DETERMINATION BY THE SECRETARY OF STATE UNDER SECTION 40 OF THE CARE ACT 2014

1. I have been asked by CouncilA to make a determination under section 40 of the Care Act 2014 of the ordinary residence of X. The dispute is with CouncilB, CouncilC, CouncilD and CouncilE.

2. For the reasons set out below, my determination is that X had no place of ordinary residence when he was discharged from prison on 22 January 2013 and placed in residential accommodation. CouncilA became responsible for X on that date, because he was a person of no settled residence who was physically in its area and who was placed by it in residential accommodation on discharge from prison.

The facts of the case

3. The following information has been ascertained from the Agreed Statement of Facts, the submissions of the local authorities and the copy documents provided.

4. X was born on XX.XX.1973 in Area1. He attended school in Area2.

5. At the age of 17, on 16 February 1990 X received a three year sentence for an arson offence. He spent 18 months in Prison1. On his release in 1991, X moved to Area6, assisted by the Organisation1. He attended college in Area3 and initially lived in Address1 in CouncilF's area.

6. X subsequently lived in Address2 in CouncilA's area from around 1991 to 1995. X moved to Area4 for a short period and then lived in Country1 for a period of approximately two years.

7. In around 1996, X returned to Country2. He stayed with his family for a short time, then moved back to Area6 where he approached the homeless unit at CouncilF.

8. In 1997 or 1998, X moved to CouncilC and privately rented a property. He was subsequently unable to work due to his health and he was housed in CouncilC area in 1998. Whilst living there, he was convicted of arson endangering life, theft and aggravated vehicle taking on 9 December 1999 and sentenced to a seven year custodial sentence. He served three years of this sentence and remained in CouncilC area following his release in 2001. He lived with a partner, then in rented accommodation when that relationship ended. He subsequently entered into a new relationship and moved in with his partner. In this period, he was working full-time.

9. The relationship broke down in April 2006 and X left CouncilC and moved to Area6 with the intention of making a fresh start there. It is likely that he was street homeless when he arrived in Area6. X was admitted to Hospital1 on 8 April 2006, where he gave his permanent address as Address3, CouncilC. It is not clear from the hospital records whether he left hospital for a few days and then was readmitted on 14 April 2006, or whether he remained in hospital throughout this period. He was discharged from hospital on either 15 April 2006 or 16 April 2006 and it is likely that he was then street homeless for approximately one week. He presented as homeless to CouncilB on 24 April 2006, explaining that he had fled domestic violence in CouncilC. CouncilB provided him with interim temporary accommodation pending investigation of his application. This temporary accommodation was in CouncilD, in CouncilD's area. There are gaps and inconsistencies in the evidence relating to this period.

10. Whilst in temporary accommodation in CouncilD, X was assisted by a local charity (Organisation2). On 9 June 2006, he committed an arson offence at the charity's offices. On 13 June 2006 CouncilB cancelled X's booking for the temporary accommodation in CouncilD's area. It is likely that he was street homeless for a number of days.

11. X was admitted voluntarily as a psychiatric inpatient at Hospital2 in CouncilD on around 24 June 2006, having presented to a hospital on 23 June 2006. In an Occupational Therapy assessment on 4 July 2006 he said that he hoped to receive assistance to find accommodation in CouncilD area when he was discharged. CouncilB agreed to reopen his homelessness application when he was discharged from hospital. It appears that he chose to leave the hospital on around 25 July 2006, without being formally discharged on that date. There are gaps and inconsistencies in the evidence relating to this period.

12. X reported the arson incident to the police on around 29 July 2006 and he was subsequently remanded in Prison2 on around 31 July 2006.

13. On 15 December 2006, X was convicted of arson with intent to endanger life and received a discretionary life sentence. He served his sentence at Prison2, in CouncilA's area. For the majority of the time, he was housed in the hospital wing. X had a number of diagnosed medical conditions, including HIV, non-Hodgkin's lymphoma, diabetes, avascular necrosis in his shoulder and hip, chronic calcific pancreatic and vitamin D deficiency.

14. On 17 December 2009, X's accommodation and care needs were assessed. When asked where he would choose to live, he replied that he would live within an hour's train journey of his family in Area2.

15. On 29 June 2012, X indicated to CouncilA that he wished to stay in north Area6 so that he could stay in contact with his mother and brother. He was informed that a placement in Area5 was willing to assess him and he said that he was not prepared to move to Area5. He described the places that he had lived since 1991. He thought that he would become depressed if he moved away from the support that he had received (whilst in prison) from his family.

