



Penalty Notices for Regular Non-Attendance at School/ Alternative Education Provision

**Code of Conduct
REVIEWED JULY 2019**

Legal Basis and Rationale

The Education (Penalty Notice) (Wales) Regulations 2013 which came into force in September 2013 provide Local Authorities within Wales the option of issuing a penalty notice as one of the interventions available to promote better school attendance. In addition the Welsh Government have published 'Guidance on penalty notices for regular non-attendance at school' (Please see www.cymru.gov.uk)

Regular and punctual attendance of pupils is both a legal requirement and essential for pupils to maximise the educational opportunities available to them. It is a criminal offence 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/alternative provision.

Carmarthenshire County Council has primary responsibility for developing the protocol within which all partners named in the Education (Penalty Notices) (Wales) Regulations 2013 will operate and The School Safeguarding and Attendance Team within Carmarthenshire County Council will carry out this function.

Head Teachers, including their authorised deputy and assistant head teachers are able to request that Carmarthenshire County Council issue a penalty notice in relation to parents/carers of children who have unauthorised absence from school /alternative provision.

The issuing of penalty notices must comply with the requirements of the Human Rights Act, Equal Opportunities legislation and all other relevant legislation.

Carmarthenshire County Council will continue to investigate cases of irregular attendance from school / alternative provision and, following appropriate casework, will instigate legal action if required. However, penalty notices offer a means of swift intervention which Carmarthenshire County Council 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 Carmarthenshire. 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

Carmarthenshire County Council are committed to the continual raising of achievement of all their pupils. There is an expectation that all 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 truanting and associated anti-social activities.

Carmarthenshire County Council are committed to ensuring that Parents / carers and pupils are supported at a school /alternative provision 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.

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 other relevant documentation.

Legal practicalities

- A penalty notice is £60 if paid within 28 days of issuing of the notice;
- This rises to £120 if paid after 28 days but within 42 days of the original notice;
- If the penalty is not paid in full by the end of the 42 days Carmarthenshire County Council will either prosecute for the offence or in certain circumstances withdraw the notice.

The Issue of a penalty notice

In order to avoid the issuing of duplicate penalty notices the management and processing arrangements in Carmarthenshire will remain the sole responsibility of Carmarthenshire County Council.

An authorised officer within Carmarthenshire County Council 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.

A penalty notice can only be issued in cases of unauthorised absence; where Carmarthenshire County Council is satisfied that there is sufficient evidence to show the parent / carer has committed an offence under section 444 of the Education Act 1996.

Please be aware of the following: -

- the use of penalty notices will be restricted to the maximum of three notices per parent, per pupil within an academic school year, where there is more than one parent liable for the offence a separate penalty notice may be issued to each parent;
- penalty notices may be issued for more than one child per family where appropriate;
- there will be no restriction on the number of times a parent may receive a formal warning of a possible penalty notice;
- penalty notices cannot be issued in respect of a child if legal proceedings against the parent/carer under section 444 of the Education Act 1996 have commenced or are contemplated in respect of that child, at the time of request.

Circumstances for issuing a penalty notice

It will be the responsibility of the schools/alternative provision to **request** that Carmarthenshire County Council issue a penalty notice and those requests will only be considered where there is proven evidence of unauthorised absence due to the following circumstances: -

- a pupil has a minimum of 10 sessions (5 school days) that have been lost due to unauthorised absences in the current school term .
- there is 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 during the current school term.

These absences do not have to be consecutive and can be a combination of the above.

Please note that the pupils overall attendance to date and individual circumstances will be taken into consideration prior to any penalty notice being issued.

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 Carmarthenshire County Council for a penalty notice can be submitted. Each Head Teacher can authorise their nominated deputy or assistant Head Teacher to request penalty notices.

The school paperwork should comprise of:

- a completed penalty notice request form and any supporting documentation;
- a copy of the pupil's registration document;
- Confirmation that information was distributed to all parents/carers at the start of the academic year which clearly states the circumstances in which a penalty notice might be issued.

