

Cheshire West and Chester Council Code of Conduct for issuing Penalty Notices for School Absence 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 Cheshire West and Chester. The code sets out the arrangements for administering penalty notices in Cheshire West and Chester Council 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.

[Working together to improve school attendance \(applies from 19 August 2024\) \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/128422/working-together-to-improve-school-attendance-guidance.pdf)

2. Consultation

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

3. Legal basis

3.1 Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under **s444 of the Education Act 1996**.

They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, AP academies, and certain off-site places as set out in **section 444A(1)(b)**.

3.2 The **Anti-social Behaviour Act 2003** contains provision for the issue of Penalty Notices for cases of unauthorised absence from school. Section 23 of that Act empowers designated Local Authority officers, Head Teachers (including Deputy and Assistant Head Teachers nominated by them) and the Police to issue Penalty Notices

3.3 The **Education (Penalty Notices) (England) Regulations 2007** (and subsequent amendments) set out how penalty notices for school absence must be used.

3.4 The **National Framework for Penalty Notices** is published in statutory guidance '**Working together to improve school attendance**'. It provides further national guidance on the operation of penalty notice schemes for school absence in England.

3.5 A penalty notice can only be issued by an authorised officer: that is, a Head Teacher or a deputy or assistant head authorised by them, an authorised Local Authority officer or a police constable.

3.6 The Local Authority, Cheshire West and Chester Council has primary responsibility for producing and overseeing the Penalty Notice Code of Conduct (“the Code of Conduct”) and ensuring consultation takes place with governing bodies, head teachers and the chief officer of police for the area in adopting the code.

3.7 A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. This defines a ‘parent’ as:

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is a parent in education law

Penalty notices will usually be issued to the parent or parents with day to day responsibility for the pupil’s attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

3.8 A child must be of compulsory school age as set out Section 8 of the Education Act 1996 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.

3.9 In the Supreme Court case of *Isle of Wight Council (Appellant) v Platt (Respondent)* ([2017] WLR(D) 269, [2017] 2 Cr App R 13, [2017] ELR 413, [2017] 1 WLR 1441, [2017] 3 All ER 623, 181 JP 237, [2017] UKSC 28, (2017) 181 JP 237), the court defined “regular attendance” as “in accordance with the rules prescribed by the school”, i.e. the law requires that parents must ensure that their children attend school on every day that the school requires in accordance with its published rules. Cheshire West and Chester Council also recognises and shares the Supreme Court’s view that a sensible approach must be taken that doesn’t result in prosecution for “a very minor or trivial breach of the law”. This code of conduct therefore aims to ensure that penalty notices are issued appropriately to address minor to medium breaches of the law.

4. Rationale

4.1 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.

- 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.
- 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.

4.2 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.

4.3 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.

4.4 The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:

- support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
- they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

4.5 In the small minority of cases where parents are unwilling to ensure their children's regular attendance at school and to engage with support networks, sanctions are necessary. Such sanctions are not intended as punishment but rather as a means of persuading the parents to recognise their responsibilities, comply with the law and ensure their children's access to education.

4.6 Regular attendance at school is a legal requirement and Section 444 (1) and 444 (1A) of the Education Act 1996 and Section 36 of the Children Act 1989 already exist to enforce attendance through the Courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents and courts have the powers to fine, imprison or impose various orders.

5. When may a penalty notice for absence be appropriate?

5.1 Penalty Notices will only be issued for cases of unauthorised absence or in the case of pupils been excluded from school and are found in a public place without good reason or when the national threshold has been met.

5.2 When a Penalty Notice is issued for cases of unauthorised absence, the defences in law against the offence remain the same as for the substantive offence under Section 444 (1) and 444 (1A) of the Education Act 1996. Any defence against conviction on this charge is very limited and the matter is dealt with in a Magistrates' Court.

5.3 The Education (Penalty Notices) (England) (Amendment) Regulations 2024 sets out the national threshold for the issuing of penalty notices and the maximum number of penalty notices which may be issued by a Local Authority to each parent in any 36-month (3 Year) period.

