

Ordinary residence, extraordinary mess:

a briefing from the Voluntary Organisations Disability Group (VODG)

Voluntary
Organisations
Disability Group

V O D G

This paper is divided into eight sections:

1. What is ordinary residence?
2. What this paper argues
3. The scale of the ordinary residence challenge - why action is vital
4. The VODG's new evidence about ordinary residence disputes
5. Case studies: the human and financial impact of ordinary residence disputes
6. An extraordinary opportunity: the Care Bill
7. The next steps
8. Conclusion

1. What is ordinary residence?

Ordinary residence guidance is part of the 1948 National Assistance Act¹. It was introduced to clarify the status of people placed in residential care outside their original area and aims to establish which local authority has to fund their support².

In this paper, we use “first” to denote the “sending” local authority and “second” to denote the ‘receiving’ authority.

Under the National Assistance Act, if a council places someone in residential care out of area, it remains financially responsible and that local authority *continues* to be deemed the person’s place of ordinary residence, for as long as the individual remains in residential care.

Disputes lasting many months arise when someone decides to move from residential care into supported accommodation within the same local authority (see section 3). The first authority argues that it is no longer responsible for funding, but the second authority (where the person actually lives) argues against funding someone not originally from the area.

The Voluntary Organisations Disability Group (VODG), a group of over 70 providers of social care across the country, has long campaigned against the use of ordinary residence as a reason to refuse someone care and support³. We strongly believe that vulnerable people must not be left in limbo simply because local authorities cannot agree over funding.

1 National Assistance Act 1948 <http://www.legislation.gov.uk/ukpga/Geo6/11-12/29/contents>

2 Department of Health (2013) Ordinary Residence :Guidance on the identification of the ordinary residence of people in need of community care services, England <https://www.gov.uk/government/publications/identifying-the-ordinary-residence-of-people-in-need-of-community-care-services>

3 Not in My Backyard VODG 2010 <http://www.vodg.org.uk/news/26/111/Not-In-My-Backyard.html> and No Place Like Home VODG 2007 www.vodg.org.uk/uploads/VODG-no-place-like-home.pdf

2. What this paper argues

This short report highlights the huge disruption caused by ordinary residence dilemmas. It reinforces our belief, as outlined in our submission to the Joint Committee which scrutinised the Draft Care Bill⁴, that new legislation presents a rare opportunity to resolve the chaos caused by ordinary residence disputes (see section 6).

Action is vital; local authorities exploit ordinary residence disputes to avoid or delay funding a person's care and the economic climate is likely to exacerbate this problem.

While successive governments have rejected campaigners' calls to place the funding obligation on the original local authority irrespective of where the individual lives, there are several ways to solve the dilemmas caused by ordinary residence. This paper suggests actions for central government and policy-makers, but it is also vital for national bodies such as the Association of Directors of Adult Social Services (ADASS) to demonstrate leadership in working with its members, government and providers to co-design workable solutions.

We have included case studies and the results of a sample survey of our members, both of which reflect the financial and human impact of ordinary residence disputes.

⁴ <http://www.vodg.org.uk/news/233/111/VODG-responds-to-Joint-Committee-report-on-the-draft-Care-Support-Bill.html>

3. The scale of the ordinary residence challenge - why action is vital

Ordinary residence disputes are mainly triggered when a person:

- funded by the first authority to live in a registered care home in another, second, authority (an out of area placement) moves into their own supported accommodation in the second authority
- is funded in an out of area home which then ceases to be registered as a care home
- leaves a residential college but wishes to stay in the area

The Department of Health (DH) published revised guidance on ordinary residence in 2011 (updated in 2013) which clarifies that:

- apart from people placed out of area in long term residential care, a person should be considered a resident in the area in which they live
- the provision of services or treatment should not be refused or delayed because ordinary residence is in dispute
- if authorities cannot agree, they must make an application for determination to the Secretary of State within four months, but not all comply with this guidance
- care providers can write to DH, which then contacts the local authorities concerned to resolve the situation⁵

However, local authorities often fail to agree their responsibilities, using ordinary residence disputes as an excuse to pass the buck. Providers can ask the Secretary of State or DH to force a decision, but this can take months and would not be necessary if authorities adhered to the guidance.

