

Fixed Penalty Notices Information for parents

**Regular and punctual attendance
at school is a legal requirement**

This guide is produced by Darlington Borough Council to answer some of the questions you may have about Fixed Penalty Notices.

Frequently asked questions:

1. Can I dispute the Fixed Penalty Notice?

Only a head teacher can authorise absence from school. If there are other exceptional and compelling circumstances of which the school were not aware, you can make a representation to the head teacher. If the school maintain the absence was unauthorised, the Fixed Penalty Notice will stand. There is no right to appeal against a Fixed Penalty Notice but you may choose not to pay and make your representations in the magistrates court. You should be aware that should the court find you guilty of the offence of irregular school attendance, they can impose a higher punishment upon conviction. The court may also charge you with court costs.

2. I do not live with the child or I am a step parent, can I still be issued with a Fixed Penalty Notice?

Yes, section 576 Education Act 1996 defines parent as:

Parent, in relation to a child or young person, includes any person who is not a parent of his/hers but who has parental responsibility for him/her, or who has care of him/her.

3. Why do some schools authorise absence and another does not?

The head teacher is the only person who can authorise absence. Head teachers are only able to authorise absence requests for exceptional reasons and each circumstance will be individual and likely to receive a different response.

4. My child has never had unauthorised absence before?

The Fixed Penalty Notice has been issued based on the referral criteria, which meets the threshold for irregular attendance at school. School attendance is crucial to children and any absence will have an impact upon your child's education. Your child's head teacher will have based their decision on whether the absence request was exceptional rather than based on your child's attendance level.

The Legal Context:

Under Section 444 of the Education Act, an offence occurs if a parent/carer fails to secure their child's regular attendance at the school where they are a registered pupil, and the absence is not authorised by the school. Only head teachers can authorise absence and the only legal reasons for absence are;

1. That the absences are with leave (i.e., that they have been agreed by the head teacher)
2. That the absences are because of sickness or unavoidable cause. Parents may be asked to provide evidence to support absences due to ill-health, this can be through a copy of an appointment card or prescription or information from a medical practitioner
3. That the absences fall on days of religious observance for the religion to which parents belong
4. That the child is entitled to free transport to school and the LEA have failed to provide this

If absences do not fall into any of these four categories or the school have not been informed of reasons for absence, absence will be marked as unauthorised.

Section 23 of the Anti-Social Behaviour Act 2003 introduced powers for issuing Fixed Penalty Notices for unauthorised absence from school.

In Darlington, Fixed Penalty notices are issued in accordance with the Local Pen-alty Notice Code of Conduct 2017. The criteria for issuing a Fixed Penalty Notice are:

- Where there are any sessions (a session being a half day) recorded as unauthorised holiday absence; or
- Where a child who has been excluded is found to be present in a public place during the first five days of the exclusion; or
- Where a parent has been issued with a formal warning of the possibility of a Fixed Penalty Notice being issued and given a fifteen school day period in which to improve attendance and there are any sessions (a session being a half day) recorded as unauthorised absence during that fifteen day period

Failure to pay a Fixed Penalty Notice reverts back to a Section 444(1) Education Act offence and you will face prosecution in the Magistrates Court.

5. I cannot afford to pay the Fixed Penalty Notice, can I pay in instalments?

The Local Authority has issued the Fixed Penalty Notice in accordance with the timeframe as laid out in law. The Local Authority is unable to assist with instalment payments.

If you cannot afford to pay the only place where this can be resolved is in the magistrates court following non-payment.

1. Can the Local Authority withdraw the Fixed Penalty Notice?

The only grounds on which a Fixed Penalty Notice can be withdrawn are:

- It ought not to have been issued i.e., where it has been issued outside of the terms of the Local Protocol or where no offence has been committed
- It has been issued to the wrong person
- It contains material errors

Details on how to pay your Fixed Penalty Notice are listed on your Fixed Penalty Notice letter.

If your question has not been answered here, please contact the Early Help Educational Support Officers at McNay Street Children's Centre on 01325 406250.