

London Borough of Merton local code of conduct for issuing penalty notices for school absence 2024

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

Consultation

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools within Merton 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 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).
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence 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 particular family.

When may a penalty notice for absence be appropriate?

12. When the national threshold has been met: the school 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 weeks¹, 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)

The School/Academy should record their decision on each occasion the attendance meets the criteria for the issuing of a Notice to Improve.

13. 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.
14. Where attendance is 51% or above in the previous 10 week period a Penalty Notice will be issued for a first and second offence unless there has already been a Prosecution under s4441 and/or s4441A Education Act 1996.

Where attendance is between 0% and 50% in the previous 10 week period, we will consider proceeding straight to prosecution under s4441 or 4441A Education Act 1996 rather than using the PN process, unless there are mitigating factors that would mean this was not appropriate, or it was not deemed in the Public Interest or the best interests of the child. This is because attendance below 50% is considered as Educational Neglect and attendance at this level will contribute significantly to reducing a pupil's choices/options at 16 years (end of statutory school age) and future life chances (see rationale 8).

15. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be the most appropriate tool. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used.

Other tools may include:

- Education Supervision Order
- Request for service from The Children and Families Hub
- Prosecution under s4441 and/or s4441A Education Act 1996:

When prosecuting, the person who signs the s9 statement (for maintained schools this is usually the EWO, and for academies, the Authorised Officer/Faculty member identified by the academy) may be required to attend court to give evidence as the representative of the school/academy throughout the legal processes and must be able to do so. It should be noted that court dates are set by His Majesties Courts and Tribunal Service.

16. 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

17. 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 offered/provided? Sufficient support will usually include some of the following, as appropriate on a case by case basis, and depending on the needs of the family/pupil:
 - Support for parent/s and pupil through an Attendance Contract (School)
 - In school support through ELSA/TAMHS/Mentor (School/Academy)
 - Referral to School Nurse or EWS Specialist Nurse (School/Academy)
 - Signposting to Kooth/Off the Record/STEM4 and other supportive organisations or in school counselling services (School/Academy/EWO/Other)
 - Referral to behaviour support – for example the Virtual Behaviour Service (School/Academy)
 - Referral to the EWO for support
 - Team around the Child/Family process (School/Academy)
 - In School/Academy measures such as timeout/get out of class card/ toilet card (School/Academy)
 - Reintegration timetable
 - Referral to Children and Adolescent Mental Health Services (CAMHS)

- Signposting parent/s to the GP/ Merton Uplift/or similar service
- Support for parents through a Referral to a Parenting Course
- Referral to Special Educational Needs (SEND)IS)
- Timed Intervention through the Canterbury Campus / Melbury College or within an Academy trust
- Request for service to Early Help /Family Wellbeing Service (School/Academy/EWO)
- Request for service to the Children and Families Hub (School/Academy/EWO).

The responsibility to engage with support rests with the parents/pupil and the School/Academy should record whether engagement has occurred.

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

- Schools/Academies should record what support has been offered/when/whether it was engaged with/outcomes.
- The LA should record any decision to not proceed with a PN and any alternative measures to be taken/recommended.

Penalty Notices for Unauthorised Leave of Absence in Term Time

18. The trigger for a Penalty Notice with regard to holiday/leave of absence is 5 days/10 sessions or more unauthorised absence (concurrent or separate absences) within a rolling period of 10 school weeks.

Schools will need to be able to evidence that the parents were informed, in advance, that a particular holiday absence would not be authorised and that a penalty notice might be the result.

Due to the nature of Unauthorised Leave of Absence the requirement for support to be offered as noted above is not appropriate.

Notice to improve

19. 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).

The LA should set out the process for issuing notices to improve in their area following consultation.

The Notice to Improve will be issued by the Local Authority Education Welfare Service (EWS) in agreement with the Authorised Officer of the School/Academy or by the Academy following criteria set down by the Local Authority [EWS^{\[EF2\]}^{\[AB3\]}](#), following acceptance of a completed detailed referral from the school/academy.

