



**Solihull Metropolitan
Borough Council
(SMBC)**

Code of conduct for Enforcement

September 2025

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SMBC

Code of Conduct for Enforcement.

Section 1 - Introduction

The [Working together to improve school attendance - GOV.UK](#) guidance is statutory and local authorities and schools must have regard to it as part of their efforts to maintain high levels of school attendance. This code of conduct should be read alongside the statutory guidance documents including:

- Children Missing Education
- Supporting Pupils with Medical Conditions at School
- Education for Children with Health Needs Who Cannot Attend School
- Suspensions and Exclusions
- Alternative Provision
- Keeping children safe in education

Solihull Schools must also read the 'The Attendance Enforcement – Handbook for Solihull Schools' alongside this code which gives further details for schools to make referrals and provides further resources.

This code of conduct is for:

- All school and academy trust staff, headteachers, governors, academy trustees, and alternative provision providers
- Local Authority attendance staff, early help lead practitioners, social workers, and virtual school headteachers
- Statutory safeguarding (including police and integrated care boards) and other local partners
- This guidance may also be useful for parents/carers.

The purpose of this local code of conduct is to ensure that legal intervention for unauthorised absences from school is carried out fairly and consistently across SMBC. The code sets out the arrangements for administering PNs and prosecutions 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](#)' (19 August 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 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. It is essential for pupils to attend school regularly 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.

1.3 Definition of a Parent

The 1996 Education Act defines parents in education law as:

- 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.

The parent/carer(s) with day-to-day responsibility for the pupil's attendance will be subject to penalty notices being issued and prosecution cases. Where it is an unauthorised leave of absence it will usually be issued to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

1.4 Definition of Compulsory School Age

Section 7 of the Education Act of 1996 imposes on parents a legal duty to secure education for their children of compulsory school age whether at school or otherwise. A child reaches compulsory school age on or after their fifth birthday:

- if they turn 5 between 1 January and 31 March they are of compulsory school age on 31 March;
- if they turn 5 between 1 April and 31 August they are of compulsory school age on 31 August.
- if they turn 5 between 1 September and 31 December, then they are of compulsory school age on 31 December.

A child continues to be of compulsory school age until the last Friday of June in the year that they reach 16 (i.e. year 11).

1.5 Referrals to SMBC

The Attendance Enforcement Team (AET) at SMBC will process referrals from schools, other local authorities and the police for legal intervention for unauthorised absences from school. Whilst schools may commission third parties to carry out attendance functions on their behalf, the AET will communicate directly with the school, providing updates and outcomes of referrals made. Schools need to ensure they have an information sharing policy in place with any third party which confirms the school are fully responsible for ensuring the sharing, storage and distribution of all information.

Types of legal intervention:

- Notice to Improve
- Penalty Notice
- Prosecution under S444(1)
- Prosecution under S444(1A)
- School Attendance Order
- Education Supervision Order

A referral to initiate formal legal procedures can ultimately result in the issue of a Penalty Notice, or prosecution in the Magistrate's Court. This formal intervention should only be used when schools have exhausted all other strategies but have failed to improve the pupil's attendance. However, formal or legal action can be an effective deterrent preventing a pattern of school non-attendance.

1.6 SMBC Education Participation Advisory Service (EPAS) – Attendance Teams

The Attendance & EHE Advisory Team is responsible on behalf of SMBC for undertaking the following proceedings:

- Implementing and Monitoring National and Local Guidance in respect of School Attendance
- Targeted support meetings
- Providing advice and guidance for Attendance enquiries
- Identifying Children Missing from Education (CME)
- Elective Home Education (EHE) Procedures

The Attendance Enforcement Team (AET) is responsible on behalf of SMBC for undertaking the following proceedings:

- Check and processing of referrals from schools
- Issuing of Penalty Notices
- Single Justice Procedure
- Prosecution in Magistrate's Court
- Meeting and cautioning parents/carers under a PACE interview (Police and Criminal Evidence Act 1984)
- School Attendance Orders
- Education Supervision Orders

Section 2 – Support First Approach and Notice to Improve

The government expects Schools and Local Authorities to:

- Promote good attendance and reduce absence, including persistent absence.
- Ensure every pupil has access to full-time education to which they are entitled; and, act early to address patterns of absence.
- Parents/carers to perform their legal duty by ensuring their children of compulsory school age who are registered at school attend regularly and on time.

