



TRAFFORD
COUNCIL

Trafford Council

School Attendance

Policy

Version 4.4

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1. Introduction

- 1.1 Trafford Council is the local education authority within Trafford and as such is the prosecution authority with respect to offences related to non-school attendance created by the Education Act 1993. The policy has been informed by the relevant statutory guidance, which came into effect in August 2024¹.
- 1.2 This policy has been produced and adopted by Trafford Council and is applicable to all schools within Trafford. Whilst independent schools are not obliged to follow this policy, they are strongly advised to do so.
- 1.3 Whilst schools are expected by good practice and statutory guidance to have their own policies and procedures to ensure regular school attendance and to provide guidelines as to when authorised periods of absence will be granted, those policies should be consistent with the local education authority's policy set out within this document.
- 1.4 This policy incorporates the Council's previous policy and code of conduct on the use of penalty notices as set out within section 444A of the Education Act 1996

2. Scope

- 2.1 This policy sets out the Council's general approach to the management of regular school attendance and in particular the approach the Council will adopt towards the use of:
 - i. Attendance Contracts
 - ii. Penalty Notices
 - iii. Education Supervision Orders
 - iv. Prosecution for relevant offences
- 2.2 The law entitles every child of compulsory school age to an efficient, full-time education suitable to their age, aptitude, and any special educational need they may have. It is the legal responsibility of every parent to make sure their child receives that education either by attendance at a school or by education otherwise than at a school.
- 2.3 In order to gain the best education, children must attend school every day that the school is open, except in a small number of allowable circumstances such as being too ill to attend or being given permission for an absence in advance from the school.
- 2.4 This policy sets out the obligations that fall upon parents, the school and the Council in managing regular school attendance.

¹ [Working together to improve school attendance: Guidance for maintained schools, academies, independent schools, and local authorities](#) – Department of Education

3. The Role of the School

- 3.1. The School Attendance (Pupil Registration) (England) Regulations 2024 makes a number of amendments to the regulations to enable local authorities in England to implement their legal duty under section 436A of the Education Act 1996 and make arrangements to identify, as far as it is possible to do so, children missing education (CME).
- 3.2. All schools must notify the local authority within five days of adding a pupil's name to the admission register at a non-standard transition point. Schools must enter pupils on the admission register on the first day that the school and a person with control of the pupil's attendance have agreed, that the pupil will attend the school. If a pupil fails to attend on the agreed or notified date, the school should undertake reasonable enquiries to establish the child's whereabouts and consider notifying the local authority at the earliest opportunity.
- 3.3. All schools must notify Trafford Council when they are about to remove a statutory school age pupil's name from the school admission register. When removing a pupil's name, the notification to the Council must include: (a) the full name and address of the pupil, (b) the full name and address of any parent with whom the pupil normally resides, (c) at least one telephone number of the parent, (d) if applicable, the pupil's future address, the date the pupil will start living there, destination school and when the pupil began or will begin to attend that school, and (e) the ground under which the pupil's name is to be removed from the admission register - applicable only to non-standard transition point.
- 3.4. Schools must make reasonable enquiries to establish the whereabouts of the child jointly with the local authority, before deleting the pupil's name from the register if the deletion is under regulation 9(1), sub-paragraphs (h) or (i) of the School Attendance (Pupil Registration) (England) Regulations 2024.
- 3.5. Schools must monitor pupils' attendance through their daily register. Schools should agree with the Council's Pupil Absence Officers the intervals at which they will inform the Council of the details of pupils who fail to attend regularly or have missed ten school days or more without permission. Schools should monitor attendance closely and cases of irregular attendance should be referred to a Pupil Absence Officer in accordance with the threshold criterion set out below.
- 3.6. Where a pupil has not returned to school for ten days after an authorised absence or is absent from school without authorisation for twenty consecutive school days, the pupil can be removed from the admission register following reasonable enquiries made jointly with the Council's Pupil Absence Officers. This only applies if the school does not have reasonable grounds to believe that the pupil is unable to attend because of sickness or unavoidable cause.
- 3.7. Schools must arrange full-time education for excluded pupils from the sixth school day of a fixed period exclusion.
- 3.8. Schools have a safeguarding duty in respect of their pupils, and as part of this should investigate any unexplained absences.

- 3.9. Each school must advise parents and pupils of the requirement to attend school regularly, i.e. the pupil must attend school on each day that the school is open unless the pupil is too ill to attend or has been given permission not to attend in advance of the absence. It is recommended that the school provides parents and pupils with that information prior to registration, or registration and at least annually as part of an annual newsletter or report.
- 3.10. Where schools are able to deploy tools and sanctions to encourage and support regular attendance at school, schools are expected to act in accordance with the threshold criterion when determining what action should be taken in any individual case.
- 3.11. The tools and sanctions available to schools without the intervention of the local authority are:
- i. The issue of an attendance concern letter
 - ii. The holding of a meeting with parents and agreeing an attendance contract.
 - iii. The provision of support through pastoral care, mentoring or counselling.
 - iv. The issue of warning letters.
 - v. The making of home visits.
 - vi. The issue of a penalty notice warning letter.
 - vii. The issue of a penalty notice.

