



# Search and Confiscation Policy

This policy has been adopted by all schools within The Golden Thread Alliance.

Date Approved	May 2022
Review Date	May 2024 (or following any updates to National/Local Guidance)

## Overview of Policy

This policy is based on the DfE Searching, screening and confiscation Advice for headteachers, school staff and governing bodies January 2018

<https://www.gov.uk/government/publications/searching-screening-and-confiscation>

which explains schools' powers for screening and searching students. It explains the use of the power to search pupils without consent and also the powers that schools have to seize and then confiscate items found during a search.

This policy adheres to the terms of article 8 of the European Convention on Human Rights, Section 91 of the Education and Inspections Act 2006 and the powers to search in the Education Act 1996 (which are compatible with Article 8)

## 2. Searching for Prohibited Items

Golden Thread Alliance staff can search a student for any item if the student agrees. Headteachers and staff authorised by them have a statutory power to search students or their possessions, **without consent**, where they have reasonable grounds for suspecting that the student may have a prohibited item. Prohibited items are:

- knives or weapons
- alcohol
- illegal drugs
- stolen items
- tobacco and cigarette papers
- fireworks
- indecent 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 the property of, any person (including the student).

## 3. Confiscation

Golden Thread Alliance 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.

#### 4. Searching with consent

Schools' common law powers to search:

- Golden Thread Alliance staff can search students with their consent for any item. Normally such a search will involve students being asked to empty their pockets, bags and having their personal possessions such as pencil cases checked. It may also involve students being asked to remove outer clothing such as jackets, blazers or jumpers. Where possible a search with consent should be conducted in the presence of a witness(es).
- Golden Thread Alliance staff is not required to have formal written consent from the student for this sort of search – it is enough for the teacher to ask the student to turn out his or her pockets or for the teacher to look in the student's bag or locker and for the student to agree.
- If a member of staff suspects a student has a banned item in his/her possession, they can instruct the student to turn out his or her pockets or bag and if the student refuses, the teacher can apply an appropriate sanction.
- Where a student refuses to agree to a search, a member of staff should call for assistance from a member of the Senior Leadership.

#### 5. Searching without consent

If a member of staff has reasonable grounds for suspecting that a student is in possession of a **prohibited item** then member of Senior Leadership (Head of School or Senior Leaders authorised by the Headteacher) may conduct a search without consent. The authorised member of staff must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard students talking about the item or they may notice students behaving in a way that causes them to be suspicious.

**What the law says about what can be searched for without consent:**

- Knives or weapons, alcohol, illegal drugs and stolen items; and
- Tobacco and cigarette papers, fireworks and pornographic images; and
- 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 property; and

- Any item banned by the school rules which has been identified in the rules as an item which may be searched for.
- Searches without consent can be conducted by authorised staff only (Head of School or Senior Leaders authorised by the Headteacher).

- An authorised member of staff conducting a search must be the same sex as the student being searched and there must be a witness present (also a staff member). If at all possible, the witness should be the same sex as the student being searched. There is a limited exception to this rule. A member of staff can carry out a search of a student of the opposite sex and without a witness present, but only where the searcher reasonably believes that 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. In this exceptional circumstance, the member of staff should bear in mind the student's expectation privacy.
- Staff can refuse to undertake a search.
- The police may be contacted where a student is suspected of having a prohibited item in their possession. All Staff within The Golden Thread Alliance are expected to maintain an ethos of professional curiosity and challenge in relation to any investigations by Police or Social Services that may be contrary to The Golden Thread Alliance Search and Confiscate Policy and/or the Protocol for Joint working (Addendum 1). This is to ensure that children are not put at risk or suffer harm while outside professionals exercise their powers of investigation.
- Searching powers allow school staff to search regardless of whether a student is found after the search to have that item. This includes circumstances where staff suspects a student of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.
- School staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item.
- Searches without consent can only be carried out on the school premises or, elsewhere, where the member of staff has lawful control or charge of a student, for example on school trips in England or in training settings.

## **6. During the search**

What the law says about the extent of the search (clothes and possessions):

- The person conducting the search may not require a student to remove any clothing other than outer clothing.
- 'Outer clothing' means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear but 'outer clothing' includes hats; shoes; boots; gloves and scarves.

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- 'Possessions' means any goods over which the student has or appears to have control – this includes lockers, bags and items within bags.

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

- The power to search without consent enables a personal search, involving removal of outer clothing and searching of pockets; but not an intimate search going further than that, which only a person with more extensive powers (e.g. a police officer) can do.

## **8. Use of force**

- 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, indecent images or articles that have been or could be used to commit an offence or cause harm. Such force cannot be used to search for items banned under the school rules.

## **9. After the search**

### **What the law allows with regards to the power to seize and confiscate items (general):**

- Schools' general power to discipline, as set out in Section 91 of the Education and Inspections Act 2006, enables a member of staff to confiscate, retain or dispose of a student's property as a disciplinary penalty, where reasonable to do so.

