

## School Attendance Enforcement Practice Guidance

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### 1. General Principles

- 1.1 Enforcement of School attendance must be delivered in a manner that maintains public and sentencer confidence in the County Council as the prosecuting agency. As such, decisions to prosecute must be defensible, proportionate and in the public interest.
- 1.2 Consistency and parity in school attendance enforcement action is essential so that young people and their parents are clear about what they are expected to do and how decisions are made.
- 1.3 Enforcement action should be carried out in a rigorous, but not over zealous manner as this has both ethical and resource implications.
- 1.4 Enforcement action has a duty to be fair, independent and objective, not being affected by improper or undue pressure from any source.
- 1.5 Nottinghamshire County Council as the prosecuting agent acting on behalf of schools has an obligation to act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 1.6 Communication with young people and parents should follow best practice and standard formats with clear language should be used.
- 1.7 Enforcement for school attendance should be used as a tool to aid changes in behaviour and improvement in attendance and not as a means to punish parents or children and should be applied justly and with fairness

## **2. Link with other guidance / statutory documents**

- 2.1 Nottinghamshire County Council staff involved in prosecutions for irregular school attendance should act in line with the Code for Crown Prosecutors [CPS Code of Crown Prosecutors](#)
- 2.2 This policy and practice guidance must be considered alongside the [Nottinghamshire Code of Conduct](#) for irregular school attendance.
- 2.3 This policy recognises that individual Schools, Academies and Trusts will also have relevant Behaviour and Attendance policies which provide to their particular context.
- 2.4 The policy and practice guidance will be considered against any relevant statutory guidance to schools and local authorities, including:

[Statutory Guidance: School Behaviour and Attendance - Parental Responsibility Measures](#)

[School Attendance: Guidance for Schools](#)

### **3. Decision Making**

- 3.1 Decisions on enforcement for irregular school attendance are generally the task of the Senior Education Welfare Practitioner through legal supervision with the designated lead professional or in the case of Education Penalty Notices, the locality Education Enforcement Officer. They are responsible for issuing legal notices, warnings and court or SJP documents. All decisions will be recorded on case records on Mosaic or in Capita.
- 3.2 Non-school attendance enforcement will be considered through supervision with Senior Case Managers and a decision made as to the most effective method of dealing with each individual case. Under the Scheme of Delegation to officers the Early Help Group Manager has delegated authority (appendix 1) to make decisions on and commence enforcement proceedings. This in turn has been delegated to Senior Education Welfare Practitioners.
- 3.3 Factors that will be considered when decisions about enforcement actions are being made may include: - age of child, number of children in the family, effect on sibling's school attendance, level of absence, history of school attendance, previous convictions and whether alternative support has been offered and refused or whether such support should be offered.
- 3.5 The primary decision in Education Law is whether to issue a Penalty Notice or to take the case before the Magistrates' Court under Section 444(1) of the Education Act 1996.

### **4. Legal Basis for Enforcement of School Attendance:**

#### 4.1 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).

4.2 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.

4.3 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 on every day that 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.

### **5. Considering whether to take legal action**

5.1 Ensuring Children's right to their education can be addressed through a range of different interventions. Prosecution options as detailed in this policy may be used as a last resort to these interventions or as the only appropriate response where necessary, however in all cases they must be applied fairly and in the public interest.

5.2 There must be sufficient admissible evidence for there to be a realistic prospect of conviction before a prosecution can be undertaken. You must also consider whether there may be evidential difficulties at all stages of the process, and whether additional evidence may be required.

### **6. Public interest**

- 6.1 The Local Authority and schools should consider prosecution (or recommending prosecution) where it is appropriate to draw attention to the need for compliance with the law and to deter others.

