

## **Legal Action Information – Unauthorised Absence from School**

### **School attendance and the Law:**

The Education Act 1996 ("EA 1996") states that as a parent, you must ensure your child receives appropriate full-time education according to their age, ability and aptitude. If your child is registered at a school, then they must attend regularly and punctually.

It is your responsibility as the parent to ensure your child has good attendance at school and if you fail to do so you can be prosecuted under s.444 EA 1996 for failing to secure the regular attendance of a child at a school at which they are registered.

In relation to education, a 'parent' includes any person who has care of a child or who has parental responsibility. The definition of a 'parent' in education law includes:

- All natural parents, whether they are married or not.
- Any person who although not a natural parent has parental responsibility for a child or young person.
- Any person although not a natural parent who has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after a child, irrespective of what their relationship is with a child.

### **Absences from school**

Only the Head Teacher can authorise the absence of your child. There is no automatic right for a child to be absent from school. The Head Teacher may require you to provide evidence of the reason for your child's absence otherwise the absence may be recorded as unauthorised.

When the Local Authority is notified by a school of evidence of an offence under the Education Act 1996 they have a statutory duty to respond to this. There are different pathways available, and each case is considered on its own merits based upon the information presented to us by the school. We also consider any information we hold and/or offered by the parent.

If we believe that your child has failed to attend regularly at school without authorisation, then we may issue you with a Fixed Penalty Notice (FPN) or we may consider court action which can lead to a prosecution in the Magistrates Court or apply for an Education Supervision Order. We will now offer more information on each of these potential outcomes below.

## **Fixed Penalty Notices (FPNs):**

Fixed Penalty Notices (FPNs) are underpinned by their own Code of Conduct which is found here: [School absences - West Sussex County Council](#)

In line with the Code of Conduct for West Sussex if a child accrues 10 or more unauthorised absences in a 10 school week period a FPN may be issued to parents. Unauthorised absence includes unauthorised holidays in term time, late arrival at school, and other absences which have not been agreed/authorised by the school. These are indicated on the attendance register with the following codes: 'G' (holiday in term time which is not authorised) 'U' (arrival after the registers have closed) or 'O' (other unauthorised absence). FPNs can also be used when a pupil who has been excluded, is noted as being in a public place during school hours shown by 'E' codes. There are occasions when a FPN can be issued outside of these parameters, and if this were to occur you would be notified.

The FPN is a time limited opportunity for a parent to accept guilt/liability for the offence under the Education Act 1996, rather than the matter going before a court. It offers the chance for the parent to discharge their criminal liability by way of paying a fine. The fine is for £160 and must be paid within 28 days. In some instances, a parent may be offered the opportunity to pay at a reduced rate of £80 so long as monies are presented in the first 21 days. Details on what amounts are payable are clearly stated in the FPN itself along with information on how to pay.

As the penalty is 'Fixed' your financial circumstances cannot be considered. There is no opportunity for payment plans and/or instalments and the payment period cannot be extended or placed on hold. In addition, FPNs cannot be appealed once issued.

FPNs are issued as the Local Authority is clear there is evidence of an offence under the Education Act 1996. If the FPN is not paid within the 28 days then we will consider a prosecution for the original non-attendance, not for the non-payment of the FPN issued. This course of action is in line with our published Code of Conduct and differs from Court action arising from other methods of referral to our offices which are explained further below.

## **Consideration of Court Action**

When a referral is made by the school to the Pupil Entitlement Investigation (PEI), we will consider all the information available and will liaise with the school throughout. In some instances, it is not appropriate to issue an FPN and consideration of the referral submission can lead to matter being referred directly before the courts, or where necessary an Investigating Officer may be allocated to explore the absence further.

If an Investigating Officer is allocated, they will aim to speak to you about the reasons for your child being absent from school, either by way or a home visit, meeting in school or a formal interview under Caution. All of this forms part of our investigation into the potential offence under the Education Act 1996. It is therefore really important for you to work with us and provide any information you consider relevant to your child's absence from school.

At the conclusion of our investigation and/or the FPN process, PEI decide what course of action is appropriate if any. You will receive letters/contact from us throughout our investigation.

If a decision is made to instigate court action it will lead to one of following:

- 1) Court Action in the Criminal Court (Magistrates); or
- 2) Court Action in the Family Court

As previously mentioned, failure to ensure your child regularly attends school is a criminal offence and there are two levels of the offence: normal or aggravated as shown below.

**Normal Offence** - If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, the parent is guilty of an offence; Education Act 1996 S.444(1).

This offence is managed by the Magistrates Court through the Single Justice Process (SJP). It is intended to streamline criminal proceedings and reduce the need for defendants to attend court if they intend to plead guilty. The Magistrate has the same sentencing options available to them as they would if you attended court in person.

West Sussex Legal Services will send you a Single Justice Procedure Notice which contains the charges against you, the evidence which will be used to prove the offence against you and instructions on how to contact the court with your plea. If you have previous offences, it will also contain this information. In addition, it will include a means form for those who intend to plead guilty by post and want the court to consider their financial situation. You must complete this document and return it to the court clearly marking if you are pleading guilty or not guilty.

There are then three possible outcomes:

1. You plead guilty, provide the court with your financial details and any mitigation. The court will consider this and sentence accordingly. You will be notified of the outcome by post.
2. You plead guilty and want to attend court. You will be sent a summons advising you of a new court date and you will attend to address the court. If you do not attend this date, you will be sentenced in your absence.

