

Adult Social Care Ordinary Residence Policy

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Policy changes

Version	Date	Author	Principal Changes
4	April 2020	Sandra Tait: Policy Review Officer	
5.1	September 2024	Carriann Hatherall-Cook: Policy Review Officer	Updated to reflect the supreme court judgement in R (Worcestershire County Council) v Secretary of State for Health and Social Care [2023] and subsequent changes to the care and support statutory guidance.

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1. Introduction

1.1 Gloucestershire County Council (we / the council) provides Adult Social Care services under the Care Act 2014 (the Care Act) and its regulations for:

- people aged 18 and over who because of illness, disability or some other impairment need help with everyday activities such as looking after themselves, doing household tasks or getting to work,
- carers. A carer is someone of any age who provides support to or looks after a family member, partner or friend who needs help because of frailty, physical or mental illness, or disability. This does not usually include people who are paid, employed or volunteer to act as carers.

1.2 This policy is about Ordinary Residence determinations in adult social care. The Care Act uses the concept of ordinary residence to determine which local authority is responsible for meeting a person's eligible needs as defined by the Care Act 2014.

1.3 Deciding where someone is Ordinarily Resident (OR) is usually straightforward. Most people are OR in the council area – where they pay their council tax to and where they have decided to live. Ordinary Residence may be less clear in circumstances such as when people:

- may lack the requisite mental capacity to make their own decisions about where they wish to live, or
- spend time living in more than one local authority area, for example because they have more than one home.
- live in one council area but their care is arranged and funded by another council

2. About this policy

2.1 This policy sets out:

- what Gloucestershire County Council the 'council' considers when making an ordinary residence determination, and
- how the council manages disputes with other local authorities about Ordinary Residence.
- and which Local Authority (LA) will meet the identified needs until the dispute is resolved

3. When this policy applies

- 3.1 This policy applies whenever the council has to decide where someone with care and support needs or a carer is ordinarily resident.

4. Legal Context

4.1. This policy is based on the requirements of:

- [The Care Act 2014](#)
- [The Care and Support \(Ordinary Residence\) \(Specified Accommodation\) Regulations 2014](#)
- [The Care and Support \(Disputes between Local Authorities\) Regulations 2014](#) (the Disputes Regulations)
- [The Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in October 2014](#) (as amended).

4.2. Other relevant legislation includes but is not limited to:

- Mental Capacity Act 2005 (MCA)
- Mental Health Act 1983 (MHA)
- National Health Service Act 2006
- Equalities Act 2010
- Human Rights Act 1998
- Children Act 1989

5. Management responsibilities for ordinary residence determinations

5.1 The following senior managers have overall responsibility for ordinary residence determinations:

- Assistant Director, Strategic Lead for Long Term Services
- Lead Commissioner for Mental Health (Health/Social Care)

6. Ordinary residence and responsibilities for meeting needs

The meaning of Ordinary Residence

6.1 There is no definition of Ordinary Residence (OR) in the Care Act 2014. The term should be given its ordinary and natural meaning. In most cases, establishing the person's OR is a straightforward matter. In more difficult cases factors such as time, intention and continuity have to be taken into account. The courts have considered the meaning of OR and the leading case is that of [Shah v London Borough of Barnet \(1983\)](#). In this case, Lord Scarman stated 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.”

Ordinary Residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled purposes, irrespective of whether they own, or have an interest in a property in another Local Authority area. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it is dependent on the nature and quality of the connection with the new home area.

6.2 Where the council has assessed needs for care and support / support as a carer and confirmed that at least some needs are eligible for social care support, the Council has a duty to meet the unmet eligible needs of:

a. adults with care and support needs who the Council has determined to be:

- ordinarily resident in Gloucestershire or
- of no settled residence but physically present in Gloucestershire.

b. carers who are caring for adults described in paragraph 6.1.

6.3 For carers, the responsible local authority will be the one where the adult for whom they care is ordinarily resident.

6.4 Where an ordinary residence determination is delayed or in dispute the council will meet unmet eligible needs while the question of ordinary residence is being resolved where:

- the Council was meeting needs on the date on which the dispute arose or
- the person with care and support needs is living in Gloucestershire, or present in Gloucestershire if of no settled residence, **and** no other Council was meeting needs on the date on which the dispute arose.

6.5 The date on which a dispute arises is the date on which the council first provided written advice to, or received written advice from, another local authority to state that ordinary residence is disputed.

6.6 Where another local authority was meeting needs on the date on which the dispute arose, the council will not usually agree to meet needs until such time as the dispute is resolved and a determination is made that the council has a duty to meet needs.

