

Interim amendments to ESBAS Code of Conduct for the issue of Fixed Penalty Notices and Prosecutions

Further to our communication on 23rd May, 2016 regarding the Isle of Wight V Platt case, the Local Authority has now reviewed its process for the issue of penalty notices and prosecutions for term time unauthorised withdrawal from learning for the purposes of a holiday.

Where a child's attendance is between 90% and 95%, the Local Authority will consider each case individually. If the absences outside the holiday are authorised by the school, a simple caution will be offered for a first offence. If the absence outside the holiday is unauthorised by the school a fixed penalty may be issued. Failure by a parent to discharge the liability may result in a prosecution. It is vital that schools do not unduly authorise absences as, should the Local Authority proceed to a prosecution, it is important that the Local Authority can demonstrate that the child's attendance is 'otherwise irregular'. It is only where a child's attendance rate is below 90% that irregular attendance is implicit as this is defined in governmental guidance as a 'persistent absence'.

A simple caution is not a criminal conviction or a financial penalty and will act as a formal warning should further unauthorised withdrawal from learning for the purpose of a holiday be taken. The caution will be administered by the Local Authority and the records kept on the ESBAS database, they will not be a matter of public record.

If further unauthorised withdrawal from learning is taken for the purposes of a holiday, the parent may receive a fixed penalty notice for the second and subsequent offences. Prosecutions will also be considered based on unauthorised absences outside the holiday period.

All requests for penalty notices to be issued where a child has attendance below 90% (in line with Persistent Absence Thresholds) will automatically result in a penalty notice being issued whether authorised or unauthorised. Failure to pay and discharge the liability by the parent will result in a prosecution being brought against the parent.

The Local Authority has implemented this interim arrangement and all previous requests are being actioned to this effect.

Interim arrangements will be reviewed regularly, as we await the outcome of the appeal case and the DfE guidance going forward.

I trust this information is helpful to you. Please do continue to request penalty notices for unauthorised withdrawal from learning, using the withdrawal from learning form as evidence of the term time holiday. Please attach the penalty notice request and attendance certificate and send to ESBAS.