

# 11KBW

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## Term-time holidays – update

Paul Greateorex

30 November 2016

# Statutory provisions

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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”
- S.444A(1): “Where an authorised officer has reason to believe that a person has committed an offence under section 444(1)...he may give the person a penalty notice in respect of the offence”

# *C v Bromley* [2006] ELR 358

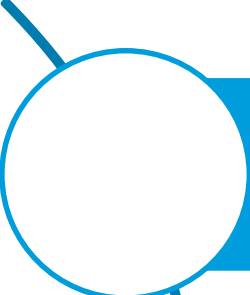
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## **Divisional Court (Auld LJ and Sullivan J):**

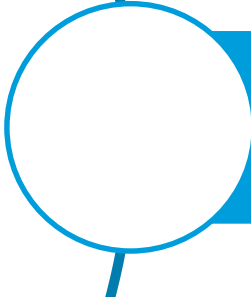
- What constitutes “regular attendance” is very much one of fact and degree in each case
- It does not automatically follow that there will not have been regular attendance merely because there has been an unauthorised holiday
- High Court will only intervene if magistrates’ decision was one no reasonable bench of magistrates could reach

# Facts and arguments in *Platt*

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Holiday absence was 13-21 April 2015, i.e. 7 school days



Information laid before magistrates alleged offence in respect of that period only and LA argued that in that period attendance was 0% so not regular



Child's attendance before the holiday was 95%, afterwards was 90.3% and parent successfully argued there was no failure to attend regularly

# Question for the High Court

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

# Decision of the Divisional Court (Lloyd-Jones LJ and Thirlwall J)

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Answer to question is no – cannot secure conviction by laying an information referring to holiday period only

*C v Bromley* approved

Decision of magistrates was reasonably open to them

Rejected argument that any absence without statutory excuse necessarily constitutes a s.444(1) offence

# DfE response

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**A spokesman for the Department for Education said on the day of the judgment (13 May 2016):**

*"We will look at the judgement in detail but are clear children's attendance is non-negotiable so we will now look to change the law. We also plan to strengthen statutory guidance to schools and local authorities."*

# Isle of Wight press statement

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## **Isle of Wight Council leader, Councillor Jonathan Bacon, said (9 June 2016):**

“Our initial response was not to expend further Isle of Wight Council money on pursuing an appeal. However, as a result of the formal request from the minister, the local and national importance of this issue and the DfE’s commitment to cover all the costs of the appeal and contribute to the council’s previous costs, we have decided to lodge an appeal in order to resolve the issue for all.”



# Application for permission to appeal:

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## Argument is:

**“Attend regularly” = “to attend on each occasion when attendance is required by the school”**

# Status of appeal

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- **Divisional Court certified question of law was one of general public importance**
- **But refused permission to appeal**
- **Application renewed to Supreme Court**
- **Notice of objection filed**
- **Decision of Supreme Court on permission to appeal awaited**

# In the meantime, as the law stands:

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“Regular attendance” is matter of fact and degree for magistrates based on all circumstances of case

Unauthorised holiday could lead to finding of failure to attend regularly but does not automatically do so

On any appeal by way of case stated, issue is only whether magistrates’ decision was reasonable

# Statistics for penalty notices for academic year 2014-2015

## 151,125 issued

108,024 paid  
within 28  
days

17,112  
withdrawn

15,283  
prosecutions  
following  
non-  
payment

<https://www.gov.uk/government/statistics/parental-responsibility-measures-2014-to-2015-academic-year>