



# Ensuring Regular School Attendance

*Guidance on the Legal Measures available  
to Secure Regular School Attendance*



MAGISTRATES  
ASSOCIATION



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confederation of education service managers

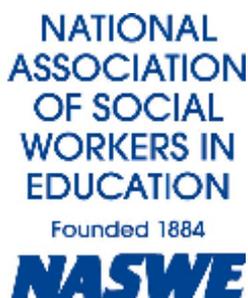


Judicial Studies Board



Home Office

BUILDING A SAFE, JUST AND TOLERANT SOCIETY



### **This guidance was produced in consultation with:**

Magistrates Association, Justices' Clerks' Society, Lord Chancellor's Department, Judicial Studies Board, Youth Justice Board, Home Office, National Children's Bureau, Confederation of Education Service Managers, Local Government Association, Secondary Heads Association, Association of Chief Police Officers, The Association for Education Welfare Management, The National Association of Social Workers in Education and representatives from a number of Local Education Authorities.

## **Summary of Contents**

The purpose of this document is to provide information on the measures that are available under the law for ensuring regular school attendance in England. It is intended for Local Education Authorities, Schools, Magistrates, Justices Clerks and all other organisations that might be involved in ensuring, through enforcement measures, children's regular attendance at school.

The document draws upon existing DfES guidance regarding school attendance and refers to other documents in the text, details of which may be found on the DfES School Attendance Website ([www.dfes.gov.uk/schoolattendance](http://www.dfes.gov.uk/schoolattendance)).

### **Explains:**

- The roles and responsibilities of parents, schools and the Local Education Authority in ensuring children's regular school attendance
- The law relating to school attendance
- The range of intervention strategies available to the LEA to enforce school attendance
- The procedure for bringing a prosecution against a parent who has failed to ensure their child's regular school attendance
- What happens at the court hearing and the sentencing options available to the court in the event that the parent is found guilty of the offence

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## **DETAILS OF THE FOLLOWING DOCUMENTS WHICH ARE REFERRED TO IN THE GUIDANCE CAN BE FOUND ON THE DFES SCHOOL ATTENDANCE WEBSITE**

[www.dfes.gov.uk/schoolattendance](http://www.dfes.gov.uk/schoolattendance)

Education Act 1996

Children Act 1989

Crime and Disorder Act 1998

Criminal Justice Act 1967

The PACE Act 1984

Attorney General Guidelines

Circular 7/90 Management of the School Day

# Introduction

1. Non-attendance at school for any reason is an important issue that must be treated seriously. However, every case is different and there is no standard path that can be followed in applying intervention strategies. In some cases, prosecution may be used as the last resort when other intervention strategies have failed to bring about an improvement in school attendance. In other cases prosecution may be the only appropriate response where acting early will prevent problems from worsening. In all cases of non-attendance it is essential that early action is taken. The purpose of this document is to outline roles, responsibilities and procedures.

## Parental Responsibility for School Attendance

Note: Throughout the document the term 'parent' refers to one parent, both parents or the child's carer.

2. Under Section 7 of the Education Act 1996, the parent is responsible for making sure that their 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. This can be by regular attendance at school or by education otherwise (the parent can choose to educate their child at home).

3. Compulsory school age is defined as beginning from age five when a child should attend school from the start of the term commencing on or after his fifth birthday. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

4. Full-time education – Circular 7/90 Management of the School Day suggests as a guide to good practice the following recommended minima for weekly taught time is:

- 21 hours for pupils aged 5-7 years (key stage 1)
- 23 hours and 30 minutes for pupils aged 8-11 years (key stage 2)
- 24 hours for pupils aged 12-13 years (key stage 3)
- 25 hours for pupils aged 14-16 years (key stage 4)

Taught time does not include breaks, registration or acts of collective worship.

5. If it appears to the Local Education Authority that a child of compulsory school age is not receiving a suitable education, either by regular attendance at school or otherwise, then under Section 437 of the Education Act 1996 they must begin procedures for issuing a School Attendance Order.

# School Attendance Order

6. 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. These circumstances are likely to arise when:

- The parent has not registered their child with any primary school
- There is a change of school phase such as transition from primary to secondary school
- The parent has failed to secure a place at the school of their preference and they are faced with options which they view to be unsuitable.
- The parent has failed in their duty under arrangements for Education Otherwise and are reluctant to engage with any school
- Children from another LEA move into the area and have been taken off the school roll in their previous LEA

7. Before serving an SAO, Education Welfare Officers should make every effort to engage the parent and help them get their children to school. This may include making sure the parent is aware of the location of schools in the area, and explaining the admission or admission appeal arrangements where necessary.

