



# S Q U A R E P E E G

**Response to Committee, Schools Bill, Part 3**

## Context:

*Square Peg is a community interest company (social impact not-for-profit) established & run by those with lived experience of school attendance difficulties. We work in partnership with Not Fine In School CIC, who support the same families via a membership group of 29k parents and carers.*

*We have come up-close-and-personal to the current culture and practice by schools, local authorities, healthcare, social care, SEND and education welfare management. We aspire to represent the most vulnerable families and children, across all socio-economic groups who experience challenges to accessing education entitlement as a result of persistent absence difficulties. These children may be referred to as 'school refusers', 'truants', 'challenging', 'disengaged', 'withdrawn', 'unmanageable' or 'unsuitable for mainstream schooling.' Many have special educational needs, a disability, chronic illness, medical needs, experience mental ill health, are young carers, live in poverty, are from a black or ethnic minority, may be Forces children, or are Looked After.*

*The writing was on the wall pre-pandemic with many of the Not Fine In School 29k family members reporting escalating mental ill health in their child arising from coercive behaviour policies, sanctions or threat of sanctions (punishments) for very minor offences. As a Twitter thread demonstrated recently, forgetting a pencil three times in a week can result in suspension from school. Absence rates were rising 20% pa pre-pandemic. Exclusion rates, off-rolling and de-registrations were all increasing pre-pandemic. Combine this with post traumatic stress arising from lockdowns and Covid, a hard and fast return to catch up learning and examinations following 2 years existential threat, bereavements, social isolation, employment uncertainty, rising cost of living etc. it is no wonder our children and their families are struggling.*

*Parliamentarians should seek to understand the impact of the Government's behaviour advice and secondary legislation on managing behaviour in schools, which directly impacts the mental health of children and their families. The same guidance draws on arguably outdated behaviourist techniques and frameworks that are carrot and stick measures many of that mindset believe are 'effective' but do not support or protect psychological safety, belonging and wellbeing for our schools and our children. These same systems pre-determine adversarial encounters which adds to fragmentation, factional culture and policy, placing a top down vice from Government to local authorities, to schools, to families and children.*

*The Government's advisors do not agree with evidence-based research from some of the world's leading educationalists, child development researchers, neuroscientists and mental healthcare professionals - there is a divisive splitting where positive mental health and inclusion support clashes with outdated behaviour management and education welfare management modalities, and therein lies the rub.*

*We know when schools focus on positive regard, secure attachments, safe, respectful relationships, wellbeing, restorative practice and implement trauma-informed organisations,*

*that are robustly inclusive and responsive, children thrive. We know from the work of the Attachment Research Community that attainment goes up, exclusions go down, as does absence<sup>1</sup>. We should not shy away from prioritising and supporting mental health in every child and young person. Our young people seek it, want it, need it and are entitled to it. By not putting support in place or ensuring whole school inclusion, attachment and trauma responsive training combined with mental health support teams urgently prioritised in every school, we are doing our children a disservice and are storing problems for the future. Ignoring additional needs or emerging social, emotional or mental health difficulties manufactures higher levels of distress, withdrawal and disengagement which can quickly convert to mental ill health and clinical levels of need. As adults, we should be alert to our resistance to responding to needs or distress:*

*Mental health professionals observe that where one feels unsure or uncomfortable around supporting and responding to rising needs or mental ill health by addressing declining wellbeing in our children, it is usually down to generational discomfort towards a taboo subject. Mental health, psychological distress, emotional instability is the last taboo in healthcare and in our communities. Mental illness was whispered in hushed tones in civil society until relatively recent memory. In many ways it still is. We are drawn to shut down and minimise emotional discomfort and distress. Certainly, mental ill health in children was unheard of, let alone acknowledged. Rather, it was (and still can be) labelled in children as dysfunction, delinquency, disordered.*

*Maintaining good mental health is as fundamental as 5-a-day, 30 mins of exercise a day. We know it is vital that everyone knows 'it's ok not to be ok.' But how does this extend to our children and young people? By prioritising the wellbeing of our children and families as a public health requirement and ensuring mental health in childhood is protected, we are actively preventing health inequalities and poor outcomes in later life.*

