

# **Managing School Absence**

## **Part 1**

Good Practice for Schools in Managing Absence

## **Part 2**

The Legal Process for Non-Attendance at School

## **Part 3**

The Penalty Notice Code of Conduct

**A guide for schools and other professionals in Gloucestershire**

**September 2015**



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# Key legislation and guidance

- The Anti Social Behaviour Act 2003
- The Education Acts 1996 and 2002
- The Education and Inspections Act 2006
- The Education (Pupil Registration) (England) Regulations 2006, as amended
- The Education (Penalty Notices) (England) Regulations 2007, and subsequent Amendment Regulations
- The Human Rights and all Equal Opportunities legislation
- Police and Criminal Evidence Act 1984
- Criminal Procedures Investigations Act 1996
- Attorney General's Guidelines for Crown Prosecutors

## Definitions

**School** is used in this document to include all educational providers used by Gloucestershire County Council to educate pupils of statutory school age including academies, free schools, colleges and alternative provision schools.

**Parent** is defined as per section 576 of the Education Act 1996 and means all natural parents, whether they are married or not and includes any person who, although not a natural parent:

- Has responsibility for a child or young person
- Has care of a child or young person

Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in Education Law.

### Compulsory school age

A child begins to be of statutory school age on the prescribed day which either falls on or follows their fifth birthday.

The prescribed days are currently 31st August, 31st December and 31st March,

This is the term following their fifth birthday. A child ceases to be of statutory school age on the school leaving date in the academic year in which they turn 16.

The school leaving date is the last Friday in June. An academic year commences on 1<sup>st</sup> September and ends on 31st August. Raising the participation age does not affect the statutory school age.

# Part 1

## Good practice for schools

### Early intervention

A key element of school absence procedures is the school systems for identifying and addressing emergent patterns of irregular attendance at an early stage. Early intervention strategies include:

- First day, contact with parents for all pupils absent without known reason.
- Analysis of individual pupil data to identify quickly patterns of absence which cause concern;
- Procedures to investigate and resolve unexplained absences within a week
- School attendance panels for pupils causing significant concern
- Support requested from the EP&I team for any child missing education – see CME guidelines
- System for regularly checking the attendance of pupils on approved educational activities off-site
- Schools must inform the Local Authority of any child who has been away from school for 10 consecutive days of unauthorised absence.
- Providing attendance certificates to parents/carers regularly, so they are aware of their child's attendance.

### Use of data

School can use data gathered internally along with RAISEonline and local comparative data available from the EP&I team to help identify causes and patterns of absence, devise solutions and evaluate the effectiveness of interventions

- Comparison of attendance rates across year groups or to other schools in similar circumstances
- Regular monitoring of progress towards attendance targets in school
- Collection and analysis of attendance data, to identify causes and patterns of absence
- Evaluation of the effectiveness of interventions used to improve attendance
- Regular updates to the senior management team and to the governing body about attendance  
Regular updates for parents in letters, newsletters, parent's evenings, assemblies, notice boards etc. and analysis of attendance data frequently, to identify causes and patterns of absence
- Regular reports to Governors

## Deletions from the Admissions Register

A pupil can lawfully be deleted from the admission register on the grounds prescribed in regulation 8 of the Education (Pupil Registration) (England) Regulations 2006. Deletion from the register for any reason, including non-attendance, other than those prescribed, is unlawful and could result in court proceedings being taken against the governing body.

[http://www.legislation.gov.uk/ukxi/2013/756/pdfs/ukxi\\_20130756\\_en.pdf](http://www.legislation.gov.uk/ukxi/2013/756/pdfs/ukxi_20130756_en.pdf)

## Missing Pupils - family whereabouts unknown

If a child is on a school roll and has:

stopped attending and no contact can be made with the parent to establish a reason for the absence

Or

- ceased to attend the school and the forwarding address/new school is not known

Or

- not returned from holiday within 10 school days of the expected date of return, the school should try to establish the family's whereabouts within 10 school days before making a referral to the EP&I team. The Local Authority guidance on Children Missing Education and Missing pupils (family whereabouts unknown) is available to download from Schoolsnet

[www.gloucestershire.gov.uk/schoolsnet/children-missing-education](http://www.gloucestershire.gov.uk/schoolsnet/children-missing-education)

## Children who are not in receipt of full time school education

The Ofsted report - Pupils missing out on education, makes a set of key recommendations for all maintained schools, academies and free schools, which include:

- Informing the local authority of any part-time education arrangements, regardless of the type of school. Schools can do this using a Microsoft Excel document. Please contact the EP&I team on 01452 426960.
- Giving governors sufficient information about children and young people who are not accessing school in the usual way, so that governors can challenge the amount of provision being made and evaluate its effectiveness.
- Establishing clear accountability for the achievement, safety and personal development of all children and young people who are on the school roll but not accessing school in the usual way, and for the quality and amount of provision made for them.

