



Local Government Association

school attendance and the prosecution of parents: perspectives from education welfare service management

by Sally Kendall, Richard White and Kay Kinder
National Foundation for Educational Research

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first report



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Richard White
Kay Kinder



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INVESTOR IN PEOPLE



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Executive summary

Background

This report relays the findings from the initial phase of a study focusing on non-attendance at school and the prosecution of parents. The study is divided into three phases. Phase one provides an overview of the prosecution process within LEAs via telephone interviews with Principal Education Welfare Officers (PEWOs) or equivalent, and the completion of a proforma in order to gather quantitative data on prosecutions within LEAs. Phase two focuses on visits to 12 LEAs to speak to Education Welfare Service (EWS) staff and others involved in prosecutions to provide a more detailed analysis of the prosecution process and to obtain operational and strategic insights. Phase three involves interviews with families who have been prosecuted, in order to gain their insights into the process and its impact.

This report, in presenting findings from phase one of the study, focuses on quantitative data on prosecutions provided by officers from 97 LEAs and qualitative data from interviews with 122 PEWO-level professionals in 119 LEAs.

Quantitative data on prosecutions

- ◆ Proforma returns showed that across 97 LEAs the total recorded number of pupils involved in prosecutions between September 2001 and July 2002 was 5045, and that prosecutions were most likely to be taken against parents of year 10 pupils.
- ◆ The number of prosecutions per 1000 pupils ranged from nil to 7.4: the average number of prosecutions was 1.1 per 1000 pupils.
- ◆ Three-quarters of prosecutions were brought against female parents, whilst only a quarter were brought against

male parents. Over four-fifths of prosecutions resulted in a guilty verdict.

- ◆ Fines were the most common disposal given, accounting for nearly two-thirds of all disposals. The most common level of fine was between £50 and £100, accounting for half of all the recorded fines imposed.

Backgrounds and contexts of prosecutions

- ◆ Socio-economic, geographic and demographic factors were identified as significant elements in understanding levels of prosecution. External influences – political and policy factors, as well as factors relating to the structure, organisation and orientation of the EWS/Education Social Work Service (ESWS) were deemed to impact on the level of prosecutions.

Nature of offences sought

- ◆ The majority of interviewees said they brought prosecutions under section 444.1 of the 1996 Education Act, although many did (or were intending to) prosecute parents under section 444.1a. (444.1a is the aggravated offence, which carries stiffer penalties with the possibility of a maximum fine of £2,500 per parent per offence, or up to three months imprisonment.) Only two respondents commented that they would not use section 444.1a.
- ◆ Many interviewees noted that considerable work had yet to be done on developing protocols and training for the successful and effective use of section 444.1a.
- ◆ The decision underlying the nature of the offence sought was largely

dependent on individual circumstances, although the higher offence was often automatically employed for repeat prosecutions and in cases of extreme non-cooperation from parents.

- ◆ The advantages of section 444.1a stemmed from the compulsion for parents to attend court, so it was seen as reflecting the seriousness of the offence. Concerns were raised regarding the philosophy of possibly imprisoning a parent, as well as the technical/legislative and training implications, such as the use of formal cautioning of parents.

Disposals arising from prosecution

- ◆ Low fines were generally criticised by EWS managers, as they were perceived to symbolise the lack of importance given to the prosecution. There was also a general acceptance of the reasons underlying such levels and parents' inability to afford higher fines. Perceived inconsistencies in the level of fines imposed were also questioned.
- ◆ Interviewees were largely supportive of a conditional discharge's ability to effect positive change in attendance without inflicting hardship on parents and families. However, a few were critical of conditional discharge in terms of it being an indecisive conclusion to a prosecution or one that might lead parents to think they had 'got away with it'.

Perspectives on the principle and effectiveness of prosecution

- ◆ Ninety per cent of interviewees (110 out of 122) agreed with the general principle of prosecution and seventy per cent of interviewees (86 out of 122) felt that, at times, prosecution could be an effective strategy. The most common justification for prosecution given by interviewees was the compulsory nature of education.

- ◆ Key factors that were felt to contribute towards the effectiveness of prosecution, e.g. the timing of prosecution and the disposals given, were also identified by interviewees as factors that might mitigate against effectiveness.

- ◆ The process of bringing parents to court was often viewed by interviewees as more effective than the actual outcome.
- ◆ There was recognition amongst interviewees of the need to monitor the effectiveness of prosecutions within their own LEAs. Where such monitoring systems were not yet established, interviewees identified this as an area for development.

Concluding comments

- ◆ Overall, the key findings to date and areas for further discussion must surely revolve around the variability both in practice and viewpoints that the research has revealed.
- ◆ It is clear that the vast majority of interviewees were supportive of the general principle of prosecution; a few adamantly were not. Considerably less (though more than two-thirds) also felt that it could be an effective strategy, and this perhaps intimates that some discrepancy between principle and current practice exists in the minds of senior EWS staff. Perceived inconsistency in disposals and resource issues were particular factors highlighted as adversely impinging on perceived effectiveness, sometimes compounded by a lack of 'hard' evidence on outcomes.
- ◆ Variability emerged in opinion about the viability and appropriateness of different disposals, about uses of the aggravated offence (Section 444.1a), as well as variability in the decision-making process, who is responsible for presenting cases in court and the role of

elected members. Similarly, from the survey data, variability within LEAs emerged: different degrees of prosecutions per pupil population were evident. In addition, variability within prosecution cases was evident: it was female parents that accounted for

three-quarters of the parents prosecuted.

- ◆ This overview of variability and variety perhaps can provide the basis for useful debate and exchange of views within and between each of the services connected to the prosecution process.

Introduction

This report provides a summary of the analysis undertaken to date for the study of the effects and effectiveness of the prosecution of parents for their child's non-attendance at school. A main aim of the research project is to assess the effectiveness of prosecution as a strategy for improving school attendance. Commensurate with this, the study is seeking to address the following research objectives:

- to undertake an analysis of prosecution cases and their outcomes
- to explore the possible relationship between successful outcomes and the age of the child at the time of prosecution
- to gain the views of parents, young people and professionals on the process and to identify good practice and/or alternatives
- to see if there is a relationship between authorities carrying out a high number of prosecutions and overall attendance levels
- to assess what measures LEAs use to ensure that assessment and decision making with regard to legal action is consistent.

The study is divided into three phases.

- Phase one: an initial audit of the prosecution process within LEAs via telephone interviews with Principal Education Welfare Officers (PEWOs) or their equivalents in other services, and the completion of a proforma in order to gather quantitative data on prosecutions within LEAs.
- Phase two: site visits to 12 LEAs to speak to Education Welfare Service staff, local

authority officers involved in prosecutions and magistrates and clerks to the court, in order to provide a more detailed analysis of the prosecution process and to obtain operational and strategic insights.

- Phase three: case studies of up to 40 families who have been prosecuted, in order to gain their insights into the process and its impact.

This report presents findings from phase one of the study, (findings from phases two and three will be presented in the final report). Firstly, it focuses on quantitative data on prosecutions provided by LEA Education Welfare Service (EWS) (or equivalent) personnel. Staff from 97 LEAs completed proformas, which focused on gathering quantitative data on prosecutions for the academic year September 2001 to July 2002. The proforma data presented here focuses on:

- the structure of the Education Welfare Service, including the number of staff and pupil populations within each LEA
- information on who was responsible for the decision to prosecute within individual LEAs
- details of who was responsible for presenting cases in court
- quantitative data on prosecutions within LEAs for the academic year September 2001 to July 2002.

Secondly, this report contains analysis of qualitative information derived from interviews with 122 PEWO-level professionals from EWS and Education Social Work Service (ESWS) departments in 119 LEAs. All interviewees were drawn from managerial levels, therefore it was not

deemed necessary to attribute a source to each quotation. This report covers the thoughts and perceptions of such personnel on the following issues/areas:

- the backgrounds and contexts of prosecutions
- the nature of offences pursued in relation to school non-attendance
- the disposals (outcomes) resulting from court appearances

- the relative effectiveness of different disposals
- the perceived purpose and effectiveness of prosecuting parents for non-attendance.

Thirdly, the report presents a brief discussion of some of the emerging themes and issues pertinent to the evaluation of prosecution as a strategy to increase school attendance, including some of the perceived barriers to effectiveness.

1. A survey of LEAs' quantitative data on prosecutions

1.1 Introduction

Telephone interviews were conducted with 122 PEWOs (or equivalent) in 119 LEAs during the summer of 2002, about their views on prosecution as a strategy for dealing with school non-attendance and to obtain details of the prosecution process within their LEAs. After completion of the telephone interviews, PEWOs were asked to complete a proforma providing additional quantitative data for the study. The proformas were designed to gather quantitative data on prosecution within LEAs for the academic year September 2001 to July 2002. The proformas also gathered information on who was responsible for the decision to prosecute, who presented cases in court, the structure of the EWS and the number of staff and pupils within the LEA. A total of 97 completed proformas were received. The following sections present an initial analysis of the proforma data.

1.2 Number of EWOs to pupil population

The number of EWOs in relation to the total pupil population was calculated to provide an overview of staffing levels within LEAs. Table 1.1 shows that this figure ranged from 0.1 to 0.7 of an Education Welfare Officer (EWO) for every 1000 pupils. (The LEA with the lowest proportion of EWOs to pupils was a county and the one with the highest was a metropolitan authority.) The average number of EWOs per 1000 pupils across all LEAs was 0.4.

1.3 Number of prosecutions to pupil population

The number of recorded prosecutions (September 2001 to July 2002) in relation to

Table 1.1 Ratio of EWOs to pupils (N = 95)

EWOs per 1000 pupils	Number of LEAs
0.1	1
0.2	24
0.3	25
0.4	27
0.5	9
0.6	8
0.7	1

Two LEAs were unable to provide data

Source: NFER proforma 2002

the total pupil population was also calculated, in order to provide an overview of the scale of prosecutions within LEAs. Table 1.2 shows the number of prosecutions per 1000 pupils, which ranged from nil to 7.4. The average number of prosecutions per 1000 pupils was 1.1. The LEA with the highest total number of prosecutions also had the greatest number of prosecutions in relation to its pupil population. It also had a relatively large number of EWOs in relation to its pupil population – 0.6 EWOs to every 1000 pupils. The LEA with the lowest number of prosecutions also had the equivalent of 0.6 EWOs to every 1000 pupils.

Table 1.2 Number of prosecutions per 1000 pupils (N = 95)

Prosecutions per 1000 pupils	Number of LEAs
< 0.1	3
0.1–1.0	59
1.1–2.0	16
2.1–3.0	9
3.1–4.0	4
4.1–5.0	1
5.1–6.0	2
6.1–7.0	0
7.1–8.0	1

Two LEAs were unable to provide data

Source: NFER proforma 2002

Analysis was undertaken to examine any possible links between the number of EWOs and the rates of prosecution within an LEA. Statistical analysis shows that there was a positive relationship between the proportion of EWOs in an LEA and the number of prosecutions, that is, as the number of EWOs per 1000 pupils increased, so did the number of prosecutions.

Table 1.3 shows the number of prosecutions per EWO in each LEA. This ranged from nil to 12.3 prosecutions per EWO, with the average number of prosecutions per EWO being 2.9.

Table 1.3 Number of prosecutions per EWO (N = 95)

Prosecutions per EWO	Number of LEAs
< 0.1	2
0.1–1.0	14
1.1–2.0	27
2.1–3.0	24
3.1–4.0	6
4.1–5.0	6
5.1–6.0	8
6.1–7.0	1
7.1–8.0	2
8.1–9.0	1
9.1–10.0	2
10.1–11.0	0
11.1–12.0	1
12.1–13.0	1

*Two LEAs were unable to provide data
Source: NFER proforma 2002*

1.4 Decision to prosecute

Respondents were asked to provide details of who was responsible for the decision to prosecute within individual LEAs. Table 1.4 presents the responses in rank order. It should be noted that this was often a two or even three-tiered system in that the EWO/Senior EWO (SEWO) may make the decision to prosecute but then this decision

had to be ratified by the PEWO and final authorisation may rest with the Director or Assistant Director of Education. In some instances, final authorisation might merely involve a rubber-stamping of the previous decision made, but respondents also pointed out that initial decisions might be overturned. Table 1.4 shows that the decision to prosecute within an LEA was most commonly taken by SEWOs and EWOs. Generally this decision was made in supervision, but it often had to be ratified by a higher authority. Thus, when less senior staff made the decision to prosecute the more likely it was that they would be required to seek final authorisation from a higher authority. It should also be noted that, in a number of LEAs, officers had to justify the reason for not prosecuting cases.

The second most common response was that PEWOs/Principal Education Social Workers (PESWs) or equivalent within the service would make the decision. This decision was being made at a higher level, so, in these cases, no respondents indicated that they would be required to seek final authorisation. Respondents stated that PEWOs often made the decision to prosecute on the evidence provided by, or after consultation with, practitioners, i.e. SEWOs and EWOs. In one LEA, it was noted that the PEWO made the decision to prosecute, but also consulted Legal Services in order to ensure that the LEA had legal grounds on which to proceed with the case.

The involvement of Legal Services was also seen in the final authorisation of the decision making process, again ensuring that the LEA had legal grounds on which to proceed. In a number of LEAs, senior education staff, i.e. Directors/Assistant Directors of Education also had to provide final authorisation, which in some instances was felt to slow down the prosecution process. In a small number of LEAs, elected council members had to provide final authorisation to prosecute. In some LEAs this had proved to be a problematic process as

cabinet members had blocked decisions to prosecute made by the EWS (see Chapter 2: Backgrounds and contexts of prosecutions). In others, elected members delegated the decision to a 'named officer' within the LEA.