2.1 Support First Approach

At all stages of improving attendance, schools and partners should work in partnership with pupils and parents collaboratively to remove any barriers to attendance by building strong and trusting relationships and working together to put the right support in place.

Initial communication

Early on, when attendance concerns are emerging, a child's school will get in touch with parents to let them know what their attendance rate is and offer support, whether from the school itself or from a service that may be able to help. At this stage, advice and support will be offered by the child's school on a

voluntary basis. Families may be signposted to one of the Family Hubs where the Attendance & EHE Advisory Team offers drop-ins for advice and guidance on attendance matters.

Informal action

If the child's attendance is not improving with the initial support offered, it is usual for either the school's attendance officer to write to parents and invite them to a meeting in school. This meeting gives parents the opportunity to discuss what the underlying reasons are for any unauthorised absences. This meeting will also give the school and professionals involved with the family the opportunity to listen and learn more about what the barriers are to attending regularly and, where appropriate, to put together an Attendance Contract.

Continued voluntary support or intensive support

The Attendance Contract should be monitored and reviewed within an agreed timescale set at the school attendance panel meeting. In cases where the objectives in the Attendance Contract have worked to improve attendance, that may be the end of the matter. However, voluntary support may continue for a further period to ensure the underlying reasons for the child's attendance have been fully addressed and barriers overcome.

In cases where the objectives in the Attendance Contract have not worked to improve attendance, even when reviewed and adapted, it may be that the school makes a referral to one or more other agency e.g. children's services, who will work with the family to improve attendance.

2.2 SMBC arrangements for the use of a 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 threshold of 10 sessions of unauthorised absence across a rolling 10 school weeks¹ period has been met, appropriate support was offered but parent did not engage, or has not worked, a school can refer for a Notice to Improve to be issued.

Schools can discuss cases with the Attendance & EHE Advisory Team if they are considering making a referral for a Notice to Improve.

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). In these circumstances a school may refer for a penalty notice or prosecution.

2.3 When a Notice to Improve has been referred to SMBC

Once a Notice to Improve referral is submitted by a school, the AET will check to ensure the correct documentation is enclosed. If the correct paperwork is not included or the work that has been undertaken is not sufficient the referral will be rejected.

The AET will issue a Notice to Improve letter to all parents/carers requested. The Notice to Improve gives the parents/carers a 6-week period (30 school days) to improve their child's attendance.

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 Notice to Improve will include:

- Details of the pupil's attendance record and details of the offences.
- The benefits of regular attendance and parents' legal duty under Education Act 1996 (legislation.gov.uk)
- Details of the support provided so far and offers of further support appropriate.
- A 6-week improvement period (30 school days).
- What sufficient improvement looks like, so that a penalty notice is not issued.
- A clear warning that a penalty notice may be issued, or prosecution considered, if attendance improvement is not secured within the improvement period.

During the 6-week improvement period the school will continue to monitor the child's attendance. At the end of the period, the AET will decide if:

- Sufficient improvement during the Notice to Improve period has been made – which may include evidence of no further unauthorised absences, or a sufficient amount of improvement tailored to the specific family circumstances **or**:
- If there is no improvement in attendance following the Notice to Improve 6-week period or conditions of the Notice to Improve have not been met, in discussion with the school, a penalty notice may be issued.

Schools are not required to wait until the 6-week period has passed before considering a penalty notice, decisions will be taken on a case-by-case basis, based on the level of parental/pupil engagement and/or level of attendance improvement noted.

In some circumstances a penalty notice may be issued after the improvement period has ended if there are further unauthorised absences and another notice to improve is not appropriate. In exceptional circumstances the AET may decide to start prosecution as alternative to a penalty notice being issued.

Section 3 – Referrals for Penalty Notices for Leave of Absence (holidays during term time) and Irregular School Attendance.