# Part 2 The Legal Process for Non-Attendance at School

## School Interventions

Schools will have a range of strategies for dealing with poor attendance however the Education Performance & Inclusion team (EP&I) on behalf of the Local Authority requires schools to have:

- Investigated the reasons for absence
- Met with parent(s) – preferably by home visit
- Warned parents in writing at the outset of the possibility of prosecution
- Implemented strategies to improve attendance, and provide evidence of this
- Considered and completed a Common Assessment Form (CAF) where appropriate
- Held a formal Attendance Improvement Meeting (AIM) with parent and child to draw up a plan.

The Local Authority must consider a number of factors before submitting a case for prosecution. These range from the requirements contained in the Attorney-General's Guidelines for Crown Prosecutors and the appropriate use of PACE cautioning, to the obligation to consider an Education Supervision Order.

## Request to initiate legal proceedings

To help the LA consider any request for legal action, schools should complete the **Request to Initiate Legal Proceedings** form as fully as possible.

On receipt of a request for LA intervention, an Inclusion Adviser (IA) from the EP&I team will contact the school within 5 school days to arrange a meeting to collect/review the evidence and check attendance registers. Following this meeting, if the evidence provided meets the required criteria, the Inclusion Adviser will initiate the legal process.

The legal process can cease should there be any further evidence or significant improvement in attendance, and will be constantly reviewed at all stages.

## **Year 11 Referrals**

The LA uses prosecution as a tool to improve a pupil's attendance at school. There comes a point in the school year when prosecution ceases to be a useful measure for some Year 11 pupils. By the time the LA is able to bring a case to court, the pupil may be on the verge of leaving school or may even have left. The LA may look more stringently at requests in these circumstances.



## Request to Initiate Legal Proceedings Education Performance & Inclusion

<b>Pupil Name:</b>			<b>School:</b>	
<b>Male / Female:</b>			<b>Home Address:</b>	
<b>Date of birth:</b>				
<b>Year group:</b>				
<b>Ethnicity:</b>				
<b>Pupil current attendance</b> %			<b>Names and dates of birth of siblings in school:</b>	
<b>SEND Category</b>				
<b>My Plan</b>	<b>My Plan +</b>	<b>Statement/EHCP</b>	<b>Child Protection Plan</b>	<b>Children in Care</b>
<b>Full Names of Parents/Carers:</b>				
<b>And any different address:</b>				
<b>Parental Communication Difficulties</b>			<b>Home Tel. No:</b>  <b>Work Tel. No:</b>  <b>Mobile Tel. No:</b>	
<b>First language spoken:</b>				
<b>Date parent warned in writing of possible LA legal action:</b>		<b>Dates of Attendance Improvement Meetings</b>		
<b>Other Agencies Involved</b>				
	<b>Agency/Department</b>	<b>Officer Name</b>	<b>Tel Number</b>	
<b>Social Care</b>				
<b>Educational eg EPS, Alternative Provision</b>				
<b>Medical</b>				
<b>Other</b>				

Please indicate below the paperwork that will be available for the Inclusion Adviser to collect following receipt of this form

