

**Non School Attendance**  
**Prosecution Policy**

**June 2017**

**DRAFT**

## Contents:

- Introduction- page 3
- Interpretation- page3
  
- Legislative Framework- page 4
- Parent Defined- page 4
  
- Attendance Handbook- page 5
- Fixed Penalty Notices- page 5
  
- Fixed Penalty Notices continued- page 6
  
- Merthyr Tydfil Education Welfare Service-Offences- page 7
- Prosecution Process- Warning Notices- page 7
  
- Prosecution Process- Documentation- page 8
- Alternatives to Prosecution- Education Supervision Order- page 8
- School Attendance Orders- page 8
  
- Parenting Contracts and Parenting Orders- page 9
- Legislative Framework- page 9
- Education Act 1996 (Section 7, Section 8, Section 444(1), Section 444(1a), Section 444(ZA), Section 437-443)- page 9
  
- Children Act 1989 (Section 36)- page 10
- Children Act 2004 (Section 16)- page 10
  
- Education (Penalty Notices) Wales regulations 2013- page 11
- Anti-Social Behaviour Act 2003- page 11
- The Education (Pupil Registration) (Wales) regulations 2010- page 11
- Police and Criminal Evidence Act 1984- page 11

## 1. Introduction

Merthyr Tydfil County Borough Council has a legal obligation to make education provision for all children living within the borough. Under section 14 of the Education Act 1996 (EA 1996) local authorities are under a duty to ensure that there are sufficient primary and secondary schools in their area to provide all pupils with the opportunity of an appropriate education.

The Education Welfare Service (EWS) acts as the enforcement body within the local authority to ensure these responsibilities are met. The department works with schools and parents, and other agencies where appropriate, to ensure compliance with this policy.

The responsibility for ensuring regular school attendance lies with the parents/carers and the implementation of legal proceedings to address issues of non-school attendance is based on an individual basis.

The ESTYN inspection standard expected for pupil attendance is 95%. When a child fails to attend school, the absence is recorded and is marked as either an authorised or unauthorised absence. Welsh Government guidance states that only schools can authorise an absence, and schools must consider whether the reason for absence is reasonable before doing so. Any absence that is not authorised by the school should be recorded as an unauthorised absence. It is essential that all schools or cluster of schools should adopt their own Attendance Policy which should include the rationale behind Fixed Penalty Notices, prosecutions and other intervention methods. This policy should also cover situations when an absence will, and will not be authorised.

Legal action should be a planned and graduated intervention, and appropriate to individual circumstances. Any such action should serve to ensure each child's right to education. This document informs and guides EWS staff and other local authority staff of the process of legal measures to ensure regular school attendance.

## 2. Interpretation

In this policy:-

- SEWO - Senior Education Welfare Officer
- EWS - Education Welfare Service
- EIO - Education Inclusion Officer
- FPN - Fixed Penalty Notice
- SAO - School Attendance Orders
- ESO - Education Supervision Order
- SLA - Service Level Agreement
- Parent - as defined in paragraph 4 and references both singular and plural.
- Compulsory school age - defined as the term after a pupil turns 5 years of age. This continues to be compulsory school age until the last Friday in June in year 11.

### 3. **Legislative Framework**

The Education Welfare Service (EWS) is the responsible body within the Local Authority to ensure that all children receive a suitable education and attend school regularly.

The responsibility of ensuring compliance with the legislation is undertaken through the Inclusion Team, specifically by the EWS officers working with the schools and parents/carers and through the prosecution of those failing to ensure their child attends school regularly. The Education Welfare Service will decide whether to instruct MTCBC legal services to consider prosecution for an offence under the Education Act 1996.

Under section 16 of the Children Act 2004, the police have power to return truants to school or a place designated by the local authority.

### 4. **Parent Defined**

Section 576 of the Education Act 1996 defines 'parent' in relation to a child or young person and includes any person who has parental responsibility, or who has care of the child.

