



**Solihull MBC**  
**Code of conduct for issuing penalty**  
**notices for school absence.**

**October 2024**

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# Local code of conduct for issuing penalty notices for school absence 2024

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 Solihull Metropolitan Borough Council (MBC). The code sets out the arrangements for administering penalty notices in Solihull. The code complies with the Education (Penalty Notice) Regulations 2007 as amended by the Education (Penalty Notices) (England) (Amendment) Regulations 2024, the 1996 Education Act and 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'](#) (29 February 2024)

## 1.1. Consultation

This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

## 1.2. Legal Basis

Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under [Education Act 1996 \(legislation.gov.uk\)](#) They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision academies, and certain off-site places as set out in section 444A(1)(b).

[The Education \(Penalty Notices\) \(England\) Regulations 2007 \(legislation.gov.uk\)](#) (and subsequent amendments) set out how penalty notices for school absence must be used.

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.

## 1.3. [Children Act 1989 \(legislation.gov.uk\)](#): Definition of a Parent

- 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 \(legislation.gov.uk\)](#) 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.

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).

## 1.4. Rationale

Regular and punctual attendance of pupils at schools is, under section 7 [Education Act 1996 \(legislation.gov.uk\)](#), a legal requirement. Parents are responsible for ensuring that any child of compulsory school age receives efficient full-time education that is suitable to the child's age, ability and aptitude, and to any special educational needs the child may have. Compulsory school age is defined as: commencing at the start of term commencing on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16. It is essential for pupils to attend school regularly in order to maximise the opportunities available to them. 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.

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.

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, unauthorised leave of absence) 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.

## 2. When may a penalty notice for absence be appropriate?

The national threshold has been met when a pupil has been recorded as absent for 10 sessions within 10 school weeks<sup>1</sup>, 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 O (none of the other rows of Table 3 in regulation 10(3) of the [School Attendance \(Pupil Registration\) \(England\) Regulations 2024](#) 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)

If, in an individual case, the local authority believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.

### 2.1. Irregular attendance

If a child meets the national threshold of 10 sessions of unauthorised absence and measures have been put into place to try and secure regular attendance but have not been successful (see further below)

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<sup>1</sup> 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).

## 2.2. Leave of Absence

The Education (Pupil Registration) (England) Regulations 2006 [The Education \(Pupil Registration\) \(England\) Regulations 2006 \(legislation.gov.uk\)](#) prohibits the proprietor of a maintained school from granting leave of absence to a pupil, except where an application has been made in advance and the proprietor is satisfied that there are exceptional circumstances for agreeing to that application. *(Note: Department for Education guidance confirms that such requests should only be authorised in exceptional circumstances, which will not normally include family holidays. The issue of unauthorised leave of absence was also considered by the Supreme Court in the case of [Isle of Wight Council \(Appellant\) v Platt \(Respondent\) - The Supreme Court](#)*

Only the head teacher of the school or, in certain circumstances, a member of staff delegated by the head teacher, can determine whether a leave absence is classed as exceptional and therefore authorised.

A school cannot grant a leave of absence retrospectively. If the parent did not apply in advance, leave of absence should not be granted.

## 2.3. Excluded Child in a Public Place

If a child of compulsory school age is excluded on disciplinary grounds, the parent of that child, provided they have been served with Notice under Section 104 of the [Education and Inspections Act 2006 \(legislation.gov.uk\)](#) must ensure that the child is not present in a public place during school hours during the first five days of that exclusion without reasonable justification. Where parents fail to ensure their child is not in a public place under these circumstances, a penalty notice may be issued.

## 3. Notice to Improve

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, schools may refer to Solihull MBC for a Notice to Improve to be sent.

Schools can choose not to use a Notice to Improve in any individual case, including cases where support is not appropriate or where they expect that it would have no impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

If a Notice to Improve is sent it is expected to include:

- Details of the pupil's attendance record and details of the offences.
- The benefits of regular attendance and parents' duty under [Education Act 1996 \(legislation.gov.uk\)](#)
- Details of the support provided so far and offers of further support appropriate.
- A recommended length of improvement period; this will usually be between 3 and 6 weeks. Schools may wish to use a flexible improvement period so that it can be varied in individual cases.

- What sufficient improvement looks like, so that a penalty notice is not issued. This might be no further unauthorised absences within the improvement period, or a sufficient amount of improvement tailored to the family.
- A clear warning that a penalty notice may be issued, or prosecution considered, if attendance improvement is not secured within the improvement period.

If there is no improvement in attendance following the Notice to Improve the school may refer to Solihull MBC for a penalty notice to be issued, even if the improvement period has not ended. For example, a Notice to Improve stated there should be no more unauthorised absences in a six-week period but the pupil is absent for unauthorised reasons in the first week.

#### **4. National Framework for issuing Penalty Notices**

A penalty notice is an out of court settlement which is intended to change behaviour without the need for criminal prosecution. If repeated penalty notices are being issued and are not working to change behaviour, they are unlikely to be the most appropriate tool. Therefore, from Autumn Term 24, only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period and any second notice within that period is charged at a higher rate:

- 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.
- A 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.
- A third penalty notice cannot be issued to the same parent in respect of the same child within 3 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 3 years, Solihull MBC may consider prosecution under [Education Act 1996 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1996/56)

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.

##### **4.1. Key considerations prior to the issue of a Penalty Notice for school absence**

Solihull MBC will assess any referrals or requests for the issuing of a penalty notice received from schools, police or other local authorities. The issue of penalty notices will only be administered by Solihull MBC in order to fully comply with current legislation and ensure a fair and consistent approach and to also ensure that a penalty notice is the best available tool to improve attendance and change parental behaviour.

In cases where support is not appropriate (for example, for holidays in term time), these will be considered upon referral from the school on a case-by-case basis.

Consideration will be given to whether it is in the public interest to issue a penalty notice in each case given the local authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment.

Where pupils move between local authority areas, Solihull MBC can be contacted on email address [cross.border@solihull.gov.uk](mailto:cross.border@solihull.gov.uk) to find out if penalty notices have been issued previously.

Where pupils attend school in Solihull MBC but live in a different Local Authority, contact will be made to the pupil's previous local authorities to establish if any previous penalty notices have been issued in the previous 3 years.

The Local Authority will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment.

#### **4.2. Payment of Penalty Notices**

The truancy penalty notice includes details of how to pay.

The Local Authority will produce an auditor's statement as part of the usual audit procedure showing that income received from fines does not exceed enforcement as defined. The surplus, if any, must be surrendered to the consolidated fund.

#### **4.3. Procedures for withdrawing Penalty Notices**

A penalty notice may be withdrawn by the Local Authority in any case in which the local authority determines that:

- a) Penalty Notice has been issued outside of the terms of the code of conduct
- b) It ought not to have been issued or issued to the person named as the recipient
- c) It appears that the notice contains material errors
- d) Where after the expiry of 28 days, the penalty is unpaid and the Local Authority do not wish to bring legal proceedings under s444

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

No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444(1/1A) of the Education Act 1996 arising out of the same circumstances.

### **5. Contact details**

For further information please contact the Attendance Enforcement Team:

Telephone number: 0121 704 6131

Email: [attendanceenforcement@solihull.gov.uk](mailto:attendanceenforcement@solihull.gov.uk)