



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

Local Code of Conduct Education Fixed Penalty Notices

Reviewed, February, 2023

Legal Basis and Rationale

The Welsh Government (WG) Education (Penalty Notice)(Wales) Regulations 2013 states that Local Authorities (LAs) are required by law to adhere to the Education Act 1996 section 444 to include penalty notices as one of the interventions to promote better school attendance. This means that “due regard must be given to the guidance and there is an expectation that it will be followed unless there is good reason to depart from it” (Guidance Doc 2013 p3).

Regular and punctual attendance of pupils at school and alternative provisions is both a legal requirement and essential for pupils to maximise the educational opportunities available to them. In law, an offence occurs if a parent/carer fails to secure their child’s regular attendance at school/alternative provision and that absence is not authorised by the school.

Sections 444A and 444B of the Education Act 1996 provide that certain cases of unauthorised absence can be dealt with by way of a penalty notice. A penalty notice is a fine of up to £120 and may be issued to a parent/carer as a result of a child’s regular non-attendance at school/education provision.

Neath Port Talbot County Borough Council have the responsibility for developing the protocol (Penalty Notices) (Wales) Regulations 2013 which will operate within Neath Port Talbot Schools. Head teachers, including their authorised deputy and assistant head teachers and the police are able to request a penalty notice in relation to parent/carer of children who have unauthorised absence from school/alternative education provision. The issuing of penalty notices must comply with all the requirements of the Human Rights Act and all Equal Opportunities legislation.

The LA will investigate cases of irregular attendance from school/alternative education provision and follow appropriate casework, and will instigate legal action if appropriate. However, penalty notices offer a means of swift intervention to deal with issues of regular non-attendance before they become entrenched. The issuing of penalty notices will be based on clear threshold criteria which will be applied consistently and equitably and may alter through new emerging guidance from the Welsh Government. All persons authorised to issue (and request the issuing) of a penalty notice must comply with the guidance set out in this code of conduct.

Inclusion and equality issues

The LA is committed to the continual raising of achievement of all their pupils. There is an expectation that all its pupils, regardless of their individual circumstances or needs, are able to secure their entitlement to high quality teaching and learning. Regular attendance is, therefore, critical if all our pupils are to be successful and benefit from the opportunities presented to them. Regular attendance and punctuality are essential to allow children to achieve their full potential during term time at school. Regular attendance also ensures

that children are safe and lessens the opportunities to become involved in truancy and associated anti-social activities.

Parents/carers and pupils are supported at a school/alternative education provision level to overcome barriers to regular attendance and through a wide range of assessment and intervention strategies. Sanctions of any nature are for use only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting problem. This additional sanction is a means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement.

Policy and Publicity

In order to ensure parents and carers are fully aware of the penalty notice legislation, it is expected that all schools, with the support of their governing body, clearly outline penalty notice information in their attendance policy and provide information to parents in writing at the beginning of each academic year (Appendix 1).

The definition of parent/carer as set out in section 576 of the Education Act 1996 is the person with whom the child lives irrespective of what their relationship is with the child ("Parents" and "Parental Responsibility", Welsh Government, 2007).

Legal practicalities

- A penalty notice is £60 if paid within 28 days of receipt of the notice;
- this rises to £120 if paid after 28 days but within 42 days of receipt;
- if the penalty is not paid in full by the end of the 42 days the local authority must either prosecute for the offence or withdraw the notice.

The prosecution proceedings will be for the offence of failing to secure the child's regular attendance at school and not for non-payment of the penalty fine. The prosecution will be brought under section 444 of the Education Act 1996.

Withdrawal of the notice can only take place in limited circumstances as set out in this code of conduct.

The Issue of a penalty notice

In order to avoid the issuing of duplicate penalty notices the management and processing arrangements will remain the sole responsibility of the LA. An authorised officer will have the discretion to decide whether to issue a penalty notice to one or more parents/carers of a child. The specific circumstances in each individual case will be the determining factor.

