

# SCHOOL ABSENCE PROSECUTIONS POLICY

## 1. INTRODUCTION

This policy applies to all primary and secondary schools in the Sandwell MBC Local Authority area. Whilst Independent schools are not obliged to follow this policy they are strongly recommended to do so.

Note: All referrals forwarded for Court action are expected to meet local referral criteria plus reach evidential and public interest thresholds. The best way to ensure this is for all education providers in Sandwell to adhere to this policy and local processes, as advised by the Local Authority.

## 2. ASSOCIATED DOCUMENTS

This policy should be read in conjunction with the Penalty Notice Code of Conduct, which includes the leave of absence guidance notes.

This can be accessed by schools via the following link:

[https://www.sandwell.gov.uk/extranetforschools/downloads/download/524/penalty\\_notice\\_code\\_of\\_conduct](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](https://www.sandwell.gov.uk/info/200295/schools_and_learning/2655/holidays_in_term_time_penalty_notices)

## 3. DEFINITIONS

### Parent

Parent, in relation to a child or young person, includes any person—

- (a) who is not a parent of his/hers but who has parental responsibility for him/her, or
- (b) who has care of him/her.

### Compulsory school age

A person begins to be of compulsory school age—

- (a) when he/she attains the age of five, if he/she attains that age on a prescribed and,
- (b) otherwise at the beginning of the prescribed day next following him/her attaining that age.

A person ceases to be of compulsory school age at the end of the day which is the school leaving date for any calendar year—

- (a) if he/she attains the age of 16 after that day but before the beginning of the school year next following,
- (b) if he/she attains that age on that day, or
- (c) if that day is the school leaving date next following him/her attaining that age.

The prescribed days relate to the start of the next full term e.g. September, January and April.

#### 4. ROLE OF SCHOOL

- 4.1 Each school is responsible for maintaining accurate attendance records.
- 4.2 Further, 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, the school is required to follow the leave of absence procedure.
- 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 If any school feels that a set of circumstances warrants a referral to the Attendance and Prosecution Service, it is the responsibility of the school to ensure that a referral is completed accurately and in full.
- 4.6 If a prosecution is subsequently initiated and the parent/parents enter a not guilty plea, the school is required to ensure (in so far as possible) that witnesses are available to attend Court if necessary, having already provided witness statements.

#### 5. ROLE OF THE LOCAL AUTHORITY (ATTENDANCE & PROSECUTION SERVICE)

- 5.1 This local authority (SMBC) prosecute parents for non-school attendance, breaches of school attendance orders and any other criminal offences as outlined within the Education Act 1996.
- 5.2 Referrals for prosecution are dealt with by the Attendance and Prosecution Service (APS).
- 5.3 Once a referral has been accepted, the APS will apply an evidential test to ascertain if there is sufficient evidence provided within the referral pack to warrant action being taken.
- 5.4 If a prosecution is deemed appropriate, the APS will prepare the evidence for Court and then pass the matter on to Legal and Assurance who will assess the case and take over the prosecution of the matter.
- 5.5 If it is deemed appropriate to issue a penalty notice, APS will issue the same in line with the penalty notice code of conduct.
- 5.6 In so far as possible, SMBC 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, whether it be related to irregular attendance or leave of absence in term time, APS will decide if the case can proceed and;
  - whether to issue a penalty notice or
  - refer the case to Legal and Assurance for consideration of prosecution under Section 444(1) or (1)(A) of the Education Act 1996.
- 6.2 The decision as to whether any action will be taken lies with the Local Authority. There is no right of appeal against this decision.
- 6.3 The irregular attendance guidance should be used by schools when considering a referral for prolonged or problematic unauthorised absence.
- 6.4 The leave of absence guidance should be used by schools when considering a referral for one off, unauthorised absence.
- 6.5 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.
- 6.6 If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, their parent(s) are guilty of an offence, contrary to Section 444(1) of the Education act 1996.
- 6.7 Section 444(1A) of the Education Act 1996 creates an offence, which occurs when the parent(s) know that the child is failing to attend regularly at the school and fails to prevent this, without reasonable justification.
- 6.8 Once a referral is received, the APS officer will ask the school for any missing documentation or necessary clarification. The documents required for referral are outlined in the guidance of the relevant process. In addition to the evidence/material provided by the school within the referral,

