



Walsall Council

WALSALL METROPOLITAN BOROUGH COUNCIL (WMBC) PENALTY NOTICE CODE OF CONDUCT FOR UNAUTHORISED ABSENCES

General & Background

1. Legal basis
 2. Rationale
 3. Legal practicalities
 4. Who may issue a Penalty Notice
 5. Withdrawal of a Penalty Notice
 6. Representation
 7. Payment of Penalty Notice
 8. Non-payment of Penalty Notice
 9. Operational details
 10. Annual Review
 11. How to get further information
-

1. Legal basis

Penalty Notices are an alternative to prosecution under section 444 (1) of the Education Act 1996 & section 103(3) of the Education & Inspections Act 2006 & enable any parent/carer to discharge of potential liability for conviction for these offences by paying a financial penalty.

As an alternative to prosecution, where appropriate, a Penalty Notice can be issued in accordance with this code of conduct.

In Walsall Council Penalty Notices are duly considered & where appropriate issued in all cases of unauthorised absence from school which give rise to a child or young person having a period of attendance that is classified as irregular &/or poor.

All Penalty Notices issued by Walsall Council's Education Welfare Service [EWS] comply with the legal principle established in the Isle of Wight Council v Platt [2017] case by the Supreme Court, namely that regular school attendance shall mean attendance in accordance with the school rules. Therefore, any non-attendance which is not authorised in accordance with the school rules will be deemed unauthorised & may give rise for reasonable cause for Walsall Council's Education Welfare Service to issue a Penalty Notice against the respective parent(s)/carer(s).

At a regional & national level, regular & punctual attendance at school is both a mandatory & legal requirement. These requirements are seen to be of equal importance in that they are both required to facilitate & ensure all pupils who attend schools within the borough of Walsall fully optimise their educational offer, as well as each & every learning opportunity that is afforded to them.

In law, an offence occurs if a parent/carer fails to secure their child's regular attendance at the school which he or she is registered & that absence is not authorised by the school.

This Code of Conduct has been drafted in accordance with the requirements of Regulations 14 to 18 of the Education (Penalty Notices) (England) Regulations 2007.

The regulations specify that the following must be included in the code of conduct.

a) Means of avoiding the issue of duplicate Penalty Notices;

Each & every EWS Officer attached to Walsall's Education Welfare Service has a professional responsibility to ensure that the Penalty Notices requested by their designated Schools comply with this Code of Conduct. All Penalty Notices are quality assured as in subject to a final check by a Specialist Attendance Officer prior to being issued.

All Penalty Notices are allocated a unique reference number which is linked to the pupil. Records are kept electronically to ensure there are no duplications.

b) Measures to ensure that a Penalty Notice is not issued in respect of an offence when proceedings for that offence under section 444 (1) of the Education Act 1996 (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 10 3(3) of the Education & Inspection Act 2006, as the case may be, are contemplated or have been commenced by the Local Authority;

Individual EWS Officers have responsibility for requesting the issue of a Penalty Notice & securing knowledge of the pupils/families being referred to them by their designated Schools. Final checks are then carried out by a senior member of the team, who issues the Penalty Notices. Each Attendance Officer is responsible for monitoring the attendance of pupils referred. The Education Welfare Service's management team use electronic records to ensure that a Penalty Notice is not issued in error when proceedings are contemplated or have been commenced.

c) The occasions when it will be appropriate to issue a Penalty Notice for an offence;

Penalty Notices will usually be the first formal response for offences under section 444 (1) where unauthorised absence is 15% or less out of 60 possible attendances always bearing in mind that the lower limit where action will be considered is 10% absence out of 60 possible attendances. Absences of 16% & above are not deemed suitable for disposal by way of a Penalty Notice. This means that the child must have attendance of at least 85% to be offered a penalty notice as an alternative to prosecution.

This can include holidays taken without authorisation in term time. However, the Local Authority also wishes to address the issue of parents/carers who do not meet the threshold of 10% absence

out of 60 possible attendances on one occasion for a holiday taken without authorisation in term time, but who have taken their child out of school on more than one occasion for unauthorised holidays in term time. Any such absences of whatever duration taken on more than one occasion, for example 2 days absence for an unauthorised holiday in term time in two different academic years, can lead to the issue of a Penalty Notice. This is because there should be no unauthorised holiday absence in term time & it is an aggravating feature of unauthorised absence that the absences are wilfully repeated.