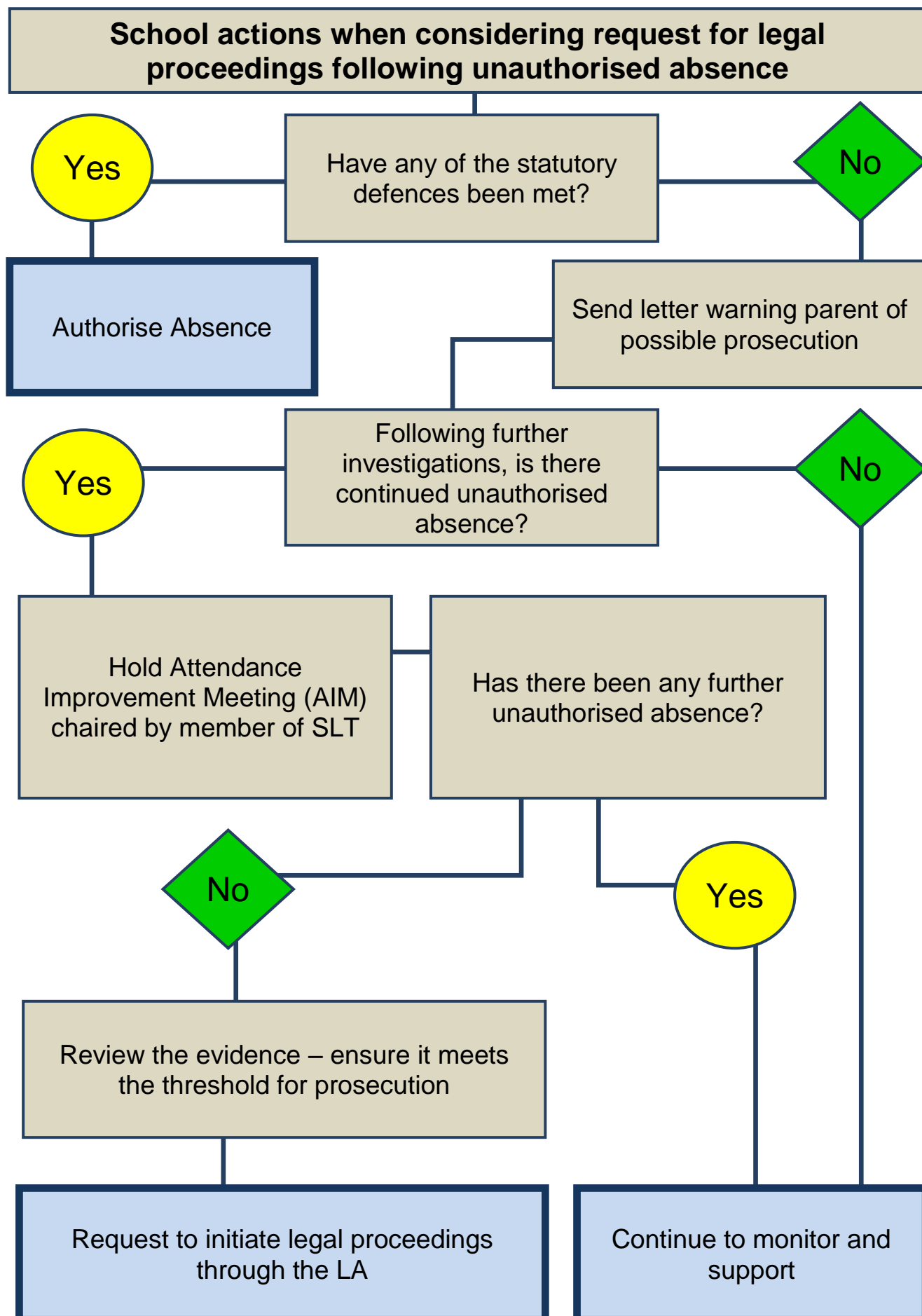
Copy of letter sent to parent at outset of working with family to warn of possible LA prosecution	
Any medical evidence (where relevant)– including letters from GPs/consultants/CYPS	
Records of attendance meetings held with parents	
Records of home visits made by school staff to discuss attendance	
Copy of AIM plan or equivalent (and review of plan if completed)	
Electronic register history of change report	
Attendance certificate signed by Head teacher	
<b>Any actions taken to support the child's broader social, emotional &amp; behavioural needs</b>	
	Offered? Start/End date
Common Assessment Framework (CAF)	
Details of referrals made to other agencies including social care	
Transport assistance investigated	
Reduced timetable	
Alternative Provision	
Altered curriculum	
Time at school inclusion unit	
Help with catching up missed work	
Rewards/sanctions	
Behaviour support	
Pastoral Support Plan	
Managed move	
Change of tutor group	
Bullying resolution	
Mentoring/buddying	
School nurse input	
Counselling	
Parenting help/referral	
Other strategy / support – please evidence.	

**Please ensure all paperwork is signed and dated.**

**Signed (Head teacher):**

**Date:**

This form may be shown to the parent/carer and could be used as evidence if court action is taken.  
This form should be sent securely at <https://securenetplus.swgfl.org.uk> or faxed to 01452 425948  
**Education Performance & Inclusion, Shire Hall, Westgate St, Gloucester GL1 2TP**



# The Statutory Defences

## Education Act 1996 S444

**(3)** The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school—

- (a)** with leave,
- (b)** at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
- (c)** on any day exclusively set apart for religious observance by the religious body to which his parent belongs.

**(4)** The child shall not be taken to have failed to attend regularly at the school if the parent proves—

- (a)** that the school at which the child is a registered pupil is not within walking distance of the child's home, and
- (b)** that no suitable arrangements have been made by the local education authority for any of the following—
  - (i)** his transport to and from the school,
  - (ii)** boarding accommodation for him at or near the school, or
  - (iii)** enabling him to become a registered pupil at a school nearer to his home.

**(5)** In subsection (4) “walking distance”—

- (a)** in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
- (b)** in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles), in each case measured by the nearest available route.

**(6)** If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves—

- (a)** that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
- (b)** that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
- (c)** if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

## Warning Letter to parents

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

Please include the following paragraph within the body of the letter you send to parents/carers (see flowchart for timescale).

***“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. There is a risk that if your child's attendance remains at the current level a referral may be made to the Local Authority who will start a legal process. I enclose a leaflet which gives more detail about school attendance.”***

Please note that the Local Authority may be unwilling to undertake legal proceedings unless this letter has been sent.

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.