8. If it is not possible to persuade the parent to make arrangements for their child's education, then the parent should be served with a notice stating that they are failing in their duty to provide their child with education and informing them that they must satisfy the LEA that they are providing an education at school or otherwise within a specified time period (but not less than 14 days).

9. Upon expiry of the notice, the LEA should write to the parent, referring them to the notice and informing them of the LEA's intention to serve a SAO. The LEA should inform the parent of schools that are suitable for the child to attend and should also inform the parent that they have the right to educate their child at home if they choose to. The parent should be told that they have 15 days in which to take action or the LEA will proceed to make a SAO.

10. It is good practice to provide the parent with detailed information explaining the law. The LEA must consult the school before naming the school in any Order. This consultation needs to take into account the code of practice on special educational needs and the code of practice on school admissions.

11. If the 15 days expire without the parent taking any action then the LEA should issue a SAO. The Order should specify which school the child should attend.

12. The parent should be informed that they have 15 days to comply with the Order.

13. If a parent, on whom a SAO has been served, fails to comply with the requirements of the Order they are guilty of an offence under Section 443 of the Education Act 1996, unless they prove that the child is receiving a suitable education otherwise than at school.

14. The case should thus be taken to the Magistrates Court where a summons can be obtained. The parent will be named on the summons and will have to appear before the Court.

15. A SAO continues to be in force for as long as the child is of compulsory school age. If there is a continued failure to register the child, the LEA has the option of referring to Social Services for consideration of care proceedings.

16. Alternatively, the case may be taken to the Family Proceedings Court instead of the Magistrates Court where an application can be made for an Education Supervision Order (Section 36 (5)a of the Children Act 1989).

## Resolving School Attendance Problems

17. While the parent is primarily responsible for ensuring their child attends school regularly, where school attendance problems occur the key to successfully resolving these problems is engaging the child through collaborative working between the parent, the school and the LEA.

## The Role of Schools: Monitoring School Attendance

18. It is often at the school level that the biggest direct influence can be brought to bear on raising levels of attendance. Absence from school undoubtedly has a detrimental effect on a pupil's progress and attainment. Therefore schools need to monitor and support pupils to maintain regular school attendance.

19. Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in an approved educational activity off-site, or absent.

20. The register must show whether any absence is authorised or unauthorised.

**Authorised** absence is where the school has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation offered afterwards as satisfactory justification for absence.

All other absences must be treated as **unauthorised**.

21. Schools, not parents, authorise absence. Schools must adhere to DfES Guidelines in authorising absence. Schools should be consistent in applying the same rules in authorising absence.

22. Schools should make sure that parents are aware of their responsibility for ensuring their child attends school regularly.

## School-Level Action to Improve School Attendance

23. All schools should have effective systems and procedures for encouraging regular school attendance and investigating the underlying causes of poor attendance which should be set out in an attendance policy. These systems should be reviewed regularly and modified where necessary to reflect the circumstances of the school.

24. Parents should be aware of the school attendance policy and should be encouraged to cooperate with the systems and procedures that the policy describes.

25. Schools should have systems and procedures for:

- Registering pupils
- Categorising absence
- Collating and analysing attendance data to identify trends and enable action to be taken
- Determining in which exceptional circumstances leave of absence will be granted for holidays during term-time
- Monitoring attendance and punctuality for all lessons
- Dealing with late arrivals
- Dealing with unauthorised absence (i.e. when contact will be made with parents, how and when standard letter systems will be used, what measures will be taken to reengage disaffected pupils, what rewards/incentives will be used to encourage attendance, what sanctions will be taken)
- Referring cases to the LEA (i.e. when, how and by whom)
- Reintegrating pupils who have been absent (e.g. providing pastoral support, the role of the Learning Support Unit, using learning/peer mentoring)

26. A good attendance policy should clearly set out staff roles and responsibilities for dealing with attendance and should link to the school's behaviour and bullying policies. It should reflect the Local Education Authority's attendance strategy and should be endorsed by the School Governors. Parents and pupils should be consulted on the policy.

27. The Head teacher is responsible for the operational management of the attendance policy.

28. Senior management and all teaching staff should work to raise the level of enjoyment and commitment to learning among students.

29. Pastoral or support staff should follow up individual pupils and analyse attendance data to identify trends for individual pupils, classes or year groups which can then enable the school to target their efforts.

