

# Ordinary Residence Practice Guidance


Adult Social Care

**A great place to live and work.**

## Ordinary Residence Practice Guidance

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## CQC Assurance Key Areas:

This policy document supports CQC Assurance Key Areas

Safe	Effective	Caring	Responsive	Well-led
●	●	●	●	●

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It is the responsibility of every individual to ensure that they are working to the most current version of this document.

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## 1. What is Ordinary Residence?

- 1.1 The term “ordinary residence” describes the place that a person has chosen to live, whether in the short or long term. A person can be considered as an ordinary resident as soon as they move into an area.
- 1.2 Local Authorities have a duty to meet the care and support needs of people who are ordinarily resident in their area. Therefore, Council’s use ordinary residence (where a person normally lives) to establish which local authority is responsible for meeting a person’s assessed, eligible needs and to ensure that people know who they should contact when they need care and support.
- 1.3 An ordinary residence test is one of the key tests to establish whether a local authority is required to meet a person’s eligible care and support needs.
- 1.4 The Care & Support statutory guidance advises that: “The concept of ordinary residence involves questions of both fact and degree. Factors such as time, intentions and continuity (each of which may be given different weight according to the context) have to be taken into account.”

## 2. Determining Ordinary Residence

- 2.1 In Central Bedfordshire Council, our adult social care teams will determine whether a person is ordinarily resident in our area following the needs or carer’s assessment, and after determining whether a person has eligible needs.
- 2.2 There is no definition of “ordinary residence” in the Care Act. However, councils must have regard to the leading case on the issue *Barnet LBC v Shah* [1983] All ER 226, HL when considering ordinary residence decisions:

“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.”

- 2.3 There is no minimum period to qualify having ordinary residence – it can be acquired as soon as a person moves to an area if the move is voluntary and for settled purposes, irrespective of whether they own, or have interest in property in another local authority.
- 2.4 Determinations around ordinary residence often apply what is known as the ‘Shah test’ based on the origins of this case. This includes both physical and mental aspects to the test (Ordinary residence guide LGA, ADASS):

- **Physical: Their abode / where they live/physical presence**

For the purposes of allocating responsibility for meeting eligible needs a person cannot be ordinarily resident in more than one place, so if an individual splits their time between two properties it would be necessary to look at all the facts to determine which one of those there is a stronger link to. Elements such as time spent at each address, GP registration, inclusion on the electoral register and looking at the extent of the individual’s community ties in each area can assist in determining this.

- **Physical: Settled Purpose**

The person must be at their abode for a “settled purpose as part of the regular order of his life for the time being, whether of short or long duration.”

A question of whether the settled purpose is part of the regular order of the individual’s life “for the time being”. From this perspective, settled purpose can be established at the instant of an individual’s move to a new area, if that move is with the intention of remaining there permanently or for the foreseeable future. That is because the person will have a settled purpose from the moment they arrive.

There is an important difference in approach where someone has made a clear decision to permanently move away from an area and the situation when someone is temporarily away from their place of residence when the need for support under the Care Act arises. If they are temporarily away, they will remain ordinarily resident in their own/originating area rather than acquiring ordinary residence in the area where they are staying. Therefore, an individual can be physically present in one area but not ordinarily resident there.

The approach to temporary presence in a particular place will vary depending on the individual circumstances. Temporary ‘absence’ from a place, for example a holiday or a stay in hospital, will not displace an individual’s ordinary residence. However, temporary ‘presence’ somewhere can – in limited situations, provided they have definitely moved away from another area – amount to ordinary residence.

The point to remember is that Shah established that the settled purpose could be of long or short duration, so the fact that an individual is only temporarily at an address is not a bar to them being ordinarily resident there.

#### **Case example – Settled Purpose**

Secretary of State determination: X was ordinarily resident in area A, after seven days of sleeping at her daughter’s house in area A.

X had moved out of a residential home in area B, where she had expressed a wish to move to area A to be nearer her family. Her settled purpose at her daughter’s was to live in area A long-term, even though the address where she was staying was temporary.

