



Education penalty notices & prosecutions

**Procedure guidance for referrers
& Hackney Education officers**

November 2022

Introduction

Absence from school is a serious issue for pupils as much of the missed learning is never made up and places pupils at a disadvantage compared to peers and impacts upon future attainment. There is evidence of a link between poor attendance and low levels of attainment. Therefore promoting good attendance is a priority for all schools and is achieved most effectively in situations where there is emphasis on good relationships with families and a responsiveness to any issues.

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 at school 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 legal enforcement measures and what information that it is necessary to supply as part of that referral. It should be read alongside the Hackney Education staged approach to improving attendance at school 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?

The use of legal enforcement measures to improve attendance should be used by schools as a last resort when other interventions by the school to improve a child's attendance have been unsuccessful. They should be used as a means to help parents fulfil their legal responsibilities in relation to education as opposed to punishing parents for breaking the law.

In the first instance schools should seek to work with parents to improve their child's attendance and, where appropriate, seek to identify and address any underlying reasons as to why the child is not attending school regularly.

Evidence that schools have undertaken this 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 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 already has a social worker schools' should consult with the social worker 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 or not it is in the public interest to proceed taking into account 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 have been absent without authorisation for at least 10 sessions in a 12 week period.

Penalty notices are an alternative to prosecution and are considered to be at their most effective when a parent/carer is considered able to secure an improvement to a child's attendance at school without the need for external agency support, but is unwilling to take responsibility for doing so. They can also be used as a sanction at an early stage before any absences become more problematic or where a prosecution would be considered too heavy-handed.

Payment of a penalty notice means that a parent is then not able to be prosecuted for the same period of absence.

Penalty notices are likely to be less effective in responding to cases where:

- 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 can be more effective. Such an approach should seek to identify the underlying reasons for absence and put in place the necessary interventions to address those. This should involve appropriate external agencies where this is relevant to the individual situation.

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.

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
- Applying 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 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 none of the statutory defences apply.

A referral to the local authority is the referrer's confirmation that they believe none of the statutory defences 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 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 meet with the Attendance Lead from the referring schools 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 in order 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.

The sort of 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.

It is not necessary to consult with the child's social worker prior to referring for a penalty notice, however it may be desirable to do so.

It is for the local authority to determine whether it is in the public interest to proceed.

Prior to bringing a prosecution against the parents of a child with a social worker, the Courts Officer will also obtain the views of the social worker before making a decision on whether to prosecute. These will be taken into consideration when making a decision, though the decision on whether the public interest test has been met rests with Hackney Education.

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 meet with the Attendance Lead at the referring school to advise them of this and why. Advice may be sought from the legal department in circumstances where whether or not the public interest test has been met 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 letters/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 Court Warning Letters/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 Hackney Education's Courts Officer

Hackney Education's Courts Officer leads on all statutory education legal interventions relating to attendance.

They are responsible for education related prosecutions, penalty notices and other associated orders (i.e. School Attendance Order; Education Supervision Order; Parenting Order). This will include preparing cases for court and issuing penalty notices where appropriate.

The Court Officer will quality assure the papers 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 Courts Officer is responsible for liaising with parents/carers, schools, Hackney's education lawyer and other professionals as part of these processes.

They 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.

The Courts Officer is managed by the Principal Officer, Pupils Out of School, who will have line management oversight of this area of work, which will be monitored through one-to-ones and other meetings.

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 should first 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.

For unauthorised holidays/leave of absence a copy of leave request and letter from the school declining the leave should be submitted. Where leave has been taken that has not been requested in advance the school should write to the parents explaining that they believe they have been on an unauthorised holiday in term time and that they will be referred for a penalty notice. This allows the parent to make representation to the school prior to referral.

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.

There is no requirement for a penalty notice to be offered to parents as an alternative to prosecution.

Further details of Hackney's penalty notice scheme can be found in the local Code of Conduct

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)
- A copy of the warning letter(s) that have been sent to parents
- An attendance certificate covering the period of offence signed by the headteacher
- Any other relevant supporting documentation (e.g. request for early help support form, parenting contract, etc)

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

What will Hackney Education then do?

Upon receipt of the referral the Courts Officer 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);
- parents/carers have received a warning letter that they may receive a penalty notice;
- all the required documentation has been completed correctly.

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

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 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 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.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.

There is no requirement for a penalty notice to be offered to parents as an alternative to prosecution.

Further details of Hackney's penalty notice scheme can be found in the local Code of Conduct

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
- 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

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 Courts Officer will issue the penalty notice and record details on the agreed database, completing all the necessary fields.

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 it may be more appropriate for parents to be prosecuted instead of being issued with a penalty notice but in other circumstances a penalty notice may have been issued but is unpaid meaning it is necessary to bring a prosecution.

Only the local authority has the power to prosecute parents under sections 444(1) and 444(1a) of the Education Act 1996.

Schools who wish to refer a parent/carer for prosecution will need to be able to provide evidence that:

- The child has not attended school regularly between two set dates;
- That between those dates that the parents/carers were advised that a criminal offence may have been committed; and
- That between those dates steps have been taken to try and improve the child's attendance.

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 referrer 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 parents/carer
- A signed witness statement from pre-statutory referral casework lead

Referrals and supporting evidence should be emailed to - courtsofficer@hackney.gov.uk

The school may be required to attend an Attendance Legal Planning Meeting with Hackney Education's Courts Officer to review 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 Attendance Legal Planning 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.

The Courts Officer will record referral details on the agreed database, completing all the necessary fields.

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 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, 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.

If there is missing referral documentation or it is unclear that the evidential and public interest tests have been met, the Courts Officer will invite the school to an Attendance Legal Planning Meeting to review the case. The purpose of this meeting is to discuss with the referrer the case before deciding whether or not to send the parent/carer a PACE Court Warning Questionnaire letter.

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.

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

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. This will include preparing a witness statement outlining their actions and decisions from receipt of the referral.

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.

Prosections (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

- A copy of 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

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

The Courts Officer will record referral details on the agreed database, completing all the necessary fields.

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 then decide whether to either 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 under either section 444(1) of the Education Act 1996 or section 103(2) of the Education and Inspections Act 2006 depending in the original reason for penalty notice being issued.

The decision to withdraw a penalty notice after it has been issued should be agreed with the Principal Officer - Pupils Out of School before it is withdrawn.

No further information should be required from the original referrer in respect of this decision as all the required information would have been supplied to Hackney Education as part of the original penalty notice referral.

Following the decision to consider a prosecution, 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 by the Courts Officer 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

The court pack should be sent to the Principal Officer - Pupils Out of School for approval prior to them being sent to the Director of Education for authority to prosecute.

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

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 or high court for an Education Supervision Order (ESO). If the Court Officer is of the opinion that an ESO would be a more appropriate intervention to prosecution, they should discuss the matter with the Principal Officer, Pupils Out of School.

Any decision not to proceed with an ESO and the reason why must be recorded in the case record and 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.