

West Berkshire code of conduct for issuing penalty notices for school absence 2024



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West Berkshire
COUNCIL

General

1. 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 West Berkshire. The code sets out the arrangements for administering penalty notices in West Berkshire 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.
2. This code incorporates amendments to the Education (Penalty Notices) (England) Regulations 2007 ('the Regulations') which come into effect on 19 August 2024 and updates the previous West Berkshire code.
3. The amended Regulations create a national threshold for issuing fixed penalty notices in relation to school absence. Details of the national threshold are included in this code.
4. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

Legal basis

5. 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).
6. The Regulations (and subsequent amendments) set out how penalty notices for school absence must be used.
7. Under the legal framework a penalty notice can only be issued by an authorised officer that is, a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable. In West Berkshire the police and headteachers (and deputy/assistant heads) will not be issuing penalty notices. The issuing and administration of penalty notices is completed by the School Attendance Team within West Berkshire Council's Education Attendance Team. Schools will refer pupil absence to West Berkshire Council ('the Local Authority') as set out in this code. The police can refer concerns about a pupil's absence from school or presence in a public place to the Education Attendance Team without having to recommend a penalty notice. The police should however inform the pupil's parents of the concern and the referral.
8. 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.
9. 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).

Rationale

10. 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.
 - 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.
11. 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.
12. 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. Education Attendance Team. Penalty notices are to be used as an additional resource where appropriate to raise school attendance and are aimed at preventing the need for court action.
13. 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 family.

When may a penalty notice for absence be appropriate?

14. When the national threshold has been met, it must be considered 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 weeks¹, 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 N (the circumstances of the pupil's absence have not yet been established),
 - 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)

¹A 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).

15. During or following a truancy sweep: the Local Authority can issue a penalty notice. Decisions will be made on a case-by-case basis and evidence will be collated. A truancy sweep may determine pupils who are not in school during the school day without an authorised reason. A penalty notice can be issued in this instance without warning or for a single period of absence.
16. Where a suspension or exclusion has been issued, the restrictions are that the pupil is not seen in a public place, during school hours, without reasonable justification. Where it has been established that a pupil has not adhered to this instruction a penalty notice can be issued in accordance with the suspension and exclusion guidance. Evidence will be collated in relation to this offence and a decision made on a case-by-case basis².
17. If in an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
18. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be 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, then an alternative will be used, prosecution will be considered or another attendance legal intervention.
19. 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.

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

20. 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 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:
 - What other services and/or agencies are working with the family? Steps must be taken by the school to ascertain if (and what) other services and/or agencies are working with the family. Where applicable their views should be sought by the school in writing as to whether a penalty notice would be detrimental.

²Penalty notices for pupils found in a public place without good reason during the first five days of an exclusion continue to be charged at £120 (reduced to £60 if paid within 21 days) and do not count towards the 3-year escalation period in the same way as penalty notices for absence.

- Has sufficient support already been provided? Sufficient support will usually include but not limited to:
 - A range of school focused and specific support that has been planned, actioned and reviewed
 - Parenting support
 - Early Help Support
 - Emotional Health Academy support or specific signposting to relevant supportive agencies
- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this 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?
- 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?

21. If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

22. Before requesting a penalty notice, schools should take the following action:

- Contact the parent to ascertain reason for absences
- Check the educational records to ascertain if any other agencies are working with the family and confirm with parents that information is correct and whether the parent has any further information they would like to be considered
- Contact other agencies where applicable about the appropriateness of issuing a penalty notice
- Check the parents full names are known and addresses are correct
- Check the school records are accurate and the attendance register is up to date
- Offer to meet with parent/s to avoid the same situation arising in the future.
- Explain that a penalty notice is to be requested.
- Write to the parent confirming intentions.
- Make a written record of details above.

Notice to improve

23. 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).

- In West Berkshire the named Education Attendance Officer within the Local Authority's Education Attendance Team will issue the notice to improve following referral and discussion with the school regarding the most appropriate action for the case.
- The recommended length of the improvement period will be between 3 and 6 weeks. West Berkshire will use a flexible improvement period so that it can be varied in individual cases.

- Sufficient Improvement, to prevent the issue of the penalty notice, will also vary on a case-by-case basis but a likely improvement will be no further unauthorised absences within the improvement period or enough improvement within the period tailored to the family. Details of what sufficient improvement will look like for that family will be included in the notice to improve.
- The school and Education Attendance Officer will further work together during the set improvement period where there are absences. The school will notify the Education Attendance Officer without delay, if there are absences to enable timely decisions.
- The Local Authority will retain discretion to issue a penalty notice during the set improvement period, where it is clear improvement is not being made. The parent will be notified before a penalty notice is issued.
- Should sufficient improvement not be successful, a penalty notice may be issued or prosecution considered after the end of the improvement period.
- Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

How authorised officers will work together


24. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
25. An Authorised Officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. In West Berkshire only local authority officers will issue penalty notices for the West Berkshire area. The relevant officers in the Local Authority are officers in the Education Attendance Service.
26. Thames Valley Police should refer any concerns about school absence to the Local Authority by email in the first instance to: penaltynotices@westberks.gov.uk.
27. Schools should liaise with the Education Attendance Officer allocated to their school. Where the school or police request that the Local Authority issues the penalty notice, the procedure set out below should be followed.
28. In all cases where a penalty notice is requested, the Local Authority will decide 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 requesting the issuing of a penalty notice.
29. The Local Authority will inform the school about whether penalty notices are paid, withdrawn, or prosecuted following non-payment. They will do this by sending a half-termly update to the school by email.
30. Where pupils move between local authority areas, West Berkshire can be contacted on crossborder.penaltynotice@westberks.gov.uk to find out if penalty notices have been issued previously.
31. Where pupils attend school in West Berkshire but live in a different local authority's area, West Berkshire will liaise with the relevant teams (Education Attendance Services) within the home local authority where a penalty notice is being considered and support is appropriate, and that support is being provided by the home local authority.

