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Supreme Court unanimously rules that parent cannot remove child from school in term time for family holiday

*Isle of Wight Council v. Jonathan Platt
Secretary of State for Education intervening
[2017] UKSC 28*

Article by David Bowden

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Executive speed read summary

Mr Platt asked to take his 8 year old daughter out of school during term time for a holiday. The head teacher refused his request. He ignored this and took his daughter for 2 weeks to Disneyland in Florida. He was prosecuted for truancy on his return. He ignored the £60 fixed penalty notice. The Magistrates Court accepted his submission there was no case to answer as his daughter had attended 'regularly' because the school records showed over 90% attendance. The council's appeal to the High Court was dismissed. The High Court certified a question of law of general public importance. The Supreme Court granted permission for a final appeal and ordered it be expedited. The question was whether a child's school attendance outside the truancy period was relevant to determining whether a parent had failed to secure that his or her child attended school 'regularly' under section 444 of the Education Act 1996. The Supreme Court has unanimously allowed the appeal. It has ruled that 'regularly' has to be interpreted 'in accordance with the rules' and not in any other way. A number of sound reasons are given by Lady Hale DPSC including the disruptive effect on the education of all children, a clear statistical link between a child's school attendance and educational attainment and Parliament did not intend that it was acceptable that parents could take their children out of school in blatant disregard of the school rules. Lady Hale said education law sometimes produced harsh results, but the aim was to bring home to parents how important it was that they ensured that their children went to school. The Education Act 1996 requires a child to receive 'full time' education and this means education for the whole of the time when education is being offered to children. The case is being sent back the Magistrates Court to continue with the prosecution.

Isle of Wight Council v. Jonathan Platt - Secretary of State for Education intervening
[2017] UKSC 28 6 April 2017

Supreme Court of the United Kingdom (Lord Neuberger PSC, Lady Hale DPSC, Lords Mance, Reed and Hughes JJSC)

What are the facts?

Mr Platt requested permission to take his daughter Mary (born in 2008) out of school (Bembridge Primary) for a holiday to Disney World in Florida between 13 and 21 April 2015. This request was refused by the daughter's head teacher. Mr Platt duly took his daughter out of school on holiday for 7 days. As a result, he was issued with a fixed penalty notice dated 14 May 2015 in respect of the absence. Mr Platt did not pay the penalty of £60 by the initial deadline of 21 days and so he was sent a further invoice dated 4 June 2015 for £120. Mr Platt did not pay this either. The local authority sent Mr Platt a letter before action dated 1 July 2015 advising him that it was preparing a prosecution. Mr Platt is separated from his wife. She had taken her daughter on a 5 day unauthorised holiday in February 2015 and was issued with a £60 penalty notice which she duly paid.

What happened in the magistrates court?

Mr Platt was then prosecuted on the basis of his alleged failure to secure regular attendance at school of his daughter contrary to section 444(1) of the Education Act 1996 (EA1996). Mr Platt pleaded 'not guilty' before the Isle of Wight Magistrates Court at Newport on 10 August 2015. His defence submitted that there was no case to answer as Mr Platt's daughter had in fact attended school regularly. The attendance register showed attendance at 92.3%.

The Magistrates' Court held that Mr Platt's daughter was a regular attender for the purposes of section 444(1) bearing in mind his daughter's overall percentage attendance. They ruled on 12 October 2015 that there was no case to answer. The Magistrates stated a case so that an appeal on a point of law could be made by the local authority to the High Court. The certified question was:

'Did we err in law in taking into account attendance outside of the offence dates (13th April to 21st April 2015) as particularised in the summons when determining the percentage attendance of the child?'

What happened in the Administrative Court?

On appeal, the Administrative Court of the High Court found [2016] EWHC 1283 (Admin) that the Magistrates Court was entitled to take into account attendance outside the offence dates when determining the attendance of the respondent's daughter. The reserved judgment was handed down on 13 May 2016 by Lord Justice Lloyd Jones and Mrs Justice Thirlwall.

What does the Education Act 1996 say?

The relevant provisions of section 444, Education Act 1996 are as follows:

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s.444(1) *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.*

(1A) If in the circumstances mentioned in subsection (1) the parent knows that his child is failing to attend regularly at the school and fails without reasonable justification to cause him to do so, he is guilty of an offence.

(2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school at which he is a registered pupil.

(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.

...

(8) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

...

(9) In this section 'leave', in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.'

How did this case end up so quickly in the Supreme Court?

