

Report to Cabinet

17 March 2021

Subject:	School Absence Prosecutions Policy
Cabinet Member:	Cabinet Member for Best Start in Life, Councillor Joyce Underhill
Director:	Director – Education, Skills and Employment, Chris Ward
Key Decision:	No - Business item
Contact Officer:	Ramsey Richards, Attendance & Prosecution Service Manager, Education, Skills and Employment Directorate ramsey_richards@sandwell.gov.uk


1 Recommendations

- 1.1 That approval be given to the School Absence Prosecutions Policy, as set out in Appendix 1.

2 Reasons for Recommendations

- 2.1 A School Absence Prosecutions Policy has been formalised in a written policy document and is presented for approval by Cabinet. The existing policy was due to be implemented as from September 2020. Prior to this date, policy was implied by operational practice which adhered to existing legislation.

3 How does this deliver objectives of the Corporate Plan?

	<p>Best start in life for children and young people</p> <p>Ambition 1 High Aspirations Ambition 3 Skilled & talented workforce and young people Ambition 4 Best start in life – high quality education</p>
---	---



4 Context and Key Issues

4.1 Background

4.2 The Attendance and Prosecution Service's practices and procedures follow legislation under the Education Act 1996, specifically Section 444. A written policy document has now been formalised and is attached as Appendix 1 for consideration. The Penalty Notice Code of Conduct is attached as Appendix 2.

4.3 Rationale

4.4 The Policy sets out in detail the roles and responsibilities of schools and the local authority. The policy applies to all primary and secondary schools in the Sandwell MBC Local Authority area. Whilst Independent schools are not obliged to follow this policy they are strongly recommended to do so as they are required to meet the same referral criteria and evidential standards.

4.5 Section 4 of the Policy sets out schools' responsibilities:

- to maintain accurate attendance records;
- to advise parents and pupils at least once a year of the requirement to ensure regular school attendance and the penalties for failing to do so;
- leave of absence and irregular attendance procedures;
- referrals to the Attendance and Prosecution Service.

4.6 Section 5 of the Policy details the role of the Attendance and Prosecution Service. The local authority (SMBC) prosecute parents for non-school attendance, breaches of school attendance orders and any other criminal offences as outlined within the Education Act 1996.

4.7 The decision as to whether any action will be taken lies with the Local Authority. There is no right to appeal against this decision. Section 6 outlines procedures followed and the rationale around any action taken, e.g. whether to:

- issue a penalty notice or
- prosecute the case under Section 444(1) or (1)(A) of the Education Act 1996.



4.8 [Disapplication notices](#) regarding school legislation have been issued by the government in response to the Coronavirus pandemic. These changes are being adhered to by the local authority.

4.9 The above disapplication notices do not apply to school attendance orders – see Section 10 of the Policy.

4.10 **The current position**

4.11 The principal drivers that have triggered the need for a new school absence prosecution policy are:

- Consultation by Attendance and Prosecution Services with the recently appointed school prosecutions lead in Legal and Assurance
- Policy needs to be in place in case of challenge by defence and/or other individuals
- Ensures consistency of practice
- Readiness for resumption of prosecutions following latest Department for Education – Disapplication Notice: school attendance legislation changes (see link below)

[Disapplication notice: school attendance legislation changes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/disapplication-notice-school-attendance-legislation-changes)

4.12 **Consultation**

4.13 The Policy has been agreed in consultation with the Legal and Assurance Principal Advocate – Prosecutions, based on existing legislation and local authority statutory duties.

4.14 It must be noted however that the Secretary of State for Education issued a fifth notice to disapply offences for non-attendance in schools during the coronavirus (COVID-19) outbreak. The notice was published on 30 April 2020 and was updated on 7 January 2021.



- 4.15 Due to the disapplication, the local authority (LA) will not be issuing penalty notices and/or prosecutions for irregular attendance while the disapplication notice is in place. The penalty notices Code of Conduct is attached as Appendix 2.
- 4.16 The disapplication notice does not apply to Children Missing Education (not on a school roll) or those who are electively Home Educated and are deemed not to be receiving a suitable education.
- 4.17 The LA will adhere to further notices issued by the government.
- 4.18 **Sustainability of proposals**
- 4.19 This policy will be reviewed annually and amended as necessary.
- 4.20 **Data protection**
- 4.21 Data is held in accordance with the SMBC privacy policy. A request for a Data Protection Impact Assessment has been submitted to the Data Protection Officer (DPO).

5 Alternative Options

- 5.1 None. It is best practice for councils to have a policy in place to protect legal processes, if and when required.

The policy will ensure that the prosecution process and policy is clear. It will ensure that a case taken to court is legally robust and that parents have been treated fairly in accordance with our policy.

6 Implications

Resources:	<p>No additional resource implications. Penalty notice income is used to fund posts linked to the administration of justice, as per the code of conduct.</p> <p>The absence of current penalty notice income does create a budget pressure for certain posts.</p>
-------------------	---



<p>Legal and Governance:</p>	<p>This local authority (SMBC) prosecute parents for non-school attendance, breaches of school attendance orders and any other criminal offences as outlined within the Education Act 1996.</p> <p>Section 444(1A) of the Education Act 1996 creates an offence, which occurs when the parent(s) <u>know</u> that the child is failing to attend regularly at the school and fails to prevent this, without reasonable justification.</p> <p>An offence is also committed if a parent fails to ensure education otherwise than at school.</p> <p>Published 30 April 2020 - Disapplication notice: school attendance legislation changes</p> <p>Secretary of State for Education issues fifth notice to disapply offences for non-attendance in schools during the coronavirus (COVID-19) outbreak. Last updated 7 January 2021.</p> <p>School attendance orders</p> <p>10.1 Section 437(1) of the Education Act 1996 states if it appears to the local authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school, or otherwise, they shall serve a notice in writing on the parent requiring him/her to satisfy them within the period specified in the notice that the child is receiving such education. This is called a School Attendance Order and they are issued by the Local Authority.</p>
<p>Risk:</p>	<p>The Corporate Risk Management Strategy (CRMS) has been complied with. The Local Authority has a statutory duty to legislative requirements.</p> <p>It is the officers' opinion that no significant risks have been identified in the writing of the policy.</p>



	If a School Attendance Prosecution Policy is not endorsed by Cabinet, future prosecution outcomes may be at risk and the LA will be in breach of its Corporate Plan and statutory duty to ensure children’s entitlement to education.
Equality:	The policy proposed has no negative impacts on any of the equality strands (protected characteristics). ALL parents have duty to ensure children are in receipt of “efficient full-time education” under the 1996 Education Act.
Health and Wellbeing:	All children should receive their entitlement to education (either at school or otherwise) – a failure to educate may be perceived as neglect.
Social Value	See corporate plan objectives above.

12.0 Appendices

1. School Absence Prosecutions Policy
2. Penalty notice code of conduct which includes the leave of absence guidance notes and the current disapplication notice as an appendix.

13.0 Background Papers

None.

