



## The Braybrook Centre

### Searching, Screening and Confiscation (DfE July 2022)

#### Introduction:

Ensuring Centre staff and young people feel safe and secure is vital to establishing calm and supportive environments conducive to learning. Using searching, screening and confiscation powers appropriately is an important way to ensure young people and staff welfare is protected and helps Centre's establish an environment where everyone is safe.

This advice is intended to explain the Centre's screening, searching and confiscation powers so that Heads of Centre and other staff have the confidence to use them if necessary.

The Centre and their staff are an important part of the wider safeguarding system for young people. This system is described in the statutory guidance Working Together to Safeguard Children. Keeping Children Safe in Education makes clear that all Centre staff have a responsibility to provide a safe environment in which young people can learn.

Before screening or conducting a search of a young person, it is vital that the Centre considers their obligations under the European Convention on Human Rights.

Under Article 8, young people have a right to respect for their private life. In the context of these rights and obligations, this means that young people 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 a Centre (or any public body) must be justified and proportionate. The powers to search in the Education Act 1996 are compatible with Article 8. A Centre exercising those powers lawfully should have no difficulty in demonstrating that it has also acted in accordance with Article 8.

#### Searching:

Searching can play a critical role in ensuring that the Centre is a safe environment for all young people and staff. It is a vital measure to safeguard and promote staff and young people's welfare and to maintain high standards of behaviour through which young people can learn and thrive.

Heads of Centre and staff they authorise have a statutory power to search a young person or their possessions where they have reasonable grounds to suspect that the young person may have a prohibited item or any other item that the Centre expectations identify as an item for which may be searched. The list of prohibited items is:

- knives and weapons;
- alcohol;
- illegal drugs;
- stolen items;

Any article that the member of staff reasonably suspects has been, or is likely to be used:

- to commit an offence,
- to cause personal injury to, or damage to property of; any person (including the young person).

An article specified in regulations:

- tobacco and cigarette papers;
- fireworks;
- pornographic images.

Under common law, Centre staff have the power to search a young person for any item if the young person agrees. The member of staff should ensure the young person understands the reason for the search and how it will be conducted so that their agreement is informed.

Being in possession of a prohibited item, especially knives, weapons, illegal drugs or stolen items, may mean that the young person is involved, or at risk of being involved, in anti-social or criminal behaviour including gang involvement and in some cases may be involved in child criminal exploitation.

A search may play a vital role in identifying young people who may benefit from early help or a referral to the Local Authority Children's Social Care Services.

The Centre's behaviour policy should outline the banned items for which a search can be made. This must include the list of prohibited items and may include other items which a Head of Centre has decided are detrimental to maintaining high standards of behaviour and a safe environment.

The Centre's behaviour policy should be communicated to all members of the Centre community to ensure expectations are transparent to all young people, Parents/Carers and staff, and provide reassurance that any searching of a young person will be implemented consistently, proportionately and fairly, in line with the Centre's policy.

When exercising their powers, the Centre must consider the age and needs of young people being searched or screened. This includes the individual needs or learning difficulties of young people with Special Educational Needs (SEN) and making reasonable adjustments that may be required where a young person has a disability.

Centre staff may wish to consider using CCTV footage to decide whether to conduct a search for an item.

**The role of the Head of Centre, the Designated Safeguarding Lead and authorised members of staff:**

Only the Head of Centre, or a member of staff authorised by the Head of Centre can carry out a search.

The Head of Centre can authorise individual members of staff to search for specific items, or all items set out in the Centre's behaviour policy. For example, a member of staff may be authorised to search for stolen property and alcohol but not for weapons or drugs.

The Head of Centre can require a member of the security staff to undertake a search.

If a security guard, who is not a member of the Centre staff, searches a young person, this guidance should be followed and the person witnessing the search should be a permanent member of staff.

Head of Centre may not require any other member of staff to undertake a search if they refuse.

The Head of Centre should oversee the Centre's practice of searching to ensure that a culture of safe, proportionate and appropriate searching is maintained, which safeguards the welfare of all young people and staff with support from the Designated Safeguarding Lead (or Deputy).

