



Halebank C E Primary School adopted

HALTON PENALTY NOTICE PROTOCOL



PENALTY NOTICE PROTOCOL

The purpose of this local code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Halton Borough Council. The code sets out the arrangements for administering penalty notices in Halton and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in the ['Working together to improve school attendance'](#) guidance 2024.

1.0 LEGAL BASIS

- 1.1 Section 444A of the Education Act 1996 empowers designated Local Authority Officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school.
- 1.2 Section 105(1) of the Education and Inspections Act 2006 empowers designated Local Authority Officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases where an excluded pupil is in a public place at any time during school hours during the first five days of any period of exclusion from school without justifiable cause.
- 1.3 The Education (Penalty Notices) (England) Regulations 2007 came in to force on 1st September 2007 and set out the statutory process for the issuing of Penalty Notices.
- 1.4 The Education (Penalty Notices) (England) (Amendment) Regulations 2012 came into force on 1st September 2012 and raised the amount of penalty payable from £50 and £100 to £60 and £120 respectively. This now applies only to Penalty Notices for children found in a public place following exclusion (see below for further details).
- 1.5 The Education (Penalty Notices) (England) (Amendment) Regulations 2024 and a new National Framework for Penalty Notices for school absence came into force on 19th August 2024 and increased the rate of a penalty notice for unauthorised absence from £120 to £160 if paid within 28 days, with a discount of 50% (£80) if paid within 21 days.
- 1.6 Education (Pupil Registration) (England) (Amendment) Regulations 2013 came in to force on the 1 September 2013 and amended the Pupil Registration Regulations 2006 by removing references to family holiday 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 is granted

- 1.7 The issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.
- 1.8 The Local Authority has the prime responsibility for developing the protocol within which all partners named in the Act will operate.
- 1.9 For the purposes of this Protocol “Parent” is as defined in the Education Act 1996 (Section 576):
- All natural parents, whether they are married or not.
 - Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
 - Those who have day to day responsibility of a child or young person. (i.e. lives with and looks after the child, day to day care)

Any reference in this Protocol to “Parent” includes the above individuals.

- 1.10 Any reference to “school” includes maintained schools, academies, free schools and alternative provision.
- 1.11 Any reference to a school “session” is either the morning or afternoon of the school day. Therefore, two sessions amount to a full school day.

2.0 RATIONALE

- 2.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.
- 2.2 Research published by the Department for Education in May 2022 found pupils with higher attainment at KS2 and KS4 had lower levels of absence over the key stage compared to those with lower attainment.
- Pupils who did not achieve the expected standard in reading, writing and maths in 2019 had an overall absence rate of 4.7% over the key stage, compared with 3.5% among pupils who achieved the expected standard and 2.7% among those who achieved the higher standard.
 - Pupils who did not achieve grade 9 to 4 in English and Maths GCSEs in 2019 had an overall absence rate of 8.8% over the key stage, compared with 5.2% among pupils who achieved a grade 4 and 3.7% among pupils who achieved grade 9 to 5 in both English and maths.
- 2.3 For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.

- 2.4 The National Framework for Penalty Notices is based on the principles that penalty notices should only be used in cases where:
- Support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
 - They are the most appropriate tool to change parental behaviour and improve attendance for that particular family.
- 2.5. In the small minority of cases where parents are unwilling to ensure their children's regular attendance at school and to engage with support networks, sanctions are necessary. Such sanctions are not intended as punishment but rather as a means of persuading the parents to recognise their responsibilities, comply with the law and ensure their children's access to education.