The finding that there was a settled purpose in this case was due to the long-expressed and clearly articulated intention of X to move permanently to area A, coupled with the fact that she had unequivocally moved away from area B.

The Secretary of State relied on the following excerpt from another ordinary residence case, Fox v. Stirk<sup>11</sup>: “Some assumption of permanence, some degree of continuity.

Some expectation of continuity, is a vital factor which turns simple occupation into residence.” If X had not known or been uncertain of where she intended to live, it would not have been possible to attribute a settled purpose to this otherwise temporary set-up and the outcome is likely to have been that she was of no settled residence.

- **Mental: The voluntary adoption or acceptance of a place of abode**

This requires the individual to have the mental capacity to choose where to live.

If a person's abode has been enforced on them, for example as a result of a sentence of imprisonment, it has not been voluntarily adopted and the individual's presence there will not amount to ordinary residence.

However, in circumstances such as if the placement is from a housing need, and there is no other accommodation available - If an individual with capacity to make the decision goes along with the plans of others they will have voluntarily adopted the abode, even if it is the only place that was offered to the individual.

An individual may not like where he is, or would prefer to be somewhere else, does not prevent that place from being where he is ordinarily resident for the time that he is there.

### **3. Mental Capacity / Looked after children preparing for adulthood**

- 3.1 We should always assume an adult has the mental capacity to make decisions, including those related to accommodation, unless the contrary is established. The test for mental capacity is specific to each decision. A person can have mental capacity to make some decisions and not others.
- 3.2 If an adult lacks the mental capacity to make this decision, the person may not be able to adopt a place of abode 'voluntarily' (and the Shah case requires the voluntary adoption of a place to live). Therefore, when establishing the ordinary residence of adults who lack capacity, local authorities should adopt the Shah 'approach'.
- 3.3 It is important to consider each case on its own merits. This should include 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 of continuity to be described as settled, whether of long or short duration.
- 3.4 Determining the ordinary residence of a person who lacks mental capacity and looked after children preparing for adulthood was clarified in the case of R (on the application of Cornwall Council) (Respondent) v Secretary of State for Health (Appellant) [2015] UKSC 46.
- 3.5 The judgment established two key points in relation to ordinary residence:
  - Deemed ordinary residence
  - Vale tests one and two

#### **3.6 Deemed ordinary residence**

In the case of Shah, the definition of ordinarily resident has been described as referring to someone's 'abode' which they have 'voluntarily adopted' for 'settled purposes'

The deeming provisions in section 39 of the Care Act ensure that a local authority cannot 'export' its responsibilities under the Care Act by placing a person in a different geographical area.

This applies where a person goes into hospital or moves into 'specified accommodation'. (see para 9.3)

In these circumstances, an adult is treated as remaining ordinarily resident in the local authority area where they lived (or was present, if of no settled residence) immediately before moving into the specified accommodation.

**Example:**

The deeming provision means that although P is living in supported accommodation in area B, he is funded by local authority A, therefore remains ordinarily resident in area A even though he is physically present in area B

### **3.7 Vale tests one and two**

The Supreme Court clarified that the two approaches in Vale were not separate legal tests: “Rather they were complementary, common-sense approaches to the application of the Shah test to a person unable to make decisions for herself; that is, to the single question whether her period of actual residence with her parents was sufficiently settled to amount to ordinary residence.”

The ‘Cornwall’ application of ‘Vale’ therefore requires there to have been some physical presence sufficiently settled to amount to residency.

A person who lacks capacity to decide where they should live cannot be said to have voluntarily adopted their place of residence. Where it is necessary to establish the ordinary residence of an adult who lacks mental capacity to decide where they should live, Cornwall has established that LAs should apply the test in Shah, but without the requirement that the person's residence is voluntarily adopted.

3.8 In establishing a person’s ordinary residence, the local authority should consider all of the relevant circumstances in order to establish whether the purpose of their residence has a sufficient degree of continuity to be described as settled, whether that is of a long or short duration. This includes considering the person's:

- Physical presence.
- Purpose for living in the area.
- Connection with the area.
- Length of residence in the area.
- Views, wishes and feeling, insofar as these are ascertainable and relevant.

