



# **Cheshire East Council Code of Conduct on Penalty Notices**

August 2018

**Cheshire East Council**

# 1. Legal Framework

- 1.1 The law empowers designated Cheshire East Council officers, Headteachers, including their nominated deputies, and the police to issue Penalty Notices to the parents of children who have unauthorised absence from school.<sup>1</sup>
- 1.2 The Local Authority, in its absolute discretion, may decide in any case that it is appropriate to issue proceedings under Section 444(1) or (1a) of the Education Act 1996 without first issuing a penalty notice where one child is failing to attend regularly at the school where he or she is a registered pupil.
- 1.3 The rules governing the implementation of these powers and the factors that should be taken into account when issuing a Penalty Notice are set out in:
  - The Education Act 1996
  - The Education & Inspections Act 2006
  - The Education (Penalty Notices) (England) Regulations 2007
  - The Education (Penalty Notices) (England) (Amendment) Regulations 2013
  - School attendance parental responsibility measures. Statutory guidance for LAs, school leaders, school staff, governing bodies and the police. January 2015
- 1.4 In addition, the issuing of Penalty Notices must comply with other legislation, such as the Human Rights Act and all relevant Equal Opportunities legislation, in order to ensure that they are used in a fair and consistent manner.
- 1.5 To that end, Cheshire East Council is responsible for developing a 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<sup>2</sup> 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.”*
- 2.2 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.
- 2.3 Section 444 of the Education Act 1996, makes it a criminal offence for a parent to fail to secure their child’s regular attendance at the school at which they are registered, where that absence is not authorised by the school. This could include: a number of unauthorised absences, perhaps within a rolling academic year; one off instances of irregular attendance such as holidays taken during term time without the school’s permission.
- 2.4 Penalty Notices are one of the sanctions available for this offence and offer a means of swift intervention, which can be used to combat non-attendance issues before they become entrenched.

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<sup>1</sup> Cheshire East has delegated this power to the Education Welfare Service and the Police.

<sup>2</sup> 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.

- 2.5 Parents and children will be supported by their school/alternative provision, the Education Welfare Service and, as appropriate, other partner agencies, to overcome barriers to regular attendance, through a range of intervention strategies.
- 2.6 Irregular Attendance Penalty Notices 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 as a means to support parents to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

### **3. Circumstances where a Penalty Notice may be issued for Irregular Attendance**

- 3.1 A Penalty Notice can only be issued in cases of unauthorised absence.
- 3.2 Use of Penalty Notices will be restricted to two notices per parent of a pupil per academic year.
- 3.3 In cases where there is more than one poorly-attending pupil in a family, notices may be issued for more than one child.
- 3.4 There will be no restriction on the number of times a parent may receive a formal warning of a possible Penalty Notice.
- 3.5 Penalty Notices may be considered appropriate in the following circumstances:
- At least ten sessions (five school days) lost due to unauthorised absence (O code) in any two consecutive half terms
  - Persistent<sup>3</sup> late arrival at school, for example after the register has closed, in any two consecutive half terms
- 3.6 Penalty Notices will not be issued in respect of Children in our Care, for whom other interventions will be used.

### **4. Circumstances where a Penalty Notice may be issued for Leave of Absence.**

- 4.1 A Penalty Notice can only be issued in cases of unauthorised absence.
- 4.2 Use of Penalty Notices will be restricted to two notices per parent of a pupil per academic year.
- 4.3 In cases where there is more than one poorly-attending pupil in a family, notices may be issued for more than one child.
- 4.4 Penalty Notices may be considered appropriate when there has been an unauthorised leave of absence (G code) of at least ten sessions (five school days) due to holidays in term time.
- 4.5 This paperwork should comprise:
- A Penalty Notice Request Form
  - A declaration form signed by the head teacher
  - A copy of a communication, posted on website or a letter/newsletter, sent to all parents during the academic year, clearly explaining the procedure

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<sup>3</sup> Persistent means at least 10 instances of late arrival

regarding requests for leave of absence which states that may receive a Penalty Notice and receive a summons if unpaid within the time frame

- A copy/record of leave absence request from the parent, including a copy of the response informing the parent that the leave of absence has not been authorised. This should also inform the parent that they may receive a Penalty Notice and receive a summons if unpaid within the timeframe
- A copy of the letter sent by the school to the parent advising that the absence has been unauthorised and that the school has referred the matter to the Local Authority and that a Penalty notice may be issued and receive a summons if unpaid within the timeframe
- Relevant pupil attendance registration certificate

4.6 Penalty Notices will not be issued in respect of Children in our care, for whom other interventions will be used.

## 5. Procedure for Issuing Penalty Notices

5.1 Although the legislation permits head teachers and the police to issue penalty Notices the authorised officers within Cheshire East Council's Education Welfare Service will be the only individuals permitted to issue Penalty Notices in the Cheshire East area. This will ensure consistent and equitable delivery, to allow schools to maintain good relationships with parents and ensure that they reinforce other enforcement sanctions.

