

Children's Services
Attendance (statutory), Child Employment/Entertainment, Elective
Home Education/ Children Missing Education (ACE)

GUIDELINES FOR SCHOOL- INITIATED PROSECUTION IN RESPECT OF PUPIL NON-ATTENDANCE AT SCHOOL

1. Introduction

- Legal proceedings for failure to ensure regular attendance at school are initiated in the Magistrates Court under Education Act 1996 s444.
- Prior to considering a referral school-led prosecution, schools may wish to consider referring to ACE for a Penalty Notice, in line with Penalty Notice Code of Conduct.
- A school-led prosecution should be considered in cases where strategies have failed, and a parent/carer refuses to ensure that their child attends school on a regular basis.
- ACE co-ordinates legal action on behalf of the Local Authority (LA) for *schools* in cases of unauthorised absence.
- A decision will need to be made whether or not it is in the public interest to pursue a prosecution prior to initiating legal proceedings.

2. School action

- Parent/carers should be provided with ACE leaflet, '*School Attendance what parents and carers need to know*' as soon as attendance issues emerge. This advises them of their legal responsibilities for ensuring their child receives fulltime education provision. It also informs them that, should legal proceedings be initiated for non- attendance, evidence contained in a witness statement will refer to information taken from discussions with them.
- School staff should ensure that there is a process in place, to ensure that action taken by the school to resolve the attendance issues, is clearly documented and have evidence of a variety of attempts to try to resolve matters ie telephone calls, letters, meetings including contract meetings, visits (if undertaken by school staff).
- School staff to identify, wherever possible, who in school will be the primary witness.
- Parent/carers sent letter warning them that they will refer to LA (ACE team) for prosecution

3. Criteria for referral to ACE

- Evidence to be gathered over a minimum of 6 weeks and child's attendance during 6-week period is below 90% (unauthorised absence)
- If family have failed to give consent for the involvement of FS or attendance has not improved following the involvement of FS.
- Case has not been referred for a Penalty Notice in last 3 months.

4. Referral to ACE team

- If attendance issues remain unresolved submit a completed referral form for prosecution to Lead Adviser, ACE team. Ensure a copy of child's attendance certificate accompanies referral to ACE team
- ACE will respond to requests within 5 school days of receiving the request for consideration of a referral for prosecution. Referrals that are appropriate will be processed for legal action, however, if the referral is not appropriate, we will outline the reasons and provide advice on further action that can be taken by school staff.

5. ACE team

- If the prosecution has been agreed, parent/carer (s) will be invited to a formal court meeting for parents, the primary witness from school and LA representative to attend.
- If the parent/carer(s) fails to attend meeting LA will proceed with prosecution.
- If the parent/carer(s) attends the meeting they will be given 10 school days to improve attendance and if attendance fails to improve and no mitigation is provided, the LA will proceed with the prosecution.
- If the decision is made to proceed with the prosecution, the parent will be sent a Notification of intention to prosecute letter.

6. Witness Statement

- ACE will provide a witness statement template and assist the school staff in preparing a witness statement
- The witness statement is a statement of **facts** of the case and must be brief and to the point. Offences need to be committed within the

previous 6 months period. In terms of the rules of evidence, hearsay evidence is not permissible; therefore, it is important that evidence is gathered by one person.

- School staff prepare a witness statement and are *witnesses* to the offence being committed.
- The witness statement needs to give details of parent/carers forenames as well as surnames.
- Distance between home and school can be used as a defence in proceedings by parent/carers. It is therefore important that the issue is addressed in the witness statement.
- The statement must state whether the school where the pupil is enrolled is within walking distance from the pupil's home i.e.
 - 3.218688 kilometres or 2 miles – if child is under 8 years old
 - 4.828032 kilometres or 3 miles- if child is over 8 years old.
- If the school is not within walking distance the statement must specify the reasons. Parental preference is often the reason given by parent/carers for a child not attending a school near to home. In such cases, the statement should make reference to arrangements that can and could be made by the Local Authority to support attendance e.g. 'enabling him to become a pupil at a school nearer to home' (Education Act 1996 s444).
- The Local Authority can only initiate proceedings for non- attendance for those absences that have not been authorised by the head teacher or a delegated member of school staff. School staff make the decision whether or not to authorise absences. Any absences that have been substantiated by a medical professional must be authorised and therefore **cannot** be used in evidence in proceedings for non-attendance.
- Certificates of Attendance covering the period should be completed and signed by the head teacher of the school and submitted with the statement and referred to as 'Exhibited and marked hereto (witness initials) 1'. ACE will obtain these once the period of evidence has been agreed.
- Copies of letters referred to in the statement should be attached to the statement and referred to as 'Exhibited and marked hereto (witness initials) 2', 'Exhibited and marked hereto (witness initials) 3' etc. The content of letters does not need to be re-iterated in the witness statement.

- If FS have been involved, evidence should be retained for the prosecution and a witness statement should be provided for the school-led prosecution.

7. Process for legal action in Magistrates Court

- The completed witness statement & Exhibits should be prepared and sent to ACE for processing
- ACE will check that court papers are compliant with the rules of evidence, approve them for legal action and then forward to Legal Services.
- Legal Services will acknowledge receipt of the case for prosecution and issue a summons accordingly.
- Witnesses will be expected to attend the Magistrates Court to provide evidence only when defendants plead **not guilty** to the offence.

8. Possible outcomes of legal action

- Fines – amount of fine is determined by the courts ie up to £1000 for s444 (1) offence and up to £2500 for s.444(1a) offence.
- Imprisonment of up to 3 months (for s.444(1a) offence)
- Conditional discharge – parent/carer receives no punishment on the condition that, in a period set by the court (not more than three years), no further offence is committed. If *any* offence is committed during the period, the offender may also be re-sentenced for the original offence for which the conditional discharge was given.
- Absolute discharge – no conditions attached; case dismissed.

January 2023