

Directorate of Lifelong Learning

Local Code of Conduct Education Fixed Penalty Notices

Date: September 2014

1. Legal Framework

1.1. The law empowers designated Flintshire County Council (FCC)

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 school.

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

- The Education Act 1996;
- The Education (Penalty Notices) (Wales) Regulations 2013; and in addition, the issuing of Fixed Penalty Notices must comply with other relevant legislation, such as the Human Rights Act and Equal Opportunities legislation, in order to ensure that they are used in a fair and consistent manner.
- United Nations Convention on the Rights Of The Child.

1.1.1. FCC is responsible for developing a protocol with which all partners e.g. Police, neighbouring authorities, and schools e.t.c will operate within.

2. Rationale

2.1. 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.”

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

2.1.2. Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely to 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 persistent absences in years 10 and 11.

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

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

2.1.5. 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 regular attendance.

2.2. Fixed Penalty Notices 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 persistent absences, whilst reducing the need for lengthy and costly prosecutions.

2.2.1. Fixed Penalty Notices 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. Policy and Publicity.

3.1. School Attendance Policies will include information on the issuing of Fixed Penalty Notices and this will be brought to the attention of parents.

4. Monitoring and review.

FCC will evaluate the effectiveness of Fixed Penalty Notices every year and amend its general enforcement strategy as appropriate depending upon the previous year's operation. Annual reports will be made available to the Head of Service

Flintshire County Council (FCC) protocols and procedures in relation to Fixed Penalty Notices

Issue of a Penalty Notice

- A Fixed Penalty Notice can only be issued in cases of unauthorised absence;
- Use of Fixed Penalty Notice will be restricted to one notice per parent of a pupil per 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 Fixed Penalty Notice.

Penalty Notices may be considered appropriate when :

The local authority will need to ensure that that this is a failure to secure 'regular attendance'.

- At least 20 sessions (10 school days) are lost due to unauthorised absence during the current term. These do not need to be consecutive;
- Persistent late arrival at school, i.e. after the register has closed, in the current term. "Persistent" means at least 10 sessions of late arrival;
- Truancy; defined as The action of staying away from school without good reason (Oxford dictionary)
- A Penalty Notice will not be issued in respect of children in LA care with whom other interventions will be used.

Considerations and Assessment as to whether a Fixed Penalty Notice should be issued

Head Teachers, their nominated deputies and Inclusion Welfare Services will take into account the following when determining whether a Fixed Penalty Notice should be issued:

- Level of absence;
- Regard to Equality and Diversity Legislation;
- Any statement of Additional Learning Needs;
- History of the attendance issues and action taken;
- Defences which may be available;
- Welsh Government (WG) Guidance;
- Likely effectiveness of Fixed Penalty Notice as a tool for obtaining compliance;
- Level of parent engagement/cooperation.

Procedure for Issuing Fixed Penalty Notices

The designated officers within the Inclusion Welfare Service (IWS) will be the only individuals permitted to issue Fixed Penalty Notices within the county of Flintshire, which will ensure consistent and equitable delivery and allow schools to maintain good relationships with parents and ensure that they reinforce any other enforcement sanctions.

Fixed Penalty Notices will only be issued by post and never as an instant action, e.g. during a Truancy Sweep. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks to individuals. (Refer also to FCC guidance on Lone Working) associated with delivering such Notices by hand.

Requests for issue of a Fixed Penalty Notice

Where schools, Police or neighbouring local authorities request the issue of a Fixed Penalty Notice, their request will be investigated and actioned by the Inclusion Welfare Service (IWS), provided that:

- The circumstances of the case meet the criteria specified in this Code of Conduct;
- The pupil is registered at a FCC school;
- All necessary evidence is provided to the Inclusion Welfare Service (IWS) to establish whether an offence under Section 444(1) or 444(1A) of the Education Act 1996 or Section 103 of the Education and Inspections Act 2006; The Education (Penalty Notices) Wales Regulations 2013 has been committed;
- Issuing a Fixed Penalty Notice 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 Fixed Penalty Notice would improve the child's school attendance
- The IWS will respond to all requests within 10 school days of receipt, and where satisfied that all of the relevant criteria are met, will issue a formal written warning to the parent of the possibility of a Fixed Penalty Notice being issued;
- Set a period of 15 school days within which the pupil must have no unauthorised absence, and give the parent an opportunity to respond; this information can be included in the formal written warning letter, where one has been issued; (see point 7 for exception in appendix 1) and
- After due consideration of the facts of the case, only issue a Fixed Penalty Notice via First Class Post (recorded delivery) at the end of the 15 day period, if the required level of improved school attendance has not been achieved.

