

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

1. I have been asked by the CouncilA and the CouncilB to make a determination under section 32(3) of the National Assistance Act 1948 (“the 1948 Act”) of the ordinary residence of X.
2. On 1 April 2015 relevant provisions of the Care Act 2014 (“the 2014 Act”) came into force. Article 5 of the Care Act (Transitional Provision) Order (SI 2015/995) requires that 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. 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 28 October 2013.

The facts

4. The following information has been ascertained from the statement of facts and legal submissions prepared by CouncilA, the submissions prepared by CouncilB and other documents supplied by the authorities.
5. X is a 62 year old man with physical health problems and a history of alcohol misuse. There is some evidence of cognitive impairment but the authorities agree that X has capacity to make decisions in relation to his residence.
6. The statement of facts submitted by CouncilA indicates that X was born in India. It is not clear when he first came to the United Kingdom but he is now a naturalised British citizen. He married and divorced twice and has nine children by his two marriages. CouncilA state that “it does not appear he has been in regular or frequent contact with his family”. I consider his family relationships in more detail below.

7. X first came to the attention of CouncilA adult services in 2008 following his admission to hospital for treatment regarding tuberculosis and a fractured hip. CouncilA's statement of facts cites a record of a visit (presumably by a social worker) to X in hospital on 6 August 2008. I have not seen an original copy of this record but I do not consider that it is necessary for me to do so for the purposes of my determination.
8. CouncilA report that, between 2008 and October 2013, X lived at various addresses including registered care homes, sheltered accommodation, temporary bed and breakfast accommodation and at his daughter's address. Issues around alcohol misuse and aggressive behaviour led to the breakdown of these placements.
9. A FACE Overview Assessment undertaken on 9 May 2012 ("FACE 09/05/12") records that X required referral to appropriate supported accommodation. However I note that FACE 09/05/12 refers to a current address of MedicalCentreA3 which CouncilA X advise me that X did not reside in until 01/06/2012. As the body of the assessment relates to formal support offered whilst X lived in a first floor shared property I assume the "current address" entry was wrongly edited during a later reassessment. In any event, following FACE 09/05/12 and by the end of May 2012, X was evicted and placed in temporary bed and breakfast accommodation for only one night before being provided with a nursing home placement and then residential care at CareHome3HT (a registered care home) on 1 November 2012. It is not disputed that, whilst at this care home, X was ordinarily resident in Council (by operation of the deeming provisions under section 24(5) of the 1948 Act (cited below)).
10. On 16 July 2013 X was admitted to HospitalBGT in CouncilB under section 2 of the Mental Health Act 1983. The discharge summary records that, on admission, X was presenting with symptoms of psychosis and a severe cognitive impairment. It is recorded that he responded well to anti-psychotic medication; his sleep and behaviour markedly improved, his grandiose delusions faded and his speech and mood normalised.

However, his cognitive symptoms persisted and he was reported not to have developed insight into his alcohol problems.

11. On 28 October 2013 X was discharged from HospitalBGT to his current supported living placement at SupportedLiving578 in CouncilB. run by CareProviderB4. No formal reassessment of X's needs was undertaken by CouncilA at this time. However, a detailed care plan was developed by CareProviderB4 which sets out X's identified needs and the steps that would be taken to address those needs.
12. CouncilA inform me that, on its website, CareProviderB4 states it provides: *“supported accommodation for individuals with a range of mental health disorders, learning disabilities and also individuals who have additional complex needs sometimes referred to as dual diagnosis”*.
13. I have been provided with a copy of a tenancy agreement that was signed by X on 28 October 2013. The landlord is described as HousingFSD FSD but it is signed on behalf of the landlord by “CareProviderB4”. CouncilA inform me that, although linked, HousingFSD and CareProviderB4 Limited are separate legal entities. SupportedLiving578 is owned by HousingFSD . Whilst at SupportedLiving578 X received non-personal care services from CareProviderB4. Personal care services were provided by PersonalCare121.
14. In January 2014 the providers of personal care reported concerns that X had been spending most of his time in bed and was unable to weight bear due to heavy drinking. The carers reported difficulties in giving personal care because X's bed was too low causing them to have to bend and hurt their backs. The carers reported that X had developed pressure sores and stated that urgent assessment was required.
15. On 14 January 2014 X was admitted to HospitalBGT with a pressure sore (grade 2/3) in the sacral region and a chest infection. Prior to his discharge, on 14 February 2014, CouncilA X carried out a full reassessment of X's community care needs.

