

Home > Residents > Education and schools > Joint code of conduct for issuing education related penalty notices

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Blackburn with Darwen, Blackpool and Lancashire County local authorities

Joint code of conduct for issuing education-related penalty notices

Code of conduct for penalty notices for school absence

Introduction

This code of conduct has been developed in accordance with the national framework for penalty notices for school absence issued by the Department for Education within statutory guidance [working together to improve school attendance](#). As such, this code of conduct comes into effect from and in relation to unauthorised school absences taking place from 19 August 2024.

It includes the codes of conduct in respect of notices for attendance and notices for the whereabouts of excluded pupils. It provides details of the procedural arrangements for the administration of such notices. In addition, the details of the legislation that underpins the issuing of education-related penalty notices can be found in Appendix 1.

National framework for penalty notices

In order to ensure a consistent approach to school attendance enforcement the national framework for penalty notices for school absence specifies the following:

Penalty notice threshold

The threshold at which a penalty notice **must** be considered is set at 10 sessions (equivalent to 5 days) of unauthorised absence within a rolling 10-school week period¹. This may include absences as a result of arriving late after the register closes. The sessions of unauthorised absence do not have to be consecutive. The 10 school weeks may span different terms or school years.

Penalty notice amounts

Penalty notices are issued at £160 and should be paid within 28 days. They can be paid at £80 if paid within 21 days.

Any second penalty notice issued to the same parent for the same child within a rolling 3-year period will be issued at a higher rate of £160 to be paid within 28 days with no option for a discounted rate.

Limits on issue

Only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period.

A third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those 3 years, alternative action should be taken instead. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions.

Recipients of penalty notices

For the purposes of school attendance, a parent is defined under s576 of the Education Act as: all natural parents and any person who

although not a natural parent, has parental responsibility or who has care of a child or young person. A penalty notice can be issued to each parent liable for the attendance offence or offences.

School responsibilities

Under The Education (Penalty Notices) (England) (Amendment) Regulations 2024 all state funded schools **must** consider as soon as practicable, whether a penalty notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a penalty notice. Schools should not have a blanket position of issuing or not issuing penalty notices and should make judgements on each individual case to ensure fairness and consistency across the country. Judgements should be made by school taking into account the working together to improve school attendance statutory guidance, using a 'support first' ethos, except where this would not be appropriate for example, for unauthorised leave/holiday.

Local authority responsibilities

Where a request for a penalty notice is made by a school, the local authority must consider if the notice should be issued in line with the national framework, the local code of conduct, the public interest and after considering any obligations under the Equality Act 2010.

Local authorities must record where a penalty notice has been issued to an individual parent in respect of individual pupils and retain these records for at least 3 years from the date of issuing any notice in order for escalation procedures to be followed.

Non-payment of penalty

Non-payment of the penalty within the 28-day time limit will trigger the prosecution process under the provisions of section 444 of the 1996 act or section 103 of the 2006 act, except where the notice is withdrawn (as detailed in the criteria below). As with all prosecutions, the code for crown prosecutors must be followed, and the rules of evidence and criminal procedural rules apply. Therefore the authority must be satisfied that any prosecution meets the “evidential” test and the “public interest” test, as set out in the said code before proceeding with a prosecution.

Withdrawing penalty notices

Once issued, a penalty notice may only be withdrawn in accordance with relevant criteria under regulation 8 of The Education (Penalty Notices) (England) Regulation 2007:

Where the relevant LA agrees that:

- The penalty notice should not have been issued; or
- The penalty notice is shown to have been issued to the wrong person; or
- It appears to the authority that the notice contains material errors

If an LA ultimately decides not to bring proceedings in respect of the non-payment of a penalty notice, the notice must be formally withdrawn.

The LA may reissue a penalty notice where appropriate.

Penalty notice income

The LA will retain any revenue from the income generated by education-related penalty notices. Any income from penalty notices should be first used for the administration of the penalty notice system and prosecution. If a surplus remains, this can be spent on attendance support.

Local code of conduct for Blackburn, Blackpool and Lancashire

The following sets out the locally agreed protocol for issuing penalty notices pan-Lancashire:

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the LA.

Each LA will only be responsible for considering the issuing of penalty notices for children who are on the roll of a school within their authority. Where pupils reside within the Lancashire, Blackpool or Blackburn with Darwen local authority area but are on roll at a school in another authority the LA for the school will decide on the appropriate action to be taken. If required, cross-border discussions will take place between the relevant LAs.

A penalty notice for non-attendance can only be issued in cases of **unauthorised** absence. Any schools submitting requests must adhere to the guidance on the marking of registers within working together to improve school attendance.

Requests for penalty notices **must be** submitted to the LA no later than three school weeks after the original offence was committed.

