



**Code of Conduct**  
**Education Fixed Penalty Notices**  
**Unauthorised Leave of Absence**  
**(Previously Known As Unauthorised Holiday Absence)**

**February 2020**

## 1. Legal Framework

- 1.1 The law empowers designated Cheshire West and Chester Borough Council Officers, head teachers - including their nominated deputies - and the Police to issue Fixed Penalty Notices to the parents of children who have unauthorised absence from school.
- 1.2 The rules governing the implementation of these powers and the factors that should be taken into account when issuing a Fixed Penalty Notice are outlined in:
  - The Education Act 1996;
  - The Education and Inspections Act 2006;
  - The Education (Penalty Notices) (England) Regulations 2007 (as amended); and
  - Guidance published by the Department for Education, in particular the *Guidance on School Attendance* and the *Guidance on School Attendance Parental Responsibility Measures: Statutory Guidance*
- 1.3 In addition, the issuing of Fixed Penalty Notices 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.
- 1.4 To that end, Cheshire West and Chester Borough Council is responsible for developing a protocol with which all the partners named in the legislation will work.

## 2. Rationale

2.1 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 and aptitude, and ... to any special educational needs he may have, either by regular attendance at school or otherwise.”

2.1.a Section 8 of the Education Act 1996 states that:

In England and Wales:

- A child begins to be of compulsory school age on the start date of the term following his fifth birthday, or that day if his fifth birthday falls on the day term starts.
- A child ceases to be of compulsory school age on the last Friday in June in the academic year in which he reaches the age of 16 or if he reaches 16 after the last Friday in June but before the start of the new school year.

2.2 Therefore, regular and punctual attendance at school or alternative provision is a legal requirement, as well as being essential to enable children to maximise their educational attainments and opportunities.

2.3 Section 444 of the Education Act 1996, makes it a criminal offence for a parent to fail to secure their child's attendance at the school at which they are registered, where that absence is not authorised by the school.

2.3.a 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 parental responsibility and/or care for a child or young person.

2.4 Fixed Penalty Notices are one of the sanctions available for this offence and offer a means of swift intervention.

### **3. Circumstances where a Fixed Penalty Notice may be issued**

3.1 A Fixed Penalty Notice can only be issued in cases of unauthorised absence.

3.2 The Local Authority may issue a maximum of two Fixed Penalty Notices in an academic year, and these Fixed Penalty Notices may be issued against each Parent/Carer of a child. Once two Fixed Penalty Notices have been issued, should there be further unauthorised absences the Local Authority are able to move to prosecution immediately.

3.3 A Fixed Penalty Notice will be issued per parent/carer per child.

3.4 Penalty Notices may be considered appropriate in the following circumstances:

- Unauthorised leave of absences of at least 10 consecutive school sessions (five school days). For example those sessions either side of a weekend or school holiday will be counted as consecutive.

3.5 The Local Authority will only issue Fixed Penalty Notices requested by a school in response to a holiday related unauthorised absence where the school has provided the necessary paperwork.

This paperwork should comprise:

- A copy of newsletter or letter sent to all parents during the current Academic year which clearly states that parents may receive a Fixed Penalty Notice for an unauthorised leave of absence relating to a holiday in term time. (The LA do not need a hard copy of this newsletter/letter each time a school applies for an unauthorised leave of absence Fixed Penalty Notice, just on the first occasion each academic year.)

- If received by the school, a copy of the request for the leave of absence submitted by parent, and a copy of the response sent to the parent by school. In the event the request is being denied the school's response should state the reason why it is unauthorised and should again advise parent that they may receive a Fixed Penalty Notice if they take their child out of school.
- A copy of letter sent by school to the parent advising that the school has referred the matter to the Local Authority and that a Fixed Penalty Notice will be issued.
- Signed certificate from the Head Teacher - or their nominated deputy – confirming that non-attendance during the period was unauthorised.
- Relevant pupil Attendance or Registration Certificate.

3.6 A Fixed Penalty Notice will not be issued in respect of children in our care with whom other interventions will be used.

#### **4. Considerations and Assessment as to whether a Fixed Penalty Notice should be Issued**

Head Teachers, their nominated deputies and Education Welfare Services will take into account any exceptional circumstances when determining whether a Fixed Penalty Notice should be issued.

#### **5. Procedure for Issuing Fixed Penalty Notices**

5.1 For the purposes of the legislation, 'authorised persons' are the designated officers within Cheshire West and Chester Borough Council's Education Welfare Service. They are the only individuals permitted to issue Fixed Penalty Notices in the Cheshire West and Chester area. This will ensure consistent and equitable delivery, to allow schools to maintain good relationships with parents and ensure that they reinforce other enforcement sanctions.

5.2 Fixed Penalty Notices will only be issued by post. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks associated with delivering such Notices by hand.

