

# **The Royal Borough of Kensington and Chelsea Education Welfare Service**

## **Legal Policy**

The Royal Borough of Kensington and Chelsea has agreed and published an Enforcement Policy that describes the Royal Borough's intent and attitude to its use of enforcement powers. All officers of the Council are expected to adhere to the principles of good enforcement contained therein and be aware of the expectations regarding: standards of service; officers exhibiting an open and helpful approach; the proportionality of actions taken and response; consistency in applying enforcement action; compliance with general legislation including Human Rights Act 1998 and Data Protection Act 1998; individuals' rights to make complaints under the Council's general complaints procedure or departmental complaints procedures and their rights of appeal and redress.

The following document underpins the Council's Enforcement Policy in the specialist area of work of the Education Welfare Service which discharges the Council's enforcement duties regarding school attendance.

## **School Attendance**

The Education Welfare Service's main task is to help schools improve pupils' attendance and reduce unnecessary absence and truancy. Education Welfare Officers (EWOs) of the Education Welfare Service (EWS) work closely with schools, children and their parents, and with other statutory and voluntary agencies. The EWS promotes, encourages and enforces regular school attendance of compulsory school age children who are resident in the Royal Borough of Kensington and Chelsea, the Local Education Authority (LEA).

Every school in the Royal Borough has a named Education Welfare Officer (EWO). EWOs are in frequent contact with their assigned schools and they visit at agreed intervals and meet with Headteachers and school staff to discuss any pupils who may have school attendance problems or other welfare issues. Schools have a duty under regulations to make referrals to the EWS regarding pupils who have poor attendance records and also they should refer any pupil who has ceased to attend school without an authenticated reason or who has apparently moved area without this being verified.

EWOs regularly inspect schools' attendance registers and check they are being properly maintained in line with good practice and relevant regulations including the Education (Pupil Registration) Regulations 1995. This process also helps to identify pupils with irregular attendance or where there are suspicious absence patterns. Some schools have an EWO based in the school as part of multi-disciplinary team concentrating on improving attendance, punctuality and behaviour.

The EWS responds to referrals from schools in Kensington and Chelsea and also from a large number of schools in other authorities where Kensington and Chelsea resident children are enrolled. The EWS also receives referrals from a variety of other sources concerning children's irregular school attendance or truancy or where it appears children are not enrolled at a school. These include: self-referrals by parents or children, referrals from independent schools, referrals by other statutory agencies such as social services or the police; referrals may also come from members of the public and organisations in the local community.

In most cases, where parents cooperate with an EWO's interventions and a short-term plan is agreed with the school, this usually leads to an improvement in the child's attendance at school. However, there are some instances where longer-term intervention is required or where parents do not cooperate fully in addressing persistent school attendance issues. Legal measures and court proceedings may be necessary in this minority of cases. It is important that any legal action is undertaken as a properly considered and planned measure that should neither be approached too swiftly, before the case can be properly assessed, nor too late as a last resort when other interventions have failed. The decision to take legal action should form part of a planned casework approach and as with all other casework interventions should be kept under regular review.

The EWS is also responsible for approving and issuing work permits and performance licences for children and chaperone licences on behalf of the Council. There are special byelaws, legislation and specific regulations relating to each of these areas and infringements may also be prosecuted under the relevant legislation but this area of work falls outside the remit of this policy, which is concerned specifically with school attendance issues.

The purpose of this document is to provide a statement of policy for EWS legal action concerning school attendance offences and to describe the specific legal measures available in such cases. Guidance is given as to when it may be appropriate for the EWS to apply such measures on behalf of the LEA.

### ***Parents' Duties***

Under Section 7 of the Education Act 1996, a parent of any child of compulsory school age (between 5 and 16) must ensure that the child receives efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. In practice this means a child should be provided with education either through regular attendance at school or otherwise. For example, a parent may elect to educate a child at home. Once a child is registered at a school, it is the parents' duty to make sure that the child attends school regularly and punctually.

## **Legal Measures**

### ***School Attendance Orders***

The EWS is responsible for discharging the Royal Borough's statutory duties as the Local Education Authority (LEA) to ensure parents who are resident in the LEA's area provide their children of statutory school age with a suitable education. Where a child is not attending school and where the parent has arranged no other suitable education provision, the LEA is obliged under Section 437 of the Education Act 1996 to issue a School Attendance Order requiring the parent to register the child at a named school.

