

<b>Subject:</b>	<b>Promoting Attendance and Reducing Persistent Absence In Brighton and Hove Schools</b>		
<b>Date of Meeting:</b>	<b>3 October 2016</b>		
<b>Report of:</b>	<b>Executive Director Families, Children and Learning</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report provides information, including data on fixed penalty notices for school absences, for all children and young people in Brighton & Hove.

**2. RECOMMENDATIONS:**

- 2.1 To note the report and endorse the focus across the City on improving attendance and reducing persistent absence in Brighton and Hove schools.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:****Attendance**

3.1 In Brighton & Hove we aim to ensure that all pupils attend school all of the time and our commitment is to promote good school attendance. We know that good school attendance is a priority for all schools. Pupils who attend school are more likely to develop both academically and socially, improving their life chances. We also know that there is a direct link between poor attendance and poor attainment for a child and young person. Added to this, many issues related to non-attendance will highlight pupils with particular health, welfare or social needs.

We also need to be mindful that school attendance is part of the school Ofsted judgment and grade descriptors make it clear that if the pupils' actual attendance is below national averages, or too many pupils are persistently absent, then attendance must be graded as inadequate. Ofsted have indicated that from September 2016 there will be a 'shift in focus' to the correlation between attendance and attainment, particularly for disadvantaged children and young people.

3.2 It is a legal requirement under Section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability and aptitude and to any special educational needs that they may have.

A child reaches compulsory school age at the start of the term on or after their fifth birthday, and continues to be of compulsory school age until the last Friday of June in the school year that they reach 16. Fixed Penalty Notices cannot therefore be issued to children in reception who have not yet reached compulsory school age.

It is essential for pupils to attend school regularly in order to maximise the opportunities available to them. The Council's Access to Education Team investigates cases of poor attendance and instigates statutory intervention where appropriate. The Access to Education Team will issue penalty notices on behalf of schools and will always serve them by first class post. The team will also ensure that the issuing of penalty notices is closely monitored with the relevant financial penalty being imposed and collected. If the penalty notice has not been paid within 28 days of issue the case may be escalated and consideration given to prosecution for non-school attendance. A parent may receive more than one separate penalty notice resulting from the unauthorised absence, but not in excess of three penalty notices for an individual child in any twelve month period. A Penalty Notice will be issued to each parent of each child exhibiting the relevant patterns of unauthorised absence. Therefore within any twelve month period each parent can receive a separate penalty notice for each child that exhibits the relevant pattern of unauthorised absence and, where appropriate, in respect of more than one child.

## **CIRCUMSTANCES WHEN PENALTY NOTICES MIGHT BE ISSUED**

Unauthorised Absence/Truancy:

- Persistent late arrival at school (after the register has closed).
- Pupils whose attendance has not reached a satisfactory (90% attendance – 2015 threshold) level during a six week period following intensive support i.e. truancy patrol.
- Where parents allow their child to be present in a public place during school hours without reasonable justification in a fixed term or permanent exclusion.
- Penalty notices will be issued following assessment of poor attendance which the LA considers to be four sessions or more within a term. This does **not** relate to unauthorised holidays but any other unauthorised absence.
- Penalty notices will be issued for all unauthorised holidays taken during term time.

The fine is £60 per parent per child, if payment is made within 21 days from the date of issue, increasing to £120 if paid after 21 days but within 28 days.

## **LEGISLATION, GUIDANCE AND CASELAW**

The Local Authority's Behaviour and Attendance Team must have regard to the following legislation and guidance when applying the provisions of this Code: -

- Data Protection Act 1998
- Children Act 1989
- Crime and Disorder Act 1998

- Human Rights Act 1998
- Education and Inspections Act 2006
- Equality Act 2010
- Education (Penalty Notices) (England) Regulations 2007
- Education (Penalty Notices) (England) (Amendment) Regulations 2012
- Education (Penalty Notices) (England) (Amendment) Regulations 2013
- Special Educational Needs Code of Practice 2014
- Education Act 1996
- Police and Criminal Evidence Act 1984
- 'Parental responsibility measures for school attendance and behaviour': DfE Guidance November 2013.

