



WESTMINSTER HALL DEBATE 11 JULY 2016.

Petition to reverse the term time holiday regulations 4.30pm-7.30pm

This is the third time this issue will be debated in Westminster Hall. We appreciate that the EU referendum result will by necessity be uppermost in Members' minds. We would ask Members to reflect on how this issue has been illustrative of the underlying reasons for widespread discontent with the political status quo: a disconnect between Government and everyday concerns, the removal of people's autonomy and the difficulties of getting power to hear. Is this an opportunity for Government to show that the lessons of the referendum are beginning to be learnt?

This briefing updates Members on significant developments since the Westminster Hall debate last October, including new Department for Education (DfE) data and details of the Platt court ruling in May. That case effectively questions the legality of the imposing blanket bans on term time holidays by statutory instrument. Wider background on the issue is at the end. Previous briefings which provide more detail on surveys are available on request.

Minister's concern in last debate answered

The Minister's response to the October 2015 debate as quoted in House of Commons Research paper was:

"In his 2012 report "Improving attendance at school", Charlie Taylor [the Government's expert adviser on behaviour] calculated that if children are taken away for a two-week holiday during term time every year and have an average number of days off for sickness and appointments, by the time they leave school at 16 they will have missed a year of school. It is for that reason that I cannot support the request set out in the petition."

Parents Want A Say requested and received the following information from the Department for Education:

"There were 5 pupils at the end of key stage 4 in 2010/11 that had two weeks or more of absence due to family holidays and the average number of days or more missed due to illness and medical dental appointments in each secondary school year (years 7 to 11). In 2011/12 and 2012/13 there were fewer than 3 pupils that fit this criteria..."¹ [our colouring and bold]

We ask the Minister to reconsider his decision in the light of this new information showing concern regarding widespread, repeated annual family holidays is unfounded.

¹ https://www.whatdotheyknow.com/request/evidence_to_support_nick_gibbs_s?nocache=incoming-741889#incoming-741889

Isle of Wight Council v Platt

www.bailii.org/cgibin/format.cgi?doc=%252Ffew%252Fcases%252FEWHC%252FAdmin%252F2016%252F1283.html&query=platt

In finding the magistrates court had been correct in taking the full attendance record of Mr Platt's daughter into account in reaching their decision, Lord Justice Lloyd Jones upheld the case of Bromley v C which states whether attendance has been regular is a matter of fact and degree in each case. Later he points out that as a statutory instrument, the 2013 regulations cannot amend the Education Act 1996 which outlines parents' obligations to ensure regular attendance. He clearly states "*Absence on an unauthorised holiday of itself does not necessarily constitute an offence in all cases*".

Further, his Lordship states "*I do not consider that it is open to the authority to criminalise every unauthorised holiday by the simple device of alleging in the information that there has been no regular attendance in a period limited to the absence on holiday. If that were carried to its logical conclusion, it would be open to the authority to bring a prosecution under section 444(1) in respect of an unauthorised absence from school without lawful excuse of one day by limiting the period of irregular attendance alleged in the information to that one day.*"

His Lordship declined to rule on the wider aspects of the law, saying that an exploration of such issues would be better explored with the Department for Education as a party. He included reference to comment in the judgement of Barnfather v London Borough of Islington that "*I recognise that the penalties are small, being only a fine, and that is a factor which can properly be considered when determining whether an offence of strict liability is justified. However, in my opinion there is nonetheless a real stigma attached to being found guilty of a criminal offence of this nature. It suggests either an indifference to one's children, or incompetence at parenting, which in the case of the blameless parent will be unwarranted.*"

In essence the case means that schools and local authorities who issue fines without taking into account the wider circumstances of individual child's attendance are not acting in accordance with the law and blanket bans by schools are not legal.

Further, his Lordship is saying that if the Department wishes to change the law on this matter it must do so using primary legislation.

The Department for Education instructed schools and local authorities to continue as before and instructed the Isle of Wight to appeal. As at 8th July 2016, permission to appeal has been refused but the Isle of Wight has been given permission to appeal that refusal.

We ask the Minister to make it very clear to schools and local authorities that they cannot impose blanket bans and we ask that the use of public money to pursue unwarranted criminalisation of parents is stopped.

We further ask that if the Department wishes to continue with this policy, it places it on a proper legal footing through primary legislation.

The statistical evidence base: correlation is not causation

BBC Radio 4's More or Less Programme <http://www.bbc.co.uk/programmes/b06zcg4v> (from around 16.mins in) looked into DfE statements and statistics and said : "Nick Gibbs is saying the absence is the thing which is causing the drop off in grades but the evidence doesn't show this at all."

