



# Moving Between Areas: Ordinary Residence and Continuity of Care

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# Contents

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<b>1.</b>	<b>Introduction</b>	<b>3</b>
1.1.	Legal context	3
1.2.	Children and young people	4
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<b>2.</b>	<b>Ordinary residence</b>	<b>5</b>
2.1.	Determining ordinary residence	5
2.2.	Temporary absences	6
2.3.	More than one place of residence	7
2.4.	People who lack mental capacity to decide where they live	7
2.5.	NHS accommodation	7
2.6.	No settled residence	7
2.7.	Arranging accommodation in another area	8
2.8.	After-care services under Section 117 of the Mental Health Act 1983	9
2.9.	People who arrange and fund their own care	10
2.10.	Applications to the Secretary of State when local authorities cannot determine ordinary residence	10
<hr/>		
<b>3.</b>	<b>Continuity of care</b>	<b>13</b>
3.1.	Overview	13
3.2.	Confirming the intention to move	14
3.3.	Supporting people to be fully involved	14
3.4.	Preparing for the move	15
3.5.	Assessment and care and support planning	15
3.6.	Different needs	16
3.7.	Arrangements on the day of the move	16
3.8.	People receiving services under children's legislation	18
3.9.	Disputes about continuity of care	19

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# 1. Introduction

The place where a person normally lives is known as their '**ordinary residence**'. Local authorities use ordinary residence (where a person normally lives) to decide which local authority is responsible for meeting assessed, eligible needs of their residents. The local authority where an adult normally lives is responsible for assessing and funding that adult's eligible, care and support needs.

The purpose of this policy is to set out:

- what the Council considers when identifying an adult's ordinary residence (where the adult normally lives), and
- how the Council manages disputes with other local authorities about ordinary residence (where the adult normally lives)

Residents seeking assessment and provision of services from the Council will normally live in the county of Buckinghamshire and for the purposes of the community care legislation will be ordinarily resident in Buckinghamshire. If a person's ordinary residence is determined to be Buckinghamshire the Council will fund services to meet the assessed eligible needs, subject to a financial assessment.

The Council will give meeting an adult's care and support needs priority and will not await resolution of any dispute regarding an adult's ordinary residence status. Ordinary residence is detailed further in [section 2](#).

If a resident moves and normally lives in a different county, the responsibility for their eligible, care and support needs will transfer to the local authority where they have moved to. The purpose of this policy is also to set out how the Council ensures an adult's care and support needs continue to be met if a change in funding responsibility occurs. This is known as '**continuity of care**' and is detailed further in [section 3](#).

## 1.1. Legal context

The legal context for ordinary residence is defined by:

- The statutory framework as referred to in sections 39, 40 and 41 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
- Chapter 19 of the Care and Support Statutory Guidance issued by the Department of Health under the Care Act 2014.
- Principles established in case law

Disputes between Local Authorities regarding the Ordinary Residence of a service user are determined by the Secretary of State.

The Secretary of State's decision will be determined on the facts of the matter.

The Secretary of State may give due regard to previous Ordinary Residence determinations.

Previous determinations are not binding on the Secretary of State.

## **1.2. Children and young people**

The guidance does not apply to provision of residential accommodation or other services in respect of a person under the age 18 years. There is far less statutory or interpretative guidance regarding ordinary residence relating to children and young people. Issues of ordinary residence may arise when children move with their families from one area to another, when families break up, and where children with disabilities or special needs reach adulthood and seek independence.

## 2. Ordinary residence

### 2.1. Determining ordinary residence

When an individual who is physically present in the county is referred to the Council for an assessment and their ordinary residence status is not clear, they will not be denied assessment or support where their ordinary residence status is in dispute.

If the Council commissions support while awaiting the outcome of disputed ordinary residence, the support will be provided on a 'without prejudice' basis pending resolution of the dispute or determination by the Secretary of State. Any contractual arrangements entered into should reflect the temporary nature of the decision. This decision must be made clear to the person concerned and to the other local authority. Staff, with support of their managers, will ensure Buckinghamshire Council clearly declines to accept ordinary residence responsibility until the matter is resolved.

There is **no statutory definition of ordinary residence**. To determine ordinary residence for residents able to choose where to live local authorities must consider the meaning of "ordinary residence" in the leading case of *Shah v London Borough of Barnet*, 1983 (this is known as the "Shah" test) where Lord Scarman defined Ordinary Residence as follows: -

"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 "ordinary residence" 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." [Emphasis added]

Ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as a 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 depends on the nature and quality of the connection with the new place.

