

**WIRRAL COUNCIL  
CHILDREN & YOUNG PEOPLE'S DEPARTMENT**

**PROTOCOL FOR FIXED PENALTY NOTICES  
FOR UNAUTHORISED ABSENCE AND EXCLUSIONS**

**Legal Basis:**

Section 23 of the Anti-Social Behaviour Act 2003 gives designated LEA officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them), and the Police the power to issue Fixed Penalty Notices in cases of unauthorised absence from school.

The Education and Inspections Act 2006 Section 103 places a duty on parents to ensure their child is not present during school hours in a public place during the first five days of each and every fixed period or permanent exclusion from school.

The power to issue the Fixed Penalty Notices must be applied fairly and consistently taking in to consideration the requirements of the Human Rights Act and Race Relations and Equal Opportunities Legislation.

The Education [Penalty Notices] [England] Regulations 2007, which were amended in 2012 set out the framework for the operation of Fixed Penalty Notice Schemes. The Local Authority has the prime responsibility for the introduction of a protocol with schools and Merseyside Police being partners agreeing to the protocol.

**Rationale:**

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise their potential.

Parents are responsible for ensuring that their child of compulsory school age receives efficient education that is suitable to the child's age, ability, aptitude and to any special educational needs the child may have at school or otherwise.

Wirral's Education Social Welfare Service seeks to ensure that every child and young person receives the maximum benefit from the education opportunities provided by the Local Authority.

The Service utilises a range of strategies and interventions, working in partnership with children and young people, parents and families, school staff and other agencies to overcome barriers to education and achieve improved outcomes.

An offence occurs if a parent or carer fails to secure a child's regular attendance at a school at which they are a registered pupil and when that absence is not authorised by the school and does not meet one of the statutory defences.

Penalty Notices are one of a number of legal sanctions available to deal with these offences.

For the purposes of this protocol and other school attendance issues, a parent is as defined under section 576 of the Education Act 1996 i.e. All natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Also for the purposes of this protocol: School hours means a school session or a break between sessions on the same school day; a public place means any highways or other place to which the public have access but does not include a school; the days of an exclusion are known as the specified days and will be detailed in a notice given to the parent.

Compulsory school age is defined as commencing at the start of the term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16 years of age.

## **Circumstances When Fixed Penalty Notices Will Be Issued:**

A Fixed Penalty Notice can be issued in cases of unauthorised absence or when an excluded pupil is found in a public place without good reason in accordance with this protocol.

Use of Fixed Penalty Notices will be restricted to **2** per pupil per parent in any academic year.

In cases where there is more than one poorly attending child in a family, notices may be issued for more than one child.

Penalty Notices may be considered appropriate in the following circumstances:

- Attendance below 90% with at least 10 days lost due to unauthorised absence. These do not need to be consecutive.
- 5 days or more unauthorised absence due to holidays in term time.
- Pupils stopped on Police Truancy Sweeps in some circumstances, for example, if this is repeated.
- The presence of an excluded child in a public place at any time during school hours in that child's first five days of a school exclusion without good reason.
- A pupil arrives late after the registers are closed (using a code U) on 10 or more separate occasions.

Head Teachers may submit a written request to the Education Social Welfare Service using the appropriate proforma asking for a Fixed Penalty Notice or a Warning Letter to be issued to parents.

In the case of unauthorised absence school will provide written evidence that the pupil's attendance is below 90% and that 10 days or more of the absences are unauthorised. School will also provide evidence that the parents have failed to cooperate with a signed and agreed Action Plan or Parenting Contract aimed at improving attendance or failed to attend at least two meetings or School Attendance Panels without reasonable explanation. In considering whether to issue a Fixed Penalty Notice the Education Social Welfare Service will consider any exceptional or mitigating circumstances. In the first instance the response from the Education Social Welfare Service may be a Warning Letter emphasising that attendance must improve within 15 school days.

Further unauthorised absence within this 15 day period may lead to the issuing of a Fixed Penalty Notice. If there are no further unauthorised absences within the 15 days the Fixed Penalty Notice will not be issued. If there are further unauthorised absences after the 15 day period, schools are advised to arrange a further School Attendance Panel and a further Warning Letter may be issued if parents fail to attend or cooperate.

In the case of holidays in term time schools may be required to provide written evidence, for example, a copy of a letter or newsletter sent to all parents during the current academic year which clearly states that parents may receive a fixed penalty notice for an unauthorised holiday in term time. School will also need to provide a copy of the written holiday request submitted by parent and a copy of any response sent to the parent along with an attendance certificate. School Attendance Policies should clearly mention the unauthorising of holidays and the use of fixed penalty notices and this should be available on school websites. Schools can request either a warning letter or a fixed penalty notice to be issued. These requests should be submitted as soon as possible after the holiday has started and should not be submitted before a holiday or saved until the end of term. If the five days is cumulative the holidays must not be any more than 3 months apart.

In the case of excluded pupils in a public place Merseyside Police may submit a written request to the Education Social Welfare Service using the appropriate proforma asking for the parents of a pupil of compulsory school age to be issued with a Fixed Penalty Notice when the pupil is found in a public place during the first five days of a school exclusion without good reason. There may be times when it is necessary for an excluded pupil to be in a public place e.g. medical appointment or emergency. Consideration will be given to possible justification for the presence although ultimately it will be up to the Courts to decide if the notice is contested. To be justified there needs to be an element of unavoidable presence. Consideration will also be given to the number of times an excluded pupil is seen, the parents' actions or inactions, the justification put forward and the parents' overall attitude.

