

BI- BOROUGH CHILDREN'S SERVICES

Penalty Notice Handbook

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1. Introduction: Penalty Notice National Framework

National Framework for issuing penalty notices reflect changes to the law introduced through the Education (Penalty Notices) (England) (Amendment) Regulations 2024. Section 23 of the Anti- Social Behaviour Act 2003 and Section 444 of the Education Act 1996 empower designated LA officers, Head teachers (and Deputy or Assistant Head teachers authorised by them), and the Police to issue Penalty Notices (PNs) in cases of unauthorised absence from school of children of compulsory school age. PNs supplement the existing sanctions currently available under Section 444 of the Education Act 1996 to enforce attendance at school where appropriate.

PNs are an effective tool as an alternative to prosecution, the offence that a PN is seeking to penalise parents for is a **“failure of their child to attend regularly at the school where the child is a registered pupil”** (section 444 Education Act 1996). There is no statutory right of appeal against the issue of a PN. Parents may discharge their potential liability for conviction for an offence under section 444 by paying a penalty. The School Attendance Support Team in Kensington & Chelsea and Westminster will be responsible for the issuing of all PNs on behalf of the Bi-Borough.

Relevant Legislation: Section 444 Education Act 1996

Regulations: Education (Penalty Notices) (England) (Amendment) Regulations 2024.

Guidance: Working Together to Improve School Attendance

Policy/code: Code of Conduct for Penalty Notices revised September 2024

2. Key Considerations for Schools and Local Authorities

A Penalty Notice (PN) is a suitable intervention in circumstances where the parent/carer is failing to ensure that their child attends school on a regular basis. Sanctions of this nature are for use only where parental co-operation is either absent or deemed insufficient to resolve the problem and are used as a means of enforcing attendance where it is likely that their use will secure an improvement. The key consideration in deciding whether or not to make an application to issue a PN, will be whether it will be effective in improving a child's attendance.

A PN is an **alternative to prosecution** and will only be issued where the council is **able to prosecute**. Before a PN can be issued, Head Teachers and the LA must be satisfied that the particular episode of unauthorised absence, looked at in the context of the individual child and his/her family, warrants **criminal proceedings** against the parents (a case must meet the evidential test and public interest test, s.222 Local Government Act 1972). They must also have considered alternative methods of securing attendance (School Attendance Parental Responsibility Measures, 2015).

The Bi-Borough Code of Conduct allows only authorised officers of the Local Authority (LA) to issue PNs. The first offence will incur a fine of £80 with payment required within 21 days of receipt of a notice and £160 if paid after this but within 28 days. In the case of a repeated offence, a second fine for the same child will be charged at the higher rate of £160. Fines will be capped at two penalty notices within a period of three years and once this limit has been reached, other action will be considered.

A parent may receive a separate PN for each child taken out of school. There is no statutory right of appeal against the issue of a PN. If the penalty is not paid in full by the end of the 28 day period, **the LA reserves the right to prosecute for the original offence of failing to secure the regular attendance of their child at their registered school**, not for non-payment of the fine.

3. Circumstances in which a Penalty Notice May Be Issued

All state funded schools must consider whether a penalty notice is appropriate in each individual case when a pupil reaches the national threshold for considering a penalty notice. Schools should not have a blanket position of issuing or not issuing penalty notices and should make judgements on each individual case to ensure fairness and consistency across the country.

The threshold is 10 sessions (5 days) of unauthorised absence in a rolling period of 10 school weeks. A school week means any week in which there is at least one school session. This can be met with any combination of unauthorised absence marks (U Code, O Code, G Code) and may be a fixed period or span across 10 school weeks (including different terms and academic years).

When the threshold has been met, schools are expected to make the following considerations to decide whether to issue a penalty notice in each individual case:

- Is support appropriate in this case?
- If yes, schools are expected to continue with the existing support without a penalty notice or issue a Notice to Improve if that support is not working or is not being engaged with. A penalty notice can then be issued if this is not impactful.
- If no, for example term time leave, a penalty notice should be issued subject to conditions below.
- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this family or would further support or 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 such as where a pupil has a disability?
- Is it in the public interest to issue a penalty notice in this case given the LA 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 should be issued. If not, another tool or legal intervention should be used to improve attendance.

