

# **School Absence Enforcement Policy**

## **Policy and Procedures for Using Statutory Powers and Sanctions**

**Enforcement Guidance**

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## **INTRODUCTION**

### **School Attendance**

Research shows that children who attend school regularly are more likely to be successful. A child who misses a day of school each week misses an equivalent of two whole years in their school life. Missing school leads to gaps in education that become difficult to fill.

### **Cumbria Children and Families Services Access and Inclusion Officers**

The Access and Inclusion Officers work with schools and other agencies to identify pupils with school attendance issues. Any pupils whose attendance is less than 90% and where school interventions have failed to achieve an improvement in the pupil's attendance should be discussed with the Local Authority Access and Inclusion Officer (Attendance) for advice on next steps.

Cumbria Access and Inclusion Officers work within statutory frameworks to promote regular attendance at school.

### **The Role of the School**

All schools should have an Attendance Policy. Schools are required to take an attendance register twice a day, at the start of morning session and once during the afternoon session. The register must show whether any absence is authorised or unauthorised. It is the school and not the parent who authorises absence.

### **Authorised Absence from School**

If a child is ill or unable to attend school for some reason, parents should provide an explanation for this non-attendance. The school will determine whether the child's absence will be authorised or not. For repeated or regular periods of illness the school will request verification is provided such as a medical certificate from the family doctor prior to authorising any absence.

### **Unauthorised Absence from School**

An unauthorised absence from school is any absence that is deemed not to be an acceptable reason for missing school. Unauthorised absences from school carry the risk of prosecution under section 444 or 444(1A) of the Education Act 1996.

### **No Attendance Improvement**

If the child's absence falls below 90% and there is no sustained improvement despite school intervention the school should consider a referral to Children and Families Services following the Attendance Protocol (Appendix 2).

### **Prosecution**

Should the child's attendance fail to improve, the Access and Inclusion Officer will consider the use of legal sanctions and may in accordance with the Prosecution Policy decide to prosecute the parent(s) for failing to ensure regular school attendance.

## **Cumbria County Council Children and Families Services Attendance Strategy 2017/18**

We as a County Council continue to recognise the links between attendance and attainment and continue to be committed to ensuring that every child in Cumbria achieves their full potential.

We are striving to focus on reducing absence in schools with a particular focus on persistent absence.

### **Attendance Data 2015/16**

National overall absence	4.6%
Cumbria's overall absence	4.7%
National authorised absence	3.5%
Cumbria's authorised absence	3.8%
National unauthorised absence	1.1%
Cumbria's unauthorised absence	0.9%

### **Vision**

In striving to maintain excellent levels of attendance across the County, the County Council must deliver a coordinated strategy for attendance. This involves partner agencies and a number of teams across Children and Families Services.

The Access and Inclusion Officers aim to work in line with the Government's priorities to focus on high overall absence and within this, persistent absence.

To this end the council:

1. Encourages all schools to convey the importance of regular and punctual attendance to staff, parents and pupils.

Schools are required by law to take an attendance register twice a day. The taking of the register should be used as a positive start and welcome to the school day. Teachers should demonstrate concern for any individual pupil who is absent and ensure a prompt follow up of any unexplained absences, following school policy and procedures.

2. Encourages parents and carers to ensure that their child attends school regularly and to inform school of the reason for absence the same day.

Parents can encourage a positive attitude by showing an interest in their child's day at school. Parents should attend consultation evenings and other events. They should avoid taking their child out of school, except in exceptional circumstances, which should be discussed with the Headteacher. Holiday in term time should be avoided. If a pupil is experiencing any difficulties with school these should be raised in school at the earliest opportunity.

3. Encourages good communication between schools and parents which is vital to promoting punctual and regular attendance.

Clear information and expectations of parents and pupils in relation to attendance should be included in the school prospectus and reinforced through letters and leaflets. This should include how to inform the school when a child is absent.

Where possible schools will contact parents on the first day of any absence when no explanation has been given to the school. This ensures the safety of the child and highlights the importance of school attendance.

4. Asks all schools to establish a clear policy with effective procedures for promoting good attendance and responding to unexplained or unauthorised absences.

Advice and guidance will be issued to all schools and updated as required by changes in legislation or advice from the Department for Education. This is further supported by a named Access and Inclusion Officer (Attendance) who can offer support and advice to schools.

5. Requires, in line with Department of Education, regular monitoring of school attendance. Analysis of data, attendance trends, difficulties and the identification of good practice will be undertaken by Children and Families Services.

## **Parental Responsibility**

Under Section 7 of the Education Act 1996, parents are responsible for making sure that their child of compulsory school age receives efficient full time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school or by education otherwise (including the parent choosing to educate their child at home).

Compulsory school age is defined as being the term commencing on or after a child's fifth birthday. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen. This applies to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit, an Academy, or other state provided education.

**Section 576 of the Education Act 1996: Definition of a Parent** – is as follows whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, 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 the child, irrespective of what their relationship is with the child, is considered to be a parent in education law. Throughout this document, references to 'parent' mean each and every parent coming within the definition (whether acting jointly or separately) and should not be taken to mean that provisions only apply to 'parent' in the singular.

## **Protocol for Statutory Interventions for Legal Action within Academies/Schools**

### **Introduction**

The LA is the only body that can commence prosecutions against parents for their child's non-school attendance.

The Local Authority is legally bound to consider an Education Supervision Order in the first instance prior to undertaking any form of enforcement action including the issuing of Fixed Penalty Notices.

An Access and Inclusion Officer (Attendance) refers to an employee of the Local Authority only.

With regard to issuing proceedings the Local Authority will not charge Academies for preparation of court papers, summonses and presentation at Court.

All academies and schools must ensure that their staff are able to provide evidence and reports sufficient for Court purposes.

Any decision whether to prosecute individual cases will be made by CCC Legal Services in consultation with CCC Children and Families Services. Prosecution decisions will be based on the Code for Crown Prosecutors and will consider in each case whether there is sufficient evidence and whether a prosecution is in the interests of justice, (evidence test and public interest test). Prosecution is generally a last resort for the more serious cases of poor attendance

### **Action**

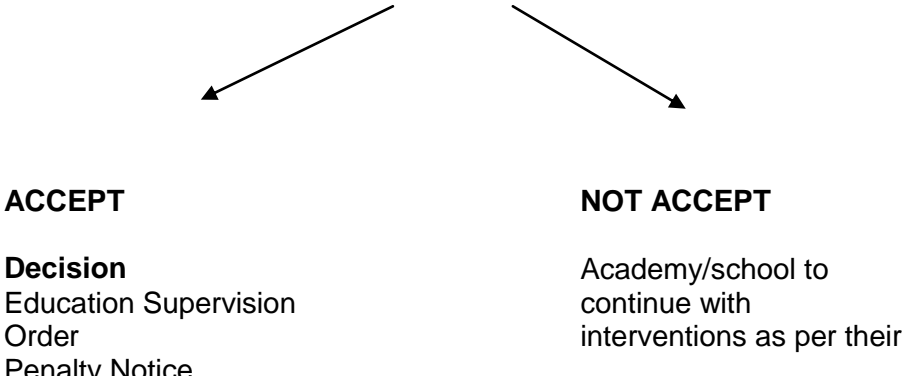
Academies/schools will provide the assessment of the pupil and family circumstances by completing an Early Help Assessment.

A chronology of interventions with dates must be provided for the last 6 months\* together with the following:

- copies of letters to parent including written notification of the possibility of legal action
- notes of phone calls
- notes of meetings
- notes of home visits
- notes of attendance panels

An identified key person from the academy or school will contact the Access and Inclusion Officer (Attendance). A decision will be made by the Access and Inclusion Officer (Attendance) on evidence the academy/school has provided relating to intervention taken to date. If there is sufficient evidence the Access and Inclusion Officer (Attendance) will convene and chair an Attendance Review Conference.

Decisions to be made at Attendance Review Conference to accept or not accept referral for statutory intervention



**Education Supervision Order**

The Local Education Authority must consider applying for an Education Supervision Order before commencing any prosecution. Application for an Education Supervision Order does not preclude prosecution of the parent. However if an application for an ESO is made the normal approach will be to work with the family under the order. Prosecution will normally only be considered if it is clear the ESO is not working and in that event the normal approach will be to seek discharge of the order before any prosecution commences.

An Education Supervision Order is a family proceedings matter as defined by the Children Act 1989 and makes the Local Authority responsible for advising, supporting and giving directions to a supervised child or their parent to ensure the child is educated. When an Education Supervision Order is in place the duties of the child’s parents under Section 7 and Section 444 of the Education Act 1996 are superseded by their duty to comply with the directions of the Education Supervision Order.

If the parent persistently fails to comply with the directions of the Order and cannot show reasonable justification for non-compliance the Local Authority will refer the matter to Social Care who have a duty to investigate under the Children Act 1989. The process of an Education Supervision Order is demonstrated in **Appendix 4**. In the event of persistent parental or child non-compliance with the order discharge of the order will be sought and consideration given to FPN or prosecution.

