



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

June 2024

Local 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 East. The code sets out the arrangements for administering penalty notices in Cheshire East 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.

Consultation

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

Legal basis

3. 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).
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
5. A penalty notice can only be issued by an authorised officer: that is, a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable.
6. 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.
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. 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).

Rationale

8. 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.
9. 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.
10. 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.
11. 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.

When may a penalty notice for absence be appropriate?

12. When the national threshold has been met, 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. 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 weeks¹, with one of, or a combination of the following codes:

¹ 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).

- (a) **code G** (the pupil is absent without leave for the purpose of a holiday),
- (b) **code N** (the circumstances of the pupil's absence have not yet been established),
- (c) **code O** (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
- (d) **code U** (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

13. The Anti-social Behaviour Act 2003 allows parents / carers to be issued with a truancy penalty notice if their child of compulsory school age fails to attend school on a regular basis. Following a Truancy Sweep, enquiries will be undertaken with the school of any pupil who is stopped. In cases where the school have recorded the absence of the pupil as unauthorised a penalty notice may be issued.
14. If in an individual case the local authority believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met. This might apply for example, where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold.
15. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be most appropriate tool. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, Cheshire East will consider prosecution.
16. 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.

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

17. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:
 - 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
- (For local authorities only) 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?
- In cases where support is appropriate, consider on a case-by-case basis:
 - Has sufficient support already been provided? Telephone calls to the family when the child is absent to understand why the child is absent and to offer support with any issues the child may be having.
An attendance letter highlighting the child's attendance and inviting parents to contact school to discuss the situation.
Parents invited to an attendance support meeting to meet and discuss attendance concerns and offer support to improve attendance.
 - 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
 - (For local authorities only) Is it in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?

If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where this is appropriate) will usually be issued.

Procedure for issuing a penalty notice or notice to improve

- 18.** Although the legislation permits head teachers and the police to issue penalty Notices the authorised officers within Cheshire East Council's Attendance and Children Out of School 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.
- 19.** 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.
- 20.** 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 Attendance and Children Out of School 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.
- Proportionate support has been offered.
- All necessary evidence is provided to the Attendance and Children Out of School 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.

21. In the case of Irregular school attendance, the Attendance and Children Out of School Service may issue a notice to improve when they are satisfied that all the relevant criteria are met, the service will then:

- Issue a formal written notice to improve school attendance to parents highlighting the possibility of a penalty notice being issued.
- Set an improvement period for twenty school days (four weeks). Pupils must have no unauthorised absences within this period or show significant improvement in attendance during this period.
- Notify school of the notice to improve, and the monitoring period.
- At the end of the monitoring period school will send the Attendance and Children Out of School Service a copy of the registration certificate.
- After due consideration of the facts of the case, the Attendance and Children Out of School service will only issue a penalty notice through the post at the end of the improvement period, if there have been unauthorised absences or no improvement in attendance.

22. The LA will inform the school about whether penalty notices are paid, withdrawn, or prosecuted for non-payment. This information will be communicated to schools by email the term after the penalty notice was issued.

Notice to improve

23. 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. An authorised officer 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).

24. Where the penalty notice is requested from a school in response to an unauthorised leave of absence (for holidays in term time), the Attendance and Children Out of School Service will not issue a twenty-day improvement period. School will provide the following evidence for the Attendance and Children Out of School service to consider:

- 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 regarding requests for leave of absence which states that holidays taken in term time will receive a penalty notice.
- A copy of the 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 penalty notice. If no leave of absence request has been received but school have reason to believe that the family have taken a holiday in term time, this criteria may be waived.
- 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.
- A copy of the pupil's registration certificate signed by the Head Teacher as set out in section 566(1)(c) of the Education Act 1996

Working with other local authorities

25. Where pupils move between local authority areas, Cheshire East can be contacted on crossborder.penaltynotice@cheshireeast.gov.uk to find out if penalty notices have been issued previously.

26. Where pupils attend school in Cheshire East but live in a different local authority. Cheshire East will liaise with the home local authority in cases where a penalty notice is being considered and support is appropriate, and that support is being provided by the home local authority.

Right of appeal

27. There is no right of appeal, but where a parent contests the issuing of a penalty notice they can 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.

