

ISLE OF WIGHT COUNCIL
SCHOOLS AND LEARNING DIVISION
EDUCATION WELFARE SERVICE

Code of Conduct under the Provision Education (Penalty Notices) (England) 2007 (Amendment) Regulations 2013 and Subsection (1) Section 23 Anti-Social Behaviour Act 2003

RATIONALE

1. Regular and punctual attendance of pupils at schools is, under Section 7 of the Education Act 1996, a legal requirement, parents being responsible for ensuring that any child of compulsory school age 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. 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 becomes 16.

It is also essential for pupils to attend school regularly in order to maximise the opportunities available to them. The Education Welfare Service for the Isle of Wight Council will continue to investigate cases of irregular attendance at school and following a strict process of targeted casework delivery, instigate statutory action where appropriate.

2. Commencing on 27th February 2004, under the provisions of sub-section (1) of Section 23 of the Anti-Social Behaviour Act 2003 and Education (Penalty Notices) (England) Regulations 2007 (Amended 2012) it will now be possible that in certain cases of unauthorised absence, a fixed penalty notice may be issued to the parent(s)/carer(s) responsible. Under these provisions the penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt.
3. The Isle of Wight Council will ensure the smooth administration of the necessary process and in order to fully comply with legislation on Human Rights, will also ensure the consistent, fair and transparent application of fixed penalty notices throughout the Isle of Wight. This Code of Conduct will govern the issuing of fixed penalty notices across the Isle of Wight Council.

GUIDANCE AND LEGISLATION

4. Persons authorised to operate this Code must have regard to the following legislation and guidance:-
 - The Race Relations (Amendment) Act 2000
 - The Race Relations (Statutory Duties) Order 2001
 - Disability Discrimination Act 1995
 - Data Protection Act 1998
 - Children Act 1989
 - Crime & Disorder Act 1998
 - Human Rights Act 1998

- Special Needs Code of Practice 2003
- Equality Act 2010
- Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003
- Education Act 1996
- Education (Penalty Notices) (England) 2007 (Amendment) Regulations 2013

Section 576 Education Act 1996 – Definition of a Parent

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in this section of the Education Act 1996. This defines 'parent' 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 – 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.

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.

PROCEDURE FOR THE ISSUE OF PENALTY NOTICES

5. The issue of fixed penalty notices will be strictly administered by the Education Welfare Service to ensure compliance with the operation of the system of targeted casework delivery followed by the Local Authority and that the provisions of this Code do not have a negative impact on the current forms of statutory intervention pursued by the Education Welfare Service. Therefore, no targeted casework fixed penalty notices will be authorised without the issue of relevant warning notices and the pursuance of relevant assessment.
6. The Education Welfare Service will always issue fixed penalty notices by post, as there may be considerable health and safety implications involved in the operation of a hand/face-to-face delivery mechanism.
7. The responsibility of the issue of fixed penalty notices will be retained by the Local Authority and held within the Education Welfare Service. The Education Welfare Service, in conjunction with the current Council revenue collection mechanisms, will ensure that the issue of fixed penalty notices is closely monitored with the relevant financial penalty being imposed and collected.
8. In the case where the penalty has not been paid within 28 days of issue, the Education Welfare Service will instigate statutory action under Section 444(1) of the Education Act 1996. The Council, therefore, will have the means to avoid the issue of duplicate notices, to ensure that any action taken is compliant with relevant legislation and that no conflict arises with other statutory interventions applied by the Local Authority in respect of high levels of unauthorised absence.
9. No parent will receive more than three separate fixed penalty notices resulting from the unauthorised absence of an individual child in any academic year. The decision may be taken to prosecute parents after only one or two fixed penalty notices being issued, depending on the circumstances of the case. Each case will be dealt with individually on

its own merits. Fixed penalty notices will be issued to each parent of the child exhibiting the relevant patterns of unauthorised absence and, where appropriate, in respect of more than one child. Notices may be issued to all relevant responsible adults who come within the definition of 'parent' as defined by Section 576 of the Education Act 1996, set out above.