5.4 **National Framework** includes:

- A single consistent national threshold for when a penalty notice **must** be considered of 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period.
- A requirement that when the national threshold is met, schools make an assessment on a case-by-case basis whether a penalty notice can and should be issued.
- The option of using a Notice to Improve where support is appropriate but not working or being engaged with, to give a parent a final opportunity to engage in support before they are issued with a penalty notice if it is appropriate.

5.5 The national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks with one of, or a combination of the following codes:

- code **G** (the pupil is absent without leave for the purpose of a holiday)
- code **N** (the circumstances of the pupil's absence have not yet been established)
- code **O** (no other code in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies)
- code **U** (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

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)

5.6 When a school becomes aware that the national threshold has been met, they must consider whether a penalty notice can and should be issued or not.

5.7 If in an individual case the Local Authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.

5.8 The national framework for penalty notices sets out:

- A maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period.
- Current penalties payable by parents are £160 if paid within 28 days discounted to £80 if paid within 21 days per parent/carer per child.
- If a second Fixed Penalty Notice is issued to the same parent for the same child, within three years of a first Fixed Penalty Notice, the second Fixed Penalty Notice is charged at a flat rate of £160 if paid within 28 days.

5.9 If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool will need to be considered such as prosecution or other attendance legal interventions.

5.10 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.

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

6.1 Considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach.

6.2 **Children Looked After**, this code of conduct does not include Children Looked After in the Penalty Notice process. Where there are concerns over attendance with a child in Local Authority care, a review should be held to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

- 6.3 **Children with Special Education Needs and/or Disabilities (SEND)** For children with identified SEND who may or may not be in receipt of an Education Health and Care Plan. Schools should determine that appropriate provision is in place or whether changes need to be made to better engage the young person with their education before considering a Penalty Notice or other legal action.
- 6.4 The Education (Pupil Registration) (Amendment) Regulations 2013 stipulate that Head Teachers may not grant any leave of absence during term time unless there are exceptional circumstances. Head Teachers should determine the number of school days a child can be away from school if the leave is granted. It is for Head Teachers to determine if the request is Exceptional. Legislation requires that each request is judged on a case-by-case basis.
- 6.5 **The Human Rights Act 1998 and the Equality Act 2010.** The issuing of Fixed Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010. Cheshire West and Chester Borough Council has the primary responsibility for developing the protocol within which all partners named in the Education Act 1996 must operate.
- 6.6 The DfE expects that head teachers will use their discretion sparingly. Head teachers should not fetter their discretion by applying policies (for example, blanket bans) which might suggest that each application has not been considered on its individual merits.
- 6.7 The Local Authority must have regard to a parents' ability to pay any Penalty Notices issued and, in situations where there is more than one non-attending child and/or parent in a family, the impact of multiple notices must receive careful consideration. However, financial circumstances alone will not prevent the issue of a Notice.
- 6.8 The decision to issue a fine to both parents will reflect the considerations set out in section 7 below.
- 6.9 When parents are separated and do not live at the same address, the Local Authority should establish how much involvement each parent has in caring for the child/ren. If one parent has little involvement, consideration should be given as to whether it is in the public or family's interest to issue a fine to both parents.
- 6.10 Before a Penalty Notice is issued it must be evident that the matter is capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent/carer can be prosecuted.
- 7. In cases where support is not appropriate** (for example, for holidays in term-time), 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?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
- Is it in the public interest to issue a penalty notice in this case given the Local Authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?

7.1 Leave of Absence

Consider:

- The family's circumstances and the likely benefits to the child and family, considering social, emotional, and cultural reasons.
- The likely detrimental impact on the child's social, emotional, and intellectual development, attainment level and any SEND.
- Meeting parents to explore exceptional circumstances such as bereavement, funerals abroad, unavoidable cause (illness/flight delays) to determine the reasonableness of delay to return and allow parents the opportunity to provide appropriate evidence. This is to reduce the need for subsequent Local Authority Penalty Notice withdrawals based on retrospective evidence provided during a pre-prosecution investigation.
- 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.
- Consider exceptional circumstances put forward by the parent, explicitly setting out considerations taken by the school in a letter to the parent confirming when requests are unauthorised.

