

Denbighshire County Council
School Improvement and Inclusion

Local Code of Conduct Education Fixed Penalty Notices

September 2016
Version 2

**This publication is available in Welsh on request.
Mae'r cyhoeddiad hwn ar gael yn Gymraeg ar gais.**

1. Legal Framework

- 1.1. The law empowers designated Denbighshire County Council Officers, head teachers, including their nominated deputies and the Police to issue Fixed Penalty Notices to the parents of children who have unauthorised absence from school. The rules governing the implementation of these powers and the factors that should be taken into account when issuing a Fixed Penalty Notice are outlined In:
- The Education Act 1996;
 - The Education & Inspections Act 2006;
 - The Education (Penalty Notices) (Wales) Regulations 2013; and
 - Guidance published by the Department for Education, in particular the “Guidance on Education–Related Parenting Contracts, Parenting Orders and Penalty Notices 2007 and Ensuring Children’s Rights to Education”.
- 1.1.1. (DCC) is responsible for developing a protocol with which all the partner agencies named in legislation will jointly work.

2. Rationale

- 2.1. 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 aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise.”
- 2.1.1. Regular and punctual attendance at school or alternative provision is a legal requirement and is essential to enable children to maximise their educational attainments, potential and opportunities available to them.
- 2.1.2. Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely not to be in education, employment or training (NEET) when they leave school. NEET young people are likely to have a history of non- attendance and persistence absences in years 10 and 11.
- 2.1.3. Section 444 of the Education Act 1996, makes it a criminal offence for a parent’s failure to secure their child’s attendance at the school at which they are registered and where absences are not authorised.
- 2.1.4. The definition of “parent” includes all natural parents, whether they are married or not and includes any person who, although not a natural parent, has the parental responsibility and/or care for a child or young person.
- 2.1.5. Targeted intervention plays a vital role in resolving issues of poor school attendance, however where this fails to have the desired effect there are a number of sanctions available to Local Authorities to try and secure improvements.
- 2.2. Fixed Penalty Notices are one of the sanctions available for this offence and offer a means of suitable and effective intervention for improving levels of unauthorised absences, before they become entrenched and persistence absences, whilst reducing the need for lengthy and costly prosecutions.
- 2:3 Fixed Penalty Notices and other sanctions will only be used where parental co-operation with this process is either absent or deemed to be insufficient to resolve the problem. They will be used as a means to support parents to meet their legal

responsibilities and only where there is a reasonable expectation that their use will secure improved school attendance.

3. Policy and Publicity.

3.1. School Attendance Policies will include information on the issuing of Fixed Penalty Notices and this will be brought to the attention of parents.

4. Monitoring and review.

(DCC) will monitor and evaluate the effectiveness of Fixed Penalty Notices every two years and amend its general enforcement strategy as appropriate. Annual reports will be made available to the Head of Service, SSEMT, Scrutiny Committee and the Welsh Government.

(DCC) protocols and procedures in relation to Fixed Penalty Notices.

Issue of a Penalty Notice

- A Fixed Penalty Notice can only be issued in cases of unauthorised absence;
- Use of Fixed Penalty Notice will be restricted to one notice per parent of a pupil per academic year; note, the unauthorised absences must be within a term to issue a Fixed Penalty Notice.
- In cases where there is more than one poorly-attending pupil in a family, Notices may be issued for more than one child;
- There will be no restriction on the number of times a parent may receive a formal warning of a possible Fixed Penalty Notice.

Penalty Notices may be considered appropriate when:

- At least 20 sessions (10 school days) are lost due to unauthorised absence during the current term. These do not need to be consecutive;
- Unauthorised absences of at least 20 sessions (10 school days) due to holidays in term time or delayed return from extended holidays; or
- Persistent late arrival at school, i.e. after the register has closed, in the current term. "Persistent" means at least 20 sessions of late arrival;
- Truancy;

The Local Authority (LA) will only issue Fixed Penalty Notices requested by a school in response to a holiday related unauthorised absence where the school has provided the necessary paperwork and evidence. This paperwork should comprise:

- A copy of the school newsletter or letter sent to all parents during the current Academic year which clearly states that parents may receive a Fixed Penalty Notice or an authorised holiday in term time. (The LA will not need a hard copy of this newsletter/letter each time a school applies for an unauthorised holiday Fixed Penalty Notice, just on the first occasion each academic year);
- A copy of the Holiday Request Form submitted by parent, and a copy of the response sent to the parent by school. In the event the holiday request is being denied the school's response should state the reason why the holiday is unauthorised and should again advise parent that they may receive a Fixed Penalty Notice if they take their child out of school;
- A copy of the letter sent by school to the parent advising that the school has referred the matter to the LA and that a Fixed Penalty Notice will be issued;
- Relevant pupil Attendance or Registration Certificate;
- Signed certificate from the Head Teacher or their nominated deputy confirming that non-attendance during the period was unauthorised;

A Penalty Notice will not be issued in respect of Looked After Children (LAC) who are subject to on-going LA intervention.