**Proceedings**

The Local Authority uses the services of officers from Legal and Democratic Services in all proceedings. In order to commence proceedings officers from Legal Services will apply to the Magistrate’s Courts for a summons to be issued. Information regarding the alleged offence will be laid before the Court within 6 months of the alleged offence. The summons outlines details of Court address and the date of the hearing.

Summonses will be served on parents by CCC Legal Services.

**Evidence**

A Certificate of Attendance completed signed and dated by the Headteacher will be presented to the Court. This must give the full name of the child and parent(s), their full address and accurately reflect the registration certificate.

The Access and Inclusion Officer (Attendance) will produce for the Court a summary of involvement and a witness statement **Appendix 5**.

A Witness Statement will also be provided by identified school staff who have offered support.

The witness statement will have exhibited to it documentary evidence i.e.

- Medical Certificate for relevant parts of absence
- Copies of Warning Letters
- Records of meetings held with school/pupils/parents
- Report



## Sentencing Options

The Court will consider its sentencing guidelines and the following disposals:-

- ✓ Adjourments - After conviction for a period up to 4 weeks at a time, this provides an opportunity for enquiries to be made to determine the best method of disposing with the case.
- ✓ Absolute Discharge - Where the case is proven but magistrates believe that the parent is not deserving of punishment. The Absolute Discharge can be cited in future prosecutions.
- ✓ Conditional Discharge - A means of disposal by way of a sentence that lasts for a fixed period up to three years. If the defendant is convicted of another offence and more particularly a similar offence within the period they could be re-sentenced for the original offence.
- ✓ Fine - For Section 444 (1) up to £1,000  
For Section 444 (1A) up to £2,500  
Magistrates will take into account ability to pay.
- ✓ Community Sentence - Where Magistrates believe the offence is serious enough to warrant such a disposal. A pre-sentence report may be required.
- ✓ Curfew Order - Where Magistrates may order parents to be tagged. A pre-sentence report is required
- ✓ Parenting Order - Magistrates may issue a Parenting Order for a limited time, if the court believes it will help improve attendance. Parents may be required to attend a parenting course. These orders are designed to help/support parents and are not a punishment. The parent(s) must be given an opportunity in court to either agree or object to a parenting order. These orders cannot be made in the parents absence (e.g. if they did not attend court or are convicted in their absence).
- ✓ Custodial Sentence - Section 444 (1A) only. For up to 3 months. Pre-Sentence report is usually required. Sentence can be suspended for up to 2 years.

## Parenting Orders

Parenting Orders are designed to help support parents in addressing their child's Non Attendance or behaviour. It consists of two elements:

- i) A requirement to attend parenting or counselling sessions for up to three months.
- ii) The parent must comply with requirements within the order i.e. the child's regular attendance at school or that the child is at home at a specified time to enable the Local Authority to meet with the child  
Section 8(4) Crime and Disorder Act 1998. This element can last for up to 12 months.

Wherever possible the Local Authority will seek to encourage attendance at voluntary parenting courses to support the parent in ensuring regular attendance at school or improvement in the child's behaviour.

## Fixed Penalty Notices

Under Section 23 of the Anti Social Behaviour Act 2003 a Local Authority/ Headteacher/or Deputy Headteacher is required to produce a Local Code of Conduct for the protocols and administration of the Penalty Notice scheme. Cumbria County Council's Code of Conduct can be seen at **Appendix 1**.

## **PENALTY NOTICE Code of Conduct**

Cumbria Children and Families Services Local Code of Conduct under The Education (Penalty Notices) (England) Regulations 2007, The Education (Penalty Notices) (England) (Amendment) Regulations 2013 and Subsection (1) Section 23 Anti Social Behaviour Act 2003.

**This local code sets out the procedures, necessary requirements and terms under which penalty notices can be issued in Cumbria.**

The code must be adhered to to ensure that the powers are applied consistently, transparently and fairly.

**Any authorised person should issue penalty notices in compliance with this code of conduct.**

**Cumbria Children and Families Services is responsible for the overall administration of the penalty notice scheme and this code sets out our arrangements for the practices required to ensure the operation of the scheme.**

### **Guidance and Legislation**

**Authorised persons using this code must adhere to the following legislation and guidance:**

***Human Rights Act 1998* - Cumbria Children and Families Services, schools and the police must apply their powers fairly and consistently, having regard to this guidance and, in the case of penalty notices this local code of conduct. Inconsistency or unfairness may lead to challenges under the HRA.**

*Equality Act 2010*

*Special Needs Code of Practice 2003*

*Data protection Act 1998*

*Children Act 2004*

*Education Act 1996*

*Children Act 1989*

*Crime and Disorder Act 1998*

*Ensuring Regular School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003*

***Section 576 of the Education Act 1996: Definition of a Parent*** - The education-related provisions of the Anti Social Behaviour Act apply to all parents who fall within the definition set out in section 576 of the Education Act 1996 (see page 5).

**Section 7 Education Act** – Places a duty on the parent to ensure that their child of compulsory school age receives efficient full time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school or by education otherwise.

Compulsory school age is defined as: Commencing at the start of term commencing on or after the child's 5<sup>th</sup> birthday. Concluding on the last Friday in June in the school year that the pupil becomes 16.

**Section 437 Education Act** – Cumbria Local Authority will apply for a School Attendance Order where a child is not in school and is not receiving suitable education elsewhere.

**Section 444(1) Education Act 1996** – If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school then the parent may be guilty of an offence. This is the offence under which penalty notices can be issued. Penalty notices are a direct alternative to prosecution and if unpaid can result in prosecution for this offence.

**Section 444(1A) Education Act 1996 (as amended by the Criminal Justice and Court Service Act 2000)** – A parent, knowing that their child is failing to attend regularly at school, fails without reasonable justification to cause him to attend (Education Act 1996, section 444(1A) as amended by the Criminal Justice and Court Service Act 2000). This offence requires proof that the parent knew of their child's non attendance and failed to act. Under this aggravated offence a conviction can lead to a custodial sentence. FPNs cannot be issued as a direct alternative to prosecution for these offences.

(Children Act 1989, section 36)

An LA must consider applying for an Education Supervision Order (ESO) before prosecuting a parent. A Local Authority may apply for an ESO instead of/or as well as prosecuting the parent but it is more appropriate to either seek an ESO or prosecute not pursue both at the same time.

**Section 444A and Section 444B** – Enables authorised personnel to issue penalty notices as an alternative to prosecution under section 444 and enable parents to discharge potential liability for conviction for that offence by paying a penalty.

The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (42 days after receipt of the notice) and cannot be convicted of that offence if s/he pays the penalty in accordance with the notice. Penalties are to be paid to Cumbria County Council.

**The penalty is £60 from September 2013 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt of the notice (a notice served by post is deemed to have been received on the second day after posting it by first class post).**

If the penalty is not paid in full by the end of the 28 day period Cumbria County Council must **either** prosecute for the offence to which the notice applies **or** withdraw the notice. The prosecution is not for non-payment of the notice but is a prosecution for irregular attendance.

Prosecutions will be brought by Cumbria County Council, Children and Families Service's under section 444 Education Act 1996.

Cumbria Children and Families Services can only withdraw the notice:

- Where it ought not to have issued i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed or prosecution is not contemplated
- Where it has been issued to the wrong person

## **Reasonable Justification for Poor Attendance**

- The pupil's absence was authorised by the school
- The pupil was ill or prevented from attending by an unavoidable cause
- The absence was on a day exclusively set aside for religious observance by the religious body to which the parent belongs
- The school is not within walking distance of the child's home and the Local Authority has not made suitable arrangement for:
  - The child's transport to and from school
  - Boarding accommodation at or near the school, or
  - Enabling the child to attend a school nearer their home
- The parent can show that their trade or business requires them to travel, and the child has attended school as regularly as the nature of the trade or business allows, and the child has attended school for at least 200 sessions during the preceding twelve months.

NB: Authorised absence means that the absence has been authorised by the Headteacher, not by a parent

**Authorised Persons** within Cumbria who may issue penalty notices under the local code are:-

- Cumbria County Council, Access and Inclusion Officers
- Cumbria Police, Community Support Officer and if applicable accredited persons
- Headteachers and Deputy and Assistant Headteachers

## **Penalty Notice**

If a penalty notice is issued it is as a direct alternative to prosecution therefore there needs to be sufficient evidence to demonstrate that the parent has committed an offence under Section 444 of the Education Act 1996. There is no statutory right of appeal against the issuing of a penalty notice (although the regulations make provisions for the Children and Families Services to withdraw them in certain limited circumstances). Therefore penalty notices must not be issued unless the parent has already had sufficient warning of the probability of a penalty notice and has been given 15 school days to address the situation.

Penalty notices can be issued to parent(s) who have the responsibility for a pupil.

