Contents

Introduction ......................................................................................................................................... 3
Legal Intervention Team .................................................................................................................. 4
Timescales ............................................................................................................................................. 4
Non attendance procedures ........................................................................................................5
  Pre referral: school actions and interventions ................................................................. 5
  School staged response ........................................................................................................... 5
Referral to the Local Authority for legal action ........................................................................7
LIT actions following referrals .................................................................................................. 9
  Referral Meeting ................................................................................................................... 9
  Warning letter and home visit appointment .................................................................. 9
  PACE Interview ..................................................................................................................... 9
  Outcome meeting ................................................................................................................... 10
No further action ......................................................................................................................... 10
Penalty Notice Warning ............................................................................................................. 10
Penalty Notice ........................................................................................................................... 10
Prosecution in Magistrates Court .......................................................................................... 11
Closing the case ........................................................................................................................... 11

Appendices

Appendix 1: Process flow diagram ............................................................................................... 12
Appendix 2: Referral Form for Legal Intervention ..................................................................13
Appendix 3: Example letter from school re referral to Local Authority ................................ 17
Appendix 4: Statutory defences .................................................................................................... 18
Appendix 5: Key legislation .......................................................................................................... 19
In order for a child to fulfil their potential in education they need to attend school regularly and punctually.

The legislation states that:

‘Parents have the responsibility to ensure that their children receive a suitable education, either by regular attendance at school or otherwise’ (section 7 Education Act 1996).

If a child is on a school roll the school must monitor and review their attendance and act on any concerns both quickly and efficiently. Schools have a wide range of strategies available to them to identify and address unsatisfactory attendance, including, ultimately, referral to the Local Authority for formal legal action to be taken against the parent.

This document explains what intervention is expected from schools prior to referral to the Legal Intervention Team, and how a referral is actioned once it is accepted.

At all times it is important to take into account the individual circumstances of each child and their family, and apply appropriate strategies. A referral to initiate formal legal procedures can ultimately result in the issue of a Penalty Notice or prosecution in Magistrate’s Court and this formal intervention should only be used when schools have exhausted all other strategies but have failed to improve the pupil’s attendance. However, formal or legal action can be an effective deterrent preventing a pattern of non school attendance from worsening.

The Local Authority regards prosecution as a last resort, when all other measures, including the use of Penalty Notices, have failed to assist a pupil to attend school regularly.
Legal Intervention Team

The Legal Intervention Team is responsible on behalf of the Local Authority for:

- Penalty Notices (Non Attendance, Unauthorised leave of absence, Exclusions)
- Prosecution in Magistrate’s Court
- School Attendance Orders
- Education Supervision Orders in Family Court
- Child Performance Licences
- Child Employment Permits
- Multi Agency Risk Assessment Conference (MARAC)
- Children Missing from Education (CME)

Timescales

When working with children and their families to improve school attendance it is important to keep in mind that should a case ultimately be taken into the court arena, any evidence that is more than 6 months will be inadmissible. This means that any information or action taken more than 6 months before the court date can not be included in the prosecution.

This timescale needs to take into account:-

- the strategies employed by school
- the work of the Legal Intervention Team
- the time taken to issue a summons and have the case listed at Magistrates Court

The length of time taken for the pre referral work is a matter for schools as this can be flexible within the parameters described above.

However, it is suggested that once an attendance concern has been identified by school any intervention work is undertaken with a view to making a referral for legal action approximately 6 weeks later. This would be a general guideline, as clearly family circumstances differ, and some interventions will require a longer timescale.

Should schools wish to clarify the issue of timescales in relation to specific potential referrals, the Legal Intervention Team is available to offer guidance.
Non attendance procedures

An overview of the process from the identification of an attendance issue to the outcome of any legal proceedings is illustrated in the flow diagram in appendix 1.

