

Education Fixed Penalty Code of Conduct

Rationale.

London Borough of Newham is committed to raising attendance in order to maximise the educational possibilities available to children and young people.

Regular and punctual attendance at school is essential and a legal requirement.

Our aim is for non-attendance to be resolved through effective partnership working with parents, pupils, schools, our Attendance Targeted Support Service and other agencies. However, where it has not been possible to resolve non-attendance, or where parents actively prevent their children from accessing, or otherwise fail to ensure that they access education, legal sanctions can and will be considered.

Fixed penalty notices are served on parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered.

Legal framework.

The Education (Penalty Notices) [Regulations 2007](#) set out the details of how the penalty notice scheme must operate.

This includes a requirement that every local authority must draw up and publish a Code of Conduct for issuing penalty notices, after consulting all schools, including academies, and the police.

The code should set out the criteria that will be used to trigger the use of a penalty notice. These could include: a number of unauthorised absences, perhaps within a rolling academic year; one-off instances of irregular attendance such as holidays taken during term time without the school's permission; and where an excluded child is found in a public place during school hours without a justifiable reason.

- [The Education \(Penalty Notice\) \(England\) Regulations 2007](#) supports offences under [Section 444 of the Education Act 1996](#). Penalty Notices supplement existing sanctions available under [Section 444 of the Education Act 1996](#) or [Children Act 1989 \(legislation.gov.uk\)](#) to enforce attendance at school or alternative provision. There is no legal requirement to consider a Penalty Notice before proceeding to a [Section 444 of the Education Act 1996](#) prosecution.
- [Section 105 The Education and Inspections Act 2006](#) allows a penalty notice to be issued in respect of excluded pupils in a public place (as mentioned above).
- The [Anti-Social Behaviour Act 2003 \(section 23\)](#) adds two sections [444A and 444B to the Education Act 1996](#) to introduce penalty notices as an alternative to prosecution and enable parents to discharge potential liability for conviction for that offence by paying a penalty.
- The issuing of Education Fixed Penalty Notices must conform to all requirements of the [Human Rights Act 1998](#) and Equality Act 20

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1. **Compulsory school age.**

All children living in England must start full-time education once they reach compulsory school age. This is on 31 December, 31 March or 31 August following their fifth birthday - whichever comes first. If your child's fifth birthday is on one of those dates then they reach compulsory school age on that date.

For example, if your child reaches compulsory school age on 31 March, they must start full-time education at the beginning of the next term (summer term that year).

Children must stay in full-time education until they reach school leaving age. They can leave school on the last Friday in June if they will be 16 by the end of the summer holidays – 31st August.

2. **Definition of a parent.**

A parent means:

- a) All natural parents, whether they are married or not;
- b) Any person who has parental responsibility for a child or young person; and,
- c) Any person who has care of a child or young person i.e. lives with and looks after the child.

The school in partnership with the local authority will decide who comes within the definition of parent in respect of a particular pupil when using the legal measures, but generally parents include all those with day to day responsibility for a child.

3. **What is a Penalty Notice (PN)?**

Penalty notices are fines of £60/£120 imposed on parents. They are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age regularly attends the school or alternative provision where they are registered.

4.

Penalty notices can be used where the pupil's absence has not been authorised by the school.

Penalty notices may also be issued where parents allow their child to be present in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion. The parents must have been notified by the school at the time of the exclusion of this and the days to which it applies.

5. **Criteria for the issuing of a Penalty Notice.**

The head teacher of the school where a child attends will, after consideration of the facts, request a penalty notice to be issued if any of the circumstances below apply unless the issuing of a Penalty Notice in these circumstances would conflict with other attendance interventions currently in place.

a) **Leave of absence (Register Code - G)**

A pupil has a leave of absence of three school days (6 sessions) or more during term time over a six week period, without the school's consent **and** their attendance has not been below 80% (24 sessions of absence) in the last 12 weeks (120 Sessions) prior to a notice being requested.

Note 1: Read this 'Leave of absence' element in conjunction with c) Poor Attendance below.

Note 2: Where a pupil's attendance is below 80% a Penalty Notice is not considered an appropriate sanction and the appropriate statutory intervention will be applied.

b) Absence from assessments, tests, and examinations

A pupil has unauthorised absence for any public examinations of which dates are published by the school in advance **or**,

A pupil has unauthorised absence for any formal school assessments, tests or examinations where the dates have been published by the school in advance.

c) Poor attendance (Register Code - O) – failing to attend school on a regular basis

The pupil has attendance of 90% or less but is above 80% within any twelve week period during any school year.

