

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2014-2015

**EDUCATION & LIFELONG LEARNING
SCRUTINY COMMITTEE**

Agenda Item No. 3

11th JUNE 2014

**REPORT OF:
DIRECTOR OF EDUCATION AND
LIFELONG LEARNING**

**INTRODUCTION OF FIXED PENALTY
NOTICES FOR NON-ATTENDANCE AT
SCHOOL**

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1. PURPOSE OF THE REPORT

To advise members:

- 1.1 On the introduction of The Education (Penalty Notice) (Wales) Regulations 2013 and the use of Fixed Penalty Notices for non-attendance at school.
- 1.2 In line with Welsh Government requirements, a Code of Conduct for issuing Fixed Penalty Notices in Rhondda Cynon Taf has been produced (Appendix 1) and is being consulted upon with schools, governing bodies and the police, with the Code and any amendments becoming effective in RCT from September 2014.
- 1.3 As part of the consultation process, views are being sought on the adoption of a consistent Local Authority approach to the un-authorisation of absence from school due to holidays in term time.

2. RECOMMENDATIONS

It is recommended that Members:

- 2.1 Note the information contained within this report.
- 2.2 Scrutinise and comment on the information provided to inform the consultation feedback to a future Cabinet.
- 2.3 Consider whether they wish to scrutinise in greater depth any matters contained in the report.

3. BACKGROUND

- 3.1 On 12th August 2013 the Education (Penalty Notice) (Wales) Regulations 2013 were laid before the National Assembly for Wales and came into force with effect from 2nd September 2013. All local authorities in Wales are required to have mechanisms in place for the regulations to become operational by September 2014.

- 3.2 To promote consistency and good practice, representatives from the All Wales Education Welfare Service Managers Group advised the Welsh Government that an All Wales Code of Conduct template be produced as the basis for all local authorities to work from. This was agreed and a guidance document was published in September 2013.
- 3.3 The Central South Consortium (CSC) has an established Attendance Strategic Network Group; one of its key priorities was to agree a regional approach to using Fixed Penalty Notices with an accompanying Code of Conduct to assist with the implementation the legislation. Subject to individual local authority approval, this will enable the legislation to be consistently applied across all five neighbouring local authorities. A standardised consultation framework was also developed and used across the Consortium.
- 3.4 Welsh Government required all local authorities to submit their draft Code of Conduct documents for approval, and a joint CSC submission was made in January 2014, which was subsequently approved.
- 3.5 Under the legislation, Fixed Penalty Notices are intended as an additional option within the range of intervention and support strategies used to tackle certain circumstances of unauthorised absence from school (e.g. holidays in term time).
- 3.6 Following the period of consultation, the Council will be required to have in place a Code of Conduct by the end of the 2013-14 academic year and all schools will be required to update their attendance related policies and procedures to reflect the circumstances for which they can request a Fixed Penalty Notice to be issued.
- 3.7 To ensure they are used consistently across the county borough and to avoid the issuing of duplicate penalty notices, it is recommended that the management, processing and all monitoring arrangements for Fixed Penalty Notices be the sole responsibility of the Council's Attendance and Wellbeing Service (AWS).

4. PROPOSED USE OF FIXED PENALTY NOTICES IN RHONDDA CYNON TAF

- 4.1 Over the past three years, there has been a steady improvement in both primary and secondary school attendance in RCT from 92.3% to 93.4% for primary schools and 90.6% to 91.9% for secondary schools. To build on this success, it is intended that the AWS continue working with schools and school improvement services to ensure registration practices are consistent and that schools' use of absence codes are monitored to improve how the local authority targets its AWS resources and interventions.
- 4.2 It is important that the AWS continue to work closely with schools, Children's Services, other welfare agencies and local police officers to make sure notices are used fairly and equitably to prevent the relationship between schools and families being compromised and to avoid conflict with other interventions already in place.
- 4.3 Issuing a Fixed Penalty Notice is intended to be an early intervention, high impact strategy for less entrenched absence issues. In England, where this legislation has been in force for some time, evidence suggests that an FPN is used mainly and most effectively for unauthorised absences for pupils going on holiday during term time. In Rhondda Cynon Taf and across the Consortium it is proposed that FPNs will only be considered appropriate 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);
- 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 AWS in attempts to improve attendance but where court sanctions have not been instigated;
- Where there is a period of unauthorised holiday absence;
- Where a pupil regularly comes to the attention of the police during school hours for being absent without an acceptable reason.

4.4 Fixed Penalty Notices will not be used as an immediate response to absence e.g. pupils found to be truanting during truancy operations, and clearly a degree of common sense will need to be applied to reflect individual circumstances.

4.5 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 of the notice. If the penalty is not paid in full by the end of the 42 days, the local authority will either prosecute for the offence of failing to secure attendance at school under section 444 of the Education Act 1996 or withdraw the notice (outlined in the Code of Conduct).

4.6 In respect of the criteria set out above in 4.3, in which the FPNs apply, schools are clear on what should be authorised and unauthorised absence in all cases except for the Council's position on holidays in term time, where there is significant inconsistency across our schools and the Consortium. As a Council, we are required to ensure there is a consistent approach across our schools in determining when a pupil takes holidays in term time whether that is authorised or unauthorised.