4. The Role of the Council

- 4.1. Trafford Council will support schools through the publication of guidance within this policy and by providing access to those sanctions in respect of non-school attendance which can only be conducted by the Local Education Authority.
- 4.2. Trafford Council expects schools to have utilised the tools available to them before seeking the intervention of the Council and save in exceptional circumstances, will only take the level of intervention set out within the threshold criterion set out within this policy.
- 4.3. An exception to that presumption is where a child is being kept out of school after a penalty notice has been issued in respect of them.
- 4.4. The sanctions and legal interventions available to the Council to encourage and support regular attendance at school are²:
- i. Making a School Attendance Order – section 437 of the Education Act 1996.
 - ii. Making an application for an Education Supervision Order – section 447 of the Education Act 1996.
 - iii. Criminal prosecution – for the offences of:

² Note: the power to make a parenting order pursuant to section 8(1)(d) of the Crime and Disorder Act 1998 referred to in some commentaries was repealed by the Sentencing Act 2020 with effect from the 1st December 2020.

- Failing to comply with a school attendance order – section 443 of the Education Act 1996.
- Failing to ensure the regular attendance of a child at school – section 444(1) Education Act 1996.
- Knowingly failing to ensure the regular attendance of a child at school – section 444(1A) Education Act 1996.

5. Publicity

- 5.1. In any legal proceedings, whether civil or criminal, the legal services officer with conduct of the file shall ensure that the appropriate order is made to ensure that nothing is published in any report of the proceedings which is capable of identifying the child who is the subject of the proceedings or the school where they are a registered pupil.
- 5.2. In any proceedings, other than criminal proceedings, section 39 of the Children and Young Persons Act 1933 enables the court to make an order prohibiting the publication of anything designed to identify the name, address, school, photograph or anything else designed to lead to the identification of a child who is involved in or subject to the proceedings.
- 5.3. In criminal proceedings, section 44 of the Youth Justice and Criminal Evidence Act 1999 prohibits the identification of any child involved in an investigation in respect of any criminal offence, in whatever capacity being identified. No order is required.
- 5.4. Section 45 of the Youth Justice and Criminal Evidence Act 1999 enables the court to make an order preventing anything being published that is likely to lead to the identification of a child concerned in the proceedings.

6. Threshold Criteria

- 6.1. The aim of this guidance is to ensure that Trafford Council complies with the legislative framework, statutory guidance and has a fair, equitable, objective and transparent approach for intervening and commencing legal proceedings in respect of irregular or nonattendance of pupils at school.
- 6.2. The guidance also seeks to ensure that the Council only commences legal proceedings where there is sufficient evidence to do so and in circumstances where the appropriate court rules, practice directions and statutory guidance allow.
- 6.3. Trafford Council cannot commence legal proceedings unless it is satisfied that the commencement of those proceedings is expedient for the promotion of the interests of the inhabitants of their area³. As the Council has a statutory duty to ensure the regular attendance of pupils at school, that test will usually be satisfied in education cases on the basis that the Council must act in the best interests of the child concerned, which are likely to be best served by ensuring the child's attendance at school. There may, however, be some cases where the particular circumstances of the child or other circumstances surrounding the child, that would render the commencement of any or certain types of proceedings oppressive or counter

³ Local Government Act 1972, s222

productive. In these cases this test will not be met in respect of certain types or all types of legal proceedings in respect of that child, even though the threshold set out within this guidance may otherwise have been passed.

- 6.4. Prosecutions can only be commenced for any offence where there is sufficient evidence to provide a realistic prospect of conviction (the “evidential test”) and where it is in the interests of justice to commence the proceedings (the “public interest” test).
- 6.5. The “evidential request” requires the prosecutor to be satisfied that sufficient evidence exists to prove each element of the offence being considered and to have satisfied themselves that no statutory defence is available to the defendant.
- 6.6. The “interests of justice” test requires the prosecutor to be satisfied that prosecution is in the public interest. There is a considerable overlap in this test and the general test the Council must apply to the commencement of any type of legal proceedings.
- 6.7. Specific guidance on the elements of each relevant offence and other rules specific to criminal proceedings are set out within Appendix A.

Intervention Model

- 6.8. The following intervention sets out a graduated response to non-attendance which should be followed in every case.
- 6.9. Progression through each intervention stage is designed to promote attendance.
- 6.10. Entry levels should be determined by either the level of non-attendance over a four-week period or the assessed vulnerability of the child and/or their family. The time required to complete each level of intervention is a matter of discretion for the school and is likely to be informed by the level of engagement demonstrated by the child and their parents and the level of any improvement or regression in attendance rates.

Level 1 - Low Level Late / Irregular / Non-Attendance	
Attendance between 90% and <100% over four weeks	Child / family needs being met by universal services
Support Interventions	<ul style="list-style-type: none"> • School to contact parent to determine reason for pupil’s absence on first day of absence and expected date of return. • Attendance and monitoring process to identify when absence or punctuality becomes a concern. • Support from the school’s own attendance officer through telephone calls, letters, emails, and home visits. • Praise and reward scheme for children entering level one from any higher level. • Parents to be offered access to other sources of support, if necessary, for example signposting via Trafford Directory.
Legal Interventions	<ul style="list-style-type: none"> • In cases of parental non-engagement, absences should be unauthorised, pupil attendance should be closely monitored, and a warning letter sent reminding parent of legal responsibility.

