

**EDUCATION WELFARE  
SERVICE****Prosecution Policy**

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## 1. Introduction

1.1 This policy applies to all Primary Schools, Secondary Schools and Alternative Providers who have bought into the services of London Borough of Brent, hereinafter referred to as LBB, Education Welfare Service (EWS) from the Local Authority (LA) and are therefore subject to a Service Level Agreement (SLA) with the Education Welfare Service and for those non SLA Schools and Alternative Providers who are therefore only assisted by LBB's Education Welfare Service from Stage 2 onwards. It defines the principles of the Education Welfare Service (EWS) which underly enforcement decisions and/or actions. This is to ensure that all decisions are fair, consistent and appropriate.

## 2. Joint working across LAs

2.1 This policy links with the London Borough of Brent's joint regulatory services enforcement policy, the Education Welfare Service Code of Conduct, and the joint working protocol for education penalty notices and the management of attendance of pupils educated outside their home borough.

2.2 In accordance with the joint working protocol, parents for whom legal action is appropriate will usually be subject to proceedings by the EWS of the host borough. Legal action includes any parental prosecution, fixed penalty notice, education supervision order or any other order imposed by a court directly related to a pupil's attendance at school. The home LA will always be advised by the EWS of any action and the outcome.

## 3. Definitions

3.1 **Enforcement** in this policy means actions taken by the EWS to prevent or rectify breaches of legislation in cases of unauthorised absence from school.

3.2 Section 7 of the Education Act of 1996 imposes on parents a legal duty to secure education for their children of compulsory school age whether at school or otherwise. A **parent** is defined to include all natural parents, whether they are married or not; any person or body who has parental responsibility for a child as defined by the Children Act 1989; and any person who although not a natural parent, has care of a child. This policy uses the word 'parent' to mean one or more parents or carers.

3.3. Having **care of a child** means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent (see Section 576 of the Education Act of 1996).

- 3.4 **Compulsory school age** is defined as beginning from the start of the term commencing on or after the child's fifth birthday (Section 8 of the Education Act of 1996). A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen. When a child is on the roll of a school they must by law attend regularly.
- 3.5 Alternative education provided by the Local Authority such as a pupil referral unit or tuition service will be referred to in this policy as a **school**.
- 3.6 Parents may exercise their legal right to educate their children **at home** rather than at a school. The Local Authority must be satisfied that parents are providing a suitable education.

#### 4. **Education Supervision Order (ESO)**

- 4.1 The Children Act of 1989 allows the LA to apply for an Education Supervision Order (ESO) on any child of compulsory school age, who, it is felt, is not being properly educated. An authority may apply for an ESO instead of, or as well as, prosecuting the parents. An authority is under a duty to consider applying for an ESO before starting legal proceedings against a parent.
- 4.2 When parents are in a position to make improvements in a child's attendance, the EWS will consider using an ESO. A supervisor will be appointed and meet regularly with the parent and child. The parent will be expected to cooperate with any strategies proposed by the supervisor and allow reasonable access to the child. If the LA chooses not to apply for an ESO, it should record and provide evidence of the consideration and the reasons why it is not thought appropriate. ESOs are to be used sparingly.

#### 5. **Schools' responsibilities**

- 5.1 Schools must ensure that they have a policy on pupil attendance which is up to date and reviewed. This policy must be well publicised and communicated to parents in writing at least once a year.
- 5.2 Schools are expected to try to improve a pupil's attendance before making a referral. Schools must deal with any concerns a parent may have about the reasons for poor attendance and have evidence to show that this has taken place.
- 5.3 When a school's attempts to improve a pupil's attendance have been unsuccessful, the school will refer the case to the Education

Welfare Service (EWS). Referrals can only be made to the EWS if attendance is 85% or below.

