



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

January 2014

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 Fixed Penalty Notices to the parents of children who have unauthorised absence from school.¹
- 1.2 The rules governing the implementation of these powers and the factors that should be taken into account when issuing a Fixed 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
- 1.3 In addition, the issuing of Fixed 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.
- 1.4 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 parent² 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 attendance at the school at which they are registered, where that absence is not authorised by the school.
- 2.4 Fixed 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.
- 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 Therefore, Fixed 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.

¹ Cheshire East has delegated this power to the Education Welfare Service and the Police.

² 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.

3. Circumstances where a Fixed Penalty Notice may be issued

- 3.1 A Fixed Penalty Notice can only be issued in cases of unauthorised absence.
- 3.2 Use of Fixed 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 Fixed Penalty Notice.
- 3.5 Fixed 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
 - Unauthorised leave of absence (G code) of at least ten sessions (five school days) due to holidays in term time
 - Persistent³ late arrival at school, for example after the register has closed, in any two consecutive half terms
- 3.6 The Local Authority will only issue Fixed Penalty Notices requested by a school related to unauthorised leave of absence when the school has provided the necessary paperwork. If the leave of absence is unauthorised then the expectation is that where there are ten or more sessions coded G within two consecutive half terms that the school requests the Local Authority to issue a Fixed Penalty Notice.

This paperwork should comprise:

- A Fixed Penalty Notice Request Form
 - A copy of a communication (posted on website or a letter/newsletter) sent to all parents during the current academic year, clearly explaining the procedure regarding requests for leave of absence which states that parents may receive a Fixed Penalty Notice for an unauthorised absence in term time and receive a summons if unpaid within the time frame
 - A copy/record of leave of 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 Fixed Penalty Notice and receive a summons if unpaid within the time frame
 - 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 Fixed Penalty Notice may be issued and receive a summons if unpaid within the time frame
 - Relevant pupil Attendance or Registration Certificate
- 3.7 Penalty Notices will not be issued in respect of Children in our Care, for whom other interventions will be used.

³ Persistent means at least 10 instances of late arrival

4. Procedure for Issuing Fixed Penalty Notices

- 4.1 The designated officers within Cheshire East Council's Education Welfare Service will be the only individuals permitted to issue Fixed 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.
- 4.2 Fixed 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.
- 4.3 Where schools, police or neighbouring local authorities ask Cheshire East Council to issue a Fixed 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 Fixed 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 Fixed Penalty Notice would improve the child's school attendance
- 4.4 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 Fixed 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 Fixed 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
- 4.5 Where the Fixed Penalty Notice is requested from a school in response to an unauthorised leave of absence (holiday), the Education Welfare Service will not carry out an investigation and the formal warning letter and fifteen day improvement period will not apply.

5. Excluded Pupils

- 5.1 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.
- 5.2 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.

6. Procedure for the Withdrawal of Fixed Penalty Notices

6.1 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, for example medical evidence
- The circumstances of the case warrant its withdrawal

7. Payment of Fixed Penalty Notices

7.1 Arrangements for payment will be detailed on the Fixed Penalty Notice.

7.2 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.

7.3 In accordance with The Education (Penalty Notices) (England) (Amendment) Regulations 2013, Statutory Instrument No. 757, if the Fixed Penalty Notice is paid:

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

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

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

7.6 Cheshire East Council will retain any revenue from the Fixed 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 Fixed Penalty Notices.

8. Non-Payment of Fixed Penalty Notices

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

9. Policy and Publicity

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

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

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

10. Reporting and Review

- 10.1 Cheshire East Council will provide an annual report of Fixed Penalty Notice data.
- 10.2 The Education Welfare Service will review Fixed Penalty Notice use at least every other year and will amend its general enforcement strategy as appropriate.

11. Right of appeal

There is no right of appeal, but where a parent contests the issuing of a Fixed 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 Fixed Penalty Notice can be fully debated.

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

The issuing of Fixed Penalty Notices must conform with all requirements of the Human Rights Act 1998 and all Equal Opportunities legislation. Cheshire East Council has the primary responsibility for developing the protocol within which all partners named in the Education Act 1996 must operate.

One Minute Guide – 'Taking children on holiday during term time'
www.cheshireeast.gov.uk/ews

Legislation

Relevant legislation includes:

The Children Act 1989

Definition of parental responsibility

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 & 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

Children and Families Service
Education Welfare Service

TAKING CHILDREN ON HOLIDAY DURING TERM TIME

A guide for parents and carers

Frequently asked questions

Am I entitled to take my child out of school for a family holiday?

