Frequently Asked Questions – Fixed Penalty Notices (FPNs)

Section 444 of the 1996 Education Act states that if a child of compulsory school age who is a registered pupil at school fails to attend regularly their parent is guilty of an offence.

Schools and the Local Authorities are required to follow government guidance in relation to absence from school. The DFE states 'Generally, a need or desire for a holiday for the purpose of leisure and recreation would not constitute an exceptional circumstance'. Guidance relating to the term 'exceptional' has expressed that it means the '**event is rare, unavoidable and short'** and by 'unavoidable' it could not reasonably be scheduled at any other time. Holiday's taken during a term time are unlikely to be authorised as generally speaking these are not exceptional as they can be scheduled at another time during a school holiday period.

What happens if I take my child out of school and the absence is not authorised?

Only a headteacher can authorise an absence from school. If your child is absent from school and the absence is not authorised the school is legally required to consider whether the threshold for issuing an FPN is met. In many cases schools and the Local Authority will offer support to try to improve your child's attendance, however if the absence is for a holiday or events such as a family gathering or birthday there would be no support need and the school is required to notify the Local Authority.

What happens if my child is unwell and unable to attend school immediately before or following a leave of absence?

You should notify the school of your child's illness following the normal procedure. The school may request official booking details of the holiday in order to demonstrate the sickness was genuine and not a way of avoiding a penalty notice.

What is a FPN?

A FPN is issued as an alternative to prosecution in the Magistrates' Court. The FPN scheme does not allow for mitigation as the notice is a 'conditional offer' for the offence of failing to secure regular attendance and in all cases the proposal is a fine of £160. In some cases, you may be offered the opportunity to pay £80, if paid within 21 days. There is no flexibility in the disposal, so mitigation is not relevant.

When will an FPN be issued?

The National Framework sets out when an FPN can be issued and includes the following:

- 10 sessions of unauthorised absence within a 10 school week period. Unauthorised absence could include late arrival after the registration period, absence for holiday

or other leisure activities and/or other unexplained absence. The absence does not have to be consecutive. This is called the national threshold.

- Unauthorised absence which falls below the threshold of 10 sessions in 10 school weeks but parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events.

Who can be issued with a FPN?

FPN's can be issued to any adult considered to be a parent as defined by the Education Act 1996, this includes:

- All natural (biological) parents, whether they are married or not.
- Any person who although not the natural parent has parental responsibility for the child or young person.
- Any person although not a natural parent has care of the child or young person. Having care of the child means a person with whom the child lives and who looks after the child irrespective of what their relationship is with the child.

To make sure penalty notices are issued fairly and legally, all Local Authorities are required to have a local Code of Conduct which explains the circumstances in which FPNs will be issued. The Code of Conduct must include the national threshold, and also any circumstances falling outside the national threshold in which a FPN will be considered. The Westmorland and Furness Code of Conduct is published on the council website and is available here: School attendance | Westmorland and Furness Council.

Can I appeal a Fixed Penalty Notice?

There is no right of appeal against a FPN. It is important you make the school aware of any circumstances or information regarding absence at the earliest opportunity. There is no requirement for information to be considered after the fact, however, if you have additional information which has not previously been shared you may wish to share this with the Attendance Team and should do so using the e-mail address provided on the FPN. The Attendance Support Team is only able to review a decision if **significant new information** is provided. Information already provided to the school will not initiate a review.

The penalty notice cannot be paused, should a review be requested with new information. The notice should still be paid within the timescales, and should it be agreed that the additional information constitutes exceptional circumstances, any payments received will then be refunded.

Will I receive a notice to improve before a FPN is issued?

A notice to improve is not issued in situations where support is not appropriate as in the case of an unauthorised leave of absence in term time.

My child has had several periods of unauthorised absence, but they fall outside the national threshold could I still be fined?
Yes. The legislation requires schools and local authorities to consider individual situations and is clear that a FPN can be issued in some circumstances before the threshold is met, for example taking several term time holidays below threshold, or for repeated absence for birthdays or other family events. This is detailed in the Code of Conduct.
Examples would include:

Jo misses three days of school in September due to a family holiday and then misses a further two days of school in January for a weekend break Jo's parents could be issued an FPN.

Bob misses nine sessions of school in February for a holiday and this has happened for the last three years. This is a pattern and Bob's parents could be issued with an FPN.

Sarah goes on holiday with her family during the first week in May missing four days of school because the Monday is a bank holiday. Sarah's family went on holiday at the same time the previous year missing four days of school. Sarah's parents could be issued with an FPN because there is a pattern of absence and it appears her parents are taking steps to avoid an FPN by choosing a week with a bank holiday.

*Please note these examples are not exhaustive

Can I pay my penalty notice by instalments?

Payment cannot be made in part or by instalments.

What happens if I don't pay my FPN?

If you don't pay within the 28 days, the offer of a FPN is withdrawn. The Local Authority will then consider instigating a prosecution in the Magistrates' Court for the offence of failing to secure regular school attendance. If a guilty finding is made this could result in a fine of up to £2,500 per parent per child and/or a parenting order or a community service order. In addition, the court may impose court costs. It is not possible to pay the FPN after the 28 days have passed.

How many penalty notices can I be issued?

You can be issued a maximum of two FPNs within a rolling three year period. The first time a FPN is issued, the amount of the fine will be £80 if paid within 21 days, increasing to £160 if paid between days 22 and 28. The second time a penalty notice is issued within a three year period, the amount is £160 payable within 28 days. If there is a third period of unauthorised absence within a three year period, a penalty notice will not be issued and the Local Authority must consider other available measures including prosecution in the Magistrates' Court. Penalty notices are issued per parent per child.

The school have organised a residential trip and my child isn't going, can we go on holiday instead?

No, a residential trip is considered part of the school curriculum. The school must continue to provide lessons for those pupils who are not taking part in the residential and they are expected to attend school as usual. The guidance is clear that a head teacher should not authorise absence for the purpose of leisure or recreation.

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