

Royal Borough of Greenwich

Education Penalty Notice

Local Code of Conduct

The National Framework for Penalty Notices, as mandated within the *Working Together to Improve School Attendance Statutory Guidance*, is effective from 19th August 2024¹.

In line with the National Framework, all local authorities within England, must follow the legislation and regulations as laid out, ensuring a fair and consistent approach to the consideration and issuing of penalty notices.

The local code of conduct sets out the legal framework and expectations, local procedures and the arrangements for administering penalty notices and must be adhered to by anyone authorised to issue or requesting a penalty notice be issued, due to unauthorised absence from school.

A penalty notice is to be used as an additional opportunity for parents/carers and guardians to fulfil their legal obligations as an alternative sanction and before entering into a court process, which can lead to criminal prosecution.

RATIONALE:

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities and enhance their chances in life.

Good school attendance is essential to improving children's educational and future employment prospects. Evidence shows that poor attendance severely impacts on children's educational growth and their future prospects are significantly restricted. They are more likely to be unemployed, suffer from poverty and are more at risk of criminal or antisocial behaviour.

There is evidence from research conducted by the Department for Education (DfE) that overall grades achieved by individual schools, decline in line with the number of school days missed by pupils during the year.

For the most vulnerable children, regular school attendance is an important protective factor and often the best opportunity for needs to be identified and support provided.

¹ <https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

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 barriers to attendance and intervening early before absence from school becomes entrenched.

The national framework for penalty notices is based on the principles that penalty notices should only be issued 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 believed to be the most appropriate tool to change parental behaviour and improve attendance.

Parents of pupils attending schools within the Royal Borough of Greenwich are supported to overcome barriers to regular attendance through a wide continuum of assessment, prevention and intervention strategies, from within schools and the wider network of support services.

LEGALITIES

Section 7 of the Education Act 1996 states that the parent of a child of compulsory school age has a legal duty to ensure that they receive an efficient full-time education suitable to their child’s age, ability, aptitude and any special educational needs. Therefore, in order to ensure that parents comply with this duty and to ensure that children and young people are able to maximise the opportunities available to them via regular attendance at school, Royal Borough of Greenwich (the Local Authority) will support schools to challenge irregular school attendance using the powers outlined in this Code of Conduct.

Section 444 of the Education Act 1996, states that, if it is believed that a child has failed to attend school regularly, the parent is guilty of an offence under section 444(1) of the Act.

Penalty notices are an alternative to prosecution and enable parents to discharge criminal liability in relation to an offence under the Education Act 1996.

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 in relation to children 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(a)(b).
- A penalty notice can only be issued by an authorised officer of the local authority and the police. Headteachers (including Deputy and Assistant Headteachers

authorised by them) are authorised to request a penalty notice be issued for unauthorised absence from school.

- The national framework directs that a penalty notice may be issued where there has been at least **10** sessions of unauthorised absence in the preceding **10** school weeks.
- The 10 school week period can span different terms and school years, i.e., the end of one academic year, into the beginning of the next academic year. (This is applicable from the academic year 2024/25 only).
- A penalty notice can be issued for **£80**, to be paid within **21 days** of the date of the notice.
- If this is not paid within the timescale, the penalty notice is increased to **£160** and should be paid by the **28th day** of the date of the notice.
- Non-payment of the penalty notice will permit the Local Authority to prosecute the parent for the original offence, under section 444(1) of the Act.
- The national framework directs that a limit of **two** penalty notices can be issued to a parent for the same child within a rolling **three** year period, so at the third or subsequent offence(s) another tool will need to be considered (such as prosecution or one of the other attendance legal interventions).
- 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 it is deemed necessary and appropriate to issue a second penalty notice to the same parent for the same child within the three year period, the penalty notice will be issued at the higher rate of **£160**. There will be no option, to pay the lesser amount of **£80**.
- Should the issuing of a penalty notice fail to improve attendance, consideration will be given to prosecution following appropriate legislation.

