

DETERMINATION BY THE SECRETARY OF STATE REQUESTED UNDER SECTION 32(3) OF THE NATIONAL ASSISTANCE ACT 1948 OF THE ORDINARY RESIDENCE OF X MADE IN ACCORDANCE WITH SECTION 40 OF THE CARE ACT 2014

1. I have been asked by CouncilA and CouncilB to make a determination under section 32(3) of the National Assistance Act 1948 (“the 1948 Act”) of the ordinary residence (“OR”) of X.
2. The question of X’s ordinary residence arose under Part 3 of the National Assistance Act 1948 (“the 1948 Act”) and would, in the first instance, fall to be determined under section 32(3) of that Act. However, as from 1 April 2015, Part 1 of the Care Act 2014 (“the 2014 Act”) came into force for material purposes and previous social care legislation, including the 1948 Act, stopped applying in relation to England except in transitional cases. By virtue of article 5 of the Care Act (Transitional Provision) Order 2015 (S.I. 2015/995), any question as to a person’s ordinary residence arising under the 1948 Act which is to be determined by me on or after 1 April 2015 is to be determined in accordance with section 40 of the 2014 Act (disputes about ordinary residence). I make this determination accordingly.
3. For the reasons set out below, I find that X is ordinarily resident in CouncilB and has been since 3 July 2013.

The facts

4. The following information is taken from the statement of facts, legal submissions and bundle of documents (“the bundle”) provided to me by both local authorities and the further information requested by me and provided by CouncilA on 10 June 2015 in regard to arrangements between X, the licensor, the care provider and CouncilA.
5. X was born on x date 1989. He has Mosaic Trisomy, which is a congenital condition. He has a diagnosis of a learning disability. He has in the past presented with challenging and ritualistic behaviour but does not have a diagnosis of autism.
6. I am advised on the papers that X attended a residential college in cross-border CouncilW from 2009 for 3 years. He then moved in with his father where he lived for 7 months with input from the Community Team for People with Learning Disabilities (“CTPLD”). In 2013, X moved to, SupportedLivingC placement in CouncilC. On or around 3 July 2013, X moved to SupportedLiving313SupportedLiving313 in the area of CouncilB. I am advised on the papers that the placement came to an end at X’s request as he expressed dissatisfaction with the placement citing too much restriction being in place. However, there are indications that there may have been other reasons. CouncilA’s letter of 12 September 2014 states under the heading “The reason for moving to CouncilB”:

“We are instructed that X’s behaviour was becoming unmanageable at the in the [sic] supported living placement where he was living in CouncilA, namely, SupportedLivingC, and the placement consequently broke down. SupportedLiving313 was a new service provided by CareServices101 offering

support to individuals presenting with challenging behaviour. X's levels of aggression warranted specialist input and both X and his father were very much in favour of SupportedLiving313 being the right placement for him."

7. By a letter dated 12 September 2014, CouncilA wrote as follows:

8.

"X was originally shown a supported living placement in RoadA in CouncilA accompanied by his father. He declined this option but when he visited SupportedLiving313 he said that he wanted to move there. Indeed, it is understood that he was very excited about moving there and clearly expressed his desire to live there after the viewing.

In terms of signing the license agreement, X was deemed to have the capacity to do this given that he had previously held a tenancy and he understood the obligations of being a tenant."

9. The statement of facts records that he X is able to prepare simple meals e.g. cereal and a sandwich independently but requires prompting and assistance when preparing something more complicated. He requires support when undertaking housework and shopping. When accessing the community, X needs support when visiting somewhere he has not been before because there is a risk that he would be unable to find his way home. He can visit his church and local park without support from staff and knows how to find his way to his father's house which is a straight 25 minute walk. He is able to wash, dress, shave his face and brush teeth independently but requires prompting to maintain his personal care. He attends CollegeH twice a week where he studies Sports and Leisure and Business and Community Enterprise. He attends unsupported and waits for staff for a lift at the end of the day.

