**Local Code of Conduct Education Fixed Penalty Notice**

**Education Inclusion Services**

September 2023



## Contents

Legal Framework Page 1

Rationale Page 2

Policy and Publicity Page 3

Monitoring and review Page 4

Appendix 1 Page 5

Appendix 2 Page 9

Appendix 3 Page 10

Appendix 4 Page 12

Appendix 5 Page 15

## Legal Framework

* 1. The law empowers designated Local Authority (LA) Officers to issue Fixed Penalty Notices to the parents of children who have unauthorised absence from schools that fall within Blaenau Gwent. The issuing of FPNs will remain the responsibility of the Education Welfare Service (EWS) in response to requests made by head teachers, their nominated deputies, and the Police.

The rules governing the implementation of these powers and the factors that should be considered when issuing a Fixed Penalty Notice are outlined in:

* The Education Act 1996;
* The Education & Inspections Act 2006;
* The Education (Penalty Notices) (Wales) Regulations 2013
* Rights of Children and Young Persons (Wales) Measures 2011
* United Nations Convention on the Rights of a Child (the right to an education)

Blaenau Gwent is responsible for developing a protocol 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. **Rationale**
	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 aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise”

* + 1. 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.
		2. 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. NEET young people are likely to have a history of non- attendance and persistence absences in years 10 and 11.
		3. 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.
		4. The definition of “parent” includes all biological parents, whether they are married or not and includes any person who, although not a biological parent, has the parental responsibility and/or care for a child or young person.
		5. Targeted intervention plays a vital role in resolving issues of poor school attendance, however where this fails to have the desired effect there are a number of sanctions available to Local Authorities (LAs) to try and secure improvements.
	1. Fixed Penalty Notices are one of the sanctions available for this offence and offer a means of suitable and effective intervention for improving levels of unauthorised absences, before they become entrenched and persistence absences, whilst reducing the need for lengthy and costly prosecutions.
	2. Fixed Penalty Notices and other sanctions will only be used where parental co-operation with this process is either absent or deemed to be insufficient to resolve the problem. They will be used as a means to support parents to meet their legal responsibilities and only where there is a reasonable expectation that their use will secure improved school attendance.
1. **Policy and Publicity.**
	1. School Attendance Policies will include information on the issuing of Fixed Penalty Notices and this will be brought to the attention of parents.
2. **Monitoring and review.**

Blaenau Gwent local authority will monitor and evaluate the effectiveness of Fixed Penalty Notices annually and amend its general enforcement strategy as appropriate. Reports will be made available to Consortium Directors, Local Authority Heads of Service and Committees, and the Welsh Government as required.

**Appendices**

|  |  |
| --- | --- |
| Appendix 1 | Protocols and procedures in relation to Fixed Penalty Notices |
| Appendix 2 | Example advisory/warning letter |
| Appendix 3 | Penalty Notice request - Unauthorised Absence |
| Appendix 4 | Penalty Notice pro-forma |
| Appendix 5 | Relevant legislation |

**Appendix1**

**Protocols and procedures in relation to Fixed Penalty Notices**

**Issue of a Fixed Penalty Notice**

* A Fixed Penalty Notice can only be issued in cases of unauthorised absence;
* Fixed Penalty Notices will be restricted to one notice per parent of a pupil in a rolling term;
* In cases where there is more than one poorly-attending pupil in a family, notices may be issued for more than one child;

There will be no restriction on the number of times a parent may receive an advisory letter warning of a possible Fixed Penalty Notice and it will be at the discretion of the EWS whether to issue a notice on one or both parent/carer. However, it would not be acceptable to issue ‘warnings’ repeatedly without making further investigations of the wider circumstances.

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

* At least 10 sessions (5 school days) are lost due to unauthorised absence during the current term. 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 10 sessions of late arrival;
* Truancy, where the child has come to the attention of the Police during school hours for being absent from school, without an acceptable reason.

**Considerations and Assessment as to whether a Fixed Penalty Notice should be issued.**

Head Teachers, their nominated deputies and the Education Welfare Service

(EWS) will take into account the following when determining whether a Fixed Penalty Notice should be issued:

* Level of absence;
* Any Equalities considerations relating to the child or family (as listed in the Council’s Strategic Equality Plan);
* Any Additional Learning Needs (ALN). LAs should consider whether attendance problems may be related to a pupil’s ALN. Schools should be able to demonstrate that they have made appropriate provision for the pupil’s needs, which may include consideration to support through an Individual Development Plan.
* 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;
* Any substantial adverse effect a fine will have on the welfare of the family;

**Procedure for Issuing Fixed Penalty Notices**

The designated officer(s) within the EWS will be the only individuals permitted to issue Fixed Penalty Notices, which will ensure consistent and equitable delivery and allow schools to maintain good relationships with parents and ensure that they reinforce any other enforcement sanctions.

Fixed Penalty Notices will never be issued as an instant action, e.g. during a Truancy Sweep. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks to individuals.

