



# Education Penalty Notice Code of Conduct

August 2018

# Rationale

Regular and punctual attendance at school is a legal requirement under Section 444 of the Education Act 1996. It is essential that parents maximise the educational opportunities available for their children and provide the best possible start in life.

Under previous legislation, parents of a registered pupil whose child failed to attend school regularly and whose absence was unauthorised committed an offence for which prosecution was the only available sanction. With the Education Penalty Notices Regulations 2007 penalty notices were introduced as an early intervention strategy as an alternative to the previous sanction by allowing parents an opportunity to discharge potential liability for conviction for the offence. From 1<sup>st</sup> September 2013 the fine is £60 to be paid within 21 days and increased to £120 to be paid within 28 days. If the penalty remains unpaid by the end of 28 days, the Local Authority must consider the commencement of proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the notice but is for failure to ensure regular attendance at school.

**Education Penalty Notices should be used as an early deterrent** to prevent patterns of unauthorised absence developing and to supplement rather than replace the use of the wider powers already available. As with current legislative action they are to be used for the enforcement of attendance and not for use as a punishment for absence.

Schools have the first responsibility to take effective action to improve attendance. Where there is clear evidence of underlying problems within the family that require more intensive support an Early Help assessment would be advised. This could support the family to make changes that will improve school attendance and other outcomes.

Penalty notices should be used where a parent is capable of securing an improvement in their child's school attendance but is unwilling to do so.

They can only be used for periods of unauthorised absence and the defences in law replicate those already in place for enforcement actions under the provisions of Section 444 of the Education Act 1996.

A separate penalty notice will be issued to each parent for every child who is not attending school. For each child there should be an Education Penalty Notice warning letter issued to each parent during an academic year.

#### Excluded pupils

Section 105 (1) of the Education and Inspections Act 2006 empowers designated Local Authority Officers, Headteachers (and Deputy and Assistant Headteachers authorised by them) and the Police to issue penalty notices in cases where an excluded pupil is in a public place during school hours at any time during the first five days of any period of exclusion from school without justifiable cause.

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.

Non-payment of a penalty notice issued where a parent allows an excluded pupil during the first five days of any period of exclusion to be present in a public place without justifiable cause may result in a prosecution under Section 103 (3) of the Education and Inspections Act 2006.

# Legislation

Section 23 of the Anti-Social Behaviour Act 2003 introduced new powers for designated Local Officers, Headteachers and the Police to issue penalty notices for unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2004 came into force on 27<sup>th</sup> February 2004. These were updated by the Education (Penalty Notices) (England) Regulations 2007 (as amended).

Penalty Notices must be issued in a manner that conforms to all requirements of the Human Rights Act and all Equal Opportunities legislation.

**For the purposes of the protocol, the legal definitions of ‘parent’ are:**

- Any natural parent, whether married or not.
- Any parent who, although 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

**If a Penalty Notice remains unpaid:**

Prosecutors must take into account the **‘Code for Crown Prosecutors’** that sets out a two-stage test that prosecutors should follow when they make decisions on case:

**Is there enough evidence against the defendant?**

When deciding whether there is enough evidence to charge, prosecutors must consider whether evidence can be used in court and is reliable. Prosecutors must be satisfied there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant.

**Is it in the public interest for the CPS to bring the case to court?**

A prosecution will usually take place unless the prosecutor is sure that the public interest factors tending against prosecution outweigh those tending in favour.

# Issuing of Penalty Notices

For an Education Penalty Notice to be considered the school is responsible for issuing an Education Penalty Notice warning letter to each parent at the beginning of the academic year and then subsequently each term (Appendix 1). For any mid-year admissions to the school all parents will receive the Education Penalty Notice warning letter as part of their intake meeting.

Prior to requesting an Education Penalty Notice schools should take all reasonable steps to ensure good attendance. In cases where a school has concerns about a pupil's attendance, the school must ensure contact has been made to parent(s) to try and resolve any issues and difficulties to prevent potential prosecution. An Education Penalty Notice should be used as a last resort.

An Education Penalty Notice may be issued following an Education Penalty Notice warning (Appendix 1) being sent.

School would complete Education Penalty Notice request form (Appendix 2) if a child falls within one or more of these categories within a 12 week period;

- 10 sessions (5 days) of unauthorised absence with under 90% attendance
- 20 sessions (10 days) of unauthorised absence
- persistently arrives late for school after the close of registration

The Local Authority will consider issuing a Penalty Notice to each responsible parent.

The use of Penalty Notices shall be restricted to one per pupil, per parent in any single academic year.

## **Wigan Local Authority will consider requests to issue Penalty Notice only if;**

- An Education Penalty Notice request form (Appendix 2) is completed with all necessary information and the supporting relevant documentation is provided.
- The period of absence is not being considered for proceedings according to Section 444 (1) or (1A) of the Education Act 1996.

- The issue of an Education Penalty Notice does not conflict with other intervention strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority.

To ensure consistent delivery of Education Penalty Notices the request form (Appendix 2) will require completion by the school and the following documentation provided:

- A copy of the pupil's up to date attendance certificate showing a minimum of ten sessions (5days) with below 90% attendance
- A chronology of intervention; i.e details of meetings, letters, phone calls with the parent(s) and has parent(s) been informed that criteria has been met
- Evidence of the Education Penalty Notice warning being issued to the parent(s)
- Clear agreement and consent from Headteacher

The Local Authority will consider each request and may deem it appropriate to take one of the following actions;

- Advise schools to refer to supporting agencies
- Issue an Education Penalty Notice
- Advise the school to refer to the Attendance Service

# Payment of Penalty Notices

The payment of an Education Penalty Notice will be £60 if paid within 21 days, increasing to £120 to be paid within 28 days.

## Non-payment of Education Penalty Notices

If payment is not received within 28 days, the Local Authority will consider prosecution for the unauthorised absence to which the Education Penalty Notice relates.

Non-payment of an Education Penalty Notice may result in legal action being taken by the Local Authority. These actions will be considered where a significant improvement of school attendance is not apparent.

The instigation of legal proceedings for unauthorised absence from school under Section 444 (1) of the Education Act 1996 may also be considered where it is deemed to be appropriate.

In these circumstances, the school is required to provide the Local Authority with a signed school attendance record of the pupil.

## Procedure for withdrawal

Once an Education Penalty Notice has been issued it can only be withdrawn in the following circumstances:

- It has been established that the notice was issued in error.
- The notice had been issued to the wrong person.
- The circumstances of the absence do not comply with the conditions of Wigan Council Local Authority's code of conduct and the Education (Penalty Notices) (England) Regulations 2007.
- The parent/carer provides evidence that would constitute a statutory defence.

# School and Local Authority policy documents

All schools should include clear reference to the Local Authority School Attendance Code of Conduct in their attendance policies and this should be brought to the attention of all parents through prospectus material. In addition the Education Penalty Notice warning is issued to parents at the beginning of the academic year and subsequently each term. Where early patterns of unauthorised absence are occurring the sending of advisory letters is an action that schools should normally undertake, alongside having conversations regarding absence with parents and reinforcing the potential implications.

## Monitoring and review

The Local Authority will monitor and evaluate the outcomes of Education Penalty Notices in terms of improvement in school attendance, payment and any subsequent legal action. The use of the notices will be reviewed at regular intervals and the enforcement strategy of the Local Authority may be amended accordingly.

Service reports include data on the deployment and outcomes of their use.