30. Action should be taken by the school to improve a pupil's attendance before a referral is made to the LEA. Schools should work closely with the Education Welfare Service to establish a clear protocol for referral. Schools may also wish to indicate which cases they believe could be effectively dealt with using the Fast-track to Prosecution Framework in order to bring about an improvement in school attendance (see paragraphs 53 - 59 below).

31. Attendance problems are often a symptom of some underlying cause. The school should investigate whether there are any school or home factors (or both) which are affecting the pupil's school attendance.

32. Schools should work closely with the Education Welfare Service to determine the course of action that should be taken in cases of non-attendance. Other agencies such as Social Services, Connexions, the Police or Youth Offending Teams should be engaged where appropriate.

33. Where possible schools should use ICT or radio communication systems (i.e. Electronic Registration) to record attendance. Electronic Registration enables more effective and efficient monitoring of attendance on a daily basis as well as allowing the identification of longer-term trends in absence which can be used to inform school policy and practice.

34. Schools must keep registers up-to-date and must ensure that they are accurately completed.

35. School administrative staff or support staff should contact parents on any day a registered pupil of compulsory school age is absent without explanation (i.e. First Day Contact), including in cases where the pupil skips lessons after registration. This makes it clear to pupils and parents that unauthorised absence is taken seriously. By contacting the parent the school also ensure that the parent is aware that the child is not in school enabling the parent to take steps, where necessary, to establish that the child is safe.

36. Unauthorised absence should be addressed early through discussion between the pupil and the teacher responsible for their registration.

37. Schools can undertake a range of actions to overcome attendance problems. These will depend on the child and their circumstances and will involve working closely with the parents.

For example:

- Meetings with parents to discuss strategies in school and at home which encourage regular school attendance and the production of an action plan for improving attendance
- Consideration of timetable and subject choice with regard to engaging the pupil
- Use of Learning Mentors to build positive relationships with pupils and parents
- Use of Peer Mentors to provide a social support network
- Use of methods for discouraging absence (i.e. placing the pupil on report, letters home)
- Extra help with work missed
- In-school counselling
- Where a pupil is at risk of failure at school through long-term disaffection the Head teacher should establish a pastoral support programme for the pupil (DfES Guidance)

38. Where intervention at the school-level fails to bring about an improvement in school attendance a referral to the Education Welfare Service must be made. The types of actions to be taken at the school-level and the trigger for referral to the Education Welfare Service should be set through negotiation between the school and the Education Welfare Service.

## **The Role of the Local Education Authority: Working with Schools**

39. The Education Welfare Service are often responsible for carrying out the LEAs duty for ensuring that a child is receiving a suitable education either by regular attendance at school or otherwise.

40. Education Welfare Officers should build an effective working relationship with schools to resolve attendance problems by:

- Working closely with schools to define their role and responsibilities surrounding school attendance
- Defining the Education Welfare Service's roles and responsibilities
- Ensuring that policies and operational practices are shared between the EWS and schools
- Agreeing arrangements for referral, regular review, monitoring and evaluation
- Agreeing procedures for resolving enquiries

The Fast-track to Prosecution Framework (see paragraphs 53–59) is dependent on closer, more effective work with schools.

41. The LEA must work with schools to ensure that school registers are kept up-to-date and are accurately completed. Where legal action is taken against the parent only unauthorised absence can be considered by the court because, by definition, any authorised absence has been approved by the school.

42. The LEA should set out the amount of support that schools can expect from the Education Welfare Service. The support should be based on clear and straight forward criteria. Any formula for EWS resource allocation should take into account the extent of absence from school and the number of pupils on the school roll.

43. Each school maintained by the LEA should have a named EWO who is responsible for liaison with the school.

44. If a child lives in a neighbouring LEA, co-operative working with the EWS from that LEA will be necessary to ensure that follow-up action is undertaken if required. This is particularly the case when levels of absence are of such severity they prompt discussion as to possible use of sanctions or other interventions.

45. All LEAs should have protocols setting out the basis under which cross border working will take place.

46. Local Education Authorities should monitor carefully the use of all different types of intervention strategies to assess whether they are effective and appropriate.

## **The Offence of Failing to Ensure Regular School Attendance**

47. If a child of compulsory school age who is registered at a school fails to attend regularly at the school then the parent is guilty of an offence under Section 444(1) of the Education Act 1996.

48. Since March 2001 there has been a more serious offence where a parent who, knowing that his child is failing to attend regularly at school, fails without reasonable justification to cause him to attend (Education Act 1996 Section 444(1A) as amended by the Criminal Justice and Court Service Act 2000). This amendment was introduced to provide another, more serious offence which requires proof that the parent knew of their child's non-attendance and failed to act. Under this higher offence a warrant can be issued compelling a parent to attend court. Prosecution under section 444(1A) can lead to a custodial sentence.

