

Appendix 2

Fixed penalty notices for unauthorised absence from school

Code of Conduct

September 2023

1. Legal basis and rationale

The law empowers designated Bridgend County Borough Council (BCBC) officers to issue a fixed penalty notice (FPN) to the parents/carers of children and young people who have unauthorised absence from school.

A FPN may only be issued in BCBC in accordance with this code. The purpose of the code is to ensure that the power is applied fairly and consistently across the local authority and that suitable arrangements are in place for the effective and efficient administration of the scheme. While headteachers, their nominated deputies and the police are empowered to issue FPNs, the issuing of FPNs will remain the responsibility of the Education Welfare Service (EWS) in response to requests made by headteachers, their nominated deputies and the police.

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise the educational opportunities available to them. In law, an offence occurs if a parent/carer fails to secure their child's attendance at school and that absence is not authorised by the school.

The legislation governing the implementation of FPNs is outlined in the following

- Sections 444A and 444B of the Education Act 1996
- The Education (Penalty Notices) (Wales) Regulations 2013

A penalty notice is a fine of up to £120 which may be issued to a parent/carer as a result of their child's regular non-attendance at school.

BCBC is responsible for developing a Code of Conduct within which all partners named in the Education (Penalty Notices) (Wales) Regulations 2013 will operate and as part of the statutory duties for ensuring school attendance it is appropriate that the EWS will deliver this responsibility on behalf of BCBC.

BCBC's EWS will continue to investigate cases of irregular attendance from school and following a period of intervention and support to resolve a concern for non-attendance will instigate legal action if thought appropriate. However, FPNs will offer a means of swift intervention to prevent individual cases becoming entrenched and progressing to the local magistrates courts.

Penalty notices will be issued in circumstances based on clear threshold criteria which will be applied consistently and equitably across BCBC and all persons authorised to request the issuing of a penalty notice (for example, police or headteachers (including their nominated deputies) and those designated officers authorised to issue a penalty notice) must comply with the guidance set out in this code of conduct.

Under the Education (Pupil Registration)(Wales)Regulations 2010 schools have a discretionary power to grant leave for the purposes of a holiday. There is no automatic right to authorise pupils from school for a holiday and in law parents

have to apply for permission in advance. The regulations state that only in exceptional circumstances should a pupil be granted more than 10 school days leave of absence for the purposes of a holiday in any school year.

2. Legal practicalities

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). If the penalty is not paid in full by the end of the 42 days the local authority must either prosecute parents/carers for the offence or withdraw the notice.

Prosecution proceedings (section 444(1) and(1A) of the Education Act 1996) will be for the offence of failing to secure attendance at school and not for non-payment of the fine.

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 penalty notice?

In order to avoid the issuing of duplicate penalty notices the management and processing arrangements in BCBC will be the responsibility of the Education Welfare Service. However, there will be occasions where the police may issue a penalty notice. The service will work in consultation and partnership with schools;

- notices are used consistently;
- relationships between schools and families are not compromised; and
- there is no conflict with any other intervention already in place including measures in respect of an offence when proceedings under section 444 of the Education Act 1996 are considered or have been commenced.

4. Circumstances for issuing a penalty notice

A penalty notice will be issued when there are circumstances of unauthorised absence. Only one notice will be issued to a parent/carer 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.

There will be no restrictions on the number of times a parent/carer may receive a formal warning of a notice and it will at the discretion of the EWS whether to issue a notice on one or both parent/carer.

Penalty notices may be considered 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 (that is, arrived at school after the close of the registration period).

- Where parent/carers have failed to engage with the EWS in attempts to improve attendance but where court sanctions have not been instigated.
- Where a parent/carer has chosen to take their child on holiday during term time without authorisation.
- Where a pupil regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason.

FPNs will not be used as an immediate action (for example, on pupils found to be truanting during truancy operations).

5. Considerations for issuing a penalty notice

The EWS in consultation with the school will take into account the following when determining whether a FPN should be issued:

- level of absence, including holidays in term time;
- any equalities considerations relating to the child or family (as listed in the local authority Equality Policy);
- any Statement of Special Educational Needs;
- history of the attendance issues and action taken;
- Welsh Government guidance;
- likely effectiveness of FPN as a tool for obtaining compliance;
- level of parent engagement/cooperation; and
- any substantial adverse effect a fine will have on the welfare of the family.

Where a holiday in term time has been requested, the headteacher will need to demonstrate that their discretion has been exercised, and include reasons for their decision.

6. Procedure for issuing a penalty notice

The EWS will respond to all requests to issue penalty notices within 10 school days of receipt and where satisfied that all relevant criteria are met. Requests can be generated by headteachers and the police. The Lead EWO will:

- send a formal written warning to the parent/carer notifying them that they may receive a FPN and why;
- set a period of 15 days to allow the parent/carer to respond. During the fifteen day period the pupil must not have any authorised absences from school; and
- if at the end of the 15 days all facts are considered to be appropriate a penalty notice will be issued via first class post.

7. FPN for unauthorised holidays

Where the school requests a fixed penalty in response to a holiday related unauthorised absence there will need to be a minimum of 10 unauthorised sessions in a term before the fixed penalty will be issued. These 10 sessions do not need to be consecutive. Where a headteacher uses their discretion and

unauthorises a holiday reasons will need to be provided. The formal warning letter and 15 day improvement period do not apply in these circumstances.

8. Payment of penalty notice

Arrangements for payment will be detailed on the 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 for the same period covered by the notice.

BCBC 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. However, any surplus must be surrendered to the Welsh Consolidation Fund.

9. Non-payment of penalty notice

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

10. 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 ;
- evidence demonstrates that the notice should not have been issued (for example, provision of medical evidence (parents/carers have the 15 day period to submit this evidence)); and
- circumstances warrant its withdrawal.

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 notice was issued or for an offence under section 444(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.

Parents can also apply to the High Court for a Judicial Review of the decision to issue the fixed penalty notice

11. Policy and publicity

In order to ensure parents and carers are fully aware of the FPN legislation it is expected that all schools with the support of their governing body clearly outline penalty notice information in its Attendance Policy.

12. Annual review and reporting

BCBC's EWS will monitor the use of penalty notices as part of the quality assurance process and data will be available to the Welsh Government on request.

This code of conduct will be reviewed on an annual basis and if necessary be amended depending on the outcome of the previous year's operation.

13. Human Rights Act 1998 and all Equal Opportunities Legislation

The issuing of FPNs must conform to all requirements of the Human Rights Act 1998 and all Equal Opportunities legislation. BCBC has the primary responsibility for developing the protocol within which all parties named in the Education (Penalty Notices) (Wales) Regulations 2013 must operate.

14. How to get further information

Further information on the operation of this code of conduct is available from:

Earlyhelp@bridgend.gov.uk