

# Local Code of Conduct Education Fixed Penalty Notices

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## 1.0 The Legal Framework

The law empowers designated Local Authority (LA) Officers, head teachers, including their nominated deputies and the Police to issue Fixed Penalty Notices to the parents of children who have unauthorised absence from schools that fall within Caerphilly County Borough Council (CCBC).

The rules governing the implementation of these powers and the factors that should be taken into account when issuing a Fixed Penalty Notice (FPN) are outlined in:

- The Education Act 1996;
- The Education & Inspections Act 2006;
- The Education (Penalty Notices) (Wales) Regulations 2013

CCBC is responsible for developing a protocol with which all the partner agencies named in legislation will work.

The Local Code was implemented in September 2014. Schools will be expected to update relevant attendance policies in line with changes in legislation or revisions to LA policies or Local Code.

Throughout this document, the reference to 'school', include all schools/education establishments and education other than at school (EOTAS) provisions.

## 2.0 Rationale

Section 7 of the Education Act 1996 states that:

“The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise”

Regular and punctual attendance at school is a legal requirement and is essential to enable children to maximise their educational attainments and opportunities available to them.

Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely not to be in education, employment or training (NEET) when they leave school. NEET young people are likely to have a history of non-attendance and persistence absences in years 10 and 11.

Section 444 of the Education Act 1996, makes it a criminal offence for a parent's failure to secure their child's attendance at the school at which they are registered and where absences are not authorised.

In education law, the definition of “parent” includes biological parents, whether they are married or not and includes any person who has parental responsibility or day to day care for a child or young person, irrespective of what their relationship is.

Targeted intervention plays a vital role in resolving issues of poor school attendance, however where this fails to have the desired effect there are a number of sanctions available to Local Authorities (LAs) to try and secure improvements.

FPNs are one of the sanctions available for this offence and offer a means of suitable and effective intervention for improving levels of unauthorised absences, before they become entrenched and persistence absences, whilst reducing the need for lengthy and costly prosecutions.

FPNs and other sanctions will only be used where parental co-operation with this process is either absent or deemed to be insufficient to resolve the problem. They will be used as a means to support parents to meet their legal responsibilities and only where there is a reasonable expectation that their use will secure improved school attendance.

### **3.0 Privacy Notices**

Information received by the EWS, together with any additional information received from schools, pupils, parents/cares or other organisations, will be recorded and processed by the LA in accordance with the legal obligations placed on CCBC and our duties under the Education Act 1996, Education and Inspections Act 2006 and The Children Act 1989.

Further information on how the information will be processed and used is available in the form of a full privacy notice and can be found at [www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)

### **4.0 Policy and Publicity**

School Attendance Policies will include information on the issuing of FPNs and this will be brought to the attention of parents.

### **5.0 Monitoring and Review**

CCBC will monitor and evaluate the effectiveness of FPNs annually and amend its general enforcement strategy as appropriate. Reports will be made available to Head of Service and Strategy Committee and the Welsh Government, as required.

## Appendix 1 – Protocols and procedures in relation to Fixed Penalty Notices

### Issue of a Fixed Penalty Notice (FPN)

- A FPN can only be issued in cases of unauthorised absence;
- The Issue of a FPN will be restricted to one parent in a family and one notice in any academic year;
- In cases where there is more than one poorly-attending pupil in a family notices may be issued for more than one child;
- There will be no restriction on the number of times a parent may receive a formal **warning** of a possible FPN.

### Some examples when FPN may be considered appropriate

- At least 10 sessions (5 school days) are lost due to unauthorised absence during a rolling 12 week period. These do not need to be consecutive;
- Unauthorised absences that include 10 consecutive sessions (5 school days) due to leave of absence/holiday taken in term time or a delayed return from an agreed holiday without a reasonable explanation;
- Persistent late arrival at school, i.e. after the register has closed, during a rolling 12 week period. "Persistent" means at least 10 sessions of late arrival (absence code U);
- In circumstances where the parent or carer is judged capable of securing their child's regular attendance or whereabouts but is not willing to take responsibility to do so, e.g. parent/carer is unwilling to sign a support plan or contract with the school and attendance is below an acceptable level (as set by the school) over an agreed period of time, without reasonable justification;
- Truancy, where the child has come to the attention of the Police or public during school hours for being absent from school without an acceptable reason.

### FPN linked to unauthorised holiday/leave of absence request

The LA will consider a request from a school where absences include those linked to unauthorised holiday related absences and where the school has provided the necessary evidence. This evidence should comprise:

- Declaration and signed registration certificate from the Head Teacher or nominated deputy, confirming that non-attendance during the period was unauthorised;
- A copy of the parental request letter or form and the response letter sent by school to the parent, advising that the school has not authorised a leave of absence or holiday request.