## **LEA-Level Action to Ensure Regular School Attendance**

49. When a case is referred to the LEA, the Education Welfare Officer should make an assessment of the case and work closely with the pupil and their family as well as the school to resolve issues surrounding their poor school attendance. This may involve making home visits and securing a problem-solving dialogue between home and school.

50. The Education Welfare Service should consider and attempt to resolve any possible factors that may be contributing to school attendance problems. Documentary evidence should be kept to prove that the Education Welfare Officer has undertaken casework to address possible reasons for non-attendance.

51. The Education Welfare Service should engage other agencies where appropriate. It may be that the pupil is a child in need (section 17 of the Children Act) and with parental agreement a child and family meeting with relevant professionals may assist the family and the pupil. There are legal (e.g. data protection requirements), professional and gate-keeping restrictions on obtaining help and/or information from other agencies such as the Benefits Agency, Health Trusts and Social Services Departments. Under section 27 of the Children Act 1989, an authority whose help is requested will comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

52. If casework or other intervention strategies have been unsuccessful in securing regular school attendance and/or the Education Welfare Service considers that prosecution may bring about an improvement in the child's school attendance then the Local Education Authority may choose to prosecute parents under section 444(1) or 444(1A) of the Education Act 1996. Some cases may be suitable for action under the Fast-track to Prosecution Framework.

## **The Fast-track to Prosecution Framework**

53. The Fast-track to Prosecution Framework is a time-focused model of best practice which concentrates on early intervention in cases of persistent non-attendance and aims to ensure a faster and more effective approach to the implementation of strategies to tackle this behaviour and the underlying causes.

54. Under this framework, in cases where parents have not cooperated with the school or LEA in ensuring their child's regular attendance at school they should be given a specified period of time (usually 12 weeks) to engage with the Education Welfare Service and school in bringing about an improvement in their child's attendance. They should be informed at the beginning of this period about the possible consequences of non-cooperation which ultimately should be prosecution.

55. The LEA, school and parent should sign up to an action plan at the beginning of the time period in which it is stated how they intend to work together to improve the child's school attendance. Any other agencies that may be able to make a contribution in improving the child's attendance should be engaged at this point by the LEA. If the parent does not sign up to the action plan, this should be recorded by the LEA.

56. During the specified time period the child's attendance should be monitored closely by the LEA and the school. The parent's level of engagement should also be monitored. Progress against the action plan should be reviewed regularly during the time period perhaps through a formal panel involving a range of different agencies.

57. If an improvement in the child's attendance is not seen and the LEA consider that the parent has failed in their responsibilities they may choose to bring a prosecution. Information about the parent's cooperation during the Fast-track process should be brought to the attention of the court.

58. The prosecution process itself is NOT affected by the Fast-track to Prosecution Framework. Fast track is about bringing cases, where parents have failed to cooperate in carrying out their responsibilities, to court more quickly. It does not in any way extend to influencing the court proceedings.

59. Further guidance on the Fast-track to Prosecution Framework is available from DfES.

# Education Supervision Order

60. 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.

61. An LEA may apply to the Court for an Education Supervision Order (ESO) as a means of attempting to ensure regular school attendance, whether or not the child is enrolled at a school.

62. An ESO is a 'family proceedings' matter, as defined by the Children Act 1989, which regards the welfare of the child as the main concern.

63. 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. These directions must be defined by the LEA and should aim to be helpful in bringing about an improvement in the child's attendance (for example the LEA could direct the parent to attend meetings at the school over the period of the ESO, require the parent/child to keep the LEA informed of their address, or require the parent to attend parenting classes).

64. Where an ESO is in force with respect to a child, the duties of the child's parents under section 7 and 444 of the Education Act 1996 (duties to secure education of children and to secure regular attendance of registered pupils) are superseded by their duty to comply with any directions in force under the ESO.

65. If a parent persistently fails to comply with directions given by the supervisor, they may be guilty of an offence unless they can show the direction was unreasonable or that they took all reasonable steps to comply. If a child persistently fails to comply, the supervisor is obliged to refer the matter to social services who have a duty to investigate under the Children Act and could commence care proceedings.

66. An ESO should ensure that a child receives full-time education suited to their age, ability aptitude and any special educational needs.