3.0 **USE OF PENALTY NOTICES FOR UNAUTHORISED ABSENCE**

- 3.1 Penalty notices can be issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or, in certain cases, at a place where alternative provision is provided. Penalty notices can be used by all schools (with the exception of independent schools) where the pupil's absence has been recorded with one or more of the unauthorised codes and that absence(s) would constitute an offence.
- 3.2 A penalty notice can be issued to each parent liable for the offence or offences. This could include a non-resident parent and a parent who has not applied for the leave of absence, if they have allowed the absence. The decision as to who will receive a penalty notice will be taken on a case by case basis. Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour and support to secure regular attendance has been provided and has not worked or been engaged with, or would not have been appropriate in the circumstances of the offence (e.g. an unauthorised holiday in term time).
- 3.3. All state funded schools must consider whether a penalty notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a penalty notice. Schools should not have a blanket position of referring cases to the Local Authority to issue penalty notices and should make judgements on each individual case to ensure fairness and consistency.
- 3.4 The national threshold is set out in the Framework and is 10 sessions of unauthorised absence in a rolling period of 10 school weeks. A school week means any week in which there is at least one school session. This can be met with any combination of unauthorised absence (e.g. 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes all within 10 school weeks). These sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6

sessions of unauthorised absence taken in 1 week and then 1 session of unauthorised absence per week for the next 4 weeks). The period of 10 school weeks can also span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

- 3.5. When a school becomes aware that the national threshold has been met, they must consider whether a referral for a penalty notice can and should be made. As set out in 3.4 above, the national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks, with one of, or a combination of the following codes:
- Code G (the pupil is absent without leave for the purpose of a holiday)
 - Code N (the circumstances of the pupil’s absence have not yet been established)
 - Code O (unauthorised absence)
 - Code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)
- 3.6 The Penalty Notice National Framework 2024 sets out the maximum number of penalty notices which may be issued by a Local Authority to each parent in any 36-month (3-year) period for periods of unauthorised absence. For these purposes, the National Framework has set a maximum of 2 penalty notices per child, per parent that can be issued within a rolling 3-year period. If a third (or subsequent) offence(s) takes place, another tool must be used, such as prosecution or one of the other attendance legal interventions available to the Local Authority. After the 3 year period has ended following the issue of the first Notice the Local Authority can, if considered appropriate, commence the process again with the issue of a penalty notice which will then begin the 3 year period again.
- 3.7. For the purpose of the escalation process, previous penalty notices include those issued and paid, those issued but not paid (including where prosecution was taken forward if the parent pleads or was found guilty) but not those which were withdrawn.

This table shows examples of certain scenarios, and whether they would count towards the limit

Scenario	Counts towards the limit?
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but	No

This table shows examples of certain scenarios, and whether they would count towards the limit

Scenario	Counts towards the limit?
later withdrawn	
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the Local Authority prosecuted for the original offence, but the Court found the parent not guilty	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the Local Authority prosecuted for the original offence and the Court found the parent guilty	Yes

3.8. The three-year period begins from the date of the first penalty notice issued. For example, if the first penalty notice is issued on 18th September 2024, a second penalty notice issued to the parent in respect of that child on or before the 17th of September 2027 would be charged at £160. A third penalty notice could not be issued within that timeframe and so in cases where the national threshold is met for a third or subsequent time another action should usually be taken instead. These could include:

- Advise schools to monitor the absence for a further period of time.
- Advise schools to refer to supporting agencies.
- Offer of a formal Caution.
- Instigate formal legal proceedings for unauthorised absence under Section 444(1).
- Instigate formal legal proceedings undertaking a PACE (Police and Criminal Evidence) interview prior to a decision to prosecute being made (Section 444(1A)).

3.9. It is not a defence for the parent to say they were unaware of the absences.

4.0 LEAVE OF ABSENCE (HOLIDAY IN TERM TIME)

4.1. It is the responsibility of the parent to check directly with their child’s school for holiday term dates prior to booking any leave. If parent wish to book leave in advance they need to be aware that the school calendar may change.