Also note:

- A member of staff can 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 in the circumstances. Where any article is thought to be a weapon it must be passed to the police.
- Staff have a defence to any complaint or other action brought against them. 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.

## 10. Items found as a result of a 'without consent' search

### What the law says:

- 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.  
Where a member of staff conducting a search finds alcohol, they may retain or dispose of it. This means that schools can dispose of **alcohol** as they think appropriate but this should not include returning it to the student.
- Where they find **controlled drugs**, these must be delivered to the police as soon as possible but may be disposed of if the person thinks there is a good reason to do so. Disposal decisions should be checked with the Head of School or those authorised by the Head of School.
- Where they find **other substances** which are not believed to be controlled drugs these can be confiscated where a member of staff believes them to be harmful or detrimental to good order and discipline. This would include, for example, so called 'legal highs'. Where staff suspect a substance may be controlled they should treat them as controlled drugs as outlined above.
- Where they find **stolen items**, these may need to be delivered to the police as soon as reasonably practicable – but alternatively they may be returned to the owner (or may be retained or disposed of if returning them to their owner is not practicable) if the member of staff thinks that there is a good reason to do so.
- Where a member of staff finds **tobacco or cigarette papers** they may retain or dispose of them. As with alcohol, this means that schools can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the student.
- **Fireworks** found as a result of a search may be retained or disposed of but should not be returned to the student.
- If a member of staff finds an **indecent image** it should be reported to the Designated Safeguarding Lead who 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 delivered to the police as soon as reasonably practicable. Images found on a mobile phone or other electronic device can be deleted unless it is necessary to pass them to the police.
- 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 it may be delivered to the police or returned to the owner. It may also be retained or disposed of.

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- 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, retain it or dispose of it.
- Any **weapons or items which are evidence of an offence** must be passed to the police as soon as possible.
- It is up to teachers to decide whether there is a good reason not to deliver **stolen items or controlled drugs** to the police. In determining what is a “good reason” for not delivering controlled drugs or stolen items to the police, the



member of staff must have regard to the following guidance issued by the Secretary of State:

**'In determining what is a '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.'**

- Where 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.
- 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).

## **11. Statutory guidance for dealing with electronic devices**

- Where the member of staff conducting the search finds an electronic device it should be reported to the school's Designated Safeguarding Lead who 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 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.
- 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:

**In determining a 'good reason' to examine or erase the data or files the staff member 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.'**

- If inappropriate material is found on the device the teacher must report it to the school's Designated Safeguarding Lead 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 of such seriousness that it requires the involvement of the police.

## **12. Telling parents and dealing with complaints**

- The school are not required to inform parents before a search takes place or to seek their consent to search their child.

- There is no legal requirement to make or keep a record of a search.
- School should inform the individual student's parents or carers where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- Complaints about screening or searching may be dealt with through the normal school complaints procedure.

### **13. Further sources of information Associated resources (external links)**

- Use of Reasonable Force – advice for headteachers, staff and governing bodies Behaviour and Discipline in Schools
- Behaviour and Discipline in Schools – advice for head teachers and school staff
- Information Commissioner for advice on the Data Protection Act

### **Legislative links**

- The Education Act 1996
- Education and Inspections Act 2006
- <https://www.gov.uk/government/publications/searching-screening-andconfiscation> 2018
- The Schools (Specification and Disposal of Articles) Regulations 2012

# Appendix 1:



## THE GOLDEN THREAD ALLIANCE JOINT WORKING PROTOCOL WITH POLICE AND CHILDREN'S SOCIAL CARE

### 1. Introduction

This protocol has been developed in acknowledgement of the outcomes and lessons learned from the serious case review of child Q. In The Golden Thread Alliance, we have a keen understanding that some of our children and their families face discrimination and our values of Respect, Responsibility and Equality are embedded in our pledges to keep learning and moving forward in addressing inequalities for all of our children within the Trust. Our Pledges can be found through the link provided below:

<https://primarysite-prod-sorted.s3.amazonaws.com/galaxy-trust/UploadedDocument/be2b24a0-3ed5-4dfa-9f23-5390e13ebc6c/galaxy-trustpledges-2021-22-small.pdf>

Our aim is to promote good practice and improve joint working between School, the Police and Children's Social Care where it is believed a child may be at risk of significant harm.

Aims of the joint protocol:

- To conduct timely and effective child protection investigations that are child centred and prioritise the child's physical and mental health. To ensure that the voice of the child is in the centre of all investigations and work.
- To promote positive relationships between the Police and Social Care in accordance with the KCSIE 2021 and Working Together to Safeguarding Children Guidance.
- To ensure consistency in practice
- To implement the Achieving Best Evidence Guidance without compromising the existing Golden Thread Alliance Policies including the Safeguarding, Behaviour, Staff Code of Conduct, Visitor Code of Conduct and Search and Confiscate policies.
- To make the best use of the skills of School Staff, social workers and police officers.
- To promote a culture of professional challenge to promote the best interests of the child. For staff to understand their role in challenging the practices and decisions made by outside agencies with confidence and in accordance to the Kent Escalation and Professional Challenge Policy.
- Parents and Carers to be involved in any Safeguarding incidents related to their child and consent sought, unless doing so puts the child at risk (KCSIE 2021).