A penalty notice may be issued to a parent as an alternative to prosecution for an unauthorised leave of absence or 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.

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 the 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.

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 family.

It is at the head teacher's discretion to authorise or unauthorise an absence for exceptional circumstances. SMBC supports head teachers in their decision making when referrals are made for legal intervention if the national legal framework has been adhered to. The parent must provide evidence to the school so that an exceptional circumstance can be considered by the head teacher.

3.1 National Framework for issuing Penalty Notices

The national threshold has been met when a pupil has unauthorised absences for 10 sessions within 10 school weeks, with one of, or a combination of, the following codes:

G	Holiday not granted by the school
O	Absent in other or unknown circumstances
U	Arrived in school late after registration closed

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.

There are 3 types of referrals that can be made for a penalty notice to be issued:

1. Leave of absence
2. Irregular school attendance
3. Excluded child in a public place

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 the Autumn Term of 2024, 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, AET may consider prosecution under Education Act 1996 (legislation.gov.uk)

For a child of compulsory school age who is a registered pupil at a school and is excluded from that school, either for a fixed period, or permanently, his/her parent/carers is guilty of an offence under 105 of the Education and Inspections Act 2006 if:

- the child in question is present in a public place during school hours without reasonable justification during the first five days of each and every period of exclusion.
- the parent/carers must have been notified by the school at the time of the exclusion of their duty and the dates it relates to.

When an exclusion penalty notice is imposed, a fee of £60 per parent per child is payable within 21 days of issue of the notice; and £120 if paid between 21 and 28 days of issue of the Notice.

3.2 Key considerations prior to the issue of a Penalty Notice for Unauthorised School Absence

Penalty notices will only be administered by the AET, 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 SMBC would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment.

Where pupils move between local authority areas, SMBC can be contacted on email address cross.border@solihull.gov.uk to find out if penalty notices have been issued previously.

Where pupils attend school in SMBC 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.

3.3 Issuing a Penalty Notice

Once the AET receives the request for a penalty notice, the evidence will be checked against the details entered on the referral. Accepted referrals will result in a penalty notice being issued.

3.4 Payment of Penalty Notices

Arrangements for payment will be detailed within the penalty notice.

- Part payments or payment plans are not accepted, fines must be paid in full within 21 or 28 days, at the rate specified within the penalty notice.
- Payment after the deadline may be accepted in exceptional circumstances. In this situation, the higher amount of £160 is usually payable and must be paid immediately and in full.
- When paying a penalty notice fine, parents/carers are essentially agreeing to an out of court settlement in respect of the unauthorised absences to which the notice refers. Payment in full against the penalty notice discharges the parent's/carer's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent/carer cannot be subsequently prosecuted for that period.
- Any revenues collected through the system must be ring-fenced to administer the penalty notice system and prosecute for the original offence in cases of non-payment. If a surplus remains after the system has been administered and any non-payers have been prosecuted, this can be spent on SMBC's Attendance Support Offer. The AET will inform the school about whether penalty notices are paid, withdrawn, or have proceeded to prosecution, due to non-payment.

3.5 Non-Payment of Penalty Notices – Single Justice Procedure

If payment is not made in the specified time SMBC may prosecute a parent in the magistrate's court under s444(1) of the Education Act 1996.

A court file will be prepared by the AET and sent to SMBC's Legal Services team to prepare paperwork for the single justice process.

The defendant will be sent an single justice procedure court summons. They will be given the following options:

- To plead guilty and have the case heard by a single magistrate without the defendant or local authority being present. Parents have the opportunity to give written explanation to the circumstances surrounding the offence for the magistrate to consider.
- To plead guilty and have the case heard in the magistrate's court with a panel of magistrates and the local authority present.
- To plead not guilty – in this case the court will usually invite the defendant to a case management hearing before setting a trial date.

If found guilty of the s444(1) offence, a fine of up to £1000 can be imposed plus court costs. The defendant will receive a criminal record.