The LA will work in consultation and partnership with schools and local police officers to ensure that:

- the child has to be registered as a pupil at the school at which the headteacher or his/her authorised deputy or assistant head teacher is making the request for the penalty notice;
- a penalty notice can only be issued in cases of unauthorised absence; notices should only be issued for offences where the LA is able and willing to prosecute. The LA should be satisfied that there is sufficient evidence to show the parent/carer has committed an offence under section 444(1) of the Education Act 1996;
- the use of penalty notices will be restricted to the maximum of three notices per parent of a pupil in a rolling 12 month period;
- penalty notices may be issued for more than one child in cases where there is more than one poorly attending pupil in a family;
- there will be no restriction on the number of times a parent may receive a formal warning of a possible penalty notice;
- if the recipient of a penalty notice moves to another LA area in Wales then the penalty notice moves with them;
- penalty notices cannot be issued if legal proceedings against the parent/carer under section 444 of the Education Act 1996 have commenced or are contemplated at the time of request (Regulations section 14 (b)).

Circumstances for issuing a penalty notice

The key criteria should be as follows:

- when a pupil has a minimum of 10 sessions (5 school days) that have been lost due to unauthorised absences during the current term and this brings the overall pupil attendance to below 90% in the school year to date (these absences do not have to be consecutive);
- unauthorised absences of at least 10 sessions (5 school days) due to holidays taken in term-time if the absences take the overall pupil attendance to below 90% in the school year to date (these absences do not have to be consecutive);
- persistent late arrival at school i.e. after the register has closed ('U' code as in the Codes Guidance Document 2010). Persistent for the purpose of this document means at least 10 sessions of late arrival within a term; these do not need to be consecutive but should bring the overall school attendance to under 90% in the school year to date;

It should be noted that 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 will limit the health and safety risks to individuals.

School application for issuing a penalty notice

Where a school has identified that a period of unauthorised absence has occurred, a request to the LA for a penalty notice can be submitted. Each headteacher can, on an annual basis, authorise their nominated deputy or assistant Head Teacher to request for penalty notices (Appendix 2).

The school paperwork should comprise of:

- confirmation that information was sent to all parents at the start of the academic year which clearly states that parents may receive a penalty notice;
- a copy of the pupil's registration document;
- completion of the penalty notice request form (Appendix 3).

A penalty notice may not be issued in respect of Children Looked After (CLA) who are subject to on-going LA intervention.

Parental request for holidays in term time (unauthorised by school)

The LA will only consider issuing penalty notices requested by a school in response to a parental request for unauthorised absence where the school has provided the necessary paperwork. This paperwork should comprise of:

- a copy of the information sent to all parents during the current academic year which clearly states that parents may receive a penalty notice;
- relevant pupil attendance or registration certificate;
- completed penalty notice request form (Appendix 3).

Procedure for issuing a penalty notice

The LA will respond to all requests to issue penalty notices within ten school days of receipt and where it is satisfied that all relevant information has been supplied and that the initiation of the penalty notice is appropriate (Appendix 4). The LA has the prime responsibility for developing the protocol within which all partners named in the Education (Penalty Notices (Wales) Regulations 2013 will operate and each LA will deliver this LA responsibility. Requests can be generated by a headteacher, their nominated deputies, the police and neighbouring local authorities. The LA must ensure that issuing a penalty notice would not conflict with another legal intervention strategy contemplated or commenced under the Education Act 444(1) or 444(1A).

The procedure is as follows:

- LA receive a request for a penalty notice and relevant checks will be made (Appendix 3);

- LA to send a formal written warning to the parent/carer notifying them that they may receive a penalty notice. Absences that occur due to holidays in term-time will not receive a warning, unless there have been multiple holidays during one academic year (Appendix 5).
- LA set a period of 15 school days to allow the parent/carer to respond. During the fifteen days, parents/carers would have the right to provide any evidence they may wish to present to the school, including medical evidence, to argue that the penalty notice should not be issued.
- It will be for the head-teacher/nominated person to determine whether the evidence is accepted and the register amended.

