

Bradford Metropolitan Council Penalty Notice Code of Conduct

PURPOSE OF CODE

The Education (Penalty Notices) (England) Regulations 2007 provide for the operation of the Penalty Notice scheme under Section 444A of the Education Act 1996 and Section 105 of the Education and Inspections Act 2006. The Regulations require that each local education authority must draw up a Code of Conduct which sets out measures to ensure consistency and fairness across its area and that suitable arrangements are in place for the administration of the scheme.

The Education Safeguarding Team's Prosecution Team is responsible for fulfilling Bradford Council's (referred to as the Council or the authority) statutory responsibilities to promote and enforce school attendance within the Council's area. The Service works in partnership with schools to support parents and pupils and to overcome barriers to secure good attendance.

A Head Teacher or persons authorised by the Head Teacher can request a Penalty Notice. Any person requesting and/or issuing a Penalty Notice within the Council's area must do so in accordance with this Code of Conduct and must also have regard to the Department for Education "Parental responsibility measures for attendance and behaviour" (<https://www.gov.uk/government/publications/parental-responsibility-measures-for-behaviour-and-attendance>). The responsibility for authorising absence rests with the school's Head Teacher.

This Code of Conduct is a statutory requirement for us to have to ensure that Penalty Notices are applied fairly, equitably and transparently across the city and that the rights of both children and their parents/ carers are upheld – please see the extract from the Penalty Notices Regulations 2007 Section 14 below:

14. Each local education authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including:
 - (a) means of avoiding the issue of duplicate penalty notices;
 - (b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the 2006 Act, as the case may be, are contemplated or have been commenced by the local education authority;
 - (c) the occasions when it will be appropriate to issue a penalty notice for an offence;
 - (d) a maximum number of penalty notices that may be issued to one parent in any twelve-month period; and

- (e) arrangements for co-ordination between the local education authority, neighbouring local education authorities where appropriate, the police and authorised officers.

The Education Safeguarding Team has the final say as to whether legal action is pursued if a Penalty Notice goes unpaid.

LEGAL BASIS

Irregular attendance, unauthorised absence and declined requests for leave of absence - section 444A and 444B of the Education Act 1996 introduced Penalty Notices as an alternative to prosecution under Section 444 of that Act (the parent of a child of compulsory school age who is a registered pupil at a school is guilty of an offence if pupil fails to attend school regularly). Parents may discharge potential liability for conviction under Section 444 by paying a Penalty Notice.

On 1 September 2013, the Education (Pupil Registration) (England) (Amendment) Regulations 2013 came into effect meaning that Head Teachers can no longer authorise any leave of absence for a holiday. The amendment removed any reference to holiday and/or extended leave and states clearly that any leave of absence will only be granted in exceptional circumstances. Schools will decide what they deem as exceptional circumstances.

Fixed or Permanent Exclusion - section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to a pupil of compulsory school age who has been excluded from school on disciplinary grounds whether for a fixed period or permanently. An offence occurs where a parent fails to ensure that their child is not present in a public place in school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion. Where the exclusion is for five days or less the duty applies to any of the days to which the exclusion relates.

Section 105 of the Education and Inspections Act 2006 allows for a Penalty Notice to be given to a parent guilty of an offence under Section 103 which allows them to discharge their potential liability by payment specified in the Penalty Notice.

In the Supreme Court case of *Isle of Wight Council (Appellant) v Platt (Respondant)* ([2017] WLR(D) 269, [2017] 2 Cr App R 13, [2017] ELR 413, [2017] 1 WLR 1441, [2017] 3 All ER 623, 181 JP 237, [2017] UKSC 28, (2017) 181 JP 237), the court defined "regular attendance" as "in accordance with the rules prescribed by the school". Bradford Metropolitan Council also recognises and shares the Supreme Court's view that a sensible approach must be taken that doesn't result in prosecution for "a very minor or trivial breach of the law". This code of conduct therefore aims to ensure that penalty notices are issued appropriately to address minor to medium breaches of the law.

DEFINITION OF 'PARENT'

For the purposes of this Code of Conduct, the definition of a 'parent' is as defined under Section 576 of the Education Act 1996, namely: -

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person and with whom the child lives and who looks after a child, irrespective of their relationship to the child.

Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately.

