

Leicester City Council Education Welfare Service Prosecution Enforcement Policy

Education Act 1996 Section 443 - Failure to comply with School Attendance Order

Where a parent/carer is failing in their duty to ensure their child is receiving an education in accordance with section 7 Education Act 1996, in that the child is not on roll at a school, nor is the parent/carer making their own suitable arrangements for that child's education, the Education Welfare Service (EWS), having followed the requirements under Section 437- 442 of the Act, may issue a School Attendance Order. Where the parent/carer fails to comply with the Order, a Section 443 prosecution will be taken in the Magistrates' Court.

The following sections should be read in conjunction with the [Leicester City Code of conduct for issuing penalty notices in respect of unauthorised absence from school from 19 August 2024](#).

Education Act 1996 Section 444 - Failure to ensure regular attendance

A.) Section 444(1)

Where a parent/carer is failing in their duty to ensure regular attendance at school, and where the school has met the expectations set out in the DfE attendance guidance (and LA policy) regarding assessment and support, the LA's statutory duty will apply. When LA statutory involvement is agreed by the school and EWS, one or more of the actions as per the Code of Conduct will be taken, and where the unauthorised absence continues, and no statutory defences apply, where no other course of action is considered to be appropriate, the Local Authority will either issue a PN, or instigate legal proceedings.

B.) Section 444(1A)

Where a parent/carer is failing in their duty to ensure regular attendance at school, and where the school has met the expectations set out in the DfE attendance guidance (and LA policy) regarding assessment and support, the LA's statutory duty will apply. When LA statutory involvement is agreed by the school and EWS, one or more of the actions as per the Code of Conduct will be taken, and where the unauthorised absence continues, and no statutory

defences apply, where no other course of action is considered to be appropriate, the Local Authority will either issue a PN, or instigate legal proceedings.

Where it can also be proved the parent/carer knew about the poor attendance and failed, without reasonable justification to ensure regular attendance then legal enforcement will be taken under this section.

In the case of both A.) and B.) above, an unpaid Penalty Notice (PN) (issued in accordance with the Local Authority Penalty Notice for Unauthorised Absence Code of Conduct) may form part of the evidence. The decision to issue a PN or to proceed to Court is taken by the Local Authority.)

Determining whether to Issue a PN or to take court proceedings

- If a Parenting Order is appropriate – court proceedings
- If the parent/carer has been to court within the last 2 years – it would be usual to return to court – normally on the aggravated offence if the additional evidential tests can be satisfied
- If the parent/carer has had a PN within the last 12 months for the child in question – court proceedings would usually follow (unless the PN related to a trip away/holiday in which case the Code of Conduct will be followed)
- If the EWS is already moving towards a prosecution relating to ongoing unauthorised absence and the pupil has unauthorised leave of absence, no PN should be issued for this, and the unauthorised absence should be included in the prosecution period.
- Where a parent informs a school that their child will be absent for an extended period, which entails 20 or more school days and the school does not agree to authorise that absence, the school should inform the parent in writing that if the child is not back in school by day 19 of the forthcoming period of unauthorised absence, that the Local Authority has advised that a PN would not be issued and the matter should proceed to the Magistrates' Court for prosecution. In reviewing cases that meet this threshold i.e. the parent does not return the child to school by the 20th school day, if it is in the public interest, these cases will proceed directly to court.
- In the event of a not guilty plea, evidence which is sufficient to prove the case to the criminal standard will be required. This will include evidence of all communication between the school and the parent/s. Any person who has had relevant direct communication with the parent/s will be

required to produce a S.9 witness statement in accordance with the Criminal Justice Act 1967; and be required to attend court to give evidence.

PN payment levels are fixed in law. In respect of payment deadlines, where there is sufficient reason to allow payment beyond the 28 days prescribed in the Regulations, this will be agreed. The decision on whether there is sufficient reason rests with the EWS management team and only the Service Manager or an Assistant Principal EWO may agree to late payment in order to ensure consistency and fairness.

***Penalty Notices** are referred to in the local authority's Code of Conduct; the Code of Conduct includes references to the local authority process relating to cases where children are on school rolls and parents are failing to ensure regular attendance, both in relation to unauthorised leave of absence (holidays/trips abroad) and other absence.

Continued

Annex A

Education Welfare Service – Guidelines regarding level of offence

S444(1) prosecutions	S4441(A) prosecutions
<p>Appropriate when:</p> <ul style="list-style-type: none">• Unable to prove knowledge and failure without reasonable justification to ensure regular attendance and/or:• Where it would not be in the public interest to proceed under S444(1A): <p>In all cases, the decision regarding court action relies on the evidential and the public interest test.</p>	<p>Appropriate when:</p> <ul style="list-style-type: none">• Can prove knowledge (from day 1 of period) and failure without reasonable justification to ensure regular attendance• Where it is in the public interest to proceed under this section. <p>In all cases, the decision regarding court action relies on the evidential and the public interest test.</p>

Where a case requires further investigation prior to making a decision whether to proceed to Court, the parent/s will be requested to answer questions under caution in accordance with the Police and Criminal Evidence Act 1984. This will usually be the case where despite efforts to do so, there has been no contact with the parent.

In all cases relating to ongoing unauthorised absence, the parent may, and usually will be issued with a Notice to Improve prior to court action being taken regardless of whether of a request has been made for them to answer questions under caution.