



# **Hackney Education Penalty Notices & Prosecutions**

**Guidance for referrers**

**September 2023**

## Introduction

Regular school attendance is a protective factor for children. We know that the positive relationships children have with their teachers and their peers helps them to continue to build a secure attachment, which in turn helps them to live happy lives filled with positive and nourishing social relationships.

Local authority and school policies, procedures and practice can all have a substantial impact on rates of attendance in school. When there is a focus on encouraging and motivating children to attend, a curious approach to understanding the context of a child when attendance declines coupled with an empathetic approach to identifying and overcoming barriers, then good overall attendance can be secured.

Whilst a whole school focus on absence coupled with targeted early intervention to address any underlying barriers to regular attendance are the most effective approaches for securing an improvement in attendance, there are occasions when it is appropriate to use legal enforcement measures.

This guidance will support schools, settings, and practitioners to decide when it is appropriate to refer to Hackney Education for school attendance enforcement measures. It should be read alongside the Hackney Education guidance [Supporting schools to improve attendance](#) and covers Stage 3 of the approach in more detail.

## An overview of the guidance

This guidance covers:

- A. The legal measures available to the local authority where parents fail to ensure their child's regular attendance at school or allows their child to be in a public place without reasonable justification whilst they are excluded from school.
- B. Guidance on education related fixed penalty notices and prosecutions, including when it is appropriate to refer to the local authority and whether this should be for a fixed penalty notice or a prosecution.
- C. The supporting evidence that is required to be submitted as part of the referral.
- D. What the local authority will do upon receipt of a referral.

## Legal framework

Under s.7 of the Education Act 1996 parents have a legal duty to ensure that:

*every child of compulsory school age shall cause him to receive efficient full-time education suitable:*

- a) to his age, ability and aptitude, and*
- b) to any special educational needs he may have,*

*either by regular attendance at school or otherwise.*

As part of their general duty to safeguard pupils schools must monitor pupil's attendance through the daily register. Schools should also take steps to address poor or irregular attendance and where required refer to the local authority.

Local authorities can issue fixed penalty notices (s.444A Education Act 1996) and have the power to prosecute parents (s.446 Education Act 1996) for failing to ensure their children's regular attendance at school (s.444 Education Act 1996).

There are two offences parents may commit under section 444 of the Education Act 1996.

The first offence is under section 444(1), which states:

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

This is an absolute liability offence, and it is only necessary to prove that the child did not attend school regularly rather than establish parents culpability in the act.

The second offence is under section 444(1a), which states:

*If in the circumstances mentioned in subsection (1) the parent knows that his child is failing to attend regularly at the school and fails to cause him to do so, he is guilty of an offence.*

Under the offence it is necessary to prove that not only did the child not attend school regularly but also that the parent is aware of this and is failing to ensure that they do.

Parents whose children are excluded from school and have a duty to ensure their children are not present in a public place during school hours for the period of exclusion (up to the first five days). Failure to ensure this means they may be liable to prosecution by the local authority under s.103(3) of the Education & Inspections Act 2006 by the local authority, which states:

*If the excluded pupil is present in a public place at any time during school hours on a school day ..., the parent commits an offence.*

Local authorities may choose to issue a penalty notice (s.105 Education & Inspections Act 2006) rather than bring a prosecution.

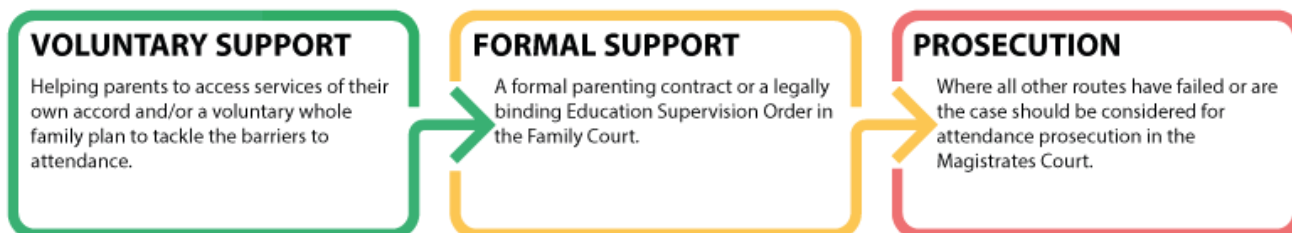
Local authorities can also prosecute parents for failing to comply with a school attendance order (s.443 Education Act 1996).