67. When applying for an ESO, LEAs should provide the court with a report on the child. This should include the following information:

- record of attendance, which gives information about attendance over the 2 previous terms prior to the ESO application. The record should be broken down to give a percentage breakdown of attendance, authorised absence and unauthorised absence. Details of attendance over a longer period may be given where appropriate;
- relevant details on the child's circumstances – including age, gender, background and any particular physical, emotional or educational needs (including special educational needs) the child may have;
- assessment of the causes of the child's poor attendance;
- medical assessment, if relevant;
- indication of the attitudes of the child, parent, school and other agencies towards the poor attendance;
- short description of the effect of work already undertaken;
- reasons why an ESO is being requested and assessment of how the child might be educationally disadvantaged should an ESO not be made;
- outline of the intended intervention, including targets for timing and monitoring;
- programme of the intended work, indicating role of child, parents and school, with an indication of how the LEA believe this will help to resolve the problem and ensure that the child attends school regularly.

A list of the child's welfare needs that the court must consider is given in section 1(3) of the Children Act. The wishes and feelings of the child also need to be sought and taken into consideration in any Children Act proceedings.

68. An ESO should be reviewed at regular intervals, through discussions between supervising officers and their managers. If the intended aims and objectives are not being met, alternative strategies must be explored promptly. It may be necessary to establish whether the child has any special educational needs (as defined in section 312 of the Education Act 1996)

69. If necessary, the supervising officer should be able to recommend an assessment and review of these needs (Sections 323 and 328 of the Education Act 1996). Where the supervising officer believes that there are sufficient grounds for making a Care Order or Supervision Order for a child who is subject to an ESO (Section 31 of the Children Act), then this should be discussed between the LEA and the Social Services Department. The Social Services Department can apply for these orders whether an ESO is in existence or not. However they may be able to help provide services that make further court proceedings to apply for these Orders unnecessary.

70. An ESO will normally cease to be effective:

- after one year
- when a child becomes over compulsory school age
- when discharged by the court following an application from the child, parents or LEA

71. An LEA may apply for an ESO to be extended for up to three years, if this is thought to be necessary to ensure that the child's education continues to progress. The LEA must do this in the three months before the ESO is due to expire. ESOs may be extended more than once. Courts may not make an ESO where the child is already in the care of the local authority. Courts may however make an ESO where the child is subject to a Criminal Supervision Order (CSO) but any directions issued under the CSO would take precedence should there be a clash over the ESO.

## Prosecution

72. 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). In order to effectively use prosecution as a planned intervention, the LEA should follow the set of procedures outlined below in order to present the best possible case to the court.

73. The Local Education Authority must be satisfied that prosecution is justified in terms of the Attorney-General's Guidelines for Crown Prosecutors. These guidelines set out the general principles which should be applied when making decisions about prosecutions to ensure that they are fair and consistent.

## Conduct when Investigating an Offence

74. The Police and Criminal Evidence (PACE) Act 1984, which came into effect on 1st January 1986, sets out the conduct that Police or 'persons other than Police Officers who are charged with the duty of investigating offences or charging offenders' should observe when carrying out these duties.

75. The PACE Act 1984 code of practice must be applied in the investigation of offences and failure to apply the code could lead to evidence being ruled inadmissible.

76. The PACE Act 1984 also covers practice for the conduct of interviews and recording statements under PACE caution.

77. LEAs should take legal advice about whether to apply the PACE Act when undertaking case work with children and their families and if so, at what point it should be applied.

## Formally Notifying the Parent

78. At the outset of casework the parent should be given a formal written notification stating that legal action may be taken by the LEA. It is good practice to make sure parents understand the consequences of failing to ensure their child's regular attendance, in particular that the case could end up in court.

79. It is good practice to allow 15 school days for parents to improve the situation before continuing the proceedings.

80. Sometimes the prospect of prosecution may lead to a significant improvement in a child's attendance and court proceedings may not be necessary if it is believed that the improvement will be sustained.

## Commencing Proceedings

81. It is highly advisable that LEAs liaise with local courts to ensure that there is a clear mutual understanding of the court's powers and procedures.

82. The information must be laid before court within 6 months of the alleged offence. All LEAs work differently in bringing information to the attention of the court. In some LEAs Legal Officers or solicitors are responsible for bringing cases to court whereas in others the Education Welfare Service bears the responsibility. The procedures outlined below should be followed regardless of who brings the case to court.

83. In order to commence court proceedings, an application must be made to the Magistrates Court for a summons to be issued. This is done by "laying an information" before the court ('information' is a brief description of the offence that has been committed, the name of the offender, the dates of the offence and where it was allegedly committed).