Considerations and Assessment as to whether a Fixed Penalty Notice should be issued.

Head Teachers, and nominated deputies need to base any decision to request a FPN on what amounts to “**regular school attendance**” a question of fact and evidence. A period of absence must be looked at in the context of a pupil’s wider attendance record.

The High Court Ruling on the 13 th May 2016 in the case of the Isle of Wight local authority, and Mr Platt requires the headteacher to exercise discretion.

This already exists with the 10 days leave in term time (exceptional circumstances) based upon all the information available within school relating to the wider attendance record of the pupil. This includes the factors below:

- Level of absence;
- Time of year and its importance within the school year,
- 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;
- Defences which may be available;
- Welsh Government (WG) Guidance;
- Likely effectiveness of Fixed Penalty Notice as a tool for obtaining compliance;
- Level of parent engagement/cooperation.
- Any substantial adverse effect a fine will have on the welfare of the family.

Procedure for Issuing Fixed Penalty Notices

The designated officers within the ESW service will be the only individuals permitted to issue Fixed Penalty Notices within the County of Denbighshire which will ensure consistent and equitable delivery and allow schools to maintain good relationships with parents and ensure that they reinforce any other enforcement sanctions.

Fixed Penalty Notices will only be issued by post and never as an instant action. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks to individuals.

Requests for issue of a Fixed Penalty Notice

Where schools, police or neighbouring local authorities request the issue of a Fixed Penalty Notice, their request will be investigated and actioned by the ESWS, provided that:

- The circumstances of the case meet the criteria specified in this Code of Conduct;
- The pupil is registered at a (DCC) school;
- All necessary evidence is provided to the ESWS to establish whether an offence under Section 444(1) or 444(1A) of the Education Act 1996 or Section 103 of the Education and Inspections Act 2006 has been committed;

- Issuing a Fixed Penalty Notice would not conflict with another intervention strategy already in place or another enforcement sanction already being processed and that there is a reasonable expectation that the use of a Fixed Penalty Notice would improve the child's school attendance or prevent further contravention of the Education and Inspections Act 2006.
- The ESWS will respond to all requests within 10 school days of receipt, and where satisfied that all of the relevant criteria are met, will Issue a formal written warning to the parent of the possibility of a Fixed Penalty Notice being issued;

Fixed Penalty Notices for unauthorised holidays.

Where the Fixed Penalty Notice is requested from a school in response to a holiday related unauthorised absence which is 10 days or more, or is in relation to an offence under section 103 of the Education and Inspections Act 2006 an immediate fixed penalty may apply , unless exceptional circumstances exist ”

Monitoring and Review

All Fixed Penalty Notices will be entered onto a database maintained by the ESWS to ensure that no duplicate Fixed Penalty Notices are issued and to evaluate the effectiveness of the process within DCC.

Excluded Pupils

The basis of the fixed penalty notice powers, do not extent to excluded pupils.

Section 108 of the Education and Inspections Act 2006 came into force in October 2010 and amends section 16 of the Crime and Disorder Act 1998 to extend Police powers for the removal of excluded pupils to designated premises if a child or young person excluded from school is found in a public place in a specified area during a specific period and during school hours.

Procedure for the Withdrawal of Fixed Penalty Notices

Once issued, a Fixed Penalty Notice can only be withdrawn if the ESWS is satisfied that:

- The Fixed Penalty Notice was issued to the wrong person;
- The use of the Fixed Penalty Notice did not conform to this Code of Conduct;
- The Fixed Penalty Notice was delivered to the wrong address;
- The evidence demonstrates that the Fixed Penalty Notice should not have been issued, e.g. medical evidence; or
- The circumstances of the case warrant its withdrawal.

Right of appeal

There is no statutory right of appeal, but where a parent contests the issuing of a Fixed Penalty Notice, they can submit any complaints to the ESWS and/or opt to face proceedings in the Magistrates' Court under section 444 of the Education Act 1996 where all of the issues relating to their Fixed Penalty Notice can be fully debated.

