

## **Portability and ordinary residence policy statement**

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### **Our position**

People with hearing loss have access to different levels and types of social services provision depending on where they live. This makes it more difficult for people with hearing loss and other needs to move area, as they have no guarantee that they will receive the support that they need in their new area. For example, the 'ordinary residence' rules make it more difficult for people to move from residential care to more independent living arrangements. Action on Hearing Loss supports reforms to the current rules as these prevent people with hearing loss from living in their preferred locality and living arrangement.

### **Introduction**

This policy statement outlines the main issues around the provision of community equipment for people with hearing loss. It also includes our stand on the issues<sup>1</sup>.

We use the term 'people with hearing loss' to refer to people who are deaf, deafened and hard of hearing throughout.

### **Background**

#### **Portability**

The term 'portability' refers to how easy it is for someone to take their care package, such as the social care that they receive, with them when they move area.

When people have social care needs, their care and support is sometimes funded by their local authority. For people with hearing loss, the social care that they receive will vary according to what they need; for instance, some people may simply need equipment to help them hear. Other people with more complex needs, for instance someone who has both hearing loss and learning difficulties, may need to live in residential care or may require support from an outreach worker who helps them with particular tasks.

People with hearing loss have access to different levels and types of social services depending on where they live. This makes it difficult for someone to move area as there is no guarantee that they will receive the support that they need in their new area. In this way, they are frequently prevented from making an informed choice about their future. Similarly, where people are receiving care or support in one area, they may be unable to start the process of arranging a package of social care in their new area until they have actually moved. This can cause problems for people with high support needs, in particular. Ultimately, the risk of interruption to their care and support restricts people's ability to move location.

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<sup>1</sup> Please note, like many policy documents this statement reflects the issues relevant at the time of writing. Over time this may be subject to change and new legislation (and further amendments and/or reviews of this document). Therefore, it is strongly recommended that you consult the policy lead in conjunction with using this document.

### **Ordinary residence rules**

This situation is further complicated by ordinary residence rules. The local authority area in which someone is considered to be ordinarily resident is responsible for funding their care and support. If a local authority places someone in residential care outside its area, it continues to pay for this. If the person then moves to live in the community, the local authority in which they are based becomes responsible for paying for their care.

In some cases this has caused disputes, sometimes lengthy, around which local authority is responsible for paying for a service-user's care and support. This situation can be further complicated by disputes between local authorities and the NHS as to who is responsible for paying for the service-user's care.

Similarly, it has limited the choices available to some people; for instance, if they have wished to move from residential care into a more independent setting but funding has not been made available by their local authority.

These rules can also prevent organisations that provide care and support, such as Action on Hearing Loss, from providing the service that best meets their service-users' needs. For instance, if a care provider felt that one of their care homes should cease to be registered as a care home (because, for instance, the residents' needs had changed so that supported living arrangements would be more appropriate for them), current ordinary residence rules would make this more difficult. This is because, where residents come from outside the local authority area of the care home, deregistration of the care home will mean that they are considered to have moved their place of ordinary residence. The new authority may not be willing to assess or fund the resident's support needs, something that might deter organisations from deregistering the care home.

### **Developments**

There has been some recognition of issues around this, however there have been no significant changes to the law or to practice in this area.

Two relevant commissions have been appointed to reform social care law (Law Commission) and funding (Dilnot Commission). Both of these commissions have recognised the issues in this area and have made the following recommendations:

- greater co-operation between local authorities
- anyone moving from one local authority area to another should keep their needs assessment until they are assessed by the new local authority, and all their eligible care needs should be met during this period.

As well as the Law and Dilnot Commissions' recommendations, there are plans to introduce a private members' bill, the Social Care Portability Bill, to parliament although there is no set timetable for this. This states that where someone moves, the local authority which they have moved to must initially provide social care that is equivalent to the provision on their previous authority. This would apply where someone moves area or where they move from residential care funded by one authority to a community living arrangement in another authority.

### **Evidence**

Action on Hearing Loss' knowledge around this issue is partially informed by the experiences of people who use our own services.

The Voluntary Organisations Disability Group (VODG), of which Action on Hearing Loss is a member, explored the experiences of people around portability and ordinary residence disputes. This project found the following:

- lengthy disputes between local authorities which put service-users' lives on hold
- local authorities refusing to assess a service-user's needs where someone wished to move from one area to another
- ordinary residence arrangements preventing service-users' from moving into more independent living arrangements
- voluntary sector organisations having support service-users while local authorities are in dispute.

Moreover, the report from VODG finds that the resolution of such disputes incurs high administration and legal costs and that in some cases, the ordinary residence rules prevent people from moving into cheaper forms of care or support.

### **Recommendations**

- People with hearing loss should be able to access the care and support that meets their needs wherever they are based.
- Issues around portability and/or ordinary residence should not prevent people with hearing loss from moving to their preferred locality or living arrangement.

We also support VODG's following recommendation:

- The Department of Health should put in place a mechanism for the transfer of funds between local authorities to minimise disputes and enable people to live in their preferred locality and living arrangement.

### **References**

Social Care Portability Bill

<http://services.parliament.uk/bills/2010-11/socialcareportabilityhl.html>

Voluntary Organisations Disability Group

<http://www.vodg.org.uk/uploads/VODG-no-place-like-home.pdf>

[http://www.vodg.org.uk/uploads/pdfs/VODG\\_report\\_final.pdf](http://www.vodg.org.uk/uploads/pdfs/VODG_report_final.pdf)