

School Attendance

Enforcement Policy in relation to non-school attendance and Code of Conduct for the issue of Fixed Penalty Notices

Information for parents, carers, schools and children and families service workers

Every child and family has access to timely and appropriate support depending on need. Such support is individually negotiated in consultation with both adults and children in the family, in the context of the economic, cultural and geographical circumstances of that family.

The Council believes that the use of the Magistrate's Courts to resolve pupils' non-attendance is justified when it is considered that it will assist parents in fulfilling their legal responsibility to ensure that their children attend school on a regular basis. In this sense, legal action is not considered primarily as a punitive measure against parents, but a supportive measure in effecting a child's right to receive efficient and full-time education.

This policy and code of conduct is supplementary to the over-arching 'MK Enforcement Policy September 2017' which sets out the general guidance and principles for Enforcement.

Definitions

Child – Means a child of legal school age which lasts from the term after a child's 5th birthday to the last Friday in June of the year in which the child is in Year Group 11.

Parent - Anyone who is a biological parent of a child, or who has parental responsibility for the child, or who has care of the child.

School - Any maintained school, Academy or Pupil Referral Unit or other off-site provision paid for out of public funds.

Unauthorised Session - An unauthorised session is one school half day ie either morning or afternoon. One full school day is therefore two sessions.

Authorised Officer – Following a line of delegation from cabinet, the Senior Attendance Officer (Legal Interventions) has delegated power to take actions under these Acts and as such is known as the "Authorised Officer."

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1 Criteria for Prosecution

1.1 The Council regards prosecution as a last resort, when all other measures to assist a pupil to return to school have failed, including the consideration of issuing of a Fixed Penalty Notice. The main factors in a decision to prosecute will be the level of co-operation the parents have shown to ensure that their children have attended school regularly and the overall level of attendance. The decision to prosecute will be made by the Senior Attendance Officer (Legal Interventions), referred to as the "Authorised Officer". A prosecution may also be taken if a FPN is not paid within 28 days of issue.

1.2 Prior to making a referral for legal interventions, consideration should be given to offering the parent support through the Children and Families Practice or other related services. Schools should undertake a CAF (Common Assessment Framework) before referring to MASH and host a TAF (Team around the Family) meeting. They should also undertake a FACT or FACT Plus to assess whether the child has any underlying SEN needs if appropriate.

1.3 Prior to requesting legal intervention, the school must:-

- Mark the pupil's absences as "unauthorised"
- Prepare a "Certificate of Pupil Attendance" clearly indicating this and obtain the signature from the appropriate school officer, before sending it to the School Attendance Officer with the referral form.
- Collate evidence of having written to or communicated with the parent, and the outcome.
- Ensure that there has been at least one home visit, a school meeting and the involvement of another service such as a Children and Family Practice Team, if required.
- Check that sufficient enquiries (e.g. a letter to the GP) have been made to confirm or refute any parental claim that absence was due to illness.
- Check whether the parent is claiming that all the child's absences were for religious observance or festivals. Most religions do not have many days set apart exclusively for religious observance. However, if in any doubt about minority ethnic religious festivals, diaries must be checked, because the calendars by which the relevant dates are calculated differ and/or rely on the first sighting of celestial bodies, so certain festival days can only be approximate and are therefore rarely fixed. Normally only one day is recognised as authorised absence for religious observance e.g. Eid.
- Check the distance between the school and the child's home. If the child lives more than 2 miles (if aged under 8) or more than 3 miles (if over 8) from school, then the Council may be required to provide transport unless the parent specifically selected that school.

2 Legal Process

2.1 At the start of the legal process the school will send a Formal Warning Letter to the parents. It is good practice at all times to write to each parent separately, even if they live at the same address.

2.2 Following a Formal Warning Letter, the school will monitor the child's attendance and if there is no improvement the school will write to the parents and invite them to an Attendance Interview with a relevant member of school staff – unless the school has decided to purchase a Traded Attendance Interview in which case this role will be performed by the Authorised Officer. This will usually be held at the child's school and other professionals involved with the family (e.g. child's or family's Social Worker or CFP worker) should be invited to attend the interview. If the parent claims a lack of control over the child, an assessment by Children's Services or CAMHSs is required. If other agencies such as Children's Services are known to be involved with the case, there should be immediate consultation with that Service before further action is taken.

