

Optimising school attendance - the thorny issue of Term Time Leave following the Isle of Wight judgement

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What is the Isle of Wight judgement?

- Facts of the Case
- In April 2015, Mr Platt took his daughter to Disney World in Florida during term time, causing her to miss 7 days of lessons. Prior to the trip, the school had rejected Mr Platt's request for permission, but he went ahead with the holiday regardless.
- The council accordingly issued Mr Platt with a fixed penalty notice under the Education Act 1996. This fine was not paid within the 21 day deadline, and so increased to £120.[1] This increased fine also went unpaid, and so the council opted to prosecute Mr Platt for committing an offence under s444 Education Act 1996.
- Mr Platt was acquitted following trial by the Magistrates Court as they were satisfied that he had proved his daughter's attendance was 'regular', i.e above 90% before and after the Disney trip.
- Hampshire County Council unsuccessfully appealed the decision at the High Court.
- DfE funded Hampshire in taking the matter to the Supreme Court for final determination.



- Supreme Court Judges ruled on 6th April 2017 that regular attendance had to be in keeping with rules of the school, after the council urged that it raised important issues over what constitutes “regular attendance” at school.
- They said the magistrates should take into account the “wider picture” of the child's attendance record outside of the dates she was absent on the holiday.
- The ruling rejects Mr Platt's argument that despite missing a week of school for a holiday, his daughter had regularly attended school over the course of the year.
- In her judgment, Lady Hale said that if parents were able to withdraw children whenever they wanted there would be an unacceptably “disruptive effect” on lessons.
- Following the judgment, Mr Platt said the ruling had reversed "decades of judicial precedent" in a move he described as "shocking", adding that it meant a child being a minute late to school "is now a criminal offence".
- “The Supreme Court has just reversed decades of judicial precedent. They didn't just say that the High Court judge who heard my case... misinterpreted the law, they have concluded that the earlier High Court decision from 2006 and one from 1969 were also wrong in their interpretation of the law," Mr Platt said.
- “Be in no doubt, despite the judgment, I followed the law precisely laid down and interpreted by High Court judges in two separate cases. They told me that to attend 'regularly' was to attend very frequently.
- “So I decided not to pay a £60 penalty notice because my daughter had otherwise perfect attendance at school. With this judgment those precedents have been swept away and the consequences can only be described as shocking.



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- “(Regularly) now means to attend on all the days and at all the times that a school requires it. Every unauthorised absence, including being a minute late to school, is now a criminal offence.”
- Gillian Graveson, partner at Birchall Blackburn Law and head of family law for the firm’s seven offices said the ruling was significant, commenting: “While I am not surprised at today’s ruling, as a parent myself I think a common-sense approach should be applied.
- "This ruling makes it clear that if a parent refuses to pay a fine for allowing their child to be absent from school without permission even for a single day, they could face a prosecution. This will affect parents across the country, many who have already made holiday bookings.
- “If a child has a great attendance throughout the year, is missing a couple of days at the end of term really going to have a huge impact on their education?”



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Hillingdon's position pre and post the Isle of Wight

- Hillingdon Penalty Notice and Prosecution Code of Practice

Sec. C para. (V) Unauthorised Absence/Unauthorised Planned Leave of Absence: Where a child's attendance falls below 90%without reasonable justification.



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School Leaders including Governors role