Note: Where a pupil's attendance is below 80% a Penalty Notice is not considered an appropriate sanction and the appropriate statutory intervention will be applied instead.

d) Lateness

A pupil arrives late at school, after registers have closed more, than six times in a six week period (**Register Code U only - not Code L**).

e) Absence and lateness combined

A pupil has a mix of six sessions of unauthorised absence and avoidable lateness during a six week period.

f) Truancy – children present in a public place during school time.

Authorised officers from the local authority, schools or the police can issue a penalty notice where they believe that a parent has committed a school attendance offence under section 444 and that the pupil in question is registered at a school.

g) Children present in a public place during school hours

Where parents allow their child to be present in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion.

Note: The parents must have been notified by the school at the time of the exclusion of this and the days to which it applies.

5. How to avoid receiving a Penalty Notice.

A pupil's parents can avoid ever receiving a Penalty Notice by making sure:

- a) Their child does not take unauthorised leave of absence (time off) during term time;
- b) Their child attends school and arrives every day during term time;
- c) They tell family and friends of their commitment to their child attending school every day, so they cannot take them out of school for social events;
- d) Their child is up early enough in the morning to arrive at school on time;

- e) They have checked the night before that their child has everything ready for school the next day, to avoid running late;
- f) They contact the school, on the first day of absence and explain the circumstances;
- g) They let the school staff know if their child is away for other reasons, especially if the need for absence is known about in advance; and
- h) They talk to their child about any problems at school.

6. **Circumstances when a Penalty Notice will not be issued.**

A pupil must attend every day that the school is open, unless;

- a) They are too ill to attend.
- b) A request has been made in advance and been given permission by the school for the pupil to be absent on a specific day due to exceptional circumstances.
- c) The pupil cannot go to school on a specific day because it is a day set aside for religious observance.
- d) The local authority is responsible for arranging a child's transport to school and it is not available or has not been provided yet.
- e) The child does not have a permanent address and you are required to travel for work. This exception only applies if your child attends their usual school or another school where you are staying as often as possible. This must be 200 half days or more a year if they are aged 6 or older.

In all other instances a Penalty Notice or other attendance sanction or statutory intervention may be applied.

7. **Who sets the criteria for issuing a Penalty Notice?**

Every local authority in England is responsible for drawing up a Code of Conduct for issuing Penalty Notices; the Code will set out the occasion when it will be appropriate to issue a Penalty Notice.

Local authorities must consult with schools and the police in their area about the criteria to be included in their Code of Conduct for issuing Penalty Notices to address specific local issues.

Once agreed and published, schools must issue penalty notice in accordance with that Code.

Therefore, it is reasonable that approaches will vary between local authorities because each Code is set locally and is not done using a national framework.

8. **Who is responsible for deciding whether or not to issue a Penalty Notice?**

By law the decision to authorise the issue of a Penalty Notice can only be made by:

- a) Head teachers and School Principals.

Note 1: The head teacher may authorise a deputy or assistant head teacher to make the decision to request to issue Penalty Notices. But a head teacher may not authorise any other member of staff to request to issue Penalty Notices.

Note 2: A head teacher or deputy or assistant head teacher may only authorise the issue a penalty notice in respect of a child who is a registered pupil at the school at which that head teacher, or deputy or assistant head teacher, as the case may be, works.

Note 3: A head teacher may request their attendance leads (this maybe a local authority commissioned service) to review the registers to determine cases for consider of a Penalty Notice, but only the head teacher can authorise (sign off) the actual issuing.

Where a head teacher has not granted permission and there is no other statutory exception for a child to be absent and therefore the absence from school is unauthorised, it would be for the school not the local authority to decide if they wish to use a penalty notice.

9. Limitations on issuing Penalty Notices.

Head teachers

A head teacher or deputy or assistant head teacher may only request the issue of a penalty notice in respect of a child who is a registered pupil at the school at which that head teacher, or deputy or assistant head teacher, is employed.

London Borough of Newham

1) Subject to paragraph 2 below, an officer of London Borough of Newham may only issue a penalty notice in respect of a child:

- a) Who is a registered pupil at a school located in Newham; or
- b) For whom London Borough of Newham has made arrangements for an alternative educational provision (whether or not in the area of that authority); or
- c) Who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in London Borough of Newham.

2) Where a local education authority has entered into an agreement with another local education authority for an officer of that other authority to issue penalty notices in respect of a child to which paragraph (1)(a) or (b) applies, an officer of that other authority may issue a penalty notice in respect of such child.

