

## Leicestershire County Council Guidance Notes

### Unauthorised Leave of Absence - Penalty Notices

Following the High Court ruling on 13<sup>th</sup> May (the Isle of Wight case), we have been working closely with colleagues in the Legal department to find an appropriate way forward pending any change in legislation or updated Guidance from the Department for Education.

It is useful to understand the implications of the decision in the Isle of Wight case and the extent to which it changes the legal position.

#### ***Firstly, what has not changed?***

- **It remains** good law, under statute, that a parent should ensure “*regular attendance*” at school.<sup>1</sup>
- **It remains** good law that the authorised officers can impose penalty notices where parents fail to ensure that a child is attending regularly.<sup>2</sup>
- **It remains** the case that Headteacher’s have a discretion to approve absences during term time in exceptional circumstances.

#### ***What are the implications of the Decision?***

The Court considered whether a parent (*Mr Platt*) had committed a criminal offence by failing to secure the regular attendance of his child at school. Mr Platt had taken his child out of school during term time but his child’s attendance was still over 90%. The Court considered that the relevant period of absence was insufficient to show that the child was failing to attend school “regularly”.

The Court’s decision helps to interpret what is meant by attending school “regularly” for the purposes of a criminal offence under Section 444(1) of the Education Act 1996. In future cases, Magistrates are unlikely to focus on a short period(s) of unauthorised absence. We can expect that they will look at the whole of a child’s attendance before coming to a conclusion about “regularity”.

#### **Impact on the Council’s Approach to Enforcement Action**

The Department for Education is considering changes to legislation to clarify the meaning of “regular attendance” under the Education Act.

However, pending any regulatory changes, a short period of unauthorised leave of absence during term time will not automatically be construed by Leicestershire

1 Section 444(1) of the Education Act 1996  
2 Section 444A of the Education Act 1996

County Council as being likely to prove the criminal offence. It will be necessary to look at the totality of the child's attendance during a relevant academic term. Each case will be decided by the Pupil Services Court Team on its individual merits with assistance from Legal Services.

### **Advice to Schools**

It remains the position that Head teachers should not authorise leave of absence unless there is a request made in advance and the reason is deemed to be exceptional circumstances.

We would ask Head teachers to continue to request the Local Authority to issue penalty notices in relation to unauthorised leave of absence **by sending us an attendance certificate with a hand written request on the document.**

Based on the submitted attendance certificate, **where the decision is that we will proceed to issue a penalty notice, we will request the usual paperwork from the school prior to issuing.**

Some requests from schools may not result in a penalty notice being issued and in these cases, the attendance certificate will be returned to the school advising of the decision. On receipt of a request to issue a penalty notice, the Pupil Services Court Team will make a judgement on whether an offence has been committed for the purposes of the relevant legislation (Section 444 of the Education Act 1996). Essentially, this will involve a consideration of whether the child has attended "regularly". It is only where an authorised officer considers that an offence has been committed that a penalty notice will be issued.

Head teachers should continue to challenge the absence if they do not feel there are exceptional circumstances. This is because any period of unauthorised absence will contribute to any further periods thereafter and may then invoke a penalty notice.

I trust that the above is helpful to schools. Please raise any queries as they arise with your Attendance Officer. In the event that they are unable to answer your query, they will seek advice from the Pupil Services Court Team.

**Lynne Fantham**  
**Court Team- Leicestershire County Council**  
**15<sup>th</sup> July 2016**