

SCHOOL ABSENCE PROSECUTIONS POLICY

1. INTRODUCTION

- 1.1 This policy applies to all Primary and Secondary schools in the Sandwell MBC local authority area. This includes schools which are maintained by or under the control of the local authority as well as academies.
- 1.2 Independent schools are not obliged to follow this policy but are strongly recommended to do so.

2. ASSOCIATED DOCUMENTS

- 2.1 This policy should be read in conjunction with the Penalty Notice Code of Conduct.

This can be accessed by schools via the following link:

https://www.sandwell.gov.uk/extranetforschools/downloads/download/524/penalty_notice_code_of_conduct

and by the public via the following link:

https://www.sandwell.gov.uk/info/200295/schools_and_learning/2655/holidays_in_term_time_penalty_notices

3. DEFINITIONS

- 3.1 Section 7 of the Education Act 1996 imposes a legal duty on parents to secure education for their children who are of compulsory school age, whether at school or otherwise.
- 3.2 A **parent** is defined to include all natural parents, whether they are married or not; any person or body who has parental responsibility for a child; and any person who has care of a child.
- 3.3 Having **care of a child** means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is also considered to be a parent.
- 3.4 A child reaches compulsory school age at the beginning of the first school term after their fifth birthday. So:
 - a child who turns 5 between 1st January and 31st March will be of compulsory school age at the beginning of the school term after 31st March.
 - a child who turns 5 between 1st April and 31st August will be of compulsory school age at the beginning of the school term after 31st August.

- a child who turns 5 between 1st September and 31st December will be of compulsory school age at the beginning of the school term after 31st December.

3.5 A child remains of compulsory school age until the last Friday in June in the school year that they turn 16 years old, even if their birthday falls after this day.

4. ROLE OF SCHOOLS

- 4.1 Each school is responsible for maintaining accurate attendance records.
- 4.2 Each school is required to advise parents and pupils of the requirement to ensure regular school attendance and the penalties for failing to do so, at least once a year. It is recommended that a school wide letter and/or newsletter is sent to all parents at the beginning of the school year and that further, a copy of the advice letter to parents is permanently available on the school website.
- 4.3 For leave of absence in term time, schools are required to follow the leave of absence procedure. It is the responsibility of the Head Teacher to determine whether there are exceptional circumstances for a child's absence to be authorised.
- 4.4 For irregular attendance, schools are required to follow the irregular attendance procedure including evidencing offers of support and early help appropriate to individual/family circumstances.
- 4.5 Schools will decide which parent(s) to involve when trying to address any issues with attendance according to the circumstances of each individual case. Usually, this will be the parent or parents who have allowed the absence to occur.
- 4.6 If any school feels that a set of circumstances warrants a referral to the Council's School Attendance Support Service, it is the responsibility of the school to ensure that a referral is completed accurately and in full.
- 4.7 Penalty Notices are issued to parents at the request of the Head Teacher/Principal of the child's school due to unauthorised absence. It is only the Head Teacher/Principal who can decide if an absence can be authorised, therefore any enquiries or disputes surrounding a Penalty Notice, or the absence to which it relates, must and can only be determined by the Head Teacher/Principal.
- 4.8 If a prosecution is commenced and the parent enters a not guilty plea, the school is required to ensure that any member of staff who has provided a witness statement is, in so far as is possible, available to attend Court.

5. ROLE OF THE LOCAL AUTHORITY

- 5.1 The local authority prosecutes parents for non-school attendance, breaches of School Attendance Orders and any other criminal offences set out in the Education Act 1996.
- 5.2 Referrals for irregular attendance are sent by schools to the Schools Attendance Support Service where there has been a minimum of 10 missed school sessions, resulting in unauthorised absence codes being entered on the school register, recorded within the previous 10 school weeks, be that whole or part weeks.
- 5.3 The Schools Attendance Support Service may contact schools where there appears to be missing documentation or information within the referral which requires clarification.
- 5.4 Once a referral has been accepted, the Schools Attendance Support Service will consider the referral for legal action and determine the appropriate course of action to be taken.
- 5.5 The decision as to whether any or what action will be taken lies with the local authority. The local authority will decide which parent(s) to take any action against according to the circumstances of each individual case. Usually, this will be the parent or parents who have allowed the absence to occur. There is no right of appeal against this decision.
- 5.6 Any matters which are progressed to the Court for prosecution will be dealt with by the local authority's Legal Services.
- 5.7 In so far as possible, the local authority will avoid listing any hearings which may require the attendance of school staff during school holidays.