10. Who administers and oversees the issuing of Penalty Notice?

The local authority is responsible for administering the process. This means the London Borough of Newham issues the notices, as requested by the head teacher, on behalf of the schools located within the borough boundary.

11. School action before Penalty Notices are issued.

All schools must publish an Attendance Policy and clearly sets expectations relating to daily attendance and the process for addressing poor attendance including lateness.

No sessions of unauthorised absence are acceptable, as they will be detrimental to a child's education. However in exceptional circumstances, where an exception may apply, the parent will be asked for evidence to corroborate this.

The school will fully consider any extenuating circumstances given by the parent to establish if there is a justified reason for the absence(s).

The school will issue a written notice to the parent(s) informing them of the consideration to refer to the Local Authority to issue a Penalty Notice, which includes the reason.

12. How many penalty notices can be issued per pupil per 12 month period?

There are no legal restrictions relating to the number of penalty notices that can be issued per pupil for each school year. However, as these are served as an alternative to prosecution, we have a local limit to ensure prosecution is used when penalty notices appear not to have addressed the issues.

- a) **Leave of Absence (Register Code: G):** Two per child per 12 month period.
- b) **Absence from public examinations or formal test:** Up to a maximum of three per child per school year.
- c) **Poor attendance (Register Code – O):** One per child per 12 month period
- d) **Lateness:** Up to a maximum of three per child per 12 month period.
- e) **Truancy – children present in a public place during school time:** Up to a maximum of three per child per 12 month period.
- f) **Children present in a public place during school hours:** One per child per 12 month period.

There is no restriction on the number of times a parent may be given a formal warning of a possible issue of a Penalty Notice for unauthorised absences. However more than one penalty notice cannot be issued for the same time period and/or offence.

Important note: Where any of these limits are reached, any future absences or including lateness (Register Code - U) will likely be managed using the appropriate statutory or local interventions procedures.

13. Who is issued a Penalty Notice?

A pupil's parents, as they are responsible for making sure that their children of compulsory school age receive a suitable full-time education. This can be by regular attendance at school, at alternative provision, or otherwise (e.g. the parent can choose to educate their child at home).

Where there is more than one person liable for the offence (more than one person with parental responsibility or day to day care), a separate notice may be issued to each person.

14. What information must be included on a Penalty Notice?

A penalty notice must give such details of the alleged circumstances as to explain the offence, as well as the following information

- a) The name and address of the recipient;
- b) The name and address of the child who is failing to:
 - a. Attend school regularly; or

- b. Attend alternative educational provision regularly.
- c) The name of the school:
 - a. Where the child is a registered pupil, or
 - b. The place where the alternative educational provision is provided for the child or at which he is required to attend; or
 - c. Where the child should have been present but was found instead to be in a public place during school hours on a school day falling within section 103(2) of the 2006 Act,
- d) Name and official particulars of the authorised officer issuing the notice;
- e) Period during which the offence was committed in the case of an offence under section 444 of the 1996 Act, and the date of the offence in relation to an offence under section 103(3) of the 2006 Act, and (in either case) the date of the issue of the notice;
- f) Exact amount of the penalty which is to be paid, if it is paid within 21 calendar days in accordance with regulation 4, and the amount in accordance with that regulation if it is not paid within that period but is paid within 28 calendar days (being the original 21 days plus a further 7 days) from receipt of the notice (expected to be a maximum of two working days from the date of issue);
- g) Name and the address of the local education authority to which the penalty is to be paid in accordance with regulation 6 and to which any correspondence relating to the penalty notice may be sent;
- h) Method or methods by which payment of the penalty may be made;
- i) Date period for paying the penalty, in accordance with regulation 5;
- j) Confirmation that payment within that period will discharge any liability for the offence;
- k) Consequences of the penalty not being paid before the expiration of the period for paying it; and
- l) Grounds on which the notice may be withdrawn.

15. Withdrawing a Penalty Notice.

Once a school has authorised the issue of a Penalty Notice, it can only be withdrawn by the local education authority named in the notice as the authority to which payment is to be made for payment in any case in which,

- a) The local authority determines that
 - It should not to have been issued; or
 - It should not to have been issued to the person named as the recipient; or
- b) It appears to the Local Authority that it contains material errors (false or inaccurate information); or

- c) In order for the local authority to pursue prosecutions under section 444 where there has been no or only part payment of a Penalty Notice.

Note: A penalty notice may be withdrawn whether or not the period for payment referred to in the notice has expired, and whether or not the penalty has been paid.

Withdrawn penalty notice.

Where a penalty notice has been withdrawn, both the following actions will apply.

- (a) The local authority will issue a notice of the withdrawal must be given to the recipient.
- (b) Any amount paid will be repaid to the person who paid it.

