



**MANCHESTER  
CITY COUNCIL**

# **Children's Services**

**Protocol**

**for**

# **Penalty Notices**

**8th issue – July 2013**

Legislation.....	3
Rationale.....	3
Advisory letters to parents .....	4
Early patterns of unauthorised absence.....	4
Truancy sweeps.....	5
Leave of absence in term-time.....	5
Excessive delayed return from leave of absence or extended leave of absence .....	5
Persistent late arrival at school .....	6
Issuing penalty notices.....	6
<b>Criteria for requesting a penalty notice</b>	
<b>Considering penalty notice requests .....</b>	<b>6</b>
<b>Issuing penalty notices .....</b>	<b>7</b>
Payment of penalty notices .....	7
Non-payment of penalty notices .....	7
Procedure for withdrawal .....	7
School and Local Authority policy documents.....	8
Monitoring and review .....	8
<b>Appendix A.....</b>	<b>9</b>
<b>Appendix B.....</b>	<b>10/11</b>
<b>Appendix C.....</b>	<b>12–15</b>

## LEGISLATION

Section 23 of the Antisocial Behaviour Act 2003 introduced new powers for designated Local Education Officers, Headteachers (and Deputy or Assistant Headteachers authorised by them) and the police to issue penalty notices for unauthorised absence from school.

The Education (Penalty notices) (England) Regulations 2004 came into force on 27 February 2004. This was updated with The Education (Penalty Notices) (England) Regulations 2007.

This was again updated with The Education (Penalty Notices) (England) (Amendment) Regulations 2013 and comes into force 1<sup>st</sup> September 2013.

Penalty notices must be issued in a manner that conforms to all requirements of the Human Rights Act and all Equal Opportunities Legislation.

For the purposes of the Protocol, the legal definitions of 'parent' are:

- Any natural parent, whether married or not
- Any parent who, although not a natural parent, has parental responsibility as defined in the Children Act (1989) for a child or young person
- Any person who, although not a natural parent, has care of a child or young person.

If a penalty notice remains unpaid, prosecutors must take into account the 'Code for Crown Prosecutors' that sets out a two-stage test that prosecutors should follow when they make decisions on cases:

*Is there enough evidence against the defendant?*

When deciding whether there is enough evidence to charge, prosecutors must consider whether evidence can be used in court and is reliable. Prosecutors must be satisfied there is enough evidence to provide a 'realistic prospect of conviction' against each defendant.

*Is it in the public interest for the CPS to bring the case to court?*

A prosecution will usually take place unless the prosecutor is sure that the public interest factors tending against prosecution outweigh those tending in favour.

## RATIONALE

The authorised officer for issuing penalty notices is Tracey Dunn, Attendance Strategy Manager, within Children's Services.

Regular and punctual attendance at school is a legal requirement under Section 444 of the Education Act 1996. It is essential that parents maximise the educational opportunities available for their children and provide the best possible start in life.

Under previous legislation, parents of a registered pupil whose child failed to attend school regularly and whose absence was unauthorised, committed an offence for which prosecution was the only available sanction. With the Education (Penalty notices) Regulations 2007, penalty notices were introduced as an early intervention strategy as an alternative to the previous sanction by allowing parents an opportunity to discharge potential liability for conviction for the offence. From 1 September 2013 following the Penalty Notice Amendment the fine will be £60 if paid within 21 days and £120 if paid within 28 days. If the penalty remains unpaid by the end of 28 days, the Local Authority (LA) must consider the commencement of proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the notice but is for failure to ensure regular attendance at school.

Penalty notices should be used as an early deterrent to prevent patterns of unauthorised absence developing and to supplement rather than replace the use of the wider powers already available. As with current legislative action, they are to be used for the enforcement of attendance and not for use as a punishment for absence.

The Local Authority authorises the issue of all penalty notices. One Education has been commissioned by the local authority to offer support and advice to parents and schools and issue a penalty notice following the authorisation if parents fail to follow advice given by the school or where co-operation is absent or insufficient to bring about necessary improvement.

