

## Cobham Hall School

### Pupil Searches: Guidance and Protocol

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## Searches: Guidance and Protocol

### 1. Statement

Mill Hill School, Mill Hill International, Belmont, Grimsdell, Cobham Hall, Lyonsdown and Keble Prep (the term the 'School' means any one of these schools, as appropriate) recognise that on some occasions it may be necessary, in the interests of a pupil/pupils and for the safety of pupils and staff, to search a pupil. School staff can search pupils with their consent (verbal is sufficient) for any item, although the school can undertake searches without consent also.

All personal searches (both with and without consent) must be undertaken with care, as they may risk violating a pupil's right to privacy and may lead to allegations of assault.

The Foundation has developed the following guidance for conducting a search/searches of pupil/s and/or their property which complies with the DfE guidance on Screening, Searching and Confiscation (into force 1<sup>st</sup> Sept 2022). This guidance includes an increased focus on safeguarding and communication with parents/carers, as well as guidance on the role of an appropriate adult, after care and strip searches.

The guidance is also in line with other relevant Government guidelines, including the DfE guidance on Behaviour and Discipline in School (January 2016) and the DfE guidance on Use of Reasonable Force (July 2013).

Parents will be informed of any incident where it has been necessary to search their child/children. The DfE Guidance on Searching, Screening and Confiscation is annexed to this Protocol.

This guidance is to be taken in conjunction with the following Foundation policies:

- Safeguarding and Protecting the Welfare of Pupils
- Use of Reasonable Force (Guidance)
- Smoking, Alcohol, Drugs and Other Substance Abuse
- Anti-bullying
- Promoting Positive Behaviour, and associated Expectations and Standards Guidance (Mill Hill School, and Mill Hill International)

#### **Schools' obligations under the Human Rights Act 1998**

Under Part One, Article 8 of the Human Rights Act 1998 pupils have a right to respect for their private life and thereby the right to expect a reasonable level of personal privacy. This right is not absolute, it can be interfered with, but any interference with this right by the school must be justified and proportionate.

The Education Act 1996 and the Education and Inspections Act 2006 enable the school to make rules on pupil behaviour and allow a member of staff to search regardless of whether the pupil is found to have that item. This includes circumstances where the member of staff suspects a pupil of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.

### 2. Searching

Only the Head, or a member of staff authorised by the Head, have a statutory power to search a pupil or their possessions *where they have reasonable grounds to suspect that the pupil may have*

*a prohibited item (listed below) or any other item that the school rules identify as an item which may be searched for.* The staff member must decide in each particular case what constitutes reasonable grounds for suspicion. Searches would normally be carried out after consultation with the Head, Designated Safeguarding Lead (DSL), or a member of the School's SLT/SMT, and in the presence of a witness.

The Head and those staff authorised by the Head have a statutory power to search pupils or their possessions, with or without the pupil's consent, where they suspect the pupil has certain prohibited items.

Prohibited items are:

- knives or weapons
- alcohol
- illegal drugs
- tobacco and cigarette papers
- any article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or to cause personal injury to, or damage to the property of, any person (including the pupil)
- vaping paraphernalia
- fireworks
- pornographic images
- stolen items
- for any other item banned ('banned items') by the School under the respective School's Promoting Positive Behaviour Policy and/or School Rules if it has been identified by the School as an item that may be searched for.

A search may play a vital role in identifying pupils who may benefit from early help or a referral to the local authority children's social care services, for example by finding items that suggest the pupil is involved in anti-social or criminal activity. The Head can search / authorise a staff member to search for specific items, or any/all of the items set out in the list above.

The Head will oversee the school's practice of searching to ensure that a culture of safe, proportionate and appropriate searching is maintained, which safeguards the welfare of all pupils and staff with support from the Designated Safeguarding Lead (DSL) or Deputy DSL. The DSL or DDSL will be informed of any searching incidents where the member of staff had reasonable grounds to suspect a pupil was in possession of a prohibited item. The staff member will also involve the DSL (or DDSL) without delay if they believe that a search has revealed a safeguarding risk.

The Head and staff who are authorised to undertake searches will be given training to ensure that they know how to carry out their responsibilities under this guidance and conduct searches that are both lawful and safe (for both the pupil and themselves), This is especially important when searching a pupil who is not cooperating; however it is vital that all staff understand their rights and the rights of the pupil who is being searched.

## **2.1 Before a Search**

A search can be considered if the member of staff *has reasonable grounds for suspecting that the pupil is in possession of a prohibited item or any item identified in the school rules for which a search can be made, or if the pupil has agreed to be searched.* Before any search takes place, the member of staff conducting the search will 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.

The authorised member of staff should always seek the co-operation of the pupil before conducting a search. If the pupil is not willing to co-operate with the search, the member of staff should consider why this is. Reasons might include that they:

- are in possession of a prohibited item;
- do not understand the instruction;
- are unaware of what a search may involve; or
- have had a previous distressing experience of being searched.