## 6. Casework procedures

- 6.1 Once a case is referred, the EWS will provide the parent with information about the procedures (**ANNEX 1**). The EWS is required to encourage and support parents in order to attempt to improve attendance. The EWS will send the parent by post the contact details of a named Education Welfare Officer (EWO). This will be the EWO who is linked to the school that the pupil attends. The EWS will communicate all key decisions about the case to a parent in writing.
- 6.2 The EWO will then write to the parent to invite them to meet at the school, Brent Civic Centre, or in the home. If a parent does not respond, the EWO will make an unannounced home visit. If the parent is not at home, the EWO will leave a calling card. EWOs may also make an unannounced visit when there is an urgent need to speak to a parent about the child's non-attendance at school.
- 6.3 Once a case has been referred to the EWS, and unauthorised absence is 10% or above, there follows a 16 week timetable of casework (**ANNEX 2**). Standard cases are to be dealt with within 16 weeks. Complex cases generally need more than 16 weeks. Within the time set there will be Stage One and Stage Two meetings followed by a decision on the next steps, the 'consideration of a disposal'. Disposal will be by Education Penalty Notice, a formal warning, or a referral to Brent Legal Services for prosecution.
- 6.4 If a parent fails to sustain any improvement in their child's attendance for no good reason and the child continues to be absent from school, the EWS will refer the case to Brent Legal Services. If, however, a parent is experiencing difficulties in complying, the EWO may ask the parent for permission to make a referral to another agency for additional support.
- 6.5 For schools purchasing the services of the EWS, the EWO will visit secondary schools each week and primary schools at least once a month as set out in the EWS Service Level Agreement (SLA). On these visits the EWO will provide oral and written feedback on the progress of cases with designated school staff. The EWO will communicate with schools at other times by email and telephone. The EWS will monitor a pupil's attendance through computerised attendance certificates sent to them by the school.

- 6.6 Schools that only access core services from the EWS will be informed in writing at the beginning of each school year about what information they are required to gather before they can make a referral directly to the EWS.

## **7. Children missing from education**

- 7.1 The EWS will receive referrals from all schools where the child is missing from education. This means that the child is absent for three or more days and their whereabouts is not known. In these cases the EWS will try to find the child and liaise with schools and parents to ensure that the child returns to school.

## **8. Stage One meetings**

- 8.1 A Stage One meeting is held when initial attempts by the EWS to engage with a parent have been unsuccessful and unauthorised absence remains at 10% or above. The EWS will write to both parents if possible, and invite them to a meeting at the school. Non SLA Schools/Alternative Providers that are only permitted to access core services from Stage 2 onwards, are required to follow LBB's 'EWS Making a Referral for Legal Action Core Guidance to Schools' and must arrange a Stage 1 Meeting with the parent at least 15 days prior to referring a case to the EWS for legal action.
- 8.2 The Stage One meeting will take place regardless of whether or not the parent attends. This fact must be communicated to the parent(s) in the invitation letter. The EWS will ensure that a translator is available if required.
- 8.3 The aim of the meeting is to allow the EWO and school staff to find out why attendance is poor and to explore possible solutions with the parent and pupil. The EWO will give parents an opportunity to discuss difficulties before any formal action is taken. The EWS will explain to the parent what they have to do to comply with their legal obligation, why this is so and by what date attendance needs to improve. The EWS will explain EWS procedures and methods of disposal to the parent (**ANNEX 1**).
- 8.4 The EWS will notify the parent(s) in writing of the outcome of the meeting within five days, whether or not the parent(s) attended the meeting.
- 8.5 Following the Stage One meeting, the EWS will send a letter to the parent if attendance improves. This will inform them that the case will be monitored for a further six weeks from the date of the Stage One meeting. If attendance deteriorates within that period to unauthorised absence at 10% or above, the case will move on to Stage Two (**ANNEX 2**).

8.6 Where the case is deemed complex, the decision to proceed to a Stage Two meeting will be made on the basis of each individual case (**ANNEX 2**). An example of a complex case is when a pupil or parent is referred to other professionals for specialist support. Unless the EWS, in consultation with a member of another professional body, makes an assessment that a pupil's mental health is at risk if they continue at school, it will be expected and required that a pupil attends regularly.

## 9. Stage Two meetings

9.1 The EWS will write to both parents if possible, to invite them to attend a Stage Two meeting at Brent Civic Centre. The EWS will ensure that a translator will be available at the meeting if required. Parents are to be notified in the invitation letter that the meeting will take place regardless of their attendance.

