

Vale of Glamorgan Council

Fixed Penalty Notice for Non-Attendance at School

Code of Conduct

August 2014

1. Legal basis and rationale

New legislation has empowered designated Vale of Glamorgan Council Education Officers to issue Fixed Penalty Notices (FPNs) to the parents of children and young people who have unauthorised absence from school. The issuing of FPNs will remain the responsibility of the Education Welfare Service (EWS) in response to requests made by headteachers, their nominated deputies and the Police.

Regular and punctual attendance of pupils at school is a legal requirement and essential if pupils are to maximise the educational opportunities available to them. Parents/carers and pupils are supported at school and at local authority level to overcome barriers to regular attendance through a range of assessment and intervention strategies with sanctions of any nature only used where parental cooperation is either absent or deemed insufficient to resolve the presenting problem. Penalty notices are an added means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement.

In law, an offence occurs if a parent/carer fails to secure their child's attendance at school and that absence is not authorised by the school. The legislation governing the implementation of FPNs is outlined in the following:

- Sections 444A and 444B of the Education Act 1996;
- The Education and Inspections Act 2006;
- The Education (Penalty Notices) (Wales) Regulations 2013;
- Rights of Children and Young Persons (Wales) Measure 2011;
- United Nations Convention on the Rights of a Child (the right to an education).

A penalty notice is a fine of £60 which may be issued to a parent/carer as a result of their child's regular non-attendance at school.

The local authority is responsible for developing a Code of Conduct within which all partners will operate and as part of the statutory duties for ensuring school attendance it is appropriate that the EWS will deliver this responsibility on behalf of the local authority.

The EWS investigates cases of irregular attendance from school and following a period of intervention and support to resolve a concern for non attendance will, if deemed appropriate instigate legal action. New legislation bringing FPNs offer a means of swift intervention to prevent individual cases becoming entrenched and progressing to the local magistrate's courts.

Penalty notices will be issued in circumstances based on clear threshold criteria which will be applied consistently and equitably across the Council and all persons authorised to request the issuing a penalty notice i.e. police or head teachers, including their nominated deputies must comply with the guidance set out in this code of conduct.

2. Legal practicalities

A penalty notice is £60 if paid within 28 days of receipt of the notice, rising to £120 if paid after 28 days (but within 42 days of receipt). If the penalty is not paid in full by the end of the 42 days the local authority must either prosecute parents/carers for the offence or withdraw the notice.

Prosecution proceedings (section 444(1) and (1A) of the Education Act 1996) will be for the offence of failing to secure attendance at school and not for non-payment of the fixed penalty fine.

Withdrawal of the notice can only take place in very limited circumstances as set out in this code of conduct.

3. Who can issue a Fixed Penalty Notice?

The legislation allows headteachers and the police (including their nominated deputies) as well as designated local authority officers (EWO's) the powers to issue FPNs. However, in order to avoid the issuing of duplicate penalty notices the management and processing arrangements in the Council will remain the sole responsibility of the EWS. The Service will work in consultation and partnership with schools and local police officers to ensure that:

- Notices are used consistently;
- Notices are not issued when proceedings under section 444 (1) or (1A) are being contemplated or have commenced;
- Relationships between schools and families are not compromised;
- There is no conflict with any other intervention already in place.

4. Circumstances for issuing a penalty notice

The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get the pupil who is truanting back into school or alternative provision.

It will be the responsibility of schools/PRUs and/or police to **request** that the EWS issue an FPN and such notice will only be issued when there are circumstances of unauthorised absence. Only one notice will be issued to a parent in any one academic year but where there may be more than one poorly attending pupil in a family, notices may be issued on more than one child in that family.

There will be no restrictions on the number of times a parent may receive a formal warning of a notice and it will be at the discretion of the EWS whether to issue a notice on one or both parent/carer.

Penalty notices **may** be considered in the following circumstances:

- Where a minimum of 10 unauthorised sessions (5 school days) have occurred in the current term (these do not need to be consecutive);
- Unauthorised absence from school due to a term time holiday and where there is a history of poor attendance;
- Persistent lateness of more than 10 sessions in the current term i.e. arrived at school after the close of the registration period;
- Where parent/carers have failed to engage with the school and/or the EWS in attempts to improve attendance but where court sanctions have not been instigated;
- Where a pupil regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason.