The Education (Pupil Registration) (England) (Amendment) Regulations 2013, which came into force on 1 September 2013, removed references to family holidays and extended leave as well as the notional threshold of ten school days. The amendments made clear that head teachers may not grant any leave of absence during term time unless 'exceptional circumstances' exist. The regulations also stated that head teachers should determine the number of school days a child can be away from school if leave is granted for 'exceptional circumstances'.

The Local Authority also has to be mindful of the recent High Court decision in the case of *Isle of Wight v Platt*. Mr Platt had been charged under the Education Act 1996 with failing to secure his daughter's "regular attendance" at school, based on an unauthorised seven day term-time holiday in 2015, before which his daughter's attendance was 95%, and which brought it down to 90.3%. The magistrates found that they were entitled to take the whole picture of attendance into account, not just the days of the holiday. They noted that the overall attendance percentage after the holiday was 90.3%, which was within the 90-95% range stated to be satisfactory in the school's document, and found that Mr Platt had no case to answer.

The prosecution appealed to the High Court which found that the magistrates were not only entitled to take the broader picture of absence into account, they were obliged to do so. However the Court expressed no view as to what the definition of "regular attendance" is, or should be but determined that when making a decision as to whether or not attendance is regular, all the circumstances of the case i.e. attendance across the term, or across the year should be looked at.

At the request of the DfE an application has now been made by IOW Council seeking leave to appeal against the High Court judgement. If permission is granted it is hoped that the Supreme Court will provide clarity on the issue of 'regular attendance'.

Our advice to schools following the judgement has been that this case does not change the law. Parents are still obliged to obtain the permission of the head teacher if they wish to take their child out of school during term time, and absence can still only be authorised in exceptional circumstances.

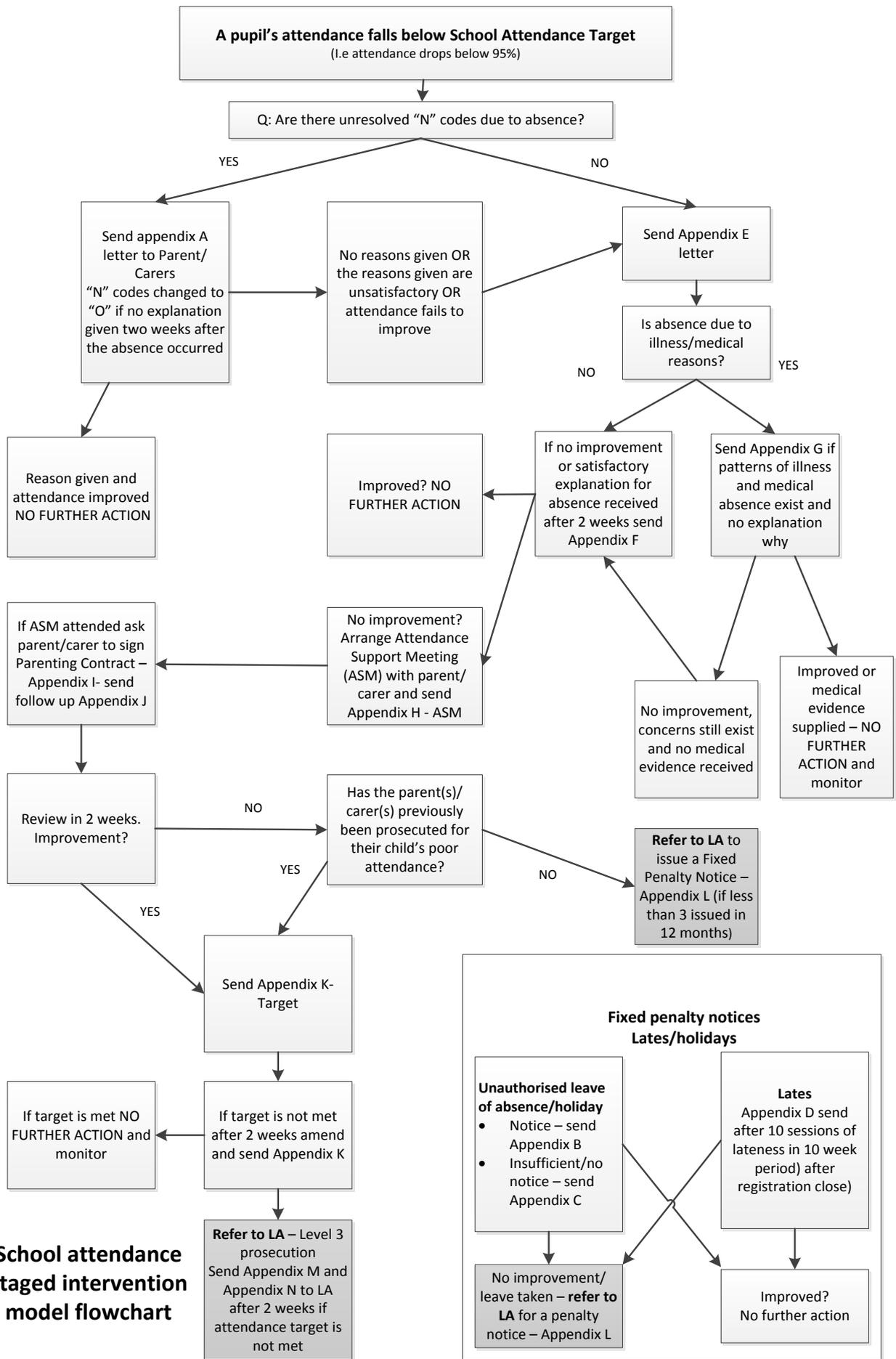
3.4 In Brighton & Hove all schools work towards promoting good school attendance and as a result schools provide a range of interventions using standardised letters as outlined in the 'School Attendance Toolkit' if they have concerns about a pupil's attendance. The schools education welfare officer will follow up on individual cases of concern with phone calls, letters of concern and tracking letters which culminates into