If a pupil continues to refuse to co-operate, the member of staff may sanction the pupil in line with the school's behaviour policy, ensuring that they are responding to misbehaviour consistently and fairly.

If the pupil still refuses to co-operate, the member of staff should assess whether it is appropriate to use reasonable force to conduct the search. A member of staff can use such force as is reasonable to search for any prohibited item, but not to search for items which are identified only in the school rules. The decision to use reasonable force should be made on a case-by-case basis. The member of staff should consider whether conducting the search will prevent the pupil harming themselves or others, damaging property or from causing disorder.

Points the school will consider:

- *An appropriate location must be found*, ideally away from other pupils. The search must only be conducted on school premises, or where the member of staff has lawful control over the pupil, e.g., on a school trip.
- The member of staff conducting the search must (limited exception below) be of *the same sex as the pupil being searched*. There must be *another member of staff present as a witness to the search*.
- A member of staff can however search a pupil of the opposite sex and/or without a witness present only:
  - if the member of staff carrying out the search reasonably believes there is risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency; and
  - in the time available, it is not reasonably practicable for the search to be carried out by a member of staff who is same sex as the pupil or it is not reasonably practicable for the search to be carried out in the presence of another member of staff.
- When a member of staff conducts a search without a witness they should immediately report this to the Head and/or DSL, and ensure a record of the search is kept.
- A pupil may, in certain circumstances, request that a search be conducted by a staff member of the opposite sex to their own biological sex, for example if the pupil is transgender.

## **2.2 The extent of the search**

A member of staff may search a pupil's outer clothing, pockets, possessions, desks or lockers. The person conducting the search cannot require the pupil to remove any clothing other 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. Staff members should be sensitive to whether such outer clothing is worn for religious reasons when conducting a search.

A member of staff is able to search lockers and desks or other personal spaces at the school for any item provided the pupil agrees. Schools can make it a condition of having the locker or space that

the pupil agrees to have these searched. If the pupil withdraws their agreement to search, a search may be conducted both for the prohibited items and any items identified in the school rules for which a search can be made.

A pupil's possessions can only be searched in the presence of the pupil and another member of staff, except where there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.

### **2.3 Strip Searching**

A strip search is a search involving the removal of more than outer clothing. 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](#).

While the decision to undertake the strip search itself and its conduct are police matters, school staff retain a duty of care to the pupil(s) involved and will advocate for pupil wellbeing at all times.

Before calling police into school, staff will assess and balance the risk of a potential strip search on the pupil's mental and physical wellbeing and the risk of not recovering the suspected item. Staff will consider whether introducing the potential for a strip search through police involvement is absolutely necessary, and will always ensure that other appropriate, less invasive approaches have been exhausted.

Once the police are on school premises, the decision on whether to conduct a strip search lies solely with them, and the role of the school is to advocate for the safety and wellbeing of the pupil(s) involved.

Unless there is an immediate risk of harm and where reasonably possible, staff should inform a parent of the pupil suspected of concealing an item in advance of the search, even if the parent is not acting as the appropriate adult. Parents should always be informed by a staff member once a strip search has taken place. Schools will keep records of strip searches that have been conducted on school premises and monitor them for any trends that emerge.

#### **During the strip search**

Except in cases of urgency where there is risk of serious harm to the pupil or others, whenever a strip search involves exposure of intimate body parts there must be at least two people present other than the pupil, one of which must be the appropriate adult. If the pupil's parent would like to be the appropriate adult, the school should facilitate this where possible. Police officers carrying out the search must be of the same sex as the pupil being searched. An appropriate adult not of the same sex as the pupil being searched may be present if specifically requested by the pupil. Otherwise, no-one of a different sex to the pupil being searched is permitted to be present, and the search must not be carried out in a location where the pupil could be seen by anyone else.

Except in urgent cases as above, a search of a pupil may take place without an appropriate adult only if the pupil explicitly states in the presence of an appropriate adult that they do not want an appropriate adult to be present during the search and the appropriate adult agrees. A record should be made of the pupil's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances.

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. [PACE Code C](#) states that a strip search may take place only if it is considered necessary to remove an item related to a criminal offence, and the officer reasonably considers the pupil might

The role of the appropriate adult is to safeguard the rights, entitlements and welfare of children and vulnerable adults in police custody. This adult must not be a police officer or otherwise associated with the police. Examples of an appropriate adult include, but are not limited to, a parent, relative, social worker, teacher or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation. Note that an appropriate adult is not required when a pupil is eighteen or above.

### **After-care following a strip search**

Pupils will be given appropriate support, irrespective of whether the suspected item is found. If an item is found, this may be a police matter, but should always be accompanied by a safeguarding process handled by the school which gives attention to the pupil's wellbeing and involves relevant staff, such as the designated safeguarding lead (or deputy).