3 The Attendance Interview

- If the parent attends and commits to improve attendance, the parent should be told that a review will take place after 4 weeks (normally this will be an internal review) and warned that if there is no improvement, they will be requested to attend a formal interview under PACE conditions (Police and Criminal Evidence Act 1984). An information leaflet will be sent out with the minutes or given to the parent at the meeting.
- If the parent does not attend or does not commit to secure improved attendance, the matter may be referred to the Local Authority for consideration of a PACE interview as advised in DfE guidance.

3.1 A copy of the Attendance Interview notes will be sent to the parent and to the school and any other professional involved with the child or family.

3.2 After the initial Attendance Interview the school will monitor the pupil's attendance level – normally up to 4 weeks; if there is no improvement, the matter will be considered for referral to the LA for a PACE interview.

4 The PACE Interview

4.1 In most cases where prosecution is felt appropriate, the parent will be invited to a PACE interview. The purpose of this is twofold – firstly to put the matter on a more formal footing as regards the parent, but secondly to obtain their reasons for the absences. This means that if the case later goes to trial, any explanation they give at Court can be compared with any explanation given in the PACE interview and the Court's attention drawn to any discrepancies or "changes of story".

4.2 The interview will be based on a series of written questions to which the parent will be expected to give their responses. The parent will be formally cautioned and notified of his/her rights prior to the PACE interview and asked if they wish to have legal representation present. If they do wish for legal representation then the PACE interview will be arranged at a convenient date/time. Should the parent attend the interview and then decide they wish to have a legal representative or say they do not understand the Formal Caution, the interview should be terminated and reconvened at another time.

4.3 At the end of the meeting the parent/carer will be given the questions/answers to read and the parent will be given an opportunity to make any amendments. When all parties are satisfied the PACE interview notes should be signed and a copy given to the parent.

4.4 After the PACE interview the Authorised Officer will decide how best to proceed, given consideration to the following:

- Whether the evidence provided is substantial enough to prove a case in court.
- Whether all options to assist the child to return to school have been explored both by the school and other services.
- Whether a more proportionate response would be a Formal Caution or other action.

4.5 If the Authorised Officer decides that prosecution should follow, he will consider whether a Parenting Order or an Education Supervision Order should be sought. Appendix 1 lists Alternative Sanctions.

5 Preparation for Court

5.1 The Authorised Officer will consider which of the two offences in the Education Act 1996 should be pursued.

5.2 The simple offence, under s444(1), of “being the parent of a child of compulsory school age, who is a registered pupil at a school, who has failed to attend regularly”.

Points to prove:-

- The child is of compulsory school age
- The child is registered at the school
- Failure to attend school regularly

5.3 The aggravated offence, under s444(1a): being the parent of a child of compulsory school age, who is a registered pupil at a school, who has failed to attend regularly, but with the added element that the parent knows that the child has failed to attend regularly and the parent has failed to cause the child to do so.

Points to prove:-

- The child is of compulsory school age
- The child is registered at the school
- failure to attend school regularly
- The parent knew this
- The parent failed to ensure regular attendance

5.4 The Authorised Officer will then refer the case to the Authoriser, who will decide whether the parent(s) should be prosecuted.

5.5 The maximum penalty for the lower level offence is a fine of £1,000, and for the aggravated offence a fine of £2,500 and/or up to 3 months imprisonment. This means that the Court may also consider a community penalty for the aggravated offence and may order a Probation report. The simple offence can be heard in the parents’ absence, and the parents may be convicted in their absence, whereas with the aggravated offence a warrant could be issued for the parents’ arrest should they fail to attend.

5.6 It is sometimes said that the lower level offence is an “absolute offence” but this is not strictly true, although a parent cannot defend it by saying they did not know their child was failing to attend regularly. The Act provides for a number of statutory defences: these should be borne in mind during the drafting of a section 9 statement and during any PACE interview. The statutory defences are that the absence was due to sickness or any unavoidable cause, and it is for the parent to prove these. The concept of “any unavoidable cause” is very wide, but there is caselaw to say that the unavoidable cause must relate to the child not the parent, and be of something like an unexpected emergency. Caselaw also says that “unavoidable cause” does not mean the same as “reasonable excuse”.

5.7 The Authorised Officer will draw up a Magistrates’ summons for each parent who is to be prosecuted. The summons must be taken to the Court office not less than 6 months after the end of the period covered by the summons, for example a summons relating to a child’s absence between 1st September 2015 and 31st December 2015 must be in the Court office by 30th June 2016. It is not necessary for the hearing itself to take place within this six-month period.

