

## **Schools Legal Training Pack 2014**

### **Purpose**

The role of the LA in cases of unsatisfactory school attendance is to work with schools and parents to return the child back into education, and to improve working partnerships between parents and the school. This can be achieved by a number of interventions including Fixed Penalty Notice, a supportive Fast Track Process, Case Management, and also prosecution when appropriate. It is only unauthorised absence that will lead to a prosecution. In authorising absence, the Head teacher, in effect, provides a statutory defence to the parent; they would therefore be acquitted if prosecuted. We are all aware that when a child attends school regularly their welfare and safeguarding can be monitored and supported and they will achieve the best possible outcomes.

In Norfolk attendance has not improved in line with national data and as a LA we still have a higher absence from school across phases to both national and our statistical neighbours.

Schools have a responsibility to monitor the attendance of their pupils and judgements are made about the leadership's effectiveness when a school is inspected. Attendance data will be part of any judgement made about a school and could be a contributory factor to a school going into a category of concern. This can be a particular issue for small schools across the County affecting their figures more dramatically.

### **Rewards, Sanctions, and Interventions**

Although schools are aware that they need to keep clear records of all interventions, rewards and sanctions, and their outcomes undertaken to improve attendance for a HMI, this data is also needed as part of any case where legal intervention is to be instigated. Therefore this should be included in any evidence submitted through the witness statement to the Court Officer, to allow the Court to be fully informed of all actions taken to support the family before legal intervention is taken.

### **Referrals and Ownership of Cases**

Schools are responsible to make appropriate referrals to the LA, and to ensure that all evidence submitted meets the standard required by the Court. Any case that is accepted for prosecution remains the individual school's responsibility in ensuring that updates are available for the Court hearings, and that the child's attendance is monitored. Some cases can take considerable time to conclude and during this time, intervention should remain with the family.

In the case that parents plead not guilty and a trial date is set, each witness called must attend Court to ensure that the matter goes ahead without delay. It is not possible to delegate Court attendance; if you are called as a witness it is the

individual's legal responsibility to attend and not a representative from the school. Any staff member who is required to attend Court can contact the Court Officer who will be available for support and advice.

School staff are welcome to attend any Court hearing should they wish, not just that of a trial, and would be welcomed by the LA and Magistrates who may take the opportunity to engage with them directly to avoid defence mitigation being based on hearsay information or parents perception. This may also prove useful to reinforce the message that irregular school attendance is not acceptable and will be acted upon. Courts will always want to be confident that at the conclusion of a Court hearing, work will continue to be undertaken and that the young person will receive all help to reintegrate fully back in to their education. Any school staff present may be able to advise the Court of future plans and commitments that the school has made to ensure this occurs.

We are aware that there are concerns in some schools regarding the instigation of Court proceedings and the effect this may have on relationships with parents. In our experience, this is not the case, and in some instances this can in fact improve working relationships with the school and their staff. While attendance at Court can seem a daunting prospect, parents often have stated that the visible support and dedication of school staff helps to assist communication in the future.

### **Education Act 1996**

Under the Education Act 1996 section 444 there are two offences that a parent can be charged with. The term parent is used in the context of the definition contained within the Education Act 1996 that *"unless the context otherwise requires, "parent" in relation to any child or young person includes any person (a) who is not a parent of his but who has parental responsibility for him or (b) who has care of him.* A parent must be an individual. The 1996 Education Act places this clear duty and responsibility on all parents whether they live with the child or not.

**Section 444(1)** – if a child fails to attend school regularly and none of the statutory defences apply (the child is unwell, is granted leave of absence, is entitled to LA transport but this is not provided, or on days of religious observance, absences where a defence applies would be marked as authorised), then the parent is guilty of an offence; this offence is subject to a penalty not exceeding a fine at level 3 (currently £1000). The entry point for sentencing is a fine or a discharge. The parent may not have known that the child was not attending school. All that needs to be proved is that the defendant is the "parent" of the child; the child is of compulsory school age, a registered pupil at a school and is failing to attend regularly and that none of the statutory defences apply. This is what is known as a "strict liability" offence.