10. The Education Welfare Service will receive referrals with regard to cases where the issue of fixed penalty notices may be appropriate from schools on the Isle of Wight, the Hampshire Police, the Local Authority and other agencies as appropriate. Such referrals must be received on a Penalty Notice Referral Form, an example of which is set out at the end of this document. The Education Welfare Service will action these requests in appropriate cases, providing the relevant information is supplied in the specified manner.

CIRCUMSTANCES WHEN FIXED PENALTY NOTICES MIGHT BE ISSUED

11. The Local Authority may consider it appropriate to issue fixed penalty notices if, following due assessment, where a parent is capable of but unwilling to secure an improvement in their child's school attendance, additional evidence of unacceptable levels of unauthorised absence is present to render appropriate such action. In addressing the issue of parentally condoned absence, fixed penalty notices may offer a prompt and potentially effective deterrent to unauthorised absence at a point, which may not be easily accessed through existing enforcement provisions.

12. Unauthorised holidays during term time

Under the Education (Penalty Notices) (England) Regulations 2007 (Amended 2012), Headteachers can only grant leave under exceptional circumstances. It is for Headteachers to determine whether or not such a request is exceptional and to state the number of days granted. Each request can only be judged on a case-by-case basis but it is usual that Headteachers will be sparing in their use of this discretion. .

Headteachers should only apply the above guidance and follow with a warning letter if they feel obliged to categorise as unauthorised any holiday absence. The Education Welfare Service may serve a fixed penalty notice without any further recourse to assessment or casework with the pupil/family.

13. Following Pupil Watch/Truancy Sweeps

Parents interviewed during, or contacted following, a pupil watch/truancy exercise, during which instances of parentally condoned absence are identified will be advised in writing of their liability under this Code and of the Local Authority's policy in this regard. Each case will be assessed on an individual basis and full account will be taken of the pupil's level of unauthorised absence during the previous twelve month period.

In cases where a parent is contacted on more than one occasion during, or following, a truancy sweep exercise, the Education Welfare Service may issue a fixed penalty notice without any further recourse to assessment or casework with the pupil/family.

14. Referrals from Schools, Police, Neighbouring Local Authorities and other Agencies

The Education Welfare Service will assess any referrals received in this regard from other agencies/schools and where levels of unauthorised absence have reached the appropriate thresholds, may issue a fixed penalty notice as an alternative to pursuing any alternative form of statutory intervention. The decisions made in relation to these referrals

will be made by the Education Welfare Service Team Leader in discussion with the relevant Education Welfare Officer and will be communicated to the referrer forthwith.

15. As an alternative to the application of targeted casework delivery and formal statutory intervention via use of the Courts

The Education Welfare Service may employ fixed penalty notices as an early use deterrent to escalating patterns of unauthorised absence and as such will supplement rather than replace current statutory interventions available under the Education Act 1996.

The Education Welfare Service, therefore, will have the potential to apply fixed penalty notices in a range of attendance scenarios provided the absences are unauthorised, which may preclude the resort to Court proceedings. If an Education Welfare Officer feels the issue of a fixed penalty notice may be appropriate, an application will be made to his/her Team Leader. The Education Welfare Team Leader and the Education Welfare Officer concerned will assess each case as above. The decision will be arrived at following consultation with schools and a full assessment of the available evidence.

As in other cases, the necessary warning letters will precede the issue of a notice.

NB

Under no circumstances will a fixed penalty notice be issued in respect of a child in cases where a parent has received a previous conviction in respect of that child in the previous 6 months; where the parent is currently subject to existing legal proceedings regarding that child; or during the life of an Education Supervision Order or Parenting Order regarding that child.