Procedure for Issuing Penalty Notices

32. In West Berkshire all penalty notices will be issued through the Local Authority's School Attendance Team. This will ensure consistent and equitable delivery, retain home/school relationships, and allow cohesion with other enforcement sanctions.
33. Penalty notices will only be issued by post; this is to satisfy that all evidential requirements are in place. First class post and certificate of posting will be used.
34. The School Attendance Team will receive requests to issue penalty notices from schools, Thames Valley Police and neighbouring local authorities. These requests will be actioned, provided that:
 - all relevant information is supplied in the specified manner (see Appendix 1),
 - the circumstances of the pupil's absence meet all the requirements of this code,
 - the issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
35. Schools must consider requesting a penalty notice where the national threshold is met.
36. The School Attendance Team will aim to respond to all requests within 10 school days of receipt and where all criteria are met.
37. When issuing penalty notices the Local Authority includes in the notice details for payment. The amount to be paid is set in the regulations (and subsequent amendments). The charges which apply will vary if the penalty notice is the second penalty notice issued to the same parent for the same pupil within a 3-year period. As set out above, a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period before prosecution or alternative legal interventions will be used. The amount to be paid will be detailed in the penalty notice on issue.
38. There is no right of appeal to a penalty notice. In exceptional circumstances where further evidence comes to light, the penalty notice request may be referred to the school by the Local Authority for reconsideration. The Local Authority will take the final decision whether to issue a penalty notice.
39. Once issued, a penalty notice can only be withdrawn by the Local Authority and this will happen if a decision is made not to proceed with a prosecution. This may occur in the following circumstances:
 - the use of the penalty notice did not conform to the terms of this code, or
 - There is a material error in the penalty notice.

Non-Payment

40. In all cases of non-payment, West Berkshire will consider prosecution. The non-payment of a penalty regarding unauthorised absence within the prescribed period will automatically lead to a prosecution under s444 Education Act 1996, unless the penalty notice is withdrawn. The non-payment of a penalty regarding presence in a public place within the first 5 days of an exclusion without reasonable justification will automatically lead to a prosecution under s103 of the Education and Inspections Act 2006. In all cases the prosecution cannot be for the non-payment and is for the offence committed under the relevant Act.

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41. All school attendance policies should include information on the deployment of penalty notices, and this will be brought to the attention of all parents/carers.
 42. The School Attendance Team will include information on the use of penalty notices and other attendance enforcement sanctions in public information material.

Reporting and review

43. The Local Authority Officer will prepare and publish an annual report on the number of penalty notices issued and their outcomes.
44. The Local Authority will review penalty notice use at regular intervals.

Contact details

penaltynotices@westberks.gov.uk
Crossborder.penaltynotice@westberks.gov.uk

Penalty Notice Authorised Officer
School Attendance Team
Market Street
Newbury
RG14 5LD

01635 519797

FIXED PENALTY NOTICE PROFORMA
Request for consideration of the issuing of a Penalty Notice

School Name:			
Pupil Details:	Year group:		Date of Birth:
Name (in full) :			
Address:			
Telephone numbers: Home:			
Mobile:			
Parent/Carer details (1):	Mr, Mrs, Miss, Ms <i>(please delete as appropriate)</i>		
Name (in full):			
Address <i>(if different to above)</i> :	As above		
Telephone numbers: Home			
Mobile			
Work			
Email address:			
Parent/Carer details (2):	Mr, Mrs, Miss, Ms <i>(please delete as appropriate)</i>		
Name (in full):			
Address <i>(if different to above)</i> :			
Telephone numbers: Home			
Mobile			
Work			
Email address:			
Sibling Information:			
Name:			
School:			
Name:			
School:			
Name:			
School:			
Dates of absence: <i>(please indicate the dates of absence over a 10 week period and attach the attendance certificate signed by the Headteacher indicating the dates to be included in the notice)</i>			
All the absences indicated must be recorded as unauthorised.			



Declaration: I confirm that the details contained on this form are true to the best of my knowledge and belief.	
Signed (Headteacher):	Please print name:
Date:	

CHECKLIST FOR FPN REQUEST:

EVIDENCE	Y/N
Current attendance certificate showing unauthorised absences and certified by Head Teacher (Please ensure declaration at bottom of this page is copied onto certificate)	
Completed FPN request form.	
Copy of leave of absence form.	
Copy of letter to parent advising absences will be unauthorised.	
Certified Copy of an Entry in the Admissions Register of the School	

PLEASE ENSURE THE FOLLOWING:
A FPN is the most appropriate action considering the information available.
Full names of parents are recorded on the form, failure to do so will delay the process.
Parents included on request are liable for FPN, eg: they are aware that the leave of absence took place and school have full names and contact details.
The home address is still current.

<p>This is a certified copy of the registration certificate.</p> <p>Signed.....</p> <p>Name.....</p> <p>Headteacher</p> <p>Date.....</p>
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