

Fixed Penalty Notices

Code of conduct for schools

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1. Legal Framework

Sections 444A and 444B of the Education Act 1996 (the act) empower authorised local authority (LA) officers, headteachers (or a member of school staff authorised by the headteacher), or the police to issue Fixed Penalty Notices (FNPs) in cases of unauthorised absence from school. The authorised person must have reason to believe that a person has committed an offence under section 444(1) of the act. There is no right of appeal against a fixed penalty notice and the imposition of one is not a criminal prosecution. As such, the requirement to consider an Education Supervision Order (ESO) is not necessary.

The Education (Penalty Notices) (England) Regulations 2007 (the Regulations) prescribe the necessary details for the operation of the fixed penalty notice scheme. Regulation 14 provides that each local authority is responsible for drawing up a code of conduct to ensure consistency in the issuing of fixed penalty notices. Therefore, it is the code of conduct, together with the relevant legislation and guidance, that will determine how the local authority should proceed in non-attendance matters and it may be subject to variation between local authorities.

The issuing of fixed penalty notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010. Fixed penalty notices must be applied consistently and fairly.

Any person issuing a fixed penalty notice must do so in accordance with this code of conduct which should be read in conjunction with the relevant legislation and Department for Education (DfE) guidance.

2. Rationale

Regular and punctual attendance at school, or alternative provision, is a legal requirement and essential for children and young people to maximise their educational opportunities.

All schools wishing to issue penalty notices under this code of conduct must evidence that literature provided to parents relating to attendance, such as a school prospectus, attendance and behaviour policies, home to school agreements and website information are readily accessible and include the warning that parents may be issued with a penalty notice for any unauthorised absence, including unauthorised term time holidays. Schools are advised to give parents and carers notification by means of one full term's notice of the enforcement of implementing fixed penalty notices. School governors should be in agreement with the endorsement of the use of fixed penalty notices.

Under section 444 of the 1996 Education Act, an offence occurs if a parent or carer fails to secure their child's attendance at the school where they are a registered pupil and the absence is not authorised by the school.

The use of fixed penalty notices is to supplement the existing sanctions currently available for this offence and offer a means of swift intervention which can be used to combat truancy problems before they become entrenched.

Parents, carers and pupils will continue to be supported by their school, by the Education Welfare Service (EWS) and, as appropriate, the Family Support Service, Youth Service and other agencies, to overcome apparent barriers to regular attendance through a range of intervention strategies.

Fixed penalty notices and other sanctions will be used only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting problem. They will be used as a means to support parents to meet their responsibilities in law and where there is a reasonable expectation that their use will secure an improvement. The key consideration in the decision to issue a penalty notice should be whether it would be effective in helping the child it relates to, to return to regular attendance.

Before issuing a penalty notice for unauthorised absence, other strategies should be considered that may help the child concerned return to regular school attendance.

These might include:

- writing to the child's parents to remind them of their legal responsibilities
- meeting with the child's parents
- ensuring a first-day response to any absence
- setting targets for improvement
- referral to the education welfare officer
- involvement of other services or agencies

Please note: The above strategies do not apply to term time leave or holiday.

The usual response would be to formally warn parents rather than to issue a penalty notice. This warning can be in the form of a communication sent to parents via school newsletters or school web page, as well as any direct mail sent to individual parents. Authorised officers can, however, issue a penalty notice for a first offence (September 2016 amendment due to changes in legislation exceptional circumstances).

Headteachers should only issue a penalty notice following consultation, discussion, reflection and joint decision with education welfare officer.

Schools should refer cases of unsatisfactory school attendance to the Education Welfare Service. Penalty notices are to be used as an additional resource to raise school attendance.

3. Code of conduct

This code of conduct is to ensure that the powers are applied consistently and fairly across the local authority's area and suitable arrangements are in place for the administration of the scheme. Fixed penalty notices must only be issued within the terms of this code of conduct.

The code of conduct is key to the successful use of fixed penalty notices. It ensures consistency, fairness and transparency in the way fixed penalty notices are applied and allows the local authority to manage the system and tailor it to local needs and resources. The regulations specify that the following must be included in the code of conduct.

- The means for avoiding the issue of duplicate notices.
- Measures to ensure that a notice is not issued when proceedings for an offence under section 444 of the act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the Education and Inspections Act 2006 Act are contemplated or have been commenced by the local authority.
- The occasions when it will be appropriate to issue a fixed penalty notice.
- The maximum number of fixed penalty notices that may be issued to one parent or carer in any 12 month period will be restricted to two per pupil per academic year.
- Arrangements for co-ordination between the local authority, neighbouring local authorities and where appropriate, the police and authorised officers.
- That fixed penalty notice can only be issued in cases of unauthorised absence in respect of a pupil who is registered at the school.
- That in cases where there is more than one poorly attending pupil in a family, multiple fixed penalty notices may be issued. A penalty notice will be issued to each parent of each child with whom they reside. The Education Act 1996 defines 'parent' as: all natural parents, whether they are married or not, any person who has parental responsibility for a child and any person who, although not a natural parent, has care of a child. Having care of a child means that a person a child lives with and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent in education law.