## When should a school refer for legal intervention?

As absence is so often a symptom of wider issues a family is facing, schools and local agencies should always work together to understand the barriers to attendance and provide support.

In the first instance, schools should seek to work with parents to understand any barriers to attendance and agree how all partners can best work together to resolve them.

This voluntary support should be tailored to remove barriers in school and help pupils and parents to access the support they need outside of school. This might include an early help or whole family plan where absence is a symptom of wider issues.



Where absence persists and voluntary support is not working or not being engaged with, partners should work together to explain the consequences clearly and ensure support is also in place to enable families to respond. Depending on the circumstances this may include formalising support through a parenting contract or consideration of an Education Supervision Order.

The use of legal enforcement measures to improve attendance should be used by schools as a last resort when all other interventions to improve a child's attendance have been unsuccessful or not engaged with.

Evidence that schools have undertaken this staged approach work strengthens the case that it is in the public interest to undertake enforcement action against a parent. Should the local authority bring a prosecution against parents, the magistrates court will want to see what steps the school has taken to work with parents to bring about an improvement in attendance.

Schools can consider applying to the local authority for a legal enforcement intervention in the following circumstances:

1. The school, despite its best endeavours, has not been able to work with the parent/carer to bring about a satisfactory improvement in attendance;
2. The school has worked with the parent and partner agencies to identify and address the reasons for absence, however the parents has not undertaken the required actions to secure an improvement in attendance; and
3. The school feels that a legal enforcement intervention is necessary in order to secure parental support for the necessary actions required to improve attendance.

If a child has a social worker, schools should consult with them prior to making a referral for enforcement. The view of the social worker will be taken into account in determining whether it is in the public interest for the local authority to pursue a legal intervention against the parent.

Should a school decide to refer a case for a legal intervention contrary to the opinion of the child's social worker, Hackney Education will determine whether it is in the public interest to proceed considering the views of those involved. Hackney Education reserves the right to proceed with a legal intervention if it determines that it is in the public interest to do so.

### **Penalty notice or prosecution?**

Penalty notices must be issued in line with the locally agreed Code of Conduct. They can be issued in response to unauthorised absence from school, including arriving late after registers have closed and unauthorised holidays in term time.

In order for a penalty notice to be considered the pupil must first have been absent without authorisation for at least 10 sessions in a 12-week period.

**Fixed Penalty Notices are intended to prevent the need for court action following an unsuccessful offer of voluntary early help support to address the barriers preventing regular attendance at school.**

However, there may be other circumstances in which a penalty notice needs to be considered outside of this, for example, a Penalty Notice can be considered after 6 sessions (3 days) when it is apparent that the unauthorised absence relates to an unauthorised holiday in term time.

Penalty notices are an alternative to prosecution. They should be considered at an early stage before any absences become entrenched or more problematic. They can also be used where a prosecution would be considered too heavy-handed.

Penalty notices are less effective in responding to cases where:

- absence from school occurs regularly and is therefore a more entrenched behaviour;
- the pupil has been absent for a long term period of time; or
- where the parent is considered not able to secure an improvement in attendance without the need for intervention and support from external agencies.

In these situations adopting a casework approach to securing an improvement in attendance is considered more effective. Such an approach should seek to identify the underlying reasons for absence and working alongside partner agencies, put in place the necessary interventions to address those.

If having adopted this approach it has not been possible to bring about an improvement in the child's attendance then a referral to the local authority for a prosecution may be appropriate.

### **Parental responsibility for ensuring a child receives a suitable education**

The Education Act 1996 (s.576) takes a broad definition of who has responsibility for ensuring a child receives a suitable education. This definition includes:

- A biological parent of a child even if they do not have parental responsibility;
- Any person who is not a biological parent of a child but has parental responsibility by virtue of an Order; and
- Someone who has care of the child.

Therefore any of the above may be subject to legal intervention. Hackney Education will consider any adult who has day to day care and responsibility to be potentially subject to legal intervention.

