

Bracknell Forest Council

Local Code of Conduct

**as to issuing penalty notices to parents/carers of
registered school pupils of compulsory school age
for**

**(i) failing to ensure the pupil regularly attends school
(irregular attendance due to unauthorised absence of the pupil from school)**

or

**(ii) failing to ensure that a pupil who has been excluded from school is not present in
a public place within school hours during the first five days of exclusion
and as to other local measures to address school non-attendance**

This local code of conduct applies, within the geographical jurisdiction of Bracknell Forest Council, to all local authority-maintained schools and pupil referral units, as well as to academy trust schools and alternative provision academy schools where those have adopted the provisions and effect of this local code of conduct.

This local code of conduct is set in consideration of and in consequence to the provisions of the following and subsequent amendments to the same

- The Education Act 1996, particularly s.444 and 576
 - The Education (Penalty Notice) (England) Regulations 2007, as amended by The Education (Penalty Notices) (England) (Amendment) Regulations 2024
 - School Attendance (Pupil Registration) (England) Regulations 2024
 - The Education and Inspections Act 2006, particularly s.103 - 106
 - Department For Education Guidance as from time to time issued in respect of school attendance matters, including “*Working together to improve school attendance: Guidance for maintained schools, academies, independent schools, and local authorities*”, published 29th February 2024, incorporating the new “*National Framework For Issuing Penalty Notices For School Absence*” and implementation guide for Local Authorities, 2024 and “*Summary table of responsibilities for school attendance: Guidance for maintained schools, academies, independent school and local authorities*”, published 29th February 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 Bracknell Forest. The code sets out the arrangements for administering penalty notices in Bracknell Forest 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.

2. The Local Education Authority is required to draw up a Code of Conduct which sets out measures to ensure consistency in the issuing of penalty notices, including the occasions as to when it will be appropriate to issue a penalty notice*

*(*Regulation 14 The Education (Penalty Notices) (England) Regulations 2007*)

Consultation

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

Legal basis

4. It is the legal duty of every parent/carer of a child of compulsory school age to cause that child to receive efficient full-time education suitable to the child's age, ability, and aptitude and to any special education needs or additional learning needs the child may have, either by regular attending at school or by education otherwise than at a school*

*s. 7 *Education Act 1996*.

5. In law, and subject to limited number of Statutory Defences set out in the Act, an offence contrary to s. 444(1) Education Act 1996 occurs if a parent / carer of a registered pupil of compulsory school age fails to ensure that pupil's regular attendance at a school by reason of the pupil being absent without authorisation contrary to the attendance rules of the school. An offence contrary s. 444(1A) of the 1996 Act occurs if the parent knows that the pupil is failing to attend school regularly and fails to cause them to do so.
6. The Supreme Court* has determined that "Regular" attendance means that which is *"in accordance with the rules prescribed by the school"*¹

**Isle of Wight Council v Platt* (6th April 2017) [SUPREME COURT] [2017] UKSC 28 (on appeal from [2016] EWHC 1283 (Admin))

7. s.23(1) of the Anti-Social Behaviour Act 2003, inserted s 444A and s.444B after s.444 of the Education Act 1996 to enable penalty notices to be used as an out of Court alternative to discharge potential prosecution for either offence under s444 of failing to secure regular attendance at school of a registered pupil of compulsory school age, thus providing parents/carers with a time limited opportunity to discharge liability to potential prosecution for either substantive offence under s.444, by paying a financial penalty to the Local Authority.
8. s.105 of the Education and Inspections Act 2006 makes similar provision for issuing a penalty notice to discharge a parent/carer's liability to potential prosecution for an offence under s. 103 of that Act in respect of an excluded pupil being in a public

¹ *Isle of Wight Council v Platt* (6th April 2017) [SUPREME COURT] [2017] UKSC 28 (on appeal from [2016] EWHC 1283 (Admin))

place within school hours during the first five days of that pupil's exclusion from school.

