

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 13

The intention of this regulation is to safeguard people who use services from suffering any form of abuse or improper treatment while receiving care and treatment. Improper treatment includes discrimination or unlawful restraint, which includes inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005.

To meet the requirements of this regulation, providers must have a zero tolerance approach to abuse, unlawful discrimination and restraint. This includes:

- neglect
- subjecting people to degrading treatment
- unnecessary or disproportionate restraint
- deprivation of liberty.

Providers must have robust procedures and processes to prevent people using the service from being abused by staff or other people they may have contact with when using the service, including visitors. Abuse and improper treatment includes care or treatment that is degrading for people and care or treatment that significantly disregards their needs or that involves inappropriate recourse to restraint. For these purposes, 'restraint' includes the use or threat of force, and physical, chemical or mechanical methods of restricting liberty to overcome a person's resistance to the treatment in question.

Where any form of abuse is suspected, occurs, is discovered, or reported by a third party, the provider must take appropriate action without delay. The action they must take includes investigation and/or referral to the appropriate body. This applies whether the third party reporting an occurrence is internal or external to the provider.

CQC can prosecute for a breach of some parts of this regulation (13(1) to 13(4)) if a failure to meet those parts results in avoidable harm to a person using the service or if a person using the service is exposed to significant risk of harm. We do not have to serve a Warning Notice before prosecution. Additionally, CQC may also take any other [regulatory action](#). See the [offences section](#) for more detail.

CQC must refuse registration if providers cannot satisfy us that they can and will continue to comply with this regulation.

The regulation in full

13.—

1. Service users must be protected from abuse and improper treatment in accordance with this regulation.
2. Systems and processes must be established and operated effectively to prevent abuse of service users.
3. Systems and processes must be established and operated effectively to investigate, immediately upon becoming aware of, any allegation or evidence of such abuse.
4. Care or treatment for service users must not be provided in a way that—

- a. includes discrimination against a service user on grounds of any protected characteristic (as defined in section 4 of the Equality Act 2010) of the service user,
 - b. includes acts intended to control or restrain a service user that are not necessary to prevent, or not a proportionate response to, a risk of harm posed to the service user or another individual if the service user was not subject to control or restraint,
 - c. is degrading for the service user, or
 - d. significantly disregards the needs of the service user for care or treatment.
5. A service user must not be deprived of their liberty for the purpose of receiving care or treatment without lawful authority.
6. For the purposes of this regulation—
'abuse' means—
 - a. any behaviour towards a service user that is an offence under the Sexual Offences Act 2003(a),
 - b. ill-treatment (whether of a physical or psychological nature) of a service user,
 - c. theft, misuse or misappropriation of money or property belonging to a service user, or
 - d. neglect of a service user.

7. For the purposes of this regulation, a person controls or restrains a service user if that person—
- a. uses, or threatens to use, force to secure the doing of an act which the service user resists, or
 - b. restricts the service user's liberty of movement, whether or not the service user resists, including by use of physical, mechanical or chemical means.

Guidance

This sets out the guidance providers must have regard to against the relevant component of the regulation.

13.—(1) Service users must be protected from abuse and improper treatment in accordance with this regulation.

Guidance on 13.—(1)

- All providers must make sure that they have, and implement, robust procedures and processes that make sure that people are protected. Safeguarding must have the right level of scrutiny and oversight, with overall responsibility held at board level or equivalent.

13(2) Systems and processes must be established and operated effectively to prevent abuse of service users.

Guidance on 13(2)

- As part of their induction, staff must receive safeguarding training that is relevant, and at a suitable level for their role. Training should be updated at

appropriate intervals and should keep staff up to date and enable them to recognise different types of abuse and the ways they can report concerns.

- Staff must be aware of their individual responsibilities to prevent, identify and report abuse when providing care and treatment. This includes referral to other providers.
- Staff must understand their roles and associated responsibilities in relation to any of the provider's policies, procedures or guidance to prevent abuse.
- Information about current procedures and guidance about raising concerns about abuse should be accessible to people who use the service, advocates, those lawfully acting on their behalf, those close to them and staff.
- Providers should use incidents and complaints to identify potential abuse and should take preventative actions, including escalation, where appropriate.
- Providers should work in partnership with other relevant bodies to contribute to individual risk assessments, developing plans for safeguarding children and safeguarding adults at risk, and when implementing these plans. This includes regularly reviewing outcomes for people using the service.
- Providers and their staff must understand and work within the requirements of the Mental Capacity Act 2005 whenever they work with people who may lack the mental capacity to make some decisions.

13(3) Systems and processes must be established and operated effectively to investigate, immediately upon becoming aware of, any allegation or evidence of such abuse.