7. What the Council considers when making an ordinary residence determination

7.1 The council will make case by case decisions and will consider all relevant circumstances when deciding where someone is ordinarily resident or that they are of no settled residence. We will have regard to whether or not:

- Care Act deeming provisions apply - see paragraph 7.2
- the person has capacity to make their own decisions about where they wish to live - see paragraphs 7.3 - 7.5
- there are any other circumstances relevant to the ordinary residence decision, for example where someone spends time living in more than one local authority area because they have more than one home.

Care Act deeming provisions

7.2 The Council may determine that an adult's care and support needs can be appropriately met in accommodation outside Gloucestershire, in another local authority area. The adult should be involved in the planning process and has the right to make a choice about preferred accommodation provided certain conditions are satisfied.

- Where the accommodation arranged is specified accommodation (see below) in another local authority area the Care Act provides that the adult is deemed to still be ordinarily resident in the area they were in before the placement in the other local authority area began.

Specified Accommodation

Specified accommodation means care in a care home, shared lives scheme or supported living accommodation.

Therefore, people whose care is arranged by the council in specified accommodation outside of Gloucestershire will be deemed to still be ordinarily resident in Gloucestershire if that was the area where they were:

- ordinarily resident immediately before they began living in the specified accommodation) **or**
- physically present if they had no settled residence.

Example: If Gloucestershire commissions care for a Gloucestershire resident in a care home in Warwickshire the adult will be deemed to still be ordinarily resident in Gloucestershire

Accommodation provided under s117 Mental Health Act (MHA) 1983 (after-care)

- 7.3 A person discharged from hospital after being detained under Section 3 Mental Health Act (MHA) 1983 is entitled to after care (sec 117 Mental Health Act (MHA)). The authority where they were ordinarily resident immediately before they were detained under the MHA has a duty to provide that aftercare.
- 7.4 The Care Act deeming provisions are not relevant when determining ordinary residence for the purposes of sec 117 after care. If a person is accommodated in specified accommodation under the Care Act by an authority (Authority A) in another authority area (Authority B) prior to detention, . Authority B would be responsible for providing section 117 after-care as the person was living there. The Care Act provides that the authority responsible for meeting a person's needs under the Care Act sec 117 should be the same authority that has the duty to provide accommodation under sec 117 aftercare. Therefore in the above scenario Authority B would take on Care Act responsibilities as well as sec 117 aftercare.

NHS accommodation

- 7.5 People who are admitted to an NHS hospital do not become ordinarily resident in the local authority area where the hospital is situated. They will remain the responsibility of the local authority where they were:
- ordinarily resident immediately before they were admitted to hospital,
 - or**
 - physically present if they were of no settled residence.

Whether or not the person has the mental capacity to make their own decisions about where they wish to live

7.6 The council will assume that people are able to make their own decisions about where they wish to live until we have established that they cannot. We will follow <https://www.gloucestershire.gov.uk/health-and-social-care/adults-and-older-people/finding-the-right-information-and-support/mental-capacity-act-mca/> where mental capacity is in doubt.

7.7 Where a person lacks capacity to decide where to live the council will still have regard to the Shah case (see section 6)

7.8 Where a person lacks capacity and has a lasting power of (LPA) or deputy appointed by the Court of Protection to make decisions for them, the decision to move to a different local authority will usually be treated in the same way as if the person made the decision themselves.

7.9 As a person who lacks capacity to decide where to live cannot be said to be living there voluntarily, the council will consider all the relevant facts such as:

- their physical presence,
- their purpose for living there,
- their 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.

Looked after children transitioning to adult social care services (Preparation for Adulthood)

7.10 The Children Act 1989 normally no longer apply once a young person reaches 18. The council will start from a presumption that for the purposes of the Care Act the young person remains ordinarily resident in the local authority in which they were ordinarily resident under the Children Act. However, this is only a starting point and if the young person remains in the area in which he was placed as a child or moves to

a new local authority area the presumption may be rebutted by the circumstances of the individual's case and the application of the Shah test (see section 6).

- 7.11 Young people who move from accommodation provided under the Children Act 1989 directly to living in specified accommodation provided by adult services under the Care Act 2014 will be deemed to still be ordinarily resident in the local authority area which had responsibility for their care under the Children Act

8. When the Council determines ordinary residence to be in another local authority area

- 8.1 Where the council has determined that an adult with care and support needs is ordinarily resident in another local authority's area, we will advise the relevant local authority in writing of our determination and the reason why.

