



**Code of Conduct Education Fixed Penalty Notices
Irregular Attendance**

This document replaces any previous code of conduct prior to: -

19 August 2024

1. Legal Framework

- 1.1 The law empowers designated Bolton Council Officers, head teachers - including their nominated deputies and the Police to issue Fixed Penalty Notices to the parents of children who have irregular attendance due to unauthorised absence from school.
- 1.2 The rules governing the implementation of these powers and the factors that should be considered when issuing a Fixed Penalty Notice are outlined in:
 - The Education Act 1996;
 - The Education and Inspections Act 2006;
 - The Education (Penalty Notices) (England) Regulations 2007 (as amended); and Guidance published by the Department for Education, in particular the “Guidance on Education–Related Parenting Contracts, Parenting Orders and Penalty Notices 2007, and Ensuring Children’s Rights to Education”
 - Anti-Social Behaviour Act 2003
 - National Framework for Penalty Notices for School Absence.
- 1.3 In addition, the issuing of Fixed Penalty Notices must comply with other legislation, such as the Human Rights Act and all relevant Equalities legislation, in order to ensure that they are used in a fair and consistent manner.
- 1.4 To that end, Bolton Council is responsible for and has developed this protocol with which all the partners named in the legislation will work.

2. Rationale

- 2.1 Section 7 of the Education Act 1996 states that: “The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable ... to his age, ability and aptitude, and ... to any special educational needs he may have, either by regular attendance at school or otherwise.”
 - 2.1.a Section 8 of the Education Act 1996 states that:

In England and Wales:

 - A child begins to be of compulsory school age on the start date of the term following his fifth birthday, or that day if his fifth birthday falls on the day term starts.
 - A child ceases to be of compulsory school age on the last Friday in June in the academic year in which he reaches the age of 16 or if he reaches 16 after the last Friday in June but before the start of the new school year.
- 2.2 Therefore, regular, and punctual attendance at school or alternative provision is a legal requirement, as well as being essential to enable children to maximise their educational attainments and opportunities. It is well established that missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in both primary and secondary school.

2.3 Once a child is registered at a school, the parent is responsible for ensuring that the child attends regularly and punctually. If a parent fails to ensure the child attends school regularly and the absence is not approved by the Headteacher, they may be guilty of an offence under section 444 of the Education Act 1996.

Section 444 has two separate but linked offences.

- **Section 444 (1) where a parent fails to secure the child's regular attendance:** A person found guilty of such an offence is liable on summary conviction to a fine of up to £1000.
- **Section 444 (1A) where a parent knows that the child is failing to attend regularly at the school and fails without reasonable justification to cause them to do so.** A person found guilty of such an offence is liable on summary conviction to a fine of up to £2,500 and / or up to three months imprisonment.

2.4 Fixed Penalty Notices (FPNs) are an alternative to prosecution and allow parents an opportunity to discharge potential liability for conviction of the offence.

2.5 The definition of "parent"¹ includes all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

2.6 FPNs are one of the sanctions available for this offence and offer a means of swift intervention, which can be used to combat truancy problems before they become entrenched.

2.7 Parents and children will be supported by their school/alternative provision, the Early Intervention Service (EIS) and as appropriate, other Partner Agencies, to overcome barriers to regular attendance, through a range of intervention strategies. Professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance.

2.8 Therefore, FPNs and other sanctions will only be used where parental co-operation with this process is either absent or deemed to be insufficient to resolve the problem. They will be used to ensure parents' focus is to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

3. Circumstances where a Fixed Penalty Notice may be issued

3.1 An FPN can only be issued in cases of unauthorised absence² due to irregular attendance for pupils of compulsory school age.

¹ s.576 Education Act 1996

² This includes late arrivals after the register has closed.

- 3.2 In accordance with the National Framework; after the 19 August 2024 the threshold for issuing a FPN is 10 sessions of unauthorised absence. This can be made up of a combination of any type of unauthorised absence, such as 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes, all taken within any 10-school week period. The unauthorised absence sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6 sessions of unauthorised absence in 1 week and 1 per week for the next 4 weeks).
- 3.3 The 10-school week³ period 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).
- 3.4 When a member of school staff becomes aware that the threshold has been met, they must consider whether it is appropriate to issue a FPN in relation to any or all of those unauthorised absences and, if so, whether to request the local authority to issue a FPN or not. For each case, they should ask:
- a) Is support appropriate for this particular cause (or causes) of absence?
 - i. If yes, staff should weigh up the specific circumstances of the case and decide which available tool is most likely to change behaviour and improve attendance. Either: continue or provide support without a FPN or Notice to Improve (e.g. where a parent is engaging well in the support, or other supportive routes could be tried); issue a Notice to Improve and continue to provide support (e.g. where a parent is not engaging well in support); issue a FPN (e.g. where a parent has already had a Notice to Improve and not engaged in support), subject to the further considerations given in b) below.
 - ii. If no, a FPN should be issued (e.g. a holiday in term-time) subject to the further considerations given in (b) below.
 - b) In all cases, before a FPN is issued, the following questions should also be considered:
 - i. Is a FPN the best available improvement tool that is most likely to change behaviour and improve attendance for this family, or would further support or one of the other legal tools be more appropriate? If legal action is most appropriate, is a FPN the most appropriate legal intervention for this individual case?
 - ii. Is issuing a FPN appropriate in this case after considering any obligations under the Equality Act 2010, such as where a pupil has a disability?
 - iii. The Local Authority must also consider whether it is in the public interest to issue a FPN⁴

If the answer is yes to i-iii) above, a FPN should be issued. If not, another tool should be used to improve attendance.

