

*Square Peg is a community interest company (social impact not-for-profit) established & run by those with lived experience of school attendance difficulties. We work in partnership with Not Fine In School CIC, who support the same families via a membership group of 37k parents and carers whose children are marked as persistently absent. Square Peg has been active since 2018 and campaigning nationally since 2019.*

As Experts by Experience, we have a unique perspective of current culture and practice delivered by schools, local authorities, healthcare, social care, SEND and education welfare management services.

### **Factors influencing absence**

Many children struggling with school attendance have SEN, a disability, chronic illness, medical needs, experience mental ill health, are young carers, live in poverty, are from a black or ethnic minority, may be Forces children, or are Looked After. Some live in insecure housing, are fleeing domestic violence or are displaced refugees. Some are bullied at school, feel psychologically unsafe at school or may be facing social or emotional challenges.

Attendance difficulties are indiscriminate and unpredictable and whilst it is paramount to hold 'at risk', vulnerable and disadvantaged groups in mind, an attendance difficulty can emerge in any child or young person, for a multitude of reasons.

This was a pre 2020 problem, with many of NFIS members and parent carers from across other social media and grassroots forums reporting escalating mental ill health in their child arising from high stakes testing, unsupported SEND or medical needs, coercive behaviour policies, sanctions or threat of sanctions (punishments) for very minor offences<sup>1</sup>.

Absence rates were rising 15-20% per annum pre-pandemic. Exclusion rates, off-rolling and de-registrations were also increasing. Combine this with toxic stress arising from lockdowns, complications from Covid, a hard and fast return to catch-up learning and examinations following 2 years existential threat, traumatic bereavements, social

---

<sup>1</sup> SP NFIS Attendance Consultation 28/02/2022 Appendix 3 and Annex docs 1-5

isolation, employment uncertainty, rising cost of living etc. it is no wonder children and their families are struggling more than ever.

We know when schools focus on positive regard, secure attachments, safe, respectful relationships, wellbeing, restorative practice and implement trauma-informed inclusive systems, that are relationally responsive, children thrive.<sup>2</sup> We also know from evidence-backed work such as that of the Attachment Research Community and National Association of Virtual School Heads that when these approaches are in place, attainment goes up, exclusions go down, as does persistent absence<sup>3</sup>. We should not shy away from prioritising and supporting the secure foundations of wellbeing and good mental health in every child and young person.

Ensuring children have safe, trusted adults who deliver attuned, reciprocal relationships is a foundation for positive child development.<sup>4</sup> We know it helps build healthy brains, promotes independence, curiosity and engagement, creativity and innovative thinking. We also know increasing numbers of children and young people are struggling in school, with many reporting that they feel alone, stressed, misunderstood, blamed and punished.<sup>5</sup>

Not all children start from the same secure foundations, with a disparity for those with additional learning or health needs, social care, emotional and welfare considerations disproportionately placing some children at greater disadvantage. Maintaining good mental health is as fundamental as 5-a-day/30 mins of exercise a day. By prioritising the wellbeing of our children and families as a public health requirement and ensuring mental health in childhood is protected, we are actively preventing health inequalities and poor outcomes in later life.

Too often, education policy and local area practice undermines our children's and families' resilience. 'Tough love' and rigid implementation of guidance and policy takes precedence over compassion-focussed helpful systems.

The solutions required are as numerous and intersectional as the causes of attendance difficulties themselves. Persistent absence, barriers to attendance and access to

---

<sup>2</sup> <https://www.youtube.com/watch?v=ATjcdmPaoE>

<sup>3</sup> <https://the-arc.org.uk/calltoaction>

<sup>4</sup> <https://developingchild.harvard.edu/science/key-concepts/resilience/>

<sup>5</sup> <https://www.mind.org.uk/media/8860/not-making-the-grade-summary.pdf>

educational entitlement intersect all areas of family life and public sector system delivery.

**Attendance is the lens through which all challenges may be seen, representing a nexus of stretched services, policy, diversity, and need.**

**Underserved individual families and under-resourced services collide via attendance barriers and difficulties for children and young people.**

Early intervention, an effective nurturing, inclusive, pastoral whole-school framework which prioritises happiness and enjoyment at school, will result in better outcomes - including reduced need for high level CAMHS and EHCP support. Workforce wellbeing is vital too, and by offering training and support to local government, teachers and leaders for their wellbeing and mental health, scaffolded with individual supervision for professional support, guidance and practice, the entire wellbeing ecosystem flourishes.

Proposals in Part 3 of the now-shelved Schools Bill and last year's Fines & Registrations Consultation tightened existing policy and practice, particularly around the thresholds for attendance enforcement and judicial intervention through the single justice procedure via the criminal court.

We've had a 70% increase in NFIS membership since schools started implementing the Government's non-statutory guidance on attendance in Sept 2022 (becoming statutory in Sept 2023). Hundreds of families are seeking support every single day. Via our membership with the Special Education Consortium (National Children's Bureau & Council for Disabled Children), we are now working with Contact a Family, whose Helpline for disabled families is swamped with calls about attendance difficulties and attendance policy they are facing. Contact a Family said:

*"A small sample from Contact's Education Helpline has shown that over 10% of the calls the helpline received about attendance were from parents concerned about being fined."*

(Contact – unpublished from internal database 1/6/22 – 31/12/22).

Research has shown criminalising families harms them, increasing disadvantage, vulnerability and adversity.<sup>6</sup> We know it doesn't improve outcomes on attendance, with criminal procedures being an unnecessarily blunt instrument with negligible merits:<sup>7</sup>

---

<sup>6</sup> <https://www.crimeandjustice.org.uk/resources/prosecuting-parents-truancy-who-pays-price>

<sup>7</sup> <https://ukaji.org/2019/01/28/cruel-and-discriminatory-new-research-on-prosecuting-parents-for-school-absence/>

*"Too often the institutions of state, the bodies that make up administrative justice, use punitive measures to address what are fundamentally problems of that state. Benefit sanctions are one example, designed into a mechanism that more often punishes than support. Criminal sanctions such as fines and threats of imprisonment have no place in the state's duty to provide education. It is noteworthy that the punitive measures to criminalise persistent school absence in England are not used across the UK. In Scotland, for example, fines are not issued for persistent absence. The researchers in the Prosecuting Parents project argue that it is wrong to criminalise school absence, and that a distinction should be made (as it is in some other European countries, such as Denmark) between social welfare and criminal justice. Truancy, the researchers say, should be a child welfare issue."*

We spoke to Transform Justice, who'd written about the Epstein et al. research and concluded:

