

Leave in Term Time (Legal) Process

Step by Step Guide

September 2022

Education Legal Intervention Team (ELIT)

Birmingham City Council



The Leave in Term Time (Legal) Process Step-by-Step Guide

Please note that this process is in relation to children of compulsory school age only – please see below

Schools are responsible for monitoring their pupils' attendance and, where appropriate, the local authority has a duty to prosecute parents in the Magistrates Court for failing to ensure their child's regular attendance at school. A Penalty Notice is an alternative to a prosecution. It requires the parent(s) to pay a fixed amount as a fine for their child's irregular attendance to avoid a court appearance.

The Leave in Term Time (Legal) Process was developed to work **in conjunction** with other legal processes such as FAST-track to Attendance (which aims to reduce on-going absence), in order to reduce the unauthorised leave taken by pupils in term time.

What is compulsory school age?

- If a child becomes 5 years old between 1st September and 31st December, they are of compulsory school age on 1st January
- If a child becomes 5 years old between 1st January and 31st March, they are of compulsory school age on 1st April
- If a child becomes 5 years old between 1st April and 31st August, they are of compulsory school age on 1st September

A child ceases to be of compulsory school age on the last Friday in June in the academic year in which the child turns 16.

Who do we prosecute?

Definition of Parent: Section 576 of the Education Act 1996:

A 'parent' in relation to any child or young person, includes any person:-

- a) all natural/adoptive parents, whether they are married or not;
- b) who is not a parent but who has parental responsibility for him; or
- c) who has care of him.

Parental partners can be included (whether or not they are married or the natural parent of the child) as they have 'care of' the child. If a pupil lives with a grandparent or older sibling as their main carer they can also be included.

For this process only, separated parents who do not accompany the other parent on the unauthorised leave should not be included. If you have details of a parent but have had no contact with them, contact the Education Legal Education Team (ELIT) for advice:

Attendance@birmingham.gov.uk

When does the Local Authority take legal action under this process?

- a pupil has been taken an unauthorised "leave of absence" from school or a place of alternative educational provision for minimum of 10 continuous sessions (G codes) and;
- the school or place of alternative educational provision have followed the relevant local authority legal intervention process,

IMPORTANT INFORMATION. Any N codes must be converted into G codes in order for legal action to be taken.

Head teachers should ensure within their school:

- all relevant staff are aware of the Leave in Term Time (Legal) Process;
- all attendance registers are completed accurately;
- accurate and quality personal data is created, used and shared with the Local Authority, e.g. the correct details of children and parents, etc.;
- the outcomes of the Leave in Term Time (Legal) Process are publicised, without breaching GDPR rules.

Please Note: All requests for legal action should be forwarded to the ELIT who will then decide whether to issue a penalty notice, or in the case of unauthorised leave of six weeks or more, whether the case should proceed directly to Court.

The 'Six Month Rule'

Schools are advised to ensure that any legal intervention relating to pupil attendance is not allowed to drift, and that referrals are timely. The local authority is limited by the 'six month rule' which states that the Magistrates' court must be informed of an offence by issuing a charge, summons, postal requisition or a complaint within 6 months of it being committed. The local authority must have referrals no later than 4 months after the start of the leave. Any referrals should be made as soon as the child returns to school. Late referrals may be rejected.

General rule s.127 Magistrates' Court 1980

'(1)... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.'

Getting Started

The whole school 'School Attendance' letter:

- the whole school letter (the same as that used for FAST-track) dated should have been sent to all of the school's parents. It may be used in evidence but mainly it is good practice that parents understand the expectations of the school;
- **the letter should be sent out to each household via email' or 'pupil post'**. If parents live at different addresses and the school hold this information, send a copy of the letter to each address;
- the school should post the letter on their website and consider including it in any prospectus and information for new parents
- the school should be prepared to answer any parental queries arising from this letter

The Process

Step One – send a 'Leave Denied' letter. Either:

- ✓ LD1 Letter – If the parents/carers have applied for leave either in writing or verbally, either before the leave or as the leave commences, but the leave has not been authorised, the Head Teacher should send the 'request denied' letter immediately.
- ✓ LD2 Letter – If the school has not heard directly from the parents/carers prior to or as the leave commences (a friend or relative might have contacted you instead); the child has not returned from authorised leave on the dates agreed; or the child has returned from a period of absence where you suspect the child has taken unauthorised leave in term time, the Head Teacher should send the 'leave taken' letter immediately.

IMPORTANT

- Whichever LD letter is used, it must be on a school letterhead, dated, and include the contact telephone number;
- Preferably the Headteacher should personally sign each LD letter but an electronic signature can be used, as long as they have reviewed the application for leave. Headteachers can be called to give evidence in court on the basis of that letter.
- **Letters must not be signed on someone's behalf (p.p.)**
- Send a separate letter to each parent in a separate envelope and address letters using parents' full names, do not address them to the 'parent of' or 'Mr and Mrs XXX';
- Make sure the school has or obtains the parents full names and that addresses and postcodes are correct; the Local Authority will also require the parents DOBs, which can be found:
 - on the templated leave request form;
 - on free school meal forms;
 - from the parents themselves, either in person or via telephone.

