

Penalty Notices

Information for Parents and Carers

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# Who is defined as a parent in Education Law?

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).

So, to summarise this includes:

* All natural parents, whether married or not
* Any person who has parental responsibility for a child or young person (even if not the natural parent)
* Any person who has care of a child or young person (even if not a natural parent)

The fact that you do not live with the child is not a defence against securing their attendance at school.

# Who is responsible for the decision to issue a Penalty Notice?

There are laws which govern the issue of Penalty Notices and each Local Authority must have a Penalty Notice Code of Conduct which ensures consistency in the issuing of Penalty Notices to make sure they are used fairly. Head teachers decide which parents to refer to the local authority and each request is checked to ensure that it complies with the thresholds set out within that code of conduct.

# Why do some schools authorise and another doesn’t?

The only individual who can authorise absence from school is the Head Teacher. They have the final decision on how attendance is recorded. The law states that a Head Teacher may only authorise absences if they consider the circumstances of those absences to be “exceptional” which is a subjective term and can lead to different Head Teachers within the same geographical area responding differently.

Guidance relating to the term ‘exceptional’ has expressed that it means the ‘event is rare, unavoidable and short’ and by ‘unavoidable’ it could not reasonably be scheduled at any other time.

Generally, the DfE does not consider a need or desire for a holiday or other absence for the purpose of leisure and recreation to be an exceptional circumstance.

**Penalty Notices and the Education Act 1996**

A penalty notice is an out of court settlement which is intended to change parental behaviour without the need for a criminal prosecution.

Section 444 of the Education Act 1996 gives powers to the Local Authority (LA) to issue Penalty Notices when a parent or carer is considered capable of but has failed to secure their child’s regular school attendance and/or punctuality. A Penalty notices is a fine which may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996.

There is a new National Framework for Penalty Notices which has increased the charge of a Penalty Notice and also decreased the number that can be issued to a parent within a rolling 3 year period, which came into force on 19 August 2024.

For absences that took place during the academic year 2023/2024 the PN charge will remain at the old rate of £120 if paid after 21 days but within 28 days and reduced to £60 if paid within 21 days.

A penalty notice must be considered when 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period has occurred. These can be as a result of any absence without the school’s permission, such as a holiday taken in term time and persistently late after the attendance register has closed.

A maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. What this means is that’s the first penalty notice issued to the parent for that pupil will be charged at £160 if paid within 28 days reducing to £80 if paid within 21 days.

Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first notice, the second notice is charged at a flat rate of £160 if paid within 28 days (without the option to pay at the lower rate).

In cases where the threshold is met for a third (or subsequent) time within those 3 years, a penalty notice cannot be issued and alternative action should be taken instead. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions.

A penalty notice can also be issued for being in a public place without a justifiable reason for being there, during school hours on a school day during the first five days of a suspension or a permanent exclusion. The school must have notified the parents of the days the pupil must not be present in a public place. This type of penalty notice is not included in the National Framework and therefore not subject the escalation process in the case of repeat offences for non-attendance. These penalty notices are charged at £120, reduced to £60 if paid within 21 days.

### Can I appeal a Penalty Notice, or simply not pay?

There is no right of appeal. Once a Penalty Notice has been issued, it can only be withdrawn if it can be demonstrated that it was issued in error. If you believe you are not guilty of the offence then you should contact the AWSS as soon as possible.

If you believe the absence should have been authorised, then this is a matter for the school/academy; please contact your child’s school in the first instance.

If the notice is not withdrawn and you do not pay, you could be liable to prosecution for the offence that your child has failed to attend school regularly, and you will have the right to represent yourself in the Magistrates Court. We strongly advise that before you make a decision not to pay that you seek legal advice.

## How do I pay?

The Council can only take payment via the online service. The details on how you make the payment and the link to the payment page is clearly set out on your Penalty Notice.

There is no option to pay in instalments.

# How can I avoid a Penalty Notice?

* Ensure their child attends every day the school is open except when a statutory reason applies.
* Notify the school as soon as possible when your child has to be unexpectedly absent (e.g. sickness).
* Only request leave of absence in exceptional circumstances and do so in advance.
* Book any medical appointments around the school day where possible.
* Work with the school and local authority to help them understand your child’s barriers to attendance.
* Proactively engage with the support offered to prevent the need for more formal support.

If you are unclear about what is required then please contact your child’s school to discuss.

## Further information

[Working together to improve school attendance](https://www.gov.uk/government/publications/working-together-to-improve-school-attendance)

[BANES Penalty Notice Code of Conduct](https://beta.bathnes.gov.uk/media/2773)

**Queries and questions.** If you would like any assistance or advice on any of these matters, please contact the Attendance and Welfare Support Service on 01225 394241 or email AWSS@bathnes.gov.uk