



THE ROYAL BOROUGH OF
KINGSTON
UPON THAMES



Penalty Notices

Code of conduct for schools

Revised August 2024

Content

Introduction	1
Legal basis	1
Who may issue a penalty notice	2
Criteria for the issuing of penalty notices.....	3
Notice to improve	4
Things to consider before issuing a penalty notice	4
Reasons to issue.....	5
Procedures in issuing penalty notices.....	6
Serving of penalty notices.....	6
Non-payment of penalty notices	7
Withdrawal of penalty notices.....	7
Outcome of penalty notices.....	7
Maximum number of penalty notices	8
Cost and collection of penalty notices.....	8
Prosecution for non-payment of penalty notices.....	8
Prosecute at the third (or subsequent) offence(s)	8
Review.....	9

Introduction

Education (Penalty Notices) (England) (Amendment) Regulations 2024 that came into effect on 19 August 2024, set out the framework for the issuing of penalty notices. The Regulations require each local authority to draw up a local code of conduct which sets out measures to ensure consistency in the issuing of penalty notices. This code of conduct should be read in conjunction with the Section 444 of the 1996 Education Act www.legislation.gov.uk/ukpga/1996/56/section/444 Section 103 of the Education and Inspection Act 2006 Education and Inspections Act 2006 (legislation.gov.uk).

The code set out the arrangements for administering penalty notices by Achieving for Children (AfC) on behalf of the Royal Borough of Kingston upon Thames and London Borough of Richmond upon Thames, and must be adhered to by anyone who has the authority to administer penalty notices. The code complies with relevant regulations and the Department for Education's (DfE's) national framework for penalty notices which came into effect on 19 August 2024 and is set out in the Working together to improve school attendance guidance: [Working together to improve school attendance - GOV.UK](#).

Legal basis

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, alternative provision academies, and certain off-site places as set out in section 444A(1)(b).

An offence occurs:

- if a parent or carer fails to secure a child's regular attendance at school or alternative provision, at which they are a registered pupil, and an absence is not authorised by the school, or alternative provision

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.

A penalty notice can only be issued by the authorised officers of the Education Welfare Service (EWS). The reference to headteachers relates to seeking authorisation for circumstances where 'leave of absence' applies.

The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance' published February 24, and applies from the 19 August 2024. It provides further national guidance on the operation of penalty notice schemes for school absence in England.

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, intervening early before absence becomes entrenched.

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 s 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). In such circumstances, separate notices will be issued to each person. Penalty notices are therefore issued per parent, per child.

Penalty notices will be issued by first class post to satisfy evidential requirements or standards. Any notice sent in this way is considered legally served by the court. Penalty notices may also be issued by email if a parent has said they will accept this method of correspondence.

The national framework for penalty notices is based on the principle that penalty notices should only be used in cases where support is not appropriate (eg, 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.

The penalty notice offers a person the opportunity to avoid a conviction by the payment of a penalty in accordance with the notice.

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.

Who may issue a penalty notice

Under our code of conduct, the issuing of penalty notices and who is the authorising officer relates to the following.

Leave of absence requests: will be for the headteacher to determine, meeting the requirements of the code of conduct, in conjunction with the local authority which can issue a penalty notice on their behalf.

However, authorised officers have the power to issue a penalty notice for a first offence in exceptional circumstances. This could be where the unauthorised absence was for an extended period and condoned by the parent (for example, where the parent has taken their child on holiday during term time without authorisation).

No notice to improve will be issued in circumstances where a leave of absence is not granted by a headteacher.

Other forms of persistent absence episodes: will be determined by the EWS following a referral submitted by the school for unauthorised absence that meets with the (five school days or 10 sessions or more criterion) set out in the code of conduct; those where 'O' code has been used, 'N' code and 'U' code.

The expectation is to 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.

Achieving for Children's EWS who also are accredited persons within the legislation, will approve and issue these penalty notices on behalf of schools. Authorised officers will determine all cases of appropriateness to take this course of action. This ensures consistency across schools and all in relation to all cases so as to prevent conflict with other enforcement sanctions.

Criteria for the issuing of penalty notices

The EWS will act on requests made by schools, academies or alternative education, provided the Government's National Framework threshold has been met.

This is reached when a pupil has been recorded as absent without authority for 10 sessions (a school day is made up of two sessions) within a 10 school week period. Unauthorised absence is evidenced by the presence of one of, or a combination of the following codes in the child's record of attendance.

