

# BCC Education Prosecution Policy

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Education Legal Intervention Team

Attendance and Inclusive Pathways Service

Birmingham City Council



## Education Prosecution Policy

### 1. Introduction

1.1 This policy applies to all Primary Schools, Secondary Schools and Alternative Providers in Birmingham. Separate arrangements for Independent Schools not commissioned by the Local Authority will also be detailed.

### 2. Joint working across Local Authorities

2.1 This policy links with the Department for Education 'Working together to improve school attendance' statutory guidance; the National Framework for Penalty Notices; Birmingham Education Penalty Notices Code of Conduct; 'Support First' guidance; and the joint working protocol with neighbouring local authorities

2.2 In accordance with the joint working protocol, parents for whom legal action is appropriate will usually be subject to proceedings by the school's host authority. Legal action includes any parental prosecution, penalty notice, education supervision order or any other order imposed by a court directly related to a pupil's attendance at school.

### 3. Definitions

3.1 Section 7 of the Education Act of 1996 imposes on parents a legal duty to secure education for their children of compulsory school age whether at school or otherwise. A **parent** is defined to include all natural parents, whether they are married or not; any person or body who has parental responsibility for a child as defined by the Children Act 1989; and any person who although not a natural parent, has care of a child. This policy uses the word 'parent' to mean one or more parents or carers.

3.2 Having **care of a child** means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent (see Section 576 of the Education Act of 1996).

3.3 **Compulsory school age** - 'School attendance parental responsibility measures - Statutory guidance for local authorities, school leaders, school staff, governing bodies and the police' 2015 states that a child reaches compulsory school age on or after their fifth birthday.:

- if they turn 5 between 1 January and 31 March they are of compulsory school age on 31 March;
- if they turn 5 between 1 April and 31 August they are of compulsory school age on 31 August.

- if they turn 5 between 1 September and 31 December, then they are of compulsory school age on 31 December.

3.5 Alternative provision will be referred to in this policy as a **school** along with maintained schools and academies.

3.6 Parents may exercise their legal right to educate their children **at home** rather than at a school. The Local Authority must be satisfied that parents are providing a suitable education. This is known as '**Elective Home Education**'. Where a child is on a school roll, and the parents elect to home educate, the parent must write to the school stating their intentions. The school must then notify the Local Authority of the letter by completing the relevant referral form and remove the child from roll, keeping the place open for 10 school days.

#### **4. Education Supervision Order (ESO)**

4.1 The Children Act of 1989 allows the LA to apply for an Education Supervision Order (ESO) on any child of compulsory school age, who, it is felt, is not being properly educated. An authority may apply for an ESO instead of, or as well as, prosecuting the parents. An authority is under a duty to consider applying for an ESO before starting legal proceedings against a parent.

#### **5. The role of the school**

5.1 Schools should ensure parents have access to any published local authority online information or publications related to school attendance throughout the year but as a minimum at least once a year (preferably in September). This is to alert parents to their legal responsibilities in this area and to deter parents from keeping their children at home/taking them on holiday when they should be in school. They should also ensure parents have access to the appropriate attendance leaflets and their school's attendance policy. Most schools will place the letter, any leaflets and their attendance policy on their website, send via pupil post etc.

5.2 In the case of on-going absence schools are expected to try to improve a pupil's attendance via 'Support First', Birmingham's early help approach to improving attendance. This would include an Early Help offer as appropriate and ensuring that 'the voice of the child' is heard.

5.3 Where there is unauthorised leave in term time which reaches the threshold under the Birmingham Education Penalty Notice Code of Conduct, schools must use the 'Leave in Term Time (Legal) Process' in order for the Local Authority to take action on their behalf.

5.4 When a school's attempts to improve a pupil's attendance have been unsuccessful using either 'Support First' or 'Leave in Term Time', and the threshold for action has been met, the school will refer the case to the Education Legal Intervention Team

5.5 In order for the Local Authority to act there must be a minimum of 10 sessions of unauthorised absence collected as prescribed in each process over a calendar year.

