

Legislative Basis for Enforcement of School Attendance:

[Education Act 1996 Section 444\(1\) and 444\(1A\)](#)

If a child is of Compulsory School age and is a registered pupil at a school fails to attend regularly then the parents can be guilty of an offence under Section 444(1) of the Education Act 1996 unless one of the statutory defences is proved. A parent has a defence where the absence is: -

- a) with leave or
- b) due to sickness or other unavoidable cause or
- c) on a day of religious observance by the religious body to which the parent belongs, or the parent proves
- d) that the School at which the child is registered is not within walking distance of their home and no suitable arrangements have been made by the Local Authority for transport or for enabling the child to become a registered pupil at a nearer School. (This is over 2 miles for 7 years of age and under and over 3 miles for those 8 and above).

Section 72 of the Criminal Justice and Courts Act 2000 inserted Section 444(1A) into the 1996 Act. The new sub section provides "if in the circumstances mentioned in sub section (1) the parent knows that his child is failing to attend regularly at the school and fails without reasonable justification to cause him to do so, he is guilty of an offence.

A 2017 Supreme Court ruling in the case of *Isle of Wight v Platt* (06/04/2017) determined that for school attendance to be considered regular a pupil must **“comply with the rules prescribed by the school.”** And for parents to meet their obligation to ensure their child receives full-time statutory education they must attend when education is being offered to them by their school. As such pupils must attend school everyday they are required to by the Head Teacher, and failure to do so can render their attendance as irregular under section 444 of the 1996 Education Act.

Sections 444A and 444B of the Education Act 1996 (introduced by section 23 of the Antisocial Behaviour Act 2003) introduced penalty notices as an alternative to prosecution under section 444. Parents may discharge potential liability for conviction for an offence under section 444(1) by paying a penalty.

Persistent Absence and Early Help Case Management

All “attendance cases” at tier 3 of the Pathway to Provision where there is the need for an assessment and the family consent to support will be allocated to a designated Lead Professional within the Early Help Case Management Team.

Families where attendance at school is a presenting concern may have multiple and complex underlying support needs that require assessment and a coordinated multi-agency support plan,

If there is already a lead professional involved from Social Care or Youth Justice or then an Education Welfare Case Manager will be allocated from the Family and Parenting Team so that enforcement action can be coordinated alongside the statutory intervention or plan.

Where families refuse to consent to an assessment or decline support from services entirely, then an Education Welfare Case Manager will be allocated from the Family and Parenting Team so that enforcement action can be progressed separately in accordance with the law,

In all cases, enforcement action will be taken in line with the County Council Policy and the Nottinghamshire Code of Conduct.

In all instances all reasonable attempts should be made to contact the family to explain the law, their obligations under the 1996 Education Act, the statutory defences in law and the likely outcome should school attendance not improve.

The first legal supervision should be within 20 working days of allocation. Following legal supervision, a Notice to Attend (NTA) should be issued unless there are legal grounds for not doing so (ie. material errors or evidential concerns).

Attendance should be reviewed every 4-6 weeks with the Senior Education Welfare Practitioner following the issuing of the NTA until legal proceedings cease.

If a decision is made not to commence legal proceedings, both the decision and the rationale must be clearly recorded on Mosaic.

In circumstances where attendance remains a concern but there is a decision not to proceed with enforcement action, this must always involve the Senior Education Welfare Practitioner or Team Manager to ensure there is a sufficiently sound legal basis.

Guidance for Education Welfare Case Managers leading on Education Enforcement of cases open to a Social Worker, Youth Justice Case Manager, Children's Centre or for families who attend a county school but normally reside outside of Nottinghamshire

If there is a lead professional identified from Social Care or Youth Justice or families refuse to consent to support from services, then an Education Welfare Case Manager will be allocated from the Family and Parenting Team so that targeted education enforcement action can be coordinated.

This Education Welfare Case Manager will as a minimum visit the family twice in person to discuss the law in relation to school attendance, explain the statutory defences and to outline the consequences if their child's school attendance does not improve.

The Education Welfare Case Manager should make attempts to discuss the barriers to school attendance and feedback to the lead professional so these issues can be addressed in their plan.

The Education Welfare Case Manager or the Lead Professional should consider commissioning interventions from the Graduated Family and Parenting offer where this is appropriate.

Where the case manager is unable to see the family at home, attempts to contact by phone and post or using audio visual technology should be made, and the parent/carers should be invited to attend a meeting in school.

The Case Manager should monitor the attendance of the young person and the families' engagement with the interventions in relation to school attendance.

The Education Welfare Case Manager should attend relevant CSC, Children Centre or YOT lead meetings and contribute towards the CP/CIN/YOT/CC plan as a representative for the Family Service.

If the attendance is not improving and/or if the family are not engaging with interventions, the Case Manager should seek legal supervision with the Senior Education Welfare Practitioner.

The requirement, or not, for additional visits after the initial visit will be dictated by the progress of the family in relation to improving attendance.

Where legal proceedings are initiated there will be a need to complete subsequent visits.