9.2 At the meeting, the EWO will review the case with the parents and remind the parent of the potential powers available to the EWS. Within 10 days a decision will be made how to proceed. The options are to:

- take no further action
- issue an informal or formal warning
- issue an Education Penalty Notice (**ANNEX 3**)
- amend a statutory notice, or
- to prosecute.

The final decision will be communicated to the parent(s) in writing within five days.

9.3 Decisions about which enforcement option is to be used should be consistent, balanced, fair and relate to common standards to ensure a child's right to an education. The following will be used to assess what action should be taken against a parent:

- the seriousness of the breach
- whether the level of pupil absence is 10% or above during EWS casework procedures
- whether the parent has failed to ensure the pupil's regular attendance, and
- whether the parent has failed to comply with a statutory notice within the timescale given.

## 10. Warnings

10.1 Warnings can take the form of an oral (informal) or written (formal) warning. Warnings will always be confirmed in writing which will

explain the relevant law, how the law has been contravened, the action the parent(s) need to take, the time period in which action needs to be taken and the consequences of not taking this action.

## **11. Education Penalty Notices**

11.1 *Section 23 of the Anti-Social Behaviour Act 2003 provides for the use of Penalty Notices by inserting section 444A into the Education Act 1996. This allows for Penalty Notices to be issued where it appears that an offence under s444 of the Act has been committed. A Penalty Notice is issued by the LA and may provide a more proportionate response to non-attendance than a prosecution and one which can often be taken sooner and for less serious non-attendance. For further information on Penalty Notices see the EWS Code of Conduct on Education Penalty Notices and The Education (Penalty Notices) (England) Regulations 2007.*

The Education (Penalty Notices) (England) Regulations 2007 sets out the framework for the operation of the penalty notice scheme.

The Education (Penalty Notices) (England) (Amendment) Regulations 2012 increased the amount of the penalty to £60 if paid within 28 days and to £120 if paid within 42 days

The Education (Penalty Notices) (England) (Amendment) Regulations 2013 shortens the time allowed for payment of the notices as follows:

From 28 days to 21 days for payment of £60

From 42 days to 28 days for payment of £120

These amendments came into force on 1 September 2013

## **12. Prosecution**

12.1 The responsibility for bringing legal proceedings under Section 444 of the Education Act 1996 rests with London Borough of Brent. At the conclusion of the Stage Two meeting, the EWS will decide whether to instruct Legal Services to prosecute for an offence under Section 444 of the Education Act 1996.

12.2 If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, their parent(s) are guilty of an offence. Section 444(1A) of the Act creates an aggravated offence, which occurs when the parent(s) know that the child is failing to attend regularly at the school and fails to prevent this, without reasonable justification.

12.3 On instructing legal services, the EWO will provide the following to the prosecution team, the EWO retaining all original documents:

1. The case chronology of steps taken and key dates
2. The referral from school
3. A statement from the EWO in compliance with section 9 of the Criminal Justice Act 1967 (Witness statement)
4. An attendance certificate from the headteacher
5. Copies of letters to the parent inviting them to the Stage One and Two meetings
6. Copies of letters to the parent with the decisions of the Stage One and Stage Two meetings
7. A copy of the letter to the parent telling them that EWS will consult with Brent Legal Services
8. Copies of all correspondence between the EWS and the parents
9. Written confirmation of other agencies involved and their awareness of the proposed proceedings and views
10. Details of the consideration given to an education supervision order and the reasoning as to why it was not appropriate
11. Details of the consideration given to a parenting order and the reasoning as to why it was not appropriate. A parenting order will only be considered if the LA makes a judgement that parenting is a significant factor in the child's behaviour.
12. Details of any siblings of school age and their school attendance records
13. Details of any previous convictions/warnings/penalty notices of proposed defendants
14. Disclosure material as defined by section 3 of the Criminal Procedure and Investigations Act 1996.
15. Schedule of officer's costs.

12.4 In order for a prosecution to proceed, Legal Services must be satisfied that there is sufficient evidence to provide a realistic prospect of a conviction: this is the evidential test. Legal Services must then determine whether a prosecution is required in the public interest (the public interest test). Once Legal Services are satisfied that both the above criteria are met, a prosecution can proceed.