*Early intervention, a robust pastoral whole-school framework, prioritising happiness and enjoyment at school, will result in better outcomes - not least attendance and a reduced need for high level CAMHS support. Workforce wellbeing is vital too, and by offering support to teachers and leaders for their wellbeing and mental health, scaffolded with individual supervision for professional support, guidance and practice, the entire wellbeing ecosystem flourishes.*

*It's time. Carrot and stick doesn't work long term. Bringing out a bigger stick isn't the solution either. Parents are not waving but drowning. We are trying to tell you what the problems are. We know what works, what doesn't. We are sharing the harms endured. We want our children to be happy, settled, learning, thriving but too many aren't that lucky.*

*Listen to us, hear us. We have children and families who wish to talk to you and who want to share what could've been done to change outcomes for them.*

***See Asks to Government on page 6. We invite your support in calling for these.***

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<sup>1</sup> <https://the-arc.org.uk/calltoaction>

## Executive Summary to Part 3:

Section 1 of the Bill has rightly been described by peers as being constitutionally “an abomination”, and an enormous “grab for power” for the running of schools by Whitehall. Section 3 of the Bill grants the Secretary of State quite extraordinary powers, this time over families.

We are all agreed that children have the right to an education and to the protection of the State should there be failings in this regard. Members are rightfully motivated in the desire to safeguard this, however this Bill is not the way to deliver on this ambition.

Registers for children not in school already exist. The Counting Children UK coalition research to date, with responses from 60% of Local Authorities (“LAs”) found that 100% who responded (107), already track children in the scope of the Bill. Other children and young people who fall within remit of the registers are already included on the DfE held alternative provision census, some will also be included in the children in need census. What is new however are the sweeping powers that come alongside it. Local authorities authorised as the State’s collection agencies would have almost limitless information from families with the Secretary of State given the power to extend what information might be demanded and with whom it might be shared. These powers are to be applied often only to rule out that there are no concerns.

Emeritus Professor Eileen Munro has said that the proposed register will not help to safeguard children, indeed that it will make things worse for families. The Victoria Climbié Foundation too is a notable organisation standing against this part of the Bill.

This Bill asks us also to grant the Secretary of State enormous powers over families whose children are in school, in the name of attendance management and enforcement.

The Department for Education, at the time of bringing this Bill, had not yet consulted on the circumstances which should necessitate issuing of a fixed penalty notice. Here the Bill seeks to grant these powers to the Secretary of State, as well as that of powers to make provision for arrangements between local authorities, the police and other authorised officers around the coordination of these.

The Bill seeks to put government guidance on a statutory footing. We are told that the drivers to attendance are wide and evolve rapidly and therefore require guidance to be updated regularly, more often than could be legislated for by primary legislation or regulations, again granting the Secretary of State sweeping powers.

Although it is intended to be the last opportunity Parliament has for any oversight of these arrangements it is worth looking at the guidance which will come into force in September 2023.

While the 2016 Named Person judgement of the UK Supreme Court upheld that the threshold for coercive State intervention is ‘concern that a child is at risk of significant harm’, the guidance mandates home visits and parenting contracts - both so called

voluntary and those with legal force - as measures which can be applied in the pursuit of full attendance.

In considering the extensive powers Whitehall is asking to be given, it is important to note that the biggest reasons for absence is due to a social, emotional and/or mental health challenge for the child and / or their family usually arising due to unmet, unrecognised or undiagnosed needs, be they practical, environmental, circumstantial, educational, health or welfare. Organisations such as Square Peg and Not Fine In School share the many complex and mitigating circumstances families experience, regarding the fitness of their child's ability to attend school, serious illness, following bereavement, or while on a waiting list for specialist assessment or support. Families also share the challenges of insecure housing, poverty, domestic abuse, marriage breakdown, terminal illness, long covid, disability, unemployment, redundancy or zero hours contracts. We hear of discrimination, harassment, coercion, parent blame and a dismissal or disregard for invisible disability, chronic illness and mental ill health.

