

Ordinary residence and local authority responsibility

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Introductory points

- Care Act 2014, section 18(1) places a duty on LA to meet an adult's needs for care and support if “the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence”.
- Two types of ordinary residence: (1) actual ordinary residence resulting from a person's physical presence in LA area, and (2) deemed ordinary residence, which will be explored in due course.

Ordinary residence for persons with capacity

- R (Cornwall Council) v SoS for Health [2015] UKSC 46. The facts:
 - P lived in area of Wiltshire CC and cared for by parents until WCC placed him with long term foster carers in South Gloucestershire CC under Children Act 1989.
 - P remained in SGCC with foster parents until after 18, when placed in area of Somerset CC under the National Assistance Act 1948.
 - In the interim the parents had moved to Cornwall CC.

Ordinary residence for persons with capacity

- In Cornwall, the Court approved of the following formulation (which arose from R v Barnet LBC ex p Shah [1983] 2 AC 309), see para 41:

“ordinarily resident’ refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration.’

- “settled” need not be indefinite, so staying for education or business is sufficient.

Ordinary residence for persons with capacity

- What appears to be critical is where the person voluntarily eats and sleeps as a matter of fact, so that a person may be ordinarily resident in interim accommodation provided under the homelessness acts, or even in a barn at a farm where he or she is working temporarily (see e.g. Mohamed v Hammersmith and Fulham LBC [2001] UKHL 57)
- In principle, a person may be ordinarily resident in more than one area, but under CA 2014 a person can only be ordinarily resident in one area so where a person has two or more places of ordinary residence it will be necessary to determine where he or she has the strongest link (R (Sunderland CC) v SF [2012] EWCA Civ 1232).

Ordinary residence for persons with capacity

- Cornwall:
 - SoS had determined ordinarily resident in Cornwall, using parents as “base” who subsequently moved to Cornwall.
 - CA determined ordinarily resident in South Gloucestershire, which is where he was ordinarily resident with foster carers.
 - SC determined ordinarily resident in Wiltshire CC. Test is where he lived voluntarily and he had been placed into South Gloucestershire.

Ordinary residence for persons lacking capacity

- Adults who lack capacity to choose where to live cannot be treated as having become ordinarily resident anywhere on the basis of the ordinary test for ordinary residence because, as a result of lacking the capacity to choose where to live, it cannot be said that such adults have ‘voluntarily adopted’ a place of residence.
- The test was set out in Cornwall (paras 45-47), that a person lacking the capacity to choose where to live will be treated as ordinarily resident in the place where they have lived on a settled basis, as part of the regular order of their life for the time being.

Ordinary residence for persons lacking capacity

- The Care and Support Statutory Guidance provides the following pointers:

“This involves considering all the facts, such as the place of the person’s physical presence, their purpose for living there, the person’s connection with the area, their duration of residence there and the person’s views, wishes and feelings (insofar as these are ascertainable and relevant) to establish whether the purpose of the residence has a sufficient degree”

Deemed ordinary residence

- CA 2014 s39, read with the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 sets out the 'deeming provisions' whereby a person accommodated in LA B will be deemed to be ordinarily resident in LA A.
- Deeming provision 1: where adult has need for care and support that can only be met in (a) a care home, (b) shared lives accommodation or (c) in supported living accommodation and is placed by LA A in area of LA B, that adult remains ordinarily resident in LA A.

Deemed ordinary residence

- Deeming provision 2: adult who is being provided with accommodation as after care service under section 117 of the Mental Capacity Act 1983 is ordinarily resident in the area of the LA with responsibility for providing them with after care services (which is the LA for the area where individual was ordinarily resident prior to detention).
- Deeming provision 3: adult provided with 'NHS accommodation' must be treated as ordinarily resident in the area where ordinarily resident before the accommodation prior to accommodation being provided.

Deemed ordinary residence

- Deeming provision 4 (CA 2014 s74): prisoners detained in prison, adults residing in approved premises, or adults residing in premises because of a requirement as a condition of bail, are treated as ordinarily resident in area of the prison, approved premises or bail premises.
- However, on release, ordinary residence is fact sensitive (see paras 17.48-17.51 of the Care and Support Statutory Guidance).
- Deeming provision 5 (non statutory): see Cornwall, the effect of which is that if LA A place person in LA B area under the Children Act 1989, then person remains ordinarily resident in LA A.

Dispute resolution procedure

- Where LAs disagree on a person's ordinary residence, the statutory procedure is to refer the matter to the Secretary of State: CA 2014 s40. Detail of the scheme is in Care and Support (Disputes between Local Authorities) Regulations 2014. SoS's decision may be judicially reviewed.
- Alternatively, Landmark Chambers have a dispute resolution service where a barrister acts as an "expert" to determine a dispute, in the 'Who Pays?' scheme: <https://www.landmarkchambers.co.uk/resources/who-pays/who-pays-home/>
- NB. there is also procedure for LA to reclaim cost from another LA where it has funded care for someone and it transpires person is ordinarily resident elsewhere: CA 2014 s41.

Residence for education duties for 18-25 year olds

- SEN functions in relation to young persons are the responsibility of an LA “if he or she is in the authority’s area”: Children and Families Act 2014 s24.
- Not many cases on this, but probably something more than simply physical presence as under Children Act 1989, because only one LA can be responsible, unlike CA 1989. I suggest the test involves presence, but additionally involves a degree of stability and connection.
- Financial responsibility for EHC Plan is governed by the Education (Areas to which Pupils and Students Belong) Regulations 1996, known as ‘the Belonging Regulations’. General principle is based on ordinary residence.

Thank you for listening

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