



## **Code of Conduct for the issuing of Warning Notices and Fixed Penalty Notices in respect of Unauthorised Absence from school.**

### **1. Legal Basis**

Section 23 of the Anti-social Behaviour Act 2003 added two new sections (444A and 444B) to the Education Act 1996. These sections introduce Fixed Penalty Notices as an alternative to prosecution under section 444 for the offence of failing to secure regular attendance at school of a registered pupil. Parents may discharge potential liability for conviction by paying a penalty. The use of Fixed Penalty Notices is governed by regulations (SI 2004 No. 181 The Education (Penalty Notices) (England) Regulations and SI 2004 No. 920 The Education (Penalty Notices) (England) (Amendment) Regulations 2004). Warning and Fixed Penalty Notices must conform to all requirements of the Human Rights Act and all Equal Opportunities Legislation.

In law an offence occurs if a parent fails to secure a child's attendance at the school at which they are a registered pupil and that absence is not authorised by the school.

Section 7 of the Education Act 1996 places a legal obligation on the parents of a child of compulsory school age, to ensure that the child receives efficient full-time education, that is suitable to the child's age, ability, and aptitude, and to any special educational needs the child may have, by regular attendance at school or otherwise.

For the purposes of Sunderland City Council's Code of Conduct, a 'parent' is defined under s576 Education Act 1996 as: -

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person with whom the child lives and who looks after a child, irrespective of their relationship with the child.

(Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately and should not be taken to mean that provisions only apply to 'parent' in the singular.)

For the purposes of Sunderland City Council's Code of Conduct, 'compulsory school age' is defined as: -

- Commencing at the start of 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 reaches the age 16 years.

The Local Authority (LA) has a duty to draw up a Code of Conduct, which sets out the measures to ensure fairness and consistency in the issuing of Fixed Penalty Notices.

A Fixed Penalty Notice is an alternative to the prosecution of parents in cases where pupils incur unauthorised absence. It enables parents to discharge potential liability for conviction by paying a penalty. The parent cannot be prosecuted for the particular offence for which the notice was issued (i.e. non school attendance) until after the final deadline for payment has passed and cannot be convicted of that offence if he/she pays a penalty in accordance with the notice.

As with any legal action, Warning and Fixed Penalty Notices should be seen as a matter of enforcement of attendance rather than as a punishment for absence. Decisions on the application of Warning and Fixed Penalty Notices are taken on a case by case basis by Sunderland City Council. Consideration should also be given to the impact of a Warning or Fixed Penalty Notice on other interventions taking place with the family or support being provided for the child or young person from other agencies.

## **2. Rationale**

The purpose of the Code of Conduct is to ensure that these powers are applied consistently and fairly across the Sunderland City Council and that suitable arrangements are in place for the administration of the scheme. Attendance at school is essential for pupil attainment and for safeguarding the child. Parents and pupils are supported at school and at LA level to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Fixed Penalty Notices will be employed as an additional resource to raise school attendance.

Sanctions of any nature are only used where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

Legal sanctions are never used as a punishment; only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement in the child's attendance.

### 3. Circumstances When A Fixed Penalty Notice May Be Issued

Within Sunderland LA, the responsibility for issuing Fixed Penalty Notices and managing arrangements for their payment, and the collections of monies rests with the Attendance Team. This ensures that all procedures relating to Fixed Penalty Notices are consistently applied; that enforcement action is not duplicated, and that any subsequent court action is integrated into the existing attendance procedures.

Fixed Penalty Notices will be issued as part of the non attendance intervention process when the parent is judged capable of securing their child's regular attendance, but is not willing to take responsibility for doing so. It is an alternative to prosecution in appropriate cases

Fixed Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent, and the absence has not been authorised by the school; or where the pupil has persistently arrived late after the register has been closed (after the register has closed – U code) and where it is believed that the issue of the notice will be effective in helping to get the child back into school which ensures:

- That the level of absence before a Fixed Penalty Notice can be issued is 20 or more half day sessions. i.e. 10 school days, of unauthorised absence during any twelve week period.
- That in the case of unauthorised absence due to Holiday, a Fixed Penalty Notice can be issued if there are 10 or more half day sessions of unauthorised absence in 15 school days. It would have to be clearly demonstrated that the parent understood and had been warned that permission for the holiday had not or would not be given. Therefore schools must have a robust policy for leave of absence during term time
- The liable parent has received a formal warning from the LA of the possibility of a Fixed Penalty Notice being issued, and shall be given a maximum of 15 school days to effect an improvement. However a Fixed Penalty Notice may be issued without a formal warning letter being sent if the parent has deliberately taken the child out of school for a holiday in term time without / against the school's permission (where it can be clearly demonstrated that all parents have been notified at the beginning of the school year that permission had not/would not be given) and where this has created a period of unauthorised absence in the current term of ten (10) or more sessions.