In 13 LEAs, the decision to prosecute was made by a panel, e.g. an 'Out of School Panel' or 'Borough Attendance Panel'. This

approach to decision making was viewed as important in showing that it was a 'joint decision' rather than being made by an individual, and also that it showed that the system was a 'fair and equal' process. In a number of these instances, the PEWO or equivalent acted as the chair of the meeting, and was still responsible for final authorisation.

Table 1.4 Decision to prosecute: who is responsible? (N = 97)

Decision to prosecute: level within service	Number of LEAs	Final authorisation (if specified)
SEWO and EWO	29	Director/Assistant Director of Education (2) Cabinet/elected members (1) Chief Education Officer (1) Head of Practice (Education and Social Services) (1) Senior Education Officer (SEO) (1) PEWO (4) SEWO (1) Legal Services (2) Panel (3)
PEWO/PW	25	None specified
PEWO/PESW and Legal Services	1	
Panel	13	Director of Education (1) PEWO/PESW (4) SEWO and Court Work Administrator (1)
SEWO/Senior Education Social Worker (SESW)	8	Director of Education (1) PESW (1) Legal Services (1)
SEWO/SESW and Chief Education Welfare Officer (CEWO)	1	Director of Education (1)
SEWO/Senior Education Social Worker (SESW) and Courts Officer	1	PESW (1)
SEWO/SESW and Assistant Education Officer (AEO)	1	AEO (1)
PEWO and SEWO	5	Director of Education (1) Cabinet/elected members (1)
PEWO and SEWO and EWO	1	Assistant Director of Education (1)
PEWO and EWO	5	
PEWO and EWO and Legal Services	1	
EWO/ESW	2	Head of Service (1)
EWO/ESW and Legal Services	1	
EWO/ESW and SEO	1	
Courts Officer	1	
No response/unable to respond	1	

Source: NFER proforma 2002

Table 1.5 Presentation of cases in court (N = 97)

Cases presented in court by:	Number of LEAs	Support from Legal Services
Legal Services	47	N/A
SEWO/SESW	21	7
EWO	8	6
PEWO/Assistant PEWO	6	1
PEWO/Assistant PEWO and Courts Officer	1	
PEWO/Assistant PEWO and SEWO	1	
Courts officer	5	
Courts officer and SEWO	1	
Courts officer and EWO	1	
EWS	2	1
EWS and Legal Services	1	
Unable to respond/no response	2	
Assistant Education Officer (AEO)	1	

Source: NFER proforma 2002

What can be shown from this analysis is that whilst the final decision to prosecute often rested with an individual, LEAs were ensuring that the process was open to review and ratification by a higher authority or, as in the case of the panels, a group of individuals within the authority/service.

1.5 Presentation of cases in court

Respondents were also asked to provide details of who actually presented their prosecution cases in court.

Table 1.5 shows, in rank order, who was responsible for presenting cases in court. Legal Services were most likely to present cases in court, with nearly half of respondents stating that this was the case. This legal representation was often carried out in conjunction with members of the EWS/ESWS, with both senior managers and practitioners attending court to give evidence, provide support and answer queries.

The second most frequent response was that cases were presented by SEWOs/SESWs. Over a fifth of LEAs who completed proformas stated that SEWOs/SESWs were responsible

for taking cases to court. Legal Services were involved in supporting or taking some of these cases. Seven of these LEAs stated that Legal Services would take the more complex cases or 'not guilty' pleas. Legal Services provided support for an even greater proportion of EWOs who were responsible for presenting cases. Six of the eight LEAs where EWOs presented cases in court stated that Legal Services would take the cases, for example if the EWO was 'unhappy about taking the case', if they were 'complex cases', if they were 'not guilty' pleas or if the parent had legal representation. Assistant PEWOs/PEWOs took cases in eight of the LEAs but only one stated they used Legal Services, perhaps reflecting PEWOs' experience of presenting cases in court.

A number of LEAs used specific Courts Officers to present cases in court; usually these were SEWOs or EWOs who might take all the prosecutions within their LEA or within a specific geographical area in the LEA. Some respondents indicated that Courts Officers presented cases in conjunction with practitioners and managers within the service.

Table 1.5 shows that approximately half of all prosecution cases were routinely taken by

legally qualified officers outside the EWS, whilst the remaining half were taken by members of the EWS, some of whom could call on specialist legal assistance if this was required. The presence of designated Courts Officers within the EWS along with the use of Legal Services may reflect the increasing specialism of court work, as well as the practical benefits of having particular personnel responsible for prosecutions within the LEA. In addition, telephone interviewees also highlighted the increasing complexity of prosecution cases in terms of:

- taking the higher order offence (Section 444.1a) where parents risked stiffer penalties including imprisonment
- an increase in the number of parents in receipt of professional representation
- the perceived threat of human rights challenges, which may also increase the EWS's need for additional specialist legal support.

1.6 Pupil and parent data: basic frequencies and distributions

The following sections examine the numbers of children and parents involved in prosecution cases in the 97 LEAs. It should be noted that, as the level of requested detail/analysis became more specific, the numbers of LEAs who could provide data reduced because, for example, not all LEAs kept records of children's and/or parents' gender.

1.6.1 Numbers of children

The total number of children involved in prosecution cases recorded between September 2001 and July 2002 was 5045. This was based on returns from 96 LEAs (one LEA did not detail the individual number of children involved but just kept records of cases).

1.6.2 Gender distribution

Overall, 91 of the 97 LEAs had records of the gender of pupils involved in prosecution cases. The remaining six LEAs did not record

this information or were unable to access it at an LEA level. Table 1.6 shows the gender distribution of pupils involved in prosecution cases. It should be noted that one LEA, whilst able to provide the total number of children, could only give gender details on those cases that had been entered onto the database at that time (92 out of 120). Therefore, the total figure for the number of individual pupils involved in prosecution cases in that LEA was not consistent with the gender totals. It is apparent that the distribution of male and female pupils involved in prosecution cases was almost equal, with only a very slight weighting towards females.

Table 1.6 Recorded pupil gender totals (N = 4441)

Male pupils		Female pupils	
Number	%	Number	%
2196	49	2245	51

*91 LEAs provided data on pupil gender
Source: NFER proforma 2002*

1.6.3 Year group distribution

Returned proformas provided details of the year group distribution of prosecutions relating to 3836 children from 85 LEAs. This included two LEAs with year group information on only a proportion of the pupils whose parents were prosecuted (one LEA had records on 92 out of 120 pupils and the other had records on 31 out of 80 pupils). Thirteen LEAs did not provide year group distributions either because they did not keep records or could not access this information at an LEA-level or, as in the case of one LEA, because they recorded pupils' date of birth rather than year group.

Table 1.7 and Figure 1.1 show the year group breakdown for pupils whose parents were prosecuted. It is apparent that the number of prosecutions increased in line with year group increase, until the level peaked at year 10, and then reduced again in year 11. Within this overall upward trend, it can be seen that nearly half (48 per cent) of all these prosecutions related to children in key stage 4 (years 10 and 11). Key stage 1 (years

1 and 2) accounted for less than one in 20 prosecutions, key stage 2 (years 3 to 6) for just over one in ten and key stage 3 (years 7 to 9) for over a third.

Table 1.7 Recorded pupil year group distribution for pupils whose parents were prosecuted (N = 3836)

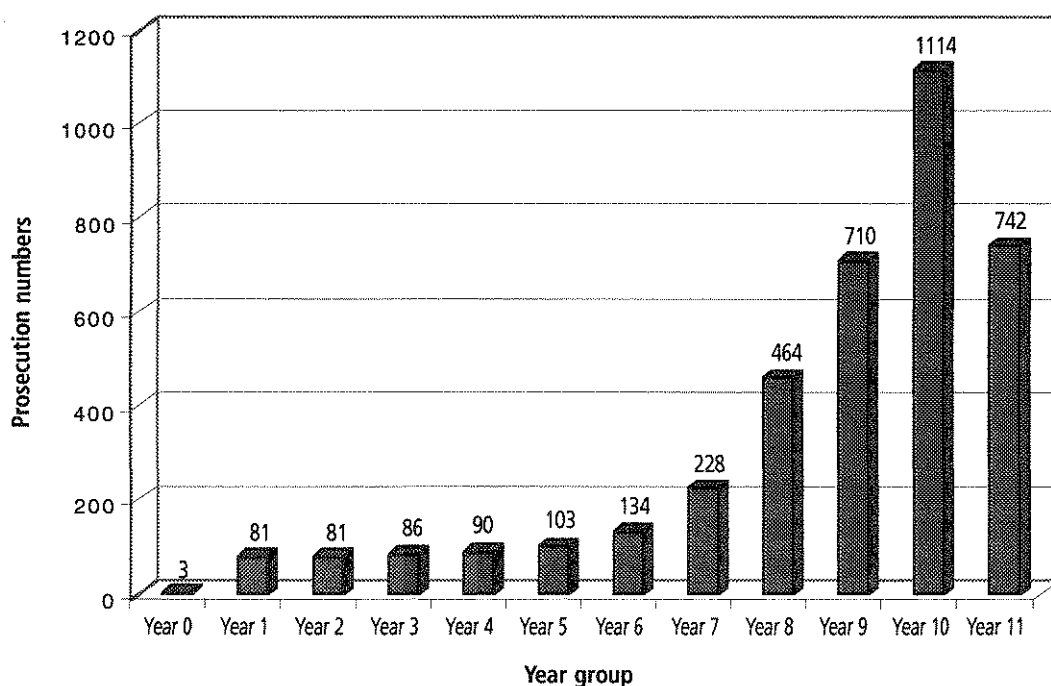
Year group	Number of pupils	%
Yr 0	3	0.08
Yr 1	81	2.11
Yr 2	81	2.11
Yr 3	86	2.24
Yr 4	90	2.35
Yr 5	103	2.69
Yr 6	134	3.49
Yr 7	228	5.94
Yr 8	464	12.10
Yr 9	710	18.51
Yr 10	1114	29.04
Yr 11	742	19.34
Totals	3836	100

85 LEAs provided data on pupil year group distribution
Source: NFER proforma 2002

This trend was in contrast to interviewees' wish to take prosecutions earlier when they felt they could be more effective. Interviewees in the study felt that the prosecution of parents of older children was less effective because poor patterns of attendance had often become entrenched by that age.

However, a number of interviewees highlighted that they were considering younger siblings when they prosecuted parents of year 10 and 11 children, that is, they were thinking of the wider (beneficial) impact that prosecution might have on the attendance of younger children in the family. In addition, interviewees noted that year 11 was a particularly important year for pupils, in terms of organising successful post-16 transition. Therefore, prosecuting parents with year 11 children was seen as ensuring that pupils maintained some contact with the educational system so that they could be referred on to other agencies, e.g. Connexions.

Figure 1.1 Recorded pupil year group distribution (85 LEAs provided data; source: NFER proforma 2002)



1.6.4 Numbers of parents summonsed to court

In total, 93 LEAs provided information on the total number of parents prosecuted. Four LEAs were unable to provide this information. In relation to the 93 LEAs that provided information, a total of 5381 parents had been summonsed to court between September 2001 and July 2002.

1.6.5 Numbers of parents summonsed — breakdown by gender

A total of 86 LEAs were able to provide data on the gender of parents prosecuted, between September 2001 and July 2002. Information derived from proforma returns indicates that three-quarters of the prosecutions were brought against female parents and only one-quarter against male parents (see Table 1.8).

Table 1.8 Recorded number of parents summonsed to court – breakdown by gender (N = 4463)

Male parents		Female parents	
Number	%	Number	%
1115	25	3348	75

85 LEAs were able to provide data on parents' gender
Source: NFER proforma 2002

1.7 Outcome data: basic frequencies and distributions of disposals

1.7.1 Outcome of prosecutions

Returned proformas contained details on the outcomes of 5230 prosecutions from 97 LEAs, but two of these LEAs were unable to complete full returns.

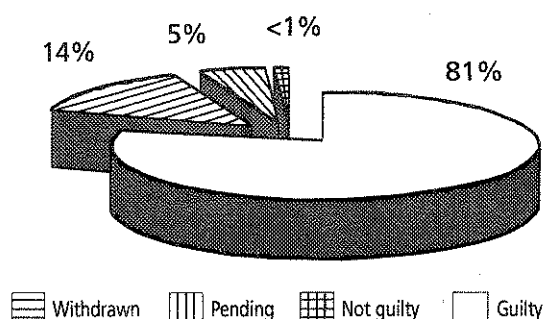
Table 1.9 and Figure 1.2 show that the vast majority, over four-fifths of prosecutions, resulted in a guilty verdict, although it is interesting to note that 14 per cent of cases were withdrawn.

Table 1.9 Recorded outcomes of prosecutions (N = 5230)

Outcome	Number	%
Not guilty	24	<1
Guilty	4223	81
Withdrawn	722	14
Pending	261	5
Totals	5230	100

95 LEAs completed full returns
Source: NFER proforma 2002

Figure 1.2 Recorded outcomes of prosecutions (95 LEAs completed full returns; source: NFER proforma 2002)



1.7.2 Disposals

Returned proformas contained details of 4580 disposals resulting from prosecutions between September 2001 and July 2002. Table 1.10 and Figure 1.3 show the distribution of disposals made in the 97 LEAs. It is apparent that fines constituted the vast majority (more than two-thirds) of disposals, followed by conditional discharges, which accounted for more than a quarter.

Proformas showed the small number of cases that had resulted in an absolute discharge or were adjourned *sine die*. Interviewees' views on disposals are explored further in Chapter 4.