## **2. Section 47 Enquires**

Where there is reasonable cause to suspect that a child is suffering or likely to suffer significant harm, the local authority is required under Section 47 of the Children Act 1989 to make enquiries, to enable it to decide whether it should take any action to safeguard and promote the welfare of the child.

Children's Social Care has the statutory duty to make, or cause to be made, enquiries when the circumstances defined in Section 47 of the Children Act 1989 exist.

The Police's responsibilities include to undertake criminal investigations of suspected or actual crime and also, to protect life and limb. Where both Children's Social Care and the police have responsibilities with respect to the child, they must coordinate to ensure the parallel process of a Section 47 enquiry and a criminal investigation is undertaken in the best interests of the child to ensure better outcomes for children and young people.

The Children Act 1989 places a statutory duty on health, education and other services to help the local authority carry out its social services functions under Part 3 of the Children Act 1989 and Section 47 enquiries. All agencies then have a duty to assist and provide information in support of child protection enquiries.

An enquiry under Section 47 of the Children Act 1989 can only be initiated following a decision from a strategy discussion.

## **3. Strategy discussion**

Wherever there is reasonable cause to suspect a child is suffering or is likely to suffer significant harm there should be a strategy discussion including social care, the police, health, the referring agency and any other professional as appropriate which includes school.

A strategy meeting can take place following a referral or at any other time including during an assessment or on an open case. The strategy discussion should take place within 24 hours of the decision to hold it. The purpose of the strategy discussion is to: (Working Together P40):

- Share information.
- Agree a safeguarding plan for the child
- Agree the conduct and timing of any criminal investigation;
- Decide whether enquiries under Section 47 of the Children's Act should be  undertaken by whom and when.
- Decide whether a medical should be undertaken.

The discussion should be chaired by a CSC/ Team Manager or Assistant Team Manager and fully recorded including a clear action plan and timescales for completion. The decision of the strategy discussion will be circulated by CSC within 24 hours for actions to be agreed and recorded.

School should be involved in strategy discussions unless incidents are urgent or dealt with out of hours. In which case, school need to be made aware as soon as possible and informed before any visits to the school take place.

The primary focus of the Section 47 enquiry will be on the safety, welfare and needs of the child:

- Child will be interviewed in accordance with the multi-agency child protection procedures, and the Achieving Best Evidence Guidance, and records will be kept accordingly. School staff and/or parents are to be invited to participate in these interviews unless doing so puts the child in further risk of harm or distress.
- The child's communication needs and abilities, age and developmental level and understanding, and any special needs they may have, will be given full consideration in all aspects of the investigation.
- Video recorded interviews with children under 'achieving best evidence' (ABE) will not take place in school but will need to be completed at the Police station unless in exceptional circumstances and with the consent of the Parent/Carer.

#### **4. The Investigation Team**

At a minimum, the investigative team should consist of a police officer and social worker and any professional with knowledge about the child (school professional or parent/carer).

The police will always lead the criminal investigation. In terms of the ABE it should be the person who has or is likely to establish the best rapport with the child who should lead the interview.

#### **5. Seeing the child**

'Seeing the child' includes observing and communicating with them, as appropriate given their age and understanding, ascertaining their wishes and feelings about the concerns that have been expressed, and taking those wishes into account. Exceptionally, a joint enquiry/investigation team may need to speak to a suspected child victim without the knowledge of the parent or caregiver. This will be decided in the Strategy Discussion.

Children's Social Care should always seek the parents' co-operation but if the parents refuse access to a child – and where concerns about that child's safety do not require an urgent response for example an Emergency Protection Order – the local authority may consider applying to the court for a Child Assessment Order. The School will comply with any Court Order issued.

#### **6. Medical examination/Physical Search**

All investigations requiring intimate access to the child to assess and record any physical evidence of physical or sexual assault against a child are not to take place in school but must take the form of a Child Protection Medical performed by the appropriate practitioners (GPs, Safeguarding Medical Lead/SARC) in a medical setting or by Police Detectives as per their own policies within the police station.

Any investigations requiring the child to be questioned and subsequently searched for illegal or dangerous items must adhere to The Golden Thread Alliance Search and

Confiscate Policy which includes the prohibition of children being asked to remove any garments that are not deemed “outer clothing” (coats, hats, scarves, etc.). Parent consent to be obtained unless doing so puts the child at additional risk.

In the event of an emergency where an immediate intimate search is required to protect the child from significant harm, Emergency Health Services are to be called and the child taken to an appropriate medical centre to receive the care that is required.

## **7. Escalation**

The Kent Safeguarding Children Multi-Agency Partnership (KSCMP) Escalation policy applies to any disagreement arising from interpretation of or adherence to this protocol. A full copy of the policy can be found on the KSCMP website.

## **8. Review Date**

This protocol will be reviewed in September 2022 unless there is a need to do so sooner in respect of changes to the KCSIE and Working Together Legislation.