



# **Education Welfare Service**

## **Code of Conduct**

### **Fixed Penalty Notice (FPN)**

**Issued: October 2013**  
**Review: August 2015**

**Reviewed: September 2015**  
**Issued: September 2015**

**Reviewed: March 2016**  
**Issued: April 2016**

**Review Date: September 2017**

## Education Welfare Service

### Code of Conduct on the Issue of Fixed Penalty Notices in respect of

#### Poor School Attendance and Holidays requested in Term-Time

#### 1. Rationale

1.1 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 and aptitude, and ... to any special educational needs he may have, either by regular attendance at school or otherwise.”*

1.2 Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the educational opportunities available to them. Rotherham Education Welfare Service will continue to investigate cases of regular absence from school and, following appropriate casework intervention, will instigate legal action if applicable.

1.3 In law an offence occurs if a person with parental responsibility fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under Section 444, Education Act 1996 or Section 36, the Children's Act 1989 to enforce attendance at school where appropriate subject to statutory defences.

1.4 The Education Welfare Service (EWS) delivers this LA responsibility.

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

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

1.7 Amendments were made to the 2007 Regulations in the **Education (Penalty Notices) (England) (Amendment) Regulations 2013**. These amendments came into force on 1<sup>st</sup> September 2013.

1.8 The 2007 regulations set out the procedures for issuing penalty notices (fines) to each parent who fails to ensure their children's regular attendance at school. Parents must pay £60 if they pay within 28 days; or £120 if they pay within 42 days.

1.9 Amendments to 2007 regulations reduced the timescales for paying a penalty notice. Parents must, from 1<sup>st</sup> September 2013, pay £60 within 21 days or £120 within 28 days. This brought attendance penalty notices into line with other types of penalty notices and allows local authorities to act faster on prosecutions.

1.10 In order to comply with Human Rights legislation it is essential that Penalty Notices be issued in a consistent manner. This Code of Conduct will govern the issuing of Penalty Notices in respect of unauthorised absence from school for holidays taken in term time, and unauthorised absence, for Rotherham Borough Council.

## **2. Section 576 Education Act 1996: Definition of a Parent**

2.1 The education- related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out in this section of the Education Act 1996. This defines 'parent' as:

- All natural parents whether they are married or not
- Any person who although they are not a natural parent, has care of a child or young person – having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child is considered to be a parent in education law.

2.2 Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to 'parent' in the singular.

## **3. Circumstances where a Fixed Penalty Notice may be issued**

3.1 The issuing of a Fixed Penalty Notice is considered appropriate in the following circumstances:-

- a) In cases of absence from school when the pupil has been taken on holiday during term time, the absence has not been authorised by the school, and the child has attendance below the Local Authority average for the previous school year or 3 terms (Primary 95.4% and Secondary 94%)  
There must be at least 10 consecutive sessions (5 school days) lost due to unauthorised leave of absence during term time.  
In such cases each parent will receive a separate Fixed Penalty Notice for each child taken out of school.
- b) Where the Local Authority School Attendance Panel / Fixed Penalty Notice Panel believes that a Fixed Penalty Notice is the most appropriate way to deal with non-school attendance.
- c) For those parents/carers of pupils in Year 11 where notification of unsatisfactory attendance has been issued during the year in which the pupil was Year 10 and unsatisfactory attendance remains a concern by October. (Year 10 Initiative)
- d) Excessive delayed return from extended holidays without prior school agreement.
- e) Following a Truancy Patrol, enquiries will be undertaken with the school of any pupil stopped. In cases where the school have recorded the absence of the pupil as unauthorised and the evidence shows that the pupil has been stopped on a previous patrol within a year then a Fixed Penalty Notice will be issued.

N.B. Fixed Penalty Notices will not be issued during Truancy Patrol as this could prejudice the Health and Safety of the Officer on Patrol. Additionally it will provide time to investigate the information provided to Officers.

3.2 No one parent will receive more than three separate Fixed Penalty Notices resulting from the unauthorised absence of an individual child in any 12 month period, however, there will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Fixed Penalty Notice.

