



Penalty Notice Code of Conduct

September 2024

Working for every child



Introduction

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 London Borough of Hackney. The code sets out the arrangements for administering penalty notices in the London Borough of Hackney 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.

Fixed Penalty Notices are intended to prevent the need for court action following an unsuccessful offer of voluntary early help to address the barriers preventing regular attendance at school. Schools should seek to work with parents and partner agencies to improve a child's attendance and seek to identify and address any underlying barriers preventing the child from attending school regularly.

Evidence that schools have undertaken this work strengthens the case that it is in the public interest to undertake enforcement action against a parent. Therefore, for unauthorised absence, schools will be expected to evidence the level of support offered to a family prior to a Penalty Notice being issued.

1. Legal basis

- 1.1. The Anti-social Behaviour Act 2003 contains provision for the issue of Penalty Notices for cases of unauthorised absence from school. Section 23 of that Act empowers designated Local Authority officers, typically School Attendance Officers (SAO), Headteachers (including Deputy and Assistant Headteachers nominated by them) and the Police to issue the aforementioned Penalty Notices.
- 1.2. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) 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.
- 1.3. 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, pupil referral units, academy schools, AP academies, and certain off-site places as set out in section 444A(1)(b).
- 1.4. Working together to improve school attendance statutory guidance provides further guidance on the operation of Penalty Notice schemes in England.
- 1.5. The Local Authority (LA) has primary responsibility for producing and overseeing the Local Penalty Notice Code of Conduct ("the Code of Conduct") which must be written in line with the national framework for penalty notices.
- 1.6. In consultation with and following agreement from schools, the administration of the Penalty Notice process will be undertaken by the Local Authority (Hackney Council), who will process Penalty Notice requests received from the school.
- 1.7. The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 of the Education Act 1996. This defines 'parent' as:
 - All natural parents, whether they are married or not.
 - Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.

- Any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a 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.
- 1.8. Throughout this document, references to ‘parent’ mean each and every person coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to ‘parent’ in the singular.
 - 1.9. In order for the Local Code of Conduct to reflect due regard to the Human Rights Act and DfE Regulations and Guidance, the LA ‘s Code of Conduct has been amended in order to meet its statutory obligations.
 - 1.10. LA’s and schools must demonstrate regard to the Human Rights Act and ensure they apply their powers fairly and consistently and in the case of Penalty Notices, the local code of conduct must be seen to fully comply with the Human Rights Act.

2. Reasons for introduction

- 2.1. Research published by the Department for Education 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.
- 2.2. • 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.
- 2.3. • 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.
- 2.4. Regular attendance at school is a legal requirement and Section 444 (1) and 444 (1A) of the Education Act 1996 and Section 36 of the Children Act 1989 already exist to enforce attendance through the Courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents and courts have the powers to fine, imprison or impose various orders.
- 2.5. Where difficulties arise with school attendance, professionals must take a support first approach by preventing a penalty notice from being used in cases where a supportive approach (anything short of a penalty notice or prosecution) is more appropriate instead. Family Hubs, SEN support, mentoring, parenting and mental health support through a raft of voluntary agencies as well as support from Social Care exists to support children and enable adults to parent effectively so that children can achieve their full potential.
- 2.6. Penalty notices will 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.
- 2.7. In the small minority of cases where parents are unwilling to ensure their children’s regular attendance at school and to engage with support networks, sanctions are necessary. Such sanctions are not intended as punishment but rather as a means of persuading the parents to recognise their responsibilities, comply with the law and ensure their children’s access to education.

3. Use of Penalty Notices

- 3.1. Penalty Notices will only be issued for cases of unauthorised absence or in the case of pupils who have been excluded from school and are found in a public place without good reason. When a Penalty Notice is issued for cases of unauthorised absence, the defences in law against the offence remain the same as for the substantive offence under Section 444 (1) and 444 (1A) of the Education Act 1996. Any defence against conviction on this charge is very limited and the matter is dealt with in a Magistrates' Court.
- 3.2. The Education (Penalty Notices) (England) (Amendment) Regulations 2024 sets out the maximum number of penalty notices which may be issued by a local authority to each parent in any 36-month (3 Year) period. For these purposes the local authority has set the maximum of 2 penalty notices per child, per parent that can be issued within a rolling 3-year period. A second notice issued in relation to the same child of the same parent within this 36-month period must be charged at the rate of £160 without the opportunity to pay a discounted rate of £80. If a third (or subsequent) offence(s) takes place, another tool must be used, such as a parental prosecution via the magistrates' court or one of the other attendance legal interventions available to the Local Authority.
- 3.3. For the purposes 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:

