

Local Code of Conduct for Issuing Penalty Notices for School Absence

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 Bi-Borough. The code sets out arrangements for the Local Authority (LA) administering penalty notices in the Royal Borough of Kensington & Chelsea (RBKC) and City of Westminster (WCC) 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 'Working together to improve school attendance'.

Consultation

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.
3. The Royal Borough of Kensington & Chelsea (RBKC) and City of Westminster (WCC) have the prime responsibility for developing the Code of Conduct within which all partners will operate.

Legal Basis

4. 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, academy schools, and alternative provisions as set out in section 444A(1)(b).
5. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
6. The issuing of penalty notices must conform to all requirements of the Human Rights Act 2000 and all equal opportunities legislation.
7. 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. There is a designated Attendance

Officer responsible for co-ordinating legal action in relation to school attendance in each borough.

8. 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.
9. 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).

Rationale

10. Regular and punctual attendance at school is both a legal requirement and essential for pupils of compulsory school age to maximise their educational opportunities.
11. 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.
12. In law an offence occurs if a parent or carer fails to secure a compulsory school age child's regular attendance at a school at which he or she is a registered pupil. Penalty notices supplement the existing sanctions to enforce attendance at school. These are to prosecute parents/carers (Education Act 1996 s444(1) & 444 (1a)) or to apply for an Education Supervision Order (Children Act 1989 s36).
13. Parent/carers and pupils are supported at school and local authority level to overcome barriers to regular attendance through a range of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.
14. 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.

15. The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
- 15.1 support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, *and*
 - 15.2 they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.
16. Sanctions are used only as a means of enforcing attendance, where there is a reasonable expectation that their use will secure an improvement, and to emphasise the importance of parental responsibility.

Circumstances where a Penalty Notice may be issued

17. The issue of a penalty notice may be considered in cases where a pupil is absent from school and the absence is unauthorised. A penalty notice can be used by schools as an alternative to a referral to Early Help Services in RBKC and WCC in cases of persistent non-attendance.
18. A penalty notice may be considered appropriate in the following circumstances:
- 18.1 cases of overt truancy
 - 18.2 cases of parentally condoned absence, where this can be demonstrated.
 - 18.3 instances where parents take children out of school for holidays/leave in term time, without the head teacher's prior agreement.
 - 18.4 instances of excessive delayed return from holidays/leave in term-time, without prior school agreement.
 - 18.5 persistent lateness (unauthorised)
19. To ensure consistency across the Bi-Borough, penalty notice referrals will be considered in cases of unauthorised absence where:
- 19.1 They are likely to be effective in improving attendance rates; and
 - 19.2 The pupil concerned has failed to attend school regularly over a period of 10 school weeks (when their attendance has fallen below 85%) and/or
 - 19.3 Holiday/leave amounting to 10 or more sessions is deliberately taken in term time despite the head teacher not agreeing or leave not being requested by parents.
20. Where families include more than one pupil with poor attendance, multiple penalty notices may be issued, but this should be subject to careful consideration and co-ordination across schools and local authorities.

Penalty Notice National Threshold

21. 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 weeks.
22. A school week means any week in which there is at least one school session recorded. The period of 10 weeks may span different terms or school years (e.g. 2 sessions in the Summer Term and a further 8 in the subsequent Autumn Term).
23. Unauthorised absence includes one or any combination of the following codes:
 - 24.1 code G (the pupil is absent without leave for the purpose of a holiday),
 - 24.2 code N (the circumstances of pupil absence have not yet been established),
 - 24.3 code O (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies)
 - 24.4 code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)
24. 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 may include legal interventions available to the local authority).
25. 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.
26. If in an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met (For example, unauthorised holiday in term time).

Procedure for Issuing Penalty Notices

27. The Attendance Officer will implement the issuing of penalty notices on behalf of RBKC and WCC under the authority of the Director of Children's Services to whom responsibility is delegated by law.
28. The Attendance Officer will receive a fully completed referral form, with accompanying documentation, and consider written requests to issue penalty notices.