## **Number of Penalty Notices which can be issued**

Two separate penalty notices can be issued to one parent in a twelve month period

Every parent with parental responsibility can be served a separate notice

There are no limits to the number of penalty notice warning letters

## **Schools Roles and Responsibilities**

Schools should:

- a) Adhere to the authorised/unauthorised absence guidance as stated in School Attendance: Guidance for maintained schools, academies, independent schools and local authorities: The Department for Education.
- b) Have a named senior member of staff responsible for attendance issues.
- c) Have effective systems and procedures for encouraging regular school attendance and investigating the underlying causes of poor attendance which should be set out in the attendance policy. The attendance policy should also set out the circumstances in which the school will consider entering into a parenting contract and issuing a penalty notice. These systems should be reviewed regularly and modified where necessary to reflect the circumstances of the school.
- d) Make parents aware of the school attendance policy.
- e) Have systems and procedures for:-
  - Registering pupils:
  - Categorising absence:
  - Collating and analysing attendance data to identify trends and enable action to be taken:
  - Determining in each individual case whether there are exceptional circumstances for leave of absence to be granted for holidays during term time:
  - Monitoring attendance and punctuality for all lessons:
  - Dealing with late arrivals:
  - Dealing with unauthorised absence (i.e. when contact will be made with parents; how and when standard letter systems will be used, what measures will be taken to re-engage disaffected pupils, what rewards/incentives will be used to encourage attendance, what sanctions will be taken including the circumstances in which the school will consider entering into a parenting contract and issuing a penalty notice):
  - Referring cases to Children and Families Services (i.e. when, how and by whom):
  - Reintegrating pupils who have been absent (e.g. providing pastoral support, the role of the Learning Support Unit, using learning/peer mentoring).

## **Administration of the Scheme**

Cumbria Children and Families Services in consultation with the school and other agencies, is responsible for the decision to serve a penalty notice on parents. This will ensure that there is no duplication of practice, human rights are adhered to and there is no danger that penalty notices are being served when the process towards prosecution is already underway.

Where a school requests the local authority to consider issuing a FPN through the scheme they must demonstrate that they have undertaken as a minimum the level of work outlined below.

- A full assessment of the case
- Casework intervention with the pupil and parent(s)
- Consultation with regard to other agencies
- A signed headteacher's certificate
- A witness statement

### **The LA will consider the request and notify the school of its decision**

All funding from penalty notices will go to the County Council to cover the costs of issuing or enforcing notices and the cost of prosecuting recipients who do not pay.

The Local Authority is required to produce an auditor's statement as part of the usual audit procedure showing that income received from fines does not exceed enforcement as defined. The surplus, if any, must be surrendered to the consolidated fund.

The financial administration of the scheme will be run by the Children and Families Services Inclusion Team.

### **Penalty Notices for Unauthorised Holiday in Term Time**

Penalty notices can only be issued for failing to secure regular attendance at school. Nonetheless, if unauthorised holidays are taken in term time that can amount to failing to secure regular attendance.

**In law there are no fixed penalty notices specifically for taking an unauthorised leave of absence for a holiday in term time.**

Penalty Notices will not be used as an **automatic** sanction against parents who take unauthorised holidays in term time, but may be issued in certain circumstances. Headteacher's can lawfully grant a leave of absence in term time if they believe the situation to be exceptional. Each request for a leave of absence should be considered individually and reasons for either granting or refusing should be provided in writing.

Leave of absence may only be granted by a person authorised on behalf of the proprietor of the school. As from 1st September 2013, the Education (Pupil Registration) (England) (Amendment) Regulations 2013 amended Regulation 7 to prohibit the proprietor of a maintained school from granting leave of absence to a pupil, except where an advance application has been made by the parent with whom the pupil normally resides, and the proprietor considers that there are exceptional circumstances relating to the application.

Schools must ensure that all literature provided to parents, such as Prospectus, Attendance and Behaviour Policies, Home School Agreements, Newsletters and website information include the warning that parents may be issued with a penalty notice if a leave of absence is taken without permission.

A letter to the parent confirming that a leave of absence has not been authorised must be sent by the Headteacher and include a warning that a penalty notice may be issued.

If the leave is taken a Fixed Penalty Notice **may** be issued for the unauthorised leave of absence providing the following criteria apply:

- There have been 10 sessions (5 consecutive days) or more of unauthorised absence due to leave taking during an academic year.
- The overall attendance figures for a reasonable period (minimum half a term) would support the issuing of a penalty notice

**Or**

- It is the second leave taken in any one academic year totalling more than five days absence

If the headteacher would like the LA to consider issuing an FPN they should send a copy of the following documentation to the Access and Inclusion Officer (Attendance) for their school:

- A completed and signed witness statement including details of how the absence has impacted on academic progress
- A signed headteacher's certificate covering the academic year to date and a minimum of half a term and including the period of absence in question
- A copy of the leave request and the reply with reasons for refusal
- A copy of the advisory letter sent to the parent
- Attendance figures for the previous and current academic year, where available



### School Attendance Process

This draft shows an outline of the proposed pathway for children whose attendance is causing concern. The pathway sits within the continuum of need and the Early Help Assessment. It identifies three main groups of children and young people who may have poor attendance:

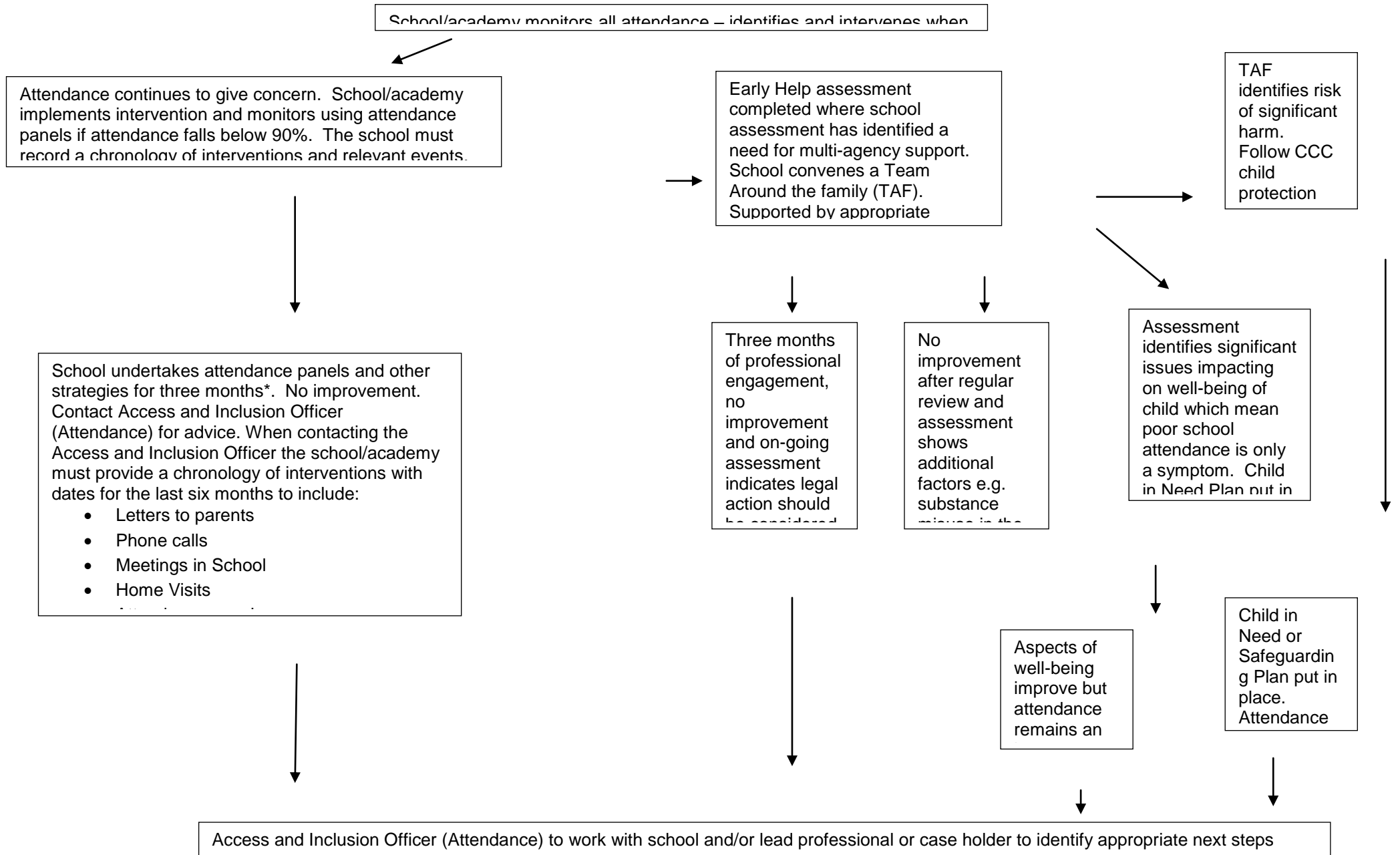
1. Those who fail to attend school with a variety of excuses but for whom there is no fundamental obstacle to attendance. These children can be regarded as those who may require additional support and this could be provided by a single agency. In these circumstances it is expected that schools will operate procedures to secure improved attendance including the use of attendance panels.
2. Those who may have a chaotic family background or short term needs either school or home based and intervention will improve attendance. The needs of these children and young people may require more than one support service and an Early Help Assessment should be initiated or a more specialist assessment may need to take place through the Early Help process. When completing the assessment schools should focus on identifying those areas of need and desired outcomes. Children and Families Services will contribute to the multi agency team which will decide how the child's needs are to be met.
3. Those who face significant challenges in their home or social circumstances which are having a detrimental effect not only on their attendance but also their wellbeing. A specialist assessment will be required in these circumstances and this should be requested through the Early Help process. If the child is suffering or at risk of significant harm, self harm and/or high risk of harm to others child protection procedures should be followed.