4. Unauthorised absence from school

All schools can grant a leave of absence at their discretion, term time leave must not be agreed unless there are exceptional circumstances. Schools must judge each application individually considering the specific facts and circumstances and relevant background context behind each request. Generally, a need or desire for a holiday or other absence for the purpose of leisure and recreation would not constitute an exceptional circumstance.

Where a leave of absence is granted, the school will determine the number of days a pupil can be absent from school and mark the register when each session of the agreed absence occurs (Code C). Such a leave of absence can only be granted under 11(11) School Attendance (Pupil Registration) Regulation 2024, where an application is made in advance by a parent the pupil normally lives with (or the pupil if they will be over compulsory school age by the time of the absence).

All requests should be made within an appropriate timeline and all decisions recorded. Schools can make use of the standard leave request form (Appendix A). Schools should inform parents/carers of the process for applying for exceptional leave in term-time and advised about the school's policy in relation to leave during term-time. Attendance registers should not be marked ahead of the date leave is taken in term time, absence should be recorded as part of morning and afternoon registration.

5. Penalty Notice Referral: Term time leave

- The conditions in which a PN application could be made are as follows:
 - Where leave is taken without permission and the school is satisfied the parent knew the procedures, providing the period of absence is equal to or more than **10 sessions** (5 days) in 10 school weeks.
 - Where leave of absence has been agreed and the pupil arrives back equal to or more than **10 sessions** (5 days) after the agreed time without explanation.
 - Where no application for leave has been made, providing the period of unauthorised absences equal to or more than **10 sessions** (5 days) in 10 school weeks.

A PN will only be considered for unauthorised absence where the LA is satisfied there is sufficient evidence to show that an offence under Section 444 has been committed. **A fully completed referral form** should be submitted with all required evidence within the specified time frame (4 school weeks after the last recorded date of unauthorised absence). Please see Appendix B for a copy of the Penalty Notice Referral Form. Detailed information is required on all applications for the LA to make an informed decision on whether a PN should be issued.

- Supporting documentation includes the following:
 - Attendance certificate for current academic year (previous year if available).
 - First day calling notes or communication log (attempts to obtain an explanation)
 - Correct address, mobile, email confirmed by parent (check statutory school age)
 - Notification letter to parent of penalty notice referral (note of parent response)
- Supporting evidence includes the following:
 - Return to school meeting with parent (and child if appropriate)
 - Unavoidable cause (emergency travel details / flight booking)
 - Illness absence (medical certificate / hospital discharge papers)

Once this information has been received, the request will be considered within 10 working days of receipt and a response will be provided to the referring school. When insufficient evidence is provided or corrections are required, the school may be invited to resubmit a referral where statutory timescales permit follow up actions.

Once a PN has been issued, parents often contact the LA with reasons as to why it should not have been issued. the query is directed back to the school as referral agent to consider rescinding the PN.

- A PN may only be withdrawn by the LA in the following circumstances:
 - The Notice has been issued to the wrong person.
 - The Notice should not have been issued (e.g. evidence of illness or unavoidable cause provided).
 - Where the Notice contains material errors (e.g. wrong address)
 - In the circumstances of exclusion, reasonable justification has been made out by the parent.

There is no specific sanction for the non-payment of a PN, and no specific means of enforcement. However, where the penalty has not been paid at the expiry of the period, the LA may consider whether to prosecute the parents for the original offence of *“failure of their child to attend regularly at the school where the child is a registered pupil”*. The LA will seek the views of the school as referral agent to initiate proceedings or withdraw from the escalation process.

In consultation with borough Legal Services, a number of factors would be considered when taking the decision to prosecute (evidential test and public interest test). The most common reason for not continuing with proceedings is incorrect and inconsistent information being provided on the referral form. For this reason, it is important to undertake checks to ensure details are accurate and up to date.

6. Penalty Notice Referral: Persistent Absence

PNs are an **early intervention strategy** that can be used as an alternative to referring a case into children's services for pupils who are persistently absent from school and where *attendance is the only concern*. In cases where attendance issues are more entrenched or complex a referral to children's services should be made to the home borough (i.e. the LA where the child resides) to undertake joint work with the school borough (the LA where the child is registered at school).

A PN for persistent absence would only be issued where a pupil has failed to attend school regularly over a period of 10 school weeks (where attendance has fallen below 85%). This may comprise a series of single or half-day unauthorised absences or a block of unauthorised absences for reasons such as illness where no evidence has been provided. Detailed information is required on all applications in order for the LA to make an informed decision on whether a PN should be issued.