16. X was released from Prison2 on 22 January 2013, following a Parole Board decision of 18 December 2012. Since his release, he has lived at CareHome1, Area6, which is in CouncilE's area. This location is convenient for his mother to visit him. The placement was arranged and funded by CouncilA, under section 21 of the National Assistance Act 1948.

The relevant law

17. In making this determination I have considered the Statement of Facts, the parties' submissions and copy papers supplied. I have also considered the provisions of Part 3 of the National Assistance Act 1948 ("the 1948 Act"), the guidance on ordinary residence (as in force at the material time) issued by the Department under the 1948 Act[1] ("the OR Guidance") and the Care and

[1] Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services, England, published on the Department of Health's website at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252864/OR_Guidance_2013

Support Statutory Guidance issued by the Secretary of State under the Care Act 2014[2] ("the Care Act Guidance"). I have also had regard to the cases of *R v Barnet London Borough Council ex parte Shah* [1983] 2 AC 309 *("Shah")*, *R v (Greenwich) v Secretary of State and Bexley* [2006] EWHC 2576 ("*Greenwich*"), *R (Kent County Council) v Secretary of State for Health and others* [2015] 1 W.L.R. 1221 ("*Kent*"), *Fox v Stirk* 1970 2 QB 463 ("*Fox*"), *Levene v Inland Revenue Commissioners* (1928) AC 217 (*"Levene"*), *Mohamed v Hammersmith London Borough Council* [2002] 1 AC 547 ("*Mohamed*") and *R (S) v Lewisham London Borough Council and others* [2008] EWHC 1290 (Admin) ("*Lewisham*").

18. My decision is unaffected by the fact that CouncilA has continued to fund services on a provisional basis throughout the material period.

The 1948 Act

19. Section 21 of the 1948 Act empowered 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 were in need of care or attention which was not otherwise available to them. Section 24(1) provided that the local authority empowered to provide residential accommodation under Part 3 of the 1948 Act was, subject to further provisions of that Part, the authority in whose area the person was ordinarily resident.

20. The Secretary of State's directions under section 21 of the 1948 Act (contained in LAC (93)10) provided that the local authority was 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*".

21. By virtue of section 26 of the 1948 Act, local authorities could, instead of providing accommodation themselves, make arrangements for the provision of the accommodation with a voluntary organisation or with any other person who was not a local authority. Certain restrictions on those arrangements were included in section 26. First, subsection (1A) required that where arrangements under section 26 were 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) stated that arrangements under that section must provide for the making by the local

---

-10-01 Revised with new contact details New DH template.pdf.

[2] Care and Support Statutory Guidance, published on the Department of Health's website at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf.

authority to the other party to the arrangements of payments in respect of the accommodation provided and that the local authority shall either recover this from the person accommodated or shall agree with the person and the establishment that the person will make payments direct to the establishment with the local authority paying the balance (and covering any unpaid fees). To satisfy section 26(3A), the local authority must also be liable for the rent payments in the event that the person defaulted in their payments to the accommodation provider.

22. Section 24(5) of the 1948 Act provided that where a person was provided with residential accommodation under Part 3 of the 1948 Act, he shall be deemed for the purposes of that Act to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the residential accommodation was provided for him. In accordance with Greenwich *and Kent*, I interpret the reference to residential accommodation at the end of section 24(5) to mean residential accommodation under Part 3. The relevant date for the deeming provision contained in section 24(5) of the 1948 Act was immediately before such accommodation was or should have been provided.

23. Section 24(6) of the 1948 Act provided that where a person was provided with NHS accommodation, he shall be deemed for the purposes of that Act to be ordinarily resident in the area in which he was resident before the NHS accommodation was provided. At the material time, NHS accommodation was defined as either (i) accommodation (at a hospital or elsewhere) provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or (ii) accommodation provided under section 117 of the Mental Health Act 1983 by a Primary Care Trust or Local Health Board (other than accommodation so provided jointly with a local authority).

24. Section 29 of the 1948 Act provided that local authorities could (with the approval of the Secretary of State) make arrangements for promoting the welfare of persons aged eighteen or over who are blind, deaf or dumb, or who suffer from mental disorder of any description and other persons aged eighteen or over who are substantially and permanently handicapped by illness, injury, or congenital deformity or such other prescribed disabilities. The Secretary of State's directions LAC (93)10 approved the making of such arrangements and directed local authorities to make specified arrangements for persons ordinarily resident in their area. There are no statutory deeming provisions relating to ordinary residence for the purpose of section 29 of the 1948 Act.