These codes are stated in the School Attendance (Pupil Registration) (England) Regulations 2024.

- Code G: the pupil is absent without permission for the purpose of a holiday.
- Code N: the circumstances of the pupil's absence have not yet been established.
- Code O: the pupil is absent without authority and none of the other registration codes within the 2024 regulations applies.
- Code U: the pupil attended school after the taking of the register ended, but before the end of the relevant sessions, and no other code within the regulations applies.

Education Welfare Service will also act on notifications from schools of incidents of an excluded pupil; Code E: being present in a public place during school hours without reasonable cause. Their national framework threshold does not apply in these cases.

If in an individual case, the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the national threshold is met.

If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be the most appropriate tool.

Where families move into the local authority, enquiries will be made with past local authorities to ascertain if penalty notices have been issued for school absence offences.

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. Penalty notices issued before 19 August 2024 will not count toward the escalation process.

Notice to improve

The Education Welfare Service are the only authorised officers that will issue a 'notice to improve' where persistent unauthorised absence applies.

No notice to improve will be issued where a leave of absence is not granted by a headteacher.

This is a final opportunity for a parent to improve attendance and engage in support before a penalty notice is issued. 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 should be sent to the parents as a final chance to engage.

The Education Welfare Service may choose not to offer a notice to improve if they do not expect it to have any impact on a parent's behaviour (for example, because the parent has already received one for a similar offence) and when this occurs, the expectation is for the local authority to consider this on a case-by-case matter.

The recommended length of the improvement period should be three to six weeks. This period is flexible, and a referral may be made to the local authority before the conclusion of the period should circumstances dictate, for example the parent fails to engage or the absence continues.

It is the Education Welfare Service's decision on what sufficient improvement amounts to. For example, there might be no further unauthorised absences within the improvement period, or a sufficient amount of improvement tailored to the family.

Things to consider before issuing a penalty notice

The Education Welfare Service, as the local authority officers, will consider the following before issuing a penalty notice to ensure consistency of approach.

A penalty notice may be issued as an early alternative to prosecution or other forms of intervention depending on the individual circumstances.

- Whether it can be effective in helping to get the pupil back into school.
- A requirement that when the national threshold is met, schools make an assessment on a case-by-case basis whether a penalty notice can and should be issued.
- A penalty notice can only be issued in cases of unauthorised absence that include leave of absence 'G' code permission not granted by the headteacher.

- A penalty notice offers a swift intervention that may be used to combat attendance problems before they become entrenched and where the local authority considers that a prosecution would be inappropriate or unwarranted at that time.
- A penalty notice can be a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance, but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed.

The normal response to a first offence should be a warning in the form of the 'Notice to Improve', rather than a penalty. However, authorised officers have the power to issue a penalty notice for a first offence in exceptional circumstances. This could be where the unauthorised absence was for an extended period and condoned by the parent (for example where the parent has taken their child on holiday during term time without authorisation).

The national threshold that a penalty notice can be issued is 10 sessions of unauthorised absence which is five school days within a 10 week period (school time only). These do not need to be consecutive.

Reasons to issue

Holidays in term time (G codes): meeting criteria and headteachers determining this is a holiday and being recorded as such.

- Whether a penalty notice is the best available tool to improve attendance and change parental behaviour.
- Whether issuing a penalty notice in this case is appropriate after considering any obligations under the Equality Act 2010.
- Whether it is 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.

Unauthorised absence (O, U and N)

Penalty notices will be considered as part of the EWS statutory duties relating to persistent absence criteria being met following a referral to EWS. However, these will be as to whether this is the most appropriate route. We will consider the following.

- A history of attendance of the pupil concerned including previous referrals to the local authority.
- A review of whether the school has offered proportional support and whether that support has worked or not, including the communication with parents by phone, letter or in person.
- The level of engagement of the parent and pupil regarding the absences.
- The reasons offered by the parent for the absences.

- Whether the penalty notice is 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?
- Whether the issuing of a penalty notice is appropriate after considering any obligations under the Equality Act 2010.
- Is it in the public interest to issue a penalty notice given that the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?

Excluded pupils in a public place

(not part of the new framework guidelines relating to the number of penalty notices that can be issued).

- Evidence of the notification to parents of their responsibilities whilst the exclusion is in place.
- Evidence presented in respect of the pupil being in a public place during school hours.
- Information relating to any reason apparent or offered for the pupil being in the public place, to help in ascertaining if there was reasonable justification.

