

# **Information for Parents/Carers - Rights and responsibilities relating to school attendance and behaviour**

**Sept 2017**

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### **1. RESPONSIBILITIES – PARENTS AND CARERS**

All parents<sup>1</sup> who have children of compulsory school age are responsible in law for ensuring that their children receive a suitable education. Most parents fulfil this responsibility by registering their children at a school.

Parent whose children are registered at a school or other educational establishment are then responsible for ensuring that they attend punctually, regularly, stay there as required and follow the school's rules with regard to behaviour. If parent/carer(s) fail to ensure this, there are a number of options open to the Local Authority and schools to secure an improvement in the child's behaviour and attendance and support parents to achieve this.

## **2. PARENTING CONTRACTS**

The Local Authority (LA) and schools have powers to make formal agreements (Parenting Contracts) with parents to address their child's behaviour and/or attendance at school.

### **What is a Parenting Contract?**

#### **It is**

- a formal agreement between a parent and either the LA or the governing body of a school
- a voluntary arrangement. Parents cannot be forced to make the agreement with the LA or school<sup>2</sup>. It is intended to provide parents with the support they need and to encourage a positive working relationship between school, the LA and parents to tackle their child's persistent absence or poor behaviour in school and address any underlying causes
- Under the contract, the parent agrees to comply with specified requirements e.g. to ensure that the child attends school regularly and punctually over a specified period of time
- The LA/School will agree to provide specified support (tailored to the parents/child's needs) to enable the parent to comply i.e. support through a referral to the Prevention Service
- Parenting Contracts can be drawn up as an outcome from an Attendance Panel Meeting as part of the schools formal Attendance Procedures. A Family Outreach Worker from the LA's Prevention Service may attend the meeting as support if agreed

*1 for the purposes of this document 'Parent' also refers to a person having Parental Responsibility or having care of a child*

*2 in the event of the LA applying for a Parenting Order following a successful prosecution of a parent for the unauthorised absence of their child or following a permanent exclusion, a parent's refusal to make this sort of agreement or failure to keep to it's terms can be used as evidence in those proceedings*

### **When can a Contract be offered?**

- In cases of persistent absence as defined by the DfE (90% and under attendance)
- When a pupil is excluded from school (whether for a fixed term or permanently)

### **Why was it introduced?**

- Recognition that parents need support and that some parents may need individualised support from the school or LA
- Helps parents build a productive relationship with the school/LA and access the support they need

### **3. PROSECUTION - under the Education Act 1996**

A parents' failure to ensure the regular attendance of their child at school is a criminal offence.

It was concluded in the case of *Isle of Wight v Platt* in the Supreme Court in a judgement given on the 6<sup>th</sup> April 2017, that 'regular' means 'in accordance with the rules prescribed by the school'. This means that a child of compulsory school age, registered at a school, must attend within the normal rules laid down by the school authorities for attendance.

The LA has the power to prosecute for this offence in the Magistrates' Courts under s444 (1) of the Act (Level 3 offence) or under s444 (1A) (Level 4 'aggravated' offence) of the Education Act 1996.

On conviction, parents can be fined up to £1000 (1) or in the case of an "aggravated" offence (1A) they can be fined up to £2500 and may also be liable to a custodial sentence of up to 3 months or a Community Order.

If a parent fails to ensure their child's regular attendance at an alternative provision the LA also has the power to take forward a prosecution in the Magistrates' Courts. In this case the parent must first have been given notice in writing of the requirement of their child to attend the alternative provision.

### **4. PARENTING ORDERS**

Parenting Orders are available following a successful prosecution of a parent for the irregular attendance of their child under Section 444 of the Education Act 1996. The LA may ask the court for an 'ancillary' Parenting Order or the magistrates may deem it appropriate themselves as an outcome of the Hearing. Schools also have powers to apply for a Parenting Order to address a child's behaviour in school.

## **What is a parenting order?**

- It is a Court Order which compels a parent to attend parenting classes, and any other requirements as determined necessary by the court, for improving their child's behaviour or attendance
- In irregular attendance cases it follows a successful prosecution in the Magistrate's Court and is in addition to any other penalty imposed
- In behavioural cases the application is a civil case and therefore does not involve a criminal conviction

## **When can it be used?**

- When a court is satisfied that it would be desirable in the interests of preventing further irregular attendance of a pupil at a school
- Where a pupil has been excluded for serious misbehaviour either permanently or for the second time in 12 months
- Where parenting is considered a factor in the child's behaviour and parents are unwilling to engage with the LA or school

## **Why was it introduced?**

- Recognition that parents need support and that some parents may need targeted and individualised support from schools and LA's
- Some parents are unwilling or feel unable to engage voluntarily when Schools/LAs raise issues over their child's behaviour
- Parenting Programmes, or 1:1 Parenting Sessions, can help parents gain the skills and confidence they need to improve the attendance and behaviour of their child. Participating parents have said that they would recommend them to other parents in their situation.