**In cases meeting the referral criteria for unauthorised leave (term-time holiday), Hackney Education will only issue a penalty notice to the parents who took the pupil out of school or gave permission for the pupil to be removed from school for the purpose of a term time holiday.**

## **The decision to prosecute**

The local authority may prosecute parents who fail to ensure their child attends school regularly or when excluded from school, their child is found in a public place without reasonable justification. It does not have a duty to prosecute every case that is referred to it.

Penalty notices allow parents to pay a fine and discharge themselves from liability for prosecution for the specific offence. These are issued in line with our local Code of Conduct.

When considering a case for prosecution the Courts Officer has to consider a number of factors as set out in the Code for Crown Prosecutors before deciding to proceed. These are:

1. A duty to be fair, independent and objective, not letting any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation influence decisions and not being affected by improper or undue pressure from any source.
2. Obligation to act in the interest of justice and not solely for the purpose of obtaining a conviction.
3. Duty to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with.
4. Duty to act in accordance with the Human Rights Act 1998.
5. Application of the evidential test – is the evidence sufficient to provide a realistic prospect of conviction?
6. Application of the public interest test – is it in the public interest to proceed with a prosecution?

If the local authority decides not to prosecute it could decide to:

- Take No further action;
- Administer a Simple Caution; and/or
- Apply for an Education Supervision Order or a Parenting Order

Applying for an Education Supervision Order must be considered prior to bringing a prosecution.

The decision on whether to recommend whether a case is prosecuted will be made by the Courts Officer in consultation with the Principal Officer, Pupils Out of School.

All prosecutions will be authorised by the Director of Inclusion and Education (or senior officers with delegated authority from the Director to do so on their behalf).

**The evidential test**

For the local authority to issue a legal intervention there needs to be sufficient evidence that an offence has been committed.

Section 444 of the Education Act 1996 also sets out the limited grounds that a parent can cite in defence against an offence under that section. These are known as statutory defences and apply in relation to both attendance penalty notices and prosecutions. These are the only legally permitted defences to the offence.

The statutory defences are:

- The head teacher authorised the absence.
- The child could not attend because of sickness or 'unavoidable cause' in an emergency.
  - Case law has held that stress arising from bullying, behavioural or mental health difficulties or a 'chaotic lifestyle' should not be considered an 'unavoidable cause'.
- The child was absent on a day exclusively set apart for religious observance.
- The school is outside of the statutory walking distance of the child's home and the Local Authority has a duty to make travel arrangements in relation to the child under and has failed to discharge that duty
  - (NB - Children in London receive free travel on public transport and therefore this defence does not apply except in where a child with special educational needs is eligible for local authority provided transport and that provision has not been made)
- The child is not registered at the school and the parents are providing a suitable alternative education.
- The parents' trade or business requires them to travel from place to place.

Section 103(4) of the Education and Inspections Act 2006 states that parents have defence against the offence of their child being in a public place during school hours whilst excluded from school if they can prove they had reasonable justification for them being in a public place.

Prior to referring to the local authority for a legal intervention, referrers must satisfy themselves that the evidential test has been met and that none of the statutory defences apply.

A referral to the local authority is the referrer's confirmation that they believe the evidential test has been met, however it will be for the local authority to determine this.

Should Hackney Education's Court Officer believe that a referral from a school does not meet the evidential test, they must consult with the Principal Officer, Pupils Out of School. The Principal Officer, Pupils Out of School will then be responsible for considering the available evidence and then determining whether the evidential test has been met.

If the Principal Officer, Pupils Out of School confirms that the evidential test has not been met then the Courts Officer will contact the referrer and advise them of this and why. The advice of the legal department may be sought in circumstances where whether or not the evidential test has been met is unclear.

### **The public interest test**

It is not sufficient that the evidential test is met to implement a legal intervention. Any action also needs to be in the public interest. This applies to both issuing penalty notices and prosecutions.

The primary consideration in determining whether the public interest test has been met is ensuring the child or young person receives the education they are entitled to. Therefore, in considering whether or not it is in the public interest to proceed with legal interventions any decisions must first and foremost be child centred, with any factors relating to parental circumstances being secondary considerations. Circumstances where it is not in the public interest to pursue legal interventions against parents/carers include children who are:

- no longer of compulsory school age;
- regularly missing from home; or
- who are subject to a child in need or child protection plan or in the care of the local authority.