5.6 If the matter proceeds to the Magistrates Court and the parent pleads not guilty, schools must provide the relevant members of staff as witnesses, having already provided ELIT with a statement of witness.

## **6. Casework procedures**

6.1 The responsibility for bringing legal proceedings under Section 444 of the Education Act 1996 rests with Birmingham City Council and is delegated to the Education Legal Intervention Team (ELIT). Under the Birmingham Education Penalty Notice Code of Conduct, the responsibility for issuing penalty notices lies with Birmingham City Council. Once a referral is received, whether it be related to on-going unauthorised absence or unauthorised leave in term time, the ELIT will decide if the case can proceed and whether to issue a penalty notice, notice to improve, or prosecute the case under Section 444 (1) or (1)(a) of the Education Act 1996. The decision as to whether any action will be taken lies with the Local Authority.

6.2 'Support First', including guidance, forms and letters which must be used, and helpful letters the school can use if required can all be found at [Birmingham School Attendance webpages](#). Click on Option 2 for attendance guidance and procedures.

6.3 The 'Leave in Term Time (Legal) process' including guidance and letters which must be used can be found at [Birmingham School Attendance webpages](#). Click on Option 2 for attendance guidance and procedures.

6.4 Schools with high levels of persistent absence who focus on 'leave in term time' may be challenged in terms of their strategy to improve the attendance of the more vulnerable persistent and severe absentees

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', the school notified and advise going forward provided.

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. Section 444(1)(A) of the Act creates an aggravated 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.

6.7 Once a referral is received, the ELIT 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. The officer will also consider:

- an education supervision order and the reasoning as to why it was not appropriate

- any previous convictions/warnings/penalty notices of proposed defendants
- in the case of Support First, the opinion of any allocated social worker or family support worker allocated to the family
- disclosure material as defined by section 3 of the Criminal Procedure and Investigations Act 1996.
- schedule of officer's costs.

6.8 In order for a prosecution to proceed, ELIT 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 (the public interest test). Once the officer is satisfied that both the above criteria are met, a decision will be made as to the most appropriate course of action.

6.9 ELIT will advise the school of the outcome and if the case has been accepted will issue either a notice to improve; a penalty notice; a 'Single Justice Notice'; or invite the parent for a formal meeting under caution according to the PACE Regulations if it is believed that the parent has committed an offence under section 444(1) (A) of the 1996 Education Act.

6.10 No offence is committed if the child was absent from school:

- because of sickness (in case of a child/young person who has extreme levels of illness absence but no underlying medical condition which could explain the absences, Head teachers can request medical evidence from parents/carers - please see the FAST-track guidance for more information)
- 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.

6.11 There are also some exceptions for a child of 'no fixed abode', particularly 'mobile children' where their parents need to travel for the purposes of work and the absence has been agreed with the Headteacher prior to the absence.

6.12 Independent Schools - 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, it is allowable 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. Cases can still be prosecuted via Section 444 (1) of the Education Act 1996.

## **7. Education 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) (Amendment) Regulations 2024 sets out the national framework for penalty notices and the Birmingham Education Penalty Notice Code of Conduct sets out the scheme for Birmingham City Council.

7.3 In Birmingham, it has been agreed that penalty notices will 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. In Birmingham penalty notices can issued for first offences, following an unsuccessful notice to improve or without one being issued, and where a child has less than 60 sessions of unauthorised absence over the period of evidence.

7.4 The Education (Penalty Notices) (England) (Amendment) Regulations 2024 also increased the amount of the penalty to £160 if paid within 28 days reduced to £80 if paid within 21 days.

7.5 Where penalty notices for a first offence are paid and a second offence against the same child is committed within a three year period, a second penalty notice can be issued, though under the nation framework, parents cannot be offered the discount of £80. Where a third offence is committed further penalty notices cannot be issued and the local authority will may issue a single justice procedure notice instead.

