

# Unpaid Penalty Notice Witness Statement and Exhibits

## Support and Guidance for Preparing a Witness Statement and Exhibits

Education Inclusion Service



In the Education Act (1996), this is the first of the two offences.

It carries a penalty of a fine up to £1000 and a criminal conviction if the defendant (parent/carer) is found guilty.

According to the case *Isle of Wight v Platt* from 2017, it defines 'regularly' as 'in accordance with the school rules.'

**Your attendance policy must contain a clear reference of how you define 'regular' attendance.**

## Section 444(1)

### Offence

Parent/Carer of a child of compulsory school age  
Registered at a school  
Fails to attend regularly

### Defence

Sickness or unavoidable cause  
Granted leave or due to religious observance  
Local Authority has a duty to make travel arrangements and fails to do so  
Parent is engaged in a business that requires travel from place to place

**The parent must prove these defences on a balance of probabilities**

# Information on all Legal Proceedings

## Available to view on Schoolsnet

**The legal process can lead to a criminal conviction for parents. GCC follows the 'Support First' guidance from the Department for Education, and we ask you to ensure that legal action is the last avenue for attendance.**

The Rehabilitation of Offenders Act 1974 confirms the following time periods before a sentence is classed as spent:

- A custodial sentence of 1 year or less - the end of the period of 12 months beginning with the day on which the sentence (including any licence period) is completed
- A relevant order (e.g. community order) - the last day on which the order is to have effect
- A fine - the end of the period of 12 months beginning with the date of the conviction

After the period ends, the conviction is still on the person's record and could come up on an Enhanced Records Check but the defendant would be classed as a "protected person". They are essentially treated as if they have not been convicted of the offence.

Before the rehabilitation period ends, the defendant must disclose the conviction when asked.

The Local Authority has the power to prosecute parents who fail to secure their child's regular attendance at school. Schools can, in some circumstances, request that the Local Authority issue a Penalty Notice where parents have failed to secure regular attendance at school.

# Unpaid Penalty Notices

What to do when you're asked to write a Witness Statement and provide exhibits for an unpaid penalty notice



# Witness Statement and Exhibits

When a Penalty Notice remains unpaid, the Lead Officer for Legal Intervention in Education (Attendance), or LOLIE, will contact you via email to ask you to complete a witness statement.

This Penalty Notice remains unpaid after the 28-day deadline.

As the payment has not been forthcoming, Gloucestershire County Council will now begin the process of issuing the defendant with a court summons.

To serve the court summons, we require the school to complete the attached template witness statement and prepare the exhibits.

For unpaid penalty notices, schools may wish to contact parents to encourage their making a late payment with Gloucestershire County Council's Education Inclusion Service. If you wish to take this course of action, please contact me as soon as possible to discuss this and the next steps.

Please see the advice below on preparing the exhibits:

**Ensure that the exhibits are labelled with the initials of the witness (the Headteacher/Attendance Champion/other designated person as detailed in the attendance policy) and the sequential number. Typically, the order of the exhibits will be:**

**[Initial and last name of parent] [AA]01 – School Attendance Policy**

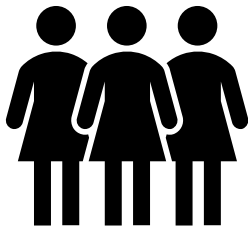
**[Initial and last name of parent] [AA]02 – Holiday request from parent/carer**

**[Initial and last name of parent] [AA]03 – Letter to parent/carer confirming Head teacher's decision to unauthorise absence request**

**[Initial and last name of parent] [AA]04 – Attendance Certificate showing time absent from school and return, signed and dated by the Head teacher**

**N.B. Replace 'AA' with the initials of the person completing the witness statement.**

"I saw Jane's holiday photos from last week."



The witness statement must be signed by the person stated as its writer.

Normally, the witness will be the Headteacher, as they are the person designated to authorise or unauthorise a leave of absence from school.

Should this role be designated to another member of staff, the person should be named in the attendance policy, and it should appear in the witness statement.