Ordinary residence

25. "Ordinary residence" was not defined in the 1948 Act. The OR Guidance noted 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. The leading case on ordinary residence is that of *Shah*. In that case, 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 "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration*".

26. The courts have considered cases of temporary residence on a number of occasions, including in *Levene* and *Mohamed.*

27. In *Fox*, the Court of Appeal considered *Levene* and Lord Denning MR derived three principles: "*The first principle is that a man can have two residences. … The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. A short-stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence.*" Lord Justice Widgery commented that "*Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence*". The Court of Appeal found that the students were resident at their university address.

28. In *Mohamed,* Lord Slynn said "*the 'prima facie' meaning of normal residence is a place where at the relevant time the person in fact resides. That therefore is the question to be asked and it is not appropriate to consider whether in a general or abstract sense such a place would be considered an ordinary or normal residence. So long as that place where he eats and sleeps is voluntarily accepted by him, the reason why he is there rather than somewhere else does not prevent that place from being his normal residence. He may not like it, he may prefer some other place, but that place is for the relevant time the place where he normally resides. If a person, having no other accommodation, takes his few belongings and moves to a barn for a period to work on a farm that is where during that period he is normally resident, however much he might prefer some more permanent or better accommodation. In a sense it is 'shelter' but it*

is also where he resides."

29. In *Lewisham,* S asked the London Borough of Lewisham to accommodate her under section 21 of the 1948 Act. She had lived in the London Borough of Lambeth, then spent some time in prison before staying with a friend in Hackney for 14 days. The Secretary of State held that S had no settled residence. The parties all accepted that this was the proper conclusion. Mr Justice Davis found that the London Borough of Lewisham was the responsible authority in this scenario: "*a person with no fixed abode who presents himself to an authority … is to be assessed by the authority to which that individual has presented himself and not by some other authority*". He compared this situation to that in *Mohammed N* [2003] EWHC 3419 Admin and commented that "*whatever the community ties may be, a person cannot become "a person in the area of" a particular local authority simply by writing a letter from another area where that person is*".

The Care Act 2014 and transitional provisions

30. The dispute relates to X's place of ordinary residence as at his release from prison on 22 January 2013. The dispute arose at around the time of his release. At this time, the 1948 Act provided the relevant statutory framework. A request was made for an ordinary residence determination on 23 December 2014, which had not been determined as at 26 March 2015.

31. Paragraph 5 of the Care Act 2014 (Transitional Provision) Order 2015 provides that any question as to a person's ordinary residence arising under the 1948 Act and which is to be determined by the Secretary of State on or after 26 March 2015 is to be determined in accordance with section 40 of the 2014 Act.

32. Section 40 of the 2014 Act provides that any dispute about where an adult is ordinarily resident for the purposes of Part 1 of that Act is to be determined by the Secretary of State (or, where the Secretary of State appoints a person for that purpose, by that person). The Care and Support (Disputes Between Local Authorities) Regulations 2014 were made under section 40(4) of the 2014 Act and apply to this dispute.

The application of the law to the facts

The issue

33. The only issue in dispute between the local authorities is where (if anywhere)

X was ordinarily resident on his release from prison on 22 January 2013.

34. The following matters are not in dispute. At all material times, X had capacity to determine where he wished to live. He was provided with residential accommodation under section 21 of the 1948 Act on his release from prison on 22 January 2013. The deeming provisions in section 24 of the 1948 Act apply in respect of that residential placement and therefore the primary issue is where (if anywhere) he was ordinarily resident immediately before he was provided with residential accommodation under section 21 of the 1948 Act. If he had no place of settled residence on that date, then the question is which local authority is responsible for his current placement.

35. CouncilA submits that X was not ordinarily resident in its area when he was residing there under compulsion in prison. It submits that prior to his remand in prison, he was ordinarily resident in CouncilD's area (having been placed there in temporary accommodation by CouncilB). Prior to that, his place of ordinary residence was CouncilC. CouncilA therefore submits that X was ordinarily resident in the area of CouncilD, CouncilB or CouncilC. In the alternative, if X had no place of settled residence, CouncilA submits that X has acquired ordinary residence in CouncilE's area (where his residential care home is located) or, alternatively, that he had no place of settled residence prior to moving there and therefore CouncilE is responsible by virtue of section 18(1)(a) of the Care act 2014.