- 8.2 The council will require local authorities which disagree with a council determination to supply the following documents and information (if not already supplied) before the determination can be reconsidered:

- most recent Care Act assessment and where relevant, any mental health assessments
- mental capacity assessment and best interest decision documentation (where relevant)
- care and support plans
- Guardianship order under s7 MHA (where relevant)
- any relevant Court Orders / Court or other legal authorisations (for example DoLS /LPAs/Deputyship)
- date on which the person was first placed / intended to be placed in Gloucestershire and the reason for the placement
- type of accommodation in which the person was / will be placed
- copy of the relevant agreement, for example tenancy, placement, shared lives
- any other documentation or information which the council considers to be necessary to reach a determination.

9. Disputes with other local authorities about ordinary residence

- 9.1 The council will co-operate with other local authorities and will take all reasonable steps to resolve ordinary residence disputes as quickly as possible.
- 9.2 The council will act as the lead authority in resolving the dispute where the council has accepted responsibility for meeting needs pending the resolution of a dispute.
- 9.3 When acting as the lead authority, the council will:
- identify, and co-ordinate discussion between, the local authorities involved in the dispute
 - collect from, and share between, the local authorities any information which may help to resolve the dispute
 - keep the person (or their representative) informed about progress towards resolving the dispute
 - discussion with Gloucestershire County Council legal representatives as required
 - legal representatives may then refer the matter to the Secretary of State in accordance with the requirements of the Disputes Regulations and the Care and Support Statutory Guidance where the local authorities have been unable to resolve the dispute within four months of the date on which it arose (see paragraph 6.4).
- 9.4 The council will consider making a referral to the Secretary of State where:
- another local authority is acting as lead authority, and
 - the local authorities have been unable to resolve the dispute within four months of the date on which it arose (see paragraph 6.4) and
 - the lead authority does not refer the dispute.

10. Recovering costs from other local authorities

10.1 The council will seek to recover the cost of meeting eligible needs from the responsible local authority where:

- the council has been meeting eligible needs pending the resolution of an ordinary residence dispute, and
- a subsequent determination between the local authorities involved in the dispute or by the Secretary of State finds another local authority to be responsible for meeting eligible needs.

11. Concerns and complaints

11.1 As a first step, the council encourages people who are dissatisfied with Adult Social Care services or with an Adult Social Care decision to:

- discuss their concerns with the staff member they are dealing with or
- ask to speak to the staff member's manager instead.

We will try to resolve concerns quickly or explain why this is not possible.

11.2 If the concern is not resolved, or if preferred, people may use council's **complaints procedure** to make a complaint. We will provide information about how to use our complaints procedure.

12. Implementing and monitoring policy

12.1 This policy will be published on the council's website.

12.2 The council will advise staff and where relevant commissioned services that policy has been revised.

12.3 The council will monitor compliance with this policy through routine quality assurance processes such as manager / supervisor oversight of casework.

13. Review

13.1 The Council will review this policy by September 2025 or earlier if relevant case law is published.

Appendix 1 – Definitions

Advocate	<p>Advocates represent people's wishes by supporting them to speak or by speaking up on their behalf. They are independent of the Council.</p> <p>Advocates help people to express their needs and make decisions about the options available to them.</p> <p>They make sure that the Council follows the correct procedures and can challenge decisions made by Councils and other organisations.</p> <p>The Council commissions four types of Independent advocacy:</p> <ul style="list-style-type: none"> • Care Act Advocacy • Mental Capacity Advocacy • Mental Health Advocacy • Health Complaints Advocacy
Carer	<p>A carer is anyone who looks after a family member, partner or friend who needs help because of their illness, frailty, disability, a mental health problem or an addiction and cannot cope without their support. The care they give is unpaid</p>
Children Act 1989	<p>The Act allocates duties to local authorities, courts, parents, and other agencies in the United Kingdom, to ensure children are safeguarded and their welfare is promoted. It centres on the idea that children are best cared for within their own families; however, it also makes provisions for instances when parents and families do not co-operate with statutory bodies.</p>
Court of Protection	<p>The Court of Protection makes decisions on financial or welfare matters for people who can't make decisions at the time they need to be made (they 'lack mental capacity').</p> <p>They are responsible for:</p> <ul style="list-style-type: none"> • deciding whether someone has the mental capacity to make a particular decision for themselves • appointing deputies to make ongoing decisions for people who lack mental capacity