16. The FACE Overview Assessment ("FACE14/02/14") notes that the reassessment was being undertaken in the context of the need for arrangements to be put in place following the hospital admission. It refers to the admission being partly as a result of alcohol induced psychosis.

17. Under the heading "background" it states:

"There are increased concerns about the appropriateness of [X's] present accommodation in Council B, a supported living scheme in which he may not be able to have room to accommodate the required equipment especially for a hoist to be used for transfers and [sic] well as difficulties with wheelchair usage indoors. Therefore [X] will be reassessed by the care provider prior to his discharge in order to determine whether the care provider can continuing [sic] safely meeting MA's needs".

18. It further states that:

"The medical team initially advised against [X's] return to his home address due to his presenting health and social care needs. It is against this backdrop that the reassessment of [X's] needs is being completed."

19. The main body of the assessment identifies a wide range of care needs concerning his physical health, mobility, personal care, social relationships, home and living situation, emotional wellbeing and mental health. It records that X did not have any expressed preferences on how he was supported and he did not express any concerns about the quality of support he received at CareProviderB4.

20. Under the heading "next steps" it is recorded that: "there will be further discussion with both [X] and the care provider about a number of issues"; "the main issue for consideration at this stage is to ensure that [X] has access to appropriate equipment mainly due to his mobility difficulties"; "the important consideration whilst [X] is in hospital is to ensure that he is

supported to effect a safe discharge from hospital and to ensure he is adequately supported upon his return to his own home”.

21. The resulting Support Plan records that X participated fully in discussions about his care and accommodation. It states that:

“[X] lives in supported living accommodation in CouncilB and he wishes to return home with a support package. The concerns that led to [X’s] admissions have been addressed, he no longer has a pressure sore and completed his treatment for his chest infection. He continues to have limited independence in managing his personal care routines and there are on-going difficulties with his ability to transfer and bear his own weight. CareProviderB4 is a specialist care provider supporting people with alcohol and substance misuse, his support plan has been revised with emphasis on helping [X] to manage alcoholism and resultant behavioural difficulties that he has displayed in the past.”

22. The copy of the support plan with which I have been provided has not been signed by X.

23. The assessment and support plan indicate that X has very limited, if any, contact with family, although some of the detail is inconsistent. The assessment states: “All attempts to engage his family with regard to this hospital discharge has been futile as none are available to maintain make contact with him” [sic]. Under the heading “informal support” it notes that a daughter provides some support, but she is unable to visit and prompt with activities throughout the week because she attends university and cannot commit time. By contrast, the support plan states that X has no contact with any of his nine children.

24. I have not been provided with specific details of any further assessments undertaken by the provider as envisaged in the FACE 14/02/14 assessment. However, CouncilA report in their statement of facts that X was discharged back to CareProviderB4 with an increased support package. The cost of the support package increased from £520 per week prior to the admission to £856.11 following discharge. CareProviderB4 were adamant that they would not be able to support X without this increased support. The increased support represented 49 hours of

dedicated 1:1 support around X's daily living activities including sleeping in staff.

25. On 12 August 2014 CouncilA formally referred X's case to CouncilB. It received no response to its initial referral. A further letter was sent on 10 September 2014 referring to the dispute and enclosing a draft statement of facts.
26. CouncilA report that in early September 2014 X was admitted again to HospitalBGT after he was coughing up blood. He was subsequently discharged back to CareProviderB4. I have not been provided with any further details in relation to this admission.
27. On 17 September 2014 X and CouncilA X were given notice by CareProviderB4 that the placement at SupportedLiving578 was being terminated. X was due to be evicted on 15 October but the date was extended in negotiation between CouncilA X and CareProviderB4. CouncilA X state that the reason for the eviction was that CareProviderB4 were no longer able to meet X's needs in a supported living setting.
28. On 18 September 2014 CouncilB's Long Term Care Management Team wrote to X's allocated social worker in CouncilA referring to the letter of 10 September 2014 requesting copies of a capacity assessment, the tenancy agreement and all documents referred to in CouncilB's list of documents. Also on 18 September 2014 CouncilB legal services wrote to CouncilA legal services asking that the letter of 10 September 2014 be resent. CouncilB legal services responded on the same day re-sending the relevant letter, enclosing all documents set out in the list of documents.
29. On 25 September 2014 CouncilB legal services wrote to CouncilA X legal services confirming that that CouncilA's letter of 18 September 2014 had been received and had been forwarded to the client department for instructions.
30. A capacity assessment was undertaken by a CouncilA social worker on 30 September 2015. The social worker concluded that X had capacity to make informed decisions about his care and accommodation. The assessment records that X *"wanted to be supported to move to a different care setting"* but it also notes that X said *"his care manager supported him in finding the service [at SupportedLiving578] because at the time he*