Pre referral: school actions and interventions

Early intervention by school

A key element of school absence procedures are the systems for identifying and addressing emergent patterns of irregular attendance at an early stage. Early intervention strategies include:

- First day contact with parents for all pupils who are absent without a known reason
- Procedures to investigate and resolve unexplained absences within a week
- Analysis of individual pupil data to identify early any patterns of absence which cause concern
- School attendance panels for pupils causing significant concern
- Systems for regularly checking the attendance of pupils on approved educational activities off-site
- Providing attendance certificates to parents regularly, so they are aware of their child’s attendance and any concerns
- Regular monitoring of attainment in relation to attendance
- Evaluating the effectiveness of interventions used to improve attendance
- Regular updates to the senior management team and Governors about attendance
- Use of data including comparison of attendance rates across year groups or to other schools
- Analysis of attendance data to identify causes and patterns of absence
- Raising awareness of the implications of poor attendance through newsletters, induction meetings, parents evenings, school website etc
- A comprehensive and clear school attendance policy which includes expectations and school procedures in relation to all aspects of attendance
- Rewarding good attendance and acknowledging improved attendance

School staged response

Once a concern has been identified best practice would suggest that schools adopt a staged response to try and improve the attendance. This should be clearly described in their Attendance Policy so that both parents and school staff are aware of the expectations and what the school actions will be should a child’s attendance fall below the expected level.

The staged response could include:

- First day response
- Discussion about attendance with the pupil (if age appropriate)
- Contact with the parent by telephone or letter to ensure they are aware of the attendance concerns
- An invitation for the parent to meet with the Head Teacher/senior member of staff to discuss attendance concerns
- Request medical information from parents advising them that further absences will not be authorised without notes from a health care professional being provided
• Use of School Governors (including linked Governor for attendance)
• Completion of a CAF (Common Assessment Framework)
• Referral to outside agencies where appropriate

It is recommended that schools appoint a senior member of staff to oversee attendance matters and dedicated staff who are best placed to address any attendance concerns in the first instance. It is also usual for a named governor to have lead responsibility for attendance.

Prior to referral to the Legal Intervention Team for formal legal action, there is a mandatory requirement that the school will have, as a minimum, completed the following:-

• Fully investigated the reasons for absence
• Met with parent(s) – by home visit and/or in a meeting at school
• Implemented strategies to improve attendance, and provide evidence of this
• Considered and completed a Common Assessment Form (CAF) where appropriate
• Informed parents in writing that a referral is being made to the Local Authority requesting formal legal action, and that ultimately this may lead to the issue of a Penalty Notice fine or prosecution in Magistrates Court

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**Referral to the Local Authority for legal action**

To help the Local Authority consider any request for legal action, schools should complete the referral form as fully as possible (appendix 2). The referral form should be forwarded to the Legal Intervention Team. All relevant accompanying documents can either be emailed with the referral form, or collected at the referral meeting.

**Referral information**

The information on the referral and the accompanying documents will form the basis of any legal action and must therefore be accurate and as comprehensive as possible. It will also inform LIT when giving consideration to an Education Supervision Order (further information below).

**Registration certificates**

The register, which is a legal document, must accurately reflect the absences and the appropriate code must be used when the absences are authorised. The ‘N’ code should not be left on a pupil’s register indefinitely; if no reason for the absence is provided (or is provided but not accepted) after a reasonable amount of time, the absence should be replaced with the ‘O’ code.

**Informing the parent**

The parent must have been informed by school in writing that a referral is being made to the Local Authority for legal intervention. Please see appendix 3 for an example letter which can be adapted for your school.
Definition of a parent

Under education law (section 576 of the Education Act 1996) a parent is defined as:-

- all natural parents, whether they are married or not
- any person who, although not a natural parent, has responsibility for the care of a child or young person. This means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in Education Law

It is important to name anyone categorised as ‘parent’ under this definition on the referral form so that they can be included in any proceedings. They should also be included in any school actions or communications prior to referral.

Criteria for referral

Before making a referral the school must ensure that:-

- All school strategies have been exhausted
- there are a minimum of 10 sessions of unauthorised absence in the past 12 weeks (in accordance with Gateshead’s Penalty Notice Code of Conduct)
- that the majority of the absences fall within the previous 6 weeks

It is essential this criteria is met before a referral can be accepted.

Year 11 referrals

Prosecution is used as a tool to improve a pupil’s attendance at school. However, there is a point in the school year when prosecution ceases to be a useful measure for some Year 11 pupils. Potentially the pupil may have left or be on the verge of leaving by the time the case can be listed at court. The Local Authority may look more stringently at requests in these circumstances.