7.6 In exceptional circumstances, ELIT 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 but where parents feel the penalty notice should not have been issued, they must contact ELIT using the relevant online form and attach any supporting evidence. Penalty Notices will be put on hold until the evidence is reviewed and a decision made. 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. Notice to Improve**

8.1 A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued.

8.2 If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, the local authority may

decide that a Notice to Improve may be sent to give parents a final chance to engage in support.

8.3 A Notice to Improve will not be issued in cases where support is not appropriate and an authorised officer can choose not to use one in any case, including cases where support is appropriate but they do not expect a Notice to Improve would have any behavioural impact (e.g. because the parent has already received one for a similar offence).

8.4 Where the local authority has decided to issue a Notice to Improve, the school will be asked to issue the notice and monitor the child's attendance for 6 weeks. If during that period, further unauthorised absence is accrued by the child, the school will notify ELIT and a penalty notice will be issued.

## **9. Single Justice Procedure**

9.1 Where penalty notices have been issued and remain unpaid, or have been previously issued to a parent in respect of a child, or there are at least 60 sessions of unauthorised absence within the period of evidence, the Education Legal Intervention Team may advise that the matter should be prosecuted in Court using the Single Justice Procedure.

9.2 Under Section 444 (1) (A) of the Education Act 1996, the Local Authority will issue a Single Justice Procedure 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
- 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.

9.3 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:

- a conditional discharge (except in a Single Justice hearing where the parent has pleaded guilty and chosen not to appear in Court)
- an absolute discharge (except in a Single Justice hearing where the parent has pleaded guilty and chosen not to appear in Court)
- a fine of up to £1000 (Level 3 under Section 444 (1A) of the Education Act of 1996)

- costs
- victim surcharge

## **10. Prosecutions under Section 444(1)(A) of the Education Act 1996**

10.1 In the case of parents who have had previous unauthorised absence cases referred to the Magistrates Court within a 5 year period, ELIT will consider a prosecution under the aggravated offence.

10.2 Parents will be invited to an interview under caution according to the PACE Regulations with a senior officer within ELIT. Following the interview, whether parents attend or not, consideration will then be given to a prosecution under the higher offence.

10.3 If the matter is referred to the Magistrates Court a summons will be issued for the parent to attend Court on a specific date. If the parent does not attend ELIT will request a warrant for the parents' arrest.

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

- a conditional discharge
- an absolute 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
- costs
- victim surcharge

## **11. School Attendance Orders**

11.1 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 ELIT on behalf of the Local Authority.

11.2 That period shall not be less than 15 days beginning with the day on which the notice is served.

11.3 Before serving the order, the relevant officer shall write to the parent:

- informing him/her of their intention to serve the order,
- specifying the school which the LA intend to name in the order.

11.4 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.

11.5 If it is believed an offence has been committed, ELIT will issue the parents with a single justice notice.

11.6 This is essentially a strict liability offence i.e. there are a limited number of statutory defences:

- child is in school
- child is being educated otherwise (at home)

## **12. Retention of information**

12.1 Documentary evidence will be securely retained in a electronic format by ELIT for a period in line with Birmingham City Council Policy. This includes all the information recorded or collected as part of enforcement activities. This information will include decisions taken about the choice of enforcement options. As part of the joint working protocol, these records will be made available to any other LA having casework involvement with the family.

## **13. Publicising penalty notice outcomes and prosecutions**

13.1 Information about penalty notices/notices to improve issued or prosecutions will be emailed to the relevant school/alternative provider regarding the child in question at the conclusion of the prosecution.

## **14. Conflicts of interest and undue influence**

14.1 To ensure that decisions are impartial, ELIT will deal with any potential conflicts of interest on the part of an officer or any instances of undue influence being used.

## **15. Audit**

15.1 ELIT will keep a record of all legal action, including penalty notices and notices to improve undertaken by the service.

## **16. Policy implementation and review**

16.1 The management of ELIT 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. This policy will be reviewed annually.