5.8 The Summons will be signed and dated by the Court Office and returned for service on the parent. The Authorised Officer should send the summons to the parent by first class post with the following documentation:-

- The section 9 statement, and exhibits
- The signed Certificate of Attendance
- Notice to defendant: proof by written statement
- Notice of guilty plea
- A Financial Means Form
- Where appropriate, Notices of the Council’s intention to cite any previous convictions or “bad character” evidence

5.9 The summons should be served so as to give the parent not less than two weeks’ notice of the hearing. Sending by recorded delivery is not recommended as people being prosecuted often refuse to accept recorded delivery post. A Proof of Service Form listing the details of the delivery of the pack will be signed and stamped by the admin officer who has responsibility for the post. This can be produced at the Court hearing as proof of service so that the Court can hear a case in the absence of a parent who fails to attend.

6 Prosecution Outcomes

6.1 There are four possible outcomes from a court case:

- The parent attends the first hearing and pleads guilty: the case will usually be dealt with on this occasion with a penalty imposed. Occasionally the Court may require a report on the parent from the Probation Service, which may lead to an adjournment to a later date.
- The parent pleads guilty by post: the case will be dealt with at the hearing, and a penalty imposed.
- The parent does not attend court and has not sent in a plea by post: here, the Authorised Officer will ask for the case to be heard in the parent’s absence. If the Court accepts that

the summons was served properly, on the basis of the Proof of Service Form, the case will be heard and the Court invited to convict on the basis of the material put before it.

- The parent pleads not guilty either by letter or in person. In this case a trial date will be set. It may be necessary for the Authorised Officer to explore additional evidence depending on comments made by the parent at this hearing.

6.2 The Authorised Officer will write to the school to inform them of the outcome. The school will continue to monitor the pupil's school attendance over the next six months, to inform future strategy and, where necessary, any further Court action, e.g. an application for a Parenting Order under section 8 of the Crime & Disorder Act 1998 or a further prosecution under Section 444(1A).

7 Primary Disclosure and Unused Material

7.1 The Authorised Officer will have sent the parent the section 9 statement and the evidence on which the case is based, at the same time as the summons. Where a parent pleads not guilty, however, the Council may be required to serve the "Unused Material": this is all the material which is contained in the school or Children and Families Practice Worker's file which has not been disclosed with the section 9 statement. The Council is required to disclose copies of anything which either assists the defence case or which undermines the prosecution case. It is for the Council as prosecutor to decide whether a particular item does or does not support the defence, and if we consider that it does not, there is no obligation to disclose it. It is common however for the Council to send to the defence copies of the actual material so there is no room for dispute. Authorised Officers are recommended to seek advice from Legal Services when dealing with Unused Material.

8 Costs

8.1 The Council should ask the Court to order the parent to pay the costs of the prosecution: a schedule of work should be drawn up, to detail the costs involved in bringing a case to court. The costs will run from the start of the investigation which is deemed to be from the Attendance Interview stage.

8.2 The Court has full discretion whether to award costs and if so the amount, but it cannot impose costs which the parent is realistically unable to pay. The amount of costs ordered must also not be disproportionate to any penalty imposed.

Code of Conduct for the issue of Fixed Penalty Notices

1. General

1.1. This Code of Conduct is made by Milton Keynes Council in relation to its powers under the Education Act 1996, and the Education (Penalty Notices) (England) Regulations 2007. This Code of Conduct originally came into effect on 1st January 2008 and has been revised regularly. This is the most recent version updated in August 2018. This Code is also made in consideration of the Human Rights Act and Equalities Act.

- 1.2. The purpose is to ensure that the power to issue a Fixed Penalty Notice is used consistently and fairly across Milton Keynes, and that suitable arrangements are in place for the administration of the scheme. FPNs supplement the existing sanctions currently available under the Education Act 1996 and the Children's Act 1989 to enforce attendance at school. The purpose of issuing a FPN in Milton Keynes will be solely to encourage regular attendance.
- 1.3. A FPN is a penalty of £60 payable in 21 days. It rises to £120 if paid later than 21 days but before 28 days. It is issued in accordance with Section 444 (1) of the Education Act 1996 and Regulation 2 of The Education (Penalty Notices) (England) Regulations 2007.

