

Advice and Guidance

Referring Unauthorised Absences to Herefordshire Council

JUNE 2021

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Introduction

Enforcement Team (Education)

Lorraine Ralph - Enforcement Officer

Louise Price - Enforcement Officer

Kathy Gundy - Technical Support Officer

Team email – locality@herefordshire.gov.uk

Anycomms + – Trading Standards

In order for Herefordshire Council to pursue any action for a pupil's unauthorised absence from school, a referral form must be completed. Although most referrals will be dealt with without the need for prosecution, sometimes Herefordshire Council will pursue legal action.

When you disclose relevant personal data to Herefordshire Council, Schedule 2 Part 1 Paragraph 2 of the Data Protection Act 2018 allows exemption from the GDPR if the disclosure is for the detection and prevention of crime or the prosecution of offenders.

As the data controller it is the responsibility of the school to make certain all information relating to parents/carers and pupils is accurate and up to date.

When corresponding with the parents/carers ensure the details on the letter match the details on the registration certificate.

You must inform us immediately if you become aware of any changes to the information you have provided on the original referral form. For example: address, telephone number, name etc.

The referral form and all accompanying documents must be sent by secure file transfer, **Anycomms +**, for the attention of Lorraine Ralph or Louise Price at Trading Standards. Please upload each document individually rather than one file.

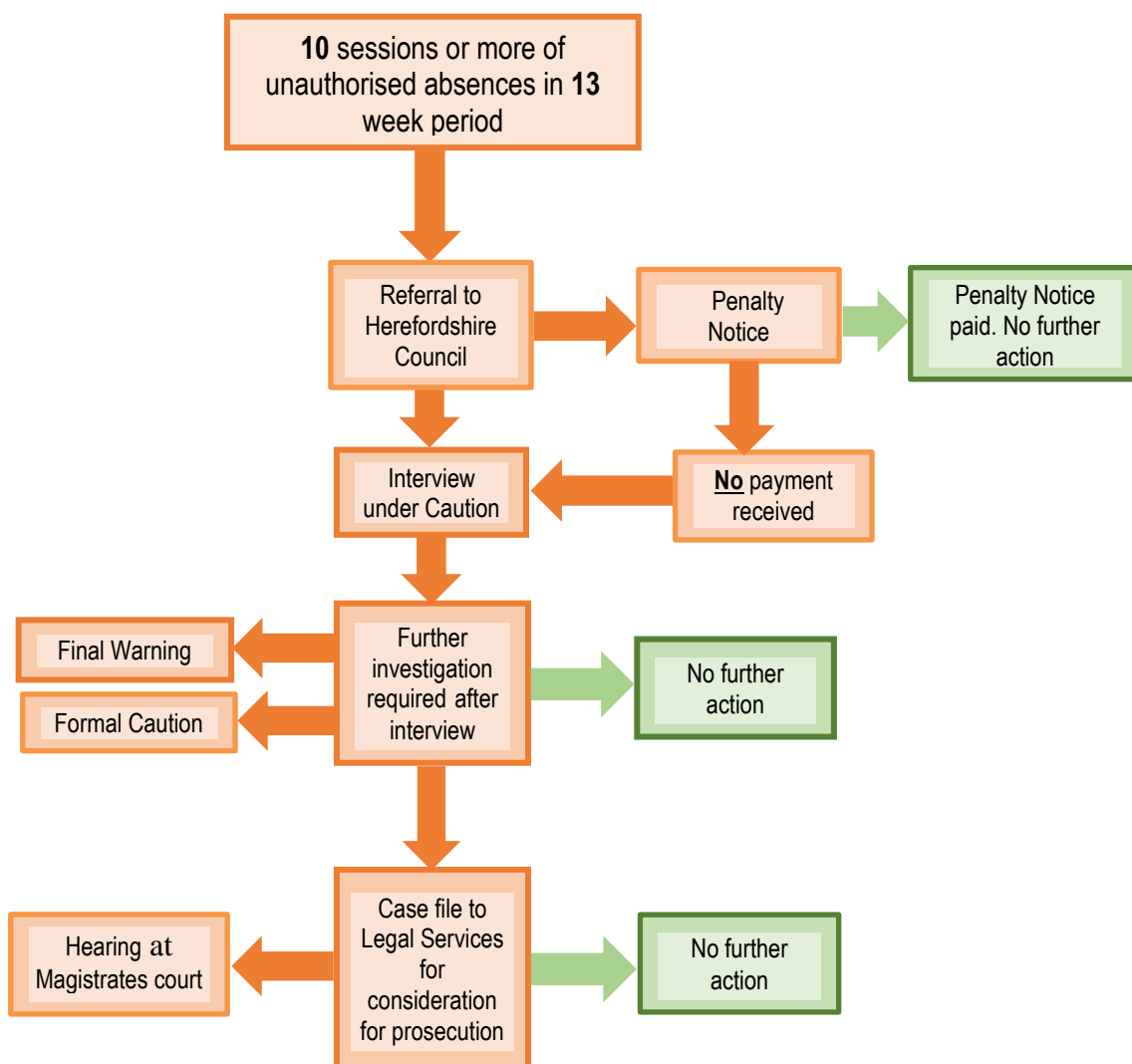
Time Line (When a Penalty Notice is issued for unauthorised absence)