10. X receives 10 hours of 1:1 support each week to access the community and participate in social activities. He also receives support within the home.

11. The Personal Needs Questionnaire dated 14 July 2011 states:
"Making decisions and organising my life:

...

X is unable to rationalise or understand the consequences into making major decisions, although with specific help and support, he may be able to make some major decisions. Individual situations will need to be assessed accordingly, and the necessary steps taken to ensure X is able to contribute in making major decisions, or understanding how to make these decisions."

12. There was a tick against a box for "Other people always make decisions and organise my life."

13. I note that this questionnaire dates from several years ago.

14. The FACE Needs Assessment dated 14 November 2014 describes X's Household composition as "X lives in SupportedLiving313 SupportedLiving313". The "Consideration of mental capacity" is "not specified". The background summary states:

“...During his time at SupportedLivingC he expressed his dissatisfaction from the support provided by them. At one occasion he went missing for a while as he was not happy and had too much restriction in place. A new place has been identified for X at SupportedLiving313. He went to see that place and expressed his wish to move there. X choice was also supported by his family. X moved to SupportedLiving313 on 03.07.2013. During the last review he expressed his wish to stay in his current place.”

15. X is largely independent with eating/drinking, dressing, and undressing but needs staff to monitor his progress and provide prompts and reminders. He can wash his body without physical assistance but staff need to monitor his progress to prevent deterioration in his personal care. He is not on any medication but would need to be supported by staff to make sure he takes the right dose of any medication prescribed. He can prepare a basic sandwich and a cold drink but would need to be supported if he wanted to prepare a sandwich with a few toppings. He needs prompting and assistance to complete a full meal and choose healthier meals. He needs to be guided and supported to keep his room clean and tidy, to put the right amount of clothes into the washing machine and with general cleaning. He has limited awareness of money and needs staff to help with shopping. He needs support from his father and paid carers to manage his money. He needs support when he goes to places that he hasn't seen before but it is reported that he has been visiting a local church and park without support and can get to his dad. He needs support with his social activities in the community.
16. In relation to planning and decision-making the Assessment states:
“In relation to decision making processes, X is able to make basic decisions but anything that requires a life changing decision will require a mental capacity assessment which may lead to a decision in his best interest. He is able to express his needs and wishes and also to hold conversation. He needs ongoing support from his father or paid carers to engage in social activities and daily routine.”
17. He signs a license agreement for the payment of rent, service charges and utilities amounting to £208.20 per week. The licensor is Housing12. X receives £150 in housing benefit each week which covers the rent element of his license charges. I am advised on the papers that the additional costs are paid for by X from his own funds. CouncilA are funding the care which is £1,137.07 per week.
18. The accommodation at SupportedLiving313 comprises of 6 bedrooms of which X has license to occupy one. There are communal areas for the benefit of all license holders. There is also an office for staff. Two members of staff are at from 07:00 am until 11 pm. Thereafter there is one member of staff at night. Support is provided 7 days a week.
19. CouncilA state that they pay for domiciliary care services provided to X at SupportedLiving313 by CareServices101 under section 29 of the 1948 Act and section 2 of the Chronically Sick and Disabled Persons Act (“CSDPA”).

