

Cardiff Council

Fixed Penalty Notices for Non-Attendance at School

Code of Conduct

This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg.

www.cardiff.gov.uk



1. Legal basis and rationale

Regular and punctual attendance of pupils at school and alternative provisions is both a legal requirement and essential for pupils to maximise the educational opportunities available to them and to achieve their full potential. 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.

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 absent from school, EOTAS arrangements and/or pupil referral units (PRUs) without authority.

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 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.

The Welsh Government introduced FPN's as an additional 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.

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/carer as a result of their child's regular non-attendance at school/education provision.

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.

2. Who can issue a Fixed Penalty Notice?

The legislation allows headteachers (their nominated deputies), teacher in charge of the PRU, EOTAS Co-ordinator and the police as well as designated local authority officers (EWS) the powers to request/issue FPNs. However, in order to ensure consistent practice and avoid the potential for issuing duplicate FPNs, the management and administration of FPNs in Cardiff will be the sole responsibility of the EWS.

The service will work in consultation and partnership with schools, PRUs, EOTAS and local police officers to encourage consistent use of FPNs. The service will also ensure that FPNs are not issued when proceedings under section 444 (1) or (1A) are being contemplated or have commenced;

3. Current Cardiff Practice in Response to Pupil Absence

Cardiff's 5 Step Framework for Managing Attendance clearly sets out roles, responsibilities and actions for Schools, School Attendance Officers and the EWS in addressing attendance issues and following up absence.

FPN's are an additional option that can be used as part of a wide range of intervention and support strategies to improve attendance at school. It is not intended that the new legislation for FPNs be used as a response to entrenched non attendance or change the traditional EWS casework with families. FPNs are intended more as a means of swift intervention and they are thought to be most effective in early intervention work or when issued for specific circumstances, over periods such as Key Stage 4 lead up to examinations or even with certain age groups of pupils.

4. Circumstances for Issuing a Fixed Penalty Notice

It will be the responsibility of schools/PRUs/EOTAS and/or police to **request** that the EWS 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 an academic year (these do not need to be consecutive);
- Pupils persistently arriving after the close of the registration period i.e. more than 10 sessions in an academic year (these do not need to be consecutive); (Recommended that registers be kept open for thirty minutes);
- A period of absence from school due to a holiday that was not authorised by school (a minimum 10 sessions);

- A pupil has regularly come to the attention of the police during school hours and is absent from school without an acceptable reason and there have been 10 unauthorised absences.

A maximum of three FPN's can be issued to a parent in a 12 month period but only one of these can be issued for 10 unauthorised absences following a warning. FPNs may be issued in respect of more than one child in cases where there is more than one poorly attending pupil in a family.

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

5. Procedure for issuing a fixed penalty notice

The EWS will respond to all requests to issue penalty notices within ten school days of receipt. Requests can be generated by headteachers, the teacher in charge of the PRU, EOTAS Co-ordinator, the police and neighbouring local authorities. EWS 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 school days to allow the parent/carer to respond. During the fifteen day period the pupil must not have any unauthorised absences from school. This monitoring period can be taken across 2 terms.
- If at the end of the 15 days there are unauthorised absences in this monitoring period, a penalty notice will be issued via first class post and will be deemed to have been received by the relevant parent 2 working days after posting the notice.

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.

6. Payment of penalty notice

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).

Arrangements for payment will be detailed on the penalty notice.

Payment of the notice discharges the parent/carer's liability for the period in question is discharged and they cannot be subsequently prosecuted under other enforcement for the same period covered by the FPN.

Subject to compliance with Section 21 of the Regulations Cardiff Council will retain the revenue from 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. Any surplus will be surrendered to the Welsh Consolidated fund.

The time frame of the payment and the amount payable are stated in law and cannot be amended on a case by case basis. This means instalment plans are not possible.

7. Non-payment of penalty notice

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).

8. Withdrawal of a penalty notice

Once issued a 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 and ought not to be issued.
- Circumstances and evidence demonstrates that the notice should not have been issued e.g. provision of medical evidence (parents/carers have the 15 day monitoring 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 instigated against the parent/carer for the offence in connection with which the withdrawn 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 penalty notice. Should a parent/carer wish to contest a notice then they may submit complaints to the EWS and/or face proceedings in the Magistrates Court under section 444(1) of the Education Act 1996 where issues relating to their Fixed Penalty Notice can be fully debated.

9. 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 clearly include information on the FPN legislation in their Attendance Policy.

10. Code of Conduct review and reporting

Cardiff's EWS will monitor the use of penalty notices as part of the quality assurance process with quantitative data being available to 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 is available from:

Education Welfare Service

Cardiff Council
County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Telephone: **02920 873619**
ewsreferrals@cardiff.gov.uk