DEFINITIONS:

Parent:

Section 576 of the Education Act 1996 defines the '*parent*' of a child or young person as including:

- Both of their natural parents, whether they are or were married or not.
- Any person who, although they are not the natural parent, has parental responsibility for the child or young person, as defined in the Children Act 1989; and

- Any person who, although not the natural parent, has care of the child or young person, i.e. with whom the child lives, irrespective of the nature of their relationship with the child.
- Penalty notices will usually be issued to the parent or parents with day to day responsibility for the pupil's school attendance or the parent or parents who have allowed the absences (regardless of which parent has applied for a leave of absence).

Throughout this document, references to 'parent' means each and every person falling within this definition, whether or not those people are intentionally acting jointly or separately; the contents of this Code of Conduct does not only apply to 'parent' in the singular.

Compulsory School Age:

Section 8 of the Education Act 1996, states that a child is of compulsory school age from the start of the school term commencing on or after their fifth birthday, until the last Friday in June of the school year in which the young person becomes sixteen years old.

Leave of Absence:

The Education (Pupil Registration) (England) Regulations 2006 prohibits the proprietor of a maintained school from granting leave of absence to a pupil, except where an application has been made in advance and the proprietor is satisfied that there are exceptional circumstances for agreeing to that application. *(Note: DfE education guidance confirms that such requests should only be authorised in exceptional circumstances, which will not normally include family holidays. The issue of unauthorised leave of absence was also considered by the Supreme Court in the case of Isle of Wight v Platt [2017] UKSC28). Where it was also clarified that 'regular school attendance' is 'in accordance with the rules prescribed by the school'.*

This Code of Conduct will govern the issuing of the Penalty Notices for schools across the Royal Borough of Greenwich.

Royal Greenwich has responsibility for producing and overseeing the Penalty Notice Code of Conduct, ensuring consultation takes place with governing bodies, headteachers and the chief officer of police for the area, to ensure all partners named, will operate with consistency in the issue of penalty notices.

This Code of Conduct is set out in accordance with The Education (Penalty Notices) (England) Regulations 2007, as amended within the *working together to improve school attendance* statutory guidance and is an agreement between:

- Royal Borough of Greenwich (Local Authority);
- National local authorities;

- Governing Bodies and Headteachers of Royal Greenwich state funded schools;
- The Greenwich Division of the Metropolitan Police Service;

The Attendance Advisory Service (AAS) carries out the administration of penalty notices, for irregular school attendance, on behalf of all schools within the Royal Borough of Greenwich.

1. Purpose of this Code of Conduct

- Ensure compliance with the laws and regulations on the administering of penalty notices.
- Ensure consistency, fairness and transparency in the way penalty notices are issued.
- Ensure that penalty notices are not issued outside the terms of this Code of Conduct.
- Provide advice and guidance to schools on the administering of penalty notices.

2. Arrangements for co-ordination between local authorities, where appropriate, and the Police.

- 2.1 The Authorised Officer for the purpose of Section 444A(1) of the Education Act 1996 shall be the Attendance Advisory Service (AAS) Courts Officer or in their absence, the Head of Service.
- 2.2 The Court Officer oversees the protocol for cross-borough co-ordination for penalty notices. The AAS will consult other local authorities, where necessary and share relevant information with our partners.
- 2.3 The AAS ensures appropriate arrangements for revenue collection.
- 2.4 All schools should have effective systems and procedures for encouraging regular school attendance. The AAS will assist schools with this process where required.

3. Means of avoiding the issue of duplicate notices.

- 3.1 The AAS has and maintains a database for storing pupil data, and produces the penalty notices.
- 3.2 The AAS will process referrals received from the Code of Conduct partners.
- 3.3 Penalty notices will only be issued following specific confirmation from the AAS that no other penalty notice or legal action has been initiated in respect of the event in question.

