

Appendix 2: Arrangements for Searching Pupils and their Possessions

Rishworth School: Promoting Good Behaviour, Discipline and Sanctions Policy

<i>Reviewed by: PSe ASG</i>

<i>Date: Lent 2016</i>

<i>Next Review: Lent 2018</i>

Distribution: same as the Policy to which this is an appendix

1. General Approach

- 1.1 Rishworth School, is committed to safeguarding the welfare of all children and cultivating an environment of mutual respect where students and staff are treated fairly and sensitively. In the unusual event of a pupil, or a pupil's room, locker, bag or other repository for possessions, being searched, the School and its agents will take all reasonable steps to maintain the usual high standard of safeguarding. Professional judgement will be exercised in all cases: if in any doubt, advice should be sought from a senior member of staff, unless the urgency or another overriding aspect of a situation makes such referral impractical.
- 1.2 The fundamental principles that need to be kept in mind are as follows:
 - a) Act with due care, consideration and sensitivity and remain mindful of the need to respect privacy; particular thought should be given to boarders for whom, during term time, the School is their 'home'
 - b) Remember that the need to protect persons/property from injury/damage and from loss is paramount and that this duty of care can in certain circumstances override all other protocols
- 1.3 At all times a balance should be retained between, on the one hand, professional judgement rightly exercised within a particular situation and, on the other, the desirability of following step-by-step written guidelines which, however helpful, stand in isolation of a specific context and cannot embrace every eventuality. Specifically, there may or may not, in the assessment of such risk in a particular case, be good grounds for the member of staff who is dealing with the matter to deviate from guidelines.
- 1.4 Whilst a search may be required for suspected dangerous/illegal items, a search may also be justified for other reasons – for items that are simply not allowed in School, for instance, but which are not necessarily of themselves dangerous (or illegal), or items which are allowed in School but which are not being properly used.

2. Confiscation

- 2.1 The same applies to confiscation: such items found in School or on a pupil's person may be confiscated for a time. An example may be a laptop which a boarder persists in using after 'lights out' or a mobile phone used when it should not be or in an inappropriate way during School hours.

Appendix 2: Arrangements for Searching Pupils and their Possessions

- 2.2 Any item confiscated, should be kept safe and the details of the confiscation (item, date, time, location, owner, reason, etc) logged. An indication should be given at the time of confiscation to the pupil by the member of staff who has confiscated an item of when the item is likely to be returned.
- 2.3 The duration of a confiscation should be reasonable and proportionate and, as in all matters, not unduly (or necessarily at all) punitive. 48 hours might be a reference-point for a confiscation period. Consideration should be given to the possible consequences of keeping the item and the pupil apart.

3. General Principles

- 3.1 School staff can search a pupil for any item if the pupil consents to the search.
- 3.2 The Headmaster and staff authorised by the Headmaster have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that a pupil may have a prohibited item. Prohibited items are:
 - a) knives or weapons
 - b) alcohol
 - c) illegal drugs
 - d) stolen items
 - e) tobacco and cigarette papers
 - f) fireworks
 - g) pornographic images
 - h) any article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or cause personal injury to, or damage to the property of, any person (including the pupil)
 - i) any item banned by the School rules which has been identified in the rules as an item which may be searched for
- 3.3 School staff can seize any prohibited item found as a result of a search. They can also seize any item, however found, which they consider harmful or detrimental to school discipline.
- 3.4 All schools have obligations under the European Convention of Human Rights. 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. However, the right under Article 8 is not absolute; it can be interfered with but any interference with this right by a school or any public authority must be justified and proportionate.

Appendix 2: Arrangements for Searching Pupils and their Possessions

- 3.5 Irrespective of any action taken or not taken by external agencies such as the Police, the School may take its own action, such as rustivating or suspending the pupil, in the first instance, if they refuse permission for the search to take place.
- 3.6 Any subsequent decision related to any or to further disciplinary actions from the School would take into account any co-operation, or lack of it, on the pupil's part and what might reasonably be inferred from that.