Level 2 - Medium Level Late / Irregular / Non-Attendance	
Attendance between 80% and <90% over four weeks	Child / family may require or would benefit from additional input or support from an agency or agencies
Support Interventions	<ul style="list-style-type: none"> • Identifying pattern of absence • School meeting with parents • Individual attendance plan • Request for advice from Trafford Pupil Absence Team • Request for medical evidence • Involvement from school nursing team • Emotionally based school non-attendance (EBSNA) toolkit • Family help assessment / involvement of Trafford Team Together • In-school pastoral and mentoring support and counselling • Home visits • Individual healthcare plan • Referral to external support services / alternative provision such as the Medical Education Service • Referral to Trafford Virtual School for children with a social worker • Referral for specialist assessment (e.g. SEND / CAMHS / EP)
Legal Interventions	<ul style="list-style-type: none"> • Notice to improve. • Attendance contract

Level 3 - High Level Late / Irregular / Non-Attendance	
Attendance below 80% over four weeks	Child / family are experiencing multiple or complex needs. They are struggling to effect change without the support and intervention of services.
Support Interventions	<ul style="list-style-type: none"> • As at Level 2
Legal Interventions	<p>When all attempts to engage with the family at levels 2 and 3 have failed, referral to Pupil Absence Team for:</p> <ul style="list-style-type: none"> • penalty notice to be issued by Trafford Council. • prosecution in the absence of the penalty being discharged within 28 days. • consideration of Education Supervision Order (ESO)

Unauthorised Absence after Request for Leave of Absence Refused	
10 sessions or more	Any level of child / family vulnerability
Legal Interventions	<ul style="list-style-type: none"> • Headteacher requests penalty notice to be issued by Trafford Council. • Prosecution in the absence of the penalty being discharged within 28 days.

Safeguarding	
Any Level of Attendance	Child / young person is at risk of or suffering significant harm and is in need of help and protection. Has a high level of unmet and complex needs requiring statutory interventions.
Interventions	<ul style="list-style-type: none"> • Immediate referral by school, Pupil Absence Team or other concerned agency to Children’s Services. • Children’s services to conduct an immediate assessment of need or a multi-agency assessment under Children’s Act 1989, s17 as appropriate.

- 6.11. Safeguarding and promoting the welfare of children and young people is everybody’s business. Poor attendance can be a vital warning sign of safeguarding issues concerning a child or young person. Safeguarding concerns should be referred immediately to Trafford First Response in line with local safeguarding procedures.
- 6.12. Further guidance as to the issue of a Penalty Notice is given within Appendix A.
- 6.13. Where cases are referred for legal intervention that does not involve criminal proceedings, please refer to Appendix B.
- 6.14. Where cases are referred for prosecution, please refer to Appendix C.

7. Persistent Late Attendances

- 7.1. Persistent late attendance at school causes disruption to the child’s education and those of their peers whose concentration is likely to be adversely affected by the late arrival of the child into class.
- 7.2. Government guidance suggests that registers should be kept open for 30 minutes from after the beginning of the registration period, but individual schools have the discretion to vary that period and their policy should be made available to parents within the school’s attendance policies.
- 7.3. When a pupil persistently arrives late to school, investigations should take place to determine the reason, and support offered where appropriate to rectify the situation.
- 7.4. Where the arrival time is after the close of registration and investigations show that there is not an acceptable reason, the offence of failing to cause a child to attend school regularly is complete and prosecution for an offence contrary to section 444(1) of the Education Act 1996 may be considered or, as a direct alternative to prosecution, the issue of a Penalty Notice.

8. Children Missing Education

- 8.1. Schools have a safeguarding duty in respect of their pupils, and as part of this should investigate any unexplained absences as part of their safeguarding policies. These investigations form part of the steps that can be taken to prevent a young person becoming a child missing from Education (CME). The Department for Education definition of CME is a child of compulsory school age who is not a registered pupil at a school and is not receiving a suitable education otherwise than at school.

- 8.2. Schools must monitor pupils' attendance through their daily register. Schools should agree with Trafford Council the intervals at which they will inform the Council of the details of pupils who fail to attend regularly or have missed ten school days or more without permission. Schools should monitor attendance closely and address poor or irregular attendance. It is important that pupils' poor attendance is referred to a pupil absence officer at the earliest possible opportunity.
- 8.3. The School Attendance (Pupil Registration) (England) Regulations 2024 make directions as to how Trafford Council implement's its legal duty under section 436A of the Education Act 1996 and make arrangements to identify, in so far as possible, children missing education.
- 8.4. All schools must notify the local authority within five days of adding a pupil's name to the admission register at a non-standard transition point. Schools must enter pupils on the admission register on the first day on which the school has agreed, or been notified, that the pupil will attend the school. If a pupil fails to attend on the agreed or notified date, the school should undertake reasonable enquiries to establish the child's whereabouts and consider notifying the local authority at the earliest opportunity.
- 8.5. Schools must notify Trafford Council when they are about to remove a statutory school age pupil's name from the school admission register. When removing a pupil's name, the notification to the local authority must include: (a) the full name and address of the pupil, (b) the full name and address of any parent with whom the pupil normally resides, (c) at least one telephone number of the parent, (d) if applicable, the pupil's future address, the date the pupil will start living there, destination school and the pupil began or will begin to attend that school, and (e) the ground under which the pupil's name is to be removed from the admission register - applicable only to non-standard transition point.
- 8.6. Where a pupil has not returned to school for ten days after an authorised absence or is absent from school without authorisation for twenty consecutive days, in accordance with regulation 9(1) sub-paragraphs (h) and (i) of the School Attendance (Pupil Registration) (England) Regulations 2024 respectively, the pupil can be removed from the admission register. Prior to deleting the pupil's name from the register under either of these grounds, the school must not have reasonable grounds to believe that the pupil is unable to attend because of sickness or unavoidable cause. In addition, schools must make reasonable enquiries to establish the whereabouts of the child jointly with the local authority. The pupil's name can be deleted from the register after reasonable enquiries have either failed to identify the whereabouts of the child or they have succeeded but it is agreed that there are no reasonable grounds to believe that the pupil will attend the school again, taking into account any reasonable steps they could take (either jointly or separately) to secure the pupil's attendance.