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. In both cases, pupils should feel that they have an opportunity to express their views regarding the strip search and the events surrounding it. School staff should give particular consideration to any pupils who have been strip searched more than once and/or groups of pupils who are more likely to be subjected to strip searching with unusual frequency and consider preventative approaches.

## **2.4 After any search**

Whether or not any items have been found during a search, the school will always consider whether the reasons for the search, the search itself, or the outcome of the search give cause to suspect that the pupil is suffering, or is likely to suffer harm, and/or whether any specific support is needed. Where this may be the case, staff will follow the procedures set out in the school Safeguarding and Protecting the Welfare of Pupils Policy and speak to the DSL.

If a pupil is found to be in possession of a prohibited item, then the staff member will alert the DSL (or DDSL) and the pupil will be sanctioned in line with the school's Behaviour Policy (Expectations and Standards).

## **2.5 Recording searches**

Any search by a member of staff for a prohibited item and all searches conducted by police officers will be recorded in My Concern, the school's safeguarding reporting system, including whether or not an item has been found. This will allow the DSL (or DDSL) to identify possible risks and initiate a safeguarding response if required.

## **2.6 Informing parents**

Schools are not required to inform parents before a search takes place or to seek their consent to search their child. However, parents/carers will always be informed as soon as is practicable of any search for a prohibited item that has taken place, regardless of the outcome of the search. A

member of staff should inform the parents of what, if anything, has been confiscated and the resulting action the school has taken, including any sanctions applied.

### **3 Confiscation**

The Education and Searches Act 2006 gives schools the power to discipline pupils which enables a member of staff to confiscate, keep or dispose of a pupil's property as a disciplinary measure where it is reasonable to do so. The law protects members of staff from liability for any loss of or damage to any confiscated item, provided that they have acted lawfully.

An authorised staff member 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.

#### **3.1 Prohibited or illegal items**

- Controlled drugs must be delivered to the police as soon as possible unless there is a good reason not to do so.
- Other substances which are not believed to be controlled should also be delivered to the police, or disposed of as above, if the member of staff believes they could be harmful.
- Where a person conducting a search finds alcohol, tobacco, cigarette papers or fireworks, they may retain or dispose of them as they think appropriate but should not return them to the pupil.
- If a member of staff finds a pornographic image, they may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence (i.e. it is extreme or an indecent image of a child) in which case it must be delivered to the police as soon as reasonably practicable.
- Where a member of staff finds stolen items, these must be delivered to the police as soon as reasonably practicable. However, if there is good reason to do so, the member of staff may also return the item to the owner, or retain or dispose of it if returning them to their owner is not practicable.
- Any weapons or items which are evidence of a suspected offence must be passed to the police as soon as possible.
- Items that have been (or are likely to be) used to commit an offence or to cause personal injury or damage to property should be delivered to the police as soon as reasonably practicable, returned to the owner, retained or disposed of.

### **4. Guidance on Dealing with Electronic Devices**

Where staff find an electronic device which is prohibited by the School Rules or that they reasonably suspect has been, or is likely to be, used to commit an offence or cause personal injury or damage to property, they may examine any data or files on the device where there is a good reason to do so and provided that they have previously notified a member of the SLT. They do not need parental consent to do so.

Electronic devices, including mobile phones, can contain files or data which relate to an offence, or which may cause harm to another person. This includes, but is not limited to, indecent images of

children, pornography, abusive messages, images or videos, or evidence relating to suspected criminal behaviour.

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files, the member of staff must have regard to the below:

- In determining whether there is a 'good reason' to examine the data or files, the member of staff should reasonably suspect that the data or file on the device has been, or could be used, to cause harm, undermine the safe environment of the school and disrupt teaching, or be used to commit an offence.
- In determining whether there is a 'good reason' to erase any data or files from the device, the member of staff should consider whether the material found may constitute evidence relating to a suspected offence. In those instances, the data or files should not be deleted, and the device must be handed to the police as soon as it is reasonably practicable. If the data or files are not suspected to be evidence in relation to an offence, a member of staff 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 and the pupil and/or the parent refuses to delete the data or files themselves.

If the member of staff conducting the search suspects they may find an indecent image of a child (sometimes known as nude or semi-nude images), 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 DDSL) as the most appropriate person to advise on the school's response.

If the member of staff has reasonable grounds to suspect that the electronic device contains evidence in relation to an offence, they must give the device to the police as soon as it is reasonably practicable. Material on the device that is suspected to be evidence related to an offence, or that is a pornographic image of a child or an extreme pornographic image, should not be deleted prior to giving the device to the police.

## **5. Dealing with Complaints**

Complaints about searching should be dealt with in accordance with the school's Complaints Policy and Procedures which can be found on the school website.

## **6. Review and Monitoring**

This document shall be reviewed every two years, or before if there are changes in legislation or other circumstances dictate.

Last Review: 23<sup>rd</sup> May 2022

This Review (interim): Mar 2023

Next Review: May 2024

Approved by Resolution of the Pastoral Committee of the Court of Governors, 8<sup>th</sup> March 2023.