## **Considerations and assessment as to whether a FPN should be issued.**

Head Teachers, their nominated deputies and the Education Welfare Service (EWS) will take into account the following when determining whether a FPN should be issued:

- Level of absence during the current year and the previous academic year;
- Any Equalities considerations relating to the child or family (as listed in the Council's Strategic Equality Plan);
- Any Special Educational Needs and or Additional Learning Needs (ALN). LAs should consider whether attendance problems may be related to a pupil's ALN. Schools should be able to demonstrate that they have made appropriate provision for the pupil's needs, which may include consideration to support through School Action, School Action Plus or in collaboration with the LA, carry out a statutory assessment.
- History of the attendance issues and action taken;
- Welsh Government (WG) Guidance;
- Likely effectiveness of a FPN as a tool for obtaining compliance;
- Level of parent engagement/cooperation;
- Any substantial adverse effect a fine will have on the welfare of the family.

## **Procedure for Issuing FPN**

The designated officer(s) within the EWS will be the only individuals permitted to issue FPNs. This will ensure consistent and equitable delivery and allow schools to maintain good relationships with parents and ensure that they reinforce any other enforcement sanctions.

The LA will not conclude that some justifications for absences are automatically unreasonable. Every case will be considered on its own merits and all relevant evidence provided by the school and the parent or carer taken into account.

FPNs will never be issued as an instant action, e.g. during a Truancy Sweep. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks to individuals.

## **Formally notifying the parent(s)/carer(s)**

At the outset of casework by the school, the parent(s)/carer(s) should be given a formal written notification explaining the actions that may be taken as in **Appendix 2**. It is good practice to allow a period of 15 school days for the parent(s)/carer(s) to improve the situation before requesting a FPN.

It is also good practice to ensure that parents/carers understand the consequences of failing to ensure their child's regular attendance and that the case could result in a FPN and/or prosecution.

## **Requests for issue of a FPN**

Where schools, Police or neighbouring LAs request the issue of a FPN, their request will be investigated and actioned by the EWS, provided that:

- The circumstances of the case meet the criteria specified in this Code of Conduct;
- The pupil is registered within a school within the CCBC area;
- All necessary evidence is provided to the EWS to establish whether an offence under Section 444(1) or 444(1A) of the Education Act 1996 or Section 108 of the Education and Inspections Act 2006 has been committed;
- Issuing a FPN would not conflict with another intervention strategy already in place or another enforcement sanction already being processed and there is a reasonable expectation that the use of a FPN would improve the child's school attendance.

## **Responding to requests for the issuing of a FPN**

Following an advisory warning notice issued by the school or Police, the pupil must have no unauthorised absence within the 15 day improvement period.

The EWS will respond within 10 school days of receipt of a request and when satisfied that all of the relevant criteria have been met, will issue the FPN.

## **FPN for an unauthorised holiday**

Where the requested FPN is in response to a holiday related unauthorised absence, or is in relation to an offence under section 108 of the Education and Inspections Act 2006, the formal warning letter and 15 day improvement period will not apply.

## **Monitoring and Review**

All FPNs will be entered onto a database maintained by the LA to evaluate the effectiveness of the process.

## **Excluded Pupils**

The basis of FPN powers, does not extend to excluded pupils. Section 108 of the Education and Inspections Act 2006 came into force in October 2010 and amends section 16 of the Crime and Disorder Act 1998 to extend Police powers for the removal of excluded pupils to designated premises, if a child or young person excluded from school is found in a public place in a specified area during a specific period and during school hours.

## **Procedure for the Withdrawal of a FPN**

Once issued, a FPN can only be withdrawn if the EWS is satisfied that:

- The notice was issued to the wrong person;
- The use of the FPN did not conform to this Code of Conduct;
- The notice was delivered to the wrong address;
- There were material errors in the notice;
- A parent is able to justify the absence my way of medical or illness confirmation;
- The period for payment has expired and the LA does not intend to institute legal proceedings for which the Penalty Notice relates. This is particularly relevant when there is evidence to suggest that a higher tier tariff as imposed by the Court would have substantial adverse effect on the welfare of the family.

## **Right of appeal**

There is no statutory right of appeal, but where a parent contests the issuing of a FPN, they can submit any complaints or supporting evidence to the EWS and/or opt to face proceedings in the Magistrates' Court under section 444 of the Education Act 1996, where all of the issues relating to their FPN and **irregular school attendance** can be fully heard.

## **Payment of FPN's**

Arrangements for payment will be detailed on the Penalty Notice. Payment of a Fixed Penalty Notice discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by FPN.



If the FPN is paid within 28 days, the penalty payable is £60, or £120 if within 42 days. Payments cannot be accepted by instalments.