Disputes submitted to the Secretary of State for resolution are simply the tip of the iceberg. Little research has been carried out on the scale of the problem (see sections 4 and 5), but based on information from our members in 2010, the VODG estimates 500 people at any one time are affected by ordinary residence disputes. Prevented from moving home because of delays over who will pay for their care, vulnerable people suffer distress and uncertainty and millions of pounds of public money is wasted if authorities fight the dispute in court.

⁵ <https://www.gov.uk/government/publications/identifying-the-ordinary-residence-of-people-in-need-of-community-care-services>

The VODG's 2007 report *No Place Like Home* highlighted the confusion and distress caused by ordinary residence disputes, and a 2010 follow-up, *Not In My Backyard*⁶ found that little had changed. We have continued to highlight the issue through articles and blogs on our website ⁷.

The government's vision for social care, set out in the White Paper *Caring for our future*⁸ is that people have choice and control over their care and providers offer innovative and person-centred support. The Equality Act of 2010, meanwhile, promotes a fair and more equal society. However, the problems caused by ordinary residence rows undermine such aims.

Proposed further cuts to local authority spending will only make the matter worse and the temptation to pass the buck even greater.

6 Not in My Backyard VODG 2010 <http://www.vodg.org.uk/news/26/111/Not-In-My-Backyard.html> and No Place Like Home VODG 2007 www.vodg.org.uk/uploads/VODG-no-place-like-home.pdf

7 Blogpost on ordinary residence <http://www.vodg.org.uk/cgblog/21/105/Ordinary-residence-extraordinary-mess.html>

8 Caring for our future: reforming care and support, HM Government (2012) <https://www.gov.uk/government/publications/caring-for-our-future-reforming-care-and-support>

4. The VODG's new evidence about ordinary residence disputes

The damaging nature of ordinary residence disputes is revealed in a recent VODG survey of 17 members conducted in the autumn of 2012⁹.

While the sample size is small, the large number of disputes reported by respondents - 146 over the last three years - indicates a significant ongoing national problem. There is a lack of data about the impact of ordinary residence problems and we believe this is the first survey of its kind.

According to the DH, out of a total 64 applications to the Secretary of State over the last three years, 40 disputes reached determination¹⁰. However, the VODG knows that the full impact of ordinary residence disputes is far greater as there are many more cases which do not reach determination.

Our survey used a wider definition of dispute to include other legal disputes, disagreements, delays and interruptions of fees; the 17 organisations reported at least 146 disputes over the last three years, with only three reaching determination by the Secretary of State.

Extrapolating these figures nationally would make the actual number run into thousands.

Our survey showed that:

- in the last three years while disputes were being resolved, organisations had to cover a gap in fees in 67 separate cases, totalling an estimated £1,558,000
- in an average year, the total costs associated with ordinary residence disputes ranged between £108,000 - £302,000 with key expenditure including legal costs, property costs and staff time
- at least 825 staff days were spent resolving ordinary residence disputes, across all departments including senior and service managers, finance and administrative staff

⁹ The survey's findings are included in our submission to the Joint Committee on the Draft Care and Support Bill <http://www.vodg.org.uk/news/233/111/VODG-responds-to-Joint-Committee-report-on-the-draft-Care-Support-Bill.html>

¹⁰ The number of determinations does not match the number of applications made, because some applications are cancelled. This could be for a number of reasons such as the local authorities have resolved the dispute themselves, the services are not being provided under Part 3 of the National Assistance Act 1948, or that the dispute is for a devolved administration to determine rather than the Secretary of State.

