

EBSA: Fines and Prosecution

- Part of the EBSA Factsheet series



Please note: 'child' = 'child or young person'

If a registered pupil of compulsory school age fails to attend school regularly or when the school requires them to (i.e. during term time) the parent could be guilty of an offence under [section 444 of the Education Act 1996](#). There are 2 offences under this section:

1. Section 444(1) Education Act 1996– If the child is absent without authorisation then the parent is guilty of an offence. This is a strict liability offence i.e. all that needs to be shown is a lack of regular attendance. Sanctions can include a fine of up to £1,000.

2. Section 444(1A) Education Act 1996– an aggravated offence. If the child is absent without authorisation and the parent knew about the child's absence **and failed to act**, then the parent is guilty of an offence. Sanctions can include a fine of up to £2,500 and a prison sentence of up to 3 months.

There are some limited defences to these offences:

- The head teacher authorised the absence.
- The child could not attend because of sickness or 'unavoidable cause' in an emergency. (Stress arising from bullying, behavioural or mental health difficulties or a 'chaotic lifestyle' should **not** be considered an 'unavoidable cause' (Case Law).
- The child was absent on a day exclusively set apart for religious observance.
- The school is outside of the statutory walking distance of the child's home and the Local Authority has a duty to make travel arrangements in relation to the child under and has failed to discharge that duty.
- The child is not registered at the school and the parents are providing a suitable alternative education.
- The parents' trade or business requires them to travel from place to place.
- EBSA could be argued under sickness in point 2.

What sanctions can be given for non-attendance?

Where a child has failed to attend regularly at school **without authorisation**, (known as 'unauthorised absence') then you may be issued with a Fixed Penalty Notice (FPN) or court action may be considered, which can lead to a prosecution in the Magistrates Court or apply for an Education Supervision Order.

Unauthorised absence includes unauthorised holidays in term time, late arrival at school, and other absences which have not been agreed/authorised by the school. Legal intervention for attendance can only be used for pupils of compulsory school age and decisions should be made on an individual case by case basis.

Fixed Penalty Notices (FPNs) are issued per parent, per child and are an alternative to prosecution. They are generally issued where there have been at least 10 sessions of unauthorised absence from school within a recorded 10 school week period. However, there are some occasions where they are issued outside of these criteria.

It is generally the school's headteacher who decides to fine unauthorised absences from school by issuing a Fixed Penalty Notice. The headteacher then requests by a referral to the Local Authority for them to issue a fixed Penalty Notice on their behalf.

FPNs give the parent an opportunity to discharge their criminal liability by paying a fine of £160, which must be paid within 28 days or if paid within 21 days, the amount is reduced to £80 (as of Aug 2024).

There is no right of appeal against a Fixed Penalty Notice. If this is not paid, the Local Authority can proceed to prosecution or withdraw the notice. The Local Authority can also prosecute parents for non-attendance without issuing a Fixed Penalty Notice. Only the Local Authority can prosecute parents, and they must fund all associated costs.

I've received an FPN or Prosecution notice– What should I do?

Where your child struggles to attend school then it will be important to show that you have taken your responsibilities seriously:

- Keep a diary (daily if possible) of what you have tried and the result of the intervention(s). This should be used towards the evidence to show you are trying to meet your responsibilities under section 444(1) (1A) in trying to get them into school (even where those interventions have failed).
- Try and keep details of doctor and professional appointments, referrals as well as emails to and from school explaining the situation.
- Work with your child's school and the LA to discuss the reasons behind your child's absence and agree an action plan so that the right support can be put in place to help them to return to regular and consistent education, whether at school or otherwise.
- If your child is struggling to attend school due to EBSA and it has been accepted by the school, then make sure the school are marking any absences as 'authorised'. FPNs should only be issued for *unauthorised* attendance.
- Contact the 'Pupil Entitlement Team'. You will have chance to explain the reasons behind your child's absence (include any SEN or Mental Health Needs (diagnosed or not) and what you and the school have tried to help your child or young person to attend school.

I have received a summons to the Magistrates Court – what should I do?

You should seek the advice of a solicitor and check whether you qualify for Legal Aid. Some courts can provide duty solicitors, who may be able to advise and represent at a hearing, usually if there is a risk of imprisonment. **Please Note:** SENDIAS is unable to provide information or advice once a summons has been issued as the matter is then covered by criminal law and not education law.

Further information:

[WSCC School & Behaviour Webpages](#) including supporting pages. Link: <https://tinyurl.com/2rd35brz>

West Sussex [SEND Information, Advice and Support Service \(SENDIAS\)](#) have a website with several resources, including [guides and factsheets](#).

The [Local Offer](#) includes information on EBSA: www.local-offer.org



Service Statement

The role of the SENDIAS service is to ensure all parents, children and young people have access to impartial information, advice and support so they can make informed decisions related to their situation. Any information that is shared with the service is in confidence unless permission has been obtained to share this with any individuals, services and agencies that may be able to help in the circumstances. For more detail, view our [policies and privacy notice](#) on our website.

How to contact us: Tel: 0330 222 8555 / Email: send.ias@westsussex.gov.uk or cyp.sendias@westsussex.gov.uk (up to age 25) / Website: www.westsussexsendias.org

To view factsheet online and access all links: <https://tinyurl.com/btwbxzep>

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