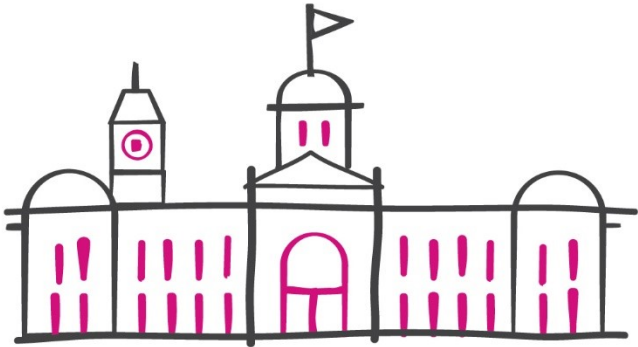


# Working together to improve school attendance – National Framework for Penalty Notices

Edwina Langley MBE - Lead Attendance Officer



 **RESET**

 **RESHAPE**

 **RESTART**

# Housekeeping

- Session is being recorded and will be available after the event – please leave the session if you don't want to be recorded
- Please keep cameras off
- Please keep microphones off
- Time for questions through the session and at the end



# Session content

- Working together to improve school attendance – reminder
- Chapter 6 – ‘Attendance legal intervention’
- Prosecution under 1996 Education Act
- Education (Penalty Notices) (England) Regulations 2007 (as amended)
- Support first
- Parenting Contracts
- Notice to Improve
- National framework for penalty notices
- Birmingham’s Code of Conduct
- Procedures
- Summary



# Working together to improve school attendance - reminder

- 'Improving attendance is everyone's business'
- Statutory guidance from 19<sup>th</sup> August 2024
- 'Must have regard to it'
- Eight chapters – Chapter 6
- Sets out expectations of partners
- 'Support first' – not punitive action first
- Schools - Duty to share attendance and absence with DfE and LAs
- Schools - Duty to consider legal action when all else fails