Stephen Gorrard, Professor of Education at Durham University said on the programme:

"There is an association between the proportion of absence and the aggregate level of attainment of students who've had that level of absence but it would be wrong to assume that it was necessarily causal. We don't know that the absences are the reason for the lower attainment. They could both be indicators of something else such as background characteristics and of course it's also possible that children who aren't do well at school after a time begin to drift away and perhaps take time off. It could be that the causal mechanism is the other way around"

In summary, with no popular support for the measure; the Minister's concerns about cumulative pupil absence being met; significant legal questions over the implementation of the policy, the use of taxpayers money to prosecute parents, and the impact on school/parent relationships, we ask Members to urge the Minister to repeal the 2013 attendance regulations.

Background

Regulations introduced by negative statutory instrument in September 2013 changed the discretion of Headteachers to allow up to 10 days term time absence for "special" circumstances with additional discretion in "exceptional" circumstances to only allow up to 10 days absence in "exceptional" circumstances and removed family holiday as an allowable reason. Fixed Penalty Notices are issued by local authorities in the event of infringements against their individual codes of conduct. Payment is £60 per parent per child, doubling if not paid within 28 days. If still not paid, parents are taken to court under Education Act s444(1) and if found guilty, receive a criminal record as well as fines of up to £1,000.

Some schools, local authorities and magistrates have been interpreting the regulations to mean that all requests for "family holiday" must be refused and any absence for reason of family holiday must constitute an offence. The codes for recording absence are fairly limited so that other than illness, only absence for reasons of religious observance, study leave, and "traveller" are delineated from "family holiday". This results in the category covering absence for a very wide range of reasons.

For example: this has led to parents being refused permission, fined or prosecuted where holiday has been taken because parents have no choice when to take leave (Stuart Sutherland, national security services, £1,000); death of grandparents (Haymore, Skelcher), international family events (Myers) to name but a few high profile cases. Our casework has included parents with terminal illnesses, children with life shortening conditions, children with learning disabilities and trips for extraordinary once-in-a-lifetime experiences. Characterisation of the issue as being one of selfish parents reckless of their children's education for the sake of cheap holidays are not evidenced and usually appear to be grounded in the personal social biases of the commentators. Members will be aware of their own constituents' stories and how viscerally parents feel about the way in which the Government has overstepped the mark in interfering in family life.

Further, holidays are not fripperies. They are a vital part of broadening a child's horizons as well as allowing families to lose the stresses of modern life and build memories together. Research on the importance of family holidays can be found on the website for the campaign network "Holidays Matter". <http://www.holidaysmatter.org.uk/research> The Family Holiday Association reports that 7 million families in this country cannot afford to take a week's holiday and 5 million cannot afford a day out. They report on some of the reasons families need a break here <https://www.familyholidayassociation.org.uk/research/impact-report/>.

The problem the government was trying to solve when it changed the rules in 2013 was that of persistent absence. It should be noted that children who are persistently absent are less likely than other children to go on family holidays. Before the regulations were introduced, authorized family holiday accounted for 7.5% of all absences in primary schools – or 0.4% of overall sessions missed. In secondary schools, this dropped to 2.5% of overall absence, or 0.1% of overall sessions missed. Absence for family holidays was lower (1.9%) for "persistently absent" pupils than for other pupils (8.2%). www.gov.uk/government/publications/pupil-absence-in-schools-in-england-autumn-2012-and-spring-2013.

We would like to see research into the impact of the reduction in education welfare resource on these children and their families. Stories which reach us from parents and the profession tend to the impression that there is a cultural shift from supporting families to tackle underlying issues to leaping straight to fines. Ironically we suspect the government's measures will prove counter-productive for these children as it drives a wedge between parents and schools:

"...parental engagement with children's learning is, as the literature is beginning to make clear, one of the best levers available for raising achievement (Gorard, See et al. 2012), school improvement (Harris and Goodall 2008) and supporting the achievement of young people facing economic challenge (Harris and Goodall 2009)." (Goodall, 2015) (extract from Ofsted's judgement of parental engagement: A justification of its place in leadership and management, <http://opus.bath.ac.uk/44363/1/resubmission.pdf>)

We are concerned that this policy is reducing parental respect for school decision making, thereby increasing disengagement from children's formal school learning and having a potential knock on effect on achievement.

The most recent FOI requests reported (by Santander Bank April 2016) shows a 237% increase in fines since the regulations were introduced, with up to 150,000 parents being fined, over 21,000 cases going to court, 17,000 being dropped and the total cost to parents exceeding £5million. (https://www.theguardian.com/education/2016/jul/07/90000-parents-fined-taking-children-out-of-school-term-time?CMP=Share_AndroidApp_Gmail and <http://www.bbc.co.uk/news/education-36734377>)

As well as a series of fast growing, highly supported petitions since 2013, the Local Government Association, the police, the tourism industry and the NUT are amongst those who have asked the government to reconsider this regulation. We are not aware of any survey even within the Headteacher profession which shows a majority in favour of the regulations.

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