9. Penalty notices 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).
10. The Education (Penalty Notices) (England) Regulations 2024 amend the 2007 Regulations as to the penalty notice regime, imposing a duty on authorised school staff to consider requesting penalty notices be issued to parent(s)/carer(s) who have failed to secure a pupil's regular attendance at school, where such staff become aware that the national framework threshold for such intervention has been reached in that that the pupil has been recorded as absent in specified circumstances for 10 school sessions during 10 school weeks (Regulation 5(1)), as well as retaining discretion, in exceptional circumstances, to request penalty notices in instances of repeated periods of unauthorised absence that, which if viewed individually, would otherwise fall below the national framework threshold criteria (e.g. regularly taking unauthorised term time holidays of less than 10 school sessions each).
11. The 2024 Regulations prescribe a limit within the national framework threshold criteria on the number of penalty notices that can be issued under section 444A (1) of the Education Act 1996 in respect of the same parent/carers and child (Regulation 6(1)). Following the issue of two penalty notices to the same parent/carers in respect of the same child, a third penalty notice cannot be issued to that same parent/carers in respect of that same child within three calendar years of the date of issue of the first penalty notice. Where the national framework threshold is met on a third occasion (or subsequent times) within those three calendar years, alternative action should be taken instead. This will include considering referral for prosecution but may, if deemed appropriate in the circumstances, include consideration of other school attendance legal intervention measures.
12. The 2024 Regulations amend the amount of a penalty payable under a penalty notice issued under section 444A (1) of the Education Act 1996, setting different amounts in different circumstances (Regulation 4(1)).
13. 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.
14. The "National Framework for Penalty Notices for School Absence" is published within statutory guidance *'Working together to improve school attendance: Guidance for maintained schools, academies, independent schools, and local authorities,'* published 29th February 2024.' It provides national guidance on the operation and threshold of penalty notice schemes for school absence in England.

15. The local authority may only use the sums it receives in payment of attendance-related penalty notices as ring-fenced monies to support the cost of its functions in issuing and enforcing the penalty notice regime under s444A(1) of the Education Act 1996 and under s.105 of the Education and Inspections Act 2006, and to support the cost of its functions in the prosecuting of offences committed under section s444 of the Education 1996 Act, and to support the cost of any other of its functions which serve to support the regular attendance at school of registered pupils*

**Regulation 7 of The Education (Penalty Notices) (England) (Amendment) Regulations 2024*

Meaning Of Parent

16. The definition of “parent” for the purposes of this local code of conduct is as prescribed in s 576 Education 1996 and includes any person not a parent of the child but who has “parental responsibility” for that child as defined by s. 2 Children Act 1989, or who “cares for” that child. It includes biological and adoptive parents, and those becoming parents via surrogacy or human embryo fertilisation, whether such persons are married / in a civil partnership or not at the time the child’s birth, as well as those who acquire and have not lost “parental responsibility” since the child’s birth. As with prosecutions for substantive offences under s.444 Education Act 1996, penalty notices will usually be issued to each parent(s)/carer(s) or those with day-to-day “parental responsibility” for the pupil’s school attendance, or to the parent(s)/carer(s) who have condoned the absence (regardless of which parent/carers may have applied for leave of absence).

Rationale For Enforcement Action Concerning Irregular School Attendance

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

22. The National Framework for Penalty Notices for School Absence is based on the principles that penalty notices should only be used in cases where:
- support is not appropriate (e.g. in cases of an unauthorised term time holiday) or where support has been offered/provided but not been engaged with or has not worked, and
 - they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

Leave of absence

23. Local Authority maintained schools within Bracknell Forest are expected to require that any sought leave of absence be applied for in writing, at least two weeks in advance, to the school using the application for term time leave of absence form, or similar, available from each school's office and/or website.
24. Regulation 11 of The School Attendance (Pupil Attendance) (England) Regulations 2024 prescribes that leave of absence from a school maintained by a local authority or a special school not maintained by a local authority may only be given by a person who the school's proprietor has authorised to do so (an "authorised person").
25. The Department for Education's "*Working together to improve school attendance*" statutory guidance 2024 requires all maintained and special schools to restrict granting leave of absence, other than in cases of authorised off-site education provision and authorised work experience, to those circumstances as listed in Regulation 11 of the 2024 Regulations and expects all other schools to do the same.

The listed circumstances are

- **A pupil taking part in a regulated performance or regulated employment abroad**, in line with a licence issued by a local authority or specified body.
- **A pupil attending an interview for employment or for admission to another educational institution**, where requested in advance by a parent/carer the pupil normally lives with
- **Study leaves for public examinations** (not including any internal school examinations, such as mocks) where requested in advance by a parent/carer the pupil normally lives with
- **A temporary, time limited, part-time timetable** where the school has agreed in advance that the pupil should temporally be educated on a part-time basis for exceptional reasons and has agreed, with a parent/carer the pupil normally lives with, the times and dates when the pupil will be expected to attend school as part of that timetable
- **Exceptional circumstances:** All schools can grant leave of absence for "exceptional circumstances" at their sole discretion. Such application and the reason for it must be given to the school in writing in advance in the case of

maintained schools and non-maintained special schools. Authorised officers of the schools will consider each application on a case-by-case basis, considering the specific facts, circumstances, and background to the request. It is the school's decision whether it finds exceptional circumstance or not to merit authorising leave of absence for the period sought, or as to what, if any, part of that sought leave period may be authorised.