This is not a definitive list and other factors may be relevant in determining whether a legal intervention is in the public interest.

Where a child has a social worker it may not be in the public interest to bring a prosecution. In determining whether or not it is in the public interest to bring a prosecution, schools should consult with the child's social worker prior to making a referral to the local authority. Things to consider in relation to prosecutions involving children with a social worker are:

- the family circumstances;
- the reason why the child has a social worker;
- whether attendance is improving or declining; and
- the level of parents' support for the agreed child in need or child protection plan.

This is not a definitive list and other factors may be relevant in making a public interest judgement.

Should a school decide to refer a case for a legal intervention contrary to the opinion of the child's social worker, Hackney Education will determine whether it is in the public interest to proceed considering the views of those involved. The decision on whether the public interest test has been met rests with Hackney Education.

Hackney Education reserves the right to proceed with a legal intervention if it determines that it is in the public interest to do so.

A referral to the local authority is the school's confirmation that they believe the public interest test has been met, however it will be for the local authority to determine this.

Should the local authority Court Officer believe that a referral from a school does not meet the public interest test, they must consult with the Principal Officer, Pupils Out of School. The Principal Officer, Pupils Out of School will then be responsible for considering the available evidence and then deciding on whether it is in the public interest to proceed.

If the Principal Officer, Pupils Out of School confirms that the public interest test has not been met then the Court Officer will contact the school, setting or attendance practitioner and advise them of this and why. Advice may be sought from the legal department in circumstances where the public interest test is unclear.



## **Police & Criminal Evidence Act 1984**

In bringing legal intervention measures schools and local authorities have to comply with the requirements of the Police & Criminal Evidence Act 1984.

Once Hackney Education has received a referral for statutory legal intervention, Hackney Education will use PACE questionnaires to put any questions to parents/carers in relation to any possible offences that may have been committed. Separate questionnaires must be sent to each parent/carer under investigation.

PACE questionnaires must include the following information:

- Details of the offence that is under investigation;
- The criminal proceedings are being considered;
- Caution them that what they say may be used in evidence; and
- Advise them that they can obtain legal advice before replying;

The questionnaire should include all the questions that Hackney Education requires the parent/carer to answer in order to establish whether there is an evidential basis (i.e. whether any of the statutory defences apply) for proceeding.

Interviews under caution will only be carried out in exceptional circumstances and require the presence of two officers from Hackney Education. The decision on whether it is necessary to undertake an interview under caution will be made by the Principal Officer, Pupils Out of School.

## **Role of the School Attendance Support Team**

The School Attendance Support Team Coordinator will act as Hackney Education's Court Officer and will lead on all statutory education legal interventions relating to attendance.

They are responsible for education related prosecutions, penalty notices and other associated orders). This will include preparing cases for court and authorising penalty notices where appropriate.

Upon receipt, the School Attendance Support Team will quality assure referrals to ensure that they are of a suitable standard to be presented in court, that the required work has been undertaken at Stages 1 and 2 and that they are compliant with the rules of evidence.

The School Attendance Support Team will be responsible for liaising with parents/carers, schools, Hackney's education lawyer and other professionals as part of the process.

The service will maintain accurate records using the agreed database systems to enable accurate reporting to Hackney Education management; the Department for Education and in response to FOI requests as required.

## Penalty Notices (Absence from School)

Schools can apply to the local authority for a penalty notice in line with the published [Code of Conduct](#) if they believe there is evidence that an offence has been committed, and that it is in the public interest to do so.

Penalty notices can be issued in a range of circumstances and schools are required to have investigated any reasons for absence and attempted to have addressed any matters with the parent (and child if appropriate) before referring for a penalty notice.

It is an offence under section 444 of the Education Act 1996 for a parent to fail to ensure their child attends school regularly. Parents can discharge their liability for prosecution for the period of offence by paying a penalty notice. Payment of a penalty notice does not amount to a conviction.

A penalty notice can be issued to any parent whose child has missed 10 or more sessions from school without the authority of the head teacher in a 12-week period. Once issued a penalty notice requires the parent to pay a penalty of £60 if it is paid within 21 days and £120 if it is paid within 28 days.