**Section 444(1A)** – the "aggravated" offence. If, in the circumstances mentioned in S444(1), a parent knows that the child has failed to attend regularly and fails to ensure that the child attends regularly, the parent is guilty of an offence. This offence is subject to a penalty not exceeding 3 months imprisonment (legislation yet to be enacted will increase this to 51 weeks) or a fine at level 4 (currently £2500) or both. "Reasonable justification" is an additional statutory defence to this allegation. This means that the LA, as prosecutor, have to prove "knowledge", but the parent

can use a “reasonable justification” for their failure to ensure the child’s regular attendance as a defence. In deciding to use the 1(A) offence the LA would have to be clear of any existing “reasonable justification” and potential defence in assessing whether there is sufficient evidence to ensure conviction.

**Statutory defences** – there are four statutory defences available to parents if prosecuted for the irregular attendance of their child. They are that the absence is due to:

(i) Sickness or unavoidable cause (an unavoidable cause relating to the child, not the parent)

(ii) Leave of absence (granted by the Head teacher)

(iii) Days of religious observance (for the religion followed by the parents)

(iv) The child is entitled to LA provided transport to school and this is not being provided

An additional defence is available for parents facing the S444 (1A) offence, that they have a reasonable justification for their failure to ensure the child’s regular attendance. If a parent is acquitted of a S1A offence, they can still be convicted of a S1 offence if that is made out.

## **Sentencing Powers**

For a S444 (1) the powers of sentencing are

### **Absolute and Conditional discharge**

An order can be imposed where it is inexpedient to inflict any punishment.

An Absolute Discharge means that a conviction has been recorded but that no punishment is deemed appropriate.

A Conditional Discharge can be up to three years and means that if no further offences are committed, then the defendant will hear no more on the matter. However, should they commit another offence in that time frame; this offence will be sentenced along with any new offence and may be treated as more serious.

In our experience, the benefit of a Conditional Discharge is that it motivates parents to make changes to avoid further appearances in Court. This ultimately means an improvement in the child’s attendance, which is the overall aim of any prosecution. This is strongly stated by the Magistrates in their closing statement. Over the past year, around 90% of outcomes have been Conditional Discharges in Norfolk, and we have a very low repeat prosecution rate, suggesting this sentence works.

### **Fine up to £1000**

For a S444 (1A) the powers of sentencing are

### **Absolute and Conditional discharge**

As above.

### **Fine up to £2500**

### **Community Order**

This includes requirements including a Curfew, Unpaid Work, an Emotional Well-being Programme for females, or any requirement deemed appropriate for the individual, and will always be alongside a Supervision requirement for the duration of the Order. This normally last for 12 months but can be more or less depending on mitigating circumstances of the parent.

### **Imprisonment up to 3 months**

This can be imposed alongside a fine as well.

### **Parenting Order**

The Court may wish to impose a Parenting Order, which is a sentencing option in the Magistrates Court and can be used in addition to any other sentence; but it cannot stand alone and must be sentenced in addition to another sentence. If parenting work is indicated as being appropriate in any case then good practice would demand that it be offered on a voluntary basis before any prosecution is undertaken. If parenting work has been offered but not taken up, then this would be an additional justification for a prosecution with the specific objective of this essential work taking place under a Parenting Order. As with any other intervention, parenting work has a better chance of success if undertaken voluntarily rather than under a Court Order.

### **Education Supervision Order**

As an alternative to prosecuting under Section 444 of the Education Act 1996, the Children Act 1989 allows the Local Authority to apply to the Family Court for an Education Supervision Order on any child of compulsory school age, whom it is felt is not being properly educated.

An Education Supervision Order is imposed when it is proved to the Court that a child is not being educated according to his age, ability and aptitude, taking into account any educational needs he/she may have. During the period of the Order, a review will be held at which the child, parent, supervisor, and member of the Education Welfare Service discusses whether the Order is working and what future plans need to be made. If a parent does not co-operate with the Supervisor in working within the requirements of the Order, the parent could be referred back to the Court. A fine of up to £2,500 could be imposed on the parent. If a child does not co-operate with the Supervisor he/she can be referred back to the Court who could direct the Social Care and Health Department to become involved and consider applying for a higher order.

Norfolk LA always considers an Education Supervision Order for all potential prosecution matters, and make an informed decision with the family and school as to whether this is an appropriate intervention. This consideration is a statutory requirement and it must take place under section 447(1).

## **Code of Conduct and Public Interest**

Schools are aware that there are certain criteria that must be met in order for a case to be successfully prosecuted. It is not in the public interest to put forward a case that does not meet this criteria or to continue with a case that will ultimately be withdrawn at Court, for example, those that we are aware have one of the statutory defences. In both of these situations, both the school and the LA could receive negative connotations around their practice and undermine future prosecutions under the Education Act 1996 and therefore would only proceed if all necessary criteria are met and no known statutory defence was applicable.