- **No.** Parents have a legal duty to ensure that their children attend school or the alternative provision on a regular basis
- The Education Act 1996 makes it a criminal offence for a parent to “*fail to secure their child’s regular attendance at the school*”
- The amendments to the 2006 Regulations remove any reference to *family holidays, extended leave and the statutory threshold of ten school days.*
- The amendments make clear that **Head Teachers may not grant any leave of absence (holiday) during term time unless there are exceptional circumstances**
- The amendments give **parents no entitlement** to take their child out of school for a holiday in term time
- The Head Teacher and Governing Body will determine what amounts to exceptional circumstances

If we decide to take a holiday during term time what should we do?

- The parent/carer with whom the child resides must apply in writing to the school
- The letter/application must explain the exceptional circumstance surrounding the request for the leave of absence

What will the school do then?

- The Head Teacher will determine whether the exceptional circumstance ruling applies, if not the application will be declined
 - Only the Headteacher (or the Deputy) has the power to approve leave of absence applications. When making the decision the protocols and criteria laid down in the school’s attendance policy must be followed.
 - Each academic year, schools inform parents/carers via a letter, newsletter or some other communication; that they may receive a Fixed Penalty Notice if their child has unauthorised absences in term time
- You will receive a written response from the Headteacher (or the Deputy) letting you know if your application has been approved
- If the holiday goes ahead after the application has been declined the absence will be recorded as unauthorised

What will happen if the absence is unauthorised?

- The school will decide if a Fixed Penalty Notice should be issued.
If the school decide that a Fixed Penalty Notice is to be issued you will receive a letter from the school advising that it has referred the matter to the Local Authority and that a Fixed Penalty Notice will be issued;
- The school will inform the Local Authority that a Fixed Penalty Notice needs to be issued
- A Fixed Penalty Notice will be sent to you, accompanied by an explanatory letter.; The Notice gives you the opportunity to pay a penalty fine instead of being prosecuted in the criminal courts

Penalties for unauthorised absence		
Timeline	One child	Two children
Paid within 21 days	£60 per parent	£60 per child = £120 per parent
After 21 days and before 28 days	£120 per parent	£120 per child = £240 per parent
After 28 days	You will receive a summons to appear before the Magistrates' Court on the grounds you have failed to secure your child's regular attendance	You will receive a summons to appear before the Magistrates' Court on the grounds you have failed to secure your children's regular attendance

Payments will **not** be accepted after the 28th day and payments **cannot** be paid in part or by instalments

Each school has a designated Education Welfare Officer who can be contacted through school. You can also telephone the main office.

Tel: 01270 375277

Website: www.cheshireeast.gov.uk/ews

Other leaflets are available to support you:

- Taking action to improve attendance – explaining legal action - a guide for parents and carers
- Helping your child to attend school. The role of the EWO- a guide for parents and carers

The expression "parent", in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him/her, or who has care of the child.

**EXAMPLE LETTER FROM HEAD TO PARENTS
RE LEAVE OF ABSENCE (HOLIDAYS) IN TERM TIME**

Dear Parent(s)/Carer(s)

We know that you as parents/carers want the best for your child and that having a good education helps to open up more opportunities in adult life. Bearing this in mind, I would like to include a regular reminder regarding the law relating to holidays taken during term time.

As parents you have a legal duty to ensure that your children attend school on a regular basis. The Education Act 1996 makes it a criminal offence for a parent to *"fail to secure their child's regular attendance at the school"*. The recent amendments to the 2006 Regulations remove any reference to *family holidays, extended leave and the statutory threshold of ten school days*. The amendments also make it very clear that **Head Teachers may not grant any leave of absence (holiday) during term time unless there are exceptional circumstances**. The amendments give **parents no entitlement** to take their child out of school for a holiday in term time and require the Head Teacher and Governing Body to determine what the exceptional circumstances are. The decision will be made by me, the Head Teacher, and/or Governor. We will use my/our discretion to consider each request individually.

A Leave of Absence form must be completed in advance and returned to the school. These forms can be collected from the School Office and, on completion, should be handed back to the School Office, so that a reply can be given. Alternatively the forms are available from the School's website. Email requests must be sent to the Head Teacher at the address given on this letter.

- It must clearly state on the form what the exceptional circumstance is that requires the leave of absence being taken in term time.
- On receipt of the request, you will be sent a response indicating whether the school is able to authorise the leave of absence or not.

If parents, contrary to what the school has said, still decide to take their child out of school for a leave of absence then the absence will be coded as **unauthorised**. This may lead to the school referring the matter to the Local Authority requesting a Fixed Penalty Notice to be issued.