	<ul style="list-style-type: none"> • giving people permission to make one-off decisions on behalf of someone else who lacks mental capacity • handling urgent or emergency applications where a decision must be made on behalf of someone else without delay • making decisions about a lasting power of attorney or enduring power of attorney and considering any objections to their registration • considering applications to make statutory wills or gifts • making decisions about when someone can be deprived of their liberty under the Mental Capacity Act
DoLS	The Deprivation of Liberty Safeguards (DoLS) is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.
Eligible need	<p>The Care Act 2014 defines the eligibility criteria in England:</p> <p>To meet the eligibility criteria in England, you must show that:</p> <ul style="list-style-type: none"> • Your needs for care and support arise from certain health problems • As a result, you're unable to do certain things • There's a significant impact on your wellbeing
Lasting Power of Attorney (LPA)	A lasting power of attorney (LPA) is a legal document that lets someone (the 'donor') appoint one or more people (known as 'attorneys') to help you make decisions or to make decisions on their behalf.
Mental Capacity	Having mental capacity means having the ability to successfully make and communicate your own specific decisions. People are presumed to have capacity to do so, unless there is reason to doubt this due to an impairment in the functioning of the mind or brain – the impairment might arise from a mental health condition, learning disability, brain injury or illness. And it is

	<p>because of this impairment that the person is unable to make the specific decision. We call this the 'Causative Nexus'.</p> <p>Where there is reason to doubt, a Mental Capacity Assessment (MCA) will be carried out relevant to the specific decision needing to be made at that time.</p> <p>In order to be deemed to have capacity to make the specific decision required, you need to be able to understand the relevant information given, retain it long enough in order to use or weigh the information to reach your decision, and then be able to communicate your decision clearly – whether that be verbally or non-verbally.</p> <p>Where the MCA concludes you lack capacity to make the required decision, a decision maker will make the required decision in your best interests.</p> <p>You will be entitled to an Independent Mental Capacity Advocate if you need one.</p>
Mental Health Act	<p>The Mental Health Act (1983) is the main piece of legislation that covers the assessment, treatment and rights of people with a mental health disorder. You can read the Mental Health Act on the government legislation website.</p> <p>People detained under the Mental Health Act may need urgent treatment for a mental health disorder and are at risk of harm to themselves or others.</p>
S117 aftercare	<p>You are entitled to section 117 aftercare if you have been in hospital under section 3, 37, 45A, 47 or 48 of the Mental Health Act 1983 and if you are placed on a Community Treatment Order (section 17A) after discharge from hospital.</p> <p>You will not be entitled to free aftercare if you have only been in hospital under section 2, 4, 5 or 38 of the Mental Health Act 1983.</p> <p>Aftercare services should help reduce the risk that you may need to be admitted to hospital again for treatment of your mental disorder. Your aftercare will help you with your particular 'needs.' The Integrated</p>

	<p>Care Board and social services will provide your section 117 aftercare services.</p> <p>Key points about section 117 aftercare services</p> <ul style="list-style-type: none"> • ‘Aftercare’ means the help you get when you leave hospital. • Section 117 means that you will get free aftercare when you leave hospital for support or services linked to your mental disorder. • Section 117 aftercare services are to help reduce the risk of you becoming unwell again and possibly needing re-admission to hospital. • Your illness might affect you in different ways.. • You may get specialist housing, help to meet other people, help with work or education and free prescriptions for mental health medication.
Shared Lives Scheme	<p>Shared Lives Schemes are an alternative to care in a care home or other more formal care arrangements.</p> <p>Schemes offer people who need care the opportunity to live in a family environment rather than a formal care setting.</p> <p>Schemes are regulated by the Care Quality Commission (CQC) who are responsible for regulating care and support in England.</p>
Specified accommodation	<p>(Specified Accommodation) Regulations 2014</p> <p>Care and Support Statutory Guidance: -</p> <p>19.29. The regulations specify the types of accommodation to which this provision applies.</p> <p>The regulations explicitly set out three types of accommodation:</p> <ul style="list-style-type: none"> • nursing homes/care homes • supported living/extra care housing • shared lives schemes
Supported Living Accommodation	<p>Supported living accommodation is accommodation other than in a care home:</p>

	<ul style="list-style-type: none"> • in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible, or • which is provided in premises intended for occupation by adults with needs for care and support where personal care is available if required (but not premises which the adult owns or occupies other than as a tenant or licensee). <p>The personal care elements of services delivered in supported living accommodation are regulated by the Care Quality Commission (CQC)</p>
The Care Act 2014	<p>The Care Act 2014 sets out how care and support in England should be provided to adults with care needs, and how it is paid for. It supports the personalisation of care services, putting the person at the centre of the process.</p>