- seven organisations reported that they were eventually repaid costs associated with ordinary residence disputes in full, but seven were not; two were only paid between 50-75% and one, 25% or less
- providers said repayment took between six and 12 months to resolve

The survey underlined how VODG members voluntarily “fill the gap” when funding from the original authority stops but has not yet started from the new authority. By default, they become the middlemen between the disputing parties.

One member also reported a judicial review in relation to two clients moving from residential care into supported living accommodation. Legal fees alone cost the charity over £70,000. Additionally, the time spent in preparing the case for the High Court amounted to hundreds of lost staff days.

Brief case studies are included below (see section 5), but the effects that disputes have on individuals are clear from our survey respondents’ testimonies. One member reported: *“The perception is that disputing councils will ‘fight until the bitter end’, resulting in limited opportunities for people concerned, increased tensions between all parties and unacceptable liabilities for providers.”*

Another provider stressed local authorities’ lack of motivation to resolve the problem: *“The majority of issues are due to delays in responses, including waiting for panel decisions. Many delays are due to total disengagement from the local authority which does not respond to requests for meetings and disregards all email or written correspondence...It rarely gets to ‘dispute’ as the host local authority knows that they are currently responsible for picking up the fees.”*

A third VODG member highlighted the negative impact on vulnerable people and their families: *“The delays present anxiety amongst families who believe that their relative will be left unfunded and homeless. This discourages people from moving into more independent accommodation as they believe they are going to be left without support.”*

Members have also reported instances where people have moved from residential care into supported living and the “new” authority has accepted responsibility for funding them, but there has been a dramatic reduction in their care package, far beyond what may be legitimate for a change of setting. This usually means less hours to support people at home and in the community and often no funding to attend vocational training. As one member concluded: *“The result is vulnerable adults living in high quality accommodation with less than adequate support and little to do during the day a formula for depression, regression and isolation and loss of independence skills.”*

5. Case studies: the human and financial impact of ordinary residence disputes

Three of our members, charities of varying size and from across England, recounted their recent and current experiences of ordinary residence problems.

A VODG member in London explained:

“Lucy, who we support and who lives in residential care in London, wants to move to supported living on the south coast. She has profound and multiple physical and learning disabilities so we, with her advocates, have supported her to explore this option and make an informed choice. We’re trying to locate a suitable property and firm up her 24-hour care package but we’re very conscious that she will fall foul of ordinary residence rules. When the time comes to approach the new ‘host authority’, we don’t know how much of a challenge setting up her care package will be in terms of who will assume responsibility for her care.

In principle, it is all the same money - public sector funding - but when Lucy transfers from one area to another, she runs the risk of the two authorities disputing her care. A move is going to be challenging enough for Lucy who cannot live without 24 hour support so can only move once support arrangements are in place.”

A VODG member in central England told us:

“Joe moved out of residential care into supported living accommodation nearby, run by the same charity provider. Council A, where Joe is now ordinarily resident, is refusing to take over funding from Council B which had previously paid his out of county residential care fees. Some 14 months later, the social care provider (a medium sized charity) is owed nearly £50,000 from Council A for this one client. Members of the charity’s finance team chase Council A each week and include copies of previous correspondence and agreements. Council A continues to delay payments, giving the provider different reasons for not paying and passes the query around different council departments. The charity has continued to provide care and covered this gap in fees.”

A VODG member in the South East said:

“James, Brian and Tim, who are funded by three separate authorities, are due to move out of an eight-place residential care home into a supported living bungalow in another county. Despite agreeing to this in principle the local authorities would not commit to funding their care until a home was secured. However, they also did not want to pursue a private rental agreement, so James, Brian and Tim lost the initial home they had chosen and the deposit, which the charity had funded. The charity is currently holding a bungalow and making adaptations for James, Brian and Tim, but with no guarantee that their care will be funded. The shortfall in funding is likely to be eight months’ rent for each person.”