#### **4. Procedures for issuing Fixed Penalty Notices**

4.1 In Rotherham Fixed Penalty Notices will be issued by the Education Welfare Service in order to avoid the issue of duplicate notices. The Education Welfare Service will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions. Fixed Penalty Notices will only be issued for offences where the Local Authority is willing and able to prosecute.

The Education Welfare Service will ensure that the issuing of Fixed Penalty Notices will be closely monitored to ensure that recipients pay the relevant fine. In cases where the penalty in respect of unauthorised leave of absence or persistent non- attendance is not paid within the appropriate period the Education Welfare Service will instigate action through the Courts as required by legislation.

4.2 A Fixed Penalty Notice can only be issued in cases of unauthorised absence.

4.3 The Education Welfare Service will receive requests to issue Fixed Penalty Notices from schools.

4.4 The Education Welfare Service will consider requests to issue Fixed Penalty Notices in respect of unauthorised holidays in term time at the Local Authority Fixed Penalty Notice Panel.

4.5 The Fixed Penalty Notice Panel will require supporting documentation and relevant information including all correspondence with the parent as consideration needs to be given to whether there are any mitigating circumstances.

4.6 Schools must consider every aspect of a pupil's case before considering whether a Fixed Penalty Notice would be appropriate. This may include strategic discussions with the allocated EWO and any other attendance support staff who have involvement with or knowledge of the pupil/family.

4.7 Referrals to the Fixed Penalty Notice Panel for unauthorised leave of absence during term time will only be considered provided that:-

- The circumstances of the pupil's absence meet all the requirements of this protocol
- Family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a Fixed Penalty Notice.
- The EWS must receive the referral within 4 weeks of the last date of the holiday.
- The issue of a Fixed Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

4.8 The EWS will respond to all requests within 10 school days of the case being heard at the Fixed Penalty Notice Panel.

4.9 Provided the referral has met all criteria EWS will issue a Fixed Penalty Notice by post.

#### **5. Procedures for Withdrawing Fixed Penalty Notices**

5.1 A Fixed Penalty Notice may be withdrawn by Rotherham Local Authority in any case in which the authority determines that:-

- a) It ought not to have been issued or
- b) It ought not to have been issued to the person named as the recipient.

5.2 Where a Fixed Penalty Notice has been withdrawn in accordance with the above, a notice of withdrawal shall be given to the recipient and any amount paid by way of penalty pursuant of that notice shall be repaid to the person who paid it.

5.3 No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444 (1A) of the Act arising out of the same circumstances.

## **6. Right of Appeal**

6.1 There is no statutory right of appeal once a Fixed Penalty Notice has been issued. A parent must pay the Fixed Penalty Notice or face proceedings in the Magistrate's Court under Section 444 of the Education Act 1996 in relation to absences, where all of the issues relating to their Fixed Penalty Notice can be fully debated.

## **7. Payment of Penalty Notices**

7.1 The arrangements for the paying of penalties will be detailed on the Penalty Notices.

**7.2 From 1<sup>st</sup> September 2013 Fixed Penalty Notices were set nationally by the DfE at £60 per parent per child if paid within 21 days of receipt of the notice increasing to £120 per parent per child if paid within 28 days of receipt of the notice.**

7.3 Payment of a Fixed Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

7.4 The LA retains any revenue from Fixed Penalty Notices to cover enforcement costs.

## **8. Non-Payment of Fixed Penalty Notices**

8.1 Non-payment of a Fixed Penalty Notice will result in the fast-track prosecution process under the provisions of Sec 444, 1996 Education Act. The fact that a notice was issued and unpaid can be used as evidence in a subsequent prosecution.

## **9. Reporting and Review**

9.1 The Education Welfare Service will review the Code of Conduct on the Issue of Fixed Penalty Notices in regard to unauthorised holidays taken in term time and poor school attendance at regular intervals and produce reports on this area of activity as required.

**Education Welfare Service  
April 2016**