

Brighton & Hove City Council Code of Conduct for the issuing of Fixed Penalty Notices

Effective from 19 August 2024

Purpose

This Code of Conduct was drafted in accordance with the Department for Education's new national framework for Fixed Penalty Notices which aims to achieve a more consistent approach across the country. The code describes how Fixed Penalty Notices are issued by Brighton and Hove City Council in line with the current guidance. [Working together to improve school attendance DfE guidance 2024](#). This guidance is statutory and came into effect on 19 August 2024. The changes introduced a national threshold for Fixed Penalty Notices for unauthorised absences and increased the Penalties to be paid. This Code of Conduct reflects those changes and has been drawn up in consultation with headteachers and governing bodies of state-funded schools and the local police force.

What are Fixed Penalty Notices (FPNs)?

Fixed Penalty Notices are fines issued to parents as an alternative to prosecution if a child is of compulsory school age and parents have failed to ensure that their child regularly attends the school where they are registered (or, in certain cases, a place where alternative provision is provided).

What is the legal basis for issuing FPNs?

It is a legal requirement under section 7 of the Education Act 1996 that parents ensure that children of compulsory school age receive full-time education that is suitable to their age, ability, aptitude and any special educational needs. Penalty Notices for unauthorised absence may be issued to a parent as an alternative to prosecution for irregular school attendance under section 444 of the Education Act 1996. They can only be issued in relation to children of compulsory school age.

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how Penalty Notices for school absence must be used. The national framework for such Penalty Notices is contained in the statutory guidance 'Working together to improve school attendance'.

The legislation that relates to Fixed Penalty Notices for child present in a public place during an Exclusion is section 105 of the Education and Inspections Act 2006.

How is the term "parent" defined?

The term "parent" does not have to refer to a biological parent. It includes any person 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(s) as defined above with day-to-day responsibility for the child's attendance (regardless of which parent has applied for a leave of absence).

What types of Fixed Penalty Notices are there?

There are three types of Fixed Penalty Notice:

- 1) “Unauthorised Absence FPNs” – When a child misses 10 or more sessions (5 days) of school for unauthorised absence within a period of 10 school weeks.
- 2) “Exclusion FPNs” – When parents allow their child to be present in a public place during school hours without reasonable justification during the first 5 days of a Permanent Exclusion or a Fixed Term Exclusion (also known as a Suspension).
- 3) “Truancy Sweep FPNs” - When a Truancy Sweep is conducted, and a child is found to be absent from school.

What is the national threshold for triggering an Unauthorised Absence FPN?

The national threshold has been met when a child has been recorded as having had unauthorised absence for 10 or more sessions (5 or more school days) in a period of 10 school weeks. One or a combination of the following codes count as unauthorised absence:

- G-codes (unauthorised term-time holiday)
- N-codes (no reason yet provided for absence)
- O-codes (unauthorised poor attendance)
- U-codes (unauthorised lateness after the close of registration)

What is meant by a “school week?”

A school week means any period of seven days, beginning with a Monday, in which the school meets for at least one session. The threshold can be met with any combination of unauthorised absence (e.g. 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes, all within 10 school weeks). These sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not. The period of 10 school weeks can also 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).

How much is a Fixed Penalty Notice?

For absences occurring in or after the Autumn Term 2024:

- a) The first Penalty Notice issued to a parent in respect of a particular child is £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
- b) If a second Penalty Notice is issued to the same parent in respect of the same child within a rolling period of 3 years, the second Penalty Notice is charged at a flat rate of £160 if paid within 28 days, *with no reduction for payment within 21 days*.
- c) A third Penalty Notice cannot be issued to the same parent in respect of the same child within 3 years of the first fine being issued. Alternative action should be taken, such as prosecution.

The escalation process mentioned in (b) and (c) above applies only to Unauthorised Absence FPNs. Exclusion and Truancy FPNs don't count towards the limit as part of the escalation process.

Can an Unauthorised Absence FPN be issued even if the 10-session threshold has not been met?

Yes. Although the threshold for an Unauthorised FPN absence is usually 10 sessions in a rolling period of 10 school weeks, statutory guidance and this Code of Conduct allow an FPN to be issued before this threshold is met. This might apply, for instance, where parents are avoiding the national threshold by taking several term time holidays that are each just below threshold, or for repeated absence for birthdays or other family events.

Must the school have warned of the risk of an FPN before issuing one?

