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 the 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 date1979. X was diagnosed with a genetic condition at birth and then suffered a major seizure at aged 14 years. X suffers from Velocardiofacial Syndrome, epilepsy, a delusional disorder (paranoia), anxiety and depression.

6. I am advised on the papers that X lived with his parents at RoadA, CouncilA, (in the area of CouncilA) until 3 July 2013 when he moved into SupportedLivingG SupportedLivingGin the area of CouncilB.

7. X has been diagnosed with a learning disability and attended SpecialSchool3N in CouncilA until around 1996. He then obtained two work placements until his GP referred him for admission to a mental health unit in 2005. Upon discharge X was referred to CouncilA learning disabilities team and was assisted equally by CouncilA CMHT and CTPLD.

8. In around 2012 X's parents felt unable to continue with care and support for X due to their own health conditions. It appears that X's mother suffered a heart attack in around February 2012 and that his father already had pre-existing health issues.

9. A letter from CouncilA to CouncilB dated 15 September 2014 states:
"…Our client instructs that X is a young man with a diagnosis of mental illness and a learning disability. Prior to his move to SupportedLivingG, X was living with his parents. Both parents are in their 60s and have heart conditions. The decision to leave the family home was a joint family decision. X's parents were finding it difficult to continue with their caring role and wished to see their son settled in his own home before they died. X however was clear that he wanted to leave home and learn to become more independent. Referring to page 2 of the Support Plan you will note X's intentions."

10. CouncilA's FACE post-dates X's move to SupportedLivingG and details X's care needs as follows;

- X requires prompting to attend to his personal care but can wash and dress independently,
- X self-administers medication to control his epilepsy, depression and anxiety but requires support and confirmation from staff that he is doing so correctly,
- X cannot prepare meals unsupported but can make hot drinks with supervision. He requires support with meal planning and preparation
- When visiting a new place, X will need support but once he has visited on a few occasions, he can revisit on his own
- X is able to manage his own money
- X volunteers for the CharityY

11. The FACE concludes that X's anticipated living arrangements are for "supported living/tenancy – continuous support presence."

12. X moved to SupportedLivingG on 3 July 2013. He signed a license agreement for the payment of rent, service charges and utilities amounting to £208.20 per week. The licensor is SupportedHousingProviderB2. X receives £150 in housing benefit each week which covers the rent element of his license charges. I am advised on the papers that X pays the remainder from his benefits.

13. The accommodation at SupportedLivingG 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 SupportedLivingG from 07:00 am until 11 pm. Thereafter there is one member of staff at night. Support is provided 7 days a week.

14. SupportedLivingG is some 10 minutes from X's family home.

15. CouncilA state that they pay for domiciliary care services provided to X at SupportedLivingG by CareProviderA1 under section 29 of the 1948 Act and section 2 of the Chronically Sick and Disabled Persons Act ("CSDPA"). The cost is jointly funded by CouncilA and Mental Health services. X attends voluntary work 3 times per week at CharityY (and has done so for more than 6 years).

16. It appears that no formal capacity assessment was undertaken at the time of X's move to SupportedLivingG. The documents indicate that X was deemed to have capacity but CouncilB dispute this. I consider the relevant capacity issues below.

17. CouncilA wrote to CouncilB on 19 December 2013 seeking the transfer of X for the purpose of ordinary residence from a date within 12 weeks, in accordance with their best practice guidelines. CouncilB requested further information including in regard to mental capacity and X's connections to the area. There was further correspondence between the authorities until October 2014. The matter was referred to me on 20 November 2014 and legal submissions were received on 8 December 2014.

The Authorities' Submissions

18. CouncilA submits that X became ordinarily resident in CouncilB on 3 July 2013 when he moved to SupportedLivingG. The basis for its submission is that:
    a. 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 SupportedLivingG voluntarily and for a settled purpose,
    b. X holds a licence in relation to SupportedLivingG under which he is solely responsible for the licence fee which is settled by way of housing benefit and the shortfall met by X himself.
    c. 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.

19. CouncilB dispute that X became ordinarily resident 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:
    a. 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 X's learning disability identified in the assessment documents cast considerable doubt on CouncilA's reliance on the presumption of capacity.
    b. It is highly unlikely that X 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 licence or tenancy agreement on his behalf.
    c. Consequently X did not make a voluntary choice to move to SupportedLivingG for a settled purpose.
    d. 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 supported 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

20. 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*").

21. 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.

22. 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".

23. 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).

24. 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".

25. 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.

26. 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

27. "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"). Paragraph18 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.

28. In *Shah v London Borough of Barnet* (1983) 1 All ER 226, Lord Scar man 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"*

29. Additional considerations apply where the relevant person lacks capacity to determine (and thus to "voluntarily adopt") his abode. However, in light of my decision at paragraph 55 below, it is not necessary to apply the additional incapacity considerations in this case.

30. 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

31. The first issue is whether the accommodation in SupportedLivingG 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.

32. CouncilA submits that it provided non-residential services to X at SupportedLivingG 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

33. 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.

34. SupportedLivingG 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 SupportedHousingProviderB2 nor CareProviderA1 can lawfully be providing personal care together with accommodation to X in this property. If I am wrong about this and SupportedLivingG 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.

35. In my view, the license agreement between X and SupportedHousingProviderB2 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 SupportedHousingProviderB2. 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 CareProviderA1 is payment towards X's care costs, not his accommodation costs.