The Request to Initiate Legal proceedings form and the AIM forms are available as Word documents on Schoolsnet - [www.gloucestershire.gov.uk/schoolsnet/attendance](http://www.gloucestershire.gov.uk/schoolsnet/attendance)

The School Attendance flyer for parents is available to print as a PDF. Alternatively ask for electronic copies by phoning 01452 426960/427360.

## What can you do to help?

- If you suspect that your child may be missing school or is unhappy at school, you should contact the school as soon as possible so that you can work with them to resolve any difficulties.
- Make sure your child understands that you do not approve of them missing school, but be on the alert for any particular reasons for non-attendance, such as bullying or problems with school work and discuss these with the school.
- If your child is ill or absent for any other reason, contact the school on the first day of absence.
- Follow the school's procedures for notifying absence, and always let the school know of any days that your child is unable to attend.
- Make sure your child arrives at school on time for both the morning and afternoon sessions.
- Take an interest in your child's education. Ask them about their day and praise and encourage their achievements at school.
- Co-operate with any support, such as a Parenting Contract offered by the school or Local Authority

The information on this flyer is based on DfES booklet – Is your child missing out? (2007)

# Make every minute count

Attending school every day = 100% attendance.

Attending 4 ½ days a week = 90% attendance = 4 weeks missed per year

Attending 4 days a week = 80% attendance = more than half a term missed per year or 2 full years missed over the course of their school career.

Attending 3 ½ days each week = 70% attendance = more than a quarter of the school year missed.

An average attendance of 80% or less across a child's school career adds up to missing a whole 2 years from school

Being late for school reduces learning time.

If your child is 5 minutes late every day they will miss three days of learning each year.

If your child is 15 minutes late every day they will miss 2 weeks of learning each year.

# Absence from School



## Information for Parents and carers



## The Law

The Education Act 1996 (Section 444) states:

'If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence'.

The offence is called a "strict liability" offence. This means that if you are the parent of the child and that child is on roll at a school and they have not attended regularly then the court must find you guilty of the offence unless you have a defence.

### A parent is defined in law as:

- All natural parents, whether married or not
- Any person who, although not a natural parent, has parental responsibility for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person.

The fact that you do not live with the child is not a defence against securing their attendance at school.

## The Defences

For any case brought before the magistrates under section 444 there are only these possible defences

- The child had leave of absence.

This means that your child had the Head teacher's permission to be absent. You could prove this by producing a letter from the Head teacher.

- The child was too sick.

Sickness means that your child was not fit for school on the dates listed on your summons. You could prove this by producing a medical certificate or letter from your child's doctor or consultant.

- The child was unavoidably absent.

This means that there were exceptional circumstances preventing your child from attending school during all of the dates listed on the summons. This may be difficult to prove.

- The child was absent for any day exclusively set apart for religious observance by the religious body to which his parent belongs.

This means that your child was absent because of your religious observance—not your child's.

You could prove this with a letter from your minister of religion. It is unlikely that this defence would apply to all the dates on your summons.

- The school is not within "walking distance" of the child's home and no suitable alternative arrangements have been made by the LA.

For a child under 8 years old this distance is 2 miles  
For a child 8 years old and over this distance is 3 miles

This means that where the Local Authority has an obligation to provide transport it has not done so.

You could prove this with copies of your correspondence with the Local Authority.

You should seek legal advice if you plan to use this as a defence.

- The child has no fixed abode and the parent can prove that they were travelling for the purposes of obtaining work.

This means that you are a Traveller and that on the dates listed on your summons you were travelling to seek work or were working.

You could prove this with a witness who could explain to the court that this is what you were doing.

Education Act 1996

Anti Social Behaviour Act 2003

### Attendance Improvement Meeting

Name of School:

Name:	Year:	Date Plan Drawn Up:
Present:		
Current Attendance %:		
Background:		
Pupil agrees to:		
Parent(s) or Carer agrees to:		
School agrees to:		
Other Agency agrees to:		
Agreed Attendance Target:		No further unauthorised absence:

#### Review Date:

As Parent/Carer of ..... I understand that failure to meet these targets may result in legal proceedings being taken against me.

Signed:

Pupil.....	School.....
Parent.....	Other.....

**Education Act 1996      Anti Social Behaviour Act 2003**

**Attendance Improvement Meeting – Review**

Name of School:

Name:	Year:	Date of Review:					
Present:							
Initial AIM Date :		Current attendance	%				
Sessions of absence since AIM meeting:							
Authorised		Unauthorised					
Comments:							
<b>Action (please indicate below)</b>							
Targets met – No further action							
or							
Improvement but targets not met – plan to continue – Review date							
or							
Targets not met – Request for legal action to Education Performance and Inclusion Team							
Review Date: (If appropriate)  As Parent/Carer of ..... I understand that failure to meet these targets may result in legal proceedings being taken against me.  Signed:  <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; height: 40px; vertical-align: bottom;">Pupil.....</td> <td style="width:50%; height: 40px; vertical-align: bottom;">School.....</td> </tr> <tr> <td style="height: 40px; vertical-align: bottom;">Parent.....</td> <td style="height: 40px; vertical-align: bottom;">Other.....</td> </tr> </table>				Pupil.....	School.....	Parent.....	Other.....
Pupil.....	School.....						
Parent.....	Other.....						