*"The Prosecuting Parents report suggests that threatening to, and prosecuting parents can be both pointless and damaging. 126 parents who had been pursued due to their child's absence responded to a survey circulated on social media. Most had children with behavioural, neurological or mental health difficulties and felt that placing the blame on parents was totally inappropriate. All wished they could get their children to school but they reported that their children were often anxious, often highly anxious."*<sup>8</sup>

Browne Jacobson, education lawyers, observed the measures proposed in the Bill (and in the new 2022 and 2023 Government guidance on attendance) "...strengthens the potential outcomes of a successful prosecution and extends the reach of the court to not only fine but to impose a custodial sentence."<sup>9</sup>

FFT Datalab analysed how many more children and their families are at risk of the new proposed thresholds for legal interventions on attendance, finding "...in the Spring term somewhere between 260,000 and 550,000 pupils met one of the three proposed new criteria for intervention due to absence."<sup>10</sup>

---

<sup>8</sup> <https://www.transformjustice.org.uk/prosecuting-parents-for-truancy-who-pays-the-price/>

<sup>9</sup> <https://www.brownejacobson.com/education/training-and-resources/legal-updates/2022/05/school-attendance>

<sup>10</sup> <https://ffteducationdatalab.org.uk/2022/06/how-many-pupils-fall-below-the-proposed-national-thresholds-for-legal-intervention-due-to-absence/>

Schools Week reported "The DfE is also proposing a national limit of two fines issued to one parent for the same child in any school year. After this limit is reached, "prosecution should be considered at the next offence."<sup>11</sup>

Whilst Square Peg is aware of the Government's desire to standardise process and ensure families access the right support at the right time, we know (and countless others evidence via the Independent Social Care Review, SEND Green Paper, Mental Health & Wellbeing Review) far too many families and children fall through gaps and are left with spiralling needs. Tightening measures will only increase harm and will not improve outcomes.

Safeguarding and child protection frameworks already exist to act where a child is at risk of serious harm.

The 'backstop' route of redress (formal complaints, LGO, PHSO etc) are swamped - clear evidence of fractured and broken systems - and these should not be upheld as necessary or viable options for families. It is not on the shoulders of vulnerable children and their families to hold broken systems to account or drive service improvement. Indeed, routes of redress should be used as exceptions rather than standard norms.

We refer Committee Members to each parent carer who has submitted their evidence to this inquiry, along with submissions from colleagues Susan Liverman and Maddie Roberts whose Change.org petition has amassed almost 250k signatories. We inform the Committee of the responses from 1,960 families who completed our survey in February 2022, which formed part of our response to the Government's consultation on Attendance.<sup>12</sup>

Our Feb 2022 consultation submission evidenced the need for a transformational approach to persistent absence and barriers to school attendance. We highlighted the devastating impact existing policy around behaviour and attendance has on children and families' mental health, wellbeing and resilience.<sup>13</sup> We detailed solutions, recommendations and considerations.<sup>14</sup>

---

<sup>11</sup> <https://schoolsweek.co.uk/electronic-registers-schools-absence-fines-attendance-education-zahawi/>

<sup>12</sup> <https://www.teamssquarepeg.org/post/dfе-attendance-consultation>

<sup>13</sup> ibid pg 16

<sup>14</sup> ibid pg 24

**Government should develop a national Wellbeing & Inclusion Strategy for local authorities and education to implement in partnership with vulnerable and marginalised groups and communities.**

**This strategy should draw on principles in the Equality Act, Children & Families Act and SEND Code of Practice and should dovetail with any work undertaken with regard to social care reform, SEND reforms, Child & Adolescent Mental Healthcare improvement and education reform. A comprehensive integrated package of funding is required.**

We have evidenced attendance enforcement via the criminal justice system is not reasonable, proportionate or fair, with families denied the right to appeal due to peculiarity as a strict liability offence. Families are additionally denied participation in their defence due to the vagaries and blunt instrument of the single justice procedure.

We received support in the House of Lords during the passage of the Schools' Bill for our recommendations of a compassion-focussed approach to attendance difficulties, and the understanding that declining wellbeing or mental ill health can impact attendance and fuel persistent absence. We introduced our 3 Asks<sup>15</sup>, which offer an alternative approach to the barriers around school attendance.

Families' voices evidence the many complex and mitigating circumstances they experience, regarding the fitness of their child's ability to attend school, serious illness, following bereavement, or while on a waiting list for specialist assessment or support. Families also share challenges of insecure housing, poverty, domestic abuse, marriage breakdown, terminal illness, long covid, disability, unemployment, redundancy or zero hours contracts. We hear of discrimination, harassment, coercion, parent blame and a dismissal or disregard for invisible disability, chronic illness and mental ill health.

Families face significant delays to CAMHS services with many taking their child to A&E in a desperate attempt to access urgent support.<sup>16</sup>

**Government should ensure all CAMHS funding is ring-fenced for local area investment and delivery in CAMH services. Government should consider a CAMH Long Term Plan.**

---

<sup>15</sup> <https://notfineinschool.co.uk/3-asks>

<sup>16</sup> <https://www.theguardian.com/society/2023/feb/09/children-mental-health-crisis-a-and-e-england>

**Government should fund mental health community hubs for children and families. Government should consider a mental health support team for every school which includes mental health support for staff wellbeing.**

**Government should pay regard to the Children & Young People's Mental Health Coalition report on behaviour policy in schools and impact on their mental health.**

It is important to note the metrics for persistent absence have changed from 15% of sessions missed in 2014/2015 to 10% today, and that the guidance specifies that at 31 minutes late a child is to be marked as absent for the session; and there are two marked sessions per day, one in the morning and one in the afternoon meaning 10 absences or late arrivals for 5 days cumulative or consecutive will mean the family must be referred for a fine. Combine this with the live attendance tracker and automated reporting we can see adverse consequences to an already challenging landscape.

**Government should give careful consideration to the impact of live attendance monitoring on the health and wellbeing of children and families. Government should determine whether retaining and freely sharing personally identifiable information of pupils for 66 years after the age of 18 is inline with GDPR Principles.**

Our most vulnerable families are at risk of these "cruel & discriminatory" punitive measures, with research showing current prosecutions are a "gendered offence" with mothers disproportionately affected.<sup>17</sup>

Proportionate, reasonable, pragmatic, supportive, caring, personalised, family centred, inclusive systems are required, underpinned by compassionate, co-designed, co-reviewed and co-produced legislation, regulation and guidance.

All families, particularly marginalised and isolated families deserve to be supported, not sanctioned. Current system of Parent Contracts, Attendance Orders etc. is extremely intimidating.

It is important to consider and include children and families with unidentified and emerging needs, eg welfare related, social care, educational, mental health, physical, psychological, cultural. Often, anxiety and attendance difficulties is the top line

---

<sup>17</sup> <https://www.crimeandjustice.org.uk/resources/prosecuting-parents-truancy-who-pays-price>

behaviour seen by parents and schools. A mental ill health wellbeing absence code will ensure families are protected from punitive pathways and permit schools to notice a child struggling with emerging mental ill health.

