

Care Act Bulletin

Edition 19

20 February 2015

Welcome to the nineteenth edition of the Care Act Bulletin. This is a series of Bulletins which have been produced to provide an outline of the key elements in the Care Act, to prompt thinking about how these changes may impact on your organisation and what opportunities it may bring. Each bulletin will cover a chapter in the Care Act Guidance issued by the Department of Health. Links to the guidance and relevant fact sheets are detailed at the end of the bulletin.

ORDINARY RESIDENCE

Ordinary residence is one of the key tests which must be met to establish whether a local authority is required to meet a person's eligible needs. The test for ordinary residence applies differently in relation to adults with needs for care and support and carers. For adults with care and support needs, the local authority in which the adult is ordinarily resident will be responsible for meeting their eligible needs. For carers, however, the responsible local authority will be the one where the adult for whom they care is ordinarily resident. This is an important point to note, particularly if the carer provides care for more than one person in different local authority areas.

Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled purposes. This is irrespective of whether they own, or have an interest in a property in another area.

The Care Act is very clear that the process of determining a person's ordinary residence must not delay the process of meeting needs. In cases where Ordinary Residence is unclear, the local authority should meet the individual's needs first and then resolve the question of residence.

However, determining ordinary residence is not always clear cut, for example when people spend their time in more than one area, or move between areas. Sometimes the line between 'visiting' or 'living with' friends or relatives can become blurred. Local authorities need to look at each case on merit, taking into account factors like time, intention and continuity when determining Ordinary Residence.

If a person lacks capacity to decide where to live, a best interest decision about their accommodation should be made under the Mental Capacity Act 2005.

In the case of children moving to adult care, ordinary residence will normally remain in the area where their parents live, or with the local authority that had responsibility for them as a child.

There may be some occasions where the local authority considers it appropriate for the person's care

and support needs to be met by the provision of accommodation in the area of another authority. In this circumstance the local authority which arranges the accommodation retains responsibility for meeting the person's needs. This would also be the case where a person takes a direct payment and arranges their own care in another local authority, given the first local authority is still meeting their needs.

When a person moves into permanent accommodation in a new area under private arrangements, and is paying for their own care, they usually acquire Ordinary Residence in this new area. A person who has sufficient financial means to pay for their care, but who has eligible care and support needs, can approach the local authority to meet their needs. In this circumstance the person will still pay for the cost of their care, but the local authority must meet their needs and can subsequently charge a brokering fee for arranging that care and support.

You can view the Department of Health Care Act Guidance by visiting:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_2390277_7_Care_Act_Book.pdf

The factsheet regarding general responsibilities is available on:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366080/Factsheet_1_-_General_responsibilities.pdf