#### Witness Statement

From our records, Jane Doe was seen posting holiday photos...



From: A. Person  
To: Attendance

On 20/11/2023, Jane Doe was posting holiday photos on social media after contacting the school to say Johnny was ill and absent from school. I attach a screenshot of the social media post.

The witness statement contains a declaration that the facts it contains are true to the best of the witness's knowledge and belief. They understand that they may be liable to prosecution if they wilfully state something that they know to be false.

There is no limit on the number/length of witness statements, but they must be relevant to what has happened. They should contain only facts and avoid hearsay.

The template's sentences may be adjusted to give an accurate account of the circumstances of the case.

The witness statement and exhibits should only reference the parent of the case – for parents who are separated, this is especially important.

If the child does not live with the parent on a day-to-day basis, use the phrasing:

*From our records, [name of parent] is the mother/father/carer of [name of child]. [Name of child] does not live with [name of parent/carer]. [Name of child] lives with their mother/father/carer a distance of [distance] miles from the school.*

**Do not** include the address of the parent/carer the child lives with if the child **does not** live with the parent/carer of the witness statement.



Replace '##' with the witness's initials

Exhibit ##01 School's Attendance Policy

Exhibit ##02 Letter from parent requesting holiday

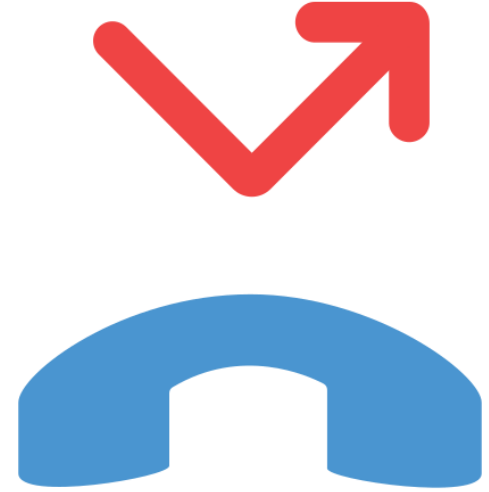
Exhibit ##03 Letter from school to inform parent that the absence will be unauthorised

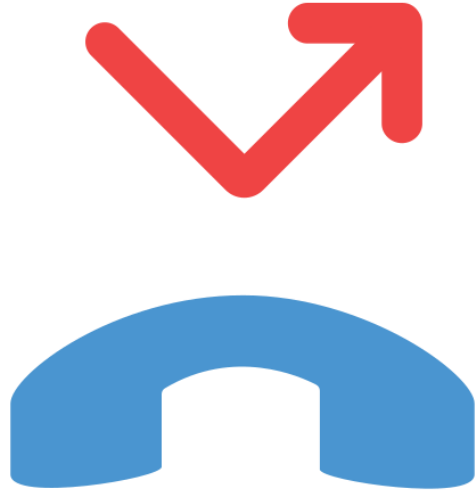
Exhibit ##04 Attendance certificate showing absence and return presence mark

The witness statement and exhibits should give a full reference to what has happened. It should use the parent(s)' first and last names, and the name(s) of the members of staff involved in the case.

Logs and how/where they are kept can be exhibited, and an explanation of what their function is should be included in the witness statement e.g., SIMS is the Information Management Service that centrally stores attendance information of the children at [...] School.

If the parents did not request a holiday before the absence took place, or they sent a notification that they were on holiday when the school checked on the whereabouts of the child, a letter can be sent to the parents to ask for evidence of exceptional circumstances for the unrequested leave of absence. This can be sent in place of the holiday request and return letters to the parents.





When this happens, adjust the wording of the witness statement so it reflects a clear and accurate chronology of what happened.



*‘For unpaid penalty notices, schools may wish to contact parents to encourage their making a late payment with Gloucestershire County Council’s Education Inclusion Service. If you wish to take this course of action, please contact me as soon as possible to discuss this and the next steps.’*

**When we ask for a witness statement, we ask for it to be returned within a week of receiving it.**

**Parents can also make a late payment (usually at the full amount of the fine) within this week.**



A Person

# Exhibits

- Label them clearly with the witness's initials followed by a number e.g. AP01, AP02 etc.
- Ensure the exhibits appear in the order they appear in the witness statement.
- Only the letter to the parent/carer of the witness statement should be included.
- They can be scanned under the witness statement or scanned separately.