The officer will also consider:

- whether or not an education supervision order is appropriate;
  - any previous convictions/penalty notices/warnings;
  - for irregular attendance – the opinion of any social worker involved in with the children and/or parents;
  - disclosure material as defined by Section 3 of the Criminal Procedure and Investigations Act 1996;
  - schedule of officer's costs (where required, eg: for trial, will be provided by Legal Services).
- 6.9 For a prosecution to proceed, the local referral thresholds must be met, and the officer must be satisfied that there is sufficient evidence to provide a realistic prospect of a conviction: this is the evidential test. The officer must then determine whether a prosecution is required in the public interest: this is the public interest test.

6.10 Once the officer is satisfied that the above criteria are met and the case has been accepted, the APS will either issue a penalty notice or, where multiple penalty notices have been issued to the same parent(s), prepare the case for referral to Legal and Assurance for consideration of prosecution. If an offence under section 444(1)(A) of the 1996 Education Act is believed to have been committed, the parent will be invited to a formal interview under caution before a decision is made.

6.11 No offence 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/carers);
- any unavoidable cause;
- with permission from the Head teacher;
- 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.

6.12 The provisions of the Education Act 1996 as amended by the Anti-Social Behaviour Act 2003 do not allow for penalty notices to be issued to parents of pupils attending independent schools\*. However, penalty notices can be issued if the child has been directed to attend there as an alternative education provider or where the school is named via an Education Health Care Plan. Further, incidents of non-attendance can still be prosecuted via Section 444(1) of the Education Act 1996.

*\* This relates specifically to scenarios where a child has been ordered (**following an ESO**) to attend an independent school because that's the only available place for them, but then subsequently does not attend.*

## 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 The Education (Penalty Notices) (England) Regulations 2007 sets out the framework for the operation of the penalty notice scheme. The Penalty Notice Code of Conduct sets out SMBC's policy for issuing of penalty notices.

7.3 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.

7.4 If the criteria are met for a prosecution, the attendance and prosecution Service MUST first consider whether court action could be avoided and if a penalty notice would be more appropriate.

- 7.5 The Education (Penalty Notices) (England) Regulations 2007 (as amended) states that the time allowed for payment of the notices as follows:
- 21 days from receipt of the penalty notice, the sum of £60 will be due; or
  - 28 days, from receipt of the penalty notice, the sum of £120 will be due.
- 7.6 In exceptional circumstances, the APS may allow late payment of the higher amount within the time specified by the officer upon contact from the parent.
- 7.7 There is no legal right of appeal against education penalty notices. Where however, a parent / carer believes the penalty notice should not have been issued (see code of conduct), they must contact the Head Teacher / Principal of the school and provide any supporting evidence.
- 7.8 Following notification / a request from the Head / Principal a Penalty Notices will be put on hold by the LA until the evidence is reviewed, and a decision made by the school. Parents will be then notified in writing of the decision to whether the penalty notice has been withdrawn or payment must be made within an amended timeframe.

## 8. SINGLE JUSTICE PROCEDURE AND OFFENCES UNDER S444

- 8.1 Where
- penalty notices have been issued and remain unpaid,
  - or have been previously issued to a parent in respect of a child,
- the attendance and prosecution team may advise that the matter should be prosecuted in Court using the Single Justice Procedure.
- 8.2 Under Section 444(1) of the Education Act 1996, provided the relevant conditions are met, the Local Authority will issue a Single Justice Notice to parents (defendants) giving them the following options:
- To plead guilty and have the case heard by a single Magistrate without the defendant or Local Authority being present. Parents have the opportunity to explain the circumstances surrounding the offence in writing on the Notice which they must send to the Courts within 21 days;
  - To plead guilty and have the case heard in Court with a panel of Magistrates and the Local Authority present; or
  - To plead not guilty - In the case of a not guilty plea the Court will invite the defendant to a case management hearing before a trial takes place.
- 8.3 The court will sentence the parent 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. Sentence is a matter for the court and the disposals available to the court are:
- an absolute discharge (except in a Single Justice hearing where the parent has pleaded guilty and chosen not to appear in Court);
  - a conditional discharge (except in a Single Justice hearing where the parent has pleaded guilty and chosen not to appear in Court); or

- a fine of up to £1000 (Level 3 under Section 444 (1A) of the Education Act of 1996).

