

Bridgend County Borough Council
Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr

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Bridgend County Borough Council
Childrens Directorate - Education Welfare Service

Non School Attendance

Enforcement

Policy

MAY 2015

1. Introduction

Bridgend County Borough Council has a legal obligation to make education provision for all children living within the borough. There is also a duty to ensure that all children attend education provision regularly either school or otherwise.

The Education Welfare Service acts as the enforcement body within the local authority to ensure these responsibilities are met. The department also works with Schools and Parents to ensure compliance with this policy.

The responsibility for ensuring regular school attendance lies with parents/carers and the implementation of legal proceedings to address issues of non- school attendance is based on an individual basis.

The ESTYN inspection standard expected for pupil attendance is 95%. When the child fails to attend school the absence is recorded and is marked as either an authorised or unauthorised absence. Welsh Government guidance states that 'only schools and not parents can authorise an absence and schools must consider whether the reason for absence is reasonable before doing so'. (Inclusion and Pupil Support Guidance – National Assembly for Wales Circular 47/2006)

It is essential that all schools or cluster of schools should adopt their own Attendance Policy which should include the rationale behind Fixed Penalty Notices, prosecutions and other intervention methods. This policy should also cover situations when an absence will and will not be authorised.

Legal action should be a planned intervention and appropriate to individual circumstances any such action should serve to ensure each child's right to education.

This document informs and guides EWS staff and other local authority staff of the process of legal measures to ensure regular school attendance.

2. Interpretation

In this policy:-

1. "EWS" means Education Welfare Service
- 2 "EWO" means Education Welfare Officer
- 3 "FPN" means fixed penalty notice.

4 “SAO” means School Attendance Orders

5 “ESO” means Education Supervision Order.

6 “parent” is as defined in paragraph 3 and references both singular and plural

7 “compulsory school age” is defined as the term after a pupil turns 5 years of age. This continues to be compulsory school age until the last Friday in June in year 11.

3. Legislative Framework

The Education Welfare Service is the responsible body within the Council to ensure that all children receive an education and attend school regularly.

The Responsibility of ensuring compliance with the legislation is undertaken through the EWO officers working with the parents (as defined below at point 3) of the children and through the prosecution of those failing to ensure their child attends school regularly. The Education Welfare Service will decide whether to instruct BCBC legal services to consider prosecution for an offence under section 444(1) and section 444(1a) of the Education Act 1996.

4. Parent Defined

Under Section 7 of the Education Act 1996 a parent of a child of compulsory school age is responsible for making sure that their child receives efficient full time education through regular school attendance or otherwise.

Section 576 of the Education Act 1996 defines ‘parent’ as:-

- All natural parents, whether they are married or not
- Any person who, although not the natural parent, has parental responsibility (as defined by the Children Act 1989) for a child or young person. Section 3 of the Children Act 1989 defines ‘parental responsibility as:- “all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and their property”. Section 2 defines who has Parental responsibility. A mother automatically has parental responsibility for her child/children from birth. A father however has parental responsibility in certain circumstances, such as if he is on the birth certificate and he is married to the child’s/children’s mother.

- Any person who although not a natural parent has the care of a child or young person.

There is no maximum number of people who can be considered a parent.

The following contributory factors are some of the criteria which will be taken into consideration as to who will receive legal correspondence:

- Who is responsible for the day to day care of the child/children.?
- Does the father or mother play an active part in the upbringing of the child/children?
- Is there a residency order with either parent?
- In some circumstances it may be appropriate to take action against only one parent whereas in other case it may be appropriate to take action against two or more parents.

5. **Attendance Policy**

Schools must ensure that they have an Attendance Policy which is regularly reviewed. The policy must be available to the public and its existence should be advertised appropriately. Schools will be expected to try and improve a pupil's attendance before a referral is made to the EWS. When schools attempts to improve a pupil's attendance have been unsuccessful, the school will refer to the EWS if attendance falls below 92%.

