

Isle of Wight Council Adult Social Care

Ordinary Residence and Continuity of Care Policy

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1 Document Information

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V0.2	September 2015	Amendments by Catherine Smith-Ivory to include a NHS Continuing Healthcare. Approval from Legal 04/11/15 – V1.0.
V1.1	April 2016	Updated due to revised Care Act statutory guidance (Care and Support Statutory Guidance). Refreshed to include sections on continuity of care, transfer of information processes and information transfer request form.
V1.2	May 2016	Catherine Smith-Ivory included sections on Cross-Border Placements and Transitioning. Roger Merry confirmed Care Act compliant 21/07/16 and Leadership Group signed off 27/07/16. Published 02/08/16.
V2.0	September/October 2018	Reviewed in line Local Government Association Ordinary Residence Guide (August 2018) Garion Bird approved 19/10/18

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2 Contents

Heading Number	Detail	Page/s
1	Document Information	2-3
2	Contents	4
3	What does ordinary residence mean?	5
4	Purpose, Scope and Aims	6
5	Establishing ordinary residence / meeting eligible social care needs	6-7
6	Ordinary residence in a particular area	7
7	Establishing ordinary residence for people who lack capacity to make their own decisions	8
8	Ordinary residence determined in another local authority area	8
9	The deeming provisions	8-9
10	Mental Health Act application	9
11	Section 117 aftercare/accommodation	9-10
12	British citizens resuming permanent residence in England after a period abroad	10
13	Disputes with other local authorities about ordinary residence	10
14	Recovering costs from other local authorities	10

3 What does ordinary residence mean?

Ordinary residence is used to determine which local authority is required to meet the care and support needs of adults and their carers. Correct determination of ordinary residence is therefore key in establishing where responsibilities lie between local authorities for funding and provision of care and support.

Determination of ordinary residence differs between adults with needs for care and support and their carers. Unless specified otherwise, the below policy relates to the ordinary residence of an adult with needs for care and support; the ordinary residence of their carer will always be the local authority where the adult for whom they care is ordinarily resident.

Ordinary residence is not defined in the Care Act and as such the term should be given its ordinary and natural meaning. This has been determined by the courts to mean the person's "*abode in a particular place...which he has adopted voluntarily and for settled purposes as part of the regular order of this life for the time being, whether of short or long duration.*" (Shah v London Borough of Barnet [1983])

Settled purpose can be established if an individual moves to a new area, if the move is with the intention of remaining there permanently or for the foreseeable future. Valid reasons for settled purpose 'time-limited' include education, business or professional, employment, health or family.

A person can acquire ordinary residence as soon as they move 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 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 an adult lacks the mental capacity to decide where they wish to live, they cannot be said to have voluntarily adopted their abode as set out above. The approach to be taken for these individuals is to determine whether the facts of the individual case are sufficient 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. Factors for consideration include the place of the person's physical presence, their purpose for living there, their connection with the area, the duration of their residence and their ascertainable views, wishes and feelings.

For the purpose of allocating responsibility for meeting eligible social care needs a person cannot be ordinarily resident in more than one place. The facts will determine which place has the stronger link. Ordinary residence will not be established in a new area merely by the individual expressing a wish or future desire to live there. They must take the steps required to actually adopt it as their place of settled residence as defined above.

4 Purpose, Scope and Aims

The Isle of Wight Council (IWC) will work together cooperatively and proactively, to ensure that people moving between areas are provided with timely and effective support. Individuals will remain at the centre of the assessment and planning process and will be able to make informed choices about their preferred care and support arrangements, including location. This may involve appropriate support and/or advocacy. In the case of any uncertainty or dispute about funding arrangements, the IWC will meet the needs of the individual on a 'without prejudice' basis, until the issue is resolved.

The Policy applies to all situations where an ordinary residence determination must be made in relation to an adult before reaching a determination who has eligible social care needs. The decision will be made on a case by case basis.

This policy derives and reflects the following legislation and government guidance of:

- [Care Act 2014](#) (effective from 1 April 2015)
- [Care and Support \(Ordinary Residence\) \(Specified Accommodation\) Regulations 2014](#)
- [Care and Support \(Disputes between Local Authorities\) Regulations 2014](#)
- [Care and Support Statutory Guidance issued under the Care Act by the Department of Health \(October 2014\)](#)
- [Local Government Association Ordinary Residence Guide \(August 2018\)](#)
- [Section 117 of the Mental Health Act 1983](#)

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](#) (in respect of transition assessments)

The policy sets out how:

- ordinary residence will be determined on the Isle of Wight (island) and
- ordinary residence disputes with other local authorities will be managed.

This policy supersedes the August 2016 policy.

5 Establishing ordinary residence / meeting eligible social care needs

Ordinary residence will be determined after a Wellbeing Assessment has identified where the individual lives and if they have eligible social care needs under the Care Act. This approach will be applied to those people who have the mental capacity to decide where they want to live. There is a different approach for people who do not have the capacity to do so.

There are some exceptional circumstances that may affect ordinary residence, for example where an individual spends time living in more than one local authority area or has moved between local authority areas.

If the purpose of the presence is not settled, the outcome will be that the individual is of no settled residence. In such cases, the duty to meet eligible social care needs would lie with the authority in whose area they are physically present.

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.

6 Ordinary residence in a particular area

Ordinary residence will sometimes be deemed to be in a local authority other than the one in which the person is actually residing. This occurs when:

- eligible needs can **only** be met by living in specified accommodation, and the person was placed in this type of accommodation outside of the placing authority (below at section 9)
- accommodation is provided under S117 MHA (below at sections 10 & 11)

Someone who is being provided with accommodation under S117 MHA (after care services) is deemed by the Care Act 2014 to be ordinarily resident in the area where the person was ordinarily resident at the time they were detained under the MHA.