If the school is unable to obtain the DOBs prior to requesting a Penalty Notice, do not allow this to delay the process, as the school can send this information later, via email.

- **All letters must be signed then photocopied along with other relevant documents sent to the parent. The originals should be posted (first class not recorded delivery) to the parent and the copies retained for evidence.**
- All correspondence, as well as notes and reports documenting all contacts, including telephone calls, and arrangements made with parents, are retained;
- A record of the letters posted is retained, including individual names and addresses being added to a Postage spreadsheet and the exact date that the letter was sent specified

Step Two - once the child has returned from leave complete an online referral form. You can include both parents, if applicable, on the one form. Please include the following documents scanned onto one PDF attachment to ELIT:

- photocopies of all signed letters
- photocopies of any 'leave request' documents (if any),
- photocopies of any travel documents supplied by the parents
- up-to-date attendance printout for this academic year showing that the offence has been committed and that the child has returned to school
- an attendance printout of the previous academic year

The online referral form can be accessed via this link:

[Leave in term time/FAST-track referral form](#)

Please Note:

The local authority cannot take legal action against:

- **parents if their child is not of compulsory school age;**
- **itself, if the pupil is a looked after child and the local authority is their corporate parent.**

Education Legal Intervention Team actions:

- Review referrals ensuring they meets the requirements according to the 'Code of Conduct' and Crown prosecution rules;
- Issue a penalty notice/single justice notice (straight to Court) to each parent as appropriate
- If a penalty notice is issued, inform the school, via email, as soon as payment is received from a parent;
- Where penalty notices have been issued previously, ELIT may proceed the case direct to Court and, via email, will advise the school of this;
- Where unauthorised leave of six weeks or more is taken, ELIT may proceed the case direct to Court and, via email, will advise the school of this.

Please Note:

- **ELIT does not send reminders to parents regarding payment and there is no facility for parents to pay a Penalty Notice in instalments;**
- **parents should be asked to send any queries following a Penalty Notice/Single Justice Notice to ELIT, in writing or by email. They can contest the penalty notice via an online form - the address is on the Penalty Notice;**
- **parents can now pay their penalty notices online, the details of which are on the penalty notice.**
- **Parents can read more information on attendance, or pay/contest their penalty notice online:**
[Online attendance advice for parents](#)

Timeline for actions when penalty notices are issued:

**PN Calendar
Day 1**

**Penalty Notices issued
£60 fine per parent per child**

ELIT will email a copy of the Penalty Notice for the school to check, please contact the team immediately, via email, if there are any errors

**PN Calendar
Day 21**

ELIT will advise the school what witness statements are required.

**PN Calendar
Day 22-28**

£120 Deadline

If the Penalty Notice has not been paid by Day 28, parents are generally prosecuted under section 444(1), the Education Act 1996. If this is necessary, ELIT will contact the school, usually by Day 21, and ask the Head Teacher to prepare a witness statement.

Where it has been decided that the matter should proceed directly to Court via a Single Justice Notice, the school will be notified.

The Head Teacher may be required to appear as a witness at a trial if the defendant pleads 'not guilty'. Further information will be sent to the school about this at that time.

Factors that could prevent a case from proceeding:

- incorrect coding on the *Attendance Certificate*;
- evidence that includes incorrectly recorded information, such as telephone calls or other arrangements with parents;
- mistakes in correspondence sent to parents;
- cases which fail the 'public interest' test;
- evidence that is more than 6 months old.

Please respond to emails from ELIT by return, to enable the team to comply with time limits for these legal proceedings.

Publicise outcomes

The Leave in Term Time (Legal) Process is a community initiative that raises parents and pupil awareness of the importance of school attendance. It is paramount that the school publicises the outcomes of the process, as this demonstrates that the school and the local authority take attendance seriously.

Do not identify individual names of parents or pupils.

ELIT will write to the school with an outline of the results when each case has concluded. These results can be shared with the school's population in a number of ways:

- sending out the results via a letter to parents
- in a regular newsletter distributed by the school;

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- presenting the results at parent's evenings;
 - including the results as an agenda item for school Governors' meetings; or
 - including on the school's attendance notice board.

To make the most of the Leave in Term Time (Legal) Process, use all of the above!

Please forward copies of all methods used publicise the results to ELIT for the local authority's records and evaluation.

Education Legal Intervention Team details

[Email: Attendance@birmingham.gov.uk](mailto:Attendance@birmingham.gov.uk)

ONLY IF URGENT: 0121 464 8979

Education Legal Intervention Team

P O BOX 16524

Birmingham

B2 2FP