

Prosecution - A Guide for Parents

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 good attendance.

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

We do not like to prosecute parents. Our number one priority is to ensure that your child is in school. There are a number of options available to help you to improve attendance, however if you or your child do not work with us to improve attendance then prosecution will be considered.

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 instigate a prosecution in the Magistrates Court or apply for an Education Supervision Order.

Fixed Penalty Notices (FPNs):

In West Sussex if a child accrues 10 or more unauthorised absences in a 10-week period a FPN may be issued to parents. Similarly, if parents take a child on holiday during the school term dates and accrues 10 or more absences a FPN is likely to be issued. The FPN is an alternative to prosecution and gives parents the opportunity to discharge their criminal liability by way of paying a fine. The fine is for £120 and must be paid within 28 days. If payment is offered within 21 days of issue, the fine is reduced to £60. However if the fine is not paid within the 28 days then EWS will consider a prosecution for the original non-attendance, not for the non-payment of the FPN. Please also note FPNs may not be suitable for extensive periods of absence (more than 15 consecutive school days) and instead can lead to the matter being brought directly before the court. For more information about FPNs, please visit the [website](#).

Prosecution of Parents:

Prosecution is a serious step. Once a referral is made by the school to the Education Welfare Service ("EWS"), we will speak to the school about the reasons why they have recorded your child as being absent without authorisation and we will also speak to you about the reasons for your child being absent from school. We will then make a decision as to whether prosecution is appropriate.

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.

Failure to ensure your child regularly attends school is a criminal offence. There are two offences;

1. "The Ordinary 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. (EA 1996 s444(1))
2. "The 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. (EA 1996 s444(1A))

If convicted you will have a criminal record. In relation to the Aggravated Offence, you can be sent to prison.

Court Proceedings:

If it is decided that prosecution is appropriate, you will receive a Summons to attend court. The summons will tell you the time, date and place of the Hearing. An interpreter will be provided by the court if requested in advance. The Summons will detail which of the 2 offences you are being prosecuted for. You will also be sent the evidence that West Sussex County Council will use to try and prove to the court that you are guilty of the offence. This evidence will include witness statements from a member of staff at the school and from the Pupil Entitlement: Investigating Officer. You will also receive a copy of the registration certificate signed by the Head Teacher which will evidence the absences of your child. 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.

On the day of the hearing, when your case is called on, 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. If you do not attend court, the matter may be proved in your absence.

It is entirely up to you whether you plead guilty or not guilty. However you should be aware that if you plead not guilty and are subsequently found guilty at a trial, you might be liable for a more severe sentence and increased prosecution costs. If you plead guilty, you will receive credit from the court for an early guilty plea and a reduced sentence. The decision on how to plea is entirely yours.

Defence Against Prosecution:

The law sets out a number of defences and you must be able to evidence one of these in order to be found not guilty.

- The absence was authorised by the Head teacher
- The absence was due to sickness or an unavoidable cause. (This is generally held to be in relation to the child, not the parent.)
- 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 recognised by the Department for Education.
- 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 Ordinary 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 a doctors certificate for the period in question.

What is not a defence?

The law is strict on what is permissible on what is a defence, as offences under the Education Act 1996 are ones of strict liability. You may have very good reasons why your child didn't attend school, but if the reason is not listed above then it may not be a defence. However, if the court cannot accept your reasoning as a defence, the court can still listen to the reasons your child did not attend and may be more lenient with you as a result. This is known as 'mitigation'. The following are example of reasons that would not be acceptable as defences;

- My child wouldn't do what I told them to do
- I've tried my hardest but my child won't go to school
- My child was too scared to go to school
- My child was bullied at school
- I had to look after my mother and couldn't take my child to school
- I didn't have any money to pay for petrol/bus fare.
- I was ill.

Sentencing:

If you have pleaded or been found guilty of the Ordinary 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 applied for by the prosecuting agent (the Local Authority) may also be awarded. Fines and costs are calculated by reference to your income. In addition you will also have to pay a victim surcharge (the victim surcharge is set by the court in all cases heard).