5.3 Where Schools, Police or Neighbouring Local Authorities ask Cheshire West and Chester Borough Council to issue a Fixed Penalty Notice, their request will be investigated and actioned by the Education Welfare Service provided that:

- The circumstances of the case meet the criteria specified in this Code of Conduct;
- The pupil is registered at a Cheshire West and Chester school;
- All necessary evidence is provided to the Education Welfare Service to establish that an offence under Section 444(1) or 444(1A) of the Education

Act 1996 or Section 103 of the Education and Inspections Act 2006 has been committed;

- Issuing a Fixed Penalty Notice would not conflict with another intervention strategy already in place or another enforcement sanction already being processed; and
- There is a reasonable expectation that the use of a Fixed Penalty Notice would improve the child's school attendance.

5.4 Where the Fixed Penalty Notice is requested from a school in response to a holiday related unauthorised leave of absence, or is in relation to an offence under section 103 of the Education and Inspections Act 2006, The Education Welfare Service will respond to all requests within 1 month from the date of receipt. Where satisfied that all of the relevant criteria are met a Fixed Penalty Notice will be issued.

5.5 All Fixed Penalty Notices will be entered onto a database maintained by Education Welfare Services.

## **6. Procedure for the Withdrawal of Fixed Penalty Notices**

6.1 Once issued, a Fixed Penalty Notice can only be withdrawn if the Education Welfare Service is satisfied that:

- the Fixed Penalty Notice was issued to the wrong person;
- the use of the Fixed Penalty Notice did not conform to this Code of Conduct;
- the Fixed Penalty Notice was delivered to the wrong address;
- the evidence demonstrates that the Fixed Penalty Notice should not have been issued, e.g. medical evidence

## **7. Right of appeal**

There is no right of appeal to an FPN, but where a parent/carer believes they have a statutory defence to the offence under s.444(1) Education Act 1996 they can opt not to pay the FPN and face proceedings in the Magistrates' Court under this section so they can provide evidence to the Court. Whilst it is for each parent/carer to take their own legal advice, at the date of publication of this guide, the statutory defences available are:

- Child prevented from attending due to sickness or unavoidable cause
- Leave is approved/authorised by the school (usually the headteacher)
- Religious observance by the religious body to which the parent belongs
- Travel arrangements the Local Authority have a duty to make for the child have failed.

## **8. Payment of Fixed Penalty Notices**

- 8.1 Arrangements for payment will be detailed on the Penalty Notice.
- 8.2 Payment of a Fixed Penalty Notice discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Fixed Penalty Notice.
- 8.3 If the Fixed Penalty Notice is paid:
- within 21 days the penalty payable is £60; or
  - within 28 days the penalty payable is £120.
- 8.4 Payments will not be accepted from parents after the 28 days.
- 8.5 Penalty Notices cannot be paid either in part or by instalments.
- 8.6 Cheshire West and Chester Borough Council will retain any revenue from the Fixed Penalty Notices, hold it separately and usually use it to cover enforcement costs, i.e. costs associated with the issue, collection or prosecution, in the event of non-payment, of Fixed Penalty Notices.

FPN queries/payment telephone number is 01244 976175 or email address at [fpnqueries@cheshirewestandchester.gov.uk](mailto:fpnqueries@cheshirewestandchester.gov.uk)

## **9. Non-Payment of Fixed Penalty Notices**

Non-payment of a Fixed Penalty Notice may result in prosecution for the period covered by the Fixed Penalty Notice and may include any continuing irregular attendance under Section 444 of the Education Act 1996.

## **10. Policy and Publicity**

- 10.1 All school Attendance Policies should include information on the issuing of Fixed Penalty Notices and this will be brought to the attention of parents.

## **11. Reporting and Review**

- 11.1 Cheshire West and Chester Borough Council will provide a termly report for the Head of Service.
- 11.2 The Education Welfare Service will review Fixed Penalty Notice use at least every other year and will amend its general enforcement strategy as appropriate.

## **12. The Human Rights Act 1998 and all Equal Opportunities Legislation**

The issuing of Fixed Penalty Notices must conform to all requirements of the Human Rights Act 1998 and all Equal Opportunities legislation. Cheshire West and Chester Borough Council has the primary responsibility for developing the protocol within which all partners named in the Education Act 1996 must operate.

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## **Appendix 1 – Legislation**

Relevant legislation includes:

### **The Children Act 1989**

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

### **The Education Act 1996**

Section 7	Duty of parents to secure education of children of compulsory school age
Section 8	Definition of compulsory school age
Section 444	Offence: Failure to secure regular attendance at school of registered pupil
Section 444A	Penalty notice in respect of failure to secure regular attendance at school of registered pupil
Section 444B	Penalty notices: supplemental
Section 444ZA	Application of section 444 to alternative educational provision
Section 576	Meaning of “parent”

### **Education and Inspections Act 2006**

Section 103	Duty of parent in relation to excluded pupil
Section 104	Notice to parent relating to excluded pupil
Section 105	Penalty notice in respect of presence of excluded pupil in public place
Section 106	Penalty notices: supplemental