

Early Help and Family Engagement

Code of Conduct on the Issue of Fixed Penalty Notices in respect of

Poor School Attendance and Unauthorised Holidays / Leave of Absence taken in Term-Time

Version 8.1 Reviewed September 2022

1. Rationale

- 1.1 The Education Act 1996 is the primary legislation which governs the attendance of a child at school. 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.’
- 1.2 Regular and punctual attendance of children at school is both a legal requirement and a priority for Rotherham Metropolitan Borough Council, to maximise the educational opportunities available to children and to ensure **Rotherham’s children are resilient, successful and safe**. The Local Authority will continue to investigate cases of regular absence from school and, following appropriate application of the School Attendance Matters Pathway (SAMP) which is Rotherham’s policy for poor school attendance, will instigate legal action where applicable and appropriate.
- 1.3 In law, an offence occurs if a parent fails to secure a child’s attendance at a school in which they are a registered pupil, and that absence is not authorised by the school. Fixed Penalty Notices supplement the existing sanctions currently available under Section 444 of The Education Act 1996, Section 103 of the Education and Inspections Act 2006 or Section 36 of The Children’s Act 1989 to enforce attendance at school where appropriate, subject to statutory defences.
- 1.4 The Early Help and Family Engagement Service, within the Local Authorities’ Children’s Services Directorate, deliver this responsibility.
- 1.5 Parents and children are supported at school and Local Authority level to overcome barriers to regular attendance in school through intervention and strategies and where required, through the Early Help Assessment and planning process (where there are additional welfare needs noted.) Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.
- 1.6 Sanctions are used primarily as a means of enforcing attendance as part of the SAMP high challenge, high support methodology, where there is a reasonable expectation that their use will secure an improvement.
- 1.7 The Education (Penalty Notices) (England) Regulations 2007 set out the procedures for issuing Fixed Penalty Notices to each parent who fails to secure the regular attendance of their child at school.

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- 1.8 Amendments were made to the 2007 Regulations in the Education (Penalty Notices) (England) (Amendment) Regulations 2013. These amendments came into force on 1st September 2013.
- 1.9 Amendments to 2007 regulations reduced the timescales for paying a Fixed Penalty Notice. Parents must, from 1st September 2013, pay £60 within 21 days or £120 within 28 days. This brought attendance Fixed Penalty Notices into line with other types of Fixed Penalty Notices and allows local authorities to act faster on prosecutions.
- 1.10 In order to comply with Human Rights legislation, it is essential that Fixed Penalty Notices are issued in a consistent manner. The SAMP supports the consistent application of enforcement in Rotherham. This Code of Conduct will govern the issuing of Fixed Penalty Notices in respect of unauthorised absence from school for holidays/ leave of absence taken in term time, and other unauthorised absence, for Rotherham Metropolitan Borough Council.
- 1.11 This code of conduct also takes into consideration statutory guidance Working Together to Improve School Attendance, May 2022.

2. Section 576 Education Act 1996: Definition of a Parent

- 2.1 Under section 576 of The Education Act 1996, a parent is defined as follows:
- All natural parents whether they are married or not
 - Any person who although they are 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.
- 2.2 Throughout this document, references to ‘parent’ mean each and every parent falling within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to ‘parent’ in the singular.

3. Circumstances where a Fixed Penalty Notice may be issued

- 3.1 The issuing of a Fixed Penalty Notice is considered appropriate in the following circumstances:

a) Leave of absence:

In cases of absence from school when the child has been taken on holiday or had a leave of absence during term time and the absence has not been authorised by the school.

Schools must have made the parent aware of their policies in relation to leave of absence through publicity materials, general correspondence, policies etc.

There must be at least 10 consecutive sessions (5 school days) lost due to unauthorised leave of absence during term time and the child has attendance below 95.2% (combined National average for both primary and secondary schools 2018/19), for the previous 12 months, including the holiday absence period.

b) Persistent Absence:

For those parents of children where there is unauthorised absence, notification of unsatisfactory attendance has been issued via the Rotherham School Attendance Matters Pathway, and when unsatisfactory attendance remains a concern.

Where the Local Authority School Attendance Panel (LASAP) or the FPN panel (subgroup of the LASAP) agree that a Fixed Penalty Notice is the most appropriate way to deal with non-school attendance.

c) Excluded pupils:

Where an excluded pupil is present in a public place during the school hours of the school where the child is on roll.

3.2 In each of the above scenarios, each parent may receive a separate Fixed Penalty Notice for each child.

3.3 Rotherham is committed to ensuring that children are supported to attend school when it is open and seeks to reduce incidences of unauthorised absence.

A parent will not be issued with more than 1 FPN in respect of an individual child in any 2-year period commencing on the last day of the leave absence pertaining to the FPN. This is designed to be a deterrent to prevent children being taken out of school for holiday's / family trips / special occasions repeatedly in their school career.

Where poor school attendance is evident following an FPN parents, carers and children (where appropriate) will be invited following escalation to the multi-disciplinary LASAP, for a decision on an appropriate course of action that will explore support to improve the child's attendance. This may include legal action through the Court.