Respondents were also asked to detail the number of Education Supervision Orders (ESO) and the number of Parenting Orders made over the period. (Parenting Orders are not disposals in their own right, but may be

made in addition to other disposals.) Returns showed that a total of 278 ESOs had been made, but that only six had been given as a result of a magistrate's direction and the LEA had applied for the rest. A total of 325 Parenting Orders had also been imposed over the period. The largest number of ESOs (36) had been issued in two county authorities, whilst the largest number of Parenting Orders (56) had been issued in a city authority. Over a quarter of respondents recorded no Parenting Orders or ESOs.

Table 1.10 Recorded disposals made (N = 4580)

Disposals	Number of disposals	%
Fines	3139	69
Conditional discharge	1176	26
Absolute discharge	129	3
Adjourned <i>sine die</i>	119	3
Community rehabilitation orders	11	<1
Education Supervision Order – magistrates' court	6	<1
Totals	4580	101

Percentages have been rounded and therefore may not sum to 100
Source: NFER proforma 2002

1.7.3 Disposals – gender breakdown

A total of 82 LEAs were able to provide data on the gender of parents in receipt of different disposals. Table 1.11 provides a breakdown of the gender totals for the two most common disposals – fines and conditional discharges – along with the number of recorded Parenting Orders and Education Supervision Orders. When these data were examined, the proportion of male and female parents fined and given a conditional discharge mirrored the percentage of male and female parents prosecuted (see Table 1.8), at a quarter and three-quarters, respectively. However, the proportion of female parents given a Parenting Order was slightly higher at 78 per cent and the proportion involved in an Education Supervision Order was lower at 70 per cent.

1.7.4 Fines

A total of 92 LEAs were able to provide details of the level of fines imposed. Table 1.12 shows that, where information on the level of fine was provided, the most common fine imposed by magistrates was

Figure 1.3 Recorded percentage breakdown of disposals made (percentages may not sum to 100 due to rounding; source: NFER proforma 2002)

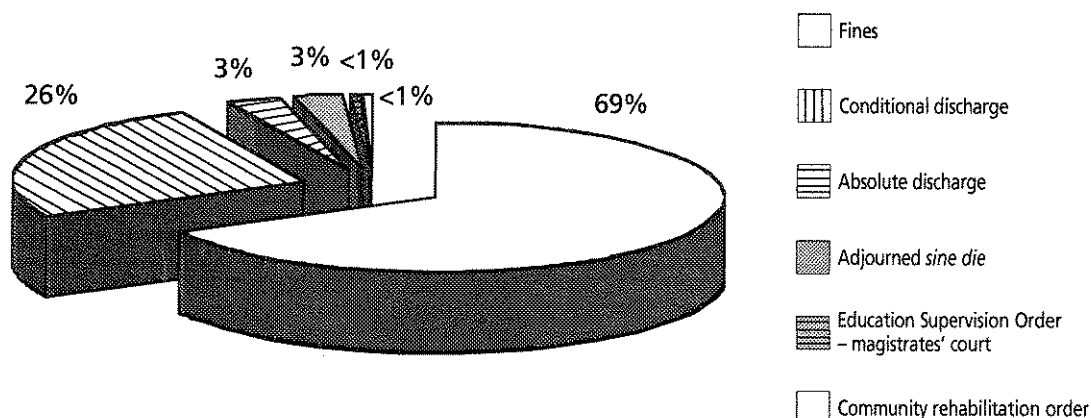


Table 1.11 Recorded disposals – gender breakdown (N = 3664)

Disposals	Male parents		Female parents	
	Number	%	Number	%
Total no. of parents fined (2218)	542	24	1676	76
Total no. of parents given a conditional discharge (1022)	238	23	784	77
Total no. of parents given a Parenting Order (278)	60	22	218	78
Total no. of parents given an Education Supervision Order (146)	44	30	102	70

82 LEAs provided data on the gender breakdown of disposals

Source: NFER proforma 2002

between £50 and £100. Fines at this level accounted for half of the recorded fines imposed. Despite interviewees' concerns that the levels of fines were low, data from the proformas indicated that there were more fines of £101 to £500 than there were of below £50. Nevertheless, fines of less than £50 still accounted for 15 per cent of all the recorded fines and there were only two fines (in the same LEA) recorded of between £1001 and £2500.

Table 1.13 shows the breakdown according to gender of the parents fined. It should be remembered that only 78 LEAs provided a gender breakdown for the parents fined, so the totals in this table will not correspond with those in Table 1.12. Table 1.13 shows that

for fines of up to £500 the proportion of male and female parents remains consistent with the overall gender breakdown of three-quarters women and a quarter men. However, the proportion of women fined between £501 and £1000 was less; women represented 65 per cent of the parents fined with a consequent rise to 35 per cent in the proportion of men fined at this level. A degree of caution should be noted when using these figures because of the relatively small numbers involved.

1.7.5 LEA costs

Respondents were asked to indicate whether they applied for costs when they sought a prosecution. Only five of the 97 respondents said that they did not. The range of costs

Table 1.12 Recorded levels of fines imposed (N = 3114)

<£50	£50–100	£101–500	£501–1000	£1001–2500	Level not stated
470	1560	742	22	2	318

92 LEAs provided data on the levels of fines imposed

Source: NFER proforma 2002

Table 1.13 Recorded levels of fines imposed: gender breakdown (N = 1989)

	<£50		£50–100		£101–500		£501–1000		£1001–2500	
	M	F	M	F	M	F	M	F	M	F
No. of parents	105	308	246	684	153	474	6	11	1	1
%	25	75	26	74	24	76	35	65	50	50

78 LEAs provided data on the levels of fines imposed and gender breakdown

Source: NFER proforma 2002

Table 1.14 Recorded LEA costs (N = 119)

	<£30	£30–50	£51–100	£101–150	£150+
Total no. of responses	3	48	46	14	8

92 LEAs provided data on costs. Responses totalled 119 as a number of LEAs indicated that they received a range of costs
Source: NFER proforma 2002

applied for varied between LEAs and cases but fell into the categories shown in Table 1.14. The most common costs applied for were between £30 and £50, followed by £51 to £100. Only eight respondents indicated that they received costs of more than £150 and three received costs of less than £30. The proforma data reflected interviewees' feelings that the costs generally awarded were relatively low, i.e. less than £50.

1.7.6 Monitoring

As well as providing quantitative data for the purposes of this research, respondents were also asked to indicate any data monitoring that regularly took place in relation to prosecutions within the LEA and to state the length of time that these data had been collected. Table 1.15 provides an overview of the variables monitored, along with the number of LEAs involved. The most common variable monitored by LEAs focused on pupil ages: school phase and pupil age, followed by gender. Nearly two-thirds of LEAs were monitoring school

phase and nearly three-fifths were monitoring pupil age and gender.

Much of the data monitoring appears to have started in the last three years, although there appeared to be a 'core' of LEAs who had been monitoring school phase, pupil age and gender for considerably longer, i.e. more than five years. One respondent indicated that the LEA had been monitoring prosecutions by school phase and pupil age for more than 18 years, whilst another had monitored all categories, except socio-economic status, for the past nine years.

Interestingly, slightly more respondents stated that their LEA was monitoring 'household type', i.e. whether they were one or two parent families, than ethnicity. More than half of those respondents who indicated how long they had been monitoring ethnicity had only been doing this for one year or less.

Other variables monitored by LEAs mainly focused on examining the effectiveness of

Table 1.15 Monitoring prosecution data (N = 257)

Variables monitored	Total*	Length of time monitored				
		1 yr or less	2–3 yrs	4–5 yrs	5+ yrs	Other**
School phase	61	14	14	8	9	5
Pupil age	58	12	15	5	10	4
Gender	56	11	14	4	10	3
Household type	30	9	8	1	7	2
Ethnicity	28	12	6	1	1	2
Socio-economic status	7	3	2	0	1	0
Other	17	2	1	2	0	1
None	22	N/A	N/A	N/A	N/A	N/A

97 LEAs provided data on monitoring

* Total will not equal the sum of the other columns due to non-responses

** Responses included: 'always', 'several years', 'annually' and 'long-term'

Source: NFER proforma 2002

the prosecution process by monitoring attendance pre- and post-court – 11 respondents indicated that they were doing this. Monitoring pre- and post-court attendance was also an issue raised by telephone interviewees, who felt that this was something that they should be monitoring at an aggregate level but did not always have the resources to do so. Respondents also highlighted that they were monitoring other factors such as:

- geographical area (where families lived)
- 'looked after' children/young carers
- parental plea
- disposals
- repeat convictions
- number of prosecutions on a termly basis.

A total of 22 respondents indicated that they did not carry out any data monitoring. This included LEAs with low levels of prosecution and one respondent indicated that all the data was collected but was recorded on individual pupil files. However, there was one respondent from an LEA with a high level of prosecution who stated that they did not monitor data at an aggregate level.

Emerging findings

- ◆ The number of EWOs per 1000 pupils ranged from 0.1 to 0.7 per 1000 pupils, reflecting widely different levels of staffing between LEAs. The average number of EWOs per 1000 pupils was 0.4.

- ◆ The number of prosecutions per 1000 pupils ranged from nil to 7.4, with the average number of prosecutions being 1.1 per 1000 pupils.
- ◆ The decision to prosecute was most commonly taken by SEWOs/EWOs in supervision or by the PEWO/PESW.
- ◆ Roughly half of all prosecutions were taken by Legal Services, whilst the remainder were taken by the EWS. A number of LEAs highlighted that EWS staff who were responsible for taking prosecutions could routinely call on the support of Legal Services if their input was required.
- ◆ Proforma returns showed that the total number of pupils involved in prosecutions between September 2001 and July 2002 was 5045 and that prosecutions were most likely to be taken against parents of year 10 pupils.
- ◆ Three-quarters of the prosecutions were brought against female parents, whilst only a quarter were brought against male parents. Over four-fifths of prosecutions resulted in a guilty verdict.
- ◆ Fines were the most common disposal given, accounting for nearly two-thirds of all disposals. The most common level of fine was between £50 and £100.
- ◆ In terms of data monitoring of prosecutions, nearly two-thirds of respondents indicated that they were monitoring school phase, and nearly three-fifths were monitoring pupil age and gender.

2. Backgrounds and contexts of prosecutions

2.1 Introduction

This section presents interviewees' perceptions of, and views on, the level of prosecution in their LEA (in relation to neighbouring authorities) and explores the contexts, issues and factors identified as possibly impacting on such levels. A total of 122 education welfare management personnel from 119 LEAs provided qualitative insights into prosecutions.

2.2 Interviewees' perceptions of prosecution levels in LEAs

Interviewees were asked to comment on the level of prosecutions in their authorities. Their responses fell into the categories shown in Table 2.1.

Table 2.1 Perceived level of prosecutions (N = 122)

Perceived level of prosecution	Number of responses	%
'Low' level	35	29
'Medium' level	32	26
'High' level	32	26
No comment/unable to make an assessment	23	18

Source: NFER interviews 2002

It is clear that there was an equal division of interviewees perceiving high and medium levels, with slightly more suggesting low levels of prosecution in their LEAs. Less than one-fifth of respondents made no comment, or were unable to make an assessment.

2.2.1 Perceived low level of prosecution (N = 35)

Those interviewees who perceived their authority to be a 'low' prosecuting LEA suggested a range of reasons for this and generally forwarded the view that such levels should and would increase.

The *reorganisation/restructuring* of EWS/ESWS was highlighted as a reason for low levels of prosecution by several interviewees. This included the devolution of EWOs into schools, which was regarded as 'a major accomplishment' by one interviewee, signifying that low prosecutions, in this case, was not seen as problematic. Several interviewees suggested that low levels of prosecutions stemmed from reduced capacity, both at managerial and case-worker levels, which had capped the number of cases instigated. In such cases, the low level was seen as something that required addressing.

We have been very under-staffed on the management side and we are now just up to full strength. I imagine that the number will increase quite a lot. If it doubled in a year, I wouldn't be surprised.

Several interviewees equated low levels of prosecutions with **process reviews and procedural developments** that had led to improved levels of attendance, with consequent reductions in the number of prosecutions brought. One respondent, for example, noted that their LEA with 'traditionally' high levels of prosecutions had reorientated its approach to non-attendance and the 'fine-tuned procedures' led to a reduction in prosecutions from 300 to less than 50 per year. Other interviewees suggested that ongoing and impending reviews of procedures, such as streamlining and reducing the administrative/bureaucratic constraints, would lead to increases in the number of prosecutions.

Several respondents accounted for low levels of prosecution in terms of the **impact of prosecution outcomes**, in that various previous disposals were seen as acting as a disincentive to bring further cases. Seemingly 'derisory' outcomes were regarded as not matching the high level of resources invested

in a prosecution, in terms of officer time, effort and financial costs and hence acted as a deterrent. Similarly, one respondent claimed that previous negative experiences of court, a succession of 'not guilty' verdicts and hostile encounters with defence representation had brought about a reluctance/reticence amongst EWOs to bring further actions.

Other explanations for low prosecution levels included a 'historical reluctance to prosecute' in one LEA, whilst another respondent suggested that this resulted from attempts to 'resolve issues without recourse to prosecution', reflecting the ethos of the LEA and the social work orientation of EWS staff. Two other interviewees noted that a large number of ESOs were sought as an alternative means of improving attendance and that low levels of unauthorised absence in an LEA were also seen as a cause of low levels of prosecution.

However, despite such views, the vast majority of those in 'low prosecuting' LEAs were supportive of prosecution and appeared to be in favour of increasing the level.