## Legal options - EP&I team

The EP&I team can decide on the following legal outcomes following a Police and Criminal Evidence Act (PACE) interview under caution:

- Proceed to court for prosecution
- Simple Caution
- Penalty Notice
- No Further Action

The team will also consider:

- CAF
- Education Supervision Order
- School Attendance Order

## Legal options – magistrate court

When the EP&I team proceeds to court for prosecution, there is a range of options available for magistrates following a conviction of a parent for failing to ensure the regular attendance at school of their child. **It is important to note that although the following disposal is an option for the magistrates, the ability to pay a fine is means tested.**

Each parent could be:

- Fined up to £1,000
- Given a Community Order
- Made subject to a Parenting Order
- Ordered to pay costs to the Council

For repeated offences, higher level prosecution under the s444 (1A) of the Education Act 1996 may occur and parents could be subject to:

- A fine up to £2,500
- Up to three months imprisonment
- A Community Order
- A Parenting Order
- An order to pay costs to the Council

# Frequently Asked Questions about the Legal Process for Non-Attendance at School

## **If I refer a case for legal action can I be sure the LA will take the matter to court?**

The LA must be satisfied that a 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. Out of court settlements such as penalty notices and simple cautions will also be considered.

## **Can a head teacher be called to court as a witness?**

**Yes.** Anyone who has provided a witness statement as part of the legal proceedings may be called to attend a court hearing if the parent requests it.

## **Why do we hear of some parents being sent to prison when their children don't attend school while others get a small fine?**

The amount of any fine is determined by the magistrates taking into account the number of any previous offences, the length of non-attendance, parental collusion, affect on others, mitigation and ability to pay.

## **When should we consider asking the LA prosecute a parent for their child's poor school attendance?**

You should only consider prosecution when you have made every attempt to help resolve the attendance issues with both the child and the parent(s). As a minimum the parent must have been warned in writing and you must have made every attempt to meet with them to try and resolve the problems.

## **When should we send a letter warning parents that they are at risk of prosecution?**

It is good practice to send the letter as soon as you feel there is an attendance problem – this would probably be when you stop authorising absences for that child. It will help you to start an evidence file for that child at the same time.

## **We sent a warning letter to a parent in October and that seemed to improve the child's attendance. It's now May and attendance has deteriorated – do we need to send another warning letter?**

**Yes.** We can only use evidence that is less than 6 months old when we lay it before the court. This means that for us to show the court that you had warned the parents in writing, it must have happened in the last 6 months. We need time to prepare the case for court once you have

submitted the Request to Initiate form to us – so we ask that the warning letter has been sent to the parent no more than 20 weeks before.

**Do we have to use your AIM template?**

**No**, you may use your own form– however it should include all the same information that we ask for on our form. It is important that the form can be easily read and clearly understood by all as it will be presented in court. It should not include abbreviations or acronyms

**A child with poor attendance lives with his mother, but his father is involved in his day to day care – should we include him on the Request to Initiate Legal Proceedings?**

**Yes**, and sometimes it is a useful tool to ensure that the absent parent works together with the other parent to improve the child's attendance.

**We have done an AIM meeting for a child who hasn't attended school for 2 months. Neither parents nor the child attended the meeting. We have sent a copy of the plan to the parents and have had no response, and the child has still not been into school. How long must we wait before sending the Request to Initiate Legal Proceedings form to you?**

We advise that you wait no more than a week from when you would expect parents to have received the plan.

**We haven't done an AIM before and are not really sure how to go about it. Is there any help you can give?**

The EP&I team are always available during office hours by phone and email and are happy to advise you. We also have a good practice guide we can give you.

**Do we have to have completed a home visit where parents are present before we can Request to Initiate Legal Proceedings?**

**Yes**, This is good practice is evidence that you have tried to engage with parents using all means available to them.

**What happens if the EP&I team have not contacted me within 5 school days of sending the Request to Initiate Legal Proceedings form?**

There are details on the form about how to send it to us. The secure mail option is checked on a daily basis and there will always be a member of the team available to deal with the completed form.

**What if a parent does not turn up to the AIM meeting?**

If there is no reason provided, we would suggest that the meeting goes ahead, the plan is drawn up and sent to the parent with a covering letter emphasising the review date.



## **Part 2**

# **Penalty Notice Code of Conduct**

### **The Legal Framework**

If a child of compulsory education age fails to attend regularly at a school at which they are registered or at alternative provision made for them then the parent may be guilty of an offence under section 444 of the Education Act 1996.

A parent is guilty of an offence under S103 of the Education and Inspections Act 2006 if their child is found in a public place without reasonable justification in the first five days of an exclusion.

