

ARTICLE 45 AND SCHEDULE 13 OF THE EDUCATION AND LIBRARIES  
(NORTHERN IRELAND) ORDER 1986

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PARENTAL PROSECUTION IN NON-ATTENDANCE CASES

INTRODUCTION AND CONTEXT

Since my appointment as the Independent Autism Reviewer for Northern Ireland<sup>1</sup> ('Autism Reviewer') a consistent and predominant issue has been the challenges autistic<sup>2</sup> and neurodivergent pupils face in accessing school regularly and consistently.

The Education Authority for Northern Ireland ('EANI') has the power to initiate criminal proceedings against parents for failure to secure their child's regular attendance at school under Article 45<sup>3</sup> and Schedule 13<sup>4</sup> ('the parental prosecution offence') of the Education and Libraries (Northern Ireland) Order 1986 ('the Order').

Within the context of school attendance, the prosecution of parents is a recurrent point of concern, as well as confusion, for many families.

Issues raised by autistic people, families and carers, practitioners or public bodies with my Office may be used to inform wider scrutiny, identify structural risks, and, where appropriate, signpost relevant oversight mechanisms, standards or sources of external expertise.

In this instance, ongoing engagement with my Office led me to consider the attendance enforcement framework itself. This Report should therefore be

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<sup>1</sup> [About the Reviewer | Independent Autism Reviewer for Northern Ireland](#)

<sup>2</sup> For the purposes of this Report the term "autistic" refers to a person of any age who has a formal diagnosis of autism, is in the process of diagnostic assessment, is awaiting assessment, has been identified or recorded by a public body as having possible autistic characteristics, or personally identifies as autistic.

<sup>3</sup> [Article 45](#)

<sup>4</sup> [Schedule 13](#)

understood as the outcome of that supportive and preventative function, rather than as a reactive or adversarial exercise.

Given the well-established disproportionate representation of autistic pupils among those with persistent attendance challenges, and the potential for legal processes to disproportionately affect autistic people and their families, the operation and accessibility of the attendance enforcement framework falls directly within my statutory remit under Article 3D of the Autism Act (Northern Ireland) 2011 to review the adequacy and effectiveness of law, practice and services<sup>5</sup> affecting autistic people. (See also Appendix One).

Consequently, I undertook a high-level scoping exercise of the Order and publicly available information and have made the following observations and incidental findings, which merit further examination and scrutiny;

- Provenance of the parental prosecution offence
- Strict liability nature of the parental prosecution offence
- Limitation of statutory defences
- Legal requirements of public bodies exercising prosecution powers
- Effectiveness and impact
- Oversight and monitoring

## PROVENANCE OF THE PARENTAL PROSECUTION OFFENCE

The parental prosecution offence originates in, and mirrors, the educational enforcement provisions first introduced under the Education Act 1944 (the “Butler Act”)<sup>6</sup>. Its core construct has remained largely unchanged and unexamined in Northern Ireland since its 1940s roots.

Since then both society and the education system have undergone notable changes. Contemporary human-rights, equality, and disability frameworks now shape the broader context in which public authorities carry out their functions, alongside wider recognition of special educational needs and inclusion.

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<sup>5</sup> In this instance “*law*” refers to the statutory and caselaw framework governing parental non-attendance prosecutions; “*practice*” refers procedural frameworks; and “*services*” refers to the supports intended to secure attendance before enforcement, including the Education Welfare Service and SEN-related provision.

<sup>6</sup> [Education Act 1944](#)

England, Wales and Scotland<sup>7</sup> have each moved to updated statutory regimes with modern supporting guidance, replacing or substantially re-shaping the original parental prosecution offence.

Northern Ireland, by contrast, continues to rely upon a statutory framework that directly descends from the original 1940s model and has not undergone equivalent legislative modernisation.

## THE LEGAL FRAMEWORK IN NORTHERN IRELAND

Article 45, read with Schedule 13, establishes a strict liability criminal offence where a parent fails to secure suitable, efficient and full-time education for a child of compulsory school age, either by regular attendance at school or otherwise.

A strict liability offence is one in which the prosecution is not required to prove intent, fault, knowledge, or negligence. The offence is made out solely by the fact that the statutory requirement has not been satisfied<sup>8</sup>.