Parental responsibility is defined in the Children's Act 1989 as where a child's father and mother were married to each other at the time of birth, they shall each have parental responsibility for the child. Also where a child has a parent by virtue of section 42 of the Human Fertilisation and Embryology Act 2008; or has a parent by virtue of section 43 of that Act and is a person to whom section 1(3) of the Family Law Reform Act 1987 applies, the child's mother and the other parent shall each have parental responsibility for the child. Where a child's father and mother were not married to each other at the time of his birth, the mother shall have parental responsibility for the child and the father shall have parental responsibility for the child if he has acquired it (and has not ceased to have it) in accordance with the

Under Section 7 of the Education Act 1996, the parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude, and to any special educational needs he may have, either by regular attendance at school or otherwise.

There is no maximum number of people who can be considered a parent.

The following contributory factors are some of the criteria which will be taken into consideration as to who will receive legal correspondence:

- Who is responsible for the day to day care of the child/children.?
- Does the father or mother play an active part in the upbringing of the child/children?
- Is there a Residency Order in place?

In some circumstances, it may be appropriate to take action against only one parent, whereas in other cases it may be appropriate to take action against two or more parents. Each case will be dealt with on an individual basis.

## 5. **Attendance Handbook**

The Local Education Authority must ensure that they have an Attendance Handbook in place which is regularly reviewed. The handbook must be available to the public when requested. Schools will be expected to try and improve a pupil's attendance before a referral is made to the EWS following a graduated response. When school's attempts to improve a pupil's attendance have been unsuccessful, those schools that are part of the EWS/SLA will refer the case to the EWS in order for the case to be addressed.

## 6. **Fixed Penalty Notices (FPN)**

The Education (Penalty Notice) Wales Regulations 2013 which came into force in September 2014 and have given local authorities new powers to issue fixed penalty notices (FPN). A Code of Conduct has been devised by MTCBC regarding the issuing of an FPN. Under this code, the issuing of the FPNs will lie with the Education Welfare Service in response to requests from Headteachers and nominated deputies. It is anticipated that a FPN will be used to improve attendance and prevent unnecessary absences from school. The Education (Pupil Registration) (Wales) Regulations 2010 gives discretion to the Headteacher to grant leave for the purposes of a holiday.

Once an absence is unauthorised by the Headteacher and the matter has been referred to the EWS, a FPN may be considered in the following circumstances:

- At least 10 sessions (5 school days) are lost due to **any** unauthorised absence during the academic year ;( this could include holidays taken within term time in excess of 5 school days. These do not need to be consecutive);
- Persistent late arrival at school, i.e. after the register has closed, in the current term. "Persistent" means at least 10 sessions of late arrival;
- Where parent/carers have failed to engage with the school and/or the EWS in attempts to improve attendance but where court sanctions have not been instigated;
- Where a pupil regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason.

The EWS will work with schools to ensure that notices are used consistently and relationships between schools and families are not compromised. There should be no conflict with any other intervention in place, including where there are measures in respect of an offence where proceedings under section 444(1) or section 444(1a) of the Education Act 1996 are being considered or have been commenced.

The Headteacher and the EWS will take into account the following in considering whether a FPN can be issued:-

- Level of absence;
- Regard to Equality and Diversity Legislation;
- History of the attendance issues and action taken;
- Welsh Government (WG) Guidance;
- Likely effectiveness of Fixed Penalty Notice as a tool for obtaining compliance;
- Level of parent engagement/cooperation.
- Statement of Special Educational Needs

A FPN will be issued where there are circumstances of unauthorised absences and when a FPN is felt appropriate, taking into account the facts of the case. It should be noted that more than one FPN can be issued during an academic year. Where there is more than one child with poor attendance within the same family, a FPN may be issued for each child in that family resulting in the parents receiving more than one notice within the same academic year. There are no restrictions on the number of times a parent may receive a formal warning of a notice prior to receiving a FPN.