6. **Fixed Penalty Notices (FPN)**

The Education (Penalty Notice) Wales Regulations 2013 which came into force in September 2014 have given local authorities new powers to issue fixed penalty notices (FPN). A Code of Conduct has been devised by BCBC regarding the issuing of an FPN. Under this code, the issuing of the FPNs will lie with the Education Welfare Service in response to requests from Head teachers and nominated deputies or Police Officers. It is anticipated that a FPN will be used to improve Attendance and prevent unnecessary absences from school. The Education (Pupil Registration)(Wales) Regulations 2010 gives discretion to the school to grant leave for the purposes of a holiday. The decision as to whether to authorise an absence for the purposes of a holiday is at the discretion of the Headteacher.

Once an absence is unauthorised by the Head teacher and the matter referred to the EWO, a FPN may be considered in the following circumstances:

- Minimum of 10 unauthorised absences in the current term which do not have to be consecutive
- Minimum of 10 sessions of lateness after close of registration.
- Parents/carers who chose to take their child/children on holiday during term time without authorisation from school for a minimum of 10 unauthorised sessions.

- Pupil regularly coming to the attention of the police during school hours with justified reason.
- Parents/carers have failed to engage with schools/EWS but where court sanctions have not been instigated.
- Where a penalty notice is requested from a school in response to a holiday related unauthorised absence, a minimum of 10 unauthorised holiday sessions will apply.

The EWS will work with schools to ensure that:

- Notices are used consistently
- Relationships between schools and families are not compromised.
- There is no conflict with any other intervention in place including where there are measures in respect of an offence when proceedings under Section 444(1) or Section 444(1a) of the Education Act 1996 are considered or have been commenced.

The EWS will take into account the following in considering whether a FPN can be issued:-

- Level of absence – unauthorised absences equating to below 95% attendance.
- Any equalities considerations;
- Statement of Special Educational Needs;
- History of Attendance;
- Defences which may be available;
- Level of parental engagement; and
- Any adverse effect a fine will have on the welfare of the family.

An FPN will be issued where there are circumstances of unauthorised absences and when a FPN is felt appropriate taking into account the above. Only one FPN will be issued to a parent of a child in one academic year. Where there is more than one child with poor attendance within the same family, an FPN may be issued for each child in that family resulting in the parents receiving more than one notice within the same academic year.

There are no restrictions on the number of times a parent may receive a formal warning of a notice prior to receiving a FPN.

It will be discretionary to the EWS which person (s) will be issued with a FPN as per paragraph 3 above.

The EWS will respond to all requests from the Head Teacher to issue penalty notices within 10 days of receipt of all relevant information. When, having taken into account the above, the EWS will in appropriate circumstances:-

- Send a formal written warning to parents/carers notifying that they may receive a FPN and why (this does not apply in relation to Holiday related unauthorised absence).
- 15 days monitoring period and to allow parents to respond.