The High Court granted a certificate under section 1 of the Administration of Justice Act 1960. The local authority then applied for permission to appeal to the Supreme Court. This was granted on 20 December 2016 by Lady Hale DPSC & Lords Carnwath and Hodge JJSC who also ordered that the appeal be expedited. It was heard over 1 day on 31 January 2017. The Education Secretary was granted permission to intervene to make submissions on the broader questions raised by both the EA 1996 and problems arising caused by children going on vacation outside the scheduled school holidays.

What was the issue for the Supreme Court?

The question certified by the High Court on 30 June 2016 was:

'Whether, on an information alleging a failure by a parent over a specified period to secure that his child attends school regularly contrary to section 444(1) of the 1996 Act, the child's attendance outside the specified period is relevant to the question whether the offence has been committed.'

What submissions did the intervenor make on this appeal?

The Education Secretary carefully took the Supreme Court through the history of legislation relating to schools and truancy. The Elementary Education Act 1870 only required '*sufficient amount of accommodation in public elementary schools*' for all the children resident in the district but did not make school attendance compulsory. The Elementary Education Act 1876 then prohibited the employment of children under ten and for imposed upon parents a duty to cause their children to '*receive efficient elementary instruction in reading, writing and arithmetic*'. The Elementary Education Act 1880 required all school boards to introduce bye-laws to compel attendance.

The school leaving age was raised to 14 by the Education Act 1918. These laws were consolidated in 1921. Rab Butler then introduced the Education Act 1944. The parental duty was widened such that it became one of causing their children '*to receive efficient full-time education suitable to his age, ability and aptitude, either by regular attendance at school or otherwise*'. If a parent failed in this, a local authority could issue a school attendance order. The 1944 Act introduced a statutory offence where a child of compulsory school age who is a registered pupil at a school failed '*to attend regularly*', the parent was guilty of an offence. There was a closed list of circumstances (including illness) in which term time absence was permitted.

These provisions were replaced in materially identical terms in 1993 and then consolidated by Kenneth Baker in the Education Act 1996. This Act contains the school attendance requirement in section 444. This distinguishes between the more serious offence of intentional truancy in section 444(1A) and the less serious offence for which Mr Platt was charged of failing to secure the regular attendance of his daughter at school. For this lesser offence a local authority does not have to prove that a parent was at fault.

What changes were made in the rules in 2013?

In 2013, the UK government made a number of important changes to the way in which term time absences could be authorised. These are set out in the Education (Pupil Registration) (England)

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(Amendment) Regulations 2013 **SI 2013/756**. However, even before the 2013 amendments, parents had no power to authorise absences from school – this power always lay with the head teacher. This was set out in the Education (Pupil Registration) (England) Regulations **SI 2006/1751**.

The important distinction is that since September 2013 head teachers could only authorise a pupil's absence from school during term time if there are '*exceptional circumstances*'. Prior to September 2013, head teachers could authorise absences of up to 10 school days per year if there were '*special circumstances*'. It should be noted that under the old regime a family holiday qualified as a special reason.

Although local authorities were able to impose fines for unauthorised absence prior to September 2013, the rules surrounding their operation were tightened up in the amendments. The power to fine parents for their children's unauthorised absence(s) comes from s444A Education Act 1996. The Education (Penalty Notices) (England) (Amendment) Regulations 2013 **SI 2013/757** made under that section state that the base level fine is £60 if paid within 21 days, and will rise to £120 if paid within 22 to 28 days. Time runs from the date the fixed penalty notice was issued

Do local authorities have any discretion to grant term time holidays?

Yes.

The Penalty Notice regulations require each local authority to publish a Code of Conduct for issuing penalty notices. The Isle of Wight Council had published theirs which provides:

'It is for head teachers to determine whether or not such a request is exceptional; and to state the number of days granted. Each request can only be judged on a case-by-case basis but it is usual that head teachers will be sparing in their use of this discretion.'

Here Mr Platt's daughter's head teacher had considered his request and refused it presumably that it was not '*exceptional*' as his daughter had been on an unauthorised absence only 2 months earlier.

What ruling did the Supreme Court give on this issue?

Lady Hale DPSC gives the unanimous ruling of the court. She said there were 3 possible meanings of the word '*regularly*' as in appears in section 444(1) of EA 1996. These were:

- At regular intervals, or
- Sufficiently frequently, or
- In accordance with the rules.