4. Searching with Consent

- 4.1 If a pupil is suspected of carrying or possessing within School, an unauthorised item a member of staff should ask the pupil to turn out, for example, his or her pockets, bag, desk or locker. This should be done, where feasible, in the presence of another member of staff. Staff should be vigilant for any attempt by a pupil to dispose of any suspected item during the search
- 4.2 Consent does not need to be formal written consent. It is sufficient for staff to ask a pupil to turn out their pockets or for the pupil to agree verbally to a member of staff looking in a pupil's bag or locker.
- 4.3 In most instances this sort of search will be very low key and dealt with swiftly and amicably.
- 4.4 If the pupil refuses to cooperate, the member of staff should refer the matter to a senior member of staff. If a pupil continues to refuse to co-operate, consideration should be given to whether or not parents can be contacted with a view to persuading the pupil to agree to the search taking place.
- 4.5 Under these circumstances consideration must be given to whether or not the pupil should be subject to disciplinary action in line with School policy.
- 4.6 If the matter is of major concern and the pupil still refuses to agree to the search, then the Police may be contacted or a search without consent considered.
- 4.7 Any search without consent will be conducted by two members of staff. It is a requirement that staff conducting any search should be of the same gender as the pupil being searched (see 5.8).
- 4.8 For 'lost' items of relatively low value, a pupil should be asked to search his or her own belongings to see if the item has been 'misplaced'. If more than one pupil is included, the scope of the search and the number of pupils involved should reflect the nature of the loss and be legitimately targeted. Kit inspections fall into this category. Members of staff (one as witness) might watch the pupil(s) search, but this may not be deemed necessary or appropriate.

Appendix 2: Arrangements for Searching Pupils and their Possessions

- 4.9 Where a boarder's room is to be searched, the boarder should be given the opportunity to conduct the search personally by emptying out drawers, opening the safe etc. Where such a search is required it will be conducted / directed by two members of staff of the same gender as the pupil being searched.
- 4.10 If a boarder refuses to co-operate, and the circumstances are deemed to warrant a search by staff, then a 'without consent' search must be conducted within the guidelines described in this policy. Any suspicious items found should be deposited in a plastic bag and sealed.

5. Searching without Consent

- 5.1 The law states that the Headmaster and staff authorised by the Headmaster have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that a pupil may have a prohibited item.
- 5.2 A search without consent may only occur where there are reasonable grounds to suspect that a pupil is in possession of a prohibited item. Such grounds may include overhearing pupils talking about an item or observing a pupil acting in a way that causes the member of staff to become suspicious. CCTV footage may be viewed in order to form the decision to search to search a pupil.
- 5.3 Prohibited items that may be searched for are: 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 to commit an offence or to cause personal injury to, or damage to property; any item banned by the prevailing School rules.
- 5.4 The power to search without consent may be exercised within the limits described in this policy regardless of whether the pupil is found, after that search to have the suspected item.
- 5.5 Any search will be conducted by two members of staff where one will be a member of the senior management team or, in the case of boarding, a senior member of the boarding staff. It is a requirement that staff conducting any search should be of the same gender as the pupil being searched.
- 5.6 No member of staff will be compelled to conduct a search.
- 5.7 Where a senior member of staff or a senior member of the boarding staff cannot be contacted or circumstances do not allow for a senior member of staff or a senior member of the boarding staff to be summoned any member of staff may, *in extremis*, conduct a search without consent but should do so in the presence of another member of staff. Staff conducting any search should be of the same gender as the pupil being searched.

Appendix 2: Arrangements for Searching Pupils and their Possessions

- 5.8 Within the law a search may **exceptionally** be conducted by a member of staff of the opposite gender to the pupil and / or without a witness but **only** where the member of staff has a reasonable belief that a failure to conduct the search may result in serious harm to the individual involved **and** where it is not reasonably practicable to summon another member of staff. In such circumstances the member of staff needs to bear in mind that a pupil's expectation of privacy increases as they get older.
- 5.9 A search without consent may only occur on School premises or on a trip within England where a member of staff has lawful charge of the pupil subject to the search.