**Government should introduce a Mental Health & Wellbeing school register code.**

**Government should implement a Pastoral Key Worker Service for every school which draws on MDT frameworks incorporating clinical psychology, early help, youth work, specialist SEND support, safeguarding and family support drawing best practice via the NHS & CDC Key Worker pilot.**

We must ensure exclusions, truancy and persistent absenteeism are considered in the same context and with the same protections, considerations and compassion-focussed support in mind. In this way, intergenerational cycles can be broken leading to better outcomes for families and their children educationally, socially, emotionally and with regard to health, wellbeing, resilience, independence, agency and engagement.

**Government should implement an Attendance Code of Practice to assure due diligence, scrutiny and oversight in the development and implementation of attendance policy and practice and instil confidence and rigour across the systems, as achieved by the SEND Code of Practice.**

**Government should introduce a new school register code for those awaiting assessment and treatment or support via an LA or healthcare service. This is an expansion of the proposed new code by Government in July 2022 consultation.**

### **Redress driving disengagement & despair**

Government has given assurances of the right to appeal school attendance notices / order for families via the following routes:

Formal Complaints - the local complaints process with LAs is extremely lengthy (a minimum of a year to complete the process). It is cumbersome, distressing and divisive and should not be viewed as a 'solution'. No family ever wants to be in a position left with no option but to complain formally to the very organisation they are beholden to for



support. How does the Government propose to centrally administer complaints and timeliness in 10 day appeals window?

SEND Tribunal - a considerable burden and adversarial process for families. In the SEND Green Paper, the Government wishes to reduce numbers going to SEND Tribunal. Why is Government recommending it as a viable solution for families with regard to attendance difficulties?

LGO - is already burdened and has a restricted scope and powers (in comparison to the PHSO). Is the Government proposing to extend the LGO's remit?

Subject Access Request / Information Commissioner's Office - another burdensome, lengthy and unsuitable solution.

Far too many families are forced down these routes.

The threat and use of Fixed Penalty Notices and formal prosecution of families without question increases harms and vulnerabilities. It widens inequalities, increases adversity and leaves deep wounds. Those working in criminal justice have shared the inadequacies of the Single Justice Procedure itself:

### **Prosecution of parents for non-attendance of their children at school**

**Evidence from charity Transform Justice [www.transformjustice.org.uk](http://www.transformjustice.org.uk)**

*"Transform Justice is concerned by any change in legislation which may increase the number of parents prosecuted for the non-attendance of their children at school. Criminal prosecution, conviction and sanctions are very blunt instruments to address a complex situation and there is no evidence that criminal sanctions act as a deterrent. The parents who are accused are frequently vulnerable, as are their children. Many children refuse to go to school for complex psychological reasons. Schools should take many steps to understand and support children who are reluctant to go to school before turning to prosecution.*

*The prosecution of this offence is done through the single justice procedure, a process that is very difficult for defendants to deal with. They get no free legal advice since the offence is not eligible for legal aid (unless the defendant has been convicted multiple times and is at risk of imprisonment). Defendants receive the criminal charge through the post and are*

*expected to fill in a long form on paper or online. If they plead guilty in this form they get no court hearing. The offence is dealt with in a closed court by a single magistrate sitting alone. All those who plead or are found guilty are fined. One of the most troubling aspects of these prosecutions is that most of those accused do not engage with the system – they do not plead at all and are then automatically assumed to be guilty. No-one knows why defendants struggle to effectively participate but it is suspected that many letters go astray (they are sent via non-registered post), and that many defendants don't understand how to respond.*

*Before legislation allows for any increase in the prosecution of parents, we need to understand more about why children don't attend school and if we must prosecute, how best to do it while respecting fair trial rights."*

**Government should end outdated harmful truancy laws, relieving the burden on criminal courts and instilling focus on support, pastoral care, access to mental health care, social care, family support and safeguarding principles.**

**We append a letter sent to Minister Gibb in 2019 with an attendance triage code proposal.**

**/ End submission (2098 words) /**

Fran Morgan & Beth Bodycote  
c/o Square Peg  
24 Pembroke Crescent  
Hove  
BN3 5DD  
e: hello@teamsquarepeg.org

Rt Hon Nick Gibb  
Ministerial and Public Communications Division  
Department for Education  
Piccadilly Gate  
Store Street  
Manchester M1 2WD

27 August 2019

Dear Mr Gibb

**Re. School attendance and absence codes**

We are writing to you on behalf of children experiencing school attendance difficulties and their families. By this, we mean children who want to attend school but are unable to do so for reasons outside their control. Many such children have special educational needs and/or mental health issues, but the problem can also arise from those unable to cope with bullying, school environments, trauma, or excessive academic pressure.

The current system for dealing with school attendance does not provide properly for these children. This means that they are often unfairly marked as having 'unauthorised' absences from school, which in turn puts the parents of such children at risk of criminal prosecution.

We would therefore like to meet with you to discuss improvements that urgently need to be made to the current system for recording and managing school attendance.

**Who we are**

Square Peg ([www.teamsquarepeg.org](http://www.teamsquarepeg.org)) is a parent-led organisation that aims to effect national change for children with school attendance difficulties and their families, by focusing on legislation/policy, research and guidance.

Not Fine In School (NFIS - [www.notfineinschool.org.uk](http://www.notfineinschool.org.uk)) is a separate parent-led organisation that supports parents and provides information to schools and parents around this topic. NFIS has a current membership of 7,638<sup>1</sup> on its closed Facebook Group for parents, with a growth rate of approximately 60 new members a day since the start of this academic year, with 95% of the membership being UK-based.

Square Peg and NFIS work closely together.

Our letter outlines the following:

1. Problems with the current attendance policy and registration codes
2. Consequences of these problems for children and families
3. An alternative system

---

<sup>1</sup> As at 20 August 2019

## **1. Problems with the current school attendance system**

There are several problems within the system as it stands, which we have categorised under nine main headings:

### **1.1 There is no absence code that clearly provides for the position where a school requests medical evidence to show that absence is legitimate, but parents face a long delay obtaining such evidence from the health service.**

The non-statutory guidance on school attendance indicates that for Code I (illness), schools are entitled to request 'reasonable' medical evidence and may mark absences as unauthorised if they are not satisfied about the veracity of an illness. This poses a major problem due to the 'invisibility' of mental health problems and the difficulties accessing mental health services. Delays in obtaining such evidence (and policies which prevent certain health services such as GPs from providing evidence) mean that parents often cannot obtain evidence for many months. In the meantime, the school is entitled to mark the child's absence as unauthorised.