36. CouncilE submits that X was ordinarily resident in a local authority area prior to his remand in prison and that he did not acquire ordinary residence in CouncilA's area whilst detained under compulsion. CouncilE's primary submission is that his place of ordinary residence was in CouncilD's area. Alternatively, he was ordinarily resident in one of the other local authority areas before his remand in prison. It denies that X was ordinarily resident in CouncilE's area, given that he first lived there when he was placed in residential care on discharge from prison. It submits that even if X had no settled place of residence, it would follow that CouncilA (and not CouncilE) was responsible because it assessed X in prison and found a suitable placement for him to live on discharge.

37. CouncilD submits that, whilst X lived in its area (placed there by CouncilB), he was not ordinarily resident at the temporary accommodation. He stayed there on a short term basis, whilst CouncilB made enquiries about his application. It is likely that he had a license and not any kind of tenancy. He did not intend to remain there. In any event, he left that accommodation on or around 13 June 2006 and he was not admitted to hospital until around 24 June 2006. It submits that he had no place of ordinary residence in that period. In any event, CouncilD suggests that X may have acquired ordinary residence

in CouncilA's area or CouncilE's area subsequently.

38. CouncilB submits that X had no settled residence when he was physically in Area6 immediately prior to his remand in prison. He was then resident in CouncilA's area when he was in prison, but he was there under compulsion and it was not his place of ordinary residence. CouncilB submits that his place of ordinary residence on discharge from prison was in CouncilE's area, where the residential care home is located. CouncilB submits in the alternative that X had no settled residence at the material time. In particular, CouncilB denies that X was ordinarily resident in its area at any time because there is no evidence that he stayed even one night in that area and no other known connection with the area, save that he had presented himself to CouncilB as a homeless person.

39. CouncilC submits that X left its area in April 2006 with no intention to return there and that he was not ordinarily resident in CouncilC's area after that data. It submits that he had no place of settled residence when he was discharged from prison. Alternatively, it submits that he was ordinarily resident in CouncilD's area, where he was living in temporary accommodation (provided by CouncilB) from 24 April 2006 to around 13 June 2006 prior to his admission to hospital and subsequent remand in prison.

Determination of ordinary residence

40. I am satisfied that X had no place of ordinary residence when he was discharged from prison on 22 January 2013 and placed in residential accommodation. CouncilA became responsible for X on that date, because he was a person of no settled residence who was physically in its area and who was placed by it in residential accommodation on discharge from prison.

41. My findings are in line with the OR Guidance, as applicable at the material time. In particular, I have had regard to paragraphs 22-24, 44, 46, 50, 60-65 and 107-111.

42. On the question of persons with no place of ordinary residence, the OR Guidance provided as follows:

> "*44.Where doubts arise in respect of a person's ordinary residence, it is usually possible for local authorities to decide that the person has resided in one place long enough, or has sufficiently firm intentions in relation to that place, to have acquired an ordinary residence there. Therefore, it should only be in rare circumstances that local authorities conclude that someone is of no settled residence for the purpose of providing Part 3 accommodation. For example, if a person has clearly and intentionally left their previous residence and moved to stay elsewhere on a temporary basis during which time their circumstances change, a local authority may conclude the person to be of no settled residence. …"*
>
> *"46…. as set out in the case of R (Greenwich) v Secretary of State and Bexley (2006) EWHC 2576 (Admin) ("the Greenwich case"), local authorities should exercise caution when making a finding that a person is of no settled residence. In this case, the judge said that a factor to take into account when considering whether a person had lost an ordinary residence in one local authority was whether they had acquired one in a new local authority. This is because those of no settled residence under the 1948 Act have a lesser degree of protection than people with an ordinary residence, and the judge said that the desirability of a local authority retaining a duty to the person in question was a relevant factor in the case (see paragraph 87 of the judgement)." …*
>
> *"50. A person of no settled residence in urgent need of section 21 accommodation is effectively entitled to choose which authority is to provide the accommodation. In R (S) v Lewisham London Borough Council and others (2008) EWHC 1290 (Admin), the High Court considered the case of a woman of no settled residence with severe mental illness. The Court held that whichever authority the woman approached would be liable to provide her with accommodation. The application does not have to be made to the authority in whose area the need arose. Physical presence in the authority's area is necessary, however, and a letter sent to another authority is not sufficient to fix it with liability*."