The Authorities' Submissions

20. CouncilA submits that X became ordinarily resident in CouncilB on 3 July 2013 when he moved to SupportedLiving313. The basis for its submission is that:
- Relying on the presumption in section 1(2) of the Mental Capacity Act 2005 ("the MCA"), X was deemed to have capacity to choose his own place of residence and he consequently moved to SupportedLiving313 voluntarily and for a settled purpose
 - X holds a license in relation to SupportedLiving313 under which he is solely responsible for the license fee which is settled by way of housing benefit and the shortfall met by himself
 - Consequently, X is not provided with Part 3 (of the 1948 Act) accommodation so the deeming provisions (section 24(5) 1948 Act) do not apply. X receives domiciliary care services in his own home under section 29 of the 1948 Act and section 2 CSDPA.
21. CouncilB disputes that X became ordinarily residence in its area on 3 July 2013 or at all. It submits that X should be deemed to remain OR in CouncilA on the following basis:
- CouncilA has been unable to produce any evidence to prove that X had the mental capacity to choose his place of residence or enter into a license agreement. Furthermore the level and range of needs arising from his learning disability identified in the assessment documents cast considerable doubt on CouncilA's reliance on the presumption of capacity.
 - It is highly unlikely that he had the capacity to understand the terms of the license agreement that he signed but no attorney or deputy was appointed to enter into a license or tenancy agreement on his behalf
 - Consequently X did not make a voluntary choice to move to SupportedLiving313 for a settled purpose
 - In extending the deeming provisions in section 39(1) of the Care Act 2014 ("the CA") from 1 April 2015 to include people placed in a support living setting "out of area", Parliament has recognised that the needs of vulnerable adults (such as X) will benefit from retaining their established network links and also that local authorities should not be able to divest themselves of responsibility for such people

Legal Framework

22. I have considered all the documents submitted by CouncilA and CouncilB, the provisions of Part 3 of the 1948 Act and the Directions issued under it, the guidance on ordinary residence issued by the Department, and the cases of *R (Shah) v London Borough of Barnet* (1983) 2 AC 309 ("*Shah*"), *R (Greenwich) v Secretary of State for Health and LBC Bexley* [2006] EWHC 2576 ("*Greenwich*"), *Chief Adjudication Officer v Quinn and Gibbon* [1996] 1 WLR 1184 ("*Quinn Gibbon*"), *R (on the application of Westminster City Council) v National Asylum Support Service* [2002] UKHL 38 ("*NASS*") and *Mohammed v Hammersmith & Fulham LBC* [2001] UKHL 57 ("*Mohammed*").

23. I set out below the law as it stood at the relevant time, prior to 1 April 2015 when relevant provisions of the 2014 Act came into force.
24. Section 21 of the 1948 Act empowers local authorities to make arrangements for providing residential accommodation for persons aged 18 or over who by reason of age, illness or disability or any other circumstances are in need of care and attention which is not otherwise available to them. Section 24(1) provides that the local authority empowered to provide residential accommodation under Part 3 is, subject to further provisions of that Part, the authority in whose area the person is ordinarily resident. The Secretary of State's Directions under section 21 provide that the local authority is under a duty to make arrangements under that section "in relation to persons who are ordinarily resident in their area and other persons who are in urgent need thereof."
25. By virtue of section 26 of the 1948 Act, local authorities can, instead of providing accommodation themselves, make arrangements for the provision of the accommodation with a voluntary organisation or with any other person who is not a local authority. Certain restrictions on those arrangements are included in section 26. First, subsection (1A) requires that where arrangements under section 26 are made for the provision of accommodation together with nursing or personal care, the accommodation must be provided in a registered care home. Second, subsections (2) and (3A) state that arrangements under that section must provide for the making by the local authority to the other party to the arrangements of payments in respect of the accommodation provided at such rates as may be determined by or under the arrangements and that the local authority shall either recover from the person accommodated or shall agree with the person and the establishment that the person accommodated will make payments direct to the establishment with the local authority paying the balance (and covering any unpaid fees).
26. Section 24(1) provides that the local authority empowered to provide residential accommodation under Part 3 of the 1948 Act is, subject to further provisions of that Part, the authority in whose area the person is ordinarily resident. The Secretary of State's Directions provide that the local authority is under a duty to make arrangements under that section "in relation to persons who are ordinarily resident in their area and other persons who are in urgent need thereof."
27. Under section 24(5) of the 1948 Act ("the deeming provision"), a person who is provided with residential accommodation under Part 3 of the 1948 Act is deemed to continue to be ordinarily resident in the area in which he was residing immediately before the residential accommodation was provided.
28. Section 29 of the 1948 Act empowers local authorities to provide welfare services to those ordinarily resident in the area of the local authority. Section 2 of the CSDPA supplements and relates to welfare services provided under section 29 of the 1948 Act.

