

Frequently Asked Questions – Fixed Penalty Notices (FPNs)

The Pupil Entitlement Team issue FPNs after considering the information presented to them by the school the child attends. This information may offer us reason to believe that an offence has been committed contrary to s444 Education Act 1996; failure to secure the regular attendance at school. The law defines regular attendance at school as being as prescribed by the school. This means that any unauthorised day of absence is tantamount to irregular attendance. Previous good attendance at school by your child has no bearing on the offence. When evidence of the offence is presented to our offices, we hold the statutory responsibility to address this, and can be achieved by way of offering a FPN and/or bringing the matter before the Magistrates Court.

What is unauthorised absence from school?

Unauthorised absence occurs when the school have not given permission for the absence. In school registers the codes used are:

- 'G' Unauthorised Holiday in term time
- 'U' arriving at school after the register had closed.
- 'O' Other Unauthorised absence
- 'N' when the reason for an absence from school has not yet been identified – if no reason is offered by the parent, it will likely be marked as 'O'.

Irrespective of which code above is used to mark the absence, they all amount to the same thing in law, namely they are an unauthorised absence from school which amounts to an offence under the Education Act 1996. It is the school who decide how to record your child's absence and it is the school who decide whether to refer your absence to WSCC for consideration of the issuing of a FPN. If you have information which was unknown to the school prior to the absence, then you should raise this with the FPN team in the first instance. The FPN team will decide whether it should be referred to the school or not. Please note there is no requirement for a school to consider information offered after the fact. If having referred back to the school, the school maintains the absence was unauthorised, the FPN will stand. FPNs cannot be placed on hold whilst any such discussions are being undertaken.

Why do some schools authorise absence and another doesn't?

The only individual who can authorise absence from school is the Head Teacher. They have the final decision on how attendance is recorded. The law states that a Head Teacher may only authorise absences if they consider the circumstances of those absences to be "exceptional" which is a subjective term and can lead to different Head Teachers within the same geographical area responding differently.

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. In addition, the Government has clearly set out expectations to Head Teachers to not permit absence during term time and to use tools such as FPNs to address absences where appropriate.

Who can be issued with a Fixed Penalty Notice (FPN)?

FPNs are issued to any adult considered to be a parent as defined by the Education Act 1996, which includes:

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

Can I appeal a Fixed Penalty Notice (FPN) and or give additional reasons/mitigation for the absence?

There is no statutory right of appeal to a FPN. However, we are willing to consider representations from parents and you can email us at FPN.PEI@westsussex.gov.uk

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We cannot, however, amend how the school have recorded the absences. If you consider your circumstances to be exceptional and you had not shared all the information at the time of the request, you may wish to share new information with the FPN team for consideration. Please do so by emailing the FPN team.

The scheme does not allow for mitigation to be presented. A FPN is actually a "conditional offer" for the offence of non-school attendance. In all cases the proposal is a £160 fine. In some cases, you may be offered the opportunity to pay at the £80 rate if it is paid within 21 days for the first occasion a child is referred. There is no flexibility, and this means mitigation is not relevant. You can either take up the offer of the FPN by way of paying it or choose not to pay which would result in our legal services team serving papers on you for court action for the offence of failing to secure the regular attendance at school of your child (S.444 Education Act 1996).

Through the Court process your mitigation and other reasons for the absence can be presented, either in person or in writing. Please be aware, the court process can often result in higher punishment in terms of a fine and may also require you to pay court costs if you are found guilty.

My child has good attendance at school.

There is no attendance figure stipulated in law which defines regular attendance. The supreme court defined regular attendance as being attendance as prescribed by the school, and this means any absence without authority is tantamount to irregular attendance. Past and future attendance at school has no bearing on the matter.

I have never caused my child to have unauthorised absence previously why should I have the same penalty as somebody who has done this more than once?

The offer is as it says, a "fixed penalty" and the punishment is fixed for the offence, not for the parent and therefore does not reflect on parenting ability. If you believe that the punishment is too severe, you have the option to argue your case at Court, but you are unlikely to obtain any benefit by way of a reduced penalty.

What time limit is there on a FPN, how do I pay, and can I pay by instalments?

There are 28 days to pay the offered FPN. The time frame of the payment and the amount payable are stated in law and cannot be amended on a case by case basis. FPNs cannot be placed on 'hold' and instalment plans are not possible. The amount of how much to pay and by when is outlined in the FPN itself. Payment can be made by the following methods:

Online at: <https://www.westsussex.gov.uk/ip> - Click on the **Miscellaneous** option and select **Fixed Penalty Notice – School Attendance Fine**.

Telephone: 01243 777505 between 09:00 to 17:00 Monday to Friday

If you cannot afford the payment or can only afford to pay by instalments the only place where a payment plan can be agreed is at Court. The Court can and do consider individual financial circumstances.

What happens if I don't pay the FPN?

Should you choose not to pay the FPN then this will likely lead to the underlying non-attendance offence being referred to the Magistrates Court. The court process will offer you an opportunity to outline the reasons why you dispute the matter. The defences to the charge are limited and you may wish to consider taking legal advice before choosing not to pay the FPN. Please note that should the court find you guilty of the non-school attendance offence they can impose a higher punishment than the level of the FPN. The court may also order you to pay court costs.

Should you remain dissatisfied with the handling of the FPNs process you may follow the County Council's complaints procedure which can be found on the Internet at:

http://www.westsussex.gov.uk/your_council/get_in_touch/comments_compliments_and/make_a_comment_compliment/comment_compliment_or_complai.aspx