- 4.2. Where parents live separately consideration will be made as to the appropriateness of issuing a penalty notice to each parents. Each case will be assessed individually.
- 4.3. A school should be able to demonstrate they communicated with parents informing them of the possible consequences of taking unauthorised leave of absence.
- 4.4. It is good practice that schools communicate closely before decisions are made for leave of absence during term-time where siblings attend at different schools.
- 4.5. Penalty notices can also be issued retrospectively should the school become aware that a child is absent due to unauthorised leave after the child's first day of absence. In this scenario, the school must notify the parent in writing stating why they believe the child has taken an unauthorised leave of absence, and the possible consequences i.e. penalty notice being issued by the Local Authority.
- 4.6. Excessive delayed return from leave of absence or extended leave of absence
 - 4.6.1 Where leave of absence has been granted by the school, parent should be informed by the school in writing (if time allows) of an agreed return date and clearly outline the possible outcomes if the pupil fails to return to school on the date stated.
 - 4.6.2 The Pupil Registration Regulations 2024 enable schools and academies to delete pupils from their roll who have been granted leave but who have failed to attend within the ten school days immediately after the end of the period of leave and their absence is not due to illness or unavoidable cause. The school and Local Authority will jointly make reasonable enquiries to confirm the position and if they have not succeeded or they do succeed but agree that there is no reasonable grounds to believe the child will return to the school, even if reasonable steps could be taken to secure attendance, then the child can be removed from role. The school must comply with Halton's Children Missing Education procedures.
 - 4.6.3 Schools should send requests to issue a Penalty Notice for an unauthorised leave of absence no later than 4 weeks from the return date from the unauthorised leave of absence. Requests after this time will not be processed.

5.0 IRREGULAR SCHOOL ATTENDANCE

Notice to Improve

- 5.1. A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support

have not been engaged with by the parent or have not worked, a notice to improve should usually be sent to give parents a final chance to engage in support.

- 5.2 Halton Borough Council can issue a notice to improve following a request from school as part of traded support. A school can also issue a notice to improve following a referral to the local authority if both agree that the criteria are met and it is the most appropriate action. Where the local authority issue the notice to improve the school will be notified of the decision and a copy of the letter will be sent to the referrer for monitoring.
- 5.3. The monitoring period for the Notice to Improve will be between 3 and 6 weeks. This allows for flexibility and will depend on the circumstances of the individual case.
- 5.4. It is the expectation that there will be no periods of unauthorised absence within the improvement period. However, schools should consider what is reasonable and each case will be considered on an individual basis as to what is a suitable improvement for the child.
- 5.5. Schools are responsible for monitoring day to day attendance during the improvement notice period and if there is no improvement school will refer to the Local Authority for consideration as to appropriate action e.g. Penalty Notice or other intervention. A school can refer to the Local Authority before the identified improvement period ends if appropriate e.g. unauthorised absence remains high in the first week of the period. The parent is to be informed if an early referral is to be made.
- 5.6 An authorised officer can choose not to issue a Notice to Improve in any case, including cases where support is appropriate, where they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence and no improvement was made).

6.0 PENALTY NOTICES IN RESPECT OF BEING PRESENT IN A PUBLIC PLACE FOLLOWING EXCLUSION

- 6.1. A Penalty Notice may be issued in respect of the presence of an excluded or suspended pupil in a public place in the first 5 days of exclusion during school hours without good reason.
- 6.2. Where an authorised officer believes that a parent has committed an offence under Section 103(3) of the Education and Inspections Act 2006 a penalty notice may be issued. The Penalty Notice will be for £60 if paid within the first 21 days and if unpaid will be increased to £120 and is to be paid within a further 7 days.
- 6.3. If a penalty notice remains unpaid, a witness statement must be provided by an appropriate person who witnessed the excluded person in a public

place during school hours. CCTV/photographic material may also be collected.

- 6.4. The above will be used as evidence in court should the penalty notice remain unpaid. The parent(s) will be prosecuted for an offence under Section 103(3) Education and Inspections Act 2006 (excluded pupil stopped in a public place).

7.0 SCHOOL REFERRAL PROCESS

- 7.1. Authorised officers in the school and Local Authority should work together to ensure that penalty notices and statutory actions are used when likely to be effective and change behaviour.

- 7.2. Where the school wishes to request statutory support, the school will:

- Complete an Education Welfare Service Statutory Referral per pupil. This must be completed and sent to the Local Authority within 10 school days of the last absence mark. for an assessment to be made.
- The request will be returned should the information be incomplete and an amended form is to be returned within 10 school days.
- Include a copy of the attendance register (12 months) for the period of complaint.
- Include any correspondence with the family linked to improving attendance.
- Include a chronology of events relating to the period including details of support to improve attendance and pupil/parents engagement with the same.
- Send all relevant documents to EWService@halton.gov.uk for consideration.

