

# Bristol City Council

## Local Code of Conduct

**Local code of conduct for issuing Penalty Notices for school absence and excluded pupils found in a public place during the school day in accordance with: The Education (Penalty Notices) (England) Regulations 2007 as amended by the Education (Penalty Notices) (England) (Amendment) Regulations 2024.**

**Updated August 2024**

### What has changed in this version - summary of changes

New national framework elements	Elements for local discretion
<b>National threshold</b> (improving the consistency in the use of penalty notices across England) – 10 sessions of unauthorised absence in a rolling 10-school week period.	<b>Notice to Improve warning letter</b> replaces the previously locally agreed Penalty Notice warning letter.
<b>Where the Penalty Notice national threshold is met</b> (prioritising the support first approach) – in each individual case, the school must consider if a Penalty Notice is appropriate, or support should be provided, or a Notice to Improve issued, or other legal interventions.	Bristol City Council will provide its schools with a <b>Notice to Improve warning letter template</b> for use that contains the recommended content outlined in the National Framework.
<b>National fine amounts increase</b> (improving the deterrent effect of a penalty notice) – First fine, £80 if paid within 21 days rising to £160 if paid between 22-28 days.	Bristol City Council will undertake <b>cross-border checks</b> on behalf of its schools for cases where a pupil has moved school or local authority area within the three rolling year period. This is to ascertain whether a Penalty Notice (or notices) have already been issued to determine if national fine amount escalation limit or cap has been reached.
<b>National fine amount escalation</b> (improving the deterrent effect of a penalty notice) - For a second Penalty Notice issued within a 3-year rolling period to the same parent in respect of the same child, the Penalty Notice is £160.00 if paid within 28 days. There is no option for this second offence to be reduced to the lower rate of £80.	
<b>National fine cap</b> (improving the deterrent effect of a penalty notice) - A maximum of two fines for the same parent and same child in a rolling three years. After which, alternative action should be taken instead, such as prosecution.	
<b>Cross-border checks</b> (improving the deterrent effect of a penalty notice) – cases where a pupil has moved school or local authority area within the three rolling year period will be subject to local authority cross-border checks to see if a Penalty Notice (or notices) have been issued in the previous 3 years.	

## 1. Rationale

- 1.1. The Education (Penalty Notices) (England) Regulations 2007 as amended by the Education (Penalty Notices) (England) (Amendment) Regulations 2024 provide for the operation of the Penalty Notice scheme under Section 444A of the Education Act 1996 and Section 105 of the Education and Inspections Act 2006. The Regulations require that each local authority must draw up a Code of Conduct which sets out measures to ensure consistency in the issuing of Penalty Notices.
- 1.2. This Code of Conduct is designed to ensure Penalty Notices are issued in a fair and consistent manner across Bristol. The code sets out the arrangements for administering Penalty Notices in Bristol 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.
- 1.3. Research published by the Department for Education (DfE) 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.
- 1.4. 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.
- 1.5. 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.
- 1.6. 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 particular family.

## 2. Consultation

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- 2.1.** This code has been drawn up in consultation with schools and the local police force within the Bristol City Council area.

### **3. Legal basis**

- 3.1.** Penalty Notices are an alternative to prosecution. They give parents the opportunity to discharge their liability for an offence under section 444 Education Act 1996, or section 103 Education and Inspections Act 2006, by paying a penalty. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision academies, and certain off-site places as set out in section 444A(1)(b). Parents of pupils at independent schools cannot be issued with Penalty Notices but can be prosecuted under section 444(1) or (1A).
- 3.2.** The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how Penalty Notices for school absence must be used.
- 3.3.** 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.
- 3.4.** 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). Examples could include, but are not limited to: step-parents, grandparents, other family members/relatives, guardians etc...
- 3.5.** All parents can commit an offence under section 444 of the Education Act 1996 and therefore all parents liable for the offence may be issued a Penalty Notice in line with regulation 13 of the Education (Penalty Notices) (England) Regulations 2007. Usually, in deciding which parents to issue a Penalty Notice to, the school and local authority should include all parents involved in failing to secure the pupil's attendance e.g. who they were living with on the dates of the offences or which parents went on the unauthorised holiday.

### **4. Issuing Penalty Notices for Bristol Pupils**

- 4.1.** The local arrangements in Bristol are that all Penalty Notices will be issued by Bristol City Council on behalf of all schools<sup>i</sup> situated within the city, and alternative education providers used by Bristol City Council to educate statutory school aged pupils. Penalty Notices are issued by the Bristol City Council using an appropriate database, to prevent the issuing of duplicate notices.

