

## **DETENTION: THE LAW AND HOW TO APPLY IT**

1. Detention is one of the sanctions schools can use in cases of serious misbehaviour. Section 5 of the Education Act 1997 gives schools authority to detain pupils after the end of a school session on disciplinary grounds.
2. All schools, except independent and non-maintained special schools, have clear legal authority to detain pupils without the consent of the parent. There is no risk of a legal action for false imprisonment if a pupil is kept at school after the session without parental consent. This covers both lunchtime and after school detentions. However, before a school introduces detention as a sanction, the head teacher must make all parents and carers, pupils and staff aware that teachers may use detention. Parents and carers of pupils admitted during the school year must also be told about the policy. If the head teacher has made all reasonable efforts to make the policy known, parents and carers should not be able to challenge the lawfulness of detention because they were unaware of it.
3. The law safeguard children's and parents' legitimate rights, and ensures reasonable limits on detention for children who misbehave. Schools do not have an unqualified right to impose detention: detentions must be reasonable and proportionate to the offence. Detentions may only be imposed by a head teacher or another teacher specifically or generally authorised to do so. They should take account of:
  - a. the child's age;
  - b. any special educational needs;
  - c. any religious requirements; and
  - d. whether the parent can reasonably arrange for a child to get home from school after the detention.

### **Written notice**

4. A school must give at least 24 hours' written notice of a detention to the parent, so allowing time for the parent to raise any problems. A notice to a parent should say:
  - a. that their child has been given a detention;
  - b. why detention was given; and
  - c. when, where and how long the child will have to remain at school.
5. Parents and carers objecting to a detention should present the relevant

facts for the school to take into account. Examples of such facts should be

- a. that the detention is on a day of religious observance for the family;
  - b. concern about the length and safety of the walking route between the school and the child's home; or
  - c. the need for transport home if the parent cannot collect the child that day or make reasonable alternative arrangements.
6. The detention could be revoked altogether or deferred because of the parent's representations.

### **Parental complaint about detention**

7. The head teacher, or other authorised teacher, may decide the child should have a detention despite the parent's representations. However, a parent who remains dissatisfied can complain to the head teacher and the governing body under the school's normal complaints procedures (although there will usually not be time to consider the complaint until after the detention has taken place). However, there is no right of appeal. A governing body has no power to overturn a decision if they consider a complaint before the detention takes place.
8. A parent concerned about either the principle of detention or how it is used can raise these concerns with the head teacher or the governing body, or both.

### **Method of notifying the parent**

9. The law allows notice of a detention to be given to a pupil's parent in various ways including:
- a. handing it to the parent;
  - b. delivering or posting it to their last known address; or
  - c. any other effective method such as 'pupil post', with a telephone call to the parent, or a fax or perhaps e-mail.
10. It should normally be unnecessary for a head teacher to have to arrange for notice of detention to be served personally on the parent or to obtain acknowledgement of its delivery. This would mean that a school could never reasonably detain a pupil whose parent deliberately avoided receiving the notice or refused to respond to it. If the head teacher has given the parent, whom the school believes has custody of the child, 24 hours' written notice of a detention, the head teacher should assume that the parent has received this even if there has been no response.

Ensure that parents not only receive but understand the requirements – for example new arrivals (including refugees or people seeking asylum) who may not be aware of the school's rules or understand the education system in their child's new school.

### **Period of notice**

11. The minimum period of written notice is 24 hours because delay in imposing a detention weakens its effect.
12. In practice the 24 hour requirement will normally mean a parent hearing more than a day in advance. For example, for a detention imposed on a Monday, the earliest that detention could take place would be after school on the Wednesday. This ought to allow enough time for parents and carers to make reasonable arrangements for transport, if necessary.

### **Who should receive the notice**

13. Written notice must be given to the parent. Notifying one person who has parental responsibility for a child, even if more than one person has custody of the child, should be adequate. A head teacher who knew that a child of separated parents and carers lived with the mother, who complies with the requirement by giving notice only to the mother, but arguably not by giving notice to the father alone. The Courts could be expected to apply a common sense approach to the notice requirement. If a head teacher had taken all reasonable steps to give notice to the parent with whom the child lived, it is doubtful whether a Court would be sympathetic to a false imprisonment claim based simply on the fact the head teacher should also have given notice to someone else.

### **Failure to attend a detention**

14. If a pupil fails to attend an after-session detention for a disciplinary offence without reasonable excuse, the head teacher should decide how to deal with the absence and the original misbehaviour, normally with a more severe sanction.

### **Circumstances for not detaining a pupil**

15. For certain children a detention might never be reasonable however bad their conduct. For example, an after-school detention could probably not reasonably be imposed on a child who lived far from school, if the pupil's only means of travelling home was on a bus leaving at the end of the school day and there was no other way the pupil could get home. However, the onus is on parents and carers to demonstrate any unreasonableness about the proposed detention. Simple inconvenience to parent or pupil in making alternative transport arrangements would not be sufficient reason to withdraw the detention. If after-school detention is not possible, the head teacher (or other

authorised teacher taking the detention) could consider detention at lunchtime or another suitable sanction.

### **Responsibility for travel arrangements**

16. Although the school must have regard to the availability of suitable travel arrangements after a detention, the responsibility for making those arrangements lies with the parent. The school does not have to pay.

### **Detaining young children**

17. In principle, there is no reason why a young child, including one under compulsory school age, should not be given detention. However, it could be difficult to justify the detention of a very young child as the pupil's age would be one of the special circumstances which the head teacher must by law consider.

### **Responsibility for care and safety of children detained**

18. Teachers have a duty to take reasonable care of pupils at school. If a child is injured because a teacher is negligent, the parent could take an action of negligence against both the teacher responsible and the employer (either the LEA or the governing body) under the legal principle of vicarious liability. Schools should also consider carefully the issues of supervision where a single child is detained.

19. A child injured going home from school after being kept in detention could theoretically have a claim in damages against the school if the child or parent could prove that:

- a. the school's duty of care extended to ensuring the child could get home safely;
- b. in the circumstances of the case, they had negligently failed to carry out that duty; and
- c. the injury was a direct result of that negligence.

20. If, for example, an unsupervised young child was knocked down crossing a busy road outside the school after a detention, but someone at the school would normally have supervised the child crossing the road at the end of the school day, this could be negligence.

21. However, the LEA or governing body would not be liable for any accident that happened to the child on the way home after a detention. To succeed in a negligence action, the child or parent would have to prove all three points in paragraph 19 above.

### **Early morning, Saturday and holiday ‘detentions’**

22. The law allows schools to use detentions other than at lunchtime or after school. For Saturday morning, early morning, or holiday detentions that pupils attend voluntarily, there can be no question of false imprisonment. Such detentions depend on the co-operation of the pupil and parent.

### **Use of time**

23. The time a pupil spends in detention should be used constructively and to best effect. Teachers should consider appropriate work for pupils to undertake during the detention.

### **Records**

24. Schools should keep a written record of any detention and the reasons for imposing it, in case parents and carers bring a legal challenge.