

Cyber bullying – confiscation of mobile phones: a guide for schools

Confiscation of a pupil's property as a disciplinary penalty is lawful under S94 EIA.

Provided the item is lawfully “seized, retained or disposed of” by a member of the school staff, he/she is protected against civil or criminal liability. You must be able to show it was lawful; unauthorised seizure, retention or disposal interferes with the pupil's rights under Article 1 (entitlement to peaceful enjoyment of one's possessions) of the First Protocol to the European Convention on Human Rights.

When is confiscation of personal belongings lawful?

The act of taking a personal item from a pupil must be a reasonable and proportionate sanction, according to the circumstances of the case. Likewise the acts of retaining and/or disposing must be reasonable and proportionate sanctions. Searching a mobile phone for material or text when the pupil's permission is withheld is not a proportionate response, even if it is reasonable to make such a request of the pupil, e.g. an allegation of cyber bullying. In that case, the staff member can issue a disciplinary sanction for failure to follow a reasonable instruction.

Retention of confiscated items

Items of value or of significance to the pupil should be stored safely. Failure to do so resulting in loss may render the school liable. Seized items should be clearly marked so there can be no dispute on ownership. A record should always be made of anything seized and the reasons why.

How long can a school keep confiscated items?

It is up to the school to set its own policy. If an item is returned at the end of the school day then there is less chance of it being lost, stolen or damaged. Obviously, an item that has no value e.g. chewing gum can be disposed of immediately. Seemingly, a note ought to be similarly disposed of immediately but the DCSF Guidance does make the point that staff do have to consider first if it has any emotional value to the pupil.

If the item is one that should not have been brought to school in the first place and/or has been misused and if the school judge it to be reasonable and proportionate, the item can be stored safely until a responsible family adult can collect.

Mobile Phones

It is up to the school to set its own policy and make that policy known to parents. Some schools have a zero tolerance policy i.e no mobile phones whatsoever. Others allow phones provided they are kept turned off at all times. Varying considerations will apply e.g.

- Safety of the pupil travelling to and from school (if this is a genuinely relevant factor, then a confiscated phone should be returned before a pupil leaves the school).
- Unacceptability of using phones to bully or camera phone to record e.g. “happy slapping”.

Deleting items from a mobile phone

When staff confiscate an item, ownership **does not** transfer to the school. Therefore staff are obliged to ensure that the item is kept safe and returned to the student in the same condition. However, if staff believe that the item confiscated or information contained within that item should not be returned to the child they can:

- in the case of an illegal item: transfer it to the Police Authority, to enable officers to investigate any potential crime and determine the manner in which such an item should be disposed; or
- in the case of an inappropriate item (for example an unpleasant text about someone else): return it to the child's parents and explain the school's concerns; that explanation may include a suggestion that the offending information be deleted.