COVID-19: THE SAFE AND LEGAL USE OF RESTRAINT AND SECLUSION IN MENTAL HEALTH AND LEARNING DISABILITY SERVICES DURING THE CORONAVIRUS PERIOD

15 April 2020
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Introduction

1. This guidance sets out key messages in relation to restraint and seclusion in mental health and learning disability services during the Coronavirus period. Restraint and seclusion in other settings than mental health and learning disability services are not covered in this guidance. This guidance may be updated in line with the changing situation.

2. Mental health and learning disability services are facing unprecedented challenges due to the ongoing worldwide Coronavirus pandemic. The risk of infection transmission is great and there have been significant temporary restrictions of everyone’s liberty. Current government and public health advice should be adhered to at all times. This will need to be balanced with all other existing legislation, guidance and best practice principles in relation to assessing, treating and caring for people with mental ill health and people with a learning disability across a range of settings.

3. As the Covid-19 infection rates increase and specific infection prevention and control measures are required in both inpatient and community services and settings for people with mental ill health and people with learning disability, it is particularly important to ensure that delivery of care, treatment and support continues to be delivered within a legal framework.

4. The Royal College of Psychiatrists, in collaboration with the Royal College of Nursing, have produced Covid-19 specific guidance for clinicians. Whilst some of this guidance is specific to England, particularly the legal pages, there are a broad range of topics covered that may be helpful. This guidance can be accessed [here](#).

Managing restrictive interventions in the Covid-19 outbreak period

5. Where there is any use of seclusion, restraint or restrictive practices, there is the need to uphold the individual’s Human Rights and respect their right to liberty and autonomy. During the Coronavirus emergency period, the same principles apply and it is essential to ensure that proactive, preventative and supportive strategies are fully implemented and adhered to. This will help to
minimise and avoid more restrictive and close contact interventions such as restraint and seclusion with patients who have suspected or confirmed Covid-19. Organisations should ensure provision of sufficient meaningful activities and therapeutic interactions for all those using their services.

6. **In making any decision regarding the use of restraint, seclusion or restrictive practices, the proposed intervention must always be the least restrictive option available, considered to be in the person’s best interests with the aim of preventing harm, and proportionate to the likelihood and seriousness of that harm.**

7. The use of seclusion, restraint and restrictive interventions should be subject to robust monitoring. It will be important that organisations continue this monitoring to be assured that any increase in any of these interventions is justifiable and delivered with a legal framework.

8. The overall use of restraint and seclusion should continue to be monitored by senior management to ensure that use of force is only used when necessary. Any trends of change in the use restraint and seclusion should be noted and raised when and where appropriate. This is particularly relevant where there are indications of increased use of restraint and seclusion.

**Seclusion in Mental health and learning disability inpatient services**

9. The Mental Health (NI) Order 1986, Code of Practice defines seclusion as:

   “the forcible denial of the company of other people by constraint within a closed environment. Seclusion is an emergency management procedure for the short term control of patients whose behaviour is seriously disturbed and should be seen as a last resort, after all other reasonable steps to control behaviour have been taken. The sole aim in using seclusion is to contain severely disturbed behaviour which is likely to cause harm to others.”

10. Therefore seclusion should only be used in the specific circumstances where all alternative interventions and strategies have not been successful in
managing such an emergency situation, and there is no other reasonable intervention that will protect others from harm.

11. Inpatient services must continue to follow current policy and procedures for the use of seclusion as a last resort to manage an emergency situation.

12. There will be specific infection prevention and control requirements where a patient has suspected or confirmed Covid-19. This will include appropriate Personal Protective Equipment (PPE) (see below) and cleaning of the seclusion area once the seclusion period has ended. Advice on cleaning is available in the NI Infection Control Manual and from the local Health and Social Care Trust Infection Prevention and Control Team.

**Restraint**

13. There are several types of restraint that may be considered for use in managing emergency situations in mental health and learning disability services and settings.¹

   a. Physical restraint -
      
      “any direct physical contact where the intervener’s intention is to prevent, restrict, or subdue movement of the body, or part of the body of another person.”

   b. Mechanical restraint -
      
      “the use of a device to prevent, restrict or subdue the movement of a person’s body, or part of the body, for the primary purpose of behavioural control.”

   c. Chemical restraint -
      
      “The use of medication which is prescribed, and administered for the purpose of controlling or subduing disturbed/violent behaviour, where it

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¹ Positive and Proactive Care: reducing the need for restrictive interventions, Department of Health, 2014
is not prescribed for the treatment of a formally identified physical or mental illness.”

