

# Quick Reference Guide (QRG)

## Children & Young People Service

### Referrals for Legal Intervention: Education Welfare Service – Non School Attendance

Version 1.0 (Sept 2020)

**All contact and work received by families from the City of Wolverhampton Council within the City will be based around restorative practice principles. This is to ensure we improve the life outcomes for all children, young people and families we work with. In Wolverhampton we intend to use restorative principles and behaviours with colleagues as well as children and families, to help develop positive working relationships.**

In order for a child to fulfil their potential in education they need to attend school regularly and on time.

#### ***The legislation states that:***

‘Parents have the responsibility to ensure that their children receive a suitable education, either by regular attendance at school or otherwise’ (section 7 Education Act 1996).

If a child is on a school roll the school must monitor and review their attendance and act on any concerns both quickly and efficiently. Schools have a wide range of strategies available to them to identify and address unsatisfactory attendance, including, ultimately, referral to the Local Authority for formal legal action against the parent to be considered.

This document explains what intervention is expected from schools prior to referral to the Education Welfare Service, and how a referral is actioned once it is accepted.

At all times it is important to take into account the individual circumstances of each child and their family and apply appropriate strategies.

***A referral to initiate formal legal procedures can ultimately result in the issue of a Penalty Notice, or prosecution in the Magistrate’s Court. This formal intervention should only be used when schools have exhausted all other strategies but have failed to improve the pupil’s attendance. However, formal or***

**legal action can be an effective deterrent preventing a pattern of school nonattendance.**

The Local Authority regards prosecution as a last resort, when all other measures have failed to assist a pupil to attend school regularly.

### **EDUCATION WELFARE SERVICE**

The Education Welfare Service is responsible on behalf of the City of Wolverhampton Council for undertaking the following proceedings:

- Meeting and cautioning parents under a PACE interview (Police and Criminal Evidence Act 1984)
- Penalty Notices
- Prosecution in Magistrate's Court
- School Attendance Orders
- Education Supervision Orders
- Identifying Children Missing from Education (CME)
- Elective Home Education Procedures
- Implementing and Monitoring National and Local Guidance in respect of School Attendance

### **SCHOOL ACTIONS PRIOR TO THE REFERRAL PROCESS**

Schools are expected to have taken all reasonable steps to identify parents and have included them in all attendance concerns. The definition of a parent is as follows:

- All biological parents, whether they are married or not.
- Any person who, although not a biological parent, has parental responsibility for a child or young person, this could be an adoptive parent, a step-parent, guardian or other relative.
- Any person who, although not a biological parent and does not have parental responsibility, has care of a child or young person.

In order for a referral to be made to the Education Welfare Service for statutory intervention, evidence of intervention must be provided, and should include the following:

- Evidence of text messages or telephone contact logs
- Copies of any letters sent to all parents
- Details of any home visits completed, times and dates and copies of calling cards
- Case notes must be completed giving detailed evidence of any meetings or telephone conversations with parents. These should be clearly dated and timed, in a chronological order which tells the story. This should clearly show who undertook the work.
- Allegations of bullying must be noted, showing that there has been an investigation with a satisfactory outcome.

- Genuine medical conditions need to be noted and should include a conversation with the school nurse. Medical plans should be implemented prior to any referral for those pupils with medical needs as per current government guidance. A copy of the medical plan should accompany the referral <https://www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions>
- Details of parental engagement or lack of engagement should be recorded.
- A copy of the Early Help Assessment must be included unless the pupil is subject to CP or CIN intervention.
- Parenting Contracts should be offered to all parents who are subject to CIN or CP proceedings (**APPENDIX 1**)
- A registration certificate clearly showing unauthorised absence.

### **HOW TO REFER**

School/Academies should complete a referral form which is the Early Help Assessment and the referral checklist (**APPENDIX 2**)

Once all the evidence has been gathered the referral should be emailed directly from the school to: [attendanceandexclusions@wolverhampton.gov.uk](mailto:attendanceandexclusions@wolverhampton.gov.uk).

***To meet GDPR requirements schools or academies that use outside services to address attendance matters should make referrals only from the recognised school email account or via a third-party account which has been provided and verified by the school. School must have an information sharing policy in place with any third party which confirms the school is fully responsible for ensuring the sharing, storage and distribution of all information. Schools and academies take full responsibility for those persons acting on their behalf.***

***Schools and academies are permitted to share information with the Local Authority without parental consent as part of the Local Authorities statutory duties, or when an offence under the Education Act 1996 is suspected.***

### **WHAT HAPPENS ONCE A REFERRAL HAS BEEN RECEIVED**

- Once the referral has been received it will be checked to ensure the correct documentation is enclosed. If the correct paperwork is not included or the work that has been undertaken is not sufficient the referral will be returned to the referrer.
- Once all the documentation and information has been supplied by the referrer and the referral has been accepted, the local authority will consider action under either the Single Justice Procedure, Section 444(1), or an aggravated offence, section 444(1A) of The Education Act 1996.

