

## Appendix 1 to Milton Keynes Enforcement Policy in relation to non-school attendance and Code of Conduct for the issue of Fixed Penalty Notices

### Alternative Sanctions

#### 1) Education Supervision Orders (ESO)

- An Education Supervision Order (ESO) makes the Local Authority (LA) responsible for educating a child of compulsory school age. LAs may apply for an ESO instead of, or as well as, prosecuting parents for poor attendance or failure to obey a School Attendance Order.
- Under s447 Education Act 1996, the Council must consider whether it would be appropriate to apply for an ESO and should explain to Court the basis of its decision. Where this is not clear, the Court can require the Council to consider an ESO and inform the Court of its decision within 8 weeks.
- ESOs should ensure that a child receives full-time education suited to their age, ability, aptitude and any special educational needs. It also ensures that both parent and child are given sufficient support and guidance, and a supervising officer is appointed to work with them. ESO proceedings are "family proceedings" as defined by the Children Act 1989 meaning the child's welfare is the main consideration.
- An ESO normally lasts one year or until the young person reaches 16, but may be extended for up to 3 years by application within 3 months of the expiry date.

#### 2) Fixed Penalty Notices (FPNs)

Please see the Council's specific Code of Conduct for the issue of FPNs, which are available alongside other sanctions. It should be noted however that if a parent pays an FPN, they cannot then be prosecuted for irregular attendance during any of the period to which the FPN related.

#### 3) Parenting Orders (PO)

In all prosecutions the Council must consider whether it is in the best interests of the child to ask the Court to impose a PO. The Order consists of directions from the Court regarding steps the parent should take to ensure the child's regular attendance and will also include a period of parenting support sessions. If a PO is felt appropriate, the Authorised Officer will prepare a draft document in readiness for the court. If it is not deemed appropriate, the section 9 statement must outline the Council's reasons. Valid reasons might include the fact the child is in their last years at school with no younger siblings, or that the parent has failed to engage voluntarily with other interventions and there is no indication that an Order will affect any change. The Order can only be made if the parent attends court in person.

#### 4) Cautions

- The Council may issue a Caution to a parent rather than prosecute them. Decisions about cautions will be made by the Authorised Officer and the Head of Service, based on the circumstances of the case including:
- The severity of the offence: if the attendance is at a level where an FPN might be considered but has not previously given cause for concern, or where there are other extenuating factors, then a Caution may be appropriate.
- Where a young person is in Year 11 and it is not felt to be in the public interest to pursue a prosecution and a FPN is felt not to be appropriate due to the timescales for payment; this will normally be around the spring/summer terms.
- If it is felt that the child is vulnerable or at risk; e.g. the child may be known to Children's Services and be a "child in need", in "need of protection", or at risk of sexual exploitation or prosecution may lead to increased risk of harm to the child. In these cases the Authorised Officer will consult with relevant professionals.
- Where there are family risk factors; e.g. absence may be in part attributed to domestic violence, drug/alcohol abuse, mental health issues, or homelessness, and it is felt that any legal intervention may increase the problems.

#### 5) School Attendance Order (SAO)

Under s443 of the Education Act 1996, a parent commits an offence where they are the parent of a child of compulsory school age who is not registered at a school, and the parent has failed to comply with the requirements of a School Attendance Order. The parent may have a statutory defence if the Notice and Order have not been served.

Points to Prove:

- (1) The child was of compulsory school age,
- (2) The parent failed to comply with the Order,
- (3) That the parent was served with Notices and the Order under s437(1) & s438, with 51 days to respond to each Notice.

SAO Procedure:

- The parent is served with a Notice under s437(1) of the Act and given 15 days in which to advise the LA of the arrangements being made for their child's education either through schooling or by Elective Home Education (EHE).
- If after 15 days they give no indication that the child is on the roll of a school or they have not elected to provide Elective Home Education, a Notice is served under s438 advising them that the LA intends to name a particular school in a School Attendance Order.

- After 15 days a School Attendance Order is served requiring the parent to register the child at the school named in the Order.
- Once the s438 Notice has been served, the process must continue through to the Order itself even though the parent may have registered the child at a school in the interim. It is a matter of discretion as to how long the parent is given to comply with the Order but legal proceedings should not be unduly delayed.
- If a child is the subject of a Statement of Special Educational Needs naming a particular school, then it will not be necessary to serve the s438 Notice.

NB. This offence relates to a child who is not registered on a school roll and where there is no evidence that they are receiving a suitable education. This offence commonly occurs where a parent does not get the school of their preference and then refuses to send the child to the allocated school, or where a family moves into the area but makes no arrangements for their child's education. Similarly where a parent opts for Elective Home Education (EHE) and fails to satisfy the LA that their child is receiving a suitable education, then this offence is likely to be relevant. If a parent is prosecuted under s443 and still fails to secure a place for their child at the school named in the Order, the process must start afresh before a further prosecution can be pursued.

## 6) Addendum

### Content of Notes of an Investigation

Our assessment of the problems that preclude regular school attendance, together with subsequent action plans need to be focused and the notes need to reflect the detail of interview with all parties or the result of enquiries made. The circumstances of the interview or the result of an enquiry may be inadmissible because it was not in the presence and hearing of the person prosecuted but such recorded information remains valuable to the prosecutor and may assist in the cross examination of a defendant - evidence of rebuttal. It is therefore crucial that arising from all meetings there is: -

- A record of the reasons for specific periods of absence and any difficulties that preclude regular attendance. The inquiry should not be addressed in general terms. We need to establish the alleged reason for each separate period of absence. To subsequently say that the parent/carer always says when their child is off school the child is ill has little assessment or evidential value.
- A record of the action the parent/carers have taken to ameliorate the problem. If they have taken little or no action enquire as to why this is so. Remember s7 Education Act 1996 places upon them a clear responsibility in regard to their child's education. Do not blandly advise parent/carers of their legal responsibility if they are endeavouring to overcome a legitimate difficulty. To do so suggests incoherent and illogical action on our part. If, however, it is necessary to do so please ensure you record what you said. Also, a formal warning letter should be sent to parent/carers at the earliest opportunity reminding them of their legal responsibilities.

- iii. A record of the action plan or Parenting Contract stipulating specific action to be taken by the child, the parent/carers, the school, the Children & Families Practice worker and any other agency or any other service. Be specific in your notes as to what these are. There have been occasions when sometime after an event, through a lack of detail in notes, the LA has had profound difficulties when preparing a statement in detailing the previously agreed strategies. Strategies put into place to support attendance must be meaningful, and measurable. For example, if you request that a parent/carer accompanies their child to school then you must have some measure in place to establish to what extent they complied with the request - it is not sufficient to say that it was infrequent unless you have the information to show that this was so.
- iv. A record of any allegation, or grievance disclosed. It is important that you report the matter to the competent authority and in due course note their response. Again such information is critical in proceedings when parent/carers complain that their concerns have not been addressed.
- v. The record of the PACE Interview. By conducting a PACE interview and asking the parent to sign and/or amend it at the meeting means that a parent/carer cannot later claim in court things that were not addressed at the PACE meeting. This ensures all issues are dealt with; also, the court will be skeptical of the parent/carers mitigation if it has not previously been notified to the LA.

Note: On each occasion that you meet with parent/carers and a child it is important that you establish or re-affirm any difficulties precluding attendance - do not assume that any previously disclosed problem remains current.

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Document ref M16218