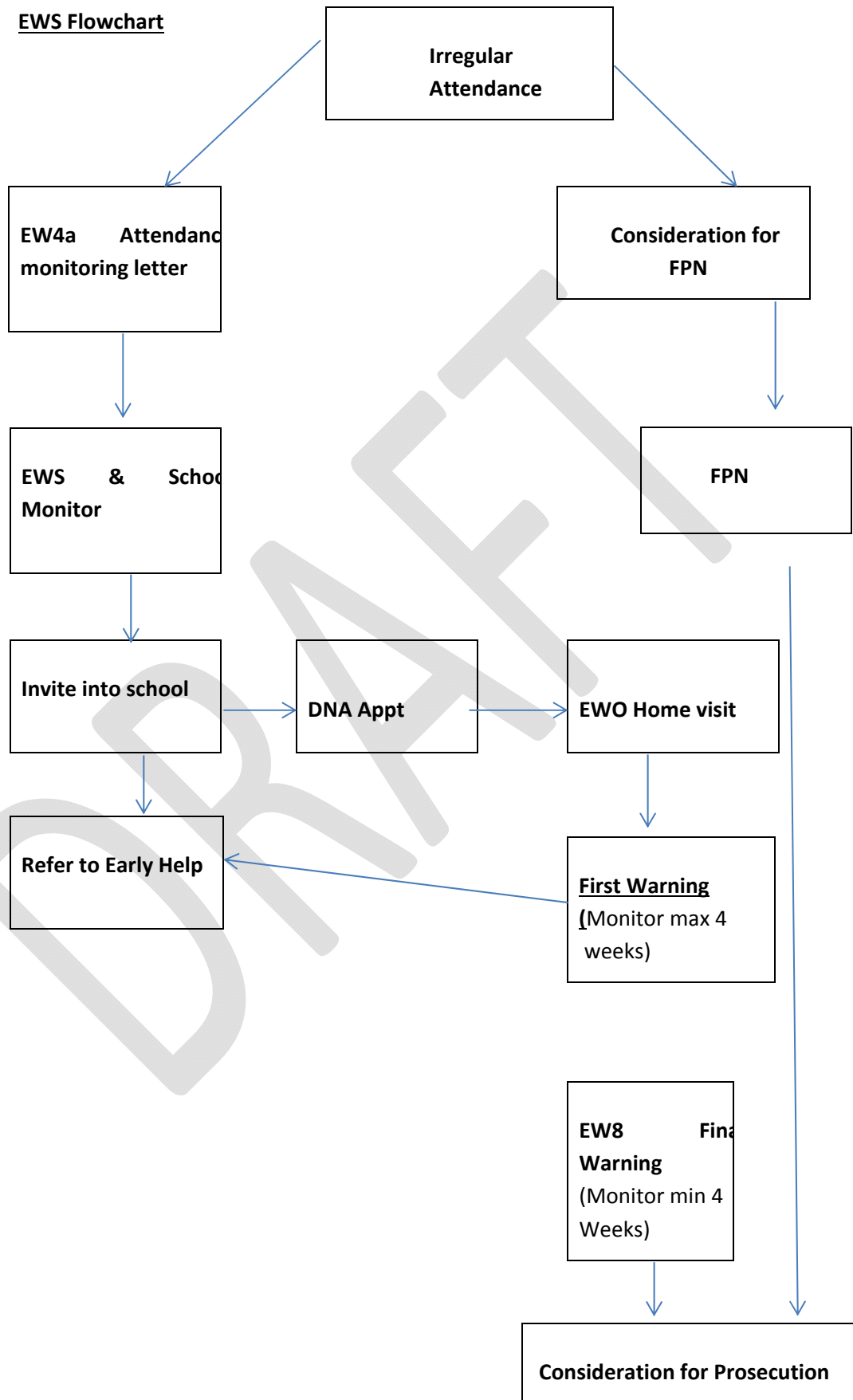
- During the 15 day period the pupil must not have any unauthorised absences from school.
- If at the end of the 15 days and all information has been considered to be appropriate a penalty notice will be issued.

A Penalty notice is £60 if paid within 28days of receipt of the notice, increasing to £120 if paid after 28 days. If the penalty is not paid in full by the end of the 42 days the local authority can prosecute parents/carers

The penalty notice may only be revoked where it is proven that:-

- The notice has been issued to the wrong person to an incorrect address.
- The notice did not conform to code of conduct.
- Evidence demonstrates that the notice should not have been issued. e.g., medical evidence provided.
- Circumstances warrant its withdrawal.

7. EWS Flowchart



8. Criminal Offences

Every case of non- school attendance is addressed on an individual basis. Welsh Government guidance confirms that before consideration can be given for the prosecution of parents/guardians the EWO is obliged to make every effort to engage and work with the child and family which includes additional support offered if necessary. If after working with the family the attendance does not improve sufficiently, the EWS will decide whether and at which point to instruct legal services to consider prosecution for the offence under section 444(1) and section 444 (1a) of the Education Act 1996.