3.9 Where a person is found to lack capacity for a specific decision, such as where to live, any decision must be made in the person’s best interests – and involving the person as much as possible.

3.10 If a person lacks mental capacity, the Mental Capacity Act 2005 and its Code of Practice sets out what needs to be done and by whom to make any decisions required.

3.11 It is not necessary for a person to understand funding arrangements to be able to decide where to live.

## **4. Ordinary Residence – Care and Support Provision**

4.1 In most situations, establishing a person’s ordinary residence is a straightforward matter. However, this may not always be the case. There will be circumstances in which ordinary

residence is not as clear cut, for example when a person spends their time in more than one local authority area or moves between areas.

- 4.2 Where uncertainties arise, we will always consider each case on its own merits, but will ensure that the person's needs are met first, and then resolve the question of ordinary residence subsequently (see section 15).

### **Ordinary Residence Test - Carers**

- 4.3 The test for ordinary residence applies differently in relation to adults with eligible care and support needs and for carers with support needs. The local authority where the cared for person with eligible needs is ordinarily resident will be responsible for meeting the persons and their carers eligible needs, no matter where the carer is ordinarily resident.

<b>People with eligible care and support needs</b>	<b>Carers of adults with care and support needs</b>
The person with care and support needs is ordinarily resident in Central Bedfordshire; therefore, Central Bedfordshire is responsible for meeting the person's eligible needs	<p>The cared for person is ordinarily resident in Central Bedfordshire, their carer is ordinarily resident in another local authority area i.e. Northampton.</p> <p>Central Bedfordshire Council would be responsible for the carers support needs because the person they care for is ordinarily resident in Central Bedfordshire.</p>

## **5. Ordinary Residence - Continuity of Care**

- 5.1 When a person in receipt of care and support moves from one authority to another their ordinary residence status may change, this would be dependent on whether they have been assessed as requiring "deeming provision" (see section 9).
- 5.2 Continuity of care is the process local authorities must follow to ensure a person's care and support continues, without disruption, during and after the move.
- 5.3 The operational practice for this is set out in the Continuity of Care Practice Guidance.

### **Transitional Funding Arrangements**

- 5.4 In some instances, there may be a need to establish a transitional funding arrangement with the other local authority. This means the originating authority retains responsibility for the adult's care for up to 6 weeks after the move, even where Ordinary Residence has changed (to enable an effective transfer of responsibility to the new local authority and to allow the new authority time to review the care needs and put in place the appropriate services).
- 5.5 A transitional funding arrangement must be agreed to by both local authorities as part of the transfer of care discussions.
- 5.6 At the end of the transitional funding period, the new local authority would become responsible for providing and funding the persons eligible care and support arrangements.



## 6. People with no settled residence

- 6.1 Where doubts arise in respect of a person's ordinary residence, it is usually possible to decide that the person has resided in one place long enough or has sufficiently firm intentions in relation to that place, to have acquired an ordinary residence there. Therefore, it should only be in rare circumstances that the Council conclude that someone is of no settled residence.
- 6.2 The Care Act 2014 makes clear that local authorities have a duty to meet the eligible needs of people if they are present in their area but of no settled residence.
- 6.3 In this regard, people who have no settled residence, but are physically present in the local authority's area, will be treated by the Council as the same as those who are ordinarily resident.

### **Case example - a person with no settled residence**

A British Citizen returning to the UK from abroad acquires ordinary residence in the area they choose to relocate to if their intention is to stay for settled purposes. If they have no settled purpose or intention to remain the local authority can find the person to be of 'no settled residence' and/or 'in urgent need'.