All offences contrary to S444 (1) or (1A) of The Education Act 1996 have to be laid before the court within 6 months from the date when the offence was committed. The countdown begins from the first day of a pupil's unauthorised absence. See below.

Please be aware that the amount of time allocated to some actions is the minimum and the process may take longer.

- Unauthorised absence takes place
- School make a referral within 15 working days of absence **(21 days)**
- Enforcement team review referral and issue a penalty notice within 15 working days of receiving referral **(21 days)**
- The penalty notice is live for 28 days **(28 days)**
- Penalty notice not paid - interview letter sent to parents/carers within 7 working days **(9 days)**
- Interview reply expected within 7 working days **(9 days)**
- Enforcement team investigate following further information within 7 working days **(9 days)**
- Request and receive completed statements from witnesses within 15 working days **(21 days)**
- Enforcement team complete prosecution file within 5 working days **(7 days)**
- Trading Standards Service Manager reviews case within 5 working days **(7 days)**
- Legal Services review case within 5 working days **(7 days)**
- Legal administration team receive case file and create documents within 5 working days **(7 days)**
- File signed off by Director within 3 working days **(3 days)**
- Documents sent to court and parents/carers within 2 days **(2 days)**
- **Total 151 days = 5 months**

Unauthorised Absence Legal Process



Children's Wellbeing will be consulted at any stage in the process to ensure the action taken is appropriate

All stages of the investigation comply with the Crown Prosecution Service evidential and public interest tests

Referral Form

Complete one referral form per pupil. This applies to siblings and children living in the same household.

To complete the form:

Page one – fill in all of the details about the pupil and their parent/carers. This information needs to match the details on the registration certificate. Please remember the school is responsible for ensuring all details are correct.

The school and Herefordshire Council will need to decide who comes within the definition of “parent” in respect of a particular pupil. Generally, “parent” includes all those with day to day responsibility for a child. Section 576 of The Education Act 1996 states that this includes any person who is not a parent of the child but has legal “parental responsibility”, or any person who has care of the child. .

Page two – explain the reason for the referral including an overview of issues and details not provided on the front page. For example, are there parental language or literacy barriers? Include a link to the school attendance policy here if the attendance policy document is not included with the documentation.

Page three – complete the referrer details and date the form.

Remember to send copies of relevant documents, registration certificate and attendance policy with the completed referral form.

Upload each referral individually and upload each document separately using **Anycomms +**.

UNAUTHORISED ABSENCE REFERRAL FORM

S444 EDUCATION ACT 1996

It is important the Information provided is accurate and up to date. It is your responsibility to keep us informed of any subsequent changes after the referral has been made.