**4.2.** A co-ordinated approach will be taken to ensure that a Penalty Notice will not be issued in cases where a prosecution is contemplated or has been commenced by the Local Authority.

## **5. When may a Penalty Notice for absence be appropriate?**

**5.1.** When the national threshold has been met: 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<sup>1</sup>, with one of, or a combination of the following codes:

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

**5.2.** During a truancy sweep: the police can request a Penalty Notice for a child stopped in a public place without a valid reason for absence from school.

**5.3.** When a pupil of compulsory school age is in a public place during school hours without reasonable justification during the first 5 school days of a fixed period or permanent disciplinary exclusion, under section 105 of the Education and Inspections Act 2006.

**5.4.** The National Framework makes it clear that if, in an individual exceptional and rare case, a Penalty Notice would be appropriate before the national threshold is met; Bristol City Council retain the discretion to issue one.

## **6. Circumstances where a Penalty Notice may be issued**

### **6.1 Irregular school attendance**

6.1.1. If a child of compulsory school age who is a registered pupil at a school fails to attend regularly<sup>ii</sup> at the school, his parent<sup>iii</sup> is guilty of an offence (Section 444 Education Act 1996).

6.1.2. Regular and punctual attendance of pupils at school is both a legal requirement and essential for students to maximise the opportunities available to them.

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<sup>1</sup> 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).

- 6.1.3. When a pupil's attendance meets the criteria for a Penalty Notice, the expectation is that schools will make a Penalty Notice request to the Local Authority, unless there are reasonable grounds for not doing so.
- 6.1.4. A Penalty Notice should be used as a sanction where there is a reasonable expectation that its use will secure an improvement or change in pattern of absence.
- 6.1.5. There will be circumstances where it is considered that a Penalty Notice is not appropriate. This may be due to a variety of reasons, including, but not limited to: (a) repeated offences indicating that Penalty Notices are not bringing about a change in behaviour, for example, repeated unauthorised term time leave; (b) the high level of unauthorised absence, including extended unauthorised term time leave cases; and (c) the complex or long-standing nature of the particular case. In such cases, the Local Authority may decide not to issue a Penalty Notice, but instead consider instigating a prosecution under Section 444(1) or 444(1A) of the Education Act 1996.
- 6.1.6. Where a school has concerns about the attendance of a pupil, there is an expectation that the school will have made the parent/s aware of the concerns about their child's attendance and the parent/s have had the opportunity to address this. Parents should be aware that if they do not make use of support offered and improve their child's attendance to an acceptable level, this may result in a Penalty Notice. The school will need to show that they have warned the parent/s that they are at risk of receiving a Penalty Notice or other legal sanction. This should at least be evidenced via the sending of a Notice to Improve (NTI) warning letter.
- 6.1.7. Penalty Notices should not normally be requested where poor attendance is symptomatic of complex family circumstances; in these circumstances the school should take a holistic support first approach to the issue and involve other agencies as necessary. The exception to this would be where parents fail to engage with support offered by the school/other agencies. Again, the school will need to show that they have warned the parent/s that they are at risk of receiving a Penalty Notice or other legal sanction by the sending of a Notice to Improve (NTI) warning letter.
- 6.1.8. Where a parent or carer chooses to take their child out of school for a period of leave which has not been authorised by school e.g. taking a holiday in term time, evidence of an individual warning is not a requirement. Instead, the school should ensure that it has made the parent/s aware:
- that term time leave of absence is not an automatic right and only permitted in exceptional circumstances.
  - Generally, a need or desire for a leave of absence for the purpose of leisure and

- recreation would not constitute an exceptional circumstance.
- of the school's expectations around parents making and the school granting leave of absence requests; and
- that unauthorised term time leave may result in a Penalty Notice.

Evidence that the parent has been warned could include but is not limited to: articles in school newsletters; information on the school's website; home-school agreement; school attendance policy; or written evidence of the refusal in the form of a letter, or a section completed by the school on a term time leave of absence request form.