3.6 Procedures for withdrawing Penalty Notices

A penalty notice may be withdrawn by the AET in any case in which they determine that:

- Penalty notice has been issued outside of the terms of the code of conduct
- It ought not to have been issued or issued to the person named as the recipient
- It appears that the notice contains material errors
- Where after the expiry of 28 days, the penalty is unpaid and the Local Authority do not wish to bring legal proceedings under s444(1).

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.

3.7 Penalty Notice escalation process

For the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent/carer pleaded or was found guilty) but not those which were withdrawn. Withdrawn penalty notices and any penalty notices issued before 19 August 2024 will not count towards the 2-penalty limit per child, per parent within a rolling 3-year period.

The following table sets out how previous penalty notices for **unauthorised absence recorded after 19 August 2024**, including those not paid and where prosecution was taken forward and the parent/carer pleaded guilty or was found guilty, will count towards the National Framework limit.

Scenario	Counts towards the limit?
Penalty Notice issued by the AET and paid within 21 days	Yes
Penalty Notice issued by the AET and paid within 28 days	Yes
Penalty Notice issued by the AET but later withdrawn	No
Penalty Notice issued by the AET. The Penalty Notice was not paid, and the local authority prosecuted for the original offence but the Court found the parent/carer not guilty	No
Penalty Notice issued by the AET. The Penalty Notice was not paid, and the local authority prosecuted for the original offence but the Court found the parent/carer guilty	Yes
A Penalty Notice is issued by the AET in respect to a child being found in a public place whilst subject to a suspension or permanent exclusion	No

Section 4 – Referrals for Prosecution

4.1 Legislation

For a child to fulfil their potential in education they need to attend school regularly and on time.

The legislation states that: 'Parents have the responsibility to ensure that their children receive a suitable education, either by regular attendance at school or otherwise' (section 7 Education Act 1996).

If a child is on a school roll the school must monitor and review their attendance and act on any concerns both quickly and efficiently. Schools have a wide range of strategies available to them to identify and address unsatisfactory attendance, including, ultimately, referral to the AET for formal legal action against the parent/carer to be considered.

At all times it is important to consider the individual circumstances of each child and their family and apply appropriate strategies.

SMBC regards prosecution as a last resort when all other measures and support at the earliest opportunity have failed to assist a pupil to attend school regularly.

In some circumstances a penalty may not be appropriate therefore school need to discuss further with the AET.

Upon receipt of a referral for a penalty notice, the AET may decide not to proceed with a penalty notice and start prosecution.

4.2 Referral process for Prosecution

Schools are expected to have taken all reasonable steps to identify parents/carers and have included them in all attendance concerns.

Schools should complete a Prosecution Referral. This referral and supporting documentation is submitted to the AET for the case to be considered. The referral should include:

- A registration certificate signed by the head teacher clearly showing unauthorised absence.
- Evidence of contact with parents including phone calls, home visit and meetings.
- Copies of any letters sent to all parents/carers.
- Any medical evidence that has been provided to school by parents.
- Details of parental/carer engagement or lack of engagement and reason for requesting prosecution.
- Copies of attendance contracts if there has been one completed.
- Consideration of any SEND needs or any other issues that school needed to have considered before making a referral.

4.3 What happens when prosecution referral has been submitted to the AET:

If the referral is accepted the AET will consider the type of prosecution, either;

- s444(1) of the Education Act 1996 (Single Justice Procedure)
- s444 (1A) of the Education Act 1996 (Magistrates Court)

s444(1) of the Education Act 1996 (Single Justice Procedure) will be considered when:

- There has been a previous unpaid penalty notice that has proceeded to court. This would suggest that another penalty notice would not be successful.

- The escalation process within the current national penalty notice guidance means that a third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of date of issue of the first.

If AET initiate prosecution under the single justice procedure a letter will be sent to the parent informing them that we are intending to prosecute. School will be asked to provide documents and evidence to the AET which will then be compiled into a court file and sent to SMBC Legal Services team - see section 3.5 for further information on the single justice process.