### ***Education Supervision Orders***

Before deciding whether to prosecute parents in the criminal courts for school attendance offences under the Education Act 1996, LEAs should first consider whether an application under Section 36 of the Children Act 1989 to the Family Proceedings Court for an Education Supervision Order (ESO) would assist in securing suitable and regular education for a child. The LEA may apply for an ESO either instead of, or as well as, prosecuting the parents. The welfare of the child is the paramount concern for proceedings under the Children Act and the ESO will only be granted if the court considers that the ESO is likely to be productive i.e. having an order is better than not having one. Section 1 (3) of the Children Act 1989 provides the Welfare Checklist that courts are required to have regard to in their deliberations.

An ESO is normally granted for a year but may be extended upon application to the court for up to three years. An ESO may be discharged by the court after considering an application from either the child or the parent/s or the LEA. Unless the term has expired or it has been discharged earlier, an ESO ceases to be effective at the point a child exceeds compulsory school age.

The parent/s and the child are separate parties to the proceedings and the court will consider representations from both. Parents in these proceedings must only be those who have or have formally acquired full legal parental responsibility as defined under the law. In order to apply for an ESO the LEA will produce a detailed report to present to the court with information about the child's background and the circumstance that warranted the ESO application. It will describe the work already done with the family and what further plans and work the order is required to support.

If the court grants an ESO, it means that the LEA has to appoint a supervising officer (usually an EWO) for the ESO. The LEA assumes responsibility for advising and assisting the parent/s and child to ensure that the child's education progresses. Parents' duties under Sections 7 and 444 of the Education Act 1996 in securing education and regular school attendance are replaced by the duties to comply with the directions of an ESO.

The supervising officer of the ESO may issue directions to the parent/s and child in order to support the objectives of the ESO. Parents have a duty to comply with reasonable directions and could be prosecuted if they persistently fail to comply. If the subject of the ESO i.e. the child, fails to comply with directions of the supervising

officer then the matter should be referred to social services to investigate and consider care proceedings.

### ***Education Act 1996 Prosecutions***

If a parent is failing to ensure their child's regular attendance at a school where the child is a registered pupil, the LEA may prosecute the parent in the magistrates court for an offence under the Education Act 1996, Section 444 (1). The most important evidence as specified in Section 556 for a prosecution is an extract of the school attendance register recording the level of the child's attendance and the headteacher must certify its accuracy. To avoid conviction, a parent would have to prove that the child was prevented from attending regularly by reason of sickness or other unavoidable cause. The child would not be taken to have not attended school on any day if the child had leave from the school to be absent on that day or on a day set apart for religious observance. Or the parent would have to prove that either the child was of no fixed abode in which case special rules apply or that the school was not within walking distance (for a child under the age of eight this would be 3.218688 km, for a child over eight, 4.828032 km) and that the Local Education Authority had not made suitable arrangements regarding transport or boarding accommodation or an alternative school. The parent in these proceedings may have full parental responsibility or it may be a person who is acting as a parent and has care of the child.

A successful prosecution under the Education Act 1996, Section 444 (1) may result in each parent being liable upon summary conviction of each offence to a Level 3 fine (current maximum £1,000) and the court may additionally impose a Parenting Order as described in the Crime and Disorder Act 1998 amended by the Anti-social Behaviour Act 2003. The court may also direct the LEA to apply for an Education Supervision Order in the Family Proceedings Court.

The LEA may now also prosecute for a higher offence under the Education Act 1996, Section 444 (1A). For a prosecution under Section 444 (1A), which was inserted as an amendment by the Criminal Justice and Court Service Act 2000, it is necessary to prove the irregular school attendance and parental knowledge of the child's failure to attend school. A warrant may be issued for a parent to attend court and upon summary conviction a parent would be liable to a Level 4 fine (current maximum £2,500) or to imprisonment for a term not exceeding three months.

### ***Penalty Notices***

Section 444 of the Education Act 1996 was further amended by the Anti-social Behaviour Act 2003 to permit either an authorised officer of an LEA or a headteacher or a police constable to issue a Penalty Notice where the officer has reason to believe that an offence under Section 444 (1) has been committed. The payment of a penalty by a parent discharges his or her liability to conviction for the offence. When a Penalty Notice is issued, a parent may not be prosecuted for the period to which it relates nor until its expiry. The power to issue Penalty Notices is a recent one and their application is subject to a separate protocol.

## ***Parenting Orders and Contracts***

The Anti-social Behaviour Act 2003 included further amendments to the Crime and Disorder Act 1998 in respect of Parenting Orders by virtue of Sections 20 to 22. Section 19 introduced the option of using a Parenting Contract when a child is excluded from school or is failing to attend school regularly. These are recent initiatives and their application is yet to be fully determined.

