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# Early Help and Family Engagement

## Fixed Penalty Notice (FPN)

### Code of Conduct

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## Early Help and Family Engagement

### **Code of Conduct on the Issue of Fixed Penalty Notices in respect of Poor School Attendance and Unauthorised Holidays taken in Term-Time**

#### **1. Rationale**

- 1.1 The Education Act 1996 is the primary legislation which governs the attendance of a child at school. 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 a priority for Rotherham Metropolitan Borough Council in order to maximise the educational opportunities available to them and ensure 'the best start in life.' The Local Authority will continue to investigate cases of regular absence from school and, following appropriate casework intervention, will instigate legal action where applicable.
- 1.3 In law, an offence occurs if a parent 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. Fixed Penalty Notices supplement the existing sanctions currently available under Section 444 of The Education Act 1996, Section 103 of the Education and Inspections Act 2006 or Section 36 of The Children's Act 1989 to enforce attendance at school where appropriate, subject to statutory defences.
- 1.4 The Early Help and Family Engagement Service, within the Local Authorities' Children's Services deliver this responsibility.
- 1.5 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 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 The Education (Penalty Notices) (England) Regulations 2007 set out the procedures for issuing Fixed Penalty Notices to each parent who fails to secure the regular attendance of their child at school.
- 1.8 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.
- 1.9 Amendments to 2007 regulations reduced the timescales for paying a Fixed Penalty Notice. Parents must, from 1<sup>st</sup> September 2013, pay £60 within 21 days or £120 within 28 days. This brought attendance Fixed Penalty Notices into line with other types of Fixed 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 Fixed Penalty Notices are issued in a consistent manner. This Code of Conduct will govern the issuing of Fixed Penalty Notices in respect of unauthorised absence from school for holidays

taken in term time, and other unauthorised absence, for Rotherham Metropolitan Borough Council.

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

2.1 Under section 576 of The Education Act 1996, a parent is defined as follows:

- 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 combined National average for both primary and secondary schools for the previous 12 months, including the holiday absence period.

There must be at least 10 consecutive sessions (5 school days) lost due to unauthorised.

- b) The deliberate taking of a holiday/leave of absence in term time without the school's permission (where the school have made the parent aware of their policies in relation to leave of absence through publicity materials, general correspondence, policies etc) and where this has created a period of unauthorised absence of at least 10 sessions (5 school days).
- c) For those parents of pupils where notification of unsatisfactory attendance has been issued and unsatisfactory attendance remains a concern.
- d) Where the Local Authority School Attendance Panel or Fixed Penalty Notice Panel believe that a Fixed Penalty Notice is the most appropriate way to deal with non-school attendance.
- e) Where a child has not returned to school on an expected date and no satisfactory explanation has been given for the absence. There must be at least 10 consecutive sessions (5 school days) lost due to unauthorised leave of absence during term time.
- f) Where an excluded pupil is present in a public place during the school hours of the school where the pupil is on roll.

3.2 In each of the above cases, each parent will receive a separate Fixed Penalty Notice for each child taken out of school.

3.3 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 Local Authority in order to avoid the issue of duplicate notices. This 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.
- 4.2 The Local Authority 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 Local Authority will instigate action through the Courts as required by legislation.
- 4.3 A Fixed Penalty Notice can only be issued in cases of unauthorised absence.
- 4.4 The Local Authority will receive requests to issue Fixed Penalty Notices from schools.
- 4.5 The Local Authority will consider requests to issue Fixed Penalty Notices in respect of any of the circumstances arising under Section 3 of this Code, at the Local Authority School Attendance Panel or the Local Authority Fixed Penalty Notice Panel.
- 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 Early Help worker and Early Help Manager and any other attendance support staff who have involvement with or knowledge of the pupil and/or family.
- 4.7 Where a pupil has special educational needs and/or disabilities, the school should consider whether a Fixed Penalty Notice would be appropriate having considered all the circumstances relevant to that pupil. In particular, the school will need to have specific regard to the needs of the pupil and the overall attendance of the pupil, which may or may not be in line with the combined National primary and secondary average.
- 4.8 The Local Authority will require supporting documentation and relevant information including all correspondence with the parent in order to establish whether a Fixed Penalty Notice is appropriate.
- 4.9 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 Code.
  - The Local Authority 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.
- 4.10 The Local Authority will respond to all requests within 10 school days of the case being heard at the Fixed Penalty Notice Panel.
- 4.11 Provided the referral has met all the criteria the Local Authority 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 Metropolitan Borough Council in any case in which it 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 Magistrates 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 Local Authority retains revenue from the Fixed Penalty Notice payments to cover the costs for issue and enforcement and for costs related to the prosecution of unpaid Fixed Penalty Notices.

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

- 8.1 Non-payment of a Fixed Penalty Notice will result in the matter being referred to Legal Services to consider instigating a prosecution under the provisions of Section 444 of the Education Act 1996. The fact that a notice was issued and unpaid can be used as evidence in a subsequent prosecution. The prosecution can only be for the original offence and not for non-payment of the Fixed Penalty Notice.
- 8.2 The Local Authority will also consider whether it would be appropriate (instead of or as well as instituting proceedings) to apply for an Education Supervision Order in respect of the child under Section 447(1) of the Education Act 1996.

## **9. Reporting and Review**

- 9.1 The Local Authority 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 annually and/or following any changes in legislation/statutory guidance or following recommendations from the Rotherham Safeguarding Children's Board.