We must note also that the measures for what constitutes persistent absence have changed from 15% of sessions missed in 2014/2015 to 10% today, and that the guidance specifies that at 31 minutes late a child is to be marked as absent for the session; and there are two marked sessions per day, one in the morning and one in the afternoon meaning 10 absences or late arrivals for 5 days cumulative or consecutive will mean the family must be referred for a fine. This lack of regard for the unpredictability of ordinary life will result in untold families being referred for fines. Combine this with the live attendance tracker reporting such instances direct to the DfE, even if schools try to exercise pragmatism and understanding, they risk questioning themselves.

It is important to note that this Bill is not the only mechanism by which surveillance is being ushered in for children. As mentioned above, the live attendance tracking of 8 million children is being rolled out as we speak, with real-time data on the location of every child held by the Department for Education and shared with other agencies.

We must pull back from the threshold at which we find ourselves. The Government's solution to straight-lace an already problematic response to attendance barriers children and their families face, in criminalising parents, does not solve the problems nor remove the causes of the barriers. We know that the most vulnerable families are at risk of these "cruel & discriminatory" punitive measures, with research showing such prosecutions are a "gendered offence" and mothers disproportionately affected.

Moreover, children with special education needs, disabilities, chronic illness, mental ill health, those who are Looked After, on Free School Meals, recently bereaved, from an ethnic minority or for whom English is not their first language all constitute persistent absentees. Young carers, children who are bullied, living in insecure housing or live in a household with employment insecurity (to name a few) are all disproportionately represented here.

Attendance difficulties is the lens through which all challenges faced by local authorities, schools, health and care providers, children and families can be seen. It is the nexus

which spotlights gaps in welfare, local services, health and mental healthcare, housing, employment, transport, social care and of course, education.

There is an opportunity to remove Dickensian truancy laws but instead this Bill combines a toxic mix of autonomous rule without regulation nor scrutiny and doubles down to ensure attendance officers' jobs are more efficient and effective. Children and families are certainly not at the centre.

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

Marginalised families deserve to be heard. Experts by experience stakeholders must be consulted, included and embedded in any changes to the lives of children and families, particularly with regards to education.

Please, work with us to ensure further systemic institutional damage and declining outcomes are stemmed, mitigated and improved.

## Asks:

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

It is important to consider and include children and families with unidentified and emerging needs, be they welfare related, social care, educational, mental health, physical, psychological, cultural. Often, anxiety and attendance difficulties is the top line behaviour seen by parents and schools. A mental ill health absence code will ensure families are protected from punitive pathways and permit schools to notice a child struggling with emerging mental ill health.

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

## Concerns:

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

Formal Complaints - the local complaints process with LAs is extremely lengthy (a minimum of a year to complete the process) via either the Corporate or Children's Act complaints pathway, depending on the nature and context of the complaint. It is cumbersome, unhelpful, distressing and divisive and should not be viewed as a 'solution'. No family ever wants to be in a position left with no option but to complain formally to the very organisation they are beholden to for support. With regard to complaints around schools, if the school is a MAT, complaints must go directly to the DfE and we are aware of 'black holes' families fall into with no satisfactory outcome. How does the Government propose to centrally administrate complaints with this regard?

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

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

Subject Access Request / Information Commissioner's Office - once again, a burdensome and unsuitable solution. Families often receive copies of their held data with huge sections redacted. It is also an entirely inadequate and cumbersome process if one has a child known across services - education, SEND, health, mental healthcare, social care - with records often containing substantial gaps, in addition to large sections of redacted information.

Far too many families are forced down these routes. Not enough support is there, nor intention to do all that is necessary to help a child access education and remain in school. Truly inclusive practice is not always possible due to binary behaviour policies, attainment and attendance targets, threadbare schools budgets, decimated local support services, CAMHS waiting lists etc..



Please review our submission to the attendance consultation for a glimpse into the impact of current systemic culture and practice on families whose child is struggling to attend school:

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

We contributed to the behaviour consultation and separately to the Case for Change call for evidence for the Independent Social Care Review last year::

<https://www.teamsquarepeg.org/publications>

Notwithstanding the extensive testimony and qualitative data gathered by our surveys, social media support groups and academic research, we have spoken to magistrates, clerks, barristers, Directors of Children's Services, family support and youth workers and schools about the use of fines and prosecutions.