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

- 3.4. The three-year period begins from the date of the first penalty notice issued. 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.
- 3.5. The Penalty Notice National Framework 2024 does not prevent a penalty notice from being used in other cases where an offence has been committed. If, in an individual case, Hackney Council believes a penalty notice would be appropriate, the council retains the discretion to issue one before the threshold is met. This might apply for example, where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events. This will be in

exceptional circumstances only, and the issuing of penalty notices in these circumstances can only be authorised by the Principal Officer.

- 3.6. In considering whether the necessary conditions for a Penalty Notice are fulfilled, the Local Authority and Headteachers should have regard to their statutory duties including their wider safeguarding duties.

4. Specific conditions

- 4.1. Looked After Children: Hackney Council does not include Looked After Children in the Penalty Notice process. Where there are concerns over attendance with a child in Local Authority care, a review should be held to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.
- 4.2. Children with Special Education Needs and/or Disabilities (SEND): For children with identified SEND who may or may not be in receipt of an Education Health and Care Plan, an emergency review should be held before considering a Penalty Notice or other legal action. This is to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

5. Key considerations prior to the issue of a Penalty Notice

- 5.1. Where a pattern of absence is at risk of becoming, or becomes, problematic schools should listen to and understand the barriers to attendance the pupil or family is experiencing. In doing so, schools should take a curious, 'support first' approach and seek to address these barriers. Schools should only resort 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.
- 5.2. All schools are expected to:
 - Support pupils and parents by working together to address any in-school barriers to attendance, and
 - Where barriers are outside of the school's control, should work with partner agencies to support pupils and parents to access any support they may need voluntarily.
- 5.3. Where absence intensifies, so should the level of support provided, this will require the school to work in tandem with the local authority and other relevant partners to seek an early help assessment.
- 5.4. 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
 - It is appropriate after considering any obligations under the Equality Act 2010
- 5.5. Where engagement in support is proving challenging, schools should hold more formal conversations with the parents and issue a 'notice to improve' letter prior to referring for a Fixed Penalty Notice.

- 5.6. Under the Education (Pupil Registration) (Amendment) Regulations 2013 Headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Headteachers should determine the number of school days a child can be away from school if the leave is granted.
- 5.7. It is for Headteachers to determine if the request is exceptional. Legislation requires that each request is judged on a case-by-case basis.
- 5.8. Before a Penalty Notice is issued it must be evident that the matter is capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent/carer can be prosecuted.
- 5.9. Headteachers should be aware that by submitting requests for a penalty notice to be issued, they are assuring the Local Authority that they accept and support that, should the parent choose not to make payment within 28 days of the fine being issued, the School Attendance Support Team may progress the matter in line with Section 444 Education Act 1996 resulting in the parents being prosecuted for their failure to ensure the regular attendance of their child.

6. Cases where issuing a Penalty Notice may be considered:

6.1. Poor School Attendance

The pupil has 10 or more sessions of unauthorised absence in the 10 weeks

6.2. Unauthorised Leave of Absence during term time

A leave of absence of five days (10 sessions) or more was taken during term time without the school's consent in the 10 weeks prior to a notice being requested.

6.3. A child of compulsory school age is found unsupervised in a public place during school hours during the first 5 days of exclusion or suspension without good reason.

Good reason might include attendance at a medical appointment, YJS appointment or other appointment with a statutory or voluntary agency.

7. School action prior to a Penalty Notice referral

7.1. Although Hackney Education does not condone any unauthorised absence, the criteria for issuing a Penalty Notice have been set to ensure the Hackney Education can confidently institute Magistrate Court proceedings if the Penalty Notice remains unpaid. Therefore, it is expected that:

7.2.

- a. The School's Governing Body has endorsed the operation of the Penalty Notice scheme;
- b. The School's Attendance Policy clearly explains the criteria and process for addressing poor attendance;
- c. The School has fully considered any extenuating circumstances and has established there are no justified causes for the absences;
- d. The parent has been regularly contacted by the school to establish the reasons for absence;
- e. For unauthorised absence, the school has offered and can evidence that support has been

provided to secure regular attendance, but this has not worked or been engaged with. Please see referrers guide for further information.

