



How extensive is seclusion?

The Mental Health Act itself does not deal with seclusion. This is a matter reserved to the Code of Practice to the Act.

Paragraph 15.43 of the Code defines seclusion as:

“the supervised confinement of a patient in a room which may be locked. Its sole aim is to contain severely disturbed behaviour which is likely to cause harm to others”

This definition is quite wide and it is important to consider whether de-escalation techniques may unwittingly come within this. For example, what is the status of Time Out, particularly if it is undertaken in a way that amounts to “supervised confinement of a patient in a room”.

Time out is not covered by the new Code of Practice although the fact that it may still exist separate to seclusion is acknowledged in paragraph 15.47 of the Code which expressly states that there should be a distinction between seclusion and psychological behaviour therapy interventions such as Time Out.

The old Code of Practice had a specific paragraph dealing with Time Out. Paragraph 18.9 defined it as:

“a behaviour modification technique which denies a patient, for a period of no more than 15 minutes, opportunities to participate in an activity or to obtain positive reinforcers immediately following an incident of unacceptable behaviour.

The patient is then returned to his or her original environment. Time out should never include the use of a locked room and should be clearly distinguished from seclusion which is for use in an emergency only and should never form part of a behavioural programme”.

This old paragraph in the previous version of the Code has not been carried over into the new Code. There is no obvious explanation for that. However, adopting the approach that the Courts have utilised on other occasions, as Time Out is not expressly prohibited, there is no reason why its use should not continue.

Nevertheless, it will be important to ensure that de-escalation techniques which may be termed as something other than seclusion (for example “therapeutic isolation”) are carefully considered to see whether they do indeed amount to seclusion. If so, then there will be a prima facie need to comply with the Code of Practice. The *Munjaz* case [1] made it plain that the Code should be followed unless there was a cogent reason not to do so. De-escalation policies should therefore be carefully considered to check whether the procedure could be said to amount to seclusion and thus trigger the need to comply with the Code.

Andrew Parsons

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October 2009

Footnote

1. R (on the application of Munjaz) v Mersey Care NHS Trust [2006] 2AC 148

Further Information

For further information on this or any other mental health issue, please contact Andrew Parsons in our Health department.

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CQC Mental Health Act Contact Details

From 16th October 2009 the contact details for CQC queries relating to the Mental Health Act change to:

Telephone: 0115 873 6250

- General queries about treatments for patients whose rights are restricted under the Act
- Queries following a visit by an MHA Commissioner
- Queries about a request already made for a SOAD

Fax : 0115 873 6251

- Requests for the SOAD service
- Notification of the death of a patient



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