The use of Fixed Penalty Notices will be restricted to two per pupil in an academic year. In situations where there is more than one pupil in a family with irregular school attendance, multiple Fixed Penalty Notices can be issued to the same parents/carers during the year. Where there is more than one child in a family whose attendance is poor, consideration should be given to the family's ability to pay before multiple penalty notices are issued.

There will be no restriction on the number of times a parent may receive a warning on the possible issue of a Fixed Penalty Notice.

Should a parent fail or refuse to pay a penalty notice then the evidence provided by the school registration certificate (or that of alternative education provider) will be the primary information laid before the court.

The Attendance Team Manager will oversee the administering of Fixed Penalty Notices in Sunderland to ensure that they comply with legislation on Human Rights and ensure that the practice is applied consistently, fairly and transparently across the City.

The Attendance Team will discharge the Local Authority's responsibility for the issue of Fixed Penalty Notices. This will be carried out in full consultation with the relevant school and will ensure a consistent and equitable delivery. It will allow cohesion with other enforcement sanctions. All Warning Notices and Fixed Penalty Notices will be authorised by the Attendance Team Manager.

#### **4. When a Fixed Penalty Notice would not be appropriate**

Sunderland City Council would not consider a Fixed Penalty Notice in the following situations:

- Where there are statutory defences for the child's absence.
- Where a case would not be considered for a court prosecution.
- Where a parent has already received two Fixed Penalty Notices in respect of the child within the academic year.
- Where legal proceedings have already begun against the parent.
- Where the irregular attendance was due to an unmet Special Educational Need (SEN) or the child's registered disability.
- Looked After Children - where there are concerns over attendance, a review should be held. This is to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

#### **5. When a Fixed Penalty Notice would be withdrawn**

Sunderland LA may withdraw a Fixed Penalty Notice in the following circumstances:

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

- Proof has been established that the Warning or Fixed Penalty Notice was issued to the wrong person; or

- the use of the Warning or Fixed Penalty Notice did not conform to the terms of this Code of Conduct.
- there is compelling evidence that no offence has been committed.

### **6. Payment and amounts**

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

Payment of a Fixed Penalty Notice discharges the parent/carer 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.

Payment of a Fixed Penalty Notice within 28 days is £50 and payment after this time but within 42 days is £100.

The Attendance Teams retains any revenue from Fixed Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

The Attendance Team will keep accurate records. These will include a copy of all notices, a record of payments received, details of withdrawn notices, and records of any subsequent prosecutions following non-payment.

Fixed Penalty Notices will be either hand delivered or sent via 1<sup>st</sup> class post. Posted notices will take effect from the 2<sup>nd</sup> working day after posting. (Amendment “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.”)

### **7. Failure to pay the Fixed Penalty Notice**

If the penalty is not paid in full by the end of the 42 day period, the Attendance Team must either prosecute for the offence to which the notice applies, or withdraw the notice. The prosecution is not for non-payment of the notice but is a prosecution for irregular school attendance – Education Act 1996 Section 444(1). Therefore before a Fixed Penalty Notice is issued, the procedures contained in this document must have been followed and all the appropriate evidence is in place to support a successful prosecution.

There is no statutory right of appeal against the issuing of a Fixed Penalty Notice.

### **8. Policy and publicity**

The use of Fixed Penalty Notices, as a sanction will be included in the LA's policy on the enforcement of attendance.

The LA will include information on the use of Fixed Penalty Notices and other sanctions in promotional/public information material.

Schools should include reference to the LA's policy on the use of Fixed Penalty Notices and other legal sanctions in their attendance policies.

The LA will report statistics on the numbers of Warning and Fixed Penalty Notices issued in their annual PRAB (Parental Measures for Behaviour and Attendance) return to the DFE.

**9. Review**

The Attendance Team will monitor and review the use of Fixed Penalty Notices. A report will be made annually to appropriate agencies. Any amendments to the local code of conduct will be subject to consultation with both schools and the police.