2.2.2 Perceived medium level of prosecution (N = 32)

Interviewees who perceived a 'medium' level of prosecution cited similar explanations and also often appeared supportive of prosecution as a means of addressing non-attendance.

Staffing implications were highlighted by several interviewees as influencing the level of prosecutions, noting that fluctuations could often occur, depending on the level of staffing. Staff leaving impacted on the capacity of services and new staff joining was also seen to have implications because of the time factor involved in training for court action.

Interviewees also suggested that **process reviews** had led to increased numbers of

prosecutions and that these also had implications for the earlier and speedier use of prosecution. One interviewee noted that **procedural developments**, such as introducing the formal cautioning of parents, had actually reduced the level of prosecutions as improvements came about without having to pursue legal action to completion.

Seven other interviewees noted that prosecution levels were rising and one respondent also commented that the increase was consistent with the move away from the previous culture of not prosecuting, noting that the current level was 'on a par with our statistical neighbours but lower than we would like it to be'.

2.2.3 Perceived high level of prosecution (N = 32)

Interviewees who perceived their LEA to be a 'high' prosecuting authority were more likely to make reference to the proactive nature of prosecutions and the changes introduced as a result of reviews and reports, notably from Ofsted. In general, these interviewees also appeared supportive of the high levels of prosecution.

Six interviewees suggested that the high prosecution level in their LEAs had arisen, in part, as a result of **reorganisation and restructuring** of their service. For example, in one case, changes in service leadership and the ethos and personal background of the new service head had inspired moves from a very low to a very high prosecution level. Staffing developments and specific appointments were made to streamline the service and to increase the capacity to bring prosecutions.

Reviews of service and procedures appear to have led to the development or maintenance of high levels of prosecution. Ofsted reports and inspections were said by three interviewees to have prompted moves to increase the levels of prosecution and put in

place the necessary mechanisms to achieve this. One respondent, for example, noted that Ofsted raised questions concerning the high level of absence and the low level of prosecutions: 'as a result, a tough stance has been taken'. One interviewee noted that with the development and refinement of procedures, the level of prosecutions had tripled over the past two or three years.

One interviewee suggested that prosecution levels had been transformed from 'very low' to 'very high', as a consequence of meeting the demands of schools. This situation, brought about by pressure from headteachers, was regarded as being problematic and the subsequent level of prosecutions seen as too high.

Eight interviewees who perceived their LEA to have high levels of prosecutions equated this with the emergence of **proactive stances on prosecution**. These interviewees were positive about the level of prosecution and stressed the 'proactive' and 'aggressive' drive to increase attendance, even if this entailed a reorientation of service and a shift in emphasis away from 'welfare' issues.

Over the last couple of years, we have really gone for prosecutions in a big way.

They [prosecutions] are growing purposefully ... we are not frightened to use them.

... blitz parentally condoned absence.

2.2.4 No comment/unable to make an assessment (N = 23)

Although unable to make a comment on the level of prosecutions in their LEA, the majority of these interviewees suggested that the numbers were rising and that they favoured this situation. One noted that their LEA was 'an authority that believes in prosecutions', whilst another contended that the level of non-attendance meant that they were 'getting to the point where it is difficult to deal with persistent absenteeism by any other means'.

2.3 The potential influences on prosecution levels in LEAs

In discussing the contexts in which prosecutions were located, interviewees highlighted areas that could potentially exert some influence on the level of prosecution in their authorities (some of which have already been introduced in the preceding discussion). Many of these issues were linked, indicating multiple influences on prosecution levels. For the purpose of analysis, interviewees' responses have been grouped into the following categories:

- socio-economic, geographic and demographic factors
- external influences (political and policy-related factors)
- service and structure-related factors.

These factors/issues serve to contextualise and ground interviewees' perceptions of how prosecution levels can be influenced and will now be explored in more detail as a means of understanding the variety of LEA settings and situations in which prosecutions took place.

2.3.1 Socio-economic, geographic and demographic factors

The influential socio-economic, geographic and demographic factors and issues identified included:

- deprivation and social issues – welfare/family circumstances (N = 24)
- geographical issues – county-wide contextual variations, industrial decline (N = 21)
- attitudinal and cultural orientations towards education (N = 20)
- demographic issues – ethnic and structural composition (N = 14)
- population instability – transience and mobility (N = 6).

Interviewees suggested that **deprivation and social issues** could represent significant

influences on the level of prosecutions in an LEA. Social issues, as a context for prosecution, were said to increase the challenges faced by schools. Poverty, unemployment, poor housing conditions, large family units and single parent households were all identified as possible contributory factors to high prosecution levels. 'A high concentration of unemployment, rented accommodation and social deprivation all affect the attendance figures.'

High levels of deprivation and social issues were also said to provide a disincentive to prosecution. One interviewee illustrated the complexities and dilemmas involved, noting that:

We have a couple of areas of really high deprivation and I think officers are quite reluctant to put forward cases for court in those areas because of the deprivation. Having said that, we do go to court in those areas, but I would expect it to be higher.

Geographical issues were seen to impact on prosecution levels. Several interviewees noted that 'leafy suburbs' and small towns were maybe less likely to have high prosecution levels as a result of good attendance in such areas. Intra-LEA variations were said, by several interviewees, to impact on the level of prosecutions taken, as more deprived areas, where education had less of a priority, were often associated with a higher number of prosecutions, leading to uneven distributions throughout the LEA. Several interviewees expressed concerns relating to the need to avoid the 'post-code lottery' syndrome where particular areas could be more 'at risk' of prosecutions being taken than others.

Attitudinal and cultural orientations towards education were noted as significant influences on prosecution levels. Various respondents highlighted their concerns about 'a sub-culture where education hasn't got a high priority'. Others developed this idea and detailed the intergenerational transmission of attitudes and orientation; 'you

get that historical thing coming in', whereby parents' lack of interest in education is passed to their children. Examples of parents' 'less than committed attitude to education' were given, including high levels of holidays in term time. Hence, cultures of low aspiration and low expectation combined with apathy from parents were seen as providing contexts in which prosecution levels could be expected to be high.

Analysis of interviewees' responses reveals that one of the most significant influences on the level of prosecutions in an LEA comprised a combination of pockets of deprivation and a persuasive feeling amongst sections of the population that children's education is not a great priority: 'There are a lot of schools in areas of serious deprivation where there seems to be a feeling that education doesn't matter.' This was seen as often being connected to wider socio-economic and geographical situations, especially the decline of traditional industries or employment opportunities:

It's parental attitudes towards education because they have always expected that when they leave school they'll walk into a job ... it's not the case these days.

Interviewees noted that high levels of parentally condoned absence could be related to, and perpetuated by, elements of a particular city's industrial past, when employment was easy to find. However, in the context of industrial decline and restructuring of employment opportunities, the effect of local cultural orientations towards education had necessitated proactive approaches to prosecutions:

The culture of previous generations has been that going to school and staying at school hasn't been that important ... the importance of going to school and getting examinations has not always been high.

Similarly, others highlighted a 'Monday and a Friday syndrome' resulting from past industrial practices in particular occupations

whereby workers could, through bonuses and quick working, earn sufficient wages without completing a full working week. It was contended that such legacies impacted on the local culture and influenced attitudes towards school attendance.

Demographic issues, including the ethnic and structural composition of the population, were deemed to have several implications for, and impacts on, the level of prosecution. For example, one interviewee noted that 40 per cent of the intake of one of the largest schools in the LEA was from the Bangladeshi community, described as being 'very disadvantaged in a number of ways, from housing to economics/employment, to other resources' and many pupils were deemed to be 'at risk of disaffection' so were more likely to have attendance problems. Links between attendance levels and population characteristics were also made by other interviewees:

We have got a huge population of Asian families and people from different ethnic minorities that take extended leave of absence, which does have a terrible effect on our attendance figures.

Conversely, another respondent described a different situation in relation to the links between attendance/prosecutions and geo-demographic contexts:

The typical person who appears in front of the magistrates tends to be a white, single mother. There are very few black families who appear in court and this is not representative of the demographic mix of the area. In the poorest parts of [the borough] there are very few prosecutions. There are a lot of refugees in these areas and they seem to value education. The majority of prosecutions come from 'settled' areas which are mainly made up of white working class families.

Population instability and high levels of transience and mobility were deemed to impact on attendance and thus on prosecution levels in some LEAs. For some towns and cities, this was especially problematic:

We have a significant transient population here ... an awful lot of people will come down here, spend months here and then disappear again.

Other respondents suggested that transience could be an issue in deciding which cases to pursue:

We do our best to prosecute parents for non-attendance. The only problem that we have got is that we have a large amount of refugees and they tend to move on. Sometimes you start the court papers only to find that they have moved on to another area.

2.3.2 External influences (political and policy-related factors)

One in five interviewees contended that the prosecution level in their LEA was not influenced by political or policy-related issues, although some noted that there had been considerable influence in the past. Twenty-three interviewees suggested that levels of prosecution could be influenced by the following political and policy-related factors:

- wider/national policy initiatives and influences (N = 10)
- local political and administrative influences (N = 10)
- legislative/legal structure influences (N = 3).

The majority of comments relating to influences on levels of prosecution were made in relation to **wider/national policy initiatives and influences** and typical comments included: 'One can't avoid league tables, can one? They obviously are the driving force.' This particular respondent identified the concerns expressed by headteachers, LEA managers and elected members as impacting on increasing prosecution initiatives in order to meet government targets for attendance levels.

Another interviewee also speculated that prosecutions in a particular LEA would rise as

a means of following government recommendations to reduce truancy. The emphasis on the 'welfare' aspects undertaken by the EWS would thus be tempered by an increased tendency to prosecute. These thoughts were replicated by others in accounting for the shifts from welfare to prosecution stances that had already taken place:

It's government policy really that influences [levels of prosecution]. It's the winds of change isn't it? ... the welfare issues were important because they influenced attendance and things change and then it became 'Prosecute! We need more prosecutions'.

There is certainly a thought within the LEA that it is obviously a government priority and my line managers feel that we should be looking at perhaps more prosecutions.

We've upped the amount of prosecutions simply because we were targeted about three years ago by [the] DfES as having high unauthorised absence. Now we've been congratulated by the DfES because we've reduced it a lot. The way we've reduced it is we've increased the amount of prosecutions.

Whilst some may have been uneasy about the influence of government policy, one interviewee in particular was firm in expressing his deep concerns about governmental 'enthusiasm' and 'encouragement' to authorities to prosecute. A consequence of this was expressed in terms of the fear that: 'if you had not undertaken prosecutions, then you were somehow failing to meet the government agenda'. Hence, for this interviewee, prosecutions were seen as acutely and inextricably linked with political issues.

Following on from such issues of politicisation, other comments were made regarding the possible **local political and administrative influences** on prosecution levels. The political orientations of local administrations – and changes to them – were identified as influential factors. One

interviewee predicted that the recent change in political orientation of the local council (after 20 years) was:

likely to have a profound impact because their thinking is very different to the previous administration and the lead councillor for education is much more keen on taking [the prosecution] route.

Similarly, it was stated that: 'we [EWS] are the instruments of the local authority and there is a will towards prosecution in the authority.' As a result, it was deemed that the level of prosecution would reflect this.

The role of elected/cabinet members appeared, in some LEAs, to have been a significant consideration with regard to the level of prosecutions. Several interviewees commented on the influence originating from this source. Several suggested that prosecutions could have been limited or curtailed or increased as a result:

Councillors have questioned the level of prosecutions in the past. There was a time when the legal department felt that prosecutions needed to be in the public interest.

Others however, noted 'expectations' from local members that **tough stances** should be taken.

Divergence within local systems was also highlighted, illustrating the possible tensions that could impact on prosecution levels. One interviewee noted that the Chair of Magistrates was 'Okay with giving parents custodial sentences, whilst the LEA's political masters would find that very inappropriate'. In order to reduce such bureaucratic and political impact on prosecutions, it was suggested by one interviewee that consideration was being given to restructuring the prosecution process to relocate the final authorisation of prosecution to an LEA director as opposed to a cabinet member:

... somebody who knows nothing about law, the rules of evidence, points to prove,

burdens of proof, reading statements and sometimes challenging me on whether I should be going to court or not [would no longer be able influence the prosecution levels].

Another interviewee was highly frustrated by and critical of, what was seen as 'an archaic system of interference' whereby cabinet members (at fortnightly committee meetings) had to consider all the cases that the EWS wished to pursue in court.

A further 18 interviewees noted that their approach to, and levels of, prosecution were not influenced by, but did receive support from such political and policy-orientated sources. Decisions relating to prosecution were generally regarded as being left to the judgement of EWS professionals. One respondent, for example, noted that elected members were supportive of prosecutions as a means of improving attendance:

They take a keen interest in the situation ... they don't stand up and bay for blood, or anything, but they want to know that the EWS is acting on the LEA's behalf to try and ensure that children attend school regularly.

One interviewee claimed that elected members were committed to the inclusion agenda pursued by the EWS and the prosecutions element that this entailed, 'as long as we are able to demonstrate that this is having a positive effect on attendance'. Furthermore, another respondent stated that:

It has always been members' views very much that that parents have a responsibility and if they don't take that responsibility, we should be taking some kind of action.

One interviewee in particular stressed the high level of input and involvement from the local authority senior management team, describing 'a definite commitment and support from our senior management team

towards using court action', reflected in a member of this team authorising all papers for prosecution.

Three interviewees noted that **legislative/legal structures** could impact on the levels of prosecutions undertaken, largely resulting from the 'demoralising effect' on EWOs that stems from inconsistent approaches of magistrates to prosecution cases. One interviewee also suggested that the borough solicitors also acted to reduce the numbers of prosecutions taken as a result of workload or capacity considerations.

