

# **Fixed Penalty Notices**

## **Code of Conduct**

**January 2014**

## 1. Introduction

- This code of conduct is issued by the Local Authority (LA) in accordance with the requirement of regulation 14 of The Education (Penalty Notice) (England) Regulations 2007 following consultation with the police and schools in Lincolnshire as required by the Regulations.
- The purpose of the code is to ensure a consistency in approach to the issuing of fixed penalty notices throughout Lincolnshire and to provide a clear, consistent and transparent approach to the use of the fixed penalty system for ALL school types, the police and parents in Lincolnshire.
- Regular and punctual attendance at school or any alternative provision is essential for children to realise their educational potential and a legal requirement for all children of compulsory school age.
- Schools have a multitude of tools available to ensure regular school attendance and such strategies will be sufficient for the majority of families where attendance is an issue. However, fixed penalty notices are an option where other strategies have been unsuccessful and should not be used as a first resort.

The Regulations allow the LA, schools and police (or PCSOs with delegated authority) to issue fixed penalty notices. This code is drafted with reference to the process that the LA and Police will adopt, if schools wish to issue fixed penalty notices themselves, rather than allow the LA to do so, they must comply with the principles established in this code.

Schools that intend to issue their own notices should provide the LA with a named contact in order to ensure that provision can be made to establish that any notices issued have been done in a fair, consistent and lawful manner.

Schools should remember that if they elect to issue notices, payment will still be to the LA.

## 2. The Law

**School Attendance:** Under Section 7 of the Education Act 1996 the parent of every child of compulsory school age has a duty to ensure that the child receives efficient full time education suitable to the child's age, ability and any special educational needs he or she may have. This duty can be met by the child attending regularly at a school or alternative educational provision made by the LA or the school or by the parent providing other suitable educational provision.

Where a parent fails to ensure the regular school attendance of their child at a school at which they are a registered pupil or other educational provision made for them then the parent may be guilty of an offence under Section 444 of the Education Act 1996.

Where a child has not attended regularly at school the LA have the options of issuing a fixed penalty notice in respect of the parents of the child, bringing proceedings before the family courts for an Education Supervision Order or prosecuting the parents under Section 444 before the Magistrates, Court.

Non-school attendance includes any day when a child should be in attendance at school and they are absent without the authorisation of the school and includes unauthorised holidays during term time and persistent late arrival at school beyond the registration period. Fixed Penalty Notices can be issued for persistent lateness where the child arrives after the closure of registration and this is coded U in the register.

**Excluded Pupils:** Section 103 of the Education and Inspections Act 2006 makes it a duty for parents in relation to pupils subject to a fixed period or permanent exclusion to ensure that their child is not present in a public place during school hours, without reasonable justification, during the first five days of any such exclusion. If a child is present in a public place during the first five days of an exclusion during school hours the parent may be guilty of an offence for which they can be prosecuted by the LA before a magistrates' court.

Alternatively the matter can be dealt with by the school through issuing of a fixed penalty notice.

**NOTE:** To proceed with a fixed penalty notice and/or prosecution under section 103 of the Education and Inspection Act 2006 the Head Teacher of the school must have issued formal warning letter to the parent(s) under Section 104 of the Act informing the parent of their liability and setting out the dates on which this liability arises (this should be included in the standard exclusions letter). This can be included in the letter sent to the parent providing other information about the exclusion and can be served by first class post but where the opportunity arises to hand it to the parent(s) this is the preferred method.

Where an excluded pupil is of compulsory school age the Head Teacher must also notify parents without delay, and by the end of the afternoon session. For the purpose of the warning letter above, the letter should include

"that for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so. This will therefore apply to you from (*Insert first date of exclusion*) to the end of the school day on (*insert fifth date of exclusion*)."

**Fixed Penalty Notices:** The Education (Penalty Notices) (England) Regulations 2007 as amended set out the framework for the operation of the penalty notice scheme.

**Parent:** For the purposes of education law and this code of conduct a "parent" means all natural parents whether they are married or not; and includes any person having parental responsibility for a child (a person under 18 years of age) who, although not the child's natural parent, has care of that child. Having care of a child means an adult with whom the child lives and who looks after the child on a day to day basis. Any reference to a "parent" in this code of conduct is a reference to anyone having care of a child as set out above.

