

Responding to Irregular School Attendance - Parenting Contracts and Penalty Notices

1. Introduction

- 1.1 The Anti-Social Behaviour Act 2003 (which came into force in 2004) is intended to support existing policy and practice in relation to improving school attendance and responding to irregular attendance at school. The new provisions (Sections 19 and 23) are intended to help ensure that parents take seriously their responsibilities to ensure their children regularly attend school.

- 1.2 It is expected that these powers will be applied fairly, equally and consistently and take into account the degree to which disability and/or special educational needs may be relevant to a child's irregular attendance.

2. Definitions

- 2.1 'Parent' is defined by Section 576 of the Education Act as: all natural parents, 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; and any person who, although not a natural parent, has care of the child. Having care of the child 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.

- 2.2 'Parent' does not include local authorities who have parental responsibility as a result of being named in a care order.

- 2.3 In general terms, the Education Welfare Service and Education Welfare Officers

(EWOs) will have responsibility for carrying out the duties described of the LEA.

3. Grounds for considering parenting contracts and penalty notices

3.1 Parenting contracts and penalty notices can only be considered when a parent is guilty of an offence under Section 444 (1) of the Education Act 1996. This occurs when a child who is registered at school fails to attend there regularly and where the parent does not have any other defence to prosecution under the Act. These defences include:

- the pupil's absence was authorised by the school;
- the pupil was ill or prevented from attending by any unavoidable cause;
- 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.

3.2 Attendance should be assessed over a period of not less than 4 weeks during term-time before a parenting contract is arranged.

4. Parenting contracts (section 19)

4.1 A parenting contract is a two-sided voluntary written agreement between a parent and either the LEA or the governing body of a school. It could be an appropriate course of action where the parent is willing but in need of support to address their child's truanting behaviour.

4.2 In deciding whether a parenting contract might be appropriate, the LEA or governing body should consider whether parental influence could be better

brought to bear in improving the child's school attendance.

- 4.3 The LEA or governing bodies may enter into a parenting contract with a parent. In the context of the school, the governing body has ultimate responsibility for a parenting contract because under the School Standards Framework Act 1998 it controls the school budget. Parenting contracts require the party entering the contract to fund the cost of the 'supportive' element of the contract. Therefore it is the governing body's name that must appear on the contract.
- 4.4 The governing body may delegate responsibility for parenting contracts to the headteacher and in these cases the headteacher may commit funds on its behalf. However, the overall policy decision of whether parenting contracts should form part of the school's attendance policy must remain with the governing body.
- 4.5 It is expected that, regardless of which party enters into a parenting contract, the LEA and school are aware of the fact that a parenting contract has been entered into with the parent. The LEA and school should liaise prior to entering into any contract in order to discuss how the contract might work and to share information about the pupil and family, and other agencies that might be involved.
- 4.6 Before arranging a meeting with parents, the governing body or LEA should consult with other agencies working with the child or their parents to establish both how a parenting contract would fit in with other interventions being used with respect to the family and also to assess how other agencies should be involved in the meeting or in suggesting terms for the parenting contract.

- 4.7 Children, subject to their age, maturity and understanding should be involved in discussions leading up to a parenting contract and in drawing up the contract itself.
- 4.8 Once the governing body or LEA has decided to suggest a parenting contract, a meeting will be arranged with the parents of the child. Both parents should be invited to attend if appropriate and a letter should describe the contract and what it involves.
- 4.9 The parents should be asked to outline their views on the child's truanting behaviour, how they believe it should be tackled and what they think of the parenting contract. The governing body (or headteacher acting on its behalf) or EWO should outline what a parenting contract is and why they feel one may be appropriate. The parents should also be given the opportunity to discuss what kind of support they would find helpful and what support the governing body or LEA is able to provide. The aim should be to work in partnership in order to improve the attendance of the child.
- 4.10 If the parents fail to attend the meeting without good reason or notification further attempts should be made to contact them and arrange a meeting. These should be recorded.
- 4.11 The contract should contain
- A statement by the parent that they agree to comply for a specified period of time with whatever requirements are specified in the contract
 - A statement by the LEA or governing body agreeing to provide support to the parents for the purpose of complying with the contract.

- 4.12 The contract will need to be written in language the parents can understand and should strike an effective balance between specific and general requirements. The parents and a representative of the governing body or the LEA must sign the contract and both parties should be given a copy. It may also be appropriate to give a copy to other agencies working with the family.
- 4.13 One parenting contract may be arranged with both parents, or in circumstances where it is desirable to have different requirements for each parent then a separate parenting contract could be arranged for each parent.
- 4.14 Responsibility for delivering the LEA or school's part of the contract and for helping manage its overall outcome must be allocated to an officer of the LEA or a member of the school's governing body, who may then choose to delegate the responsibility to the headteacher who may delegate to a senior member of staff. Delivering the contract will involve regular contact with the parents to discuss progress and any problems in meeting the contract's requirements.
- 4.15 Every discovered breach of the contract should have a response. Upon learning of a breach the EWO or member of the governing body/senior staff responsible for overseeing the contract should contact the parents within 1 working day to seek an explanation for the breach. If the breach is reasonable and the contract is still proving useful then this should all be recorded and the contract would continue as normal. If the explanation shows that the contract is proving difficult to comply with through no fault of the parents, then a meeting should be arranged with the parents to review and consider amending the contract.