needed care” and “the decision to find a supported living accommodation with a specialist focus on helping customers manage alcohol dependency was a decision that [X] remembers and agrees he needed at the time”. The assessment states that X acknowledged that his health needs had changed.

31. There is also reference in the capacity assessment to X’s benefits being suspended and to non-payment of service charges. There is no suggestion that these service charges were being met by, or sought from, CouncilA.
32. On 6 October 2014 CouncilA legal services wrote to CouncilB legal services informing them that X has been given notice of termination of his tenancy at SupportedLiving578, inviting them to take over responsibility urgently and to consider X’s accommodation needs post eviction. CouncilA X asked for a response by 10 October 2014.
33. No response was received by this date. On 16 October 2014 CouncilB legal services wrote to CouncilA legal services stating: “it has come to our attention that [X] has been moved today by CouncilA to an alternative accommodation”. CouncilB legal services sought details of the location and type of accommodation. I understand that, in fact, X had not yet moved as an extension to the notice period had been agreed.
34. On 30 October 2014 X moved to a residential care placement provided by CouncilA ResidentialCareV2K in CouncilB. The placement was, and continues to be, funded by CouncilA on a provisional basis. CouncilA wrote to CouncilB informing them of the move and noting that, under the deeming provision of section 24 of the 1948 Act, X’s ordinary residence would continue to be in the place where he was ordinarily resident immediately before the residential accommodation was provided.
35. On 27 November 2014 CouncilB wrote to CouncilA stating that they disagreed with this approach and that X had been inappropriately placed in supported living. The letter also referred to a meeting between X and a CouncilB social worker in which X is reported to have said that he felt “tricked” into moving into ResidentialCareV2K against his wishes. The letter states that X did not feel any connection to CouncilB and that he had clearly expressed a desire to be moved back to CouncilA. The social worker’s notes of the meeting indicate that X told the social worker that he was not happy at ResidentialCareV2K and that he would like to live in Area

B in CouncilB because he had lived there before, he knows the area and likes the food that is readily available there; his family also live in AreaB, although of his five daughters only one wants anything to do with him.

36. CouncilA responded to CouncilB's letter of 27 November 2014 but the date of the response is not clear (the document I have seen is wrongly dated 9 September 2014). CouncilA's response addressed the matters raised by CouncilA, asked for comments on the statement of facts previously submitted and stated that a referral to the Secretary of State would be made on 5 December 2014.
37. CouncilB did not reply to CouncilA before 10 December 2014 when CouncilA referred this matter to me. On 10 December 2014 CouncilA submitted a signed statement of facts and list of relevant documents. On 16 December 2014 they sent their legal submissions. These documents were posted to an incorrect address but were resubmitted on 17 December 2014.
38. On 26 January 2015 I wrote to the authorities noting that that the Guidance and Directions for determination of ordinary residence disputes appeared not to have been complied with. In particular, CouncilB had neither signed nor agreed the statement of facts. I invited CouncilB to consider and attempt to agree the statement of facts and to make any submissions within 28 days.
39. On 20 February 2015 CouncilA wrote to me confirming that they wished to continue with the dispute resolution, noting that the 28 days had expired and there had been no communication from CouncilB.
40. On 3 March 2015 CouncilB wrote to me requesting a stay of this matter until 1 April 2015. I refused the request for a stay. I wrote to CouncilB on 12 March 2015 stating that the parties had been afforded sufficient opportunity to make representations; the content of all correspondence received from the parties would be considered; and if further information was required I would write to the parties.
41. CouncilB wrote to me on 13 March 2015 stating that they would be responding to the matters raised in this dispute prior to 20 March 2015, asking me not to determine the issue until receipt of their further representations (their letter was sent to the wrong e-mail address and was

re-sent on 18 March 2015). Finally, on 20 March 2015, CouncilB sent me their submissions.