Anyone present in a local authority area who is determined to be of 'no settled residence' is owed a duty under Section 18 Care Act 2014 and should be treated the same as those who are ordinarily resident in that area

## 7. Care Leavers

- 7.1 The 1989 Children's Act requires the responsible authority to continue to provide various forms of advice, assistance and guidance to young people over the age of 18 making the transition from care to more independent living arrangements. These requirements apply if they have previously been eligible or relevant children, who are described as former relevant children (and may apply to qualifying children, depending on the local authority's assessment of their needs). These duties operate primarily until the young person reaches the age of 21. However, the duties continue beyond a young person's 21st birthday where they remain engaged in education or training and continue until the end of the agreed programme as set out in their pathway plan.
- 7.2 The statutory responsibility for after care duties remains with the originating authority under which they became Looked After even when the young person resides in another authority.
- 7.3 If a young person is entitled to support and services as a care leaver, this status remains unchanged while in custody and the local authority that looked after the young person retains responsibility for providing leaving care services during their time in custody and on release. Local authorities have a duty to provide personal adviser (PA) support to all care leavers up to age 25, if they want this support.

## 8. Prison

**Section 76 of the Care Act sets out the responsibilities for the provision of care and support for adult prisoners and people residing in approved premises**

### During detention

- 8.1 Under s76 of the Care Act, if the premises in which an individual is detained is outside of the Local Authority area in which they normally live, their ordinary residence status does not change but must be disregarded.
- 8.2 Full responsibility for assessing and meeting eligible Care and Support needs during detention lies solely with the Local Authority area in which the place of detention is located. This includes the provision of equipment. Where applicable, it also applies prior to detention if the person is required to reside in the area as a condition of bail.
- 8.3 If the person was receiving Care and Support Services prior to their detention the two local authority areas should co-operate to ensure that the Local Authority now responsible for meeting needs can do so in a timely way without unnecessary duplication

### Leaving prison

- 8.4 If the person intends to return to the Local Authority where they lived prior to their detention, their ordinary residence does not change.
- 8.5 If the person intends to move to a whole new area upon release, the ordinary residence will change to that Local Authority
- 8.6 The starting presumption is that the deeming provision approach set out in s39 of the Care Act is followed for people leaving prison who are in need of specified accommodation; that people leaving prison remain ordinarily resident in the area in which they were ordinarily resident immediately before the start of their sentence.
- 8.7 However, determining an offender's ordinary residence on release from prison will not always be straightforward and each case must be considered on an individual basis. For example, it may not be possible for an offender to return to their prior local authority area due to the history of their case and any risks associated with a return to that area. In situations where an offender is likely to have needs for care and support on release from prison/approved premises and their place of Ordinary Residence is unclear or they have expressed an intention to settle in a new Local Authority area, the Local Authority area in which they plan to live should take responsibility for carrying out the assessment.
- 8.8 Further guidance regarding prisons, approved premises and bail accommodation can be found at Chapter 17 of the Care and Support Statutory Guidance

## 9. Ordinary Residence when arranging accommodation in another area

- 9.1 There may be some cases where we (Central Bedfordshire Council) consider it appropriate for a person's care and support needs to be met by the provision of accommodation in another authority area. The person should be involved in the planning process and has the right to make a choice about preferred accommodation including choice of individual provider and location.
- 9.2 In these cases, in line with the Care Act 2014 (section 39) and the statutory guidance, if the person is placed 'out of area' they are **deemed** to continue to be ordinarily resident in Central Bedfordshire. Therefore, the person would not acquire an ordinary residence in the

'host' or second authority and we would retain responsibility for meeting that person's needs.

9.3 Further to the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014, we recognise that this applies to the following types of accommodation:

- Nursing and residential care homes
- Supported living
- Shared living schemes

**Note:** Deeming Provision does not refer to community support services

9.4 Depending on the specifics of the case, we may choose to initiate an agreement to allow the authority where the accommodation is located to carry out functions on our behalf. This may be the case where the accommodation is located some distance away, as some functions can be performed more effectively locally for example, we may request the other authority to carry out care and support reviews on our behalf.

9.5 Transitional provisions and guidance on this issue have clarified that the extension of the 'deeming provisions' to additional types of accommodations such as supported living only apply from 1st April 2015. Where someone began to live in for example, supported living, before that date, the deeming rule in S.39 (1) Care Act 2014 does not apply. The law prior to the Care Act (the National Assistance Act 1948) would continue to apply and ordinary residence would not be deemed to remain with the placing authority but would transfer to the authority in which the accommodation was situated.