an 'attendance support meeting' if the pupils' attendance does not improve. The attendance is monitored and target letters are sent to the parents/carers prior to any referral to early help; integrated team for families or for a fixed penalty notice, depending on the circumstances and may run concurrently. Parents must obtain permission from the head teacher if they wish to take their child out of school during term time. Applications should be made in advance of the requested absence and the absence should still only be authorised in exceptional circumstances. Head teachers retain the discretion and consider individual circumstances. The head teacher will decide how many days leave can be granted and it remains the case that parents can be fined for taking children on holiday during term time without the school's permission. In accordance with our current policies and procedures the head teacher of a school can refer the matter to the Local Authority for a fixed penalty notice for:

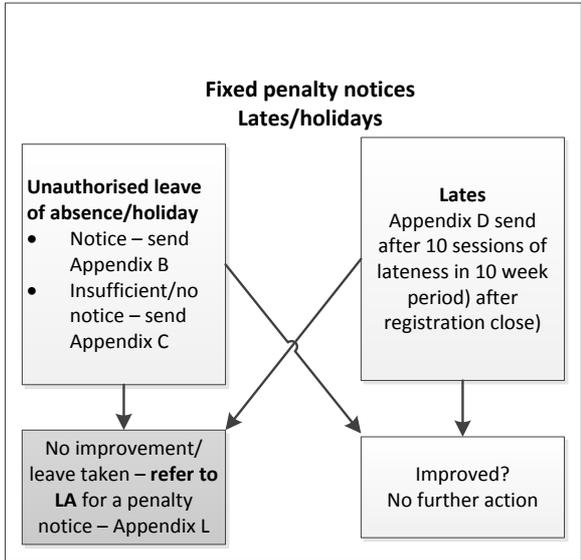
- Unauthorised leave of absence,
- Holidays in term time,
- Persistent late arrivals (after the register has closed - 10 sessions in 10 weeks),
- Excluded pupils found in public places during school hours (during the first five days of an exclusion),
- Poor attendance of four or more sessions within a term (if attendance is less than 90% in a six week period, please follow the steps in poor attendance below).