2.3.3 Service and structure-related factors

Sixteen interviewees suggested that issues relating to the nature and structure of the EWS or ESWS could influence the level of prosecutions brought in a LEA in terms of:

- developments within the service (N = 6)
- staff-related issues – training, attitudes, inconsistencies (N = 10).

Six interviewees noted that **developments within the service**, such as restructuring and staffing levels, could impact on the level of prosecutions sought. Training and guidance for staff was seen as key to this, as exemplified by one interviewee:

We had a load of new people two years ago ... we doubled our staff basically, so they have taken a while to bed-in. You can't just rush in and prosecute.

The **orientation and ethos, attitudes and approach** of staff were also seen as potentially able to impact on prosecution levels. It was contended, for example, that staff with social work backgrounds may be less inclined to prosecute than others: '95 per cent of staff here are qualified social workers and they tend to take a wider view than the Attendance Officer might take.'

Emerging findings

- ◆ Interviewees' responses reflected a roughly equal distribution of high, medium and low perceived levels of prosecution.
- ◆ There was a feeling amongst interviewees that prosecutions had risen and would continue to rise across low, medium and high categories of perceived prosecution levels.
- ◆ Interviewees were generally supportive of prosecutions – it was only those in the 'low' category that did not appear satisfied with the level of prosecution.
- ◆ The majority of interviewees located prosecutions in, or associated them with, the contexts and settings in which non/low attendance occurred.
- ◆ Socio-economic, geographic and demographic factors were identified as significant elements in understanding levels of prosecution.
- ◆ External influences – political and policy-related factors, as well as factors relating to the structure, organisation and orientation of the EWS/ESWS were deemed to impact on the level of prosecutions.

3. Nature of offences sought

3.1 Introduction

Interviewees were asked to specify and comment on the nature of offences their LEAs pursued in relation to school non-attendance. This section explores the distribution of offences taken under Section 444.1 (Level 3) and Section 444.1a (Level 4) of the 1996 Education Act. Table 3.1 shows that a total of 109 interviewees provided details of the nature of offences pursued by LEAs in relation to school non-attendance.

Table 3.1 Nature of offences sought (N = 109)

Offence sought	Number of responses	%
Both section 444.1 and 444.1a	57	52
Section 444.1 currently, with use of section 444.1a in the future	33	30
Only section 444.1	17	15
Only section 444.1a	2	2

Source: NFER interviews 2002

3.2 The offences sought

Table 3.1 shows that the majority of interviewees noted that their LEAs brought prosecutions under section 444.1, although many also indicated that they did (or were intending to) prosecute parents under the aggravated offence (section 444.1a), which carried with it the possibility of a maximum of £2,500 fine per parent per offence and up to three months imprisonment. Very few indicated that they did not take, or would not consider taking the aggravated offence.

3.2.1 Prosecutions sought under both section 444.1 and section 444.1a

Of the 57 interviewees indicating that they took both section 444.1 and 444.1a, nine specified taking mainly section 444.1, and seven specified taking mainly section 444.1a.

The remainder made no comment as to the breakdown/balance of offence. Those who specified taking mainly the lesser offence largely accounted for this in terms of it being the generic or normal prosecution sought and that it was adequate and appropriate for such cases. Those who specified taking cases mainly under the higher offence provided a range of reasons for this.

In explaining the rationale behind the choice in offence taken, several interviewees noted that the **circumstances** of individual cases were the pivotal factors. That is, the higher offence would be pursued in cases of 'complete non-cooperation' from parents. One other respondent suggested that this higher offence was also sought in 'complex' cases where other agencies, such as Youth Offending Teams (YOT), mental health and drugs professionals, were involved. Five interviewees also stated that parents would be prosecuted under the higher offence in second and subsequent cases where there had been no improvement in the child's attendance:

we have decided, after talking to legal services and between ourselves, that we will go under '1' for a first offence and '1a' for subsequent offences.

Interviewees also explained the use of the higher offence in terms of their perceptions of its benefits and advantages over the lesser offence: 'purely because we don't see any advantage in using the lower one.'

One interviewee accounted for the predominant use of the higher offence as it led to simplification and streamlining of procedure, so that only one set of documentation is required and that parents are aware of the maximum penalties that can be imposed. **Outside influences** were also apparent, and one interviewee stated that the decision to use section 444.1a was

made by the solicitor, whilst another contended that an increase in the number of 'not guilty' pleas had resulted in direction from the DfES to reduce the number of cases taken under section 444.1a.

3.2.2 Prosecutions currently sought under section 444.1, with possible/probable use of section 444.1a in the future

Thirty-three interviewees revealed that they were only taking section 444.1 currently, but were considering/preparing to use section 444.1a in the future. The majority of these noted that cases brought under the higher offence were either imminent or in preparation. Reasons given for the choice of offence to be taken, again, centred on case-specific circumstances, and interviewees largely noted that they envisaged being more likely to take repeat prosecutions under the higher offence. One respondent, for example, stated that, after consultations with the Local Authority solicitors, repeat prosecutions brought by the EWS would be taken 'under 1a in the first instance, unless there are extenuating circumstances'. Others noted that they would be prepared to use the higher offence as a means of demonstrating the seriousness of the situation to parents, and the threat of possible imprisonment was seen as a powerful influence.

Several interviewees stated that they intended to pursue section 444.1a once the necessary protocols had been established and the appropriate procedures put in place. This largely involved the training of staff – particularly in administering cautions under the Police and Criminal Evidence Act (PACE) – and clarification of legal issues. One interviewee noted that he was in discussion with borough solicitors about 'developing an appropriate protocol before the courts' and as such was 'seriously considering it, but had not done it as yet'. Another interviewee noted that

solicitors had deemed it appropriate to pursue an impending case through the higher offence, although uncertainties still remained with regard to the training of officers in administering formal cautions. As such (in the absence of benchmarks or guidance) a barrister's advice was being sought 'so that we can come up with a criteria for that offence'.

3.2.3 Prosecutions only sought under section 444.1 or only under section 444.1a

Seventeen respondents commented that they only took cases under section 444.1, whilst only two noted that they only took prosecutions under 444.1a. Of those taking only the lesser offence, two interviewees spoke of their reluctance to prosecute under the higher offence: 'I would oppose that.' Two detailed their uncertainty concerning the issues and implications of pursuing the higher offence: 'I am not really sure we are into that yet ... and I also certainly don't think the magistrates are ... they have got muddled up in my view.' In a similar way, another interviewee noted that 'we are still avoiding doing [a prosecution under section 444.1a] ... waiting for someone else to do it first'. Other interviewees stated that they had no experience of bringing prosecutions under the higher offence.

The two interviewees who noted that they only prosecuted under section 444.1a accounted for this in terms of the ability to issue warrants to ensure parents' presence in court to reinforce the seriousness of the offence and to try and bring about improved attendance.

3.3 Views on section 444.1a

Interviewees were asked to give their views on bringing prosecutions under section 444.1a, and a wide range of responses was generated. In the main, interviewees were largely supportive of the use of the higher

offence (34 out of 54 responses) whilst 14 expressed concerns or reservations and a further six passed no evaluative comments.

3.3.1 Support for the use of section 444.1a

The use of section 444.1a was viewed, by many, as a vital element of prosecution for non-attendance, and support for it was commonly grounded in terms of its **appropriateness** in individual situations. On a basic level, this particular offence was deemed to reflect the aggravated nature of non-attendance cases and, as such, was the suitable course of action to be taken.

My view is that where parents are aware that the child is not at school and they are failing to do something about it, that is an aggravation to the offence and I think the parents have a duty towards their child's education and they are not acting diligently enough.

The majority of our cases are now going under [section 444.1a] because we are able to say with the majority of cases that we do identify for court, that the parents do know that the child is failing to attend school and they haven't acted appropriately within the parameters of their responsibility.

As highlighted in Section 3.2, several interviewees contended that section 444.1a was the most appropriate offence to pursue in particular circumstances, notably in repeat prosecutions. 'I think that if we are having to prosecute for a second or third time, then I would have thought we should consider aggravated truancy'.

Others suggested that more clearly defined protocols had been laid down:

Our policy is that if we go to magistrates under Level 3 and we get a prosecution and the level of attendance doesn't improve, we will go back for a Level 4 for an aggravated offence, looking for a higher fine.

Other circumstances highlighted as warranting the use of section 444.1a

included the non-cooperation of parents with EWS/ESWS departments, or where parents were deemed to have been 'actively colluding with the absence': 'The aggravated offence is taken where parents aren't working with us ... and the parents are not taking responsibility'.

Hence, the use of section 444.1a was seen as reflecting and symbolising the seriousness of the offence, and a point made by many interviewees was that part of its value lay in terms of **raising the profile of attendance**. The following comments of one respondent exemplify and reflect the views of others:

We don't want anybody to end up in prison but I think because the actual process is a lot more high profile, I am hoping that the process works rather than the court action.

Interviewees also grounded their support for the use of section 444.1a in terms of its value as a **mechanism to increase court attendance**. The ability to issue a warrant to ensure parents' attendance in court was seen as a useful component of the aggravated offence. One respondent, for example, noted that 'the advantage is that the police ensure that they are there'. However, it was also acknowledged that this could have drawbacks:

The magistrates' put a warrant out and the police picked [parent] up on the Thursday for the Monday. We had to intervene and say 'this isn't appropriate; we don't want this woman in the cells for the next four days.' So we sorted that one out, but she did turn up for the next hearing.

The issuing of warrants to secure a parent's presence in court was seen as beneficial in that it ensured the parent was in a position where the seriousness of the situation could be put to him/her. Several interviewees suggested that if there was no compulsion to attend court, parents could avoid engaging with the whole process. One interviewee contended that: 'parents can go through the whole system, if [parents] are on benefit,

have a nominal fine and never face up to anybody and discuss it'. Similarly, other interviewees stressed the value of parents having to attend court:

It sounds draconian to say 'parents should be made to attend' ... but parents need to take some responsibility for this. If they're not there, it's just like 'oh well, I've been fined.' They need to be accountable.

The power is in making people come to court, making them face up to what they are guilty of, raising the profile.

It's not necessarily the result ... it's more that we feel they ought to be there in court rather than just sending a letter or not turning up because that doesn't make any difference. And we've had significantly better results since we've been going for the aggravated offence.

Several interviewees noted that the **potentially higher disposals** that could result from prosecutions under section 444.1a were a positive development. One respondent, for example, highlighted a case where a parent of a 12 year-old child with minimal attendance:

was arrested and brought to court because it was done under a 1a ... I would say that it was the threat of imprisonment that actually got her back to school.

3.3.2 Reservations and concerns about the use of section 444.1a

Fourteen interviewees noted certain reservations and concerns about pursuing prosecutions under section 444.1a. These largely centred around philosophical standpoints and issues, as well as technicalities associated with the aggravated offence.

In terms of **philosophical standpoints and issues** surrounding the use of section 444.1a, several interviewees noted the potential negative impact on the family as an area of concern, including childcare issues if parents were imprisoned. Interviewees also

highlighted the possible damage to future working relationships between the EWS and the family. With regard to the orientations towards this offence, several respondents noted their unease or reluctance in pursuing it because of the higher tariffs and the potential for imprisonment that it carried. For example, one interviewee commented that 'we have to do something about attendance [but] I personally have some reservations about using a penal system to achieve that.' Others suggested that despite the level and nature of absence technically warranting a prosecution under section 444.1a, this offence would be totally inappropriate because of the characteristics, circumstances and, in one case, the 'inadequacies' of the parent.

Other interviewees suggested that the use of section 444.1a could possibly obscure the underlying reason for bringing the prosecution in the first place – notably to improve attendance:

I would have to be directed [to pursue 444.1a] and I don't think even with direction I would go that way. I am not actually into families being fined ... the reasons we are taking them to court is to get the kid into school.

In a similar way, another interviewee challenged the possible (political) motives underlying prosecuting under section 444.1a:

I fail to see what benefit [jailing parents] would have really. Who is going to look after the kids, how is a jailed parent going to get their kid to school? My personal view is that there is an expression of frustration by the authorities that some parents just won't play ball at all, and they are punishing them.

Only one interviewee appeared to be vehemently opposed to the use of section 444.1a, suggesting it was 'draconian, unnecessary and again, a reflection of government policy and it is crass and stupid'.

Concerns regarding **technical and legislative implications** of prosecuting under the aggravated offence were also highlighted. These included the issuing of formal cautions under PACE, and the issues of training for EWS/ESWS staff and the debate as to whether or not such professionals should be expected to administer this caution.

The issue of defence representation was also raised by several interviewees, who commented that the potential loss of liberty meant that cases would be defended by professional solicitors, so there was an increased need to protect EWS staff in the court/legal process:

Professional solicitors – it's a different ball game. You've got to guard your own staff, who are not legally trained. 1a is a specialist area. I'm not too enamoured, but if needs must, I'll use it.

The issue of defence solicitors was also raised in relation to the granting of legal aid to parents:

I don't think legal aid solicitors have a great knowledge of education law and they fish around ... asking more questions ... human rights is coming into it a bit.

As a result, the prosecuting authority was said to be far more likely to employ the services of their own solicitors as a means of dealing with these areas of law.

As a consequence of such issues, it was said that in addition to the requirement for EWS/ESWS staff to spend more time ensuring that they could produce 'watertight' evidence, the fear was also expressed that cases could become orientated more around points of law rather than addressing children's non-attendance at school. One interviewee traced this back to the lack of clarity in the legislation:

We have tried to avoid it, partly because we feel that the law is badly written, it isn't very clear. Having an absolute offence [444.1] is very clear, having an offence where you have to decide whether people are feckless

or not makes it a lot more difficult ... It takes away from the value of our position in that we are not doing this because we want to punish people, we are doing it because we want children to have a chance.