Where there is some doubt about where an adult is ordinarily resident, further information will be sought. For example, if a person was receiving services or was living in a residential home before arriving in the county, or still has a house in another county an ordinary residence issue may arise which must be resolved as soon as possible.

If a resident has been funded for residential/ supported living care by their local authority, that local authority retains funding responsibility for them when they are placed in residential/supported living care outside their host authority area. The host authority's responsibility will cease if there is a break in funding pursuant to the 'deeming provisions' contained in section 39 of the Care Act 2014. This can occur when the service user has moved into independent accommodation or is self-funding their care.

Where a resident is placed and funded by their local authority and there is a change in the care provided or the facility closes, the funding authority retains responsibility to review the service user's needs and continue funding, unless the service user has moved into independent accommodation or become self-funding.

Council staff must not accept funding responsibility on behalf of Buckinghamshire Council until funding issues have been resolved and decisions have been made by the team manager following investigation.

## **2.2. Temporary absences**

A resident being away from where they normally live (ordinary resident) for the purpose of business or pleasure does not deprive the resident of their ordinary residence. If a resident's ordinary residence is established, it should not be affected by the individual taking a temporary absence from the area for example holidays or hospital visits in another area.

The fact that a resident may be temporarily away from the local authority in which they are ordinarily resident (normally resident) should not prevent that resident from receiving accommodation and/or services from the local authority where they are temporarily living if they become in urgent need.

## **2.3. More than one place of residence**

Although it is possible for an individual to divide their time equally between two homes, under the Care Act 2014 a determination which single local authority has responsibility for meeting that individual's assessed eligible needs must be made. The local authorities will need to establish, from all the available evidence and circumstances which home the person has a stronger link with and that local authority will be responsible for funding the assessed and eligible social care needs of that individual.

## **2.4. People who lack mental capacity to decide where they live**

The Mental Capacity Act 2005 determines an adult should always be assumed to have capacity to make their own decisions unless it is established to the contrary. The test for capacity is specific to each decision at the time it needs to be made. If a resident lacks capacity to decide where to live, a best interests' decision about their accommodation should be made. If there is uncertainty about their place of ordinary residence, paragraph 2.1 will apply. All the facts of a residents' circumstances, including why a resident is in a particular area and the nature and purpose of their presence there but without needing the individual to have voluntarily adopted the place of residence will be considered when establishing the individual's Ordinary Residence (where they normally live).

## **2.5. NHS accommodation**

Where a person goes into hospital, or other NHS accommodation, they are treated as remaining ordinarily resident in the local authority in which they were ordinarily resident before the NHS accommodation was provided.

## **2.6. No settled residence**

It should only be in rare circumstances that an adult is deemed to have no settled residence since it is usually possible for a local authority to decide that an adult has resided in one place long enough or has sufficiently firm intentions/connections in relation to that place, to have acquired an ordinary residence there.

Under sections 18 and 20 of the Care Act 2014, local authorities have a duty to meet the eligible need of people if they are present in its area but of no settled residence. For example, if a person is deemed to have no settled residence but is physically present in the local authority's area, they should be treated the same as those who are ordinarily resident.

## **2.7. Arranging accommodation in another area**

If Buckinghamshire Council places a resident in accommodation outside the county, the local authority that is responsible for the resident's care and support should be determined in pursuant to section 39 of the Care Act 2014. This provides that where a resident's needs can only be met through the types of accommodation below, and the local authority places a resident "out of area", that resident is deemed to continue to be ordinarily resident in the area of the "placing" authority. This means that a person is treated as not acquiring ordinary residence in the "host" or second authority.

Section 39 applies where arrangements are made for the following types of accommodation as specified in the Regulations:

- Care home accommodation
- Shared lives scheme accommodation
- Supported living accommodation

The Care Act 2014 deeming provisions apply from 1 April 2015. Where a resident began to live in supported living before that date the National Assistance Act 1948 applies. The deeming rule in section 39 of the Act will not apply and their ordinary residence will be determined according to where the resident normally lives.

If a resident's assessed eligible care and support needs can only be met by one of the above types of accommodation and they are placed in another area by a local authority the placing authority will remain responsible for their care and support.

If a resident arranges their own care and the Council does not meet their needs the deeming provision does not apply.

In the event that a resident no longer requires a specific type of accommodation, and should the resident choose to settle in their own accommodation in another



local authority, their ordinary residence will change, and the first local authority will no longer retain responsibility.

If a person arranges their own care because they receive a Direct Payment and their care plan provides that their care needs are met in one of the specified types of accommodation (as above) then the deeming principle also applies. However Direct Payment may not be made to meet the provision of long-term care and support in a care home.

