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Rhondda Cynon Taf County Borough Council

Fixed Penalty Notice for Non-Attendance at School

Code of Conduct

September 2023



Following the national introduction of fixed penalty notices for non-attendance at school by Welsh Government in 2013 (The Education (Penalty Notices (Wales) Regulations 2013), which became operational in Rhondda Cynon Taf (RCT) from January 2015, this is the revised Code of Conduct following an annual review of the scheme.

1. Legal basis and rationale

Regular and punctual attendance of pupils at school and alternative provisions is a both a legal requirement and essential for pupils to maximise the educational opportunities available to them. Regular attendance and punctuality are essential to allow children and young people to achieve their full potential during term time at school. They also ensure that children remain safe and lessen the opportunities for them to become involved in truancing and associated anti-social activities.

In law, an offence occurs if a parent/carers fails to secure their child's regular attendance at school/alternative provision and that absence is not authorised by the school.

In Wales, legislation (The Education (Penalty Notices) (Wales) Regulations 2013) has given local authorities the power to issue fixed penalty notices (FPNs) to the parents/carers of children and young people who are absent from school, pupil referral units (PRUs) and alternative provision without authority. Within RCT, the Education and Inclusion Services Directorate has devolved full responsibility for operating the scheme, including the issuing of fixed penalty notices as requested by headteachers, their nominated deputies or the Police, to the Attendance and Wellbeing Service (AWS) as part of their statutory duties.

A fixed penalty notice is an invitation to discharge your liability and carries a financial penalty of up to £120 which may be issued to a parent/carers as a result of their child's regular non-attendance at school/education provision.

The legislation governing the implementation of fixed penalty notices 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).

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

The legislation for issuing fixed penalty notices for non-attendance at school is not intended to be used as a response to entrenched absence from school or to change the traditional work of the AWS casework with families. Fixed penalty notices are

intended to be used as a means of swift intervention and they are deemed to be more effective when issued for specific circumstances, hence the criteria stated in section 4.

In order to ensure parents and carers are fully aware of the fixed penalty notice legislation, it is expected that all schools, with the support of their Governing Body, clearly outline penalty notice information in their School Attendance Policy and must clearly outline the day-to-day procedures to follow up pupil absence and how a headteacher will determine whether an absence will be authorised or not. Only headteachers are obliged to make judgements on the authorising of absence and subsequent coding (All Wales Attendance Codes 2010) to categorise the reason for absence. 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.

2. Legal practicalities

A fixed 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 fixed penalty notice is not paid in full by the end of the 42 days the local authority must either prosecute parents/carers or withdraw the notice. Prosecution proceedings (section 444(1) of the Education Act 1996) will be for the offence of failing to secure attendance at school and not for non-payment of the notice.

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 management of the fixed penalty notice process will be the responsibility of the AWS. The service will work in consultation and partnership with schools and local police officers to limit conflict with any other intervention already in place.

4. Circumstances for issuing a fixed penalty notice

A fixed penalty notice will be issued when there are circumstances of unauthorised absence. Only one notice will be issued to a parent in relation to an absence in any one academic year but where there may be more than one poorly attending pupil in

a family, notices may be issued for more than one child in that family. The academic year in which the school has placed the request to the Attendance and Wellbeing Service, and when the initial absence occurred, is relevant to the issuing of a notice and not the academic year in which the FPN may be processed and issued. There will be no restrictions on the number of times a parent may receive a formal warning of a notice and it will at the discretion of the AWS whether to issue a notice on one or both parent/carer.

Fixed penalty notices may be considered in 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) which may or may not include pupils who are persistently arriving after the close of the registration period (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.

Fixed penalty notices will not be used as an immediate action e.g. on pupils found to be truanting during truancy operations **and also if legal proceedings against the parent/carer under section 444 of the Education Act 1996 have commenced or are contemplated at the time of request as part of an ongoing case.**

5. Procedure for issuing a fixed penalty notice

Requests to issue fixed penalty notices will have been considered by the requestor in line with their own policy for managing unauthorised attendance. Requests to issue fixed penalty notices should then be sent to the local authority for further investigation of the information provided by the school/police. Appropriate requests will be actioned by the AWS within 10 working days of receipt from the school, where all the relevant information has been provided. Requests can be generated by schools, the police and neighbouring authorities. Once it is established that all required criteria is met the AWS 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 by ensuring the child/young person has full attendance. During the 15 day period, the child/young person must not have any unauthorised absences from school;
- If at the end of the 15 days unauthorised absences have occurred during this monitoring period, a fixed penalty notice will be issued.

PLEASE NOTE that where a school requests that a fixed penalty notice be issued as a response to a period of unauthorised holiday absence, the formal warning letter and 15 day improvement period will **NOT** apply and a fixed penalty notice will be issued immediately.

6. Payment of a fixed penalty notice

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

Fixed penalty notices that have been paid cannot be refunded on appeal.

Subject to compliance with Section 21 of the Regulations, RCT will retain the value of revenue from fixed 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.

7. Non-payment of a fixed penalty notice

Non-payment of a fixed penalty notice **may result in prosecution** under section 444(1) of the Education Act 1996.

8. Withdrawal of a fixed penalty notice

Once issued, a fixed 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. No proceedings will continue or be instituted against the parent/carer for the offence in connection with which the withdrawn penalty 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 fixed penalty notice. Should a parent/carer wish to contest an notice, they may submit complaints to the AWS and/or face proceedings in the Magistrates Court under section 444(1) of the Education Act 1996.

9. Policy and publicity

In order to ensure parents and carers are fully aware of the fixed penalty notice legislation, it is required that all schools/PRUs with the support of their governing

body/board of management clearly outline fixed penalty notice information in their Attendance Policy.

10. Code of Conduct review and reporting

The AWS will monitor the use of fixed penalty notices as part of the 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 a regular basis and, if necessary, be amended.

11. How to get further information

Further information on the operation of this Code of Conduct and fixed penalty notices is available from:

Attendance and Wellbeing Service,
Valleys Innovation Centre,
Navigation Park,
Mountain Ash,
Abercynon
CF45 4SN
01443 744298
aws@rctcbc.gov.uk