## Typical list of exhibits for 444(1) cases:

AP01 – School Attendance Policy

AP02 – Holiday request from parent/carer

AP03 – Letter to parent/carer confirming Head teacher's decision to unauthorise absence request

AP04 – Attendance Certificate showing time absent from school and return, signed and dated by the Head teacher

## Example of what is expected for 444(1a) cases:

AP01 – School Attendance Policy

AP02 – Attendance certificate for the current academic year, signed and dated by the Head teacher

AP03 etc. and onwards – exhibits that support chronological events regarding the pupil's attendance e.g., letters/emails to the parent voicing concerns about attendance, and warning of potential legal action; referral letters to other professionals and agencies; AIM and AIM review records; any other correspondence e.g., notifications from other professional bodies etc.



# General Guidance

## Hearsay

Court normally relies upon a witness giving oral testimony with personal knowledge of the facts. If it is not first-hand knowledge, then it is hearsay. If it is hearsay, it is inadmissible, unless a 'gateway' applies.

One of those gateways covers documents created during a profession.

From the school records, the witness statement would say, 'I exhibit the record as AA01'. This makes it clear that the information has come from school records, not personal own knowledge.

## Record-Keeping

*Telephone record says, 'called mum'.*

If someone is looking at that later, how are they going to know what happened on that phone call? Did mum answer? What was said? When was the call? What was the outcome? Which number was called? It is easy for mum to say, 'I never got a call'.

**N.B. schools should refer to parents'/carers' first and last names in record-keeping to ensure clarity.**

Think about your record keeping and how it will potentially be used in the future. In 6 months, if you need to take the record to court, are you going to be able to show the Magistrates clearly who was there, what was said and the outcome?

# General Guidance

## Documents

Send letters by post where possible, ensuring that the parent's name, address and the date it was sent are clearly marked.

Letters should be sent to parents individually as best practice.

Schools can inform parents that holidays have been unauthorised via email.

Take care not to include information about the other parent on the exhibits e.g., telephone numbers or other sensitive material.

Redact any other names not to do with the parent and pupil e.g., other pupils' names

## Writing clearly

The witness statement will be read out in full in the Magistrates' court, usually by the solicitor employed by GCC.

Ensure that the witness statement that reflects a clear and accurate account of what happened.

Consider the readability of the finished document.

Ensure the full picture of what happened is contained in the witness statement, with the exhibits used to corroborate what happened.

Ensure the exhibits contain only supportive and relevant material for the case.

Refer to the **Paperwork Checklist for All Legal Disposals** document for further support

# Court Process

- A Summons is sent to each defendant with statements and exhibits.
- The case is listed for a first hearing; at the hearing, the defendant has the choice of pleading guilty or not guilty:
  - Guilty: convicted and the Magistrates will sentence
  - Not guilty: give a reason, explain what the issue is e.g., disagree with the process outlined in the witness statement
- If 'Not Guilty' is pleaded, the matter is listed for trial. If the witness statement is agreed by all parties, then it will be read at trial.
- If the defendant does not agree with the witness statement, the witness will be required to attend court on the day of trial.





# Court Process

- At trial, the prosecution witnesses give evidence first, either read out or orally.
- The defence will have opportunity to question each witness if the person is there giving live evidence.
- The defence are given the opportunity to give their evidence, explain their case and what has happened from their point of view, and the prosecution are given the opportunity to question them.
- The Magistrates will make their decision once they have heard all the evidence and decide on guilty or not guilty.



# After the Court Process

## Returning to supporting attendance

- After the court process is completed, the school will still maintain attendance intervention support with the family until such time when attendance is not a concern for the child.
- AIMs can be used to plan improvements and maintaining regular attendance.
- Should attendance continue to decline, then the school should contact the LOLIE to review the next steps.