The threat and use of Fixed Penalty Notices and formal prosecution of families without question increases harms and vulnerabilities. It widens inequalities, increases adversity and leaves deep scars. Those working in criminal justice have shared the inadequacies of the Single Justice Procedure itself and we invite your consideration of the evidence submitted from Transform Justice in conjunction with links to research on the impact and outcomes of the single justice procedure below:

**Prosecution of parents for non-attendance of their children at school  
Evidence from charity Transform Justice [www.transformjustice.org.uk](http://www.transformjustice.org.uk)**

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

*The prosecution of this offence is done through the single justice procedure, a process that is very difficult for defendants to deal with. They get no free legal advice since the offence is not eligible for legal aid (unless the defendant has been convicted multiple times and is at risk of imprisonment). Defendants receive the criminal charge through the post and are expected to fill in a long form on paper or online. If they plead guilty in this form they get no court hearing. The offence is dealt with in a closed court by a single magistrate sitting alone. All those who plead or are found guilty are fined. One of the most troubling aspects of these prosecutions is that most of those accused do not engage with the system – they do not plead at all and are then automatically assumed to be guilty. No-one knows why defendants struggle to effectively participate but it is suspected that many letters go astray (they are sent via non-registered post), and that many defendants don't understand how to respond.*

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

Truancy, Single Justice Procedure & opinion pieces:

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

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

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

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

***'A gendered offence'***

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

***'Pointless and damaging'***

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

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

Mental health impact:

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

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

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

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

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

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

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

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

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

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

***Struggling Pupils Need Support***

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

***Happier During Lockdown:***

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



S Q U A R E P E G



Not Fine in School

Safeguarding:

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

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

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

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

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

'Ghost' children:

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

Data fact checks

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

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

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

Teachers Talk Radio, attendance data analysis

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

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

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

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

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

## **Solutions:**

Supporting mental health, attachment, relationships in schools - recommended providers

### **Whole School:**

Solihull Approach for Schools

<https://solihullapproachparenting.com/schools/>

Restorative & Relational Practice in Schools

<https://l30relationalsystems.co.uk/childrens-services/>

Well Schools

<https://www.well-school.org/login>

Trauma Informed Organisations

<http://www.safehandstinkingminds.co.uk/trauma-informed-trauma-responsive-organisations-systems/>

Trauma Informed Schools

<https://traumainformedschools.co.uk/>

Attachment Lead for Schools

<https://www.attachmentleadnetwork.net/national-trainer-bio---louise-bomber.php>

Attachment Research Community

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

States of Mind & Selfology

<https://www.statesofmind.org/>

<https://selfology.io/>

### **Targeted & High Needs:**

Well at School, Medical Needs

<https://www.wellatschool.org/>

Trauma Informed Education

<https://traumainformededucation.org.uk/>

## Schools & leaders getting it right:

Parklands - A School Built on Love (HT Chris Dyson)

<https://www.theguardian.com/education/2022/apr/16/leeds-primary-school-parklands-chris-dyson-interview>

Kensington Primary School - Wellbeing & MH Award Winner (HT Ben Levinson)

<https://www.kensington.newham.sch.uk/news/?pid=6&nid=1&storyid=182>

Colebourne Primary School - a trauma informed & attachment focussed school (HT Stuart Guest)

<https://www.hazwebs.co.uk/colebourne/>

Carr Manor (HT Simon Flowers)

<https://carrmanor.org.uk/>

Baycroft School (HT Marijke Miles)

<https://www.baycroftschoo.com/>

The New School (Lucy Stephens)

<https://www.thenewschoo.org.uk/>

XP School (HT Andy Sprakes) watch the movie. Note: no exclusions in 5 years, no staff absence!

<https://www.edge.co.uk/news-and-events/campaigns/above-all-compassion-the-story-of-xp/>

<https://www.youtube.com/watch?v=MwrtCFGGUaE>

<https://xpschool.org/we-are-crew-film/>

Solihull AP Academy (HT Steven Steinhaus)

<https://www.sa.solihull.sch.uk/index.asp>

North Tyneside Virtual School (VSH Jane Pickthall MBE)

<https://my.northtyneside.gov.uk/news/29457/national-recognition-north-tyneside-s-champion-children-care>

[www.teamsquarepeg.org](http://www.teamsquarepeg.org)

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