### **3. Use of Fixed Penalty Notices**

- The Inclusion and Attendance Team are responsible for the delivery of this function and penalty notices will only be issued within this Code of Conduct.
- Fixed penalties are one of the tools available to the LA in tackling poor school attendance and anti-social behaviour issues and where thought appropriate alternative approaches such as Education Supervision Orders and prosecution may be utilised at the discretion of the LA.
- Use of fixed penalty notices will be restricted to two per child per academic year. In situations where a parent meets the criteria for more than one penalty notice to be issued, because there is more than one child with irregular school attendance multiple issue may occur. Where a child resides with two parents a separate penalty notice will be issued to each parent.
- Parents must always be forewarned of the possible issue of a Fixed Penalty Notice by the school through a Fixed Penalty Notice Formal Warning letter. A Formal Warning letter can also be issued by the school in cases where a fixed penalty may not be suitable. An example of this might be when parents request a period of absence that does not meet the 15% absence criteria but it is still a period of unauthorised absence. The purpose of this would be to show a level of consistent practice in relation to application for absence during term time. Examples of Formal Warning letters can be found in Appendix 1.
- There is no restriction on the number of times a parent may receive a Formal Warning letter of the possible issue of a Fixed Penalty Notice.
- If a penalty notice is issued whether paid or not it may be used in evidence in subsequent criminal proceedings in relation to either non-school attendance or being in a public place during school hours whilst excluded from school. This includes regular patterns of term time absence such as unauthorised annual holidays.

#### 4. Where a Penalty Notice may be Issued

Fixed term penalties will only be issued in circumstance where the LA is satisfied that the criteria for prosecution would be met if the option of a fixed penalty notice is not taken up by the parent. The circumstances in which a notice may be issued are:

- Where a child is absent from school due to unauthorised absence of 15% or above over a six week period. This will include lateness after the close of registration when code U is used.
- Where a child is present in a public place during school hours without reasonable justification during the first five days of any exclusion.

**Non-Attendance:** It must be remembered that to count as non-attendance at school the absence must be unauthorised. **The Education (Pupil Registration) (England) (Amendment) Regulations 2013** have removed the reference to holidays during term time and now provides that a leave of absence during term time will only be granted where an application is made in advance to the school and the school consider that the leave of absence should be granted due to exceptional circumstances relating to that application.

What amounts to "exceptional circumstances" is a matter for the discretion of the Head Teacher and should be judged on a case by case basis but it is unlikely to amount to an exceptional circumstance if it is merely claimed that a holiday abroad can only be afforded in term time or that a parent is unable to take leave during school holidays (this is a matter between the parent and their employer). Head Teachers should also consider asking for evidence of the circumstances that has arisen where appropriate.

**Action by the Police –** Before issuing a penalty notice yourself or approaching the LA to issue the same it is important to ensure that evidence is available to support the fixed term notice and this will often require the school and the police sharing information and working together.

Where a pupil is found in a public place when they should be in school or during a period of exclusion, enquires should be made to ensure in terms of a fixed

penalty notice for failure to attend regularly at school under section 444(A) EA 1996 that:

- The pupil's absence on the day they are found in public by the police taken with other absences over a six week period gives an unauthorised absence rate of 15% or above.
- The school do not already have in place actions aimed at addressing the non-school attendance of the pupil where the issue of a fixed penalty notice would be counterproductive or inappropriate, for example if the matter is already being referred to the LA for prosecution.

In respect of a child who is in a public place during a period of exclusion it will need to be verified with the school that the child was found in a public place during school hours in the first five days of that exclusion and that the appropriate formal warning letter was served on the parents at the time the exclusion was imposed.

Consideration should also be given to calling at the pupil's home address to ascertain whether a parent is at home in a supervisory capacity and to make them aware that the child has been found in public when either the child should have been in school or during the first five days of an exclusion.

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

Penalty Notices will only be issued within the terms of the Code of Conduct. The Inclusion and Attendance Team of the LA are responsible for the administration and issue of penalty notices in Lincolnshire. The LA will ensure that penalty notices are properly issued and will only issue them for offences where the LA is satisfied that the matter meets the threshold for a prosecution.

Requests for fixed penalty notices can be found on Lincolnshire County Council's website, <http://www.lincolnshire.gov.uk/parents/schools/welfare>. by entering Fixed Penalty Notices into the search tool. Once the application is completed it should be emailed with the correct supporting information to [fpn@lincolnshire.gov.uk](mailto:fpn@lincolnshire.gov.uk). The Inclusion & Attendance Team will acknowledge receipt of the school's application and notify the school once the period of 21

and 28 days has passed advising whether or not the fine has been paid. Requests for the issue of fixed penalty notices will be accepted from schools in Lincolnshire and the Lincolnshire Police and from within the LA and must be in writing and include:

- The name and address of all the parent(s)
- The name and address of the child concerned and their date of birth
- Details of the offence in terms of documentary evidence including, where the matter relates to an unauthorised absence from school, a signed copy (by Head Teacher or those with delegated authority within the school) of a pupil absence record (PAR) form showing the period of unauthorised absence.
- Confirmation of the date/dates over which the offence was committed.