26. The Department for Education's 2024 guidance prescribes that it generally does not consider a term time holiday for the purpose of leisure and recreation to be an exceptional circumstance to merit authorising leave, nor should leave be granted for a pupil to take part in protest activity during school hours. Although each request is considered on its merits, schools' own attendance policies may prescribe that such requests will generally be refused save for where the school finds exceptional circumstances.

When may a penalty notice for unauthorised absence be appropriate?

27. Where the national framework threshold has been met and a school becomes aware that the national threshold has been met, it must consider whether a penalty notice can and should be issued or not. The national framework threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks², with one of, or a combination of the following codes:
- (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)

When parent(s)/carer(s) fail to ensure, without reasonable justification*, that a pupil who has been excluded from school is not present in a public place within school hours times during the first five school days of any exclusion (s.103 - s106 Education and Inspections Act 2006*)

*It is incumbent upon the parent(s) in such circumstances to provide proof of reasonable justification, for example, that the child or young person needed to attend a pre-arranged medical appointment, or a medical emergency requiring the child to be supervised elsewhere then at home. A penalty notice will be issued on the first occasion if appropriate.

² 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).

28. If, on any instance, a Bracknell Forest Council authorised officer believes a penalty notice would be appropriate, they retain the discretion to issue one before the national framework threshold is met. This might apply for example, where parents are deliberately avoiding the national threshold by taking several unauthorised term time holidays below the 10 sessions in 10 weeks threshold, or for repeated absence for birthdays or other family events. This will be in exceptional circumstances only, and the issuing of penalty notices in these circumstances can only be authorised by the Education Welfare Team Leader or someone of higher grade within Early Help.
29. Each decision will be made on a case-by-case basis and Bracknell Forest Council does not have to issue a fixed penalty notice, it may choose to go straight to prosecution if an authorised officer considers the case too serious or if a fixed penalty notice is deemed to be a disproportionately lenient response in the circumstances.

Two penalty notice limit and escalation in cases of repeat offences

30. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be most appropriate tool. The National Framework for Penalty Notices for School Absence sets out that a maximum of two penalty notices per child, per parent/carer can be issued within a rolling three-year period. If the national threshold is met for a third time (or subsequent times) within three calendar years (rather than academic years) of the date of issue of the first penalty notice, another tool should be used such as prosecution or one of the other legal intervention measures available to the Local Authority in seeking to improve the pupil's school attendance.
31. For the purpose of 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.

Scenario	Counts towards the maximum two penalty notices within three calendar Year limit?
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but later withdrawn	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the local authority prosecuted for the original offence, but the Court found the parent not guilty.	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the local authority prosecuted for the original offence and the Court found the parent/carer guilty.	Yes

32. The three-year period runs by calendar year not academic year and begins from the date of the first penalty notice issued. For example, if the first penalty notice is issued on 18th September 2024, a second penalty notice issued to that parent in respect of that child on or before the 17th September 2027 would be charged at £160. A third penalty notice could not be issued within that timeframe and so in cases where the national threshold is met for a third or subsequent time another action should be taken instead.
33. A penalty notice issued under s.105 Education and Inspections Act 2006 in respect of an excluded pupil found in a public place within school hours during the first five days of an exclusion does not count towards the escalation process and national framework threshold limit of a maximum of two penalty notices within three calendar years.

Notice to improve

34. 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 framework 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 parents as a final chance to engage in support. An authorised

officer can choose not to issue a notice to improve in any case, including cases where support is appropriate but where they do not expect a notice to improve would have any impact on parent/carer behaviour (e.g. because the parent/carer has already received one for a similar offence).

Key considerations prior to the issue of a Penalty Notice for school absence

35. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

36. In cases where support is not appropriate (for example, for unauthorised term time holidays), 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 e.g. Fast Track.
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010
- Are the evidential and public interest tests satisfied to support and justify issuing a penalty notice, given that, in event of non-payment, the local authority would be considering prosecution for the substantive offence?