### **1.2 It is not clear what code should be applied in cases where non-attendance is due to bullying or other such difficulties rather than for medical reasons.**

In theory such absence could be authorised under Code C but the guidance does not make this clear. This means for example, that children facing serious unresolved bullying often find themselves marked as being absent on an unauthorised basis.

### **1.3 There is inadequate guidance on requirements for medical evidence, and insufficient clarity in respect of what is necessary to satisfy that absence for mental health reasons is legitimate.**

School leaders or local authorities can therefore insist on medical evidence from a senior (Tier 3) medical professional or consultant, or evidence that uses specific phrases or expressly states that a child cannot attend school for a specific period of time. In short, the guidance gives school leaders/local authorities excessive discretion in this regard, in circumstances where the sanctions for unauthorised attendance for parents are draconian.

### **1.4 DfE and Ofsted attendance goals are compromising pupil welfare.**

The 'attendance=attainment' narrative that is driven down by both the DfE and Ofsted is putting attendance targets before pupil welfare. It does not recognise the current challenges in the system and promotes a rigid stance to maintaining high attendance levels which children with unmet need simply cannot meet. Some schools are recording absence unlawfully, or retrospectively amending registers to avoid scrutiny over low attendance.

### **1.5 Persistent absence figures do not allow for meaningful analysis of underlying need.**

There are currently over 783,425 pupils who are classed as persistent absentees<sup>2</sup>, with 325,685 of all pupil absences recorded as 'more than 25 days' (there are no further categories for long-term absence). The threshold for persistent absence has risen twice in the last 13 years, which prevents any long-term analysis of trends. There is insufficient data on the degree and frequency of non-attendance, and the cause, and no recognition that issues such as bullying, trauma and SEND are contributing to persistent absence. It is important to consider the reasons for absence as 92% of NFIS survey respondents attributed their child's school attendance difficulties to undiagnosed, or diagnosed but

---

<sup>2</sup> Full year absence data released on 21 March 2019

unsupported, SEND<sup>3</sup>. Respondents also identified the influence of bullying by child or adult (44.3%), academic pressure (62.4%), school culture (62.3%), school environment (73.7%) and social anxiety (70.2%).

#### **1.6 Unauthorised absence can lead to fines and prosecutions, with insufficient consideration of the underlying cause.**

Government guidance suggests that after 10 consecutive days of unauthorised absence schools should notify their local authority, which could trigger a penalty notice (local authorities can apply their own rules on when parents can be fined<sup>4</sup>). There is no distinction in law between parents who remove their child for a term-time holiday, disengaged children and families, and children who struggle with school attendance due to undiagnosed or unmet needs or SEND. Last year 37,411 of the 260,877 penalty notices were for 'absence due to other unauthorised circumstances'. There were 13,324 prosecutions in 2016/17, rising by 46% to 19,518 in 2017/18<sup>5</sup>. There is a raft of punitive measures (penalty notices, fines, Education Supervision Orders and Parenting Orders) that can be used by schools and local authorities following a period of unauthorised absence, without the requirement to identify or fully understand the underlying cause(s).

#### **1.7 Whilst attendance may have improved overall, the current policy may be counter-productive for more vulnerable children**

It is clear from the continuing rise in persistent absence that current initiatives to improve attendance are not working for a large number of low/non-attenders. Punitive measures have been shown to have little positive long-term effect on school attendance. Recent relevant academic research noted that: *some European countries take a child-welfare rather than a criminal justice approach to the child who does not attend school regularly which has significance because: in the social welfare system the welfare of the child is the paramount consideration: this is not the case in the criminal justice system where the welfare of the child is only one of a number of considerations*<sup>6</sup>.

#### **1.8 Accountability is one-sided, with a culture of parental blame**

The law assumes that a parent whose child cannot attend school is guilty of a criminal offence, irrespective of the underlying cause. There is no right of appeal against a penalty notice. This culture of parental blame fuels an adversarial relationship between parents and schools and exacerbates the lack of real understanding around school attendance difficulties and extreme anxiety. Accountability systems are unsatisfactory, with less than 10% of NFIS survey respondents satisfied with school complaints procedures<sup>7</sup> as they lack independence, transparency and objectivity and the LGO unable to intervene in many aspects of internal school policy.

#### **1.9 Anxiety is often not regarded as a mental health issue**

Excessive anxiety is classed as a disability under the Equality Act 2010 if it has a long-term (likely to last over 12 months) and substantial adverse effect on day to day living. Even so, attendance difficulties related to excessive anxiety are often disregarded as a concern, and thus the impact of anxiety on a child's ability to attend school is misunderstood. This is problematic as recent academic research identified: *evidence for cross-sectional associations*

---

<sup>3</sup> NFIS member survey, May 2018, 1,661 respondents

<sup>4</sup> See <https://www.gov.uk/school-attendance-absence/legal-action-to-enforce-school-attendance>

<sup>5</sup> <https://www.gov.uk/government/statistics/parental-responsibility-measures-2017-to-2018>

<sup>6</sup> Epstein, R., Brown, G. & O'Flynn, S. (2019) *Prosecuting Parents for Truancy: who pays the price?* Coventry University & University of Roehampton

<sup>7</sup> NFIS members survey, May 2019, 726 responses

between unexcused absences/truancy and any anxiety, as well as social anxiety and generalised anxiety, specifically. Evidence was also found for a cross-sectional association between school refusal and separation anxiety, generalised anxiety, social anxiety and simple phobia.<sup>8</sup>

## **2 Consequences of these problems for children and families**

### **2.1 Deterioration in a child's mental health and an increase in level of need**

One characteristic of a child with school attendance difficulties is that they want to attend, but their difficulties prevent them from doing so. It is not a case of them wilfully refusing to attend, they simply cannot do it, usually due to overwhelming anxiety (although there may well be other underlying issues). The default response, reflecting the lack of comprehensive research and best practice guidance, is to force a child to attend school, although this has been shown to cause neurological damage and trauma, particularly if the underlying cause has not been identified. Parents report that this approach is counterproductive and makes a child's anxiety much worse. In our 2018 survey 45% of respondents say they forced their child to attend under pressure from the school or local authority. 21% felt pressured but refused to force attendance. 36% of the respondents felt forcing attendance hadn't helped and 59% felt it had made the situation much worse<sup>9</sup>.

### **2.2 Financial hardship**

If a child has unmet SEND or severe mental health problems and is unable to attend school, one parent will often have to give up work to care for them. In the absence of timely NHS referrals, many turn to private assessments for the sake of their child's welfare or to authorise absence. If the absence is unauthorised and the school refuses to send work home parents may try to fund private tutors to fill the education gap, and some re-mortgage their home to fund legal battles for the right support. The recent SEND inquiry has highlighted the fact that £70m is being spent on parental challenge against local authorities, yet 89% of parents win this challenge<sup>10</sup>. Fines and prosecutions only add to the stress of this situation.