Name of pupil:	School:
D.O.B.	Year Group
First Language:	Male/Female
Child Protection Plan <input type="checkbox"/> Child in Need <input type="checkbox"/> LAC <input type="checkbox"/>	EHA <input type="checkbox"/> EHCP <input type="checkbox"/> OTHER (please state)

Parent/Carer details

Title (Mr/Mrs/Ms/Miss)		
Surname		
Forename (in full)		
Date of Birth if known		
Relationship to pupil		
Address		
Postcode		
Telephone number:		
Pupil resides with:		

Please explain the reason for the referral and attach the registration certificate, letter of referral to parents/carers and any other correspondence and evidence of support. Provide a link to your school attendance policy.

Please note that if this evidence is not attached your referral may be returned with a request for further information resulting in a delay in the process of the referral.

It is your responsibility to provide information in line with Data Protection Act 2018 and to keep us informed of any subsequent changes after the referral has been made.

Signature Date

Print name.....

Job title.....

Contact details.....

.....

Send via Anycomms to: **Louise Price or Lorraine Ralph, Trading Standards**
or post to: **Enforcement Officers (Education), Trading Standards, 8 St Owen's Street,**
Hereford, HR1 2PJ.

Essential Documents to Include with a Referral

Some of the documents referred to are generated by SIMS. If your school does not use SIMS please produce an equivalent document from your system.

- **Attendance** policy or link to the attendance policy
- **Registration certificate** – this is the school register which is a legal document. It is a vital piece of evidence and Herefordshire Council will not take action without a copy
- **Student marks** or other report documenting comments relating to the pupil
- **Letters** sent to parents/carers – a warning letter and a letter informing them of a referral to Herefordshire Council
- **Relevant correspondence** or contact from and to parents/carers. This might include letters, emails, transcripts of phone calls, text messages and minutes of meetings. (This is not an exhaustive list)
- **If** the referral is for reasons other than unauthorised term time leave please provide relevant evidence of support offered by the school to the child/family

IMPORTANT: We are unable to process any referrals without the documents listed above.

Attendance Policy Guidance

The school attendance policy is an important document when it comes to improving school attendance. Attendance policies are individual to each school and are the school rules. You are asking the parents and children to adhere to these rules.

The aim is for everyone to know what the school rules are and where to find them. The attendance policy should be easy to locate on the school website. It is worth stating that a hard copy of the policy is available from the school office.

The school attendance policy or a link to the attendance policy must be submitted as part of a referral to Herefordshire Council.

When a referral is received the evidence including the attendance policy are reviewed to establish there have been clear breaches of the rules as written in the policy. The location of the policy is also verified to ensure it is accessible by parents/carers.

Please find below points to consider when reviewing your school attendance policy.

- Use simple language and avoid using jargon. This helps to make the policy accessible
- The policy is for parents/carers. Avoid including too much information relating to internal procedure. You can always have an additional internal policy for school staff
- Avoid using percentage attendance targets if possible. Instead emphasise that “*children should attend school every day that the school is open*” or that “*children should aim for a school attendance of 100%*”. If you choose to include percentage attendance targets, Herefordshire Council will use that figure as the benchmark and will not take legal action if a child’s attendance is higher
- Set out the times of the school day; the start and the end of the day and registration times. Be clear about the time the school registers close. It is important to highlight that any attendance after the registers have closed will be coded as late and unauthorised
- When referring to Herefordshire Council in the policy, do not state that specific action will be taken. Please advise parents/carers that Herefordshire Council may take legal action
- The policy should not include any of Herefordshire Council’s information i.e. penalty notice leaflets. This information is subject to change and is only applicable if Herefordshire Council issue a penalty notice

- Each school has their own rules regarding how parents/carers submit an absence request for consideration. Ensure it is clear that it is the head teacher or delegated senior staff who make decisions regarding the authorisation of absences
- Do not give specific examples of circumstances when term time leave may be authorised but state that all absence requests will be considered on an individual basis
- There may be occasions when children are absent from school due to illness or medical appointments. Clearly inform parents/carers what they should do in these circumstances and include possible consequences if they fail to comply with these expectations i.e. the absence will be unauthorised
- The policy should also inform parents/carers what will happen if they don't report their child absent i.e. phone calls, home visits. These checks should be in line with the school's safeguarding policy. You may want to link them.
- School's must also ensure that their policy is kept up to date with the latest legislation and government guidance regarding school attendance

We are unable to process any referrals without an up to date attendance policy.