37. In cases where support is appropriate, consider on a case-by-case basis:

- Has sufficient support already been provided?
- Sufficient support will usually include:

Poor Attendance	Leave of absence
Has the school regularly contacted the parent/carer to establish the reasons for absence or is there established parental non-engagement in response to phone calls, letters, or invitations to school-based meetings	The family's circumstances and the likely benefits to the child and family, considering social, emotional, and cultural reasons.
If unmet needs have been identified, has the Early Help Assessment and/or a request for support from another service been considered?	The detrimental impact on the child's social, emotional, and intellectual development, attainment level and any SEN.
Could there be underlying issues which need to be explored with the parents at a school-based meeting to identify if any support is required	Siblings in other schools. Liaise with other schools in individual cases to agree a consistent approach in considering term-time holiday request and penalty notices.
When parents/carers are separated and do not live at the same address, establish how much involvement each parent/carer has in caring for the child/ren. If one parent/carer has little	Consider exceptional circumstances put forward by the parent, explicitly setting out considerations taken by the school in a letter to the parent/carer confirming when requests are unauthorised.

involvement, consider whether it is in the public or family's interest to issue a fine to both parents/carers.	
Parents/carers who live at the same address will be equally responsible for their child/ren's attendance and will each receive a fine for each child.	

- 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
- Are the evidential and public interest tests satisfied to support and justify issuing a penalty notice in the case, given that, in event of non-payment, the local authority would be considering prosecution for the substantive offence?
- 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.

Alternatives to issuing Penalty Notices or Proceeding Straight to prosecution

38. If a penalty notice or notice to improve is not deemed by authorised officers to be a suitable or proportionate response, or where there is a third request for a penalty notice for unauthorised absences occurring within three calendar years of a first issued penalty notice, the local authority may, at its discretion, and rather than proceeding to prosecution, choose to instigate other alternative legal enforcement measures.

Fast track

39. The Fast Track process for school non-attendance is a government initiative. The Fast Track Framework is a time-focused model of best practice which concentrates on early intervention in cases of persistent non-attendance and aims to ensure a faster more effective approach to the implementation of strategies to tackle this behaviour and the underlying causes. Where the parents/carers fail to bring about the necessary improvement legal proceedings are initiated.

The aims and objectives of the framework are to:

- Ensure the intervention strategies are put into place early to tackle school attendance problems
- Ensure parents who fail to cooperate or are unwilling to work with the school/LA are identified sooner and action taken to make sure they take responsibility for their child's school attendance
- Bring consistency across LAs to the prosecution process while still enabling local decisions

40. Within the Fast Track process parenting contract is not a legally binding document. It is a tool, initiated by the government, to help the parents and pupil to recognise the seriousness of the situation and to support them in bringing about the necessary change. However, if the parent does not co-operate and support an improvement in their child's attendance a Parenting Order could be applied for in the Magistrate's Court. If it is necessary to apply for a Parenting Order the contract or refusal to sign the contract would be cited.
41. If target has not been met, the Team Manager who will make decision about prosecution. Unless there are sound reasons of mitigation from the parents, absences will lead to a prosecution. When the decision is to prosecute the EWO will prepare the papers. The EWO then submits the case file and completed prosecution papers to the Team Manager who, after perusal, will forward the papers to the legal department. The legal department will issue the summons and arrange for it to be served on the parent. The solicitor will email the Team Manager with date of hearing; this will be sent to the EWO for the case file.
42. A Local authority or governing body of a relevant school may enter into a parenting contract with a parent/carer of a pupil, for such period as may be specified, that agrees required actions to be taken by each party in seeking to ensure the pupil's regular attendance at school. It is signed by all parties and includes statement by the local authority or governing body that it agrees to provide specified support to the parent for the purpose of complying with those requirements, which may include regular support and review meetings or for the parent/carer to attend a counselling or guidance programme.

School action prior to requesting the issuing of a Penalty Notice - General

43. The School's Attendance Policy clearly explains the criteria and process for addressing poor attendance, and the expectation is that all pupils should attend every day that the school is open unless absence is authorised by the school either
 - finding reason under Regulation 11 of The School Attendance (Pupil Attendance) (England) Regulations 2024, including a finding of "exceptional circumstance", to merit authorising absence, or any part of a period of absence, or
 - Being satisfied that one of the potential statutory defences under s.444 Education Act 1996 is otherwise likely to apply, including where the school has authorised the absence, or where the pupil is prevented from attending due to sickness, or absence is due to unavoidable cause involving an element of emergency concerning the child rather than the parent/carer, or absence is on a day exclusively set aside for religious observance by the religious body to which the parent/carer belongs, or where the local authority has not complied with any statutory duty upon it in prescribed circumstances to assist the pupil with travel arrangements to/from school, or where the child has no fixed abode, or where the parent/carer needs to travel for business (subject to certain conditions), or where, in the case of the offence contrary to s.444(1A) the parent/carer the school is satisfied either that the parent/carer did not have knowledge of the pupil not regularly attending school or is satisfied of there likely being reasonable justification for the parent/carer failing to cause the child to regularly attend school in any event.