- The decision on which section of the Education Act any prosecution will be taken will be based on the evidence provided in the referral along with the level of absence. Other factors will include any previous prosecutions and the likelihood of successful prosecution.
- The referrer will be notified under which section of The Education Act 1996 the referral has been accepted.

### **SINGLE JUSTICE PROCEDURE (SJP) 444(1)**

Referrals accepted under the single justice procedure will proceed as follows:

- A letter will be sent to all parents informing them that a referral has been received, raising concerns in relation to school attendance. The letter gives the parents a six weeks period to improve attendance or face the possibility of legal proceedings.
- During the six weeks period, the pupil's school attendance will be monitored, and schools should notify the Education Welfare Service of any unauthorised absences that occur.
- After the monitoring period has elapsed, a decision will be made to either close the case as attendance has improved or refer the matter to legal services for the case to be brought to the Magistrates' court under SJP procedures. A letter will be sent to parents notifying them of this action.

### **AGGRAVATED OFFENCE 444(1A)**

Referrals accepted under the aggravated offence will proceed as follows:

- A letter will be sent to all parents informing them of the referral and inviting them to a meeting to discuss the attendance concerns.
- At the meeting the parent will be given the opportunity to discuss any issues that are preventing the pupil from attending school regularly. A representative from the school will be expected to attend this meeting in order to answer any concerns raised by the parent. If new information emerges during the meeting, and if the parents have not already engaged in an Early Help Assessment (EHA), they will again be offered the opportunity to engage with school in an EHA to access additional support.

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All contact and work received by families from the City of Wolverhampton Council will be based around restorative practice principles. This is to ensure we improve the life outcomes for all children, young people and families. All meetings will be held using Restorative Practice procedures.

- All legal meetings are held under Restorative Practice Procedures.

***Please note that information contained in the referral will be shared and discussed with the parents at this meeting and could ultimately be used as evidence in court.***

- At the end of the meeting parents will be informed that if the pupil in questions attendance does not improve over a period of six weeks, they will be invited to a further meeting which will be held under a PACE interview (Police & Criminal Evidence 1984) A letter and notes of the meeting will be sent to parents, confirming this action. If parents do not attend the meeting a letter will be sent giving them the opportunity for the pupil's attendance to improve to avoid further action being taken.
- If a PACE interview is required a home visit will be undertaken to engage with the parent and to inform them of the PACE interview date and time, a letter will be left to confirm these details. If there is no response at the home visit a letter will be left inviting parents to the meeting or asking them to contact us to make alternative arrangements. During the meeting parents will be cautioned, advising that an offence may have been committed, and informing them that the matter would now be referred to legal services for consideration for prosecution. Following this meeting a letter will be sent notifying parents of prosecution. **(Appendix 10)**
- If the decision of the Local Authority is to proceed with a prosecution (**only the Local Authority can prosecute parents**) the Local Authority will provide witness statements and evidence for the prosecution and liaise with Legal Services. However, in the instance of a parent disputing information in the statement, or making a plea of 'not guilty', the school may also be required to provide a statement. The Education Welfare Service will offer schools support and guidance on preparing a witness statement and the exhibits to be included as evidence based on the information provided by school. The matter will then be listed by the court for a trial, and all witnesses who have provided statements may be required to attend court on that day.

## **CHILD IN NEED/CHILD PROTECTION CASES**

All referrals that are subject to Child in Need or Child Protection procedures will be discussed with the Social Worker and the Local Authority Solicitor to ensure that prosecution is in the best interests of the pupil's wellbeing.

## **REFERRALS FOR PENALTY NOTICES**

- A 'Leave in Term Time' Penalty Notice (HPN) can be issued, without warning, for each period of leave in term time, if a pupils absence is not agreed or authorised by the Headteacher. All Penalty Notices will be issued under the LA code of conduct for issuing Penalty Notices.
- All schools should produce a standard authorisation of leave in term time protocol as an addition to their attendance policy. Information should be available to all parents, including estranged parents, and step parents, regarding the schools leave in term time policy. This information (and a copy of the request for leave in term time application form) should be published on the school's website.
- The City of Wolverhampton have produced a leaflet entitled "Are you thinking of taking your child out of school in term time". This gives parents full information on current legislation and includes an application form which can be submitted to the school.
- Parents should apply to school for leave of absence in term time no later than 4 weeks prior to the requested leave being taken. This will allow school ample opportunity to consider the facts of the request and to establish whether there are any exceptional circumstances. The school will write to the parent within seven days of receiving the application to confirm if the leave has been authorised or not. If the request is denied the letter should notifying the parents that they may be subject to a Penalty Notice if they continue with the leave.
- At least 10 sessions (5 consecutive school days) of unauthorised absence must have been taken for a Penalty Notice to be issued and school should have marked the register in accordance with national guidance.
- Schools must refer the case to the Education Welfare Service no later than 4 weeks from the pupil returning to school. N.B The legislation does not allow for retrospective permission for leave to be granted.
- Once a pupil has returned to school a referral should be made using the Leave of Absence Referral form. The referral should include the parental request form, the letter school sent declining the leave of absence and a registration