The EWS will respond to all requests from the Headteacher to issue penalty notices within 10 days of receipt of all relevant information. When, having taken into account the above, the EWS will in appropriate circumstances send a formal written warning to parents/carers notifying them that they may receive a FPN and why. This does not apply in relation to holiday related unauthorised absences. The EWS will then adhere to the following:

- 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 in attendance and there are no unauthorised absences then the penalty notice will not be issued;
- Please note that where the school requests that an FPN be issued for an unauthorised holiday absence the formal warning and 15 day improvement period will not apply;
- There is no limit to the number of times a warning notice may be issued.
  - It will be at the discretion of the Headteacher as to whether the LA will issue a FPN on one or both parent/carers.

Fixed Penalty Notices are £120 (reduced to £60 if paid within 28 days) and are issued to each parent/carer with parental responsibility. If the fixed penalty remains unpaid after 42 days, the parent will be prosecuted under Section 444(1) of Education Act 1996.

The penalty notice may only be withdrawn where it is proven that:-

- The notice has been issued to the wrong person or to an incorrect address;
- The notice did not conform to code of conduct;
- Evidence demonstrates that the notice should not have been issued. e.g., medical evidence provided; or
  - Notification of withdrawal will be given to the parent/carer.

## **MERTHYR TYDFIL EDUCATION WELFARE SERVICE**

### **7. Offences**

Every case of non-school attendance is dealt with on an individual basis. Welsh Government guidance confirms that before consideration can be given for the prosecution of parents/guardians, that where a SLA, is in place with the school, that the EIO is obliged to make every effort to engage and work with the child and family which includes additional support offered if necessary. Where an SLA, is not in place this remains the responsibility of the school. If after working with the family the attendance does not improve sufficiently, the EWS will decide whether and at which point to instruct legal services to consider prosecution for the offence under section 444(1) and section 444(1a) of the Education Act 1996.

Ultimately, the decision to refer the matter to legal for prosecution lies with the Headteacher of the school, but will be overseen by the Senior Education Welfare Officer (SEWO). These cases normally are when parents refuse to engage or cooperate with either the school or the EWS, or where it is felt that the parents/carers could have done more to improve their child's attendance.

Decisions to instigate legal proceedings in MTCBC are not taken lightly. Consideration will be given as to whether it is appropriate and in the public interest to proceed. All children have a right to be in education and the local authority has a duty to them to make sure that they receive an education.

### **8. Prosecution Process**

#### **a. Warning Notices**

Consequences of non-school attendance should be made clear to parents/carers. There are two warnings which are issued to parents which give the parents/carers an opportunity to improve the situation. The expectation is that there will be an improvement in attendance. The parent(s) may be invited to a formal meeting in order to discuss the reasons for non-school attendance.

If, following the second warning, the situation does not improve, the matter will be referred to the Local Authority's legal department. Local authority lawyers will advise the education department whether it is in the public interest to prosecute and will go through the evidence that is presented from the education department. The local

authority lawyers will act on behalf of the Authority and present the case in the local Magistrate's Court.

**b. Documentation**

Evidence for prosecution has to be provided by the school. Either the school or the EWS, (depending if the school is part of the SLA) will prepare a witness statement outlining the involvement with the pupil and parent(s). This needs to be recorded in first person and checked by the SEWO. A witness statement should include name of pupil, date of birth, name of parent, period of complaint and the school that the child is registered to attend. The witness statement should exhibit the registration certificate and any other relevant exhibits, including warning letters.

When the matter is referred to the legal department, previous convictions, if appropriate, should be highlighted. Local authority lawyers will assess the evidence and advise whether the matter is suitable for prosecution. If the legal department advise that the matter is suitable for prosecution they will proceed to draft the summons and associated documents and will serve documentation upon the parents.

The case is presented in the Magistrates court by MTCBC lawyers. If the matter progresses to trial or has other complicating features, it may be necessary for the individual who wrote the statement to attend court. The legal department will advise the SEWO if attendance from school or EIO is required in court.

It may be necessary to interview parents under the Police and Criminal Evidence Act 1984 in order to ascertain from parents the reasons for non-attendance. The evidence given in interview can then be used as evidence for court if necessary.

