



London Borough of Bromley local code of conduct for issuing penalty notices for school absence from 19th August 2024

1. 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 Bromley. The code sets out the arrangements for administering penalty notices in the London Borough of Bromley 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

2. This code has been drawn up in consultation with the headteachers and governing bodies of all schools and the local police force.

Legal basis

3. 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).
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
5. In accordance with this local code of conduct, a penalty notice should only be issued by The London Borough of Bromley Education Welfare Service. This will also help track, monitor and reduce the risk of duplication of penalty notices.
6. 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.

7. 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.

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 of the Education Act 1996. This defines 'parent' as:

- 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. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is a parent in education law.

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).

Rationale

8. 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.
9. 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.
10. 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.

11. 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?

12. When the national threshold has been met, the school must consider whether a penalty notice should be requested to the local authority to issue 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:

- (a) code G (the pupil is absent without leave for the purpose of a holiday),
- (b) 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
- (c) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

13. 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.

14. 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.

In the case of the national threshold being met, (for a third time or subsequent times within 3 years), The London Borough of Bromley will refer straight to the Magistrates' Court. Magistrates' fines can be up to £1000 per parent, per child. Cases found guilty

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).

in Magistrates' Court can show on the parent's future DBS certificate, due to 'failure to safeguard a child's education'

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

Scenario	Counts towards the limit?
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but later withdrawn	No
Penalty notice issued by any authorised officer. The penalty notice was not paid and the local authority prosecuted for the original offence but the Court found the parent not guilty.	No
Penalty notice issued by any authorised officer. The penalty notice was not paid and the local authority prosecuted for the original offence and the Court found the parent guilty.	Yes

The three-year period begins from the date of the first penalty notice issued on or after 19 August 2024. For example, if the first penalty notice is issued on 18th September 2024, a second penalty notice issued to that parent in respect of that child on or before the 17th September 2027 would be charged at £160. A third penalty notice could not be issued within that timeframe and so in cases where the national threshold is met for a third or subsequent time another action should be taken instead.

Key considerations prior to the issue of a Penalty Notice for school absence

15. The following considerations will be made before issuing 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:

- 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, such as where a pupil has a disability?
 - 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?
- **In cases where support is appropriate, consider on a case-by-case basis; for example, where a pupil's attendance is below 85% or Year 11 pupil's where attendance is below 80% may be considered.**
- Has sufficient support already been provided? Sufficient support will usually include but not be limited to:
 - The referral has the correct parent(s)/ carer(s) details
 - When/how were parent(s)/ carer(s) informed absence/s were unauthorised by school.
 - Parent/s/carers informed in writing of school's concern regarding unauthorised absence at the earliest opportunity.
 - Held meeting (s) with parent/carers if appropriate and barriers to attendance discussed.

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.

Notice to improve

16. 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).

- Only The London Borough of Bromley will issue Notice to Improve letters to parent(s)/ carer(s).
- Referrals to the Local Authority to consider issuing a Notice to Improve can be accessed via: [Penalty notices - Child attendance \(bromley.gov.uk\)](https://www.bromley.gov.uk/penalty-notices-child-attendance)
- The criteria for support first approach must be evidenced within the referral, below points considered but not limited to:
- The referral has the correct parent(s)/ carer(s) details of those requested to receive a fine.
- When/how parent(s)/ carer(s) informed absence/s were unauthorised by school.
- Parent/s/carers informed in writing of school's concern regarding unauthorised absence at the earliest opportunity
- Held meeting (s) with parent/carers if appropriate and barriers to attendance discussed.
- School have considered whether a referral to the Children and Family Hub would be appropriate (including but not limited to educational neglect/CSE/CCE) or other agencies such as Young Careers / Bromley Y/ CAHMS
- Consider whether an attendance contract would be more appropriate
- School to document whether SEND (Special Educational Needs and Disability) support is required and if any underlying SEND needs are a barrier to attendance.
- If pupil has an EHCP (Education Health Care Plan), ensure reviews are up to date, or further review called if necessary.
- Where allegations of bullying have been made, that there is evidence that this has been investigated and addressed by school.
- Where a Home /School disagreement is cited for non-attendance, that school have offered a meeting to resolve any disagreement. Recording outcomes and actions.
- The Notice to Improve will be sent to parent(s)/ carer(s) with a 3-week monitoring period. The local authority would expect to see a significant improvement in attendance.
- Schools will be sent a copy of the Notice to Improve that went to parent/(s) carer/(s) for their records.
- On receipt of school receiving the Notice to Improve letter, there is a requirement for the school to send the Local Authority a registration certificate at the end of the monitoring period.
- The local authority will then make the decision whether to issue a Penalty Notice and will inform school/ parent/(s) carer/(s) .

When issued by the Local Authority a Notice to Improve letter will include:

- The pupil's attendance record and details of the offence(s)

- The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
- Support/opportunities for support provided so far
- Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate.
- Risk of a penalty notice being issued or prosecution considered if improvement is not secured within the improvement period (15 school days)
- A clear timeframe for the improvement period which will be 15 school days.
- Details of what sufficient improvement within that timeframe will look like in the case (e.g. no further offences within a certain timeframe or attendance improved within a certain timeframe)
- The grounds on which a penalty notice may be issued before the end of the improvement period.

When requesting a penalty notice in respect of a suspended/excluded pupil, schools must be able to evidence that the following criteria have been met/considered:

- The excluding school must have notified the parent informing them of their duty and warning that a penalty notice could be issued.
- Where there is more than one person liable for the offence, a separate penalty notice may be issued to each person;
- Where a pupil is present in a public place during the first 5 days of a fixed period suspension. The London Borough of Bromley would issue a penalty notice if the school is in their local authority area;
- Where the child has been permanently excluded, the responsibility for issuing a penalty notice would fall to the local authority in which the child resides.
- This type of penalty notice is not included in the National Framework and therefore not subject to the same considerations about support being provided or count towards the limit as part of the escalation process in the case of repeat offences for non-attendance. These penalty notices are charged at £120, reduced to £60 if paid within 21 days.

Payment of Penalty Notice fines

17. Arrangements for payment will be detailed within the Penalty Notice.

The first penalty notice issued to each parent for a child will be charged at £160, reduced to £80 if paid within 21 days, rising to £160 if paid between days 22 and 28.

Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first offence, the second notice is charged at a flat rate of £160 and is payable within 28 days. There is no reduced sum available in this instance.

Part payments or payment plans are not acceptable, and fines must be paid in full within 21 or 28 days, at the rate specified within the penalty notice.

Payment after the deadline may be accepted in exceptional circumstances. In this situation, the higher amount of £160 is usually payable and must be paid immediately and in full.

When paying a penalty notice fine, parents are agreeing to an out of court settlement in respect of the unauthorised absences to which the notice refers. Payment in full against the penalty notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent cannot be subsequently prosecuted for that period. Any revenues collected through the system must be ring-fenced to administer the penalty notice system and prosecute for the original offence in cases of non-payment. If a surplus remains after the system has been administered and any non-payers have been prosecuted, this can be spent on the local authority's attendance support offer.

18. The local authority will inform the school about whether penalty notices are paid, withdrawn, or have proceeded to prosecution, due to non-payment.
19. Where pupils move between local authority areas, The London Borough of Bromley can be contacted on **crossborder.penaltynotice@bromley.gov.uk** to find out if penalty notices have been issued previously, so that appropriate escalation of fines may be applied in line with the national framework for penalty notices.
20. Where pupils attend school in **the London Borough of Bromley** but live in a different local authority, The London Borough of Bromley will contact the home' local authority to establish if the child has received previous penalty notices via their cross-border email address.