44. No sessions of unauthorised absence are acceptable, and where an exception may apply, the parent will be asked for evidence to collaborate this, including medical evidence in support of repeated absences due to sickness of the child where the school is not satisfied of the reason given.
- The school will fully consider any extenuating circumstances / representations as notified to it to establish if there are any justified causes for the absence(s).
 - Where satisfied that the circumstances of the case merit refusal to authorise leave of absence and where the criteria for issuing such notice is met, the school will send a written notice to parent(s)/carer(s) informing them of the refusal to authorise leave for the period in question and of the decision to refer the matter to Local Authority for penalty notice issuance consideration.
 - While the Head teacher can delegate the authority to a member of staff to make penalty notice referrals on their behalf, all referrals must be signed or agreed by a member of the Senior Leadership Team to confirm authorisation to ensure that referrals are made in line with this Code of Conduct.
 - It is good practice to ensure that parents are reminded on an annual basis of the school's policy on attendance, including the existence of the penalty notice regime, national framework, and escalation threshold.

Procedure for the issuing of Penalty Notices by the Local Authority

45. Schools considering referring cases to the Local Authority for Penalty Notices to be issued for unauthorised absences will need to follow the process below.
46. If Penalty Notice is in relation to unauthorised absence for which leave of absence was not applied for:
- The following is required to be submitted to the local authority
 - A fully completed online penalty notice request form, including details of any reason given by the parent/carers for the pupil's absence
 - A certificate of the pupil's attendance for the period of attendance the penalty notice request relates to, signed by the headteacher.
 - A certificate of the pupil's attendance for the previous and current academic year to date.
 - A copy of the school's letter to the parent, confirming the absences taken were unauthorised and why, including any determination of no exceptional circumstance being found, and warning that referral has been made to the local authority to consider issuance of a penalty notice per parent/carers per child.
 - Evidence of any support that has been offered to the pupil and/or the parent(s)/carers(s), if applicable

47. If Penalty Notice is in relation to unauthorised absence for which leave of absence that was applied for, but which was refused:

The following is required to be submitted to the local authority

- A fully completed online penalty notice request form.
- A Certificate of Attendance for the period of attendance this penalty notice request relates to, signed by the headteacher

- A certificate of the pupil's attendance for the previous and current academic year to date.
- The submitted leave of absence request form or letter from the child's parent/carer
- The letter of refusal to grant leave of absence as sent from the school to the parent/carer outlining:
 - any exceptional circumstances the school has considered.
 - confirmation of the school refusal decision
 - setting out the reasons for refusal.
- the consequences of having already taken the period of unauthorised absence / unauthorised term time holiday, or the consequences if ultimately taken, including warning that referral either has been made to the local authority to consider issuance of a penalty notice per parent/carer per child for unauthorised leave taken, or else will be made if the applied for but unauthorised proposed leave is ultimately taken.
- Evidence of any support that has been offered to the pupil and/or the parent(s)/carer(s), if applicable

Local Authority action on receipt of referral

48. Penalty Notices will be issued by Bracknell Forest Council as the Local Education Authority and not by individual Headteachers or Thames Valley Police

Poor Attendance	Unauthorised Leave of Absence
The LA will issue a Notice to Improve within 5 working days of receiving a request for distribution to the parents/carers of pupils who have been identified as meeting the criteria. The notice will outline that their child's attendance will be monitored for 30 Sessions (15 school days), and that no more than one session of unauthorised absence should occur following this warning during the monitoring period.	Penalty Notices for unauthorised leave of absence during term-time will be issued immediately without any notice. The school's letter confirming the refusal of the request will have acted as a warning and raised parental awareness of the unauthorised holiday and the risk of receiving a penalty notice.
Notices to Improve will be recorded on a database, potential duplication checked, and cases monitored for actions to take place within the prescribed timescales.	Where a Penalty Notice is issued, it will be sent by the Education Welfare Team within 4 weeks of the referral being received via First Class post to the parent's last known address. The database will be checked before the issue of the Notice to avoid duplication.

