



# GIGGLESWICK SCHOOL

## Searches and Confiscation Policy

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## 1 POLICY GUIDANCE

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Giggleswick School ("the School") has the duty to safeguard and promote the welfare of children. In exercising this duty, it will pay proper attention to the right of privacy of all pupils but there will be occasions on which it is necessary to search the person, belongings or room of a pupil and which may lead to certain items being confiscated. These instructions set out the circumstances in which such searches can be carried out and the means by which they should be done, and follow guidance set out in [Searching, Screening and Confiscation: Advice for schools](#) (DfE, July 2022), and [DfE and ACPO drug advice for schools](#) (DfE, September 2012).

Before screening or conducting a search of a pupil, it is vital that the School consider its obligations under the European Convention on Human Rights. Under Article 8, pupils have a right to respect for their private life. In the context of these rights and obligations, this means that pupils have the right to expect a reasonable level of personal privacy. The right under Article 8 is not absolute; it can be interfered with, but any interference with this right by the School must be justified and proportionate.

This policy aims to take into account several documents:

- Article 8 of the European Convention on Human Rights;
- The Children Act 1989 s.3 (5) (acting reasonably to promote child's welfare); and
- Boarding Schools' Association briefing paper (no.15) Conducting a search of a pupil's room, belongings or person (Farrar & Co)

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## 2 KEY POINTS

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Guidance from Farrar & Co (BSA Briefing Paper, 2015) states:

*"The Education Act 2011 introduced new provisions into the Education Act 1996 [section 550Z] which give school staff the power to search a pupil or his/her possessions if they believe them to be carrying any prohibited item which the staff member reasonably suspects has been, or is likely to be, (a) used to commit a criminal offence or (b) to cause personal injury to, or damage the property of, any person or (c) any other item which the school rules identify as an item for which a search may be made. Staff are given the power to search a pupil even if they are under the age of criminal responsibility, and likewise staff of the opposite sex may still search a pupil if they believe the risk is so great that serious harm would be caused if they waited to find a member of staff of the same sex as the pupil to be searched.*

*"There are particular rules relating to electronic devices which allow such devices to be seized and examined for relevant data or files which might offend the law or school rules. Section 550Z provides for the return of such devices to the pupil but also deals with any offending data or files which may be erased from the device if the staff member believes there are good reasons for doing so."*

Key points of the School's approach under this guidance are:

- Staff can search a pupil for any item if the pupil agrees;
- Authorised School staff (all staff at the School are so authorised) have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that the pupil may have prohibited items including:
  - knives or weapons;
  - alcohol;
  - illegal drugs;
  - stolen items;
  - tobacco related products (including e-cigarettes and associated products);

- fireworks;
- pornographic images;
- material associated with hate speech or extremism; or
- any article that the member of staff reasonably suspects has been, or is likely to be:
  - used to commit an offence or is committing an offence, or
  - to cause personal injury to, or damage to the property of, any person (including the pupil);
- Staff can seize any banned or prohibited item found as a result of a search or which they consider harmful or detrimental to School discipline;
- Staff may also confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so (see section 3 below);
- Pupils have a right to expect a reasonable level of personal privacy and any search should, therefore, be justified and proportionate;
- This policy applies on authorised School trips where School rules are in force;
- Incident reports must be submitted to the Second Master about any such search, listing all the main details; and
- **The Senior House Staff or the Second Master should always contact affected pupil's parents after any search, regardless of the outcome.**

## 2.1 Considerations

The School will always consider the age and needs of pupils being searched or screened. This includes those with individual needs or learning difficulties of pupils with Special Educational Needs (SEN) as outlined in a LaMP, and making reasonable adjustments that may be required where a pupil has a disability.

The School may also use CCTV footage to decide whether to conduct a search for an item.

## 2.2 Safeguarding in Relation to Searches

Staff must inform the DSL or a deputy of any searching incidents where the member of staff had reasonable grounds to suspect a pupil was in possession of a prohibited item as listed in section 2. The DSL or a deputy should also be informed without delay if a member of staff believes that a search has revealed a safeguarding risk.

If the DSL or a deputy finds evidence that any child is at risk of harm, a referral to children's social care services will be made in line with the School's Safeguarding Policy and Procedures.

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## 3 PROCEDURE FOR CARRYING OUT A SEARCH

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### **Staff may not carry out personal/intimate searches<sup>1</sup> of a pupil in any circumstances.**

These may only be carried out by a person with more extensive powers (e.g. a police officer).

Strip searches on school premises can only be carried out by police officers under the Police and Criminal Evidence Act 1984 (PACE) Code A and in accordance with the Police and Criminal Evidence Act 1984 (PACE) Code C. Section 5.11 of the School's Safeguarding Policy and Procedures states that any pupil in contact with the police must be accompanied by an appropriate adult. Any search of a pupil by police will involve an appropriate adult as a matter of course, under the direction of the DSL or a deputy.