Before referring for a penalty notice, schools must issue a warning letter to parent(s) advising them that if their child continues to be absent from school without authorisation then a penalty notice may be issued.

Penalty Notices can be issued without a warning where schools can demonstrate that a leave of absence was taken during term time without the consent of the Head Teacher and the parent was made aware in writing of the possible consequences.

For unauthorised leave (term-time holiday), if no communication had been received from the parent prior to the leave, but it has been established that the leave was unauthorised, a refusal letter must be sent detailing how the school established it was a period of unauthorised leave and the fact that it was refused by the Headteacher. In addition, the letter must include the reasons for refusal, any exceptional circumstances the school considered, and highlight the consequences of taking an unauthorised holiday, including the issuing of a Penalty Notice.

Separate penalty notices can be issued to each parent for each child. Therefore, two parents with two children who do not attend school regularly may receive a total of four penalty notices.

### What do referrers need to do?

Schools that wish to refer for a penalty notice should send the following to Hackney Education:

- A completed referral form
- A copy of the application for leave of absence (unauthorised holidays only)
- Evidence that the school has attempted to provide support, but this has not worked or been engaged with (unauthorised absence only),
- A copy of the warning letter(s) that have been sent to parents
- A refusal of leave letter from the school (unauthorised holidays only)
- An attendance certificate covering the period of offence signed by the headteacher

Penalty Notice warning letters must state that:

- A criminal offence under s.444 may have been committed;
- The time period in which parents have to secure an improvement;
- That a penalty notice may be issued if there are further unauthorised absences;
- That paying a penalty notice discharges the parent from prosecution for the period of offence

Referrals and supporting evidence should be emailed to – [courtsofficer@hackney.gov.uk](mailto:courtsofficer@hackney.gov.uk)

#### What will Hackney Education then do?

Upon receipt of the referral the School Attendance Support Team will check to ensure:

- the request is in line with the Code of Conduct;
- there is evidence that an offence has been committed (i.e. the absences are unauthorised);
- for unauthorised absence, the school has offered and can evidence that support has been provided to secure regular attendance, but this has not worked or been engaged with;
- parents/carers have received a warning letter that they may receive a penalty notice; and
- all the required documentation has been completed correctly.

Once the referral has passed the above checks, the team will issue the penalty notice and record details on the agreed database, completing all the necessary fields.

Where a Penalty Notice is issued, it will be sent within 10 working days of the referral being received via First Class post to the parent's last known address.

The School Attendance Support Team will monitor the payment of penalty notices and inform the school at the end of the payment period whether the penalty notice has been paid or remains unpaid. If the parent pays the penalty notice, then no further legal action can be taken in respect of that period of absence.

If the penalty notice remains unpaid by the parent, the Courts Officer will need to decide whether to prosecute the parent or withdraw the penalty notice. The presumption should be that in the event of a penalty notice being unpaid at the end of the 28-day period that a prosecution will then be brought under s.444(1) of the Education Act 1996. Penalty notices can only be withdrawn in the following limited circumstances, which are:

- Where the penalty notice ought not to have been issued;
- Where it has been issued to the wrong person; or
- Where the penalty notice contains material errors.

However there may also be specific circumstances in some cases that mean it is no longer in the public interest to bring a prosecution despite the penalty notice being unpaid. Such situations will be judged on a case-by-case basis in discussions between the Courts Officer and Principal Officer, Pupils Out of School.

## **Penalty Notices (Exclusion from School)**

It is an offence under section 103(2) of the Education and Inspections Act 2006 for a child who is excluded from school to be in a public place without reasonable justification. The local authority can, under section 105 of the Education and Inspections Act 2006 and in line with the local Code of Conduct, issue a penalty notice to the child's parent/carer as an alternative to prosecution. Payment of a penalty notice discharges the parent/carer from liability for prosecution for the offence.

A penalty notice can be issued to any parent whose child has been excluded from school and has been found in a public place during school hours without reasonable justification. Once issued a penalty notice requires the parent to pay a penalty of £60 if it is paid within 21 days and £120 if it is paid within 28 days.

Before referring for a penalty notice, schools must ensure that they have advised the parent in the exclusion letter of the requirement to not allow them to be in a public place from school without justification and that a fine may be issued if they fail to do so.

