

Code of conduct on the provisions for fixed penalty notice for school absences

Reviewed August 2025

Local code of conduct for issuing penalty notices for school absence 2024

The purpose of this local code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across the London Borough of Ealing. The code sets out the arrangements for administering penalty notices in Ealing and must be adhered to by anyone issuing a penalty notice for school absence in this area.

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 guidance.

Consultation

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

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).

The Education (Penalty Notices) (England) (Amendment) (No. 2) Regulations 2024 (legislation.gov.uk)

A penalty notice can only be issued by an authorised officer: that is, a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable.

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.

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).

Where payment of a Penalty Notice is made it enables the parents to discharge liability for that offence.

If a parent fails to pay within the timescales the local authority will decide to either withdraw the penalty notice or to take court proceedings.

If court proceedings are taken, and proven, a parent may be fined up to £1000 and receive a criminal conviction for a s.444 (1) offence.

If convicted of a s.444 (1A) offence (the aggravated offence) they could receive a fine of up to £2500 or up to 3 months in prison and a criminal record. Both offences could also have a parenting order attached to any additional conditions the court may direct. Education Act 1996, Section 576

Rationale

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.

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.

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.

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 family.

When may a penalty notice for absence be appropriate?

When the national threshold has been met 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 weeks¹, with one of, or a combination of the following codes:

- code G (the pupil is absent without leave for the purpose of a holiday),
- code N (the circumstances of the pupil's absence have not yet been established),
- 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
- code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

During or following a truancy sweep: the Local authority or police can issue a penalty notice.

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.

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, another tool should be used. This might include prosecution or one of the other attendance legal interventions available to

¹ 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).

the Local authority. (Please refer to section 25 -Two penalty notice limit and escalation in cases of repeat offences)

For 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.

Key considerations prior to the issue of a penalty notice for school absence

The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

In cases where support is not appropriate (for example, for holidays 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 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 Equality Act 2010: guidance (For local authorities only) 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?
- 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.
- (support is not usually appropriate for absences coded as G), consider on a case-by-case basis:

For requests from schools for unagreed Holiday taken (solely G code) these will be made via Gateway/unauthorised holiday and the relevant attendance grid showing the G codes and correct parental contact details should be attached to the request. These will be issued where there are a minimum of 10 sessions over a 10-week period.

For requests from schools for variable absence codes (G, O, and U) these should be made via Gateway/Attendance, and the LA link officer will contact the referrer to establish what support has been offered and to agree jointly on appropriate action, whether a Fixed Penalty notice is the best available tool. Please be aware that N codes should be cleared, and the most appropriate absence code applied.

Has sufficient support already been provided?

Sufficient support will usually include:

- the school's own internal pastoral support has been offered
- consideration of SEN and any medical needs
- reasonable adjustments where appropriate
- early help (EHAP) including the offer of parenting classes where appropriate.
- referral to social care/SAFE as appropriate
- attendance contract
- attendance support meeting/s
- opportunity given for the parent/s to provide evidence of a request for exceptional leave
- the school's usual escalation process including a) daily logged calls b) an attendance overview letter and c) discussion with the Local authority Link Officer and or d) an attendance referral to the local authority as necessary
- The Local authority will also apply where necessary their usual escalation processes and interventions

Where a child has an EHCP, schools should consider calling an emergency annual review.

Notice to improve

A notice to improve is a final opportunity for a parent to engage in support and improve attendance 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 usually be sent to give parents a final chance to engage in support.

An authorised officer 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).

- The LA will issue 'Notice to Improve' letters
- There will be a flexible period of improvement set between 3 and 6 weeks, so that it can be varied in individual cases
- Within the period of improvement monitoring there should be no further unauthorised absences and full engagement by the parent/s with any services, support and advice offered from the school and the Local authority.
- The Local authority Attendance Officer will monitor the attendance data at regular intervals. Following the period of improvement, the

officer will contact the school to agree or not that a penalty notice should be issued/that to do so is in the public interest. If there have been further unauthorised absences and or if the parent/s have not engaged with services and any support offered, then a penalty notice will usually be issued.

The Local authority (and the Police on occasion) will work together to ensure that penalty notices are used when likely to be effective and change behaviour.

An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. **Ealing Local authority School Attendance Service will ordinarily issue the penalty notices**

Where the school request that the LA issues the penalty notice, they need to:

- Schools should request penalty notices via Gateway.
- For solely G coded requests (unagreed term time leave), these should be made through Gateway/unauthorised holiday. When uploading the request, schools should attach the attendance certificate showing the parent/s correct contact details. Notices will be processed within a 4-week period of receipt of the referral.
- For requests for variable absence codes (G, O, and U) these should be made via Gateway/attendance, and the Local authority link officer will contact the referrer to agree jointly on appropriate action dependent on whether sufficient support has been offered to the parent/s and whether a Fixed Penalty notice is the best available tool. Where there is dispute, the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice will be final.

The local authority will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. **Schools will receive a termly report on fines paid/not paid, withdrawn or prosecuted**

Where pupils move between local authority areas, Ealing can be contacted on crossborder.penaltynotice@ealing.gov.uk to find out if penalty notices have been issued previously.

Where pupils attend school in Ealing but live in a different local authority, Ealing will issue the penalty notice. Schools will provide evidence of support offered by the school and any wider services where the child is living, such as social care or health services.

Where fines are not paid and further legal action is being considered, Ealing will liaise by email with the attendance team in the borough in which the child lives.

Two penalty notice limit and escalation in cases of repeat offences

A penalty notice is an out of court settlement which is intended to change behaviour without the need for criminal prosecution. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool.

Therefore, only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period and any second notice within that period is charged at a higher rate:

- The first penalty notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
- A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.
- 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.

Once 3 years has elapsed since the first penalty notice was issued a further penalty notice can be issued, but in most cases, it would not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

For the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward and the parent pleaded or was found guilty) but not those which were withdrawn.

In cases where a pupil has moved school or local authority area in the previous 3 years, an additional check should be made to try and ascertain whether previous penalty notices have been issued to the parent in respect of the pupil.

Where the pupil's previous school was in the same local authority area this check will be simple. If the pupil has moved between local authorities in the previous 3 years and the previous local authority(ies) is known they should be contacted to check whether a penalty notice has been issued to that parent for that pupil in the previous 3 years.

These checks can be made by the school and/or local authority depending on the agreed local process. In cases where the previous local authority is not known or the information cannot be, or is not, provided by the previous local authority, it should be assumed that the parent has not previously received a penalty notice and the escalation process started as a new case.