A Penalty Notice can only be issued to a parent who is an individual. Where a child is in the care of the Local Authority or other agency, a Penalty Notice cannot be issued.

PERSONS AUTHORISED TO ISSUE PENALTY NOTICES

The local arrangement in Bradford means that Penalty Notices will be issued by The Education Safeguarding Team's Prosecution Team at no charge to schools or academies.

CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

To ensure consistent delivery of Penalty Notices the following criteria will apply:

Poor School Attendance:

- At least 6 sessions (3 school days) lost to unauthorised absence by the pupil in a period of 6 school weeks. AND
- Their attendance has not been below 80% (24 sessions of TOTAL absence) in the last 12 weeks (120 Sessions) prior to a notice being requested.
- The liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued by The Education Safeguarding Team's Prosecution Team and given a minimum of 20 school days with the expectation of full attendance

OR

- The pupil has been stopped on a School Attendance and Exclusion Sweep (also known as Truancy Patrol) on more than one occasion, with no justified reason for absence.

Unauthorised Leave of Absence during term time:

- Where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given.

- Where this has created a period of unauthorised absence of at least 6 consecutive sessions (3 days).

In case of an Excluded Pupil

The pupil is found unsupervised in a public place during school hours during the first 5 days of exclusion without good reason.

In the case of a Non-Court Disposal

A penalty notice may be issued as an alternative to legal action through the magistrates' court in the following circumstances:

- Evidence of intervention has been supplied by the pupil's school and/or the Local Authority;
- The Local Authority is satisfied that an offence has been committed under Section 444(1) Education Act 1996;
- There are no "aggravating" factors which would suggest that a Fixed Penalty Notice is not appropriate, including the parent having previous school attendance related convictions.
- There is evidence that the child's attendance has improved, but that unauthorised absence is still occurring "infrequently" (Less than eight sessions in the last six weeks).

ISSUE OF PENALTY NOTICES (ALL CASES)

All requests to issue Penalty Notices from Schools, West Yorkshire Police, the Anti-Social Behaviour Unit / Community Safety and neighbouring Local Authorities must be made on the Referral Form to the Prosecution Team.

The issue of a Penalty Notice should not conflict with any other intervention strategies in place or other enforcement sanctions already being processed for the child / family.

Penalty Notices will only be issued by post and never as an on the spot action; this is to allow the Council as prosecuting authority time to satisfy itself that all evidential requirements and authorisation procedures are in place.

Where there is more than one person liable for the offence, a separate Penalty Notice will be issued to each parent.

The Local Authority (Bradford District Metropolitan Council) issuing the penalty notice shall:

- Make a record of its issue on a Council database to ensure that duplicate penalty notices are not issued.
- Notify the Head teacher/Principal of the relevant school/ Academy of the receipt of a referral and if the Penalty Notice goes unpaid.

- Monitor for payment / non-payment of the Penalty Notice, record payments against Penalty Notices that have been paid and inform the school if Penalty Notices go unpaid.

Penalty Notices will be issued to the parents of pupils registered at Bradford schools, irrespective of their actual home address. This also means that follow-up prosecutions where parents fail to pay the Notice or to improve their children's attendance will extend to families resident outside the Borough. The Prosecution Team will notify the 'home' authority of all pupils resident outside of Bradford if a prosecution is undertaken. Penalty Notices will not be issued to parents whose children are not on roll of a Bradford school.

The issuing of Penalty Notices must conform to all requirements of the Human Rights Act, Equal Opportunities and Equality legislation as amended so far as the same is relevant to the issue of Penalty Notices.

GENERAL CONSIDERATIONS FOR THE ISSUING OF PENALTY NOTICES:

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities and outcomes later in life. Penalty Notices should be used to supplement the existing sanctions currently available under Section 444 of the Education Act 1996 (magistrates court) or Section 36 of the Children Act 1989 (Education Supervision Orders) to enforce attendance at school where appropriate.

The Penalty Notice sanction should be used as a means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement or change in pattern of absence. In circumstances where it is felt that a Penalty Notice is not appropriate a prosecution can be taken by the Council under Section 444 of the Education Act 1996. Penalty Notices should not be issued where the poor attendance is symptomatic of complex family circumstances where a multi-agency team around the family response is required. Where other agencies are involved they must be in agreed that a Penalty Notice is appropriate.

