

## **DETERMINATION BY THE SECRETARY OF STATE OF ORDINARY RESIDENCE DISPUTE**

1. I have been asked by CouncilA to make a determination under section 40 (“s.40”) of the Care Act 2014 (“the 2014 Act”) in regard to an ordinary residence dispute with CouncilB relating to Mr X.
2. The issue is whether Mr X was ordinarily resident in the area of CouncilA or CouncilB for the purpose of determining which authority would be responsible for the payment of his mental health after-care services (“after-care”) pursuant to section 117 of the Mental Health Act 1983 (“the 1983 Act”). For the reasons set out below, I determine that Mr X was ordinarily resident in CouncilB at the critical date.
3. The issue is not so much *where* Mr X was ordinarily resident, but *when* that issue falls to be determined. In my view it has to be considered as at the date when he was detained (for the first and only time) under section 3 of the 1983 Act, which is on 17 May 2016. He became entitled to after-care services at that point. The fact that he was subsequently detained under section 2 of the 1983 Act for a period does not alter that because that period of detention is not relevant under section 117(3) of the 1983 Act.

### **Procedural matters**

4. As I say above, I was invited to determine this dispute by CouncilA. I have been provided with legal submissions, and a draft statement of facts (“the Draft Statement”) by CouncilA.
5. I have seen correspondence between CouncilA and CouncilB which predates the referral to the Secretary of State, in which the authorities set out their respective positions as to Mr X's ordinary residence and why they consider the other authority to be responsible for providing him with after-care services under section 117 of the 1983 Act.

6. On 14 September 2017, CouncilA wrote to CouncilB enclosing a first draft statement of facts for its agreement. CouncilB responded to that on 15 September, raising some queries.
7. Both authorities wrote again (following some intervening exchanges) on 21 September. CouncilB's letter of that date sets out what I (and CouncilA) understand to be CouncilB's reasons for contending that it is not responsible to provide after-care services for Mr X.
8. CouncilA's letter of that date (which appears to have crossed with CouncilB's letter) enclosed an amended draft statement of facts which it again invited CouncilB to agree. There has been no further response from CouncilB to the CouncilA statement of facts.
9. The matter was referred to the Secretary of State by CouncilA by letter dated 26 September 2017. Its letter enclosed copies of the correspondence, a copy of the draft statement of facts prepared by CouncilA and legal submissions on behalf of CouncilA.
10. The Secretary of State wrote to CouncilB on 18 October 2017 notifying it of the referral and of the procedure to be followed, and inviting it to agree a statement of facts with CouncilA and inviting it to provide any legal submissions it wished to make on the matter (by 1 November 2017).
11. No statement of facts has been agreed and no submissions have been provided by CouncilB.
12. The Secretary of State communicated with CouncilB by email on 21 November 2017, again inviting it to confirm whether it wished to provide submissions. No response was received.
13. On 11 January 2017 the Secretary of State confirmed by email that he would proceed to determine the dispute in the absence of submissions from CouncilB, given its failure to respond.

## Facts

14. I base my findings of fact on the latest version of the draft statement of facts provided by CouncilA, in the absence of any further response to that draft statement of facts from CouncilB and in the absence of any material from CouncilB which casts doubt upon it. The correspondence from CouncilB appears to accept its correctness on the key points (it raised certain issues about the procedural history in its letter of 21 September but these have in any case been incorporated into the latest draft statement prepared by CouncilA).
15. X was born on XX XX 1956.
16. Prior to 21 April 2016, his permanent address was Address1B. In the absence of any contrary argument, and any reason to think otherwise, I conclude that his ordinary residence up to that time was at this address, which is AreaB.
17. Mr X was detained on 21 April 2016. The detention commenced under section 136 of the 1983 Act but was converted to detention under section 2 of the 1983 Act on the same date.
18. Mr X remained in detention under section 2 of the 1983 Act until 17 May 2016, when he was detained for treatment under section 3 of the 1983 Act.
19. I have seen nothing to suggest that Mr X ceased to be ordinarily resident at Address1B between 21 April and 17 May 2016. I would not necessarily expect his ordinary residence to be altered by a short period of detention, since by its very nature detention does not involve the voluntary adoption of a new place of residence and there is nothing to suggest that there was an expectation at that time that Mr X would have moved in any long term sense. Nor do CouncilB appear to suggest that Mr X's ordinary residence shifted between April and May. Accordingly, I conclude that Mr X remained ordinarily resident at the Address1B address up to 17 May 2016.

