

# INFORMATION PAPER



brownejacobson  
education advisors

## Consequences of Term-time Absences

On 6 April 2017, the **Supreme Court ruled unanimously** against the father who had won earlier legal battles in relation to a fine imposed following a term-time holiday taken without permission.

This information paper sets out the key considerations for schools as a result of this decision.

### Background

The issue for the Supreme Court to consider were the words “fail to attend regularly” in Section 444 of the Education Act 1996 (“the 1996 Act”). This provision deals with the criminal offence relating to non-attendance at school.

The Magistrates’ Court and the High Court had previously decided that the father had no case to answer because his daughter had attended school regularly, in that her attendance was over 90% for the academic year to date as at the end of the period of unauthorised absence.

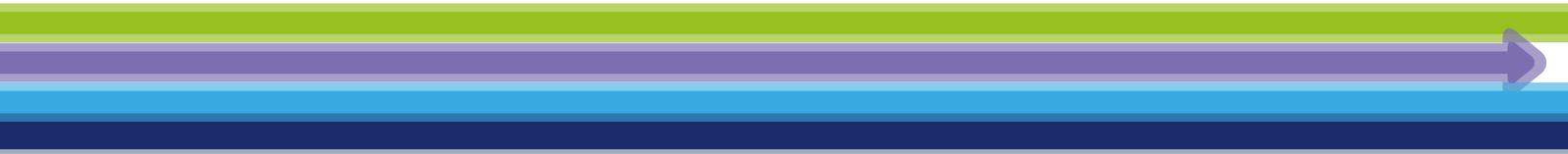
The Supreme Court disagreed, saying that ‘regularly’ did not mean ‘evenly spaced’ or ‘sufficiently often’ but instead ‘in accordance with attendance rules’.

As well as ensuring that pupils attend at all times required by the school, this interpretation was preferred by the Supreme Court because it said it offered certainty to schools and parents on whether or not an offence is committed when taking a pupil out of school without leave. **ASCL welcomes this ruling**, and that the judgment brings to an end a period of uncertainty as to the meaning of ‘regular attendance’.

### Leave of absence

If a pupil is taken out of a school in term-time, either without requesting a leave of absence or when a leave of absence is denied, then the period of absence will be unauthorised and the pupil in question may be deemed to have failed to attend school regularly.

Regulation 7 of the Education (Pupil Registration) (England) Regulations 2006 governs ‘leave of absence’ in relation to a maintained school or a special school not maintained by a local authority. Under this regulation, a leave of absence may only be granted by the school (usually through the headteacher) in exceptional circumstances. Currently, there is no such ‘exceptional circumstances’ restriction for other types of schools (including academies and independent schools), giving these headteachers the possibility of a wider discretion to grant a leave of absence.



## What options are available if a pupil fails to attend regularly?

Most commonly, a fixed penalty notice can be issued by a local authority or a headteacher, depending on the local code of conduct, and which has a £60/£120 limit, depending on when the fine is paid.<sup>1</sup> If the fine is paid, no further action is necessary. The local authority acts on behalf of both schools and academies. The fines are used to cover enforcement costs associated with the issue and collection of fixed penalty notices, or subsequent prosecution in the event of non-payment (and subject to each local authority's Code of Conduct). If issued by a headteacher, a copy of the fixed penalty notice must be provided (without delay) the local authority named in the notice.

However, if the fine is not paid before the statutory deadline, the local authority must either withdraw the fixed penalty notice, or initiate a prosecution for an offence under Section 444 of the 1996 Act. This provision creates an automatic offence for parents if their child is not regularly attending the school at which they are registered<sup>2</sup>. Section 444(1A) creates a further offence if parents are aware that their child is not regularly attending, yet fail to cause the child to attend.<sup>3</sup>

The local authority is entitled to prosecute without first issuing a fixed penalty notice, however, this would likely be criticised by the court. Indeed, Lady Hale made the point that a sensible prosecution policy is important so that parents are not convicted of an offence as a first port of call.<sup>4</sup>

The local code of conduct for the issuing of fixed penalty notices should be clear on the circumstances in which a penalty notice is appropriate, and should contain a maximum number of penalty notices that may be issued to one parent in any 12 month period before a prosecution must be brought. In preparing the code of conduct, the local authority must consult its relevant governing bodies and headteachers, and must have regard to any guidance issued by the Secretary of State.

In any event, before taking legal action the local authority must consider whether they should apply for an Education Supervision Order under the Children Act 1989.

If the local authority is satisfied that it is appropriate to prosecute the parent(s), the relevant offences will be under Section 444(1) or Section 444(1A) of the 1996 Act, as detailed above. It will be for the local authority as the prosecuting body to prove the elements of the offence are made out, and that any defence under this section is not applicable.

If found guilty under Section 444(1) of the 1996 Act, the parent(s) are liable on conviction in a Magistrates' Court to a fine not exceeding level 3 on the standard scale; this is currently £1,000. This would not form a criminal record.

If found guilty under Section 444(1A) of the 1996 Act, the parent(s) are liable on conviction in a Magistrates' Court to either a fine not exceeding level 4 on the standard scale (currently £2,500) or to imprisonment for a term not to exceed three months. This would form a criminal record.

Any fines imposed would be payable to the Court, however, the local authority may apply to recover their costs in taking the case to Court.

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1 Ss. 444A and 444B of the 1996 Act and the Penalty Notice Regulations 2007.

2 S. 444(1) "if a child of compulsory school age who is a registered pupil at a school fails to regularly attend at the school, his parent is guilty of an offence".

3 S. 444(1A) "if in the circumstances mentioned in (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".

4 *Isle of With Council (Appellant) v Platt (Respondent)* [2017] UKSC 28, Paragraph 43.

## What should schools do now?

Given the comments in the Supreme Court decision about the need for clarity, certainty and a sensible prosecution policy, it would be prudent for all schools to consider the information that they currently prepare and/or publish in relation to their requirements about attendance.

- Policies should be updated to reflect the decision of the Supreme Court with a view to making the information and advice as clear as possible.
- Policies should set out the key requirement of when a pupil is expected to attend school and provide details on the school day, times of registration, evidence required to support absences from school, the process by which applications for leave will be considered and the possible consequences of any unauthorised term time absences.

Supreme Court ruling Isle of Wight Council (Appellant) v Platt (Respondent)  
<https://www.supremecourt.uk/cases/uksc-2016-0155.html>

Information provided by ASCL Premier Partner Browne Jacobson LLP