- f. A written notice has been sent to parents informing them of the consideration to refer to the Local Authority to issue a Penalty Notice;
 - g. While the Headteacher can delegate the authority to a member of staff to make Penalty Notice referrals on their behalf, all referrals must include a signed attendance certificate to ensure that referrals are made in line with this protocol.
- 7.3. Hackney Education recommends that parents are reminded on an annual basis of the school's policy on attendance, including the existence of Penalty Notices and any arrangements for granting leave during term time.
- 7.4. A penalty notice may be issued if attendance has not improved (according to the agreed goals) and it is agreed that this is the best tool to improve attendance. If the family is open to other statutory and non-statutory services, the network must agree that this is the most appropriate next step.

8. Procedure for issuing Penalty Notices

- 8.1. Schools that wish to refer for a Penalty Notice should complete the online referral form which can be found and completed [here](#). Please ensure that you attach all the required evidence that is outlined below.
- 8.2. If the Penalty Notice is in relation to unauthorised absence**
- a) a copy of the letters that have been sent to parents, including a penalty notice warning
 - b) a plan, do, review cycle of evidence that the school has attempted to provide support, but this has not worked or been engaged with
 - c) a Notice to Improve letter if support has not been engaged with
 - d) evidence that safeguarding concerns have been considered
 - e) evidence of discussion about penalty notice with the wider team around the child
 - f) an attendance certificate covering the period of offence signed by the Headteacher.
- 8.3. If the Penalty Notice is in relation to an unauthorised leave of absence**
- a) a copy of the application for leave of absence from the child's parent,
 - b) a refusal of leave letter from the school, and
 - c) an attendance certificate covering the period of offence signed by the Headteacher.
- 8.4. If the parent has not applied for a leave of absence, but the school ascertains after a period of absence that this should have been unauthorised, a refusal of leave letter must be sent detailing how the school established it was a period of unauthorised leave.
- This letter must include:
- a) the reasons for refusal,
 - b) any exceptional circumstances the school considered, and
 - c) highlight the consequences of taking an unauthorised holiday, including the issuing of a Penalty Notice.
- 8.5. If the Penalty Notice is in relation to an Excluded Pupil found unsupervised in a public place during school hours without good reason**

- a) a copy of the exclusion letter, which must advise the parent of the possibility of a Penalty Notice being issued if their child is found in a public place without reasonable justification,
- b) an attendance certificate covering the period of exclusion signed by the Headteacher, and
- c) a signed witness statement setting out where and when the child was seen and that they are not aware of any reasonable justification for the child being in a public place.

8.6 The above will be used as evidence in court should the Penalty fine remain unpaid. The parent(s) will then be prosecuted for an offence under Section 103(3) Education and Inspections Act 2006 (excluded pupil stopped in public place).

9. Hackney Education action on receipt of a Penalty Notice referral

9.1 Hackney Education will check the referral to confirm that it meets the criteria whereby a Penalty Notice can be issued and the consequences for failure to pay within the required time scale.

9.2 The decision whether to issue a Penalty Notice will be authorised by the Courts Officer or an authorised person in their absence.

9.3 Should the Courts Officer feel that the request is not in line with the Code of Conduct or that there is insufficient evidence to issue the Penalty Notice, the matter will be discussed with the Principal Officer, Pupils Out of School and a conclusion reached.

9.4 In cases where the child has attended another local authority school in the previous 3 years, an additional check will be carried out. Where the previous local authority area is known, Hackney Council will make contact to check whether a penalty notice has been issued to that parent for that child in the previous 3 years. As per paragraph 3.2, a penalty notice cannot be issued to the parent of a child who has already received two penalty notices in the previous 3 years relating to poor attendance or an unauthorised leave of absence.

9.5 Penalty Notices for unauthorised leave of absence during term-time will be issued without a Warning Letter. The school's letter confirming the refusal of the request will have acted as a warning and raised parental awareness of the unauthorised holiday and the risk of receiving a Penalty Notice.

9.6 Where a Penalty Notice is issued, it will be sent by the Courts Officer via First Class post to the parent's last known address.

9.7 Penalty Notices will be issued to the parents of pupils registered at Hackney schools, irrespective of their actual home address. This also means that follow-up prosecutions where parents fail to pay the Notice or to improve their children's attendance will extend to families resident outside the Borough. Hackney Education's Courts Officer will notify the 'home' authority of all pupils' resident outside of Hackney if a prosecution is undertaken. Penalty Notices will not be issued to parents whose children are not on roll of a Hackney school.