The Head of Centre should ensure that a sufficient number of staff are appropriately trained in how to lawfully and safely search a young person who is not co-operating, so that these trained staff can support and advise other members of staff if this situation arises. However, it is vital that all staff understand their rights and the rights of the young person who is being searched.

The Designated Safeguarding Lead (or Deputy) should be informed of any searching incidents where the member of staff had reasonable grounds to suspect a young person was in possession of a prohibited item. The staff member should also involve the Designated Safeguarding Lead (or Deputy) without delay if they believe that a search has revealed a safeguarding risk. If the Designated Safeguarding Lead (or Deputy) finds evidence that any young person is at risk of harm, they should make a referral to Children's Social Care Services immediately (as set out in part 1 of Keeping Children Safe in Education). The Designated Safeguarding Lead (or Deputy) should then consider the circumstances of the young person who has been searched to assess the incident against potential wider safeguarding concerns.

### **Before Searching:**

A search can be considered if the member of staff has reasonable grounds for suspecting that the young person is in possession of a prohibited item or any item identified in the Centre expectation for which a search can be made, or if the young person has agreed.

The authorised member of staff should make an assessment of how urgent the need for a search is and should consider the risk to other young people and staff.

Before any search takes place, the member of staff conducting the search should explain to the young person 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 young person before conducting a search. If the young person 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;
- ✓ have had a previous distressing experience of being searched.

If a young person continues to refuse to co-operate, the member of staff may place consequences for the young person in line with the Centre's behaviour policy, ensuring that they are responding to misbehaviour consistently and fairly.

If the member of staff still considers a search to be necessary, but is not required urgently, they should seek the advice of the Head of Centre, Designated Safeguarding Lead (or Deputy) or member of staff who may have more information about the young person.

During this time, the young person should be supervised and kept away from other young people.

If the young person 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 items. 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 young person harming themselves or others, damaging property or from causing disorder.

### **During a search:**

**Where:** An appropriate location for the search should be found. Where possible, this should be away from other young people. The search must only take place on the Centre premises or where the member of staff has lawful control or charge of the young person, for example on a Centre trip.

**Who:** The law states the member of staff conducting the search must be of the same sex as the young person being searched. There must be another member of staff present as a witness to the search. There is a limited exception to this rule. This is that a member of staff can search a young person 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;
- ✓ 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 young person 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 another member of staff and ensure a record of the search is kept.

### **The extent of the search:**

A member of staff may search a young person's outer clothing, pockets, possessions, desks or lockers.

The person conducting the search must not require the young person 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.

'Possessions' means any goods over which the young person has or appears to have control - this includes desks, lockers and bags.

A member of staff is able to search lockers and desks or other personal spaces at the Centre for any item provided the young person agrees.

The Centre can make it a condition of having the locker or space that the young person agrees to have these searched.

If the young person withdraws their agreement to search, a search may be conducted both for the prohibited items and any items identified in the Centre expectations for which a search can be made.

A young person's possessions can only be searched in the presence of the young person 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.

The member of staff may use a metal detector to assist with the search.

The member of staff's power to search outlined above does not enable them to conduct a strip search.

### **Strip Searching:**

A strip search is a search involving the removal of more than outer clothing.

Strip searches on Centre 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, Centre staff retain a duty of care to the young person(s) involved and should advocate for a young person's wellbeing at all times.

Before calling police into Centre, staff should assess and balance the risk of a potential strip search on the young person's mental and physical wellbeing and the risk of not recovering the suspected item.

Staff should consider whether introducing the potential for a strip search through police involvement is absolutely necessary and should always ensure that other appropriate, less invasive approaches have been exhausted.

Staff members should be sensitive to whether such outer clothing is worn for religious reasons when conducting a search.

Searches may entail different levels of invasiveness and exposure.

A search under PACE Code A that involves removing more than outer clothing but does not expose intimate parts of the body would not require the presence of an appropriate adult. However, from a young person wellbeing perspective, Centre's may wish to involve an appropriate adult as a matter of course during all searches conducted by police.