4. Procedures for issuing Fixed Penalty Notices

4.1 Fixed Penalty Notices are issued by the Local Authority to avoid duplicate notices. This ensures consistent and equitable application of policy, protects school-home relationships and allows alignment with other enforcement sanctions and statutory interventions. Fixed Penalty Notices will only be issued for offences where the Local Authority is willing and able to prosecute and that are agreed at either the Local Authority School Attendance Panel or the FPN panel.

4.2 The Local Authority will ensure that the issuing of Fixed Penalty Notices will be closely monitored to ensure that recipients pay the relevant fine. In instances where the penalty is not paid within the appropriate period, the Local Authority will prosecute.

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

4.4 The Local Authority will receive requests to issue Fixed Penalty Notices from schools and requests will be screened to ensure adequate evidence of support and intervention, as required by the pathway, is submitted.

4.5 The Local Authority will consider requests to issue Fixed Penalty Notices in respect of any of the circumstances arising under Section 3 of this Code, in either the Local Authority School Attendance Panel or the FPN panel.

- 4.6 Schools must consider welfare aspects of a child's circumstances before considering whether a request to the Local Authority would be appropriate. The SAMP is underpinned by the Early Help Assessment to enable schools to understand need and develop appropriate plans to support good attendance in partnership with the child and family.
- 4.7 Where a child has special educational needs and/or disabilities, the school should consider whether a request via SAMP would be appropriate having considered all the circumstances relevant to that child. In particular, the school will need to have specific regard to the individual needs of the child, pertinent EHCP process and the overall attendance of the child, which may or may not be in line with the combined National primary and secondary average.
- 4.8 The Local Authority will require supporting documentation and relevant information outlined in the SAMP Guidance including all correspondence with the parent, in order to establish whether a Fixed Penalty Notice is appropriate.
- 4.9 Requests for unauthorised leave of absence during term time will be considered provided that:
- The circumstances of the child's absence meet all the requirements of this Code.
 - The Local Authority must receive the referral within five working days of the last date of the leave of absence.
 - The issue of a Fixed Penalty Notice does not conflict with or undermine other intervention strategies in place or other enforcement sanctions already underway.
- 4.10 Requests for a Fixed Penalty Notice for persistent absence via SAMP will be considered provided that:
- The circumstances of the child's absence meet all the requirements of this Code.
 - The Local Authority must receive the referral within five working days of warning letter 3 being sent to parents for requests via SAMP.
 - The issue of a Fixed Penalty Notice does not conflict with or undermine other intervention strategies in place or other enforcement sanctions already underway.
- 4.10 The Local Authority will respond with the outcome to all requests within two weeks of the request being heard by either the Local Authority School Attendance Panel or the FPN panel, notifying the school of any intended action.
- 4.11 Provided the request has met all the criteria the Local Authority will issue a Fixed Penalty Notice by post.

5. Procedures for Withdrawing Fixed Penalty Notices

- 5.1 A Fixed Penalty Notice may be withdrawn by Rotherham Metropolitan Borough Council in exceptional circumstances that determine:
- a) It ought not to have been issued.
 - b) It ought not to have been issued to the person named as the recipient.
- 5.2 Decisions to withdraw an FPN will be made by the Local Authority Lead for the School Attendance Matters Pathway.

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- 5.3 Where a Fixed Penalty Notice has been withdrawn in accordance with the above, a notice of withdrawal shall be given to the recipient and the amount paid by way of penalty pursuant to that notice shall be repaid to the person who paid it
- 5.4 No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444 (1A) of the Act arising out of the same circumstances

6. Right of Appeal

- 6.1 There is no statutory right of appeal once a Fixed Penalty Notice has been issued. A parent must pay the Fixed Penalty Notice or face proceedings in the Magistrates Court.

7. Payment of Penalty Notices

- 7.1 The arrangements for the paying of penalties will be detailed on the Penalty Notices.
- 7.2 Fixed Penalty Notices were set nationally by the DfE in September 2013 at £60 per parent, per child, if paid within 21 days of receipt of the notice; increasing to £120 per parent, per child, if paid within 28 days of receipt of the notice.
- 7.3 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 Penalty Notice.
- 7.4 The Local Authority retains revenue from the Fixed Penalty Notice payments to cover the costs for issue and enforcement and for costs related to the prosecution of unpaid Fixed Penalty Notices.

8. Non-Payment of Fixed Penalty Notices

- 8.1 Non-payment of a Fixed Penalty Notice will result in the matter being escalated to RMBC Legal Services to consider instigating a prosecution under the provisions of Section 444 of the Education Act 1996. The fact that a notice was issued and unpaid, can be used as evidence in a subsequent prosecution. The prosecution can only be for the original offence and not for non-payment of the Fixed Penalty Notice.
- 8.2 The Local Authority will consider whether it would be appropriate (instead of or as well as instituting proceedings) to apply for an Education Supervision Order in respect of the child under Section 447(1) of the Education Act 1996.

9. Reporting and Review

- 9.1 The Local Authority will review the Code of Conduct on the Issue of Fixed Penalty Notices in regard to unauthorised holidays taken in term time and poor school attendance annually and/or following any changes in legislation/statutory guidance or following recommendations from the Rotherham Safeguarding Children's Partnership.

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