### **2.3 Parents are 'non-electively' home educating**

Many parents are withdrawing their child from mainstream education, either because they are worried about their child's wellbeing and mental health, or they are being faced with fines and prosecutions due to unauthorised absence<sup>11</sup>. This is a reaction to a crisis, not a positive choice that reflects the aspiration of 'elective' home educators.

### **2.4 Parents are unaware of their rights, especially where schools and local authorities act unlawfully**

Government guidance allows for local autonomy, and this flexibility is being abused to 'gatekeep' funding. Over 20% of respondents to an NFIS survey have been incorrectly told by schools or CAMHS not to bother applying for an EHCP as they would not get one<sup>12</sup>. The onus is on parents to identify when guidance or the law is not being followed, and to pursue this through the school or local authority complaints system. Many parents are unaware that their child should be receiving an education if on authorised absence for 15 days or more

---

<sup>8</sup> Finning, K. et al (2019) Review: The association between anxiety and poor attendance at school. *Child and Adolescent Mental Health* 2019.

<sup>9</sup> NFIS member survey, May 2018, 1,661 respondents

<sup>10</sup> <https://www.specialneedsjungle.com/70million-council-costs-parents-send-tribunal/>

<sup>11</sup> Children's Commissioner for England (2019) *Skipping School: Invisible Children. How children disappear from England's schools.*

<sup>12</sup> NFIS member survey, May 2018, 1,661 respondents

and even if they are aware, it is difficult to find a local authority who follows this guidance correctly and fairly.

## 2.5 Family stress

The toll on families of looking after a child with unmet need, while receiving threats of fines and prosecutions and fighting the various systems is immense<sup>13</sup>. 26% of NFIS survey respondents, and/or their child, have been threatened with fines or prosecution<sup>14</sup>. Many family relationships break down under this pressure and parents often become ill themselves due to the stress they experience.

## 2.6 Referrals to social services and accusations of abuse, neglect and FII

Referring to Social Services or questioning whether there may be abuse or neglect, when there are very spurious grounds to do so, is one form of off rolling and a means of shifting safeguarding responsibility. 25% of NFIS survey respondents<sup>15</sup> have been reported to Social Services as a result of their child's school attendance difficulties. Furthermore, given the rarity of FII legal cases, it is shocking that over 18% of respondents have been subjected to accusations of FII. Unlike other criminal charges, FII cannot be erased from someone's file, even if a judge subsequently absolves them of any wrongdoing and deems the accusations to have been groundless. This means the outcome of such an action is long-term damage to a family's reputation and ability to access services without suspicion.

## 2.7 Children missing education

If a child is struggling to attend it is unlikely that the school will be prepared to send work home. Even when an absence is authorised, a comprehensive set of work and a system of marking and exchanging new work is rarely provided by schools, with only 35% of respondents to an NFIS survey<sup>16</sup> given even the most basic 'homework'. 59% were offered no suitable alternative provision even after medical evidence had been obtained. This is discriminatory; children who are excluded have the right to alternative provision after 5 days with no penalty against the parent. This lack of individualised educational support occurs while the school are still receiving funding for that child.

## 2.8 Off rolling is rife, to remove low attenders

It has been recognised publicly that off rolling exists and is a tactic used by schools to improve their attendance and attainment statistics. Children who are struggling with school attendance due to unmet need are particularly susceptible to off rolling tactics. These may be as subtle as gentle encouragement to home educate or move schools, or they may be wilfully obstructive, perhaps sabotaging a re-integration plan.

## 3 An alternative system

The attached Proposed Triage Attendance Plan outlines a skeleton proposal for an alternative system. Clearly any new system would require the resources of a policy group with multiple stakeholders; our proposal is intended to show that there is a feasible alternative which benefits schools and parents equally. We are, of course, open to other suggestions and look forward to hearing about any ideas you may have to solve the current problems.

---

<sup>13</sup> Epstein, R. , Brown, G. & O'Flynn, S. (2019) *Prosecuting Parents for Truancy: who pays the price?* Coventry University & University of Roehampton

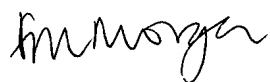
<sup>14</sup> NFIS member survey, May 2018, 1,661 respondents

<sup>15</sup> NFIS member survey, May 2018, 1,661 respondents

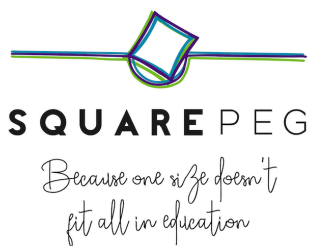
<sup>16</sup> NFIS member survey, May 2018, 1,661 respondents

We look forward to your response.

Kind regards



Fran Morgan  
Square Peg  
[www.teamsquarepeg.org](http://www.teamsquarepeg.org)