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

Unless there is an immediate risk of harm and where reasonably possible, staff should inform a Parent/Carer of the young person suspected of concealing an item in advance of the search, even if the Parent/Carer is not acting as the appropriate adult.

Parents/Carers should always be informed by a staff member once a strip search has taken place.

Centre should keep records of strip searches that have been conducted on Centre premises and monitor them for any trends that emerge.

The process the police must follow during a strip search:

- ✓ Except in cases of urgency where there is risk of serious harm to the young person or others, whenever a strip search involves exposure of intimate body parts there must be at least two people present other than the young person, one of which must be the appropriate adult.
- ✓ If the young person's Parent/Carer would like to be the appropriate adult, the Centre should facilitate this where possible.
- ✓ Police officers carrying out the search must be of the same sex as the young person being searched.
- ✓ An appropriate adult not of the same sex as the young person being searched may be present if specifically requested by the young person. Otherwise, no-one of a different sex to the young person being searched is permitted to be present, and the search must not be carried out in a location where the young person could be seen by anyone else.
- ✓ Except in urgent cases as above, a search of a young person may take place without an appropriate adult only if the young person 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 young person'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 young person involved, as well as for staff and other young people affected, especially if undertaken on Centre 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 young person might have concealed such an item.

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 young person is eighteen or above.

Strip searches should not be routinely carried out if there is no reason to consider that such items are concealed.

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

Young people should 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 Centre which gives attention to the young person'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 young person 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, young people should feel that they have an opportunity to express their views regarding the strip search and the events surrounding it.

Centre staff should give particular consideration to any young people who have been strip searched more than once and/or groups of young people who are more likely to be subjected to strip searching with unusual frequency and consider preventative approaches.

#### **After a search:**

Whether or not any items have been found as a result of any search, the Centre should consider whether the reasons for the search, the search itself, or the outcome of the search give cause to suspect that the young person is suffering, or is likely to suffer harm, and/or whether any specific support is needed. Where this may be the case, Centre staff should follow the Centre's child protection policy and speak to the Designated Safeguarding Lead (or Deputy) as set out in Part 1 of Keeping Children Safe in Education. They will consider if pastoral support, an early help intervention or a referral to Children's Social Care is appropriate.

If any prohibited items are found during the search, the member of staff should follow the guidance on confiscation.

If a young person is found to be in possession of a prohibited item then the staff member should alert the Designated Safeguarding Lead (or Deputy) and the young person should be sanctioned in line with the Centre's behaviour policy to ensure consistency of approach.

Further information on safeguarding can be found in Keeping Children Safe in Education and Working Together to Safeguard Children.

## **Recording searches:**

Any search by a member of staff for a prohibited item and all searches conducted by police officers should be recorded in the Centre's safeguarding reporting system (CPOMS), including whether or not an item is found. This will allow the Designated Safeguarding Lead (or Deputy) to identify possible risks and initiate a safeguarding response if required.

Headteachers may also decide that all searches for items banned by the Centre expectations should be recorded.

Staff members should follow the Centre policy in these cases.

The Centre is encouraged to include in the record of each search:

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

The Centre who conducts a high number of searches should consider whether the searches fall disproportionately on any particular groups of young people by analysing the recorded data. In such cases where searching is falling disproportionately on any group or groups, they should consider whether any actions should be taken to prevent this.

## **Informing Parents/Carers:**

The Centre should reinforce the whole-Centre approach by building and maintaining positive relationships with Parents/Carers.

Parents/Carers should always be informed of any search for a prohibited item that has taken place, and the outcome of the search as soon as is practicable.

A member of staff should inform the Parents/Carers of what, if anything, has been confiscated and the resulting action the Centre has taken, including any sanctions applied.

The Centre should consider that in some circumstances it might also be necessary to inform Parents/Carers of a search for an item banned by the Centre policy.

Any complaints about searching, screening or confiscation should be dealt with through the normal Centre complaints procedure.