Education Supervision Order

An application for an Education Supervision Order (ESO) is made in family court and are “family proceedings” as defined by the Children Act 1989, meaning that the child’s welfare is the main consideration.

The purpose of ESOs is to ensure that a child receives full-time education suited to their age, ability, aptitude and any special educational needs, and that both parent/carer and child are given sufficient support and guidance. A supervising officer is appointed to work with the child and family and an ESO usually lasts one year or until the young person reaches statutory school leaving age.

On receipt of a referral for legal intervention, the LA will consider whether an application for an ESO is appropriate (as required under Section 447 of the Education Act 1996) and the school will be contacted if this is the case.
LIT actions following referrals

Referral Meeting

A referral meeting between a member of the Legal Intervention Team and school staff will take place if required or requested. This is an opportunity to collect and review the accompanying documents and to discuss any additional information that is required.

If all of the information in the referral and accompanying documents meet the requirements for formal action, the Legal Intervention Team will initiate the formal process.

However, the process will be suspended should any new evidence be brought to light at any point and the matter will returned to the school for further investigation and action.

Warning Letter and Home Visit Appointment

Once all of the documentation and information has been supplied by school and the referral has been accepted, a Formal Warning will be sent to the parent.

Included with the letter will be an appointment for a home visit, an explanation of the formal process and information about Penalty Notices, prosecution, and PACE interviews (interviews under caution).

The visit allows the Local Authority to discuss the referral with the parent and explain the legal consequences of continued poor attendance.

Please note that information contained in the referral will be shared and discussed with the parent, and could ultimately be used as evidence in court.

If the parent is not available for the visit then a follow up letter will be sent and the process will continue. A further appointment will not be offered.

Where the parent is present for the visit, the formal process and consequences will be explained and if the parent does not provide any new information or explanation for their child’s poor attendance the process will continue.

However, should the parent discuss issues that haven’t previously been raised or addressed by school (and evidenced with the referral information) then the information will be given to school so that they can take the appropriate action before referring the matter for legal intervention by the Local Authority.

The Monday following the weekly allocation meeting will mark the first day of the 6 week period, during which a PACE interview will be offered to the parent.

During this period it is important that school continue to keep accurate written records of any further contacts, meeting, interventions etc as this information will be included in any potential legal proceedings.

It is essential that:

• The school forward an up to date accurate attendance register to the Legal Intervention Team on a weekly basis (Friday PM) during this 6 week period so that the attendance can be closely monitored at every stage.
• The school notify the Legal Intervention Team as soon as possible of any updates such as a change of address or a change in family circumstances.
PACE Interview

During the 6 week period the parent is formally requested to provide additional information to the Local Authority about their child’s poor school attendance.

This takes the form of either a recorded interview or a written response to set questions. In either case, the responses are made under caution, in line with The Police and Criminal Evidence Act 1984 (PACE).

Again, if the parent does not respond, or there is no new information, the process will continue. However, if the parent attends for the PACE interview or completes the PACE form and there is new information that has not previously been raised or addressed by school (and evidenced in the referral information) the matter will be passed back to school for those issues to be dealt with before the case is re-referred to the Local Authority for legal action.

Outcome Meeting

At the end of the 6 week period the Local Authority will convene a multi agency decision making group who will undertake a final review of the case with one of the following outcomes:-

- No further action
- Penalty Notice Warning
- Penalty Notice
- Prosecution in Magistrates Court

The Legal Intervention Team will notify the school of the Local Authority’s decision and discuss any actions (if any) the school needs to take as a result.

No further action

The expectation is that the child will achieve a minimum of 95% attendance during the 6 week period. If this is the case, demonstrating that an improvement has been made, the Local Authority may decide not to take any further action. This does not prevent the matter being re-referred by school at a later date if there is a deterioration in attendance.

However, if the attendance falls below the target of 95% but the absences have been authorised by the school, no further action against the parent can be taken.

The school will be informed of the reasons behind the decision not to progress the case further and the matter is then dealt with via the usual school procedures.

Penalty Notice Warning

In cases where the attendance has failed to meet the target by one session only, achieving 93.3%, the parent will be issued with a Penalty Notice Warning and the process will be repeated with immediate effect. This will give the parent the opportunity to sustain the improvement in attendance and achieve the 95% target, resulting in no further action being taken by the LA.

