



ORDINARY RESIDENCE

PRACTICE GUIDANCE

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1. INTRODUCTION

When someone approaches **local authority A** for support, it is essential to establish as early as possible whether or not we are responsible for meeting that person's needs. Many of our care and support responsibilities relate to the entire local population (for instance, in relation to information and advice or preventive services) but we are only required to meet the support needs of people who are "ordinarily resident" in **local authority A** (or are present here but have no settled residence) (1)

This policy will set out how to ascertain someone's ordinary residence, the steps to take when someone who is being provided with funded support is ordinarily resident elsewhere and what to do when there is a dispute.

2. WHAT IS ORDINARY RESIDENCE?

Although there is no strict definition of ordinary residence in any statute including the Care Act, the courts have accepted a definition put forward by Lord Scarman in the case of **Shah v London Borough of Barnet (1983)** which states:

'Unless ... it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that "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 long duration.' (2)

This has become known as the **Shah test** and what it means is that a person's ordinary residence lies in the place s/he has chosen to live and settle. For carers, it is the ordinary residence of the person they care for which is relevant. Someone who lives in the **local authority B** but cares for a person in **local authority A** may be entitled to carers support services funded by **local authority A** if they meet the eligibility criteria.

Someone can only have one ordinary residence. If they have more than one home, all of their circumstances should be considered to decide to which of their homes they have the strongest link.

Because the **Shah test** relies on someone making a choice, it does not apply to people who lack the mental capacity to make that choice. A different process should be followed, which is set out at section 6 below.

3. WHEN SHOULD ORDINARY RESIDENCE BE DETERMINED?

The process for assessing and meeting need is set out in the Care Act 2014 which requires local authorities to carry out an assessment of need on anyone who requests one and appears to have some degree of need. If they have urgent needs, these should be met as soon as they are identified and the assessment continued with. Once the assessment is complete, the local authority must determine whether any of the needs identified fall within the national eligibility criteria. If the person does have eligible needs, their ordinary residence should then be ascertained. (3)

4. ESTABLISHING ORDINARY RESIDENCE FOR PEOPLE WHO HAVE CAPACITY

Establishing where someone is ordinarily resident is a key test in determining which local authority is responsible for funding any support services someone requires. However, determining ordinary residence should not delay the assessment process, nor should it stop us from meeting someone's eligible need. If it is clear from the outset that someone is ordinarily resident elsewhere, they should be encouraged to seek support from that local authority, or if that is not practicable, that their home local authority is informed of the action **local authority A** is taking and an agreement is reached that they will fund any support provided. This could happen, for example if someone is visiting the city with a carer and that carer is taken ill, leaving the person vulnerable and with an urgent need for support services. (4)

Ordinary residence is acquired as soon as someone moves to an area provided the move is made voluntarily and for a settled purpose. It is important to consider both of these criteria as unless both are met, ordinary residence is not acquired and people in very similar situations may have different residencies. This is illustrated in the example below.

Establishing ordinary residence

Sue, Bob and Will are all students with disabilities and needs for support who move from **local authority B** to **local authority A** to start university.

Sue loves **local authority B** and intends to live there her whole life. Sue has moved to **local authority A** voluntarily but not for settled purposes, and so her ordinary residence does not transfer from **local authority B** to **local authority A**. **Local authority B** retains responsibility for funding her support.

Bob loves **local authority A** and intends to stay here his whole life. Bob moves voluntarily and for settled purposes so his ordinary residence does transfer to **local authority A**.

Will wants to spread his wings. He has no intention of either going back to **local authority B** or remaining in **local authority A** once his studies have finished. Will has moved voluntarily and for settled purposes as part of the regular order of his life for the time being, albeit of short duration and so his ordinary residence transfers to **local authority A**.