7 Establishing ordinary residence for people who lack capacity to make their own decisions

As previously noted, a different approach must be used to establish ordinary residence under the Care Act for those individuals who do not have the mental capacity to voluntarily adopt a place of abode.

It is important to note that all issues relating to mental capacity should be decided in line with the provisions of the Mental Capacity Act 2005. Under the legislation it must be assumed that adults have the capacity to make their own decisions – including in relation to their accommodation and care – unless it is established to the contrary. For the purposes of ordinary residence, the relevant decision is about where to live. Where a person is found to lack capacity for a specific decision, such as where to live, any decision must be made in the individual's best interests – and involving the person as much as possible.

Young people who lack capacity and who are transitioning from Childrens to Adult Services under the Care Act will remain resident in the local authority area which had responsibility under the Children Act.

8 Ordinary residence determined in another local authority area

Where the IWC has determined that an adult in need of care and support is ordinarily resident in another local authority area, the IWC will advise the relevant local authority in writing of its determination and the reason for reaching the determination.

Where the other local authority disagrees with the IWC's determination, the IWC will require the other local authority to supply the following documents and information (if not already supplied) before a determination can be reconsidered:

- The most recent needs assessment
- The capacity assessment (where relevant)
- The care and support plan
- Guardianship order under S7 MHA (where relevant)
- Deprivation of Liberties authorisation (where relevant)
- Date on which the individual was first placed or is intended to be placed on the island and the reason for the placement, the type of accommodation in which the individual was or will be placed and a copy of the relevant agreement (for example tenancy, placement, Shared Lives)
- Any other documentation or information which the County Council considers to be necessary to reaching a determination.

9 The deeming provisions

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 an individual in a different geographical area. That might happen where an individual chooses to go to a different area to be near family or because there are no suitable local placements available and they are placed out of area.

In such cases the legislation deems financial responsibility for care and support services to remain with the placing local authority if a person has been placed out of area.

The deeming provisions require that where a person is placed by a local authority in certain types of accommodation (known as 'specified accommodation') the responsibilities for that person remain with the placing or originating local authority.

The three types of specified accommodation are:

- care home accommodation (an establishment that provides accommodation, together with nursing or personal care)
- shared lives scheme accommodation
- supported living accommodation

If someone is living these types of specified accommodation in England and a Wellbeing Assessment has determined that their eligible social care needs can **only** be met by living in the specified accommodation, they are deemed by the Care Act 2014 to be ordinarily resident:

- in the area where they were ordinarily resident immediately before beginning to live in the specified accommodation; or
- if the person was of no settled residence immediately before beginning to live in the specified accommodation, in the area in which they were present at that time.

If an individual arranges their own support as a self-funder in such a type of accommodation, then it follows that the deeming provision will not apply.

10 Mental Health Act application

The person will remain ordinarily resident in the area in which they were ordinarily resident immediately before they were admitted to hospital. This applies if the person is moved to a hospital in a different area.

The IWC will apply their responsibilities under the Care Act relating to hospital discharges and the Mental Health Act in cases where section 117 aftercare arrangements apply.

11 Section 117 aftercare/accommodation

Section 117 of the Mental Health Act imposes a joint duty on clinical commissioning groups (CCGs) and the IWC to provide or arrange for the provision of aftercare services for individuals who have been detained under sections of the Mental Health Act that deal with compulsory treatment, and who then cease to be detained and subsequently leave hospital.

Section 117 aftercare responsibility will remain with the local authority in which the person was ordinarily resident immediately before being detained under the Mental

Health Act. Any needs for care and support which are not aftercare needs must be met by the local authority in which the person is currently ordinarily resident. In other words, responsibility for aftercare needs will never change, but responsibility for all other eligible needs as defined by the Care Act 2014 may change as the person's place of ordinary residence changes.

12 British citizens resuming permanent residence in England after a period abroad

British citizens returning to England after a period of residing abroad and who had given up their previous home in this country would usually acquire an ordinary residence in the area in which they chose to locate, if their intention was to stay living there for settled purpose. As long as they can demonstrate an intention to remain in the place they are living for settled purposes, as detailed above in section 3, they are able to acquire an ordinary residence there. If the person has not given up their previous home in this country then the starting point would be that they would remain ordinarily resident in their previous local authority until they are able to demonstrate that they have adopted a new authority as their place of settled residence.

If a returning citizen presents to a local authority on their return to England but has no particular intention to settle in that area, the local authority may decide they may be found to be of 'no settled status' and/or in 'urgent need'.

Each case will be decided on an individual basis and will be determined by the Local Authority in line with this policy as determined by the facts of the case. In order to establish ordinary residence, the returning British citizen must provide to the local authority evidence demonstrating the nature and quality of their settled purpose in the relevant local authority.

13 Disputes with other local authorities about ordinary residence

The right to an assessment and or application of support or necessary services will not be delayed or impeded as a result of any inter-authority dispute. The IWC will ensure there is no impact on the person and resolve any dispute as quickly as possible.

If the dispute cannot be resolved locally, a referral will be made to the Secretary of State or their appointed representative within four months of the dispute arising. A referral will only be made if efforts to resolve the matter locally have been unsuccessful. Legal advice will be taken prior to any referral. The IWC will follow the steps in Appendix C of the Local Government Association's Ordinary Residence Guide in making a formal referral.

14 Recovering costs from other local authorities

Where the IWC has met eligible needs pending the resolution of an ordinary residence dispute and a subsequent determination, whether between the parties to the dispute or by the Secretary of State, the IWC will recover the cost of meeting needs from the responsible local authority.