Penalty Notice

The processes and requirements for the issuing of Penalty Notices are described in the Local Authority’s Code of Conduct. Penalty Notices can be issued for poor school attendance, unauthorised leave of absence in term time (please refer to LA document ‘Penalty Notices for Holidays in Term Time’) or when excluded pupils are found present in a public place.
Penalty Notices in relation to poor school attendance were introduced in Sections 444A and 444B of the Education Act 1996 (introduced by section 23 of the Anti-social Behaviour Act 2003). If a parent is issued with a Penalty Notice, they may discharge potential liability for conviction for an offence under section 444(1) by paying a penalty.

The fixed penalty is £60 if paid within 21 days, or £120 if paid between 21 and 28 days. A Penalty Notice will be issued to each parent of a child.

If the Penalty Notice is paid, the case will be closed to the Legal Intervention Team and subsequent unsatisfactory attendance dealt with as per the usual school procedures.

However, if the Penalty Notice is not paid, the case may proceed to Magistrates Court for the prosecution of the original offence of failure to secure the child’s regular attendance at school. The Local Authority will provide witness statements and evidence for the prosecution and liaise with Legal Services. However, in the instance of a parent disputing information in the statement, or making a plea of ‘not guilty’, the school may also be required to provide a statement. The Legal Intervention Team will offer schools support and guidance on preparing a witness statement and the exhibits to be put into evidence based on the information provided by school at the point of referral, and any subsequent information from the 6 week monitoring period.

The Local Authority issues all Penalty Notices and monitors their payment in accordance with the Gateshead’s Penalty Notice Code of Conduct. Schools will be informed by the Legal Intervention Team whether payment has been made or not.

**Prosecution in Magistrates Court**

There are two offences relating to parental responsibility for ensuring regular attendance at school or alternative provision:

If a registered pupil is absent without authorisation from school or alternative provision then the parent is guilty of an offence under section 444(1) of the Education Act 1996.

If 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 section 444 (1A) of the Education Act 1996.

From: Ensuring Children’s Right to Education Guidance on the legal measures available to secure regular school attendance (DCFE 2008)

Please see appendix 5 which explains the statutory defences to the offence.

If the case proceeds to court the Local Authority will provide witness statements and evidence for the prosecution and liaise with Legal Services. However, in the instance of a parent disputing information in the statement, or making a plea of ‘not guilty’, the school may also be required to provide a statement. The Legal Intervention Team will offer schools support and guidance on preparing a witness statement and the exhibits to be put into evidence based on the information provided by school at the point of referral, and any subsequent information from the 6 week monitoring period.

If the parent pleads not guilty to the offence, the matter will be listed by the court for trial, and all witnesses will be required to attend court on that day.

The range of options available for magistrates following a conviction for failing to ensure the child’s regular school attendance are listed bon page 11.
Under section 444(1) Magistrates are empowered to:

- fine the parent up to £1,000
- give the parent a Conditional Discharge which means there will be no sentence if their child’s attendance remains at an acceptable level for a specified period (usually 6 or 12 months), however if the parent is convicted of a further offence during this time the Court will take the previous offence into consideration
- issue the parent with a Community Order
- issue the parent with Parenting Order requiring them to attend a parenting group
- give the parent an Absolute Discharge, which means they have been found guilty and have a criminal conviction but receive no penalty
- direct the Local Authority to make an application for an Education Supervision Order

Under section 444(1A) Magistrates are empowered to:

- fine the parent up to £2,500
- impose up to three months imprisonment
- give the parent a Community Order
- give the parent a Parenting Order
- give the parent an Absolute Discharge
- direct the Local Authority to make an application for an Education Supervision Order

Although a fine is an option for the magistrates, the ability to pay a fine is means tested. Magistrates may also order the parent to pay costs to the Local Authority.

**Closing the Case**

Once the entire process has been completed, the school will be informed of any outcomes and the case will be closed to the Legal Intervention Team.