Note: Except as provided in paragraph (5), no proceedings will be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued, or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances.

However where a penalty notice was issued, and was withdrawn pursuant to paragraph (1)(b), the law permits school attendance proceedings to be continued or instituted:

- (a) For the offence in connection with which that penalty notice was issued; or,
- (b) Where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) of that section arising out of the same circumstances as the first mentioned offence, if both of the following conditions are met:
 - (i) A further penalty notice in respect of the offence, or in the case of sub-paragraph (b), the first mentioned offence, was issued at the same time as the first penalty notice was withdrawn; and
 - (ii) The penalty has not been paid in full.

16. Payment of Penalty Notices.

All payments must be made to London Borough of Newham, not the pupil's school. Full details of how to pay are detailed on the Penalty Notice.

The penalty is £60 if paid within 21 calendar days of receipt, rising to £120 if paid after 21 calendar days but within 28 calendar days (being the original 21 days plus a further 7 days).

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 period covered by the Penalty Notice.

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

A certificate purporting to be signed by the proper officer London Borough of Newham to the effect that the recipient of a penalty notice has or has not paid the amount due on or before a date stated in the certificate is admissible in evidence in any legal proceedings and is evidence of the matters stated in it.

17. Extension of time to pay requests.

London Borough of Newham cannot extend the time to pay for a Penalty Notice as the payments dates are set out in law.

18. Non-payment, part-payment and payment plan requests.

Payment of a Penalty Notice must be for the full amount due £60/£120, lesser payment cannot be accepted.

The law does not permit payment plans as the payment times are time bound.

Where a parent makes a payment below the amount due, the payment will be refunded to them and the Penalty Notice will be processed as unpaid.

Unless withdrawn, non-payment of a Penalty Notice will trigger the prosecution process under the provisions of Section 444 Education Act 1996.

Where the non-payment results in the prosecution process being initiated, the parent is being prosecuted for the offence to which the Penalty Notice relates and not for the non-payment of the Penalty Notice.

19. What happens if full payment is not received by the specified dates?

If a penalty notice is not paid in full by the specified dates, the London Borough of Newham can proceed to prosecution or withdraw the notice.

Note: The London Borough of Newham can also prosecute parents for non-attendance without issuing a Fixed Penalty Notice.

20. Appeals and written representations.

a) Appeal

There is no statutory right of appeal against the decision to issue a penalty notice.

The sole authority to authorise absence and Penalty Notices sits with the Head teacher or Principal of education establishment.

The Education (Pupil Registration) (England) Regulations does not permit Head teachers to give authorisation for absence retrospectively meaning they cannot backdate a decision.

b) Written representations

London Borough of Newham officers will examine any evidence provided that would show that an error (mistake) had been made.

Important Note: Officers at London Borough of Newham cannot overturn:

- Any decision made by the head teacher regarding authorisation of leave during term time, or
- A registration mark.

Only evidence that shows an error was made in issuing the penalty notice can be considered. Any other evidence will not be considered.

Parents will be required to provide documentary evidence to support an argument and must deal directly with the Local Authority and not the school.

21. Data collection and monitoring

Data relating to the number of Penalty Notices issued per academic year by:

- ☐ School
- ☐ Year Group
- ☐ Phase of education
- ☐ Pupil characteristics
- ☐ Postal area
- ☐ Number paid within 21 or 28 calendar days (from date of receipt).
- ☐ Number unpaid resulting in court action.

This is not an exhaustive list.

The data will be used to inform and support a range of services throughout the Council to develop strategies to support families to improve their child's attendance at school.

22. Records and retention

London Borough of Newham will keep records of penalty notices issued. These records will include:

- ☐ An electronic copy of each notice issued;
- ☐ A record of all payments made and on what dates;
- ☐ Whether the notice was withdrawn and on what grounds; and
- ☐ Whether the recipient was prosecuted for the offence for which the notice was issued (or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances).

These records will be retained in accordance with retention requirements.

23. Publicity

This Code of Conduct and related information will be published on the London Borough of Newham website and the individual websites of each school within the local area (borough boundary).

Hard copies can be requested via schools or by calling London Borough of Newham 020 8430 2000.

24. Finances

Funds are received by the London Borough of Newham via the payment of Penalty Notices, in accordance with law, and are used for the sole purpose of administration and direct costs relating to Penalty Notices.

Schools do not receive any of the funds/income from Penalty Notices.

25. Annual review.

This Code of Conduct will be reviewed and consulted upon annually during the summer term unless statutory changes are required sooner.