APPENDIX A – Penalty Notice Code of Conduct

1. The purpose of this local code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Trafford Council. The code sets out the arrangements for administering penalty notices in Trafford Council and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant regulations and the Department for Education’s national framework for penalty notices as set out in the [‘Working together to improve school attendance’](#) guidance.

Consultation

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools.

Legal basis

3. Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, AP academies, and certain off-site places as set out in section 444A(1)(b) of the Education Act 1996.
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
5. A penalty notice can only be issued by an authorised officer of Trafford Council upon the request of the school.
6. The national framework for penalty notices is published in statutory guidance ‘Working together to improve school attendance’. It provides further national guidance on the operation of penalty notice schemes for school absence in England.
7. A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. Penalty notices will usually be issued to the parent or parents with day-to-day responsibility for the pupil’s attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

Rationale

8. Research published by the Department for Education found pupils with higher attainment at KS2 and KS4 had lower levels of absence over the key stage compared to those with lower attainment.
9. For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.
10. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance, only progressing to legal enforcement as a last resort. The aim is that the need for legal enforcement is reduced by taking a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.
11. The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
 - support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
 - they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

When may a penalty notice for absence be appropriate?

12. When the national threshold has been met. When a school becomes aware that the national threshold has been met, they must consider whether a penalty notice can and should be issued or not. The national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks⁴, with one of, or a combination of the following codes:
 - a) code G (the pupil is absent without leave for the purpose of a holiday),
 - b) code N (the circumstances of the pupil's absence have not yet been established),
 - c) code O absence without justifiable reason (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
 - d) code U late arrival after the register has closed (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

When a pupil has been excluded or suspended and is found in a public place:

⁴ A school week means any week (Monday to Sunday) in which there is at least one school session. The 10 school-week period when the national threshold applies may span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

Section 103(3) of the Education and Inspections Act 2006 renders a parent of a pupil who has been excluded from school liable to conviction for an offence where that pupil is found in a public place during school hours during the first five days of the exclusion or within any period specified within a notice of exclusion issued by the head teacher to the parent of that pupil in accordance with section 104 of that Act.

13. If in an individual case the local authority believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met. This might apply, for example, where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events.
14. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be the most appropriate tool. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, the local authority will consider applying for an Education Supervision Order through the Family courts and may also consider a prosecution for irregular attendance under S444(1) or S444(1)A Education Act 1996.
15. For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn.

Key considerations prior to the issue of a Penalty Notice for school absence

16. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

In cases where support is not appropriate (for example, for holidays in term time), consider on a case-by-case basis:

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would 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?
- (For local authorities only) Is it in the public interest to issue a penalty notice in this case given the local authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?

In cases where support is appropriate, consider on a case-by-case basis:

- Has sufficient support already been provided? Sufficient support by the school will usually include those strategies outlined in the Trafford graduated approach such as the examples below:
 - School meetings with parents
 - Individual attendance plans
 - Attendance contract
 - Request for advice from Trafford Pupil Absence Team
 - Request for medical evidence
 - Involvement from school nursing team
 - Emotionally based school non-attendance (EBSNA) toolkit
 - Family help assessment / involvement of Trafford Team Together
 - In-school pastoral and mentoring support and counselling
 - Home visits
 - Individual health care plan
 - Referral to external support services / alternative provision such as the Medical Education Service
 - Referral to Trafford Virtual School for children with a social worker or who have previously had social worker involvement.
 - Referral for specialist assessment (e.g. SEND / CAMHS / EP)

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would 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?
- (For local authorities only) 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 answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

Where appropriate the views of other agencies involved with the child will be taken into consideration.

Notice to Improve

17. A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a notice to improve should usually be sent to give parents a final chance to engage in support. An authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

18. In cases other than leave of absence in term time when the threshold has been met, the school will be responsible for issuing a notice to improve setting out the recommended improvement period which will be between 3 and 6 weeks depending on each individual case.
19. Schools may use the Trafford Notice to Improve template (available from www.traffordeducation.co.uk/attendance). They must ensure that the notice includes:
- Details of the pupil's attendance record and details of the offences.
 - The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996.
 - Details of the support provided so far.
 - Opportunities for further support and the option to access previously provided support that was not engaged with.
 - A clear warning that a penalty notice may be issued or prosecution considered if attendance improvement is not secured within the improvement period.
 - A clear timeframe for the improvement period of between 3 and 6 weeks.
 - Details of what sufficient improvement within that timeframe will look like.
 - The grounds on which a penalty notice may be issued before the end of the improvement period.
20. During the monitoring period there must either be an acceptable increase in engagement with interventions available to the pupil and/or parent or be a significant improvement in the pupil's attendance with no unauthorised absences from school during this period.
21. Should there not be sufficient improvement and further unauthorised absences take place during this period, a Penalty Notice may be issued.

