



## **Policy on Searching and Confiscation of Banned Items**

*If anyone is found with something for which no permission has been given by the superior, this fault must be punished .....  
(R.St.B. Chapter 55)*

### **Scope**

This policy has been authorised by the Governors and is available to parents and pupils on request. The policy relates to the power of authorised staff to search pupils and the retention and disposal of items that have been confiscated in accordance with the School Rules, the School's 'Behaviour Policy' and the 'Anti-Bullying Policy'. This policy applies whenever pupils are in the care of the school, including on school trips or in training settings.

All schools have a general power to impose reasonable and proportionate disciplinary measures (Education and Inspections Act 2006). This enables a member of staff to confiscate, retain or dispose of a pupil's property as a disciplinary penalty where it is reasonable to do so. This policy also has regard to guidance published by the Department for Education (DfE), *Searching, screening and confiscation* (January 2018).

This policy can be made available in large print or other accessible format if required.

### **Aims**

The central aim of this policy is to enable the School to carry out its duties to safeguard and promote the welfare of children by ensuring that dangerous, illegal or disruptive items are removed from pupils and disposed of safely and lawfully.

This policy also aims to ensure that the pupils and parents understand the circumstances in which searches will take place, what will happen to items confiscated by staff and to discourage pupils from bringing such items into school or on school trips.

### **Prohibited items**

At Downside School the following are "prohibited items" under Section 550ZA(3) of the Education Act 1996 and Regulation 3 of the Schools (Specification and Disposal of Articles) Regulations 2012:

- knives or weapons, alcohol, illegal drugs and stolen items
- tobacco and cigarette papers, fireworks and pornographic images
- any article that a member of staff reasonably suspects has been, or is likely to be used:
  - (a) to commit an offence or
  - (b) to cause personal injury to, or damage to the property of, any person (including the pupil)

- any item banned by the School rules

## **Banned Items**

In addition to the Prohibited Items listed above, the following items are banned by the School:

- cigarettes, cigars, e-cigarettes, smoking paraphernalia
- drugs or substances as detailed by the Drugs and Substances Policy
- laser pens
- fake id

## **Confiscation**

Under the School's general power to discipline, a member of staff may confiscate, retain or, after consultation with the Director of Pastoral Care, dispose of a pupil's property as a disciplinary penalty where it is reasonable to do so.

Confiscation of an item may take place following a lawful search, as set out above, or however the item is found if the member of staff considers it to be harmful or detrimental to school discipline.

## **Schools' obligations under the European Convention on Human Rights**

### **(ECHR)**

- Under article 8 of the European Convention on Human Rights pupils have a right to respect for their private life. In the context of these particular powers, 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 must be justified and proportionate.

## **2**

### **2.1 Searching with consent**

2.2 Before any search is undertaken the pupil will usually be asked to consent verbally. In seeking consent, the age and maturity of the pupil will be taken into account together with any special needs the pupil may have.

2.3 If a member of staff suspects that a pupil has an item that is banned by the School they can instruct the pupil to turn out his or her pockets or bag. If the pupil refuses, this refusal will be deemed a breach of School discipline and disciplinary action may be taken in accordance with the School's Pupil Behaviour Policy.

2.4 The School will also search for any items that are deemed by staff likely to cause harm or disruption. Pupils must not have such items in their possession on school premises or at any time when they are in the lawful charge and control of the school (for example on a school trip).

2.5 • The powers to search in the Education Act 1996 are compatible with Article 8.

## 2.6 Searching for prohibited items

2.7 Where the Head Master or an authorised member of staff have reasonable grounds to suspect that a pupil may have a prohibited item, consent is not required and the search will be carried out.

2.8 The Head Master has authorised all teaching staff to carry out searches and retain or dispose of items in accordance with this policy.

2.9 Searches will be carried out only on school premises or, if elsewhere, where the member of staff has lawful control or charge of the pupil, for example on a school trip or in training settings.

**2.10 When pupils travel outside England on a school trip, they will be required as a condition of participating in the trip to confirm their consent in writing to any search that may be considered necessary by an authorised member of staff during the period in which pupils are outside England.**

2.11 If it is believed that a pupil has a prohibited item, it may be appropriate for a member of staff to carry out:

2.12 a search of outer clothing, i.e. clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear. and / or

2.13 a search of school property (e.g. pupils' lockers or desks) and / or

2.14 a search of personal property (e.g. bag or pencil case).

2.15 Searches will be conducted in such a manner as to minimise embarrassment or distress. Any search of a pupil or their possessions will be carried out in the presence of the pupil and another member of staff. Where a pupil is searched, the searcher and if at all possible the second member of staff present will be the same gender as the pupil.

2.16 Where it is reasonably believed that serious harm may be caused if the search is not carried out immediately and it is not practicable to summon another member of staff, a member of staff may carry out a search of a pupil of the opposite sex and / or in the absence of a witness.