Local authority A becomes responsible for funding the support of both Bob and Will. (5)

If someone's ordinary residence is not clear, **local authority A** will meet the person's eligible unmet needs first and will then determine their ordinary residence

5. PEOPLE OF NO SETTLED RESIDENCE

It is usually clear that someone has chosen a particular place to live for settled purposes, whether they have been there for a long or short time, and so defining ordinary residence is straightforward for most people. However, for some people it is not clear, and it must be concluded that they are of no settled residence. For example, if someone has clearly and intentionally left their previous home and moved to stay elsewhere on a temporary basis during which time their circumstances change, they may find themselves to be of no settled residence. The Care Act makes it clear that local authorities have a duty to meet the eligible needs of people if they are present in its area but are either of no settled residence or if their ordinary residence is in dispute. (6)

This means that people who have no settled residence, but are physically present in the local authority's area, should be treated the same as those who are ordinarily resident.

An example is given below of the circumstances in which someone may find themselves of no settled residence.

No settled residence

David is 30 years old with physical and learning disabilities. Until 6 months ago, he lived with his family in **local authority A**. However, the relationship broke down and David sought help from **local authority A** who placed him in a residential home on a short term basis until something more permanent could be agreed.

After a few weeks, David left the residential home and went to stay with friends in **local authority B**. That arrangement then broke down and David approached **local authority B** for support. **Local authority B** placed David in residential care and asked **local authority A** to fund it.

Local authority A argues that when David moved to stay with friends in **local authority B**, his ordinary residence transferred.

According to the Care Act guidance, from which this example is taken, David had not acquired ordinary residence in **local authority B** as the arrangement with his friends was only temporary, he had not built up any ties to the community and he had not chosen to live in **local authority B** voluntarily and for settled purposes.

However, he had not retained his ordinary residence in **local authority A** as he left intentionally and had no settled residence to which he could return. David is therefore of no settled residence. The Care Act makes it clear that local authorities have a duty to meet the needs of people who are physically present in the local authority area but are of no settled residence. **Local authority B** is therefore responsible for meeting David's eligible unmet support needs. (7)

6. ESTABLISHING ORDINARY RESIDENCE FOR PEOPLE WITHOUT MENTAL CAPACITY

Under the Mental Capacity Act 2005, it must be assumed that adults have capacity to make their own decisions, including decisions relating to their accommodation and care, unless it is established to the contrary. The test for capacity is specific to each decision at the time it needs to be made, and someone may be capable of making some decisions but not others. It is not necessary for the person to understand local authority funding arrangements to be able to decide where they want to live. If it can be shown that the person lacks capacity to make a particular decision, the MCA makes clear who can take decisions on their behalf, in which situations and how they should go about doing this.

For example, if a person lacks capacity to decide where to live, and has no attorney or deputy, a best interest decision about their accommodation should be made. Under the MCA, any act done, or decision made (which would include a decision relating to where a person without capacity should live), must be in the best interests of the person who lacks capacity.

Section 4 of the MCA gives guidance on how to work out the best interests of someone who lacks capacity and provides a checklist of factors for this purpose.

Where the person lacks the capacity to decide where to live and uncertainties arise about their place of ordinary residence, the test by Lord Scarman in the **Shah** case will not help since it requires the voluntary adoption of a place. In the case of someone who lacks or has lost capacity, the approach known as **Vale 2** can be used to determine ordinary residence.

This arose from the case of *R v Waltham Forest London Borough Council, Ex p Vale* The Times 1985 which set out two tests for establishing the ordinary residence of someone who lacks capacity.

Subsequent case law has advised against the use of the first test but the second may still be used. It has been enhanced by more recent case law and does not give a hard and fast answer but is an aid to decision making. It involves considering a person's ordinary residence as if they had capacity and all relevant facts of their case should be considered, including physical presence in a particular place but without requiring the person to have voluntarily adopted the place of residence.