Sanctions currently available under Section 444, Education Act 1996 or Section 36 of the Children Act 1989 are supplemented by Penalty Notices to enforce attendance at school where appropriate.

Payment of a Penalty Notice discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under other enforcement for the period covered by the Penalty Notice.

### **The responsibility of the Local Authority**

Section 23 of the Anti Social Behaviour Act 2003 adds two sections to the Education Act 1996 (444A and 444B) which empower designated LA officers, head teachers (and deputies or assistants authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. However The Education (Penalty Notices) (England) Regulations 2007 gives Local Authorities leading responsibility for developing the Penalty Notice Code of Conduct under which all partners, named in the Education Act, will operate. This code of Conduct states that the Local Authority are the only body in Gloucestershire able to issue a Penalty Notice for the offences above.

### **The Education Performance & Inclusion team (EP&I)**

In Gloucestershire the EP&I team has responsibility for Penalty Notices on behalf of the Local Authority.

The Data Officer:

- Receives requests to issue Penalty Notices from schools in Gloucestershire, Gloucestershire Constabulary and neighbouring LAs.
- Issues the Penalty Notices
- Reports annually on the use and outcomes of Fixed Penalty Notices.

## Circumstances when a Penalty Notice can be issued

A Penalty Notice can only be issued when an excluded pupil is found in a public place during school hours without a justifiable reason or in one of the following circumstances of unauthorised absence:

**Holiday during term time** when the school has not authorised the absence and the child has missed at least 10 sessions within a 10 week period.

**Persistent late arrival at school** after the registers have closed, and where the U code is used on the attendance certificate on at least 10 occasions within a 10 week period.

**Excluded Pupil found in a public place** within the first 5 days of any exclusion.

The exclusion letter issued to parents is a warning of this, and if a child is found in a public place within the first five days of an exclusion, schools may request the issue of a Penalty Notice

In all but exceptional cases, a school will issue a formal warning letter to a parent giving fifteen school days for an improvement to be made, before requesting a Penalty Notice. There is no right of appeal by parents against a penalty notice, so these 15 days allows parents time to make representations to the school (see letter template).

If there is further unauthorised absence during the fifteen-day period the school can request a Penalty Notice be issued by the LA.

If there is no further unauthorised absence during the fifteen-day period the case should be closed and the warning letter kept on file. If the child subsequently has ten sessions of unauthorised absence, the school can request a Penalty Notice be issued if the criteria are met without having to send a second warning letter.

Before requesting a Penalty Notice, the police/neighbouring LAs should contact the EP&I team to establish whether any action is being undertaken for the period of unauthorised absence.

In some circumstances, a Penalty Notice may also be considered an appropriate sanction for O coded absences, but this decision will only be made following the receipt of a request to initiate legal proceedings.

## Procedures for issuing a Penalty Notice

No more than two Penalty Notices per child will be issued in any twelve-month period to any one parent.

Requests to issue Penalty Notices should be submitted to the EP&I team directly. The Request for Penalty Notice form completed by a school should be sent with:

- a copy of the Warning Letter issued by the school
- evidence of a 15 day monitoring period
- registration certificate signed by the head teacher

The EP&I team will:

- check that the criteria for issue of a Penalty Notice are met
- contact the referrer in writing regarding the outcome of the request
- issue Penalty Notices by post – never in person

## Payment of a Penalty Notice fine

Arrangements for payment are detailed on the Penalty Notice.

The Penalties are as follows:

- If paid within 21 days, the penalty is £60.
- If paid after 21 days, but within 28 days, the penalty is £120.

The LA will not accept payment after 28 days and will, proceed to prosecution if the fine is unpaid, unless there are grounds not to do so.

The LA will retain any revenue from the issue of Penalty Notices. The revenue will be used to cover enforcement costs.

## Circumstances when a Penalty Notice can be withdrawn

A Penalty Notice, once issued, will only be withdrawn if:

- it ought not to have been issued i.e. if it has been issued outside the terms of this code of conduct or where no offence has been committed
- it was issued to the wrong person
- it is deemed to be materially defective
- it is not paid and no further action is taken by the LA.

When a Penalty Notice is withdrawn, the EP&I team send notice of the withdrawal to the recipient and any payment made by way of penalty in pursuance of that notice is repaid to the person who paid it.

## Monitoring and Review

The EP&I team maintains records of Penalty Notices including:

- the number of requests to issue a Penalty Notice and the requesting agency
- the number of Penalty Notices issued
- the number of Penalties paid, when and how much
- the number of requests for withdrawals, notices withdrawn and the grounds of the withdrawal
- the number and outcome of cases taken to court.

This Code of Conduct will be reviewed on a yearly basis and will be amended accordingly.