- 7.3. Where the Local Authority receives requests for statutory support, the Local Authority will:

- Endeavour to consider all requests within 10 school days.
- Confirm whether all appropriate support has been provided and if not identify what support could be implemented and whether this should be school based or alternative Local Authority statutory processes e.g. application for Education Supervision Order.
- Issue letters such as a Notice to Improve or a penalty notice to each parent/carer by first class post, if appropriate.
- Inform the school about the action taken. The Local Authority's decision regarding support and appropriate action is final although the Local Authority will liaise with the school and relevant others before making a final decision if necessary.
- Check for previous action when pupils are known to have moved between local authority areas in the last three years. If information cannot be obtained the parent will be treated as not having received a previous Notice. Halton Borough Council can be contacted

on EWService@halton.gov.uk to find out if penalty notices have been issued previously.

- 7.4. Penalty Notices will be issued to the parents of the children registered at Halton's Schools, irrespective of their actual home address. This also means that follow-up prosecutions where parents fail to pay the Notice or to improve their children's attendance will extend to families residing outside the district. Penalty Notices will not be issued by Halton Borough Council to parents whose children are not on roll in a Halton school.
- 7.5. The Education Welfare Service will issue Penalty Notices in Halton. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions.
- 7.6. Penalty Notices will only be issued by post and never as an on the spot action; this is to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.

8.0 KEY CONSIDERATIONS PRIOR TO CONSIDERATION OF A PENALTY NOTICE

- 8.1 In the case of absence from school, a penalty notice should be considered if the parent is judged capable of securing better attendance but is not willing to accept responsibility and it is considered likely to improve the pupil's attendance.
- 8.2 This judgment is based on the parental response to warnings issued by the Local Authority and the school regarding their child's poor attendance and their engagement with the school and/or attempts to improve attendance.
- 8.3 Parents who do not heed warnings or respond to efforts to deal with their child's absences may be considered to have failed in their duty and will receive a Penalty Notice for each individual parent and for each child with unauthorised absence.
- 8.4 This Code of Conduct gives due regard to the Equality Act, Human Rights Act, Legislation and Regulations and DFE Guidance.
- 8.5 DFE expects that Headteachers will use their discretion sparingly when considering whether to agree a leave of absence during term-time. It is for Headteachers to determine if the request is exceptional. Legislation requires that each request is judged on a case-by-case basis.
- 8.6 The Local Authority must have regard to a parent's ability to pay any Penalty Notices issued, and in situations where there is more than one non-attending child and/or parent in a family, the impact of multiple notices must receive careful consideration. **However, financial circumstances alone will not prevent the issue of a Penalty Notice.** The decision to

issue a fine to both parents will reflect the considerations set out as follows below.

- 8.7. The following considerations will be made before a school make a referral to the Local Authority to issue a penalty notice to ensure consistency of approach:
- In cases where support is not appropriate (for example, for holidays in term time), consider on a case-by-case basis.
 - Is a penalty notice the best available tool to improve attendance and change parental behaviour for this family or would one of the other legal interventions be more appropriate?
 - Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010.
 - (For local authorities only) Is it in the public interest to issue a penalty notice in this case given the Local Authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment.
- 8.8. In cases where support is appropriate, consider on a case-by-case basis:
- Has sufficient support already been provided? Sufficient support will usually include:
 - Full implementation of school's support teams and assessment of individual need.
 - Utilisation of relevant aspects of Halton's Emotional Based School Non-Attendance (EBSNA) guidance using trauma-informed approaches.
 - Offer of a parental meeting in school to discuss attendance concerns where minutes are recorded.
 - Offer of an attendance contract/attendance support plan to support the family. If accepted, agreed actions to support improvements in attendance.
 - An offer of early help and a MAP where appropriate
 - Referral/signposting to relevant external agencies.
- 8.9. In cases where support is not appropriate, consider on a case-by-case basis:
- A fully completed penalty notice referral request.
 - A Certificate of Attendance for the period of absence this penalty notice request relates to.
 - A certificate of attendance for the last 12 months.
 - Record of discussion with the parent if exceptional circumstances are raised for an unauthorised term-time holiday or any evidence of exceptionality submitted by parent.