Penalty Notices for attendance for Year 11 pupils should not be issued later than the spring term to ensure the process can be concluded. It may prove impossible to prosecute following an unpaid Penalty Notice due to the child attaining school leaving age and in this circumstance, the case would fail to meet the public interest criteria.

The lower compulsory school age limit is set at the first day of the term following a child's fifth birthday, this is on 31st December, 31st March or 31st August, whichever comes first. This means that only unauthorised absence accrued after the first day of the relevant term can count towards the number of unauthorised absences necessary to issue a penalty notice.

The upper compulsory school age limit (the last Friday in June when the child turns 16) in respect of statutory attendance regulations and parental responsibility has not changed, despite the Raising of the Participation Age, meaning there is currently no statutory or enforcement element in respect of learners in years 12 and over.

The circumstances of the pupil's absence must meet all the requirements of this Code of Conduct and any guidance issued via Bradford Council (for example via Bradford Schools Online) which sets out the matters which must be addressed before a Penalty Notice is considered.

Use of Penalty Notices will be unrestricted and parents may receive more than one Penalty Notice for the same child in any academic year, particularly in cases where unauthorised leave of absence occurs. The Prosecution Team will consider prosecution under Section 444(1/1A) of the Education Act 1996 where multiple Penalty Notices has previously been issued but has failed to lead to a change in behaviour.

CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED FOR POOR ATTENDANCE

Although the LA does not condone any unauthorised absence, the criteria for issuing a penalty notice have been set to take into account the level of unauthorised absence that justifies the instituting of Magistrate Court proceedings in the event that the Penalty Notice remains unpaid.

Schools should therefore consider:

Has the parent been regularly contacted by the school to establish the reasons for absence or is there established parental non-engagement in response to phone calls, letters or invitations to school based meetings.

Could there be underlying issues which need to be explored with the parents at a school based meeting to identify if any support is required.

When parents are separated and do not live at the same address, establish how much involvement each parent has in caring for the child/ren. If one parent has little involvement, consider whether it is in the public or family's interest to issue a fine to both parents.

Warning Notices:

Parents of Pupils, who at the point of referral have had 6 or more unauthorised absences over the previous six weeks for poor attendance or lateness, will be sent a warning letter by the local authority, outlining that their attendance will be monitored for 40 Sessions (20 School days). No more than one session of unauthorised absence should occur following this warning during the monitoring period. Should 2 or more unauthorised absence occur during the monitoring period, the decision whether to issue a Penalty Notice will be authorised by a member of the Prosecution Team or an authorised person in their absence following consultation with the school.

Parents/Adults over the age of 18 who live at the same address as the pupil will be equally responsible for the pupil's attendance and consideration should be given for requesting penalty notices for each individual adult.

CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED FOR UNAUTHORISED LEAVE OF ABSENCE

All schools should consider the following before submitting a referral:

The family's circumstances and the likely benefits to the child and family of the period of leave, taking into account social, emotional and cultural reasons;

The likely detrimental impact on the child's social, emotional and intellectual development, attainment level and any SEN of the taking of a period of leave.

Meeting parents to explore exceptional circumstances such as bereavement, funerals abroad, unavoidable cause (illness/flight delays) to determine the reasonableness of delay to return and allow parents the opportunity to provide appropriate evidence. This is to reduce the need for subsequent Local Authority Penalty Notice withdrawals based on retrospective evidence;

Siblings in other Bradford schools. Liaise with other schools in individual cases to agree a consistent approach in considering termtime holiday request and penalty notice;

The child's previous attendance record;

Consider exceptional circumstances put forward by the parent, explicitly setting out considerations taken by the school in a letter to the parent confirming when requests are unauthorised.

The Local Authority advises schools that no leave of absence should be authorised for children unless exceptional circumstances apply.

Penalty Notices can be issued without warning where schools can show that a leave of absence was taken during term time without the consent of the Head Teacher and the parent was made aware in writing of the decision to unauthorise the period of absence, the reasons why (including details of any evidence), and the possible consequences, including the issuing of a fixed penalty notice.

Penalty Notices can also be issued retrospectively should the school become aware that a child is absent due to an unauthorised leave of absence after the child's first day of absence. In this scenario, the school must notify the parent in writing stating why they believe the child has taken an unauthorised leave of absence, and the possible consequences i.e. penalty notice being issued by the Local Authority.