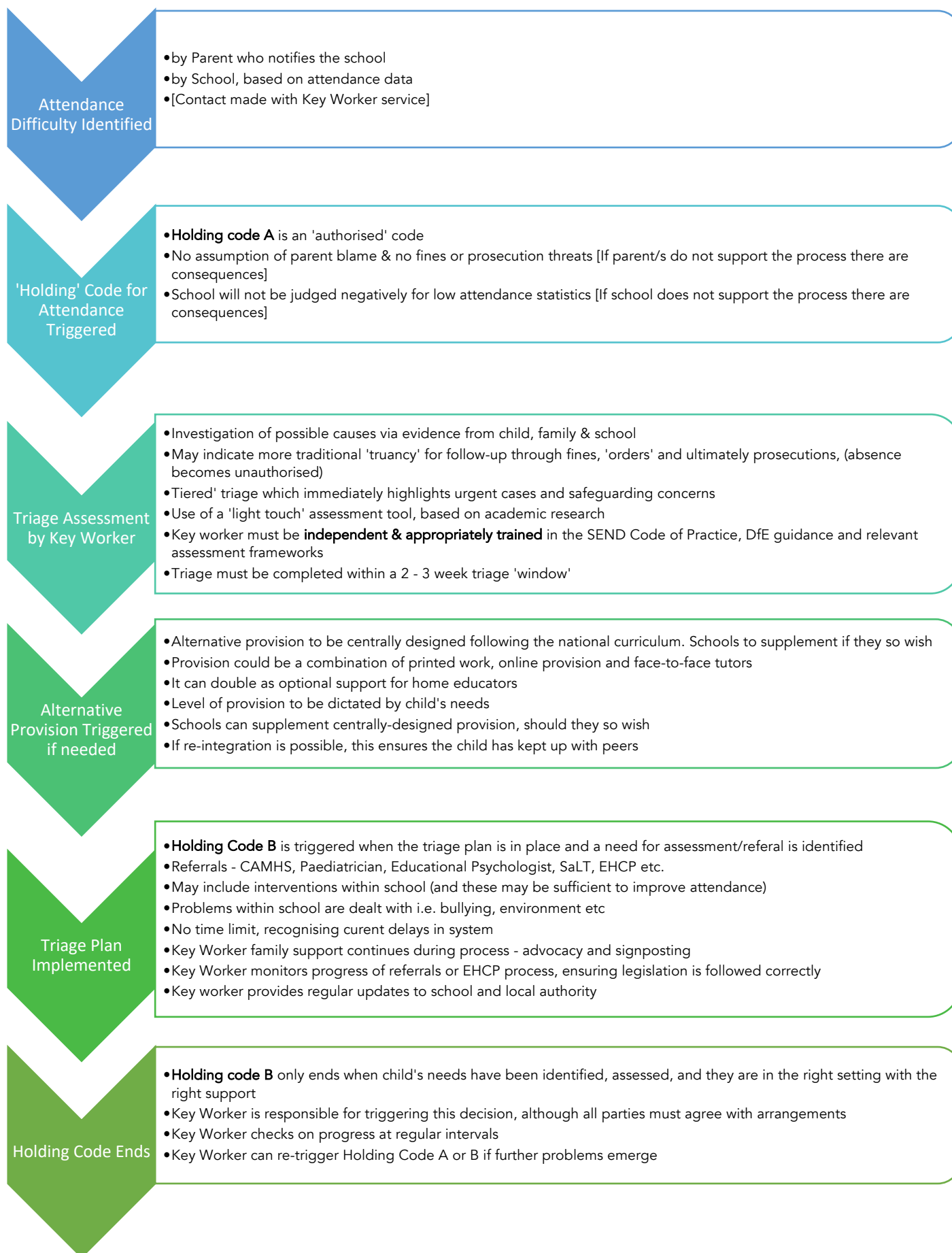
Beth Bodycote  
Not Fine In School  
[www.notfineinschool.org.uk](http://www.notfineinschool.org.uk)



encl. Proposed Triage Attendance Plan



## PROPOSED ATTENDANCE 'TRIAGE' SYSTEM



## PROPOSED ATTENDANCE 'TRIAGE' SYSTEM

### KEY POINTS

- We propose two new Holding Codes:
  - Holding Code A** identifies that there is a problem with school attendance and there MAY BE underlying issues
  - Holding Code B** follows the initial triage process and identifies that further investigation is needed
- It is crucial that either parent or school can trigger Holding Code A, and neither will face penalties during the process
- It is crucial that an independent, correctly trained Key Worker manages the triage process, using a 'light touch' plan based on existing research into school attendance difficulties
- This triage must happen immediately, within a 2-3 week window
- Safeguarding remains a key priority, overseen by the Key Worker who will gain an in-depth knowledge of the child and family
- If the Key Worker deems this solely as a 'truancy' issue, the absence will become unauthorised, although this must not preclude the investigation of underlying issues
- Holding Code B is triggered when the need for further referrals, assessments, diagnoses and support is identified (including an EHCP). This period is also authorised and remains in place until the Key Worker is satisfied that the child's needs have been met and appropriate educational provision is in place
- Alternative provision should be provided as soon as Holding Code B is triggered, or before - if applicable
- The Key Worker remains in place to guide any referrals, act as a point of contact for agencies and keep the school updated on progress. Their independence means that they can ensure practices remain lawful (saving the legal costs of parental challenge)
- Both Holding Codes start to evidence the scale of the problem, underlying issues and trends
- Co-production and mutual respect are crucial to success. The new system recognises that there are parents, schools and local authorities who do everything possible to resolve a child's difficulties, but equally there are others (on all sides) who do not take the actions they should

### The Key Worker MUST be:

- **INDEPENDENT** of school and LA (potentially funded through Contact, for example)
- **TRAINED** in statutory guidance and legislation, SEND issues and the Code of Practice, school attendance difficulties - based on the latest research
- **RESPECTED** by other professionals and school staff
- **AVAILABLE** immediately to undertake a triage assessment when the holding code is triggered
- **INFORMED** - able to build a comprehensive directory of local support services (based on the Local Offer, but not all are comprehensive) to which they can signpost families
- **RESPONSIBLE** for helping families navigate through the various systems and being a 'buffer' to support parents in what can be a time-consuming, stressful and long-drawn-out journey
- **ABLE** to support accountability and prevent unlawful practices
- **A POINT of CONTACT** for agencies (who often don't have well-established lines of communication)
- As far as possible **RESOURCE NEUTRAL**, through redirecting existing services and re-investing cost savings

We recognise the need for any new plan to be resource neutral, as far as is reasonably possible. The Key Worker role could therefore come from the redirection of an existing role in social services or education welfare, provided the funding is re-routed through an independent organisation and the new job specification and training is appropriate. Alternatively it could come from an independent workforce currently operating within schools (or where there are plans for such a workforce, eg. mental health leads/support teams).

Savings could come from a reduction in EHCP applications as early intervention could prevent a worsening of mental health problems, and create less need to apply for an EHCP as the only route to get help/appropriate provision. Savings can also be identified in terms of school resources and the cost of detriments caused by inadequacies in the current system. The prosecution, fining and imprisoning route currently used for truancy prosecution is very expensive, courts, lawyers etc all cost a huge amount. Better resourced help for parents & children would have costs attached, but not necessarily any greater than the costs of prosecuting 16,400 people (2017 statistics).

## Further Reading

Truancy, Single Justice Procedure & opinion pieces:

***The Times: Scrap plead by post secret trials***

<https://www.thetimes.co.uk/article/call-to-scrap-plead-by-post-secret-trials-5p6w8r3fz>

***'Cruel & discriminatory' 'Welfare, not criminal justice'***

<https://ukaii.org/2019/01/28/cruel-and-discriminatory-new-research-on-prosecuting-parents-for-school-absence/>

***'A gendered offence'***

<https://www.crimeandjustice.org.uk/resources/prosecuting-parents-truancy-who-pays-price>

***'Pointless and damaging'***

<https://www.transformjustice.org.uk/prosecuting-parents-for-truancy-who-pays-the-price/>

<https://www.thetimes.co.uk/article/parents-of-covid-ghost-pupils-hit-with-fines-3wj3j8vxq>

***'Parents wrongly convicted in truancy cases'***

<https://www.standard.co.uk/news/uk/parents-convicted-truancy-single-justice-procedure-b1029024.html>