Separate penalty notices can be issued to each parent for each child. Therefore, both parents of an excluded child may receive a penalty notice.

### What do referrers need to do?

If a school wishes to refer to the local authority, they should send the following to Hackney Education:

- A completed a referral form
- A copy of the exclusion letter, which must advise the parent of the possibility of a penalty notice being issued if their child is found in a public place without reasonable justification
- An attendance certificate covering the period of exclusion signed by the headteacher
- A signed witness statement setting out where and when the child was seen and that they are not aware of any reasonable justification for the child being in a public place.

Referrals and supporting evidence should be emailed to - [courtsofficer@hackney.gov.uk](mailto:courtsofficer@hackney.gov.uk)

### What will Hackney Education then do?

Upon receipt of the referral the Courts Officer will check to ensure that:

- That there is a completed referral form;
- Parents/carers have received an exclusion letter advising them that they may receive a penalty notice if their child is found to be in a public place without reasonable justification;
- There is a signed witness statement;
- The request is in line with the Code of Conduct;

Once the referral has passed the above checks, the School Attendance Support Team will issue the penalty notice and record details on the agreed database, completing all the necessary fields.

Where a Penalty Notice is issued, it will be sent by the Courts Officer within 10 working days of the referral being received via First Class post to the parent's last known address.

Should the Courts Officer feel that the request is not in line with the Code of Conduct or that there is insufficient evidence to issue the penalty notice, the matter should be discussed with the Principal Officer, Pupils Out of School to agree next steps.

The Courts Officer will monitor the payment of penalty notices and inform the referrer at the end of the payment period whether the penalty notice has been paid or remains unpaid.

If the parent pays the penalty notice then no further legal action can be taken in respect of that period of absence.

If the penalty notice remains unpaid by the parent, the Courts Officer will need to make a decision on whether to now prosecute the parent or withdraw the penalty notice. The presumption should be that in the event of a penalty notice being unpaid at the end of the 28 day period that a prosecution will then be brought under s.103(2) of the Education and Inspections Act 2006. Penalty notices can only be withdrawn in the following limited circumstances, which are:

- Where the penalty notice ought not to have been issued;
- Where it has been issued to the wrong person; or
- Where the penalty notice contains material errors.

However, as with absence related penalty notices, there may also be specific circumstances in some cases that mean it is no longer in the public interest to bring a prosecution despite the penalty notice being unpaid. Such situations will be judged on a case by case basis in discussions between the Courts Officer and Principal Officer, Pupils Out of School.

### **Prosecutions (Absence from School)**

Parents/carers can be prosecuted under the Education Act 1996 when their child does not attend school regularly. In some circumstances, for example, where the pupil is severely absent and where all avenues have been exhausted and support is not working or not being engaged with, it may be more appropriate for parents to be prosecuted instead of being issued with a penalty notice. Only the local authority has the power to prosecute parents under sections 444(1) and 444(1a) of the Education Act 1996.

In order for a case to be considered by the local authority for prosecution, there should be evidence that, at a minimum, the school has undertaken the following:

1. Identified and sought to address any underlying reasons for absence;
2. Written to the parent/carer to advise them that their child was not attending school regularly and that they could face legal intervention if there is not an improvement.
3. Convened an initial meeting (involving the parents/carers and any professionals involved with the family);
4. Devised and implemented a plan and/or parenting contract;
5. Discussed the issues with the Team Around the School;
6. Offered parents/carers a referral to the MASH Early Help Hub for additional support;
7. Held a review meeting following an implementation and monitoring period;
8. Sent the parents/carers copies of all correspondence and any plan/decisions following meetings in their school or at their home address if they did not attend or engage with the process at the school.

Referrers also need to believe that both the evidential and public interest tests have been met.

In the event of a not-guilty plea by the parent/carer the school's head teacher (who has signed the attendance certificate) and anyone else who has submitted a witness statement may be required to attend the magistrate court as a witness at the trial.

### What do referrers need to do?

If a school wishes to refer to the local authority they should send the following to Hackney Education:

- A completed referral form.
- An attendance certificate covering the period of offence signed by the headteacher.
- Copies of all warning letters sent to the parents/carers during this period.
- Minutes of any meetings with the parents/carer.
- Evidence that clearly shows support has been provided to secure regular attendance, but this has not worked or been engaged with (for example a copy of the parent contract), and
- A signed witness statement from the pre-statutory referral casework lead.

