



CODE OF CONDUCT

Issuing Penalty Notices for unauthorised absence from schools

Linked guidance:

DfE Working together to improve school attendance August 2024
DfE National Framework for Penalty Notices for School absence – implementation guide for local authorities

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

From the 19th August 2024, the Department for Education has implemented a **National Framework for Penalty Notices** for school absence. The statutory guidance is for maintained schools, academies, pupil referral units and local authorities.

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.

A penalty notice issued for any offence that begins prior to the 19th August will be issued under the existing rules. Therefore, it will (a) be charged at £60/£120, (b) not count towards the escalation whereby a second penalty notice within 3 years is charged at a flat rate of £160 and there is a limit of 2 penalty notices within 3 years and (c) should be issued in line with your existing LA thresholds for the 2023-24 academic year. This is regardless of whether the penalty notice is issued before or after the 19th August.

For example, if a parent takes a pupil out of school without leave in term time for 2 weeks in July 2024 but the penalty notice is not issued until September the old rules will be followed, including being charged at the old rates. The penalty notice will not count towards the escalation.

Or, for example, a parent takes a pupil out of school in late July without permission and does not return until September and the penalty notice is issued at the beginning of October, the old rules will be followed, including being charged at the old rates of £60/£120. The penalty notice will not count towards the escalation.

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.
- 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.

- (1) In this Act, unless the context otherwise requires, "parent", in relation to a child or young person, includes any person:
 - (a) who is not a parent of him/her but who has parental responsibility for him/her, or
 - (b) who has care of him/her, except that in (F1 section 499(8)) it only includes such a person if he/she is an individual.
- (2) In subsection (1) "parental responsibility" has the same meaning as in the M1 Children Act 1989.
- (3) In determining for the purposes of subsection (1) whether an individual has care of a child or young person, any absence of the child or young person at a hospital or boarding school and any other temporary absence shall be disregarded.

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 £160 per parent per child if paid within 28 days, reduced to £80 per parent per child if paid within 21 days from

the date of issue. (*The fine amount increased from £60 to £80 from 19th August 2024*).

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. There should be a reasonable expectation that their use will secure an improvement in attendance by changing parental behaviour. Support to secure regular attendance must have been provided and has either not worked or not been engaged with. They are not for use as a punishment for absence.

List of support available

- Letters to share attendance concerns to parents
- Meetings with parents to discuss attendance concerns
- Referrals to other agencies offers
- Breakfast club placements
- EBSA toolkit
- Story So Far
- Attendance Improvement Plan
- Attendance Panel Meeting
- Attendance Contracts (Parenting Contracts)

The School Attendance, Exclusion & Community 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.

A single consistent national threshold for when a penalty notice must be considered for 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period.

These sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6 sessions of unauthorised absence taken in 1 week and 1 per week for the next 4 weeks). The period of 10 weeks can also 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).

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:

- 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, on any of the days to which the exclusion relates, under the protocol for Section 103 of the Education and Inspections Act 2006. (*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 toward the limit as part of the escalation process in the case of repeat offences towards non-attendance*).

During or following a truancy sweep: the LA would only issue a Penalty Notice if they locate a child during a truancy sweep who is within a five day school exclusion from school. *See criteria below*

For a child of compulsory school age who is a registered pupil at a school and is excluded from that school, either for a suspension period, or permanently, his/her parent/carer is guilty of an offence under Section 103 of the Education and Inspections Act 2006 if:

1. The child in question is present in a public place during school hours without reasonable justification during the first five days of each and every period of exclusion.
2. The parent must have been notified by the school at the time of the exclusion of their duty and the dates it relates to.
3. If all criteria are met, a Penalty Notice will be issued and payment options are in line with 1st issue Penalty Notices. A 'Notice to Improve' will not be issued.

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

- Absent for 10 sessions (five school days) of unauthorised absence within a rolling 10 school week period within pre-set submission dates – these do not need to be consecutive absences. *These pre-set submission dates are referred to as Batch periods*. This includes the deliberate taking of unauthorised leave/holiday during term-time.
- Persistently late (coded *U*) after the register has closed, for 10 sessions of unauthorised absence within a rolling 10 school week period.
- Present in a public place whilst excluded from school, without reasonable justification.

Schools should take all reasonable steps to ensure good attendance and are expected to monitor the attendance of all pupils on their school roll in line with their 2024 Attendance Policy. 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 exceptional circumstances 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 Schools Attendance Lead, School Attendance Officers and/or any other staff who have involvement with or knowledge of the pupil/family.

