



## Educational Inclusion and Partnership Team

### Attendance And Enforcement Policy

#### Rationale

Regular and punctual attendance of pupils at schools is, under section 7 of the Education Act 1996, a legal requirement, parents being responsible for ensuring that any child of compulsory school age receives efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. Compulsory school age is defined as: Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16. It is also essential for pupils to attend school regularly in order to maximise the opportunities available to them. The Educational Inclusion and Partnership Team (EIPT) investigate cases of irregular attendance and instigate statutory intervention where appropriate.

This enforcement policy aims to promote good practise and the principals for good enforcement, summarising how to conduct enforcement with openness, setting standards and consistency

- To uphold the law fairly.
- To prevent and detect offending
- To act with integrity, common sense and sound judgement

In doing so the EIPT will ensure that:

- When an allegation is reported or an offence suspected of being committed a thorough investigation will follow.
- The exercise of legal powers should not be oppressive to the issue under investigation
- As far as operationally practical and with due regard to an individual's right to confidentiality, investigations should be as transparent as possible in keeping those involved up to date
- We will take reasonable steps to understand the individuals needs, e.g. culture, religion, belief, sexuality, lifestyle, disability etc. (Race Relations and Equality Acts) Have regard for vulnerable adults and children. Respect the professional ethics of others

#### **R Purdy V DPP 2009 –**

Any consideration for a prosecution should meet both the evidential test and also the public interest test. All cases should have due regard to the Crown Prosecution Service code of conduct.

#### **Guidance And Legislation**

The EIPT is authorised to operate this code and must have regard to the following legislation and guidance: -

The Race Relations (Amendment) Act 2000  
The Race Relations (Statutory Duties) Order 2001  
Disability Discrimination Act 1995  
Data Protection Act 1998  
Children Act 1989  
Crime and Disorder Act 1998  
Human Rights Act 1998  
Special Needs Code of Practice 2003  
Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003  
Education Act 1996

The EIPT team supports the LA in carrying out their statutory duties with regards to promoting regular attendance at school.

Irregular attendance raises complex issues. Pupils may be failing to attend school for a variety of reasons. Some reasons may be outside the immediate control of the school, but good practice and appropriate responses within the school to identify the needs can help to improve attendance. It is therefore important that there are clearly defined criteria and procedures for referring non-attenders to the EIPT. The importance of early identification, assessment and intervention cannot be over emphasised.

### **The La's Policy For Prosecution**

The parent/s of any pupil of compulsory schools age who fails to achieve regular attendance will be considered for legal processing unless there are extenuating circumstances.

### **Education Act 1996 Section 444 - Failure to Ensure Regular Attendance**

- **Section 444(1)** Where a parent/carer is failing in their duty to ensure regular attendance at school and school have made attempts to engage and support. Where, following this intervention the unauthorised absence continues and no statutory defences apply, the EIPT will consider instigating legal proceedings.
- **Section 444(1A)** Where a parent/carer is failing in their duty to ensure regular attendance at school and school have made attempts to engage and support. Where, following this intervention the unauthorised absence continues and no statutory defences apply, the EIPT will consider instigating legal proceedings. Where it can also be proved the parent/carer knew about the poor attendance and failed, without reasonable justification to ensure regular attendance then legal enforcement will be taken under this section.

In the case of both s444 and s.444 (1a) an unpaid Penalty Notice (issued in accordance with the LA Penalty Notice Code of Conduct (revised September 2016)) may form part of the evidence.

## **Education (Penalty Notice) (England) (Amendment) Regulations 2013**

- **Penalty Notices (PN) for Non-School Attendance** These will be issued as an alternative to Magistrates' Court proceedings wherever it is appropriate and in accordance with the Local Authority Code of Conduct. To issue a PN, there should be 5 days (10 sessions) or more unauthorised absences in a 6 week period however we would expect schools to follow their attendance procedures in identifying the issues and putting support in place.

- **Penalty Notices for term time absence**

These will be issued as an alternative to Magistrates Court Proceedings whenever it is appropriate and in accordance with the Local Authority Code of Conduct. To issue a PN, there should be 5 days (10 sessions) or more of consecutive unauthorised absence.

### **Determining Whether To Issue A Penalty Notice Or To Take Court Proceedings:**

- If a Parenting Order is appropriate – COURT PROCEEDINGS
- If the parent/carer has been to court within the last 1 year – the PN Code of Conduct indicates that we should usually RETURN TO COURT – normally on the aggravated offence if the additional evidential tests can be satisfied.
- If the parent/carer has had a PN within the last 12 months for the child in question – COURT PROCEEDINGS (unless the PN related to a holiday in which case a further PN can be issued).
- If by issuing a PN vital evidence will be lost if the PN is unpaid – COURT PROCEEDINGS
- If the EIPT is already moving towards a prosecution relating to ongoing unauthorised absence and the pupil has unauthorised leave of absence, no PN should be issued for this and the unauthorised absence should be included in the prosecution period.
- Where a child has had 2 periods of unauthorised leave for which the parent has been issued with a PN, on the third occasion, no PN will be issued and that parent will be prosecuted under S444(1) as long as parent was warned that this would happen
- Where a parent has previously been prosecuted for a period of unauthorised leave, unless there is a reason not to, the usual action for a further occasion of unauthorised leave would be to proceed to Court and not to issue a further PN.