- If the parent has not applied for a leave of absence, but the school ascertains after a period of absence that this should have been unauthorised, a refusal of leave letter should be sent.
- 8.10. Before a Penalty Notice is issued, it must be evident that the matter is capable of proof in the Magistrates' Court so that in the event of non-payment of the charge, the parent/carer can be prosecuted.

9.0 SCHOOL ACTION PRIOR TO ISSUING A PENALTY NOTICE

- 9.1. The School's Governing Body has endorsed the operation of the penalty notice scheme through the school attendance policy.
- 9.2. The School's Attendance Policy clearly explains the criteria and process for addressing poor attendance, and the expectation is that all children should attend every day that the school is open except for sickness, unavoidable causes, religious holidays, absences authorised by the school, local authorities' failure to make statutory travel arrangements, or, where the child has no fixed abode, the parents need to travel for business (subject to certain conditions).
- 9.3. The school has taken a 'support first' approach to address unauthorised absence.
- 9.4. The school has fully considered any extenuating circumstances and has established there are no justified causes for the absences. Parent /carer should be asked to provide supporting evidence where appropriate.
- 9.5. A written notice has been sent to parents informing them of the intention to refer to the Local Authority for consideration of the issue of a penalty notice.
- 9.6. The Headteacher can delegate the authority to a member of the school's attendance team to make penalty notice referrals on their behalf. All referrals must be sent to EWService@halton.gov.uk to confirm the authorisation to ensure that referrals are made in line with protocol.
- 9.7. It is good practice to ensure that parents are reminded on an annual basis of the school's policies on attendance, including the existence of Penalty Notices.

10.0. PROCEDURE FOR ISSUING PENALTY NOTICES

- 10.1. The Education Welfare Service will issue Penalty Notices in Halton. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions.

102. Penalty Notices will only be issued by post and never as an on the spot action; this is to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.
- 10.3. The Education Welfare Service will discuss requests to issue Penalty Notices from Halton schools, Cheshire Police and neighbouring Local Authorities where the pupil attends a Halton school. These requests will be actioned provided that:
- The circumstance of the pupil's absence meets all the relevant requirements of this Protocol.
 - Family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a Penalty Notice (this to include any cases of possible multiple issue to any one family)
 - The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
- 10.4. Schools must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate (for either presence in a public place following exclusion or for unauthorised absence). This must include strategic discussions with the assigned Education Welfare Officer and any other attendance support staff who have involvement with or knowledge of the pupil/family.

11.0. PROCEDURE FOR WITHDRAWING PENALTY NOTICES

There is no statutory right of appeal to the issuing of a penalty notice in relation to education matters.

- 11.1. The Local Authority will withdraw any Notice issued if one or more of these conditions exist:
- (a) The penalty notice has been issued outside of the terms of the local code of conduct;
 - (b) The penalty notice ought not to have been issued or issued to the person named as the recipient;
 - (c) The penalty notice contains material errors; or
 - (d) where after the expiry of 28 days the penalty notice is unpaid and the local authority has neither started legal proceedings nor wishes to take such action under section 444/Section 103(3).
- 11.2. If a Penalty Notice is withdrawn a prosecution may still be brought in respect of the unauthorised absence for the period for which the Penalty Notice was issued provided that a new Penalty Notice was issued when the first Penalty Notice was withdrawn and the Penalty Notice remains unpaid.
- 11.3. If a Penalty Notice is withdrawn then any monies paid must be re-paid to the recipient.