Guidance on 13(3)

- Providers must take action as soon as they are alerted to suspected, alleged or actual abuse, or the risk of abuse. Where appropriate, this action should be in line with the procedures agreed by local Safeguarding Adults or Children Boards.
- Providers and staff must know and understand the local safeguarding policy and procedures, and the actions they need to take in response to suspicions and allegations of abuse, no matter who raises the concern or who the alleged abuser may be. These include timescales for action and the local arrangements for investigation.
- Staff must be aware of, and have access to, current procedures and guidance for raising and responding to concerns of abuse. Staff should have access to support from line management when considering how to respond to concerns of abuse.
- Managers and staff must understand their individual responsibilities to respond to concerns about abuse when providing care and treatment, including investigating concerns.
- Staff must understand their roles and associated responsibilities in supporting the actions the provider takes in responding to allegations and concerns about abuse.
- Providers should make sure that staff are kept up to date about changes to national and local safeguarding arrangements.
- Where appropriate, staff must follow local safeguarding arrangements to make sure that allegations are investigated internally or externally. Providers must make sure that they respond without delay to the findings of any investigations.

- When people who use services make allegations of abuse, or actually experience abuse, they must receive the support they need.
- Where allegations of abuse are substantiated, providers must take action to redress the abuse and take the necessary steps to ensure the abuse is not repeated. This may involve seeking specialist advice or support.
- When required to, providers must participate in serious case reviews. Any changes to practice and/or recommendations relating to the provider must be implemented.

13(4) Care or treatment for service users must not be provided in a way that–

Guidance on 13(4)

13(4)(a) includes discrimination against a service user on grounds of any protected characteristics (as defined in Section 4 of the Equality Act 2010) of the service user,

13(4)(b) includes acts intended to control or restrain a service user that are not necessary to prevent, or not a proportionate response to, a risk of harm posed to the service user or another individual if the service user was not subject to control or restraint,

- Staff must understand their individual responsibilities in preventing discrimination in relation to the protected characteristics set out in s.4 of the Equality Act 2010. These are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- Providers should have systems for dealing with allegations and acts of discrimination regardless of who raises the concern or who the allegation is against. This includes policies and procedures that describe the required actions and the timescales in which to take action.

- Providers must support people who use services when they make allegations of discrimination or actually experience discrimination. They must not unlawfully victimise people who use services for making a complaint about discrimination.
- When allegations of discrimination are substantiated, providers must take corrective action and make changes to prevent it happening again. This may involve seeking specialist advice or support.
- See Regulation 13(7) for the meaning of restraint in relation to this regulation.
- As part of their induction, staff must receive training that is relevant to their role and at a suitable level to make sure any control, restraint or restrictive practices are only used when absolutely necessary, in line with current national guidance and good practice, and as a last resort. The provider should make arrangements to keep staff up to date at appropriate intervals.
- If using restraint, providers must make sure that restraint:

- Is only used when absolutely necessary.
- Is proportionate in relation to the risk of harm and the seriousness of that harm to the person using the service or another person.
- Takes account of the assessment of the person's needs and their capacity to consent to such treatment.
- Follows current legislation and guidance.

- Providers and staff should regularly monitor and review the approach to, and use of, restraint and restrictive practices.

- Where a person lacks mental capacity to consent to the arrangements for their care or treatment, including depriving them of their liberty, providers must follow a best interest process in accordance with the Mental Capacity Act 2005, including the use of the Mental Capacity Act 2005 Deprivation of Liberty Safeguards, where appropriate.

13(4)(c) is degrading for the service user, or

Guidance on 13(4)(c)

- Providers and staff must take all reasonable steps to make sure that people who use services are not subjected to any form of degradation or treated in a manner that may reasonably be viewed as degrading, such as:
 - not providing help and aids so that people can be supported to attend to their continence needs, and
 - making sure people are not:
 - left in soiled sheets for long periods
 - left on the toilet for long periods and without the means to call for help
 - left naked or partially or inappropriately covered
 - made to carry out demeaning tasks or social activities
 - ridiculed in any way by staff.

This list is not exhaustive.

- Providers should consult and consider the views of people using their service when defining the meaning of 'degrading'.

13(4)(d) significantly disregards the needs of the service user for care or treatment.

Guidance on 13(4)(d)

- Care and treatment must be planned and delivered in a way that enables all a person's needs to be met. This includes making sure that enough time is allocated to allow staff to provide care and treatment in accordance with the person's assessed needs and preferences. There should be policies and procedures that support staff to deliver care and treatment in accordance with the requirements detailed in the plan(s) of care.
- When a person lacks the mental capacity to consent to care and treatment, a best interests process must be followed in accordance with the Mental Capacity Act 2005. Other forms of authority such as advance decisions must also be taken into account.
- Staff should raise any concerns with the provider about their ability to provide planned care. When concerns are raised, the provider should respond appropriately and without delay.

13(5) A service user must not be deprived of their liberty for the purpose of receiving care or treatment without lawful authority.

Guidance on 13(5)

- Providers must act at all times in accordance with the Mental Capacity Act 2005 Deprivation of Liberty Safeguards: Code of Practice and the Mental Capacity Act 2005 Code of Practice.

- Hospitals and care homes must follow the Deprivation of Liberty Safeguards.
- Other types of services must ensure that any deprivation of the liberty of a person who lacks mental capacity is authorised by the Court of Protection.