If there is no improvement after 12 weeks of intervention contact should be made with the Access and Inclusion Officer (Attendance) who will lead on any enforcement action. If in doubt the Access and Inclusion Officer (Attendance) can be contacted for advice.

The proposed pathway seeks to address the wide ranging reasons for non attendance.

It is the school's responsibility to monitor and report on attendance and the parent's responsibility to ensure attendance. It is expected that schools will initially take the lead in managing non attendance through close monitoring of pupil attendance and regular contact with home. Schools should seek to assess the reasons for non attendance and address them wherever possible.

## ATTENDANCE FLOW CHART



## THE ATTENDANCE REVIEW CONFERENCE

Where there are unexplained absences and parent/carers have failed to respond to interventions from school in line with the attendance flow chart the school/academy should contact



The Attendance Review Conference will be chaired by the Access and Inclusion Officer. Minutes will be taken by a school representative. The Local Authority is legally bound to consider an Education Supervision Order in the first instance, before any legal action including prosecution is considered. If an Education Supervision Order is not felt to be appropriate the

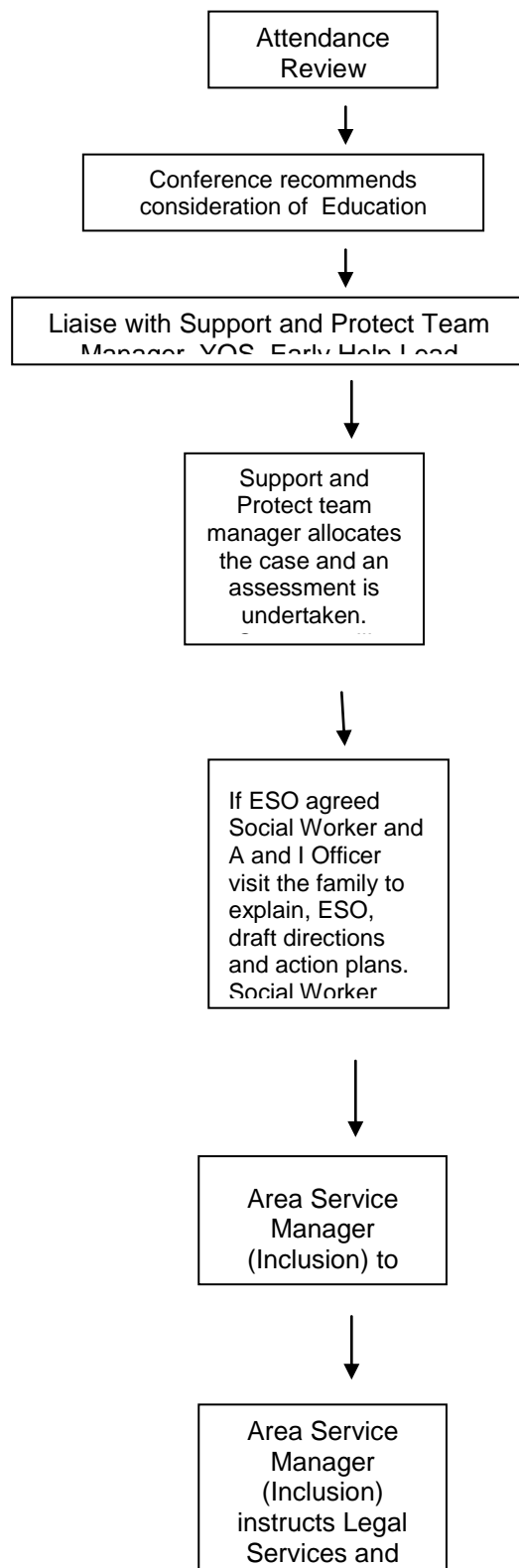


Decisions which can be made at the ARC are:  
a) An application for an ESO, Section 36(8) The Children Act 1989

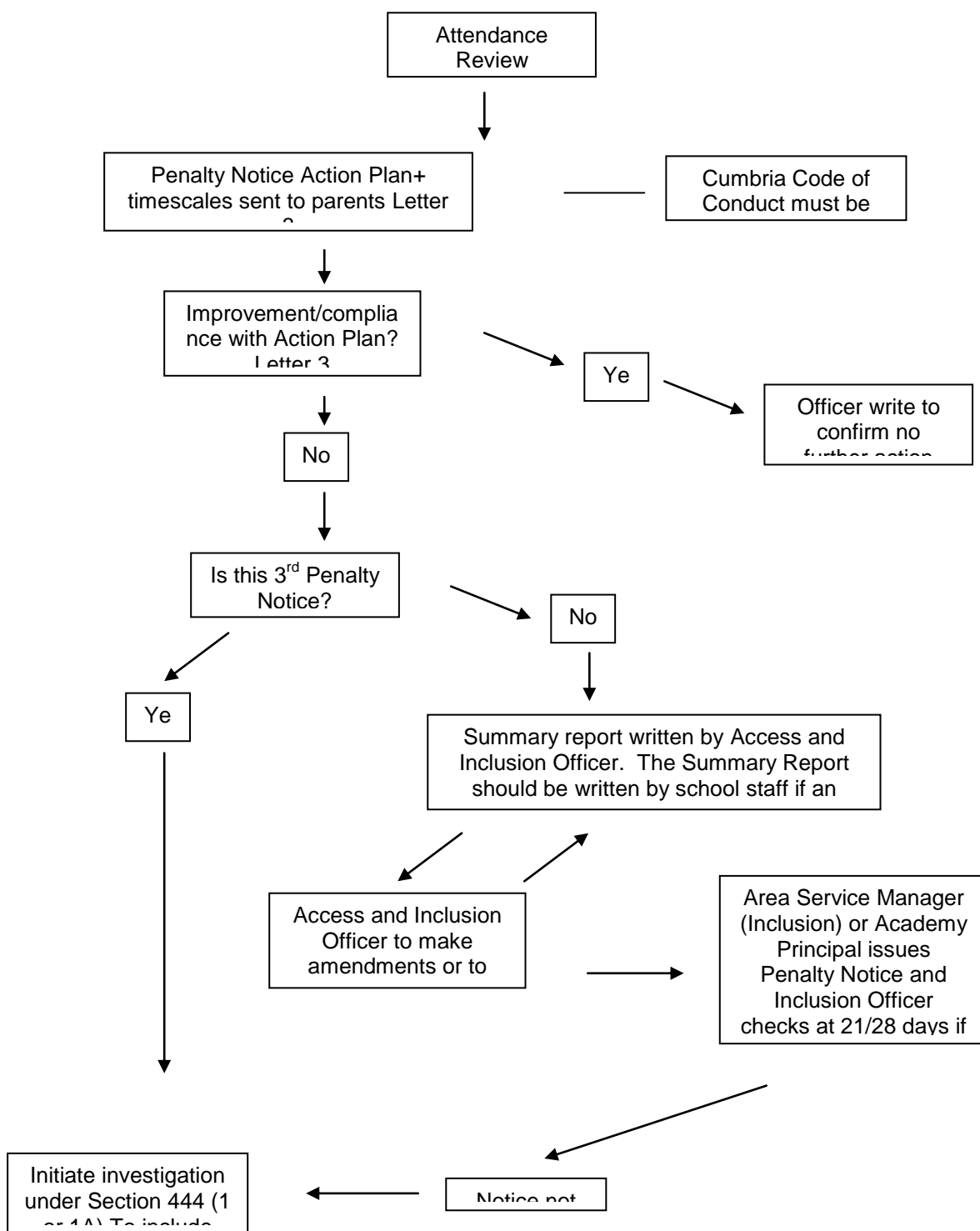


Schools and Academies must ensure that their staff are able to provide evidence and reports sufficient for court purposes.  
When contacting the Access and Inclusion Officer for consideration of enforcement action schools and Academies must provide an assessment of the family circumstances (e.g. an Early Help Assessment) and a chronology of interventions with dates for the last 6 months\* as per the attendance flow chart.  
\*6 months is an indicative timeframe to provide an