6. PROCEDURES

- 6.1 Once a referral is received from a school by the local authority, the Schools Attendance Support Service will consider whether the material and information provided meets the referral criteria and determine how the case is to proceed.
- 6.2 Referrals from schools which do not meet the referral criteria, or where the appropriate process has not been followed as prescribed, will be marked as 'no further action' and the school notified.
- 6.3 Consideration will be given to offences that may have been committed contrary to the following sections of the Education Act 1996:
 - Section 444(1) which relates to where a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school;
 - Section 444(1A) which relates to where the parent knows that the child

is failing to attend regularly at the school and the parent fails to prevent this without reasonable justification.

- 6.4 Consideration will also be given to:
- whether or not an Education Supervision Order is appropriate;
 - any previous warning letters, Penalty Notices or convictions;
 - the opinion of any social worker involved in with the children and/or parents (where applicable).
- 6.5 Where the Schools Attendance Support Service is satisfied that an offence under Section 444(1) of the Education Act 1996 has been committed, it will either:
- issue a penalty notice in accordance with the Council's Penalty Notice Code of Conduct; or
 - prepare the case for referral to Legal Services for consideration of prosecution.
- 6.6 Where a consideration is being given to an offence under Section 444(1A), the parent may be given the opportunity to attend an interview under caution in accordance with the Police and Criminal Evidence Act 1984 Codes of Practice. This interview will take place in one of two ways, either by way of letter or by attending an in-person interview, both of which will be under caution.
- 6.7 Following a response being received to an interview letter, an in-person interview taking place, or there being no response from the parent, consideration will then be given to a prosecution for the aggravated offence under Section 444(1A).
- 6.8 No offence under Section 444 of the Education Act 1996 is committed if the child was absent from school:
- because of sickness (in case of a child/young person who has concerning illness absence but no underlying medical condition which could explain the absences, Head teachers can request medical evidence from parents);
 - any unavoidable cause;
 - with permission from the Head Teacher/Principal;
 - for religious observance; or;
 - if the parent can prove that the local education authority has a duty to make travel arrangements in relation to the child and has failed to discharge that duty.
- 6.9 Where a case is referred to Legal Services for prosecution, it will be assessed and will only be prosecuted where both the evidential and public interest tests are met.

7. PENALTY NOTICES

- 7.1 Section 23 of the Anti-Social Behaviour Act 2003 provides for the use of Penalty Notices by inserting Section 444A into the Education Act 1996. This allows for Penalty Notices to be issued where it appears that an offence under Section 444 of the Act has been committed.
- 7.2 In Sandwell, a Penalty Notice can only be issued by the local authority and may provide a more proportionate response to non-attendance than a prosecution and one which can often be taken sooner and for less serious non-attendance.
- 7.3 In accordance with the Education (Penalty Notices) (England) Regulations 2007 (as amended), the local authority has published its Code of Conduct in relation to Penalty Notices (see link at paragraph 2.1).
- 7.4 If satisfied that an offence has been committed, the Schools Attendance Support Service must first consider whether court action could be avoided and if a penalty notice would be more appropriate.
- 7.5 All Penalty Notices issued by the local authority will be dealt with in accordance with its Code of Conduct.
- 7.6 In exceptional circumstances, the Schools Attendance Support Service may allow late payment of a Penalty Notice.
- 7.7 There is no legal right of appeal against education Penalty Notices. Where, however, a parent believes the Penalty Notice should not have been issued, they must contact the Head Teacher/Principal of the school and provide any supporting evidence.

8. OFFENCES UNDER SECTION 444(1)

- 8.1 Where a case is referred for prosecution of a s444(1) offence, and provided the relevant conditions are met, the matter will usually be prosecuted in Court using the Single Justice Procedure.
- 8.2 A Single Justice Procedure Notice will be issued to parents (defendants), together with the evidence on which it relies to prove the offence.
- 8.3 Defendants can respond to the Notice by sending details of their plea and circumstances directly to the Court within 21 days. Parents will have the option to:
 - plead guilty and have the case heard by a single Magistrate without the defendant or Local Authority being present;
 - to plead guilty and have the case heard in Court by a panel of Magistrates or a Judge, with the Local Authority present; or
 - to plead not guilty.

- 8.4 There may be instances where prosecution of a Section 444(1) offence is not dealt with using the Single Justice Procedure. In these instances, a summons will be issued for the parent (defendant) to attend Court on a specific date for the matter to be considered and for a plea to be entered.
- 8.5 Where a defendant pleads not guilty, the Court may list the matter for case management hearing before listing it for trial.
- 8.6 The Court will sentence the defendant if they plead guilty, or if they are found guilty, either by a contested trial or if the matter has been proved in their absence. Paragraph 11 sets out the sentencing options available to the Court.