Ordinary Residence

29. "Ordinary residence" is not defined in the 1948 Act. The Department of Health has issued guidance to local authorities (and certain other bodies) on the question of

identifying the ordinary residence of people in need of community care services (“the guidance”). Paragraph 18 of the guidance onwards notes that the term should be given its ordinary and natural meaning subject to any interpretation by the courts. The concept involves questions of fact and degree. Factors such as time, intention and continuity have to be taken into account.

30. In *Shah v London Borough of Barnet* (1983) 1 All ER 226, Lord Scarman stated that: *“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 a settled purpose as part of the regular order of his life for the time being, whether of short or long duration”*
31. Additional considerations apply where the relevant person lacks capacity to determine (and thus to “voluntarily adopt”) his abode. However, in light of my decision below, it is not necessary to apply the additional incapacity considerations in this case.
32. Section 1(2) of the MCA provides that a person should always be assumed to have capacity to make their own decisions unless it is established to the contrary. Where lack of capacity has been established, section 1(5) provides that decisions as to accommodation and care must be made in the person’s best interests. Section 4 sets out the factors to consider for this purpose.

Application of the law to the facts

33. The first issue is whether the accommodation in SupportedLiving313 was provision of residential accommodation under section 21 of the 1948 Act. If it was, X will be deemed to be ordinarily resident in CouncilA’s area because of the application of the deeming provision in section 24(5) of the 1948 Act. If X is not provided with accommodation under section 21 of the 1948 Act the next step is to consider whether he should have been, in which case the deeming provisions in section 24(5) will still apply. Finally, if the arrangements do not fall under section 21 at all, the deeming provision will not apply but it will be necessary to determine X’s OR in accordance with the ordinary meaning of the term as interpreted by the courts.
34. CouncilA submits that it provided non-residential services to X at SupportedLiving313 under section 29 of the 1948 Act. CouncilB has not directly disputed this but submit that X should be deemed to be OR in CouncilA because he did not have the capacity to make a voluntary choice to either move or enter into the license agreement. I consider it necessary to make a finding on the application of section 21.

Characteristics of section 21 accommodation

35. In order for a person’s accommodation under a private occupancy agreement to fall under section 21, the contractual arrangements between the person, the accommodation provider and the local authority must meet the requirements of section 26(1A), (2) and (3) of the 1948 Act. Section 26(1A) provides that if arrangements under this section are being made for the provision of accommodation

“together with nursing or personal care”, they must not be made unless the accommodation is provided in a care home, as defined in the Care Standards Act 2000, and is managed by an organisation or person who is registered under Chapter 2 of [Part 1](#) of the Health and Social Care Act 2008.

36. SupportedLiving313 does not appear to be registered with the CQC. If any provider were providing personal care together with accommodation in this property (regulated activities) without being registered they would be guilty of an offence. For this reason neither Housing12 nor CareServices101 can lawfully be providing personal care together with accommodation to X in this property. If I am wrong about this and SupportedLiving313 is registered as a care home under Chapter 2 of Part 1 of the Health and Social Care Act 2008 I will proceed to evaluate whether the other conditions of section 26 of the 1948 Act are met. In *Quinn Gibbon*, Lord Slynn held that arrangements for the provision of accommodation must satisfy section 26(2) to constitute the provision of Part 3 accommodation.
37. In my view, the license agreement between X and Housing12 does not meet the section 26 requirements in order for it to be accommodation falling under section 21. The arrangements do not meet the requirements of section 26(2) as set out above as they do not provide for the making of payments by a local authority to the accommodation provider (and hence do not provide for the recovery of payments from the person receiving accommodation). X is provided with a licence to occupy a room within a shared home. He is solely responsible for the payment of a license fee and is charged interest on any late payment. I have no evidence before me of any obligation on CouncilA to make any payment for accommodation to Housing12. The rent element of the licence fee is funded by housing benefit payments. X is responsible for the shortfall to cover service charges and utilities. The funding provided by CouncilA to CareServices101 is payment towards X's care costs, not his accommodation costs.

