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# THE CARE ACT 2014

## ORDINARY RESIDENCE



# THE KEY PROVISIONS

# THE KEY PROVISIONS



- **Relevant Statutory Provisions:**
- **Sections 18-19 Care Act 2014**
- **Sections 39-41 Care Act 2014**
- **The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014**
- **The Care and Support (Disputes Between Local Authorities) Regulations 2014**

# THE KEY PROVISIONS



- **Relevant Guidance:**
- **Chapters 19 and 20 Statutory Guidance, Annex H1-H8**
- **Key Case-Law:**
- **R. (on the application of Cornwall Council) v Secretary of State for Health [2014] EWCA Civ 12; [2014] 1 W.L.R. 3408**



# ORDINARY RESIDENCE PRE-CARE ACT 2014

# PRE-CARE ACT 2014



- The existing statutory framework on ordinary residence is set out in sections 21, 24, 29 and 32(3) to (5) of the National Assistance Act 1948, and the supporting directions.
- LAC(93)10: Approvals and Directions for Arrangements from 1 April 1993
- The Ordinary Residence Disputes (National Assistance Act 1948) Directions 2010

# PRE-CARE ACT 2014



- Guidance by the Dept of Health:
- “Ordinary residence: Guidance on the identification of the ordinary residence of people in need of community care services, England”.
- Case Law:
- R v Barnet London Borough Council, Ex p Nilish Shah [1983] 2 AC 309
- R v Waltham Forest London Borough Council, Ex p Vale The Times, 25 February 1985



**ORDINARY RESIDENCE**



# WHAT DOES OR MEAN?



- No definition
- The words “ordinary residence” should, unless the context indicates otherwise, be given their ordinary and natural meaning. (Elias J in **Cornwall** at [77])

# ADULTS WITH CAPACITY



- R v Barnet London Borough Council, Ex p Nilish Shah [1983] 2 AC 309:
- a. The words should be given their ordinary natural meaning.
- b. 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 of long duration.

# ADULTS WITH CAPACITY



- R v Barnet London Borough Council, Ex p Nilish Shah [1983] 2 AC 309 (continued):

[...]

- c. The residence must be voluntarily adopted.
- d. There must be a degree of settled purpose - the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.

# ADULTS WITH CAPACITY



- When assessing ordinary residence decision makers should also take into account:
- Ordinary residence can be acquired as soon as a person moves into an area.
- P may own or have an interest to a property in another area.
- Temporary absences e.g. holidays, hospital visits and term time at college/university do not break the continuity of ordinary residence.

# ADULTS WITHOUT CAPACITY



- A person must be assumed to have capacity in relation to a particular issue or decision unless it is established that they lack capacity, see: 1(2) Mental Capacity Act 2005.
- For the purposes of ordinary residence, the relevant decision is a decision where to live.

# ADULTS WITHOUT CAPACITY



- **COURT OF APPEAL DECISION**
- **R (on the application of Cornwall Council) v Secretary of State for Health [2014] EWCA Civ 12 (permission to appeal to the Supreme Court has been granted).**
- **Vale 1 test rejected.**
- **All of the factual circumstances relevant**
- **Statutory Guidance at para 19.21**



# POST-CARE ACT 2014

## BASIC STRUCTURE

# WHEN IS IT RELEVANT



- **Section 9 & 10: Duty to Assess**
- **Section 13(1): Eligibility Criteria**
- **Section 13(3), (4): Ordinary Residence**



# SECTION 18: DUTY



- **Section 18(1)(a) of the Care Act 2014 provides that a local authority, having made a determination under section 13(1) must meet the adult's needs for care and support which meet the eligibility criteria if the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence.**

# SECTION 19 POWER WHERE NO DUTY



- Section 19(1) of the Care Act 2014 provides that a local authority, having carried out a needs assessment and if required to do so a financial assessment **may** meet an adult's needs for care and support if the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, where the local authority have determined no duty under section 18

# SECTION 19 POWER WHERE OR IN OTHER AREA



- **Section 19(2) of the Care Act 2014 provides that a local authority having made a determination under section 13(1) may meet an adult's needs for care and support which meet the eligibility criteria if (as relevant) the adult is ordinarily resident in the area of another local authority.**

# SECTION 19 & URGENT NEEDS



- **Urgent Needs**
- Sections 19(3) and (4) Care Act 2014 provide that a local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area). A local authority may meet an adult's needs under subsection (3) where, for example, the adult is terminally ill.