## Sample warning letter for Penalty Notices

Dear (NAME),

### **The Education (Penalty Notices) (England) Regulations 2007 Warning of Penalty Notice**

Under the Education Act 1996, parents and carers have a duty to make sure their children regularly attend school. If parents or carers fail to do this, they can be prosecuted.

Working within a Code of Conduct the Local Authority can issue a Penalty Notice to parents or carers if a child has missed 10 or more sessions over the previous ten weeks without permission from the school.

(NAME) has been absent from school for ten or more sessions in the previous ten weeks without prior authorisation or an acceptable reason being given to the Head Teacher. Please note there are normally two sessions in each school day.

This absence has therefore been recorded as unauthorised in the school register.

**I need to inform you that the level of (NAME's) unauthorised absence places you at risk of a Penalty Notice and / or Court Action by the Local Authority.**

Providing there are no further unauthorised absences within the next 15 school days (*which will start two days after the date of this letter, to allow for postage*) a Penalty Notice will not be issued on this occasion.

I must also draw your attention to the fact that should (NAME) have more unauthorised absences within the next 12 months, you may receive a Penalty Notice without further warning.

Yours sincerely,

## Penalty Notices and the Education Act 1996

Section 444A of the Education Act gives powers to the Local Authority (LA) to issue Penalty Notices when a parent or carer is considered capable of but unwilling to secure an improvement in their child's school attendance and/or punctuality.

### Q Why are Penalty Notices used?

Missing school damages children's attainment levels, disrupts school routines and the learning of others. Children who miss school are vulnerable to anti-social behaviour and youth crime. Above all, missing school seriously affects children's longer-term life opportunities. If your child fails to attend school regularly and punctually and the absence is recorded by the school as unauthorized, you are guilty of a criminal offence under Section 444 of the Education Act.

### Q What is a Penalty Notice?

A Penalty Notice is a fine which may be issued as an alternative to prosecution. It does not require a court appearance and does not result in a criminal record. Payment of a Penalty Notice means you avoid the potential danger of prosecution and subsequent conviction.

### Q When might a Penalty Notice be issued?

If your child is absent from school for 10 sessions\* in a ten-week period, without authorisation from their school, you will be sent a warning letter by the school. This *includes sessions where your child has arrived after the school's registration period without an acceptable reason*. If there are no unauthorised absences in the next 15 school days, no further action will be taken. If there are further unauthorised absences there will be no further warning and a Penalty Notice will be issued by the Local Authority.

\*Each school day contains two sessions.

## Government Advice on School Attendance October 2014

'pupils need to attend school regularly to benefit from their education. Missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in both primary and secondary school.'

### Q How is a Penalty Notice issued?

You will receive the Penalty Notice by post to your home. Fines are issued to each parent for each child.

### Q What is the cost of the fine?

The penalty notice allows you 21 days to pay a £60 fine. If you pay after the 21-day period but within 28 days, the fine increases to £120. If the fine remains unpaid at this stage, we would initiate legal proceedings against you for your child's non-attendance.

### Q How can a Penalty Notice be paid?

Your penalty notice will include clear instructions on how to pay. There are two main ways - by cheque or postal order or over the phone using your debit or credit card. We cannot accept payment in part or by installment of a Penalty Notice.

### Q What happens if I do not pay?

You will have up to 28 days from receipt to pay the Penalty Notice in full. If you fail to do so, the Local Authority is required, by law, to start proceedings in the Magistrates' Court for the original offence of poor school attendance and/or punctuality.

If you are convicted of this offence there are a number of possible sentences including a fine of up to £1000 or a fine of up to £2500 and/or a period of up to 3 months' imprisonment.

## Penalty Notices



## Information for Parents and Carers

## Education, Performance and Inclusion

### Q Is there an appeal process?

No. When you receive your penalty notice all investigations will have taken place, so once you have been issued with a penalty notice we cannot withdraw it unless it has been issued in error. It must be paid.

### Q What happens if the Penalty Notice is paid but my child still misses school?

Parents/carers are not liable for prosecution for their child's school attendance for the period in question once the penalty notice is paid. However, prosecution may be considered for further periods of poor attendance not covered by the notice. Prosecution will be considered if two penalty notices have been served.

### Q Who can I contact about a Penalty Notice that has been issued?

In the first instance you should contact the Attendance Officer at the school your child attends.