Was there a duty to provide section 21 accommodation?

38. However, that is not sufficient to settle the matter. The further question which I then have to address is whether in fact arrangements for Part 3 accommodation for X should have been made when he moved to SupportedLiving313 in July 2013. In *Greenwich*, the court looked at what the position would have been had arrangements been made under section 26 of the 1948 Act and noted that the deeming provision should be applied and interpreted on the basis that they had actually been put in place by the appropriate authority (paragraph 55 of judgment). Following *Greenwich*, therefore, lack of compliance with section 26 may not be fatal if, in fact, the local authority should have been making section 21 arrangements.
39. In *Wahid v Tower Hamlets [2002] EWCA Civ 287*, Hale J explained that the section 21(1)(a) duty arose:
- a) where the person was in need of care and attention;
 - b) that need arose because of age, illness, disability of any other circumstances; and
 - c) care and attention were not available otherwise than by the provision of residential accommodation.

40. The first limb of the test in section 21 of the 1948 Act is whether or not the person is in need of care and attention. Care and attention was defined by Baroness Hale in *R (M) v Slough BC* [2008] UKHL 52 at paragraph 33:
'...the natural and ordinary meaning of the words 'care and attention' in this context is 'looking after'. Looking after means doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list.'
41. I take the view that the totality of X's care package as described above, which includes support in and outside the home amounts to personal care needs as defined in regulation 2 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
42. The second limb of the test in order to determine whether a duty under section 21 exists is to ask whether or not the care and attention needed is available otherwise than by the provision of residential accommodation. One of the conditions for qualifying for accommodation under section 21 is that, without the provision of such accommodation, the care and attention which the person requires would not otherwise be available to them. In *NASS* the court confirmed that a person needing care and attention that could be provided in their own home would not normally be entitled to accommodation under section 21.
43. In the case of *R (SL) v Westminster CC* [2013] UKSC 27 Lord Carnwath said, at paragraph 44: "What is involved in providing "care and attention" must take some colour from its association with the duty to provide residential accommodation."
44. At paragraph 45 he asked about care and attention: ".....was it available otherwise than by the provision of accommodation under section 21? Although it is unnecessary for us to decide the point, or to consider the arguments in detail, it seems to me that the simple answer must be yes, as the judge held. The services provided by the council were in no sense accommodation-related. They were entirely independent of his actual accommodation, however provided, or his need for it. They could have been provided in the same place and in the same way, whether or not he had accommodation of any particular type, or at all."
45. In the light of the authorities *R Wahid v Tower Hamlets* (2001) EWHC Admin 641 (First Instance Judgment of Stanley Burnton J) and (2002) EWCA Civ 282 (Court of Appeal), it is established that section 21 is a provision of last resort, and that it does not follow that because residential accommodation can mean ordinary housing and the claimant is in need of ordinary housing, a duty arises to provide him with that housing under section 21(1)(a). This analysis was approved by Hoffman J in *NASS*.
46. Whether personal care is being provided "together with" accommodation is a question of fact and one of substance rather than form.