- 4.16 If no explanation is given or the EWO or member of the governing body/senior staff responsible for overseeing the contract is not satisfied with the explanation then they should serve the parents with a warning, which may be in the form of a letter, and keep a record of this. If there are still further breaches then the EWO or member of the governing body/senior staff responsible for overseeing the contract should arrange a meeting with the parents to review the contract and how it can be made work. The parents should be reminded of possible action which the LEA could take.
- 4.17 In the light of this meeting, it should be decided whether the non-compliance is undermining the contract to the extent that it is no longer useful in which case an alternative course of action would need to be decided upon. The decision and reasons for that decision should be recorded. The LEA or school may consider issuing a penalty notice to the parent of the LEA to consider prosecuting the parent in which case evidence that the parent failed to comply with the contract could be presented in court. It is therefore important that any breach of the contract is recorded.
- 4.18 Parenting contracts are entered into on a voluntary basis. If a parent refuses to enter into a contract then the EWO or member of the governing body/senior staff responsible for overseeing the contract should seek constructively to meet all legitimate concerns and ensure that a written record is kept of all efforts to negotiate a contract. This would include whether the parents were at least willing to meet to discuss the possibility.

5. Penalty notices (section 23)

- 5.1 Penalty notices have been introduced as an alternative to prosecution and

enable parents to discharge potential liability for conviction for that offence by paying a penalty. A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so. It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the LEA considers that a prosecution would be too heavy-handed.

- 5.2 Primary responsibility for issuing penalty notices rests with the LEA. The LEA is responsible for the administration of the scheme. The LEA is also responsible for drawing up a penalty notice *pro forma* and distributing this to those issuing them.
- 5.3 Penalty notices can be issued in respect of the parents of all pupils attending Harrow schools (even if they live out-borough).
- 5.4 It is for the LEA to set out in its local code of conduct the attendance levels below which a penalty notice may normally be issued. The purpose of the code of conduct is to ensure that the powers are applied consistently and fairly across the LEA and that suitable arrangements are in place for the administration of the scheme. Headteachers, deputy and assistant heads and the police must comply with this code of conduct when issuing penalty notices. Consultation will take place with headteachers, governors and the police before this code of conduct is finalized.
- 5.5 Anyone issuing a penalty notice must provide a copy to the LEA.
- 5.6 The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get the truanting pupil back to school.

- 5.7 The following are enabled to issue penalty notices:
- authorised LEA staff;
 - headteachers (who have first gained the agreement of their governing body) and deputy or assistant heads authorised by them;
 - police, community support officers and accredited persons.
- 5.8 The LEA must ensure that the notice clearly sets out the parents' position on receipt of a penalty notice. The position is that if the parent does not pay then the LEA must proceed to prosecution except in very limited circumstances where the notice can be withdrawn (i.e. it was issued incorrectly). Payment of the penalty discharges the parent's liability for the offence to which the notice relates.
- 5.9 If parents do not pay the penalty the LEA must proceed with a prosecution under Section 444(1) of the Education Act (even if the attendance has improved). The prosecution relates the non-attendance which was the basis of the penalty rather than the non-payment of the penalty. Parents (whether in another borough or Harrow) must be prosecuted by Harrow if Harrow issues the penalty notice.
- 5.10 Where feasible, it is important to warn parents of the possibility of a notice being issued as this allows them to make any representations they wish such as representations regarding inability to pay.
- 5.11 Parents cannot appeal against a penalty notice. However if they do not pay it they can make a defence in court when the case is heard.
- 5.12 At the outset of casework by the school or LEA the parent should normally be

given formal written notification explaining the actions that may be taken. It is good practice to make sure that parents understand the implications of failing to ensure that their child's regular attendance. It is also good practice to allow 15 school days for parents to improve the situation before continuing the proceedings.

- 5.13 The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed and cannot be convicted of that offence if he pays a penalty in accordance with the notice. A parent will not have a criminal record should the penalty be paid. However if the case proceeds to a successful prosecution this would be on record as a criminal conviction. Information regarding the payment of a penalty cannot be used in a subsequent prosecution.
- 5.14 The normal response to a first offence should be a warning rather than a penalty. However authorised officers have the discretion to issue a penalty notice for a first offence in exceptional circumstances. This could be where the unauthorised absence was for an extended period and condoned by the parent, for example where the parent has chosen to take their child on holiday during term time without authorisation or for parentally condoned absence identified in the course of a truancy sweep.
- 5.15 Penalty notices do not have to be issued in person or on the spot. It is sufficient for them to be posted.
- 5.16 The penalty is £50 if paid within 28 days or £100 if paid within 42 days. Late payments or payment by installments are not permitted.

5.17 Penalties are to be paid to the LEA. The LEA can retain revenue from the penalty notices to cover the cost of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay. The LEA will be required to produce an auditor's statement as part of the usual procedure showing that income received from fines does not exceed enforcement as defined.