



A Guide to Non School Attendance, Statutory Responsibility and Referral to Education Welfare Service



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EDUCATION WELFARE

A Guide to Non School Attendance, Statutory Responsibility and Referral to Education Welfare

Education Welfare (EW) work to ensure that the Local Authority's (LA) statutory duties and other responsibilities for safeguarding children in relation to school attendance, elective home education, children missing education, permanently excluded pupils, child employment and performance licencing are carried out to the highest possible standard.

Education Welfare promote and enforce regular attendance at school and alternative provision for all children, including looked after children, vulnerable learners and those students with a statement/education health care plan, in order for them to take full advantage of the educational opportunities available to them.

Work is undertaken on behalf of children in partnership with their parents, schools, alternative providers and other professionals to enable each pupil the maximum opportunity to benefit from their educational entitlement.

Education Welfare will address inequality of opportunity where it is identified and will challenge discriminatory and unprofessional practices or statements whenever they occur.

School Attendance and the Law

Section 7 of the 1996 Education Act states that parents/carers must ensure that children of compulsory school age receive efficient full-time education suitable to their age, ability and aptitude and to any special educational needs they may have, either by regular attendance at school, or otherwise. If a child is registered at a school, parents/carers have primary responsibility for ensuring that their child attends regularly.

Education Welfare aim to improve attendance at school as quickly as possible by advising schools and empowering parents to undertake their legal responsibility to ensure their children access education by regular school attendance, without the need to undertake legal intervention. However, if such action is necessary in order to protect children's education and secure a successful outcome, statutory intervention will be used. Our processes are therefore designed to use legal sanctions seamlessly within our case management system.

Children Missing Education (CME)

There are many circumstances where a child may become missing from education.

Children may be missing from education because they are suffering from abuse or neglect. Where this is suspected schools should follow local child protection procedures. EWO's should check that a referral has been made. Checks are carried out in line with NCC Children Missing Education procedures.

Children of Gypsy, Roma and Traveller (GRT) Families

Research has shown that many children from these families can become disengaged from education, particularly during the secondary school phase. It is therefore vital that schools inform the LA when a GRT pupil leaves the school without identifying a new destination school, particularly in the transition from primary to secondary so that the LA can attempt to facilitate continuity of the child's education.

Although many are settled, some GRT families move regularly and their children can be at increased risk of missing education.

Families of Armed Forces

Families of members of the Armed Forces are likely to move frequently – both in UK and overseas and often at short notice.

Missing Children / Runaways

Children who go missing or run away from home or care may be in serious danger and are vulnerable to crime, sexual exploitation or abduction as well as missing education.

Children who have offended or are at risk of doing so are also at risk of disengaging from education.

Elective Home Education

A parent may choose to home educate their child. EW must investigate these cases (within the law) and ensure the child is receiving suitable education.

CME Regulations

The government responded to Consultation on improving information in identifying children missing education. These amendments are intended to achieve this through strengthening the regulations so that LA's work with schools to obtain the information they need.

Attendance

School Responsibilities

The register is a legal document. We need to use it as evidence in court. Data inaccuracies hinder the ability of the LA to progress attendance cases to prosecution. You must have clear procedures for completing the register. Teachers must complete it accurately. The attendance register must indicate if an absence of a pupil is authorised or unauthorised. Absence can only be authorised by a Head Teacher or a delegated member of staff, who is acting on the Head Teacher's authority.

To monitor attendance effectively, you should:

- use the same registration procedures throughout your school;
- use different codes for authorised and unauthorised absence;
- keep track of pupils during the day;
- identify vulnerable learners;
- have a system, possibly spot checks, to tackle truancy after registration;
- provide guidelines for form tutors on keeping registers and improving attendance;
- provide clear, full and accurate information to the EWO.

The school should always follow up any absences to:

- ascertain the reason;
- ensure the proper safeguarding action is taken if necessary;
- identify whether the absence is authorised or not; and
- identify the correct code to use before entering it on to the school's electronic register or management information system which is used to download data to the School Census.