Determining ordinary residence – Vale 2: an aid to decision making

1. What is the centre or focus of the adult's social and family environment?
2. What are the purposes and intentions of his nearest relatives?
3. What is his actual place of residence?
4. Where does he have a pattern of regular living? (if for examples he has two homes)
5. What emotional pull is greater – parents or carers? (if for example he has two homes)
6. What is his state of mind (not wishes) as to his residence?
7. How long has he lived here?
8. Why does he live there?
9. Is his residence there stable or intermittent and temporary?
10. A lack of integration does not mean a lack of habitual residence. (8)

The use of the **Vale 2** test involves considering a person's ordinary residence as if they had capacity and aims to identify the decision they would make if they did have capacity. All the facts of the person's case must be considered, including physical presence in a particular place and the nature and purpose of that presence but without requiring the person to have voluntarily adopted the place of residence.

This is the basic test to be used for people living or moving into some form of independent living, whether that is with family, friends or in a supported tenancy. Regarding residential care, The Supreme Court has recently ruled in a case which shows that neither the **Shah test** nor the **Vale test** apply when residential care or other specified accommodation is needed. The two case studies below illustrate this.

Ordinary residence and independent living for someone with impaired capacity

Matt is 25 years old and has a learning disability. He has the capacity to make some decisions but not others. He has been living in residential care for seven years but expresses a wish to move into a flat with some friends with similar disabilities. The assessment of capacity shows that Matt has the capacity to decide where he wants to live but does not have the capacity to enter into a tenancy or manage his financial affairs. He has no family or friends who are willing and able to take on a lasting power of attorney, so the local authority which provides the residential care **local authority A** applies to the Court of Protection to act as Matt's deputy. The Court appoints an officer from **local authority A** to be Matt's deputy.

Matt and his friends choose a house which is in **local authority B** and the move goes ahead. Matt's deputy signs the tenancy agreement on his behalf and sets up payment of the rent and utilities.

Local authorities A and **B** then fall into dispute over which of them is responsible for funding Matt's support in the future. **Local authority A** argues that Matt has moved to **local authority B** voluntarily and for settled purpose and so has acquired ordinary residence there. **Local authority B** argues that as Matt's deputy is an officer of **local authority A**, this amounts to arranging accommodation specified by section 39 of the Care Act and so **local authority A** retains responsibility for funding Matt's support.

Because Matt has not been provided with accommodation specified by Care Act regulations – that is, residential care, shared lives, extra care or supported living – the regulations do not apply. Matt has moved into independent living and the support he needs to continue to live independently must be provided by the local authority in which he resides, which is **local authority B**. (9)

Ordinary residence and residential care for people who lack capacity – the Cornwall case.

The case of R (Cornwall Council) v SSH 2015 is the most recent ruling in cases of ordinary residence. P has severe physical and learning disabilities and is without speech. He does not have the capacity to decide where to live. When he was four, his parents who lived in Wiltshire could not meet his needs and he was placed by Somerset County council with foster parents in South Gloucestershire. He formed close links with his foster family and with the local community and shortly after his placement there, his parents moved to Cornwall. They visited him frequently and he visited them. When P turned 18, the fostering arrangement ceased and Somerset County council placed him in residential care in Somerset at a cost of £80,000 a year. Somerset, Cornwall and South Gloucestershire then fell into dispute over the responsibility for funding his care. Somerset held that P's ordinary residence had transferred to Cornwall when his family moved there. Cornwall held that as he had never lived in Cornwall, he could not have acquired ordinary residence and that as he had lived a settled life in South Gloucestershire and had formed close links with the local community that was where he would choose to live if he had the capacity to make the choice. On that basis, his ordinary residence lay in South Gloucestershire.