The local authority in which the adult for whom the carer is providing care and support is ordinarily resident should be the local authority that is responsible for meeting the carer's eligible needs. Therefore, the responsible local authority will be the one where the adult for whom the care is provided is ordinarily resident.

## **2.8. After-care services under Section 117 of the Mental Health Act 1983**

Under section 117 of the Mental Health Act 1983 (MHA), local authorities, and Clinical Commissioning Groups (CCGs), have a joint duty to arrange the provision of mental health after-care services for individuals who have been detained under specific sections of the MHA.

The purpose of S117 aftercare is to prevent recurrence of the mental disorder for which the individual was detained, and by doing so reduce the need for further inpatient admissions. There is no power for local authorities to charge for the provision of S117 Aftercare services.

Responsibility for the provision of such services falls to the local authority and the Clinical Commissioning Group (CCG) for the area in which the individual was ordinarily resident immediately before they were detained in hospital under the 1983 Act, even if the individual does not return to that area on discharge. For example, if an individual is ordinarily resident in local authority area (A) immediately before detention under provisions of the Mental Health Act 1983 and moves on discharge to local authority area (B) and moves again to local authority area (C), local authority (A) will remain responsible for providing or commissioning their after-care. However, if the individual, having become ordinarily resident after discharge in local authority area (B) or (C), is subsequently detained in hospital for treatment again, the local authority in whose area the individual was ordinarily resident immediately before their

subsequent admission (local authority (B) or (C)) will be responsible for their aftercare when they are discharged from hospital.

If a person's ordinary residence cannot be established before they were detained under the Mental Health Act 1983, the local authority responsible for commissioning a person's after-care will be the one for the area in which the person was resident immediately before being detained under the 1983 Act. If this cannot be established, then the responsible local authority will be the one for the area to which the person is sent on discharge.

Each time a person is re-detained under a provision of the Mental Health Act 1983, will entitle them to section 117 after-care, the rules would need to be applied again to decide which authority has responsibility for any aftercare services once the person leaves hospital again.

If there is a dispute between local authorities about where an individual was ordinarily resident before being detained, the Secretary of State will determine ordinary residence in accordance with the process set out in section 40.

Other disputes arising in connection with section 117 of the 1983 Act may not be referred to the Secretary of State or Welsh Ministers for determination under section 40 of the Care Act not being ordinary residence disputes. If a dispute cannot be resolved locally, it may be necessary to seek a determination by a Judge of the High Court.

## **2.9. People who arrange and fund their own care**

A person who self-funds and arranges their own care may choose to move to another area and later find they are no longer able to pay for their care. A self-funder can apply to the local authority area that they have moved to in order to have their needs assessed. If they are assessed to have eligible needs for care and support, the person's ordinary residence will be the place where they moved to and not the first authority where they moved from.

## **2.10. Applications to the Secretary of State when local authorities cannot determine ordinary residence**

When local authorities cannot resolve matters of ordinary residence between themselves within 4 months from the date when the dispute arose, the local

authority which has accepted provisional responsibility may apply for a determination to the Secretary of State. The procedure for seeking a determination is set out in the Care and Support (Disputes Between Local Authorities) Regulations 2014.

Local authority ordinary residence disputes must not affect the provision of care needs. The local authority who is meeting the adult's needs on which the dispute arises must continue to meet those needs until the dispute is resolved.

If there is no local authority currently meeting the adult's needs when the dispute arises then the local authority where the adult is living or where the adult is physically present has a duty to meet the person's care needs until the dispute is resolved.

Section 6 of The Care Act 2014 (Transitional Provision) Order 2015 provides that a determination will be made in accordance with the law that was in force at the relevant date in respect of which ordinary residence falls to be determined. If ordinary residence is to be determined in respect of a period which falls before the Care Act 2014 came into force on 1st April 2015, the determination will be made in accordance with the National Assistance Act 1948. If in respect of a period on or after 1st April 2015 then the determination will be made in accordance with the Care Act 2014.

Should there be a matter that requires a determination from the Secretary of State, the Council's Legal Services will correspond with the other local authority's legal department and draft the papers required for seeking a determination of ordinary residence from the Secretary of State.

The specific process for seeking a determination is set out in Care and Support (Disputes Between Local Authorities) Regulations 2014, as follows:

- i. The local authorities in dispute must take all reasonable steps to resolve this dispute without the need for a determination of ordinary residence.
- ii. If the authorities cannot resolve the dispute between themselves within four months of the dispute arising, the authority that has accepted provisional responsibility must make an application for a determination to the Secretary of State.
- iii. Each local authority can then make legal submissions to the Secretary of State that must be sent within 14 days of the date on which the dispute is referred.

