# Frequently Asked Questions – Fixed Penalty Notices (FPNs)

## Who decides whether an FPN will be issued?

Only the headteacher of a school can decide how to record your child's absence in the register, and whether it is authorised or unauthorised. The Local Authority have no influence over this. And it is the school who decide whether to refer the unauthorised absence to WSCC for consideration of the issuing of an FPN.

When a school makes a referral to the Local Authority, the information is reviewed to ensure it meets our Code of Conduct, and there is evidence that an offence has been committed contrary to s444 Education Act 1996; *failure to secure the regular attendance at school of a child*. The law defines regular attendance at school as attendance as prescribed by the school. This means any unauthorised day of absence is equal to irregular attendance. Previous good attendance at school by your child has no bearing on the offence. When there is evidence of an offence, we hold a statutory responsibility to address this within a legal framework, and this means a parent can be offered a FPN and/or bring 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. It is only a Head Teacher who can authorise 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' school are awaiting reason for absence.

The above codes are all unauthorised absence from school and evidences an offence under the Education Act 1996. If you have information which was unknown to the school prior to the absence, then you should raise this with the school directly in the first instance. Please note there is no requirement for a school to consider information offered after the fact. If 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 can only authorise absence if they consider the circumstances to be "exceptional" which is a subjective term. The term 'exceptional' has been defined as an event which 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, particularly 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.

## When will I get a fine for taking my child out of school for a holiday? I've had a letter from school.

A fine cannot be issued until the pupil has returned to school following absence. Once this has happened, the school will make a referral to the local authority. The local authority will then review the referral and if there is evidence of an offence, a fixed penalty notice will be issued to you. This will be sent out via first class post and will provide all the information on payment due dates and ways to pay.

## The class teacher told me that taking my son out for a holiday would be ok, why have I received a fine?

We suggest you approach the school directly to discuss the matter in this situation.
Only the headteacher of the school can decide how a pupil is coded in the register and whether absence is authorised or not. The local authority is notified that unauthorised absence has occurred when a school decides to make a referral to us for consideration of a fixed penalty notice. The local authority has no influence over how a pupil is coded in the register and cannot change coding.

## 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.

# Frequently Asked Questions – Fixed Penalty Notices (FPNs)

## I'm not the parent of this child and don't have parental responsibility?

FPNs are issued to all parents. Under Education Law a 'parent' is defined as:

- 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. Having care of a child 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 give reasons for the absence?

NO. **There is no statutory right of appeal**. The only place an FPN can be appealed is within the court.
There are set statutory defences for this offence as follows:

- The child was unfit to attend school on health grounds. The duty is on the parent to provide evidence to the satisfaction of a court their child was unfit to attend. This generally means evidence provided from a medical professional.
- The child is in receipt of transport provided by the Local Authority and this transport failed.
- The child was engaged in a religious observance, as stipulated as an observance day in the religious calendar. Celebrations, festivals etc, are not a religious observance.
- The child was prevented from attending school due to an unavoidable cause. An unavoidable cause is something akin to an emergency, for example, house burnt down, volcano erupted impacting on flights.

If you believe you have evidence of one of the above statutory defences, please email your evidence to the FPN team at FPN.PEI@westsussex.gov.uk. Anything outside of these defences if mitigation.

**NB** screenshots or images pasted into emails will not be an accepted form of evidence as they are susceptible to alteration software. Only attached or forwarded original documents or images will be accepted with their metadata intact.

If you cannot offer evidence of one of the set statutory defences, you have the choice to pay the FPN or allow the matter to go before the courts where your mitigation will be considered. 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.

## I can't afford the fine. Can I set up a payment plan?

No. The FPN is a time limited offer, and an alternative to going to court. The full payment needs to be paid in one go. 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.

## How long do I have to pay the FPN?

There are 28 days to pay the FPN. The time frame of the payment and the amount payable are stated in law and cannot be amended. 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

## 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 the WSCC website.