As per the national framework, where the LA is of the opinion that a pupil's level of attendance is so low that initiating proceedings in the magistrates' court would be more appropriate, the LA reserves the right not to issue a penalty notice. Each local authority will determine which action should be taken on a case-by-case basis.

Procedure for issuing penalty notices

The relevant nominated officer(s) for each LA will issue penalty notices for non-attendance on behalf of their respective LA.

Penalty notices will only be issued by first class post (which constitutes good service) and should not be hand delivered, other than in exceptional circumstances. This will ensure that evidential and health and safety requirements are met.

Requests from schools and the police to issue penalty notices will be considered by the LA provided that:

- All relevant information is supplied in the manner specified by the relevant LA
- The application is accompanied by a completed local authority school attendance support checklist, which demonstrates that where appropriate, support options have been considered and offered. This checklist is not required for requests in relation to unauthorised leave/holidays
- The circumstances of the pupil's absence meet all the evidential requirements of the national framework for penalty notices for school absence and this code of conduct
- The issuing of a penalty notice will not conflict with other intervention strategies already in place or other enforcement measures already being processed

The LA will endeavour to respond to all such requests within 10 school days, providing all criteria are met. They will then either confirm that penalty notice procedures will be implemented or that other, more appropriate, interventions will be explored.

Notices to improve

In cases of unauthorised absence, other than notification of intention to take unauthorised leave of absence, the LA will:

- Issue a formal written notice to improve to the parent/carer of the possibility of a penalty notice being issued
- In the same letter, set a period of 15 school days during which the pupil's attendance will be closely monitored
- Issue a penalty notice through the post if the required level of improvement has not been achieved

Unauthorised leave/holidays

Notices to improve will generally not be issued in cases where all or the majority of the absence is due to unauthorised leave. Schools must ensure that they notify parents (in writing) when a leave request is not authorised, and that if the leave is still taken, the school will apply for legal sanctions. Where parents do not give notice of a leave of absence, schools must still inform the parents (in writing) that the absence has not been authorised and that the school intends to apply for legal sanctions.

Penalty notice outcomes

Schools will be notified by the LA when a penalty notice has been issued, when a payment has been received and where a payment has not been received within the specified timescales. This will normally be via email from the issuing officer or LA team.

Subsequent offences

Where two penalty notices have been issued to a parent within a rolling 3-year period, and those penalty notices meet the criteria set out in the national framework, the LA will consider the following options:

- Prosecution under s444(1) Education Act 1996
- Prosecution under s444(1)(A) Education Act 1996 (aggravated offence)
- Application for an education supervision order

Where applicable, schools will be asked to indicate (if known) the previous school of any child who has not been on their roll for the last 3 years, on the penalty notice request.

In cases where the pupil has moved between local authority areas in the previous 3 years, either because the family has moved house or the pupil has moved school, an additional check will be carried out by the responsible officer by contacting the previous LA. Where no response is received within 10 working days, it will be assumed that the parent has not previously received a penalty notice.

Local authorities may make these checks to the LAs included in this code of conduct via the following emails:

crossborder.penaltynotice@blackburn.gov.uk

Reporting and review

The three LAs will review the penalty notice procedures at appropriate intervals and:

- Ensure that all relevant statistical information is made available to the Department for Education (DfE)
- Propose amendments to the procedures as and when appropriate

Code of conduct for penalty notices for the whereabouts of excluded pupils

Rationale – penalty notices for whereabouts of excluded pupils

Parents are expected to make arrangements for the supervision of children who have been excluded from school on any day which is one of the first five school days to which any exclusion relates.

Where the LA is notified that a parent is believed to be failing in their statutory duty to ensure such children are not in a public place, an investigation will be undertaken to establish the basic facts of the case in each instance in order to determine whether an offence is likely to have been committed.

It is expected that in the first instance parents would be reminded of their duty under this legislation and warned as to future behaviour, but subsequently a penalty notice could be issued where the criteria set out in the relevant code of conduct have been met. However, where a child is reported on more than one occasion during any single episode of exclusion, the LA will only consider a penalty notice for any one offence.

Where there is evidence of repeat episodes which suggest parenting is a significant contributory factor to the pupil's continuing behaviour concerns, schools will be expected to have considered/offered a parenting contract for behaviour before the LA will consider more than three requests for penalty notices in any one academic year.

Circumstances where a penalty notice may be issued for the whereabouts of excluded pupils

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the LA.

A penalty notice for the whereabouts of excluded pupils can only be issued in cases where the parents of a formally excluded child fail in their duty to ensure that he/she is not in a public place during school hours (without reasonable justification) on a day which is one of the first five school days of any fixed period or permanent exclusion.