FPNs will not be used as an immediate action e.g. on pupils found to be truanting during truancy operations.

Once the circumstances are proven the EWS will then assess whether an FPN should be issued taking the following into account: -

- Level of absence;
- Any Equalities considerations relating to the child or family (as listed in the Council's Equality Policy);
- Any statement of Special Educational Needs;
- History of the attendance issues and action taken;
- Welsh Government (WG) Guidance;
- Likely effectiveness of Fixed Penalty Notice 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.

5. Procedure for issuing a Fixed Penalty Notice

The EWS will respond to all requests to issue penalty notices within ten school days of receipt and where satisfied that all relevant criteria are met. Requests can be generated by headteachers, the police. The EWS will:

- Send a formal written warning to the parent/carer notifying them that they may receive a fixed penalty notice and why;
- Set a period of 15 days to allow the parent/carer to respond. During the fifteen day period the pupil must not have any unauthorised absences from school;
- If at the end of the 15 days all facts are considered to be appropriate a penalty notice will be issued via first class post.

6. Legal practicalities

An FPN is £60 if paid within 28 days of receipt of the notice, rising to £120 if paid after 28 days (but within 42 days of receipt). If the FPN is not paid in full by the end of the 42 days the local authority must either: -

- Prosecute parents/carers in the usual way using section 444(1) and (1A) of the Education Act 1996) or
- Withdraw the FPN (in limited circumstances as set out in this Code of Conduct).

Only one FPN will be issued to a parent in any one academic year but where there may be more than one poorly attending pupil in a family, FPNs may be issued on more than one child in that family. It will be at the discretion of the EWS whether to issue an FPN on one or both parents/carers.

Whilst there are no restrictions on the number of times a parent may receive a formal warning of an FPN it would not be acceptable to issue "warnings" repeatedly without making further investigations of the wider circumstances.

7. Payment of Fixed Penalty Notice

Arrangements for payment will be detailed on the penalty notice.

Once paid the parent/carer's liability for the period in question is discharged and they cannot then be subsequently prosecuted under other enforcement powers (section 444 (1)) for the same period covered by the notice.

The Council will retain the revenue from penalty notices in order to cover the enforcement costs associated with the issue, collection or in the event of non payment cases progressing to prosecution.

8. Non-payment of Fixed Penalty Notice

Non-payment of a penalty notice may trigger prosecution procedures brought under section 444(1) of the Education Act 1996.

9. Withdrawal of a Fixed Penalty Notice

Once issued a penalty notice may only be withdrawn where it is proven that:

- The notice has been issued to the wrong person/to the incorrect address;
- The notice did not conform to this Code of Conduct;
- Evidence demonstrates that the notice should not have been issued e.g. provision of medical evidence (parents/carers have the 15 day period to submit this evidence);
- Circumstances warrant its withdrawal.

Notification of the withdrawal will be given to the parent/carer and any amount paid will be repaid to the person who paid it. No proceedings will continue or be instituted against the parent/carer for the offence in connection with which the withdrawn notice was issued or for an offence under section 444(1 and 1A) of the Education Act 1996 arising out of the same circumstances.

There is no statutory right of appeal against the issuing of a penalty notice. Should a parent/carer wish to contest a notice then they may submit complaints to the EWS and/or face proceedings in the Magistrates Court under section 444(1) of the Education Act 1996.

10. Policy and publicity

In order to ensure parents and carers are fully aware of the FPN legislation, it is expected that all schools with the support of their governing body clearly outline penalty notice information in their Attendance Policy.

11. Annual review and reporting

The EWS will monitor the use of penalty notices as part of the quality assurance process with quantitative data being available to the Welsh Government on request.

This Code of Conduct will be reviewed on an annual basis and if necessary be amended depending on the outcome of the previous year's operation.

12. How to get further information

Further information on the operation of this code of conduct and penalty notices is available from:

The Senior Education Welfare Officer (SEWO)
Education Welfare Service
Provincial House
Kendrick Rd
Barry CF62 8BF
Tel 01446 709180