If we raise a concern relating to the content of your school's attendance policy it is important that you are aware that if school choose not to make amendments this may affect our ability to act upon referrals you make to our service.

Registration Certificate

The registration certificate is a legal document that records the daily attendance of each individual pupil. This document is a key piece of evidence and will be used in all actions taken by Herefordshire Council. A referral will not be considered without a registration certificate.

What is recorded on the registration certificate and how accurately it is recorded will be instrumental in any decision made by the Enforcement Officers, (Education).

Registration is taken twice a day, once for the morning session and once for the afternoon session and a code or mark is entered on each occasion.

Absences should be recorded using the correct registration codes. Although all codes create a picture, Herefordshire Council will only take action if **unauthorised** absence codes have been recorded.

Unauthorised codes:

G – Unauthorised family holiday

O – Unauthorised absence

U – Late after close of registration

N – No reason yet provided for absence (For the purpose of our legal action this code is not counted as an unauthorised absence and must be amended to show either a present or absent code)

From the date of the warning letter sent to parents/carers by the school, there must be a minimum of **10 sessions** of **unauthorised** absence recorded on the registration certificate within a **13 week** period.

Before making a referral please check that the information on the registration certificate is accurate and up to date. As well as the appropriate codes it is essential that the name and date of birth of the pupil, the name of the parent/carer and their current address and contact details are recorded correctly.

The Enforcement Team, (Education), must be informed if codes are changed after a referral has been made. Changes to the registration certificate may affect the action taken by Herefordshire Council.

Important Information to Include when Writing Letters

Before school's refer to Herefordshire Council regarding poor attendance, it is important that they have attempted to communicate and engage with the families first.

We would also expect schools to send parents/carers a penalty notice warning letter when there have been 10 or more unauthorised absences over a 26 week period.

Within our pack we have included an example of a warning letter. This is an example only and each school may want to add further information specific to them. The example does present the minimum information that needs to be shared with the parents/carers. The information in the example must be included in your warning letter.

The warning letter will be the first stage of the legal process so it is important that the wording is accurate. It is also extremely important that the letter is dated as this information will be required should further legal action be taken regarding poor school attendance.

It is best practice to send each parent/carer a letter but if they are living at the same address then we will accept one letter to the address. The letter must be addressed to both parents/carers. We would also recommend that the letters are sent via royal mail rather than handed over in person. If you do hand deliver or hand the warning to the parent/carer in person you must record the time/date this occurred. If the parents/carers live at different addresses then they should each have their own letters sent to them.

It is the schools responsibility to ensure that the details on the warning letter are accurate. You are the data controller and need to ensure that the details you have for parents/carers are correct i.e. the address details are correct and you have the parent's full name. If at any point after the referral is made you become aware that any of the details are inaccurate, you must inform us immediately.

There is nothing stopping schools from sending other letters prior to the warning letter. The information above is relevant for those letters too. The aim is to make sure parents/carers are fully aware of the concerns around their child's attendance and that legal action could occur if they fail to acknowledge or address it.

Once the school has sent out the warning letter to the parents/carers the school should seek to make a referral to Herefordshire Council once a further 10 unauthorised absences have occurred. There must be at least 10 unauthorised absences within a 13 week period **after** the date of the letter. Once this threshold is met, the school should send out a further letter informing parents/carers that they are being referred to Herefordshire Council for possible legal action. It is important that you do not specify what action will be taken as this may be different once we review the referral.

This procedure should be referred to in the school's attendance policy. The referral to Herefordshire Council is related to the parents/carers not adhering to the school rules.

Schools should note that once the parents/carers are referred to Herefordshire Council, the legal process has started.