For example, if the absences are supported by medical evidence then the registers may have to be corrected using the appropriate code. In such cases the penalty notice may not be issued by the Local Authority.

If evidence is not provided or the head-teacher/nominated person does not accept the absences then a penalty notice can be issued by the LA by first class post (Appendix 6);

- if the payment is made there will be no further action;
- if payment is not made then the case will either be withdrawn or result in prosecution under Education Act 1996 section 444.

The Coordinator of the Child and Family Support Team and the Manager Education Welfare Service are appointed as the authorised officers for the purposes of issuing and withdrawal of Penalty Notices under Section 444A of the Education Act 1996 and any Regulations made under that Act.

Payment of a penalty notice

- Arrangements for payment will be detailed on the penalty notice.
- Once paid the parent/carer's liability for the period in question is discharged and they cannot then be subsequently prosecuted under other enforcement powers (section 444 of the Education Act 1996) for the same period covered by the notice.
- The LA will retain the revenue from penalty notices to cover enforcement costs. However, any surplus must be surrendered to the Welsh Consolidated Fund.
- There is no facility for payment by instalment

Non-Payment of a penalty notice

Non-payment of a penalty notice may result in a prosecution under Section 444 of the Education Act 1996.

Withdrawal of a penalty notice

There is no statutory right of appeal against issuing of a penalty notice, but where a parent contests the issuing of a penalty notice they can submit any complaints to the LA and/or opt to face proceedings in the Magistrates' Court under section 444 of the Education Act 1996 where all of the issues relating to their penalty notice can be fully debated.

Once issued, a penalty notice can only be withdrawn if the LA is satisfied that:

- the penalty notice was issued to the wrong person;
- the penalty notice ought not to have been issued, i.e. where it has been issued outside of the terms of this Code of Conduct or no offence has been committed;
- the circumstances of the case warrant its withdrawal;
- the notice contains material errors.

Where a penalty notice has been withdrawn in accordance with the above, notification of the withdrawal will be given to the recipient of the notice and any amount paid will be repaid to the person who paid it. No proceedings will continue or be instituted against the recipient of the notice for the offence in connection with which the withdrawn notice was issued, or for an offence under sections 444(1)/444(1A) of the Education Act 1996 for the offence arising out of the same circumstances.

Annual review and reporting

The LA will evaluate the effectiveness of penalty notices every year and amend its general enforcement strategy as appropriate. This report will be made available to the head of service.

How to get further information

Further information on the operation of this Code of Conduct and Penalty notices within Neath Port Talbot is available from:

The Education Welfare Service, Education Dept., Civic Centre, Port Talbot. SA13 1PJ. Tel: 01639 763600. Email ews@npt.gov.uk

Appendices examples

- Appendix 1: School letter
- Appendix 2: Head teachers authorisation form.
- Appendix 3: Penalty notice request form
- Appendix 4: LA checklist
- Appendix 5: Warning notice.
- Appendix 6: Penalty notice letter
- Appendix 7: FPN Flow chart

References

The Children Act 1989 - the definition of “parent”;
“Parents” and “Parental Responsibility” (Welsh Government 2007)The
Education Act 1996 – section 444;
The Education (Penalty notices) (Wales) Regulations 2013;
United Nations Convention on the Right of the Child (the right to an education
Article 28).

Appendix 1 (example)

Dear Parent /Guardian,

Penalty Notices – Unauthorised Absence from School.

This letter alerts you to the introduction of Penalty notices for unauthorised absences from school.

The Local Authority believe that any absence from school, for whatever reason, is detrimental to a child's long term life opportunities, so should be avoided if at all possible. Reducing absence from school is a key priority, both nationally and locally, because missing school damages a pupil's attainment levels, disrupts school routines and can leave a pupil vulnerable to anti-social behaviour and youth crime.

A Penalty Notice is an alternative to prosecution with the aim of seeking to secure an improvement in the pupil's attendance.

