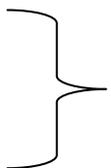


Ordinary residence 'cheat sheet'

The general principle is that people will be ordinarily resident in the area where they have chosen to live. This includes people who move into a care home under private arrangements ('self-funders').

IT DOES NOT INCLUDE:

- 1) Where they have moved into the area having been 'placed' by another authority. This applies where they have been assessed by another authority as needing:

- Residential care
 - Supported living accommodation
 - Shared lives accommodation
- 
- = specified accommodation

And then does move in to such a placement. These are called the 'deeming provisions' and are contained in s39 Care Act 2014.

This also applies where the placing authority has made the placement for someone who is a 'full cost payer' but is unable to make private arrangements.

This also includes people accommodated whilst the 12 week property disregard applies. If they then become a 'self-funder' they are likely to attain new area of ordinary residence.

This applies even if the authority should have placed in such accommodation but failed to do so. They can't rely on their own breach of duty to avoid responsibility. If you think this might be the case, contact the legal team.

- 2) Where they are entitled to s117 aftercare. The rules here state that the authority where the person was either 'resident' (if before the Care Act came into force) or 'ordinarily resident' (if after the Care Act came into force) when they were sectioned has responsibility.
- 3) Where the person has been provided with accommodation under continuing healthcare or spent a period of time in hospital. They will be ordinarily resident where they were ordinarily resident prior to the accommodation being provided.

WHERE THE INDIVIDUAL LACKS THE CAPACITY TO CHOOSE WHERE TO LIVE, ordinary residence is decided on the basis of where the person has the most 'links' or 'ties'. The starting point is physical presence, but this can be rebutted if there is evidence of more significant ties to other areas e.g. family and friends, college, activities, doctor, dentist, as well as their own views as to where they would like to live. If you are unclear, seek legal advice.

WHERE THE PERSON IS TRANSITIONING straight from accommodation under the Children Act 1989, to specified accommodation under the Care Act 2014, the 'deeming provisions' continue to apply and the person will be ordinarily resident in the authority which made the Children Act placement. "Staying Put" doesn't count as a Children Act placement or a Care Act 'specified accommodation' placement.

WATCH OUT FOR:

- People provided with support under the 'urgent needs' provisions. This does not mean that the person is ordinarily resident in the area of the authority providing urgent services
- Cross-border placements in Scotland, Wales or NI. The placing authority will retain responsibility (usually).
- People moving in to the area after a period abroad. They will usually be ordinarily resident where they chose to live.
- Historic cases where the move took place before 1st April 2015
- S117 aftercare cases where the person moves to a different area and is subsequently re-sectioned under the Mental Health Act 1983. New guidance has been released and a judicial review is ongoing which could change this position.

Detailed guidance is found in the Care and Support statutory guidance at chapter 19, and Annex H.