MATTERS TO BE CONSIDERED BEFORE THE ISSUE OF PENALTY NOTICES FOR PUPILS STOPPED DURING A SCHOOL EXCLUSION AND ATTENDANCE SWEEP (TRUANCY PATROL)

Before submitting a referral for a penalty notice, consider:

- Ensuring that there are no genuine reasons for the absence and any underlying issues which may need school based support.
- Arranging a parent meeting on the first occurrence of established unauthorised absence and warn of the risk of receiving a penalty notice. Penalty notices for pupils stopped twice during a sweep will act as a trigger to consider a penalty notice.

MATTERS TO BE CONSIDERED BEFORE THE ISSUE OF PENALTY NOTICES FOR EXCLUDED CHILDREN FOUND IN A PUBLIC PLACE

Penalty Notices are amongst a number of interventions available to promote better school attendance and behaviour. Better behaviour and attendance are essential to improve children's educational outcomes and outcomes later in life.

Every aspect of a pupil's case must be considered before deciding whether a Penalty Notice would be an appropriate sanction. Where appropriate discussion should take place with relevant stakeholders e.g. Children's Social Work Services and school staff. Consideration should be given to:

- The number of occasions on which the child has been present in a public place
- The parent's actions or inactions which have led the child to be in a public place at a prescribed time
- Is the child of compulsory school age and excluded on disciplinary grounds from a relevant school, whether for a fixed period or permanently?
- Can the Head teacher or Principal confirm that the school have informed the Council of the exclusion?
- Has the parent received a notice, under Section 104 of the Education and Inspections Act 2006, informing them of their responsibility with regard to Section 103, and that the day in question is one which is specified in the notice? The relevant school has the responsibility to ensure these notices are sent in accordance with the relevant legislation and guidance.
- Is there reasonable justification? Section 103(4) of the Education and Inspections Act 2006 allows the parent a defence of reasonable justification. Any explanation offered by the parent by way of reasonable justification must be considered prior to any Penalty Notice being issued. It is for the parent to prove reasonable justification. The presence of a parent does not, in itself, give reasonable justification for an excluded pupil being found in a public place during school hours. To be justified there needs to be an element of unavoidable presence.

Examples of reasonable justification are:

- Taking a child to a pre-arranged medical appointment or a medical emergency requiring immediate attention
- Extraordinary family circumstances e.g. a funeral.

CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED FOR EXCLUDED CHILDREN FOUND IN PUBLIC PLACE

A Penalty Notice can only be issued in cases where an authorised officer has reason to believe that a parent has committed an offence under Section 103 of the Education and Inspection Act 2006. Only a child's parent (as defined) is liable to receive a Penalty Notice, regardless of whether the child is seen in a public place in the company of a responsible person or other person other than the parent, including siblings and friends.

The use of Penalty Notices will be restricted to two per pupil per academic year. Only one Penalty Notice will be issued in relation to each period of exclusion. In cases where families contain more than one excluded pupil, multiple issues may occur but this will be the subject of careful consideration and co-ordination.

To ensure effective delivery of Penalty Notices, the following criteria will apply as minimum criteria for consideration:

- The excluded pupil of compulsory school age is unsupervised in a public place during school hours, or
- The excluded pupil of compulsory school age is accompanied by a parent, or other person in a public place during school hours without reasonable justification, or
- The excluded pupil of compulsory school age is stopped during school hours by the Police, anti-social behaviour officers or Police Community Support Officers.
- A witness statement from the person seeing the excluded pupil must accompany the referral, providing the pupil's details, the details of the time / location the pupil was seen, and exhibiting a copy of the exclusion letter demonstrating that the parent was aware of their responsibilities during the first 6 days of an exclusion.

Full consideration must be given to any explanation offered by the parent by way of reasonable justification.

NON-COURT DISPOSAL

A penalty notice may be used in circumstances where it is it may be more appropriate to make use of a non-court disposal than to seek legal proceedings via the magistrates' court,

In such instances, the expectation is that a referral for prosecution, together with supporting evidence, would have been submitted to the Local Authority in order to establish that an offence has been committed.

No warning letter will be issued in this circumstance, as the parent would already have been informed that they may be committing an offence, and that legal action may be sought.