Should 2 or more unauthorised absence occur during the monitoring period, the decision whether to issue lies with the Education Welfare Team leader, someone delegated to do so by the Team leader, or an authorised person in their absence following consultation with the school.	Penalty Notices will be issued to the parents of children registered at Bracknell Forest schools, irrespective of their actual home address. This also means that follow-up prosecutions where parents fail to pay the Notice or to improve their children's attendance will extend to family's resident outside the district.
Should 2 or more unauthorised absences occur before the end of the monitoring period, a penalty notice may be issued before the end of the monitoring period.	
The Penalty Notice will clearly set out the circumstances whereby a Penalty Notice can be issued and the consequences for failure to pay within the required time scale.	
An offence is committed by an individual parent for each individual child's unauthorised absence. To ensure each parent is aware of their legal duty, each parent will be written to individually and will receive a separate Warning Letter and Penalty Notice for each child they are responsible for.	
Where a Penalty Notice is issued, it will be sent by the Education Welfare Team via First Class post to the parent's last known address. The database will be checked before the issue of the Notice to avoid duplication.	

49. Whoever is issuing the penalty notice should decide 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.

50. The LA will inform the school about whether penalty notices are paid, withdrawn, or prosecuted for substantive s.444 offence. They will do this via email.

51. Where pupils move between local authority areas, Bracknell Forest can be contacted on crossborder.penaltynotice@bracknell-forest.gov.uk to find out if penalty notices have been issued previously.

52. Where pupils attend school in Bracknell Forest but live in a different LA, Bracknell Forest will work in collaboration with the home LA to ensure child is offered the correct support.

Representations

53. Only a Headteacher, or person authorised by the Headteacher to do so, can authorise a pupil's absence from school. If the school maintains that a pupil's absence was unauthorised then, where above stated criteria for the issuing of such penalty notices are met, a uniquely and separately numbered penalty notice may result and such penalty notices may be separately issued to, and thus separately payable by, each parent/carer in respect of each pupil's irregular attendance at school.

54. There is no statutory right of Appeal against the Local Education Authority's decision to issue a penalty notice.

55. Any parent/carer believing that a penalty notice has wrongly been issued to them, or has been issued to them not in accordance with the terms of this Code of Conduct for the issuing of penalty notices, must contact the Local Education Authority, as soon as possible, to ask for such penalty notice to be withdrawn, stating why the parent/carer believes that the penalty notice was incorrectly issued. The Local Education Authority will consider the parent/carer's request and notify the parent if the penalty notice is to be withdrawn or not.

56. If the penalty notice is not withdrawn, and the parent/carer fails to pay the penalty notice amount within the prescribed time limit stated on the penalty notice, the parent will be liable for prosecution for the substantive offence of failing to ensure the child's regular attendance at school.

57. In the event of such a prosecution being instigated, the parent, upon receipt of the Court Summons, will have the opportunity to make any desired representations to the Magistrates' Court in respect of the alleged offence

Withdrawal of a Penalty Notice

58. A Penalty Notice, once issued, can only be withdrawn in the following circumstances:

- When it ought not to have been issued, i.e. where it has been issued outside of the terms set out in this protocol, or where no offence has been committed
- Where it has been issued to the wrong person
- Where it appears to the authority that the notice contains material errors
- The Penalty Notice has not been paid and the LA has not, and does not intend to, instigate proceedings

Payment of penalty notices

59. Arrangements for payment will be detailed within the Penalty Notice.

60. The first penalty notice issued to the parent for a child will be charged at £160 if paid within 28 days reducing to £80 if paid within 21 days.

61. 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 offence, the second notice is charged at a flat rate of £160 if paid within 28 days. **There is no reduced sum available in this instance.**

62. Part payments or payment plans are not acceptable, and fines must be paid in full within the 21/28-day time limits.

63. The Penalty Notices must be paid within the prescribed timescales. All Payments received after the end of the 28-day period will be reimbursed to the payee, by Bracknell Forest Council as Local Education Authority (via its Finance Department).

64. Payment in full of the penalty notice discharges the parent/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.

Transition period

65. The national framework regime and The School Attendance (Pupil Registration) (England) Regulations 2024 come in to force on 19th August 2024. During the transition period from the previous regime to the new a penalty notice issued for any offence period that begins prior to the 19th August 2024 will be issued under the previous rules on such penalty notices. Therefore, it will (a) be charged at £60/£120, (b) not count towards the escalation whereby a second penalty notice within 3 years is charged at a flat rate of £160 and there is a limit of 2 penalty notices within 3 years. This is regardless of whether the penalty notice is issued before or after the 19th August 2024.

Non-Payment Of Penalty Notices

66. If the penalty notice is not paid at the end of the 28-day period, Bracknell Forest council as the local education authority will either prosecute for the substantive offence to which the notice applies or (in accordance with the limited circumstances described above) withdraw the notice and not proceed to prosecution.

67. If an issued penalty notice is not paid within the prescribed time limit for payment, each parent/carer may be liable to prosecution at the Magistrates' Court for an offence contrary to Section 444 Education Act 1996, (failure to secure regular attendance at school of a registered pupil of compulsory school age), in the same way as if the penalty notice had never been issued.