The notice allows a parent to pay a penalty as a way of discharging any liability for the offence on the days specified. However, the parents must have been explicitly notified by the school of this duty/liability at the time of their child's exclusion **and** the specific days to which it relates.

Consequently, schools will be required to provide the LA with proof of notification and the means of delivery when making a request for a parent to be issued with a penalty notice for the whereabouts of an excluded pupil.

However, a parent has a defence if they can prove reasonable justification. A competent justification which is capable of being regarded as reasonable will depend on the parents "facts" being backed up by proof. It is unlikely that any justification will be held to be reasonable unless it stands up on these facts.

The maximum number of penalty notices for the whereabouts of an excluded pupil that can be issued is restricted to one per pupil, per parent **in any one exclusion period**, up to a maximum of five in any one school year.

However, after three such requests, no further notices will be issued in one school year until the school provides evidence that a parenting contract (behaviour) has been considered in order to support the parent(s).

There is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

Where pupils reside within the Lancashire, Blackpool or Blackburn with Darwen local authority area but are on roll at a school in another authority the LA for the school will decide on the appropriate action to be taken.

If required, cross-border discussions will take place between the relevant LAs.

Procedure for issuing a penalty notice for the whereabouts of excluded pupils

The court officer will issue penalty notices for the whereabouts of excluded pupils on behalf of the LA in Lancashire and will automatically consider their use in all cases brought to their attention.

There are provisions in the legislation to enable the following to issue penalty notices, though there is no requirement to do so

- Authorised local authority staff
- Head teachers and where authorised, deputy and assistant heads
- The police, community support officers and accredited persons

Lancashire Constabulary have confirmed that they will not issue penalty notices in respect of excluded pupils under these provisions, nor will they formally request the LA to issue such penalty notices. However, where the police (or community support officers) believe an offence may have been committed under this legislation, they will share information with the relevant LA so that enquiries can be made.

Although head teachers are empowered to issue penalty notices, they may not be sufficiently informed to do so as the offence under section 103 of the 2006 act allows an excluded pupil's presence in a public place where there is reasonable justification for them being there. As such, each individual case must be examined on its own merits

Consequently, schools should report suspected breaches of section 103 to the LA so that the facts of the case can be ascertained before a penalty notice is considered.

The LA will investigate matters such as the method of notification to parents, the number of times an excluded pupil has been apprehended, the parents' actions or inactions that resulted in the excluded pupil being in a public place when they shouldn't have been there, the justification, if any, put forward by the parents and their overall attitude towards their responsibilities.

Some sets of circumstances will be more straightforward than others, for example, parents who claim to be unable to control their child or to be physically intimidated by them will need to prove this to be the case, unless it is self-evident. Although it is unlikely that such a justification would be held to be reasonable, it could still count towards mitigation. In such cases, where there is not already an assessment in place, schools will be advised to consider whether it would be appropriate to initiate such a process.

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Appendix 1 – Legislation

In this document "Joint Code of Conduct for issuing education-related Penalty Notices" the 96 Act means The Education Act 1996, the 2006 Act means The Education & Inspections Act 2006, and the Regulations 2007 means The Education (Penalty Notices) (England) Regulations 2007, as amended.

Relevant sections of legislation referred to in this document include:

The Education Act 1996

- Section 4 Meaning of "school"
- Section 7 Duty of parents to secure education of children of compulsory school age
- Section 8 Definition of compulsory school age
- Section 444(1) Offence: Failure to secure regular attendance at school of registered pupil
- Section 444A Penalty notice in respect of failure to secure regular attendance at school of registered pupil
- Section 444B Penalty notices: supplemental
- Section 444ZA Application of section 444 to alternative educational provision
- Section 576 Meaning of "parent"

Education & Inspections Act 2006

- Section 103 Duty of parent in relation to excluded pupil
- Section 104 Notice to parent relating to excluded pupil
- Section 105 Penalty notice in respect of presence of excluded pupil in public place
- Section 106 Penalty notices: supplemental

The Education and Skills Act 2008

- Section 155 Application of section 444 of Education Act 1996 to alternative education provision

Additional Interpretations

“School hours” mean a school session or a break between sessions on the same school day.

“A public place” means any highway or any place to which the public have access, and a school is not a public place for this purpose.

“Specific days of exclusion” are the days when this duty on parents applies, and will be detailed in the notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of such notice.

“Parent” – throughout this document, references to “parent” means each and every parent coming within the definition of the Children Act 1989, whether acting jointly or separately, and should not be taken to mean that the provisions only apply to a “parent” in the singular.

“Which constitutes good service” is a legal definition prescribing the approved conditions for effectively issuing formal notices under this scheme.

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