Therefore, if a child of compulsory school age “*fails to attend regularly at school*”, the parent is guilty of an offence unless they can establish one of the statutory defences.

“*Regularly*” in the context of school attendance has been authoritatively defined by the UK Supreme Court in [Isle of Wight Council v Platt \[2017\] UKSC 28](#) as attendance “*in accordance with the rules*” of the school, rather than “*sufficiently often*” or by reference to any percentage threshold. Accordingly, even short periods of unauthorised absence can amount to a failure to attend “*regularly*”.

This definition reinforces the strict liability nature of the offence - once irregular attendance is proved, the parent is guilty unless they can bring themselves within one of the limited statutory defences set out in Schedule 13.

Schedule 13 prescribes the enforcement process for Article 45, including an Education Supervision Order<sup>9</sup>, the duty to secure regular attendance, the statutory defences, and the offences and penalties that arise where a parent does not comply.

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<sup>7</sup>England and Wales - [Education Act 1996](#) and subsequent reforms, supported by modern statutory guidance. Scotland - [Education \(Scotland\) Act 1980](#) with a distinct non-criminal intervention framework.

<sup>8</sup> Examples of other strict liability offences include driving without insurance and selling alcohol to a person under 18, where the offence is made out regardless of intention or awareness.

<sup>9</sup> [Article 55 of The Children \(Northern Ireland\) Order 1995](#)

Under Schedule 13, a parent may avoid criminal liability only where one of the specific statutory defences applies<sup>10</sup>. The Supreme Court in *Platt*<sup>11</sup> held that the statutory defences are exhaustive and must be strictly construed.

It follows that wider circumstances such as anxiety, bullying, behavioural difficulties or school-related distress do not fall within the statutory defences unless they are of such a nature that they meet one of the specific statutory exceptions, most commonly by amounting to a medical condition that genuinely prevents attendance.

Statutory defences should be considered at two stages; (i) pre-decision the prosecuting authority should assess any information indicating that a statutory defence may apply before deciding whether to institute proceedings, as required by Schedule 13 (including paragraph 5, which obliges consideration of alternatives such as an Education Supervision Order), and (ii) once proceedings are before the Court whether a defence is made out is a matter for the Court, and it must determine if the parent has discharged the burden of proving the relevant statutory exception.

## LEGAL REQUIREMENTS FOR PUBLIC BODIES EXERCISING PROSECUTION POWERS

In Northern Ireland, the legal standards that apply to a criminal case do not vary according to which public authority brings the prosecution<sup>12</sup>. The settled legal position across the UK is that prosecutorial standards follow the function, not the institution, and apply irrespective of who the prosecutor is.

UK caselaw is clear that any public authority exercising criminal prosecution powers, including the decision to prosecute, the initiation and conduct of proceedings, must meet the same standards of legality, transparency and procedural fairness as the national prosecuting standard.

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<sup>10</sup> Sickness or other unavoidable cause, tightly defined transport circumstances, itinerant work with no fixed abode, or that the child is receiving suitable full-time education otherwise than at school.

<sup>11</sup> *Ibid*

<sup>12</sup> Legislation relating to the criminal procedure, disclosure and the conduct of criminal proceedings, including the [Criminal Procedure and Investigations Act 1996](#), [The Crown Court \(Criminal Procedure and Investigations Act 1996\) \(Disclosure\) Rules \(Northern Ireland\) 1997](#) and [The Magistrates' Courts \(Criminal Procedure and Investigations Act 1996\) \(Disclosure\) Rules \(Northern Ireland\) 1997](#), impose statutory duties on “prosecutors” without exception. The law does not permit a lower or different standard because the prosecuting body is not the PPSNI. Article 6 ECHR reinforces this by guaranteeing a fair hearing regardless of who initiates the prosecution.

In Northern Ireland that benchmark is [The Code for Prosecutors](#) ("the Code"), issued by the Public Prosecution Service for Northern Ireland ("PPSNI")<sup>13</sup>. Although other bodies are not required to adopt the Code, it provides the evidential and public-interest framework against which prosecution decision-making is understood in this jurisdiction.