Warning Letter Example

DATE

Dear **xxxxxxx**

Re: xxxxxxxxx (DOB)

I am writing to inform you that **CHILD** has **XX** sessions of unauthorised absence from school. As parent/carer for **CHILD** as per the definition in section 576 of the Education Act 1996 it is your responsibility to ensure **CHILD** attends school regularly and on time.

We want to see an improvement in **CHILD's** attendance. Should **CHILD** continue to accumulate further sessions of unauthorised absence then we will consider referring you to Herefordshire Council who may issue a penalty notice or initiate legal proceedings against you under the Education Act 1996 (Section 444).

Yours sincerely

Referral Letter Example

DATE

Dear **xxxxxxx**

Re: xxxxxxxxx (DOB)

We wrote to you on DATE regarding the concerns we had for CHILD's level of school attendance. You were informed that should CHILD continue to accumulate unauthorised absences you would be referred to Herefordshire Council.

The level of CHILD's unauthorised absence is such that we are now referring the matter to Herefordshire Council who may consider taking legal action against you under the Education Act 1996 (section 444).

If you would like to discuss this further please contact me at school.

Yours sincerely

Statement Writing

What is a statement?

A statement is a written, factual record of your actions, interventions and support in relation to a child's attendance at school. Personal opinions or hearsay should not be part of a statement.

All witnesses must write their own personal statements, they could be required to stand before the court under oath and confirm that they have written their statement and the facts are true and in their own words

Why do I have to write a statement?

A member of school staff will often be the main or only case holder/worker. There is an expectation that someone from the school will write a statement as they hold the evidence.

If more than one person from the school has worked with the family/pupil then more than one statement may be needed.

The head teacher will always be required to provide a statement.

Questions to ask yourself when writing a statement

- Who are you writing the statement about?
- When were the absences and over how long a period?
- Where has the 'action' taken place?
- Why was the child not in school? What reasons have been offered by the parents/carers?
- How did you contact, support the child and parents/carers?

Why are statements important?

- The majority of offences contrary to S444 of The Education Act 1996 are heard in Hereford Magistrates Court through the Single Justice Procedure (SJP)
- The SJP means a case is heard without the need for anyone to attend court. The cases are dealt with by the Court on the papers alone
- A person who has made a statement may never appear in court or be given the opportunity to give a full account of the work that has been undertaken
- The **only** way a magistrate is able to judge the facts is through written witness statements and exhibits

There are circumstances when a case may be heard in court and witnesses called to give evidence:

- If a parent/carer elects to have their case heard in court
- If a parent/carer pleads not guilty
- If the offence is aggravated, S444 (1A), as this may result in a custodial sentence

Statement Writing Tips and Guidance

Statements need to be presented in a consistent layout. Here are some tips and guidelines.

- You will be provided with a statement template. The first paragraph contains all the details that identify you, the parents/carers and the pupil. As it is a template you must fill in the appropriate details
- The body of the text should be in Arial 11pt, **double** line spacing with **no** paragraphs
- The statement must be signed in two places on the first page, (top and bottom). All subsequent pages should be signed once at the bottom of the page. The first page should also be dated
- If more than one page is required the following should be typed at the top of each new page:-
CONTINUATION OF STATEMENT OF INSERT YOUR NAME
- When using names for the first time in a statement use the full name and insert in brackets how you will refer to him/her throughout your statement. For example, Mrs Jane SMITH, ('Mrs SMITH')
- Always write the last name in capital letters
- Avoid abbreviations – many magistrates will not know them
If a full name or group has been used at an early stage in the statement then an abbreviated form may be used later if it has been referenced. For example, 'Early Help Assessment, (EHA)'
- An exhibit referred to in the statement, (a letter for example) needs to be referenced as follows, 'I produce the letter as exhibit LR/01' – use your initials and number accordingly, (initials/exhibit number). All exhibits must be signed and dated
- Recount the facts in chronological order
- A statement should be compiled from your own notes, not those of others
- Read the statement through carefully
- Correct any typographical and factual errors
- Check it is signed and dated
- Keep a copy of your statement

Remember, by signing the statement you are committing yourself to it being true. As such if it is later proved that information in the statement is untrue you may have broken the law.

