

## Ordinary Residence (*ref 35*)

**1.** If a person with a learning disability moves from one Social Services authority to another there are sometimes disputes about which authority is responsible for funding care; the authority from which the person originated or the authority in the area where they now live.

**2.** Under the *National Assistance Act 1948* Social Services have responsibility for providing residential accommodation to people who are 'ordinary resident' in the authority's area. *Section 21* deals with placement in the authorities own homes, *Section 26* with purchasing service in the independent sector. *Section 24* says a person who is placed in residential care, 'shall be deemed to be ordinarily resident in the area in which he was ordinarily resident immediately before the residential accommodation was provided'. So a person can live in residential care in another area but remain the responsibility of the authority where they lived immediately before entering residential care.

**3.** So generally the placing authority is and remains responsible for residential care placements.

**4.** *Local Authority Circular LAC (93) 7* reinforces this saying 'the placing authority will normally retain for that person the same responsibility that it has for someone living in its own area'.

**5.** Although the *1948 Act* refers to 'residential accommodation' with the growth of Supported Living, registered group homes and more diverse ways of providing care and support it has been accepted in some court decisions that the *1948 Act* applies equally to these more modern arrangements so that the placing authority remains responsible whether or not the placement is in a registered care home.

**6.** A problem arises however, where someone moves from residential care to live more independently in their own home and can be said to be taking a decision in effect to place themselves. This has become much more common and has been encouraged by the introduction of the Supporting People Grant regime. Here it is argued by some lawyers:

Someone having a tenancy of their own home cannot be regarded as provision of residential accommodation under *Section 21 of the National Assistance Act* (authorities own provision).

*Under Section 26* (provision in the independent sector) the authority similarly is only responsible if it is a registered care home.

The placing authority is only responsible for those who lack capacity to enter into a tenancy agreement.

As a consequence a 'receiving' authority will become responsible for those who have moved into 'ordinary homes' and have a genuine tenancy because they have now become ordinary resident in the area in which they live not the area they came from.

**7.** This is not very satisfactory for authorities who receive large numbers of people in their area and really requires Government action to come to a fairer policy.

**8.** If Local Authorities cannot agree the Secretary of State can be asked to resolve.

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