6. During the Search

- 6.1. The member of staff conducting the search may not require the pupil to remove any clothing other than outer clothing which is defined as 'clothes that are not worn against the skin or immediately over a garment that is being worn as underwear'.
- 6.2. The power to search without consent enables a personal search involving the removal of outer clothing and searching of pockets within the limits described within this policy. They do not permit any further intimate search. If a member of staff believes that such a search is required it will have to be conducted by the Police or someone with similar authority to do the same.
- 6.3. A pupil's possessions, defined as 'any goods over which the pupil has or appears to have control' and which includes desks, lockers and bags, 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 practicable to summon another member of staff.
- 6.4. Members of staff can use such force as is reasonable given the circumstances when conducting a search for knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm. Any use of force or restraint will be **in extremis** and in line with School policy on the Use of Physical Restraint which forms Appendix 2 to this policy
- 6.5. Such force cannot be used to search for items banned under the School rules.

7. After the Search: Confiscation and Disposal following a 'with consent' search

- 7.1 Within Rishworth School's general power to discipline, as set out in Section 91 of the Education and Inspections Act 2006, a member of staff may confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where it is reasonable to do so.
- 7.2 Where any item found is thought to be a weapon, the Deputy Headmaster or the most senior member of staff, if the Deputy Headmaster is unavailable, must be

Appendix 2: Arrangements for Searching Pupils and their Possessions

notified and the item passed to the Police. In the meantime the Deputy Headmaster will store the item in a secure location.

- 7.3 A member of staff may use their discretion to confiscate, retain and / or destroy any item found as a result of a 'with consent' search so long as it is reasonable to do so within the circumstances and is not a prohibited item.
- 7.4 Members of staff can also seize any item, however found, which they consider harmful or detrimental to School discipline.
- 7.5 In practice, members of staff should consult a senior member of staff such as the Deputy Headmaster, Head of Section or Senior member of the Boarding staff before retaining or destroying an item.

8. After the Search: Confiscation and Disposal following the discovery of a prohibited item

- 8.1 A member of staff carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited item or is evidence in relation to an offence.
- 8.2 Common sense says that any member of staff who discovers a prohibited item as defined within this policy will as a matter of routine refer the matter immediately to the Headmaster, Deputy Headmaster or a senior member of staff or Head of Section.
- 8.3 Where a member of staff conducting a search finds alcohol, they may retain or dispose of it. The Deputy Headmaster or other senior member of staff if not already involved in the situation, should be informed immediately. The Deputy Headmaster or senior member of staff will dispose of the alcohol as they deem fit but this will not include returning it to the pupil.
- 8.4 Where a member of staff finds controlled drugs they will refer the matter immediately to the Headmaster / Deputy Headmaster or Director of Administration who is also the 'Substance Co-ordinator'. The School will make contact with the Police for both advice and to arrange for their disposal. Staff should take regard the separate '**Drugs and Substance Abuse Policy, Appendix B: Guidance for Staff**'. Any controlled drugs that are discovered during a search will be stored in a locked and secure location up to that point. In every case, a record should be made regarding the suspected nature of the confiscated material, from whom the material was taken, the time and date and any other significant information. In serious cases it is likely that the Police will be involved as a matter of course.¹

¹ Statutory guidance from the Secretary of State indicates that it is possible where there is 'good reason' for a stolen item or controlled drug, not to be presented to the Police. *"In determining what is 'good reason' for not delivering controlled drugs or stolen items to the Police, the member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article."* (Secretary of State, February 2014)