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<sup>1</sup> An intimate search, also known as a strip search, is one defined by the removal of more than outer clothing. 'Outer clothing' means any item of clothing that is not worn wholly next to the skin or immediately over a garment that is being worn as underwear, as well as hats, shoes, boots or scarves (DfE Searching, Screening and Confiscation Guidance, 2022).

Strip searching can be highly distressing for the pupil involved, as well as for staff and other pupils affected, especially if undertaken on school premises. The role of the school is to advocate for the safety and wellbeing of the pupil(s) involved. Safeguarding should also be at the centre of support following a strip search in which the item is not found, both in the sense of supporting the pupil to deal with the experience of being searched, and regarding wider issues that may have informed the decision to conduct a strip search in the first place.

**Before any search takes place, the member of staff conducting the search should explain to the pupil why they are being searched, how and where the search is going to take place and give them the opportunity to ask any questions.**

### **3.1 Searches with Consent**

If a pupil is suspected of carrying or possessing an unauthorised item (items banned by School rules but not 'prohibited items' as described in section 1) they should be asked, ideally in the presence of a second adult witness, to turn out their pockets or their bag.

If a pupil refuses – and depending on the level of concern regarding what they may possess – their parents/guardian should be contacted to persuade them to co-operate or, alternatively, the pupil can be disciplined as if they were in possession of the suspected items. Similarly, if there is concern that there is an unauthorised item in a pupil's property in a locker or study/bedroom, then they should be asked for their consent for a search to take place. If the pupil refuses, then their parents/guardian can be contacted as above.

For less serious items, the extent and nature of the search should be proportionate to the value of the item sought and the likelihood of the item being found. Great care must be taken to avoid persistent targeting of individuals where allegations of victimisation or discrimination might arise.

### **3.2 Searches without Consent**

In nearly all circumstances, consent should be sought before a search is carried out. In establishing the grounds for a search, teachers must have reasonable grounds for suspecting that a pupil may have in his possession a prohibited item, listed in section 1. The teacher must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other pupils talking about the item or they might notice a pupil behaving in a way that causes them to be suspicious. Staff should always seek to discuss this with the Second Master in advance, if practicable. A second adult witness should always be present at a search, and a member of staff of the appropriate gender should always conduct a search without consent, with a witness of the same gender (where practicable).

The only exception is if a member of staff reasonably believes that there is a risk that serious harm will be caused to a person if they did not conduct the search immediately and where it is not reasonably practicable to summon another member of staff or to call the Second Master. In these circumstances only, a female member of staff can carry out a search of a male pupil (or vice versa), and any member of staff can search without an adult witness present.

### **3.3 Searching a Pupil's Person**

The pupil should be asked, in the presence of an adult witness, to turn out their pockets or bag. If they refuse, the first step is to inform their parents to ask them to persuade them to co-operate. If this fails and possession of such items is still strongly suspected, then a search of the pupil's outer clothes (once removed) or bag may still be conducted without the consent of the pupil. Under no circumstances should staff touch the pupil or carry out any search of clothing being worn, and the member of staff conducting the search may not require the pupil to remove any clothing other than outer clothing (turning out of pockets or removal of outer

clothing including coats, jumpers, hats, shoes, boots, gloves and scarves). **An intimate search (i.e. consisting of inner clothing) may only be conducted by a police officer.** If a member of staff has good cause to suspect that a prohibited item is concealed within a pupil's inner clothing then the pupil should be told that the police will be called, who are allowed to conduct a personal search if they believe that a crime has been committed.

### **3.4 Searches of a Pupil's Personal and School Property**

There may be circumstances in which staff wish to search a pupil's personal property, such as a bag, locked box, desk, locker or room. Consent should usually be sought (see below for exceptions). If a pupil does not consent to a search, then it is possible to conduct a search without consent but only for the 'prohibited items' listed above. If the pupil refuses consent, staff should notify parents to ask them to persuade their child to give consent, although schools are not required to inform parents before a search takes place or to seek their consent to search their child.

If the pupil is away, then staff must await their return to obtain consent. Any such search must be witnessed by a second adult and the pupil themselves. At least one member of staff should be the same gender as the pupil. Proper records should be kept. Searches of School property should not be carried out in the absence of a pupil, unless the circumstances are such (for instance the suspected presence of drugs or weapons) as to make such a search warranted. In such cases, authorisation to carry out the search should be obtained from the Second Master. Forcible entry into locked property is only justified in extreme circumstances and would also need the authorisation of the Second Master.

