



**Code of Conduct**  
**Education Fixed Penalty Notices**  
**Irregular Attendance**

**February 2020**

## **1. Legal Framework**

- 1.1 The law empowers designated Cheshire West and Chester Borough Council Officers, head teachers - including their nominated deputies - and the Police to issue Fixed Penalty Notices to the parents of children who have unauthorised absence for Irregular Attendance from school.
- 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 outlined in:
  - The Education Act 1996;
  - The Education and Inspections Act 2006;
  - The Education (Penalty Notices) (England) Regulations 2007; and
  - Guidance published by the Department for Education, in particular the “Guidance on Education–Related Parenting Contracts, Parenting Orders and Penalty Notices 2007, and Ensuring Children’s Rights to Education”.
- 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 West and Chester Borough 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 parent 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.”
- 2.1.a Section 8 of the Education Act 1996 states that:

In England and Wales:

  - A child begins to be of compulsory school age on the start date of the term following his fifth birthday, or that day if his fifth birthday falls on the day term starts.
  - A child ceases to be of compulsory school age on the last Friday in June in the academic year in which he reaches the age of 16 or if he reaches 16 after the last Friday in June but before the start of the new school year.

- 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.
- 2.3.a The definition of "parent" includes 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
- 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 truancy problems before they become entrenched.
- 2.5 Parents and children will be supported by their school/alternative provision, the Education Welfare Service (EWS) 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.

### **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 due to Irregular Attendance for pupils of compulsory school age.
- 3.2 The Local Authority may issue a maximum of two Fixed Penalty Notices in an academic year, and these Fixed Penalty Notices may be issued against each Parent/Carer of a child. Once two Fixed Penalty Notices have been issued, should there be further unauthorised absences the Local Authority are able to move to prosecution immediately.
- 3.3 In cases where there is more than one poorly-attending pupil in a family, Penalty Notices may be issued for more than one child and the Education Welfare Officer should consider the attendance of any other sibling.
- 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 Penalty Notices may be considered appropriate in the following circumstances:
  - At least 10 sessions (five school days) lost due to unauthorised absence during the current term. These do not need to be consecutive.

- Persistent late arrival at school, i.e. after the register has closed, in the current term. “Persistent” means at least 10 sessions of late arrival
- Truancy
- The presence of an excluded child in a public place at any time during school hours in that child’s first five days of exclusion. An “excluded child” is one who has been excluded from school for a given period under the Education and Inspection Act 2006.

3.6 A Penalty Notice will not be issued in respect of children in our care with whom other interventions will be used.

#### **4. Considerations and Assessment as to whether a Fixed Penalty Notice should be Issued**

4.1 The Education Welfare Services will take into account the following when determining whether a Fixed Penalty Notice should be issued:

- 4.1.a Level of absence
- 4.1.b Disability under the Equality Act 2010
- 4.1.c Any statement of Special Educational Needs
- 4.1.d History of the attendance issues and action taken
- 4.1.e Defences which may be available
- 4.1.f Government Guidance
- 4.1.g Likely effectiveness of a Fixed Penalty Notice as a tool for improving attendance
- 4.1.h Level of parent engagement/cooperation

#### **5. Procedure for Issuing Fixed Penalty Notices**

5.1 The decision to issue a Fixed Penalty Notice is made by the Education Welfare Officer in consultation with the School.

5.2 Following instruction from the Education Welfare Officer the designated officers within Cheshire West and Chester Borough Council’s Education Welfare Service will be the only individuals permitted to issue Fixed Penalty Notices in the Cheshire West and Chester 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.

5.3 Fixed 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 limit the health and safety risks associated with delivering such Notices by hand.

5.4 Where schools, Police or neighbouring local authorities ask Cheshire West and Chester Borough Council to issue a Fixed Penalty Notice, their request 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 West and Chester 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 or Section 103 of the Education and Inspections Act 2006 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; and
- There is a reasonable expectation that the use of a Fixed Penalty Notice would improve the child's school attendance.

#### 5.5 The Education Welfare Service will:-

- Issue a formal written warning to the parent of the possibility of a Fixed Penalty Notice being issued;
- Set a period of 15 school days within which the pupil must have no unauthorised absence, and give the parent an opportunity to respond; this information is included in the formal written warning letter.
- After due consideration of the facts of the case, only issue a Fixed Penalty Notice through the post at the end of the 15 day period, if the required level of improved school attendance has not been achieved.

#### 5.6 All Fixed Penalty Notices will be entered onto a database maintained by Education Welfare Services to assure that no duplicate Fixed Penalty Notices are issued.

## **6. Excluded Pupils**

- 6.1 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, up to and including the first five days or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates.
- 6.2 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 and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level three on the standard scale.

## **7. Procedure for the Withdrawal of Fixed Penalty Notices**

- 7.1 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, e.g. medical evidence; or
- The circumstances of the case warrant its withdrawal.

## **8. 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 to the Education Welfare Service and/or opt to face proceedings in the Magistrates' Court under Section 444 of the Education Act 1996 in relation to absences or under section 103 of the Education and Inspections Act 2006 in relation to excluded children, where all of the issues relating to their Fixed Penalty Notice can be fully debated.

## **9. Payment of Fixed Penalty Notices**

9.1 Arrangements for payment will be detailed on the Penalty Notice.

9.2 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.

9.3 If the Fixed Penalty Notice is paid:

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

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

9.5 Penalty Notices cannot be paid either in part or by instalments.

9.6 Cheshire West and Chester Borough Council will retain any revenue from the Fixed Penalty Notices, hold it separately and usually use it to cover enforcement costs, i.e. costs associated with the issue, collection or prosecution, in the event of non-payment, of Fixed Penalty Notices.

## **10. Non-Payment of Fixed Penalty Notices**

Non-payment of a Fixed Penalty Notice may result in prosecution for the period covered by the Fixed Penalty Notice and may include any continuing irregular attendance under Section 444 of the Education Act 1996.

## **11. Policy and Publicity**

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

## **12. Reporting and Review**

- 12.1 Cheshire West and Chester Borough Council will provide a termly report for the Head of Service.
- 12.2 The Education Welfare Service will review Fixed Penalty Notice use at least every other year and will amend its general enforcement strategy as appropriate.

## **13. The Human Rights Act 1998 and all Equal Opportunities Legislation**

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

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## **Appendix 1 – Legislation**

Relevant legislation includes:

### **The Children Act 1989**

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.

### **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 and 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

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