In the case of an Unauthorised Absence FPN:

- a) If half or more of the 10 absent sessions (2.5 days or more) were G-coded (classified as an unauthorised holiday), no warning is required. Parents must secure the school's written permission before any absence. National legislation requires that parents request permission for the holiday before any absence begins.
- b) If less than half of the 10 absent sessions (less than 2.5 days) were G-coded, the school would usually be expected to have given written warning of the risk of an FPN.

In the case of an Exclusion FPN, the school must have warned parents of the days the child must not be present in a public place.

In the case of a Truancy Sweep FPN, no warning is needed.

What is a Notice to Improve?

A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a Penalty Notice is issued. If the 10-session threshold for issuing a Fixed Penalty Notice has been met and support is appropriate, but not engaged with by the parent or has 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 (for example a term-time holiday). The Notice to Improve should include an improvement period of between 3 and 6 weeks and contain a clear warning that any unauthorised absence in that period can trigger an FPN or prosecution without further warning (if attendance improvement is not secured within the improvement period). A Notice to Improve is issued by the school. Schools can choose not to use a Notice to Improve, for example where support would be appropriate but a Notice to Improve is not expected to have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

Who issues Fixed Penalty Notices?

For all children attending schools in the Brighton and Hove area, Fixed Penalty Notices are issued by Brighton and Hove City Council upon receipt of a referral from the school.

Does a parent have any right of appeal against an FPN?

No. Section 199 of the Department for Education's "Working together to improve school attendance" guidance states that "There is no right of appeal by parents against a Penalty Notice".

Any disputes over how a child's absence is recorded ought to have been resolved before an FPN is issued and should be taken up with the school, as the Local Authority is unable to change a school's classification. Parents should respect a school's classification, challenging it only if evidence that could not have been presented before the FPN was issued becomes available. When an FPN remains unpaid, the Local Authority will decide whether to consider prosecution after the 28-day deadline, so it is important that disputes be resolved by that time.

Are parents entitled to pay FPNs gradually?

No. Fines are intended as an alternative to prosecution, but legally only serve this function if they are fully paid within 28 days. Parents can therefore be prosecuted if fines are not paid in full by the 28-day deadline.

If a parent doesn't pay the fine, what happens?

If the fine is not paid in full within 28 days, the Local Authority will consider whether to prosecute. Prosecutions are brought in connection with the alleged offence that triggered the fine. The Local Authority has the power to prosecute parents who fail to secure their child's regular attendance at a school, for which there are two separate offences: section 444(1) where a parent fails to secure the child's regular attendance; and section 444(1A) where a parent knows that the child is failing to attend school regularly and fails to ensure the child does so. The section 444(1) offence may result in a fine of up to £1,000 and the section 444(1A) offence may result in a fine of up to £2,500, and/or a community order or imprisonment of up to 3 months.

Could FPNs issued in connection with absences before the August 2024 legislation came into force cause a parent to be fined at a higher rate?

No. Only fines issued in relation to absences that occurred after August 2024 are counted.

How will Fixed Penalty Notice outcomes will be communicated to the school?

Schools can request updates in relation to specific cases. This may be when relevant information comes to light in relation to an FPN, for example a parent provides evidence not previously seen by the school or an address provided by the school is found by the Local Authority to be out-of-date.

When a child has moved from Brighton and Hove to another Local Authority, how can that other Authority determine the number of FPNs issued to that parent for that child in the previous 3 years?

Enquires should be sent to crossborder.penaltynotice@brighton-hove.gov.uk
This email address is for the use of **Local Authority Officers only**.

Legislation and Guidance

Working together to improve school attendance - Statutory guidance for maintained schools, academies, independent schools and local authorities

https://assets.publishing.service.gov.uk/media/65f1b048133c22b8eecd38f7/Working_together_to_improve_school_attendance_applies_from_19_August_2024_.pdf

Education and Inspections Act 2006

<https://www.legislation.gov.uk/ukpga/2006/40/section/105>

The Education (Penalty Notices) (England) Regulations 2007

<https://www.legislation.gov.uk/uksi/2007/1867/contents/made>

The Education (Penalty Notices) (England) (Amendment) Regulations 2012

<https://www.legislation.gov.uk/uksi/2012/1046/contents/made>

The Education (Penalty Notices) (England) (Amendment) Regulations 2013

<https://www.legislation.gov.uk/uksi/2013/757/contents/made>

The Education (Penalty Notices) (England) (Amendment) Regulations 2024

<https://www.legislation.gov.uk/uksi/2024/210/made>