## 10. Self-funding care and support

10.1 A self-funder is a person who:

- has capital above LA financial threshold limits;
- makes private arrangements for their care and support, without the involvement of the Local Authority

10.2 If a person arranges their own care and support and moves to another local authority area, they will acquire ordinary residence in the new area.

10.3 The deeming rule does not apply where a person has chosen to arrange their own care in a type of specified accommodation in another area (nursing/residential care homes, supported living, extra care housing or shared living schemes) and then later asks for local authority support.

10.4 People who self-fund and arrange their own care and move to Central Bedfordshire, and then find that their funds have depleted, can apply to the Council to have their needs assessed. If it is decided that they have eligible needs for care and support, the person's ordinary residence will be in Central Bedfordshire, and not their previous area.

## 11. NHS Accommodation

11.1 A person for whom NHS accommodation is provided is to be treated as being ordinarily resident in the local authority where they were ordinarily resident before the NHS accommodation was provided.

- 11.2 This means the Council retains responsibility for the person's care and support, and this responsibility does not transfer to the area of the hospital if this is different from the area in which the person lived previously.

## 12. Mental Health After Care

- 12.1 After-care services must have both the purposes of "meeting a need arising from or related to the person's mental disorder" and "reducing the risk of a deterioration of the person's mental condition and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder." The range of services which can be provided is broad.
- 12.2 The duty to commission or provide mental health after-care rests with the Council. In the event that the person concerned was ordinarily resident in Central Bedfordshire immediately before they were detained under the 1983 Mental Health Act. This remains the case even if the person's ordinary residence changes after their discharge. The duty to provide care and support services will rest, with the local authority in which the person is ordinarily resident.

### Case Example – Directly leading up to detention.

A person detained under section 3 of the Mental Health Act 1983 and is subject to s117 aftercare will remain the responsibility of the LA the person was ordinary resident **prior to being detained**.

However, if the person is subsequently re-detained for treatment under the MHA, the new aftercare services under section 117, will be the responsibility of the local authority of which the person was **ordinarily resident immediately before their most recent detention**.

[\(R \(Worcestershire County Council\) v Secretary of State for Health and Social Care \[2023\] UKSC 31\)](#).

## 13. Temporary absences and in urgent need

- 13.1 Having established ordinary residence in a particular place, this should not be affected by the person taking a temporary absence from the area. The Council will therefore retain responsibility for meeting the care and support needs of a person, even in the event of a temporary absence.

### Example:

An elderly person (Central Bedfordshire resident) goes to stay with their daughter in another area for a temporary period following an acute health episode. This may result in the Council (Central Bedfordshire) asking the other Local Authority to commission a package of care which is funded by Central Bedfordshire (who remains the funding authority.)

- 13.2 We also recognise that in certain circumstances a person may be temporarily residing in Central Bedfordshire when experiencing an urgent need for care and support. In such a

situation, we will work with the person to ensure their care and support needs are met and will inform and work with the original local authority where the person is ordinarily resident to ensure continuity of care.

## **14. People with more than one home**

- 14.1 The purpose of the ordinary residence test is to determine which single local authority has responsibility for meeting a person's eligible needs, and this purpose would be defeated if a person could have more than one ordinary residence.
- 14.2 If a person appears to genuinely divide their time equally between two homes, the Council will work with the other local authority to establish (from all of the circumstances) which of the two homes the person has the stronger link. If this is found to be in Central Bedfordshire, we would provide or arrange care and support to meet the needs during the time the person is temporarily away at their second home, as well as when they are residing in Central Bedfordshire.
- 14.3 Where there is more than one local authority involved, those authorities should consider how best to cooperate on and share the provision of support.