## **7. General Conduct**

- 7.1 School and LA staff involved in prosecutions for irregular school attendance should act in line with the Code for Crown Prosecutors.  
[CPS: Code of Crown Prosecutors](#)
- 7.2 Key points to be aware of are:
- A duty to ***be fair, independent and objective***, not letting any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation influence decisions and not being affected by improper or undue pressure from any source.
  - Obligation to ***act in the interests of justice*** and not solely for the purpose of obtaining a conviction.
  - A duty to review, advise on and prosecute cases, ***ensuring that the law is properly applied, that all relevant evidence is put before the court*** and that obligations of disclosure are complied with.
  - A duty to act in accordance with the ***Human Rights Act 1998***.

## **8. Appropriate Action**

- 8.1 There are no hard and fast rules when deciding the most appropriate type of prosecution to take. The LA must make a professional decision as to what they consider to be the most effective and proportionate way of dealing with each individual case and be able to justify that decision.
- 8.2 It is vital that the child's interest and welfare are at the centre of any such decision. Therefore, when making decisions about enforcement action, the Nottinghamshire County Council will take into consideration the following factors:
- Age of child
  - Number of children in the family
  - The possible effect on other siblings
  - The extent of the non attendance
  - Family history regarding school attendance
  - Previous convictions
  - Whether parenting support would be more appropriate to prosecution

## **9. Parental responsibility**

- 9.1 Under Section 7 of the Education Act 1996, the parent is responsible for making sure that their child of statutory school age receives efficient full-time education that is suitable to the child's age, ability and aptitude. All those recognised as a parent under section 576 of the Education Act 1996 are parents for the purpose of this policy.
- 9.2 As set out in section 576 of the Education Act 1996, the definition of a parent includes:
- All natural parents, whether they are married or not;
  - Any person who has parental responsibility for a child or young person; and,
  - Any person who has care of a child or young person i.e. lives with and looks after the child.

The local authority and school will need to decide who comes within the definition of parent in respect of a particular pupil when using the legal measures, but generally parents include all those with day to day responsibility for a child.

## **10. Range of legal interventions**

### ***School Attendance Orders***

- 10.1 School Attendance Orders (SAO) may be used to direct the parent to send their child to a specified school. An SAO should be used when a pupil is not on roll at any school.
- 10.2 Under Section 437 (1) of the 1996 Education Act if it appears to the Local Authority that a child of compulsory school age in their area is not receiving suitable education either by regular attendance at school or otherwise they must serve a Notice in writing on the parent, requiring the parent to satisfy the Council that the child is receiving appropriate education.
- 10.3 Parents must be given at least 15 days notice to satisfy the Local Authority that a child is receiving suitable education. If the parent does not do this then a School Attendance Order will be served on the parent. The Order requires the parent to cause the child to become a registered pupil at the School named in the Order.
- 10.4 Once parents have been served with a Notice then they have 15 days to choose any one of the schools which the Authority have named as an alternative. In addition, the parents can obtain a place for a child at a suitable school. When that occurs then the school in question is to be named in the Order.

- 10.5 A School Attendance Order continues in force until the child ceases to be of compulsory school age unless it is revoked by the Local Authority or a Court directs it is to cease to be in force.
- 10.6 A parent can ask a Local Authority to revoke an Order on the ground that arrangements have been made for the child to receive suitable education otherwise than at school (Section 442 (1), (2) and (5) (a)). The Authority are under a duty to revoke the Order unless they are of the opinion that no satisfactory arrangements have been made. If the parent is aggrieved by the Authority's refusal to revoke the order, they can refer the matter to the Secretary of State (Section 442 of the 1996 Act).
- 10.7 It is an offence for a parent to fail to comply with the requirements of a School Attendance Order unless he/she proves the child is receiving suitable education otherwise than at school (Section 443 (1) of the 1996 Act). If a parent is prosecuted but is acquitted the Court may direct the School Attendance Order is to cease to have effect. (Section 443 (2) 1996 Act). However, such a direction does not stop the Local Authority from recommencing the procedure under Section 437 (of the 1996 Act) if circumstances change.