Referrals and supporting evidence should be emailed to - [courtsofficer@hackney.gov.uk](mailto:courtsofficer@hackney.gov.uk)

The school may be required to attend a review meeting with Hackney Education's Courts Officer to consider the evidence and discuss the circumstances of the case if meeting the evidential or public interest tests are unclear from the referral. Parents/carers are not invited to review meetings.

### What will Hackney Education then do?

Upon receipt of the referral the Courts Officer will review the referral to check:

- The referral form, attendance certificate and supporting evidence has been submitted;
- There is evidence that an offence has been committed (i.e. the absences are unauthorised);
- The evidential and public interest test have been met.

Once the referral has passed the above checks, the Courts Officer will send the parent/carer a PACE Court Warning Questionnaire letter. The purpose of this is to enable the parent/carer to make representations to Hackney Education ahead of the decision to prosecute, thus enabling the Courts Officer to assess whether any of the statutory defences apply, that the evidential test has been met and whether it is in the public interest to prosecute.

If the child has a social worker, but their views have not been included, the Courts Officer will contact the named social worker to seek their views on a possible prosecution. This will help inform Hackney Education's decision to prosecute.

If there is missing referral documentation or it is unclear that the evidential and public interest tests have been met, the Courts Officer may invite the school to a review meeting to consider the case.

As part of the decision to prosecute, the Courts Officer must consider whether or not to seek an Education Supervision Order.

Where the Courts Officer feels that a referral does not meet the evidential or public interest test the matter should be discussed with the Principal Officer, Pupils Out of School to agree next steps.

**Prosecutions (Exclusion from School)**

The local authority has the power to prosecute parents/carers under s.103(2) of the Education and Inspections Act 2006 if whilst their child is excluded from school they are found in a public place during school hours without reasonable justification.

Hackney Education will, in the first instance, look to issue a penalty notice rather than prosecute in the situation. However, where a parent/carer has already received two penalty notices relating to this offence a prosecution will be considered.

What do referrers need to do?

If a referrer wishes to refer to the local authority they should send the following to Hackney Education:

- A completed a referral form
- The exclusion letter, which must advise the parent/carer of the possibility of a penalty notice being issued if their child is found in a public place without reasonable justification
- An attendance certificate covering the period of exclusion signed by the headteacher
- A signed witness statement setting out where and when the child was seen and that they are not aware of any reasonable justification for the child being in a public place

Referrals and supporting evidence should be emailed to - [courtsofficer@hackney.gov.uk](mailto:courtsofficer@hackney.gov.uk)

What will Hackney Education then do?

Upon receipt of the referral the Courts Officer will check to ensure that:

- There is a completed referral form
- Parents/carers have received an exclusion letter advising them that they may receive a penalty notice if their child is found to be in a public place without reasonable justification;.
- There is a signed witness statement

Once the referral has passed the above checks, the Courts Officer sends the parents/carers a PACE Court Warning Questionnaire letter. The purpose of this is to enable the parent/carer to make representations to Hackney Education ahead of the decision to prosecute, thus enabling the Courts Officer to assess whether there is a justifiable reason for the child to be in a public place, that the evidential test has been met and whether it is in the public interest to prosecute.

If the child has a social worker, the Courts Officer will also contact the named social worker to seek their views on a possible prosecution. This will help inform Hackney Education's decision to prosecute.

The Courts Officer will consider any response received from parents/carers to the PACE Court Warning Questionnaire before deciding whether or not to proceed with a prosecution.

Should the Courts Officer decide there is sufficient evidence to prosecute and that it is in the public interest to do so then the Court Officer will then prepare a court pack. Where the Courts Officer feels that a referral does not meet the evidential or public interest test the matter should be discussed with the Principal Officer, Pupils Out of School to agree next steps.

### **Prosecutions (Unpaid Penalty Notices)**

There is no specific offence for not paying a penalty notice. Therefore, any prosecutions that are considered after a penalty notice has been issued and remains unpaid will be for the original offence that the penalty notice was seeking to discharge the parent/carer liability from.