The three local authorities appealed to the Secretary of State who ruled that as Cornwall was where the family home was, that was indeed where P's ordinary residence was. Cornwall applied for judicial review and the judge upheld the decision of the Secretary of State. Cornwall then appealed to the Court of Appeal, on the grounds that as all of P's community ties were to South Gloucestershire, that was where his ordinary residence lay. The Court of Appeal set aside the judge's decision and declared that P's ordinary residence was indeed in South Gloucestershire. The Court allowed an appeal to the Supreme Court which ruled that as an adult, P could not automatically be assumed to share the ordinary residence of his parents, as would be the case with a child and so he did not have ordinary residence in Cornwall. Nor did he have ordinary residence in South Gloucestershire. Somerset County Council had placed P with a care provider there, but residing in a care provision did not create ordinary residence. The Supreme Court found that as P had no settled ordinary residence in his own right, the authority in which he resided prior to care provision being made retained responsibility and therefore Somerset County Council would remain responsible for funding his care indefinitely, regardless of where he was placed.⁽¹⁰⁾

The Cornwall case has firmly established the principle that if a local authority places someone in certain types of accommodation – namely residential care, shared lives, extra care or supported living, then it retains responsibility for funding that person's support for as long as they need that particular type of service. This still applies even if the person lives elsewhere and has close ties to their adopted community.

7. ORDINARY RESIDENCE AND SPECIFIED ACCOMMODATION INCLUDING OUT OF AREA PLACEMENT

When it has been agreed that someone needs to live in a type of accommodation specified in regulations (i.e. residential/nursing care, shared lives, supported living or extra care) (11) the Care Act gives them the right to choose where they go, including places outside of the local authority area provided that:

- The accommodation is suitable, available and the provider agrees to accept the person
- It does not cost the local authority more than the amount specified in the person's personal budget. The personal budget must reflect the usual cost of care and at least one viable offer must be available at that cost. If there is no viable choice at that cost at that time, the personal budget must be increased to the level at which a viable choice can be offered.

The choice must not be limited to providers with whom the local authority already contracts, or to those within the geographical area of the local authority. If someone chooses to be placed in a setting which is outside the local authority's area, the local authority must still arrange for their preferred care. In doing so, the local authority must have regard to the cost of care in that area and set the personal budget accordingly. (12)

If the person chooses accommodation which costs more than the amount specified in the personal budget, they (or a third party) can top-up the payments from their own resources. A top up cannot be requested until at least one viable choice at the level of the personal budget has been offered and rejected.

If someone living in **local authority A** has been assessed as needing residential/nursing care, shared lives, extra care or supported living, then their ordinary residence stays in **local authority A** regardless of whether they choose to live somewhere else and regardless of whether we or they fund the placement provided that we assess them and arrange it.

However, if someone arranges and funds their own placement without an assessment, then their ordinary residence transfers to the new local authority area. The key to whether ordinary residence transfers or not is whether we have provided an assessment which finds that the person's needs can only be met through the provision of specified accommodation.

Ordinary residence and out of area placements

Wendy and Amy are both 82, in poor health and are living in **local authority A**. Both have substantial financial assets. Following a stroke, Amy is assessed as needing residential care and she asks the local authority to arrange a placement in **local authority B** as her family live there.

Wendy feels that she too would prefer to live in residential care and moves into the same home as Amy. Initially, both are funding their own care. However, when their savings fall below the capital threshold and they become eligible for local authority funded support, Amy is regarded as ordinarily resident in **local authority A**, because **local authority A** workers identified her need for residential care and arranged the placement. Because Wendy arranged her own placement, she moved voluntarily and for settled purposes to **local authority B** where she lived until she needed to approach the local authority for support. She therefore became ordinarily resident in **local authority B**.

Under the Care Act, someone is ordinarily resident in the area they lived in immediately prior to specified accommodation being provided by a local authority (in this case, residential care) In Amy's case, residential care was initially provided by **local authority A**, even though **local authority A** wasn't funding it and it was being provided out of area whereas Wendy lived in **local authority B** prior to approaching the local authority even though it was in residential care. (13)