- Supporting documentation includes the following:
 - Attendance certificate for current academic year (previous year if available).
 - First day calling notes or communication log (attempts to obtain an explanation)
 - Correct address, mobile, email confirmed by parent (check statutory school age)
 - Notification letter to parent of penalty notice referral (note of the parent response)
- Evidence of family engagement includes the following:
 - Attendance concern / monitoring letter to parent
 - Invitation to school attendance meeting and review
 - Attendance contract declined / agreed / reviewed.
 - Referrals to partner agencies and support services

A fully completed form should be submitted to the LA with all the required evidence within the specified time frame (2 school weeks after the last recorded date of unauthorised absence). Once this information has been received, the request will normally be actioned within 10 working days of receipt and a response will be provided to the referring school. When insufficient evidence is provided or corrections are required, the school may be invited to resubmit a referral where statutory timescales permit follow up actions. Once a referral is accepted, children and family services where the child resides will be contacted to determine whether the intended course of action is appropriate.

The response to a PN referral for persistent absence is generally to issue Notice to Improve, whereby a **monitoring period of 3 school weeks** (15 school days) would be established in order to give the parent an opportunity to improve their child's attendance and avoid a subsequent fine. Should the child have **4 or more sessions** of unauthorised absence during the 15-day monitoring period, a PN will be issued. Please see Appendix C for a flow-chart of action following referral.

A parent will not normally receive more than one PN resulting from a Notice to Improve of an individual child in one academic year. If unauthorised absence persists after the issue of the first PN, it may be appropriate to prosecute or address the attendance using an alternative intervention.

7. Penalty Notices: Excluded Children

Section 105 of the Education and Inspections Act 2006 enables PN's to be issued to parents of excluded children who breach the duty to ensure that their child is not present in a public place during the first five days of exclusion without reasonable justification. Reasonable justification will be assessed on the individual circumstances of each case but may include medical emergency of parent or child or pre-arranged medical appointment. Revised regulations and guidance relating to Penalty Notices in cases of truancy and exclusions came into force on 1st September 2007.

Should you have any questions or concerns please contact the respective Bi-borough Attendance Officer who will be pleased to advise on these matters:

Westminster: penaltynotice@westminster.gov.uk

Kensington & Chelsea: penaltynotice@rbkc.gov.uk

Appendix A

Penalty Notice Referral Form

- **Westminster Penalty Notice Information:** <https://www.westminster.gov.uk/children-and-families/education/school-attendance/penalty-notices-fines-non-attendance-school>
- **Westminster Penalty Notice Referral Form:** Weblink and image of webpage below
<https://www.westminster.gov.uk/children-and-families/education/school-attendance/referral-form>

Before you start

Before you begin, please be aware you can't save and return to the form. As such, please make sure you have the following information to hand:

- Child's details
- Their siblings details if you're also making a referral for them
- Child's school or academy details
- Parent or carer details
- Penalty Notice request details

You may also need to upload the following:

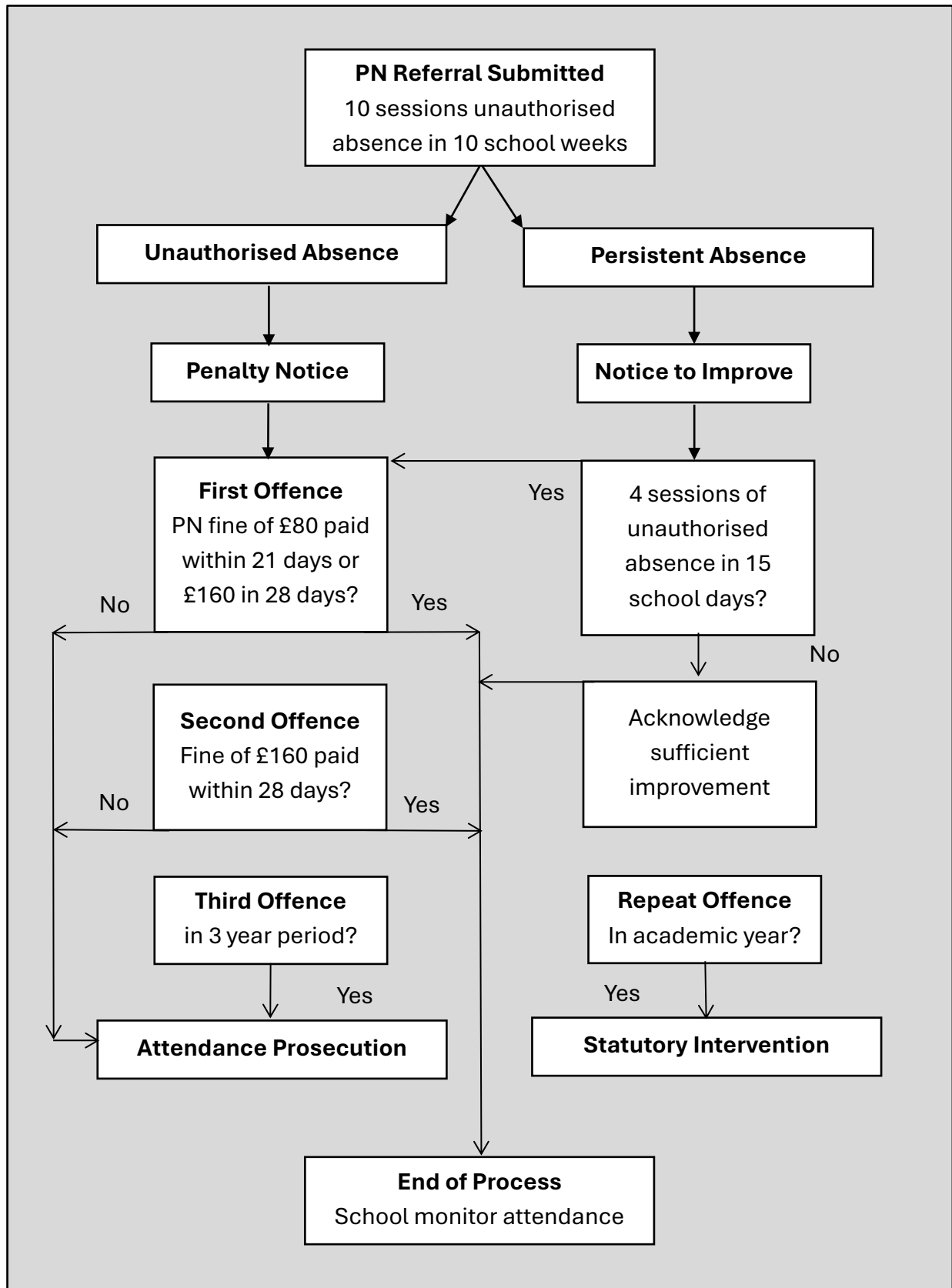
- Attendance certificate for current year (required)
- Attendance certificate for previous year (optional)
- Parent request for term time leave (optional)
- Parent notification of Penalty Notice referral (optional)
- Additional supporting information, Penalty Notice for unauthorised term time leave (optional)
- Additional supporting information, Penalty Notice for persistent absenteeism (optional)

A copy of your submission will be emailed to you once you submit the form.

- **Bi-Borough Penalty Notice Code of Conduct:**
<https://www.westminster.gov.uk/media/document/penalty-notice-code-of-conduct>
- **Bi Borough Penalty Notice Information Leaflet:**
<https://www.westminster.gov.uk/media/document/penalty-notice-leaflet>

Appendix B

Penalty Notice Flow Chart



Appendix C

Term Time Leave Request Form

Name of School _____

Parents/guardians must ask permission, where the situation is exceptional or urgent, for their child to be absent during term time, and it is at the Head teacher's discretion to decide whether or not the absence will be authorised. If leave is taken without permission, or no application is made, parents risk being issued with a Penalty Notice or being prosecuted on their return. Parents wishing to apply for their child to have leave from school should complete this form and return it to school for authorisation where possible, 2 weeks before the proposed leave.

PARENTS SECTION (to be completed first)					
Surname of child				First name	
Date of birth		Year		Class	
Full Name of parent/guardian					
Address of child					
Postcode			Telephone number		
Reason for request:					
Departure Date	From (date)			To (date)	
Would your child miss any national tests or examinations?					Yes / No
Is his/her attendance above 95% over the past 12 months?					Yes / No
Has (s)he had leave during term-time in the last 12 months? (If so, please give dates, reasons, and number of school days leave)					Yes / No

SCHOOL SECTION

Leave in Term Time	(i) approved _____ school days	(ii) not approved _____ school days
Reasons:		
Date of Meeting with Parent		
Headteacher's signature		Date: _____

Please return a copy of this form to the parent after consideration.

