6 April 2017

PRESS SUMMARY

Isle of Wight Council (Appellant) v Platt (Respondent) [2017] UKSC 28
On appeal from [2016] EWHC 1283 (Admin)

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Reed, Lord Hughes

BACKGROUND TO THE APPEAL

Section 444(1) of the Education Act 1996 provides that if a child of compulsory school age 'fails to attend regularly' at the school where he is a registered pupil, his parent is guilty of an offence. The issue in this appeal is the meaning of 'regularly'. 'Regularly' has at least three possible meanings in this provision: it could mean (a) evenly spaced; (b) sufficiently often; or (c) in accordance with the rules.

Mr Platt sought permission from his daughter's head teacher to remove her from school during term time for a holiday. The head teacher refused the request but Mr Platt took his daughter on holiday as planned, causing her to miss seven school days in April 2015. Mr Platt was issued with a penalty notice on her return. He did not pay the fixed penalty and was prosecuted in the Isle of Wight Magistrates' Court. The magistrates ruled that Mr Platt had no case to answer. They held that his daughter had attended school 'regularly' because, even after the holiday, she had attended 90.3% of the time up to that point in the academic year.

The Council appealed on the issue of whether the magistrates had been entitled to take into account attendance at school outside the period of the absence. The Divisional Court held that the magistrates had not erred in doing so, but certified a point of law of general public importance on the meaning of the words 'fails to attend regularly' in section 444(1).

JUDGMENT

The Supreme Court unanimously allows the Council's appeal, declaring that the word 'regularly' means 'in accordance with the rules prescribed by the school'. Lady Hale, with whom the other Justices agree, gives the only judgment.

REASONS FOR THE JUDGMENT

The history of the law preceding section 444(1) of the Education Act 1996 shows that before 1944 it was well established that the offence of failing to cause a child to attend school without a reasonable excuse could be committed by a single day's absence **[8-14]**. The Education Act 1944 replaced the concept of reasonable excuse with a closed list of circumstances in which absence was permitted, and provided that the offence would be committed if the child failed to attend school 'regularly'. This provision was reproduced in the Education Act 1993 and is now found in s 444(1) of the 1996 Act

[15-19]. The penalty notice regime is an alternative to immediate prosecution and offers a parent the opportunity of escaping liability to conviction by paying the penalty **[21]**.

The question for the Supreme Court is which meaning of the word 'regularly' was intended by Parliament when enacting s 444(1). It plainly is not 'at regular intervals' as this would mean attendance at school once a week is regular even though attendance every day is required by the rules. 'Sufficiently frequently' was the meaning assumed in some earlier cases, and in the lower courts in this case, but there are many reasons to think that this was not what Parliament intended in 1944 or in 1996:

- School attendance is compulsory and there are rules about when it is required **[32]**.
- The purpose of the 1944 act was to increase the scope and character of compulsory state education and it is implausible to suggest that it was intended to relax the previous obligation on parents to secure their children's attendance **[33]**.
- The defences were tightened in 1944 and the flexibility inherent in a 'reasonable excuse' was removed **[34]**.
- The exception for absence on a single day for religious observance in s 444(3) would not be needed unless it would otherwise amount to a failure to attend regularly **[35]**.
- Provisions for parents with an itinerant trade or business did not suggest that 'regularly' was a matter of fact and degree **[36]**.
- A boarder fails to attend regularly under s 444(7) if he is absent without leave during any part of the school term, and there is no reason why 100% attendance should be required of boarders but not of day pupils **[37]**.
- This interpretation is far too uncertain to found a criminal offence. A parent would not know on any given day whether removing the child from school is a criminal offence **[39]**.
- There are sound policy reasons for rejecting this interpretation because of the disruptive impact of the absence for the education of the individual child and of the other pupils **[40]**.
- It permits an approach to rule keeping which no educational system can be expected to find acceptable **[41]**.

These reasons also point towards the correct interpretation of 'regularly' being 'in accordance with the rules'. A sensible prosecution policy will allow minor or trivial breaches to be dealt with appropriately **[43]**. This was not thought to be a problem under the pre-1944 law **[44]**. The rule that statutes imposing criminal liability must enable everyone to know what is and is not an offence is important **[45].** This interpretation is consistent with the provisions excepting from the scope of the offence a child absent with the leave of the school **[46]**, and with the obligation on parents to cause their child to receive 'full-time' education under section 7 of the 1996 act **[47]**.

Accordingly, the penalty notice was properly issued to Mr Platt and, having not paid the penalty fine, he should have been convicted of the offence unless he can establish one of the statutory exceptions. The case is therefore returned to the magistrates with a direction to proceed as if his submission of no case to answer had been rejected **[49]**.

References in square brackets are to paragraphs in the judgment