84. The information will then be considered to check that it contains all of the details above and that it is within the time limits of the offence.

85. The date of the hearing must be arranged before the summons is issued. This can usually be arranged administratively without the need to attend Court. The summons is then issued by the court and gives details of the alleged offence, when it is to be heard and at which court.

## Serving the Summons

86. When the court has issued the summons, it must be served on the defendant. The LEA should decide how the summons should be served (i.e. personally or by post).

87. The court may require evidence of service of the summons. It is good practice to endorse the copy summons with a certificate of service. If the defendant turns up for the hearing, there is no need to produce evidence. If however the defendant fails to attend, the court will require evidence that the summons has been served – a certificate of service would normally be sufficient.

88. In appropriate cases it may be possible for the EWO working with the family to serve the summons by hand on the person named in the summons. However, due consideration should be given in every case to potential health and safety implications. Employers have a duty to ensure that appropriate precautions are taken to avoid exposing employees to hazardous situations and it is the responsibility of the LEA to ensure that there has been a risk assessment prior to serving the summons.

89. Courts are often willing to accept certificates proving service, and so alternative methods of service which the LEA may wish to use include sending the summons by Recorded Delivery or using a Process Server. However, First Class Post is also deemed as good service.

90. It is good practice to give at least 10 working days notice of the hearing date to the defendant.

91. At the same time as serving the summons it is also good practice for the LEA to present the defendant with the evidence that it intends to present to the Court. This would take the form of a witness statement (section 9 of the Criminal Justice Act 1967).

92. The defendant should be presented with a notice explaining that the LEA will not call the witness (i.e. the EWO) to give evidence in person unless the defendant indicates within seven days that they wish the witness to be present. Within this period the defendant may also object to any of the content of the witness statement. If the LEA intends to draw any previous convictions that the defendant may have to the courts attention, details of these convictions should be included in the notice.

93. The defendant should also be sent a form on which he/she can indicate their plea, sign and return it to the Court.

## The Court Hearing

94. There are 2 types of bench that may sit: District Judge or Lay Bench.

95. A District Judge is a trained barrister or solicitor who will usually sit alone.

96. The Lay Bench consists of two or three Justices of the Peace, also known as magistrates, one of whom will be the chair. The Lay Bench is advised by a Legal Advisor, who is also known as a Court Clerk. The Legal Advisor advises the bench on all matters of law, practice and procedure.

97. At the hearing the parent will be asked to state whether they plead guilty or not guilty to the offence.

98. It is possible that the parent, either themselves or through their solicitor if they are represented, will ask for an adjournment before they enter a plea of guilty or not guilty. The court are always anxious to ensure that cases are dealt with at the earliest opportunity but must decide if it in the interests of justice to grant an adjournment. The court has to be satisfied that both the prosecution and the defence have equal opportunity to present their case. If it is considered that this has not happened then the case may be appealed.

99. If the parents plead not guilty, the case will be adjourned until a trial date set by the court. This is to ensure that both parties are able to adequately prepare and present their case and that the court has time to consider it. At the trial (a hearing to consider the contested case), the LEA should be represented by a solicitor or barrister. The EWO must be available to be called as a witness, and may be questioned by the defence.

100. If the parents plead guilty at the hearing, the LEA representative will outline the case before the court hears from the parent or their solicitor.

## **How guilty pleas can be dealt with in the absence of the defendant**

101. Under Section 12 of the Magistrates' Courts Act 1980, pleas of guilty may be dealt with in writing without the need for the defendant to attend court.

102. In order to invoke this section, the LEA MUST have presented the defendant with the evidence to be presented to the court in writing prior to the court hearing as a section 9 witness statement served at the same time as the summons.

103. The defendant should also have indicated (in the form they were asked to sign) that they wish to plead guilty and would like the court to deal with the case in their absence.

104. If the parent fails to attend court on a second occasion an application can be made for the case to proceed in their absence. The court will then consider the facts and decide whether it is in the interests of justice to do so.

105. Only information that has been served on the defendant can be referred to in court. The witness statement will be read out along with any written statement made by the defendant. The court may then sentence on the basis of what has been placed before it without seeing the defendant.

106. If the defendant indicates a not guilty plea or that he does not wish the case to proceed in his absence then the case must be adjourned. An adjournment notice would be sent to the defendant.

107. Where the defendant is being prosecuted under the more serious offence (444(1A)) the Court will usually wish to see the defendant in person and this procedure will not usually be appropriate.