4.7 Welsh Government guidance recommends that it is at the discretion of the headteacher and up to 10 days can be authorised as absence. To improve attendance, Cardiff, Merthyr, Torfaen, Newport, Neath Port Talbot, Swansea, Carmarthenshire, Pembrokeshire, Ceredigion and Powys councils have introduced a policy where all holidays in term time are unauthorised. As a result, in the future, parents that do take their children out of school for holidays in term time could be subject to a penalty notice of £60. The Vale of Glamorgan and Bridgend Councils are also reviewing their position and whether they adopt the policy of un-authorising all holidays.

4.8 Whilst attendance at school is very important and all parents must strive to ensure their child has 100% attendance, for many families in Rhondda Cynon Taf, Members will recognise that a holiday plays a significant part in family life but many parents struggle to afford the holiday at the inflated prices charged during the school break. However, despite good progress in improving the attendance of Rhondda Cynon Taf pupils and significantly reducing the gap with the Welsh average, too many of our schools attendance statistics are in the lower two quartiles when compared with similar schools across Wales.

4.9 Given the stance adopted by ten of the other Welsh councils and Rhondda Cynon Taf's position in the league table of attendance statistics, if we did not adopt an approach that only authorises holidays in term time in exceptional circumstances we could be considered by some to "undervalue" education.

5. NEXT STEPS

- 5.1 To collate and analyse the responses of the stakeholder consultation, including the views of the Education & Lifelong Learning Scrutiny Committee.
- 5.2 Based upon the findings of the consultation analysis, request Cabinet approval for any amendments to the Code of Conduct, including the circumstances for which Fixed Penalty Notices are to be used.
- 5.3 For Cabinet to agree on whether a blanket approach be undertaken in relation to the unauthorisation of holidays in school term time.
- 5.3 For Cabinet to agree that the AWS is the most relevant and appropriate service area to manage the process and monitor the use and impact of FPNs.
- 5.4 For the AWS to ensure that all schools/PRUs are advised of their responsibilities for requesting Fixed Penalty Notices and for updating the relevant policies and procedural documents (School Attendance Policies) to reflect the circumstances of their use.
- 5.5 For the Central South Consortium Attendance Group to coordinate and manage an appropriate awareness raising campaign to notify pupils and parents/carers of the introduction of this new legislation and the potential implications of unauthorised absence from school.
- 5.6 To make suitable arrangements for methods of payment of penalty notices for non school attendance
- 5.7 To establish the necessary data capture and monitoring systems for reporting to Education and Lifelong Learning Scrutiny Committee and Welsh Government.
- 5.8 To review the Code of Conduct on an annual basis.

6. CONCLUSION

- 6.1 Cabinet and the Education Scrutiny Committee have made improving school attendance a priority for its schools and PRUs.
- 6.2 This report sets out how Rhondda Cynon Taf will introduce The Education (Penalty Notice) (Wales) Regulations 2013 which will contribute to further improvements in school attendance.

Rhondda Cynon Taf County Borough Council

**Fixed Penalty Notice for
Non-Attendance at School**

Code of Conduct

September 2014



1. Legal basis and rationale

Regular and punctual attendance at school is a legal requirement and essential if children and young people are to have access to a range of educational opportunities enabling them to have the best chance to succeed in life and become active responsible participants in the communities in which they will live as adults. Children and young people have the right to an appropriate education which meets their needs and when they are in school are also at less risk of harm.

The majority of learners attend school regularly, arrive punctually and are fully engaged with the curriculum, but for some, attending school regularly is a challenge and this can be for a variety of reasons. A range of assessment and intervention strategies are available from schools and officers from the Local Authority to help families overcome barriers to regular attendance, with sanctions of any nature only used as a last resort.

In Wales, legislation (The Education (Penalty Notices) (Wales) Regulations 2013) has given local authorities new powers to issue Fixed Penalty Notices (FPNs) to the parents of children and young people who are persistently absent from school and/or pupil referral units (PRUs) without authority. It is recommended that in Rhondda Cynon Taf the Attendance and Wellbeing Service (AWS) within the Education and Lifelong Learning Directorate have sole responsibility for issuing FPNs in response to requests made by headteachers, their nominated deputies or the police.

An FPN is a fine of £60 which may be issued to a parent/carer as a result of their child's unauthorised absence from school. The Welsh Government has introduced them as an added means of addressing unauthorised absence from school particularly in circumstances where there is a reasonable expectation that its use will secure an improvement in the future. Parents/carers have a legal responsibility to ensure that once registered at a school their child attends regularly. An offence occurs when a parent/carer fails in that duty and cannot offer any justifiable reason for absences.

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).

Head teachers are obliged to make judgements on the authorising of absence and subsequent coding (All Wales Attendance Codes 2010) to categorise the reason for absence. All schools have Attendance Policies which must clearly outline the day to day procedures in place to follow up pupil absence and how they will determine whether an absence is justified or not. Registration Regulations state that the statutory (lawfully acceptable) defences for school absence are that:-

- The absence is authorised;
- The pupil was prevented from attending due to illness or other unavoidable cause;
- The absence occurred on a day set aside for religious observance;
- The local authority has failed to make suitable travel arrangements to facilitate attendance (Learner Travel (Wales) Measure 2008);
- The child is excluded.