8. ORDINARY RESIDENCE AND CONTINUING HEALTH CARE

Continuing Health Care funding is provided to people aged 18 or over who have a primary health need as a result of disability, accident or illness. The Clinical Commissioning Group responsible for the area in which the person's GP is situated is responsible for care planning, commissioning both health and care and support services and for case management. If a review subsequently finds the person is no longer eligible for CHC funding, the local authority in which the person is ordinarily resident becomes liable for meeting any ongoing support needs. If the person has remained in the same local authority area, or has moved voluntarily and for settled purposes while receiving CHC funding, they are ordinarily resident in the place they are actually living. If however, they have been placed in residential care as part of the CHC provision, their ordinary residence is in the place they lived immediately prior to moving into residential care. This does mean that on occasion, the CCG responsible for CHC funding and the local authority responsible for meeting care and support needs can be located many miles apart. (14)

Ordinary residence and CHC funding

Maureen is 72 and living in **local authority A** when she has a stroke which leaves her with a severe disability and complex care needs. She is assessed as needing CHC funding and moves from hospital into a rehabilitation unit in a residential care home in the **local authority B**. She lives there for three years and steadily recovers.

She forms good links with the local community and with other residents in the home. During this time, Maureen's husband dies.

A reassessment of Maureen's needs shows she is no longer eligible for CHC funding but she still has eligible support needs which can only be met through residential care. Maureen no longer has any ties to **local authority A** but is well integrated with the community within and around the home in the **local authority B**. All agree the best option for Maureen is to remain in the residential home but dispute which local authority is responsible for funding her ongoing support.

Once Maureen's CHC funding ceases and she is provided with accommodation under the Care Act, she is deemed to be ordinarily resident in the area in which she lived immediately before the accommodation was provided. Just before being provided with accommodation under the Care Act, Maureen lived in the home in the **local authority B** but was ordinarily resident in **local authority A**. Therefore, she remains ordinarily resident in **local authority A**. Even though Maureen has no ties to **local authority A** and has made a capacitated choice to live in **local authority B** voluntarily and for settled purposes, once accommodation is provided to meet support needs, a person's ordinary residence remains static. (15)

9. ORDINARY RESIDENCE AND TRANSITION

Neither the Children Act 1989 or the Care Act makes provision for how to determine the ordinary residence of someone transiting from children's to adult's services. Each case must be decided on an individual basis, taking all relevant circumstances into account. Important factors will include:

- Where the person is actually living
- Whether they have the mental capacity to decide where they wish to live and settle
- Whether they have been placed in residential care or other form of specified accommodation by a local authority
- The ties the person has with the area they lived in as a child
- The ties with the area they are currently living in

The Cornwall case (described above) is the most recent piece of case law informing the determination of the ordinary residence of young adults without capacity and suitable weight must be given to the view of the Supreme Court that the local authority in which someone is living when they first enter residential care or other specified accommodation retains responsibility for that person until they no longer need accommodation of that type.

If the person either does not live in specified accommodation or no longer needs it, then they acquire ordinary residence in the place they choose to live voluntarily and for settled purposes. The examples below illustrate the points to consider.

Ordinary residence and transition: Scenario 1

Sunil is 18 and has physical and learning disabilities. He and his parents lived in **local authority A** until he was placed in a residential school in **local authority B** at the age of 10, funded by **local authority A**. Since then, he has had only occasional contact with his family.

At the end of the academic year, Sunil's needs are reassessed and it is agreed that he needs to remain in residential care. Sunil has the capacity to make some decisions and expresses a strong desire to move into a residential care home which is close to the school so that he can still see his friends. A place is found for him in a home in **local authority B** but **local authority A** and **local authority B** fall into dispute over who is responsible for paying the care home fees.

Sunil has lived in **local authority B** for eight years, during which time he has built up relationships with people and with the local community. He has only occasional contact with his family in **local authority A** and so cannot be said to have a base there with them. He has expressed a clear wish to live in **local authority B**.