NB In the case of ongoing unauthorised absence, unless it is not in the public interest to proceed, Penalty Notice or legal enforcement action may be taken when the level of unauthorised absence exceeds 10% or more. Penalty Notice payment levels are fixed in law. However, where there is sufficient reason to allow payment beyond the 28 days, this will be agreed. The decision on whether there is sufficient

reason rests with the EIPT Prosecution Officer who may agree late payment in order to ensure consistency and fairness.

***Penalty Notices issued in relation to unauthorised leave of absence are referred to in the EIPT Penalty Notice Code of Conduct. Prosecution will follow if Penalty Notices are unpaid.***

**NB Where a case requires further investigation prior to making a decision whether to proceed to Court, the parent/s will be requested to attend a Formal Caution Interview under the Police and Criminal Evidence Act 1984.**

Within NCC the duty of instigating court procedures is delegated to the EIP Team. A summons will be issued and served and a representative from the EIP Team will attend court and present the case on behalf of the LA. In certain circumstances e.g. trials legal services will be instructed.

A certificate signed by the head teacher confirming the child's school attendance during the period of prosecution referred to in the summons will be required as documentary evidence by the court.

**Only unauthorised absence can be used in evidence.**

If parents are acting responsibly, but cannot ensure regular attendance of their child/children because of the attitude of the child/children then consideration should be given to applying for an Education Supervision Order.

### **Education Supervision Order**

An ESO is an Order made by the Family Proceedings Court under Section 36 of the Children's Act 1989. The initial order is for 1 year but application can be made to extend the order yearly for up to 3 years. The court must be satisfied that a child of compulsory school age is not being properly educated and that the making of the order would be better for the child than making no order at all. In addition the court shall have regard in particular to:

- The ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding)
- The child's physical, emotional and educational needs.
- The likely effect on the child of any change in circumstance.
- The child's age, sex, background and any characteristics that the court considers relevant.
- The capability of each parent in meeting the child's needs together with any other person whom the court considers appropriate.
- Any harm the child has suffered, or is at risk of suffering.
- The range of powers available to the court under this Act in the proceedings in question.

Under the terms of the Order, the Supervising Officer must "advise, assist and befriend" the child and the family, whilst the child and family must abide by the "directions" that

the court lays down and any other reasonable direction of the Supervising Officer. Failure by the parent to follow these directions would mean returning to court when a fine of up to £2,500 could be imposed. In addition the parent may be imprisoned for up to 3 months. Failure by the child to follow these directions could lead to the statutory involvement of social care.

There may be some situation in which an ESO is unlikely to be effective. Where, for example, parents would be hostile to such intervention. It may not be possible to undertake the structured programme of work that is necessary. At all times, the Supervising Officer will need to operate within a structure that defines clear aims and objectives. This will require a planned and realistic programme of intervention, including directions where necessary, which will specify how the aims and objectives are to be achieved. The active involvement of parents, children and schools will aid the success.

Education Supervision Orders, as the name implies, require a great deal of time spent with the pupil supervising them and encouraging them to change patterns of behaviour. They have a limited effectiveness, as many of the strategies that could be applied may have already been tried. Where parents are cooperative this relationship can effectively be developed through Early Help support teams rather than applying for an Order.

### **Other Legal Sanctions.**

#### **Exclusion Penalty Notices**

For a child of compulsory school age who is a registered pupil at a school and is excluded from that school either for a fixed period or permanently, his/her parent/carer is guilty of an offence under **Section 103 of the Education and Inspections Act 2006** if that child is present in a public place during schools hours without reasonable justification during the first 5 days of each and every fixed period or permanent exclusion.

#### **Parenting Orders**

The 1998 Crime and Disorder Act allows courts to make a Parenting Order for cases on non school attendance brought under sections 443 and 444 of the Education Act 1996. The aim of the order is to increase parenting support and to encourage parent/s to develop better parenting skills.

A Parenting Order can consist of two elements:

- A requirement of the parents or guardian to attend counselling or guidance sessions, these can last up to three months and
- A requirement encouraging the parent or guardian to exercise a measure of control over the child (e.g. that the parent ensure that the child attends school regularly) These orders can last up to 12 months.

## **EDUCATION ACT 1996 SECTION 443 - Failure To Comply With School Attendance Order**

Where a parent/carer is failing in their duty to ensure their child is receiving an education in accordance with section 7 Education Act 1996, i.e. in that the child is not on roll at a school, nor is the parent/carer making their own arrangements for that child's education, the EIPT, having followed the requirements under Section 437- 442 of the Act issues a School Attendance Order. Where the parent/carer fails to comply with the Order, a Section 443 prosecution will be taken in the Magistrates' Court.