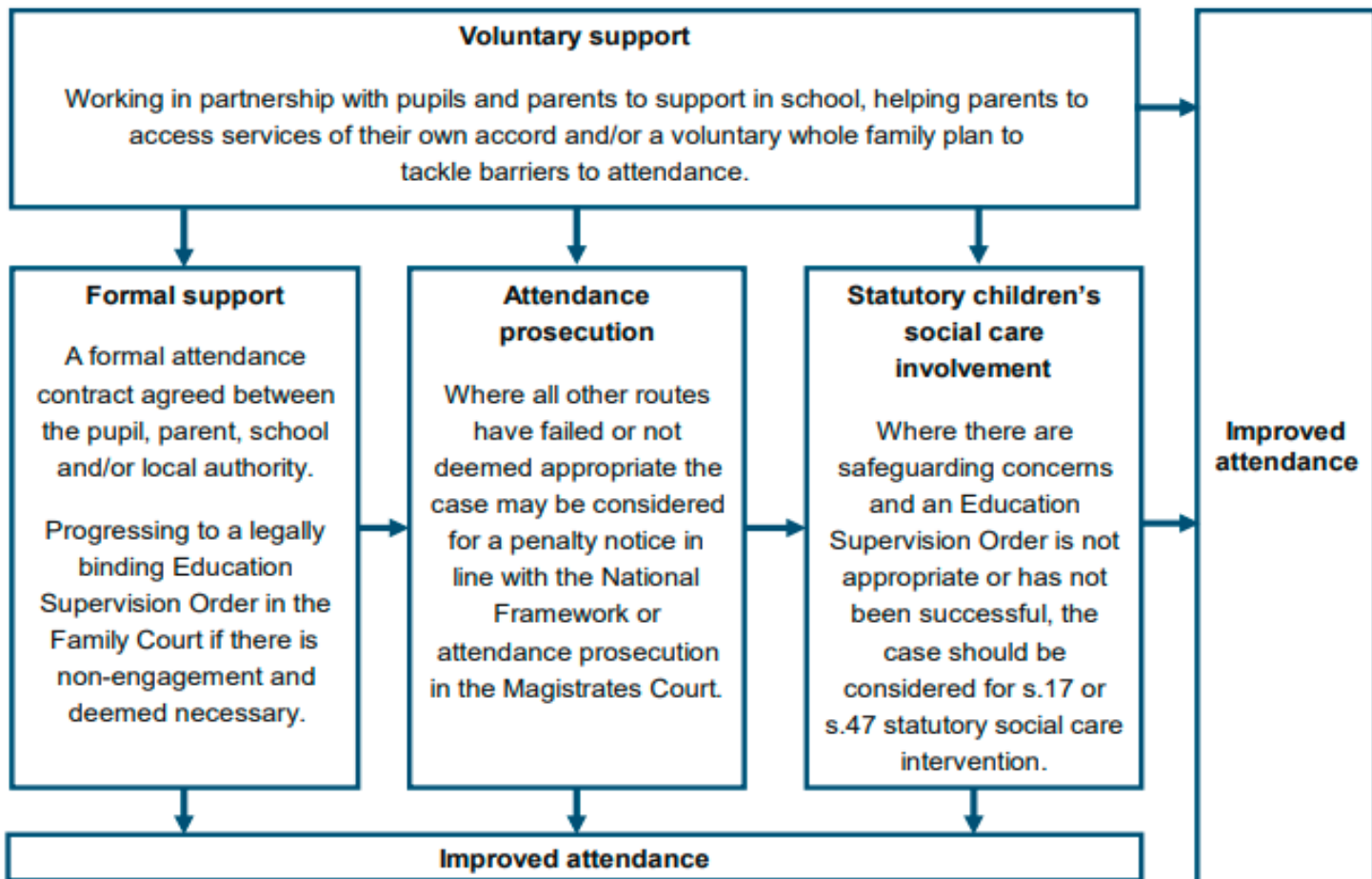


# Chapter 6 – Attendance legal intervention

- Absence is often a symptom of wider issues a family is facing
- Schools, trusts and local authorities should always work together with other local partners
- Understand the barriers to attendance
- Provide support
- Not successful, or is not engaged with
- The law protects pupils' right to an education
- Range of legal interventions to formalise attendance improvement
- Where all other avenues have been exhausted - prosecution of parents
- Pupils of compulsory school age
- Case by case basis



## Providing support first before attendance legal intervention



# Support First - WTTISA

- Support includes any activity designed to improve a child's attendance without a penalty notice or prosecution
- Speaking to the child
- Informal meetings with parents
- Adjustments made in school
- Early help assessment
- School nurse referral
- Forward Thinking Birmingham etc

*'The local authority's decision on whether sufficient support has been provided before issuing a penalty notice should be treated as final.'*



# Possible legal interventions highlighted in WTTISA

Depending on individual circumstances of the family

- Attendance Contracts
- Education Supervision Orders
- Attendance Prosecution
- Parenting Orders
- Penalty Notices

Decision making should also be informed by Keeping Children Safe in Education and Right Help, Right Time





# Attendance Contracts

- Similar to 'Parent/school contract' used at the end of a SARM
- Details of the requirements the parent(s) is expected to comply with.
- A statement from the school and/or local authority agreeing to provide support to the parent(s) to meet the requirements and setting out details of the support.
- A statement by the parent that they agree to comply with the requirements for the period of time specified by the contract
- 3 to 12 months in duration
- No further unauthorised absence during set period
- Arranged through meeting with parent



# Attendance contract requirements

- Measures to ensure the pupil attends school or alternative provision punctually and regularly
- Requiring the parent to attend meetings with the school and/or local authority
- Accessing or partaking in the support or programmes offered
- Working with or accessing other separate support provided to the pupil at school level (e.g. being on report)

Could also include:

- Signposting to other services, voluntary or statutory
- Name of a lead professional at the school to support
- Send to parent with a letter



# Attendance contract non-compliance

Where parent doesn't comply...

- Explore why the contract has been breached
- Unauthorised absence
- Referral to ELIT
- If parents don't attend the meeting
- Similar to the SARM now
- Where the school or partners don't comply with the contract, no further action will be taken against the parent.



# Notice to Improve

- A final opportunity for a parent to engage in support and improve attendance
- Not 'formal warning notice'
- Prior to penalty notice being issued.
- If the threshold for a penalty notice has been met
- Support is appropriate but engaged with by the parent or have not worked
- Ongoing absence not leave in term time
- School would refer after threshold reached – LA consider issuing a notice
- Process still being refined
- Only issued once – not for repeat offences.



# Education Supervision Orders

- Made through Family or High Court
- Parent has a duty to comply with the Order
- Must be considered before any prosecution
- Require engagement and cooperation from the parent
- 'Can't' or 'won't'
- To consult with Birmingham Children's Trust



# Attendance Prosecution

*'If a child of compulsory school age fails to attend regularly at a school at which they are registered, or at a place where alternative provision is provided for them, their parents may be guilty of an offence and can be prosecuted by the local authority.'*

- Magistrates Court
- Last resort
- All other voluntary and formal support or legal intervention has failed or...
- Where support has been deemed inappropriate in the circumstances of the individual case – e.g. leave in term time



# Local authority power to prosecute

- Section 443 of the Education Act 1996 - Parents who fail to comply with a school attendance order issued by the local authority to require a parent to get their child registered at a named school
- Section 444(1) - Parents who fail to secure their child's regular attendance at a school
- Section 444(1A) - Parent knows that the child is failing to attend school regularly and fails to ensure the child does so
- Sections 444 and 444ZA - Parents who fail to secure the regular attendance of their child at a place where the local authority or governing body has arranged alternative provision
- Schedule 3 to the Children Act 1989/Section 375 of the Sentencing Act 2020 – Parents who fail to comply with an ESO or parenting order