29. This will ensure that there is;
 - 30.1 no duplication of notices being served
 - 30.2 a notice is not issued when legal proceedings are being contemplated under Education Act s444 or an application for an ESO is planned/being made.
30. The Attendance Officer will check that:
 - 31.1 All relevant information has been provided
 - 31.2 the circumstances of the pupil's absence meets all the requirements of this Code of Conduct
 - 31.3 the issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed;
 - 31.4 other support services are appropriately consulted.
31. The Attendance Officer will consider whether the issuing of a penalty notice is likely to improve attendance.
32. The Attendance Officer will respond to all requests within ten school days of receipt of a referral. If the Officer decides that the threshold has been met a penalty notice will be issued.
33. A penalty notice will only be issued by post. Penalty notices will not be issued "on the spot" as this does not allow for the collation of evidence.
34. Arrangements for payment will be detailed on the penalty notice. The local authority retains any revenue from penalty notices to contribute to enforcement costs (collection or prosecution in the event of non-payment).
35. Payment of a penalty notice discharges the parents' or carers' liability for the period in question. This means that parents or carers cannot subsequently be prosecuted for their failure to ensure that their children are attending school regularly and punctually under other enforcement powers for the period covered by the penalty notice.
36. In the first instance, payment of a penalty notice within 21 days is £80 and payment after this time but within 28 days is £160. A second penalty notice will result in the full rate of £160. Failure to pay the fine after 28 days will result in consideration being given to prosecution in the Magistrate's Court.
37. Cases of non-payment of a penalty notice, may trigger consideration of prosecution of parents/carers in the Magistrate's Court (Education Act 1996 s.444(1) & 444 (1a)).

38. The Attendance Officer can only withdraw penalty notices in the following limited circumstances: Where it ought not to have been issued, where it has been issued outside the terms of the local code of conduct, where no offence has been committed, where it has been issued to the wrong person.

Key considerations prior to issuing a Penalty Notice

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

40.1 In cases where support is not appropriate (for example, for holidays in term time), consider on a case by case basis:

40.1.1 Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?

40.1.2 Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?

40.1.3 (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?

40.2 In cases where support is appropriate, consider on a case-by-case basis:

40.2.1 Has sufficient support already been provided? Sufficient support will usually include: family engagement, needs assessment, attendance contract, provision of pastoral care, securing access to services, exploring referral pathways, consultation with the local authority.

40.2.2 Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?

40.2.3 Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?

40.2.4 (For local authorities only) Is it in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?

40.3 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 Attendance

40. 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).

41. The process for the local authority issuing a Notice to Improve will include:

42.1 Completed referral submitted by a school representative delegated by the head teacher within a specified time frame (2 school weeks after the end date of the period of persistent absence of 10 unauthorised sessions in 10 school weeks).

42.2 Supporting documentation will include formal notification of the referral and evidence of school measures in place within the period of 10 school weeks of persistent absence (family engagement, assessment and intervention strategies).

42.3 Where evidence provided is not satisfactory, schools will be advised by the local authority on supportive measures. An opportunity may be available for schools to resubmit the referral where time scales permit.

42.4 Where a school provides evidence that support has not been engaged with or has not been impactful, the local authority may issue a Notice to Improve within a period of 3 school weeks (15 school days).

42.5 Following the improvement period, the school will inform the local authority of the outcome of monitoring by providing an updated attendance certificate. The case will not be progressed if this information is not received on request.

42.6 Where further incidents of absence (4 unauthorised sessions) are recorded within the improvement period of 3 school weeks (15 school days), a penalty notice may then be issued by the local authority in agreement with the school as referral agent.

Authorised officers working together

42. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.

43. An authorised officer is a headteacher or someone authorised by them (for example; a deputy or assistant head), a local authority officer or the police.

44. Where the school or police request that the local authority issues a penalty notice, a completed referral is required with supporting documentation, and submitted within a specified time frame (within 4 school weeks of the end date of a fixed period of unauthorised absence or within 2 school weeks of the end date of persistent absence period of 10 unauthorised sessions in 10 school weeks).
45. The referral agent should decide whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice.
46. The local authority will inform the referral agent of the outcome of penalty notice request by sending a copy of the Penalty Notice or Notice to Improve. In cases of non-payment, the local Authority will contact the referral agent to consider prosecution or withdrawal.
47. Where pupils move between local authority areas, RBKC can be contacted via penalty.notice@RBKC.gov.uk and WCC can be contacted via penaltynotice@westminster.gov.uk to find out if penalty notices have been issued previously.
48. Where pupils attend school in RBKC or WCC but live in a different LA, the school LA will liaise with the home LA to ascertain what support is provided by the home LA and determine whether issuing a penalty notice is appropriate.

Communication & Publicity

49. The establishment of this Code of Conduct should be made available to the school community in RBKC and WCC.
50. School attendance policies should be revised to include information on penalty notices and brought to the attention of all parents.
51. The local authority will provide a leaflet for schools to distribute to parent/carers explaining the use of penalty notices.

Reporting & Review

52. The local authority will report, as required by census returns, on the deployment and outcomes of penalty notices.

53. The local authority will review penalty notice use at regular intervals using information supplied by schools.