In relation to non attendance prosecutions:-

What is the definition of ‘parent’ and who can be prosecuted as a ‘parent’ of a child with attendance issues?

As a result of confusion amongst some parents who claim they have no parental responsibility and therefore can’t be issued a penalty notice or prosecuted, this leaflet has been put together to clarify the legal definition of, “parent”. It should also give some helpful pointers which may assist future work with families.

Background

Schools are required by law to have a wide range of dealings with pupils' parents. The question "Who are a pupil's parents?" is, however, not always as straightforward as it sounds. In addition, schools can often find themselves caught up in disputes between a number of adults who each claim to have parental responsibility for a particular child.

This leaflet is intended as helpful guidance for schools but should not be treated as a complete and authoritative statement of the law.

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SES
Definitions

Who is a "Parent"?
Section 576 of the Education Act 1996 defines "parent" as:
- All natural (biological) parents, whether they are 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.

Who has “Parental Responsibility”?
(The Children Act 1989)
Having parental responsibility means assuming all the rights, duties, powers, responsibilities and authority that a parent of a child has by law.

People other than a child's natural parents can acquire parental responsibility through:
- Being granted a residence order
- Being appointed a guardian
- Being named in an emergency protection order (although parental responsibility in such a case is limited to taking reasonable steps to safeguard or promote the child's welfare)
- Adopting a child.

If the parents of a child were not married to each other when the child was born, the mother automatically has parental responsibility but the father only does (from 1 December 2003) by jointly registering the birth of the child with the mother. He can, however subsequently acquire parental responsibility by various legal means.

What does having “care” of a child mean”?
Having care of a child or young person means that a person who the child lives with and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

This could be shown by:
- Interaction with the school – attending meetings, making phone calls, being on the School’s record as being involved (in whatever capacity) etc.
- Residence with the child where, for all intents and purposes, the person is part of the family
- A man or woman married to a parent of a child

For example:
- Are they listed on school records?
- Does the school have contact details for them?
- Do they meet with teachers/attend parents’ evenings?
- Have they been involved with the measures designed to improve attendance?
- Do they contact the school on behalf of the child when s/he is ill?
- Do they live with the child?
- How long has the school known of them being connected with the child?
- Does the adult bring/collect the child to/from school?
- Is the adult married to the parent of the child?

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It would not be appropriate to assume that someone having a casual relationship with the parent of a child necessarily has ‘care of the child’ unless we have cause to believe the person has some involvement with the child’s life – living with the child could be a determining factor as could the other examples outlined above.

Educational Provision

The Education Act 1996 s.7 states that:

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable –
to his age, ability and aptitude, and
to any special educational needs he may have,
either by regular attendance at school or otherwise.

Conclusion

It is therefore those adults who are having significant input to a child’s life who can be classified as, “parent”, having “parental responsibility” or who have “care of a child” who we can take action against if they are failing in their duties to ensure the child is receiving their educational entitlement and the school can evidence that they have actively engaged them in efforts to improve the poor attendance.