

**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 value of revenue from FPNs needed 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 will 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](mailto:aws@rctcbc.gov.uk)