

CONFISCATING ITEMS – THE LAW

If a teacher confiscates a mobile phone (or something else of value) from a pupil and it then gets broken or lost, who is responsible, and who must therefore bear the cost of replacing the item? Is it the teacher, the pupil or the school? And what does the law say about how long it is reasonable to withhold such items from pupils?

Legally, the school has taken possession of the pupil's property. However, Section 94 of the Education and Inspections Act 2006 states that where a teacher disciplines a pupil by confiscating an item, neither the teacher nor the school will be liable for any loss or damage to that item. Equally, there is no statutory liability on schools for items that go missing in other ways.

This will no doubt come as a relief to schools. However, there are some caveats to all this.

First, the disciplinary penalty must be lawful. This means the action must be reasonable, proportionate and imposed by an authorised person (normally a paid member of the teaching staff) and not in breach of any statutory requirement or prohibition. The act does give some helpful guidance on considerations to be taken when deciding if such a penalty is reasonable: these include deciding whether the punishment is proportionate in all the circumstances, and whether there are any personal characteristics relevant to the pupil, including their age, special educational needs, disability or any religious requirements (e.g. dress) affecting the imposition of the penalty.

Second, the school's policy on items such as mobile phones and other electronics should be communicated clearly to the pupil and their parents or guardians. They should be told that bringing such items into school is done so at their own risk. The policy should also outline what is considered acceptable phone use and that the school retains the right to confiscate items for inappropriate use.

The school owes a duty to each child in its care

Third, when school staff confiscate such items they should also take reasonable steps to ensure their safety, such as storing them in lockers in the staff room.

However, even if the school adheres to all the above, additional complications can arise. Picture the following scenario: the parents of the pupil whose phone has been removed lodge a complaint with the head the following day. Their child was unable to call home, telling their parents they had been held back for detention, or decided to stay on for a revision session that night; this caused untold worry for the parents, who were left in the dark and unable to get hold of their child.

In short, the school owes a duty to each child in its care, requiring it to do what is reasonable to protect the health, safety and welfare of children and dependent on the facts of each individual case. Following the guidance from the act, confiscating a pupil's phone overnight for a student who is older, lives locally and is not otherwise vulnerable is likely to be seen as more reasonable than a younger child, or one with special needs, whose phone may be an important safety item.

In summary, the law does protect the teacher and school, provided the guidelines are followed.