- certificate showing the unauthorised leave along with the pupils subsequent return.
- Send the referral to [Attendanceandexclusions@wolverhampton.gov.uk](mailto:Attendanceandexclusions@wolverhampton.gov.uk) for a Penalty Notice to be issued.

- It is vital that school ensure the Parental Request Form has been filled out in its entirety with all information included . Incomplete forms cannot be accepted and will result in the referral being returned.
- Where parents fail to comply with the schools' request for leave in term time procedure, a Penalty Notice (HPN) may still be considered for any unauthorised leave in term time.
- If a school believe leave of absence has been taken without the necessary process having been followed they will need to write to the parent clearly stating what evidence they have to support this understanding.
- If Penalty Notices (HPN) issued for unauthorised leave in term time are unpaid it may result in parents being prosecuted under Section 444 (1) or 444(1)(A) of the Education Act 1996. This could mean school being asked to give evidence in any future court proceedings.

## **COURT OUTCOME**

Magistrates have various powers when sentencing under the Education Act 1996 which include:

### ***Under section 444(1) (SJP) Magistrates are empowered to:***

- Fine the parent up to £1,000.
- Give the parent a Conditional Discharge which means there will be no sentence if their child's attendance remains at an acceptable level for a specified period (usually 6 or 12 months), however if the parent is convicted of a further offence during this time the Court will take the previous offence into consideration.
- Issue the parent with a Community Order.
- Issue the parent with Parenting Order requiring them to attend a parenting group.
- Give the parent an Absolute Discharge, which means they have been found guilty and have a criminal conviction but receive no penalty.
- Direct the Local Authority to make an application for an Education Supervision Order.

### ***Under section 444(1A) (Aggravated) Magistrates are empowered to:***

- fine the parent up to £2,500.
- impose up to three months imprisonment.
- give the parent a Community Order.
- give the parent a Parenting Order.
- give the parent an Absolute Discharge.



- direct the Local Authority to make an application for an Education Supervision Order.

Education Act 1996 section 444 (ZA) has extended the circumstances in which a parent can be prosecuted which includes 'failure to attend alternative provision that has been made for the pupil'

## **STATUTORY DEFENCES**

There are certain circumstances which the court will consider as a statutory defence these are as follows:

Education Act 1996 S444

***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.

***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.

***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.

***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.

### **CLOSURE OF A CASE**

Once the entire process has been completed, the referrer will be informed of any outcomes and the case will be closed to the Education Welfare Service.

Should there be future concerns regarding attendance within a 3-month period after a successful prosecution, then school should follow their usual attendance procedures and contact made with the Education Welfare Service to discuss what evidence is required to reopen the case. (a new referral will not always be necessary depending on the circumstances of the re-referral.

### **DECISION NOT TO PROSECUTE**

Only the Local Authority has the power to prosecute a parent under the Education Act 1996. Not all cases referred to the Local Authority will proceed to court. Advice will be sought from the Local Authority Solicitor in cases where a successful prosecution is in doubt or where extenuating circumstances are impacting on the family. If the advice from the Local Authority Solicitor is that a case is not in the public interest or that a successful prosecution is unlikely to be secured, then the case will not proceed to court and school advised of what further action needs to be implemented.

### **KEY LEGISLATION AND GUIDANCE RELEVANT TO SCHOOL ATTENDANCE**

- 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.

**THIS POLICY HAS BEEN PRODUCED IN ACCORDANCE WITH THE FOLLOWING GUIDANCE DISTRIBUTED BY THE DEPARTMENT OF EDUCATION**

Central to raising standards in education and ensuring all pupils can fulfil their potential is an assumption so widely understood that it is insufficiently stated – 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.

The government expects:

- Schools and local authorities to:
  - Promote good attendance and reduce absence, including persistent absence;
  - Ensure every pupil has access to full-time education to which they are entitled; and,
  - act early to address patterns of absence.
- Parents to perform their legal duty by ensuring their children of compulsory school age who are registered at school attend regularly.
- All pupils to be punctual to their lessons.