Should a penalty notice remain unpaid at the end of the 28-day payment period, the Courts Officer will decide whether to withdraw the penalty notice or prosecute the parent/carer. Penalty notices can only be withdrawn in specific limited circumstances; therefore, the presumption is that all correctly issued unpaid penalty notices will proceed to prosecution.

For Penalty Notices relating to unauthorised absence, the school will need to submit a signed witness statement from the pre-statutory referral casework lead that sets out the steps taken and support offered prior to referring for a Penalty Notice. However, for Penalty Notices relating to unauthorised leave (term-time holiday) or for being in a public place during the first five days of an exclusions, no further information should be required from the referrer as all the required information would have been supplied to Hackney Education as part of the original penalty notice referral.

Should prosecution be considered, the Courts Officer will send a PACE Court Warning Questionnaire letter to the parents/carers. The purpose of this is to allow parents to make representations to Hackney Education regarding any possible statutory defences that might apply and consider any other factors in relation to the evidential and public interest tests. The Courts Officer will consider any response received to the PACE Court Warning Questionnaire before deciding whether to recommend withdrawing the penalty notice and taking no further action or proceeding with a prosecution.

### **Preparing a case for prosecution**

When preparing a case for prosecution the Courts Officer should prepare a court pack, which includes the following information:

- Completed covering paperwork
- An exhibits list
- An unused evidence list
- Director's authority to prosecute
- Certificate of attendance for the period of offence signed by the head teacher;
- Signed witness statement outlining the actions undertaken during the period of offence by the pre-statutory referral casework lead;
- Supporting evidence for the period of offence (i.e. letters; minutes of meetings, etc) as listed on the exhibits list
- Signed witness statement on behalf of the School Attendance Support Team covering actions undertaken following receipt of the referral. This must cover the sending of the PACE Court Warning Questionnaire letter, the consideration of an Education Supervision Order; and decision to prosecute.
- Supporting evidence for the Courts Officer's actions (i.e. letters, minutes of meetings, etc) as listed on the exhibit list
- A parent/carer representations in response to the PACE Court Warning Questionnaire letter

Once authority to prosecute has been agreed, the Courts Officer will then liaise with Hackney's lead education lawyer.

### **Duty to consider an Education Supervision Order**



When considering whether to prosecute a parent/carer, the Courts Officer must also consider whether or not to apply to the family court for an Education Supervision Order (ESO).

Any decision not to proceed with an ESO and the reason must be included in the Courts Officer's witness statement.

### **The Prosecution**

Prosecutions will be considered by the magistrates court under the single justice procedure (SJP). This means the case can be considered by the court without the parent/carer needing to be summoned to appear before the court. Parents/carers will receive an SJP notice, which allows them to respond to the charge and have it considered in their absence. If they do not respond to the SJP notice they may be found guilty in their absence and receive a sanction from the court.

If parents plead not guilty then the case may go to trial in the magistrates court. In those circumstances the parent/carer will be summoned to court and witnesses may be required to give evidence in person.

### **Possible outcomes from a prosecution**

If found guilty in the magistrates court parents/carers could face the following possible outcomes

- a) Absolute discharge – no conditions attached, case dismissed.
- b) Conditional discharge – parent/carer receives no punishment on the condition that, in a period set by the court (not more than three year), no offence is committed. If any offence is committed during the period, the offender may also be re-sentenced for the original offence for which the conditional discharge was given.
- c) Fines – amount of fine is determined by the courts but up to £1000 for convictions under sections 444(1) and 103(2); and up to £2500 for convictions under section 444(1A).
- d) Imprisonment – custodial sentences of up to three months for convictions under section 444(1A).
- e) Parenting Order – courts can issue a parenting order, which requires the parent/carer to attend a parenting programme as determined by the local authority.

The Courts Officer will be responsible for reporting back to the school the outcome of any prosecution.

If, following a prosecution, attendance continues to decline, schools should decide on whether to refer to the local authority for a further prosecution for a new period of absence.

If all avenues of support have been facilitated by schools, Hackney Education, and other partners have been provided but severe absence for unauthorised reasons continues, it is likely to constitute neglect. Schools should be especially conscious of any potential safeguarding issues in these cases and discuss the matter with the School Attendance Support Team for escalation.