### ***Penalty Notices***

(Please also refer to the [Nottinghamshire Code of Conduct](#))

- 10.8 Nottinghamshire County Council has a code of conduct to enable penalty notices to be issued by authorised persons for truancy or where a pupil is found to be in a public place during the first five days of exclusion.
- 10.9 The purpose of the local code of conduct is to ensure that the power to issue penalty notices is applied consistently and fairly across the local authority area and that suitable arrangements are in place for the administration of the scheme.
- 10.10 A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance or whereabouts but is not willing to take responsibility for doing so.
- 10.11 The law states that authorised LA staff, Head Teachers and school staff authorised by them (deputy/assistant heads), the Police, Community Support Officers and accredited persons may issue Penalty Notices, although there is no requirement for them to do so.
- 10.12 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.

- 10.13 The penalty is set at £120 and should be paid within 28 days of the date on which the notice starts. If the penalty is paid within 21 days of the date on which the notice starts the sum is reduced to £60. Payment is made to the Local Authority.
- 10.14 Where the issue of a penalty notice is requested it will be necessary for the LA to receive details of the pupil's absence and the evidence to be presented to the magistrates' court should the penalty be unpaid. **The standard of evidence required is the same as that required for court cases brought under section 444(1) of the Education Act 1996.** The LA request where schools issue their own penalty notices detail is given to the LA so that payment may be monitored.
- 10.15 Where a penalty is unpaid, the Local Authority will take legal action under Section 444(1) of the Education Act 1996 for the original offence. In this case it is necessary for the person who requested the issue of a penalty notice to provide evidence for the court case by way of a Section 9 Statement (a witness statement admissible in court under the Criminal Justice Act 2003 and the Magistrates' Courts Act (1980) and Magistrates' Courts (Amendment) Rules 2004).

### ***Prosecution in the Magistrates court***

- 10.16 Prosecution should be a planned intervention in those cases where it is identified to be appropriate (i.e. where the parent fails to cooperate in ensuring their child's regular school attendance).
- 10.17 An LEA must consider applying for an Education Supervision Order (ESO) before prosecuting parents. An LEA may apply for an ESO instead of or as well as prosecuting the parents. An ESO makes the LEA responsible for advising, supporting and giving 'directions' to the supervised child and his/her parents in such a way as to ensure that the child is properly educated.

## **11. Parenting contracts and orders**

- 11.1 **Parenting Contracts** are written agreements between the parent and Local Authority or schools' governing body stating the support offered and the parent's intention to comply. The parent cannot be compelled to enter into a parenting contract and there is no obligation on the local authority or governing body to offer one. Nottinghamshire County Council may consider using Parenting contracts to resolve school attendance issues.
- 11.2 A Parenting Order is an order which requires the parent or guardian to comply with any requirements specified within the order for a period of up to 12 months and to attend counselling or guidance sessions where they will receive help in dealing with their children as directed by the responsible officer appointed by the court for a period of up to 3 months. This element will normally form the core element of any parenting order and must, with one exception, be imposed in all cases when an order is made.
- 11.3 A court may make a **Parenting Order** following a conviction for an offence under section 443 or 444 of the Education Act 1996. The Court must be satisfied that the order would be desirable in the interests of preventing the commission of any further offence under those sections. The parenting order is an ancillary order and cannot be a sentence in its own right – therefore, if given, will be in addition to any other penalty imposed. The main purpose of the requirements set out in the order is to ensure that the parents take responsibility for supporting their child to ensure school attendance.
- 11.4 In all cases where a parenting order and contract in being proposed by the lead professional where school attendance is a concern, they should liaise with the Family and Parenting Teams to request an assessment of the suitability of a parenting contract or order prior to the case being heard at court.
- 11.5 The one exception is the situation when the parent or guardian has previously received a parenting order (Section 8(5) of the Crime and Disorder Act 1998). In such cases the Court may choose to impose a further period of counselling or guidance sessions but is not bound to do so.
- 11.6 The requirements of the order will be supervised by a nominated responsible officer. Usually from the Family Service Family and Parenting Team.
- 11.7 The responsible officer will have responsibility for, amongst other things, arranging the provision of counselling or guidance sessions and ensuring that the parent complies with any other requirements which the court may impose.