Payment of Fixed Penalty Notices

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Fixed Penalty Notice discharges the parent'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.

If the Fixed Penalty Notice is paid within 28 days, the penalty payable is £60, or £120 if within 42 days. Payments will not be accepted from parents after 42 days has elapsed and cannot be paid either by instalments.

(DCC) will retain any revenue from the Fixed Penalty Notices, hold it separately and use it to cover enforcement costs, i.e. costs associated with the issue, collection or prosecution, in the event of non-payment, of Fixed Penalty Notices.

Non-Payment of Fixed Penalty Notices

Non-payment of a Fixed Penalty Notice may result in prosecution for the period covered by the Fixed Penalty Notice under Section 444 of the Education Act 1996.

Equalities and Welsh Language

The issuing of Fixed Penalty Notices must comply with other related legislation and regulations, in order to ensure that they are used in a fair and consistent manner and have paid due regard to the circumstances of the child/children and families involved. These include, but are not limited to the following:-

- Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011
- Welsh Language (Wales) Measure 2011
- Human Rights Act 1998

The Council's Equalities Policy covers the full range of issues that may need to be considered, depending on the individual case.

Appendices

Appendix 1 - Fixed Penalty Notice Warning Letter Request

Appendix 2 - Fixed Penalty Notice Request

Appendix 3 - Relevant Legislation that relates to Fixed Penalty Notices

Appendix 1

**FIXED PENALTY NOTICE WARNING LETTER REQUEST
(Following 5 days (10 sessions of unauthorised absence)
UNAUTHORISED ABSENCE – Section 444, Education Act 1996**

I request that the Local Authority consider issuing a Fixed Penalty Notice Warning letter to the parent(s)/carer(s)* of the following pupil:

Pupil Details

Registered School.....

Name of Pupil DOB Year

Address.....

.....

***Only provide details of the parent/carer to whom the FPN is to be issued.**

Parent 1 *

Full name DOB.....

Address.....

Parent 2 *

Full name..... DOB.....

Address.....

The expression “parent”, in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has day to day care of the child.

In making this request, I confirm that such action would not conflict with other intervention strategies already in place or other enforcement measures already being processed. I can also confirm that the governing body of this school has reviewed its attendance policy and agreed that this school will request the Local Authority to issue Penalty Notices in appropriate cases.

How has the parent been contacted regarding the unauthorised absences?

School Meeting Letter Telephone Call

Is the family known to other Services, eg: Children's Services, YJS, CAMHS?

Yes / No

If yes, please give full details:

Are there any notable circumstances to consider, eg: mental health, bereavement, family dynamics/domestic violence? Yes / No

If yes, please give full details:

Signed Designation Date:.....

Please enclose an up to date registration certificate signed by the Headteacher or Deputy in their absence.

Appendix 2

**FIXED PENALTY NOTICE REQUEST
UNAUTHORISED ABSENCE - Section 444, Education Act 1996**

Information contained in the form will be used in legal action under the above Act relating to non-attendance at school in the event that an Education Penalty Notice is issued and remains unpaid. I request that the Local Authority consider issuing a Penalty Notice to the parent(s)* of the following pupil:

Pupil Details

Registered School.....

Name of Pupil DOB Year

Address.....

***Only provide details of the parent/carer to whom the FPN is to be issued.**

Parent 1 *

Full name DOB.....

Address.....

Parent 2 *

Full name..... DOB.....

Address.....

The expression “parent”, in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has day to day care of the child.

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How has the parent been contacted regarding the unauthorised absences?

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Yes / No

If yes, please give full details:

Are there any notable circumstances to consider, eg: mental health, bereavement, family dynamics/domestic violence? Yes / No

If yes, please give full details:

Signed Designation Date:.....

Please enclose an up to date registration certificate signed by the Headteacher or Deputy in their absence.

Appendix 3

Relevant legislation that relates to Fixed Penalty Notices includes:

The Children Act 1989

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

The Education Act 1996

Section 7	Duty of parents to secure education of children of compulsory school age;
Section 8	Definition of compulsory school age;
Section 444	Offence: Failure to secure regular attendance at school of registered pupil;
Section 444A	Penalty notice in respect of failure to secure regular attendance at school of registered pupil;
Section 444B	Penalty notices: supplemental;
Section 444ZA	Application of section 444 to alternative educational provision
Section 576	Meaning of “parent”

Education & Inspections Act 2006

Section 103	Duty of parent in relation to excluded pupil.
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