A Penalty Notice can be requested by the Head teacher, Police or from within the Local Authority Education Welfare Service in relation to unauthorised non-attendance at school. If a reason for absence is provided by the parent/carer then it is up to the head-teacher to decide if they accept it and mark it appropriately. There is no limit to the number of formal warnings which can be issued

If a notice has been requested the parent/carer will receive a warning letter that gives them 15 days to provide evidence to the Local Authority that the unauthorised absences are justified and that the register should be amended. If the unauthorised absences are due to taking a holiday in school time then a warning will not be issued, but parents may be liable to a penalty notice.

If the school attendance does not improve then the **penalty notice will be issued. Payment of £60 will be due** in the first instance which may rise to £120 if not paid in full within 28 days. If the penalty is not paid then the Local Authority (LA) will consider **issuing prosecution proceedings against parent(s)** for the original offence, which is 'failure to ensure regular attendance at school of the registered pupil' under **Section 444 (1) or (1A)** of the Education Act 1996.

Please remember that if there are reasons why your child is missing school then you can seek support and guidance from staff at your child's school. Ask before the non-attendance becomes an issue.

Appendix 2 (example)

Education Department

To be completed at the start of each academic year.

I, _____, Head teacher of
_____ School, hereby authorise:-

Deputy/ Assistant Head teacher [delete as appropriate] at the
above mentioned school to request Penalty Notices.

- in accordance with the **EDUCATION ACT 1996 (SECTION 444 (1) and/or (1A) / THE EDUCATION (PENALTY NOTICES) (WALES) REGULATIONS 2013 / Neath Port Talbot Local Code of Conduct, Education Fixed Penalty Notices.**

Signed: _____

Name Printed: _____

Date: _____

PENALTY NOTICE REQUEST
THE EDUCATION (PENALTY NOTICE) (WALES) REGULATIONS 2013

I request that the Local Authority (Education Welfare Service) consider issuing a Penalty Notice to the person named below as parent(s)/day to day carer* for the following pupil. This request is made in accordance with the Local Authority's Code of Conduct and using the following criteria:

- ☐ At least 10 sessions (five school days) are lost due to unauthorised absences during the current term and this brings the overall school attendance to below 90% in the school year to date. (These absences do not have to be consecutive)
- ☐ Unauthorised absences of at least 10 sessions (5 school days) due to holidays in term-time if the absences take the overall school attendance to below 90% in the school year to date. (These absences do not have to be consecutive)
- ☐ Persistent late arrival at school i.e. after the register has closed 'U' code as in the Codes Guidance Document 2010. Persistent for the purpose of this document means at least 10 sessions of late arrival within a term; these do not need to be consecutive and brings the overall school attendance to under 90% in the school year to date.
- ☐ Where parents/carers have failed to engage with the school/and or the EWS in attempts to improve attendance.
- ☐ When it is not likely that court prosecution will be initiated.

The period in which the offence was committed: _____ to _____

Attendance at point of request: _____ % (not including authorised absences).

Pupil Details

Name of Pupil _____ DOB _____
Year _____

Address

Parent/Carer1 Full name

Address if different from above:

Parent/Carer 2 Full name _____

Address if different from above:

(A "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 or her, or who has day to day care of the child).

Briefly outline the actions school has taken to resolve the attendance concern.

Please indicate if the family is known to other services, e.g. Children's Services, YOT, CAMHS or Team Around the Family (TAF) etc.

Are there any known circumstances to consider e.g. ALN, parental mental health, bereavement, domestic violence, young carer responsibilities?

Yes ☐ No ☐

If yes, please give full details:

Attachments required

- Registration certificate
- Parental request for unauthorised absence due to holidays

Head Teacher Declaration

- I certify that the governing body of this school has reviewed its attendance policy and agreed that requests be made to the Local Authority to issue Penalty Notices in accordance with the Local Authority Code of Conduct;
- I confirm that such action would not conflict with other intervention strategies in place or other enforcement measures being processed;
- To the best of my knowledge there are no exceptional circumstances to consider in making this request.