Appendix 2: Arrangements for Searching Pupils and their Possessions

- 8.5 Where a member of staff finds other substances which are not believed to be controlled drugs these should be confiscated as they are likely to be both harmful and detrimental to good order and discipline. This will include, for example, so called 'legal highs'. The Headmaster / Deputy Headmaster or Director of Administration should be informed immediately. Where a member of staff suspects a substance may be controlled they should treat them as such. In every case, a record should be made regarding the nature of the confiscated material, from whom the material was taken, the time and date and any other significant information.
- 8.6 Where a member of staff finds stolen items, these must be delivered to the Police as soon as reasonably practicable but may be returned to the owner (or may be retained or disposed of if returning them to their owner is not practicable) if the Deputy Headmaster thinks that there is a good reason to do so. Clearly where any stolen item is a low value item such as a pencil case, it will not be appropriate to involve the Police. In practice valuable stolen items will be given to the Deputy Headmaster or Headmaster. The School will make contact with the Police where their involvement is warranted and dispose of the items as directed by the Police.
- 8.7 With regard to stolen items, it would not be reasonable or desirable to involve the Police in dealing with low value items such as pencil cases. However, School staff may judge it appropriate to contact the Police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks). In every case, a record should be made regarding the nature of the confiscated material, from whom the material was taken, the time and date and any other significant information.
- 8.8 Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. The Deputy Headmaster or senior member of staff will dispose of the tobacco or cigarette papers as they deem fit but this may not include returning it to the pupil.
- 8.9 Fireworks found as a result of a search should be retained or disposed of but may not be returned to the pupil.
- 8.10 If a member of staff finds a pornographic image, they may dispose of the image unless its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case it must be reported to the Deputy Headmaster and delivered to the Police as soon as reasonably practicable. If the image is electronic and discovered on mobile phone or other electronic device it must not be forwarded via any electronic means or saved on any other device by the member of staff leading the search as this in itself, although well-meaning with regard to preserving evidence, would constitute an offence. The device upon which the image is found should be retained and the matter referred to the appropriate Head of Section or to senior boarding staff who may in turn refer the matter to the Deputy Headmaster. Images found on a mobile phone or

Appendix 2: Arrangements for Searching Pupils and their Possessions

other electronic device can be deleted unless it is necessary to pass them to the Police.

- 8.11 Where an article that has been (or could be) used to commit an offence or to cause personal injury or damage to property is found the matter must be referred to the Deputy Headmaster as soon as practicable. Any such item may also be returned to a parent or retained or disposed of, or delivered to the Police for disposal.
- 8.12 Where a member of staff finds an item which is banned under the School rules they should take into account all relevant circumstances and use their professional judgement to decide whether to return it to its owner.
- 8.13 If a search uncovers weapons or items which are evidence of an offence the matter must be referred to the Deputy Headmaster in the first instance and passed to the Police as soon as possible.

9. Statutory Guidance for dealing with Electronic Devices (DfE February 2014)

- 9.1 Where a member of staff conducting any search finds an electronic device, they may examine any data or files on the device if they think there is a good reason to do so. Following an examination, if the member of staff conducting the search has decided to return the device to the owner, or to retain or dispose of it, they may erase any data or files, if they think there is a good reason to do so.
- 9.2 The member of staff must have regard to the following guidance issued by the Secretary of State when determining what is a “good reason” for examining or erasing the contents of an electronic device:
 - 9.3 In determining a ‘good reason’ to examine or erase the data or files the member of staff must reasonably suspect that the data or file on the device in question has been, or could be, used to cause harm, to disrupt teaching or break the School rules.
 - 9.4 If inappropriate material is found on the device it is up to the member of staff to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of School discipline) or whether the material is serious enough to warrant Police involvement.

10. Informing Parents and dealing with Complaints

- 10.1 The School is not required to inform parents before a search takes place or seek their consent to search their child but may, in certain circumstances, choose to do so.
- 10.2 Where a complaint is raised following any search this will be dealt with through the School’s complaints procedure – see **Concerns and Complaints Policy**.

Appendix 2: Arrangements for Searching Pupils and their Possessions

10.3 The law protects members of staff from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.

9.5 When a search has taken place the following items should be noted and kept on the relevant pupil's file:

- The reason for the search taking place
- The date and time of the search
- The results of the search
- All staff involved
- Other agencies involved
- The outcome (including any disciplinary action taken in respect of the pupil)

References:

1. DfE Guidance, 'Searching, Screening and Confiscation: Advice for Headteachers, School Staff and Governing Bodies', February 2014.

Linked Policies / Documentation:

1. Child Protection and Safeguarding Policy
2. Drugs and Substance Abuse Policy, Appendix B: Guidance for Staff

PSe / ASG