

SHROPSHIRE COUNCIL
LEARNING & SKILLS
EDUCATION ACCESS SERVICE

(Updated September 2017)

Code of Conduct under the Provision of The Education (Penalty Notices) Regulation 2004 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 Access Service in Shropshire 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 27 February 2004, under the provisions of subsection (1) of section 23 of the Anti-Social Behaviour Act 2003, 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** Shropshire 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 Shropshire. This Code of Conduct will govern the issuing of Fixed Penalty Notices by Shropshire Council to all maintained schools.

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 and Disorder Act 1998
 - Human Rights Act 1998
 - Special Needs Code of Practice 2003

- Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003
- Education Act 1996

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 Access 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 Access Service. Therefore, no Fixed Penalty Notices will be issued without the issue of relevant warning notices and the pursuance of relevant assessment of the case.
- 6** The Education Access Service will always issue Fixed Penalty Notices by first class post, as there may be considerable health and safety implications involved in the operation of a hand/face-to-face delivery mechanism. Schools will be informed when a Fixed Penalty Notice has been served.
- 7** The responsibility for the issue of Fixed Penalty Notices will be retained by the Local Authority and held within the Education Access Service. The Education Access 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 Access 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 one parent will receive more than two separate Fixed Penalty Notices resulting from the unauthorised absence of an individual child in any twelve-month period. 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.
- 10** The Education Access Service will receive referrals with regard to cases where the issue of Fixed Penalty Notices may be appropriate from schools in Shropshire, and other agencies as appropriate. The Education Access Service will action these requests in appropriate cases, providing the relevant information is supplied and that the level of unauthorised absence is consistent with the provisions of this code.

CIRCUMSTANCES WHEN FIXED PENALTY NOTICES MIGHT BE ISSUED

- 11** The Local Authority may consider it appropriated to issue Fixed Penalty Notices where:-
- The Education Access Service has made an initial assessment and
 - parent(s)/carer(s) is/are capable of, but unwilling, to secure an improvement in their child's school attendance and
 - there is additional evidence of unacceptable levels of unauthorised absence of ten or more sessions in a term.

In addressing the issue of parentally condoned absence, Fixed Penalty Notices may offer a prompt and potentially effective deterrent to unauthorised absence.

12 Unauthorised Holidays during Term Time

Absence due to holidays in term time is now a major factor in overall school attendance. In order to maintain a consistent approach across the County the Education Access Service offer the following observations and guidance:

- Any absence in term time will have an effect on pupil attainment.
- All schools should actively discourage holidays during term time.
- It is the responsibility of Governors and Headteachers to set policy regarding the authorisation of holidays in term time.
- The Education Access Service advises that holidays in term time should only be authorised in exceptional circumstances. (See separate LA guidance to schools.)
- Headteachers should make it clear to parents, in writing, the implications of any periods of unauthorised absence resulting from holidays in term time.
- A referral to the Education Access Service should be made when the school have informed the parent that they will not authorise a holiday in term time and they have been warned of the consequences of taking unauthorised leave.
- In such cases the Education Access Service may serve a Fixed Penalty Notice without any further recourse to assessment or casework with the

pupil/family when there are ten or more sessions of unauthorised absence in a term.

13 An Alternative to the Application of Targeted Casework Delivery and Formal Statutory Intervention via use of the Courts

The Education Access Service may employ Fixed Penalty Notices as an early 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 Access Service, therefore, will have the potential to apply Fixed Penalty Notices in a range of attendance scenarios provided the absences are unauthorised and meet this code criteria.

ADMINISTRATION OF THE FIXED PENALTY NOTICE SCHEME

14 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 at local offices throughout the County (See Annex A).

15 None payment of a Fixed Penalty Notice must result in prosecution of that person. There is no mechanism within the legislation or this code for the collection of none payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice.

16 There are exceptions when a notice may be withdrawn;

- a) when it is issued to the wrong person or
- b) when issued outside the terms of the code of conduct
- c) when an offence has not been committed
- d) if a parent can prove it was delivered to the wrong address

17 The Education Access 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.