14. Staff will need to consider, in any and all individual circumstances, if the use of restraint and the particular method of restraint used, is a proportionate response to the likelihood and seriousness of harm. In the current emergency period, this will include consideration of suspected or confirmed Covid-19 infection, where a person’s compliance to infection prevention and control measures may be impaired by an acute or chronic mental health condition or impaired cognition.

15. Documentation should clearly record consideration of all relevant risks and decisions for using a particular method of restraint. Organisations must continue to follow current policy, procedures and protocols for any use of restraint.

16. Organisations must also adhere to local and national infection prevention and control procedures, including provision and use of PPE appropriate to the particular restraint procedure.

17. The clinical guidance documents from the Royal Colleges and a guidance document from the National Association of Psychiatric Intensive Care and Low Secure Units (NAIPCU) provide advice regarding clinical interventions, including those regarded as restraint, and specific relevant considerations should there be a suspected or confirmed case of Covid-19.

Public health advice around social distancing, shielding and isolation, and associated legalities for mental health and learning disability services

18. Current public health advice around social distancing, shielding and isolation may present challenges for inpatient and community mental health and learning disability services. In terms of the legal authority to enforce measures such as isolation, shielding or social distancing for those with suspected or confirmed Covid-19, the following table should assist in decision making.
<table>
<thead>
<tr>
<th>Legal Status</th>
<th>Authority to enforce social distancing, shielding or isolation</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patient subject to detention in hospital under Mental Health (NI) Order 1986 with suspected or confirmed Covid-19</td>
<td>Detained status allows for enforced social distancing, shielding or isolation in accordance with public health advice and timelines IF the patient’s understanding of the situation and the potential for harm to their own health or the health of others is impaired by their mental disorder or learning disability.</td>
<td>Enforced social distancing, shielding or isolation must be considered in the context of any additional interference with human rights. Documentation and risk assessment must reflect the relevant discussions around proportionality of social distancing, shielding or isolation in consideration of the likelihood and seriousness of harm. Staff must consider if the enforced social distancing, shielding or isolation amounts to seclusion. If yes, the seclusion must be managed in accordance with current procedures and protocols and ended as soon as is possible. The Three Steps to Positive Practice framework will assist staff with decision making processes and record-keeping requirements.</td>
</tr>
<tr>
<td>Voluntary inpatient in mental health or learning disability hospital with suspected or confirmed Covid-19</td>
<td>At this time there is no legal authority for health and social care staff to enforce social distancing, shielding or isolation. This may change when relevant public health regulations secondary to the Coronavirus Act 2020 become law.</td>
<td>There MAY be some applicability of Mental Capacity Act (NI) 2016 Deprivation of Liberty Safeguards, if the relevant conditions and safeguards for authorisation are met. Each individual case will need to be considered in respect of applicability. In the absence of a legal authority to enforce social distancing, shielding or isolation, organisations will need to develop appropriate strategies to manage this safely to protect patients and staff from transmission. This is likely to require an individualised approach in many cases but could include consideration of early discharge if safe to do so, use of cohorting etc.</td>
</tr>
</tbody>
</table>
| Persons who are currently subject to an authorised deprivation of liberty under the Mental Capacity Act (NI) 2016, Deprivation of Liberty Safeguards with suspected or confirmed Covid-19 | An authorised deprivation of liberty will allow for enforced social distancing, shielding or isolation in accordance with public health advice and timelines. | Enforced social distancing, shielding or isolation must be considered in the context of any additional interference with human rights. Documentation must reflect the relevant discussions around proportionality of social distancing, shielding or isolation in consideration of the likelihood and seriousness of harm.  

The Three Steps to Positive Practice framework will assist staff with decision making processes and record-keeping requirements. |
|---|---|---|
| People who live in care homes or other communal living arrangements, or supported to live independently in their own homes by a team of staff, who are NOT currently subject to an authorised (whether by Trust panel or through emergency provisions of the Mental Capacity Act) deprivation of liberty with suspected or confirmed Covid-19 | At this time there is no legal authority for health and social care staff to enforce social distancing, shielding or isolation. This may change when relevant public health regulations secondary to the Coronavirus Act 2020 become law. | There MAY be some applicability of Mental Capacity Act (NI) 2016 Deprivation of Liberty Safeguards, if the relevant conditions and safeguards for authorisation are met. Each individual case will need to be considered in respect of applicability.  