Should there be future concerns regarding the child’s attendance, the usual school procedures will be followed. Ultimately a further referral may be made to the Local Authority for legal intervention if school strategies fail to support an improvement in attendance.
Appendix 1: Process flow diagram

Pre Referral
School actions and intervention

Referral to LA for
Legal Intervention

Referral to LA for
Legal Intervention

Referral Meeting
LA Officer and School

Discuss/advise on additional actions/strategies by school

Referral accepted

Warning Letter and Home Visit Appointment
Initial Assessment

NO REPLY
Follow up letter
Continue process

REPLY
No new information
Continue process

REPLY
New information to be investigated by school

PACE Interview (Taped or written)

Do Not Respond
Continue process

Attend
Interview or in writing

No new information
Continue process

New information
To be investigated by school

Outcome Meeting

Penalty Notice
Warning Letter
Attendance 93.3%
during 6 weeks

Penalty Notice
Payment monitored

Penalty Notice issued
penalty payment monitored

Penalty Notice not paid

Process immediately repeated

Penalty Notice

Penalty Notice
Paid

Penalty Notice
Not paid

Prosecution

Submit statement(s) to Legal Services

Magistrates’ decision

No further action
95% attendance during 6 weeks

CASE CLOSED TO LEGAL INTERVENTION TEAM
## Appendix 2: Referral Form for Legal Intervention

**Request for Legal Intervention**  
**Non School Attendance**  
**Legal Intervention Team**

The Local Authority regards legal action (penalty notice/prosecution) as a last resort when all school interventions and strategies have failed to improve the attendance.

<table>
<thead>
<tr>
<th>Pupil Details</th>
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<tbody>
<tr>
<td>Name</td>
<td>DOB</td>
<td>Gender</td>
<td></td>
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<tr>
<td>Address</td>
<td>Post Code</td>
<td>Contact Number</td>
<td></td>
</tr>
<tr>
<td>School</td>
<td>Year Group</td>
<td>Current % Att</td>
<td></td>
</tr>
<tr>
<td>Ethnicity</td>
<td>Language used at home</td>
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</table>

<table>
<thead>
<tr>
<th>Parents names</th>
<th></th>
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<tbody>
<tr>
<td>Title</td>
<td>First name</td>
<td>Surname</td>
<td>Relationship</td>
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<tr>
<th>Siblings name/s</th>
<th>School/s</th>
<th>Year Group</th>
<th>Percentage Att</th>
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### Other Agencies Involved

<table>
<thead>
<tr>
<th>Agency</th>
<th>Yes / No</th>
<th>Contact details and any other information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Services</td>
<td></td>
<td></td>
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<tr>
<td>Emotional Wellbeing Team</td>
<td></td>
<td></td>
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<tr>
<td>Youth Offending Team/Youth Crime</td>
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<tr>
<td>Education Prevention Team</td>
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<tr>
<td>Crossroads - Young Carers</td>
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<tr>
<td>Child and Young Peoples Service</td>
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<tr>
<td>Educational Psychologists</td>
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<tr>
<td>Family Intervention Team</td>
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<tr>
<td>Early Years Provision</td>
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<tr>
<td>Young Women’s Project</td>
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<td>Fair Access Team</td>
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<td>REALAC</td>
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<td>EMTAS</td>
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<tr>
<td>Other</td>
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### Formal Assessments

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>Child Protection Plan</td>
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<tr>
<td>Child in Need</td>
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<tr>
<td>Looked after Child</td>
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<tr>
<td>Families Gateshead</td>
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<tr>
<td>Single Plan (Education and Health Care Plan)</td>
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</table>