43. On the question of ordinary residence in respect of persons released from prison, the OR Guidance provided as follows:

> "*107. The deeming provisions in section 24(5) and (6) of the 1948 Act, which provide that a person's ordinary residence is retained where they are placed out of area in Part 3 accommodation or are receiving care or treatment in NHS accommodation, do not apply to people who are leaving prison, resettlement units and similar establishments. However, local authorities could reasonably follow the approach set out in these sections for people who are due for release from prison. Therefore, where a person requires Part 3 accommodation on release from prison, local authorities should start from a presumption that they remain ordinarily resident in the area in which they were ordinarily resident before the start of their sentence.*
>
> *108. However, determining an offender's ordinary residence on release from prison will not always be straightforward and each case must be considered on an individual basis. It may not be possible for an offender to return to their prior local authority area due to the history of their case and any risks associated with a return to that area. Therefore, any presumption of ordinary residence may be rebutted by a number of factors, including the offender's wishes and intentions about where to live, the length of their sentence and remaining ties with their previous area.*
>
> *109. In situations where an offender is likely to require community care services on release from prison and their place of ordinary residence is unclear and/or they express an intention to settle in a new local authority area, the local authority to which they plan to move should have regard to paragraphs 6-8 of this guidance (Community care assessments) and take responsibility for carrying out the community care assessment. The duty to assess is not limited to people who are ordinarily resident in a local authority's area; it extends to those people who are about to be in need in a local authority's area.*
>
> *110. Given the difficulties associated with determining some offenders' ordinary residence on release, it is good practice for prisons to initiate joint planning for release at least 3 months before it is due. Prisons should work with the National Offender Management Service, the relevant local authority and Primary Care Trust to support assessment and care planning for those offenders who will require community care services on their release from prison.*
>
> *111. If a person due for release from prison was not ordinarily resident in any area prior to being sentenced and does not have a permanent place to live on release, they may fall within the provisions of section 24(3) of the*

1948 Act and be found to be of "no settled residence" and/or in "urgent need" (see paragraphs 43-50)…"

44. X was ordinarily resident in CouncilC's area until early April 2006. He left CouncilC with the intention of living in Area6 and he did not intend to return to CouncilC.

45. X had no place of ordinary residence when he was street homeless in Area6 on arrival in April 2006. Further, he is deemed not to have acquired ordinary residence when he was living in NHS accommodation for a number of days that month.

46. When X presented to CouncilB as homeless on 24 April 2006, he was placed in temporary accommodation in CouncilD's area. He lived there from 24 April 2006 until around 13 June 2006. Despite the temporary nature of the accommodation, he acquired ordinary residence in CouncilD's area whilst he was living at this address.

47. X left the temporary accommodation by 13 June 2006 and CouncilB cancelled his booking. From that date, he was no longer ordinarily resident in CouncilD's area.

48. From around 13 June 2006 until 23 or 24 June 2006, X was street homeless. He did not have any place of ordinary residence at this time.

49. On 23 or 24 June 2006, X was admitted voluntarily as a psychiatric patient at Hospital2. This was NHS accommodation and therefore he was deemed to continue to be ordinarily resident in the area in which he was resident before the NHS accommodation was provided. It follows that he continued to have no place of ordinary residence.

50. X left NHS accommodation on around 25 July 2006. He reported the arson incident to the police on 9 July 2006 and was remanded in Prison2 on around 31 July 2006. He did not have any place of ordinary residence from 25 July 2006 until his remand in prison in CouncilA's area.

51. Whilst X was in prison from around 25 July 2006 to 22 January 2013, he

did not voluntarily adopt the prison as his place of residence. There is no reason to rebut the presumption that he did not acquire ordinary residence in CouncilA's area in this period. He wished to be in the north Area6 area so that his family members could continue to provide him with support on his release, but he did not express a preference for a particular local authority area and he did not have any particular ties with any area. Therefore he continued to be a person with no settled residence, as he had been immediately prior to the start of is prison sentence.

52. X was released from prison to a residential placement at CareHome1 on 22 January 2013. This is located in CouncilE's area, but arranged by the CouncilA. Immediately prior to the placement, which is the relevant date under the deeming principles in the 1948 Act for this purpose, X was a person of no settled residence who was physically in CouncilA's area.

Conclusion

53. I am therefore satisfied that X had no place of ordinary residence when he was discharged from prison on 22 January 2013 and placed in residential accommodation. CouncilA became responsible for X on that date, because he was a person of no settled residence who was physically in its area and who was placed by it in residential accommodation on discharge from prison.

54. For completeness, I note that my findings are also in line with the Care Act Guidance: see paragraphs 17.3, 17.42, 17.48-17.50, 19.16, 19.22-23, 19.47 and Annex H1.