**Requests for issue of a Fixed Penalty Notice**

Where schools, Police or neighbouring LAs request the issue of a Fixed Penalty Notice, their request will be investigated and actioned by the EWS, provided that:

* The circumstances of the case meet the criteria specified in this Code of Conduct;
* The pupil is registered within a school within Blaenau Gwent;
* All necessary evidence is provided to the EWS to establish whether an offence under Section 444(1) or 444(1A) of the Education Act 1996 or Section 108 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.

**Responding to requests for the issuing of a fixed penalty notices**

Following the advisory notice (Appendix 2) issued by the school or Police, parents have a period of 15 school days within which to respond. During this time, the pupil must have no unauthorised absence. This information can be included in the formal written warning letter, where one has been issued.

The EWS will respond to all requests from schools or Police within 10 school days of receipt of a request. When satisfied that all of the relevant criteria have been met the LA will then issue a fixed penalty notice.

**Monitoring and Review**

All Fixed Penalty Notices will be entered onto a database maintained by individual LAs to ensure that no duplicate Fixed Penalty Notices are issued and to evaluate the effectiveness of the process.

**Excluded Pupils**

The basis of the fixed penalty notice powers, do not extend to excluded pupils. Section 108 of the Education and Inspections Act 2006 came into force in October 2010 and amends section 16 of the Crime and Disorder Act 1998 to extend Police powers for the removal of excluded pupils to designated premises, if a child or young person excluded from school is found in a public place in a specified area during a specific period and during school hours.

**Procedure for the Withdrawal of Fixed Penalty Notices**

Once issued, a Fixed Penalty Notice can only be withdrawn if the EWS 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; or

**Right of appeal**

There is no statutory right of appeal, but where a parent contests the issuing of a Fixed Penalty Notice, they can submit any complaints to the EWS and/or opt to face proceedings in the Magistrates’ Court under section 444 of the Education Act 1996, where all of the issues relating to their Fixed Penalty Notice can be heard.

**Payment of Fixed Penalty Notices**

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

If the Fixed Penalty Notice is paid within 28 days, the penalty payable is £60, or £120 if within 42 days. Payments will not be accepted from parents after 42 days has elapsed and cannot be paid either by instalments.

Individual LAs will only be able to retain enough revenue from the Fixed Penalty Notices, to cover administration costs for the process of issuing Fixed Penalty Notice, the surplus is to be surrendered to the Welsh consolidated fund.

**Non-Payment of Fixed Penalty Notices**

Non-payment of a Fixed Penalty Notice will result in prosecution for the period covered by the Fixed Penalty Notice under Section 444 of the Education Act 1996.

**Equalities and Welsh Language**

The issuing of Fixed Penalty Notices must comply with other related legislation and regulations, in order to ensure that they are used in a fair and consistent manner and have paid due regard to the circumstances of the child/children and families involved. These include, but are not limited to the following:-

* Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011
* Welsh Language (Wales) Measure 2011
* Human Rights Act 1998

Councils’ Strategic Equalities Plan covers the full range of issues that may need to be considered, depending on the individual case.

**Appendix 2a**

Non-attendance advisory notice for Blaenau Gwent schools

To reply please contact:

Tel:

Fax:

Email:

Date:

Dear <<Parent name>>

Name of pupil: ...................................................................... Date of birth: ........................................................

School: ....................................................................................................................................................................................................

I have reviewed your child’s attendance record and am concerned to note that he/she has incurred at least ten sessions (5 school days) of unauthorised absence in the current term.

I enclose a copy of your child’s attendance record and remind you that as a parent/carer of a child who is a registered pupil at this school, you hold legal responsibility for ensuring your child attends school regularly.

All Blaenau Gwent schools share the Welsh Government’s determination to raise levels of pupil attendance and achievement in order to ensure the best possible start in life for our children.

Under the Antisocial Behaviour Act 2003 an authorised officer of Blaenau Gwent County Borough Council has the power to issue each parent/carer with a penalty notice for each of their children who fails to attend school regularly. A penalty notice is an early deterrent that is intended to prevent more extended periods of unauthorised absence developing.

Penalty notices issued on or after 1 September 2013 incur a fine of £120, which is reduced to £60 if paid within28 days of the notice being served. Failure to pay a penalty notice may result in prosecution.

I write, therefore, to advise you that we are actively monitoring your child’s attendance after the date of this letter and should your child incur any further unauthorised absence in the next 15 days then further action, including the issue of a penalty notice or consideration of a prosecution, may be taken.

Any such penalty notice or prosecution may relate to your child’s attendance record both prior to and subsequent to this letter.

Support and guidance on attendance is always available from our school and if you have any specific queries in relation to this letter, please contact me on the above number. Alternatively you can contact the Families First Service on 08000 32 33 39 who will be able to offer a package of support with an allocated key worker.

Yours sincerely,

Head teacher

**Appendix 2b**

Medical advisory notice for Blaenau Gwent schools

To reply please contact:

Tel:

Fax:

Email:

Date:

Dear <<Parent name>>

Name of pupil: ...................................................................... Date of birth: ........................................................

School: ....................................................................................................................................................................................................

Dear parent/carer,

I am concerned to note that your child has already had 10 days medical absence this term. Currently ………………has been absent for …………. % of this school term/year. So that you have a clear picture of the extent of the absence, I am enclosing a copy of the pupil registration certificate.