How Schools can Submit a Penalty Notice Request

22. A school should submit a request for a penalty notice no later than 6 school weeks following the last unauthorised absence for the period for which the penalty notice is to be considered.
23. All referrals for penalty notices must be submitted through the school portal at www.trafford.gov.uk/educationportal
24. All requests for penalty notices must be accompanied by a current certificate of registration signed by the headteacher or headteacher's designated officer. Penalty notice requests for irregular attendance other than for leave of absence in term time must be submitted with a copy of the Notice to Improve, and the portal checklist setting out details of support strategies attempted must be completed.

25. The LA will make a decision as to whether proportionate support has been provided, and whether that support has worked or not.
26. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. The LA will do this by sending a report at the request of the school.
27. Where pupils move between local authority areas, Trafford Council can be contacted on pupil.absence@trafford.gov.uk to find out if penalty notices have been issued previously.
28. Where pupils attend school in **Trafford** but live in a different LA, Trafford Council will in cases other than unauthorised leave of absence in term time contact the home LA to enquire if the family are known to services in that area and to consider what level of support may be appropriate for the family.

Two Penalty Notice Limit and Escalation in Cases of Repeat Offences.

29. Only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period and any second notice within that period is charged at a higher rate.
30. The first penalty notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
31. A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.
32. A third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those 3 years, alternative action should be taken instead. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions.

Making Payments

33. If the penalty is not paid by the end of the 28-day period, the LA must decide either to prosecute for the original offence to which the notice applies or withdraw the notice.
34. Parent(s) can only be prosecuted if 28 days have expired, and full payment has not been made. There is no right of appeal by parents against a penalty notice.

35. If the penalty is not paid in full by the end of the stated time period, the LA must decide either to prosecute for the original offence to which the notice applies or withdraw the notice.

36. Payment must be made in full. The legislation does not allow for payment by instalments.

Withdrawing Penalty Notices

37. Trafford may only withdraw a penalty notice where:

- it should not have been issued i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed, or
- it has been issued to the wrong person, or
- it contains material errors.

APPENDIX B – Civil and Family Legal Interventions

Introduction

1. This section of this document deals with the statutory interventions that can be adopted by the Council acting within its own powers or by application to the courts for civil or family court orders which compel parental engagement, but which fall short of a criminal conviction with all the adverse consequences such a conviction might have.
2. Whereas in criminal proceedings the burden of proof is “beyond reasonable doubt” or “so that the court is sure” the burden of proof in civil and family proceedings is “on the balance of probabilities”, in other words whether “it is more likely than not”.
3. Where civil or family proceedings involve a child, the Court must also only make orders that are in the best interests of the child.
4. The various statutory interventions are set out below.

School Attendance Orders

5. Section 437 of the Education Act 1996 provides that if it appears to the local authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they must serve a school attendance order on the parent(s) requiring them to satisfy the local authority that the child is receiving such education within 15 days from the date of service of the notice.
6. The form of the notice is specified by the schedule to the Education (School Attendance Order) Regulations 1995 and requires the parent(s) to cause the child to attend the school specified in the order.
7. Non-compliance with the order is an offence contrary to section 443 of the Education Act 1996 – see Appendix C below.

Attendance Contracts

8. Section 19 of the Anti-social Behaviour Act 2003 provides for parenting contracts to be made in a number of circumstances, which include at section 19(2) the power to enter into a parenting contract where a registered pupil is failing to attend regularly at school or other place where the Council has made provision for the child’s education. In this policy, in line with the Working Together to Improve School Attendance guidance, an attendance contract means a parenting contract entered into under section 19(2) of the Anti-social Behaviour Act 2003.
9. An “attendance contract” is an agreement between either the governing body of the school or the Council and the parent(s) of the registered pupil in which the parent agrees to comply with such conditions as are specified in the agreement and the Council or governing body agree to provide such support as is specified in the agreement.
10. The conditions that may be imposed within the contract include conditions that are designed to improve the child’s attendance at school and may include requirements to attend counselling or advice sessions.

11. Although described as a “contract” the agreement does not create any contractual liability to either party.
12. There is no right of appeal against the making of an attendance contract.
13. There is no sanction for breach of an attendance contract, although where there was default by the parent either the school or the Pupil Absence officers are expected to reconsider what further intervention may be required.

Parenting Order

14. Section 20 of the Anti-social Behaviour Act 2003 enables a magistrates’ court to make a parenting order where:
 - a. A pupil has been excluded from school temporarily or permanently, or:
 - b. If it appears to the local authority that the pupil has engaged in behaviour which would warrant the exclusion of the pupil, even if the school has a policy of not using its powers to exclude pupils.
15. A parenting order is an order which lasts for a period not exceeding twelve months and requires the parent to comply with such conditions as may be specified in the order and which may require the parent to attend counselling for a period of up to three months.
16. Court rules⁵ require that applications for parenting orders be commenced by way of a complaint laid before the magistrates’ court. Where such an order is required, the case should be referred to legal services with a civil statement(s) setting out the relevant behaviour, date and period of exclusion or reasons why the pupil has not been excluded together with the conditions sought and the reasons for them.
17. Applications for such orders should be submitted to legal services as soon as possible after the behaviour or exclusion has occurred to enable legal services to seek an urgent hearing at court.