***'Should school non attendance be treated as a crime?'***

<https://www.transformjustice.org.uk/should-school-non-attendance-be-treated-as-a-crime/>

Mental health impact:

***Impact of current attendance policy on mental health for children & young people***

<https://www.teamsquarepeg.org/post/dfc-attendance-consultation>

***Non attendance & neurodiversity & mental ill health***

[https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(21\)00367-9/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(21)00367-9/fulltext)

***Transmission of anxiety within family systems - SEND child to parent & siblings***

<https://uwaterloo.ca/news/media/when-covid-19-disrupts-multi-child-families-one-sibling>

***Kids in Crisis - Square Peg families & professionals interviewed***

<https://schoolsweek.co.uk/wp-content/uploads/2022/02/Kids-in-crisis-diqi.pdf>

***Channel 4 News - mental health & attendance***

<https://www.channel4.com/news/tens-of-thousands-of-children-absent-from-englands-schools-childrens-commissioner-says>

***Struggling Pupils Need Support***

<https://www.bbc.co.uk/news/education-61786325>

***Happier During Lockdown:***

<https://link.springer.com/article/10.1007/s00787-021-01934-z>

Safeguarding:

Institutionalising Parent Blame, Professor Luke Clements, Leeds Law School, found post Victoria Climbié serious case review guidance, Working Together to Safeguard Children, which is used in the new Working Together to Improve School Attendance Guidance, 'inherently unlawful'. Eileen Munro has spoken to Lord Knight in this regard.

<https://cerebra.org.uk/research/institutionalising-parent-carer-blame/>

<https://www.communitycare.co.uk/2021/12/16/the-tragic-deaths-of-arthur-and-star-must-lead-to-a-more-humane-and-supportive-social-care-for-families/> :

*"Yet the vast majority of these did not find the child required removal from home – or even a child protection plan. Research shows that one in every seven children were subject to a child protection enquiry before their fifth birthday by 2015-16, compared with one in 16 in 2009-10.*

*Over decades, reforms to children and families social work that have focused on target- driven cultures, efficiency and procedures, and taken social workers further away from families, seem to have achieved little for children and their safety. We now have systems that are more focused on organisational needs and targets than the needs of children and their families."*

#### Truancy (persistent absence)

2005 - Government fails to make a dent on truancy

<http://news.bbc.co.uk/1/hi/education/4232643.stm>

*"...seven years of tough government rhetoric and meaningless targets have done nothing to tackle the truancy epidemic in our schools."*

*It was time to tackle the causes of truancy rather than focus on penalties.*

*What was needed were smaller class sizes that gave teachers more time with each pupil, better flexibility between academic and vocational courses and reforming the curriculum so young people saw school as relevant.'*

#### 'Ghost' children:

<https://schoolweek.co.uk/do-ghost-children-exist-and-what-can-we-do-about-them/>

#### Data fact checks

<https://fullfact.org/education/iain-duncan-smith-school-absence-covid-lockdown/>

<https://fullfact.org/education/135000-children-missing-school-autumn-2021/>

<https://fullfact.org/education/children-off-school-roll-covid/>

#### Teachers Talk Radio, attendance data analysis

<https://teachertalkradio.podbean.com/e/improving-attendance-the-twilight-show-with-nathan-gynn/>

#### **Data retention period (66 years) for new live attendance tracker currently in pilot stage but due to roll out if Schools Bill is approved:**

Schools Bill Impact Assessment / Data (new) See Page 7

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1058763/School\\_attendance\\_data\\_collection\\_impact\\_assessment\\_v6.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058763/School_attendance_data_collection_impact_assessment_v6.pdf)

Data Protection Act 2018 <https://www.gov.uk/data-protection>

What is persistent absence measuring and does it need to change?

<https://ffteducationdatalab.org.uk/2023/02/what-is-persistent-absence-measuring-and-does-it-need-to-change/>

### 3 Asks

1. **End truancy laws** - criminalising parents does not improve outcomes for the child or their family, nor does it increase attendance. It harms the most vulnerable, increases likelihood of withdrawal, disengagement, anger, resentment, distrust. It weaves intergenerational institutional cycles of harm and has no place in civil society.
  - a. Replace truancy laws with a compassion-focussed response which focuses on ensuring welfare, social care, disability and SEN / educational support, mental health and appropriate healthcare needs have been assessed and provision is in place.
  - b. Where it is found a child is at risk of abuse or parental neglect, there are already mechanisms in place to address this via safeguarding and social services.
  - c. Ensure all efforts to work with the child and their family is a priority and protected standard.
  
2. **Attendance Code of Practice**, mapped, designed and co-produced with organisations such as ours, those with lived experience of barriers to attendance and brings together third sector organisations working across disability, SEN, intersectionality, children & families support as well as education professionals, health and care practitioners and welfare teams. The Attendance Code of Practice would set out the gold-standard replacement offer to criminalising families.
  
3. Introduce a **Mental Health & Wellbeing absence code** - this will achieve several key outcomes:
  - a. Give schools agency to authorise absence for mental ill health (too many currently do not recognise mental health as legitimate or valid)
  - b. Ensure families are not caught in the 'unauthorised absence' black hole, which fast tracks them to punitive, harmful, destabilising threats of fines and prosecution
  - c. Separate & identify the numbers of children struggling with disabling or clinical levels of mental ill health from the physical illness absence data and thus capture the impact of mental ill health on children's ability to access education
  - d. Act as a pastoral 'flag' for schools to notice and check in with the family to put in place informal or formal support or refer to specialist services, as appropriate, by following the Attendance Code of Practice



Department  
for Education

Sanctuary Buildings  
20 Great Smith Street  
London  
SW1P 3BT

Fran Morgan and Beth Bodycote  
c/o Square Peg

BY EMAIL ONLY

29 October 2019

Dear Ms Morgan and Ms Bodycote,

Thank you for your letter of 27 August addressed to Nick Gibb, Minister of State for School Standards, about school attendance and absence codes. Your letter has been passed to the team responsible for the Government's policy on school attendance to respond. We should be clear that this response relates to schools and local authorities in England only.

Good mental health is a priority for the Government. The department has committed to support schools and colleges to promote good mental wellbeing in children, provide a supportive environment for those experiencing problems, and secure access to more specialist help for those who need it. To enable this, we confirmed our commitment to take forward our ambitious, transformational proposals to provide earlier support for children and young people's mental health in the Government response to the department's consultation ['transforming children and young people's mental health provision'](#).

The NHS Long Term Plan, published on 7 January 2019, announced that by 2023/24 an extra 345,000 children and young people aged 0-25 will receive mental health support via NHS-funded mental health services and school or college-based Mental Health Support Teams. Under the Long Term Plan, mental health services will continue to receive a growing share of the NHS budget, with funding to grow by at least £2.3bn a year by 2023/24. For the first time, funding for children and young people's mental health services will grow faster than both overall NHS funding and total mental health spending.