(Criminal Procedure Rules, r. 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

Age of Witness: Over 18

Occupation of witness: Insert your job title here

Dated the day of 20

Signed (witness):

I am **insert your job role here** at **insert your school's name and address here**, ('the school'). This statement is made with reference to **insert child's full name here**, ('**insert the child's first name here**'), (**insert child's date of birth here**), who is currently a year **insert child's year group here** pupil at the school and is the son/daughter of **insert the full name/s of parents/carers here**, ('**insert the name of the parent/carer here if you intend to refer to the parent/carer by another or shortened name in the statement**') of **insert address of parents/carers**.

:Signed

STATEMENT OF WITNESS

*(Criminal Procedure Rules, r. 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)*

STATEMENT OF (name of witness): John TEST

Age of Witness (If over 18 enter "over 18"): Over 18

Occupation of witness: Head of House, City School

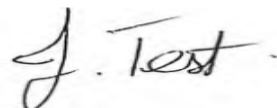
Dated the 22 day of March 2019

Signed (witness):



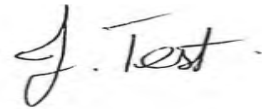
This statement (consisting of 1 page) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

I am the Head of Blue House at City School, City, XX1 1XX, ('the school'). This statement is made with reference to Thomas EXAMPLE, ('Tom'), (01/01/2007), who is currently a year 7 pupil at the school and is the son of Mr Don EXAMPLE, ('Mr EXAMPLE') and Mrs May EXAMPLE, ('Mrs EXAMPLE'), of 100 Toy Town Way, City, XX2 2XX. I have looked after Tom's pastoral care since September 2018. On 22 October 2018, Tom was absent from school. We received no explanation for his absence. First day calling procedures were followed as detailed in Tom's comments report. I produce a copy of the report as exhibit JT/01. On 22 October 2018, I received an email from Mrs EXAMPLE at 21:14, explaining that Tom was away on holiday and would not be in school that week. Mrs EXAMPLE stated that she had made a genuine mistake as the half term had fallen later than she had expected. I produce a copy of this email as exhibit JT/02. The school term dates for 2018/2019



CONTINUATION OF STATEMENT OF JOHN TEST

were provided to all year 6 students prior to their transfer to City School in the summer term 2018, if not before. The term dates are also listed on the schools website well in advance of the start of the academic year. I produce a copy of these dates as exhibit JT/03. The school attendance policy states parents contemplating a planned absence should discuss the implications with the school before making any commitments and if they wish to apply for a planned absence to do so not less than six weeks before the start of the absence. On 23 October 2018, I wrote to Mr and Mrs EXAMPLE advising that Tom's absences from 22 October 2018 to 26 October 2018 inclusive would be recorded as unauthorised. I produce a copy of this letter as exhibit JT/04.



STATEMENT OF WITNESS

*(Criminal Procedure Rules, r. 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)*

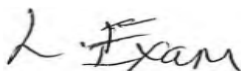
STATEMENT OF (name of witness): Leonardo EXAM

Age of Witness (If over 18 enter "over 18"): Over 18

Occupation of witness: Senior House Leader

Dated the 22 day of March 2019

Signed (witness):



This statement (consisting of 1 page) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

I am the Senior House Leader at City School, City, XX1 1XX, ('the school'). I have responsibility for the pastoral care of students at the school. This statement is made with reference to Thomas EXAMPLE, ('Tom'), (01/01/2007), who is currently a year 7 pupil at the school and is the son of Mr Don EXAMPLE, ('Mr EXAMPLE') and Mrs May EXAMPLE, ('Mrs EXAMPLE'), of 100 Toy Town Way, City, XX2 2XX. On 06 February 2019, I was forwarded an email from Mrs EXAMPLE requesting that we reconsider changing Tom's period of unauthorised leave between 22 October 2018 and 26 October 2018, to authorised leave. On 13 February 2019, I responded to this email advising that the period of leave would remain unauthorised. I produce these emails as exhibit LE/01.



STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

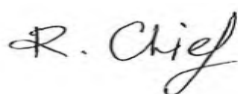
STATEMENT OF (name of witness): Romeo CHIEF

Age of Witness (If over 18 enter "over 18"): Over 18

Occupation of witness: Head Teacher

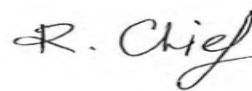
Dated the 22 day of March 2019

Signed (witness):



This statement (consisting of 1 page) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

I am the Head Teacher at City School, City, XX1 1XX, ('the school'). I have the ultimate responsibility at the school for deciding whether a pupil's absence should be authorised or unauthorised and these decisions are made in accordance with the school attendance policy. I produce the policy as exhibit RC/01. This statement is made with reference to Thomas EXAMPLE, ('Tom'), (01/01/2007), who is currently a year 7 pupil at the school and is the son of Mr Don EXAMPLE, ('Mr EXAMPLE') and Mrs May EXAMPLE, ('Mrs EXAMPLE'), of 100 Toy Town Way, City, XX2 2XX. On 06 February 2019, I received an email from Mrs EXAMPLE requesting that I authorise Tom's unauthorised absences between 22 October 2018 and 26 October 2018, as she had made a mistaken assumption about the half term dates. I sent a reply explaining attendance decisions are delegated to the pastoral team and I would forward her message to Mr Leonardo EXAM, ('Mr EXAM'), Senior House Leader at the school. I produce these emails as exhibit RC/02. I produce a true copy of the register which accurately shows the school attendance of Thomas EXAMPLE as exhibit RC/03.



FAQs

- **Can we refer year 11 students?**

It is unlikely we will accept referrals for year 11 students after the end of the autumn term. If you have a concern regarding the attendance of a year 11 student we request that you contact the team to discuss the individual case.

- **How many penalty notices will you issue to a parent in an academic year?**

*The penalty notice code of conduct states that no more than two penalty notices can be issued in a calendar year. **This does not mean that two will be issued.***

- **Can we refer when unauthorised term time leave has been taken but the days don't run concurrently?**

Yes. However there must be 10 unauthorised sessions within a 13 week period. The absences must be coded correctly ('G' on the register). For an immediate penalty notice, there must be 10 'G' codes otherwise we would expect the school to issue parents/carers with a warning.

- **Why do you prosecute some cases and not others?**

All prosecutions are considered in line with Herefordshire Council's prosecution and enforcement policy. Cases must reach certain threshold's to be pursued. It is important that all communications with parents/carers are recorded as cases may not be prosecuted if there is not sufficient evidence.

- **What are the consequences for parents/carers when their case goes to court?**

If Herefordshire Council seeks to prosecute a parent/carer and if they are found guilty, they are guilty of an offence under section 444 of the Education Act 1996. The parent/carer is likely to face a fine up to £2500. In some cases this could also lead to up to 6 months imprisonment, although this is a less likely scenario. In all cases, if found guilty, parents/carers will receive a criminal record. This should not deter you from referring but might act as a deterrent to parent/carers if this information is in your attendance policy.

- **What happens if the school does not send a warning letter to the parents/carers?**

If no warning letter is sent a penalty notice cannot be issued as a sanction. We may decide that we are unable to proceed with any action.

- **Can we request what sanctions are issued to parents/carers?**

No. Following a referral the decision on what action to take sits with Herefordshire Council. The subsequent action will depend on the evidence presented. However, if you feel there are circumstances which change how the referral should be viewed you should present this in the referral form. You can always contact the team to discuss individual cases. It is ultimately Herefordshire Council's decision on how to proceed.

- **At what point must we refer unauthorised absence to Herefordshire Council?**

We are here to support schools with improving their overall attendance. You do not have to refer any case to us. You should make the decision to refer in line with the schools attendance policy. You can always contact the team to discuss individual cases.

- **Can schools issue their own penalty notices?**

No. It is stated in Herefordshire Council's Penalty Notice Code of Conduct that they issue the penalty notices.