



CODE OF CONDUCT

**Issuing Penalty Notices for unauthorised
absence from schools**

September 2020

Code of Conduct: Issuing Penalty Notices for unauthorised absence from schools

The purpose of the *Code of Conduct* is to ensure that Penalty Notices are issued consistently and fairly across the area that comes under the control of Bury Council and that suitable arrangements are in place for the administration of the scheme.

This local code sets out the procedures and terms under which Penalty Notices for unauthorised absence can, and should, be issued in Bury. It applies to all statutory school age children between the ages of 5 to 16 years and to all maintained schools and academies within Bury Council. All *authorised* persons must issue Penalty notices in compliance with this code.

Following the Corona Virus pandemic and in accordance with the Department for Education (DfE) guidance on the return to school for all children, Bury Council are committed to ensuring that no parent is penalised for a Covid-19 related absence.

1. Legal Background

Section 23 of the Anti-Social Behaviour Act 2003 introduced new powers for designated Local Authority Officers, Head Teachers (and Deputy Head Teachers authorised by them) and the Police to issue Penalty Notices to parents in cases of unauthorised absence from school.

In accordance with the Education (Penalty Notices) (England) Regulation 2007 (as amended) and Section 444 Education Act 1996, the local authority, in consultation with all of the above, is required to develop a Code of Conduct for issuing Penalty Notices.

The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and all Equal Opportunities legislation.

Any person issuing a Penalty Notice for the unauthorised absence of a Bury child must do so within the terms of this *Code of Conduct*.

Section 576 of the Education Act 1996 defines 'parent' to include:

- All natural parents, whether married or not.

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- Any parent who, although not a natural parent, has *parental responsibility* as defined in the Children Act 1989.
- Any person who, although not a natural parent, has day to day care of a child or young person.

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

2. Rationale for issuing Penalty Notices

Regular and punctual attendance at school is a legal requirement under Section 444 of the Education Act 1996. It is essential that parents maximise the educational opportunities available for their children in order to afford them the best possible start in life.

In law, parents/carers are committing an offence if they fail to ensure a child attends regularly at the school at which they are registered, unless the absence has been authorised by the school.

The purpose of a Penalty Notice is to offer an early intervention strategy for cases of unauthorised absence, in order to prevent the problem becoming too entrenched.

Penalty Notices were introduced as an alternative to the existing sanctions available under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989, by allowing parents to discharge liability for conviction for the offence by paying the fine. The fine is £60 per parent per child if paid within 21 days, increasing to £120 per parent per child if paid within 28 days from the date of issue.

Penalty Notices should only be used where a parent is capable of securing an improvement in their child's school attendance but is unwilling to do so and where there is a reasonable expectation that their use will secure an improvement in attendance. They are not for use as a punishment for absence.

The School Attendance Team is responsible for deploying the Penalty Notice system on behalf of Bury Council.

3. Circumstances where a Penalty Notice may be issued

A Penalty Notice can only be issued in cases of unauthorised absence, where a pupil of compulsory school age has been absent or late and the absence or lateness has not been authorised by the school.

Use of Penalty Notices will be restricted to one per academic year. However, in

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the case of unauthorised holidays there is no restriction and a Penalty Notice may be issued for every holiday taken during term time which the school has not authorised.

A separate Penalty Notice will be issued to each parent for every child who is not attending school.

There is no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice.

The issuing of a penalty Notice is considered appropriate in the following circumstances:

- ✓ Overt truancy (including pupils caught on truancy sweeps)
- ✓ Parentally-condoned absences
- ✓ Unauthorised holidays in term-time
- ✓ Persistent late arrival at school (after the register has closed)
- ✓ When an excluded child is present in a public place during school hours on a day which is one of the first 5 school days to which the exclusion relates or, where that exclusion is for a fixed period of 5 days or less, any of the days to which the exclusion relates, under the protocol for Section 103 of the Education and Inspections Act 2006.

