Bournemouth, Christchurch and Poole (BCP) Code of Conduct

for issuing Penalty Notices for school absences from August 2024.

1. The purpose of this local Code of Conduct is to ensure that Penalty Notices for school absences are issued in a manner that is fair and consistent across BCP Council. The code sets out the arrangements for administering Penalty Notices in BCP Council and must be adhered to by anyone issuing a Penalty Notice for school absences in this area. The code complies with relevant regulations and the Department for Education's (DfE) National Framework for Penalty Notices as set out in the 'Working together to improve school attendance' guidance.

Consultation

2. 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

3. Penalty Notices may be issued to a parent as an alternative to prosecution for irregular school attendance under section 444 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, Alternative Provision (AP) academies, and certain off-site places as set out in section 444A(1)(b).

4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how Penalty Notices for school absences must be used.

5. 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.

6. 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.

7. 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

8. 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.

9. 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.

10. 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.

11. 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?

12. 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[1], with one of, or a combination of the following codes:

[1] 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).

(a) code G (the pupil is absent without leave for the purpose of a holiday),
(b) code N (the circumstances of the pupil's absence have not yet been established),
(c) 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
(d) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

13. 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.

14. 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, another tool should be used. This might include prosecution or one of the other attendance legal interventions available to the Local Authority.

15. 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.

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

16. The following considerations will be made before issuing (or requesting that another authorised officer issues) a Penalty Notice to ensure consistency of approach:

16a. 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?

16b. In cases where support is appropriate, consider on a case-by-case basis:

- Has sufficient support already been provided? In cases where there has been engagement, but no sustained improvement, sufficient support will usually include, but is not limited to:

- At least one full cycle of ‘assess, plan, do, review’ has been completed, with no sustained improvement, and no evidence to suggest that a further cycle would result in the required improvement. Schools should consider the use of an appropriate assessment tool in order to fully understand the reasons for absence. Fast Track to Attendance could be considered a suitable ‘assess, plan, do, review’ framework.
- As part of this process, to have provided any necessary in-school support and made reasonable adjustments to curriculum, policy and processes to support and remove barriers to attendance.
- Involved the pupil, parents and other relevant agencies in developing and implementing a multi-agency support plan to address barriers to the pupil not attending.
- Where there has been previous legal action, including Penalty Notices (with the exception of unauthorised leave in term-time), for a follow-up meeting to have been offered, with no sustained improvement.

- 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 responsible for any resulting prosecution for the original offence in cases of non-payment?

16c. In cases of non-engagement, consider on a case-by-case basis whether sufficient support has already been offered. This would usually include, but is not limited to:

- Repeated attempts (minimum of 2) have been made to engage the family with the purpose of discussing the barriers and agreeing actions and support, with at least one of these being an opportunity to meet (can include a virtual meeting such as Teams/Zoom or by telephone), and that parents have either declined to engage, failed to respond with no acceptable reason given, or would not engage in a meaningful discussion to move the situation forward.

- 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 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' in cases where support is appropriate) will usually be issued.

Notice to Improve

17. 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).

18. Where Fast Track to Attendance is used, the use of the standard invite letter means that a Notice to Improve is not required.

19. A Notice to Improve will normally be issued by the school where the pupil is on roll. The Local Authority can issue a Notice to Improve in cases where they are most appropriately placed to do so, including where a pupil is being provided Alternative Provision commissioned by the Local Authority.

20. The improvement period should be between 3 and 6 school weeks (this can straddle school holidays, including the summer holidays if necessary).

21. The criteria for improvement can be varied according to individual circumstances. The criteria that is used needs to be clearly stated in the Notice to Improve. Conventional criteria is no more than 10% unauthorised absence in the specified period.

22. The responsibility to review the attendance at the end of the specified period lies with the issuer of the Notice to Improve. The parent needs to be informed of the outcome, including whether a Penalty Notice is being issued. Where there is insufficient improvement, a Penalty Notice can be requested using the

PN01 form, and supplying the documents requested in the accompanying checklist.

23. Where it is clear that improvement is not being made, it may be appropriate to issue a Penalty Notice before the improvement period has ended. The parent should be informed before a Penalty Notice is issued if it is before the end of the improvement period.

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. The Local Authority should set out which authorised officers will issue Penalty Notices in their area.

26. Where the school or police request that the Local Authority issues the Penalty Notice, they need to:

    - Complete the PN01 form and provide the information according to the relevant checklist. It is expected that requests will be received within 3 school weeks of either:

    - The child's return to school (for unauthorised leave in term-time), or
    - The end of any stated period for improvement (Notice to Improve, or Fast Track to Attendance), or
    - Notification to parent that a Penalty Notice is being requested (when there has been a previous warning in the last 12 months).

27. The Local Authority will 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.

28. The Local Authority will send a copy of every issued Penalty Notice to the requester, via the email address used to request the Penalty Notice.