7.2 Penalty Notices can be issued without warning where schools can show that a leave of absence was taken during term time without the consent of the Head Teacher and the parent was made aware in writing of the decision to mark the period of absence as unauthorised, the reasons why (including details of any evidence), and the possible consequences, including the issuing of a fixed penalty notice.

7.3 Penalty Notices can also be issued retrospectively should the school become aware that a child is absent due to an unauthorised leave of absence after the child's first day of absence. In this scenario, the school must notify the parent in writing stating why they believe the child has taken an unauthorised leave of absence, and the possible consequences i.e. penalty notice being issued by the Local Authority.

8. In cases where support is appropriate, consider on a case-by-case basis: Has sufficient support already been provided? Sufficient support will include:

- Following CWAC **Attendance Pathway**.

- Consideration of an **Education Supervision Order** – S.36 Children’s Act 1989.

and should include one or a combination of interventions from below:

- **Attendance Panel** – an informal meeting providing opportunities for discussion of attendance issues between school, parent and if old enough, the child.
- **Team Around the Family (TAF)** – a TAF, is used to get everyone together who is or could be working with your family. With agreement the TAF helps families and schools to work together to identify the needs and strengths of a family. It will be used to find out what works well for the family, any extra support the family may need and the best way to help them.
- **An Individual Healthcare Plan** – this may be appropriate to assist in assessing whether the child requires additional support to help them to attend more regularly, and whether the illness is likely to prevent the child from attending for extended periods.
- **Attendance Contract** – this is a formal written agreement between a parent and the school to address irregular attendance at school or alternative provision. An attendance contract is not legally binding but allows a more formal route to secure engagement with support where a voluntary early help plan has not worked or is not deemed appropriate. An attendance contract is not a punitive tool, it is intended to provide support and offer an alternative to prosecution.

- 8.1 Has the parent been regularly contacted by the school 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?
- 8.2 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?
- 8.3 If unmet needs have been identified, has the use of a Single Assessment or Early Help Assessment and/or a request for support from another service been considered? The CWAC continuum of need can help you consider a list of needs that may be unmet.
- 8.4 When parents are separated and do not live at the same address, establish how much involvement each parent has in caring for the child/ren. If one parent has little involvement, consider whether it is in the public or family’s interest to issue a fine to both parents.

9 Notice to improve

- 9.1 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.

9.2 An authorised officer from the Education Welfare Service 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 impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

9.3 The Education Welfare Service will:

- Issue a Notice to Improve and a formal written warning to the parent of the possibility of a Fixed Penalty Notice being issued.
A copy of the Notice to Improve will be sent to the school at the same time
The Notice to Improve will include:
 - *The pupil's attendance record and details of the offence(s)*
 - *The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996*
 - *Support/opportunities for support provided so far*
 - *Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate*
 - *Risk of a penalty notice being issued, or prosecution considered if improvement is not secured within the improvement period*
 - *A clear timeframe for the improvement period of 4 weeks*
 - *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)*
 - *The grounds on which a penalty notice may be issued before the end of the improvement period*
- Set an Improvement Period of 20 school days within which the pupil must have no unauthorised absence and give the parent an opportunity to respond; this information is included in the formal written warning letter.
- After due consideration of the facts of the case, issue a Fixed Notice through the post at the end of the 20-day period, if the required level of improved school attendance has not been achieved.
- Issue a penalty notice before the end of the Improvement Period, where it is clear that improvement is not being made. The Notice to Improve states that there should be no further unauthorised absences in a 20-day period, but the pupil has unauthorised absences before the end of the 20-day period.

10 Procedure for Issuing Fixed Penalty Notices

10.1 The decision to issue a Fixed Penalty Notice is made by the Education Welfare Officer in consultation with the school.