The LA will only be able to retain enough revenue to cover administration costs for the process of issuing FPNs; the surplus is to be surrendered to the Welsh consolidated fund.

## **Non-Payment of FPNs**

If a FPN is unpaid, the LA will use the fact that a notice was issued and unpaid as evidence in a subsequent prosecution for the period covered by the scheme under Section 444 of the Education Act 1996.

## **Equalities and Welsh Language**

The issuing of FPNs must comply with other related legislation and regulations, in order to ensure that they are used in a fair and consistent manner and have paid due regard to the circumstances of the child/children and families involved. These include, but are not limited to the following:-

- Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011
- Welsh Language (Wales) Measure 2011
- Human Rights Act 1998

The Council's Strategic Equalities Plan covers the full range of issues that may need to be considered, depending on the individual case.

## Appendix 2 – Example Advisory Warning Letter For Schools

Dear (Parent name)

Name of pupil:

Date of birth:

Date:

I have reviewed your child's attendance record and am concerned to note that he/she has incurred at least 10 sessions (5 school days) of unauthorised absence in a rolling 12 week period.

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

All schools share the Welsh 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 Section 444 of the Education Act 1996, the Local Authority has the power to issue parents/carers with a Fixed Penalty Notice for each of their children, who fail to attend school regularly.

A Fixed Penalty Notice is an early deterrent intended to prevent more extended periods of unauthorised absence developing and incur a fine of £120, reduced to £60 if paid within 28 days of the notice being served. Failure to pay a penalty notice may result in prosecution under the Education Act 1996.

I can therefore advise you that the school, will be monitoring your child's attendance for 15 school days from the date of this letter and should any further unauthorised absence occur, consideration will be given to the issue of a Fixed Penalty Notice.

Support and guidance regarding attendance is available from school or the Local Authority, however should you have any specific queries in relation to this letter, please contact me on the above telephone number.

Yours sincerely

Head Teacher

## Appendix 3 – Fixed Penalty Notice request to the Local Authority

### FIXED PENALTY NOTICE REQUEST Section 444, Education Act 1996

Information contained in the form will be used in legal action under the above Act relating to non-attendance at school in the event that an Education Penalty Notice is issued and remains unpaid. I request that the Local Authority consider issuing a Penalty Notice to the parent(s)\* of the following pupil:

#### Pupil details:

Registered School:

Name of Pupil:                      DOB:                      NC Year:

Address:

#### Parent details:

Full name:                              DOB:

Address:

Address: (if different from above)

#### Dates of absence:

The above named pupil was absent from school on the following dates and are recorded in the school register as unauthorised.

(Please attach a registration certificate showing the period)


How has the parent been contacted regarding the unauthorised absences?

School Meeting  Letter  Telephone Call

If absences include an unauthorised leave of absence or holiday, please confirm whether:

- The parents requested authorisation prior to holiday: Yes / No.
- School responded in writing to decline authorisation of holiday: Yes / No.
- A pupil has not returned to school by the agreed date and no satisfactory explanation has been received: Yes/No

**Please append copies of the request and school's response, declining the request.**

- Is the family known to other Services<sup>1</sup>, e.g. Children's Services, YOS, CAMHS? Yes / No
- Are there any notable circumstances to consider, e.g. mental health, bereavement, family dynamics/domestic violence? Yes / No

If yes, please give full details:

The expression "parent", in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has day to day care of the child.

### **Declaration**

In making this request, I confirm that such action would not conflict with other intervention strategies already in place or other enforcement measures already being processed. I can also confirm that the governing body of this school has reviewed its attendance policy and agreed that this school will request the Local Authority to issue a Fixed Penalty Notices in appropriate cases.

Signed:

Designation:

Date:

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<sup>1</sup> The LA will consider information received in terms of any support service intervention and may refuse a request for a FPN or withdraw an issued FPN if it is deemed appropriate.

## **Appendix 4 – Relevant legislation that relates to Fixed Penalty Notices**

Legislation that relates to the Fixed Penalty Notice scheme include:

### **The Children Act 1989**

The definition of “parent” means all biological parents, whether they are married or not; and includes any person who, although not a biological parent, has parental responsibility and/or care for a child or young person.

### **The Education Act 1996**

Section 7	Duty of parents to secure education of children of compulsory school age;
Section 8	Definition of compulsory school age;
Section 444(1)	Offence: Failure to secure regular attendance at school of registered pupil;
Section 444A	Penalty notice in respect of failure to secure regular attendance at school of registered pupil;
Section 444B	Penalty notices: supplemental;
Section 444ZA	Application of section 444 to alternative educational provision
Section 576	Meaning of “parent”

### **Education & Inspections Act 2006**

Section 108	Duty of parent in relation to excluded pupil.
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