The parents will be prosecuted in the magistrates court. This prosecution carries a fine of up to £1000 per parent and a criminal record.

s444 (1A) of the Education Act 1996 (Magistrates Court) will be considered when:

- The parents have previously been prosecuted under s444(1) of the Education Act and there are further unauthorised absences, the AET may consider prosecuting under the aggravated offence.
- A letter will be sent to parents advising them of the possibility of prosecution. The letter has a Police and Criminal Evidence (PACE) caution. The PACE caution is also verbally delivered to parents during the process.
- Parents will be invited to an Education Network Meeting where an action plan is drawn up to prevent prosecution. This is reviewed over a period of agreed time with agencies, parent and child (if secondary school age). Review meetings will usually be set to carry out the actions in the plan.
- If there is no improvement in attendance The AET will send a final letter to parents warning them of court action.
- School will be asked to provide documents and evidence which will then be compiled into a court file and sent to SMBC Legal Services team.

If the matter is referred to the Magistrates court a summons will be issued for the parent to attend court on a specific date. If the parent fails to attend court a warrant may be issued for the parent's arrest. Once the parent appears in court the case will proceed.

If the parent is found guilty the court disposals could include:

- a fine of up to £2500 plus court costs
- a conditional discharge
- a parenting order
- a community order
- a custodial sentence of up to 3 months

4.4 Child In Need/ Child Protection Cases

All referrals that are subject to Child in Need or Child Protection procedures will be discussed with the Social Worker to decide whether it is appropriate for legal action.

4.5 Closure of a Case

Once the entire process has been completed, the school will be informed of any outcomes and the case will be closed to the AET.

Should there be future concerns regarding attendance, the school should follow their usual attendance procedures and consider re-referring to the AET.

4.6 Decision Not to Prosecute

Only the Local Authority has the power to prosecute a parent/carer under the Education Act 1996. Not all cases referred to SMBC will proceed to court.

Advice will be sought from SMBC's Solicitor in cases where a successful prosecution is in doubt or where extenuating circumstances are impacting on the family. If the advice from the SMBC Solicitor is that a case is not in the public interest or that a successful prosecution is unlikely to be secured, then the case will not proceed to court.

4.7 School Attendance Order

Section 437(1) of the Education Act 1996 states if it appears to the local authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school, or otherwise, they shall serve a notice in writing on the parent requiring him/her to satisfy them within the period specified in the notice that the child is receiving such education.

This is called a School Attendance Order and they are issued by Attendance & EHE Advisory Team. That period shall not be less than 15 days beginning with the day on which the notice is served. Before serving the order, the relevant officer shall write to the parent:

- informing him/her of their intention to serve the order,
- specifying the school which SMBC intend to name in the order.

Section 443(1) states that if a parent on whom a school attendance order is served fails to comply with the requirements of the order, s/he is guilty of an offence, unless s/he proves that s/he is causing the child to receive suitable education otherwise than at school.

If it is believed an offence has been committed, EPAS Attendance teams will work together to create a court file and then the AET will then refer to SMBC Legal services team to issue the parents with a single justice notice. This could result in a prosecution in the magistrate's court.

4.8 Education Supervision Order

The Children Act of 1989 allows SMBC to apply for an education supervision order on any child of compulsory school age, who, it is felt, is not being properly educated. An authority may apply for an education supervision order instead of, or as well as, prosecuting the parents. An authority is under a duty to consider applying for an education supervision order before starting legal proceedings against a parent.

Section 5 - Policy and Publicity

All Solihull school attendance policies should include information on legal interventions in line with statutory guidance, and this should be brought to the attention of all parents/carers. SMBC will include information on the use of penalty notices and other attendance enforcement sanctions in promotional/public information material. The EPAS Attendance teams will offer advice and support to schools in the process of enforcement of the Code of Conduct for Enforcement.

The AET will review the Code of Conduct annually.

Section 6 - Contact details

For further information please contact EPAS Attendance Teams on:

Attendance and EHE Advisory Team:

- Telephone number: 0121 704 6191
- Email: attendanceenquiries@solihull.gov.uk

Attendance Enforcement Team (AET):

- Telephone number: 0121 704 6131
- Email: attendanceenforcement@solihull.gov.uk