Confusion, combined with the approach of 'a couple of local solicitors' was said by one interviewee to have added increasing legislative complexity to non-attendance cases:

I think the magistrates weren't entirely sure whether they ought to be listening to the 'knowingly' [prosecution] or the 'reasonable justification' [defence] and I felt the whole 'knowingly' bit was getting diluted by this solicitor's hell-bent approach on what was reasonable.

As a result of such confusion and lack of clarity, several respondents expressed concerns that there was increasing pressure to push for the lower offence to prevent parents applying for legal aid and involving defence representation. Hence, for EWS/ESWS departments, there was the assertion that it could prove less problematic to prosecute under the lesser offence as there may be a greater probability of obtaining a 'guilty plea and a shorter and more concentrated outcome if we don't persist in going with section 1a'. This was seen as a compromising situation – one which EWO practitioners were frustrated about when it was clear to them that the parents were guilty of the higher offence.

Frustrations arising from such paradoxical situations and the impact of conflicting influences were thus expressed. 'The Government are giving us some greater clout and yet the legal implementers are saying "don't do it".' This was seen as disappointing to this particular interviewee, who had expressed high hopes at the time the legislation was introduced: 'The "knowingly" bit gives us a bit more oomph, but we have been dissuaded quite considerably from using it.'

Emerging findings

- ◆ The majority of interviewees took a combination of the higher and lesser offences. Interestingly, only two respondents commented that they would not use section 444.1a.
- ◆ Many interviewees noted that considerable work had yet to be done on developing protocols and training for the successful and effective use of section 444.1a.
- ◆ The decision underlying the nature of offence sought was largely dependent on individual circumstances, although the higher offence was often automatically employed for repeat prosecutions and in cases of extreme non-cooperation from parents.
- ◆ The advantages of section 444.1a stemmed from the compulsion for parents to attend court, so it was seen as reflecting the seriousness of the offence.
- ◆ Concerns were raised regarding the philosophy of possibly imprisoning a parent, as well as the technical or legislative and training implications, such as the use of formal cautioning of parents.
- ◆ The use of section 444.1a was also seen as increasing the involvement of defence solicitors in education prosecutions, possibly clouding the issue and purpose of trying to secure improved attendance.

4. The disposals arising from prosecution for non-attendance

4.1 Introduction

This section presents the range of disposals arising from school non-attendance prosecutions and goes on to explore interviewees' subjective interpretations of them.

4.2 The range of disposals

Interviewees were asked to detail the range of disposals arising from prosecutions, and details were provided by 102 respondents. Their responses generally replicated those provided in the proformas, with the most frequently mentioned disposals being fines and conditional discharges, with only a small number noting Education Supervision Orders (ESOs) and community-based penalties. Only two respondents suggested that conditional discharges were the main form of disposal.

The majority of interviewees also revealed that the most common combination of disposals involved fines and conditional discharges, followed by fines, conditional discharges and Parenting Orders. Eight respondents contended that in addition to the main disposal, an increasing number of Parenting Orders were being imposed. Most of the 26 interviewees who mentioned ESOs noted that they were rarely, or only occasionally, given.

4.3 Views on disposals

This section explores interviewees' thoughts and perspectives on the main disposals arising from prosecutions in magistrates' courts.

4.3.1 Fines

Fourteen interviewees were critical of the **low fines** that were given as disposals in magistrates courts, describing them as 'small and insignificant' and 'derisory'. Consequently, one respondent noted the conflicting signals that were apparent in relation to attendance issues:

We get a mixed message from the government on this. The Local Authority should use their enforcement powers to raise school attendance, which we're trying to do, and on the other hand, courts are becoming far more lenient.

This particular interviewee suggested, possibly with a degree of cynicism, that 'a lot of courts see themselves as an extension of a social welfare arm, rather than a justice arm, and view things in that way.'

In addition to the low level of financial penalty imposed, several interviewees noted their dismay at the reduction of fines on appeal. Similarly, the non-enforcement of payment and the effective dismissal of fines were seen as problematic issues.

The thing that angers me about financial penalties is that we have had people appeal against financial penalty and the financial penalty, on appeal, has been reduced. Equally, people have been fined, have not paid their fines, said they can't afford them and they have either been reduced or even written off.

A common bone of contention amongst interviewees appeared to relate to the fact that low fines for education prosecutions were often justified in terms of a parent's inability to pay, whereas the same criteria were not deemed to apply to other offences.

They always say to me ... what's the point in fining them x number of pounds if they can't afford it? And yet I don't think the same logic is used on television licence fines ... Why is it more important to have your television licence than to send your child to school?

Hence, low fines were seen as symbolising the lack of importance and seriousness accorded to school non-attendance cases, sending out negative messages to parents, children and the wider community, as well as dispiriting EWS staff.

You've worked hard with a child who's been deprived and they bang a £50 fine and the next case is an ice-cream seller who sounded his chimes after hours and he gets £200. It makes you wonder if it's all worthwhile. It's the messages that go out.

Low fines were regarded as harmful in the 'publicity battle', possibly lending encouragement to those failing to ensure their child's attendance: 'the anecdotal comment going round [is] "well if I pay 50 pence a week, can I stay off school?"'

Although there was considerable expression of dissatisfaction with the levels of fines imposed, interviewees accepted the reasoning behind such levels and related them to the contexts in which they existed.

No way is a fine useful to our families because they can't pay it and they won't pay it, so it's a nothing. A lot of the families we work with have very low incomes, they're not high earning people who can be hit in their pockets – they haven't the pockets to be hit in, so that's pretty useless.

Other respondents were also keen to stress that they did not wish to have large financial burdens placed on families for the sake of it – prosecution was not about punishment, but about addressing non-attendance. Two interviewees were especially critical of **high fines** imposed, in terms of their impact on 'already hard-pressed families' and also

because large fines were seen as being more likely to be subject to appeal. As a way forward, several interviewees proposed that a system of fixed tariffs could be employed.

Thirteen interviewees were critical of the **inconsistencies** associated with the levels of fines imposed in local and national settings.

We had one where it was a £25 fine for quite a serious offence, which in the context, nationally, of someone being sent to prison, a £25 fine does seem quite bizarre.

A constant frustration for EWOs is the lack of consistency in disposals [and variations] from one court to another, even in the same court from morning to afternoon.

Several noted that better dialogue and communication with magistrates and clerks was required in order to overcome this.

Inequalities in the potential impact of fines were also highlighted, as certain parents were deemed to have greater levels of immunity from financial penalties than others. One interviewee, for example, highlighted a case in which a £500 fine was said to have solicited the response from the parent: 'I couldn't care less ... I can afford to pay a fine, I'm not sending him', whereas 'somebody else getting £50 probably felt it sting'. Such differentials in effect were also exemplified by other interviewees:

If the person is constantly in the courts and having fines for television licences and car licences and they have a whole string of fines, and they are in debt to catalogues, it is considered to be one more fine. If the parents are the sort of parents who haven't been to court a lot, or at all, then I think fining makes an impression.

Notwithstanding such criticisms of fines as disposals, five interviewees stated that they were generally **satisfied with**, or were not critical of, the levels of fine imposed, as they matched the circumstances of the parents. One interviewee also noted that he tried to

distance his staff from the disposals made in court:

I encourage my service not to beat themselves up about it. Once you've taken it to court, it's up to them ... the magistrates, and if they think it's justice, it's up to them.

4.3.2 Conditional discharge

Interviewees were largely supportive of conditional discharge as a disposal for school non-attendance (34 out of 39 comments), although four were more critical of this disposal.

Support for conditional discharge was overwhelmingly derived from the feeling of continuing influence that could be exerted on the parent to effect positive changes in the child's attendance.

It holds the issue of court over the parents for a period of time ... for us it's quite effective because it is not actually penalising the parents at that stage, it is giving them almost another chance to try and work with us and cooperate with us on a better level.

A fine is dealt with and finished, whereas a conditional discharge is still there and is held over people's heads ... it is a good tool.

Disposing of a prosecution with a conditional discharge was seen as issuing parents with a 'warning shot' and legally demonstrating their responsibilities to improve their child's attendance. As such, this disposal was said to 'galvanise the family into some kind of cooperation'. Thus, a conditional discharge was seen as helping to maintain effective working relationships between parents and the EWS, as opposed to fines, which could be seen to antagonise parents:

Fines put their backs up and makes their life harder ... If they have a conditional discharge, they know that it is behind them and they know what can happen and they are much more likely to buck up.

Conditional discharge was also presented as a valuable mechanism through which EWS/ESWS

departments were given the opportunity to return the parents to court if the conditions of the discharge were breached and attendance did not improve satisfactorily.

Instead of having to go through another few weeks and get new evidence to prosecute again, we can actually just breach them on the conditional discharge.

Despite the prevalence of such views, however, several interviewees expressed **reservations about the use of conditional discharges** as parents could regard it as 'getting off' unless the discharge was accompanied by an appropriate message from the magistrate reinforcing the seriousness of the situation. One interviewee also noted that 'they're the most frustrating thing. We have parents laughing as they walk out of court'. It was contended that parents interpreted this disposal as saying 'case proven but go away without any sort of punishment'.

Similarly, this disposal could be seen as a 'non-outcome' for the prosecution: 'I don't like conditional discharge. Don't like the idea that you can take a case to court and then it's forgotten about, almost.' A further respondent commented that there were cases 'where we have difficulty in accepting how that decision is appropriate'.

Absolute discharges were deemed by interviewees to be extremely counter productive and disheartening to the EWS/ESWS staff involved. Parents and children could also be led to believe that the issues surrounding non-attendance were not important when prosecutions ended in this way.

4.3.3 Parenting Orders

A range of views were expressed in relation to the imposition of Parenting Orders in relation to school non-attendance prosecutions. The majority of respondents expressed either **mixed** (32) or **negative** (16) views on Parenting Orders, the former suggesting that they could be appropriate and useful, given the right circumstances. One of the most

commonly expressed concerns revolved around questions of financing and operationalising the orders granted.

People haven't thought about the resource implications.

We think they are a great idea and we'd like to do more of them, but the resourcing was difficult.

I think one must bear in mind that it is very important that they are well resourced or they won't work.

The big issue is ensuring that the LEAs have got the resources to actually carry them through, to assess the parents properly and to actually set up programmes that are going to be effective and successful. That is the big question mark for us at the moment.

In addition to funding, concerns relating to the mechanics of Parenting Orders, notably the issue of who was actually responsible for implementing them, were also raised. One respondent noted that 'we have had great confusion here about who was going to do the work', whilst another commented: 'They are a good idea, but there is a complete lack of thought of who is going to provide it.' Interviewees thus expressed support for Parenting Orders, although there were concerns that there were not sufficient trained and experienced staff available to run the courses.

I can't get any assurances about the quality of the courses running. I don't want to go for Parenting Orders and then find out that we haven't got the appropriate skills training for the parents to access.

Several interviewees also highlighted issues that stemmed from working alongside other agencies, notably Youth Offending Teams (YOTs), in relation to delivering parenting courses. One in particular, who welcomed the introduction of Parenting Orders as being 'not punitive, a bit more kind and supportive', noted the reality to have been disappointing.

They have been totally ineffective and that's because your YOT, who have been named as the responsible person, are not into being a responsible person.

Another interviewee stated that the magistrates were making orders 'regardless of whether we had any means of dealing with them' necessitating the EWS to instigate its own course 'because the YOT weren't interested'.

Although deemed useful and valuable, other interviewees also questioned the compulsion to attend classes that accompanied orders granted in court. Many asserted that it was this element that mitigated against their success and that voluntary attendance at parenting classes could be more effective. Several interviewees also supported the aims and content of Parenting Orders, but questioned whether they were appropriate as part of a legal disposal.

Parenting Orders were seen as another string to the bow ... there was a little bit of scepticism at first about making a compulsory order to do something that would really be more effective if it was done voluntarily.

I think if you are compelling people, then you are automatically starting to cut off the cooperation.

I'm not sure that the notion of a compulsory order will make any difference ... In fact it makes it possibly even more difficult to work in partnership.

Other areas or concerns that were deemed to challenge the value of Parenting Orders included the assertion that, in reality, they either offered too little, too late, or that the content of parenting classes, and the recommendations of the order, would have been implemented by the EWS prior to bringing the case to court. Several other respondents also suggested that significant evaluation would be required before adequate assessments could be made

Those interviewees who were generally unsupportive of Parenting Orders echoed the reasons highlighted earlier and also noted that there was often a lack of support from legislative infrastructure to implement the order successfully. That is, the Crown Prosecution Service (CPS) was often seen as unwilling to instigate breach proceedings. Interviewees said: 'they feel these kinds of case don't merit court time' and 'the CPS has more important fish to fry than a parent who has failed to comply with a Parenting Order.' Several interviewees thus labelled Parenting Orders as 'toothless tigers', 'gimmicks' and 'totally useless'.

Despite the prevalence of these views, 29 interviewees were generally supportive of Parenting Orders on the grounds that parents were given access to support, rather than punishment, as a result of a prosecution.

I have become a bigger and bigger fan of Parenting Orders. It makes [parents] realise that they are not the only ones in that particular boat and it also makes them look at what they are doing.

Others suggested that Parenting Orders were an effective means of motivating parents to take responsibility for their child's attendance and education. They were thus seen as constituting a constructive attempt to help parents to effect a change, rather than 'prosecute them for being a bad parent'.

