



Code of Conduct

Fixed penalty notice for non-attendance at school

[July 2025)

1. Legal basis and rationale

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise the educational opportunities available to them.

Under Section 7 of the Education Act 1996, a parent/carer is responsible for ensuring that their child of compulsory school age receives efficient full time education that is suitable for their child's age, ability and aptitude and to any special educational needs the child may have. It is an offence if a parent/carer fails to secure their child's attendance at school 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 as an alternative to prosecution under Section 444. 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.

The issuing of penalty notices must conform to all requirements of the Human Rights Act and equal opportunities legislation.

Conwy County Borough Council has the prime responsibility for developing the protocol within which all partners named in the Education (Penalty Notices) (Wales) Regulations 2013 will operate and the Education Social Work Service

("ESWS") will deliver this local authority responsibility within the County Borough of Conwy.

Conwy County Borough Council ESWS will continue to investigate cases of irregular attendance from school and following appropriate enquiries, instigate legal action if appropriate. However, penalty notices offer a means of swift intervention which Conwy County Borough Council will use 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 need to be applied consistently and equitably across Conwy County Borough Council. Any person authorised to issue a notice on behalf of Conwy County Borough Council must comply with the guidance set out in this code of conduct.

Parents/carers and pupils are supported at school and local authority ("LA") level to overcome barriers to regular attendance 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 sanction is a means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement.

2. Legal practicalities

- 2.1 A penalty notice is £60 if paid within 28 days of receipt of the notice, rising 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 LA **must consider either prosecution for the offence or withdraw the notice.**

- 2.2 Such a prosecution is for the offence of failing to secure attendance at school and not for non-payment of the fine. It is brought under section 444 of the Education Act 1996.
- 2.3 Withdrawal of the notice can only take place in very limited circumstances as set out in this code of conduct.

3. Who can issue a penalty notice

- 3.1 The authorised officers within the ESWS will be the only individuals permitted to issue FPN warning letters and the Fixed Penalty Notices within the County Borough of Conwy, which will ensure consistent and equitable delivery and allow schools to maintain good relationships with parents and ensure that they reinforce any other enforcement sanctions.
- 3.2 The authorised officers have discretion when deciding whether to issue a penalty notice; the specific circumstances in each individual case will be the determining factor.
- 3.3 Subject to paragraph 3.4 below, an officer of a LA may only issue a penalty notice in respect of a child:
- (a) Who is a registered pupil at a school in the area of that authority;
 - (b) For whom that authority has made arrangements for alternative educational provision (whether or not in the area of that authority); or
 - (c) Who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of that authority.
- 3.4 Where a LA has entered into an agreement with another LA for an officer of that other authority to issue penalty notices in respect of a child to which paragraph (a) or (b) above applies, an officer of that other authority may issue

a penalty notice in respect of such child. Where a pupil resides in the area of a neighbouring LA but attends a school within Conwy, Conwy County Borough Council ESWs will be responsible for issuing any penalty notices for non-attendance at school.

4. Who can receive a penalty notice

- 4.1 Any parent/carer of children of compulsory school age who are registered at a maintained school, a Pupil Referral Unit (PRU) and those attending alternative provision can receive a fixed penalty notice.
- 4.2 As with prosecutions under Section 444 of the Education Act 1996, a penalty notice may be issued to each parent/carer liable for the offence or offences.
- 4.3 For the purposes of education legislation the definition of parent/carer is set out at Section 576 of the Education Act 1996. 'Parent' means all natural parents/carers, whether they are married or not; it includes any person who although not a parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person, and 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 considered to be a parent in education law.

5. Circumstances for issuing a penalty notice

- 5.1 A penalty notice can only be issued in cases of unauthorised absence. The use of penalty notices will be restricted to one notice per parent / carer of a pupil per term.

5.2 Penalty notices may be issued in respect of more than one child in cases where there is more than one poorly attending pupil in a family.