6. An extraordinary opportunity: the Care Bill

The Care Bill offers a chance to finally untangle the mess created by ordinary residence problems and fulfil policy intentions to give people more choice and control over their care and support.

We welcome some positive proposals in the legislation, such as:

- provisions that when a person who has an out of area placement moves into a different care setting, determined by regulations, but stays in the same area, responsibility remains with the original first authority
- provisions setting out when one local authority can recover costs from another following a dispute

However, certain aspects of the Bill raise cause for concern:

- regulations on the resolution of disputes (and the associated guidance) must strengthen the duties for local authorities to co-operate with providers and with each other, to prevent disagreements and delays from escalating
- regulations accompanying the Bill will widen the types of accommodation with support for which the first local authority remains responsible including different models of supported living. However, it will be difficult for regulations to capture and clearly define the full range of relevant accommodation and differences in interpretation will potentially become a new source of disputes
- the particular type of accommodation to be defined in regulations is more likely to be that which is registered with the health and social care regulator the Care Quality Commission, to the exclusion of other models of provision
- the Bill contains provisions for a person to express a preference about which type of accommodation they wish to live in, but not the location of it

7. The next steps

VODG members are keen to continue working with DH and parliamentarians to discuss how the Care Bill can help resolve ordinary residence complications (see section 6), particularly in relation to:

- difficulties in interpretation - the Bill, regulations and related guidance must be unambiguous and should reflect present day health and social care policies and models of provision
- different care rates in different local authorities - a formula could be developed to account for variations, drawing on approaches like the Care Funding Calculator¹¹
- ensuring care assessments are relevant to the individual. Some local authorities have relatively little contact with the people whom they have placed out of area. VODG is keen to explore how the Bill's provisions for a local authority to delegate duties to another organisation can potentially be used to enable assessments to be carried out by the local authority a person is currently living in, not the one in which they are deemed ordinarily resident

8. Conclusion

Ordinary residence disputes cause unnecessary anxiety to individuals and are a waste of public funds. The experience of VODG members reveals a persistent, national problem which also restricts providers' ability to deliver creative, personalised, high quality care and stifles the choices and independence of individuals we support. Crucially, we believe that tackling ordinary residency problems should not represent an increase in public costs overall, but in many cases will lead to savings.

DH guidance acknowledges the key issues of ordinary residence – yet local authorities still call it into question; the Care Bill is a rare opportunity to address the problems we have outlined in this briefing and to avoid the waste of time and resources caused by disputes, and end the needless placing of vulnerable people and their families in limbo. Arrangements between authorities must be clarified so the provision of care is not delayed simply because of uncertainty about who funds the service. Ordinary residence principles must then be reinforced by national government and its partners and strongly promoted to local authorities.

If the government truly wants to offer people more choice and control, care funding should not be determined by the location or type of accommodation, but individuals themselves should have a greater say in where and how they are supported. This is surely an achievable and an essential goal.

¹¹ The Care Funding Calculator (CFC) is a national pricing tool that aims to help providers and authorities achieve a better understanding of the market and assess fair prices for residential care and supported living arrangements for service users. It is being used nationally. There are two versions, one for residential care and one for independent living.

A note on the VODG:

The VODG represents over 70 leading voluntary sector and not-for-profit disability organisations. We work on behalf of members to influence and develop social care policy, build relationships with government and other key agencies, promote best practice and keep members up-to-date on matters that have an effect on service delivery.

VODG members work with around a million disabled people throughout the UK providing services that promote independence, choice and control. Members employ more than 75,000 staff and have a combined annual turnover in excess of £2.2 billion.

A note on this paper:

Our thanks to all the VODG members who contributed to this briefing, and to Hardeep Aiden, research officer at Scope, for his analysis of the VODG's ordinary residence survey results.

Information and contact:

<http://www.vodg.org.uk>

Email info@vodg.org.uk

VODG general secretary John Adams:

Tel: 07917 670 509

Postal address: VODG

6 Market Road

London

N7 9PW