Applications should be made as soon after the date(s) of the alleged offence as possible. Late submission of a request for a fixed penalty notice may result in the application being rejected if the time that has elapsed since the alleged offence is such that court proceedings would no longer be viable (due to the six month time limit on issuing legal proceedings) if the option of a fixed penalty notice is not taken up by the parent.

The Court expects action to be taken without undue delay in order to address non-attendance issues. Any unreasonable delay could result in a prosecution case being weakened and, more importantly, the education opportunities for the child being missed.

On receipt of an application for a fixed penalty notice to be issued the LA will make an assessment of whether the application is a proper matter upon which a fixed penalty notice should be issued and meets the criteria provided for either a formal warning or a fixed penalty notice and communicate its decision in writing to the applicant.

Where an application for a formal warning or fixed penalty notice is accepted the LA will issue the warning or notice in writing to the parent(s) concerned and

where there is more than one parent a separate written notification will be sent to each parent for each child that the notice relates to. The notice will be sent to the parent by first class post and copies sent to the school.

#### **6. Effect of Penalty Notice being issued**

- The penalty notice is presumed to be served on the parent to whom it is sent on the second working day after it was posted.
- If a parent pays the penalty notice within 21 days from the date it is served the sum due from the parent to discharge the penalty notice is £60.00
- The parent can still pay the notice after 21 days but the payment increases to £120 and this must be paid before 28 days have passed from the date of service.
- If a parent pays the amount due within the times set out above then no further action will be taken against that parent for the offence on the date(s) set out in the penalty notice.
- Once a penalty notice has been issued no prosecution for the non-attendance detailed in the penalty notice can be brought against the parent until the payment period of 28 days has passed and the fixed penalty has not been paid.
- All payments must be made to the LA.

#### **7. Appeal against the Penalty Notice**

There is no right of appeal against a penalty notice and a parent can either accept and pay the fine or decline payment subject to them being aware that further action as set out below may be taken by the LA if the penalty notice remains unpaid.

The LA has the discretion to withdraw the notice if the LA is satisfied that:

- The fixed penalty notice has been sent to the wrong person
- It contains a material error (in these circumstances a fresh amended penalty notice could still be issued).

- If for any other reason the LA are of the opinion that it should not have been issued.

## **8. Non Payment of the Penalty Notice**

- Non-payment of a fixed term penalty notice is not in itself an offence. The fixed penalty notice is issued as an alternative to bringing a prosecution in the magistrates' court for the offence set out in the formal warning letter. However, if the offer of dealing with the offence as a fixed penalty matter is not taken up by payment of the sum due within the 28 day period then consideration will be given to issuing criminal proceedings against the parent in the magistrates' court for the non-attendance of their child.
- If a fixed penalty notice has not been paid after 28 days from the day it is taken to be served then the LA will contact the school or police officer who made the application for the penalty notice to be issued and discuss with them the available evidence to bring proceedings in the magistrates' court for the alleged offence under Section 444 of the Education Act 1996 or Section 103 of the Education and Inspection Act 2006.
- If it is the view of the LA that prosecution is a viable option then a request will be made that the school or police officer concerned submits a report to the Local Authority's Legal Panel for a formal decision to be taken as to whether to proceed with the matter by issuing criminal proceedings before the magistrates' court.
- Prosecution of offences is a matter within the discretion of the local authority and a decision will be taken in line with the LA prosecution policy for these matters and proceedings, where commenced, will be issued by the LA.
- If a prosecution is brought and the parent is found guilty or pleads guilty then a conviction for an offence under Section 444(1) of the Education Act 1996 or for an offence under Section 103 of the Education and inspection Act 2006 both carry a fine of up to a maximum of £1000 and in addition the LA will seek to recover costs in respect of bringing the proceedings. Further, a successful prosecution will result in a parent

having a criminal record which could be disclosed should they apply for a position where a DBS check (formally known as a CRB Criminal Records Bureau Check) is required.

**9. Administration of Fixed Penalty Notices.**

All administrative functions in respect of the issue of fixed penalty notices and the collection of payments for the same will be undertaken by the LA unless schools/academies choose to issue their own, although non- payment of fines will still be monitored by the LA.

The LA will keep central records in respect of the issue of such notices within Lincolnshire which must include:

- A copy of each notice issued,
- A record of all payments made and the date of payment,
- Whether the notice was withdrawn and on what grounds,
- Whether the parent(s) following non-payment of the same, was subsequently prosecuted for the offence set out in the notice or for an offence arising out of the same circumstances