### Reasons given by parents for absences

### Please detail any other relevant information e.g. family circumstances, significant events
<table>
<thead>
<tr>
<th>Overview of school intervention and actions</th>
<th>Date</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact with parent by phone</td>
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<tr>
<td>Contact with parent by letter</td>
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<td></td>
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<tr>
<td>Meeting in school with HT/HOY/relevant member of school staff</td>
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<tr>
<td>Meeting in school with Governors</td>
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<tr>
<td>Altered curriculum/reduced timetable</td>
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<tr>
<td>Use of school inclusion unit</td>
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<tr>
<td>Rewards/sanctions</td>
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<td></td>
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<tr>
<td>Change of tutor group/seating arrangements</td>
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<tr>
<td>Mentoring/buddying</td>
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<td>Re integration plan</td>
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<tr>
<td>School nurse input</td>
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<tr>
<td>Bullying resolution</td>
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<tr>
<td>Alternative provision (name of provider)</td>
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<td></td>
</tr>
<tr>
<td>Counselling (professional counsellor)</td>
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<tr>
<td>Transport assistance</td>
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<tr>
<td>Pastoral Support Plan (PSP)</td>
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<tr>
<td>Use of internal exclusion (reasons)</td>
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<tr>
<td>Use of external exclusion (reasons)</td>
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<tr>
<td>Referral for Penalty Notice – U/A leave of absence</td>
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<tr>
<td>Common Assessment Framework (CAF) offered</td>
<td></td>
<td></td>
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<tr>
<td>Common Assessment Framework (CAF) completed</td>
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<tr>
<td>TAF meetings</td>
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<tr>
<td>Referrals to other agencies</td>
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<tr>
<td>Referral for parenting programme</td>
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<tr>
<td>Managed move (PPP or FAP)</td>
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<tr>
<td>Additional learning needs investigated and addressed</td>
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<tr>
<td>Contact with Crossroads (Young Carers)</td>
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<tr>
<td>Other strategy/support – please evidence</td>
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</tbody>
</table>
**Supporting documents attached** | *mandatory documents required before referral can be accepted* | Yes
---|---|---
*Attendance certificate* | | |
*Copies of letters sent to parent regarding attendance* | | |
*Copy of letter to parent informing them of the request to LA for legal intervention* | | |
*Records of attendance meetings held in school* | | |
*Records of home visits made by school staff to discuss attendance* | | |
Attendance certificate for siblings | | |
Any medical information – letters from GP/consultant/CYPS | | |
Copy of Support Plan (CAF) | | |
Copy of Care Plan (CP) | | |

**As lone visits will be made to the child’s home by the Legal Intervention Team (LIT) it is important to share any known issues which may affect their personal safety.**

<table>
<thead>
<tr>
<th>Is there any information which may affect the health and safety of the worker?</th>
<th>Yes / No</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes please give full details</td>
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**Referrer Details**

<table>
<thead>
<tr>
<th>Name of Referrer</th>
<th>Designation</th>
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<tbody>
<tr>
<td>Contact Details</td>
<td>Date</td>
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</table>
Appendix 3:
Example letter from school re referral to LA

Dear <parent’s name>

Re: <child’s name> – Date of Birth:

Unfortunately, despite attempts by school to support an improvement in <child’s name> attendance, his/her current attendance of < %> remains at an unsatisfactory level.

As you can see on the enclosed register, there have been <number> unauthorised sessions this academic year.

The Education Act 1996 states that as the person with parental responsibility, you have a duty to ensure that your child attends school regularly and punctually.

I have therefore decided to refer the matter to the Local Authority for formal action to be taken. Failure to ensure your child’s regular attendance can ultimately result in you being issued with a £60 Penalty Notice, or legal proceedings being taken against you in either the Magistrates Court, where the maximum fine is £2,500, or in the Family Proceedings Court, by an application for an Education Supervision Order.

The Legal Intervention Team will contact you to make an appointment to discuss the process and consequences with you.

Yours sincerely

Head teacher
Appendix 4: Statutory defences

Education Act 1996 S444

(3) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school -
   (a) with leave,
   (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
   (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.

(4) The child shall not be taken to have failed to attend regularly at the school if the parent proves -
   (a) that the school at which the child is a registered pupil is not within walking distance of the child’s home, and
   (b) that no suitable arrangements have been made by the local education authority for any of the following—
      (i) his transport to and from the school,
      (ii) boarding accommodation for him at or near the school, or
      (iii) enabling him to become a registered pupil at a school nearer to his home.

(5) In subsection (4) “walking distance”-
   (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
   (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles), in each case measured by the nearest available route.

(6) If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves -
   (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
   (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
   (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.
Appendix 5:

Key legislation and guidance relevant to school attendance

- The Anti Social Behaviour Act 2003
- The Education Acts 1996 and 2002
- The Education and Inspections Act 2006
- The Education (Pupil Registration) (England) Regulations 2006, as amended
- The Education (Penalty Notices) (England) Regulations 2007, and subsequent Amendment Regulations
- The Human Rights and all Equal Opportunities legislation
- Police and Criminal Evidence Act 1984
- Criminal Procedures Investigations Act 1996
- Attorney General’s Guidelines for Crown Prosecutors