10.2 Following instruction from the Education Welfare Officer, the designated officers within Cheshire West and Chester Borough Council's Education Welfare Service will be the only individuals permitted to issue Fixed Penalty Notices in the Cheshire West and Chester 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.

10.3 Fixed Penalty Notices will only be issued by post and never as an instant action, e.g. 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.

10.4 Where schools, Police or neighbouring local authorities ask Cheshire West and Chester Borough Council to issue a Fixed Penalty Notice, their request 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 West and Chester 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 or Section 103 of the Education and Inspections Act 2006 has been committed
- Issuing a Fixed Penalty Notice would not conflict with another intervention strategy already in place or another enforcement sanction already being processed; and
- There is a reasonable expectation that the use of a Fixed Penalty Notice would improve the child's school attendance.

10.5 All Fixed Penalty Notices will be entered onto a database maintained by Education Welfare Services to assure that no duplicate Fixed Penalty Notices are issued.

11 Excluded Pupils

11.1 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, 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.

11.2 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 and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level three on the standard scale.

12 Procedure for the Withdrawal of Fixed Penalty Notices

12.1 Once issued, a Fixed Penalty Notice can only be withdrawn if the Education Welfare Service is satisfied that:

- the Fixed Penalty Notice was issued to the wrong person
- the use of the Fixed Penalty Notice did not conform to this Code of Conduct
- the Fixed Penalty Notice was delivered to the wrong address
- the evidence demonstrates that the Fixed Penalty Notice should not have been issued, e.g. medical evidence or the circumstances of the case warrant its withdrawal.

13. Right of appeal

13.1 There is no right of appeal, but where a parent contests the issuing of a Fixed Penalty Notice they can submit any complaints to the Education Welfare Service and/or opt to face proceedings in the Magistrates' Court under Section 444 of the Education Act 1996 in relation to absences or under section 103 of the Education and Inspections Act 2006 in relation to excluded children, where all of the issues relating to their Fixed Penalty Notice can be fully debated.

14. Payment of Fixed Penalty Notices

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

14.2 Payment of a Fixed 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 Fixed Penalty Notice.

14.3 If the first Fixed Penalty Notice is paid:

- within 28 days the penalty payable is £160
- within 21 days reduced penalty payable is £80

If a second Fixed penalty Notice is issued to the same parent for the same child within 3 years of a first Fixed Penalty Notice, the second Fixed Penalty Notice is charged at a flat rate of £160 if paid within 28 days.

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

14.5 Penalty Notices cannot be paid either in part or by instalments.

14.6 Cheshire West and Chester Borough Council will retain any revenue from the Fixed Penalty Notices, hold it separately and usually use it to cover enforcement costs, i.e. costs associated with the issue, collection or prosecution, in the event of non-payment, of Fixed Penalty Notices.

15. Non-Payment of Fixed Penalty Notices

15.1 Non-payment of a Fixed Penalty Notice may result in prosecution for the period covered by the Fixed Penalty Notice and may include any continuing irregular attendance under Section 444 of the Education Act 1996.

16. Policy and Publicity

16.1 All school Attendance Policies and school websites should include information on the issuing of Fixed Penalty Notices, and this will be brought to the attention of parents.

17. Reporting and Review

17.1 Cheshire West and Chester Borough Council will provide a termly report for the Head of Service.

17.2 The Education Welfare Service will review Fixed Penalty Notice use at least every other year and will amend its general enforcement strategy as appropriate.

18. Cross Border Pupils

18.1 Where pupils move between Local Authority areas, Cheshire West and Chester Council can be contacted on crossborder.penaltynotice@cheshirewestandchester.gov.uk to find out if penalty notices have been issued previously.

Where pupils attend school in Cheshire West and Chester, but live in a different Local Authority, Cheshire West and Chester will notify the home Local Authority in cases where a penalty notice is being considered and where support is appropriate, liaise with the home Local Authority to enquire what support has been offered.