20. It follows that I conclude that Mr X was ordinarily resident in AreaB as at 17 May 2016, which is the date immediately before he was detained under section 3 of the 1983.

21. As a result of this detention under section 3, Mr X became entitled to after-care services under section 117 of the 1983 Act upon his release.

22. He was discharged from detention on 24 June 2016, and began receiving a package of section 117 aftercare. There is no doubt (and, I think, no dispute) that CouncilB was responsible for the provision of this care at this stage.

23. Mr X continued to live in AreaC until 30 August 2016, when his brother moved him to AreaA. Mr X's brother arranged a flat at Address1A.

24. Mr X was again admitted to hospital on 1 January 2017. During this period he was detained under section 2 of the 1983, but he was not detained under section 3. I note that in its letter of 21 September 2017, CouncilB appears to accept this.

25. Mr X later became an informal patient at Hospital1A in AreaA.

### **The positions of CouncilA and CouncilB**

26. CouncilA's position is that Mr X was ordinarily resident in AreaB immediately before he was detained under section 3 of the 1983 Act. His entitlement to after-care services arises from that period of detention. His subsequent detention under section 2 of the 1983 Act is irrelevant. Accordingly, the relevant authority for providing after-care services is CouncilB.

27. CouncilB's position, as explained in its letter of 21 September 2017, is that the detention under section 2 of the 1983 Act in January 2017 means that the authority responsible for after-care services must be reassessed by reference to that date. On that date, he was ordinarily resident in AreaA.

28. Thus, the dispute is not so much as to *where* Mr X was ordinarily resident, but as to that date on which that question falls to be decided for the purposes of assessing liability to provide him with after-care services.

### **Determination**

29. Section 117 of the 1983 Act (as amended) provides, materially, as follows:

**117.— After-care.**

*(1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of a hospital direction made under section 45A above or a transfer direction made under section 47 or 48 above, and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.*

*(2) It shall be the duty of the clinical commissioning group or Local Health Board and of the local social services authority to provide or arrange for the provision of, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the clinical commissioning group or Local Health Board and the local social services authority are satisfied that the person concerned is no longer in need of such services; but they shall not be so satisfied in the case of a community patient while he remains such a patient.*

*(3) In this section ... “the local social services authority” means the local social services authority*

*(a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;*

*(b) if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or*

*(c) in any other case for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.*

30. It follows that the duty upon a social services authority to provide after-care services under this section arises from the fact that a person is detained under section 3 of the 1983 Act (or other provisions referred to in subsection (1)). No such duty arises from detention under section 2 of the 1983 Act.

31. It follows, in my view, that the words “immediately before being detained” in subsection (3) of the 1983 Act must mean “immediately before being detained under a provision referred to in subsection (1)”. I do not think detention under section 2 of the 1983 Act, or indeed detention under other legislation, is relevant for the purposes of subsection (3)(a).

32. Accordingly, I agree with Council A that Mr X’s entitlement to after-care services derives from his period of detention under section 3 in 2016, and the relevant date for determining which authority is responsible for providing such services (by reference to his ordinary residence on that date) is 17 May 2016. The fact that he was detained for a period after that under section 2 of the 1983 Act does not alter or remove his right to such services, and nor does it give rise to any new entitlement to services.

33. It follows that, since Mr X was ordinarily resident in Area B on that date, Council B is responsible for providing him with services.

34. I would add that, though it is not strictly necessary to my determination, I have seen nothing to suggest that Mr X was discharged from after-care services under section 117 during the period of his detention under section 2. It is not clear to me that Council B could have properly chosen to discharge him from those services on the basis that he had ceased to need them, given the shortness of the period of detention and that it was for assessment only. In those circumstances, I doubt whether there was any break in Mr X’s entitlement to after-care services from Council B in this period. But, given my conclusions on the legal relevance of detention under section 2, this is not strictly necessary to my decision.

## **Conclusion**

35. I conclude that the relevant date for deciding Mr X’s ordinary residence is 17 May 2016, and that on that date Mr X was ordinarily resident in Council B’s area.