

Gloucestershire County Council EPI Team November 2016

Temporary Guidance for Schools on the Issue of Penalty Notices for Unauthorised Holiday Absence (Code G).

Following the recent press reports and in response to the Isle of Wight case, (May 2016), this guidance is intended to provide some clarity for schools on the issue of Penalty Notices for unauthorised holiday absence (Code G) during term-time.

It is important to note that there has been no change to the law or to the Department for Education's (DfE) guidance in respect of authorisation of family holiday during term time. Headteachers should continue to comply with the 2013 amendment to the Education (Pupil Registration) (England) (2006) Regulations 2013 which means that they should not authorise a leave of absence from school unless it is exceptional; every case should be treated on an individual basis and with due consideration of the circumstances. Ultimately, it is the head teacher of the school who decides if a period of leave during term time should be authorised or not.

Isle of Wight v Mr Platt (See Appendix A for background information).

The law has not changed in the sense that a parent will still be guilty an offence if his or her child fails to attend school regularly without just cause. Likewise, the question of whether school attendance has been regular or not remains a 'question of fact' for magistrates to decide.

However, in May 2016, the High Court held that unauthorised holiday must be considered in all the circumstances of the case including attendance over a wider period than the period of absence. In other words, if attendance is otherwise largely regular, the unauthorised holiday is itself not likely to constitute an offence. This decision is binding on the lower courts, so magistrates must follow it.

In light of the High Court Judgment and available guidance from the Department of Education (DfE), we have taken legal advice to review our current practices. Gloucestershire County Council's current Penalty Notice Code of Conduct is robust and rigorous; ensuring our strict criteria is followed and individual case referrals are looked at to ensure consistency and fairness.

Gloucestershire's position pending future judgement/guidance/legislation:

The planned implementation of the recently revised County Council's Code of Conduct for issuing Penalty Notices remains on hold, (HeadsUp previous update June 2016), because we understand that a further appeal of the Isle of Wight decision is pending.

Under our current Code of Conduct for issuing Penalty Notices, schools should issue a warning letter to parents after 10 sessions of unauthorised absence within a 10 week period. A Penalty Notice may then be requested if there are further sessions of unauthorised absence within the period specified in the letter, namely the following 15 school days allowing two working days for receipt of the letter by first class post.

Schools should continue to consider requests for holiday absence in accordance with the current regulations (ie exceptional circumstances only) and submit all requests for the issue of penalty notices to the LA in the normal way, having taken into account the overall attendance pattern of the pupil, as advised by Gloucestershire County Council in May 2016.

In light of the Isle of Wight decision, prosecution for the original offence under Section 444 (1) Education Act 1996 is currently unlikely to be successful if a penalty notice goes unpaid, unless there is a clear pattern of unauthorised absence which constitutes at least 10% of the pupil's overall attendance record. Thus, in the event of an unpaid penalty notice, prosecution will only be considered by Gloucestershire County Council when the unauthorised absence is in excess of 10% as a minimum. Other authorised absence cannot be considered as by its' nature, the Headteacher has agreed that the absence from school was authorised and therefore appropriate.

As a Local Authority, our aim is the same as that of our schools; to ensure that children in Gloucestershire receive the very best possible educational provision, in order that they may secure their best possible outcomes. Clearly, regular and punctual attendance at school is a fundamental aspect of this goal.

Gloucestershire Local Authority would like to reassure all schools that it continues to support them on the importance of punctual and regular attendance but that in line with other Local Authorities, this is the current situation regarding Penalty Notices.

If you have any further questions regarding this guidance then please send them via email to: attendance@gloucestershire.gov.uk

Appendix A

Background to High Court ruling:

In July 2015 Mr Platt, an Isle of Wight resident, entered a not guilty plea to a prosecution for unauthorised leave during term-time, based on the premise that his child's overall attendance (at 92%) was above 90% and that this constituted regular school attendance.

Magistrates found that the defendant had no case to answer based on the Isle of Wight Local Authority (LA) failing to demonstrate that his child's attendance was irregular.

The Isle of Wight LA challenged this decision in the High Court asking 'did the Magistrates' err in law when taking into account the attendance outside of the offence dates?'

On 13 May, 2016 the High Court ruled that Magistrates had not erred in law and, furthermore, the body of the report stated that Magistrates were 'bound' to consider wider school attendance. However, a definition of regular school attendance was not determined.

The Isle of Wight LA has now been given permission to appeal against the judgement to the Supreme Court.