ADMINISTRATION OF THE FIXED PENALTY NOTICE SCHEME

16. Fixed penalty notices shall be issued in a prescribed manner and revenue from such notices shall be collected through the current Council scheme allowing for various methods of payment.
17. The Education Welfare Service Team Leader and administrative staff will be able to track payments made enabling a swift response in bringing a prosecution under Section 444(1) of the Education Act 1996 when necessary. There is no mechanism within the legislation or within this Code for the collection of non-payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice. Non-payment of a fixed penalty notice will result in a prosecution of that person.
18. There are exceptions when a notice may be withdrawn:-
 - When it is issued to the wrong person;
 - When it has been issued outside of the terms of the Code of Conduct;
 - When an offence has not been committed;
 - If a parent can prove it was delivered to the wrong address.
19. The Education Welfare Service shall produce an annual audited statement of revenue collected from fixed penalty notices. Such revenue may only be used to cover legal costs of administering the scheme or taking a prosecution as a result of non-payment, any surplus shall be surrendered to the consolidated fund.

TRUANCY PENALTY NOTICE

Notice issued under Section 444(1) of the Education Act 1996.

Please read the notes overleaf carefully

If a child who is of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his/her parent is guilty of an offence under Section 444(1) of the Education Act 1996.

TO: [INSERT NAME]

OF: [ADDRESS]

You are a parent of [CHILD'S NAME] [(DOB)], [ADDRESS] (called in the notice "the pupil") who is a registered pupil at [SCHOOL].

BETWEEN [INSERT DATE] and [INSERT DATE] the pupil failed to attend regularly at the 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 or £120 in accordance with the table below**. 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 set out in this notice.

If the notice is paid within 21 days then the amount payable will be £60. **Please see attached invoice**. If you fail to pay within 21 days, another invoice will be forwarded for £120 with an additional 7 days to pay. Payment should be made to the Isle of Wight Council by the dates and methods listed overleaf.

The amount of penalty is as follows:-

When Paid	Date payment must be received by	Amount Due
If paid within 21 days	[INSERT DATE]	£60
If paid between 21 and 28 days	[INSERT DATE]	£120

Late or part payment will not be accepted and no reminders will be sent. If payment is not received by the due date you may be prosecuted for the offence and subject to a fine of up to £1,000.

This notice is issued by Karen Pothecary, Education Welfare Service, Thompson House, Sandy Lane, Newport, Isle of Wight PO30 3NA. ☎ (01983) 821000 ext 133.

Date of issue: [INSERT DATE]

NOTES

1. Contact Details

If you have any queries about this notice, please contact the Education Welfare Service, Thompson House, Sandy Lane, Newport, Isle of Wight PO30 3NA. ☎ (01983) 821000 ext 133.

2. Code of Conduct

This notice is issued with a local Code of Conduct drawn up by the Isle of Wight Council Education Welfare Service. Any questions or correspondence about the Code should be addressed to the Education Welfare Service, Thompson House, Sandy Lane, Newport, Isle of Wight PO30 3NA. ☎ (01983) 821000 ext 133.

3. Withdrawal

This notice may be withdrawn by the Education Welfare Service Team Leader if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local Code of Conduct. If you believe that the notice was wrongly issued you must contact the Education Welfare Service Team Leader to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The Education Welfare Service Team Leader 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 that your child has failed to attend school regularly.

4. Prosecution

If you do not pay the penalty notice 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 the time and date of the Court hearing. You will be able to defend yourself and would be advised to seek legal representation; in some circumstances you may be entitled to Legal Aid.

5. Payment methods

Payment online:

www.iwight.com/online

All payments by post to:

Cash Office
Civic Centre
Sandown
Isle of Wight
PO36 9EA

Please make cheques payable to 'Isle of Wight Council'

By telephone:

For debit cards ☎ (01983) 823644

BACS/Telephone/Internet banking:

Contact your bank quoting bank sort code 54-10-34 and bank number 47672552. You will need to tell your bank the amount you wish to pay and your invoice number.

At a bank:

Payment may be made at any branch of Nat West by cash or cheque. No service charge will be made for this service.

PLEASE DO NOT SEND ANY PAYMENTS DIRECTLY TO THE EDUCATION WELFARE SERVICE OR TO COUNTY HALL.