42. On 29 June 2015 I asked both authorities to provide me with further information as detailed in that correspondence. I received responses from both authorities on 4 August which I have considered.

The Authorities' Submissions

43. CouncilA submits that X became ordinarily resident in CouncilB on 28 October 2013 when he moved to SupportedLiving578. The basis for their submission is that:

- a. A tenancy agreement was signed by X on the date he moved. There was no agreement that required CouncilA to pay for X's accommodation, so the placement could not constitute accommodation provided under Part 3 of the 1948 Act and the deeming provisions under section 24 do not apply;
- b. CouncilA dispute that the arrangements for X at SupportedLiving578 were unsuitable and, in any event, they submit that the suitability of the placement does not impact on the contractual arrangements involved.
- c. X had capacity to determine his place of residence and moved voluntarily to SupportedLiving578 for settled purpose.
- d. Whilst at the later stages of his residence at SupportedLiving578 he expressed a wish to live elsewhere, this was in the context of deterioration in his condition and a desire to move does not affect ordinary residence (CouncilA place reliance on the dicta of Lord Slynn in *Mohamed v Hammersmith & Fulham LBC* [2001] UKHL 57).
- e. CouncilA dispute that X was "tricked" into moving to ResidentialCareV2K but, in any event, they submit that the issue is irrelevant as X's ordinary residence after his move to ResidentialCareV2K should be determined, pursuant to section 24 of the 1948 Act, by reference to where he was ordinarily residence immediately prior to entering that accommodation.

44. Council B dispute that X became ordinarily resident in their area on 28 October 2013 or at all. They accept that X had capacity to determine his residence but submit that:
- a. X should have been placed in residential accommodation under section 21 of the 1948 Act. In arranging the supported accommodation at Supported Living 578, Council A failed properly to perform its duties under Part 3 of the 1948 Act such that the deeming provisions under section 24 should be applied notwithstanding the fact that no accommodation was, in fact, provided under section 21 (reliance is placed on *R v (Greenwich) v Secretary of State and Bexley* [2006] EWHC 2576).
 - b. Further or alternatively, Council B submit that X did not adopt accommodation at Supported Living 578 voluntarily or for settled purpose. They aver that X was placed against his wishes and that he retains strong links to Council A.

The Law

45. I have considered all the documents submitted by Council A and Council B, the provisions of Part 3 of the 1948 Act and the Directions issued under it, the OR Guidance, and the cases of *R (Cornwall Council) v Secretary of State for Health* [2015] UKSC 46 (“*Cornwall*”); *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*”), and *Mohammed v Hammersmith & Fulham LBC* [2001] UKHL 57 (“*Mohammed*”), *R Wahid v Tower Hamlets* (2001) EWHC Admin 641 (First Instance Judgment of Stanley Burton J) and (2002) EWCA Civ 282 (Court of Appeal), *R (on the application of Westminster City Council) v National Asylum Support Service* [2002] UKHL 38 (“*NASS*”). My determination is not affected by provisional acceptance of responsibility by Council A.
46. I set out below the law as it stood at the relevant time.
47. 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 or attention which is not otherwise available to them.

48. 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 being made for the provision of accommodation together with 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).
49. Section 26(1A) of the 1948 Act consequently prohibits arrangements being made by a local authority to provide residential accommodation together with personal care under section 21 of that Act with any organisation other than a registered care home.
50. 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".
51. Under section 24(5) of the 1948 Act, a person who is provided with residential accommodation under Part 3 of the Act is deemed to continue to be ordinarily resident in the area in which he was residing immediately before the residential accommodation was provided.

52. In addition, section 29 of the 1948 Act empowers local authorities to provide a range of non-residential community care services which is similarly converted into a duty by the Directions for those who are ordinarily resident in the local authorities' area.

Ordinary Residence

53. "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.

54. 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 settled purpose as part of the regular order of his life for the time being, whether of short or long duration"

Application of the law to the facts

55. I consider that X is, and has been since 28 October 2013, ordinarily resident in Council B. There is no dispute that X has capacity to decide his residence and, on the information before me, I have concluded that his abode at Supported Living 578 was adopted voluntarily for settled purpose from the date he moved there and signed a tenancy agreement.

56. It does not appear to be in dispute that Council A did not provide accommodation to X at Supported Living 578 pursuant to section 21 of the 1948 Act. The accommodation is not a registered care home and it does not meet the requirements of section 26(1A) of the 1948 Act. X alone is liable for the rent which is paid for by housing benefit. X is also responsible for paying additional service charges. 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). Therefore, the

starting point here is that the deeming provisions under section 24 do not apply.

