

# Education Penalty Notice Code of Conduct

For unauthorised absence from school

September 2024

Education Legal Intervention Team

Birmingham City Council



 **RESET**

 **RESHAPE**

 **RESTART**

**Birmingham City Council**  
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**Introduction**

1. The purpose of this code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Birmingham City Council. The code sets out the arrangements for administering penalty notices in Birmingham and must be adhered to. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in the ['Working together to improve school attendance'](#) statutory guidance.

**Consultation**

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

**Legal basis**

3. Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, AP academies, and certain off-site places as set out in section 444A(1)(b).
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
5. A penalty notice can only be issued by an authorised officer, which for Birmingham City Council will be a local authority officer.
6. The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance'. It provides further national guidance on the operation of penalty notice schemes for school absence in England.
7. A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. Penalty notices will usually be issued to the parent or parents with day-to-day responsibility for the pupil's attendance

or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

## **Rationale**

8. Research published by the Department for Education in May 2022 found pupils with higher attainment at KS2 and KS4 had lower levels of absence over the key stage compared to those with lower attainment.
  - Pupils who did not achieve the expected standard in reading, writing and maths in 2019 had an overall absence rate of 4.7% over the key stage, compared with 3.5% among pupils who achieved the expected standard and 2.7% among those who achieved the higher standard.
  - Pupils who did not achieve grade 9 to 4 in English and maths GCSEs in 2019 had an overall absence rate of 8.8% over the key stage, compared with 5.2% among pupils who achieved a grade 4 and 3.7% among pupils who achieved grade 9 to 5 in both English and maths.
9. For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.
10. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance, only resorting to legal enforcement when necessary. The aim is that the need for legal enforcement is reduced by taking a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.
11. The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
  - support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
  - they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

## **When may a penalty notice for absence be appropriate?**

12. When a school becomes aware that the national threshold has been met, they must consider whether a penalty notice can and should be issued or not. The national threshold has been met when a pupil has been recorded

as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks<sup>1</sup>, with one of, or a combination of the following codes:

- (a) code G (the pupil is absent without authorisation for the purpose of leave in term time),
- (b) code O (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
- (c) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

13. Birmingham City Council will consider issuing penalty notices within the national framework in the following circumstances:

- Ongoing unauthorised absence - When:
  - a pupil has had a minimum of 10 sessions of unauthorised absence within a period of 10 school weeks;
  - a school or place of alternative educational provision has completed the relevant attendance procedure and;
  - despite that procedure being followed by the school/alternative provision, there has been little improvement in the pupil's attendance; or a notice to improve has been issued but there has been no improvement over a six-week period.
- Unauthorised Leave in Term Time - When:
  - a pupil has been taken on an unauthorised "leave of absence" from school (code G) or a place of alternative educational provision for minimum of 10 continuous sessions (five days) and;
  - the school or place of alternative educational provision have followed the relevant local authority legal intervention process, a penalty notice may be issued.
- Excluded Child in a Public Place - When:
  - a child of compulsory school age is excluded on disciplinary grounds, the parent of that child, provided they have been served with Notice under Section 104 of the act, must ensure that the child is not present in a public place during school hours during the first five days of that exclusion without reasonable justification. Where parents fail to ensure their

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<sup>1</sup> A school week means any week (Monday to Sunday) in which there is at least one school session. The 10 school-week period when the national threshold applies may span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

child is not in a public place under these circumstances, a penalty notice may be issued.

14. If in an individual case the local authority believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met. This will be in exceptional circumstances only, and the issuing of penalty notices in these circumstances can only be authorised by a manager within the Attendance and Inclusion Service.
15. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, the local authority will consider direct prosecution under section 444 (1) of the Education Act 1996.
16. For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn. Where penalty notices are not paid for the first offence, the local authority will go straight to prosecution for a second offence under section 444 (1) of the Act.
17. Though not a requirement of the framework, the Local Authority may, in cases of high levels of unauthorised absence including where unauthorised leave in term time of 30 school days or more has been taken, decide not to issue a Penalty Notice, but instead prosecute the parent under sections 444(1) or 444(1A) of the Act.

### **Key considerations prior to the issue of a Penalty Notice for school absence**

18. The following considerations will be made by the local authority before issuing a penalty notice to ensure consistency of approach:
  - In cases where support is not appropriate (for example, for leave in term time), consider on a case-by-case basis:
    - Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
    - Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010

- Is it in the public interest to issue a penalty notice in this case given the local authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?
- In cases where support is appropriate, consider on a case-by-case basis:
  - Has sufficient support already been provided? Sufficient support will usually include an offer of early help; the offer of a formal support meeting; and the offer of an attendance contract or as specified in the appropriate local authority attendance procedures.
  - Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
  - Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010
  - Is it in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?

If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

### **Notice to improve**

19. A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued in cases of ongoing unauthorised absence from school. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a notice to improve may be sent to give parents a final chance to engage in support. The local authority can choose not to use one in any case, including cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

20. Decisions as to whether a notice to improve or other actions should be taken will be made by the local authority once a referral is made by the school.

21. If a notice to improve is issued, the local authority will notify the school and ask for the child's attendance to be monitored for a maximum of six weeks. Should there be any further unauthorised absence accrued within the improvement period, the local authority must be advised immediately by the school and a penalty notice will be issued.

## **Penalty Notices**

22. Birmingham City Council issues all education penalty notices in Birmingham.

23. In order for a request for a penalty notice or other disposals to be considered the school must complete an online referral form within six weeks of the threshold being reached, and include the evidence specified in the appropriate guidance.

24. On receipt of the referral the local authority will review the evidence and decide whether sufficient support has been provided as appropriate before issuing a penalty notice if appropriate.

25. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. They will do this by contacting the school by email as soon as possible after the outcome of the referral is determined.

26. Where pupils move between local authority areas, Birmingham can be contacted on [crossborder.penaltynotice@birmingham.gov.uk](mailto:crossborder.penaltynotice@birmingham.gov.uk) to find out if penalty notices have been issued previously.

27. Where pupils attend school in Birmingham but live in a neighbouring local authority Birmingham City Council will work with neighbouring local authorities to set out how we will work together. This might include how the local authority will liaise with the home LA in cases where a penalty notice is being considered and support is appropriate, and that support is being provided by the home LA.