A high level of intervention and effort is provided by schools to families where there are attendance concerns, but this good work is often not recorded. It is important that all early intervention is well documented. This will enable EWO's to reiterate to parents the previous work undertaken by school to address the attendance concerns.

Where a parent is not engaging, contact must have been attempted in different ways and at various times of the day.

These should include:

- Telephone contact; date and time of contact should always be recorded along with any discussion and initialled.
- Letters to the parent/carer individually advising on the level of non-attendance. All correspondence should be signed and dated and should state the parents' full name and title and the child's. True copies of all documents should be stored in the student's file as evidence of work undertaken.
- Meetings with pupil and parent/carer at home or in school to gather information to address the issues i.e. The parents/child's personal perception of any difficulties, e.g. curriculum, bullying or relationship problems with a member of staff. Other factors contributing to non-attendance.

Always:

- Record discussion and agreed action points with the parent/carer and keep on the child's file.
- Review the actions and outcomes and respond to any issues that remain outstanding.

Where appropriate:

- Draw up an Attendance Contract or Action Plan between school/parents/carers/pupil. The contract /plan should set out the expectations placed on the school, family and pupil. It should include realistic expectations with regards to improvement and the family/pupil's individual circumstances should be addressed within the contract.
- Monitor and review the contract.
- Where there are underlying concerns, the school should seek the parent's consent to invoke an Early Help Assessment (EHA).

The Education Welfare Officer will support and advise school on attendance matters, including the development of whole school attendance policy and strategies.

Referrals into Education Welfare

A referral to Education Welfare can be made if a student's attendance falls to 92%, and; there is a minimum of six unauthorised absences, you have tried to address the concern, *and*, you have previously advised the parent in writing that the referral is being made.

School should refer to EW if pre-referral work with the family has been undertaken and recorded and attendance meets EW referral criteria (see above) a referral form must be completed together with all supporting evidence.

Please Note: Schools are required to make referral to EW if a pupil has had 20 or more continuous *unauthorised* absence sessions.

Education welfare will respond to safeguarding referrals where appropriate.

Before referring the case to EW, the school need to ensure that where there is no improvement in the pupil's attendance and there are unauthorised absences they:

- Formally write to parents/carers to advise them of their intention to refer the case to Education Welfare
- All actions and decisions are appropriately and clearly evidenced.
- Additional information is considered.
- Any initial biases or misjudgements are challenged to ensure parent's concerns are dealt with appropriately.

To prevent delay, it is important that the referral form is completed in full and appropriate evidence provided. You will need to ensure the information is accurate including full names, address and dob of parents /carers .The GDPR provisions do not apply to personal data where disclosure of the data is necessary for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings) or statutory duties, nor does it prevent, or limit, the sharing of information for the purposes of keeping children and young people safe.

The EWO will consider the appropriate level of contact with the parent.

The parent will be written to and the EWO will undertake an investigation (case work). A home visit may be undertaken after risk assessment checks have been made.

Legal Intervention/Action

Referrals that are progressed for consideration for legal action (Local Authority's Statutory Duty)

If a parent/carer fails to meet their legal responsibility in ensuring their child receives a suitable education either by regular attendance at school, alternative provision or otherwise, legal action may be considered. These include Penalty Notices, Education Supervision Orders, Attendance Orders and or Prosecution.

With certain exceptions a minimum absence of ten sessions (five school days) *which are unauthorised* must be recorded against the pupils name within a 6-12 week school period. This guidance is in accordance with the Local Code of Conduct for Penalty Notice (see attached document).

Unauthorised absence is where the school has either not received a reason for absence, or the reason given is unacceptable. It is the Head teacher who determines whether or not the absence is authorised.