5.3. Penalty notices may be considered appropriate in the following circumstances:

- Failure to secure regular attendance;

This will be established when:

- (i) At least 10 sessions (5 school days) are lost due to unauthorised absence during the current term. These do not need to be consecutive; or

- (ii) Unauthorised absences of at least 10 session (5 school days) due to Leave of absence (holiday) in term time or delayed return from extended Leave of absence.

- Persistent lateness (i.e. after the register has closed and an unauthorised absence is created). “Persistent” means at least 10 sessions (5 school days) of late arrival during the current term.

5.4 Schools are required under the Education (Pupil Registration)(Wales) Regulations 2010 to take an attendance register twice a day; at the start of the morning session and once during the afternoon session. The accuracy of the register is important to support any statutory interventions that may be required, and it is an offence not to maintain accurate registers.

5.5 Please see Appendix 1 for examples of when a Fixed Penalty Notice may be considered appropriate.

6. Procedure for issuing a fixed penalty notice

6.1 Conwy County Borough Council ESWS, in consultation with schools, will be responsible for the decision to issue penalty notices. This will ensure:

- consistent delivery
- relationships between schools and parents/carers are maintained
- co-ordination with other enforcement sanctions; and
- co-ordination between agencies

6.2 Schools, the police and neighbouring LA's are able to request the issue of a notice. Conwy County Borough Council ESWs will respond to all requests to issue a penalty notice within 10 school days of receipt, provided all relevant information has been supplied to enable the request to be properly considered.

6.3 Where the relevant criteria for a Fixed Penalty Notice are satisfied, Conwy County Borough Council ESWs may decide to issue a formal written warning to the parent/carer, advising them that a fixed penalty will be issued unless immediate improvements are made and sustained in respect of the child or young person's school attendance. In such circumstances the parent/carer **will be given 15 school days to improve the** situation before a notice is issued or proceedings are instigated. Such matters will be determined on a case by case basis.

6.4 Conwy County Borough Council ESWs will only consider issue of a Notice where the school has provided the necessary paperwork and evidence. This paperwork should comprise:

(a) A copy of the school newsletter or letter sent to all parents/carers during the current academic year which clearly states that parents may receive a Fixed Penalty Notice for unauthorised absences, including Leave of Absence (holidays) in term time which have not been authorised by the school.

(b) A copy of the Leave of Absence request form submitted by parent/carer, and a copy of the response sent to the parent/carer by school. In the event the Leave of absence request is not being authorised, the school's response must state the reason why and should again advise the parent/carer that

they may receive a Fixed Penalty Notice if they still decide to take their child out of school;

(c) A copy of the letter sent by the school to the parent/carer advising them that the school has referred the matter to the LA for consideration and that a Fixed Penalty Notice may be issued;

(d) Pupil Attendance or Registration Certificate;

(e) Signed certificate from the Head Teacher or their nominated deputy confirming that the non-attendance during the period was unauthorised;

6.5 A Penalty Notice will not be issued in respect of Looked After Children (LAC) who are subject to on-going LA intervention.

6.6 Penalty notices will be served by post; service is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice. "Working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

7. Payment of penalty notice

7.1 Arrangements for payment will be detailed within the penalty notice.

7.2 Payment of the notice discharges the parent's/carer's liability for the period in question and they cannot be subsequently prosecuted under other enforcement powers for the period covered by the notice.

7.3 Conwy County Borough Council retains any revenue from any penalty notice to cover enforcement costs. It is unlikely that revenue will be greater than enforcement costs. However, any surplus must be surrendered to the Welsh Consolidated Fund.

8. Non-payment of penalty notice

Non-payment of a penalty **may** trigger prosecution procedures brought under section 444 of the Education Act 1996, **but this will be considered on an individual basis**

9. Withdrawal of a penalty notice

- 9.1 There is no statutory right of appeal against issuing of a penalty notice. Once issued a penalty notice may only be withdrawn by Conwy County Borough Council where:
- (i) proof has been established that the penalty notice has been issued to the wrong person;
 - (ii) the notice ought not to have been issued, i.e. where it has been issued outside the terms of this code of conduct or no offence has been committed; or
 - (iii) it appears to the LA that the notice has material errors.
- 9.2 Where a penalty notice has been withdrawn in accordance with the above, written notice of the withdrawal must be given to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it.
- 9.3 No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued, or for an offence under section 444(1A) of the Education Act 1996 arising out of the same circumstances.
- 9.4 A penalty notice must be withdrawn where the penalty is not paid in full before the expiry of the period for paying it (i.e. within 42 days of receipt of the notice),

and the LA has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is contemplating such proceedings.