12.5 Legal Services will advise and issue court papers within an 8-week period.

12.6 No offence is committed if the child was absent from school:

- because of sickness
- any unavoidable cause
- with permission



- for religious observance, or
- if the parent can prove that the local education authority has a duty to make travel arrangements in relation to the child and have failed to discharge that duty.

There are also exceptions for a child of 'no fixed abode'.

12.7 The court will sentence the parent if they plead guilty, or if they are found guilty, either by a contested trial or if the matter has been proved in their absence. Sentence is a matter for the court and the disposals available to the court are:

- a conditional discharge
- an unconditional discharge
- a fine of £1000 (Level 3 under Section 444 (1A) of the Education Act of 1996)
- a fine of £2500, or imprisonment for a term not exceeding three months, or both (Level 4)
- a parenting order as defined by the Crime and Disorder Act of 1998. Parenting orders are made at the discretion of the court where parenting is an issue.

### **13. Retention of Information**

13.1 Documentary evidence will be securely retained in a paper and electronic format by the EWO for seven years. This includes all the information recorded or collected as part of EWS enforcement activities. This information will include decisions taken about the choice of enforcement options. As part of the joint working protocol, these records will be made available to any other LA having casework involvement with the family.

### **14. Publicising successful prosecutions**

14.1 Information about successful prosecutions will be sent in writing to the relevant school/alternative provider regarding the child in question at the conclusion of the prosecution. Information about the number of pupils involved whether they are primary or secondary age and the fines handed down to the parent(s) can be obtained by contacting the Education Welfare Service.

**15. Conflicts of interest and undue influence**

15.1 To ensure that decisions are impartial, the EWS will deal with any potential conflicts of interest on the part of an officer or any instances of undue influence being used.

**16. Audit**

16.1 The EWS will keep a record on the Inclusion and Alternative Education database of all legal action undertaken by the service.

**17. Preparation for court (See ANNEX 4).**

**18. Policy implementation and review**

18.1 The management of the EWS will implement this policy and take corrective action where necessary. Departures from the policy will be exceptional and when they do occur, the reasons for the departure will be recorded. This policy will be reviewed annually.

## ANNEX 1



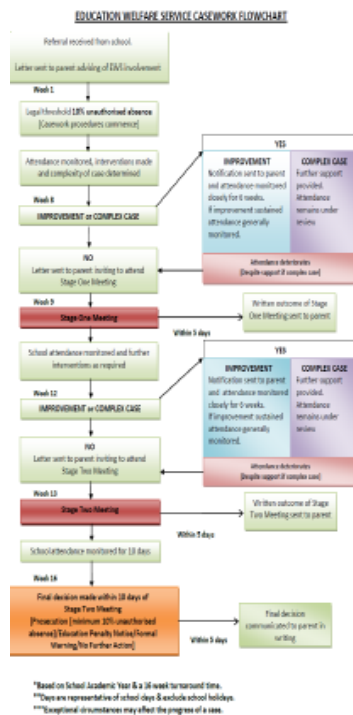
Children and Young People

Education Welfare Service



Guidance to Parents;

Unauthorised Absence from School



### Independent advice for parents



**Family Lives**  
Listening, supportive and  
non-judgemental

Family Lives is a national charity providing help and support in all aspects of family life. If you would like support and advice, you can talk to one of their Family Support Workers by calling a confidential helpline on:

Tel: 0800 800 2222

The helpline service is open -  
9am – 9pm, Monday to Friday  
and  
10am – 3pm Saturday and Sunday.  
[www.familylives.org.uk](http://www.familylives.org.uk)

Inclusion and Alternative Education Service  
Education Welfare Service  
Brent Civic Centre  
Engineers Way  
Wembley  
HA9 0FJ  
Tel: 020 8937 1234  
Email: [ews@brent.gov.uk](mailto:ews@brent.gov.uk)

For more information about the Education Welfare Service prosecution policy and Local Code of Conduct for Education Penalty Notices, go to: [www.brent.gov.uk](http://www.brent.gov.uk)

## Ensure your child attends school every day and on time.

### The law

Parents have a legal duty to secure education for their children of compulsory school age whether at school or otherwise (Section 7 of the 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, a parent is guilty of an offence (Section 444 of the Education Act 1996). A parent is defined to include all natural parents, whether they are married or not; any person who has parental responsibility for a child and any person who, although not a natural parent, has care of a child (Children Act 1989).

