

## **Luton Borough Council's Penalty Notice Code of Conduct**

**August 2024**

## Penalty Notice Code of Conduct

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**Version:** 2.0 (published)

**Last Updated:** 19 August 2024

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## 1. Introduction

‘Each local authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices’ The Education (Penalty Notices) Regulations 2007 Section 14.

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In law an offence occurs if a parent/carer fails to secure a child’s attendance at school at which they are a registered pupil, and that absence is not authorised by the school.

A parent/carer is supported at school and local authority (LA) level to overcome barriers to regular attendance. The Attendance Support Team (AST) will continue to investigate cases of non-attendance at school and use legal sanctions against a parent/carer wherever appropriate. All those recognised as a parent under section 576 of the Education Act are parents for the purposes of this code.

A child reaches compulsory school age at the start of the term on or after their fifth birthday and continues to be of compulsory school age until the last Friday of June in the school year that they reach 16 years of age. Notices cannot therefore be issued to children in reception who have not yet reached compulsory school age.

## 2. The law

Section 23 of the Anti-Social Behaviour Act 2003 empowers designated LA officers, head teachers and the Police to issue penalty notices. The Education Penalty Notice Regulations 2007 section 10 also states a head teacher may authorise a deputy or assistant head teacher to issue penalty notices, but no other member of staff can issue penalty notices, in cases of unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2007 came into force on 1 September 2007. Penalty notices (Sections 444A & 444B) supplement the existing sanctions to enforce attendance at school currently available under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989.

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.

It is a legal requirement under section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability and aptitude and to any special educational needs that they may have.

Penalty notices are issued to 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 or, in certain cases, at a place where alternative provision is provided. Penalty notices can be used by all schools (with the exception of independent schools) where the pupil’s absence has been recorded with one or more of the unauthorised codes and that absence(s) constitutes an offence. A penalty notice can be issued to each parent liable for the offence or offences. They should usually only be

issued to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

### **3. Rationale and overview of penalty notices**

3.1 The purpose of this code of conduct is to ensure that penalty notices are applied consistently and fairly across the local authority area and that arrangements for their issue and administration are suitable.

3.2 From 19 August 2024, a new National Framework for Penalty Notices has been introduced following changes to secondary legislation. The aim of this is to improve consistency in the use of penalty notices across England by introducing a new national threshold.

3.3 This code has been issued pursuant to The Education (Penalty Notices) (England) Regulations 2007/1867 (as amended) and applies to all schools and academies in Luton (except for independent schools). All references to the Local Authority mean Luton Borough Council.

3.4 Penalty notices are an alternative to prosecution. They give parents the opportunity to discharge their liability in respect of the following two offences by paying a penalty:

- Education Act 1996, section 444(1): failure by a parent to secure regular attendance at school of a registered pupil.
- Education and Inspections Act 2006, section 103: duty of a parent of an excluded pupil to ensure the pupil is not present in a public place at any time during school hours on a school day.

3.5 Penalty notices are not the only means of disposal for these offences. Depending on the circumstances of each case, the local authority (LA) may alternatively decide to issue a caution, or to prosecute the offence in a magistrates' court, or to take no further action.

3.6 It is important that decisions about these offences are made in accordance with the Human Rights Act 1998 and the Equality Act 2010 as well as specific relevant legislation, regulations and statutory guidance. Therefore, in Luton the agreed practice is that all penalty notices will be issued by the local authority.

### **4. Who is a parent?**

The local authority and the school will need to decide who falls within the definition of parent in respect of a particular pupil when using the legal measures. A penalty notice may be issued to each parent for each child. The definition of a parent in education law is broader than the definition in other legislation.

4.1 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 stepparent, 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)

## **5. Circumstances where a penalty notice may be issued**

### **5.1 Irregular school attendance**

5.1.1 If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence. (Section 444 Education Act 1996). The Supreme Court Judgement from 2017 (Isle of Wight Council v Platt [2017] UKSC 28) has determined that ‘regular’ means ‘in accordance with the rules prescribed by the school’.

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

5.1.3 When a pupil’s attendance meets the criteria for a penalty notice, the expectation is that schools will make a referral to the local authority, unless there are reasonable grounds for not doing so.

5.1.4 Upon receipt of a referral from the school, Luton Borough Council will check to confirm that it meets the national threshold for a penalty notice to be issued and to whom. Each referral must contain evidence of a written warning and a registration certificate showing unauthorised absence. In cases of persistent absence, all support offered must be evidenced detailing if this support was taken up or rejected by parent or child, any if any support had any improvement at all to attendance.