Norfolk LA endeavors to offer a consistent service to all families across the county and therefore must abide by the LA protocol and Code of Conduct set out in the Court of Law. Last Academic Year, 104 Fixed Penalty Notices were issued and 24 went to Court through non-payment. 1321 Fast Track cases were opened across the county and 310 were taken through to Court due to failure of attendance to improve to a satisfactory level. This however, shows that in the majority of cases, Fast Track works.

## **In summary**

The LA aims to work effectively with schools in ensuring the best outcomes for children in Norfolk are met. We are reliant on accurate information being shared and acted upon in a timely fashion in order to meet legal obligations and because we know that the longer a child is out of education, the more difficult reintegration can be, which affects their attainment levels and success.

The LA is committed to ensuring that schools have constructive feedback on all cases they put forward, including outcomes for parents and ways forward.

Over the last two academic years we have been pro-active in our legal interventions where deemed appropriate, to improve school attendance of children across the County:

## **Fixed Penalty Notices**

2011-2012: 103 were issued with 15 being put forward for prosecution following non-payment.

2012-2013: 104 were issued with 24 being put forward for prosecution following non-payment.

## **Fast Track Cases**

2011-2012: 362 cases were prosecuted following the Fast Track intervention with the school.

2012-2013: 310 cases were prosecuted following the Fast Track intervention with the school.

## Appendix 1 Exemplary Witness Statement and Evidence Pack.

### Statement of Witness

Name: Emma Lewis

Of: Norfolk County Council (School)

Age: Over 21 years

---

“This statement (consisting of 2 pages each signed by me) is true to the best of my knowledge and belief, and I make it knowing, that if it is tendered in evidence, I shall be liable to prosecution if I wilfully stated in it anything which I know to be false or do not believe to be true”

1. Mrs Lisa Smith (DOB) is the parent of David Smith (DOB) who is currently of compulsory school age and has been a registered pupil at SCHOOL NAME since INSERT DATE.
2. David’s attendance has been of concern to the school since DATE and the School has attempted to improve this by INSERT (attendance panel meetings, reward schemes, PSA working with the family, Pastoral Support offered and so on).
3. SCHOOL NAME uses the Fast Track model to improve attendance, in conjunction with the Attendance Team. As none of the above interventions resulted in maintained improved attendance, David was entered in to the Fast Track process in DATE with an attendance of %.
4. On DATE a letter was sent to Mrs Lisa Smith (Exhibit EL1) highlighting the attendance concerns and inviting them to attend the Initial Fast Track meeting at the school on DATE.

5. The initial Fast Track meeting was held on DATE where attendance stood at %, and Mrs Lisa Smith did/did not attend (insert if any reason). During this meeting an Action Plan was discussed, agreed and signed by all those present and included the following points (**Outline Key Action Points**) (Exhibit EL2).
6. **If Parent did not attend** A copy of the minutes and Action Plan was sent to Mrs Lisa Smith on DATE (Exhibit EL3) which included the date of the review meeting.
7. A letter was sent to Mrs Lisa Smith on DATE (Exhibit EL4) to remind her of the upcoming Fast Track Review Meeting.
8. The Fast Track Review Meeting was held on DATE where attendance stood at %, and Mrs Lisa Smith did/did not attend (insert if any reason). During this meeting the Action Plan points were discussed and **either** a further Action Plan was agreed to be all those present and included the following points (**Outline Key Action Points**) **or** it was decided to put the matter forward for prosecution due to continued poor attendance/decline in attendance which is currently % with no statutory defence provided.
9. **If a further meeting was held repeat points 7&8.**
10. I have attached the truancy call log relating to David and Mrs Lisa Smith (Exhibit EL5). NUMBER calls/texts were made and NUMBER were responded to.
11. The school continue to offer Mr Lisa Smith and David support in a number of ways, including OUTLINE with success/little success.

## **Points to note**

- All defendants should have a separate witness statement as they are treated as individuals in the Court and may, at times, be dealt with separately. Also, they should not be privy to information about another defendant in case evidence is disputed or goes to trial.
- Include all relevant information, including previous attempts to improve attendance in summary (point 2), but don't exhibit any documents as these are not officially part of the prosecution period.
- Ensure all pages of each exhibit are labelled and that this label does not cover any important information, and for consistency, place labels in the same place on each page (top right or bottom right corner).