47. The Care Quality Commission has provided useful guidance “Supported living schemes: Regulated activities for which the provider may need to register” (“ the CQC guidance”).
48. The CQC guidance identifies factors that may be indicative of accommodation being provided “together with” care. It states that there are a number of possible indicators to be taken into consideration in making a judgment about whether the accommodation and care are provided together. The existence of an agreement between landlord and tenant for example is not in itself determinative. The CQC guidance details indicators which are not dictated as conclusive in their own right.
49. In order to evaluate the whole picture in this case, I asked both local authorities to provide me with further information. CouncilB was not able to assist, not having been involved in X’s care package to date. CouncilA provided me with the following additional documents which I have considered:
Joint working protocol (“ the protocol”),and
CareServices101 Brochure.
50. I summarise my findings in this respect as follows:
- There is no evidence to show that Housing12 and CareServices101 are the same legal entity. They are separately registered companies albeit with the same registered address.
 - The protocol refers to an Attached Schedule of Properties which has not been provided to me. However as the protocol was provided upon my request in this case I assume that it applies to SupportedLiving313.
 - The parties to the protocol are identified as the Care and Support Provider – CareServices101 and Landlord and Support Provider – Housing12. CouncilA is not identified as a party but there are provisions in the protocol which purport to govern how a Council must act.
 - X has keys to his own room but the Owner and his staff have unrestricted access for the purposes specified.
 - The license agreement does not explicitly tie occupancy to using the services of CareServices101 but CareServices101 is expressly referred to at clause 12 which provides that “the Owner will facilitate such care and support provided by the Care provider (CareServices101)..”
51. In my view, overall there appears to be a close relationship between the provider of accommodation and the provider of care. However I do not consider that this amounts to the provision of accommodation “together with” personal care for the following reasons;
- The purpose of the protocol is to ensure good joint working, good practice and continuity of service with the consequential aspiration of protecting the interests of the residents.
 - There is a clear division of housing management and care service responsibilities throughout the protocol and between the parties to the protocol.

- Although the landlord must be informed of proposals to terminate or re-commission care services in advance, this remains the responsibility of the Council as does monitoring and periodic review.
 - The care service provider has no responsibility for housing tenancy matters.
 - Both parties and the Council have a responsibility to inform stakeholders of any concerns in regard to performance and agree any action to resolve problems (Para 3.16).
 - A Council may terminate a contract with the care service provider and where it does so it is not envisaged that the license will automatically be terminated (it can be agreed that the licensee will continue to live at the premises, subject to the landlords business decisions) (Para 4).
52. In my view X was receiving the care and attention he required whilst living in private residential accommodation under a license agreement. However, equally, the services he required could have been provided by another provider. The amount and nature of the services were not intrinsically linked to the accommodation. Accordingly I find that CouncilA was lawfully making arrangements other than under section 21.
53. Section 29 of the 1948 Act and the Directions issued under that section require the provision of certain welfare services to individuals such as X. Such services are provided in the community. It is clear that the services provided to him come within the nature of services which can be provided in a person's own home under these provisions.
54. I therefore determine that there was no duty to provide section 21 accommodation to him. If the provision of accommodation does not fall within section 21, the section 24(5) deeming provision does not apply. If section 24(5) does not apply, then X's ordinary residence falls to be determined according to the normal rules.
55. Such a determination is still necessary because X required welfare services under section 29 of the 1948 Act. The local authority responsible for the provision of those services will be the one in which he was ordinarily resident.
56. Where it is established that a person has the capacity to make a decision about where he should live, the relevant test of where that person is ordinarily resident is set out in the leading case of Shah mentioned above.

Mental capacity

57. I therefore consider it appropriate at this stage to turn to the question of X's mental capacity, and his ability to make decisions about where he wishes to live. There is no consensus between the parties on this issue but I conclude from the documents that I have seen that he had capacity to choose to move voluntarily and did so for settled purpose.
58. Neither local authority has undertaken a capacity assessment in relation to X's capacity to decide where to live or what arrangements should be made for his care. That is particularly unfortunate given that the FACE Assessment suggests that "anything that requires a life changing decision will require a mental capacity assessment which may lead to a decision in his best interest". CouncilA submit that

the reason for this is because it was presumed X had capacity to decide where to live in accordance with section 1 (2) MCA.

