

A Guide to Non-Attendance Prosecutions and Court

Information for Parents

Introduction

As a parent you are legally responsible for ensuring that your children receive a suitable education. Should your child fail to regularly attend the school at which he/she is registered then the council may take legal action against you. This leaflet explains this action.

Failure to ensure a child's regular attendance at the school at which he/she is a registered pupil is a criminal offence under the Education Act 1996. If convicted under Section 444 (1) of the Act a parent can be fined up to £1000 for each offence. A conviction under Section 444 (1a) – which is the more serious offence when a parent knowingly allows a child to be absent from school without authorisation – can lead to a fine of up to £2,500 and/or 3 months in prison. If a parent is prosecuted under Section 444 (1a) he/she will be formally cautioned and interviewed under the Police and Criminal Evidence (PACE) Act 1984.

Pre- Court Meetings

If your child fails to attend school regularly, a School Attendance Officer from the council will usually invite you to a meeting at your child's school. This meeting will take place before any decision is made to prosecute you and it is vital that you attend. At this meeting you and your child will be given the opportunity to explain why your child's school attendance is so poor and to suggest how you intend to improve it. This meeting will be chaired by the council's School Attendance Legal Interventions Officer.

At the end of the meeting a plan will be written and you will be asked to sign it. This plan will identify what you will do to improve your child's attendance. You will be clearly told that if your child's attendance does not improve you will be taken to court.

The Decision to Prosecute – Evidence

If your child's attendance fails to improve and the council decides to prosecute you will receive a summons to appear before a magistrates court at a specified date and time. You will also receive a copy of a School Attendance Officer's report, based on the work which he/she has done with you and your child. This is known as a Section 9 Statement. You will also receive a copy of an extract from your child's school's attendance register. This will be signed by your child's headteacher and will show your child's attendance record during the period for which you are being prosecuted.

You may wish to seek legal advice before the court date.

Attendance at Court

You must attend court at the time and date specified on the summons. If there is a good reason why you cannot attend at this time/date you must contact the court to explain. Only the court can decide whether to accept your explanation and to offer a new date. (If you do not turn up to court the magistrates may decide to hear the case in your absence. If this happens and they decide to find you guilty it is likely that your failure to turn up will increase the severity of any sentence imposed. The magistrates may also consider issuing a warrant for your arrest.)

A council officer will attend the court to present the case on behalf of the council. You may also bring your own solicitor. Or at court you may ask to speak with the duty solicitor.

A case is normally heard by three magistrates and on occasions a District Judge. When you get to court a court usher will show you where to go and what to do. The case will be heard in an "open" court so members of the public and the press may attend.

In Court

When you appear in court you will be asked to confirm your name, address and date of birth. The Clerk to the Court will read the charge as written on the summons and you will be asked to plead either "guilty" or "not guilty". If you plead "guilty", the court will hear the evidence presented against you by the council and will then give you the opportunity to explain why your child has not attended school regularly. (When presenting its evidence against you the council will ask the court to award costs against you should you be found guilty.

If you plead "not guilty" the case will be adjourned to a future date and be heard as a trial.

At the trial, you or your legal representative, will be able to make the case for your defence.

You will be able to challenge the grounds on which you have been prosecuted if you can demonstrate one or more of the following:

- your child's absence was authorised by the school;
- you child's absence was caused by sickness or some other unavoidable cause; if you state that you child was absent due to illness you will need to produce a note from a doctor or health professional to prove this;
- your child was absent due to an act of religious observance;
- the distance from your home to your child's school is beyond the statutory limit for walking and no transport is available; the limits are 2 miles for children aged under 8 and 3 miles for children aged 8 and over;
- your child is not registered at the school and you are providing suitable education at home or elsewhere;

- your trade or business requires you to travel from place to place.

At the end of the trial the magistrates will decide whether you are “guilty” or “not guilty”. If you are found “guilty” the court will then decide on a sentence.

Possible Sentences

If you plead “guilty” or the court finds you “guilty”, any previous convictions will be reported to the magistrates. The magistrates will then pass sentence. This sentence may be one of the following:

- a fine of up to £1,000 (if the prosecution has been under Section 444 (1) of the Education Act 1996);
- a fine of up to £2,500 or imprisonment of up to 3 months (if the prosecution has been under Section 444(1a) of the same Act;
- a Conditional Discharge for a specified period – this means that there is no immediate penalty if your child’s attendance is satisfactory for the duration of this period; but if you are convicted of another offence during this period you will be punished for the original as well as the subsequent offence;
- an Absolute Discharge – this means that whilst you have been found guilty of the offence you will not be subject to any penalty, although this still counts as a criminal conviction;
- a Deferred Sentence – this means that a new court date will be set; in the meantime you will be expected to take steps to improve your child’s attendance; at the new date you will be sentenced;
- a Parenting Order – this means that you will be ordered to attend parenting groups;
- Community Service – this means that you will be ordered to carry out unpaid work in the community under the direction of the Probation Service;
- An Education Supervision Order – this means that the court can direct the council to consider making an application for such an order; you will be expected to cooperate with this Order.

Contact

For further information about non-school attendance prosecutions and the court process please contact the Legal Interventions Officer on 0300 300 6291.