Was there a duty to provide section 21 accommodation?

36. 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 SupportedLivingG 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.

37. 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.

38. 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.'

39. X requires physical assistance in connection with eating and drinking, and prompting in relation to the performance of activities such as washing and associated personal appearance tasks. I take the view that the totality of X's care package, 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.

40. 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.

41. 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."

42. 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."

43. 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.

44. Whether personal care is being provided "together with" accommodation is a question of fact and one of substance rather than form.

45. The Care Quality Commission has provided useful guidance "Supported living schemes: Regulated activities for which the provider may need to register" ("the CQC guidance").

46. 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.

47. 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:
    i. Joint working protocol (" the protocol"),and
    ii. CareProviderA1 Services Brochure.

48. I summarise my findings in this respect as follows:
    - There is no evidence to show that SupportedHousingProviderB2 and CareProviderA1 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 SupportedLivingG.

- The parties to the protocol are identified as the CareProviderA1 and Landlord and Support Provider – SupportedHousingProviderB2). 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 (license agreement Clause 3.3).
- The license agreement does not explicitly tie occupancy to using the services of CareProviderA1 but CareProviderA1 is expressly referred to at clause 12 which provides that "the Owner will facilitate such care and support provided by CareProviderA1…"

49. 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 (para 1.2).
    - There is a clear division of housing management and care service responsibilities throughout the protocol and between the parties to the protocol (Para 3).
    - Although the landlord must be informed of proposals to terminate or re-commission care services in advance, this remains the responsibility of the Council (Para 3.1) as does monitoring and periodic review (Para 3.4).
    - The care service provider has no responsibility for housing tenancy matters (Paras 3.12 – 3.15).
    - 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).

50. 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.

51. 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.

52. I therefore determine that there was no duty to provide section 21 accommodation to X. 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.

53. 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 X was ordinarily resident.

54. 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

55. 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 it is clear from the documents that I have seen that X had capacity to choose to move voluntarily and did so for settled purpose.

56. 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. 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.

57. 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 X 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 X 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.

58. 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 X did not have capacity.

59. 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).

60. 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 SupportedLivingG and was able to express this.

61. I base my conclusions on the following:

- the starting position of a presumption of capacity;
- there is no direct evidence contemporaneous to the date X moved to SupportedLivingG. The personal needs questionnaire dates from a time when X was first considering his future needs and leaving his parental home. The assessor comments that X "would not be able to understand complex information in order to take decisions to maintain his safety" and that X "finds it difficult to understand information and instructions" appear to relate to X's ability to keep and manage himself safely in difficult and new situations.
- The personal needs questionnaire also states that X is "verbal and able to express his choices and needs" "is able to take decisions concerning his daily life and routine activities".
- This same section also states that X has "limited understanding and finds it difficult to make informed choices on matters which are not familiar or routine". I also note that "housing" was noted as one matter upon which his mother assisted X. This section continues that, whilst X has support to do so, X himself "takes decisions affecting his social, physical and emotional life." X is able to "understand information if it is presented in simple language and when he is assisted to understand … in order to take decision basically about…. his accommodation and support to meet his social needs."
- It therefore appears to have been the opinion of the social worker that X was able to make decisions with support. There is little evidence available to me on what support X received in regard to his move to supported accommodation but I note that this date was a full year before X's actual move, when he appears to have been on a waiting list for supported accommodation and was supported by way of a few viewings to CareProviderA1 before his decision to move to S SupportedHousingG. I assume that this period allowed X time to consider his aspirations and options available with the people available to support him.
- I find the statements in CouncilAs FACE contradictory. Consideration of mental capacity is "not specified" yet within the body of the document the writer states, under

the heading life planning/management, " [X is able to make basic decisions but anything that requires a life changing decision, will require a mental capacity assessment." The writer then states there are no problems identified with X's memory and in relation to planning and decision-making:
"X is able to express his basic wishes and choices. X has ability to make decisions but needs assistance/advice from others to action his decision and to organising his life."

62. It is clear from the evidence presented to me that X sought a move from, but close to, his parental home in order to extend his skills and improve his ability to live independently. This is stated variously in the support plan which concludes with X's wish to make new friends and share a house with people of his own age. X recalls these same reasons for moving in CouncilA's FACE, where he confirms that he feels he has "upgraded himself to a higher level since [moving to SupportedLivingG]", does not wish to move and would like to remain in order to continue his work towards future independence.

63. Similarly I find that X had the capacity to enter into the license agreement. I am advised on the papers that X's social worker was present when he signed the license and they read the agreement together. The social worker can also confirm that X understood the agreement and was able to tell her and a member of staff from CareProviderA1, who was also present, the key points of the agreement. I am also advised that X was provided with an easy read version of the agreement. In any event if this is not correct, it would only render the license voidable not void. The legal enforceability of a license or tenancy agreement is not determinative of ordinary residence as ordinary residence is a matter of fact.

64. On balance I find that X made a voluntary choice to move to SupportedLivingG 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

65. CouncilB's further submission points to Parliaments 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 resident 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.

66. Accordingly, this determination is based on the law as it stood at the relevant time in July 2013.

67. For the reasons set out above, I accept CouncilA's submission that X is ordinarily resident in CouncilB and that he has been so since 13 July 2013.