

**- IMPORTANT NOTICE TO PARENTS, SCHOOLS AND LOCAL  
AUTHORITIES - ATTENDANCE DURING COVID-19, VULNERABLE  
HOUSEHOLDS & LOCAL DISCRETION -**

The Public Interest Law Centre has been acting on behalf of clinically vulnerable families, challenging the Government's policy on school attendance during Covid-19.

We understand that schools and local authorities have felt unable to authorise absence in some cases, no matter how compelling the circumstances. Officials have said that their 'hands are tied' due to the Government's guidance in this area, which states that:

***“Children who live with someone who is clinically extremely vulnerable, but who are not clinically extremely vulnerable themselves, should still attend school.”<sup>1</sup>***

We sent out a pre-action letter to the Government challenging this position because:

- ➔ Vulnerable families are being forced to choose between risking contracting the virus, or facing fines, de-registration from school and/or a criminal conviction;
- ➔ A policy that only a very small cohort (clinically extremely vulnerable children) should have their absence authorised, is irrational and has been implemented in breach of Equality and Human Rights Law; and
- ➔ The policy appeared to leave local authorities and schools no discretion to authorise a child's absence in cases where:
  - They have vulnerable family members;
  - They are vulnerable but not extremely vulnerable themselves; and/or
  - There are mental health issues or special educational needs to consider.

The Government responded to our pre-action letter, and its official position (cleared by ministers), is **NOT** what it seems from the published guidance. It is as follows:

***‘...a blanket rule for children of CEV or shielding parents would not be appropriate. The Secretary of State considers that it is right that there is local discretion in this matter. The guidance “Addendum: recording attendance in relation to coronavirus (COVID-19) during the 2020 to 2021 academic year” explains different approaches to attendance recording during the COVID-19 [...] The guidance explains the new attendance recording category of “not attending in circumstances relating to coronavirus”, and the circumstances in which that may apply [...]***

***This though does not change the overall framework of school attendance provisions. As you know, there is a detailed existing system, which includes provision for authorised absences. Absence can be authorised by school***

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<sup>1</sup> Addendum: recording attendance in relation to coronavirus (COVID-19) during the 2020 to 2021 academic year.

**head teachers, and / or recorded as authorised in attendance registers, beyond the specific examples set out in the above Addendum guidance. That can cover the situation you explain your client is in [CV and CEV parents and SEN children], if the relevant head teacher considers your client's situation merits authorising the absence from school of her child or if the facts of your client's situation satisfy one of the other conditions for her child's absence to be recorded as authorised [...]**

**Whether leave of absence is granted is determined by each individual school head teacher. This is a matter of local decision-making. The Secretary of State does not seek to lay down a blanket rule for head teachers in all circumstances where a parent keeps his or her child at home due to concerns as to possible infection of family members. None of the guidance quoted in this letter, nor any other guidance, overrides or purports to override local discretion and flexibility, which is part of the 'usual rules on attendance' that the guidance notes continues to operate... Parliament has chosen to set this decision-making at the local level. The enforcement of school attendance is not decided upon or undertaken by central Government [emphasis added].'**

- ➔ The Government has not made the above clear in its published guidance.
- ➔ Schools and local authorities are therefore confused about what their powers are, and for that reason have not been exercising discretion in many cases.
- ➔ Vulnerable families are facing sanctions as a result.

**We will now be pushing the Government to:**



Amend its published guidance to reflect its official position on local discretion.



Change its guidance on school attendance and vulnerable family members, which in our view is irrational and in breach of equality and human rights law (notwithstanding the fact that this is not binding on schools and local authorities)

However, in the meantime, we wanted to bring the Government's position on authorising absence to the attention of parents, school and local authorities so that:



Local authorities and schools are clear that they are able to exercise discretion when authorising a child's absence, taking into account the vulnerabilities of family members (whether clinically vulnerable or extremely vulnerable) as well as any other factor such as mental health issues or special educational needs.



Parents are able to rely on this notice when liaising with schools and local authorities and requesting that they authorise their child's absence from school.