

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 arrangements for that child's education, the 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.

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, the EWS will hold a School Attendance Panel Meeting with the family in an attempt to support the parent/carer(s) to resolve the matter. Where, following this intervention the unauthorised absence continues and no statutory defences apply, the EWS will instigate legal proceedings. (See Annex A.)

B.) Section 444(1A)

Where a parent/carer is failing in their duty to ensure regular attendance at school, the EWS will hold a School Attendance Panel Meeting with the family in an attempt to support the parent/carer(s) to resolve the matter. Where, following this intervention the unauthorised absence continues and no statutory defences apply, the EWS will 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. (See Annex A.)

In the case of both A.) and B.) above, an unpaid Penalty Notice (issued in accordance with the LA Penalty Notice for Unauthorised Absence Code of Conduct) may form part of the evidence. See next point.

C.) Penalty Notices for Non-School Attendance

These will be issued as an alternative to legal proceedings before the Magistrates' Court wherever it is appropriate and in accordance with the Local Authority Code of Conduct. To issue a PN for ongoing unauthorised absence, an Attendance Panel should have been held, there should be 20 or more unauthorised absences in a 12 week period or less and the PN should have been issued by week 14 at the latest of the potential prosecution period.

Determining Whether To Issue A Penalty Notice 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 – the PN Code of Conduct indicates that we should usually 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 (unless the PN related to a holiday or truancy patrols in which case a further PN can be issued). (NB See Annex A.)
- If by issuing a PN vital evidence will be lost if the PN is unpaid – COURT PROCEEDINGS
- 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 child has had 2 periods of unauthorised leave in the 4 previous school years for which the parent has been issued with PNs, on the third occasion, no PN will be issued and that parent will be prosecuted under S444(1) as long as parent was warned that this could happen, and as long as there is no other reason identified not to do so. Further occasions may proceed under S444(1A). See Annex A for further details.
- Where a parent has previously been prosecuted for a period of unauthorised leave, unless there is a reason not to, the usual action for a further occasion of unauthorised leave would be to proceed to Court and not to issue a further PN.

NB In the case of ongoing unauthorised absence, unless it is not in the public interest to proceed, Penalty Notice or legal enforcement action may be taken when the level of unauthorised absence exceeds 20 or more sessions of unauthorised absences in a 12 week school period and will always have been taken when the level of unauthorised sessions is 40 or more in a 12 week period. Penalty Notice 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 APEWO may agree late payment in order to ensure consistency and fairness.

Penalty Notices issued in relation to unauthorised leave of absence are referred to in the EWS Penalty Notice Code of Conduct. There is no required number of absences. However, to satisfy the public interest test in the event of the PN being unpaid and a prosecution becoming appropriate, a minimum of 4 days of unauthorised absence will be required, but, if there is sufficient reason (which will usually relate to a concerning history of similar absence), PNs may be issued for a period of less than 4 days. Prosecution will follow if a Penalty Notice is unpaid.

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):<ul style="list-style-type: none">○ First case of unpaid holiday PN where child has over 90% attendance over the previous 12 month period (ie the child is not a persistent absentee) – with the exception of where a genuine serious medical condition had caused the child to have low attendance in the previous 12 month period○ Case relates to a third unauthorised holiday (same parent and child) in the previous 4 school years – no PN will be issued and a direct prosecution will ensue (first occasion)• There is evidence that would amount to significant mitigation. (NB Reasonable excuse is a high test and there would have to be a very good reason for a parent failing to ensure regular attendance to meet this test.)	<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• Case relates to a second unauthorised holiday where the previous PN was unpaid and resulted in a successful prosecution• Case relates to a fourth or more unauthorised holiday (same parent and child) – no PN will be issued and a direct prosecution will ensue under 444(1A) where there has been a previous case relating to a third or subsequent unauthorised holiday taken under 444(1)

NB Where a case requires further investigation prior to making a decision whether to proceed to Court, the parent/s will be requested to attend a Formal Interview under Caution in accordance with the Police and Criminal Evidence Act 1984.