### Role of a parent

Going to school regularly is important for your child's future. It is helpful for a to school if you ring on your child's first day of sickness and do not keep them away any longer than necessary. Always provide a note to their teacher on their return. Absence for shopping and birthdays is not acceptable. Never take holidays during term time or assume that a request to take your child out of school for any other reason will be granted.

### Role of a school

It is a school that decides whether to authorise an absence. You may be asked to provide medical evidence if your child has a health problem that is affecting their attendance. Your child's school may use a range of strategies to assist you to improve your child's attendance, such as setting targets, presenting awards, offering incentives and making referrals to other agencies for additional support.

If there is no improvement in your child's attendance over a period of time the school will discuss your child's attendance with their Link Education Welfare Officer (EWO). Some schools manage their own attendance and refer to the Education Welfare Service (EWS) at Stage Two if a case meets Brent's legal threshold.

### Role of the Education Welfare Service

The Education Welfare Service (EWS) will take referrals from schools where a pupil has 85% or less attendance, with a significant amount of absence recorded as unauthorised and where attempts by the school to improve a pupil's attendance have been unsuccessful. If your child's attendance falls into this category you will be provided with the contact details of an EWO linked to your child's school and they will arrange to meet with you to discuss your child's absence. In some cases the EWO may make an unannounced home visit. If you are not at home, a calling card will be left. If your child has unauthorised absence of ten percent or above, there then follows a 16 week timetable of casework that is set out on the next page. The EWS will arrange a translator for all meetings if required. Some school will manage the

### Stage one meeting

If your child continues to have unauthorised absence of ten percent or above, the EWO will invite you to a meeting at the school. School staff and other professionals supporting your family will be invited. The aim of the meeting is to allow the EWO and school to find out why attendance is still poor and to

explore with you and your child if they are secondary school age, how a solution can be found. The EWO will explain to you what needs to be done to comply with your legal obligation and the timescales to achieve this. Even if you do not attend this meeting you will be notified of the outcome within five days. Some schools will arrange their own stage one meeting.

### Stage two meeting

If your child continues to have unauthorised absence of ten percent or above, the case will proceed to stage two. At the meeting held at Brent Civic Centre the case will be reviewed and you will be advised of the range of legal options available to the EWS. Even if you do not attend this meeting, you will be notified in writing within ten days of the final decision as to whether the EWS issues a formal warning, issues an Education Penalty Notice, prosecutes you or takes no action.