In accordance with the new [Code of Conduct](#) which has been devised in partnership with schools, school governors' and the police the team has composed practical suggested template letters, a revised parenting contract and referral forms for use by schools. These template letters have been put together with schools to ensure a consistent and robust approach across the City. This document suggests an approach which is in line with the Department for Education expectations and the law. It also makes use of much effective practice observed in the City and the key message is about early intervention. Schools are advised to challenge irregular school attendance and to ensure that each child is encouraged to attend from the very first day. There is a four stage process and procedure prior to the Head Teacher referring this matter to the Local Authority. The 'School Attendance Staged Intervention Model' flowchart set down in more detail below.

In the meantime, it remains the case – as set out in the Education (Pupil Registration) (England) Regulations 2006 amended in 2013 – that head teachers continue to have the power to authorise leave of absence, but only in exceptional circumstances. While family holidays are enriching experiences, the school year is designed to give families the opportunity for these breaks without having to disrupt their children's education. It is for schools to consider the specific details and relevant context behind each request and act according to the circumstances of each specific case. The Team support schools with implementing clear and rigorous approaches that are fully compliant with statutory guidelines.



**School attendance staged intervention model flowchart**



## **Education Investigation Service (EIS)**

3.5 This is a legal intervention to enforce action for poor school attendance. In line with the national approach the Local Authority uses other education related legal interventions such as fixed penalty notices and prosecutions in line with the PACE 1984 requirements. If the fixed penalty notice is unpaid the Local Authority will send a Notice of Intended Prosecution and Confidential Consultative Document & Integrated Team for Families (ITF) consultation form (identifies MASH, Early help, ITF or Social Worker involvement). If the fixed penalty notice remains unpaid after one week the parent/s is invited to an Interview under Caution. Prior to the interview brief enquiries are made with the school and other agencies involved. At the interview the parent is given a final opportunity to pay the fixed penalty notice to discharge their liability. By conducting the interviews in accordance with the Police and Criminal Evidence Act 1984 we are adhering to Department for Education guidance.

### **Interviews under Caution:**

This approach offers parent/s a fair and transparent process which is fairly administered to all cases referred by schools to the Local Authority. The interviews under caution give us the opportunity for parent/s to provide any relevant background information. Once evidence has been gathered from the school, parent/carer and other agencies (if necessary), the evidence is evaluated and valued to decide whether or not it is appropriate to consider legal proceedings. At the interview, the local authority provides advice and guidance around improving attendance and the impact of term time holidays.

If the decision is made to instigate legal proceedings, the parent/carer(s) is invited to attend an interview under caution to provide a final opportunity to disclose any further information/evidence with the knowledge that legal proceedings will be implemented without haste should no defence exist and it remains in the public interest to proceed.

The interview will be PACE compliant with an audio recording made according to the relevant PACE code of conduct. The interview will be led by the investigating officer who will be responsible for asking you questions, with support provided by another investigating officer who will be responsible for ensuring the interview is undertaken in accordance with the law. The common themes identified at interview under caution are as follows:-

- Financial hardship
- Medical concerns/condition (perceived)
- SEN
- Bullying
- Bereavement
- Inconsistent
- Temporary accommodation (out of Brighton and Hove-distance)

The facts from the IUC are presented to the Strategic Attendance Lead and a decision is made on whether to withdraw the fixed penalty notice. Consideration is given to investigate circumstances further and/or make additional enquiries with the school and

other agencies whether to proceed with prosecution. Prosecution is a last resort and it must be in the Public Interest to proceed. The interviews under caution are proving to be a fair and effective way of establishing more facts to each individual case as parent/s are bringing more information about their case to light. The attendance at interview is obviously voluntary and the local authority have seen an increase in parent/s attending these sessions in the last few months with a majority of parent/s welcoming the opportunity to be more specific and open about their circumstances .

## Data Information

3.6 Table 1 below shows the number and type of referrals for autumn 2014 and 2015, demonstrating a high level of referrals for holidays and an increase in poor attendance.