## **6.2. If an excluded pupil is found in a public place during school hours**

- 6.2.1. If a pupil is excluded, their parent has to ensure the child is not present in a public place in school hours, without reasonable justification, during the first five days of each and every fixed period or permanent exclusion. Where the exclusion is for five days or less, the duty applies to any of the days to which the exclusion relates. (Section 103 Education and Inspections Act 2006). A school is not deemed to be a public place for the purposes of this legislation.
- 6.2.2. The school must have followed the Department for Education's statutory guidance for exclusions, which will include warning parents of this provision and the days to which it applies.
- 6.2.3. If a pupil receives several fixed term exclusions and the parent allows the pupil to be in a public place more than twice, the parent may be prosecuted for any third and subsequent occasion that occurs within any 12-month period.
- 6.2.4. If an excluded pupil is found in a public place during school hours, the witness must be willing to provide a witness statement and, if required to do so, be willing to testify in court.

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

7.1. The following considerations will be made before issuing (or requesting that another authorised officer issues) 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 basis:

- 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?
- Is issuing a Penalty Notice in this case appropriate after considering any obligations under the Equality Act 2010?
- (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?

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

- Has sufficient support already been provided? Sufficient support will usually include (but not limited to): Attendance communications with the parent/s (for example telephone calls, text messages, emails etc...), attendance letters, attendance support meetings, attendance action plans, targeted interventions for the child (for example a buddy, mentor, safe space pass, toilet pass etc...), travel support/adjustments, referrals to support agencies, working with multi-agency professionals, referrals to health professionals etc...
- 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?
- Is issuing a Penalty Notice in this case appropriate after considering any obligations under the Equality Act 2010?
- (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?

If the answer to the above questions is 'yes', then a Penalty Notice (or a Notice to Improve warning letter in cases where support is appropriate) will usually be issued.



## **8. Notice to Improve (NTI) warning letter**

- 8.1.** A Notice to Improve warning letter 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/school representative 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).
- 8.2.** A Notice to Improve warning letter will be sent digitally or by post by the school to the parent using the agreed Notice to Improve warning letter template which is signed by school representatives.
- 8.3.** The Notice to Improve warning letter must include:
- 8.3.1. The pupil's attendance record and details of the offence/s
  - 8.3.2. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
  - 8.3.3. Support/opportunities for support provided so far
  - 8.3.4. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
  - 8.3.5. Risk of Penalty Notice being issued or prosecution being considered if improvement is not secured within the improvement period
  - 8.3.6. The recommended length of the improvement period; this should be assigned on a case-by-case basis and is recommended to be between 3 and 6 weeks.
  - 8.3.7. What sufficient improvement looks like so that a Penalty Notice is not issued. This might be no further unauthorised absences within the improvement period, or a sufficient amount of improvement tailored to the family.
  - 8.3.8. How 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.
  - 8.3.9. The grounds on which a Penalty Notice may be issued before the end of the improvement period.

## **9. Maximum number of Penalty Notices**

- 9.1.** If repeated Penalty Notices are being issued and they are not working to change behaviour, they are unlikely to be the 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 might include prosecution or one of the other attendance legal interventions available to the Local Authority.

- 9.2.** 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:

<b>Scenario</b>	<b>Counts towards the limit?</b>
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

- 9.3.** A Penalty Noticed issued for a pupil found in a public place during the first 5 days of an exclusion does not count towards the escalation process or national limit.

- 9.4.** Once 3 years has elapsed since the first Penalty Notice was issued to the parent, a further Penalty Notice can be issued if appropriate, but in most cases it will not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

## **10. How authorised officers will work together**

- 10.1.** Authorised officers should work together to ensure that Penalty Notices are used when likely to be effective and change behaviour.

- 10.2.** An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. Any authorised officer can request a Penalty Notice, but in Bristol, it is only a local authority officer who will issue Penalty Notices.
- 10.3.** Where the school or police request that Bristol City Council issues the Penalty Notice, ordinarily they need to supply:
1. Fully completed Penalty Notice request forms
  2. A certificate of attendance for the period of attendance the Penalty Notice request relates to, signed by the headteacher.
  3. A certificate of attendance for the last 12 months.
  4. A copy of the school's Notice to Improve/warning letter to the parent, warning that a referral may be made to the local authority to issue a Penalty Notice.
  5. Any other supporting documentation as necessary, such as, but not limited to, Notice to Improve warning letter, other attendance warning letters, meeting notes, attendance action plans, leave of absence request form, leave of absence letter etc..
- 10.4.** Ordinarily, the main way for making Penalty Notice requests to Bristol City Council for school absence is via secure email to [educationpenaltnotices@bristol.gov.uk](mailto:educationpenaltnotices@bristol.gov.uk).
- 10.5.** Whoever is issuing the Penalty Notice should make a decision as to 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.