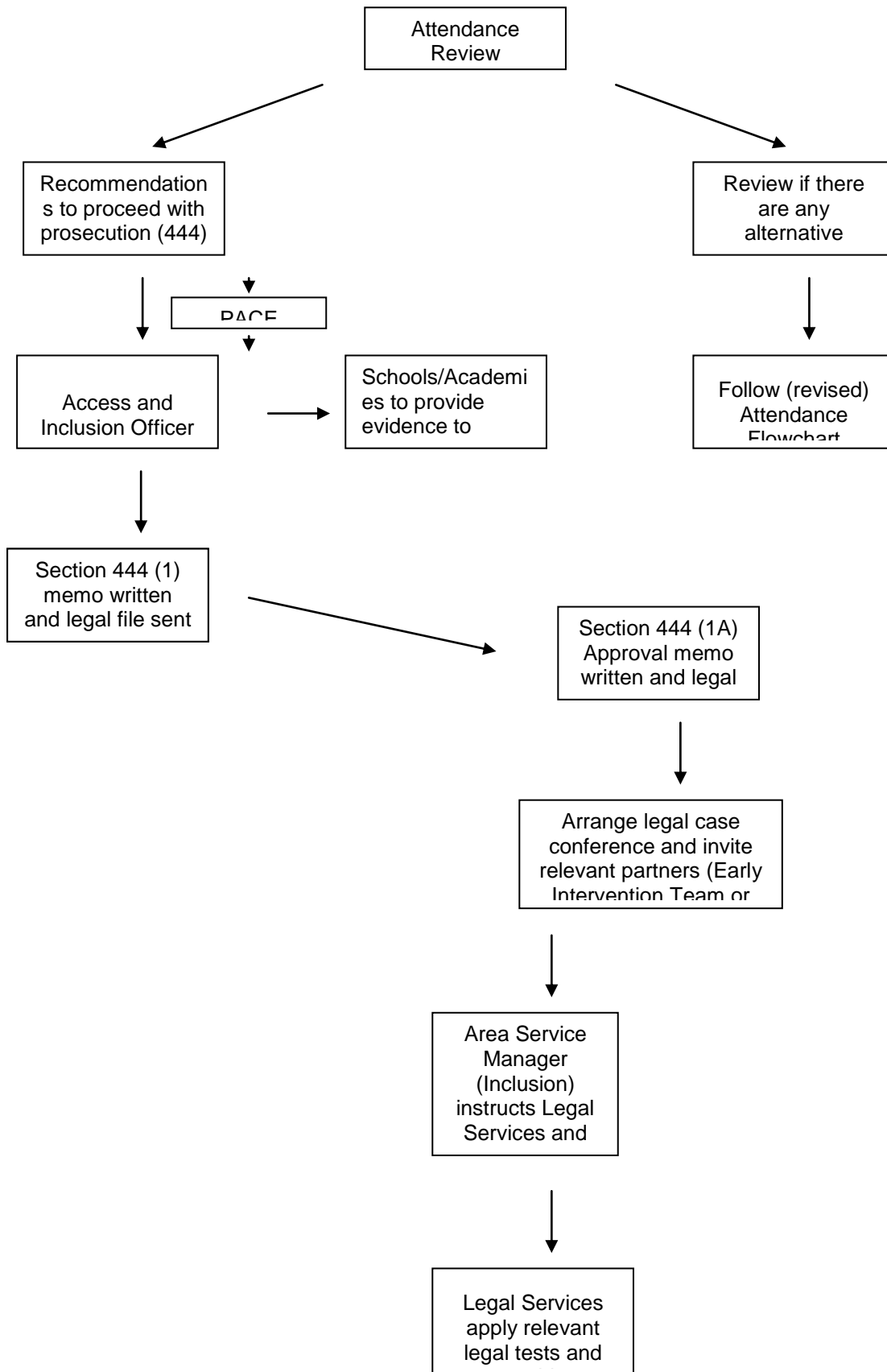
## EDUCATION SUPERVISION ORDER FLOWCHART



## PENALTY NOTICE FLOWCHART



# PROSECUTION FLOWCHART



**Letter 1**  
**To be sent by School/Academy**

**WARNING LETTER**

[Date]

[Parents Name and Address]

**CONFIDENTIAL**

Dear [Parents Name]

**RE: UNAUTHORISED ABSENCE FROM SCHOOL [Pupils Name and DoB]**

I am writing in connection with your son/daughter, [Pupils Name] unauthorised absence from school.

This letter serves as a formal reminder of your legal duty to ensure regular attendance at school.

According to schools records, from [Week Period] to {End of Week Period} [pupils name] has been absent from school on [Number] occasions out of a possible [Number] attendances. Please note that one absence is one half day session at school.

Not all absences have been authorised by school therefore you may be guilty of an offence under Section 444 (1) or Section 444 (1A) of the Education Act 1996. The maximum penalty for these offences is a fine of £2,500, 3 months imprisonment or both. Alternatively the Local Authority/School may choose to impose a Section 444A Penalty Notice in the order of a fine instead of prosecuting for the offences given above. The amount of the penalty notice is £60.00 if paid within 21 days. If paid after 21 days but within 28 days the penalty notice is doubled to £120.00. Failure to pay a Penalty Notice will result in prosecution except in limited circumstances.

To avoid any of these legal sanctions, please give your full co-operation and ensure your child attends school regularly from now on.

Should [pupil's name] absences from school be caused by illness, you should contact the school and provide evidence of the medical condition or treatment plan. If the absence is due to illness the school will discuss options for maintaining education during this period.

The situation will reviewed in [select timescale] weeks and if there is no improvement in [child's name] attendance we will refer this matter to the Local Authority..

Yours sincerely

[Headteachers Name]

## **ATTENDANCE REVIEW CONFERENCE**

### **Agenda**

Chaired by the Access and Inclusion Officer

Minutes taken by School Representative

Chair introduces self and asks all present to introduce themselves

- Chair fully explains the purpose of the meeting
- Chair fully explains what decisions can be made
  - a) An application for an ESO, Section 36(8) the Children Act 1989
  - b) Issue a Penalty Notice under Section 444A 1996 Education Act
  - c) Prosecution of parents – Section 444(1) or 444(i)(a) the Education Act 1996
- The meeting reviews the Action Plan/Parenting Contract
- Invite attendees to give their opinion and point of view, including the child/young person
- Chair summarises the meeting and invites professionals to state opinions on the ways forward, the views of the parent and school are considered as part of the decision making. The final decision on any enforcement is made by the Local Authority.
- The Local Authority agree the decision from the following options:-
  - a) Monitor attendance for four school weeks and if there is no significant improvement the LA issues Final Warning Letter (WL2)
  - b) Hold ESO planning meeting
  - c) Issue proceedings after PACE interview
  - d) Issue Fixed Penalty Notice
- Inform all that the outcome of meeting will be confirmed in writing.
- Thanks all for attending



**Letter 2**  
**Sent by Access and Inclusion Officer (Attendance)**

**NOTICE OF LEGAL ACTION**

[Date]

[Parents Name and Address]

**CONFIDENTIAL**

Dear [Parents Name]

**Re: UNAUTHORISED ABSENCES [Pupils Name and DoB]**

**Registered School:** \_\_\_\_\_

You will recall that a Review Conference was held on [date], about [child's name] unauthorised absence from school. (Please find enclosed Agreed Action Plan)

Despite this meeting and previous warnings, between [date] and [date], [child's name] has only attended [number] sessions out of a possible [number] sessions.

As there appears to be no legally acceptable reason for this continued level of poor attendance I am satisfied that sufficient grounds exist for legal proceedings to be taken against you, under Section 444 of the Education Act 1996 and will therefore be instructing the Local Authority to:

- Issue a Section 444A Penalty Notice of £60.00 to be payable within 21 days. If paid after 21 days but within 28 days the penalty is doubled to £120.00. Failure to pay after 28 days following receipt of Penalty Notice will result in legal proceedings being taken against you in the Magistrates Court under Section 444(1) of the 1996 Education Act. Or,

OR

- Initiate legal proceedings against you under Section 444(1) or (1a) as appropriate, of The 1996 Education Act. The maximum penalties for these offence offences are £1000 fine (S.444(1)) or £2,500 fine and or three months imprisonment (S.444(1A))

In the meantime you should ensure a prompt and substantial improvement in [child's name] attendance at school.

You may wish to seek your own independent legal advice in this matter. Should [child's name] absence be caused by illness you should contact the school and provide evidence of the medical condition or treatment plan. If the absence is due to illness the school will discuss options for maintaining education during this period.

