

Devonshires' Justice Services Update

Segregation under Rule 45 of the Prison Rules 1999

Two Supreme Court decisions handed down in 2015 (*R (Bourgass and another) v SSJ* [2015] UKSC 54 and *Shahid v Scottish Ministers* [2015] UKSC 58) and subsequent amendments to PSO 1700 and Rule 45 of the Prison Rules 1999 have had a significant impact on the way in which prisons must now deal with removal from association, known as segregation, for the maintenance of good order and discipline or in the own interests of a prisoner.

Segregation post Bourgass and Shahid

All prisons should now be complying with the amended PSO 1700 and the amended Prison Rules 1999 in the implementation and continuing authorisation of segregation (see overleaf procedural checklist).

Segregation – key principles

1. The Court's approach to segregation is that it should be used for the minimum time necessary in order to protect the physical and mental health of segregated prisoners.
2. No matter how difficult a problem the prisoner poses, prisons are expected to consider alternatives to segregation at an early stage and implement a plan to avoid long-term segregation of a prisoner (for example, reintegration back onto normal location or transfer to another establishment).
3. The longer the segregation continues, the more detailed and compelling the reasons for the segregation need to be. This reflects the fact that the longer segregation continues for, the greater the risk of harm to the prisoner and therefore the stronger the justification for continuing the segregation needs to be.
4. To ensure procedural fairness, a prisoner should normally have a reasonable opportunity to make representations before a decision is taken to continue to authorise segregation and should be should also normally be informed in advance of the reasons why continued segregation may be authorised (or a gist where safety of the others/security of the prison is at risk).

It is vital that documentation and evidence covering the above is maintained.

Segregation under Rule 45 of the Prison Rules 1999 – good order or discipline/in prisoner's own interests

Procedural checklist

1. Initial segregation of a prisoner for the maintenance of good order or discipline or in the prisoner's own interests can be authorised by the Governor/Director (or a "competent operational manager" with delegated authority from the Governor/Director).
2. Within the first 72 hours from initial segregation, a Segregation Review Board ("SRB") must convene to review the case. The 72 hour-SRB (and any subsequent SRBs) must be made up of a Chairperson (a "competent operational manager"), healthcare representative and/or person from Mental Health In-Reach Team and the ACCT case manager (if prisoner is subject to

ACCT processes). The SRB must impartially consider all the evidence both for and against continued segregation of prisoner and consider all alternatives to segregation.

3. If, following the 72 hour-SRB the segregation of the prisoner is continued, then a further SRB must take place within 14 days of the decision to continue segregation. The 14 day-SRB must be a multidisciplinary SRB.
4. The role of Chairperson should be rotated between competent operational managers. The Chairperson at the 72 hour-SRB and the 14 day-SRB must not be the person who authorised the initial segregation of the prisoner.
5. In addition to the representatives who must attend SRBs, the following people should also attend where appropriate: IMB member (every effort must be made to facilitate this); Segregation Officer; Wing/Unit personal officer; a member of the Chaplaincy Team; Psychologist; and Offender Manager.
6. If the segregation of a prisoner is continued beyond the initial 14 day period, subsequent SRBs must be held at least every 14 days (or more frequently depending on the circumstances).
7. SRB can authorise segregation up to 42 days, prior to the expiry of which the Governor/Director must obtain leave from the Secretary of State (usually though the appropriate Deputy Director of Custody for the prison, or someone with delegated authority of the DDC in the case of the first 42 day-review) to continue the segregation beyond 42 days.
8. For continuous segregation beyond a period of 6 months, leave must be obtained from the relevant NOMS Director (as distinct from the Director of a contracted prison).
9. If at any stage authority is not given or leave is not obtained to continue the segregation beyond the current authority, the continuing segregation will be unlawful.
10. A prisoner must be given the opportunity to attend any SRB but can be excluded from part of the SRB if sensitive security information is being discussed.
11. In advance of any SRB or DDC/NOMS Director review the prisoner must be informed of the reasons why segregation may be continued and be given a reasonable opportunity to make written representations. Where for security reasons it is not possible to provide detail of the reasons why segregation may be continued, the prisoner should be given a general gist of the reasons.
12. Where any decision is made to continue the segregation of a prisoner, the prisoner must be given a meaningful explanation of the reasons for the decision, both orally and in writing.