5.1.5 A penalty notice may be issued as an alternative to prosecution, where a pupil has accrued a minimum of 10 unauthorised absence sessions in any 10-week period. The unauthorised sessions can be made up of one or a combination of the following codes:

- Code G (the pupil is absence without leave for the purpose of a holiday).
- Code O (where no reason for absence is established or the school is not satisfied that the reason given is one that would be recorded using one of the codes statistically classified as authorised).
- Code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies).

These unauthorised sessions can either be consecutive or non-consecutive.

A rolling period of 10 school weeks. A school week means any week in which there is at least one school session. The period of 10 school weeks can also span different terms or school years.

5.1.6 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 a pattern of absence.

5.1.7 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:

- repeated offences indicating that penalty notices are not bringing about a change in behaviour for example repeated unauthorised term time leave
- the high level of unauthorised absence, including extended unauthorised term time leave cases
- the complex or long-standing nature of the particular case. In such cases the local authority may decide not to issue a penalty notice and instead consider instigating a prosecution under Section 444(1) or 444(1A) of the Education Act 1996

5.1.8 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 local authority will check that the school 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.

5.1.9 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 approach to the issues and involve other agencies as necessary.

The exception to this would be where parents fail to engage with the support offered by the school or other agencies or where the support has been unsuccessful. The local authority will need to check that the school have warned the parent/s that they are at risk of receiving a penalty notice or other legal sanction.

5.1.10 Each parent may be issued with a separate penalty notice for each child taken out of school. 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, for example, taking a holiday in term time, the school should ensure that it has made the parent/s aware of the following:

- term time leave of absence is not an automatic right
- school's expectations around parents making leave of absence requests, the school granting the leave
- that unauthorised term time leave may result in a penalty notice
- Where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, for example returning to school on the fourth day (before the five-day minimum) or using the days before and after school holiday dates during the academic year, or repeated absence for birthdays or other family events. The local authority will exercise discretion and consider issuing a penalty notice if appropriate.

School should provide evidence that each parent has been warned in writing in the form of a letter, email or by "school parent mail".

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

5.2.1 If a pupil is excluded, their parent must ensure the child is not present in a public place in school hours, without reasonable justification, during the first five days of every fixed period of suspension or a permanent exclusion.

Where the suspension is for five days or less, the duty applies to any of the days to which the suspension relates. (Section 103 Education and Inspections Act 2006.) A school is not deemed to be a public place for the purposes of this legislation.

Reasonable justification may include medical emergencies and hospital or other medical appointments. Shopping for clothes or food would not generally be considered reasonable. It is the parent's responsibility to prove reasonable justification.

5.2.2 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.

5.2.3 If a pupil receives a number of 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. Early intervention**

6.1 An attendance support early intervention letter can be issued by the school after a minimum of four sessions of unauthorised absence (or two days), including unauthorised late absence. If there are six further sessions of unauthorised absence within the total 10 weeks, a notice to improve should be issued by the school.

## **7. Notice to Improve**

7.1 Schools should consider if support is more appropriate in each case of absence. If support is more appropriate, this should be arranged or continued if already in place without a penalty notice being requested. Where appropriate school could consider issuing a notice to improve if the support arranged stops working or is not being engaged with.

7.2 Luton Attendance Support Team has produced a template letter for schools to use. This letter ensures a consistent approach across the local authority and includes all legal references as included in this code of conduct. Schools must not change the template letter but should add specific detail where indicated to ensure it is appropriate to the child and parent. Schools must keep a record of all Notice to Improve letters and share the data with the Attendance Support Team.

7.3 A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is requested by the school.

7.4 There will be a six weeks time frame for attendance to improve, this will be known as the improvement period. The notice to improve will detail what sufficient improvement will look like on a case by case basis.

7.5 The notice will also include grounds on which a penalty notice may be issued before the end of the improvement period. Parents should be informed of this prior to a penalty notice being issued.

7.6 The notice to improve letter will inform the parents of the pupil's attendance, support that has been offered or provided so far and give opportunities for further support. It will contain a clear warning that a penalty notice may be issued or prosecution considered if attendance improvement is not secured within the improvement period.

7.7 The Notice to Improve letter will contain a warning that should there be further unauthorised absence after the improvement period has ended, a penalty notice may be issued without further warning. This will be for the headteacher to notify the Local Authority requesting the appropriate course of action after considering how much time has passed since the improvement period has ended.

7.8 Requests for penalty notices for unauthorised holidays will be processed without a notice to improve. The school's letter or refused absence request will have acted as a warning to consequences of unauthorised absences and risk of receiving a penalty notice or prosecution.