This decision will involve careful consideration and consultation between the school and the education welfare officer (EWO).

There will be no restriction on the number of times a parent or carer may receive a formal warning of a possible fixed penalty notice.

A penalty notice may be issued to each parent of each child liable for the offence or offences.

- It is important to avoid issuing duplicate penalty notices and to ensure that a penalty notice is not issued when a prosecution is being planned or has been commenced for the offence relating to the specific period of unauthorised absence. Therefore, before issuing a penalty notice, everyone authorised must liaise with the school's named education welfare officer and any other local authority involved with the child. This would include a local authority who has responsibility for a looked after child and a local authority in whose area the pupil lives.

- An authorised person must promptly provide the Education Welfare Service with a copy of the paperwork relating to the decision (eg, the warning letter sent, the record of consideration and decision, etc). If the authorised person decides not to issue a penalty notice and unauthorised absence is continuing, they should liaise with the Education Welfare Service to consider how to proceed.

4. Circumstances where a fixed penalty notice may be issued

Fixed penalty notices may be considered appropriate in the following specific circumstances.

Poor attendance

At least 10 sessions (five school days) accrued due to unauthorised absence in any five week period. This includes the following.

Persistent unauthorised absence

Where a minimum of 10 unauthorised absences must have accrued during a five school week period, without the schools consent. In these circumstances, following a warning letter being sent, a monitoring period having been set, then a penalty notice can be issued. The 10 sessions need not be consecutive. (Setting a period of 15 school days to effect the improvement before issuing).

Unauthorised term time leave

Absence from school **without permission** and is not deemed to be exceptional circumstances and authorised by the headteacher. In these circumstances where a headteacher does not authorise a request from a parent or carer for an absence they will respond to the request directly. This response will constitute a valid warning to the parent about a potential penalty notice. In all cases, a minimum of 10 sessions in total (five school days) of absence must have been accrued. The absences will be consecutive.

In these circumstances, penalty notices will be issued as they are not exceptional or unavoidable. The absences must be recorded as a 'G' code in the attendance register. Copy of a letter to the parent or carer advising them that the matter has been discussed with the EWO and a copy of the letter is to be kept on the school file. Evidence of attendance for the relevant period signed by the headteacher. The Education (Pupil Registration) (England) (Amendment) Regulations 2013, state headteachers may not grant any leave of absence during term time unless there are exceptional circumstances (no definition is given within this legislation). This has been supported by the Supreme Court judgement of April 2017 on unauthorised holidays taken in term time.

Unauthorised delayed return from extended holidays

(the pupil fails to return on agreed date). Following a warning, a penalty notice can be issued. In these circumstances, headteachers should make clear to parents and carers the date of when the pupil will be expected to return to school, warning them that if they fail to return on the date then a penalty notice may be issued.

Persistent late arrival at school (after the register has closed)

Equivalent to a minimum of 10 sessions accrued in a five week period. Following the warning letter being sent, a penalty notice may be issued. The late mark (code U) for an unauthorised absence should be recorded.

Fixed penalty notices will not be issued in respect of children who are looked after.

5. Procedure for issuing fixed penalty notices

The law grants police, headteachers (or a member of school staff authorised by the headteacher) and local authorities the power to issue fixed penalty notices. Although the local authority also has the power to issue fixed penalty notices, it considers the school to be responsible for this. The EWS can advise schools wishing to use their power to issue fixed penalty notices.

In issuing fixed penalty notices, headteachers (or a member of school staff authorised by the headteacher) need to consider that their approach ensures consistent and equitable delivery, maintains good relationships with parent and carers and allows cohesion with other enforcement sanctions. Where schools make a decision to use a fixed penalty notice, they must ensure they provide parents and carers with this warning in their attendance policy and procedures and in line with this code of conduct. Penalty notices should only be used where a parent or carer is capable of securing an improvement in their child's attendance, but is unwilling to do so.

Fixed penalty notices will only be issued by post and never as an on the spot action (eg, given out while a headteacher is meeting a parent or carer). This ensures all evidential and health and safety requirements are in place. Where the fixed penalty notice is served by first class post, service is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice.

Where all criteria are met, the headteacher (or a member of school staff authorised by the headteacher) will:

- issue a written warning to the parent or carer that a fixed penalty notice might be issued in circumstances mentioned above. The formal warning allows headteachers to in the same letter, set a period of 15 school days within which the pupil must have no unauthorised absence and give an opportunity to respond. Unauthorised absence within the 15 school day period after the warning has been sent will result in the issuing of a fixed penalty notice
- issue a fixed penalty notice by post at the end of the 15 day period if absence continues to be unauthorised and the required level of improvement has not been achieved

In all instances, **the school will advise the EWO** of any decision to issue a fixed penalty notice and in accordance with the code of conduct make the request to the strategic lead for education welfare in the issuing of a fixed penalty notice.