Penalty notices should be used where a parent is capable of securing an improvement in their child's school attendance but is unwilling to do so. They can only be used for periods of unauthorised absence and the defences in law replicate those already in place for enforcement actions under the provisions of Section 444 of the Education Act 1996.

A separate penalty notice can be issued to each parent for every child who is not attending school. For each child, there should be an advisory letter issued to each parent during an academic year. All penalty notices will be issued by first-class post.

## **ADVISORY LETTERS TO PARENTS**

### **Early patterns of unauthorised absence**

Schools are expected to monitor the attendance of all pupils on their roll. If five sessions of unauthorised absence occur over a period of no more than 100 sessions, the school should advise parents of the unauthorised absence, and that their child's attendance is going to be monitored for a period of no less than 15 school days. They should also be advised that statutory action may be considered.

Any such advice must be given in writing, and the advisory letter sent by post or hand delivered to the home address to each parent where appropriate. The advisory letter is attached in Appendix A. Any changes to the advisory letter will be communicated to schools via a circular letter.

Prior to sending such a letter, the school should:

- be able to evidence casework such as meetings, home visits and letters regarding the pupil's attendance
- consider the attendance record of any other siblings, including siblings from other schools of statutory school age and whether co-ordination of advisory letters or action is required
- consider whether the process conflicts with other intervention strategies in place by the Local Authority or other agencies
- ensure the school's attendance leader has given approval.

It is important that any school actions are accurately recorded on the pupil's file. This will aid completion of the penalty notice request form (Appendix B) and may be used to provide evidence to the courts at a later date.

### **Truancy sweeps**

Where a pupil is stopped on a truancy sweep and there is not a valid reason for the absence from school, the Local Authority will send a letter to the parent(s) advising them that further unauthorised absences over the following 15 school-day period may result in a penalty notice being issued. Prior to a notice being issued the local authority will consult with schools to agree this action.

## **Leave of absence in term time**

An amendment has been made to The Education (Pupil Registration) (England) Regulations 2006 (b) and will come into force 1<sup>st</sup> September 2013.

The new Regulations remove references to family holidays and extended leave as well as the statutory threshold of ten school days. The amendments make clear that head teachers may not grant any leave of absence during term time unless there are exceptional circumstances. Head teachers should determine the number of school days a child can be away from school if the leave of absence for exceptional circumstances is granted.

Where a school has refused to authorise leave of absence, they must inform the parents in writing that the request has been refused and the possibility of statutory action being taken. Where permission has not been requested, and the school can demonstrate parents were aware via other forms of communication, such as attendance policies, newsletters or whole school letters sent to parents, then a penalty notice may be considered.

It is important to note that the Local Authority may not authorise the issue of penalty notices where there is a lack of consistency between schools in the authorisation or non-authorisation of requests for leave of absence during term-time. It is good practice that schools communicate closely before decisions are made for leave of absence during term-time.

Where there are inconsistencies the Local Authority will use its discretion before authorising the issue of penalty notices where there appear to be valid reasons to authorise for one child and not another.

## **Excessive delayed return from leave of absence or extended leave of absence**

Where leave of absence has been granted by the school, parents should be informed by the school in writing of an agreed return date and clearly outlines the possible outcomes if the pupil fails to return to school on the date stated. For example the school may request that the Local Authority considers the issue of a penalty notice on the family's return to their home address (Appendix B).

The Pupil Registration Regulations 2013 also enable schools to delete from their roll pupils who have failed to attend on the agreed return date. Following this date, ten days of investigation by the school and the Local Authority must occur in an attempt to locate the pupil prior to deletion. Schools should refer to the Local Authority guidance 'Removing a Pupil from the Attendance Register 2009' to ensure compliance with The Pupil Registration Regulations 2013.

