



## Prosecution for Non Attendance

### Parent Information Guide

**This guide has been written to provide information regarding the legal prosecution process and to inform parents of the defences that can be used in cases of non-school attendance.**

#### **Education Law**

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

Section 576 of the Education Act 1996 defines parents as all natural parents, whether married or not; any person who, although not a natural parent, has parental responsibility for a child or young person; and any person who, although neither a natural parent nor a person with parental responsibility, has care of a child or young person.

The fact that a parent does not live with the child is not a defence against securing their attendance at school.

#### **Defences in Law**

For any case brought before the magistrate under section 444 there are **only** the following possible defences;

- **The child had a leave of absence**  
This means that your child had the Head Teacher's permission to be absent. You could prove this by producing a letter from the Head Teacher.
- **The child was too sick**  
Sickness means that your child was not medically fit for school on the dates listed on the summons from the court. You could prove this by producing a medical certificate or letter from your child's doctor or consultant.
- **The child was unavoidably absent**  
This means that there were exceptional circumstances preventing your child attending school during the dates listed on the summons. You could prove this by producing evidence of events that directly affected your family or the child.
- **The child was absent for any day exclusively set apart for religious observance by the religious body to which the parent belongs**

This means your child was absent because of your religious observance- not your child's. You could prove this with a letter from your minister of religion.

- **The school is not in 'walking distance' of the child's home and no alternative arrangements have been made by the local authority.**  
For a child under 8 years old the distance is 2 miles. For a child 8 years old the distance is 3 miles. This means that where the local authority has an obligation to provide transport it has not done so. You could prove this by providing copies of your correspondence with the local authority. This does not apply where you have applied for a specific school knowing the distance is further than the legal distance as described above.
- **The child has no fixed abode and the parent can prove that they were travelling for the purpose of obtaining work**  
This means you are a Traveller and that on the dates listed on your summons you were travelling to seek work or were working. You could prove this by producing documentation evidencing employment during the dates on the summons.

If you have evidence to support one or more of the defences above, please contact your child's school as soon as possible.

### **Burden of Proof**

It is for the parent to prove that one or more of the defences apply. It is not a defence to say that you did know your child was absent from school or that they were being bullied at the time. If your child has or is being bullied, you could prove this by producing documentation of meetings with the school to discuss your concerns.

### **Sentencing**

If you have pleaded guilty or are found guilty of the offence for which you have been summonsed the magistrate has the power to impose penalties as follows:

- A fine of up to £2500,
- A Parent Order,
- A suspended sentence,
- Imprisonment for a term not exceeding 3 months.

**Parents are strongly advised to seek legal advice at the earliest opportunity.**

Child Law Advice

<https://childlawadvice.org.uk/information-pages/school-attendance-and-absence/>

Citizens Advice Bureau

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Contact details:

**Attendance, Inclusion and Participation Service**

Second Floor, Laurence House, 1 Catford Road, London, SE6 4RU

Telephone: 020 8314 6272

Email: [aws@lewisham.gov.uk](mailto:aws@lewisham.gov.uk)

Produced by Emma Stubbington, Attendance Manager September 2022