2.17 Where the Head Master, or staff authorised by the Head Master, find anything which they have reasonable grounds for suspecting is a prohibited item, they may seize, retain and dispose of that item in accordance with this policy. Staff can refuse to undertake a search.

2.18

## Searching electronic devices

In accordance with the school's 'ICT Acceptable Use Policy' and 'Mobile Phone Policy' an electronic device such as a mobile phone or a tablet computer may be confiscated in appropriate circumstances in accordance with this policy. If there is good reason to suspect that the device has been, or could be used to commit an offence, cause harm or personal injury, damage to property to disrupt teaching or break school rules, any data or files on the device may be searched and, where appropriate, data or files may be erased before the device is returned to its owner. Any data or files will only be erased, if there is good reason to

suspect that the data or files have been, or could be used to cause harm, to disrupt teaching or break school rules.

If inappropriate material is found on an electronic device, the member of staff may delete the material, retain it as evidence of a breach of school discipline. In the case of a criminal offence, Data or Files will not be deleted and the device will be handed to the Police.

### **Disposal of confiscated items**

**Alcohol:** alcohol which has been confiscated will be disposed of appropriately.

**Controlled drugs:** controlled drugs will usually be delivered to the police as soon as possible. In exceptional circumstances and at the discretion of the Head Master or authorised member of staff, the drugs may be destroyed without the involvement of the police if there is good reason to do so. All relevant circumstances will be taken into account and staff will use professional judgement to determine whether the items can be safely disposed of. They will not be returned to the pupil.

**Other substances:** substances which are not believed to be illegal drugs but which are harmful or detrimental to good order and discipline (for example "legal highs") may be confiscated and destroyed. Where it is not clear whether or not the substance seized is an illegal drug, it will be treated as though it is illegal and disposed of as above.

**Stolen items:** If, in the opinion of the Head Master or authorised member of staff, there is good reason to do so, stolen items may be returned to the owner without the involvement of the police. Stolen items may, however, be delivered to the police when appropriate.

**Tobacco or cigarette papers:** tobacco or cigarette papers will be destroyed.

**Fireworks:** fireworks will not be returned to the pupil. They will be disposed of safely at the discretion of the Head Master or other authorised member of staff.

**Pornographic images:** pornographic images involving children or images that constitute "extreme pornography" under section 63 of the Criminal Justice and Immigration Act 2008 will be handed to the police as soon as practicable. As possession of such images may indicate that the pupil has been abused, the school's Designated Person for Child Protection will also be notified and will decide whether to make a referral to the LADO (Local Authority Designated Officer).

Other pornographic images will also be discussed with the School's Designated Person for Child Protection. The images may then be passed to the LADO (Local Authority Designated Officer) for consideration of any further action. If no action is to be taken by the local authority the images will be erased after a note has been made for disciplinary purposes, confirming the nature of the material.

**Article used to commit an offence or to cause personal injury or damage to property:** such articles may, at the discretion of the Head Master or authorised member of staff taking all the circumstances into account, be delivered to the police, returned to the owner, retained or disposed of.

**Weapons or items which are evidence of an offence:** such items will be passed to the police as soon as possible.

**Electronic devices used to carry out cyberbullying:** if it is found that a mobile phone, laptop or tablet computer or any other electronic device has been used to carry out cyberbullying, the device will be confiscated and any data or files on the device may be searched and may be used as evidence in disciplinary proceedings. The pupil may be prohibited from bringing such a device onto school premises or on school trips. In serious cases, the device may be handed to the police for investigation.

### **Communication with parents**

There is no legal requirement for the School to inform parents before a search for banned or prohibited items takes place or to seek their consent to search their child and it will not generally be practicable to do so. However, we will inform parents of any search that takes place and provide details of any items that have been found. In appropriate cases we will consult parents on how the School should dispose of certain items.

We will keep a record of searches carried out which can be inspected by the parents of the pupil(s) involved subject to any restrictions under the Data Protection Act 1998. The record will include details of the disposal of items confiscated.

Complaints about searching or confiscation will be dealt with through the School's Complaints Procedure. A copy of the procedure is posted on the School website and hard copies are available **from the School office on request.**

**The School will take reasonable care of any** items confiscated from pupils. However, unless negligent or guilty of some other wrongdoing causing injury, loss or damage, the School does not accept responsibility for loss or damage to property.

### **Monitoring**

This policy will be reviewed:

- following any serious incident involving pupils and banned or prohibited items
- following the issue of any new guidance from the Department for Education (DfE) and
- in any event, every three years.

The review will be carried out by the Director of Pastoral Care. A report, if necessary, will be made to the Governors who will authorise any necessary amendments.

Approved by the SLT Review every 3 years. Next Review due: March 2021