## **Persistent late arrival at school**

When a pupil persistently arrives late, schools should investigate the reason for this and offer support where appropriate to rectify the situation. Where the arrival time is after the close of registration period (Guidance for Schools and Local Authorities Absence and Attendance Codes state the register of pupils should close 30 minutes after the register was taken) the late mark, code U, an unauthorised absence, should be recorded. The same process applies when requesting and issuing a penalty notice.

## **ISSUING PENALTY NOTICES**

### **Criteria for requesting a penalty notice**

Following the unauthorised absence of a minimum of five sessions (2.5 days) the school should send an advisory letter to each responsible parent/carer (Appendix 1). If further unauthorised absence occurs following a monitoring period, the school can request the Local Authority issues a penalty notice (Appendix A). The Local Authority may receive requests to issue penalty notices from Manchester schools only if:

- A penalty notice request is completed with all the necessary information and supporting relevant documentation and must be signed and dated by the Head teacher or Deputy Head teacher.
- The circumstances of the absence meet the criteria according to the protocol. The level of the unauthorised absence should be no more than 40 sessions out of 100 sessions.
- The period of absence is not being considered for proceedings according to Section 444 (1) or (1A) of the Education Act 1996.
- The issue of a penalty notice does not conflict with other intervention strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority.

To ensure consistent delivery of penalty notices, the school's request form (Appendix B) will require completion by the school's Attendance Leader with the following:

- A copy of the pupil's up to date attendance record.
- A copy of the advisory letter to each parent/carer dated and signed by the headteacher.
- A copy of a chronology of all intervention

## **Considering penalty notice requests.**

The Local Authority will consider each request and may deem it appropriate to take one of the following actions:

- Advise schools to refer to supporting agencies
- Advise schools to monitor for a further period
- Issue a Local Authority warning letter to parents/carers
- Offer a formal caution
- Issue the penalty notice
- Instigate legal proceedings.

## **Issuing penalty notices**

The local authority will consider all requests within ten school days of receipt and, where the criteria are met, will authorise the issue of a penalty notice to each parent/carer by first-class post.

One Education on behalf of the Local Authority will monitor all penalty notices issued and inform schools of the payment/non-payment or further action authorised by the local authority. This will ensure consistent and equitable delivery and ensure cohesion with other enforcement action.

## **PAYMENT OF PENALTY NOTICES**

From 1 September 2013 the payment of a penalty notice will be £60 if paid within 21 days, increasing to £120 to be paid within 28 days. Payment in full discharges a parent's/carer's liability for the period. The Local Authority will retain this revenue to cover enforcement costs.

## **NON-PAYMENT OF PENALTY NOTICES**

If payment is not received within 28 days the Local Authority will consider prosecution for the unauthorised absence to which the penalty notice relates.

Non-payment of a penalty notice may result in action being taken by the Local Authority, which may include a further warning letter or a formal caution. These actions will be considered where the significant improvement of school attendance is apparent. The instigation of legal proceedings for unauthorised absence from school under Section 444 (1) or s444 (1A) of the Education Act 1996 may also be considered where it is deemed to be appropriate. In these circumstances, the school would be required to provide the Local Authority with a signed school attendance record and witness statement to be used as evidence in the prosecution (Appendix D). A witness statement would be provided by either the attendance leader or headteacher, who may be expected to attend court to give oral evidence should the parent defend the

prosecution. If appropriate, a further witness statement can be provided by any relevant member of staff to include further support/communication with the parent(s). The Local Authority may also undertake a PACE Caution (Police and Criminal Evidence) interview prior to a decision to prosecute being made.

## **PROCEDURE FOR WITHDRAWAL**

Once a penalty notice has been issued, it can only be withdrawn in the following circumstances:

- It has been established that the notice was issued in error.
- The circumstances of the absence do not comply with the conditions of Manchester City Council's Protocol and the Education (Penalty Notices) (England) Regulations 2007.
- Only the Local Authority can withdraw a Penalty Notice if it considers there are exceptional circumstances that warrant a withdrawal of the penalty notice. Schools or parents will be required to provide evidence to the local authority for a full assessment to be considered.
- The parent/carer provides evidence that would constitute a statutory defence.