There is no legal basis on which a public authority initiating a criminal prosecution could apply a materially lower threshold of legality, fairness or transparency than that required across the criminal justice system.

The [2025 Criminal Justice Inspection Northern Ireland \(CJINI\) Report](#) reinforces this principle and highlights the importance of consistent oversight of all bodies exercising criminal enforcement powers.

Taken together, this means that any public authority with prosecution powers must be able to demonstrate lawful, transparent and procedurally fair decision-making consistent with the statutory duties that govern criminal proceedings and the right to a fair trial.

Caselaw also requires prosecuting authorities to operate to published and accessible criteria so that those affected can understand how decisions are made and whether they reflect fairness and proportionality.

The EANI "[EWS - Legal Information](#)", the Department of Education "[School Attendance](#)" and NI Direct "[School attendance and absence](#)" do present information in relation to the parental prosecution offence. However, unlike most other bodies with prosecutorial powers, this published information does not include a prosecution policy or evidential standards and public interest considerations.

Additionally, there does not appear to be any publicly accessible information on how to request a review of the decision to prosecute, how and by whom any such requests are dealt with, and how complaints are processed and audited.

In the absence of the accessible publication of such information, families may not know what evidential threshold must be met, what public interest factors are taken into account, what alternatives have been formally considered including alternative disposals, how disability-related factors are considered and how "*co-operation*" is defined<sup>14</sup>.

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<sup>13</sup> Under the Justice Act (Northern Ireland) 2002

<sup>14</sup> In the context of ongoing SEN pressures, references to "*co-operation*" as part of the prosecution decision-making process may lead some parents to perceive that necessary advocacy, disagreement, or escalation of concerns may be interpreted negatively. This perception, even if not reflective of

Responses to recent Assembly Questions provide helpful context on organisational intent but do not reference a formal prosecution policy or published decision-making criteria.

The lack of publicly available information does not in and of itself indicate improper practice. It does, however, reflect a transparency gap that may affect confidence and understanding in the process.

## EFFECTIVENESS AND IMPACT

Questions about the effectiveness of parental prosecution in improving school attendance are not new. During the 2014 Public Accounts Committee (PAC) [Report on Improving Pupil Attendance Follow-Up Report](#), Ms Barr agreed that prosecuting parents had not been particularly successful<sup>15</sup>. That concern has, to date, remained substantively unexamined.

In response to a recent Assembly Question seeking the number of cases in which, following a prosecution for school non-attendance, school attendance has improved, the Minister of Education stated:

*“Collection of this data commenced in September 2025 as part of the Education Welfare Service Transformation Programme and will be included in the service data set for Term One of this academic year. Information is expected to be available in February 2026.”*

This commitment is very welcome. Access to robust outcome data is essential to determine whether the parental prosecution offence achieves its intended purpose, whether it has any deterrent or corrective effect, and whether alternative interventions may, in practice, be more effective.

The forthcoming dataset therefore represents an important opportunity to build an evidence base and to inform future policy development. It also offers the potential to understand which interventions, supports or system responses are most effective in re-engaging pupils with education, including autistic and neurodivergent pupils.

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organisational intent, can create uncertainty, inhibit open communication, and contribute to heightened anxiety among families who are already managing complex educational needs.

<sup>15</sup> [Report on Improving Pupil Attendance Follow-Up Report](#) Paragraph 262 Ms Barr, Chief Executive Welfare Officer, Southern Education and Library Board, *“I agree with you that prosecuting parents has not been particularly successful, as demonstrated by many repeat prosecutions. Parents prosecuted once are often prosecuted again the following year, but the young person still does not attend. That is a problem.”*

There are also important implications for children and families when a parent is prosecuted for non-attendance. Although children are not required to attend court, the EANI advises that they “*should be made aware of the seriousness of the situation*”.

For some pupils this can have emotional and relational effects, including increased anxiety, school-related distress and disruption to family dynamics, particularly in households where there are siblings with differing needs.

Emerging evidence across the UK and Ireland highlights the potential impact of attendance-related legal processes on pupil wellbeing, educational engagement and longer-term outcomes, in particular autistic and neurodivergent pupils.

These considerations sit alongside the wider effects on families, including stress, financial strain, and the possibility of fractured relationships with schools and support services.