The decision to refer the matter to legal for prosecution lies with individual EWO's but will be overseen by the Lead EWO. These cases normally are when parents refuse to engage or cooperate with the EWS or where it is felt that they could have done more to improve their child's attendance.

Decisions to instigate legal proceedings in BCBC are not taken lightly. Consideration will be given as to whether it is appropriate to proceed in the 'Public interest'. All children have a right to be in education and the local authority has a duty to them to make sure that they receive an education.

9. Prosecution Process

a. Warning Notices

Consequences of non- school attendance should be made clear to parents/carers. There are two warnings which are issued to parents which give the parents/carers an opportunity to improve the situation; a maximum period of 4 weeks is given in between both warnings. The expectation is that there will be an improvement in attendance

If, following the second warning, the situation does not improve the matter will be referred to the Local Authority's legal department. Local Authority Lawyers will decide whether to prosecute and will act on behalf of the Authority and present the cases in the local magistrate's court.

If, following the second warning, the situation does not improve and the EWO believes the parents may have committed the more serious offence, a formal letter will need to be sent to the parent by the Lead EWO. The parent will be invited to a formal meeting in order to discuss the reasons for non- school attendance. The letter will include a questionnaire which has to be completed by the parents and a formal caution under PACE which will be included in the questionnaire.

b. Documentation

Evidence for prosecution has to be provided by the school and this has to include a Head teacher's certificate confirming attendance with the Head teacher's signature. A period of complaint can be from 4 weeks to 12 weeks. In cases of general poor attendance the period of complaint must pre-date the final warning. In cases where an FPN has not been paid within the required timescale, the period of complaint must match the period contained within the FPN.

EWO's will prepare a concise witness statement outlining their involvement with the pupil and parents. This needs to be recorded in first person and checked by the Lead EWO. A witness statement must include name of pupil, date of birth, name of parent, address, period of complaint and the school that the child is registered to attend. The witness statement must exhibit the head teacher's certificate and any other relevant exhibits, including warning letters. When the matter is referred to the legal department previous convictions, if appropriate, should be highlighted. Local Authority lawyers will assess the evidence and determine whether the matter is suitable for prosecution. If the legal department determine that the matter is suitable for prosecution they will proceed to draft the summons and associated documents and will serve all the documentation on the parents.

The case is presented in court by BCBC lawyers. If the matter progresses to trial or has other complicating features it may be necessary for the individual EWO to attend on the day of the first hearing or the day the matter is listed for trial. The legal department will advise the individual EWO's if their attendance is required at Court.

10. Alternatives to Prosecution

Alternatives to prosecution are more successful when used as an early intervention tool, addressing poor school attendance at the earliest point, avoiding the poor attendance becoming entrenched and the prospect of taking further action via the instigation of court proceedings. The alternatives to Prosecution include: simple cautions, Education Supervision Orders and School Attendance Orders.

a. Simple Caution

A Simple Caution is a non-statutory disposal for adults committing an offence. It may be used for cases involving first time, low level offences where the public interest can be met by a caution. The EWO will recommend to the legal department that a caution be administered and the legal department will determine whether the case is suitable for caution.

The Local Authority will consider the following in order to make a decision whether a caution is appropriate:

- The Legal Department have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction.
- The parent must make a clear and reliable admission of guilt to committing the offence
- Is it in the public interest to use a Caution as the appropriate means of a disposal?

A simple caution should not be given where a person has been cautioned for or convicted of the same or similar offences within two years of the commission of the current offence unless there are exceptional circumstances.

A simple caution can only be given when the offender agrees to accept it. He or she should not be induced to accept a simple caution in any way and should not be pressed to make an instant decision on whether to accept the same. They should be allowed to consider the matter and given the opportunity to take independent legal advice.