29. The Local Authority will inform the requester when the Penalty Notice is paid.

30. If the Penalty Notice is unpaid the Local Authority will inform the requester and request further information so that the case can proceed to prosecution, either via Single Justice Procedure (SJP) or via prosecution in the Magistrates

Court. This may include submitting a Witness Statement. The requester will be informed of the outcome in due course.

31. In the case that a Penalty Notice is withdrawn, the Local Authority will inform the requester.

32. Where pupils move between Local Authority areas, BCP Council can be contacted on: crossborder.penaltynotice@bcpcouncil.gov.uk to find out if Penalty Notices have been issued previously.

33. Where pupils attend school in BCP Council but live in a different Local Authority, BCP Council will liaise with the authority in which the child lives (whether that is the neighbouring authority or otherwise) to ensure appropriate support is in place where appropriate.

In the case of an excluded pupil

34. A Penalty Notice may be issued where a pupil is found by the school, police or Local Authority service in a public place*, in school hours** without reasonable justification during the first 5 days of a fixed term or permanent exclusion. The Local Authority will carefully consider reasons given by the parent if a child is found in a public place, prior to issuing a Penalty Notice.

** Public place means any highway or any place to which the public has access*
*** School hours are defined as 'a school session or a break between sessions on the same school day'*

Procedure for withdrawing a Penalty Notice

35. There is no statutory right of appeal against a Penalty Notice.

36. A Penalty Notice may be withdrawn in any case in which it is determined that:

- It ought not to have been issued.
- It ought not to have been issued to the person named as the recipient.
- It appears that the notice contains material errors.

37. A Penalty Notice may be withdrawn in accordance with the above whether or not the period for payment referred to in the notice has expired, and whether or not the Penalty Notice has been paid.

38. Where a Penalty Notice has been withdrawn in accordance with the above a notice of withdrawal must be given to the recipient and any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.

39. Except as provided below no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued.

40. Where a Penalty Notice was issued and was withdrawn, proceedings may be continued or instigated for the offence in connection with which that Penalty Notice was issued if both the following conditions are met:

- A replacement Penalty Notice in respect of the offence was issued at the same time as the first Penalty Notice was withdrawn; and
- The replacement Penalty Notice has not been paid in accordance with the requirement of the regulations.

41. Where the Penalty Notice is not paid in full before expiry of the period for paying it; and the Local Authority named in the notice has neither instigated proceedings against the recipient for the offence to which the notice relates, nor is it contemplating such proceedings, the authority must withdraw the notice.

Payment of Penalty Notices

42. Fines per parent are capped to two fines within any three-year period. Once this limit has been reached, other action like a parenting order or prosecution will be considered.

    The first fine is £80 if paid within 21 days, or £160 if paid within 28 days.

    If this is a second fine for the same child within any three-year period, this will be charged at the higher rate of £160.

43. The payment must be made in full – part payments will not be accepted - details of how to pay are printed on the Penalty Notice (an invoice served by post is deemed to have been received on the second day after posting it by first class post).

44. Fines issued are payable to the Local Authority:

    “Money received by a Local Authority under this process may be used by the authority for the purposes of any of their functions which may be specified in regulations namely issuing or enforcing Penalty Notices and prosecuting recipients who do not pay but, to the extent that they are not so used, must be paid in accordance with the regulations, to the Secretary of State for Education.”

Failure to pay (Penalty Notice for school absences)

45. If the Penalty Notice is not paid BCP Council will consider prosecution proceedings under s.444(1) or 444(1A) of the Education Act 1996. If convicted, sanctions can include a fine of up to £2,500 and a prison sentence of up to 3 months, and you will have a criminal record.

Failure to pay (Penalty Notice for exclusions)

46. If a parent has not paid the Penalty Notice in full before the 28 days allowed, the Local Authority is required to commence legal proceedings in the Magistrates Court for the original offence of failing to ensure a child is not in a public place during the 'specified days of exclusion' unless there are reasons for withdrawal as stated in Section 6 above.

    If found guilty under Section 103 of the Education and Inspections Act, the parent could receive a fine of up to £1,000.

Right of Appeal

47. Under the regulations, parents have no right of appeal against the Penalty Notice but if they believe it to be wrongly issued or need further information and advice, they should immediately contact the Local Authority.

Review arrangements

48. This Code of Conduct will be reviewed regularly and amended when necessary.

Supplemental

49. If a Penalty Notice is not paid or not paid in full within twenty-eight days, the fact that the Penalty Notice was offered in lieu of a prosecution will be brought to the court's attention.

50. BCP Council will manage a central database for storing pupil data and details of Penalty Notices issued. They will also keep details of all payments made, court dates, whether the recipient was prosecuted or whether the Penalty Notice was withdrawn and on what grounds.

51. Local Authorities are not able to issue Penalty Notices in relation to privately funded schools. However, alternative forms of legal action can be considered where appropriate.