68. The purpose of the penalty notice, where it is considered appropriate for such notice to be issued, is to give a parent/carer the time limited opportunity to discharge liability to prosecution for a substantive offence contrary to Section 444 Education 1996.

69. Any such prosecution following non-payment of an issued penalty notice will be for a substantive offence contrary to s. 444 Education Act 1996, rather than for non-payment of an issued penalty notice.

70. However, the fact that a penalty notice had previously been issued but not paid may be used in evidence during the prosecution.

71. In the event of a parent/carer's ultimate conviction for the substantive offence and in accordance with the relevant sentencing guidelines for offences contrary to s.444 Education Act 1996 and in order to assist the Court in its sentencing exercise, the prosecution may refer the Court to any known previous convictions of the parent/carer and whether those are current or spent convictions under the Rehabilitation of Offenders Act 1974 and also to any previous penalty notice history for similar like offences, the details of which having been provided to the Defendant in advance of the Hearing.

72. Prosecution for the substantive offence, if proved, may, in respect of the less serious offence contrary to s. 444(1) Education Act 1996 (being the parent of a child of compulsory school age who fails to regularly attend school), result in each such parent/carer receiving a criminal conviction and sentence by way of a Fine not exceeding £1,000.00.

73. Prosecution for the substantive offence, if proved, may, in respect of the more serious offence contrary to s. 444 (1A) Education Act 1996 (where the parent knows that the child is failing to attend regularly at the school and the parent fails without reasonable justification to cause that child to regularly attend school), result in each such parent/carer receiving a criminal conviction and sentence by way of a Fine not exceeding £2,500.00 and / or to a term of imprisonment not exceeding three months, or else any such community based sentence as deemed appropriate by the Court.

74. Prosecution for the substantive offence, if proved, may, in respect of the offence contrary to s. 103 Education and Inspections Act 2006 (parent/carer failing to ensure that a pupil who has been excluded from school is not present in a public place within school hours during the first five days of exclusion), result in each such parent/carer receiving a criminal conviction and sentence by way of a fine not exceeding £1,000.

Prosecution Costs

75. In addition, in all cases where one of the substantive offences is proved, the Prosecution will seek an Order for the Defendant to pay a contribution towards the Prosecution Costs of the case, including investigation costs, the application for which will be served upon the Defendants at the time of the relevant Court proceedings.

Victim Surcharge

76. In addition, when a Court passes a sentence, it must also order that the relevant "Victim Surcharge" be paid by Defendants. Revenue raised from the Victim Surcharge is used by Central Government to fund victim of crime

The current mandatory Victim Surcharge Rates imposed on those convicted Defendants aged 18 and over as at date of offence, for offences committed after 16th June 2022, are as follows per each type of sentence imposed:

Sentence Imposed	Amount of Victim Surcharge to be Paid
Fine	40% of total fine imposed (rounded up or down to the nearest pound)
Conditional Discharge	£26
Community Sentence	£114

Suspended or Immediate Prison Sentence	£154
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Parenting Order

77 In addition to any other Sentence imposed, the Court has the ancillary power* to impose a "Parenting Order", for a period of not more than 12 months, where the Court is satisfied such order would be desirable in the interests of preventing the commission of any further offence under s. 444 Education Act 1996. Such order will require the parent/carer to comply with specified requirements in the order and to attend a mandatory parent/carer counselling or guidance programme, of not more than 3 months, as may be specified in directions given by the responsible officer of the Local Authority.

78. Failing to comply, without reasonable excuse, with the requirements of a "Parenting Order", or with a direction of the nominated responsible officer in respect of it, is an offence, with fine upon conviction not exceeding £1,000.00.

**Crime and Disorder Act 1998, s8 (As amended by Anti-Social Behaviour Act 2003, s 18)
The Magistrates' Courts (Parenting Orders) Rules 2004, as amended, Rule 7 + Sentencing Act 2020, Chapter 4, s. 365 - 375*

Education Supervision order

79. Before instituting proceedings for an offence under section 444, the Local Authority must consider whether it would be appropriate (instead of or as well as instituting prosecution proceedings) to apply for an Education Supervision Order in the family Court with respect to the child*.

**s.447 Education Act 1996*

80. The Court on convicting for an offence contrary to s. 444 Education Act 1996 may also direct* the Local Authority to apply for such an order to safeguard the child, where the Court considers it appropriate. Where imposed, a supervising officer is appointed to advise, support, and give directions to the supervised child and their parent(s)/carer(s) to help get the child into regular attendance. Such order will usually last for up to twelve months unless the Court determines to extend it. Persistently failing, without reasonable excuse, to comply with the terms and requirements of an Education Supervision Order is a criminal offence with fine upon conviction not exceeding £1,000.00.