**9. Alternatives to Prosecution**

In some instances, alternatives to prosecution can be more successful when used as an early intervention tool. Addressing poor school attendance at the earliest point and avoiding the poor attendance becoming entrenched and the prospect of taking further action via the instigation of court proceedings is important.

**a. Education Supervision Order**

A local authority may consider applying for an Education Supervision Order (ESO) before prosecuting a parent (Children Act 1989, Section 36). A local authority may apply for an ESO through the Family Court instead of or as well as prosecuting the parent. An ESO is designed to aid families who are trying to parent and to ensure that their child gets their education but where there are difficulties, which with the help of the LA will improve the situation. An ESO may not be made with respect to a child who is in the care of the local authority.

**b. School Attendance Orders**

If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school

or otherwise, under section 437 of the Education Act 1996 the local education authority can serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education. That period shall not be less than 15 days beginning with the day on which the notice is served. If a parent on whom a notice has been served fails to satisfy the local education authority within the period specified in the notice that the child is receiving suitable education, and in the opinion of the authority it is expedient that the child should attend school, the authority shall serve on the parent a school attendance order (SAO).

A SAO shall (subject to any amendment made by the local education authority)

### **c. Parenting Contracts and Parenting Orders**

The Anti-Social Behaviour Act 2003 introduced further local authority powers to help children's behaviour in school. Parenting Contracts are a voluntary contract between the school/EWS and the parent of a child. Their purpose is to help parents take responsibility for their child's behaviour by setting specific requirements and support which are agreed by all parties concerned.

## **10. Legislative framework**

Education Act 1996  
Children Act 1989  
Education (Penalty Notice) Wales Regulations 2013  
Anti-Social Behaviour Act 2003

### **Education Act 1996**

- Section 7 - Duty on parents

Parents/guardians have a legal responsibility to ensure that their children receive an efficient full time education that is suitable to their age, ability and aptitude and any

special educational needs the child may have. This can be regular attendance at school or otherwise.

- Section 8 – Compulsory school age

Compulsory school age is between 5 years (commencing the term following a child's fifth birthday) and the school official leaving date is the last Friday in June.

- Section 444(1)

Prosecution where a child of compulsory school age, who is registered pupil at school, fails to attend regularly and/or is persistently late at school. Maximum fine is £1000.

- Section 444(1a)

This is an aggravated offence, where a parent of a child of compulsory school age who knowing their child failed to attend without justifiable reason failed to cause them not to attend. Maximum fine is currently £2000 and/or a term of imprisonment for up to 3 months.

- Section 444 (ZA)

This has extended the circumstances in which a parent can be prosecuted which includes 'failure to attend alternative provision that has been made for the pupil' (this was inserted in section 116 of Education Act 2005).

- Section 437- 443

These orders are issued by the local authority to direct parents to enrol their children at a named school. Failure to comply with an SAO is an offence unless parents can demonstrate that the child is receiving a suitable education otherwise than at school. The maximum fine is £1000.

### **Children Act 1989**

- Section 36

Education Supervision Orders (ESO) is an order granted by the Family Proceedings Court giving the local authority the legal right to work more closely with children and families to enable the child to benefit from all education opportunities available to them. Section 444/443 of the Education Act 1996 allows consideration to be given as to whether it would be appropriate to apply for an ESO. ESO's are normally granted for one year but can also remain in place for up to 3 years. An ESO requires the engagement and cooperation of the parents and pupil and research shows that they are more successful with younger age pupils.

### **Children Act 2004**

- Section 16

Gives police powers to return truants to school or a place designated by the local authority.

**Education (Penalty Notice) Wales Regulations 2013**

Gives local authorities powers to issue fixed penalty notices (FPN) to parent(s)/carer(s).

**Anti-Social Behaviour Act 2003**

- Section 18

Allows for parenting contracts where there is a voluntary contract between the school/EWS and the parent of a child.

**The Education (Pupil Registration) (Wales) Regulations 2010**

Provides discretion to the Headteacher to grant leave for the purposes of a holiday.

**Police and Criminal Evidence Act 1984**

Allows the local authority to interview parents regarding non-school attendance.

DRAFT