³ A school week is any week in which a school meets at least once.

⁴ [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk) sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

4. Considerations and Assessment as to whether a Fixed Penalty Notice should be Issued

- 4.1 The Early Intervention Service will consider the following when determining whether a FPN should be issued:
- Level of absence
 - Disability under the Equality Act 2010
 - Any statement of Special Educational Needs
 - History of the attendance issues and action taken
 - Defences which may be available
 - Government Guidance
 - Likely effectiveness of a FPN as a tool for improving attendance
 - Level of parent engagement/cooperation
- 4.2 In cases where the national threshold is met and support is appropriate, that support should be continued or provided straightaway. In most cases this support is provided at school level and should start early when absence issues are first detected.
- 4.3 In deciding whether support is appropriate or not, the school and local authority (and police, if involved) should consider whether the cause of the absence is something for which support could be provided. If support could be provided, the school and the local authority should then consider what suitable forms of support are currently available in school and where necessary by other services and agencies in the local area. They should then decide whether any or all of those things are appropriate in the individual case and for those that are appropriate, whether they have been provided previously or could be provided or continued now instead of taking legal action.
- 4.4 Support can be any activity intended to improve the child's attendance not including issuing a FPN or prosecution. Examples of support include action taken in school such as written communications to parents and meetings with parents and pupils to understand barriers and plan targeted support together. The form of support will be specific to the pupil and family and could include a range of actions including additional learning and or pastoral support, some support may involve the local authority or other community services such as an early help assessment and support, or an attendance contract.
- 4.5 An example of where support would not be appropriate is in cases where the absence is clearly condoned by the parent with no mitigating factors, such as a holiday taken in term time.
- 4.6 If the threshold is met and offers of support have not been engaged with by the parent(s) or have not worked, then a Notice to Improve should usually be sent. This is to make clear that without improvement or engagement in support, legal action is likely to be taken. The Notice to Improve should be sent by the school.

- 4.7 A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support. A Notice to Improve does not need to be issued in cases where support is not appropriate and an authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a Notice to Improve would have any behavioural impact (e.g. because the parent has already received one for a similar offence).
- 4.8 The Notice to Improve should include:
- a. The pupil's attendance record and details of the offence(s)
 - b. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
 - c. Support/opportunities for support provided so far
 - d. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate.
 - e. Warning that a FPN may be issued, or prosecution considered if improvement is not secured within the improvement period
 - f. A clear timeframe for the improvement period of between 3 and 6 weeks
 - g. Details of what sufficient improvement within that timeframe will look like in the case (e.g. no further offences within a certain timeframe or attendance improved within a certain timeframe)
 - h. The grounds on which a FPN may be issued before the end of the improvement period
- 4.9 The length of the Notice to improve should be up to 3 weeks and it is good practice to monitor improvement throughout this period and adapt the approach where necessary.
- 4.10 'Sufficient improvement' will be decided on a case-by-case basis. For some families, no further unauthorised absence will be tolerated, and in other cases some will be tolerated if the family is showing engagement and progress. This will be made clear to the parent in the Notice to Improve letter.
- 4.11 Where it is clear that improvement is not being made, a FPN maybe issued before the improvement period has ended (e.g. if the Notice to Improve stated that there should be no further unauthorised absences in a 3-week period but the pupil is absent for an unauthorised absence in the first week there is no need to wait the full 3 weeks before issuing). The Notice to Improve will make clear on what grounds it will be considered to proceed to a penalty notice before the end of the improvement period.
- 4.12 A Notice to Improve should only be used in cases where support is appropriate. They will not be issued in most cases of term time holiday.

5. Escalation Procedure in cases of repeat offences.

- 5.1 Whatever action is taken after the threshold has been met, schools, and Bolton Council will continue to monitor the impact of the action, and if it does not lead to improvement in attendance, the decision will be reviewed, and alternative action taken as appropriate.
- 5.2 A FPN may not be issued in respect of children in our care with whom other interventions will be used.
- 5.3 A FPN can be issued to each parent liable for the attendance offence or offences. They should 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). However, where parents are estranged and one of the parents has taken the child out of school without approved leave of absence, then the local authority in most cases will issue the FPN to the parent who committed the offence.
- 5.4 The decision to issue a FPN is made by the Child Employment and Enforcement Officer in consultation with the school.
- 5.5 If repeated FPNs are being considered for the same parent, a further FPN is unlikely to be the most appropriate tool available. Therefore, from 19 August 2024, no more than 2 FPNs will be issued to the same parent for the same pupil within a 3-year rolling period.
- 5.6 The first FPN 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.
- 5.7 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 with no option to pay at the lower rate.
- 5.8 A third FPN must not be issued within a 3-year period. Therefore, in cases where the threshold is met for a third (or subsequent) time within those 3 years, a FPN 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. In these cases, once 3 years has elapsed since the first penalty notice was issued to the parent a further FPN can be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