*The decision to prosecute rests solely with the LA as an independent prosecuting authority*



# Parenting orders

- Can be imposed by the Court
- Following conviction for non-attendance alongside a fine and/or community order
- Parents agreement is not required





# National framework for penalty notices

- An alternative to prosecution
- Section 444(1)
- Issued to each parent liable
- Intended to prevent the need for court action
- Only where deemed likely to change behaviour
- Education (Penalty Notices) (England) Regulations 2007, as amended
- Can only be issued by a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police
- Local Code of Conduct maintained by LA - consultation



# Birmingham

- Penalty notices issued by ELIT
- Where schools want to issue their own PNs
- Check each case with LA first
- Send LA copies
- Comply with crown prosecution rules
- Arrange payments to be sent to LA
- Payment system set up by school that complies with GDPR and financial regulations – can't take credit card payments over the phone



# National threshold

*'All state funded schools must consider whether a penalty notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a penalty notice'*

- Schools should not have a blanket position
- Issuing or not issuing penalty notices
- Should make judgements on each individual case
- Ensuring fairness and consistency
- For example... pupil in your school with siblings in other schools where those Headteachers refer to ELIT but your school never does



# Thresholds

- 10 sessions over a rolling period of 10 weeks
- Any combination of unauthorised absence
- Can be consecutive or not
- 10 weeks can span different terms or school years (except for this year due to the legislation change starting on 19<sup>th</sup> August)

## Birmingham Code of Conduct:

- Minimum of 10 consecutive sessions (LITT)
- Minimum of 10 sessions over a 10-week period following ‘Support First’ procedure



# Birmingham Code of Conduct – local arrangements

- **Ongoing unauthorised absence - When:**
  - a pupil has had a minimum of 10 sessions of unauthorised absence within a period of 10 school weeks;
  - a school or place of alternative educational provision has completed the relevant attendance procedure and;
  - despite that procedure being followed by the school/alternative provision, there has been little improvement in the pupil’s attendance; or a notice to improve has been issued but there has been no improvement over a six-week period.
- **Unauthorised Leave in Term Time - When:**
  - a pupil has been taken on an unauthorised “leave of absence” from school (code G) or a place of alternative educational provision for minimum of 10 continuous sessions (five days) and;
  - the school or place of alternative educational provision have followed the relevant local authority legal intervention process, a penalty notice may be issued.



# Questions for schools prior to ELIT referral

- Is support appropriate in this case?
  - If yes, schools are expected to continue with the existing support without a penalty notice or request a Notice to Improve if that support is not working or is not being engaged with. A penalty notice can be issued if either has not worked.
  - If no, for example a holiday in term time, a penalty notice should be issued subject to the other conditions below.
- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would further support or one of the other legal interventions be more appropriate?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010 such as where a pupil has a disability?



# Questions for the LA on receipt of a referral

*Is it in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?*

- If the answers to the school and LA questions is yes, a penalty notice should be issued in line with the National Framework
- If not, another tool should be used including additional support



# Penalty notices – other cases

- National framework allows consideration of a penalty notice where the threshold has not been met
- Rare!
- For example;
  - Parent deliberately avoiding the national threshold by taking several or repeated term time holidays below the threshold
  - Repeated absence for birthdays, weddings etc.
  - Long weekends with a parent who lives in a different area
- Repeated instances not one-off events – check before referring





# Two penalty notice limit and escalation in cases of repeat offences

- Penalty notice – out of court settlement
- Intended to change behaviour
- Repeated penalty notices – not working to change behaviour
- September 2024
- 2 penalty notices issued to same parent
- Same child
- Within rolling three-year period – starts when first PN is issued
- 2<sup>nd</sup> notice – only at higher rate (no discount)



# Penalty notices

- From 19<sup>th</sup> August
- £160 to each parent for each child if paid within 28 days
- Reduced to £80 if paid by day 21
- Second penalty notice
- £160 with no discount
- Third penalty cannot be issued to same parent within a three-year period
- Alternative action
- Prosecution
- After three years likely to continue escalation
- Check with local LAs if they have also taken action



# Birmingham

- Support First – replacing FAST-track but similar
- September 2024
- Leave in term time (legal) process - updated
- Training available from September 2024
- Children with attendance of concern
- From September 2024 start support from the beginning
- Offer of early help etc
- Early Help Service – similar offer to this year

More information in the new academic year



# Summary

- Working together to improve school attendance – reminder
- Chapter 6 – ‘Attendance legal intervention’
- Prosecution under 1996 Education Act
- Education (Penalty Notices) (England) Regulations 2007 (as amended)
- Support first
- Parenting Contracts
- Notice to Improve
- National framework for penalty notices
- Birmingham’s Code of Conduct
- Procedures



# Questions?





@BhamCityCouncil



@birminghamcitycouncil



@birminghamcitycouncil



birmingham.gov.uk