10. Policy and publicity

- 10.1 School Attendance Policies to include information on issuing Penalty Notices. This should be brought to the attention of parents/carers.

11. Equalities and Welsh Language

- 11.1 The issuing of Fixed Penalty Notices must comply with other related legislation and regulations, in order to ensure that they are used in a fair and consistent manner and have paid due regard to the circumstances of the child/children and families involved. These include, but are not limited to the following:-

- Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011
- Welsh Language (Wales) Measure 2011
- Human Rights Act 1998

- 11.2 Conwy County Borough Council's Equality & Diversity Policy covers the full range of issues that may need to be considered, depending on the individual case.

12. Annual review, reporting and recordkeeping

- 12.1 Conwy County Borough Council ESWS will monitor, record and evaluate the effectiveness of Fixed Penalty Notices annually. Data will also be made available to the Welsh Government on request.
- 12.2 This code of conduct will be reviewed by Conwy County Borough Council ESWS on an annual basis, and may be amended depending on the outcome of the previous year's operation.
- 12.3 Conwy County Borough Council ESWS will be responsible for maintaining records of penalty notices within the County Borough of Conwy, which will include:
- (a) a copy of each notice issued;
 - (b) a record of all payments made and on what dates;
 - (c) whether the notice was withdrawn and on what grounds; and
 - (d) whether the recipient was prosecuted for the offence for which the notice was issued (or where the notice related to an offence under subsection (1) of section 444 of the Education Act 1996, for an offence under subsection (1A) arising out of the same circumstances).

13. How to get further information

- 13.1 Further information on the operation of this code of conduct and penalty notices within Conwy County Borough Council is available from:

Education Social Work Service
Coed Pella
Conwy Road
Colwyn Bay
CONWY
LL29 7AZ

Telephone: (01492) 575031

Email: **ESWS@conwy.gov.uk**

- 13.2 General information about penalty notices for non-attendance at school can be found in the Education (Penalty Notices)(Wales) Regulations 2013 and the Welsh Government Guidance document 'Guidance on penalty notices for regular non-attendance at school – 116/2013'.

Appendix 1

EXAMPLES WHEN A PENALTY NOTICE MAY BE CONSIDERED

A penalty notice can only be issued in cases of unauthorised absence where the criteria at 5.3 above are established.

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/carers has committed an offence under section 444(1) of the Education Act 1996.

LAs and schools should consider each pupil and case on an individual basis and assess the level of support and intervention required before deciding on the most suitable strategy for improving an individual pupil's attendance.

The following are examples where a penalty notice might be issued. Whilst they are not an exhaustive list of examples, it might be considered appropriate to serve a notice in the following circumstances:

- A child has been referred to ESWS and casework is in progress, but the parents/carers are not supporting the schools or ESWS's attempts to bring about improved attendance and no other legal sanctions are underway.
- Where parents/carers persistently fail to ensure their children attend school, and where there is a pattern of unauthorised absence for an identified period with no acceptable reason, and no other legal sanctions are underway.
- Where there is a pattern of unauthorised absence for a given period without justification and parental non-attendance prosecution under section 444 of the Education Act 1996 would not be in the public interest.

- Where parents/carers are unwilling to sign a contract offering support and attendance is below an agreed acceptable level over a set period without reasonable justification.
- Leave of Absence (holiday) is taken without agreement with, or notification to, the school and the parents/carers have been warned that a fixed penalty notice may result.
- Where a pupil is persistently late and arrives after the register has closed.
- Where a child regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason.
- Pupils located on truancy sweep initiatives (this will only be possible where the facts are already known, e.g. where a child has a history of persistent absence) unless there is a justifiable reason for the absence from school.