



# **Code of Conduct for Penalty Notices**

## **Irregular Attendance at School/ Alternative Education Provision**

## Legal Basis and Rationale

The Welsh Government [WG] Guidance on Penalty Notices for Regular Non-Attendance at School (Guidance document no. 116/2013) [the Guidance] provides that penalty notices are one option available to promote better school attendance. The Guidance also provides 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”.

Regular and punctual attendance of pupils at school/alternative education provision 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, as defined in section 576 of the Education Act 1996, fails to secure their child’s regular attendance at school / alternative education 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 of up to £120 may be issued to a parent as a result of a child’s regular non attendance at school / alternative education provision.

Pembrokeshire County Council [PCC] has the prime responsibility for developing the protocol within which schools, police and the local authority in Pembrokeshire will operate and PCC’s Children and Schools Directorate will deliver this responsibility. Head teachers, including their authorised deputy and assistant head teachers, and the police are able to request a penalty notice in relation to a parent of child/ren who have unauthorised absence from school / alternative education provision. A Head teacher, or their authorised deputy and assistant Head teacher, can only request a penalty notice in respect of a child who is a registered pupil at their school. The issuing of penalty notices must comply with all the requirements of the Human Rights Act and all equal opportunities legislation.

PCC will continue to investigate cases of irregular attendance from school / alternative education provision and following appropriate casework, will instigate legal action if appropriate. However, penalty notices offer a means of swift intervention which PCC may 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 be applied consistently and equitably across PCC. Any persons authorised to issue (and request the issuing) of a penalty notice must do so in accordance with this code of conduct.

The purpose of the Code of Conduct is to ensure that the powers are applied consistently and fairly across Pembrokeshire and that suitable arrangements are in place for the administration of the scheme.

## **Inclusion and equality issues**

PCC 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 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 truancing and associated anti-social activities.

Parents and pupils are supported at a school / alternative education provision and PCC 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 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).

## **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 of the notice;
- 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 notice. 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 in Pembrokeshire will remain the sole responsibility of PCC's Children and Schools Directorate. A penalty notice may only be issued by authorised officers within PCC's Children and Schools Directorate. Those authorised officers will have the discretion to decide whether to issue a penalty notice to one or more parents of a child. The specific circumstances in each individual case will be the determining factor.

### **Circumstances for issuing a penalty notice**

A penalty notice can only be issued in cases of unauthorised absence.

The key criteria are as follows:

**When a pupil has a minimum of 10 sessions (five school days) that have been lost due to unauthorised absences during the current term and this brings the pupil's overall attendance to below 90% in the school year to date (these absences do not have to be consecutive).**

\*unauthorised absences include:-

- unauthorised non-attendance at school;
- unauthorised holidays in term-time; and
- unauthorised late arrival after registration has closed.

Authorised officers within PCC's Children and Schools Directorate will co-ordinate and work in consultation with schools, local police officers and neighbouring local authorities where appropriate, to ensure that:

- the child has to be registered as a pupil at the school at which the head teacher or his/her authorised deputy or assistant head teacher is making the request for the penalty notice;
- a penalty notice should only be issued for offences where PCC is able and willing to prosecute (if the penalty is not paid in full by the end of the 42 days of receipt of the notice). PCC should be satisfied that there is sufficient evidence to show the parent has committed an offence under section 444 of the Education Act 1996;
- the use of penalty notices will be restricted to the maximum of three notices per parent of a pupil within an academic school year;
- 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 under section 444 of the Education Act 1996 have commenced or are contemplated at the time of request.

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 request for issuing a penalty notice**

Where a school has identified that a period of unauthorised absence has occurred, a request to PCC's Children and Schools Directorate for a penalty notice can be submitted. Each Head teacher 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;
- completed penalty notice request form (Appendix 3).

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

### **Procedure for issuing a penalty notice**

PCC 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 (Appendix 4). Requests can be generated by a Head teacher, their authorised deputy or assistant head teacher, the police and neighbouring local authorities.

The procedure is as follows:

- PCC receive a request for a penalty notice (Appendix 3) and the relevant checklist will be completed by PCC (Appendix 4);

- If the request is accepted by PCC, PCC to send a formal written warning to the parent notifying them that they may receive a penalty notice. (Appendix 5).
- PCC set a period of 15 school days to allow the parent to respond. During the fifteen days, parents 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/authorised person in the school to determine whether the evidence is accepted and the register amended.

If evidence is not provided or the Head teacher/authorised person does not accept the evidence, then the Head Teacher should notify PCC, and a penalty notice can be issued by PCC by first class post (Appendix 6);

if the payment of £60 is made within 28 days of receipt of the notice there will be no further action;

- if the payment of £60 is not made within 28 days of receipt of the notice, the penalty rises to £120 if paid after 28 days but within 42 days of receipt of the notice;
- if payment of £120 is made within 42 days of receipt of the notice, there will be no further action;
- if payment is not made pursuant to the notice, then the notice will either be withdrawn or the offence will be prosecuted under Education Act 1996 section 444.

#### **Payment of a penalty notice**

- Arrangements for payment will be detailed on the penalty notice.
- Once paid in accordance with the notice, the parent's liability for the period specified in the notice is discharged and they cannot be prosecuted under section 444 of the Education Act 1996 for the same period covered by the notice.
- PCC will use the sums received from penalty notices for the functions of issuing and enforcing penalty notices and prosecuting recipients who do not pay. However, any sums received from penalty notices which are not used for those functions must be paid to Welsh Ministers.
- 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.

Once issued, a penalty notice can only be withdrawn if PCC 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;
- or
- the penalty 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.

Except as provided in the paragraph below, 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 penalty notice related to an offence under section 444(1) of the Education Act 1996, for an offence under section 444(1A) of the Education Act 1996 arising out of the same circumstances.

Where a penalty notice was issued and was withdrawn due to the penalty notice containing material errors, proceedings may be continued or instituted for the offence in connection with which that penalty notice was issued, or where the penalty notice related to an offence under section 444(1) of the Education Act 1996, for an offence under section 444(1A) of the Education Act 1996 arising out of the same circumstances as the first mentioned offence, if both of the following are met:-

-a further penalty notice in respect of the offence or the first mentioned offence, was issued at the same time as the first penalty notice was withdrawn; and

-the penalty has not been paid pursuant to that further penalty notice in accordance with the requirements of the Education (Penalty Notices) (Wales) Regulations 2013 [the Regulations].

PCC must withdraw the penalty notice where:-

- a) the penalty is not paid in full before the expiry of the period for paying it ; and
- b) PCC (pursuant to regulation 3(f) of the Regulations) has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is contemplating such proceedings.

## **Annual review and reporting**

PCC's Children and Schools Directorate will monitor the use of penalty notices as part of the quality assurance process. Data will also be made available to the Welsh Government on request.

This Code of Conduct will be reviewed on an annual basis and may be amended depending on the outcome of the review.

## **How to get further information**

For further information on the operation of this Code of Conduct and Penalty Notices within PCC, please contact:-

Early Intervention Officer  
Education Department  
Children and Schools  
Pembrokeshire County Council  
Freemans Way  
Haverfordwest  
Pembrokeshire  
SA611TP

01437 764551

## **Appendices**

- Appendix 1: School letter
- Appendix 2: Head teacher's authorisation form.
- Appendix 3: Penalty notice request form
- Appendix 4: LA checklist
- Appendix 5: Warning notice.
- Appendix 6: Penalty notice letter