Referrals for notices relating to exclusions will only be accepted from Police and Police Community Support Officers. This provision is in addition to the independent powers of Merseyside Police and does not fetter their discretion. In consultation with the Anti-Social Behaviour Team consideration may also be given to the use of an Acceptable Behaviour Contract. In the first instance the response from the Education Social Welfare Service may be a Warning Letter emphasising that the parents may be served with a Fixed Penalty Notice if the offence is repeated.

Although Fixed Penalty Notices will not routinely be issued during Truancy Sweeps it might be appropriate for a notice to be issued following pupils being stopped during a sweep in some circumstances. The Education Social Welfare Service will take into consideration whether the pupil has been stopped before on a Truancy Sweep, their level of school attendance, and whether absences have been authorised or unauthorised by school. The Education Social Welfare Service will also consider requests from other Education Authorities for a Fixed Penalty Notice to be issued to the parents of a child who attends a Wirral school but lives in their area or is repeatedly stopped on their truancy sweeps. The decision on whether to issue a Fixed Penalty Notice or not will be taken by Education Social Welfare Service in accordance with this protocol. In the first instance the response from the Education Social Welfare Service may be a Warning Letter emphasising that the parents may be served with a Fixed Penalty Notice if the offence is repeated.

In the case of persistent lateness the school will have to demonstrate that the parent has been warned that as a result of arriving late after registers are closed on 10 separate occasions [and using Code U in the school register] a Fixed Penalty Notice may be issued. Schools should be clear about what time their registers close and again this should be included in Attendance Policies.

A Penalty Notice will not normally be issued where there has previously been a prosecution against the parent under Section 444 of the Education Act 1996. In such circumstances consideration of further legal interventions including prosecution should be considered.

### **Exceptional Circumstances:**

The Department of Education has not issued any guidance to Head Teachers on what constitutes “exceptional circumstances” in relation to requests from parents for family holidays taken in term time. In the absence of this each case must be viewed on its own merits. A large majority of Wirral Head Teachers indicated they would view circumstances where parents conditions of employment preclude them from taking holidays during school holiday time or prescribe holidays must be taken in school time, for example, serving members of the armed forces or where there is a factory shut-down as exceptional. A large majority also viewed cases involving a terminally ill child as exceptional. Head Teachers may also wish to consider carefully issues in relation to family members with a terminal illness, family members with a disability, holidays funded by charities, and absences in relation to recognised religious festivals. Advice in relation to families from ethnic minorities can be provided by Minority Ethnic Achievement Service [MEAS]. Education Social Welfare Service can also be contacted for further discussion. Guidance from NAHT suggested that the principles for defining exceptional are rare, significant, unavoidable and short with unavoidable meaning an event that could not reasonably be scheduled at another time.

### **Procedure for Issuing Fixed Penalty Notices:**

In order to ensure consistent delivery, retain home-school relationships and ensure cohesion with other enforcement sanctions, only the Education Social Welfare Service will issue Fixed Penalty Notices.

Fixed Penalty Notices will only be issued by post and never hand delivered to meet Health and Safety Requirements by avoiding potential face-to-face confrontation. The Notice will be deemed to have been received on the second working day after posting unless it is shown otherwise.

### **Procedure For Withdrawing Fixed Penalty Notices:**

Once issued a Fixed Penalty Notice may only be withdrawn in the following circumstances:

The Fixed Penalty Notice was issued to the wrong person

**Or**

It was issued outside of the terms of the local protocol

**Or**

It contains a material error

**Or**

It has not been paid in full, and the LA has not, and does not intend to, instigate proceedings

**Or**

The circumstances of the case warrant its withdrawal.

### **Payment Of Fixed Penalty Notices:**

Arrangements for payment will be detailed on the Fixed Penalty Notice.

Payment of the Fixed Penalty Notice discharges the parent liability for the period in question and they cannot subsequently be prosecuted under Section 444 of the Education Act 1996 for the period covered by the Fixed Penalty Notice.

Payment of a Fixed Penalty Notice is £60 if paid within 21 days and £120 if paid after this time but within 28 days.

The Local Authority retains any revenue from the Fixed Penalty Notices to cover enforcement costs.

### **Non-payment Of Fixed Penalty Notices:**

Non-payment of a Fixed Penalty Notice will result in the withdrawal of the notice and may trigger a prosecution of parents by the Education Social Welfare Service under Section 444 Education Act 1996.

### **Right of appeal:**

In accordance with Department of Education Guidance there is no right of appeal but where a parent wishes to contest the issuing of a Fixed Penalty Notice they should contact the Education Social Welfare Service [as outlined on the Penalty Notice] and/or opt to face proceedings in the Magistrates' Court, where all of the issues relating to their Fixed Penalty Notice can be fully debated.

### **Policy And Publicity:**

Use of Fixed Penalty Notices as a sanction is included in the Authority's Attendance Policy. All School Attendance Policies should include information on the use of Fixed Penalty Notices and this will be brought to the attention of all parents. The LA will include information on the use of Fixed Penalty Notices in promotional/public information material.

### **Reporting And Review:**

The Education Social Welfare Service will report to partners on the deployment and outcomes of Fixed Penalty Notices and will review this protocol at regular intervals.