Appendix D

Letter Template: Exceptional Leave Request Approved

Parent Address:

Current Date:

Dear Parent / Carer,

I received an exceptional leave request to take your child **XX** in Year **XX** out of **XX** School during term time, from **xx/xx/20xx** to **xx/xx/20xx**. I have reviewed your request, and the period of absence will be granted on this occasion as the reasons you have given are considered exceptional circumstances.

I have authorised this leave for a period of **XX** days, please note that any absence beyond **xx/xx/20xx** will be considered unauthorised and you may be issued with a Penalty Notice fine on your return.

I have included a leaflet explaining Penalty Notices, which has been produced by the Local Authority in response to parents who take their children out of school during term time.

I look forward to seeing **XX** back in school on **xx/xx/20xx**.

Yours sincerely,

Head Teacher

Appendix E

Letter Template: Exceptional Leave Request Refused

Parent Address:

Current Date:

Dear Parent / Carer,

I received an exceptional leave request to take your child **XX** in Year **XX** out of **XX** School during term time, from **xx/xx/20xx** to **xx/xx/20xx**. I have considered your request and regret to inform you that leave in term time has not been granted for the following reasons:

- ☐ Your child's attendance record is currently below 95% this academic year.
- ☐ It is in the school's attendance policy not to authorise leave during term time except in **exceptional circumstances**. I am unable to authorise this leave as the reasons stated on your application form are not deemed as exceptional.
- ☐ Your request is for leave is at an important time of the academic year where students in your child's year group will be sitting exams.

I must warn you if you decide to take your children out of school for this period you may be issued with a Penalty Notice by the Local Authority.

- For a first offence, the fine is £80.00 if paid within 21 days and increasing to £160.
- For a second offence, the higher rate of £160.00 is payable within 28 days of issue.
- For a third offence, attendance prosecution or other intervention must be considered.

I have included a leaflet about Penalty Notices which has been produced by the Local Authority in response to parents who take their children out of school during term time.

Yours sincerely,

Head Teacher

Appendix F

Letter Template: Penalty Notice Unauthorised Leave

Parent Address:

Current Date:

Dear Parent / Carer,

I write regarding the recent period of unauthorised absence from **xx/xx/20xx** to **xx/xx/20xx**, recorded on the attendance record of your child **XX** in Year **XX** at **XX** school. You are aware that leave in term time is not permitted without approval of the Head teacher as taking children out of school during term time disrupts their school routine and learning.

Despite being informed of school policy and consequences for doing so, you chose to take your child on leave during term time without authorisation. As such you are now being referred to the Local Authority for a Penalty Notice under Sec. 444a. of the Education Act (1996) for failing to ensure the regular attendance of your child at school.

The Penalty Notice is being requested in line with the Code of Conduct administered by the Local Authority. If accepted, a Penalty Notice will be issued by the Local Authority and details regarding payment of the fine will be sent by post to your home address.

We thank you for your support in ensuring that your child is not absent from school during term time in future.

Yours sincerely,

Head Teacher

Appendix G

Letter Template: Penalty Notice Persistent Absence

Parent Address:

Current Date:

Dear Parent / Carer,

Following attendance checks of the register at **XX** school, it has been noted that your child **XX** in Year **XX** has 10 sessions or more of unauthorised absence recorded in a rolling period of 10 school weeks. This meets the national threshold for consideration of a penalty notice for persistent absence.

You, as parent, are legally responsible under Section 444(1) of the Education Act 1996, for ensuring your child attends school regularly. As such you are now being referred to the Local Authority for a Penalty Notice under Sec. 444 of the Education Act (1996) for failing to ensure the regular attendance of your child at school.

The Penalty Notice is being requested in line with the Code of Conduct administered by the Local Authority. You may be issued with a **Notice to Improve**, whereby a 15-day monitoring period would be set in order to give you an opportunity to improve your child's attendance and avoid a subsequent fine.

Please take steps to make sure your child gets to school on time every day and obtain supportive medical evidence if your child is too unwell to attend. Any other reason for absence should be discussed with the school, as it is the decision of the head teacher to authorise school absence.

We thank you for your support in ensuring that your child is not absent from school during term time.

Yours sincerely,

Head Teacher