Therefore, in line with the **Shah test**, he has chosen to live there voluntarily and for settled purposes and so acquires ordinary residence in **local authority B** at the point of transition. Because Sunil is being provided with specified accommodation, he is deemed to be ordinarily resident in the area in which he was resident immediately before being provided with accommodation. Immediately before being provided with accommodation, he had made a clear choice to settle in **local authority B** and so had acquired ordinary residence there. He is therefore, ordinarily resident in **local authority B** who will retain responsibility for funding his support for as long as he lives in **local authority B**, or for as long as he remains in specified accommodation whether that is in **local authority B** or not. (16)

Ordinary residence and transition: Scenario 2

Joe is 18 years old and has physical and learning disabilities. He and his parents lived in **local authority A** until he was placed in a residential school in **local authority B** at the age of 10, funded by **local authority A**. Joe still has a close relationship with his parents and there is frequent contact.

At the end of the academic year, Joe's needs are reassessed and it is agreed that he needs to remain in residential care. Joe does not have the capacity to make a decision about where to live, but it is felt by all concerned to be in his best interest to move into a residential care home which is close to the school so that he can still see his friends. A place is found for him in a home in **local authority B** but **local authority A** and **local authority B** fall into dispute over who is responsible for paying the care home fees.

Joe has lived in **local authority B** for eight years but has kept close links with his family and appears to regard his parents' house as his home. Because Joe cannot make a capacitated choice about where to live, the **Vale test** should be used to work out his ordinary residence. Every indication is that Joe has ties with **local authority A** and would regard it as his home if he had the capacity to do so. His ordinary residence therefore remains in **local authority A**.

Joe's case can be contrasted with Sunil's above. Joe maintains a close relationship with his parents and their home remains his base, whereas Sunil does not have a similar base with his parents. Furthermore, Sunil has established links with his local community in **local authority B** and has expressed a wish to remain there. Joe has established no such links and does not have the capacity to make the same decision as Sunil in relation to his choice of residence. (17)

Ordinary residence and transition: Scenario 3

Rosie is 18 years old and has physical and learning disabilities. She has been a 'looked after child' of **local authority A** from an early age and has lived with foster carers in the **local authority B** since she was 5.

When Rosie turns 18, she is ready to leave care and an assessment is carried out to determine her future care needs. Rosie wants to move into independent living and her support workers from **local authority A**, along with her foster carers help her to find a flat share in **local authority B**. Rosie signs her own tenancy agreement and the move takes place. She receives housing benefit and has a direct payment, which her foster carers manage on her behalf, to pay for support with her social care needs. At this point, **local authority A** and **local authority B** fall into dispute over responsibility for funding.

Rosie has lived in the **local authority B** from a young age and has built links with the local community. She has taken on a tenancy in **local authority B** and so has clearly made a capacitated choice to move voluntarily and for settled purposes to the **local authority B**.

In line with the **Shah test**, Rosie has therefore acquired ordinary residence in the **local authority B**.

However, as she is also a care leaver, she has a right to after care services provided by the local authority which provided her with care and although Rosie was living in the **local authority B**, the service was provided and funded by **local authority A**. Rosie therefore is entitled to after care support from **local authority A** and ongoing support as an adult from the **local authority B**, and the Care Act places a duty on both local authorities to co-operate in Rosie's best interest. (18)

10. ORDINARY RESIDENCE AND DELAYED DISCHARGE

When someone is ready to be discharged from hospital and it appears to the NHS that they may be in need of social care support, it will issue a notice under section 2 of the Community Care (Delayed Discharges) Act 2003 to the local authority in which the person is ordinarily resident. If the person is of no settled residence, it will issue the section 2 notice to the local authority in which the hospital is situated. (19)

If a notice is issued to **local authority A** and it appears that the person is ordinarily resident elsewhere, the person receiving the notice must inform the hospital immediately. If the hospital agrees that the person is ordinarily resident elsewhere, it will withdraw the notice and reissue it to the relevant local authority. If the hospital does not agree, then **local authority A** must proceed with assessment and support planning for the person but must negotiate with officers from the local authority they believe the person is ordinarily resident in over who should fund. If agreement can't be reached, legal advice should be sought about whether an application to the Secretary of State should be made.