**Where possible, the Second Master, Assistant Head (Pastoral) or DSL will be present when a search is carried out.**

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## **4 SCHOOL TRIPS**

School Rules state that School rules "also apply to any and all activities in which a pupil represents the School". There may, therefore, be occasion to carry out a search on a School trip. If this occasion arises, the adult in charge of the trip should make an effort to contact either the Headmaster, Second Master, Assistant Head (Pastoral) or DSL to obtain authorisation. If this proves impossible and the circumstances are such as to make a search necessary, the adult in charge is empowered to carry out such a search, following all the above procedures. A second adult should act as a witness. Full notes must be kept, and an incident report submitted in due course.

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## **5 RECORDING SEARCHES**

Any search by a member of staff for a prohibited item listed in section 2 and all searches conducted by police officers will be recorded on CPOMS, including whether or not an item is found. This will allow the DSL or a deputy to identify possible risks and initiate a safeguarding response if required.

Each search record will contain:

- the date, time and location of the search;
- which pupil was searched;
- who conducted the search and any other adults or pupils present;
- what was being searched for;
- the reason for searching;
- what items, if any, were found; and
- what follow-up action was taken as a consequence of the search.

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## 6 CONFISCATIONS

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All authorised staff carrying out a search can confiscate any item that they have reasonable grounds for suspecting:

- poses a risk to staff or pupils;
- is prohibited, or identified in the school rules for which a search can be made; or
- is evidence in relation to an offence.

School staff may also confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so.

School staff will have a defence to any claim made against them for loss or damage to confiscated items as long as the confiscation was on School premises or elsewhere where the pupil was under School control, provided they acted lawfully and where the confiscation was "reasonable". "Reasonableness" is defined as any clear breach of School rules or where there is a clear concern about pupils' or others' safety. The confiscation must also be proportionate to the offence.

Any member of staff who confiscates alcohol, tobacco or cigarette papers or fireworks should inform the Second Master. The School may retain the item or dispose of it. These items should NOT be returned to the pupil.

Any member of staff who confiscates an item or substance which may be illegal or stolen, or which contravene School rules (this might include weapons, suspected illegal drugs, new psychoactive substances, previously called 'legal highs', vape pens, or cigarettes) should pass them on to the Second Master. In certain situations, these items may be passed onto the police for further investigation. Confiscation may be accompanied by other disciplinary action to be determined by the staff member, Housemaster/mistress, Assistant Head (Pastoral), Second Master, or Headmaster, depending on the item(s) confiscated.

### 6.1 Electronic Devices

The School's Online Safety Policy contains a copy of the Mobile Phone Use Policy clearly setting out the School's rules for mobile phone use. Any pupil who is in clear breach of these rules, by using it in a lesson for example, or takes a photo of someone without their permission, stands to have the phone confiscated.

Similarly, it would also be reasonable to confiscate a phone or other electronic device where a pupil was using it whilst crossing a road and is clearly oblivious to the danger it presents to themselves.

A member of staff who confiscates a pupil's phone or other item during a School activity or lesson could:

- Return the item to the pupil at the end of the activity and inform their Housemaster/mistress with a written explanation of the reason for confiscation. This would be appropriate if the use of the mobile phone was distracting, inadvertently dangerous or against the School rules.
- Return the item directly to the Housemaster/mistress with a written explanation. This would be appropriate if the use of the mobile phone in lessons or around School was by pupils in the lower three years.
- Return to the Second Master with a written explanation. This would be appropriate in cases where, for example, a pupil had repeatedly ignored requests to cease using the device, or if there was concern that the device had been used to cyberbully another pupil, or if there was concern surrounding Youth Produced Sexual Imagery or other inappropriate content.

As with all prohibited items, staff should first consider the appropriate safeguarding response if they find images, data or files on an electronic device that they reasonably suspect are likely to put a person at risk.

If the member of staff conducting the search suspects they may find an indecent image of a child (known as nude or semi-nude images, or YPSI), the member of staff should never intentionally view the image, and must never copy, print, share, store or save such images. When an incident might involve an indecent image of a child and/or video, the member of staff should confiscate the device, avoid looking at the device and refer the incident to the DSL or a deputy as soon as possible<sup>2</sup>.

Following an examination of an electronic device, if the data or files are not suspected to be evidence in relation to an offence, the Second Master may delete the data or files if the continued existence of the data or file is likely to continue to cause harm to any person, disrupt teaching or break school rules, and the pupil and/or the parent refuses to delete the data or files themselves.

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## **6 COMPLAINTS**

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Any complaints about how a search or confiscation has been conducted will be dealt with under the School's Complaints Procedure.

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<sup>2</sup> Staff should consult the School's Safeguarding Policy and Procedures for further guidance – Section 5.7 details how staff should respond to an incident involving YPSI.