It may also be helpful if I explain that every school has to have arrangements to protect its pupils from harm and provide support for pupils with health issues – mental as well as physical. When a school identifies an emerging issue, including mental health issues which require additional support, they should not delay putting it in place. They should follow the graduated approach process set out in the [department's statutory guidance on special educational needs and disability code of practice](#). The guidance is clear that support should be provided from an early stage, whether or not the child has a specific diagnosis.

The graduated approach, is a four-part cycle through which earlier decisions and actions are revisited, refined and revised with a growing understanding of the pupil's needs, what supports the pupil in making good progress and what they need to secure good outcomes. The four part-cycle is as follows:

- Assess: teachers, with the SENCO, assess the child's progress and identify needs regularly;
- Plan: put in place adjustments, interventions and support in consultation with the parent and pupil, regularly reviewing progress;
- Do: coordinated and continuous response from the teacher working with the SENCO, teaching assistants and other staff to problem solve and identifying what is effective; and,
- Review: on agreed dates assess the impact of the support against progress, agree changes and inform the parents.

A child in school who has this support would be regarded as receiving special educational needs (SEN) support. Where a pupil is receiving SEN support, schools must talk to parents regularly to agree clear outcomes and review progress towards them, discuss the activities and support that will help achieve them, and identify the responsibilities of the parent, the pupil and the school. Schools should meet parents at least three times each year.

A school should always involve a specialist where a pupil continues to make little or no progress or where they continue to work at levels substantially below those expected of pupils of a similar age despite evidence-based SEN support delivered by appropriately trained staff. Specialists might include, but are not limited to, Educational Psychologists, Child and Adolescent Mental Health Services (CAMHS), specialist teachers or support services and therapists (including speech and language therapists, occupational therapists and physiotherapists).

For some children it will be appropriate for a request to be made to the local authority for an Education, Health and Care needs assessment. This request can be made by the school or the parent. If the local authority agrees that an assessment is necessary this can lead to the creation of an Education, Health and Care Plan which sets out the support needed to enable the child to achieve their best possible outcomes.

The special educational needs and disabilities code of practice intentionally does not require a diagnosis for a child to access the support they need. The process is based on a child's need.

We are sorry to hear that you feel the current policy on school attendance and the national codes for recording absence in school attendance registers are causing problems for children with difficulties that you believe affect their attendance at school.

I am afraid that we do not accept the argument that introducing an additional absence code is necessary. It may be helpful to explain that keeping and

maintaining the school attendance register is governed by the Education (Pupil Registration) (England) Regulations 2006 as amended. The regulations are clear that where a pupil is unable to attend school by reason of sickness, their absence must be treated as authorised. The regulations also set out that where the reason for a pupil's absence cannot be established at the time when the register is taken, the absence must be recorded as unauthorised and that if the absence is subsequently established to be authorised, the register must be updated as soon as possible.

The use of the absence and attendance codes are not mandatory but they enable schools to record and monitor absence in a consistent way. They are also used for collecting statistics through the school census system. The absence and attendance codes are detailed in the [department's guidance on school attendance](#).

Schools are advised to use code I to record illness and guidance is clear that schools should authorise absence due to illness (both physical and mental health related) unless they have genuine cause for concern about the veracity of an illness. If the authenticity of illness is in doubt, school can request parents to provide medical evidence to support the absence. Schools are advised not to request medical evidence unnecessarily; we would not expect schools to request medical evidence unless there is a clear case to do so. This means that schools must authorise the absence unless they have reason to doubt that a pupil cannot attend school by reason of sickness.

Schools are advised to use code N to record absence where the reason for absence has not yet been provided. Schools should make every effort to establish the reason for a pupil's absence and when the reason has been established the register should be amended. This means that if schools cannot establish the reason for absence at the time the register is taken, they must record it as unauthorised. Code N is in effect a holding code while the reason for absence is being established. Guidance is clear that code N should not be left on a pupil's attendance record indefinitely. Schools are advised that if no reason for absence is provided after a reasonable amount of time code N should be replaced with code O which means the pupil is absent from school without authorisation. We expect schools to consider the individual case when determining what a reasonable amount of time is.

With regard to monitoring attendance, the regulations require schools to notify their local authority, at agreed regular intervals, the details of any pupil of compulsory school age who has failed to attend the school regularly, or has been absent without the school's permission for a continuous period of ten school days or more. Schools and local authorities should consider the individual circumstances of each case and take the appropriate course of action to ensure the child receives consistent education.

With regard to parents being penalised for their child's absence, as you are aware, if parents register their child at school and the child fails to attend regularly, parents may be guilty of an offence under section 444 of the Education Act 1996 and may be issued a penalty notice or prosecuted. A



parent cannot be penalised if a statutory exception applies. These exceptions are: where the school has given permission; where the pupil is prevented from attending by sickness or other unavoidable problems; where their family is marking a day reserved exclusively for religious observance; or where the local authority has failed to fulfil any duty it has to help them get to school.

It is for schools or the local authorities to decide if they wish to use a penalty notice as a sanction. Penalty notices are governed by the Education (Penalty Notices) (England) Regulations 2007 as amended. The regulations require every local authority, in consultation with their schools and the police, to draw up a code of conduct for issuing penalty notices. The code will set out the occasions when it will be appropriate to issue a penalty notice. A penalty notice must be issued in accordance with that code.

It is for local authorities to decide whether to prosecute a parent having taken account of all the circumstances of the case and the information submitted by the school. Local authority officers are best placed to assess the family's circumstances and decide upon the most appropriate course of action.

We would encourage parents to work with their child's school and their local authority, to discuss the reasons behind their child's absence and agree an action plan so that the right support can be put in place to help their child to return to regular and consistent education, whether at school or otherwise.

Local authorities are responsible for arranging suitable education for children of compulsory school age who, because of health reasons, would otherwise not receive suitable education. This applies whether or not the child is registered at a school and whatever type of school they attend. The education must be full-time or as close to full-time as the child's health allows. The [department's statutory guidance on ensuring a good education for children who cannot attend school because of health needs](#) sets out that local authorities should provide education as soon as it is clear that the child will be away from school for fifteen days or more, whether consecutive or cumulative. Local authorities should have a named officer responsible for the education of children with additional health needs.

We hope you find this information helpful and that it has gone some way to reassure you that the department currently provides guidance for schools and local authorities to ensure that pupils who cannot attend school because of health needs continue to receive education and that SEN and health issues, including mental health, are supported.

Yours sincerely,

School Attendance Policy Team  
Behaviour, Attendance, Exclusion and Alternative Provision Division

February 2023