



Cyngor Bwrdeistref Sirol  
**MERTHYR TUDFUL**  
**MERTHYR TYDFIL**  
County Borough Council

## Local Code of Conduct

# Fixed Penalty Notices 2017-2020

*This publication is available in Welsh, and in other languages and formats on request.  
Mae'r cyhoeddiad hwn ar gael yn Gymraeg, ac mewn ieithoedd a fformatau eraill ar gais.*

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## 1.0 Legal Basis and Rationale

- 1.1 New legislation has empowered designated Merthyr Tydfil County Borough Council (MTCBC) officers to issue Fixed Penalty Notices (FPNs) to the parents of children and young people who have unauthorised absence from school and/or pupil referral units (PRUs). The issuing of FPNs will remain the responsibility of the Education Welfare Service (EWS) in response to requests made by headteachers and their nominated deputies.
- 1.2 Regular and punctual attendance of pupils at school and/or (PRUs) is a legal requirement and essential if pupils are to maximise the educational opportunities available to them. Parents/carers and pupils are supported at school and at local authority level to overcome barriers to regular attendance through a range of assessment and intervention strategies with sanctions of any nature only used where parental cooperation is either absent or deemed insufficient to resolve the presenting problem. Penalty notices are an added means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement, before they become entrenched and persistence absences, whilst reducing the need for lengthy and costly prosecutions.
- 1.3 The legislation governing the implementation of (FPNs) is outlined in the following:
  - Sections 444A and 444B of the Education Act 1996;
  - The Education & 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).
  - Welsh Government (WG)Guidance;
  - The Education (Pupil Registration) (Wales) regulations 2010.
- 1.4 The local authority is responsible for developing a Code of Conduct within which all partners 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 the local authority.
- 1.5 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.”
- 1.6 Regular and punctual attendance at school or alternative provision is a legal requirement and is essential to enable children to maximise their educational attainments and opportunities available to them.
- 1.7 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.
- 1.8 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.

## **2.0 Policy and Publicity**

2.1 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 are required to 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 absence is justified or not.

## **3.0 Who can issue a Fixed Penalty Notice?**

3.1 The legislation allows Headteachers and the Police (including their nominated deputies) as well as designated local authority officers (EWO's) the powers to issue FPNs. However, in order to avoid the issuing of duplicate penalty notices the management and processing arrangements in the Council will remain the sole responsibility of the EWS. The Service will work in consultation and partnership with schools and local police officers to ensure that:

- notices are used consistently;
- notices 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; and
- there is no conflict with any other intervention already in place.

## **4.0 Circumstances for issuing a Fixed Penalty Notice**

4.1 Headteachers, their nominated deputies, and the Senior Education Welfare Officer will take into account the following when determining whether a FPN should 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.

## **5.0 Fixed Penalty Notices may be considered appropriate when:**

- at least ten sessions (five school days) are lost due to **any** unauthorised absence during the current term (this could include holidays taken within term time – 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 ten sessions of late arrival;
- 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; and
- a pupil regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason.

## **6.0 Procedure for issuing a Fixed Penalty Notice**

6.1 The EWS will respond to all requests to issue an FPN within ten school days of receipt, and where satisfied that all of the relevant criteria are met:

- 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

## **7.0 Legal Practicalities**

7.1 A FPN is £60.00 if paid within 28 days of receipt of the notice, rising to £120.00 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 will be obliged to:

- Prosecute parent/carers under section 444(1) and 444(1A) of the Education Act 1996, for failing to ensure regular school attendance or
- Withdraw the FPN (in limited circumstances as set out in this Code of Conduct)
- It should be noted that more than one FPN can be issued during an academic year

## **8.0 Monitoring and Review**

8.1 All FPNs will be entered onto a database maintained by the EWS to ensure that no duplicate FPNs are issued and to evaluate the effectiveness of the process within the borough.

## **9.0 Withdrawal of a Fixed Penalty Notices**

9.1 Once issued, a FPN can only be withdrawn where it is proven that:

- Evidence that the Notice was issued to the wrong person/the incorrect address
- The Notice did not conform to this Code of Conduct
- The evidence demonstrates that the FPN should not have been issued, e.g. medical evidence (parents/carers have the 15 day period to submit this evidence)
- Notification of withdrawal will be given to the parent/carer

## **10.0 Right of appeal**

10.1 There is no statutory right of appeal, but where a parent contests the issuing of a FPN, they can submit any complaints to the EWS and/or face proceedings in the Magistrates' Court under section 444 (1) of the Education Act 1996.

## **11.0 Payment of Fixed Penalty Notices (FPN's)**

- Arrangements for payment is detailed on the FPN
- Payment of a FPN discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers (section 444 (1)) for the period covered by the FPN
- Payments may be made by instalments subject to authorisation from the Local Authority
- The Education Welfare will retain any revenue from the FPNs, 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 FPN.

## **12.0 Equal Opportunities**

12.1 The issuing of FPNs must comply with other legislation, such as the Human Rights Act and all relevant Equal Opportunities legislation, in order to ensure that they are used in a fair and consistent manner.

## **13.0 How to get further information**

13.1 Further information on the operation of this Code of Conduct and FPN's is available from:

Education Welfare Service  
Schools Department  
Merthyr Tydfil County Borough Council  
Unit 5 Triangle Business Park  
Pentrebach  
Merthyr Tydfil  
CF48 4TQ

Telephone: 01685 724620

E'mail: [educationwelfare@merthyr.gov.uk](mailto:educationwelfare@merthyr.gov.uk)

14.0 Fixed Penalty Flowchart