12.0. PAYMENT OF PENALTY NOTICES (CHILD IN A PUBLIC PLACE)

- 12.1. Arrangements for payment will be detailed on the Penalty Notice.
- 12.2. Where payment is received in accordance with the Penalty Notice a parent cannot be convicted of the offence to which the Penalty Notice relates.
- 12.3. Payment of a Penalty Notice discharges the parent liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.
- 12.4. Payment of a Penalty Notice for a child in a public place within 21 days is £60 and payment after this time but within 28 days is increased to £120.
- 12.5. Payment cannot be made by way of part payment or installments.
- 12.6. The Local Authority retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment). Any surplus will be used in respect of attendance support e.g. any other activity to improve attendance prior to the issue of a Penalty Notice or prosecution.

13.0. PAYMENT OF PENALTY NOTICES (UNAUTHORISED ABSENCE)

- 13.1. Arrangements for payment will be detailed within the Penalty Notice.
- 13.2. The first penalty notice issued to the parent for a child will be charged at £160 if paid within 28 days reducing to £80 if paid within 21 days.
- 13.3. Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first offence, the second notice is charged at a flat rate of £160 if paid within 28 days. There is no reduced sum available in this instance.
- 13.4. Part payments or payment plans are not accepted, and the fines must be paid in full within 21/28 days.
- 13.5. Payment after the deadline may be accepted in exceptional circumstances, for example (include couple of examples). This is not an exhaustive list and the decision to accept payment will be at the discretion of the Local Authority. In this situation the higher amount of £160 is usually payable and must be paid immediately and in full.
- 13.6. Payment in full of the Penalty Notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the notice and the parent cannot be subsequently prosecuted for that period.
- 13.7. Any revenues collected through the system must be ring-fenced to administer the penalty notice system and prosecute for the original offence in cases of non-payment. If a surplus remains after the system has been administered and any non-payers have been prosecuted, this can be spent on attendance support.

14.0 NON PAYMENT OF PENALTY NOTICES (CHILD IN PUBLIC PLACE AND UNAUTHORISED ABSENCE)

- 14.1. The offence detailed in the Penalty Notice must be capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent/carer can be prosecuted.
- 14.2. Non-payment of Penalty Notices within the prescribed time limits will result in the initiation of a criminal investigation and possible prosecution under Section 444(1) of the Education Act 1996 for the original offence detailed in the penalty notice for unauthorised absence or under s103(3) of the Education and Inspections Act 2006 for children found in a public place.

15.0 PROSECUTION (CHILD IN PUBLIC PLACE AND UNAUTHORISED ABSENCE).

15.1 The Decision to Prosecute will be taken in line with the Code for Crown Prosecutors

- 15.2. The code is issued by the Attorney General which states that the decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order and therefore careful consideration will be given before agreeing to institute court proceedings under Section 444 of the Education Act 1996/ s103(3) Education and Inspections Act 2006.

General Principles

- 15.3. Each case is unique and must be considered on its own merit.
- 15.4. The right person is prosecuted for the right offence which underlines the importance of having up to date information on school records of all those with parental responsibility as well as day-to-day care and supervision. It is essential that schools regularly up-date their contact details.
- 15.5. There is sufficient evidence to provide a realistic prospect of conviction and consideration must be given to what the defence case may be and how that is likely to affect the prosecution case.
- 15.6. Is the evidence reliable? It is therefore essential that schools ensure that they are satisfied with the accuracy of the register and registration codes used.

There are also Public Interest factors against prosecution which must be considered:

- 15.7. The offence was committed because of a genuine mistake or misunderstanding.
- 15.8. A prosecution is likely to have a detrimental effect on the victim's physical or mental health.
- 15.9. The defendant is suffering from mental or physical ill-health.

15.10. At the point of considering issuing a penalty notice the above principles should be considered. However, should these issues only come to the notice of the school or Local Authority once the notice has been issued, a withdrawal will be considered in discussion with the school's Attendance Lead.

15.11. When a Notice is withdrawn (and a new Notice is not issued), no proceedings under Section 444 of the Education Act 1996/ s103(3) Education and Inspections Act 2006 shall be instituted against the recipient in respect of the period covered by the original Penalty Notice.

16.0. REPORTING AND REVIEW

16.1. The Education Welfare Service will report at regular intervals to Head Teachers, Elected Members on the deployment and outcome of Penalty Notices.

16.2. The Education Welfare Service will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.