When preparing the legal papers for seeking a determination it is useful if Legal Services are provided with the following information and documentation (not all will be relevant for every case):

- Updated Care Act Assessment
- Updated Care and Support Plan
- Signed Tenancy Agreement
- Mental Capacity Assessment
- Full details of the care providers, including current costs of the care package
- Details of where the person is residing and any former places of residence
- A chronology of events with dates
- A copy of the contract between Buckinghamshire Council and the care provider
- Confirmation that Buckinghamshire Council is only paying for the care component and not the housing component (i.e., that accommodation is not a care home); and
- Confirmation that the person is in receipt of housing benefit.

There may be cases where the local authorities concerned agree about a person's ordinary residence, but the person is unhappy with the decision. The person would have to pursue this with the authorities concerned and/or the Local government Ombudsman and cannot apply to the Secretary of State for a determination.

## 3. Continuity of care

### 3.1. Overview

The context for continuity of care is set by:

- Sections 37-38 of the Care Act 2014
- The Care and Support (Continuity of Care) Regulations 2014

Where a person decides to move to a new area their ordinary residence status may change. For example, a person with care and support needs may decide to move to be closer to family, or to pursue education or employment opportunities, or because they want to live in another area.

The aim of the process is to ensure that the person with care and support needs will be able to move with the confidence that arrangements to meet their needs will be in place on the day of the move. Continuity of care is expected to be achieved by ensuring that the second authority has undertaken a Care Act assessment and completed a care and support plan.

Where a person chooses to live in a different local authority area, the local authority that is currently arranging care and support and the authority to which they are moving must work together to ensure that there is no disruption to the person's care and support.

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.

In this section, the first authority is the authority from which the person is moving, and the second authority is the authority to which the person is moving.

The key to ensuring that the person's care is continued is through both local authorities working together so that the adult and their carer, if they are continuing to care for the adult, are at the centre of the process.

Section 37 of the Care Act 2014 provides that continuity of care applies where:

- A person's needs for care and support are being met by a local authority ("the first authority") under section 18 or 19

- The person notifies another local authority (“the second authority”) that the person intends to move to the area of the second authority, and
- The second authority is satisfied that the person’s intention is genuine.

### **3.2. Confirming the intention to move**

The continuity of care process starts when the second authority is notified of the person’s intention to move. If the person has approached the first authority and informed them of their intention to move, then the first authority should contact the second authority to tell them that the person is planning on moving to their area.

The second authority must assure itself that the intention is genuine and should:

- Establish and maintain contact with the person and their carer to keep abreast of their intentions to move
- Continue to speak with the first authority to get their view on the person’s intentions
- Ask if the person has any information or contacts that can help to establish their intention

### **3.3. Supporting people to be fully involved**

When the second authority is satisfied that the person’s intention to move is genuine, it must provide the person and the carer, if also intending to move, with such information as it considers appropriate about care and support available in its area.

This should include the types of care and support available to people with similar needs, so the adult can know how they are likely to be affected by differences in the range of services available:

- Support for carers
- The local market and organisations that could meet their needs
- The local authority’s charging policy, including any charges which the person may be expected to meet for particular services in that area

When the person moving receives a Direct Payment to meet their care needs, they should be advised by the first local authority that they will need to consider

how to meet any contractual arrangements put in place for the provision of their care and support.

The second authority must also inform the first authority that it is satisfied that the person's intention to move is genuine.

### **3.4. Preparing for the move**

When the first authority has received notification from the second authority that it is satisfied that the person's intention to move is genuine, the first authority must provide the second authority with copies of the following information,

- A copy of the person's most recent care and support plan
- A copy of the most recent support plan prepared for the carer where the person's carer is moving with them
- The person's financial assessment
- A copy of the person's most recent needs assessment
- Any other information relating to the person or their carer that the second authority may request. This may include any safeguarding plan that has been made for the person.

### **3.5. Assessment and care and support planning**

The second authority must assess whether the person has needs for care and support and, if they do, what those needs are. Where the person has or is proposing to have a carer, the second authority must assess whether the carer has or is likely to have needs for support and what those needs are or are likely to be. The second authority should also consider whether the person might be moving to be closer to a new carer and whether that new carer would benefit from an assessment.

When the second authority is carrying out an assessment, they must have regard to the care and support plan provided by the first authority.

The assessment must consider whether any preventative services or advice and information that would help a person meet any outcomes identified in the assessment. The assessment should also consider the individual's own strengths and capabilities and whether support might be available from family, friends, or within the new community to achieve outcomes.