Therefore, whilst the legal framework focuses on parental responsibility, any enforcement action must be understood within its broader educational and child-wellbeing context.

## OVERSIGHT AND MONITORING

Recent Assembly Questions provide helpful information about existing internal oversight arrangements within the EANI.

In response to [AQW 39467/22-27](#), the Minister of Education confirmed that the EANI Internal Audit Team has undertaken audits relating to waiting lists and school expulsions as part of the 2024/2025 Internal Audit Plan, and that a further audit of court processes has been requested for inclusion in the 2025/2026 Plan. This is a welcome development and indicates an organisational willingness to examine internal processes.

In [AQW 34104/22-27](#), the Minister outlined that decisions to initiate legal proceedings are considered by Local Education Welfare Service Court Panels, with oversight provided by a senior member of the Education Welfare Service.

These processes are internal and there appears to be no external or independent oversight mechanism referenced publicly, nor any link to the wider criminal justice governance structures that apply to other bodies with prosecution powers.

Findings of the 2025 CJINI Report identified with concern a system-wide gap in relation to non-police prosecutors, noting that several public bodies exercising criminal enforcement powers fall outside the formal oversight and inspection framework applied to the Police Service of Northern Ireland and the Public Prosecution Service.

Importantly, the report makes a specific recommendation to the Department of Justice that,

*“...the remit of Criminal Justice Inspection Northern Ireland should be extended to allow it to inspect and provide independent oversight of all public bodies that exercise criminal investigation or prosecution functions.”*

This recommendation directly addresses the structural oversight gap in the parental prosecution offence identified within this Report. It also presents an opportunity to create greater consistency, transparency and public confidence across the system<sup>16</sup>.

For families supporting autistic pupils, who may already be navigating complex SEN pressures, the absence of an external inspection or assurance mechanism may contribute to uncertainty about how prosecutorial decisions are reviewed and quality-assured, particularly where such decisions carry criminal consequences<sup>17</sup>.

The absence of published criteria does not necessarily indicate improper practice. It does, however, create a transparency and safeguarding gap that may limit understanding and confidence in the process.

## CONCLUSION

The observations within this Report are preliminary and do not imply any finding of improper practice. They indicate areas where further examination, transparency and external assurance may support public confidence and alignment with contemporary legal and educational frameworks. I will

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<sup>16</sup> Parental non-attendance prosecutions fall within the category of “non-police, non-PPS” prosecutions that CJINI identifies as currently having no external scrutiny.

<sup>17</sup> Consequences include a fine, a criminal record and associated reputational impact, with possible implications for international travel. Although imprisonment is not a penalty for this offence, unpaid fines are enforceable through separate court processes which can, in rare cases, result in loss of liberty for fine default, not for the offence.

continue to monitor developments and provide further advice as appropriate.

## APPENDIX ONE - MY REMIT

This Report is issued under Article 3D of the Autism Act (Northern Ireland) 2011, which requires me as the Independent Autism Reviewer to keep under review the adequacy and effectiveness of law, practice and services affecting autistic people, their families and carers.

In addition, I am a Solicitor on the Roll of the Supreme Court of Judicature (non-practising). My core professional, status-based duties continue to apply.

Taken together, my statutory remit and my professional status mean that when I become aware of systemic risks to legality, transparency, accountability or procedural fairness in the exercise of a public power affecting autistic people, I am not free to disregard them.

My role requires that such risks are identified, assessed, and reported in a clear, evidence-based and impartial manner, so that public authorities and the Northern Ireland Assembly can take informed and lawful decisions.

**This Report does not challenge, and should not be interpreted as challenging, the legitimacy of an enforcement mechanism in circumstances where parents have failed to discharge their statutory responsibility to secure their child's regular attendance and a suitable, full-time education appropriate to their age, aptitude, ability and any special educational needs.**

**The Report is based solely on publicly available information. It has not examined, relied upon, or formed any view in relation to individual cases, save for the caselaw referenced for legal analysis.**

**For the avoidance of doubt, nothing in this Report comments upon, interferes with, or seeks to direct the EANI's independent prosecutorial decision-making in any individual case. This Report is limited to the adequacy, transparency and accessibility of the legal and administrative framework pertaining to the parental prosecution offence.**