Education Supervision Orders

18. An education supervision order is an alternative manner to provide formal legal intervention without criminal prosecution. Current central government guidance, to which the Council must have regard, requires the Council to consider making an application for an education supervision order in all cases before considering prosecution. In deciding whether to progress to an education supervision order, the school and Council should have exhausted voluntary support and be clear that making the order would be beneficial for the pupil and parent.
19. When it is clear that a parent is fully cooperating with the school and the Pupil Absence Officers in trying to ensure their child's regular school attendance and it is the child who is resisting these attempts, the Local Authority may apply to the Family Law Court for an Education Supervision Order in respect of the child under Section 36 Children Act 1989.

⁵ [The Magistrates' Courts \(Parenting Orders\) Rules 2004](#)

20. An Education Supervision Order is a court order that formalises the plan drawn up by the Pupil Absence Officers in partnership with the child, parents and school as well as other agencies if appropriate, to bring about a return to regular school attendance.
21. Where such an order is sought, the matter must be referred to legal services with civil statements setting out the relevant circumstances and the terms sought within the order together for the reasons for them.

APPENDIX C – Criminal Proceedings in Education Cases

1. This section of this document sets out the rules that apply to the issue and use of criminal proceedings in education cases. The Education Act 1996, Education and Inspections Act 2006, Children Act 1989 and Sentencing Act 1975 creates the following offences:
 - Failing to comply with a school attendance order – section 443 of the Education Act 1996.
 - Failing to ensure the regular attendance of a child at school – section 444(1) of the Education Act 1996.
 - Knowingly failing to ensure the regular attendance of a child at school – section 444(1A) of the Education Act 1996.
 - Allowing an excluded pupil to be in a public place during school hours – section 103 of the Education and Inspections Act 2006.
 - Persistently failing to comply with directions under an Education Supervision Order – Schedule 3 of the Children Act 1989.
 - Breaching a Parenting Order – section 375 of the Sentencing Act 2020.
2. In the case of failing to comply with a school attendance order, failing to ensure the regular attendance of a child at school or knowingly failing to ensure the regular attendance of a child at school, section 447(1) of the Education Act 1996 requires the Council to consider whether it would be appropriate to apply for an education supervision order instead of or in addition to commencing criminal proceedings.
3. Whenever a prosecution is requested by a Pupil Absence officer, the officer must provide a case file which includes:
 - All the evidence required to prove the case and rebut any defences.
 - A schedule of unused material.
4. Files must be submitted as soon as possible and at least 28 days before the expiry of the statutory time limit.

Time Limit

5. All of the offences referred to are summary offences which can only be tried in the magistrates' court and can only be commenced within six months of the date of the offence, or in the case of a continuing offence, to the last day upon which the offence was committed.
6. In order to comply with the time limit the prosecutor must lay an information setting out the identity of the prosecutor and the accused and providing the details before the court. In practice this means delivering, electronically or otherwise an information, an application for a summons and a draft summons within the period of the time limit. Templates of those documents are held by legal services.
7. The time limit applies to all criminal proceedings, including those commenced after a penalty notice has been issued. Therefore, where penalty notices are to be used it is

important that they are issued promptly so that the 28-day time period for payment expires in sufficient time to enable criminal proceedings to be commenced, if the penalty is not paid.

8. Provided that the information is laid within time, it is immaterial whether the first hearing of the matter is within or after the time limit has expired.

The Offences

Failing to Comply with a School Attendance Order

9. This offence is created by section 443(1) of the Education Act 1996. It requires the prosecutor to be able to prove that:
 - A school attendance order was made pursuant to section 437 of the Education Act 1996 – this should be proved by exhibiting the order.
 - That the school attendance order was served on the parent – which should be proved by producing a certificate of service demonstrating when and how the order was served on the parent.
 - That the parent has failed to comply with one or more of the terms within the order – this requires a statement from a Pupil Absence officer or other witness setting out what the breach was supported by documentary evidence which should be exhibited to the statement.
10. The offence is punishable by a fine of up to £1,000 (level three). There are no definitive sentencing guidelines.
11. On conviction, the court may direct the Council to apply for an education supervision order.
12. If the defendant is acquitted, the Court may discharge the school attendance order, however that does not prevent the Council issuing a further attendance order if it is appropriate to do so.

Failing to Ensure the Regular Attendance of a Child at School

13. This offence is created by section 444(1) of the Education Act 1996. It requires the prosecution to be able to prove that:
 - The child is of compulsory school age – evidence of which should be provided within a statement from the school attendance officer
 - The child is a registered pupil at the school - evidence of which should be provided within a statement from the school attendance officer
 - That the child has failed to attend school regularly – evidence of which should be in the form of a certificate of attendance signed by the head teacher of the school.
14. It is a defence to prove, on the balance of probabilities that:
 - That the child had been prevented from attending school because of illness or some other unavoidable cause.