Monitoring and Review

All Fixed Penalty Notices will be entered onto a database maintained by the IWS to ensure that no duplicate Fixed Penalty Notices are issued and to evaluate the effectiveness of the process within the County.

Procedure for the Withdrawal of Fixed Penalty Notices

Once issued, a Fixed Penalty Notice can only be withdrawn if the IWS is satisfied that:

- The Fixed Penalty Notice was issued to the wrong person;
- The use of the Fixed Penalty Notice did not conform to this Code of Conduct;
- The evidence demonstrates that the Fixed Penalty Notice should not have been issued, e.g. medical evidence
- The circumstances of the case warrant its withdrawal.

Right of appeal

There is no right of appeal, but where a parent contests the issuing of a Fixed Penalty Notice they can submit any complaints to the IWS and/or opt to face proceedings in the Magistrates Court under Section 444 of the Education Act 1996

Payment of Fixed Penalty Notices

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 the Fixed Penalty Notice.

If the Fixed Penalty Notice is paid within 28 days, the penalty payable is £60 or £120 if within 42 days. Payments will not be accepted from parents after 42 days has elapsed and cannot be paid either by instalments.

FCC will retain any revenue from the Fixed Penalty Notices, hold it separately and usually use it to cover enforcement costs, i.e. costs associated with the issue, collection or prosecution, in the event of non-payment, of Fixed Penalty Notices. The surplus if any will be surrendered to the Welsh Consolidation Fund.

Non-Payment of Fixed Penalty Notices

Non-payment of a Fixed Penalty Notice may result in prosecution for the period covered by the Fixed Penalty Notice under Section 444 of the Education Act 1996.

Equal Opportunities

The issuing of Fixed Penalty Notices 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
- United Nations Convention On the Rights Of The Child.

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

Appendix 1

**Fixed Penalty Notice Request Check List (to be submitted with Request)
Request for Penalty Notice Unauthorised Absence**

Fixed Penalty Notice Check List

1. Who has parental responsibility over the pupil?
Please name person who has day to day care if different

Parental Responsibility.....

Day to Day Care.....

2. Has the period of absence meant the pupil has missed at least 20 school sessions?

Yes / No

3. Has the parent named in response to question 1 previously received a Fixed Penalty Notice? If yes, when?

Yes / No

Please specify when:

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4. Was a request made to the school by the parent for holiday leave during the period you wish to issue a Fixed Penalty Notice for?

If 'yes' what was the reason for refusal? Please attach copies of the correspondence exchanged.

If 'no' please explain why an unauthorised holiday is suspected.

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5. What is the pupil's up to date attendance history (please attach SIMS print outs)?

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6. Does the pupil have any statement of Special Educational Needs?

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7. Does the pupil have a Disability under the Equality Act 2010?

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8. What is known of the pupil's personal circumstances?

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9. Are there any exceptional circumstances that the Council should be aware of?

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10. Has the pupil had a previous holiday or long period of absence in the academic year the unauthorised holiday was taken in?

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11. Has parent been in contact with the school in relation to the absence?

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12. Has Flintshire's County Council's Code of Conduct been considered?

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REQUEST FOR PENALTY NOTICE
UNAUTHORISED ABSENCE - 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 Year

Address.....
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Parent 1

Full Name.....DOB.....

Address.....
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Parent 2

Full Name.....DOB.....

Address.....
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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 care of the child.

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 Penalty Notices in appropriate cases.

How has the parent been contacted regarding the unauthorised absences?

School Meeting Letter Telephone Call

Is the family known to other Services, eg: Children's Services, CAMHS?

Yes / No

Are there any notable circumstances to consider, eg: mental health, bereavement, family dynamics/domestic violence? Yes / No

If yes, please give full details:

Signed Designation Date:.....

Please enclose an up to date registration certificate.

Appendix 2

Relevant legislation that relates to Fixed Penalty Notices includes:

The Children Act 1989

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural 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	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 103	Duty of parent in relation to excluded pupil;
Section 104	Notice to parent relating to excluded pupil;
Section 105	Penalty notice in respect of presence of excluded pupil in public place;