In the absence of a legal authority to enforce social distancing, shielding or isolation, organisations will need to develop appropriate strategies to manage this safely to protect those in the care and staff from transmission. This is likely to require an individualised approach in many cases. |
19. Any deprivation of liberty under the Mental Capacity Act / Deprivation of Liberty Safeguards must be authorised. The Act contains emergency provisions providing protection from liability even if all additional safeguards are not met. If a person takes all reasonable steps to put the additional safeguards in place the person is protected from liability. That means in some circumstances a deprivation of liberty can be treated as authorised, even if not authorised by a trust panel.

20. However, the situation is only an emergency if all reasonable steps have been taken to put the safeguards in place. In all cases the person doing the deprivation of liberty must have reasonable belief that the person lacks capacity, that the deprivation of liberty is in the best interests and that the prevention of serious harm condition is met. Also, the use of the emergency provision must be considered on a case by case basis and cannot be used as a blanket measure not to put certain additional safeguards in place, such as authorisations.

21. Temporary measures are in place for the detentions under the Mental Health Order and the Mental Capacity Act. Temporary Codes of Practice have, together with temporary forms, been published on the Department of Health’s website:

   Mental Health (NI) Order 1986
   Mental Capacity Act (NI) 2016

22. It must be acknowledged that enforced social distancing, shielding or isolation, over and above the level of supervision an individual is used to, may result in psychological harm, especially for those with a history of trauma. It will be vital that organisations consider what additional support could be provided to these individuals. Organisations may find the following useful:

   Take 5 Steps to well-being – Public Health Agency:
   https://www.publichealth.hscni.net/publications/take-5-steps-wellbeing-looking-after-your-mental-health-while-you-stay-home
Mental health and psychosocial considerations during the COVID-19 outbreak World Health Organisation:  
https://www.who.int/docs/default-source/coronaviruse/mental-health-considerations.pdf?sfvrsn=6d3578af_2

Blanket Restrictions
23. The impact of COVID-19 may result in a justifiable need for restrictive practice in particular circumstances. However, it is important that at every opportunity organisations use the least restrictive methods possible. Any use of restriction must be proportionate to the risks involved.

24. For example, it is possible that an increased use of blanket restrictions will be required in some cases to maintain safe care where staffing levels are significantly impacted by COVID-19. Where blanket restrictions are identified as necessary and proportionate due to COVID-19, organisations should continue to adhere to their own organisational polices regarding the regular review of the restrictions and documentation as to why they are necessary.

Personal Protective Equipment
25. The use of PPE is updated subsequent to review of emerging evidence for best practice.

26. The current guidance on use of PPE was published on 2 April 2020 and updated on 6 April 2020. It can accessed here. This guidance is subject to regular reviews and updates, so staff are advised to check for updates on a regular basis. Staff working in mental health and learning disability services and settings are advised to read the guidance in full.

27. The national IPC team have determined that neither spitting nor nasogastric (NG) feeding are aerosol generating procedures (AGPs). The same level of PPE is therefore sufficient (see RCPsych/RCN clinical guidance). AGPs are defined in the up to date guidance on use of PPE.
Useful references

Department of Health and Social Care: Positive and Proactive Care: reducing the need for restrictive interventions

Public Health England: COVID-19 Personal Protective Equipment (PPE)

National Association of Psychiatric Intensive Care and Low Secure Units: Managing acute disturbance in the context of COVID-19

Public Health Agency: Northern Ireland Regional Infection Prevention and Control Manual
https://www.niinfectioncontrolmanual.net/

Public Health Agency: Take 5 Steps to well-being
https://www.publichealthe.hscni.net/publications/take-5-steps-wellbeing-looking-after-your-mental-health-while-you-stay-home

Royal College of Nursing: Three Steps to Positive Practice: A rights based approach when considering and reviewing the use of restrictive interventions
https://www.rcn.org.uk/professional-development/publications/pub-006075

Royal College of Psychiatrists: Guidance for clinicians

World Health Organisation - Mental health and psychosocial considerations during the COVID-19 outbreak
https://www.who.int/docs/default-source/coronaviruse/mental-health-considerations.pdf?sfvrsn=6d3578af_2

Coronavirus Act 2020
http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted

Mental Capacity Act 2016, Deprivation of Liberty Safeguards
https://www.health-ni.gov.uk/mca

Mental Health (NI) Order 1986
Mental Health (NI) Order 1986