## **SCHOOL AND LOCAL AUTHORITY POLICY DOCUMENTS**

All schools should include clear reference to the Local Authority penalty notice protocol in their attendance policies and this should be brought to the attention of all parents through prospectus material. Where early patterns of unauthorised absence are occurring, the sending of advisory letters is an action that schools should normally undertake.

## **MONITORING AND REVIEW**

The Local Authority will monitor and evaluate the outcomes of penalty notices in terms of improvement in school attendance, payment and any subsequent legal action. The use of the notices will be reviewed at regular intervals and the enforcement strategy of the Local Authority may be amended accordingly. Service reports include data on the deployment and outcomes of their use.

## **Appendix A**

### **Model advisory letter for Manchester schools**

#### **Non-attendance advisory letter for Manchester schools**

<<Name of Parent/Carer>>

<<Date>>

Dear <<Parent name>>

RE: <<Pupil Name>> DOB: <<DOB>> School: <<School>>

I have reviewed your child's attendance record and am concerned to note that he/she has incurred at least five sessions (2.5 school days) of unauthorised absence in the last 100 sessions (50 school days). Or in the case of unauthorised leave of absence you are planning to take in the future.

I enclose a copy of your child's attendance record and remind you that as a parent/carer of a child who is a registered pupil at this school, you hold legal responsibility for ensuring your child attends school regularly.

All Manchester schools share the Government's determination to raise levels of pupil attendance and achievement in order to ensure the best possible start in life for our children.

Under the Antisocial Behaviour Act 2003 an authorised officer of Manchester City Council has the power to issue each parent/carer with a penalty notice for each of their children who fails to attend school regularly. A penalty notice is an early deterrent that is intended to prevent more extended periods of unauthorised absence developing.

Penalty notices issued on or after 1 September 2013 incur a fine of £120 if paid within 28 days, which is reduced to £60 if paid within 21 days of the notice being served. Failure to pay a penalty notice may result in prosecution.

I write, therefore, to advise you that we are actively monitoring your child's attendance after the date of this letter.

Should your child incur any further unauthorised absence after the date of this letter, then further action, including the issue of a penalty notice or referral to City Solicitors for consideration of a prosecution, may be taken.

Any such penalty notice or prosecution may relate to your child's attendance record both prior to and subsequent to this letter.

Support and guidance on attendance is always available from our school and if you have any specific queries in relation to this letter, please contact me on the above number.

Yours sincerely,

Head teacher

#### GUIDANCE NOTES FOR SCHOOLS PENALTY NOTICE REQUEST FORM

A penalty notice can be issued by the Local Authority when it is perceived that a parent is capable of improving their child's school attendance but unwilling to do so. It is an early intervention strategy and its use is inappropriate for pupils with long-term attendance difficulties. Only unauthorised absence is relevant to the decision to issue a penalty notice. The criteria allow for three penalty notices to be issued in any one academic year to address the following absences:

- Unauthorised leave of absence
- Pupils stopped during a truancy sweep initiative
- Other recorded unauthorised absence.

A separate penalty notice request should be completed for each pupil and for each parent and signed by the head teacher or the deputy head teacher.

Prior to the leader/headteacher of the school sending an advisory letter individually to each parent, the following should have occurred:

- Evidence (contemporaneous notes) of casework to include letters, meetings and home visits regarding the pupil's attendance.
- Evidence of at least five and no more than 40 sessions of unauthorised absence within the previous 100 sessions.
- Consideration given to the attendance record of any other siblings of statutory school age and whether co-ordination of advisory letters or action is required.
- The process not conflicting with other intervention strategies in place by the Local Authority or other agencies.

**The advisory letter** (Appendix A) should be sent by first-class post or hand delivered to the address to each parent where appropriate. All letters must be addressed to the parent/carer on school-headed paper dated and signed by the headteacher or deputy headteacher.