- Referrals will be accepted from maintained Schools within Merton. Academies will carry out their own casework and then refer to the LA to issue a PN.
- The Notice to Improve (NTI) should state a monitoring period of between 3 and 6 school weeks (to be decided on a case by case basis). However, it would usually be appropriate to monitor for up to 6 school weeks unless the attendance is already below 50% in the first 3 weeks.
- The NTI should lay down 'success criteria' stating what sufficient improvement looks like and this should be decided on a case by case basis. For example where the attendance issue is predominantly U codes the success criteria might be no more than 3 U codes in the monitoring period
- Where the issue is O codes it might be appropriate to state the number of O codes that will be the maximum permissible for the PN not to be issued in the monitoring period.

The Success Criteria should indicate a percentage attendance to be achieved during the monitoring period below which the issuing of a PN would occur – 90% or below is the figure suggested with the majority of the absences being unauthorised.

- The attendance should be monitored by the School/EWO/Academy as appropriate. If the criteria identified to show sufficient improvement are bypassed within the first few weeks of monitoring consideration should be given to ceasing the monitoring period forthwith and moving directly to the issuing of a Penalty Notice fine.

- Otherwise, once the 3 - 6 week period is reached a decision should be made as to whether a PN should be issued.

How authorised officers will work together

20. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.

21. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. The LA should set out which authorised officers will issue penalty notices in their area.

22. Where the school or police request that the LA issues the penalty notice:

- Penalty Notices will be issued only by the LA through the Education Welfare Service working in partnership with maintained schools (who have an allocated EWO) within the process/timescales laid down in the Code of Conduct, on provision of a completed and signed Referral Form (App A) containing full written details of support offered, what has been successful/not engaged with etc...
- Academies can apply to the LA to issue a PN on their behalf if they have followed the advice and guidance issued by the LA as to the process/timescales laid down in the Code of Conduct, and on provision of a completed and signed referral form (app A) containing full written details of the support offered, what has been successful/not engaged with etc...
- On receipt of a completed and signed Referral the LA will respond to confirm the referral has been accepted, or where the referral is incomplete the referral will be returned with advice and guidance within a reasonable time.

23. If it is a school or the police issuing the penalty notice, they are expected to check the following points with the local authority before issuing:

- Duplication will be avoided as the PN fines will only be issued by the Education Welfare Service working in partnership with schools/academies.
- On receipt of a request to issue a Penalty Notice fine, the LA will make reasonable checks to seek to ensure that no more than 2 PNs have been issued to the same parent for the same pupil within a rolling 3 year period, via the e mail mechanism detailed above.
- The LA will review the EWS referral form received to ascertain whether the support offered meets an assessment of what is sufficient and make a

judgement as to whether there is any additional support that can be offered by the LA.

24. 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.
25. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. They will do this by e-mailing the EWO (maintained schools) or the Authorised Officer (academies) if/when the PN is paid.
26. There will usually be a discussion with the EWO/School/Academy before a PN is withdrawn unless the basis on which it was issued is shown to be erroneous or there is a clear legal defence to the issuing of the PN. Parents will usually be signposted to the school/academy in the first instance if there is a dispute regarding potential evidence to support the absence that requires consideration by the school/academy.
27. Where pupils move between local authority areas, the London Borough of Merton can be contacted on crossborder.penaltynotice@merton.gov.uk to find out if penalty notices have been issued previously.

Where pupils attend school in Merton but live in a different LA, it is expected that the school/academy will liaise as appropriate with the home borough. There will be an expectation that where there are interventions at level 3 or above (for example a Child Protection or Child in Need Plan, or an EHCP) in the home borough the school/academy will record details on these interventions, and work in partnership with the home borough to ensure that records are maintained of all support offered in the home borough as well as by/within the school/academy.

A discussion may take place between the managers of the services to agree who is the most appropriate person in which borough to work the case or an agreement if there will be joint working.

28. Once a referral is received from the school/academy the LA can review what support has been offered and whether this meets the criteria for the issuing of a PN fine.

If there is insufficient support that has been offered and detailed within the referral, the LA may decide not to issue a Penalty Notice fine and refer the matter back to the school/academy with suggestions of further support that should be tried prior to legal action being considered.