She ruled out the '*regular intervals*' possible meaning quite shortly saying '*this cannot have been the intended meaning in the case of school attendance. It would enable attendance every Monday to count as "regular" even though attendance every day of the week is required.*'

Lady Hale gave 10 reasons for rejecting the '*sufficiently frequently*' interpretation. These included:

- The purpose of the Education Act 1944 was '*to increase the scope and character of compulsory state education*',
- The 1944 Act '*indicated an intention to tighten rather than relax parental responsibility*',
- Section 444(3) suggest that '*absence on a single day would be a failure to attend regularly*',
- Section 444(6) suggests that the word '*regularly*' is to be interpreted as not suggesting '*a matter of fact and degree*' but rather that '*the child has attended as often as he can*',
- Section 444(7) on boarding school pupils means that absences are unauthorised where a pupil is absent '*without leave during any part of the school term*',
- This interpretation is too uncertain to found a criminal offence,
- There are good policy reasons why this interpretation will not do because '*there is a clear statistical link between school attendance and educational achievement*' and unauthorised absences '*disrupt the education of the individual child*', making up for one pupil's absence could '*disrupt the work of other pupils*' and that '*if one pupil can be taken out whenever it suits the parent, then so can others*'. If this happened then this would increase '*the disruptive effect exponentially*', and
- Parliament could not have intended that it was '*acceptable that parents could take their children out of school in blatant disregard of the school rules, either without having asked for permission at all or, having asked for it, been refused*'.

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Lady Hale DPSC ruled that the only possible interpretation was the 3rd one that 'regularly' is interpreted 'in accordance with the rules'. She gave these reasons for preferring this over the other 2 options:

- There were many examples where minor breaches can lead to criminal liability such as speeding in a car,
- The law before 1944 'recognised that this sometimes produced harsh results, but the aim was to bring home to parents how important it was that they ensured that their children went to school',
- Statutes imposing criminal liability should be construed 'in a way which enables everyone to know where they stand, to know what is and is not an offence',
- Section 444 has to be read as a whole. Sections 444(9) and 444(3)(a) read together make clear that 'a child is not to be taken to have failed to attend regularly if he is absent with the leave of a person authorised by the governing body or proprietor of the school', and
- Section 7 of the EA 1996 requires a child to receive 'full time' education and so 'regularly' has to be interpreted correspondingly which indicates 'for the whole of the time when education is being offered to children like the child in question'.

What will happen next with this case?

It was open to the Supreme Court to have answered the question referred by the High Court and taken no further action meaning that Mr Platt would not be convicted but that the law had been clarified for all other parents. However, Lady Hale DPSC was not impressed by the history of unauthorised absences and so has ordered the case to be returned to the Isle of Wight Magistrates Court as if the submission of no case to answer had been rejected. Lady Hale said she was 'mindful of the fact that the mother did exactly the same thing, was issued with a penalty notice and paid it' and that now she may 'well feel a sense of injustice if, it now having been held that the penalty notice to the father was properly issued, the case did not proceed'.

What are the statistics for truancy?

These are the 2015 statistics for truancy prosecutions in England. In total local authorities took action against 19,920 parents and three-quarters of these were found guilty. The average fine for truancy is £176. The courts handed out the following sentences. These are listed in descending order of severity.

- | | |
|---------------------------|--------|
| • Prison | 8 |
| • Suspended jail sentence | 111 |
| • Fine | 11,493 |
| • Community service order | 553 |
| • Conditional discharge | 2,280 |
| • Absolute discharge | 306 |

What impact does this ruling have for travel and tourism businesses?

One of the principal drivers for parents seeking to take their children out of school during term time is that holidays and flights cost more during all the recognized school holidays. It is not always entirely clear that these price differentials are economically justified in a fully functioning competitive market. It is disappointing that the Supreme Court approach is so binary and there is no consideration of this underlying motivation in its judgement. Whether there will be action such as a referral of the travel market to the Competition and Markets Authority remains to be seen. In some ways, this ruling may only serve to make matters worse. The clarion call is that truancy is to be treated seriously and that parents removing their children during term time will receive a criminal record. We will see whether the truancy statistics change this year and next. If they go down, then there will be **more** demand for holidays during recognized school holidays which could see the prices of those holidays **rise** yet further. This could be an unfortunate but unavoidable consequence of this clear ruling from the Supreme Court today.

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David Bowden is a solicitor-advocate and runs [David Bowden Law](http://DavidBowdenLaw.com) which is authorised and regulated by the Bar Standards Board to provide legal services and conduct litigation. He is the cases editor for the Encyclopedia of Consumer Credit Law. If you need advice or assistance in relation to consumer credit, financial services or litigation he can be contacted at info@DavidBowdenLaw.com or by telephone on (01462) 431444.