## **11. Payment of Penalty Notices**

- 11.1.** The arrangements for payment are detailed on the Penalty Notice.
- 11.2.** The penalty for the first Penalty Notice issued to a parent in respect of a particular pupil is charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
- 11.3.** A second Penalty Notice issued to the same parent in respect of the same pupil within a 3-year rolling period is charged at a flat rate of £160 if paid within 28 days.
- 11.4.** The Penalty amount and related timescales may change in line with legislation changes.  
**Payment cannot be made in instalments.**
- 11.5.** Payment of a Penalty Notice discharges the parent/carer from liability for the period of the offence to which the Penalty Notice relates.

**11.6.** The local authority will inform the school about whether Penalty Notices are paid, withdrawn or prosecuted for non-payment. The notification will usually be electronic in the form of secure email.

## **12. Non-payment of Penalty Notices**

**12.1.** Non-payment of a Penalty Notice within the prescribed time period may result in prosecution by the local authority for the offence to which the Penalty Notice relates.

## **13. Pupil movement and cross border situations**

**13.1.** Where pupils move between local authority areas, **Bristol City Council** can be contacted on **crossborder.penaltynotice@bristol.gov.uk** to find out if Penalty Notices have been issued previously.

**13.2.** In cases where it is believed a pupil has moved school or local authority area within the three rolling year period, Bristol City Council will also make reasonable enquiries with the other local authority to ascertain if any previous Penalty Notices have been issued.

**13.3.** Where pupils attend school in **Bristol Local Authority** but live in a different local authority, Bristol will issue the Penalty Notice in line with the Bristol code of conduct. This is because Bristol is the area in which the child goes to school and Penalty Notices must be issued by the school local authority.

## **14. Withdrawal of Penalty Notices**

**14.1.** There is no statutory right of appeal to the issuing of a Penalty Notice in relation to education matters.

**14.2.** The circumstances when a Penalty Notice will be withdrawn are detailed on the Penalty Notice.

**14.3.** When a Penalty Notice is withdrawn, no proceedings under Section 444 of the Education Act 1996 shall be instituted against the recipient in respect of the period covered by the original Penalty Notice.

## **Definitions**

- i. 'Schools' means all Department for Education registered educational providers situated within the City of Bristol, for pupils of statutory school age, not including independent schools.
- ii. In April 2017 The Supreme Court gave its judgment on the meaning of what is meant by 'attend regularly' at school for the purposes of section 444 of the Education Act 1996. The

Supreme Court decided that “regularly” meant “in accordance with the rules prescribed by the school”.

- iii. For the purposes of education law, section 576 of the Education Act 1996 defines a 'parent' as:
- all natural (biological) parents, whether they are married or not;
  - any person who, although not a natural parent, has parental responsibility for a child or young person (this could be a step-parent, guardian or other relative);
  - any person who, although not a natural parent, has care of a child or young person. (A person has care of a child or young person if they are the person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child.)

Throughout this document, references to 'parent' mean each and every parent coming within the definition (whether acting jointly or separately) and should not be taken to only apply to 'parent' in the singular.

- iv. '10-week period' means a continuous period of 100 school sessions (which would usually be 50 school days). Days when the school is not in session are not counted (i.e. Inset Days, Bank Holidays, School Holidays and Weekends). The 100 school sessions could span two different terms, or indeed, two academic years.
- v. Compulsory school age is a child between 5 to 16 years old. A child reaches compulsory school age on or after their fifth birthday. If they turn 5 between 1 January and 31 March they are of compulsory school age on 31 March; if they turn 5 between 1 April and 31 August they are of compulsory school age on 31 August. If they turn 5 between 1 September and 31 December, then they are of compulsory school age on 31st December. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

### Further information

DfE Statutory School Attendance Guidance: “Working Together to Improve School Attendance”  
<https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

The Education (Penalty Notices) (England) (Amendment) Regulations 2024: [SI 2024/210 - The Education \(Penalty Notices\) \(England\) \(Amendment\) Regulations 2024](#) - These Regulations amend the Education (Penalty Notices) (England) Regulations 2007 (S.I. 2007/1867).

Section 23 Anti-Social Behaviour Act 2003:  
<https://www.legislation.gov.uk/ukpga/2003/38/section/23>