## **12. Breaches of Parenting Orders**

- 12.1 If the parents/carers fail to comply with a requirement, including missing appointments or parenting groups, the Parent and Family Worker / Parenting Coordinator must:
- Contact them within 24 hours by visit, letter or telephone to determine the reason for non-compliance
  - Issue a formal warning letter if the reason given is unacceptable
- 12.2 If there is more than one unacceptable failure in a period of three months, the lead practitioner for the Parenting order should hold a meeting with the parents/carers and any other agency involved to review the Order. This meeting should examine whether the Order is workable, whether compliance can be achieved or whether a breach should be reported.
- 12.3 Where a parenting order lead believes, following the meeting, that breach action is appropriate a referral will be made to the Police. This should be recorded on Capita / Mosaic. Before referring a Breach of a Parenting Order to the Police the Local Authority will:
- Ensure the conditions set in the original parenting order are clearly defined so that the prosecution are in no doubt when and how a breach has occurred.
  - The original order from court needs to be kept safe and be the main documentary exhibit in all matters going forward.
  - Before any submission of a file to the police, the submitting authority needs to ensure that all statements, evidence and exhibits are present.
- 12.4 The Local Authority will send the police a statement detailing:
- Chronology of events
  - Parenting Order (a copy of)
  - Any directions set by the Responsible Officer (NCC in this case)
  - Details of any Parenting Order proceedings e.g. if they've taken the parent to court already.
  - Detail exactly how the parent has failed to comply and how this has breached the order.
  - Any warnings/correspondence letters that have been issued.
  - Parenting Plan (copy)
  - Detail any repeat of the child's behaviour that led to the parenting order being put in place.

The above information should be sent in a PDF file to the relevant Neighbourhood Policing Team inbox for review and allocation by the NPT Sergeant. <https://www.nottinghamshire.police.uk/neighbourhoods>

If there appears to be evidence of a breach the Police Officer will:

- Take a statement from parenting worker.
- Conduct a PACE interview with the parent if they are compliant. This will normally be a contemporaneous interview and no arrest will be necessary.
- Submit a file to the CPS or deliver an adult caution if the offender is eligible and admits the breach.

12.5 The Crown Prosecution Service will be responsible for prosecution and trial management.

### **13. Recouping the costs of prosecuting cases in court:**

13.1 At the point of sentencing, Her Majesty's Courts and Tribunals Service (HMCTS) will determine the level of any fine in line with sentencing guidelines and taking into account any aggravated factors in the case and the circumstances of the defendant. Any fine is retained by them.

13.2 There is a cost to the local authority of preparing and prosecuting cases under s4441 of the Education Act in Court. The Local authority will seek to mitigate the cost to the public purse of prosecuting cases in court under s4441 of the Education Act. To this end we will submit a claim for costs to the court for their consideration at the point they are determining any sentence and/or fine.

13.3 The LA will only seek costs that are proportionate, fair and defensible. To that end, the costs submitted will be based on the average cost to the LA of prosecuting cases rather than an actual cost for each individual case.

13.4 In general costs will be calculated as an average per prosecution and will include the average time taken to:

- Administrate EPN fines or associated correspondence,
- Interview witnesses / gather evidence through contact with families,
- Quality assure or review evidence,
- Provide Legal supervision,
- Prepare and lay bundles at Court or through Single Justice Procedures,
- Issue formal documents to defendants (i.e. Notices to Attend, Intention to Prosecute, Certificate of Non-Payment)
- Instruct legal counsel where cases are being contested

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