**Sch 3, Part III para.18(1) Children Act 1989*

General Principles to Decision to Prosecute:

- Prosecution is to be a proportionate action and a means of last resort.
- Prosecution is both a punishment and a deterrent to demonstrate the seriousness and consequence of a parent/carer having failed to ensure a pupil's regular school attendance at school and to seek to ensure that the pupil's future levels of attainment, social skills and career path options are maximised through regular school attendance, including by means of any requirements that the Court may impose on parents/carers either as part Sentence or ancillary Court Order upon conviction.

- Each case is unique and must be considered on its own merits.
- Consideration will first be given to whether any other legal interventions are appropriate or have been tried but have not worked
- Consideration will be given to whether statutory social care intervention would be more appropriate, especially where absence is severe or where there is evidence of neglect (including referral to a Child in Need or Child Protection Plan).
- The right person is to be prosecuted for the right offence which underlines the importance of having up to date information on school records of all those with parental responsibility as well as day-to-day care and supervision. It is essential that schools regularly up-date their parent/carer contact details.
- The level of engagement from the parent/carer will be considered including response to any issued notice to improve and/or warnings or other legal enforcement/intervention methods used, as well as consideration of any representations made during any interview under caution or made subsequently, including following referral for prosecution.
- The evidential test and public interest test as per the Code for Crown Prosecutors must be met and continue to be met to justify commencing or continuing with a prosecution.
- There must be sufficient evidence to provide a realistic prospect of conviction and consideration must be given to what the defence case may be and how that is likely to affect the prosecution case.
- Is the evidence reliable? It is, therefore, essential that schools ensure that they are satisfied with the accuracy of the register and registration codes used.
- Where the evidential test is met of there being sufficient evidence to provide a realistic prospect of conviction consideration must also be given to whether it is also in the public interest to commence or to continue with a prosecution. Such considerations as to public interest will include but are not limited to.
- Over what length of time has the offence been committed?
- Is there a history of previous convictions, especially for similar like offences, or a history of out of court interventions/sanctions/penalty notices that haven't resulted in the pupil's regular attendance and/or evidence of likely repetition?
- What is the level of culpability of the suspect?
- Has there been an escalation of offending behaviour and is the s.444(1A) offence, with higher sentencing range, more appropriate/justified.
- What is the likely if any, impact on pupil?
- Is prosecution a proportionate response?
- What is known, if anything, of the suspect's personal / family / employment circumstances / means?
- A suspect being in receipt of Welfare Benefits is, by itself, unlikely to be sole reason not to prosecute as Courts can agree payment plans on conviction and can order deduction of any imposed fines/costs/victim surcharge from on-going benefits and will take Welfare Benefits / means / ability to pay in to account when imposing Sentence.
- Is the suspect known to be suffering from mental or physical ill-health, literacy, learning or language difficulties, or have any protected characteristic under the Equality Act 2010 and would prosecution likely have a detrimental and

disproportionate effect on that, and have any reasonable adjustments been considered and made?

- The above principles should also be considered at the point of considering issuing a penalty notice. However, should these issues only come to the notice of the school or LA once the penalty notice has been issued, or once a case has been referred for prosecution or once a prosecution has commenced, a withdrawal will be considered in discussion with the school's Attendance Lead.
- When a penalty notice is withdrawn, no proceedings under Section 444 of the Education Act 1996 shall be instituted against the recipient in respect of the period covered by the original penalty notice.

Records

81. The Local Education Authority will keep pertinent records for all Fixed Penalty Notices requested and/or issued and of cases prosecuted. Records are archived once a pupil reaches the end of their compulsory education. These records will then be destroyed in line with the local retention policy.

Reporting & Review

82. The Education Welfare Service Team Manager will report at regular intervals on the use and outcomes of Penalty Notices. Information will be shared with Senior Managers within the Children, Young People & Learning Department and with schools via the termly Attendance Network Meetings. The Department for Education (DfE) annual census return (PRMA) will be completed by the Team Manager EWS in respect of the issuing of warnings and Penalty Notice.

Officer Code of Conduct

83. The public is entitled to expect the highest standards of conduct from all employees who work for Bracknell Forest Council. Bracknell Forest Council officers will serve only the public interest and will never improperly confer an advantage or disadvantage on any person. They will make decisions on merit and shall be accountable to the public for their actions and the way they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office. Bracknell Forest Council officers will promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They will uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.