57. That said, the starting point could be departed from if accommodation should have been provided under Part 3 of the 1948 Act. In *Greenwich* at [55] Charles J held that: *“if the position is that the arrangements [for accommodation under Part 3] should have been made... the deeming provision should be applied and interpreted on the basis that they had actually been put in place by the appropriate local authority.”* Accordingly if Council A should have made arrangements for X under Part 3 of the 1948 Act, the deeming provision should be applied and interpreted on the basis that such arrangements were actually made.

58. 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.”

59. I take the view that X was in need of care and attention as his care package included support for tasks which he was not capable of doing for himself, such as assistance with household tasks and personal care.

60. 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 *R (on the application of Westminster City Council) v National Asylum Support*

Service [2002] UKHL 38 (“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.

61. In the case of *R (SL) v Westminster CC [2013] UKSC 27* Lord Carnwath made clear the care and attention which is required under section 21 must take some colour from its association with the duty to provide residential accommodation and the services provided must be accommodation-related, or effectively useless if the adult in question has no home. He also observed that whether care and attention is otherwise available was a matter best left to the judgement and common sense of the local authorities directly concerned and would not normally involve any issue of law requiring the intervention of the court.

62. 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.*”

63. 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*.

64. In determining whether Council A should have provided accommodation for X under Part 3, I must have regard to the assessments carried out at the time by those responsible for meeting X’s social care needs. It would not

be appropriate for me to go behind these assessments unless the facts as provided to me clearly showed that CouncilA had acted in breach of its legal duties in failing to provide appropriate social care. I do not find this to be the case here.

65. Whilst no formal reassessment of X's needs was undertaken by CouncilA immediately prior to his move to SupportedLiving578, it is clear from the Care Plan produced by CareProviderB4 that detailed consideration was given to X's care needs and how they would be addressed. The FACE 14/02/14 indicates that a full reassessment was undertaken after X was admitted to hospital in January 2014. An enhanced care package was put in place in consultation with the care provider and this package was thought to be appropriate to meet his needs. I do not consider that the later breakdown of the placement is evidence of its inherent unsuitability. The document before me suggests that the placement became unsuitable because X's condition deteriorated and CouncilA acted appropriately at that stage in arranging alternative accommodation. I refer, in particular, to the capacity assessment of 30 September 2014 ("CouncilA MCA") which records that X's needs had changed.

66. CouncilB argue that the level of support that X received at SupportedLiving578- 49 hours of dedicated 1:1 care per week, with sleeping staff- indicates that residential care would have been more appropriate than supported living. I do not accept that this is necessarily the case. As a matter of fact, 49 hours of dedicated 1:1 care were provided in a supported living setting. The level of a person's care needs in terms of the number of hours support required is not determinative of whether a person should be provided with accommodation under Part 3 of the 1948 Act. CouncilB submit that the level of risk identified in the needs assessment would not usually be managed in supported accommodation. However, even assuming that this is correct, it does not mean that it was inappropriate or unlawful for X's needs to be met at a supported living placement in this case.

67. In their submission CouncilB refer to a number of specific passages in FACE 14/02/14. One passage states that X's hospital admissions had been "frequent and largely resulting from physical ailments that could be deemed preventable". The fact that ailments may have been preventable does not mean that Part 3 accommodation was necessary or required. The

support identified to address the preventable ailments includes assistance in collecting prescriptions and general access to community health facilities which could just as appropriately be offered at an independent supported living placement as in a care home. Council B assert that the medical team at Hospital BGT advised against a return to the supported living accommodation due to X's needs not being met adequately. However, this is not what FACE 14/02/14 says: it reports that the medical team initially advised against X's return to his home address due to his presenting health and social care needs. It was against this backdrop that the reassessment was completed.

68. In my view X was receiving the care and attention he required whilst living in private residential accommodation. However, equally, the services he required could have been provided by another provider. Those services were not intrinsically linked to the accommodation. Accordingly I find that Council A were perfectly lawfully making arrangements other than under section 21.

69. 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 X come within the nature of services which can be provided in a person's own home under these provisions.