In the case of offences under section 103(3) of the Education & Inspections Act 2006 a Penalty Notice will usually be issued whenever the pupil is present in a public place at any time during school hours on a day which: (1) is one of the first five school days to which the exclusion relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates & (2) is stated in the notice to be a day on which the parent(s)/carer(s) is subject to this obligation. This is because the child is present in breach of the notice & the length of the infringement.

d) A maximum number of Penalty Notices that may be issued to one parent in any twelve month period;

Irrespective of whether a child/young person of compulsory school age has more than two periods of irregular, poor or non-attendance in any academic year of schooling the maximum number of Penalty Notices that may be issued by Walsall Council is two.

e) Arrangements for co-ordination between the Local Authority, neighbouring Local Authorities where appropriate, the Police & any other Authorised Officers;

Please note that:

1. Walsall Council only issue Penalty Notices with respect of pupils that are registered at Walsall schools and by virtue of this arrangement are reasonably expected to attend to their designated school regularly, irrespective of their home address.
2. None of the Police that operate within the borough of Walsall issue Penalty Notices for truancy.
3. There are at present no arrangements for co-ordination between the Local Authority, neighbouring Local Authorities, the Police & or any other Authorised Officers.

2. Rationale

Through the daily application of a broad continuum of assessment & intervention strategies (employed via the staff working within Walsall Council's Education Welfare Service & across all of Walsall's schools) all of Walsall's parents/carers, children/young people & schools are appropriately supported proactively at a regional & national level to overcome barriers that impact adversely on the securement of regular school attendance.

This broad continuum of assessment & intervention strategies are applied in a fair, just & reasonable manner by the designated EWS Officers assigned to work within Walsall's schools. All of the EWS Officers working across the borough of Walsall use the same graduated tiered approach to inform how they engage with children, young people & families.

Adopting this approach consistently ensures each & every family are afforded equitable opportunities to participate/engage with the Education Welfare Service in a child centred way that reduces the risk of legal action being instigated against them.

The Education Welfare Service's graduated tiered approach is underpinned by the application of a broad range of child centred/wellbeing principals which actively seek to promote early/preventative interventions. The approach adopted is also designed to promote positive engagement, inclusion, & is informed by the use of restorative justice principles, where appropriate.

The Education Welfare Service is committed to ensuring each family's unique set of circumstances are duly considered, respected & reflected in the assessment(s) & or intervention strategies that are put forward to best support their individual & or collective needs.

3. Legal practicalities

All Penalty Notices as issued by Walsall Council effectively afford the respective parent(s)/carer(s) of the pupil(s) to whom the Penalty Notice relates the opportunity to avoid legal action (by diverting themselves away from being made the subject matter of a prosecution via the Local Magistrates Court) for failing to secure regular school attendance of their child(ren).

All Penalty Notices issued within the borough of Walsall are consulted on & approved in conjunction with the respective School as well as with the designated EWS Officer.

Walsall Council's Education Welfare Service has & will retain the primary responsibility for developing & enforcing the protocol(s) within which all partners named in this said policy will be required to operate.

4. Who may issue a Penalty Notice

All Penalty Notices issued to parents/carers of children (who attend schools within Walsall) are administered by authorised LA staff employed within Walsall Council's Education Welfare Service.

All nominated Local Authority Officers of Walsall Council who are authorised to issue Penalty Notices in Walsall must comply with the guidance set out in this Code of Conduct.

5. Withdrawal of a Penalty Notice

(1) A Penalty Notice may be withdrawn by the Local Authority named in the notice as the authority to which payment is to be made for payment in any case in which—

Approved: April 2021

- (a) That authority determines that—
 - (i) It ought not to have been issued; or
 - (ii) It ought not to have been issued to the person named as the recipient; or
- (b) It appears to the authority that the notice contains material errors.

No proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued, or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Education Act, for an offence under subsection (1A) arising out of the same circumstances.

However, where the Penalty Notice was withdrawn because it appears to the Local Authority that the notice contains material errors proceedings can be continued or instituted if a further penalty notice is issued at the same time the defective notice is withdrawn & the further notice period has elapsed without payment being made.