The simple caution forms part of the offender's record and a record will be kept by the EWS and retained for future use. It may also be disclosed in Court in future proceedings.

b. Education Supervision Order

At the conclusion of a successful prosecution for non-school attendance the Magistrates may direct an application for an ESO or the AWS may apply for an order. The legislation for these orders is contained in the Children Act 1989 s.36

In Bridgend CBC these are currently not used and this must be made clear in the officers witness statement. The EWS strives to work with families and pupils and will ensure that all necessary support and efforts have been made before a prosecution is instigated.

c. School Attendance Orders

Under section 437-443 Education Act 1996 a School Attendance Order may be made by the court, upon an application being made by the LA, in cases when a parent of a child of compulsory school age fails to prove that the child is receiving suitable education and where the authority believed the child should attend school. A School Attendance Order may be used to direct a parent to send their child to a specified school, and should be used when a pupil is not on roll at any school. They are not intended for pupils who attend irregularly. A SAO continues to be in force for as long as a child is of compulsory school age.

Before an application for a SAO is considered EWO's should make every effort to engage the parent and encourage and support them in ensuring they are on roll.

11. Legislative framework.

Education Act 1996

- **Education Act 1996 Section 7- Duty on parents**

Duty on parents – parents/guardians have a legal responsibility to ensure that their children receive an efficient full time education that is suitable to their age, ability and aptitude and any special educational needs the child may have. This can be regular attendance at school or otherwise.

- **Education Act 1996 Section 8 – Compulsory school age**

Compulsory school age is between 5 years (commencing the term following a child's fifth birthday) and the school official leaving date is the last Friday in June.

- **Education Act 1996 Section 444 (1)**

This section of legislation is used on the grounds of prosecution if a child of compulsory school age, who is registered pupil at school, fails to attend regularly and/or is persistently late at school. Maximum Fine is £1000.

- **Education Act 1996 Section 444 (1a)**

This is an aggravated offence, where a parent of a child of compulsory school age who knowing their child failed to attend without justifiable reason failed to cause them not to attend. Maximum fine is currently £2000 and/or a term of imprisonment for up to 3 months.

- **Education Act 1996 section 444 (ZA)**

This has extended the circumstances in which a parent can be prosecuted which includes 'failure to attend alternative provision that has been made for the pupil' (This was inserted in section 116 of Education Act 2005).

- **School Attendance Order – Section 437-443**

These orders are issued by the local authority to direct parents to enrol their children at a named school. Failure to comply with an SAO is an offence unless parents can demonstrate that the child is receiving a suitable education otherwise than at school. The maximum Fine is £1000.

- **Children Act 1989 – Section 36**

Education Supervision Orders (ESO) is an order granted by the Family Proceedings Court giving the local authority the legal right to work more closely with children and families to enable the child to benefit from all education opportunities available to them. Section 444/443 of the education Act 1996 allows consideration to be given as to whether it would be appropriate to apply for an ESO. ESO's are normally granted for 1 year but can also remain in place for up to 3 years. An ESO requires the engagement and cooperation of the parents and pupil and research shows that they are more successful with younger age pupils.

- **Children Act 2004 – Section 16.**

This incorporates Police Power to return truants to school or a place designated by the local authority.

DRAFT

SIMPLE CAUTION

CASE REFERENCE:

NAME OF DEFENDANT:

DATE OF BIRTH:

ADDRESS:

OCCUPATION:

Date of Offences:

Place of Offences:

Brief Circumstances of Offences:

Declaration

I hereby declare that, I admit the offence described above and agree to accept a caution in this case. I understand that a record will be kept of this caution and that it may influence a decision to institute proceedings should I be found to be infringing the law in the future. I further understand that this caution may be cited should I subsequently be found guilty of an offence by a Court of Law.

Name: (Block Capitals)			
Signed:		Date:	

Signed:		
Date:		