## **Screening:**

Screening can help provide reassurance to young people, staff and Parents/Carers that the Centre is taking measures to create a calm, safe and supportive environment.

The Centre's statutory power to make expectations on young person behaviour and their duties as employers in relation to the safety of staff, young people and visitors enables them to impose a requirement that young people undergo screening.

Screening is the use of a walk-through or hand-held metal detector (arch or wand) to scan all young people for weapons before they enter the Centre premises.

Before considering the installation and use of any technology for screening, the Head of Centre is encouraged to consult with the local police who may be able to provide advice about whether installation of these devices is appropriate.

If a Head of Centre decides to introduce a screening arrangement, they should inform young people and Parents/Carers in advance to explain what the screening will involve and why it will be introduced.

Where a young person has a disability, the Centre should make any reasonable adjustments to the screening process that may be required.

If a young person refuses to be screened, the member of staff should consider why the young person is not co-operating and make an assessment of whether it is necessary to carry out a search.

### **Confiscation Items found as a result of a search**

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 young people;
- is prohibited or identified in the Centre Expectations for which a search can be made.
- is evidence in relation to an offence.

### **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.

In these cases, the member of staff must safely dispose of the drugs. In determining whether there is a good reason to dispose of controlled drugs. The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the controlled drug. When staff are unsure as to the legal status of a substance and have reason to believe it may be a controlled drug, they should treat it as such. If the member of staff is in doubt about the safe disposal of controlled drugs, they should deliver them to the police.

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 young person.

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 Legally, be delivered to the police as soon as reasonably practicable.

The Centre does not have to give the name of the young person from whom drugs have been taken to the police. The Centre should consider this on a case-by-case basis.

Members of staff should never intentionally view any indecent image of a child (also sometimes known as nude or semi-nude images). Staff must never copy, print, share, store or save such images.



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.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the seized article. In taking into account the relevant circumstances, the member of staff should consider the following:

- the value of the item - it would not be reasonable or desirable to involve the police in dealing with low value items such as pencil cases, though Centre staff may judge it appropriate to contact the police if the items are valuable;
- whether the item is banned by the Centre;
- whether retaining or returning the item to the owner may place any person at risk of harm;
- whether the item can be disposed of safely.

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.

The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether the item should be delivered to the police, retained, returned to the owner or disposed of.

In taking into account all relevant circumstances the member of staff should consider:

- whether it is safe to dispose of the item;
- whether and when it is safe to return the item.

If a member staff suspects a confiscated item has been used to commit an offence or is evidence in relation to an offence, the item should be delivered to the police.

Members of staff should use their judgement to decide to return, retain or dispose of any other items banned under the Centre expectations. The member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of the seized item. In taking into account all relevant circumstances, the member of staff should consider:

- the value of the item;
- whether it is appropriate to return the item to the young person or parent;
- whether the item is likely to continue to disrupt learning or the calm, safe and supportive environment of the Centre.

Members of staff should follow any additional guidance and procedures on the retention and disposal of items put in place by the Centre.

### **Electronic Devices:**

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.

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.

Staff may examine any data or files on an electronic device they have confiscated as a result of a search, if there is good reason to do so.

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 Designated Safeguarding Lead (or Deputy) as the most appropriate person to advise on the Centre's response. Handling such reports or concerns can be especially complicated and Centres should follow the principles as set out in Keeping Children Safe in Education. The UK Council for Internet Safety also provides the following guidance to support Centre staff and Designated Safeguarding Leads.

### **Sharing Nudes and Semi-Nudes:**

Advice for education settings working with children and young people. If a member of staff finds any image, data or file that they suspect might constitute a specified offence, then they must be delivered to the police as soon as is reasonably practicable.

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so. 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 Centre 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 young person and/or the Parent/Carer refuses to delete the data or files themselves.

### **Confiscation as a Disciplinary Penalty:**

The Centre's general power to discipline enables a member of staff to confiscate, retain or dispose of a young person's property as a disciplinary penalty, where reasonable to do so. 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.