6. Representation

There is no statutory right of appeal against the issuing of a Penalty Notice.

7. Payment of Penalty Notice

1. Arrangements to make payment of Penalty Notices are detailed on the Penalty Notice itself.
2. Payment of the Penalty Notice discharges the parents/carers of liability for the period of irregular or non-school attendance recorded (specifically the dates cited on the Penalty Notice itself) which could otherwise (if unpaid) give rise to the parents/carers being subject to legal action.
3. Walsall Council retains all revenue secured from Penalty Notice payments to cover enforcement costs.
4. In the unlikely event that the Penalty Notice revenue exceeds the enforcement costs the additional sum is returned to central Government.

8. Non – payment of Penalty Notice

Where appropriate, non – payment of Penalty Notices will trigger prosecution, under the Single Justice Procedure in accordance with the provisions set out in section 444 of the 1996 Education Act or section 103(3) of the 2006 Education & Inspections Act.

9. Operational details

1. The Education Welfare Service will retain operational responsibility for processing & issuing all Penalty Notice requests that are made by Schools within the borough of Walsall that comply with this Code of Conduct & circumstances of the pupil's absence meets the required threshold criteria.
 2. All Penalty Notices will be issued (in good faith) on the basis of the requests being made out on behalf of a Headteachers &/or school staff authorised by them (e.g. Attendance Leads; Deputy Heads, Designated Safeguarding Leads etc.) to make out such requests to Walsall Council with their consent/authority.
 3. All Schools within the geographical borders of Walsall will be privy to this Penalty Notice Code of Conduct & will be required to amend their Attendance Policy to align with it.
 4. All Schools within the geographical borders of Walsall are strongly advised to place a copy of this Code of Conduct on their respective School websites.
-

10. Annual Review

- This Code of Conduct will be monitored & reviewed as appropriate by Walsall Council's Education Welfare Service.
 - Subject to consultation, Walsall Council reserves the legal right to make amendments to this Code of Conduct prior to the scheduled annual review of it on a needs or must do basis to ensure it continues to reflect up to date legislation, DfE guidance &/or best practice principles.
-



Signed: Sally Rowe
Executive Director – Children's Services

Dated: 16th June 2021

Approved: April 2021

How to get further information

Internet links to penalty notice regulations:

1. The Education (Penalty Notices) (England) (Amendment) Regulations 2013:
<https://www.legislation.gov.uk/uksi/2013/757/made>
2. The Education (Penalty Notices) (England Regulations 2007):
<http://www.legislation.gov.uk/uksi/2007/1867/contents/made>
3. The Education (Penalty Notices) (England (Amendment) Regulations 2012:
<http://www.legislation.gov.uk/uksi/2012/1046/contents/made>
4. The Education (Penalty Notices) (England (Amendment) Regulations 2013:
<http://www.legislation.gov.uk/uksi/2013/757/contents/made>

Associated Regulations & Acts of Law:

1. The Education (Pupil Registration) (England Regulations 2006:
<http://www.legislation.gov.uk/uksi/2006/1751/contents/made>
2. The Education (Pupil Registration) (England (Amendment) Regulations 2013:
<http://www.legislation.gov.uk/uksi/2013/756/regulation/2/made>
3. Education Act 1996:
<http://www.legislation.gov.uk/ukpga/1996/56/contents>
4. Anti-Social Behaviour Act 2003:
<http://www.legislation.gov.uk/ukpga/2003/38/contents>
5. The Education & Inspections Act 2006:
<http://www.legislation.gov.uk/ukpga/2006/40/contents>
6. Children Act 1989:
<http://www.legislation.gov.uk/ukpga/1989/41/contents>

Reference documents:

1. DfE: [Schools coronavirus \(COVID-19\) operational guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)
2. DfE: School attendance parental responsibility measures. Statutory guidance for local authorities, school leaders, school staff, governing bodies & the police (January 2015):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/581539/School_attendance_parental_responsibility_measures_statutory_guidance.pdf
3. DfE: A guide to absence statistics (March 2019):
<https://www.gov.uk/government/publications/absence-statistics-guide>
4. DfE: School attendance Guidance for maintained schools, academies, independent schools & local authorities (July 2019):
<https://www.gov.uk/government/publications/school-attendance>