

The right to go out

Regarding community participation, people living in care homes have a right to:

-  Receive **person-centred care** that is appropriate, meets their needs and reflects their personal preferences.¹ Some of this may be provided by **relatives and friends**.²
-  Forge friendships and other relationships and to **participate in society**.³
-  **Support**, so that they can be included in the community rather than segregated from it.⁴ Managers must **promote access** to the local shop, to public facilities and to family outings.⁵
-  **Transportation**⁶ on an equal basis with others.
-  Make **unwise decisions**.⁷
-  Be treated as an individual and free from **restrictive practices** that are intended for others.⁸
-  Make **unescorted outings**⁹ even when they are subject to restrictions.¹⁰
-  Unregulated contact with family and friends, unless a Court has ruled to the contrary.¹¹
-  **Protection from abuse or harm**.¹²

- 1** Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 9(1)
- 2** Some DoLS are authorised which oversee a care plan comprised of 'continuous supervision and control' which are made up of some supervision provided by staff and the rest provided by relatives or others. There is no formal advice that specifies the identity of the supervisor.
- 3** Article 8 of the Human Rights Act 1998. Also Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- 4** See <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html>.
- 5** See <https://www.scie.org.uk/mca/dols/practice/care-home>. The same point was made in P (Scope of Schedule A1) (30 June 2010) (Unreported) (Mostyn J) - P should have access to society in the community and be able to escape the confines of the care home. See page 107 of the Law Society Deprivation of Liberty: A practical Guide. Available at <https://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>
The Deprivation of Liberty Safeguards will be replaced in 2020 with Liberty Protection Safeguards under Mental Capacity (Amendment) Act 2019.
- 6** Article 9 of the UNCRPD.
- 7** Principle 3 of the Mental Capacity Act 2005.
- 8** United Nations (adopted 27 Oct 2017) CRPD General comment No. 5 (2017) on living independently and being included in the community. Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/GC/5&Lang=en paragraph 20.
- 9** See Department of Health (2014) Positive and Proactive Care: reducing the need for restrictive interventions – available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300293/JRA_DoH_Guidance_on_RP_web_accessible.pdf.
- 10** Stanev v Bulgaria. <http://www.bailii.org/eu/cases/ECHR/2012/46.html>
- 11** See Part V, section 123 of the Police Act 1997. Also See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf page 5.
- 12** Contact with certain people can be restricted by the Court of Protection, not the DoLS process. See https://www.39essex.com/cop_cases/sr-v-a-local-authority/.