- 3.4 All local authorities will have a cross borough email address ie crossborder.penaltynotice@xx.gov.uk, whereby checks can be undertaken, if a family are known to have moved into/out of a local authority, within the preceding three years.
- 4. Measures to ensure that a notice is not issued when proceedings for an offence under s444 of the Education Act 1996 are contemplated or have been commenced by the Local Authority;**
- 4.1 A database overseen by the AAS contains details of cases where legal intervention is a likely outcome.
- 4.2 The AAS checks the database against referrals received and will advise the referrer of any possible legal intervention in progress.
- 5. Expectations for School Action before referring to the AAS for the issuance of a Penalty Notice**
- a) All schools must have an Attendance Policy (endorsed by their Governing Body and updated annually), this should include the 'school rules' and clarify the expectations upon parents with regards to their children's regular school attendance, the supportive measures in place and sanctions for non-compliance, including reference to the use of penalty notices and potential legal action.
- b) Attendance Policies should be fair and consistent and not include blanket bans on requests for leave of absence, as this might suggest that each application is not considered on its individual merits and on a case by case basis.
- c) It is good practice for schools to remind parents on an annual basis, its policy on attendance and when they will take the decision, to request a penalty notice be issued.
- d) The school will have followed agreed procedures for addressing irregular school attendance, in line with the *working together to improve school attendance* statutory guidance, related legislation, DfE guidance and the Council's procedures, on dealing with attendance matters, ensuring 'support first and legal action as a last resort', intervention.
- e) Where difficulties arise with school attendance, school representatives should intervene early to assist both the pupil and the family, to resolve these difficulties. Early intervention support should be sought, using the raft of supportive measures available, through internal services, local partners, voluntary agencies, SEN support, mentoring, parenting support groups, as well as support from Children's Social Care, in line with the expectations of the *working together to improve school attendance* statutory guidance. Preventative and supportive measures must always be attempted, to assist adults to parent effectively, so that children can achieve to their full potential, prior to consideration of formal/legal interventions.

- f) During the course of school/AAS action to address irregular school attendance, a 'Notice to Improve', must be issued to the parent, giving them an opportunity to take action to improve their child's school attendance.
- g) The notice to improve will specify a timeframe of between 3-6 weeks, dependent on the circumstances.
- h) In exceptional circumstances, the process of initiating a referral for a penalty notice, can be expedited. This could be where the unauthorised absence was for an extended period of absence condoned by the parent, including for example, where the parent has chosen to take their child on holiday (leave of absence) during term time, without authorisation.
- i) Under the Education (Pupil Registration) (England) Regulations 2006, leave of absence during term time will not be granted unless there are exceptional circumstances and be judged on a case by case basis. The authorised person (usually the Headteacher) should determine if the leave request is exceptional and the number of school days a child can be absent from school if the leave is granted.

Including;

- the family circumstances and the benefits to the child and the family taking into account any cultural and social circumstances,
 - the likely detrimental effect on the child's social, emotional development, attainment level and any special education needs,
 - the parent(s) to explore exceptional circumstances such as bereavement, any unavoidable cause that pertains to the child only and to allow the parent(s) to provide evidence and thus remove the need to withdraw a penalty notice at a later date,
 - Liaising with other sibling(s)' schools to ensure a consistent approach to requests for term time leave,
 - the child's previous and current attendance record,
 - Any exceptional circumstances for the absence and ensure the school's reasons for refusing the leave request are explicitly relayed in writing to the parent.
 - Is issuing a penalty notice appropriate after considering any obligations under the Equality Act 2010.
- j) The school will have considered the reason(s) cited for absence, sufficient evidence has not been provided to corroborate the absence and they have determined that the absence will not be authorised and will remain unauthorised.
 - k) When parents live separately, how much contact and care giving does the absent parent have with their child? Schools must consider the public interest in issuing a penalty notice to the absent parent.
 - l) Is issuing a penalty notice appropriate after considering any obligations under the Equality Act 2010.