Frequent absences may have a serious effect on your child’s educational progress and the extent of your child’s absence because of illness now gives concern to his/her school, and I am sure, to yourself/yourselves.

As a result, no further absences will be authorised without supporting medical evidence. Please note we do not need a sick note or GP letter but evidence such as a dated appointment card, a white label from prescribed medication or a prescription slip.

Should your child’s absence be recorded as unauthorised I would remind you that you could receive a Fixed Penalty Notice or other intervention as appropriate.

If you wish to discuss these matters further, please do not hesitate to contact school or myself.

Yours sincerely,

Head teacher

**Appendix 3**

 **FIXED PENALTY NOTICE REQUEST**

**UNAUTHORISED ABSENCE - Section 444, Education Act 1996**

Information contained in the form will be used in legal action under the above Act relating to non-attendance at school in the event that an Education Penalty Notice is issued and remains unpaid. I request that the Local Authority consider issuing a Penalty Notice to the parent(s)\* of the following pupil:

**Pupil Details**

Registered School…………………………………………………………………………………

Name of Pupil …………………………... …………….. DOB ……………. Year ………

Address……………………………………………………………………………………..

……………………………………………………………………………………………….

**Parent 1**

Full name ……………………………………………………………… DOB………...

Address……………………………………………………………………………………..

**Parent 2**

Full name…………………....…………….….. …………………………DOB………....

Address…………………………………………………………………………………….

The expression “parent”, in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has care of the child.

In making this request, I confirm that such action would not conflict with other intervention strategies already in place or other enforcement measures already being processed. I can also confirm that the governing body of this school has reviewed its attendance policy and agreed that this school will request the Local Authority to issue a Fixed Penalty Notices in appropriate cases.

 How has the parent been contacted regarding the unauthorised absences?

 School Meeting Letter  Telephone Call

Is the family known to other Services, e.g.: Children’s Services, YOS, and CAMHS?

Yes / No

Are there any notable circumstances to consider, e.g.: mental health, bereavement, family dynamics/domestic violence? Yes / No

If yes, please give full details:

Signed ………………… Designation …………………… Date:

**Please enclose an up to date registration certificate**.

**Appendix 4**

**FIXED Penalty Notice [S.444A EDUCATION ACT 1996]**

Please read the notes below carefully.

**Part 1**

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, or fails to attend regularly at alternative provision, the child’s parent/guardian is guilty of an offence under s.444 Education Act 1996.

To: (Title)

(Forenames)

(Surname)

Of: (address)

(Postcode)

You are a parent/guardian of (name and address of child) (called in this notice “the pupil”) who is a registered pupil at (name of school) and has been directed to attend alternative provision/ is not registered at a school but for whom the local authority has made arrangements to attend alternative educational provision.

On (date/dates)/ between (date) and (date) the pupil (name) failed to attend regularly at the (Name of) school. This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 28 days. If paid after 28 days but within 42 days the penalty is doubled to £120. Payment should be made to ***insert office details*** for payment and can be made in person during office opening hours, ***insert opening hours*** or by posting this notice with a cheque or postal order.

Late or part payments will not be accepted and no reminders will be sent. If payment is not received by (insert date 42 days from date of issue), you will be prosecuted for the offence and could be subject to a fine of up to £2,500.

This notice is issued by ***name, official particulars of the post*** within ***insert name of LA.***

Date of issue: .......................................................................................

**Part 2**

Please complete the following and return this notice with your payment to:

***Insert Name & Address of LA***

Name: .......................................................................................................

Address: ...................................................................................................

I attach payment in the sum of £...............................................................

Signed: .....................................................................................................

Date: .........................................................................................................

**NOTES**

**Contact details**

If you have any queries about this notice, please contact ***insert contact details, job title and department of contact, telephone number, fax number and address***

**Amount of penalty**

The amount of the penalty is as follows:

If paid within 28 days £60 If paid within 42 days £120.

**Code of conduct**

This notice is issued in accordance with a local code of conduct (we should include the full title together with its date or Edition) drawn up by The Blaenau Gwent and ***insert L A.*** Any questions or correspondence about the code should be addressed to ***name of contact, department within authority address and telephone phone number.***

**Withdrawal**

This notice may be withdrawn by ***inset LA name*** if it is shown that it should not have been issued to you or has not been issued to you in accordance with the SEWC code of conduct. If you believe that the notice was wrongly issued you must contact The issuing Local Authority as soon as possible to ask for it to be withdrawn, stating why you believe the notice to have been incorrectly issued.

The issuing Local Authority will consider your request and contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence.

**Payment**

You should complete the notice above and send or deliver it to the address given above.

**Prosecution**

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child’s regular attendance at school.

You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation;

**Appendix 5**

Relevant legislation that relates to Fixed Penalty Notices includes:

**The Children Act 1989**

The definition of “parent” means all biological parents, whether they are married or not; and includes any person who, although not a biological 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 8Definition of compulsory school age;

Section 444Offence: 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 & Inspections Act 2006**

Section 103 Duty of parent in relation to excluded pupil.