SCHOOL ACTION PRIOR TO REFERRING TO THE LOCAL AUTHORITY FOR THE ISSUING OF A PENALTY NOTICE

It is expected that:

The School's Governing Body has endorsed the operation of the penalty notice scheme;

The School's Attendance Policy clearly explains the criteria and process for addressing poor attendance;

The School has fully considered any extenuating circumstances and has established there are no justified causes for the absences;

A written notice has been sent to parents informing them of the consideration to refer to the Local Authority to issue a penalty notice;

While the Head teacher can delegate the authority to a member of staff to make penalty notice referrals on their behalf, all referrals must be signed or emailed by a member of the Senior Leadership Team to confirm authorisation to ensure that referrals are made in line with the protocol.

It is good practice to ensure that parents are reminded on an annual basis of the school's policy on attendance, including the existence of Penalty Notices.

PROCEDURE FOR WITHDRAWING PENALTY NOTICES

Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

(a) that authority determines that—

- (i) it ought not to have been issued; or
- (ii) it ought not to have been issued to the person named as the recipient; or

(b) it appears to the authority that the notice contains material errors

Where any of the above occurs, written notice of the withdrawal shall be given to the recipient and any monies paid over shall be fully refunded.

PAYMENT OF PENALTY NOTICES

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the same offence in the period covered by the penalty Notice.

The Local Authority will not take late payment for a Penalty Notice once paperwork has been submitted to court.

Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120.

The LA retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

NON-PAYMENT OF PENALTY NOTICES

Non-payment of a Penalty notice within the required time limit will result in the withdrawal of the Notice and will trigger the prosecution process under the provisions of Sec 444, 1996 Education Act where you could receive a fine of up to £1000. A conviction under Section 444(1A) Education Act 1996 may result in a substantial fine up to a maximum of £2500 and/or a term of imprisonment not exceeding 3 months.

THE DECISION TO PROSECUTE WILL BE TAKEN IN LINE WITH THE CODE FOR CROWN PROSECUTORS

The Code is issued by the Attorney General which states that the decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order and therefore careful consideration will be given before agreeing to institute court proceedings under Section 444 of the Education Act 1996

General Principles:

Each case is unique and must be considered on its own.

The right person is prosecuted for the right offence which underlines the importance of having up to date information on school records of all those with parental responsibility as well as day-to-day care and supervision. It is essential that schools regularly up-date their contact details.

There is sufficient evidence to provide a realistic prospect of conviction and consideration must be given to what the defence case may be and how that is likely to affect the prosecution case.

Is the evidence reliable? It is therefore essential that schools ensure that they are satisfied with the accuracy of the register and registration codes used.

There are also Public Interest factors against prosecution which must be considered:

The offence was committed as a result of a genuine mistake or misunderstanding;

A prosecution is likely to have a detrimental effect on the victim's physical or mental health;

The defendant is suffering from mental or physical ill-health;

It is considered that there is insufficient evidence to provide a realistic prospect of conviction;

At the point of considering issuing a penalty notice the above principles should be taken into account. However, should these issues only come to the notice of the school or LA once the notice has been issued, a withdrawal will be considered in discussion with the school's Attendance Lead

When a Notice is withdrawn, no proceedings under Section 444 of the Education Act 1996 shall be instituted against the recipient in respect of the period covered by the original Penalty Notice.

RECORDS

The Council shall keep records of Penalty Notices, including:

A copy of each Penalty Notice that has been issued, including reason for issuing the notice i.e. unauthorised absence, if the leave was for a holiday, other unauthorised absence reasons.

- Details of all payments made and on what dates they were received.
- Whether the Penalty Notice was withdrawn, and if so, for what reason.
- Whether the recipient was prosecuted for the offence for which the Penalty Notice was issued.

REPORTING AND REVIEW

The Education Safeguarding Team will report at regular intervals to the Head Teacher Associations, West Yorkshire Police and other relevant partners on the deployment and outcomes of Penalty Notices as required

The Education Safeguarding Team will review the Penalty Notice procedure at regular intervals and make any changes deemed appropriate.

Freedom of Information Requests frequently demand information about how many Notices have been issued by the authority and, in particular, the reason for the issuing of the Notice. The Prosecution Team will continue to respond to such requests

For more information and guidance consult the DfE Guidance available for download from:

<https://www.gov.uk/government/publications/parental-responsibility-measures-for-behaviour-and-attendance>