

Answer by **Ane Vernon, Dispute Resolution Associate at Payne Hicks Beach**, first published online in the Techregister on 19 March 2019 and is reproduced with kind permission <https://www.techregister.co.uk/will-i-be-fined-for-taking-my-children-out-of-school-in-term-time/>



## Will I be fined for taking my children out of school in term time?

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**My husband splits his time working between the US and the UK. However, I moved back to the UK with our children a few years ago for reasons of their education. My daughter is at a public school and my son is at one of the leading state schools in the county.**

**We want to take the children to the US for two weeks during term time so they can spend time with their father, but I've heard we could be fined by schools if we take "unauthorised absences". Our children have an excellent attendance record and we only want to take them out of school for two weeks. Could we face a fine?**

Education is subject to the devolved powers and so different policies apply in Scotland, Wales and Northern Ireland. **Ane Vernon, an associate at Payne Hicks Beach**, outlines the considerations that will apply if your children are educated in England.

As parents you are responsible for ensuring that your children, who are of compulsory school age, receive full-time education. For most parents this means ensuring their children's regular attendance at school. You do not say how old your children are — in broad terms a child is of compulsory school age between the ages of five and 16.

The Education Act 1996 states that if a child of compulsory school age who is a registered pupil at a school fails to attend school regularly, the parents are guilty of an offence. Specified reasons justifying absence such as sickness, religious observance or authorisation from the headteacher create a defence.



Ane Vernon, an associate at Payne Hicks Beach © Handout

Government guidance states that headteachers should not grant leave of absence unless there are exceptional circumstances and makes clear that leave is unlikely to be granted for the purposes of a family holiday "as a norm". The decision to grant leave is entirely at the headteacher's discretion.

You explain that your children's father works in the US and you want to take your children there during term time so that they can spend time with their father. You do not say why your planned trip to the US cannot take place during school holidays, and I would expect the headteacher to require an explanation as to the reasons or importance of the planned trip during term time.

If leave is granted, your children's absence will be noted as an authorised absence and you will not face a fine. If leave is not granted, but you still take your children out of school or keep them away for longer than agreed, the absence will be unauthorised. You should be aware that schools are unable to grant retrospective approval for holiday absences; if you do not seek leave in advance of the trip, the absence will be unauthorised.

Local authorities govern attendance policies for state schools while independent schools publish their own policies. Underlying all policies is the value of continuity for a successful education; schools promote regular attendance for effective teaching and learning.

A fine can be issued regardless of whether you perceive your children to have an otherwise excellent attendance record. The definition of attending school "regularly" was clarified in 2017 in the case of [Isle of Wight Council v Platt](#). Mr Platt sought permission to remove his daughter from school for a term time family holiday in Florida. He proceeded to take his daughter out of school notwithstanding the school's refusal to authorise the absence.

He refused to pay a £120 fine and argued that his daughter had attended school regularly when her whole-year attendance was considered. The dispute ended in the Supreme Court, where it was clarified that attending school "regularly" means "in accordance with the rules prescribed by the school".

The overarching obligation to ensure children receive full-time education applies in all cases, and where this duty is discharged through school attendance, parents must ensure their children's regular attendance, whatever the type of school.

So, having consulted the relevant attendance policies you should seek leave in advance of the planned trip from your children's respective headteachers.

**Danielle Reece-Greenhalgh, an associate at Corker Binning**, says the Education Act 1996 provides the framework for the provision of education in the UK. Under this legislation, the local authority is obliged to identify any children who are not in full-time education. However, legal responsibility ultimately lies with the parents to ensure their child's regular attendance, and criminal sanctions apply to those who fall short.

Parents are automatically guilty of an offence if their child fails to attend school regularly. The offence is punishable by a fine of up to £1,000, and applies whether or not the parents knew about the absence. It is a defence to prove that a child could not attend by reason of sickness, unavoidable cause, or where the child had permission from the school not to attend or the absence fell on a day

of religious observance. "Unavoidable cause" generally encompasses emergencies relating to the health or wellbeing of the child.

Parents who knowingly fail to secure their child's regular attendance at school without reasonable justification are guilty of a more serious offence, for which a fine of up to £2,500 and/or a term of imprisonment of up to three months can be imposed. In addition to the limited defences outlined above, it is also possible for parents to argue "reasonable justification" for failing to ensure their attendance. "Reasonable justification" is undefined and depends on the particular facts, but will cover only exceptional situations.

What constitutes "regular" attendance was recently considered by the UK Supreme Court. The court held that regularity should be determined "in accordance with the rules prescribed by the school" and could include a block of time rather than regular occasions over an extended period. Furthermore, the discretion available to schools to authorise term time holidays has been curtailed in recent years.

In lieu of immediate prosecution, local authorities or the schools themselves (only in the case of state schools) will often issue penalty notices. This typically offers the option of paying a fine within a specified period in order to avoid criminal proceedings. Non-payment of the fine within that period can result in a court summons. The application of the penalty notice scheme varies between different local authorities.

The difference between the two schools is likely to be a practical one, relating to the margin of discretion afforded to you when asking for permission for term-time absence. If your US travel plans are opposed by the schools and you decide to press ahead anyway, the absences will be recorded as unauthorised.

A two-week period of unauthorised absence with your knowing consent is likely to prompt investigation, and you should be prepared for the prospect of further action, in relation to both your son and your daughter, including penalty notices and potentially criminal prosecution.

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