Signed _____ Date _____

_____ School

Appendix 4 (example)

PENALTY NOTICE REQUEST EWS UNAUTHORISED ABSENCE CHECKLIST

Date Penalty Notice Request received: _____

Pupil Name _____

School _____

Named person requesting PN _____

Name of the person with

Day to day care (1)

Day to Day Carer (2)

To satisfy the criteria:

1. Has the person named above previously received a Penalty Notice?

Day to day carer (1) Yes ☐ No ☐ Date issued: _____

Day to day carer (2) Yes ☐ No ☐ Date issued: _____

2. What is the pupil's attendance in the 12 months prior to the last unauthorised absence : _____% (not including authorised absences)

3. What interventions/offers of support been actioned by school to avoid this request (include an outline of parental engagement):

4. Is the case open to the Education Welfare Service:

Yes ☐ Name of EWO: _____ No ☐

If "yes" briefly outline of case and actions to date:

5. Has there been:

- At least 10 sessions (five school days) are lost due to unauthorised absences during the current term and this brings the overall school attendance to below 90% in the school year to date. (These absences do not have to be consecutive)
- Unauthorised absences of at least 10 sessions (5 school days) due to holidays in term-time if the absences take the overall school attendance to below 90% in the school year to date. (These absences do not have to be consecutive)
 - Has a parental request for unauthorised absence for holiday form been submitted by parent Yes ☐ No ☐
- Persistent late arrival at school i.e. after the register has closed 'U' code as in the Codes Guidance Document 2010. Persistent for the purpose of this document means at least 10 sessions of late arrival within a term; these do not need to be consecutive and brings the overall school attendance to under 90% in the school year to date.
- Where parents/carers have failed to engage with the school/and or the EWS in attempts to improve attendance.
- When it is not likely that court prosecution will be initiated.

Legal Action:

10. Has this parent/carer been prosecuted in the last 12 months ☐ Date:

Outcome:

Has a pre-warning been issued YES ☐ Date..... NO ☐

Has an Official Warning been issued: YES ☐ Date..... NO ☐

EWS PN Actions:

Has an appropriate referral been made:

YES ☐ Date: _____

NO ☐ Date and reason why not accepted. _____

Date warning letter issued (not for term-time holidays): _____

Review date (15 days after warning issued): _____

Date Notice issued: _____ **NOTICE REF NO:** _____

Date at 28 days: _____

Date at end of Notice: _____

Was notice paid: YES ☐ Close case.

☐ NO ☐ See Manager regarding prosecution options.

Any additional information relevant to this case;

Pupils attendance at the end of the academic year:

Appendix 5 (example)

EDUCATION ACT 1996 (SECTION 444 (1) AND (1A)) THE EDUCATION (PENALTY NOTICES) (WALES) REGULATIONS 2013 WARNING NOTICE

Dear Mr/Mrs/Ms

I am writing to advise you that a request has been made that you be issued with a Penalty Notice in accordance with the above regulation.

In accordance with LA Code of Conduct, Penalty Notices are considered in the following circumstances:

- When a pupil has a minimum of 10 sessions (five school days) that have been lost due to unauthorised absence during the current term and this brings the overall attendance to below 90% in the school year to date. These do not need to be consecutive absences.
- Where unauthorised absence of at least 10 sessions (5 school days) due to holidays in term-time if the absences take the overall school attendance to below 90% in the school year to date. These do not need to be consecutive absences.
- Persistent late arrival at school i.e. after the registration has closed and marked as 'U' code as stated in the WG codes Guidance 2010. Persistent lateness for the purposes of this document consists of at least 10 days late arrival within a term; these do not have to be consecutive but should bring the overall school attendance to under 90% in the current year to date.

You are hereby requested to provide any evidence necessary to explain the reason for the unauthorised absences within 15 days. It will be for the head-teacher/nominated person to determine whether the evidence is accepted and the register amended. For example, if the absences are supported by medical evidence then the registers may be corrected using the appropriate code. In such cases the penalty notice will not be issued by the Local Authority.