70. Therefore the provision of residential care under Part 3 of the 1948 Act was not the only option open to Council A when making its decision as to how to properly meet X's needs for care and support. There is no evidence to show that Council A's assessment was not reasonably or properly made or that Council A's social workers could not reasonably decide that X's needs could be appropriately met by the provision of services under section 29 of the 1948 Act in supported living accommodation rather than by the provision of residential accommodation under Part 3 of the 1948 Act.

71. Therefore, I reject the argument that the deeming provision under section 24 of the 1948 Act should be applied on the grounds that X should have been provided with accommodation under Part 3.

“Voluntary and settled purpose”

72. In the alternative, Council B submit that X’s move out of area was both involuntary and without a settled purpose.

73. As the parties agree that X has capacity I therefore use Shah as my starting reference. In considering the question of ordinary residence Lord Scarman made clear that the mind of the person was important in two respects¹. The residence must be voluntarily adopted and there must be a degree of settled purpose.

74. I note that the Hospital BGT discharge summary states that the CareHome3HT had become unable to cope with X’s behaviour and that X remained as a voluntary patient for some time before discharge. The concluding care plan section notes that X is “awaiting suitable accommodation”. I have not been provided with any further assessment of social care needs or details of exactly when and why the placement at CareHome3HT was terminated but I also note that the OR Guidance says: “[w]here a person moves from residential care under Part 3 of the 1948 Act to accommodation under a tenancy agreement, it is unlikely that there would be any “arrangements” as required by section 26(2) or (3A)... by the local authority.”²

75. Regardless of the failure to complete a FACE assessment contemporaneously with discharge, on the papers I have seen;

- X had capacity to determine his own place of residence and he chose to accept an offer of accommodation at SupportedLiving578, signing a

¹ (1983)1 All ER 226 at 235

² Para 95

tenancy agreement from date of occupation. There is no suggestion that the tenancy agreement was signed under coercion or duress.

- It is stated that X participated in the reassessment of his care needs for creation of FACE 14/02/14 and did not raise any specific concerns about his accommodation or its appropriateness. The “home and living situation” outcome identified that X wished to maintain a care package and use of equipment to help him manage at home.
- The support plan states that he wished to return home to SupportedLiving578 and the CouncilA MCA undertaken in September 2014 records that X recalled that he had originally been supported in finding the service “because at the time he needed care”, and the decision to find supported accommodation with a specialist focus on managing alcohol dependency was one he remembers and agrees he needed at the time.
- CouncilB refer to X’s family ties in CouncilA X but the evidence suggests that X has very limited contact with his family. Further, and in any event, when determining, as a matter of fact, where he was ordinarily resident, these family ties could not, in my view, outweigh the fact that X moved to SupportedLiving578 and signed a tenancy agreement for that placement. It is clear from the various papers that X was isolated for various reasons including his mobility difficulties and his challenging behaviour.

76. I have also considered separately whether either X’s wish to move to a different care environment expressed in CouncilA MCA or his allegation that he was “tricked” into moving to ResidentialCareV2K (CouncilB social worker note (26/11/14)) negates the “settled purpose” which must be established to create ordinary residence.

77. Lord Scarman states that the;

“ purpose may be one or there may be several. It may be specific or general. All the law requires is that there is a settled purpose. This is not

to say that the propositus intends to stay where he is indefinitely; indeed his purpose while settled, may be for a limited period.... All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.”

78. There is no necessity for ordinary residence to be “permanent “or “indefinitely enduring”. Lord Slynn explained in *Mohammed* that a preference to reside elsewhere does not prevent normal or ordinary residence. I do not take X’s subsequent expression of a wish to live elsewhere as sufficient to negate either his volition or settled purpose in moving to Supported Living 578. Around the time that X was expressing this wish (in September 2014) notice had been served by Care Provider B4 and attempts were being made to find alternative accommodation. Until that alternative accommodation was secured, I consider that X remained ordinarily resident in Council B.

I note that X said to the Council B social worker that he was “tricked” into moving to Residential Care V2K. I have seen no evidence to support the contention that he was tricked (other than the social work note of what X said). On the basis that, at the time the decision was being made to place him at Residential Care V2K, X was already ordinarily resident in Council B, this would make no difference to my determination. Even if X had been placed at a different care home outside Council B he would still have continued to be ordinarily resident in Council B pursuant to the deeming provisions under section 24.

Conclusion

79. For the reasons set out above, I find that X is, and has been since 28 October 2013, ordinarily resident in Council B.