Exceptions to the above may include **leave of absence in term-time**, for which no permission has been sought from the school, or permission sought but refused, or child has not returned by the agreed date and no acceptable reason for delay has been received. (NB The Education (Pupil Registration) (England) (Amendment) Regulations 2013 (Statutory Instrument No 756) amends regulation 7 of The Education (Pupil Registration) (England) Regulations 2006 to the effect that Head teachers are prohibited from granting leave of absence **except** where an application has been made in advance and they consider there are exceptional circumstances relating to the application.) Only if a Head teacher feels obliged to categorise as unauthorised any holiday absence should a penalty notice be requested.

The judgement given on 6th April 2017 in respect of *Isle of Wight Council v Platt* concluded that section 444(1) of the Education Act 1996, “regularly” means “in accordance with the rules prescribed by the school” (Please see attached guidance on leave of absence)

Penalty Notices

A Penalty Notice is an alternative to prosecution for a S444 (1) offence. If a Penalty Notice remains unpaid, then prosecution must follow for the offence of unsatisfactory school attendance.

- Penalty Notices will be used in accordance with Northumberland Council's Penalty Notice Code of Conduct.
- A Penalty Notice gives the parent the opportunity to discharge themselves of their legal responsibility.
- Failure to pay the Penalty Notice may result in a prosecution under Section 444 of the Education Act 1996.

Education Supervision Orders

ESO considerations arise before proceedings are instituted and must be considered in all cases. Education Supervision Orders are considered on a case by case basis on the individual circumstances known about the child and parent(s) and should be underpinned by critical analysis of the no order principle.

Consideration needs to be made as to the appropriateness of seeking an Education Supervision Order (ESO). If the decision is not to seek an ESO the reasons must be given.

Prosecutions may be undertaken where:

- The parent has ignored previous advice.
- penalty notice has failed to secure good attendance.
- The parent demonstrates a blatant disregard for the law and has acted to the detriment of another.
- Any other instance where circumstances warrant it.

Any decision to pass a case to Legal Services for prosecution will be made by the Principal Education Welfare Officer in conjunction with the Lead Education Welfare Officer and Education Welfare Officer. The case will then be passed to Legal Services who will consider a prosecution in accordance with the Code for Crown Prosecutors.

Prosecution

To ensure uniformity, consistency, fairness and objectivity in relation to legal enforcement, all cases will be treated on their merits and progressed appropriately and in accordance with the Code for Crown Prosecutors.

A decision to prosecute under s444(1) of the Education Act 1996, should be dealt with under the Single Justice Procedure, unless Legal Services determine that the case is inappropriate to be dealt with by a Single Justice (a sole magistrate sitting with a Legal Advisor).

Under the Single Justice Procedure, a Single Justice Procedure Notice will be sent out to a parent, this contains the charge, case summary and plea options. Once posted out - "posting date" the case will be determined by a Single Justice with 28 - 31 days of said posting date.

A parent does have the opportunity to "opt out" of the Single Justice Procedure and the case will revert to the local Magistrates Court. It may take several weeks for a new listing date to be fixed.

A decision to prosecute under s444 (1A) or proceed with a case outside of the Single Justice Procedure will proceed to the local Magistrates Court, an information will be laid, a summons requested and once authorised by the Court, the summons and information together with the required witness statements and exhibits will be served on the parent (s) by Legal Services. Due to listing considerations, this may take up to 12 weeks to progress.

Please note that s444 of the Education Act 1996 sets out the statutory defences available to a parent.

The Code for Crown Prosecutors sets out the "full code test" when considering a prosecution. In short there must be sufficient evidence to provide a realistic prospect of conviction (evidential test) and it must be in the public interest to proceed (public interest test).

Education Welfare will advise the school of the disposal handed down by the court to the parent. The school will be responsible for monitoring the child's attendance post the court hearing and should refer back to into the Service if appropriate.

Note added September 2021

Please note that due to the COVID-19 pandemic Her Majesty's Court and Tribunal Service has had to reduce its service, this had led to delay and as a result any prosecutions under s444 (1A) may take longer than 12 weeks to conclude.