CHILDREN & YOUNG PEOPLE
ATTENDANCE AND BEHAVIOUR SERVICE

PENALTY NOTICE PROTOCOL

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 to £100 to £60 and £120 respectively.

1.5 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

1.6 The issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.

1.7 The Local Authority has the prime responsibility for developing the protocol within which all partners named in the Act will operate.

1.8 For the purposes of this Protocol "Parent" is as defined in the Education Act 1996 (Section 576).

1.9 Any reference to "school" includes maintained schools, academies, free schools and alternative provision.

1.10 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 The parent of an excluded pupil must ensure that the pupil is not present in a public place at any time during school hours during the first five days of any exclusion. This is in order to ensure the health and safety of the child and reduce the risk of anti-social behaviour.

2.3 In law an offence occurs under Section 103(3) of the Education and Inspections Act 2006 if a parent allows an excluded pupil to be present in a public place any time during school hours during the first five days of any period of exclusion without justifiable cause. The Attendance & Behaviour Service delivers this Local Authority responsibility.

2.4 In law an offence occurs if a parent/carer fails to secure a child's regular attendance at a school which they are as a registered pupil and that absence is not authorised by the school. Penalty notices supplement the existing sanctions currently available under Section 444 of the Education Act 1996 or Section 36 of the Children's Act 1989 to enforce attendance at school where appropriate. The Attendance & Behaviour Service delivers this Local Authority responsibility.

2.5 Parents and pupils are supported at school and Local Authority level to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Sanctions of any nature are for the use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

2.6 Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

3.0 CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

A) PENALTY NOTICE IN RESPECT OF UNAUTHORISED ABSENCE

3.1 Penalty Notice's for irregular school attendance can only be issued in cases of **unauthorised** absence. Parents can be issued with more than one Penalty Notice in an academic year. In cases where families have

more than one child with unsatisfactory attendance multiple issue may occur but this will be the subject of careful consideration and co-ordination.

3.2 The Local Authority deems regular attendance as 95% or above. This is in light of the government having amended the measure of persistent absence to 90% and Local Authorities being expected to raise attendance levels to above this rate. Therefore, attendance less than 95% is deemed unsatisfactory.

3.3 In light of this the issuing of a Penalty Notice is considered appropriate (following the issue of any warning letter as set out in paragraph 3.4 below), where a child's attendance is below 95% during the previous 38 weeks and one of the following circumstances applies:

- Overt truancy (including pupils caught on truancy sweeps)
- Unauthorised absence where no reason is provided by the parent or the reason is not accepted by the school, including parentally condoned absences, i.e. with the full knowledge and consent of the parent or where a child has not returned to school following a period of agreed leave of absence.
- Late for 10 or more sessions (after the register has closed) in the previous 12 weeks.

WARNING LETTER TO IMPROVE SCHOOL ATTENDANCE.

3.4 A parent will receive a formal warning letter in respect of the possibility of a Penalty Notice once it is established that there has been 10 unauthorised sessions of absence during the previous 12 weeks. Parents will have a 4 week period to improve attendance to a minimum of 95% before consideration will be given to issuing a penalty notice.

3.5 There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice in relation to unauthorised absence from school.

3.6 Any Penalty Notice issued following a warning letter must be issued in accordance with paragraph 3.3 of this Protocol.

3.7 However, parents will not be issued with a warning letter if there is leave of absence that has been requested by the parent but has not been approved by the proprietor. This is because the application for leave of absence will contain a warning that the parent may be issued a Penalty notice if the school do not authorise the requested period of leave of absence. In these circumstances a Penalty Notice may be issued in accordance with paragraph 3.8 below.

B) PENALTY NOTICE IN RESPECT OF UNAUTHORISED REQUEST FOR LEAVE OF ABSENCE (HOLIDAYS IN TERM TIME)

3.8 A Penalty Notice is considered appropriate where a child's attendance is irregular i.e. below 95% during the previous 38 weeks and the following circumstances apply:

- Leave of absence for a period of 5 school days or more (10 or more sessions) taken following a request being submitted to the school where that request was **not** approved as exceptional circumstances by the proprietor of the school.

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

3.9 A Penalty Notice may be issued in respect of the presence of an excluded pupil in a public place, where an authorised officer believes that a parent has committed an offence under Section 103(3) of the Education and Inspections Act 2006.

3.10 The parent will receive a formal warning about the possibility of a Penalty Notice being issued if their child is found in a public place, at the same time that they are advised of the exclusion.

4.0 PROCEDURE FOR ISSUING PENALTY NOTICES

4.1 The Attendance & Behaviour 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.

4.2 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.

4.3 The Attendance & Behaviour Service will discuss requests to issue Penalty Notices from schools, Cheshire Police and neighbouring Local Authorities. 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.

4.4 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.

5.0 PROCEDURE FOR WITHDRAWING PENALTY NOTICES

5.1 Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person
- The use of the Penalty Notice did not conform to the terms of this Protocol
- It appears to the authority that the notice contains material errors

5.2 With regards to the latter a prosecution may still be brought in respect of 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.

5.3 If a Penalty Notice is withdrawn then any monies paid must be re-paid to the recipient.

6.0 PAYMENT OF PENALTY NOTICES

6.1 Arrangements for payment will be detailed on the Penalty Notice.

6.2 Where payment is received in accordance with the Penalty Notice a parent cannot be convicted of the offence to which the Penalty Notice relates.

6.3 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.

6.4 Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is increased to £120.

6.5 Payment cannot be made by way of part payment or installments.

6.5 The Local Authority retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

7.0 NON-PAYMENT OF PENALTY NOTICES

7.1 Non-payment of a Penalty Notice issued for unauthorised absence from school may result in the withdrawal of the Notice and may result in a prosecution being brought under the provision of Section 444(1) of the 1996 Education Act.

7.2 Non payment of a Penalty Notice issued where a parent allows an excluded pupil during the first 5 days of any period of exclusion to be present in a public place without justifiable cause may result in a

prosecution under Section 103(3) of the Education and Inspections Act 2006.

8.0 POLICY AND PUBLICITY

8.1 Deployment of Penalty Notices as a sanction is included in the Authority's Attendance and Behaviour Policy.

8.2 All School Attendance Policies will include information on the deployment of Penalty Notices for unauthorised absence and this will be brought to the attention of all parents. Schools should ensure they amend their Attendance Policies accordingly.

8.3 School Behaviour Policy will include information on the issue of Penalty Notices where a parent allows an excluded pupil to be present in a public place during school hours without justifiable cause.

8.4 The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional/public information material.

9.0 REPORTING AND REVIEW

9.1 The Attendance & Behaviour Service will report at regular intervals to Head Teachers, Elected Members and Cheshire Police on the deployment and outcome of Penalty Notices.

9.2 The Attendance & Behaviour Service will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.