**Table 1: Breakdown of FPN Referrals for Autumn Term 2014/2015**

Referral Reason	Autumn 2014	Autumn 2015
Holiday	318	398
Lates	4	1
Poor Attendance	0	49
Truancy	0	0
Truancy - Exclusion	0	0
<b>Total</b>	<b>322</b>	<b>448</b>

### Impact:

3.7 Against this back drop of information, Table 2 below shows the school absence figures for autumn term 2014 and 2015 as a comparison. It can be seen that for the Autumn Term primary school absence has improved from 4.1% in 2014 to 3.7% in 2015. There is also a marked improvement in secondary school absence down from 5.6% in 2014 to 5.4% in 2015. For persistent absence figures, there is a reduction for both phases which also takes account the new threshold of 10% introduced in September 2015. Table 3 below, gives a breakdown of the most improved primary school persistent absence for the two academic years. It highlights a number of primary schools who have issued fixed penalty notices and have seen an improvement in their persistent absence.

**Table 2: Breakdown of Primary and Secondary School Absence for Autumn Term 2014/2015**

Sector	Autumn 2014	Autumn 2015	Autumn PA 2014	Autumn PA 2015
<b>Primary School Absence</b>	4.1%	3.7%	11.4%	9.4%
<b>Secondary School Absence</b>	5.6%	5.4%	16.7%	14.7%

**Table 3: Breakdown of the most improved Primary School Persistent Absence for 2015/2016 compared to 2014/15 and the number of FPN's issued**

DfE	Establishment	% PA Improvement	Number of FPNS
3308	St Martin's CE Primary School	15.7	10

2011	City Academy Whitehawk	9.5	14
3305	St Bartholomew's CE Primary School	8.1	10
2093	West Blatchington Primary School	7.6	8
2007	Coombe Road Primary School	7.4	29
3313	St Mary Magdalen Catholic Primary School	7.2	4
2158	Woodingdean Primary School	7	41
3318	St Bernadette's Catholic Primary School	5.8	9
2037	Carlton Hill Primary School	5.5	6
3316	Our Lady of Lourdes Catholic Primary School	5	11
2114	Peter Gladwin Primary School	4.9	26
2165	Fairlight Primary School	4.6	22
3311	St John The Baptist Catholic Primary School	4.3	1
2002	Moulseccomb Primary School	4.2	33
2096	West Hove Infant School	4	56

### Financial Information:

3.8 The income generated from fines received by the local authority is outlined in the table below:

Academic year	Number Of FPNs	Money received
2013-2014	417	£18837
2014-2015	959	£50465
2015-2016	1076	£77160 (not yet fully received)

In terms of the expenditure associated with the income outlined above, the income is used both to fund the administrative and legal costs associated with the process and to reinvest in schools to improve standards of attendance and persistent absence. The staffing costs are annual.

#### The Team:

Access to Education Officer (legal) - £25,400;  
Fixed Penalty Notice Administrator - £24,700;  
BHCC Legal Services - £3,500 - £7,500.

#### Projects:

A joint project with Public Health was funded for £26K to address sickness issues in schools and the information and support that was provided to parents; 12 schools were identified where persistent absence for pupil premium pupils was identified as a significant issue in their lack of progress. In collaboration with head teachers, attendance leads and the local authority, an intervention strategy was implemented to address this and schools received £32k to support this work.

## 4. COMMUNITY ENGAGEMENT AND CONSULTATION

Community Engagement options to be decided.

## **5. FINANCIAL & OTHER IMPLICATIONS**

### **Financial Implications**

5.1 The report updates on fixed penalty notices for school absences for all children and young people in Brighton & Hove.

5.2 It is important that for any developments that the financial position is reviewed regularly in line with the Targeted Budget Management Timetable (TBM) to ensure there are no additional costs to the council.

In particular the position re IOW Council seeking leave to appeal against the High Court judgement will need to be monitored in case of implications on the budget.