Yours sincerely

**Access and Inclusion Officer (Attendance)**

**Appendix 4**  
**EDUCATION SUPERVISION ORDERS (ESO)**  
**SECTION 36 CHILDREN ACT 1989**  
**PART III, SCHEDULE 3 CHILDREN ACT 1989**

The application for an ESO is made under Section 36 of the Children Act 1989 and applications for such Orders are Family Proceedings.

**Grounds**

The Court may only make an ESO if it is satisfied that the child concerned

- (i) is of compulsory school age
- (ii) **and** is not being properly educated

A child is being properly educated if they are receiving efficient, full time education suitable to their age, ability and aptitude and any special educational needs they may have.

**Duty to consult with Social Care Colleagues**

The Access and Inclusion Officer will consult with Social Care colleagues. The outcome of this consultation should be recorded in writing. Where the young person is known to the Youth Offending Service, they should be consulted to assess whether the education needs can be met through any existing orders or whether cooperation/joint working may be appropriate.

**Cooperation of the Parents and Child**

It is important that both the child and their parents are willing to cooperate, to the best of their ability, with Children's Services, if an Order is to be made. Before the application is made, it will be necessary to speak to them both, in order to obtain their view and preferably confirm in writing your intention to apply for an ESO. As a matter of good practice, an application should not be made without either parent's knowledge. The case of **Essex County Council v. B** is authority that an application can be made, even if a parent's cooperation is doubtful, on the basis that an attempt should be made to ensure that a child receives proper education.

**Duty of the Supervisor**

The Act states that the duty of the supervisor is to advise, assist and befriend, and give directions to

- (i) the supervised child; and
- (ii) his parents

in such a way as will secure that he is properly educated. The aim is to establish and strengthen parental responsibility and to enable parents to discharge their parental responsibility. There is no specified amount of contact required between the supervisor, parents and child, therefore the amount of contact necessary will be determined by the need to achieve the aims and objectives. It will be helpful, for the child and the parents, to draw up at the outset and discuss with the family a **planned and realistic programme of**

**intervention.** Consideration should be made to the existence and use of Early Help Assessment and Action Plan.

If an Order is made, its progress should be subject to six weekly **reviews\***, in order to establish that intervention is achieving the intended result. If not, directions can be amended by the supervisor, in consultation with the parents and the child.

### **Preparation for an Order**

All reasonable efforts should have been made by the school to resolve the problem of poor school attendance, prior to commencing legal proceedings. The child's parents should be made aware that an ESO removes the rights of appeal against a school admission decision and also removes certain rights to have their child educated in accordance with their wishes. They should also be made aware of their legal duty to comply with directions made under the Order and that by failing to comply, they may be guilty of an offence and liable to pay a fine. The child and their parents should also be informed that if the child persistently fails to comply with directions under the Order, then Children and Families Services are required by law to assess the child's circumstances and have a duty to consider care proceedings.

### **Directions**

Before giving any directions to the child and parents, the supervisor should ascertain the wishes and feelings of the child and parents, including, in particular, their wishes as to the place at which the child should be educated.

**The following are examples of directions which you may wish to consider incorporating into the application:**

1. A requirement for the child and his parents to attend meetings with the supervisor or with teachers at the school, to discuss the child's progress.
2. Medical treatment or examination, if necessary.
3. Assessment by an Educational Psychologist, if appropriate.
4. Attend a parenting group.
5. Escort the child to school.

**Directions should be verbally explained and confirmed in writing and if a direction is given to the child, the parents also need to be informed of this in writing.** Directions need to be made with care as if they are unreasonable, they have no legal force.

### **Failure to comply with directions**

If a parent of a child, with respect to whom an Education Supervision Order is in force, persistently fails to comply with a direction given under the Order, he shall be guilty of an offence, maximum fine £1,000.

The parent would have a defence to the charge if they could show either that the direction was unreasonable or that they had taken all reasonable steps to ensure that the direction was complied with. **For this reason, it is important that any directions attached to an ESO are reasonable, otherwise they cannot be enforced.**

**\*Reviews can occur more frequently if required depending on individual circumstances**

### **Persistent failure of a child to comply with directions**

An ESO has effect for a period of one year, beginning with the date on which it is made. However, the Inclusion Officer can apply to the Court to extend the period of the ESO, provided an application is made to the Court within the last three months of the Order. An ESO can be extended on more than one occasion. No one extension may be for a period of more than three years.

An ESO shall cease to have effect if

- (a) the child is no longer of compulsory school age, or
- (b) a Care Order is made in respect of the child

### **Discharge**

The Court may discharge an ESO, on the application of either the child, the parents or the Inclusion Officer. On discharge, the Court may direct Social Care colleagues to assess the circumstances of the child.

### **Application and Evidence**

Applications for an Education Supervisor Order are made to the relevant Family Proceedings Court. The child and their parents will be expected to attend the hearing, together with the Inclusion Officer and the identified Supervising Officer. The Court does not have any power to appoint a Guardian AdLitem, to represent the child's interests .

A detailed statement will be required to accompany the application. To be admissible in Court, the statement should be in the format enclosed. The statement should related to the **welfare check list** set out in Section 1 (3) of the Children Act 1989 and should also include the following:

- (a) The child's record of attendance, distinguishing between authorised and unauthorised absences. Accurate details of the child's attendance for the 12 school weeks prior to Court action being initiated should be provided. It may also be helpful to provide general details of the attendance over a longer period.
- (b) Relevant details of the child's circumstances, including age, sex, background and any particular physical, emotional or educational needs (including special educational needs) the child may have.
- (c) An assessment of the causes of the poor attendance of the child (including a medical assessment if relevant) and an indication of the attitudes of the child, the parents, school and other agencies towards the poor attendance.
- (d) A short description of the work that has already been undertaken and its results, giving the reasons why an ESO is being requested and including an assessment of any likely educational disadvantage to the child, should an Order not be made.
- (e) An outline of the intended intervention. This should include a programme of the intended work and should also give an indication of why it is believed that such a programme will help to resolve the problem and ensure the child attends school regularly.

In considering an application for an Education Supervision Order, the Court must adopt the principle in Section 1 of the Children Act 1989, i.e. that the child's welfare is paramount and the Court will have regards to the welfare check list and the principle that reference should be made to these considerations, in the concluding part of your statement. The statement should be prepared in full consultation with the child and their parents. If they disagree with the assessment of the causes of the child's poor attendance, this should be indicated in the statement.

## EDUCATION SUPERVISION ORDERS

### CHECKLIST

#### Prior to application:

Consultation with Social Care colleagues, Youth Offending Service (where applicable), Early Help lead professionals (where applicable).

Consultation with child and parent/carers.

Advise parents of effect of ESO – removal of “parental preference” re: choice of school.

Breach of Directions – Social Care colleagues **must** be informed of failure and potential consequences.

Directions must be clear, unambiguous and drawn up after consultation with parents and child.

12 month Order but can be extended 3 months **before** expiry.

#### Children and Families Officers statement:

In specified format and must include:

Full names of parents and siblings.

Occupation of parents and siblings.

Date of birth of parents and siblings.

Paragraph re outcome of consultation with Social Care colleagues.

Breakdown of attendance, showing authorised/unauthorised absences over previous 12 months. Termly breakdown can be helpful.

No abbreviations should be used in the report as the Court may not understand them.

Background to non-attendance and attempts at resolution should be included.

Action Plan – must be clear and achievable.

Statements should include confirmation that parents and child have been consulted regarding the contents of the statement.

**ESO STATEMENT**

Statement: (name of Inclusion Officer)  
Number: One  
Date:  
Filed: Applicant

IN THE \* FAMILY COURT  
CASE NO. FPC/

IN THE MATTER OF SECTION 36 CHILDREN ACT 1989  
IN THE MATTER OF \* (child's name)

BETWEEN:

CUMBRIA COUNTY COUNCIL

First Applicant:

and

(Parents name)

First Respondent:

and

(Other Parent's name or child if no other parent known)

Second Respondent:

And

(child's name)

Third Respondent

\_\_\_\_\_  
FIRST STATEMENT OF (name of Access and Inclusion Officer or Social Worker)  
\_\_\_\_\_

- 1. Please type in – full name, professional address, qualifications and experience.
- 2. I make this statement in support of Cumbria Children and Families Services application for an Education Supervisor Order in respect of (child's name).

**FAMILY COMPOSITION**

NAME      DOB      RELATIONSHIP      OCCUPATION      ADDRESS

3. [Continue to provide relevant information under the following headings in numbered paragraphs]]

**School attendance and any previous school Information**

**Social Care Children and Families Services involvement**

**Historical Information;**

**Summary of Strategies:**

**Current Situation:**

**Health and Special Needs:**

**Reason for Application:**

**Proposed Directions:**

(This should include actions for pupil/parent and any agency involved.)

**The Proposed Action Plan:**

(This should include strategies to address school attendance and any underlying issues.)

4. I make this statement believing it to be true and I understand that it may be placed before the Court

Each page should be individually signed and dated.

Signed: ..... Dated: .....