A further 23 interviewees did not make any evaluative comments regarding Parenting Orders, largely because of their lack of experience or knowledge of them.

4.3.4 Education Supervision Orders (ESOs)

Over half of the interviewees who commented on ESOs revealed dissatisfaction with them. Many considered them to constitute a 'very unwieldy process' and 'a lot of input for no gain'. In describing ESOs as a 'complete and utter waste of time' one

interviewee asserted that they were powerless and had no real sanctions to enforce them. Others agreed, noting that such orders 'with not much bite' would have little impact on disengaged young people or their families. For example, in accounting for only one success in 20 cases, one respondent conceded that 'there is nothing that can actually enforce a child to do it', a point echoed by others: 'anything over 13 with a non-school attender, you're not really going to get their cooperation.'

Similarly, the value of ESOs was questioned in terms of levels of parental cooperation: 'For an ESO to operate, you need the parent working with you. If they were working with you, you wouldn't be in court.'

Further criticisms of ESOs included the assertion that they would only contain strategies that had already been tried by EWS prior to instigating the prosecution process, and as such, were 'a pointless exercise'. Other respondents developed this, and suggested that the success, or otherwise, of ESOs depended on the level of resources made available to implement them. One interviewee, for example, contended that 'there was never any resources devoted to allow that legislation to actually become effective'. Others also suggested that ESOs would be 'a waste of time' if the resources were not available to administer them thoroughly and rigorously.

Despite such thoughts, many other interviewees noted the benefits and possibilities of ESOs, especially when used in appropriate situations. ESOs were deemed to have greater chances of success when used with younger children and when a good working relationship existed between parents and the EWS. They were deemed to be 'useful when you have a large degree of cooperation from the parents but the pupils are not complying with the parents'. ESOs were argued, by one respondent, to give parents some 'backbone' when dealing with their children.

As a result of the potential for increased multi-agency input, and the voluntary involvement of parents and children, other interviewees variously described ESOs as:

A much overlooked way of attempting to increase attendance – a shame they have been neglected [by] departments.

The best piece of legislation that came out under the Children Act ... they are very undervalued.

An opportunity missed.

Many, however, contended that ESOs required adequate resourcing and could be most effective when they were given not as a disposal from court. It was deemed that the element of compulsion would serve to damage the ethos and intent behind the order and make parents and children view them in a negative light.

Emerging findings

- ◆ Low fines were generally criticised, as they were perceived to symbolise the lack of importance accorded to the prosecution. There was also a general acceptance of the reasons underlying such levels and parents' inability to afford higher fines.

- ◆ Perceived inconsistencies in the level of fines imposed were also criticised.
- ◆ Interviewees were largely supportive of a conditional discharge's ability to effect positive change in attendance without inflicting hardship on parents and families.
- ◆ Some interviewees were critical of conditional discharge in terms of it being an indecisive conclusion to a prosecution or one that might lead parents to think they had 'got away with it'.
- ◆ Parenting Orders and Education Supervision Orders were viewed with mixed feelings. Problems included the lack of resources available to implement these discharges and the lack of enforcement mechanisms to ensure parents' and young people's involvement and cooperation.
- ◆ The perceived benefits associated with Parenting Orders and Education Supervision Orders included the potential to support parents in becoming more involved with their children's education without recourse to financial penalties.

5. Perceptions of the principle and effectiveness of prosecution

5.1 Introduction: perceptions of the principle of prosecution

Interviewees were invited to express their personal views on the general principle of prosecuting parents for non-attendance. Out of 122 interviewees, the vast majority agreed with the principle, although six interviewees voiced mixed feelings on the subject and another six were generally unsupportive of prosecution. Their answers were supported by a wide range of arguments, alluding to the various justifications, possible benefits and consequences of prosecution (both positive and negative).

5.2 Support for the principle of prosecution

Overall, most interviewees viewed the principle of prosecuting parents for non-attendance in a positive light. Interviewees were supportive of prosecution because:

- the compulsory nature of education requires it
- prosecution is another tool that the EWS can use
- prosecution can be used to improve attendance
- it is a statutory duty of the EWS to enforce attendance
- prosecution sends a clear message to parents.

Others were supportive of the principle of prosecution but accompanied their statements with a range of justifications and, sometimes, provisos. In terms of the latter, interviewees were happy to proceed with prosecution in the following circumstances:

- if used as a last resort
- if used appropriately (i.e. not for all families)

- for cases where parents were failing to cooperate.

5.2.1 'The compulsory nature of education requires prosecution'

Many interviewees supported prosecution, on the grounds that children must attend school by law and when the law is broken, the EWS must be seen to take action. This was the most commonly mentioned justification for prosecution, highlighted by 29 interviewees. By applying the law, interviewees believed that parents were being held accountable for their actions and prosecution demonstrated that parents had a legal responsibility to ensure their children's attendance at school. Where they failed to do this, interviewees believed there had to be some kind of sanction, which served both as a penalty and a deterrent to others. A failure to ensure school attendance was often compared to other offences, such as driving over the speed limit, where, if the law was broken, it was expected that a penalty would follow. A number of interviewees believed the law needed to be upheld on the basis that the rights of a child to education were being denied. School non-attendance was thought to put children at a distinct disadvantage and adversely affect their chances later in life. It was also viewed as increasing their vulnerability, and a number of interviewees raised concerns about child protection issues associated with school non-attendance. Thus, prosecution was seen as a necessary measure, in order to safeguard the welfare of children and guarantee equality of opportunity.

Upholding the legal responsibility of parents

I think basically if every effort has been tried to engage with the family we are just

wasting public services and if we look at best value it is not appropriate to just carry on pursuing. It isn't our responsibility for those young people to attend school, it is the parents' and if they are not doing it, then they should be prosecuted.

Sanction for breaking the law

I think once you are professionally satisfied that a parent is failing in their duty ... in a sense it's a bit like me driving to work isn't it? I go over 30 miles an hour, but if I get caught well you say 'it's my fault' and I think one has to say that to parents, in a sense it's a bit like that, because parents have a duty and if they fail in that duty, there's a consequence.

Threat of prosecution

I think you need to have that threat, I think without that we wouldn't have any teeth. I think that you need to have the clout of saying 'and we can prosecute you' even if it is, in most cases, a threat.

Protecting children's rights

My general view is that untold damage can be done to a young person's future by failing to ensure that they receive an appropriate education. I see it as a form of child abuse and on that basis I think parents should be held to account.

5.2.2 'Prosecution is another tool that the EWS can use'

Fifteen interviewees simply saw prosecution as another 'tool in the tool box'. Thus, they were happy to use prosecution, when they felt the circumstances were appropriate.

It's another tool in your tool bag for enabling children to access education – it's not punitive or to be used as retribution.

I see it as a very positive aspect of our work ... just one of the several tools that we have to deal with appropriate cases.

Interviewees emphasised that it was just one element in their policy focusing on attendance.

5.2.3 'Prosecution can be used to improve attendance'

Following on from the 'tool box' view, nine interviewees supported prosecution because it offered a means of improving attendance and because the possibility of achieving change warranted its use.

There's always the chance it's going to improve attendance for the immediate family.

If we can use the court system to ensure regular school attendance I think it is a good thing.

5.2.4 'Statutory duty of the EWS to enforce attendance'

Seven interviewees expressed no reservations on the principle of prosecution, as they regarded it as their statutory obligation to enforce attendance. They saw prosecution as a remit of the service and considered that they were required to pursue prosecution when other interventions had failed.

We have a moral responsibility and a legal statutory obligation ... Why would I be in education welfare if I wasn't prepared to pursue that through the law, which says children have to go to school? If we can't help the young person in any other way, then I think we morally have to pursue that, to ensure that we at least do everything within our power, even if it wasn't successful, we have done everything within our power to try and assist that young person and make a difference.

5.2.5 'Prosecution sends a clear message to parents'

Four interviewees felt that prosecution was justified on the grounds of its wider benefits, in the sense that it conveyed to other parents that non-attendance was a serious matter and that there were consequences if they failed to meet their responsibilities.

I see prosecution as the measure to send out the right message to the community. The

prosecution doesn't have long-term sustainable effects on absentees once parents are taken to the court, but it does have effects on other groups of parents and pupils.

5.2.6 'If used as a last resort'

Twenty of the 122 interviewees were comfortable with the policy of prosecuting, when it was used as a last resort: 'when everything's been tried and there's been no effect, it has to be used.' It was seen as an available option when all other strategies had failed and, as such, interviewees felt they had a responsibility to try this final course of action. They emphasised, however, that prosecution was very much at the end of the intervention process and at least by proceeding to the final option, they had done all in their powers to effect a change in attendance.

I think that when we have tried everything else we have got to go for prosecution. When that has come to the end of the line and we can't get parents to work with us and we can't get the child back into education, I don't think that we have got any other alternative. I think we have got to protect a child by using any method that we can and when we have exhausted all the methods of support and we put in enormous effort, if we can't do that, then I think legally we have got to prove that we have done something.

5.2.7 'If used appropriately'

Thirteen interviewees concurred with the principle of prosecution, when it was used 'appropriately'. They were not in favour of a blanket approach, but instead advocated a selective use of the strategy according to the individual circumstances of a particular case. A lack of parental cooperation (see section 5.2.8) was identified as one criterion for proceeding with prosecution. In addition, interviewees mentioned prosecuting the 'right' sort of parents, where a positive outcome was achievable, and that prosecution should not be used as an alternative to working with parents.

5.2.8 'For cases where parents are failing to cooperate'

The failure of parents to cooperate with the EWS was cited as another justification for prosecution and, where this was the case, interviewees supported the principle. This view was articulated by ten interviewees, two of whom saw prosecution as another (albeit final) opportunity to engage with a family. An appearance in court could bring the two sides together and start the discussion process. Other interviewees pointed out that children have a right to an education and if the main barrier was their parents' unwillingness to work with the EWS and a failure to accept their parental responsibilities, then prosecution was seen as a reasonable response.

Lack of parental cooperation affects children's rights

Children can only benefit from education if they are in school, and if the only thing that is preventing that is parents' non-cooperation then that is when prosecution should be used. It is necessary to safeguard a child's rights to an education.

Opportunity to engage with parents

Once you've got to court, it is using that as part of the process. You're not just sitting there and letting them be fined. You are actually talking to them before, talking to them after, so it can be really good and really helpful. Because what you're always trying to do is catch them at a point when they can work with you and if it has to be that point, well then so be it.

5.3 Mixed views on the principle of prosecution

There were six interviewees who registered both support for, and doubts about, the principle of prosecution. Whilst recognising that school attendance was a legal requirement and that, in some cases, prosecution could generate desirable outcomes, they also spoke of feeling dissatisfied with the process, believing that

there must be a better alternative. One interviewee maintained that prosecution compromised his/her ability to work with families because of the punitive element. Another saw prosecution as an admission of defeat on the part of the Education Welfare Service, although conceding that it did have a 'marginal deterrent effect'. It was perhaps the lack of positive outcomes that made it difficult for the following interviewee to decisively support or reject the principle of prosecution:

I think prosecution is one of the things our service can do. I'm at my wits end because it doesn't work. But I still want to find something that does work and if [prosecution] works for one child every now and again then we'll go on doing it. And because the law says we have the right to and it's an accountability issue [we prosecute]. Personally, it doesn't work per se and we've got to think of something more imaginative or something that will actually work because at the moment it takes a lot of resources.

5.4 Questioning the prosecution principle

Six interviewees, whilst recognising their legal duty to prosecute, were doubtful of its value and were therefore more dismissive of prosecution as a possible course of action. Four of the six remained to be convinced of its success, in terms of positive attendance outcomes. For example, one interviewee explained that by the time a case reached prosecution almost every type of intervention had already been tried and he/she was uncertain whether prosecution would be the critical factor that turned the situation around. Instead, two interviewees suggested that more could be gained from directing resources back into the Education Welfare Service so that EWOs could work with families in a more proactive way. Indeed, there were interviewees who seemed uneasy with a potentially punitive strategy, particularly given that it often affected families already 'on the more needy

end of society'. Instead, these interviewees preferred to continue working with families in a supportive capacity.

Better use of resources

I would like to feel that if we were properly resourced ... that it would pay better dividends to be able to be more proactive than reactive and to do group work and work with disaffected youngsters rather than prosecute their parents – because I feel that might have better outcomes.

Support not prosecute

I just think that we should be looking for more ... we are an education service and we should be looking at that problem from an education point of view not from a punitive – using the law to prosecute parents – we should be helping them, making sure that if they can't do it we have to do it for them.

Does it work?

I'm not sure if you get to that point and you've tried everything else, I'm not sure it's actually going to make the difference, because invariably there are many other factors affecting why a child isn't going to school. I'm not sure that prosecuting them is going to remove those barriers to the child's ability to learn.

The remainder of this section explores interviewees' perceptions of the effectiveness of prosecution as a strategy.

5.5 Introduction: perceptions of the effectiveness of prosecution

In addition to being asked their views on the **general principle of prosecuting parents**, interviewees were also asked to state their views on the **effectiveness** of using prosecution as a strategy for dealing with school non-attendance. They were also asked to provide evidence to support their views, if possible. The majority of interviewees felt that prosecution could, at times and within certain contexts, be an effective tool.

5.6 Interviewees' views on the effectiveness of prosecution

The majority of the 122 interviewees (70 per cent) felt that prosecution could at times be an effective strategy for dealing with non-attendance. Interviewees who felt prosecution was an effective strategy were divided into three categories – those who thought:

- it was largely effective (41)
- effectiveness was dependent on the circumstances of individual cases and prosecution could be effective on a case-by-case basis (31)
- it could be effective in wider contexts, e.g. in terms of the impact it had on the attendance of other children in the family and/or community/school (14).