7.9 Schools may issue the notice to improve letter without the authorisation from the local authority. However, only the Luton Borough Council notice to improve letter may be used. Schools must keep a record of all Notice to Improve letters and share the data with the local authority each half term.

7.10 Luton Borough Council does not include Children Looked After in the penalty notice process. Where there are concerns over attendance with a child in the council or another council's care, a review should be held to determine that appropriate provision is in place and whether changes are required to help engage the young person more in their education.

## **8. Maximum number of notices**

8.1 A penalty notice is an out of court settlement which is intended to change behaviour without the need for criminal prosecution. From the autumn term 2024, only two penalty notices can be issued to the same parent in respect of the same child within a three year rolling period and any second offence within that period is charged at a higher rate.

8.2 The local authority will keep accurate records of the number of penalty notices issued to individual parents for individual pupils to prevent duplication and will check prosecution is not ongoing or being considered prior to issue further penalty notices.

## **9. Payment of penalty notices**

9.1 The arrangements for payment are detailed on the penalty notice.

9.2 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.

9.3 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.

9.4 Payment cannot be made in instalments.

9.5 A third penalty notice cannot be issued to the same parent in respect of the same pupil within three years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those three years,



alternative action may be taken. This will often include considering prosecution, but may include other tools such as one of the other attendance legal interventions.

9.6 Payment of a penalty notice discharges the parent or carer from liability for the period of the offence to which the penalty notice relates.

9.7 There is no right of appeal by parents against a penalty notice.

9.8 Where a penalty notice is issued, it will be sent via first class post to the parent's address registered with the school.

## **10. Non-payment of penalty notices**

10.1 If the penalty notice remains unpaid after 28 days and, providing the penalty notice has not been withdrawn, the local authority will look to proceed to prosecute the original offence in the magistrates' court.

10.2 In order to prosecute, Luton Borough Council has six months from the date of the last recorded absence to instigate legal proceedings.

## **11. Circumstances when a penalty notice can be withdrawn**

11.1 A penalty notice, once issued, may be withdrawn by the local authority if the local authority determines that it meets at least one of the following criteria:

- Penalty notice has been issued outside of the terms of the local code of conduct
- It ought not to have been issued to the person named as the recipient.
- It appears that the notice contains material errors.
- It is unpaid and the Local Authority decides to take no further action. The circumstances when a penalty notice will be withdrawn are detailed on the penalty notice.

## **12. Sums received by local authorities**

12.1 Any revenues collected through the system will be used for the administration of penalty notices and prosecutions.

12.2 Any surplus revenue will be used to support the regular attendance at school of registered pupils.

12.3 Any remaining surplus must be paid to the Secretary of State.

## **13. Cross-border assistance**

13.1 In cases where a pupil has moved school or local authority area in the previous three years an additional check will be made to try and ascertain whether previous penalty notices have been issued to the parent in respect of the pupil.

13.2 If the local authority area is known the new local authority will make contact to check whether any penalty notices have been issued to that parent for that pupil in the previous three years.

13.3 In cases where the previous local authority is unknown or the information cannot be, or is not, provided by the previous local authority, it will be assumed that the parent has not previously received a penalty notice and the escalation process started as a new case.

13.4 The new local authority can contact Luton Borough Council on [crossborder.penaltynotice@luton.gov.uk](mailto:crossborder.penaltynotice@luton.gov.uk) to check whether a penalty notice has been issued in the previous three years.

## 14. Outcomes from penalty notices

14.1 Schools can make contact with the Local Authority if they wish to know the outcome of a penalty notice at [AttendanceSupport.Team@luton.gov.uk](mailto:AttendanceSupport.Team@luton.gov.uk)

## 15. Relevant underpinning legislation

- The Education Act 1996
- The Children Act 1989
- The Education (Pupil Registration) (England) Regulations 2006
- The Education (Pupil Registration) (England) (Amendment) Regulations 2010
- The Education (Pupil Registration) (England) (Amendment) Regulations 2011
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013
- The Education (Pupil Registration) (England) (Amendment) Regulations 2016
- The Education Act 2002
- The Anti-Social Behaviour Act 2003
- The Education Act 2005
- The Equality Act 2010
- Human Rights Act 1998
- The Education and Inspections Act 2006
- The Education (Penalty Notices) (England) Regulations 2007
- The Education (Penalty Notices) (England) (Amendment) Regulations 2012
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013
- Education (Penalty Notices) (England) (Amendment) Regulations 2024