Letter 3

## **PENALTY NOTICE ACTION PLAN**

[Date]

[Parents Name & Address]

### **CONFIDENTIAL**

Dear [Parents Name]

Following a review of the Action Plan at the Attendance Review Conference the minutes were sent to you by school.

This letter states the expectations of the Local Authority in your responsibility to enable your child to attend school under Section 444 of the Education Act 1996.

**(List the expectations for parents – see below some examples that can be used, however each individual action plan should reflect the issues raised at the ARC)**

- Ensure ..... attends on time every day
- Contact school every day to ensure ..... has arrived
- Contact school the same day ..... is unable to attend due to ill health
- If .....is absent inform school by 9.30 am and provide medical evidence to cover illness period
- Attend review meeting on .....

Failure to meet these expectations over the next four weeks may result in a Penalty Notice of £60 being issued. Failure to pay a Fixed Penalty Notice will result in a prosecution in the Magistrates' Court.

Yours sincerely

**Headteacher or Access and Inclusion Officer**



Letter 4

**PENALTY NOTICE REPORT**

[Date]

[Parent's Name & Address]

Dear [Parent's Name]

Re: [Pupil's Name] DoB: [Pupil's DoB] Year Gp: [Year Gp]

**Actual Attendance for Academic Year:  
Attendance for Last Six Weeks:**

Please find attached:-

Copy of the latest Action Plan/Review

Copy of the Penalty Notice Action Plan with detailed expectations of the parent

**Case Summary (to be completed by school include summary of assessment of barriers to attendance and summary of actions/interventions used)**

Yours sincerely

**Headteacher or Access and Inclusion Officer**

Enc

## FIXED PENALTY NOTICE PROFORMA

### *Penalty Notice Proforma*

#### **Penalty Notice S.444A EDUCATION ACT 1996**

Please read the notes overleaf carefully.

#### **PART 1**

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence under s.444 Education Act 1996.

To: **[name of parent/guardian]**

Of: **[address of parent/guardian]**

You are a parent of **[name of pupil]** of **[pupil's DOB]** (called in this notice "the pupil") who is a registered pupil at **[name of school]**.

Between **[date]** and **[date]** the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60/£120 in accordance with the table overleaf. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 21 days **[date]**. If paid after 21 days but within 28 days **[date]** the penalty is doubled to £120.

Payment should be sent to: **Linda Hodgson, Blencathra House, Tangier Street, Whitehaven, Cumbria, CA28 7UW** by completing this notice and returning with a cheque, postal order or alternatively by cash in person to the address above.

**If you are unable to arrange payment by cheque or postal order or are unable to come in person please contact Linda Hodgson on 01946 506200 to discuss the matter further.**

Late or part payments will not be accepted and no reminders will be sent. **If payment is not received by [date], you may be prosecuted for the offence and could be subject to a fine of up to £2,500 and/ or a custodial sentence of up to three months.**

This notice is issued by:

**Sarah Wright, Area Service Manager (Inclusion), Children and Families Services**

On behalf of:

**John Macilwraith, Corporate Director of Children and Families Services Cumbria County Council**

Cumbria House

107-117 Botchergate

Carlisle

Cumbria

CA1 1RD

Date of issue: **[date]**



which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to legal aid.

Appendix 5  
STATEMENT OF WITNESS  
(CJ Act 1967 Section 9, MC Act 1980, s 5A(3)(a) and 5B  
Magistrates Court Rules 1981 Rule 70

Statement of: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

Subject: \_\_\_\_\_

School: \_\_\_\_\_

Parent(s): \_\_\_\_\_

This statement consisting of \_\_\_\_\_ 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 evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe it to be true.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

Signed: \_\_\_\_\_

Signature witnessed by \_\_\_\_\_

My name is \_\_\_\_\_ employed by Cumbria County Council as an Access and Inclusion Officer. As part of my duties I am responsible for the investigation of cases where identified pupils have unacceptable levels of absence from school.

I am responsible for coordinating a plan of support for the said pupils and their families and carers in order to overcome the problems of irregular school attendance. This may include home visits, meetings in school and liaison with other agencies and professionals.

I am the responsible Access and Inclusion Officer for \_\_\_\_\_ School where \_\_\_\_\_ is a registered Year \_\_\_\_\_ pupil. I have been responsible for investigating \_\_\_\_\_ absences from school since \_\_\_\_\_. \_\_\_\_\_ is the parent of \_\_\_\_\_ who is of compulsory school age until \_\_\_\_\_.

I attached as Exhibit [your initials 1] the Summary of Support including the chronology relating to this case.

Signed: \_\_\_\_\_

## **PARENTING CONTRACTS – BEHAVIOUR**

Parenting contracts and parenting orders are intended to add to the range of strategies available for tackling poor behaviour in school and to enable schools and the Local Authority to engage with parents effectively, whether on a voluntary or compulsory basis.

The provisions are only available in cases where exclusion has taken place. The provisions are not intended to replace any existing practice but to provide additional options for working with the parent and pupil to bring about an improvement in the pupil's behaviour. Parenting contracts and parenting orders could form part of the schools behaviour policy.

## **PARENTING CONTRACTS IN CASES OF EXCLUSION**

If a pupil is excluded from school whether for a fixed term or permanently, the Local Authority or governing body of the school may consider it would be appropriate to offer a parenting contract.

A parenting contract is a written voluntary agreement between a parent and either the Local Authority or the governing body of a school and should contain:

- a) a statement by the parent that they agree to comply for a specified period with whatever requirements are specified in the contract; and
- b) a statement by the Local Authority or governing body agreeing to provide support to the parent for the purpose of complying with the contract.

The Local Authority or governing body may agree to provide support in the form of a parenting programme. The contract may specify that the parent is required to attend the sessions of any such programme. In assessing the nature of the programme, the Local Authority or governing body should consider their ability to engage with parents, the curriculum used, whether classes will be group or individually based and whether there are particular cultural or social factors to be considered.

Failure to keep to the terms of the parenting contract cannot lead to action for breach of contract or for civil damages.

If the pupil's misbehaviour continues or escalates to such a level that the school or Local Authority considers an application for a parenting order is appropriate, the court will be required to take this failure or refusal into account in deciding whether to make the order.

### **Circumstances in which a parenting contract might be pursued**

The purpose of a parenting contract is to improve the pupil's behaviour at school and to address any underlying causes. It is not to be seen or used as a punitive measure against the parent, nor will it be appropriate in all cases. A parenting contract will be an appropriate course of action where the parent wishes to address their child's poor behaviour in school but needs support to do so effectively.

Parenting contracts can apply to pupils of:

- a) a community, foundation or voluntary school or a community or foundation special school;
- b) a maintained nursery school;
- c) a city technology college;
- d) a city college for the technology of the arts;
- e) an Academy; or
- f) a pupil referral unit.

The parenting contract should be arranged as soon as possible after the exclusion and completion of any review and appeal process.

In the case of permanent exclusion this would be:

- the date by which it is known that the parent does not wish to lodge an appeal against the head teacher's decision to exclude, which has subsequently been upheld by the governing body. This would be the date set out in the letter sent to the parent by the governing body (covered in existing guidance), informing the parent of the decision to uphold the permanent exclusion; or
- the date upon which the Independent Appeal Panel upholds the decision to exclude.

In the case of fixed-term exclusions the date on which the review process is complete would be:

- the date upon which the governing body upholds the Headteacher's decision to exclude; or
- if the exclusion is not considered by the governing body, the date on which the exclusion began.

For a pupil referral unit, the review process is complete when the Local Authority upholds the decision of the teacher in charge to exclude; or if the Local Authority does not consider it, the date on which the exclusion began.

### **Liaison between the Headteacher, governing body, Local Authority and other agencies involved**

Parenting contracts require the party entering into the contract to fund any cost of the supportive element of the contract. In the context of the school, this will be the governing body (which controls the school budget under the School Standards and Framework Act 1998). Therefore it is the governing body's name that must appear on the contract and the governing body that will have ultimate responsibility for the parenting contract.

The overall policy decision of whether parenting contracts should form part of the school's behaviour policy must remain with the governing body. Regardless of whether the school or the Local Authority enters into a parenting contract, it is important that both parties are aware of the fact that a parenting contract has been entered into with the parent. The Local Authority and the school should liaise prior to entering into any parenting contract in order to share information about the pupil and family with other agencies that might be involved. If other agencies are identified, the school and Local Authority should consult them to discuss any underlying issues and to consider the types of requirements and support that might usefully be included in the contract itself.

### **Parenting Contracts following Permanent Exclusion**

In cases of permanent exclusion from school, it will usually be the Local Authority that will consider arranging a parenting contract in relation to the pupil. In most cases, the excluded pupil will be the responsibility of the Local Authority until arrangements can be made for the pupil to continue their education elsewhere.

The governing body of any school which takes in an excluded pupil may also consider arranging a parenting contract but is under no obligation to do so. However, in accordance with the law on admissions a school may not require a parent to sign a parenting contract as a condition of their child being accepted by the school.