For more information about the issuing of Penalty Notices you can contact Education, Performance and Inclusion

Block 1, Shire Hall  
Westgate Street  
Gloucester  
GL1 2TP  
Tel: 01452 427360 / 426960

## Request to Issue a Penalty Notice

### Education Performance & Inclusion Team

*This form will be used in any legal action under the Education and Inspections Act 2006 S103 and The Education Act 1996 S444 relating to non-school attendance of a registered pupil at the school.*

The completed form should be signed by the head teacher/ principal and returned to  
 Education Performance & Inclusion team, Shire Hall Westgate Street Gloucester GL1 2TP  
 Tel 01452 328033 Fax 01452 425948

<b>Pupil Name:</b>		<b>School:</b>	
<b>Date of Birth:</b>			
<b>Male / Female:</b>	<b>NCY:</b>		
<b>CiC Yes/No</b>	<b>CPP Yes/No</b>	<b>SEND Yes/No</b>	<b>Traveller Yes/No</b>
<b>Parent detail:</b>			
<b>Title – Mr/Miss/Mrs/Ms</b>		<b>Address</b>	
<b>Surname</b>			
<b>Forename</b>			
<b>Date of birth– if known</b>			
<b>Relationship to pupil</b>		<b>Postcode</b>	
<b>Parent detail:</b>			
<b>Title – Mr/Miss/Mrs/Ms</b>		<b>Address</b>	
<b>Surname</b>			
<b>Forename</b>			
<b>Date of birth– if known</b>			
<b>Relationship to pupil</b>		<b>Postcode</b>	
<b>Reason for request – please select</b>		<b>Enclosed documents – please confirm</b>	
Unauthorised holiday (Code G)		Attendance printout for the academic year	
Persistent late arrival at school – after the registers have closed (Code U)		Evidence of warning letter and monitoring period	
Child found in a public place during an exclusion		Copies of relevant letters to parents/carers	
<b>Head teacher confirmation</b>			
I confirm that this pupil is on roll at the school named above and that he/she has had <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span> sessions of unauthorised absence in a period not exceeding 10 weeks prior to the date that the warning letter was issued. I confirm that the attached, signed attendance printout is an accurate record of the attendance register for this pupil.			
<b>Name</b>	<b>Signed</b>	<b>Date</b>	

## Frequently Asked Questions about Penalty Notices

### What can we issue Penalty Notices for?

Penalty Notices are seen as a quick, effective way to bring about change where a child has relatively low level of unauthorised absence perhaps due to holiday in term time or for persistent late arrival after the register closes.

### Can a school issue their own Penalty Notices?

**No.** In Gloucestershire the Penalty Notice scheme is administered by the Local Authority.

### Does the 10-week period include school holidays?

**Yes.** The pupil must have been recorded with at least 10 sessions of unauthorised absence during the 10 weeks immediately preceding the issue of a warning letter.

### Why do the unauthorised absences have to be within a 10-week period?

This is to ensure that, should a penalty notice be issued and remains unpaid, and the LA decide to prosecute, any evidence we produce in court is within a set timeframe.

### After we have sent a warning letter, when does the 15 school day monitoring period start?

You should allow 2 working days from the date of the letter for delivery before starting to monitor for further unauthorised absences.

### A pupil for whom we sent a warning letter has had unauthorised absence on the first day of the 15 school day monitoring period, should we refer to the EP&I team for a Penalty Notice to be issued straight away?

You could send a referral for Penalty Notice on the first occurrence of unauthorised absence but good practice would be to wait for the end of the 15 school days.

### A pupil for whom we sent a warning letter has been recorded with an N-code (no reason yet given) during the 15 school days monitoring period, can we refer for a Penalty Notice?

**No.** You must establish the reason for absence. If, once a reason is provided for the absence, the absence is changed to G or U, you can then refer.

### A pupil has had further unauthorised absences within the 15 school day monitoring period and we would like to refer for a Penalty Notice, how soon must we do this?

In order to ensure any evidence we may have to produce in court is kept within the timeframes, we ask that any referrals are made within 2 weeks of the last day of the monitoring period.

### We have a pupil in Reception who is persistently late after the register closes, can we send a warning letter?

**Yes,** if the pupil has reached compulsory school age.

**A pupil has had at least 10 sessions of unauthorised absence during a 10 week period for a variety of reasons, can we send a warning letter?**

**Yes.** However, we suggest you use the majority so if child has lots of O-coded absences you should consider a request to initiate legal proceedings rather than a penalty notice.

**We have already sent a warning letter this academic year and now the child is off on holiday again or started to be late after the registers have closed, do I send another warning letter?**

**No.** Providing the original warning letter contained an explanation that any further unauthorised absences within the next 12 months could result in a penalty notice being issued without further warning, you do not need to send another warning letter. However, there must 10 unauthorised absences falling within a 'new' period of 10 weeks before you can complete a Penalty Notice request form. The original warning letter must be attached to the original referral form.

**A pupil normally lives with their mother, but their father has taken them on holiday during term time which has not been authorised by the school. Who should we send a warning letter to?**

Any adult, who lives with and looks after a child, is considered to be a parent in Education Law. The fact that a parent does not live with the child is not a defence. For that reason, a warning letter could be sent to both mother and father in this case.

**We have a pupil in NCY11 who has been recorded with 10 sessions of unauthorised holiday within a 10 week period, can we send a warning letter?**

**Yes,** but due to timescales for court evidence, warning letters for year 11 pupils should not be issued after 1<sup>st</sup> March.