## **5. ALTERNATIVES TO PROSECUTION - ESO/ Penalty Notice**

### ***1. Education Supervision Order (ESO) – Children Act 1989***

The LA has a duty to consider an Education Supervision Order (ESO) prior to taking a prosecution against a parent in a magistrate's court. The LA may apply for the Order instead of, or as well as a prosecution, as a means of ensuring regular school attendance whether a child is enrolled at a school or not.

An ESO is made in respect of a child in the Family Proceedings Court under the Children Act 1989 and makes the LA responsible (through an appointed Supervising Officer – usually the Attendance and Enforcement Officer) for advising, supporting and giving Direction to the child and his or her parents in order to make sure that the child is suitably educated. Directions may include for example, a requirement for the parent and child to attend meetings with the Supervisor, or with staff at the school, to discuss the child's progress.

Where parents persistently fail to comply with Directions, and those Directions are reasonable, they may be guilty of a Level 3 offence. In such

circumstances the Supervising Officer must ensure that the matter is drawn to the attention of the Magistrates Court and, upon conviction, the parent will be liable to a fine of up to £1,000. The Supervising Officer must also inform Children's Social Care (CSC) and, in such cases, CSC must investigate the circumstances around the child (Section 47) and consider whether it is appropriate for them to take any action to secure the welfare of the child.

## **2. Penalty Notice for Irregular attendance and exclusion**

LA Officers, Head teachers (Deputy or Assistant Head teachers if authorised by the Head teacher) or the Police, have the power to issue Penalty Notices<sup>3</sup> however, the main responsibility is with the LA<sup>3</sup>

### **What is a Penalty Notice**

#### **1. For irregular attendance**

- Parents of a registered pupil whose child fails to attend school regularly are committing an offence (this includes the taking of leave of absence in term time (holiday) when the request is not deemed by the Head teacher to be an exceptional circumstance and therefore not authorised)
- In cases other than unauthorised leave of absence in term time and exclusions, a Warning Letter will be issued as an outcome of a PACE Formal Caution Interview, when it is required that no further unauthorised absence is to occur by the child within the following 15 school days or the Penalty Notice will be issued.
- Penalty Notices provide an alternative to a prosecution for the offence in the form of a fine. There are 2 levels of penalty - £60 (if paid within 21 days of receipt of the notice) and £120 (if paid after 21 days but no later than 28 days)
- Parents who pay the penalty within the time limits cannot later be prosecuted for the offence of their child's irregular attendance within the same time period to which the Penalty Notice relates

#### **What if I don't pay?**

- If a parent does not pay a properly issued Penalty Notice within 28 days, the LA will prosecute for the offence of failing to ensure regular attendance under s444 (1) of the Education Act 1996.

#### **Can I appeal against a penalty notice?**

- There is no right of appeal against the Penalty Notice, but if you believe it to have been wrongly issued to you, you should contact the LA immediately. The Penalty Notice may be withdrawn if it has not been issued in accordance with the LA's Code of Conduct for the use of Penalty Notices or has been issued to the wrong person
- If the Penalty Notice is not withdrawn and you do not pay, you may be prosecuted under s444 of the Education Act 1996.. The court will

consider the evidence and decide whether an offence has been committed. If found proven, the appropriate penalty will be determined by the court.

## **2. For an exclusion**

A Penalty Notice can also be issued under the Education and Inspections Act 2006 if a child is seen in a public place in the first five days following a fixed term or permanent exclusion without a justifiable reason. Parents must have been informed of their duty and the time scale of the exclusion in writing by the school.

## **6. SCHOOL ATTENDANCE ORDERS**

If it appears to the LA that a child of compulsory school age is not receiving a suitable education either by regular attendance at school or otherwise, then procedures for issuing a School Attendance Order against the parent under s437 of the Education Act 1996 will begin. The Order will require the child's parent to register their child at a named school. If the Order is not complied with, the parent can be prosecuted in a Magistrates Court (Level 3 offence) with a fine of up to £1,000 or an Education Supervision Order can be pursued.

## **7. Contacts for further information:**

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