

The use of seclusion rooms within schools

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1. On 14 October 2021, the BBC ran a news story which concerned allegations of pupil abuse that was said to have occurred in a seclusion room of a special school between 2014 and 2017¹. An investigation had been launched into what was described as “organised and complex abuse” at the school after CCTV footage was discovered of pupils being physically assaulted and neglected in a padded room.
2. The use of seclusion rooms is, unfortunately, nothing new although the nature of the abuse reported by the BBC in its article is mercifully not something that we – as practitioners – see on a regular basis. The harmful effects of the use of seclusion rooms has been a topic of some discussion for a considerable period of time. Indeed, concerns surrounding the use of seclusion rooms hit the media headlines in 2019 when it was reported that children were being held in isolation rooms for as long as six hours a day for minor infringements of behaviour policies. National Education Union delegates described how isolation booths were filled with children with special needs and those with difficult home lives.
3. In 2018, a BBC investigation found more than 200 pupils had spent at least five straight days in isolation booths in schools in England the previous year². The research also found more than 5,000 children with special educational needs also attended isolation rooms at some stage.
4. Following the BBC article of 14 October 2021, the British Psychological Society called for a ban on the use of isolation booths, seclusion rooms and all forms of segregation in schools, saying that their use is not backed by evidence and is not proven to be effective³. In particular, the BPS called for better regulation and monitoring of the use of these provisions in schools.

¹ <https://www.bbc.co.uk/news/uk-58885635>

² <https://www.bbc.co.uk/news/education-46044394>

³ <https://www.bps.org.uk/news-and-policy/use-isolation-booths-schools-should-be-banned-says-british-psychological-society>

5. So why then hasn't more been done to tackle this issue? In part, the answer is probably related to the pandemic. The Department for Education has known for some time though that the guidance surrounding seclusion rooms is – I think it is fair to say – sparse.
6. The Guidance relating to isolation rooms is contained with the DfE 2016 guidance entitled “*Behaviour and Discipline in Schools – advice for Headteachers and School staff*”. Only two paragraphs are dedicated to this topic:

Schools can adopt a policy which allows disruptive pupils to be placed in an area away from other pupils for a limited period, in what are often referred to as seclusion or isolation rooms. If a school uses seclusion or isolation rooms as a disciplinary penalty this should be made clear in their behaviour policy. As with all other disciplinary penalties, schools must act reasonably in all the circumstances when using such rooms (see paragraphs 14 and 15). Any use of isolation that prevents a child from leaving a room of their own free will should only be considered in exceptional circumstances. The school must also ensure the health and safety of pupils and any requirements in relation to safeguarding and pupil welfare.

It is for individual schools to decide how long a pupil should be kept in seclusion or isolation, and for the staff member in charge to determine what pupils may and may not do during the time they are there. Schools should ensure that pupils are kept in seclusion or isolation no longer than is necessary and that their time spent there is used as constructively as possible. Schools should also allow pupils time to eat or use the toilet.

7. In view of the growing concerns around the use of seclusion rooms, it seems that this is an issue the Department for Education will have to revisit as a matter of some urgency. Further guidance on the use of seclusion rooms would, I am sure, be very welcome from Schools. But what about for those who may have already suffered harm from their usage?

Legal Implications

8. Where unreasonable force is used against a student in an educational setting, this could result in criminal or civil proceedings. It could lead to serious personal injury: both physical and/or psychological, and in the most extreme of cases, injuries could prove fatal. As practitioners, we anticipate the increased public awareness of the harmful use of seclusion rooms will lead to an increase in negligence claims for personal injury.
9. In addition, reports suggest that a disproportionately high number of children with special educational needs are being placed in isolation booths or seclusion rooms. This could lead to challenges under the Equality Act 2010.

10. Further, if a decision to place a person in segregation is made without the necessary process having been followed, this may be in breach of the right to liberty and security - Article 5 of the European Convention on Human Rights (as incorporated into the Human Rights Act 1998) which states, "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law." Establishing whether there has been a breach of this article will depend on the facts of the case. A court would consider the degree of restriction and the reason why the restriction was imposed.
11. Rights under Article 8, a right to respect for private and family life, are not absolute rights. They can be interfered with as long as the measure is in accordance with the law (for example the Mental Health Act 1983 or the Mental Capacity Act 2005), has for a legitimate aim and is necessary. It is possible that the use of segregation may breach a person's rights under Article 8 if these measures could have been avoided or if segregation is prolonged beyond the point that is necessary.
12. Even if the decision to place a person in segregation is lawful, meets a legitimate aim and is necessary, there could be breaches of Article 8 in terms of the conditions someone is experiencing while in segregation. Decisions about how care is provided, such as restrictions on access to family and friends, access to outside space or to possessions while in segregation, could breach Article 8 if each decision does not meet the test of whether it is lawful, legitimate and necessary.
13. If restrictive interventions and practices cause very significant distress to the person concerned, they might breach Article 3, the right to be free from inhuman or degrading treatment. This is an absolute right.

What is very clear is that this issue is not going away any time soon. Schools would greatly benefit from further guidance from the DfE on this important issue. Meanwhile parents may consider whether unreasonable force has been utilised should they learn that their child has been placed in a seclusion. It is a complex arena for all concerned but at the heart of any decision to place a child in seclusion (or not to place a child in seclusion) should be that child's best interests.

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December 2021



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