8.4 The court are obliged to impose a victim surcharge, the amount of which varies depending on the type of sentence passed.

8.5 The court must consider making an order for the defendant to pay some or all of the Prosecution costs. However, the making of a costs order is entirely at the Court's discretion. Defendants should note that costs requested in a non-contested matter are usually in the region of £200, whereas costs in a contested matter are likely to exceed £250.

## 9. S444(1A) OFFENCES

9.1 In the case of parents who have had previous unauthorised absence cases referred to Court, the AP Service will consider a prosecution under s444 1 A of the Education Act 1996 for the more serious non-school attendance offence.

9.2 Parents will be invited to an interview under caution conducted in accordance with the Police and Criminal Evidence Act 1984 Codes of Practice with a senior officer within the attendance and prosecution service. Following the interview, whether parents attend or not, consideration will then be given to a prosecution for the aggravated offence.

9.3 If the matter is to be prosecuted in the Magistrates Court a summons will be issued for the parent to attend Court on a specific date. If the parent does not attend, the prosecutor may request a warrant for the parents' arrest.

9.4 Once the parent appears in Court, the case will proceed. Where the parent pleads or is found guilty the disposals available to the Court could include:

- an absolute discharge;
- a conditional discharge;
- a fine of up to £2500, or imprisonment for a term not exceeding three months, or both (Level 4);
- a parenting order as defined by the Crime and Disorder Act of 1998. Parenting orders are made at the discretion of the court where parenting is an issue;
- a community order; or
- a prison sentence of up to 3 months.

9.5 The Court are obliged to impose a victim surcharge, the amount of which varies depending on the type of sentence passed.

9.6 The Court must consider making an order for the defendant to pay some or all of the Prosecution costs. However, the making of a costs order is entirely at the Court's discretion. Defendants should note that costs requested in a non-contested matter are usually in the region of £200, whereas costs in a contested matter are likely to exceed £250.

## 10. SCHOOL ATTENDANCE ORDERS

- 10.1 Section 437(1) of the Education Act 1996 states if it appears to the local authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school, or otherwise, they shall serve a notice in writing on the parent requiring him/her to satisfy them within the period specified in the notice that the child is receiving such education. This is called a School Attendance Order and they are issued by the Local Authority.
- 10.2 That period shall not be less than 15 days beginning with the day on which the notice is served.
- 10.3 Before serving the order, the relevant officer shall write to the parent:
- informing him/her of their intention to serve the order; and
  - specifying the school which the LA intend to name in the order.
- 10.4 Section 443(1) states that if a parent on whom a school attendance order is served fails to comply with the requirements of the order, s/he is guilty of an offence, unless s/he proves that s/he is causing the child to receive suitable education otherwise than at school. There are a limited number of statutory defences namely;
- the child is in school; or
  - the child is being educated elsewhere (i.e a private school or home schooled).
- 10.5 parents are advised that in order to raise a defence of home schooling, they must ensure that they have complied with the LA's guidance on home schooling.
- 10.6 If it is believed an offence has been committed, the attendance and prosecution service will issue the parents with a single justice notice. There is no right to appeal against a decision to prosecute.

## 11. GDPR

Data will be held in accordance with the SMBC Privacy Policy

<https://www.sandwell.gov.uk/privacy>

## 12. PUBLICATIONS OF PROSECUTIONS AND OUTCOMES

- 12.1 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.
- 12.2 Parents are also reminded that Court hearings are public and therefore, information about the case and any convictions may be published in the press.

## 13. POLICY IMPLEMENTATION AND REVIEW

- 13.1 The attendance and prosecution 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.
- 13.2 This policy will be reviewed annually.