## ***Decisions regarding legal action***

Before the EWS instigates legal action, an assessment is made in each and every case and this includes careful consideration as to whether the proposed action is:

- a. evidence based and such evidence meets the proof standard required
- b. justified as appropriate to the particular circumstances of the case
- c. timely in its execution
- d. likely to be successful in progressing the case including returning the child to regular school attendance
- e. in the child's best interests particularly where other services are involved
- f. in the public interest

EWOs consider the suitability for legal intervention from their first contacts with families and their initial case assessments are regularly reviewed in this respect, particularly in persistent and intransigent cases of poor school attendance. EWOs normally raise in regular supervision sessions with their managers any proposals about legal action on cases. This takes place when it is assessed that a case has reached an appropriate point for legal intervention as part of the casework plan. There is a process of discussion and decision making in supervision sessions between an EWO and his or her supervisor about individual casework progression. This includes an ongoing assessment as to the suitability of legal intervention and where appropriate deciding a timetable for action. It rests with the Principal Education Welfare Officer or Deputy to authorise or not any recommendations for legal action. The Council's Legal Services are only instructed in respect of instigating proceedings with prosecutions, ESO applications, School Attendance Orders or other legal action with explicit EWS managerial approval.

The EWS is fully supported by the LEA's Legal Services in the use of legal measures including prosecutions in the Magistrate Court and ESO applications in the Family Proceedings Court. Legal Services offer advice and guidance relating to proper use of such legal action to ensure it is in line with the relevant legal requirements and important recommendations such as those governing court proceedings as well as broader ones such as those relating to Human Rights and Equal Opportunities. The Legal Services Department is responsible for the process and conduct of the Council's legal proceedings and its officers present the cases in court with EWOs acting as witnesses where required.

Prior to court action there will have been extensive preparation by the EWO who is the case officer. This will include linking with the officer from legal services and with schools in order to ensure that any summonses or papers have been issued and that

all relevant evidence and statements are properly presented and available for the court hearing.

Each school attendance case is different and so each requires its own casework approach and plan. This includes an individual assessment for suitability for legal intervention.

The following factors are considered in determining the appropriateness of either ESO applications or prosecutions under the Education Act 1996 for either the lower level or for the higher level offence:

1. the assessed causes of the lack of regular school attendance and the seriousness of the offence
2. the previous responses by the school and the EWO in order to address the problems
3. the age of the child and the parent's influence over the child
4. the home circumstances and the health and welfare of the child
5. the parent's attitude to EWS intervention and the parent's level of cooperation with EWS including whether the parent's are perceived as either actively assisting or passively condoning further unnecessary absence from school
6. the previous history of the family regarding school attendance and EWS involvement
7. the assessed potential for an ESO to work i.e. the likely responses by the child and by the parent to further plans and directions under an ESO
8. the likely effect of prosecution upon the case and upon other children's school attendance in the family or upon other parents and pupils of the school or within the wider community
9. the views of any other agencies that are involved with the child or parents such as social services
10. the defences or mitigations that the parent may provide to court.

If, over and above those casework actions and plans already tried, having an ESO in place with a clear and structured plan backed up by directions, has a likely chance of being effective, then an application for an ESO should be considered.

However, if a parent has failed to cooperate fully with an EWO in addressing his or her child's lack of regular school attendance, then prosecution is usually more appropriate. Where it can be demonstrated that a parent knows about his or her child's continuing poor school attendance and yet the parent still fails to act to address the problem and return the child to school, then prosecution for the higher offence is justified.

***The following legislation, policies and guidance inform the EWS in respect of enforcement action:***

Anti-social Behaviour Act 2003

Children's Act 1989

Crime and Disorder Act 1998

Criminal Justice and Court Services Act 2000

Crown Prosecution Service guidance

Data Protection Act 1998

Education Act 1996 (as amended)

Ensuring Regular School Attendance – Guidance on the Legal Measures available to Secure Regular School Attendance Department for Education and Skills 2003

Freedom of Information Act 2000

Human Rights Act 1998

Police and Criminal Evidence (PACE) Act 1984

Royal Borough of Kensington and Chelsea Data Protection Statement

Royal Borough of Kensington and Chelsea Enforcement Policy

Royal Borough of Kensington and Chelsea EWS Practice Standards and Guidance Notes 2005

The Education (Pupil Registration) Regulations 1995

United Nations Convention on the Rights of the Child 1990