11. ORDINARY RESIDENCE AND DOLS

If someone living in a care home needs to be deprived of their liberty, an application must be made by the care home (the managing authority) to the supervisory body (the local authority) The Mental Capacity Act 2005 states that the supervisory body is always the local authority in which the person is ordinarily resident. (Please see above for how to determine ordinary residence) If the person is of no settled residence, the supervisory body is the local authority in which the care home is situated. (20)

12. ORDINARY RESIDENCE AND SECTION 117 AFTER CARE

Under section 117 of the Mental Health Act 1983, local authorities, Clinical Commissioning Groups and where appropriate, the NHS Commissioning Board (NHS England) have a duty together to provide mental health after care services for people who have been detained in hospital for treatment under certain sections of that act, if they need such services. This duty is placed on the local authority in which the person was ordinarily resident immediately before they were detained under the Mental Health Act until such a time as they no longer require after care services, even if they become ordinarily resident in another area upon leaving hospital.

If they do become ordinarily resident in another area and their mental health deteriorates to the point where they need to be detained in hospital again, the rules are applied again from scratch which means that a different local authority may be responsible for the second package of section 117 after care services. (This is illustrated in the example below.) (21)

Ordinary residence and section 117 after care

James has a history of mental health problems. He is living in **local authority A** and following deterioration in his mental health, he is detained in hospital for treatment under section 3 of the Mental Health Act 1983. When he is subsequently discharged, he moves in with his sister in **local authority B**, but needs after care under section 117 of the mental health act. Under the terms of the Care Act, the local authority in which he was ordinarily resident before being detained is responsible for funding such services. Therefore, although James has moved to the **local authority B** voluntarily and for settled purposes upon leaving hospital, he lived in **local authority A** prior to being detained and so **local authority A** is responsible for funding his after care services.

A few months later, James's mental health deteriorated and he is detained in hospital again. Because James had moved to **local authority B** voluntarily and for settled purposes prior to his most recent hospital admission and so had acquired ordinary residence there, **local authority B** is now the local authority in which he was ordinarily resident before being detained and so is responsible for funding any after care service required under section 117.

If James had been placed in a residential home or other specified accommodation in **local authority B** by **local authority A**, he would have retained ordinary residence in **local authority A**, so **local authority A** would have been responsible for funding after care services subsequent to both hospital admissions. This is a change to the legal position prior to the Care Act where James's *residence* which was considered by the 1983 Mental Health Act would have transferred to **local authority B** even when his *ordinary residence* considered under section 24(5) of the 1948 National Assistance Act for the purposes of deciding responsibility for funding placements in residential care did not.

13. ORDINARY RESIDENCE AND PEOPLE LEAVING PRISON

People who are detained in prison, bail hostels or other approved premises are ordinarily resident in the area in which the prison, bail hostels or other approved premises are situated for the duration of their sentence. (22) Upon release, if the person needs to move into specified accommodation (residential/nursing care, extra care, shared lives or supported living) they are usually regarded as being ordinarily resident in the area they lived in immediately prior to entering prison. If they do not need to move into specified accommodation they become ordinarily resident in the area in which they choose to move to voluntarily and for settled purposes. (23)

If someone is receiving support funded by **local authority A**, then contact must be made immediately prior to their release with the local authority whose area the person is moving to in order to ensure continuity of care.

14. RESOLVING ORDINARY RESIDENCE ISSUES WITH OTHER LOCAL AUTHORITIES

If someone receiving support funded by **local authority A** is proposing to move to another local authority area, or it appears that someone receiving support may be ordinarily resident in another local authority area, contact must be made with that authority at the earliest possible opportunity to raise the issue, outlining clearly the reason why we feel the person is ordinarily resident in their area and open a dialogue. The person and his/her carers (where relevant) must be kept fully informed and a clear record must be kept of all correspondence or discussions.

If the other local authority does not accept responsibility, then legal advice must be sought on how to proceed. Every reasonable effort must be made to resolve the dispute, but disputes should not be allowed to run on indefinitely. If resolution cannot be reached, then an application should be made by the legal section to the Secretary of State for a ruling in the matter.