Following the introduction of FPNs all local authorities in Wales are required to have in place a Code of Conduct within which all partners will operate as part of the statutory duties for ensuring school attendance. In RCT it is recommended that the AWS be solely responsible for the operational functions of this Code of Conduct on behalf of the Local Authority which will ensure the process is managed consistently across the County Borough.

2. 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 (AWS) the powers to issue FPNs. However, in order to ensure consistent practice and avoid the potential for issuing duplicate FPNs it is recommended that the management and processing arrangements in RCT will be the sole responsibility of the AWS.

The service will work in consultation and partnership with schools, PRUs, and local police officers to ensure that:

- FPNs are used consistently;
- FPNs 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.

3. Current RCT Practice in Response to Pupil Absence

RCT's AWS has developed an Attendance Toolkit, used by schools and PRUs to ensure that statutory obligations for registration processes and practices are managed effectively, with good attendance highlighted as a priority and closely linked to improved outcomes.

The Toolkit outlines the actions schools should take in following up absence and it is important that school staff intervene as early as possible when there are signs that a pupil may be disengaging from learning. Following school's initial interventions it may be appropriate to refer into AWS to instigate further investigation into cases of irregular attendance and only following a period of assessment and intervention to help resolve a concern will legal proceedings be considered and then only where parental cooperation is either absent or deemed insufficient to support the child's education.

It is not intended that the new legislation for FPNs be used as a response to entrenched non attendance or change the traditional AWS casework with families. FPNs are intended more as a means of swift intervention and they are thought to be most effective when issued for specific circumstances, over periods such as Key Stage 4 lead up to examinations or even with certain age groups of pupils. The FPN process will not be reactionary to immediate circumstances e.g. truancy operations and warning letters which are a required part of the process will in many cases be enough to raise parental awareness of the concerns and lead to an improvement.

This Code of Conduct defines how RCT will introduce and operate the FPN process outlining the circumstances and threshold criteria expected to be applied consistently and equitably across the County Borough and all persons authorised to request an FPN be issued i.e. head teachers and police and their nominated deputies must comply with the detail set out in this Code of Conduct.

4. Circumstances for Issuing a Fixed Penalty Notice

It will be the responsibility of schools/PRUs and/or police to **request** that the AWS issue an FPN and those requests will only be considered where there is proven evidence of unauthorised absence due to the following circumstances: -

- Where there is a minimum of 10 unauthorised sessions (5 school days) in the current term (these do not need to be consecutive);
- Pupils are persistently arriving after the close of the registration period i.e. more than 10 sessions in the current term; (Recommended that registers be kept open for thirty minutes);
- Where parent/carers have failed to engage with the school and/or the AWS in attempts to improve attendance but where court sanctions have not been instigated;
- A period of absence from school due to a holiday that was not authorised by school;
- A pupil has regularly come to the attention of the police during school hours and is absent from school without an acceptable reason.

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

- The 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;
- The likely effectiveness of an FPN as a tool for obtaining compliance;
- The level of parent engagement/cooperation.
- Any adverse effect a fine will have on the welfare of the family.

5. Procedure for Issuing a Fixed Penalty Notice

The AWS will respond to all requests to issue an FPN within ten school days and where satisfied that all relevant criteria are met 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 during which the pupil must not have any unauthorised absences from school;
- If at the end of the 15 days there has been no improvement a penalty notice will be issued via first class post;
- If there is an improvement and there are no unauthorised absences then the FPN will not be issued.

Please note that where a school requests that an FPN be issued as a response to a period of unauthorised holiday absence the formal warning letter and 15 day improvement period will not apply.

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 AWS 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 a Fixed Penalty Notice

Arrangements for payment will be detailed on the FPN.

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 FPN.

Subject to compliance with Section 21 of the Regulations RCT will retain the revenue from FPNs 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 a Fixed Penalty Notice

Non-payment of an FPN will trigger prosecution procedures brought under section 444(1) of the Education Act 1996.

9. Withdrawal of a Fixed Penalty Notice

Once issued an FPN 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;
- Circumstances and evidence demonstrate that the FPN should not have been issued e.g. provision of medical evidence (parents/carers have the 15 day period to submit this evidence);

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 FPN 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 an FPN. Should a parent/carer wish to contest an FPN then they may submit complaints to the AWS 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 required that all schools/PRUs with the support of their governing body/board of management clearly include information on the FPN legislation in their Attendance Policy.

11. Annual review and reporting

RCT's AWS will monitor the use of FPNs as part of the local monitoring quality assurance process with quantitative data being made available to Education and Lifelong Learning Scrutiny Committee, Senior Management and the Welsh Government on request.

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

12. How to get further information

Further information on the operation of this Code of Conduct and FPNs is available from:

Prosecution Lead,
Attendance and Wellbeing Service,
Ty Trevithick,
Abercynon,
CF45 4UQ (01443 744282) aws@rctcbc.gov.uk