5.2 Penalty Notices will only be issued by post and never as an 'on the spot' action, for example during a Truancy Sweep. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks associated with delivering such notices by hand.

5.3 Where schools, police or neighbouring local authorities ask Cheshire East Council to issue a Penalty Notice, in the case of an irregular attendance the request for the notice will be investigated and actioned by the Education Welfare Service provided that:

- The circumstances of the case meet the criteria specified in this Code of Conduct
- The pupil is registered at a Cheshire East school
- All necessary evidence is provided to the Education Welfare Service to establish that an offence under Section 444(1) or 444(1A) of the Education Act 1996 has been committed
- Issuing a Penalty Notice would not conflict with another intervention strategy already in place or another enforcement sanction already being processed
- There is a reasonable expectation that the use of a Penalty Notice would improve the child's school attendance or deter future unauthorised leave of absences.

5.4 In the case of **Irregular Attendance** the Education Welfare Service when satisfied that all of the relevant criteria are met will

- Issue a formal written warning to the parent of the possibility of a Penalty Notice being issued
- Set a period of fifteen school days within which the pupil must have no unauthorised absence, and give the parent an opportunity to respond; this information can be included in the formal written warning letter, where one has been issued
- After due consideration of the facts of the case, only issue a Penalty Notice through the post at the end of the fifteen day period, if there has been no

improvement in attendance or the improvement has not been sustained for a minimum of three weeks

- 5.5 Where the Penalty Notice is requested from a school in response to an **unauthorised leave of absence**, the **Education Welfare Service will not carry out an investigation** and the formal warning letter and fifteen day improvement period will not apply.

## **6. Excluded Pupils**

- 6.1 The parent of the 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.
- 6.2 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 & Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

## **7. Procedure for the Withdrawal of Penalty Notices**

- 7.1 Once issued, a Penalty Notice can only be withdrawn if the Education Welfare Service is satisfied that:
- the Penalty Notice was issued to the wrong person
  - the use of the Penalty Notice did not conform to this Code of Conduct
  - the Penalty Notice was delivered to the wrong address
  - the evidence demonstrates that the Penalty Notice should not have been issued, for example medical evidence
  - The circumstances of the case warrant its withdrawal

## **8. Payment of Penalty Notices**

8.1 Arrangements for payment will be detailed on the Penalty Notice.

8.2 Payment of a Penalty Notice 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 Penalty Notice.

8.3 In accordance with The Education (Penalty Notices) (England) (Amendment) Regulations 2013. If the Penalty Notice is paid:

- within 21 days the penalty payable is £60 or
- within 28 days the penalty payable is £120.

8.4 Payments will not be accepted from parents after the 28 days.

8.5 Penalty Notices cannot be paid either in part or by instalments. Late payments will not be accepted.

8.6 Cheshire East Council will retain any revenue from the Penalty Notices, hold it separately and use it to cover enforcement costs, for example costs associated with the issue, collection or prosecution, in the event of non-payment, of Penalty Notices and to improve outcomes for children

## **9. Non-Payment of Penalty Notices**

9.1 Non-payment of a Penalty Notice may result in prosecution for the period covered by the Penalty Notice under Section 444 of the Education Act 1996.

## **10. Policy and Publicity**

10.1 The issuing of Penalty Notices as a sanction is included in the Best Practice Guide available on the Cheshire East Council web site.

10.2 All school Attendance Policies will include information on the issuing of Penalty Notices and this will be brought to the attention of parents.

10.3 Cheshire East Council will include information about the use of Penalty Notices and other enforcement sanctions in promotional/public information material.

## **11. Reporting and Review**

11.1 Cheshire East Council compile regular reports on the number of Penalty Notice issued.

11.2 The Education Welfare Service will review Penalty Notice use at least every other year and will amend its general enforcement strategy as appropriate. The next review date will be April 2016.

## **12. Right of appeal**

There is no right of appeal, but where a parent contests the issuing of a Penalty Notice they can submit any complaints in writing to the Education Welfare Service and/or opt to face proceedings in the Magistrates' Court under Section 444, where all of the issues relating to their Penalty Notice can be fully argued.

## **13. The Human Rights Act 1998 and the Equality Act 2010**

The issuing of Penalty Notices must conform with all requirements of the Human Rights Act 1998 and the Equality Act 2010.

One Minute Guide – 'Taking children on holiday during term time'

One Minute Guide – 'Taking action to improve attendance'

One Minute guide – 'Helping your child to attend school'

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