6. AAS considerations Prior to issuing a Penalty Notice

- 6.1 The request to issue a penalty notice will be considered on its own merit and on a case by case basis.
- There has to be sufficient evidence that pre-referral action has been undertaken to address the matter with the parent and will only be issued, where the AAS, having considered the circumstances, agrees it is appropriate and justified.
- 6.2 A key consideration in deciding whether to issue a penalty notice is whether it is deemed to be an effective sanction to change parental behaviour and encourage regular school attendance.
- 6.3 A penalty notice is considered 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, or their efforts have proved to be insufficient or intermittent, for example where the parent has failed to engage with any voluntary or supportive measures proposed. It can be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the Local Authority considers that a prosecution would in the first instance, be too heavy-handed.
- 6.4 Consideration is given to the parent's response to warnings issued by the school and/or officers of the AAS, regarding their child's poor attendance, their engagement with the school, support services and/or the AAS, in attempts to improve attendance.
- 6.5 Parents who do not heed warnings or respond to efforts to deal with their child's absence may be judged to have failed in their duty. Each parent will be issued with a penalty notice individually and for each child.
- 6.6 Penalty notices will only be issued for cases of unauthorised absence or in the case of a child who has been excluded from school and are found in a public place without good reason during school hours.
- 6.7 In cases where parents are unwilling to ensure their children's regular attendance at school and to engage with support measures, sanctions are necessary. Such sanctions i.e., the use of penalty notices, are not intended as punishment but rather as an alternative means of persuading the parent(s) to recognise their responsibilities, comply with the law and ensure their child's access to education.
- 6.8 The Education (Pupil Registration) (England) (Amendment) Regulations 2013 amended the 2006 Regulations, to clarify that leave of absence during term time, shall not be granted unless there are 'exceptional circumstances'. Schools will need to be able to evidence that the parents were informed, in advance, that a particular leave of absence including holiday absence, would not be authorised and that a penalty notice might be the result.

Special considerations

- a) A penalty notice will 'not' be issued where the attendance is less than **80%** and/or the case is deemed to be complex. These cases often require investigation to ensure complex issues are identified and support offered, prior to legal action being considered.
- b) Royal Borough of Greenwich does not include Looked after Children in the penalty notice process. Where there are concerns over attendance with a child in the Council's or another Council's Care, a review should be held within the processes of the Virtual School Team, to determine that appropriate provision is in place and whether changes are required to help engage the young person more in their education.
- c) Special Educational Needs (SEN): For pupils in receipt of an Education, Health and Care Plan, an early review should be held before considering a penalty notice or other legal action. This is to determine that the appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

7. Penalty Notice Referral Request to the AAS

- a) As part of the referral to the AAS requesting a penalty notice be issued, all schools will have to provide a referral form, supporting documentation and evidence of action undertaken to address irregular school attendance with the parent.

Referrals are made using the email;

penaltynotice.education@royalgreenwich.gov.uk

Documentation Required;

- A fully completed penalty notice request form;
- A chronology of school action, evidencing communications with the parent, and preventative actions undertaken;
- Evidence of cross borough working, where applicable;
- The Certificate of Attendance from the school's pupil record system;
- All letters from the school addressed to the parent(s) regarding the irregular school attendance, including a Parental Warning letter, advising them of the legal implications of irregular school attendance and that a request for a penalty notice may be made;
- The Notice to Improve letter.
- A copy of/link to the school's attendance policy.

Also where applicable;

- The parent's holiday request form or letter;

- Record of the discussion with the parent where the exceptional circumstances have been raised;
 - The school's letter declining the request, addressed to the parent demonstrating that the exceptional circumstances have been considered, the reasons for refusal and setting out the consequences of taking unauthorised term time leave.
- b) Where the school has information that a term time holiday (leave of absence) has been taken, a request was not made by the parent and the absences reach the threshold for action, the school may request that the local authority issue a penalty notice. **Evidential referral documentation must be provided.**
- 7.1.1 For requests for a penalty notice for pupils found in a public place during the first five days of an exclusion the following documentation must be provided:
- A completed Penalty Notice Request Form;
 - The Certificate of Attendance from the school's pupil record system;
 - Copy of school's exclusion letter (Section 104 of the Education Act 1996), informing the parent of its intention to request a Penalty Notice from the Council;
 - A written witness statement from the person(s) who had cause to see the young person in a public place, including details related to the incident. Written confirmation is also required, that the witness is prepared to attend Magistrates court, should this be necessary;
 - Confirmation that the parent has had an opportunity to provide a reason for their child being in a public place during school hours. A good reason may include attendance at a medical appointment, Youth Justice Service (YJS) appointment or other appointment with a statutory or voluntary agency, with proof provided.