9. OFFENCES UNDER SECTION 444(1A)

- 9.1 It is not possible to prosecute offences under Section 444(1A) using the Single Justice Procedure.
- 9.2 Where a case is referred for prosecution of a Section 444(1A) offence, and provided the relevant conditions are met, a summons will be issued for the parent (defendant) to attend Court on a specific date. If the defendant does not attend, the prosecutor may request a warrant for their arrest.
- 9.3 Once the defendant appears in Court, they will be able to enter a plea. Where a defendant pleads not guilty, the Court may list the matter for case management hearing before listing it for trial.
- 9.4 The Court will sentence the defendant if they plead guilty, or if they are found guilty after trial. Paragraph 11 sets out the sentencing options available to the Court.

10. SCHOOL ATTENDANCE ORDERS

- 10.1 Where the local authority is not satisfied that a parent is providing a suitable education to a child of compulsory school age and it is appropriate for the child to attend school, it will give notice to parent of its intention to serve a School Attendance Order.
- 10.2 Once served, a School Attendance Order will require the parent to register the child at the school named within the Order.
- 10.3 Failure to comply with a School Attendance Order is an offence contrary to Section 443(1) and a parent may be prosecuted by the local authority.
- 10.4 A parent will be guilty of an offence under Section 443(1) unless they can prove that they are causing the child to receive a suitable education.

- 10.5 The statutory defences that are available to a Section 443(1) offence are that the child is in school or that the child is being educated otherwise (for example: at home).
- 10.6 Where a parent is considering elective home education for their child or where a parent claims that their child is being home educated, they should refer to the guidance for parents from the Department for Education for Elective Home Education. This can be found at [Elective home education - GOV.UK](https://www.gov.uk/elective-home-education)
- 10.7 Where a case is referred for prosecution of a s443(1) offence, the matter may be dealt with using the Single Justice Procedure or by issuing a summons.
- 10.8 Where a defendant pleads not guilty, the Court may list the matter for case management hearing before listing it for trial.
- 10.9 The Court will sentence the defendant if they plead guilty, or if they are found guilty, either by a contested trial or if the matter has been proved in their absence.

11. SENTENCING OPTIONS AVAILABLE TO THE COURT

- 11.1 Where a parent has pleaded guilty, or has been found guilty by the Court, the following sentencing options are available:
 - A fine of up to £1,000 (for Section 443(1) / 444(1) offences).
 - A fine of up to £2,500, or imprisonment for a term not exceeding three months, or both (only for Section 444(1A) offences).
 - A Conditional Discharge which means there will be no sentence if the child's attendance remains at an acceptable level for a specified period (eg: 6 or 12 months), however, if the parent/carer is convicted of a further offence during the specified period the Court will take the previous offence into account.
 - An Absolute Discharge which means the parent has been found guilty and have a criminal conviction, but they receive no penalty.
 - A Community Order.
 - A Parenting Order.
 - An Education Supervision Order.
- 11.2 The Court is obliged to impose a victim surcharge, the amount of which varies depending on the type of sentence passed.
- 11.3 The Court will be asked to consider making an order for the defendant to pay some, or all, of the Prosecution costs. This is entirely at the Court's discretion. The amount of costs requested will depend on whether the case is contested.

- 11.4 In an uncontested case, where the defendant pleads guilty or is found guilty by the court under the Single Justice Procedure, costs of between £200-£250 will be requested.
- 11.5 In a contested case, where the defendant pleads not guilty and the case is listed for trial, additional costs will be incurred by the local authority and therefore, the amount of costs are likely to exceed £500.

12. GDPR

Data will be held in accordance with the SMBC Privacy Policy
<https://www.sandwell.gov.uk/privacy>

13. PUBLICATIONS OF PROSECUTIONS AND OUTCOMES

- 13.1 Information about penalty notices issued or prosecutions may be shared with the relevant school/alternative provider regarding the child in question at the conclusion of the prosecution process.
- 13.2 Parents are also reminded that Court hearings are public and therefore, information about the case and any convictions may be published in the press.

14. POLICY IMPLEMENTATION AND REVIEW

- 14.1 The Schools Attendance Support Service, along with the management of said service will implement this policy and take corrective action where necessary. Departures from the policy will be exceptional and when they do occur, the reasons for the departure will be recorded.
- 14.2 This policy will be reviewed regularly.