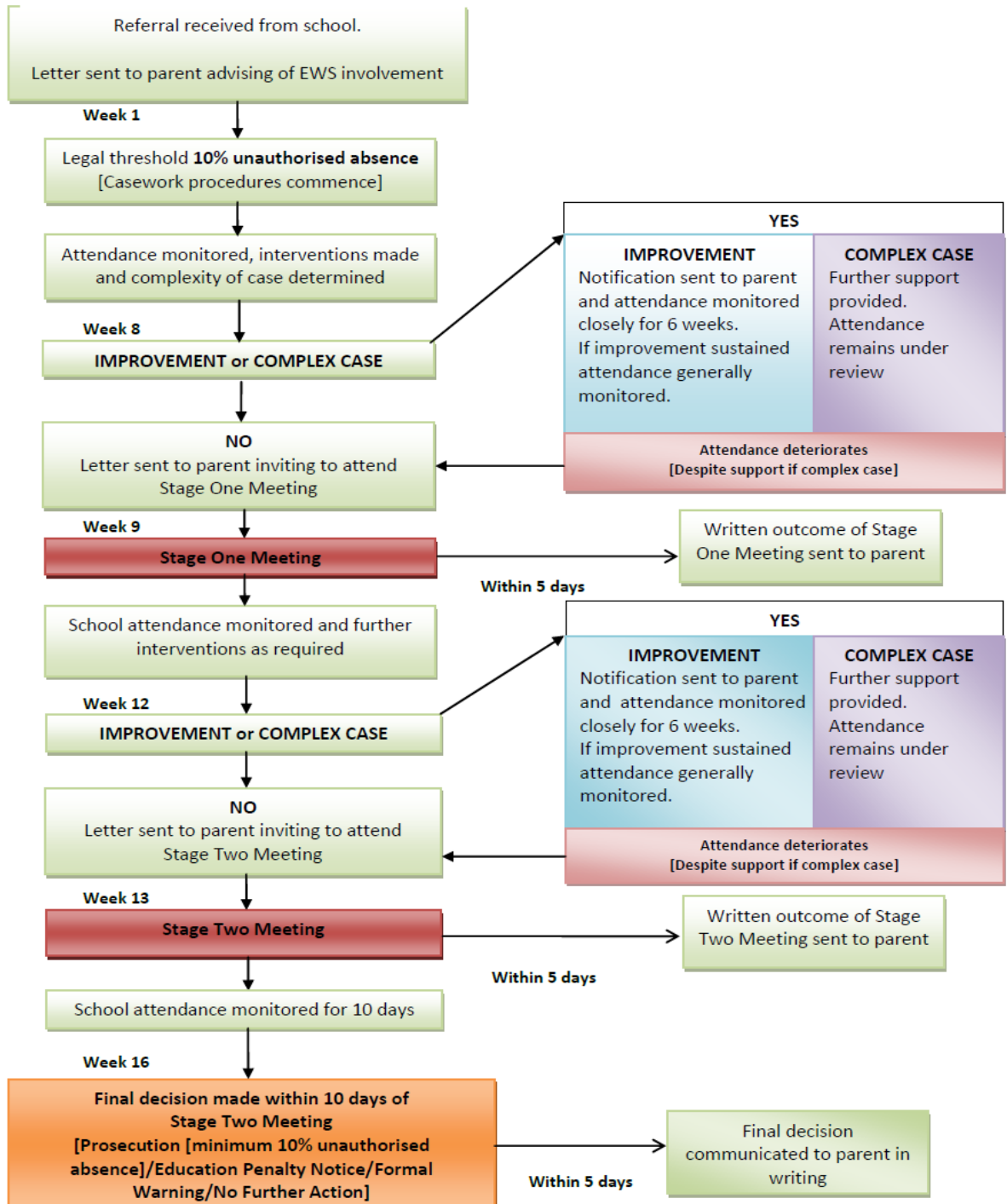


### Complex cases

Complex cases, where a family is receiving extra support for social or health needs, may take longer than 16 weeks to conclude.