## **a) Parenting Orders in cases of Exclusions from school**

Where a pupil is permanently excluded from school or receives more than one fixed term exclusion within 12 months, the Local Authority may apply to the court for a parenting order.

Parenting orders compel parents who have been unwilling or unable to engage on a voluntary basis to address their child's poor behaviour in school by providing support including parenting programmes.

- They underline parents' responsibilities for their children's behaviour.
- Orders impose requirements on parents to help them bring up their child in a way which minimises anti-social or offending behaviour.
- A Local Authority may apply to a Magistrates' Court for a parenting order when:
  - a) a pupil has been excluded from school for a second fixed-term within a period of 12 months; or
  - b) a pupil has been permanently excluded from school.
- Orders are made by:

All Criminal Courts (Magistrates' and Crown Court).  
Family Proceedings Court.  
Magistrates' Courts acting under civil jurisdiction.

### **Content of Parenting Order**

The Order comprises two elements;

Firstly

The core requirement of a parenting order is that the parent attends a counselling or guidance programme (e.g. a parenting support or parenting education programme) as specified in directions given by the responsible officer. This requirement must be imposed in all cases when an order is made (except where the parent has previously received a parenting order) and the programme can last for up to three months.

The arrangements for meeting this requirement should be as flexible as possible, not least to take account of the availability and timing of such a programme.

The counselling or guidance programme may be provided by the responsible officer or by another provider such as a local voluntary sector organisation working with parents. The Local Authority should be aware of what provision exists in its area and in neighbouring authorities (for cross-border cases).

The court will decide the length of this requirement but experience suggests that this should be no less than six or seven two-hour sessions. The period of up to three months for this requirement must run concurrently with the overall length of the order and any specific requirements, but taking account of the availability of an appropriate counselling and guidance programme, does not have to run from the date the order is made.

If the only requirement to be included in the order is to attend a counselling or guidance programme then the court can still make the order last for 12 months if it considers it reasonable to do so to allow for the possibility of the order being breached and varied to require the parent to attend a new counselling or guidance programme.

Secondly

The Local Authority should make a recommendation to the court as to how long the parenting order should be imposed for depending on the circumstances of the case. In many cases it will be desirable to recommend to the court that the parenting order should last for the full 12 month period. The imposition of a parenting order for this time period is more likely to bring about a sustained improvement as a consequence of the ongoing support and monitoring delivered through the order.

The requirements specified in the order may be such as the court considers desirable in the interests of preventing any repetition of the behaviour which led to the pupil being excluded from school in the first place. Although discretionary, it is likely to be appropriate to include requirements relating to the supervision of the pupil in order to address their behaviour. The Local Authority should recommend to the court what these requirements should consist of. Possible requirements might include: setting and reinforcing agreed boundaries at home; ensuring the pupil's regular attendance at alternative provision; signing regular behaviour reports or updates; attending regular meetings with the pupil's education provider.

The requirements imposed under this element of the order will need to be tailored to address the problems which caused the court to make the parenting order and should, if possible, be linked to any work being undertaken by the Local Authority or school with the pupil.

When deciding on specific requirements it is important to consider that breach of the order is a criminal offence. It is therefore vital to ensure that the requirements are specific, measurable and clear enough for a parent to know when they are breaching them and for the responsible officer to be able to monitor the parent's compliance.

### **Coverage of the Order**

A Parenting Order can be made by a court where:

- A child or young person has been excluded from school on disciplinary grounds – section 20 of the Anti-Social Behaviour Act 2003.
- In cases of exclusion from school, failure by the parent to comply with a Parenting Contract would be a relevant consideration for the Local Authority in deciding whether to apply for a parenting order and, in deciding whether to make a parenting order, the court must take into account any failure by the parent to comply with the requirements specified in a parenting contract.
- A child or young person has been convicted of a criminal offence.
- A Child Safety Order, Anti-social Behaviour Order or Sex Offender Order has been made against a child or young person.
- A person is convicted under Section 443 or 444 of the Education Act 1996 or failing to comply with a School Attendance Order or failing to secure the regular attendance at school of a registered pupil.
- The court can only make a Parenting Order if it is desirable in the interests of preventing the commission of any further offence under Section 443 or 444 of the Education Act 1996, where such an offence has been committed.
- A Parenting Order may be given in addition to any fine that the court may impose for conviction for such an offence.

- Parent is defined as in Section 576 Education Act 1996.
- There is no requirement of consent on the part of the parent or guardian.
- The court must explain to the parent, in ordinary language, the effect of the order, the requirements proposed and the consequences of failure to comply.
- Monitoring of the compliance of the order is the role of a Responsible Officer.
- The Responsible Officer will provide or arrange for the provision of counselling or guidance sessions and will supervise any other requirements included in the Order.
- The Parenting Order is primarily designed to help and support the parent in addressing their child's behaviour. The Responsible Officer should be seeking to secure and maintain the parent's co-operation and compliance with the requirements of the order to ensure that it is successfully completed, and will need to make a judgement about what is reasonable in all the circumstances of the case.
- If a parent fails to comply with a requirement of the order, it is good practice for the responsible officer to make contact with the parent within one working day by visit, telephone or letter. If there is no acceptable reason for the non-compliance, the responsible officer should give the parent a written warning and if possible a warning in person.
- If the parent has good reason for the failure to comply with the requirements of the parenting order it may be appropriate for the responsible officer to consider whether to apply to the court for the terms of the order to be varied.
- In the event of more than one unacceptable failure to comply within a period of three months, the responsible officer should meet the parent to review the order and how it can be made to work. In the light of this discussion the responsible officer should consider whether the failure to comply should form the basis of a prosecution.
- If a prosecution is brought there will be a hearing to determine whether the parent is guilty of failing without reasonable excuse to comply with a requirement of a parenting order. In all cases this will be heard in the adult Magistrates' Court, except when the parent is under 18 where it would be more appropriate for the case to be heard in a Youth Court. The hearing will provide an opportunity for the parent to explain why a failure to comply with a requirement of the order has occurred.
- If the parent is convicted, they will be liable to a fine not exceeding level three on the standard scale (currently up to £1,000). The court may also impose an absolute or conditional discharge, probation or curfew order. The imposition of a community sentence would be subject to the restrictions set out in sections 6 and 7 of the Criminal Justice Act 2003. Courts cannot re-issue parenting orders in breach proceedings but the original order will continue to be valid.
- Under section 127 of the Magistrates' Court Act 1980 there is a six-month time limit for bringing breach proceedings. Proceedings can be brought after an order has expired. They will however be most effective when brought as soon as possible after the breach is discovered and completed within the life of the order. This will allow the court more options, for instance to vary the order to require the parent to attend a new parenting programme and fulfil specific requirements to exercise control over their child. The penalty for breach could be a fine or community sentence dependent on the parent attending a new programme and meeting other requirements.

- Section 34A of the Children Act 1933 applies equally to Magistrates' Courts dealing with civil proceedings as it does to Magistrates' Courts dealing with criminal proceedings. This section applies in the case of all proceedings in relation to Parenting Orders where a child or young person is brought before the court and his or her actions are the trigger for a Parenting Order. Parents who fail to attend such hearings will be subject to the existing rules of those courts, therefore absent parents can also be made subject of a Parenting Order. In such cases the court will write to the absent parent explaining:

Date of hearing held

Nature of the requirements within Parenting Order

Consequences of non-compliance

Date of hearing that the Order will be made.

The delivery of this correspondence will be the duty of the Responsible Officer.

Please note that the Local Authority can only apply for and ask a Magistrates' Court for a Parenting Order. This should be within the provisions of Section 20 of the Anti-Social Behaviour Act 2003 and not for cases of school attendance registration.

This way if Magistrates want to issue a Parenting Order the necessary paperwork is already complete.

**PARENTING ORDER – APPLICATION TO THE MAGISTRATES’ COURT**

Application for Parenting Order  
(Anti-Social Behaviour Act 2003, Section 20)

.....Magistrates Court (Code)

Date: .....

Child or young person:.....

Child or young person’s address:.....

Child or young person’s age and d.o.b: .....

Parent:.....

Parent’s address:.....

which is in the area of [ ] the Local Children’s Service

Parent:.....

Parent’s address:.....

which is in the area of Cumbria County Council Children and Families Services

Applicant Cumbria County Council Children and Families Services

It is alleged that:

- (a) the child or young person has been excluded from school on disciplinary grounds;  
and
- (b) the prescribed conditions are satisfied in that [insert details].

[The parent(s) entered into a parenting contract on [date].] [It is alleged that the parent(s) have failed to comply with the parenting contract, a copy of which is attached to this application form.]

Short description of alleged failure to comply with parenting contract:

Evidence of this alleged failure to comply is attached.

[It is alleged that the parent(s) have refused to enter into a parenting contract.]

[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]