It is critical that the person does not go without the support they need while their ordinary residence is in dispute, and **local authority A** as the local authority 'of the moment' must arrange whatever support is agreed as necessary to meet that person's needs while the dispute is ongoing. If the other local authority later accepts responsibility or if the Secretary of State makes a ruling in our favour, then recompense may be sought from the other local authority by our legal and finance sections. (24)

15. PROCESS OF SEEKING A DETERMINATION FROM THE SECRETARY OF STATE

If a dispute over ordinary residence cannot be resolved through discussion informed by legal advice then as a last resort, application should be made to the Secretary of State for a determination. **Local authority A** legal section will lead this work, using the documentation set out in the Care and Support (Ordinary Residence Disputes etc.) Regulations 2014 together with a statement of fact and evidence of the attempts made to resolve the dispute informally. Applications for determination must be made within four months of the dispute arising.

It would normally fall to the lead authority (the one providing support to the person) to make the application but if another local authority, having approached **local authority A** with a dispute about someone's ordinary residence then fails to engage in constructive dialogue to resolve the dispute, **Local authority A** may apply to the Secretary of State for a determination. (25)

All applications for a determination should be made to:

Department of Health
Quality and Safety Team
Social Care Policy Division
Area 313B, Richmond House
79 Whitehall
London
SW1A 2NS

16. GOOD PRACTICE GUIDANCE – MOVING TO A NEIGHBOURING BOROUGH

If an individual chooses to move from one borough to another to live in the community, the following process should be followed:

- The individual or the individual's current local authority should make a referral to the local authority to which the individual intends to move
- The referral should be made in good time, at least two weeks in advance of the move to ensure that sufficient time is available to complete an assessment of need which takes into account the availability of services in the second local authority
- This should enable the second local authority to prepare a suitable care package to meet the individual's needs from the first day of moving to that authority
- If the second council has had sufficient notice to complete an assessment but has not done so, the second authority will be responsible for replicating and funding the individual's existing care package at least until a review has been completed from the first day of moving to that authority
- If the second local authority has not been given notice of the move, then the first local authority should support the individual for a transitional period of two weeks to give the second local authority the opportunity to respond to the request for assessment and services
- Issues such as capacity and whether the former local authority has assisted and supported the move may impact on the above decision. Further legal advice should be sought in these circumstances

17. REFERENCES AND SOURCES

1	Care Act guidance 19.1
2	Shah v London Borough of Barnet (1983)
3	Care Act guidance 19.7
4	Care Act guidance Annex J1 para 2
5	Care Act guidance Annex J8 pp 414 - 415
6	Care Act sections 18 and 20
7	Care Act guidance section 19 p 285
8	Amalgamated from judge's rulings in the cases of: R V Waltham Forest London Borough Council Ex p Vale The Times 1985 and R (Cornwall Council v SSH 2015
9	Ordinary residence: Guidance on the identification of ordinary residence of people in need of community care services, England. Department of Health 2013 pp 40 – 41
10	R (Cornwall Council) v SSH 2015 reported by the Incorporated Council of Law Reporting for England and Wales
11	The Care and Support (ordinary residence) (specified accommodation) regulations 2014
12	Care Act guidance Annex A para 4 - 6
13	Care Act guidance Annex J4 p 402 (adapted)
14	Care Act guidance Annex J5
15	Care Act guidance Annex J5 P 404
16	Care Act guidance Annex J8 P 412
17	Ordinary residence: Guidance on the identification of ordinary residence of people in need of community care services, England. Department of Health 2013 p 56
18	Care Act guidance Annex J8 P 413
19	Care Act guidance Annex J9 para 61 - 62
20	Care Act guidance Annex J9 para 68 - 72
21	Care Act guidance 19.38 – 19.39
22	Care Act 2014 Section 76 subsection 1 - 3
23	Care Act guidance 17.47 – 17.49
24	Care Act guidance 19.45 – 19.50
25	Care Act guidance 19.53 – 19.58