Bury Council will issue a Penalty Notice for any unauthorised absence where the pupil has been:

- Absent for 10 sessions (five school days) within pre-set submission dates – these do not need to be consecutive absences. *These pre-set submission dates are referred to as Batch periods.*
- Persistently late (coded U) after the register has closed, for 10 sessions.

Schools should take all reasonable steps to ensure good attendance and are expected to monitor the attendance of all pupils on their school roll. Absences can only be authorised when the Head Teacher has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation as satisfactory justification for the absence. If a school has concerns regarding a pupil's attendance they should normally advise parents in writing that their child's attendance is being monitored, and that unauthorised absences are occurring. Schools must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate. This must include strategic discussions with School's Attendance Lead and any other staff who have involvement with or knowledge of the pupil/family.

4. Procedure for issuing Penalty Notices

Criteria for issuing a penalty warning:

Following the unauthorised absence of a minimum of 10 sessions (5 school days) the Local Education Department should send a warning letter to each responsible parent/carer.

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If further unauthorised absence occurs following a monitoring period, (15 school days) Bury Council may issue a penalty notice.

An exception to this is for the deliberate taking of a holiday in term time without authorisation by the school. Regularly taking time off school for family holidays can have a significant impact on a child's achievement and their continuity of learning. Schools need to clearly demonstrate that the parent/carer understood that permission had not/would not be given and where this has created a period of unauthorised absence of at least 10 sessions.

The Council will pre-set submission dates and consider requests from Bury schools within ten school days of receipt. Where criteria has been met, the council will authorise the issue of a Penalty Notice to each parent/carer by first class post. Penalty Notices issued must be addressed to one parent, but a Penalty Notice may be issued to each parent liable for the offence(s).

Penalty Notices will be issued by post and never as on the spot action; this to satisfy that all evidential requirements are in place:

- A Penalty Notice request is completed with all necessary information and supporting relevant documentation.
- The circumstances of the pupil's absence meet all the requirements of the Code of Conduct.
- The period of absence is not being considered for proceedings according to Section 444 (1) or Section (1A) of the Education Act 1996.
- The issue of a penalty notice does not conflict with other intervention strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority.

To ensure consistent and equitable delivery of penalty notices, retain school/home relationships and allow cohesion with other enforcement sanctions, the schools request forms will require completion by the school with the following:

- A copy of the pupil's up to date attendance record.
- A copy of the advisory letter sent to each parent/carer dated and signed by the Head Teacher.
- A copy of a chronology to detail all intervention by the school.

5. Non-Payment of Penalty Notices

Arrangements for payment will be detailed on the Penalty Notices themselves.

Payment of a Penalty Notice discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted under any other enforcement powers for the period covered by the Penalty Notice.

Non-payment of a Penalty Notice will result in a prosecution under Section 444 of the Education Act 1996. The prosecution is not for the non-payment of the Penalty Notice but relates to the original offence of unauthorised absence from school.

The offence is punishable on summary conviction to a fine not exceeding £1,000.

6. Procedure for withdrawal

Once a Penalty Notice has been issued, it can only be withdrawn in the following circumstances:

- If it can be established that the notice was issued in error.
- The circumstances of the absence do not comply with the conditions of Bury Council's Code of Conduct and the Education (Penalty Notices) (England) Regulations 2007.
- The Parent/carer provides evidence that would constitute a statutory defence.

There is no statutory right to appeal against the issuing of a Penalty notice.

Any revenue resulting from payment of penalty notices will be retained by the council and is used to cover the enforcement costs, such as costs associated with the issue, collection or prosecution, in the event of non-payment, of Penalty Notices.

7. Policy and Review

The deployment of Penalty Notices as a sanction is included in Bury Education Authority's Attendance Policy. All Bury Schools Attendance Policies should include the deployment of Penalty Notices and this will be brought to the attention of parents.

Bury Council will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional/public information material.

The School Attendance Team will report at regular intervals to the Local Authority and Greater Manchester Police on the deployment and outcome of Penalty Notices.

The School Attendance Team will review Penalty Notices use at regular intervals, amending the Code of Conduct as necessary and its general enforcement strategy as appropriate.