## What happens if the defendant fails to attend the hearing

108. If the defendant fails to attend the hearing (where no arrangements have been made for the case to be heard in their absence) the case may be adjourned. The parent will be sent an adjournment notice which sets out a new hearing date.

109. In most Courts, if the parent fails to attend on the second date, the case can be heard in their absence if the court considers it to be in the best interests of justice to do so. In order to hear the case in the absence of the parent, the Court must rely on the evidence presented to the defendant in the section 9 witness statement.

110. Where prosecution is being brought under section 444(1A), the Local Education Authority may ask the Court to issue a warrant in order to compel the parent to attend Court. The legal adviser in court should be consulted as to the procedure to be followed in each particular case. This will usually involve the EWO or LEA representative taking an oath/affirmation to confirm that the summons has been issued and that the information laid before the court is true to the best of their knowledge and belief.

111. The court may choose to issue a warrant with or without bail. If a warrant is issued with bail then the defendant is arrested by the police and granted bail on the condition that they attend court on the new date of the hearing. If a warrant is issued without bail then the defendant is arrested and placed before the next available court where a decision is taken as to how to proceed with the case.

## Evidence

112. The LEA representative should present the Certificate of Attendance to the Court. The court should be informed of the case work undertaken by the Education Welfare Service.

113. A witness statement by the Education Welfare Officer managing the case (including details of the family and home visits) should be presented to the court.

114. Documentary evidence may also include:

- Medical Certificates for all or part of the absence, if applicable.
- Copies of any warning letters/notices sent to the parents.
- Records of planning meetings held.
- Documentary evidence relating to the aggravating or mitigating circumstances.
- Report from the school.

115. Oral evidence must be recorded at the time of, or very shortly after the interview in the form of notes. If prosecution seems likely, parents must be warned.

116. In the event of a guilty plea, the defendant, either in person or through a legal representative, will also be given the opportunity to address the court so that the magistrates' have as much information as possible about the commission of the offence and the defendant in order to pass sentence.

117. Where a not guilty plea is entered, after the LEA has given evidence and the prosecution case is closed, the defendant may give evidence and call witnesses to give evidence who may be cross-examined by the prosecution. The court would then decide if the defendant was guilty. If the defendant is acquitted this would mark the end of the proceedings. If the defendant were found guilty the court would then proceed to sentence as described above.

# Sentencing Options available to the Court

118. In reaching their sentence the Magistrates will consider all of the information presented to the Court.

119. Before deciding upon a sentence the Magistrates will need to consider the aggravating and mitigating factors of the offence. Examples of aggravating features contained in the Magistrates' Court Sentencing Guidelines are:

- Harmful effect on other children in the family
- Lack of parental effort to ensure attendance
- Parental collusion  
(not an exhaustive list)

Examples of mitigating features contained in the Magistrates' Court Sentencing Guidelines are:

- Parent has a bona fide complaint of bullying, drugs etc.
- Parental unawareness
- Physical or mental health of child  
(not an exhaustive list)

The court will also consider offender mitigation, examples in the Magistrates Court Sentencing Guidelines are:

- Age, health (physical or mental)
- Cooperation with the Education Authority
- Evidence of genuine remorse

The Court will also consider a reduction in sentence if the parent entered a timely guilty plea to the offence.

120. On conviction the court can choose from the various disposals available to it.

121. The Court may consider the following disposals:

- **Adjournment:**  
After conviction a case may only be adjourned for up to 4 weeks at a time for enquiries to be made and to determine the most suitable method of dealing with the case. In addition, prior to conviction the case may be adjourned, usually for a fixed period. At the end of that period the parent would have to re-appear before the court, unless the child's attendance had improved and the LEA had decided to discontinue the case against the parent.
- **Absolute Discharge:**  
Where a case is proven but the court believe that the parent is not deserving of a punishment this disposal may be used. This can be cited in future prosecutions.
- **Conditional Discharge:**  
This disposal is by way of a sentence that lasts for a fixed period of time , up to 3 years. If the defendant is convicted of another offence during the period fixed then they could be re-sentenced for this offence.

In the case of non-attendance at school, it could be used if the child's attendance has improved. As long as the parent does not re-offend within the discharge period no further action is taken.