A total of 30 per cent of interviewees felt either that prosecution was largely not effective or were unsure or unable to comment on its effectiveness:

- not often effective (29)
- not sure/no comment made (7).

5.6.1 Prosecution largely seen as an effective strategy

Over a third of interviewees felt that prosecution was largely an effective tool in combating non-attendance. A number of interviewees also provided data to support this view.

Prosecution is an effective strategy

[Out of] 72 court prosecutions we successfully secured a return to school in 39.

I think that it is 85/90 per cent effective.

So far all the prosecutions we have taken ... apart from the ESOs ... have resulted in the children back in education ... whether they are back in mainstream school or they are back in some [other] form of education.

Two interviewees felt that an overhaul of the prosecution process within their LEAs,

including the introduction of new initiatives and procedures, had resulted in a positive impact on attendance levels within the LEA. In one authority an improvement in attendance in secondary schools was linked to the LEA's prosecution policy. As a result, attendance had increased from what was deemed to have been a:

fairly appalling situation and that's down to various things but it's certainly down to the message that you will have to account for yourselves in court as parents if your children don't go to school.

However, interviewees also highlighted the difficulties in interpreting the data and how they might be manipulated to reinforce arguments either for or against using prosecution:

If you look at our stats it'll show half and half, 50/50. I'd hate someone to say 'you've got insufficient evidence there to say prosecutions work' because I would say 'you never know what the effect is going to be'.

Thus, it was suggested by many interviewees that prosecution constituted an effective tool because it had the potential to lead to a positive outcome. Other interviewees noted that they were developing attendance data monitoring procedures to substantiate claims of effectiveness in the future. Others claimed that because parents were not being prosecuted again the process was having a positive impact: 'less than one per cent have gone back to court and that is positive for me.'

5.6.2 Prosecution effective on a case-by-case basis

A quarter of interviewees felt that prosecution could be an effective tool in some instances but that it had to be considered on a case-by-case basis. Interviewees claimed that it was often impossible to predict which cases would be effective and therefore all cases that were considered appropriate for prosecution were taken to court. This also meant that all cases

were treated consistently and on equal terms.

Prosecution effective on a case-by-case basis

I would say that it is dependent on different cases.

You can't predict which ones it will be effective with and which not.

It constantly surprises me which ones are effective and which ones aren't.

Two interviewees, however, also highlighted concerns that despite the unique circumstances of each case they felt pressurised to take 'blanket' approaches and that the prosecution of parents was often based on legislative needs and political pressure, rather than the needs of individual families:

Every case is different but local authorities don't think on those lines. They make policies to suit the masses not individuals.

At the end of the day I think we do it far more for society's reasons rather than for the particular reasons of those individual families.

Interviewees who identified the case-by-case effectiveness of prosecution highlighted two key factors in this: effectiveness dependent on disposals given and effectiveness dependent on early intervention and the age of the child.

Effectiveness dependent on disposals given (6)

This was an issue raised by interviewees throughout the interviews and is covered in full in Chapter 4:

[Prosecution is] sometimes effective ... sometimes not, because of the way magistrates dispose of cases they minimise the value of education ... [parents are] almost let off for not sending their children to school.

Some disposals, e.g. conditional discharges, were viewed as more effective than others.

There was a view that prosecution would be more effective if a more effective disposal, e.g. community service, were used. As noted earlier, other interviewees felt that certain disposals, e.g. absolute discharges and low fines, were actually detrimental and counter productive to the effectiveness of the process 'because parents think they've got away with it'.

Effectiveness dependent on early intervention and the age of the child (8)

Eight interviewees felt that effectiveness was dependent on early intervention and the age of the child when the prosecution was taken.

The younger the child the better. For older children it is much more problematic. Prosecutions are always sought with younger children because there is almost always a return to school regularly.

Years 10 and 11 were pinpointed as an age when prosecution was likely to be least effective. Interviewees highlighted the paradoxical situation that despite a belief that prosecution was more effective with younger pupils, due to staffing and resource constraints, they had to focus most of their time on the intransient cases, who were invariably older pupils. This was also substantiated by the quantitative data presented in Chapter 1, which showed that most prosecutions were taken in relation to older pupils. Interviewees also felt there was a need for analysis of prosecution data in order to determine the age when prosecution was most effective: 'we are not evidence based enough in our use of prosecutions.'

Interviewees also raised a number of additional issues as follows:

- The short-term impact of prosecution: four interviewees highlighted that attendance initially improved after parents were prosecuted but that this was not maintained in the long term. Thus, interviewees emphasised the importance of continuing to work with

families after a prosecution had taken place: 'a majority of them are fairly short-lived effects and require ongoing work from us to maintain attendance'.

- Attendance may increase after prosecution but not enough to impact on pupils' attainment.
- There are a small number of families whose difficulties are so extreme that prosecution will not have an effect.

5.6.3 Prosecution can be effective in wider contexts

A total of 14 interviewees felt that prosecution could be effective in wider contexts, in terms of the message conveyed to others, i.e. people were committing an offence and the LEA was fulfilling its legal duty to take action. Interviewees felt that, in many instances, the use of prosecution had a deterrent effect. Without wanting to victimise the parents who were prosecuted it was felt that:

the message it sends out to other people is important ... it sends out messages to schools, to other parents and to the community: 'education matters'.

In addition to such reinforcement of the value and importance of education, interviewees acknowledged that although prosecution may not have a direct impact on the parents prosecuted, there was a belief that it may well have a positive impact on other parents: 'I think we have the most effect on the people we never meet.' Interviewees felt that prosecution was effective in sending a message to the wider community that something would be done about non-attendance: 'that if you don't send your kids to school you will be in court'. One interviewee also highlighted the 'ripple effect', in terms of: 'for every one you prosecute you probably make five, perhaps ten, think twice.' Various examples were provided, including deterring parents who might be thinking of taking term-time holidays.

However, interviewees did acknowledge that the wider impacts they identified were generally not quantifiable or possible to measure. Nevertheless, they felt that prosecution was a valuable strategy because of the message it sent out to parents and the wider community. This was especially apparent in situations where education was not valued by parents and interviewees were generally supportive of publicising prosecutions for this reason.

5.6.4 Prosecution not often effective

Nearly a quarter of respondents felt that prosecution was not often an effective strategy, whilst a further seven of the 122 respondents were unsure or unable to comment on its effectiveness. Interestingly, five of the seven interviewees who were unsure or unable to comment on the efficacy of prosecution highlighted the need to monitor effectiveness as a key area for service development:

What we must do now is review the results, look at the outcomes and ask ourselves whether it did achieve what we wanted it to achieve ... if it didn't we will not expend the energy on it that we have been.

They also alluded to the need for a national evaluation of the effectiveness of prosecutions: 'we need some quantifiable evidence – a national assessment of it – the main thing we don't get is direction from government.'

Despite these interviewees' doubts about the effectiveness of prosecution as a strategy, most were prepared to continue taking parents to court. Interviewees said: 'I am very dubious about it, but having said that, that wouldn't stop me doing it' and 'if it means having to take them to court then so be it.' The first interviewee was concerned about what she felt were ineffectual disposals given by magistrates, whilst the second interviewee saw it as a 'last resort' sanction to try to ensure that children's right to education were not denied.

Doubts as to the effectiveness of prosecution largely related to the contention that it did not always lead to an **improvement in attendance**:

it hasn't been effective in getting a young person back to school, which is the primary aim ... some do, but as a general point of view it doesn't work.

Several interviewees felt that prosecution was primarily used as a **damage limitation exercise** by the EWS or LEA against being sued in the future, rather than as a strategy for improving attendance.

It is also important to recognise the subjective interpretations underlying perceptions as to the effectiveness of prosecution as a strategy for improving school attendance. Interviewees who felt that it was largely an ineffective strategy often provided similar statistics to those given by colleagues who felt that it was a largely effective strategy, but they were interpreting the figures differently: 'a third of prosecutions result in improved attendance ... my guess is that it really isn't very effective.'

The main reasons underlying the perceived lack of effectiveness of prosecution proffered often reiterated and expanded on the issues raised by interviewees who felt prosecution could be effective on a case-by-case basis. The reasons fell into the following categories:

- magistrate/court-related issues
- the timing of prosecutions – intervention was viewed as too late
- policy issues and procedures
- time factors – court delays and delays in the EWS taking parents to court.

The most common reasons given by interviewees why prosecutions were less effective focused on **magistrate and court-related issues**, including what were perceived as inadequate and inconsistent disposals.

A lack of clear policies and procedures were also identified as mitigating against effectiveness, e.g. schools without clear attendance policies or schools that were authorising absence. Similarly, within the

Table 5.1 Key factors identified by interviewees (N = 122)

Contributing to the effectiveness of prosecutions	Mitigating against the effectiveness of prosecutions
Clear policies and procedures • Schools: attendance policies • EWS: attendance and prosecution • Parents: aware of implications from the outset • EWS: measuring outcomes and monitoring effectiveness	Lack of clear policies and procedures • Schools: attendance policies • EWS: not measuring outcomes, unaware of effectiveness
Timing • Early intervention • Younger children	Timing • Intervention too late • Children too old
Court process • Process seen as more effective than the outcome • Parents attending court • Discuss implications with parents	Court process • Parents not attending court • Not discussing implications with parents
Disposals • Consistent approach • Higher fines • Use of alternative disposals	Disposals • Inconsistency • Inadequate disposals • Not using full range of disposals
	Reintegration after prosecution • Problematic

EWS itself interviewees focused on the fact that the service did not monitor outcomes so they were unaware of the effectiveness of prosecution as a strategy.

Table 5.1 summarises the key factors identified by interviewees as contributing to the effectiveness of prosecutions and the key factors mitigating against its effectiveness. These key factors have been taken from interviewees' comments on the effectiveness of prosecution.

Emerging findings

- ◆ Ninety per cent (110 out of 122) of interviewees agreed with the general principle of prosecution.
- ◆ The most common justification for prosecution given by interviewees was the compulsory nature of education.
- ◆ The main proviso highlighted by interviewees was that prosecution should only be used as a last resort. However, a significant number of interviewees disagreed with this view.

- ◆ Seventy per cent (86 out of 122) of interviewees felt that, at times, prosecution could be an effective strategy.
- ◆ Key factors that were felt to contribute towards the effectiveness of prosecution, e.g. the timing of prosecution and the disposals given, were also identified by interviewees as factors that might mitigate against effectiveness.
- ◆ The process of bringing parents to court was often viewed by interviewees as more effective than the actual outcome.
- ◆ There was recognition amongst interviewees of the need to monitor the effectiveness of prosecutions within their own LEAs. Where such monitoring systems were not yet established, interviewees identified this as an area for development.
- ◆ Interviewees expressed concern about magistrates' use of inconsistent and/or inadequate disposals, which they felt had a detrimental impact on the effectiveness of prosecutions.

6. Concluding comments

This report has provided an initial overview of the first phase of the research, which focused on gathering both qualitative and quantitative data on prosecutions taken within individual LEAs as supplied by EWS managers. Its remit has thus been to relay recent thinking and available data at LEA level. The exceptionally high rate of response from senior EWS staff is itself a notable outcome of the research to date, perhaps reflecting the interest and topicality surrounding this area of EWS work. This support has been evident in later phases of the study, which look in more detail at the prosecution processes and outcomes in 12 case-study LEAs.

Overall, the key findings to date and areas for further discussion must surely revolve around the **variability** both in practice and viewpoints that the research has revealed.

It is clear that the vast majority of interviewees were supportive of the general principle of prosecution; a few adamantly were not. Considerably less (though more than two-thirds) also felt that it could be an effective strategy, and this perhaps intimates that some discrepancy between principle and current practice exists in the minds of senior EWS staff. Perceived inconsistency in disposals and resource issues were particular factors highlighted as adversely impinging on perceived effectiveness, sometimes compounded by a lack of 'hard' evidence on outcomes.

Variability also emerged in opinion about the viability and appropriateness of different disposals, uses of the aggravated offence [Section 444.1a], as well as in the decision-making process and who is responsible for presenting cases in court. The role of elected members in prosecution decision making

varied also. Preliminary analysis also suggests that there was considerable variability in the use, purpose and existence of such pre-court procedures as warning letter(s), school- and multi-agency panels.

Similarly, variability within LEAs emerged from the survey data: different degrees of prosecutions per pupil population were evident. In addition, variability within prosecution cases was evident: it was female parents that accounted for three-quarters of the parents prosecuted. Despite a belief amongst many interviewees that prosecution was more effective in relation to younger pupils, the actual number of prosecutions increased in line with age, peaking at year 10 and then reducing again in year 11.

LEA data suggested that over four-fifths of prosecutions resulted in a guilty verdict, although a significant number, 14 per cent, were withdrawn prior to a disposal being made. In terms of magistrates' disposals, fines followed by conditional discharges were the most common disposals made.

This overview of variability and variety perhaps can provide the basis for useful debate and exchange of views within and between each of the services connected to the prosecution process. The next phase of the research will hopefully contribute to this debate further by directly relaying the views of representatives from these services (including clerks to the court and magistrates) and those of parents who have been involved in the prosecution process. Further examination of the purpose of prosecution will be considered, including the variation in viewpoint as to whether prosecution can and should function as a remedy for non-attendance, as opposed to a reprisal for failure to comply with a legal requirement.

The LGA Educational Research Programme is carried out by the NFER. The research projects cover topics and perspectives that are of special interest to LEAs. All the reports are published and disseminated by NFER, with separate executive summaries.

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