4. Procedure for issuing Notice to Improve

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).

The LA will issue the notice to improve and, where appropriate, how referrals will work and to what timescales.

The recommended length of the improvement period; this will be between 3 and 6 weeks.

Monitoring is expected to be carried out over the improvement period and the process for deciding whether to issue a penalty notice if sufficient improvement is not made. A monitoring period would take place over 15 school days / 3-week period. Once 15 school days have lapsed, should the child have been absent for 3 unauthorised session or more, then a penalty notice will be issued.

HOW AUTHORISED OFFICERS WILL WORK TOGETHER

1. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
2. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. The LA should set out which authorised officers will issue penalty notices in their area.

5. Procedure for issuing Penalty Notice

Criteria for issuing a penalty warning:

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

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 shorter holidays, repeated absences or birthdays 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 is 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; to satisfy that all evidential requirements are in place:

- The circumstances of the pupil's absence meet all the requirements of the Code of Conduct.
- The period of absence is not already 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.

Two penalty notice limit

From the 19th August 2024, only 2 penalty notices can be issued to the same parent in respect of the same child within a 3 year rolling period and any second notice within that period is charged at the higher rate.

Details of what option the local authority will consider if a 3rd (or subsequent) offence is committed within the 3 rolling year period.

It is also expected to include:

- The first penalty notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
- The second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.
- A Third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a 3rd time (or subsequent times) within those 3 years alternative action will be taken instead. This could include prosecution but may include other tools such as one of the other attendance legal interventions. *Once 3 years has elapsed since the first penalty notice was issued a further penalty notice can be issued.*
- These could include:
 - A school attendance order
 - PACE caution

Escalation in cases of repeat offences

- For 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.

6. 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.

7. 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/carers provides evidence that would constitute a statutory defence.

There is no statutory right of appeal after a Penalty Notice has been issued, any challenges would need to be made to the Magistrates Court once the fine remains unpaid.

Any revenue resulting from payment of penalty notices will be retained by the council and is used to cover the enforcement costs, such as but not limited to costs associated with the issue, collection, or prosecution, in the event of non-payment of Penalty Notices.

8. Cross Border Procedures

From August 19th, 2024 the new DfE Guidance for Working Together to improve school attendance has stated that each Local Authority is required to have a cross border mailbox available to ensure that, where children have

moved into a new location, the local authority can liaise with the school attendance team and provide the penalty notice information.

This is in accordance with the changes to the penalty notice escalation system.

Bury's mailbox address is : crossborderpenaltynotice@bury.gov.uk

9. Armed Forces / Uniform Covenant Duty around School Attendance

Due to the unique obligation and sacrifice of separation, Service families might be unable to take holidays, or spend time together, during normal school holiday periods. Service children might find they have limited time to spend with their serving parent(s) if the parent can only return home during term-time. The unique obligation and sacrifice of hours of work might mean that, even if the Service person remains on their UK base location, their duties prevent them taking leave during normal school holiday periods. The Service family might therefore ask the school for permission to take a holiday during term time.

As with all children, the decision on whether to authorise term time holidays for Service children sits solely with the head teacher of the school. While the educational needs of the Service child will always be a critical factor in determining whether term time absence should be granted, the wider family impacts on Service children should also be considered. It can be difficult for serving parents to obtain permission to take their child out of school during term time if the school's attendance policy and decision making fails to take account of the nature of Service life.

It is for Service families to apply to the school in advance, presenting evidence of how operational needs of the Armed Forces have legitimately prevented a Service family from taking holiday during normal school holiday periods.

In the past, head teachers have sought advice on applications for school absence from Unit Commanding Officers and their Welfare Staff, who are able to provide advice, verification and endorsement as required. The Ministry of Defence has produced guidance that provides advice to head teachers regarding term time absence for Service children. It includes contact details that can be used if head teachers are unsure how to make contact with the relevant Armed Forces unit.

10. Elective Home Education

Penalty Notices that are issued to parents where their child is on a school roll and are then subsequently removed to elective home educate, the Penalty Notice will remain in force and parents are liable for the offence.

11. Policy and Review

All Bury Schools should include the deployment of Penalty Notices in their 2024 School Attendance policy, and this should 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, Exclusion & Community 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, Exclusion & Community Team will review the use of Penalty Notices at regular intervals, amending the Code of Conduct as necessary and its general enforcement strategy as appropriate.