6. Evidence

Should a fixed penalty notice be issued, and if the penalty is not paid within 28 days, the local authority must consider prosecution for this unauthorised absence. It is therefore essential that the decision to issue a fixed penalty notice is supported by sufficient evidence to ensure a realistic prospect of conviction should it be necessary to withdraw the fixed penalty notice if non-payment occurs and a prosecution is being sought under Section 444 of the act.

7. Procedure for the withdrawal of fixed penalty notices

Once issued, a fixed penalty notice may only be withdrawn in the following circumstances:

- it ought not to have been issued
- it ought not to have been issued to the person named as the recipient
- it contained material errors
- the use of the fixed penalty notice does not conform to this code of conduct
- the period for payment has expired (and consideration will now be given to prosecution under section 444 (1) or section 444 (1A) of the act)

8. Cross-border working

Where a school's headteacher is considering issuing a fixed penalty notice for one of its pupils who is the resident of another local authority, the attached EWO will contact the EWO in the other local authority advising them of this.

The attached EWO should agree with the other local authority in which court any subsequent prosecution will take place if the penalty is not paid and consideration is made under section 444 (1) or section 444 (1A) of the act where it is deemed to be appropriate.

This agreement must be reached between the two local authorities before issuing of any fixed penalty notice.

9. Payment of fixed penalty notices

Arrangements for payment will be detailed on the fixed penalty notice.

Payment of a fixed penalty notice discharges the parent's or carer'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.

Payment within 21 days is £60.00 per parent, per child and payment after this time, but within 28 days is £120.00 per parent, per child for the offence period.

The local authority retains revenue from fixed penalty notices to cover the cost of administration (both collection and prosecution in the event of non-payment). This revenue will be held separately and audited annually.

10. Records

A person issuing a fixed penalty notice must (without delay) provide a copy to the local authority named in the fixed penalty notice as the local authority to which payment is to be made.

A local authority must keep records of fixed penalty notices which must include:

- a copy of each fixed penalty notice issued
- a record of all payments made and on what dates
- whether the fixed penalty notice was withdrawn and on what grounds
- whether the recipient was prosecuted for the offence for which the fixed penalty notice was issued (or, where the fixed penalty notice related to an offence under subsection (1) of section 444 of the act, for an offence under subsection (1A) arising out of the same circumstances)

11. Non-payment of fixed penalty notices

If the fixed penalty payment is not received within 28 days, the local authority can consider whether to start a prosecution. If it decides not to start a prosecution or consider one, it must withdraw the fixed penalty notice. If proceedings are deemed to be appropriate, then the action will be a criminal prosecution under section 444(1) or section 444(1A) of the act, as opposed to an action for failing to pay the fixed penalty notice. The provisions of section 447 of the act will then apply, requiring consideration of an ESO.

Non-payment of a fixed penalty notice does not automatically result in further action being taken by the local authority. If the fine remains unpaid after 28 days, the presumption is that we will issue a summons and proceed to court. When deciding on whether there is enough evidence to charge, prosecutors must consider and determine whether evidence can be used in court and is reliable. Prosecutors must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant. Each case is looked at to ensure that it is in the public interest and/or the best interests of the child before this is done.

Should the matter be pursued, a warning letter will be sent from the local authority to the parent or carer informing them of the local authority's intention to pursue legal proceedings for the period of absence in question under section 444 (1) or S444 (1A) of the act.

The instigation of legal proceedings for unauthorised absence from school under prosecution powers is not for the non-payment of the fixed penalty notice, but is for failure to ensure regular attendance at school.

Only the local authority has the power to instigate criminal proceedings in cases of school non-attendance. We would only be considering that five week period, not the whole academic year in terms of the prosecution, as long as the school rules and expectations and our policy are clear, reasonable and followed.

12. Policy and publicity

Deployment of fixed penalty notices as a sanction is included in each school's attendance policy.

All school attendance policies will include information on the deployment of fixed penalty notices and this will be brought to the attention of all parents or carers. Schools should ensure they amend their attendance policies accordingly, so they are clear and reasonable for parents to be alerted to.

The local authority will include information on the use of fixed penalty notices and other attendance enforcement sanctions in promotional and public information material.

13. Reporting and reviewing

Headteachers should report to the governors on an annual basis, giving details of the Penalty Notices issued on parents of pupils within their school.

This code will be reviewed annually. Amendments to this code of conduct will be made in line with any legislative changes. As with any review, this may require further consultation as deemed appropriate.

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