If evidence is not provided, or the head-teacher/nominated person does not accept the evidence and change the register to remove the unauthorised absences, then a penalty notice will be issued by the Local Authority.

Any evidence you wish to submit must be received within 15 days of the date of this letter and should be sent to:

Ms Hayley Thomas, Manager Education Welfare Service, Education Child and Family Service, Civic Centre, Port Talbot. SA13 1PJ ews@npt.gov.uk

Should you wish to discuss this warning notice please do not hesitate to contact me.

Yours sincerely,

<NAME>

Manager Education Welfare Service

FPN 1

Ref No: NPT.....

Education Department

PENALTY NOTICE

**EDUCATION ACT 1996 - SECTION 444A
THE EDUCATION (PENALTY NOTICES) (WALES) REGULATIONS 2013
Neath Port Talbot CBC, Local Code of Conduct, for Penalty Notices for
Irregular School Attendance**

Part 1

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school/alternative provision or fails to attend regularly, the child's parent/carer is guilty of an offence under Section 444A of the Education Act 1996.

Title: _____

Forenames: _____

Name of Child: _____

Of (address);

Postcode: _____

You are the parent/carer of _____ of
_____ (address) who is a registered pupil at
(name of School / Alternative Education Provision)
_____ and is failing to attend school regularly
in that:-

Between the 1st day of unauthorised absence (date) _____ to the last
day of absence (date) _____ the pupil failed to attend regularly
at the school which brought your child's overall school attendance to below
90% due to unauthorised absences

This Notice gives you the opportunity to pay a penalty instead of being prosecuted for the offence stipulated above. Payment of £60 is to be made within 28 days of this notice. If you pay this penalty within the time limits set out below you will discharge your liability for the offence and no further action will be taken against you in connection with this offence as set out in this Notice.

- Payment should be made within 28 days i.e. by **XXXX** date
- If paid after 28 days but within 42 days i.e. by **XXXX** date the penalty is doubled to £120.

Payment should be made to **Neath Port Talbot CBC**. Payment can be made by **Telephone by credit or debit card**. Please call _____ on _____. Cheques or postal orders can be made payable to the **Neath Port Talbot CBC** and sent to _____ (Details of address and opening hours), clearly printing on the back the Fixed Penalty Notice Number which is **FPN1 NPT (XXXX)**

Alternatively payment can be made in person at the Contact Centre which is located at **XXXXXXXXXXXXXXXXXXXXXX**. You will need to provide your fixed penalty notice number when making payment.

If payment is not received by **<date specified>** (42 days from the date of receipt), you may be prosecuted for the offence and therefore be subject to a fine of up to £1000 under section 444(1) and £2,500 under section 444(1A) or up to three months in prison.

Late payments will not be accepted and no payment by instalments.

Withdrawal

This Notice may only be withdrawn by the Education Welfare Service if we are satisfied that:-

1. The Penalty Notice was issued to the wrong person;
2. The Penalty Notice ought not to have been issued, i.e. where it had been issued outside the terms of this Code of Conduct (or no offence has been committed); or the circumstances of the case warrant its withdrawal.
3. If you believe that the notice was wrongly issued you must contact Neath Port Talbot CBC as soon as possible to ask for it to be withdrawn, stating why you believe the notice to have been incorrectly issued. Neath Port Talbot will consider your request and contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable for prosecution for the offence.

This notice is issued by [Name and official particulars].

Signed: _____

Designation: _____

Date of issue _____

.....

Part 2

Please complete the following and return this notice with your payment to Neath Port Talbot CBC; **XXXXXX** , Civic Centre, Port Talbot SA13 1PJ

Name: _____

Address _____

I attach payment in the sum of £<sum of>

Signed _____ Date _____

Contact details

If you have any queries about this notice please contact:

Education Welfare Service
(**School Address here**)
TEL: **XXXXXXXXXXXX**

Fixed Penalty Notice flow chart