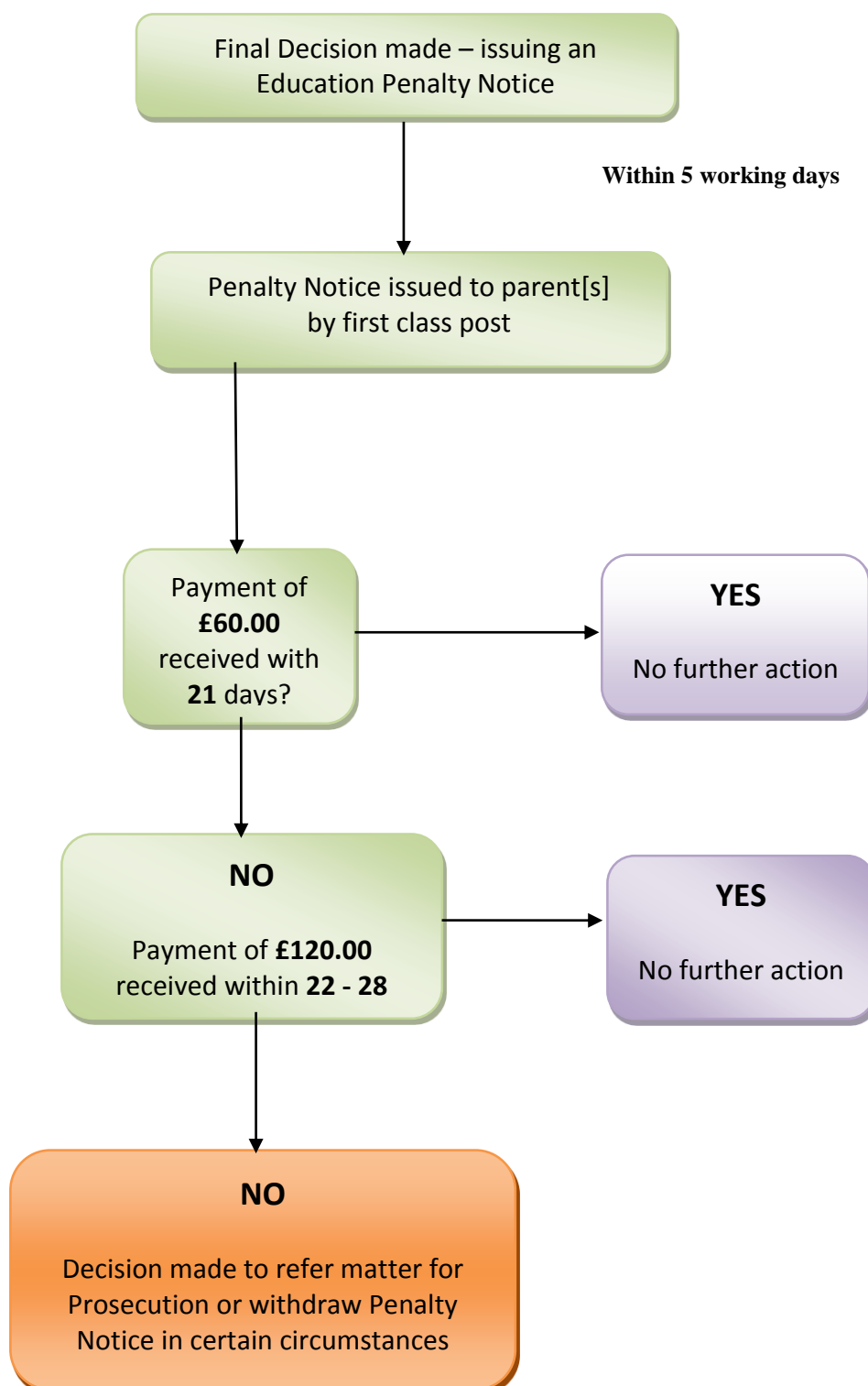
## ANNEX 2

### EDUCATION WELFARE SERVICE CASEWORK FLOWCHART



- \*Based on School Academic Year & a 16 week turnaround time.
- \*\*Days are representative of school days & exclude school holidays.
- \*\*\*Exceptional circumstances may affect the progress of a case.

**EDUCATION PENALTY NOTICES FOR PERSISTENT UNAUTHORISED ABSENCE**



Preparation for Court Proceedings

On instructing, Legal Services will advise and issue court papers within an 8-week period:

Defences – Section 444 of the Education Act 1996

When the offence is not deemed to have been committed

1. The child shall not be taken to have failed to attend school regularly by reason of their absence from the school:
  - i. By reason of sickness.
  - ii. Any unavoidable cause.
  - iii. With leave.
  - iv. On any day exclusively set apart for religious observation by the religious body to which the parent belongs.
  - v. If the parent proves that the local education authority has a duty to make travel arrangements in relation to the child under section 508 of the Act and have failed to discharge that duty.

Defence

2. If it is proven that the child is of no fixed abode, it is a defence for the parent to prove:
  - i. That he is engaged in a trade or business of such a nature as to require him to travel from place to place  
and
  - ii. That the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits,  
and
  - iii. If the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

Sentences

Following a guilty plea or a finding of guilt by either a contested trial or if the matter has been proved in absence, the court will sentence the parent[s]. Sentence is a matter for the court but the disposals available to the court are:-

1. Conditional Discharge
2. Unconditional Discharge
3. Section 444(1) Fine [Level 3 = £1000]
4. Section 444 (1A) Fine (level 4 = £2500 or to imprisonment for a term not exceeding 3 months, or both) Parenting Order

As defined by The **Crime and Disorder Act 1998**. Parenting orders are made at the discretion of the court where parenting is an issue.