- 5.9 For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded, or was found, guilty) but not those which were withdrawn. In summary:

Scenario	Counts towards the 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 guilty.	Yes

- 5.10 The three-year period begins from the date of the first FPN issued on or after 19 August 2024. For example, if the first FPN is issued on 18th September 2024, a second FPN issued to that parent in respect of that child on or before the 17 September 2027 would be charged at £160. A third FPN 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. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions.
- 5.11 All FPNs will be entered onto a database maintained by the Early Intervention Service to assure that no duplicate FPNs are issued.

6. Excluded Pupils

- 6.1 The parent of an excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day that he/she is excluded, up to and including the first five days or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates.

- 6.2 In cases where an excluded pupil is found to be out in a public place during the first five days of an exclusion from school, the Local Authority would issue a warning notice to the pupil's parents/carers. If the pupil was subsequently to be found out in a public place again either during the same period of exclusion or during a further exclusion within the same academic year, then a penalty notice may be issued.
- 6.3 If the excluded pupil is present in a public place at any time during school hours on a school day specified above the parent commits an offence under section 103 of the Education and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level three on the standard scale.

7. Payment of Fixed Penalty Notices

- 7.1 Arrangements for payment will be detailed on the FPN.
- 7.2 Payment of a FPN discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the FPN.
- 7.3 If the first FPN issued to a parent in respect of a particular pupil is paid:
- within 21 days the penalty payable is £80: or
 - within 28 days the penalty payable is £160.
- 7.4 If the second FPN issued to the same parent in respect of the same pupil is paid:
- Within 28 days the penalty payable is a flat rate of £160
- 7.5 FPNs cannot be paid either in part or by instalments.
- 7.6 Payment of the penalty in full enables parents to discharge potential liability for conviction for the period the penalty notice was issued. Prosecution might be considered for further periods of unauthorised absence from school.
- 7.7 Bolton Council will retain any revenue from the FPNs. Monies collected will be used for administration of the FPN system and prosecution. Any surplus left after this will be spent on attendance support.

8. Non-payment of fixed penalty notices

- 8.1 If the penalty remains unpaid by the end of 28 days, the Local Authority will consider the commencement of proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the penalty notice but is for failure to ensure regular attendance at school.

9. Procedure for the Withdrawal of Fixed Penalty Notices

9.1 Once a penalty notice has been issued it may only be withdrawn in the following circumstances:

- If it ought not to have been issued, in other words the absence has been subsequently authorised by the school or
- It ought not to have been issued to the person named as the recipient or
- It contains “material errors” or
- If after the expiry of 28 days the penalty notice remains unpaid, and the local authority decided not to prosecute the parent.

10. Right of appeal

There is no right of appeal by parents against a FPN.

11. Cases where a pupil has moved school or local authority area within the three rolling year period

11.1 In cases where the pupil has moved between local authority areas in the previous 3 years, either because the family has moved house or the pupil has moved school, an additional check will be carried out. Bolton Council will contact the previous local authority area to check whether a FPN has been issued to that parent for that pupil in the previous 3 years.

11.2 In cases where the previous local authority is not known or the information cannot be, or is not, provided by the previous local authority, it will be assumed that the parent has not previously received a FPN, and the escalation process started as per a new case.

12. Policy and Publicity

12.1 All school Attendance Policies should include information on the issuing of FPNs and this will be brought to the attention of parents.

13. Reporting and Review

- 13.1 The Code of conduct will be reviewed as and when necessary, in line with any legislative amendments or updates.
- 13.2 The Local authority will submit the parental responsibility measures for attendance (PRM-A) data to the Department for Education annually.

14. The Human Rights Act 1998 and all Equal Opportunities Legislation

The issuing of FPNs must conform to all requirements of the Human Rights Act 1998 and all Equalities legislation. Bolton Borough Council has the primary responsibility for developing the protocol within which all partners named in the Education Act 1996 must

Appendix 1 – Legislation

Relevant legislation includes:

The Children Act 1989

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

The Education Act 1996

Section 7	Duty of parents to secure education of children of compulsory school age
Section 8	Definition of compulsory school age
Section 444	Offence: Failure to secure regular attendance at school of registered pupil
Section 444A	Penalty notice in respect of failure to secure regular attendance at school of registered pupil
Section 444B	Penalty notices: supplemental
Section 444ZA	Application of section 444 to alternative educational provision
Section 576	Meaning of “parent”

Education and Inspections Act 2006

Section 103	Duty of parent in relation to excluded pupil
Section 104	Notice to parent relating to excluded pupil
Section 105	Penalty notice in respect of presence of excluded pupil in public place
Section 106	Penalty notices: supplemental