If further unauthorised absence occurs following the sending of an advisory letter, the school can request the Local Authority issues a **penalty notice**. The school is required to submit this request **following a reasonable monitoring demonstrating further patterns of unauthorised absence** after the sending and the receipt of the advisory letter. The school should provide the penalty request form, a true copy of the advisory letter, and an attendance printout.

If the parent fails to pay the penalty notice issued by the Local Authority, consultation will occur with the school and legal services to agree the most appropriate action; however, the matter is usually brought before the Magistrates' Court through education legislation relating to the failure of parents to ensure their child's regular school attendance. Possible actions are outlined in the section 'Requesting and Issuing Penalty Notices'. There will be the need for a school statement to be prepared for these proceedings, as evidence is likely to be wholly school-based. Depending

on the parent's/carer's plea, this may also involve the need for court appearances by school representatives.

There are two other circumstances where a penalty notice can be issued:

- A school can request a penalty notice when an unauthorised leave of absence is taken in term-time without permission from the school and it can be demonstrated that the parent/carer understood permission had not been granted, confirmed by an advisory letter or other advisory documentation clearly demonstrating that the parent was fully aware and informed of the possible outcomes should they continue with their planned unauthorised leave of absence. As with all penalty notice requests the appropriateness of issuing a penalty notice or other actions taken will be considered by the Local Authority in consultation with schools on an individual basis.
- The Local Authority action a penalty notice following a truancy sweep in consultation with schools. This would occur when an unauthorised absence was recorded due to a pupil interviewed during a truancy sweep and where further unauthorised circumstances occurred in the following 15 school days.

## Appendix B

### PENALTY NOTICE REQUEST FORM

Registered at .....School

Year group.....

% attendance.....Number of unauthorised absences since date of advisory letter.....

#### Pupil details:

Name .....	DOB.....
Address .....	
Postcode .....	Telephone number .....

#### Parent's/Carer's details: (separate form for each parent/carer)

Full name .....(parent to receive notice)	
DOB (if known).....	
Address (if different from above) .....	
..... Postcode .....	
Date of meeting/phone call (please delete) with parent prior to warning letter.....	
Outcome .....	

#### Other adults living in family home:

Name	Telephone	Relationship to pupil	Ethnicity

#### Siblings:

Name	DOB	School	Attendance

**Family background/school and other agency involvement: CP, LAC, mental health issues, homelessness, antisocial behaviour etc.**

**ANY RISK FACTORS IDENTIFIED:**

**Drug/alcohol abuse, gun/gang-related, if previously abusive/knowledge of aggressive behaviour etc**

**Any other relevant information that may be mitigation in court:**

Is this Penalty Notice Request relating to unauthorised leave of absence in term-time? YES/NO (delete)

Can you confirm that the above named pupil had at least five sessions of unauthorised absence prior to the advisory letter being sent, and following this a reasonable monitoring period demonstrating further patterns of unauthorised absence occurred.

**YES/NO – please delete as appropriate**

**Enclosed:**

- **Current attendance printout – showing five unauthorised absences prior to advisory letter.**
- **True copy of the advisory letter to each parent/carer signed by the headteacher. This must be dated and on a school letterhead.**
- **Chronology of intervention.**

**Declaration:** The information provided is true to the best of our knowledge and belief. I may be required to prepare a Section 9 Statement and attend Court.

Attendance leader .....Date.....

Headteacher ..... Date .....

**The request for the Local Authority to issue a penalty notice must be made after the date of the advisory letter and following a reasonable monitoring period demonstrating further patterns of unauthorised absence.**





Penalty Notice  
S.444 (A) EDUCATION ACT 1996

Please read the notes carefully

Part 1

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence under S.444 Education Act 1996.

To: «Title» «Forename» «Surname»

Of: «Address1» «Address\_2» «Town» «Postcode»

You are a parent of «Child's\_name» DOB «DOB» (called in this notice 'the pupil') who is a registered pupil at «school».

Between «date1» and «date2» the pupil failed to attend regularly at school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60 or £120 in accordance with the table enclosed. If you pay this penalty within the time limits set, no further action will be taken against you in connection with the offence as set out in this notice.