*Finance Officer consulted: David Ellis Date : 25 August 2016*

### **Legal Implications**

5.3 The parent of every child of compulsory school age has a legal duty under section 7 of the Education Act 1996 to ensure that his/her child receives a suitable education by full time attendance at school or otherwise. If a parent fails to do so a Fixed Penalty Notices (FPN) can be issued by the Local Authority in the circumstances set out in para 3.4 of the report above.

The Education (Penalty Notices) Regulations 2007 set out the details of how a local authority penalty notice scheme must operate. This includes a requirement that every local authority must draw up and publish a Code of Conduct for issuing penalty notices, after consulting all schools, including academies, and the police. The code should set out the criteria that will be used to trigger the use of a penalty notice. These could include: a number of unauthorised absences, perhaps within a rolling academic year; one-off instances of irregular attendance such as holidays taken during term time without the school's permission; and where an excluded child is found in a public place during school hours without a justifiable reason. It is good practice that the Code should be regularly reviewed.

The recent High Court judgement in the case of IOW v Platt has not altered the law as set out in the Education (Penalty Notices) (England) (Amendment) Regulations 2013. These Regulations provide that head teachers should only grant leave of absence in term time in 'exceptional circumstances'. If the absence is not authorised a fixed penalty notice will be issued.

Local authorities need to observe the provisions in their Code of Conduct when making decisions as to when to prosecute for non-payment of the fixed penalty notice and when not to. If the local authority does decide to prosecute, the court will look at all the circumstances of the case when making a decision as to whether or not attendance is deemed to be regular i.e. they will look at attendance across the term, or across the year. It is clear from the Platt case that there is no attendance threshold below which parents will automatically be convicted, or above which parents can take their children out of school with impunity.

To conclude, this report highlights the following key points:

- 320 (2%) less Primary school children were persistently absent on 2015-16 compared to 2014-15
- 230 (2%) less Secondary school children were persistently absent on 2015-16 compared to 2014-15
- 750 persistently absent children in 2015-16 had a holiday
- 520 of the 750 children who had a holiday and who were persistently absent in 2015-16 would not have been persistently absent if they had not have taken the holiday
- Persistent absence rates in 49 out of 64 schools improved in 2015-16, compared to 2014-15
- Children who live in our most deprived areas are on average over one third more likely to be persistently absent than their peers
- Generally, the higher the percentage of sessions missed across the key stage, the lower the likely level of attainment at the end of KS4. Specifically, pupils with no absence are 1.5 times more likely to achieve 5+ GCSEs A\*-C or equivalent and 2.8 times more likely to achieve 5+ GCSEs A\*-C or equivalent including English and mathematics than pupils missing 15-20 per cent of all sessions.
- Generally, the higher the percentage of sessions missed across the key stage, the lower the likely level of attainment at the end of KS2. In particular, pupils with no absence are 1.6 times more likely to achieve level 4 or above, and 4.7 times more likely to achieve level 5 or above, than pupils that missed 15-20 per cent of all sessions.
- The process provides rigour such that it is subject to scrutiny, accountability and opportunities for challenge.

*Legal Advisor consulted: Serena Kynaston Date : 25 August 2016*

### **Equalities Implications**

5.4 Regular and punctual attendance at school and access to appropriate education provision will significantly improve the ability for children in Brighton & Hove to reach their full potential. If children do not attend school regularly or engage in appropriate education, the welfare and protection of these children will be at risk.

### **Sustainability Implications**

5.5 All policies, procedures and systems will be reviewed regularly giving consideration to any new or updated legislation and guidance.

### **Crime & Disorder Implications**

5.6 Ensuring children and young people are fully engaged in education and attending school will support the reduction in crime by young people.

### **Risk and Opportunity Management Implications**

5.7 None.

### **Public Health Implications**

5.8 This report aligns with the priorities at outlined by the EHWPB 2015.

## **Corporate / Citywide Implications**

5.9 This area of work directly aligns with the corporate plan principles, providing strong civic leadership for the well-being and aspiration of Brighton & Hove community.

### **6. EVALUATION OF ANY ALTERNATIVE OPTION(S)**

6.1 None

### **7. REASONS FOR REPORT RECOMMENDATIONS**

7.1 Information only