## **15. Resolving ordinary residence disputes**

- 15.1 The Care and Support (Disputes between Local Authorities) Regulations 2014 state that local authorities must take all reasonable steps to resolve the disputes. This may be done, for example, by one local authority funding the arrangements pending the resolution of the specific dispute or putting in place bespoke arrangements with a sharing of costs. The expectation is that discussions should not run on indefinitely before the Secretary of State is required to determine the dispute.
- 15.2 No individual should be without provision and one local authority must provisionally accept responsibility. If this is in dispute, the Care and Support (Disputes between Local Authorities) Regulations 2014 require the local authority in which the person is physically present to accept responsibility and it will therefore be referred to as the 'lead local authority'. The 'lead' authority co-ordinates dialogue between the local authorities involved. The 'lead' authority must also keep the person or their carer if appropriate, fully informed of the dispute in question and of progress regarding any resolution.
- 15.3 If the involved local authorities cannot resolve the dispute between themselves within four months of the date on which it arose. If necessary, the 'lead' authority will make an application for the dispute to be settled by the Secretary of State.
- 15.4 Taking the 'lead' role does not influence the Secretary of State in determining responsibility. The Secretary of State will not proceed to determine unless one local authority has provisionally accepted responsibility.
- 15.5 If the Secretary of State finds in favour of the 'lead' local authority, then their costs are recoverable against the other local authority that should have been providing care and support for eligible needs. Local authorities should not provide reduced care packages pending determination and should meet all assessed needs.

## 16. The process for contacting the Secretary of State

- 16.1 Only local authorities, and not members, can ask for a determination by the Secretary of State. Contacting the Secretary of State to resolve a dispute between local authorities is expected to be a last resort solution.
- 16.2 The local authority seeking a determination from the Secretary of State will need to make this request in writing. In Central Bedfordshire, the letter will be prepared and submitted by Legal Services. A letter will only be submitted once attempts to resolve the matter at a local level have failed. The Council's Legal Services must be contacted as soon as possible if this seems likely.
- 16.3 The Care and Support (Disputes between Local Authorities) Regulations 2014 set out:
- the responsibility for meeting needs whilst any dispute is unresolved
  - the steps to be taken prior to referral of a dispute to the Secretary of State
  - what needs to be included in the referral within or before the end of a period of four months during which the dispute has not been resolved.
- 16.4 The Secretary of State will reconsider a determination if further facts come to light following the decision - but a reconsideration must be requested within 3 months of the date of the original determination.

## 17. Evaluation, Review and Monitoring

- 17.1 This document will be reviewed in line with the relating policy document(s) or after 2 years.

### CQC Assurance Key Areas and Statements:

- 17.2 This policy document supports CQC Assurance Key Areas and Statements:

Key question:	Quality statements used to assess quality
Safe	<b>Safe Systems, pathways and transitions</b> We work with people and our partners to establish and maintain safe systems of care, in which safety is managed, monitored and assured. We ensure continuity of care, including when people move between different services. <b>Safe and effective staffing</b> We make sure there are enough qualified, skilled and experienced people, who receive effective support, supervision and development. They work together effectively to provide safe care that meets people's individual needs.
Effective	<b>How staff, teams and services work together</b> We work effectively across teams and services to support people. We make sure they only need to tell their story once by sharing their assessment of needs when they move between different services.
Caring	<b>Independence, choice and control</b> We promote people's independence, so they know their rights and have choice and control over their own care, treatment and wellbeing.

Responsive	<p><b>Care provision, integration, and continuity</b></p> <p>We understand the diverse health and care needs of people and our local communities, so care is joined-up, flexible and supports choice and continuity.</p>
Well-led	<p><b>Governance, management, and sustainability</b></p> <p>We have clear responsibilities, roles, systems of accountability and good governance. We use these to manage and deliver good quality, sustainable care, treatment and support. We act on the best information about risk, performance and outcomes, and we share this securely with others when appropriate.</p> <p><b>Partnerships and communities</b></p> <p>We understand our duty to collaborate and work in partnership, so our services work seamlessly for people. We share information and learning with partners and collaborate for improvement.</p>

## 18. Related Policies

- Ordinary Residence Policy
- Continuity of Care Policy
- Continuity of Care Practice Guidance