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I know that some parents/carers will find these measures severe but we believe that regular and high attendance is in every pupil's best interests and helps to maximise their achievements and enjoyment of school. This letter reflects accurately the current legislation and, as a school, we have a duty to point this out to parents/carers.

Yours sincerely

REQUEST FOR LEAVE OF ABSENCE IN TERM TIME

The 2013 regulation amendments make clear that head teachers may not grant any leave of absence (holiday) during term time unless there are exceptional circumstances. The amendments give parents no entitlement to take their child out of school for a holiday in term time. The Head teacher and the Governing Body will determine whether the parent's reasons for requesting leave of absence in term time amount to exceptional circumstances.

FOR COMPLETION BY PARENT/CARER

You have requested the school's permission for leave of absence to be taken during term time. Before such authorisation is considered please complete the form below and return to the School Office. Completion of the form does not guarantee the leave of absence will be authorised.

Pupil's Name: _____ Class/Form: _____

Dates of Leave of Absence: From: _____ To: _____

Please give full reason(s) for asking for leave of absence in term time

Signed: _____ (Parent/Carer) Date: _____

It is important to have read and understood the school's policy on attendance

TAKING YOUR CHILD OUT OF SCHOOL WITHOUT THE SCHOOL'S AUTHORISATION MAY RESULT IN THE SCHOOL REQUESTING THE LOCAL AUTHORITY TO ISSUE A FIXED PENALTY NOTICE TO EACH PARENT/CARER FOR EACH CHILD.

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For Completion by School:-

Authorised **REGISTER CODE H**
 Unauthorised **REGISTER CODE G**

Reason holiday declined

Signed: _____ Date: _____

**Copy to: Parent
Pupil File
Local Authority**



Education Welfare Service
FIXED PENALTY NOTICE REQUEST
For Unauthorised Leave of Absence

Registered pupil at:

.....School

Pupil Details:

Name:	MALE/FEMALE	D.O.B:
Address:.....		
.....		
.....		
Postcode:		

Parent/Carer (please delete one)

Name:	
.....	
Address (if different from above):	
.....	
.....	
Postcode:	
Telephone No:	Mobile No:
Name:	
.....	
Address (if different from above):	
.....	
.....	
Postcode:	Telephone/Mobile No:.....

Dates of Absence

The above named pupil was absent from school on the following dates:

.....
.....
.....

and this absence is recorded in the school register as unauthorised. (Please attach a registration certificate showing the period.)

Declaration

I am the Head Teacher/Acting Head Teacher of the School named. I certify that this leave of absence request has been considered in line with the School Attendance Policy. To the best of my knowledge there are no exceptional circumstances.

Did parents request authorisation prior to leave of absence?

Yes / No.

Did school respond in writing declining application?

Yes / No

PLEASE ATTACH COPIES OF ALL PAPERWORK.

- Copy of newsletter detailing FPN information and charges
- Copy of leave of absence application
- Copy of letter declining application
- Pupil attendance certificate

Name:

SignatureDate:

.....

This is the exhibit of

.....

.....
(Name of Head Teacher/Acting Head Teacher)

marked "Exhibit ____/2"

Please send this form fully completed to:
FPN Administrator, Education Welfare Services, Cheshire East Council,
7th Floor Delamere House,
c/o Municipal Buildings,
Earle Street,
Crewe
CW1 2BJ

Example declination letter

Dear *Parents name*,

Re: *Pupil name*

I am writing in response to your request/application for Leave of Absence in term time for *pupil's name* for *dates*.

Following changes in regulations, Leave of Absence may only be authorised in exceptional circumstances. As your request does not meet our criteria for exceptional circumstances in this instance, we are unable to authorise your request for leave for this period.

If you continue with your plans, and take your child out of school, the absence will be recorded as unauthorised. As such the school will inform the Local Authority and a Fixed Penalty Notice (FPN) may be issued. Failure to pay the penalty fine, within the required time, may result in prosecution.

Please refer to chart below for details of the FPN process including fines and timelines.

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Yours sincerely,

Example letter if parent takes child on unauthorised leave of absence

Dear *Parents name*,

Re: *Pupil name*

Further to our letter of *date*, as you decided to take the unauthorised leave of absence between *date* and *date*, we will be informing the Local Authority who may issue a Fixed Penalty Notice (FPN). If a FPN is issued, failure to pay the penalty fine within the required time may result in prosecution.

Please refer to chart below for details of the FPN process including fines and timelines.

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Yours sincerely,