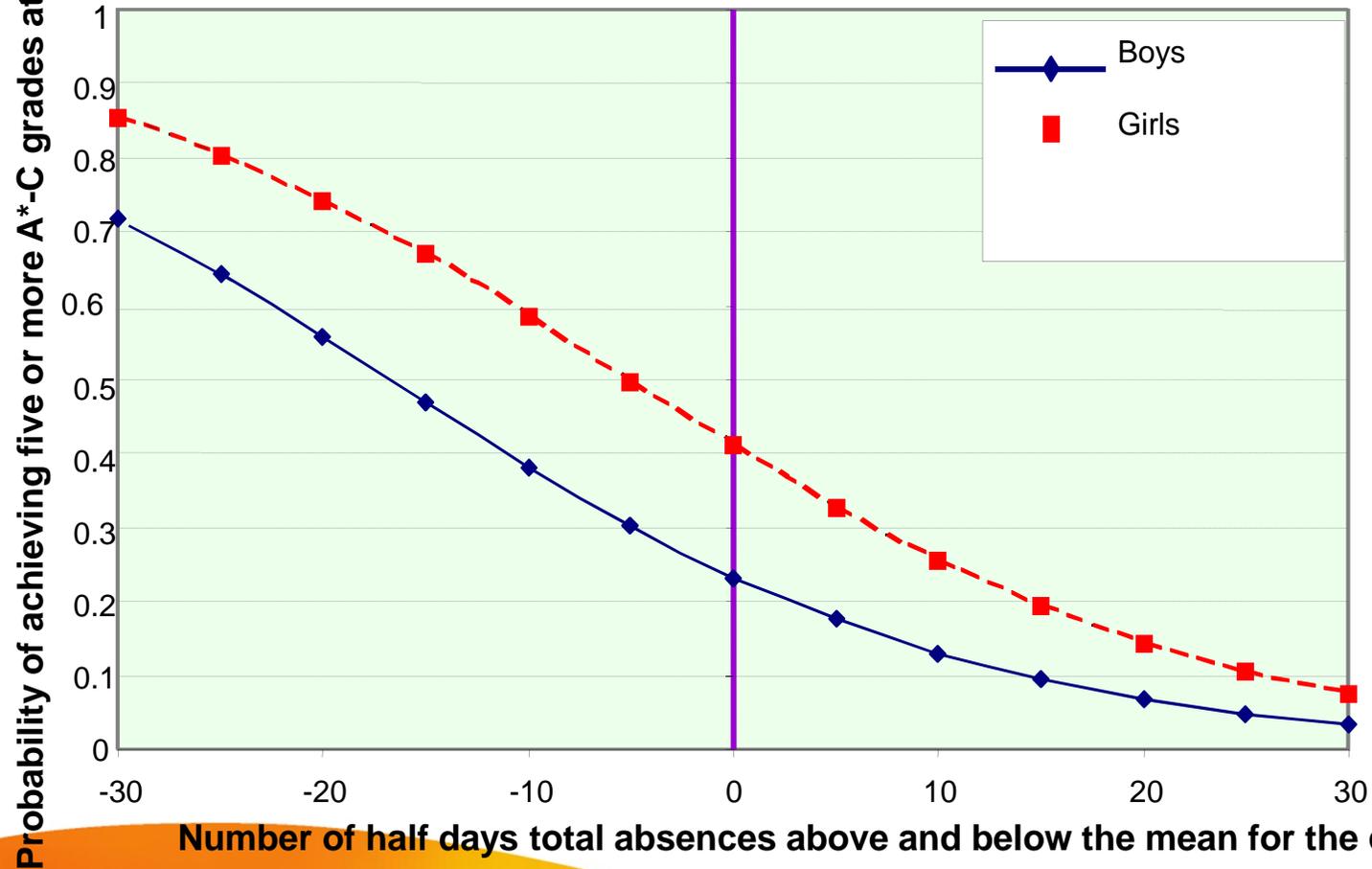
- Agree a robust Attendance policy and review annually. Have available on your website.
- Agree your position on Term Time Holidays (zero tolerance, exceptionally or accepted without limit).
- Agree parental application process. An application form is not advisable. A written request followed up with a meeting with member of SLT advisable.
- Agree required timelines.
- Agree consequences of unauthorised absence.
- All must be explicit in your policy



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Attendance - why worry?

SE Probability of a pupil achieving 5 or more good GCSEs



Also agree....

- Acceptable absence for Religious observance. SACRE guidance.
- Frame for bereavement leave
- Approach to minimising sickness absence, currently responsible for 61% of absenteeism



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Sickness absence - operational tips

- For short term investment in time, long term benefit in terms of changing a culture.
- Remove the telephone option to leave a message reporting pupil absence.
- Alternatively, ring back every parent of an unwell pupil on the same day. Ask when their expected return day will be.
- Gentle but clear challenge will always be supported by your allocated Participation Key Worker.
- Advice from your School Nurse to support your initiative.
- Remember, it is not for parents to 'authorise' any form of absence, including illness absence.
- Particularly for Infant and Primary Schools, child minders and private nurseries often have their own conditions for entry with ailments that are more onerous than required by Public Health England for schools. Parents expectations may need revising through effective and early communication at transition to school.
- Use 'evidence' of medication and consultation with Pharmacists in lieu of doctors' certificates.



When in doubt....

- For use by your front line staff and for referencing in your Attendance Policy, new parents briefings and website
- **Public Health England - Guidance on Infection Control in Schools and other Childcare Settings**
- Also, statutory guidance from DfE on Supporting Pupils at School with Medical Conditions



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Please do bear in mind.....

- Clear culture and expectations, wrapped into policy, will not alienate your parental community.
- Employers have parameters on holiday, exceptional and sickness absence.
- You are ‘training’ the employees of tomorrow.
- School staff cannot benefit from cheaper holidays in term time.



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One last quick message

- Fixed term exclusions have a huge detrimental effect on school attendance.
- How effective is exclusion as a behaviour management tool?
- Pupils at SEN Support are 7 times more likely to be excluded.
- Your role with exclusions is so much more than a rubber stamp of the Head teacher's decision.



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Not just a 'rubber stamp'

- *“A discipline committee was a statutory committee, it was not a token committee. It most certainly was not there to rubber stamp the head teacher’s decision. Unless it acted as an independent reviewing body, unless it acted fairly and unless it appeared to act fairly it served no purpose whatsoever.”*
(R(A) v Kingsmead School Governors and another (The Times 13th March 2002)



Your turn....



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