59. CouncilB rely on CouncilA's assessment documents as evidence of X's level and range of needs arising from his learning disability to cast doubt on CouncilA's reliance on the presumption of capacity. CouncilB submit that on the evidence available, there is significant reason to doubt that he had capacity to make a complex choice in regard to where to live or to understand the terms of the license agreement and in fact CouncilA have not provided any evidence that he was given any choice. A doubt that a person has capacity to decide where to live would not be enough to establish that a person did not have capacity but might trigger the need to undertake a more formal assessment of capacity.
60. A person should not be considered to lack capacity merely because of "a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity" (S2 (3)(b) MCA). While it would plainly have been helpful had a capacity assessment been undertaken at the relevant time, the evidence presented does not suffice to establish that RO did not have capacity.
61. The current test for capacity is found in section 3 of the MCA. That section states that a person is unable to make a decision for himself if he is unable:
 - (a) to understand the information relevant to a decision;
 - (b) to retain that information;
 - (c) to use or weigh that information as part of the process of making the decision; or
 - (d) to communicate his decision (whether by talking, using sign language or any other means).
62. Capacity is time specific as well as decision-specific: a person may have capacity at one time but not at another time. The decision in question is where X wished to live at the material time. It is not a decision as to the exact nature of the accommodation arrangements nor does it require understanding of the implications of those arrangements or which local authority might be responsible for funding his care. It seems to me that there is a qualitative difference between complex issues relating to long term plans, and relatively uncomplicated issues about where one wishes to live and spend one's time. I am satisfied from the information available to me that X understood that he wanted to move to SupportedLiving313 and was able to express this.
63. I base my conclusions on the following:
 - the starting position of a presumption of capacity;
 - I am advised on the papers that X moved to SupportedLiving313 after expressing dissatisfaction with his previous placement; that he went to see SupportedLiving313 and that he expressed a wish to move there
 - While the FACE Assessment notes that a capacity assessment in relation to a major decision *may* lead to a best interests decision, even the 2011 Personal Needs Questionnaire recognised that he may be able to make some major decisions for himself. The decision in the present case did not require a particularly complicated consideration.

- I note that it appears that X was originally shown a different supported living placement at RoadA, which he declined. It is said that he said he wanted to move to SupportedLiving313 when he visited there.
64. While the information before me is not very detailed, on balance, the evidence does not displace the presumption that X had capacity to decide to move to SupportedLiving313. There is nothing to suggest that the social worker completing the assessments considered that he lacked such capacity. Having regard to the presumption of capacity, I conclude that X did have capacity to decide whether to move to SupportedLiving313.
 65. Similarly, I find that X had capacity to enter into the license agreement. I am advised in the letter of 12 September 2014 that “In terms of signing the license agreement, X was deemed to have the capacity to do this given that he had previously held a tenancy and he understood the obligations of being a tenant.”
 66. On balance, I find that X made a voluntary choice to move to SupportedLiving313 for a settled purpose on 3 July 2013. The test in Shah applies and, applying that test, it appears on the facts that X adopted his residence there voluntarily and for a settled purpose.

Conclusion

67. CouncilB’s further submission points to Parliament’s introduction of section 39 of the 2014 Act. This section, read with S.I. 2014/2828, provides that certain adults living in care home accommodation, shared lives scheme accommodation or supported living accommodation are treated for the purposes of Part 1 of that Act as ordinarily residence in the area in which they were ordinarily resident or present immediately before they began to live in that type of accommodation. However, pursuant to article 6(2)(c) S.I. 2015/995, section 39 does not have effect in relation to a person who, immediately before the date on which Part 1 of the CA applies to that person (the earliest possible date being 1 April 2015), he was being provided with certain accommodation including supported living accommodation, for as long as that provision continues.
68. Accordingly, this determination is based on the law as it stood at the relevant time in July 2013.
69. For the reasons set out above, I accept CouncilA’s submission that X is ordinarily residence in CouncilB and has been since 3 July 2013.