

## Burden of proof

It is for the **parents to prove** that one or more of these defences apply. It is not a defence to say that you did not know that your child was absent from school or that there were other reasons for them not attending school e.g., that they were being bullied at the time.

## Sentencing

If you have been convicted of the offence for which you have been summonsed, the magistrates have the power to impose penalties as follows:

- A fine of up to £1,000
- A fine of up to £2,500 and/or imprisonment for a term not exceeding three months

Costs may also be awarded against you.

Fines and costs are collected by the court bailiff.

## Advice

The officer dealing with your case has specialist knowledge and experience in the courts. If you require legal advice, lists of solicitors are available at the Citizens Advice Bureau. Visit [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) for further guidance.

Parents are strongly advised to seek legal help at the earliest opportunity. This may reduce delay and expense in your case.

---

For more information, please contact the Education Inclusion Service:  
Telephone: 01452 427274  
Email: [attendance@gloucestershire.gov.uk](mailto:attendance@gloucestershire.gov.uk)  
Website: [www.gloucestershire.gov.uk/education-and-learning](http://www.gloucestershire.gov.uk/education-and-learning)

# Prosecution for Non-Attendance at School



## The Law

The Education Act 1996 (Section 444) states:

'If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.'

The offence is called a 'strict liability' offence. This means that if you are the parent of the child, and that child is on roll at a school and they have not attended regularly, then the court must find you guilty of the offence, unless you have a defence.

### A parent is defined in Education Law as:

- All natural parents, whether married or not
- Any person who, although not a natural parent, has parental responsibility for a child or young person
- Any person who, although not a natural parent, has care of a child or young person

The fact that you do not live with the child is not a defence against securing their attendance at school.

## The Defences

For any case brought before the magistrates under section 444, there are only the following defences:

- **The child had a leave of absence**  
Your child had the Headteacher's permission to be absent. You could prove this by producing a letter from the Headteacher.
- **The child was too ill to attend school**

Sickness means that your child was not fit for school on the dates listed on your summons. You could prove this by producing a medical certificate or letter from your child's doctor or consultant.

- **The child was unavoidably absent**  
There were exceptional circumstances preventing your child from attending school during all the dates listed on the summons. This may be difficult to prove.
- **The child was absent for any day exclusively set apart for religious observance by the religious body to which his parent belongs**  
Your child was absent because of your religious observance – not your child's. You could prove this with a letter from your minister of religion. It is unlikely that this defence would apply to all the dates on your summons.
- **The school is not within 'walking distance' of the child's home, and no suitable alternative arrangements have been made by the Local Authority (LA)**  
For a child under 8 years old, this distance is 2 miles; for a child 8 years old and over, this distance is 3 miles. If this is the case, and the LA has failed to provide alternative arrangements, you could prove this with copies of your correspondence with the LA. You should seek legal advice if you plan to use this as a defence.
- **The child has no fixed abode, and the parent can prove that they were travelling for the purposes of obtaining work**  
This means that you are a Traveller, and on the dates listed on your summons, you were travelling to seek work or were working. You could prove this with a witness who could explain to the court that this was what you were doing.