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

Procedure for issuing a penalty notice

Carmarthenshire County Council will respond to all requests to issue penalty notices within 14 school days of receipt. Where it is satisfied that all relevant information has been supplied, the issuing of the penalty notice will be considered.

The procedure is as follows:

- Carmarthenshire County Council receive a request for a penalty notice from the school/alternative provision.
- Carmarthenshire County Council will undertake preliminary enquiries regarding the request.

- If satisfied that the request should progress Carmarthenshire County Council will send a formal letter to the parent/carer notifying them of the request for a penalty notice and give them the opportunity to provide any evidence necessary to explain 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 have to be corrected using the appropriate code. In such circumstances the penalty notice may not be issued by Carmarthenshire County Council

If evidence is not provided or the head-teacher/nominated person does not accept the absences and Carmarthenshire County Council deem it appropriate, then a penalty notice may be issued by first class post.

Payment of a penalty notice

The amount of the penalty notice is £60 if paid within 28 days of issue: -

- if the payment of £60 is made within 28 days of issuing the notice there will be no further action;
- if the payment of £60 is not made, this rises to £120 if paid after 28 days but within 42 days of issuing the original notice;
- if payment of £120 is made within 42 days of issuing the original notice there will be no further action;
- if payment is not made then this could result in a prosecution under section 444 Education Act 1996.

Arrangements for payment will be detailed on the penalty notice **and there is no facility for payment by instalment.**

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.

Carmarthenshire County Council will retain the revenue from penalty notices to cover enforcement costs. However, any surplus must be surrendered to the Welsh Consolidated Fund.

Non-Payment of a penalty notice

Non-payment of a penalty notice may result in a prosecution under Section 444(1) or (1A) of the Education Act 1996. Please note 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 penalties available to the Magistrates Court for a Section 444(1) offence is a fine not exceeding £1,000 and for a section 444(1A) offence a fine not exceeding £2,500 and/or a term of imprisonment not exceeding three months.

Withdrawal of a penalty notice

In line with The Education (Penalty Notices) (Wales) Regulations 2013, once issued, a penalty notice can only be withdrawn if Carmarthenshire County Council is satisfied that:

- That it should not 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;
- That it should not have been issued to the person named on the notice; or
- It appears to Carmarthenshire County Council that the notice contains material errors.

If a parent/carer would like to request that the notice is withdrawn as they feel one or more of the above criteria is met, then they must submit a written request to the authorised officer at Carmarthenshire County Council within 14 days of the date of notice being issued. (please see contact details below)

The authorised officer on receipt of the request will make a decision on whether the notice should be withdrawn.

The authorised officer will then write to the parent/carer to inform them as to whether their request has been successful or not.

Where a penalty notice has been withdrawn in accordance with the above criteria, no proceedings will continue or be instigated 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 of the Education Act 1996 for the offence arising out of the circumstances for the period covered by penalty notice.

Right of Appeal

There is no statutory right of appeal against issuing of a penalty notice, but where a parent/carer contests the issuing of a penalty notice they can submit evidence within 14 days of the notice being issued to the authorised officer within Carmarthenshire County Council. If the evidence is not accepted by Carmarthenshire County Council, then the notice still stands, and the original payment time scale still applies.

Annual review and reporting

Carmarthenshire County Council will monitor the use of fixed penalty notice as part of the quality assurance process. Data will also be 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 previous year's operation. This report will be made available to the head of service.

How to get further information

If you require any further information on this Code of Conduct, the issuing of Penalty notices or wish to contact the authorised officer within Carmarthenshire County Council then please contact the School Safeguarding and Attendance team at:-

School Safeguarding and Attendance team,
2nd Floor,
Ty Elwyn,
Llanelli,
SA15 3AP
01554 742369
educationwelfare@carmarthenshire.gov.uk