# SECTION 20: CARERS



- **Section 20 of the Care Act 2014 contains similar duties and powers in respect of carers. It is the ordinary residence of the adult that needs care that is material.**

# NO SETTLED RESIDENCE



- Only in rare cases
- Paragraphs 19.22 and 19.24 Guidance examples:
- They have clearly and intentionally left their previous residence and moved to stay elsewhere on a temporary basis during which time their circumstances change; and
- They have arrived from abroad including those people who are returning to England after a period of residing abroad and who have given up their previous home in this country



**POST-CARE ACT 2014**

**DEEMING PROVISIONS: SPECIFIED  
ACCOMMODATION**

# SECTION 39(1)



- (1) Where an adult has needs for care and support which **can be met only** if the adult is living in accommodation of a **type specified in regulations, and the adult is living in accommodation in England of a type so specified**, the adult is to be treated for the purposes of this Part as ordinarily resident—
  - (a) **in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation** of a type specified in the regulations, or
  - (b) if the adult was of **no settled residence immediately before the adult began to live in accommodation** of a type so specified, in the area in which the adult was present at that time.



# REGULATIONS



- **Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014/2828**
- **Not yet in force**

# SPECIFIED ACCOMMODATION



- Firstly, **care home** accommodation.
- Secondly, **shared lives scheme** accommodation.
- Thirdly, **support living** accommodation.



**POST-CARE ACT 2014**

**DEEMING PROVISIONS:**

**NHS ACCOMMODATION**

# NHS ACCOMMODATION



- Section 39(5) applies the same principle to NHS accommodation. **NHS accommodation** means accommodation provided as part of the NHS under any relevant NHS legislation. It ensures that a stay NHS accommodation (as defined in s.39(6)) in England, Scotland, Wales or Northern Ireland will not affect a person's ordinary residence. This means that their care and support must continue to be provided by the local authority in whose area they were ordinarily resident before their admission to NHS accommodation.



**POST-CARE ACT 2014**

**DEEMING PROVISIONS:**

**SECTION 117 MHA 1983 AFTER-CARE**

# SECTION 117 MHA 1983 AFTER-CARE



- **After-Care services defined for the first time:**
- **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.**
- **Statutory Guidance at paragraph 19.42**

# SECTION 117 MHA 1983 AFTER-CARE



- Section 75 of the Care Act 2014 amends section 117 of the Mental Health Act 1983 to provide that the local authority responsible for providing or commissioning after care services is the local authority in which the person was **ordinarily resident** immediately before he was detained.

# AFTER-CARE ACCOMMODATION & DEEMING FOR THE PURPOSES OF CA 2014



- Section 39(4) provides that an adult who is being provided with **accommodation** under section 117 of the Mental Health Act 1983 will be treated **for the purposes of Part 1 of the Care Act 2014** as ordinarily resident in the area of the local authority in England or Wales which is under a duty to provide the adult with services by virtue of **section 117 MHA 1983**.



# SECTION 117 MHA 1983 AFTER-CARE



- By new s.117A the Secretary of State is empowered to make Regulations requiring a local authority to comply with a preference by P for particular accommodation, with P paying a top-up fee if the preferred accommodation is more than the authority's usual cost. In discharging the s.117 duty, the Council is permitted to provide the person with direct payments.



# POST-CARE ACT 2014 SELF-FUNDERS

# SELF-FUNDERS



- A person that self-funds and arranges their own care and chooses to move to an area is likely to take the ordinary residence of the area he moved to.
- The Guidance at paragraph 19.52 provides that people who self-fund and arrange their own care and choose to move to another area for that care and then find their funds depleted are likely to have the ordinary residence in the new area as they voluntarily choose to move there.

# SELF-FUNDERS



- A person that seeks the help of the local authority pursuant to section 18(3) of the Care Act 2014 i.e. a person who has sufficient financial means to pay for their own care, but who has eligible needs, and asks the local authority to meet their needs (e.g. where they lack the skill or confidence to arrange their own care). The person is paying for the accommodation but the local authority has arranged it and provided a care plan and so the deeming provision will apply and P will keep the ordinary residence of the arranging local authority (Annex H4 of the Guidance).



# POST-CARE ACT 2014 DISPUTE RESOLUTION

# DISPUTE RESOLUTION



- **Section 40: Dispute Resolution**
- **Care and Support (Disputes Between Local Authorities) Regulations 2014/2829**
- **Section 41: Financial Adjustments**
- **PRINCIPLES OF CO-OPERATION!**



**POST-CARE ACT 2014**

**TRANSITIONAL PROVISIONS**

# TRANSITIONAL PROVISIONS



- **Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015**





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