2. Grounds for issuing a Fixed Penalty Notice (FPN)

- 2.1. An FPN can only be issued where a child has failed to attend school regularly; in this instance "regularly" is defined as 10 unauthorised sessions or five days.
- 2.2. A parent/carer could be issued with more than one FPN in an academic year if further incidences of unauthorised lateness / absence or holidays are recorded.
- 2.3. In all cases the Authorised Officer must have reason to believe that there is sufficient evidence to show that a parent has committed an offence under Section 444(1) of the Education Act 1996.

3. Restrictions on issuing of Fixed Penalty Notice

- 3.1. An FPN will not be issued to:-

- 1) A parent of a child who is:-
 - At immediate risk of significant harm, or
 - Looked after by the Local Authority
- 2) A parent who at the time of the child's absence was:-
 - Serving a term of imprisonment, or
 - An in-patient at a medical facility

- 3.2. An FPN will only be issued by post and never as a form of on-the-spot sanction.

- 3.3. No more than three (3) Fixed Penalty Notices will be issued to a single person in an academic year.

4. Who may issue a Fixed Penalty Notice

- 4.1. A Fixed Penalty Notice will only be issued by The Authorised Officer as defined. The following may request that an FPN be issued, if the circumstances of the pupil's absence meet all the requirements of this Code of Conduct.
- 4.2. A head teacher of a maintained school or Academy in Milton Keynes (or his or her authorised deputy or assistant head teacher) in respect of a child who is a registered pupil at that school, where the governing body of the school has agreed to adopt this code of conduct, or

4.3. The teacher in charge of any Pupil Referral Unit, or other off-site provision funded by Milton Keynes Local Authority

4.4. Requests from the above should be made to the Authorised Officer on the appropriate form who will consider the matter and decide if an FPN should be issued. A FPN may only be issued by the Authorised Officer in respect of a child who is a registered pupil at a school in Milton Keynes.

5. Consideration of school requests for the issue of Notices

In order to avoid duplication of FPNs, and to ensure that FPNs are not issued when other legal proceedings are being planned or commenced (under The Children Act 1989 or the Education Act 1996) an FPN will only be authorised by the Authorised Officer, or other nominated staff, on receipt of all the documentation from the school. The request will then be checked to ensure the details are correct and the issue of the Notice is consistent with this Code prior to authorisation. In addition, where appropriate the Authorised Officer will consult with neighbouring authorities. The final decision to issue a FPN is that of the Authorised Officer.

6. Warning letters

6.1. In accordance with recognised good practice, the normal response to a first offence will be a formal written warning to the parent/carer that an FPN may be issued. This is with the exception of term time holidays. A warning letter will remain in place for twelve weeks after issue.

6.2. The School will issue the warning letter and send a copy to the Authorised Officer. It is advisable that Heads pass this responsibility to Year Heads or other nominated senior staff and a proper record is kept to avoid duplication.

6.3. After the warning letter is issued the school will monitor the pupil's attendance. The pupil is expected to attain 100% attendance unless there are medical notes or the school is notified of other exceptional circumstances, which will allow the school to authorise the absence. If the pupil has been absent and the school have not authorised the absence then the Authorised Officer will consider the issue of a FPN.

7. Term time holidays

If a parent has deliberately taken their child out of school for a term time holiday, an FPN may be issued without a warning letter. The rationale for this is that the school will have highlighted the issue of FPNs in their Attendance Policy and informed parents regularly through newsletters and their website. If the parent has requested leave in term time then a letter should be sent to the parent by the school refusing the leave. Likewise if they feel a holiday was taken without pre-request the school should notify the parent of this fact.

8. Serving a Fixed Penalty Notice

An FPN will be issued to all persons known to be a parent or carer of the child in question. The

FPN is deemed to have been received on the second day after being posted by first class post. The FPN will include written details of how and where it may be paid, and a Frequently Asked Questions sheet explaining the FPN process.

9. Withdrawal of a Fixed Penalty Notice

An FPN can be withdrawn if:

- It has been found to have been issued in error
- it has been issued outside the terms of the Local Code of Conduct
- it is found that no offence was committed
- it has been issued to the wrong person

In such circumstances where payment has been made but the Notice should not have been issued a refund can be given.

10. General Information

The Authorised Officer will maintain a register of FPNs which have been issued and thereafter paid, withdrawn, refunded and prosecuted, and this will include details of each child's school, school year, gender, special educational needs/disability.

Appendix 1 – Alternative Sections

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