Procedures in issuing penalty notices

The Education Welfare Service will be solely responsible for processing requests for penalty notice from schools for a leave of absence. Requests will be considered provided that a 'request a penalty notice form' is received, fully completed and sent to the ewsfpn@achievingforchildren.org.uk inbox alongside ensuring the requirements of this code of conduct are met. In addition, the issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already in process.

The Education Welfare Service and officer overseeing penalty notices will issue them by post if the required improvement has not been achieved.

Serving of penalty notices

A notice may be served by post sending it to the recipient at that address.

Please note: service by post shall be deemed to have occurred, unless the contrary is proved, after posting the notice by post.

Non-payment of penalty notices

Where the penalty notice is not paid in full by the end of the 28 day period, the local authority must:

- prosecute for the offence to which the penalty notice applies; the prosecution relates to irregular school attendance under S444 of the Education Act 1996, or in instances of a child being in a public place whilst excluded under S.103 of the Education and Inspections Act 2006
- withdraw the penalty notice when circumstances indicate this is suitable
- keep a record of all penalty notices issued, and all prosecutions relating to offence for which a penalty notice was issued

Withdrawal of penalty notices

There is no inherent right to appeal a penalty notice.

Once issued a penalty notice can only be withdrawn in the following circumstances:

- the penalty notice has not been issued in accordance with the code of conduct
- evidence has been established that the penalty notice was issued to the wrong person
- material errors have been identified in the information leading to the issue of the penalty notice
- the period for payment has expired and the local authority does not intend to instigate legal proceedings for which the penalty notice relates

Outcome of penalty notices

The local authority will notify the schools of instances where an offered penalty notice has not been paid, withdrawn, or resulted in a prosecution in respect of the offence under S.444 Education Act 1996. This notification will be achieved by email contact to the referring school.

Where pupils move between local authority areas, Achieving for Children can be contacted by email ewsfpn@achievingforchildren.org.uk to find out if penalty notices have been issued previously.

Where pupils attend school in Kingston and Richmond boroughs and live in a different local authority, Achieving for Children will liaise with the home local Authority to advise of the actions taken and outcome.

Maximum number of penalty notices

The national framework for penalty notices sets out that a maximum of two penalty notices per child, per parent can be issued within a rolling three year period. If the national threshold is met for third time (or subsequent times) within three years, alternative intervention may be considered. This might include prosecution or one of the other attendance legal interventions available to the local authority. The decision on the type of intervention is for the local authority to decide.

If repeated penalty notices are being issued and are not working to change behaviour they are unlikely to be the most appropriate tool.

Cost and collection of penalty notices

The national framework has stipulated revenue generated from penalty notices, must be used to cover the costs of issuing, and enforcing these, including the cost of prosecuting recipients who do not take up the offer of the penalty notice. All penalties will be paid to the local authority which will retain the revenue to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay.

The penalty is £80 if paid within 21 days of receipt of the invoice. If payment is not received by the local authority within 21 days, the cost of £80 will increase to £160 for a further seven days.

Second penalty notice issued to the same parent for the same child within a rolling three year period being charged at a higher rate of £160 with no option for this second offence to be paid at the lower rate of £80.

Prosecution for non-payment of penalty notices

The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed, 28 days after receipt of the invoice. They cannot be convicted of that offence if they pay a penalty in accordance with the notice.

If the penalty is not paid in full by the end of the 28 day period, the local authority must either prosecute for the offence to which the notice applies or withdraw the notice (can only be done in limited circumstances).

Prosecute at the third (or subsequent) offence(s)

NB: Unlike other penalty notice schemes, the prosecution is not for non-payment.

If there is a prosecution, it will follow the usual procedures of a prosecution for irregular attendance. Prosecutions will be brought by the local authority under section 444 of the Education Act 1996. In the case of a penalty notice for exclusions, the prosecution will be brought by the local authority under Section 103 of the Education and Inspection Act 2006.

Review

This code of conduct will be reviewed on an annual basis and may be amended in line with relevant regulations and the Department for Education's (DfE's) National Framework for Penalty Notices revised August 2024.

All enquiries relating to penalty notices should be directed to:
ewsfpn@achievingforchildren.org.uk.

Please be aware that this inbox is not monitored daily.

Any questions regarding penalty notices relating to a leave of absence must be directed to the headteacher of your child's school where the penalty notice was issued and not to this inbox. We do not determine the issuing of penalty notices, only approve these in relation to a leave of absence where the criteria is met to issue.

There is no right of appeal for penalty notices.