- That the child had been granted leave of absence at the material time.
 - That the child had failed to attend school for a day set aside for religious observance.
 - That the local authority had a duty to make travel arrangements to take the child to and from school but had failed to do so.
15. The school attendance officer's statement should contain sufficient information to exclude all of the defences to the charge.
16. The offence is punishable by a £1,000 (level three) fine. The Sentencing Council has published [definitive sentencing guidelines](#).
17. A penalty notice can be issued in respect of this offence – see Appendix B

Knowingly Fail to Ensure the Regular Attendance of a Child at School

18. This offence is created by section 444(1A) of the Education Act 1996 and differs from the previous offence in that the prosecution must be able to prove that the parent knew that the child was failing to attend school regularly and failed to cause their attendance.
19. It requires the prosecution to be able to prove that:
- The child is of compulsory school age – evidence of which should be provided within a statement from the school attendance officer.
 - The child is a registered pupil at the school - evidence of which should be provided within a statement from the school attendance officer.
 - That the child has failed to attend school regularly – evidence of which should be in the form of a certificate of attendance signed by the head teacher of the school.
 - The parent of the child knew that the child was failing to attend school regularly, and failed to cause the child to attend school regularly – evidence of knowledge and a failure to cause the child to attend school may come from events which can be reduced to evidence in a witness statement or from the defendant's comments in an interview under caution.
20. It is a defence to prove, on the balance of probabilities that:
- That the parent had some justifiable case for not causing the child to attend regularly at school.
 - That the child had been prevented from attending school because of illness or some other unavoidable cause.
 - That the child had been granted leave of absence at the material time.
 - That the child had failed to attend school for a day set aside for religious observance.

- That the local authority had a duty to make travel arrangements to take the child to and from school but had failed to do so.
21. The school attendance officers statement should contain sufficient information to exclude all of the defences to the charge.
22. The offence is punishable by a £2,500 (level four) fine or to term of imprisonment not exceeding three months or both. The Sentencing Council has published [definitive sentencing guidelines](#).

Excluded Pupil Found in a Public Place

23. This offence is created by section 103 of the Education and Inspections Act 2006 and requires the prosecution to be able to prove, so that court is sure, that:
- The defendant is the parent of a pupil of compulsory school age – evidence of which should come in the form of a statement from the head teacher or pupil attendance officer.
 - That the pupil has been excluded from school on disciplinary grounds – to be evidenced within a statement from the head teacher or school attendance officer exhibiting the notice of exclusion.
 - That during the first five days of the exclusion or within the period of exclusion set out in the notice of exclusion signed by the head teacher, and within school hours, the excluded pupil was found in a public place – evidence of which to be provided by the pupil absence officer or constable who found the excluded pupil in a public place corroborated by CCTV or body worn camera footage where available.
24. For the purpose of this offence:
- 24..1. “public place” means any highway or any other place to which at the material time the public or any section of the public have access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 24..2. “school hours” means any time during a school session of the school referred to in subsection (1)(a) or during a break between sessions of that school on the same day.
25. It is a defence for the parent to prove on the balance of probabilities that that they had a reasonable justification for their failure to ensure that the excluded pupil was not in a public place – evidence to rebut such an assertion may require the parent to be interviewed under caution before any proceedings are commenced.
26. The offence is punishable by a fine of up to £1,000 (level three). There are no definitive sentencing guidelines.

Failing to Comply with an Education Supervision Order

27. This offence is created by Schedule 3 to the Children Act 1989. It requires the prosecutor to be able to prove that:

- An Education Supervision Order was made pursuant to section 36 of the Education Act 1996 – this should be proved by exhibiting the order.
- That the education supervision order was served on the parent – which should be proved by producing a certificate of service demonstrating when and how the order was served on the parent.
- That the parent has persistently failed to comply with directions given by the supervisor – this requires a statement from the supervisor or other witness setting out the persistent failures and supported by documentary evidence, which should be exhibited to the statement.

28. The offence is punishable by a fine of up to £1,000 (level three).

29. It is a defence for the parent to prove on the balance of probabilities that:

- they had taken all reasonable steps to ensure that the direction was complied with.
- the direction was unreasonable; or
- they had complied with a requirement included in a supervision order made with respect to the child or directions given under such a requirement and that it was not reasonably practicable to comply both with the direction and with the requirement or directions.

30. The supervisor's statement should contain sufficient information to exclude all the defences to the charge.

Persistent Breaches of a Parenting Order

31. This offence is created by section 375 of the Sentencing Act 2020. It requires the prosecutor to be able to prove that:

- A Parenting Order was made – this should be proved by exhibiting the order.
- That the Parenting Order was served on the parent – which should be proved by producing a certificate of service demonstrating when and how the order was served on the parent.
- That the parent failed to comply with any requirement included in the order or specified in directions by the responsible officer – this requires a statement from the responsible officer or other witness setting out the failures and supported by any documentary evidence, which should be exhibited to the statement.