- **Fine:**  
For an offence under Section 444(1) this could be up to £1000 (level 3). Where the offence is under Section 444(1A) the fine could be up to £2500 (level 4). In considering the level of fine, the magistrates must take into account the means of the offender to pay.
- **Deferred Sentence:**  
This is when the sentencing decision is deferred for a fixed period of time, up to a maximum of 6 months, dependent on certain conditions that the defendant must agree to abide by. The sentence could be deferred for up to 6 months. This enables the Court to consider the parent's conduct after conviction. The Court will explain what it expects during the deferment e.g. the child to attend school regularly. If the parent meets the court's expectations a reduced sentence could be imposed.
- **Community Sentence:**  
Before passing a community sentence the court must be of the opinion that the offence is serious enough to warrant such a sentence. The Court will often order a report to be prepared by the Probation Service before imposing a community sentence. A Specific Sentence Report may be prepared on the day, but a pre-sentence report will require the case to be adjourned. In relation to the offence under Section 444(1) only three community sentences are available:

Community Rehabilitation Order: (previously known as probation) requiring the defendant to be under supervision for a period of time (from 6 months to 3 years) and aimed at securing rehabilitation and/or preventing further offences.

Curfew Order: Requires an offender to remain at a specified place from 2 to 12 hours a day, from one to seven days a week, for a maximum period of six months.

Parenting Order (see paragraphs 123-133)

In relation to the offence under Section 444(1A) the following community sentences are also available:

Attendance Centre Order: Defendants under the age of 21 can be required to attend at an attendance centre for between 12 and 36 hours (usually in 2-4 hour sessions once per week).

Community Punishment Order (previously known as a Community Service Order): requires the defendant to perform unpaid work for not less than 40 or more than 240 hours (work must be available and the offender considered suitable).

Community Punishment and Rehabilitation Order: Combines the elements of a Community Rehabilitation Order (from 1 to 3 years) and a Community Punishment Order (maximum of 100 hours).

- **Custodial Sentence (only available under Section 444(1A):**  
This could be for a period of up to 3 months. The offence must be considered so serious that only custody is appropriate. A custodial sentence will not be imposed in the absence of the parent. The court will normally ask the probation service to prepare a pre-sentence report before considering a custodial sentence. In exceptional circumstances the court could suspend the sentence for up to 2 years.

122. In addition to imposing a penalty, the Court could direct the LEA to consider an application for an Education Supervision Order. The LEA has a period of 8 weeks to respond to the Court.

# Parenting Order

123. The 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.

124. Before making a Parenting Order on a child or young person under 16, the court must obtain and consider information about the family's circumstances and the likely impact of an Order on those circumstances. This is usually in the form of a written or oral report prepared by the Education Welfare Service as appropriate. Education Welfare Services should include this in court report information.

125. Parenting Orders are designed to help and support parents in addressing their child's problem behaviour. They are intended to be a means of support rather than punishment.

126. The Parenting Order consists of 2 elements:

- A requirement on the parent to attend counselling or guidance sessions where they will receive help and support in dealing with their child. This is the core of the Parenting Order and lasts for 3 months.
- A requirement on the parent to comply with such requirements as are specified in the order. This could include ensuring that the pupil attends school every day or are back home by a certain time. Section 8(4) of the Crime and Disorder Act 1998 provides that this element can last up to 12 months.

127. The Order can be made on one or both parents and their consent is not required.

128. Parenting Orders can be made against the parent of the child in the care of the Local Authority, but only with care and in some specific circumstances. The court should only consider this when it believes that the parents or guardians would benefit from the help and support offered, in that it may lead to the child eventually being able to return home.

129. All Parenting Orders are supervised by a 'responsible officer'. In education cases, the responsible officer would usually be a member of the Education Welfare Service. It is the role of the responsible officer to arrange provision of counselling or guidance sessions and ensure that the parent complies with any additional requirements.

130. The counselling and guidance sessions must last for up to 3 months with no more than one session a week. They can be delivered on a one-to-one basis or in a group format. The majority of Orders are delivered through groups as this offers parents the opportunity to gain support from other parents experiencing similar issues.

131. Additional requirements may run for up to 12 months alongside the parenting support and guidance. They could include that the young person

- Attends schools or other educational provision
- Avoids contact with other specific children
- Avoids visiting certain areas at certain times
- Is back home by a certain time
- Requires parent to attend a specific programme such as anger management

132. Once a parent has successfully completed an Order, further support can be offered on a voluntary basis if appropriate.

133. If the parent fails to comply with an Order, then breach proceedings must be considered. The responsible officer must take all necessary action to contact the parent and seek to re-engage them. However if this fails the parent must be taken back to the Magistrates Court and prosecuted for breach of the Order. There will be a hearing to determine guilt and, if convicted, the parent will be liable to a fine not exceeding level 3 and the court may also consider any other sentence available for a non-imprisonable offence.



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