Prior to the person's move, the first authority must keep in contact with second authority to ascertain the progress that the second authority is making in preparing to meet any care and support needs.

The second authority should agree the person's (and carer's) care and support, including any personal budget, in advance of the move to ensure that arrangements are in place when the person moves into the new area.

If the person also has health needs, the second authority should carry out the assessment jointly with their local Clinical Commissioning Group.

Where the first authority has provided equipment, it should move with the person to the second authority where this is the person's preference, and it is still required and doing so is the most cost-effective solution. As adaptations are fitted based on the person's accommodation, it may be more practicable for the second authority to organise the installation of any adaptations.

### **3.6. Different needs**

Where the needs identified in the assessment carried out by the second authority are different from those in the care and support plan provided by the first authority, the second authority must provide a written explanation of the difference to the adult, any carer of the adult, or any other person to whom the adult asks the authority to provide an explanation.

The second authority must also provide a written explanation where the cost to the second authority of meeting the adult's or carer's needs is different from the cost to the first authority.

### **3.7. Arrangements on the day of the move**

Local authorities are expected to achieve continuity of care by ensuring that the second authority has completed a needs assessment and care and support plan for the person prior to the day of the move. It is possible that the second local authority might be unable to complete a needs assessment prior to the day of the move due to the logistics of assessing a person a long distance away or because they want to assess the adult in their new home. Alternatively, the second authority may have completed the assessment but may not have made arrangements to have support in place. For example, the second authority may



want to assess the person in their new home and consider if their needs have changed.

If the second authority has not carried out the assessment prior to the move it must put in place arrangements to continue to meet the needs for care and support as identified by the first authority. These arrangements must be in place from the day of the move until the second authority has carried out its own assessment.

If, on the day of the intended move, the second authority has yet to carry out the assessment the second authority has a duty to meet the person's (including their carer's) needs for care and support, which the first authority has been meeting. The second authority is required to do this until it has carried out an assessment of the person's needs for care and support.

The second authority must involve the adult or carer when deciding how to meet their care and support needs. If the person has substantial difficulty and requires help to be fully involved in the assessment or care planning process, and there is no other suitable person who can support them, the Care Act requires that they must be provided with an independent advocate. In this case, the advocate should be provided by the second authority as it is taking over the responsibility for carrying out the assessment and care planning with the person.

The second authority must have regard to the following matters in deciding how to perform the duty to meet a person's needs for care and support where they have not carried out an assessment on the day of the intended move,

- Contents of any care and support plan supplied to the second authority by the first authority
- The contents of any support plan supplied by the second authority by the first authority
- The outcomes that the adult wishes to achieve in day-to-day life
- The outcomes that any relevant carer of that adult wishes to achieve in day-to-day life
- The views and preferences of the relevant adult as to how the authority should meet their needs for care and support
- The views and preferences of any relevant carer of that adult as to how the authority should meet that carer's needs for support

- Any differences between the adult's circumstances before and after the day of the adult's intended move (a difference is relevant if it is likely to have a significant effect on the adult's well-being), including,
  - Access to a carer
  - Public transport
  - Educational facilities; and
  - Recreational facilities or services
- The availability of support from family members, friends, neighbours, and the wider community.

The first authority is not required to meet the adult's needs for care and support where this duty applies to the second authority i.e. if the second authority has yet to carry out the assessment on the day of the intended move.

If the person's move is delayed, and they remain resident in the area of the first authority, they will normally continue to be ordinarily resident in that area and the first authority will remain responsible for meeting the person's and their carers' needs.

Where the second authority has complied with the duty, and the second authority is not required to meet the person's needs for care and support because the person is still ordinarily resident in the area of the first authority, the second authority may recover from the first authority the costs it incurs in complying with the duty.

### **3.8. People receiving services under children's legislation**

The continuity of care provisions will not apply for people receiving services under children's legislation.

Where a person has had a transition assessment but is moving area before the actual transition to adult care and support takes place, the first local authority should ensure that the local authority to which the person is moving is provided with a copy of the assessment and any resulting transition plan.

Where a child's carer is having needs met by adult care and support in advance of the child turning 18 (following a transition) the first local authority should

ensure that the second is provided with a copy of the assessment and the carer's support plan.

### **3.9. Disputes about continuity of care**

Where local authorities are in dispute over the application of the continuity of care provisions, this dispute must not adversely affect the meeting of a person's needs.

Where a dispute cannot be resolved between the authorities the process relating to ordinary residence disputes must be followed (see Section 16).

An application can be submitted by the first authority to the Secretary of State for a determination before or by the end of a period of four months from the date when the dispute arose.