NB. It is not a defence in law for a parent to say that they were unaware of the absences of their child(ren) and for them being out unsupervised during an exclusion from school. Parents are expected to know where their child(ren) are on a daily basis.

8 Issuing the Penalty Notice

- a) Upon receipt of the penalty notice request. The AAS will ascertain that the request and documentation meet the threshold, documentation is in order and there is sufficient evidence to issue the penalty notice.
- b) The information will be checked against the Council's database and other local authorities, as appropriate.
- c) Liaison will be undertaken with the referrer, if the threshold is not met and/or two penalty notices have already been issued to the same parent for the same child, within the preceding three years or proceedings are already underway with regards to the child or sibling(s). Advising accordingly.

- d) If all is in order, the penalty notice will be issued, following the criterion set out in the Code of Conduct. Advising the referrer accordingly.
- e) The penalty notice letter (and reminders as necessary) will be sent by the AAS, by first class post to the address(es) provided by the school at the time of the request.
- f) An offence is committed by an individual parent for their child's absence. Therefore each parent will receive a separate penalty notice.
- g) Penalty notices will be issued to parents of:
 - Children of compulsory school age, on roll of all maintained schools, pupil referral units, academy schools, AP academies and certain off-site places as set out in section 444A(1)(b), within the Royal Borough of Greenwich.
 - Children of compulsory school age, on roll of schools, pupil referral units, academy schools, AP academies and certain off-site places as set out in section 444A(1)(b), outside of the area of the Royal Borough of Greenwich, who have entered into a Service Level Agreement, with the AAS.
 - Children on roll of schools, academies and alternative provisions, within the area of the Royal Borough of Greenwich, whereby they have made their own attendance monitoring and action arrangements and have followed the criterion within the Penalty Notice Code of Conduct and provide the documentation as expected, upon their request that a penalty notice be issued, on their behalf.
 - Children on roll of schools, academy schools, pupil referral units, AP academies, alternative provisions and certain off-site places, within the area of the Royal Borough of Greenwich, who reside in neighbouring boroughs.
- h) Prosecutions may therefore be pursued with regards to parents who reside in neighbouring boroughs and who fail to pay the penalty notice. The AAS will liaise with and advise any neighbouring borough of any penalty notices issued or subsequent prosecution that is undertaken regarding their residents.

8.1.1 A Penalty Notice may be issued as an alternative to legal action in the Magistrates' Court in the following circumstances:

- Evidence of intervention has been supplied by the school and/or the Council.
- The Council is satisfied that an offence has been committed under Section 444(1) of the Education Act 1996.
- There are no aggravating factors which would suggest that a penalty notice is not appropriate, including the parent having had previous school attendance related convictions.
- There is evidence that the child's attendance has improved, but that unauthorised absence is still occurring infrequently (i.e., less than five sessions in the preceding six school weeks).

9 The Decision to Prosecute shall be taken in line with the Code for Crown Prosecutors

- a) The Code is issued by the Attorney General and states that the decision to prosecute an individual is a serious step. The Code for Crown Prosecutors is split into two parts and each must be fulfilled prior to any summons being issued by the Court. The test is:
 - (i) the evidential stage i.e., is there sufficient evidence to secure a conviction; followed by
 - (ii) The public interest stage.
- b) The final decision in respect of prosecution lies with the Courts Officer, Royal Borough of Greenwich.