9.8 In the event of non-payment of a Penalty Notice, Hackney Education will send a PACE Court Warning letter to the parent(s), warning of the possible consequences, as well as giving them an opportunity to produce any evidence that would support the unauthorised absence.

10. Withdrawal of a Penalty Notice

10.1 There is no right of appeal against the issue of a Penalty Notice.

10.2 Hackney Education may only withdraw a Penalty Notice in the following circumstances:

1. Where it ought not to have been issued i.e. where it has been issued outside the terms of the Code of Conduct or where no offence has been committed;
2. Where it has been issued to the wrong person;
3. Where the notice contains material errors; or
4. Where new evidence or information has come to light after the initial application that warrants the withdrawal of the Penalty Notice.

10.3 Where any of the above occurs, written notice of the withdrawal shall be given to the recipient and any monies paid over shall be fully refunded.

10.4 If a parent disagrees with the contents of Penalty Notice, or does not agree with the conditions under which it has been issued, they may write to the Courts Officer to identify their concerns within 14 days of the issue of the Penalty Notice. No correspondence will be entered into after the 14 day period.

10.5 All correspondence should be addressed to the Courts Officer and emailed to courtsofficer@hackney.go.uk

11. Payment

11.1 Arrangements for payment will be detailed on the Penalty Notice.

11.2 The first penalty notice issued to the parent for a child will be charged at £160 if paid within 28 days reducing to £80 if paid within 21 days.

11.3 Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first offence, the second notice is charged at a flat rate of £160 if paid within 28 days.

11.4 There is no reduced sum available in this instance.

11.5 Part Payments or Payment plans are not acceptable, and fines must be paid in full within 21/28 days.

11.6 Payment after the deadline may be accepted in exceptional circumstances. In this situation the higher amount of £160 is usually payable and must be paid by the agreed date and in full.

11.7 Payment in full of the Penalty Notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent cannot be subsequently prosecuted for that period.

11.8 Any revenues collected through the system must be ring-fenced to administer the penalty notice system and prosecute for the original offence in cases of non-payment. If a surplus remains after the system has been administered and any non-payers have been prosecuted, this can be spent on attendance support.

12. Non Payment

12.1 The offence detailed in the Penalty Notice must be capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent can be prosecuted. Non-payment of Penalty Notices within the prescribed time limits will result in the initiation of a criminal investigation

and possible prosecution under Section 444(1) of the Education Act 1996 for the original offence detailed in the Penalty Notice.

12.2 However, there may be specific circumstances in some cases that mean it is no longer in the public interest to bring a prosecution despite the Penalty Notice being unpaid. Such situations will be judged on a case by case basis in discussions between the Courts Officer and Principal Officer, Pupils Out of School.

12.3 To assist with any decision, Hackney Education's Courts Officer will send a PACE Court Warning letter to the parent(s). The purpose of this is to allow parents to make representations regarding any possible statutory defences that might apply.

12.4 The Courts Officer will consider any response received before deciding whether to recommend withdrawing the Penalty Notice and taking no further action or proceeding with a prosecution.

13. The Decision to Prosecute

13.1 The decision to bring a prosecution will be made in line with the Council's policies and procedures for bringing a prosecution.

13.2 The prosecution would not be for non-payment of the penalty notice, but for the original offence of failing to ensure the child's regular attendance at school. The Courts Officer will look at all the circumstances of the case when assessing the likelihood of securing a conviction for the original attendance offence. If the decision is made to proceed with prosecution the parent or carer will be issued with a Notice of Intended Prosecution in the first instance.

13.3 For prosecutions relating to unauthorised absence, schools will be expected to provide a witness statement outlining the actions undertaken during the period of offence by the pre-statutory referral casework lead and any supporting evidence for the period of offence.

13.4 When a 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.

14. Monitoring and Review

14.1 The Attendance Team must maintain records of penalty notices including:

- A copy of each notice issued,
- A record of all payments made and when they were paid,
- Whether the notice was withdrawn and on what grounds, and
- Whether the penalty notice led to a prosecution and the outcome.

14.2 This code of conduct will be reviewed on an annual basis, or following any changes to relevant legislation and/or regulations.