You may pay this penalty fine with a cheque or by postal order. Cheques/postal orders should be made payable to **Manchester City Council** and marked **Education Fines** on the reverse. This needs to be sent with remittance to or paid in person at the Corporate Services Cashiers Counter, Number One First Street, Manchester M15 4FN, located at the junction of Whitworth Street and Albion Street (for satellite navigation systems you should use M1 5DE). Should you require a receipt, please enclose a stamped addressed envelope. For card payments telephone 0161 234 5194.

Payment of £60 should be made before «M\_28\_days». The penalty is doubled to £120 if paid after «M\_28\_days» but before «M\_42\_days».

**PAYMENT WILL NOT BE ACCEPTED AFTER «M\_42\_days».**

Part-payments will not be accepted and no reminders will be sent. **If payment is not made before «M\_42\_days», you may be prosecuted for the offence under s 444(1) and could be subject to a fine of up to £1,000 or you could be prosecuted for an offence under s444 (1A) and could be subject to a fine of up to £2,500, a parenting order, a community sentence, or up to three months' imprisonment.**

This notice is issued by Tracey Dunn, Manchester City Council.

Date of notice: «Date\_of\_Notice»

**Part 2 EDUCATION FINE REMITTANCE**

Please complete the following and return this notice with your payment.

**Notice reference number** «Number»

**Name** .....

**Address** .....

.....**Postcode** .....

**Child's name** «Child's\_name» **DOB** «DOB»

I attach payment of £ .....

Date .....

**Payment details**

**£60 if paid before** «m\_28\_days»

**£120 if paid after** «m\_28\_days» **but before** «m\_42\_days»

**Payment will not be accepted after** «m\_42\_days»

Date of notice: «date\_of\_notice»

Penalty notice  
NOTES

1. Contact details

If you have any queries about this notice, please contact the Senior Attendance Officer, Attendance Team, One Education Limited, Universal Square, Devonshire Street North, Ardwick, Manchester M12 6JH.

2. Amount of penalty

The amount of the penalty is as follows:

**When paid**

Within 21 days: £60

Within 28 days: £120

3. Code of conduct

This notice is issued in accordance with the local Code of Conduct drawn up by Manchester City Council. Any questions or correspondence about the code should be addressed FAO Senior Attendance Officer, Attendance Team, One Education, Universal Square, Devonshire Street North, Ardwick, Manchester M12 6JH.

4. Withdrawal

Manchester City Council may withdraw this notice if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local Code of Conduct. If you believe the notice was wrongly issued, you must contact the Senior Attendance Officer, Attendance Team, One Education, Universal Square, Devonshire Street North, Ardwick, Manchester M12 6JH to ask for it to be withdrawn as soon as possible, stating why you believe the notice was incorrectly issued. Manchester City Council will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable for prosecution for the offence that your child has failed to attend school regularly.

5. Payment

You should complete the notice above and send or deliver it to the address given.

6. Prosecution

If you do not pay the penalty and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this, which will give you notice of the time and date of the court hearing.

Date of notice: <<Date\_of\_Notice>>

**Please note:**

**This penalty notice has been issued to you in respect of your child's unauthorised absence(s) from school.**

**If you have cause to dispute the unauthorised absences, and you have reasons why this notice should not have been issued to you, please respond in writing to:**

**Attendance Team**

One Education  
Devonshire Street North  
Ardwick  
Manchester  
M12 6JH

**Important information:**

Where two 'parents' have been issued with a penalty notice for this child, then each 'parent' will need to pay their fine.

Where penalty notices have been issued for more than one child, then each 'parent' will need to pay a fine for each child.

**Definition of 'parent'**

Section 576 of the Education Act 1996 defines 'parent' to include:

- all natural parents, whether they are married or not
- any person who, although not a natural parent, has parental responsibility for a child or young person
- any person who, although not a natural parent, has care of a child or young person.