10 Payment of Penalty Notices

- a) Arrangements for payment are detailed on the penalty notice.
- b) A penalty notice is currently for the sum of £80.00 to be paid within 21 days. The penalty rises to £160.00 should payment not be made within 21 days and must be paid within a further 28 days.
- c) Part payment or payment plans for penalty notices are not accepted.
- d) Payment in full discharges the parent's legal responsibility and for the 'period of unauthorised absence' outlined in the penalty notice and therefore the parent cannot be subsequently prosecuted for that period.
- e) Payment after the 28 day deadline explained above may be accepted in exceptional circumstances and the higher amount of £160 is payable.
- f) The referrer will be informed when payment of the penalty notice is received.
- g) Revenue from penalty notices is retained by the Council and ring fenced for the administration of the penalty notice system and attendance support.

11 Non-Payment of Penalty Notices

- a) The offence detailed in the penalty notice must be capable of proof in the Magistrates' Court so that, in the event of non-payment, the parent can be prosecuted. Non-payment of penalty notices within the prescribed timescales may result in the initiation of a criminal investigation and possible prosecution under

Section 444(1) of the Education Act 1996, for the offence detailed in the penalty notice.

- b) The parent will be advised by letter, that due to the failure to pay the penalty notice within the given timescales, that the matter is being considered for referral to Magistrates Court under Section 444(1) of the Education Act 1996,.
- c) The referrer will be advised of the non-payment of the penalty notice at the due date, together with the letter to the parent, advising that the matter is being considered for referral to Magistrates Court.
- d) The referrer will be advised that a witness statement will be expected from them, for presentation in Magistrates Court.

12 Right of Appeal

- There is no statutory right of appeal against the decision to issue a penalty notice.
- The authority to authorise absences and request a penalty notice be issued, sits with the head teacher/principal of a defined educational establishment, as defined in the code of conduct.

13 Withdrawal of a Penalty Notice

13.1 The Local Authority may withdraw a penalty notice in any instance in which the Local Authority determines that:

- It ought not to have been issued;
- It ought not to have been issued to the person named as the recipient;
- The penalty notice has not been paid in full before the expiry of the period for payment, but it has come to light that family circumstances mean it is not appropriate to prosecute the recipient for the offence in connection with which the penalty notice was issued;
- In order to pursue prosecutions under section 444 where there has been no payment of a penalty notice.

13.2 Where a penalty notice has been withdrawn in accordance with the above:

- Notice of the withdrawal shall be given to the recipient;
- Where the grounds for withdrawal are that it should not have been issued, any amount paid by way of penalty in pursuance of that penalty notice shall be repaid to the person who paid it;
- No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn penalty notice was issued or for an offence under s444 (1) of the Education Act 1996 arising out of the same circumstances.

14 Policy & Publicity

- 14.1 The Local Authority will publish a copy of the Code of Conduct for Penalty Notices on the Council's website and include information on the use of penalty notices and other attendance enforcement sanctions in promotional public information material.
- 14.2 All School Attendance Policies should include information on the utilization of penalty notices, and this should be brought to the attention of all parents.

15 Monitoring and Review

- 15.1 The AAS Manager/Court Officer will report at regular intervals to the Head of Service on the deployment and outcomes of penalty notices.
- 15.2 The AAS Manager/Court Officer will review the use of penalty notices at regular intervals and amend the general enforcement strategy as appropriate.
- 15.3 The Head of Service will include penalty notices when reporting attendance matters to Cabinet and other relevant committees.
- 15.4 The Head of Service will ensure partners to this protocol are kept informed of issues relevant to the partnership.
- 15.5 The Code of Conduct will be reviewed annually, unless dictated by changes to statutory guidance.

GUIDANCE AND LEGISLATION:

Application of this Code is subject to the law, in particular;

The Education Act 1996

The Anti-social Behaviour Act 2003

The Education (Pupil Registration) (England) Regulations 2006 & 2007.

The Education (Penalty Notices) (England) (Amendment) Regulations 2024

The Education (Pupil Registration) (England) (Amendment) Regulations 2024

Working Together to Improve School Attendance Statutory Guidance 2024

The Children Act 1989

The Crime and Disorder Act 1998

The Human Rights Act 1998

The Equality Act 2010

The SEND Code of Practice

The Data Protection Act 1998

For more information and guidance consult the DfE Guidance

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