3. You plead not guilty. You will be sent a date to attend court for a Case Management Hearing. At this hearing you will inform the court why you are pleading not guilty and be required to offer information relating to the defence you intend to use. A date will be set for trial. If you do not attend either of these dates, the prosecutor may make an application to prove the offence in your absence.

If you do not return the court pack within the timescale specified, the court will consider the evidence "in your absence" and you may be found guilty and sentenced with no consideration given to your financial means or mitigation.

**Aggravated Offence** - If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school and the parent knows that the child is failing to attend regularly at the school and fails to cause the child to do so the parent is guilty of an offence; Education Act 1996 S.444 (1)(A).

If you receive a summons and evidence in relation to the aggravated offence from West Sussex Legal Services, you will be expected to attend the named court on the date specified.

This pack will contain

- The court summons and this will tell you the date & place of the court hearing as well as details of the offence.
- Copies of any witness statements which form part of the prosecution will be offered to you.
- Copies of the record of attendance at school of your child for the period in question.
- Any previous convictions that you may have.

If you disagree with any of the evidence, you should write to Legal Services within seven days of receiving the evidence.

If you can, you should obtain legal advice from a solicitor or other legal advisor before the hearing. You may not be able to obtain legal advice on the day of the hearing. If you have any difficulties attending court or if you have any questions regarding the proceedings, contact the Investigating Officer.

When you attend the court and when your case is called you will be asked to stand in the dock and to confirm your name and address. The alleged offence will be read to you, and you will be asked if you plead guilty or not guilty. The decision on how to plea is entirely yours.

At court you can offer the court any additional information you wish them to be aware of which may have contributed to the absence from school. If you are convicted of either of these offences, it means you will have a criminal record and in relation to the aggravated offence the magistrates can consider a community and/or custodial sentence. If you enter a not-guilty plea, a date will

be set for trial, and you will be expected to inform the court of your intended defence.

If you do not attend either the first court hearing or the trial, the prosecutor may make an application to prove the offence in your absence.

If you are convicted of either of these offences, it means you will have a criminal record and in relation to the Aggravated Offence the magistrates can consider a custodial sentence.

### **Fast Track:**

PEI can consider either of the above offences under what is known as a "Fast Track" model. This means you will be given up to 12 weeks to ensure your child is attending school regularly and punctually. You will receive a letter advising of this court of action. If your child's attendance has sufficiently improved by the time of the court hearing and/or new information comes to light which supports the absence, then the prosecution against you will be withdrawn. If attendance has not improved to a satisfactory level, then the prosecution against you will continue and you are required to either offer a plea to the court or attend in person on the date as stated in the summons.

### **Defences:**

The two offences under the education act are what are known as 'strict liability'. This means that there are only a set number of permitted defences, and you must be able to evidence one of these in order to be found not guilty. If you have evidence of these, you should share these with the Investigating Officer and/or legal services at the earliest opportunity as this may mean Court action is ceased.

The permitted defences are as follows:

- The absence was authorised by the Head teacher.
- The absence was due to sickness or an unavoidable cause. (This is in relation to the child, not the parent and a child having a health issue does not automatically mean the child was unfit to attend school.)
- The absence was on any day exclusively set apart for religious observance by the religious body to which the parent belongs. The religious observance must be one which is stated in the calendar as an observance day for that particular religion. Religious Festivals are not considered observance days, nor are pilgrimages, weddings, celebrations etc.
- The child attends a school which is at such a distance that West Sussex County Council has a legal responsibility to provide transport to the school and has failed to do so. The limits are two miles for children under 8 years of age and three miles for children aged eight and over.
- If your child has no fixed abode and you are engaged in a trade or business of such a nature as to require you to travel from place to place;

that your child attends school as a registered pupil as regularly as the nature of that trade or business allows and that if your child is at least 6 years of age, has made at least 200 attendance during the period of 12 months ending with the date on which the proceedings were instituted.

If you are being prosecuted for the Aggravated Offence, it is also a defence if you can prove that you had a "reasonable justification" for your failure to ensure your child regularly attended school. You should be aware however that even if you are able to prove this defence, you may still be found guilty of the Normal Offence unless you can evidence one of the defences listed above.

If you wish to plead one of these defences, then you must bring with you to the Court the evidence to prove it. For example, if you say your child was ill, then you must bring with you the supporting evidence for the Court to consider for the period in question.

### **Mitigation**

Mitigating circumstances are factors and conditions which are relevant to the offence. They do not justify it nor excuse it but can be considered as impacting upon it. Mitigating circumstances are considered during the sentencing by the Magistrates. The weight of any mitigation offered is for the court to decide.

### **Sentencing:**

If you have pleaded or been found guilty of the normal Offence, the Magistrates have the power to impose a fine of up to £1000. If you have pleaded or been found guilty of the aggravated Offence, you can be fined up to £2,500, be subject to a community order and/or a term of imprisonment not exceeding three months. In both cases, costs may also be awarded against you, and you will also have to pay a victim surcharge (the victim surcharge is set by the court in all cases heard).

All Fines and costs are calculated by considering the elements of the offence and in reference to your income.

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

During the investigation it may become apparent that it is more suitable for the Local Authority to apply for an Education Supervision Order (ESO). These are sought in the Family Court and require the agreement of the parents and the child concerned to be effective. If this course of action is proposed you will be fully advised as to what it means, and how it works by the Investigating Officer.

There is separate information available on ESO's which can be found here by visiting: <https://www.gov.uk/school-attendance-absence/legal-action-to-enforce-school-attendance> or by contacting Pupil Entitlement: Investigation:

- Email: [pei@westsussex.gov.uk](mailto:pei@westsussex.gov.uk) or Telephone: 03302 228200