Quality Standards for non-lead professional attendance cases

Quality Standard	Descriptor	Timescale	Responsibility
Allocation to an Early Help Case Manager for enforcement	Time taken to allocate a case to an Education Welfare case manager following receipt from the EHU or another referrer	Referral will be screened within 5 working days of receipt and allocated as soon as there is capacity.	Team Manager or equivalent
Initial contact with family	telephone contact and Face-to-face (either home visit or school meetings) with family/young person	Expectation is that indirect contact is made within 5 working days and direct contact is made within 10 days	Education Welfare Case Manager
Contact frequency	Case Manager Face-to-face contact with the family whilst case is open	Visits completed in line with legal proceedings, estimated at once every 6 weeks.	Education Welfare Case Manager
Attendance and Enforcement review	Frequency with which case manager reviews attendance and considers whether enforcement action is required	First Legal Supervision within 20 days of allocation and every 4-6 weeks thereafter.	EH Case Manager and Unit Leader - Enforcement

Minimum Thresholds for legal enforcement of school attendance:

To meet the threshold for legal enforcement of attendance a pupil's absence must meet the criteria for persistent absence. All absences must be unauthorised.

The attendance register must provide very recent evidence of either unauthorised absence in excess of 10% over a 6-week period or in excess of 6 unauthorised absence over the 6-week period prior to the referral.

For cases to be considered for allocation to an Education Welfare Case Manager, unauthorised absence from school should as a minimum be between 15-20% and/or between 9-12 days of absence over a 6-week period.

When deciding whether to allocate to an Education Welfare Case Manager or issue a Penalty notice, the determining factor will be which is the most proportionate intervention.

Principles and processes for managing the workload for cases referred to Case Manager Enforcement only:

There will be no formal cap on the number of cases that can be allocated to an Education Welfare Case Manager. However, it is expected that at any one time an FTE Education Welfare Case Manager will carry approximately 50 cases.

When an attendance referral is received without consent consideration will always be given to whether the levels of unauthorised absence would make it more cost effective and proportionate to issue a Penalty Notice fine rather than to allocate to an Education Welfare Case Manager. Should the fine be unpaid the original offence can be escalated to the Magistrates court.

Where the student concerned is in Year 11 consideration will be given to a referral for Risk of NEET support.

Where there are CME or Missing concerns consideration will be given to RAW workers undertaking the initial visit to the family while they are on the waiting list.

In order to help manage the flow of work and demand for intervention when a referral is received:

1. Priority for allocation to an Education Welfare Case Manager will be given to cases on the waiting list with the most significant levels of persistent absence,
2. Where appropriate cases for cases being added to the waiting list an Education Penalty Notice Warning Letter will be issued with a fifteen-day review period.
3. If at the end of the review period attendance has not improved a Penalty Notice will be issued, (taking the period of evidence from the original referral).
4. Attendance should be reviewed within 15 days of the PN being issued, but by no later than the end of the PN period (21 or 28 days) and
5. If attendance has not improved sufficiently, then an Education Welfare Case Manager should be allocated.
6. Where penalty notices or legal action has already occurred within the previous 12 months and there is concern about the efficacy of issuing a new EPN, consideration will be given to Fast Track the case to prosecution by the Senior Education Welfare Practitioner.

Cases Open to Early Help Case Management:

- a) In cases where there is withdrawn consent and ongoing attendance issues with a Notice to Attend having been issued the case will only transfer over from EHCM to Interventions by agreement between the two Team Managers and following legal supervision. Decisions to transfer cases and close to EHCM will take into account capacity within both teams, whether evidential thresholds have been met and whether a PN could be used as an alternative to continued allocation to a case manager.
- b) In cases where there is ongoing poor attendance or withdrawn consent and a formal warning letter has been issued the Early Help Case Manager will remain allocated to the family until the Court Action Letter has been issued at which point the Senior Education Welfare Practitioner will manage the case

through to prosecution. This will be agreed through legal supervision and will be conditional of sufficient evidence already being in place. Any remedial action will be agreed in legal supervision and must be actioned before transfer.

Movement between these stages will be agreed either in legal supervision with through Management Agreement in order to ensure there is sufficient action and evidence to proceed to the next stage.

Decisions and actions at all stages will be recorded on Mosaic.

Penalty Notices

In Nottinghamshire both the Local Authority and Schools can issue penalty notices.

The Local Authority will always be responsible for the collection of the penalty and where a Penalty Notice is unpaid (and the code of conduct has been followed in the issuing of the penalty) will take legal action under section 444(1) of the Education Act 1996 for the original offence.

Requests for Penalty Notices to be issued by the Local Authority and requests should be made directly to the Education Enforcement Officer.

It is good practice for schools to request the EPN within 3 weeks of the child's return to school following the offence to ensure currency and to allow enough time should the fine go unpaid and the original offence needs to be prosecuted in court.

It will be necessary for the Education Enforcement Officer to receive details of the pupil's absence and the evidence that will be available to present to the magistrates' court should the penalty be unpaid. Reference should be made to the Local Code of Conduct.

Where notices are issued by the School / Academy they must provide a copy of the notice to the Education Enforcement Officer / Senior Education Welfare Practitioner within one week. The Education Enforcement Officer will monitor payment of the penalty and where payment is not received the LA will prosecute for the offence to which the notice applies or withdraw the notice (which can only be done in limited circumstances).

The Local Authority will only prosecute those cases where the Code of Conduct has been followed fully in the issuing of the Penalty Notice And reserves the right to decide whether a case is prosecuted in Court for non-payment of a fine

Penalty Notice will be issued within 10 working days of receipt of valid request.

Related Document:

Nottinghamshire Local Code of Conduct for Penalty Notices Issued in Respect of Truancy and Excluded Pupils (revised Nov 2017)
[Nottinghamshire Code of Conduct](#)