32. The offence is punishable by a fine of up to £1,000 (level three).

Criminal Procedure

Interviews Under Caution

33. Interviews with a suspect are a useful method of gathering information as to a suspect's intentions and state of mind during the commission of an offence. In education cases an interview under caution is only likely to be needed in respect of the offence of knowingly failing to cause a child to attend school regularly, or where it is thought that the defendant may seek to rely on one or more of the statutory defences.
34. Interviews under caution must be conducted in accordance with procedures established by the Codes of Practice made under the Police and Criminal Evidence Act 1984. To ensure compliance, such interviews must be conducted by trained officers and be audio recorded.
35. Where an interview under caution takes place, a transcript of the interview must be submitted with the prosecution file and copies of the audio recording must be retained with an unedited original copy being made available to the defendant on request.
36. Where it is intended to conduct an interview under caution a letter calling the parent in to interview must be sent to or delivered to the parent of the child stating that:
 - The Council is not satisfied that the parent is causing the child to attend school regularly and that consideration is being given to prosecute the parent for an offence under section 444(1) or (1A) of the Education Act 1996.
 - The Council wishes to interview the parent under caution about the commission of that offence and to allow the parent to raise any defence to the proposed proceedings on which they intend to rely.
 - That the interview will be the subject of an audio recording.
 - That the defendant has a right to be legally represented by a solicitor or an accredited legal representative during the interview at their own expense, and;
 - That failure to attend the interview may result in the prosecution being commenced without further notice.
 - The date time and place where the interview will be conducted.
37. At the commencement of the interview the parties present must introduce themselves for the purposes of later transcription and the interviewing officer must:
 - Inform the suspect what they are being interviewed about by setting out the offence.
 - Reminding the suspect of their right to legal advice and if they are not legally represented asking them if they want to explain why they have decided not to have a legal representative present.
 - Ask the suspect if they are fit and well and ensure they have not consumed any alcohol or controlled drug that might impair their ability to be interviewed.

- Caution the defendant by saying “You do not have to say anything, but it may harm your defence if you do not mention anything when questioned which you later rely on in court. Anything you do say will be recorded and may be used in evidence”
- Explain the caution: “The first part means you have the right not to answer any of my questions. The second part means that if you are brought before the court and give evidence at your trial you may be asked why you did not answer questions or, if your answers to questions differ, why the answers are not the same and the court may decide what the reasons for those differences are. The third part means that the recording of this interview or a transcript of it may be used as evidence”.

38. At the conclusion of the interview the interviewing officer should give the suspect a notice setting out how they can obtain a copy of the interview, if they are brought before the court.

Retention of Unused Material

39. It is of the utmost importance and a legal requirement under the Criminal Procedure & Investigations Act 1996, that all documents, including emails which could either undermine the prosecution case or that might assist the defence are disclosed by schools at the time of the referral.
40. No action will be taken to progress a prosecution without a signed declaration by the Head Teacher that all information/material has been disclosed to legal services that could either undermine the prosecution case or assist the defence in the preparation of their case.
41. It is not possible to provide a definitive list of what such material might be, however it is likely to include any material that suggests the defendant could rely on any of the statutory defences referred to above.

Initiating Criminal Proceedings

42. In order to initiate criminal proceedings the Pupil Absence Officer in conjunction with the Head Teacher should determine whether, in their opinion and by reference to this policy, whether criminal proceedings are required.
43. The Pupil Absence Officer is responsible for compiling a case file which must include:
- A certificate of attendance signed by the Head Teacher.
 - A statement documenting the child’s age, the fact that the child is a registered pupil at the school, what other steps have been taken to attempt to secure regular attendance, what consideration has been given to applying for an education supervision order, any other relevant information and whether the parent has ever been issued with a previous fixed penalty or been convicted of any similar offence.
 - Any relevant exhibits
 - Any existing or previous court orders, made in respect of the child’s or a sibling’s attendance at school.

- All unused material and a declaration from the head teacher that all such material has been disclosed.
- Any requests for any ancillary orders.

44. On receipt of a case file, the Council's Legal Services Department will:

- Determine whether the request for prosecution is brought in time.
- Apply the evidential and public interest tests to determine whether the case is suitable for prosecution.
- If and only if the case is suitable for prosecution, prepare (1) an information (2) an application for summons and (3) a draft summons and submit the same to the Court. For the avoidance of doubt, no court fee is payable.
- On receipt of the returned summons, prepare a case summary and evidential bundle, a draft certificate of service and arrange for the same to be served by business support by first class post, together with a schedule of costs.
- Advise the school attendance officer/pupil absence officer of the date and time of the first hearing. Neither the school attendance officer, pupil absence officer nor any witness is required to attend at the first hearing.
- Arrange representation at the first hearing.

Single Justice Procedure (SJP)

45. The SJP allows defendants accused of summary-only, non-imprisonable offences, such as offences under 444(1) of the Education Act 1996, to be tried and sentenced by a single magistrate rather than by a bench of two or three in a court. The magistrate has the same powers as a traditional court to impose fines and any other necessary ancillary orders such as parenting orders and costs. Defendants will receive a notice explaining the offence and how to enter a plea. A parent can still choose to have the case heard in a court. Failure to respond to the notice within 21 days will result in the case being heard without the parent/carer's defence or mitigation being considered.

46. Trafford Council will only consider this process for offences under 444(1) of Education Act 1996 where the following apply:

First time offences where the level of unauthorised absences has not resulted in attendance below 85%.

When a parent/carer has failed to discharge liability for an offence by paying a penalty notice under s444 of the Education Act 1996 and the unauthorised absence has not resulted in attendance below 85%.

When a parent/carer has failed to discharge liability for an offence by paying a penalty notice under s444 of the Education Act 1996 and the unauthorised absence relates to late arrival after the school's register has closed.

47. Trafford Council will not consider use of SJP where there is persistent unauthorised absence or significant safeguarding or child protection concerns.