

# Adult Social Care Policies and Procedures

## **ORDINARY RESIDENCE**

Including Disputes and Financial Adjustments

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### ORDINARY RESIDENCE

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## POLICY STATEMENT

Prior to the Care Act 2014, the National Guidance on Ordinary Residence was introduced by the Department of Health on 19 April 2010, updated in April 2013 and again in October 2013. The guidance applied to Social Services and set out how to identify which Local Authority is responsible for funding/provision of care for people aged 18 and over who are assessed as needing care and support services. After the Care Act 2014 was enacted, the Department of Health introduced the Care and Statutory Guidance of October 2014 (which is regularly updated, the latest update is 27 August 2021. Chapter 19 of this guidance sets out how to identify which Local Authority is responsible for funding/provision of care for people aged 18 and over who are assessed as needing care and support services.

The duty to provide social care services rest with the local authority in whose area the person is "ordinarily resident". It is therefore important to establish where an individual is ordinarily resident.

Provision of services should **never** be delayed because of uncertainty about which local authority is responsible. An agreement to provide and fund services until an issue of ordinary residence is resolved will not have a bearing on the final decision.

The local authority that is meeting the needs of the individual or the carer on the date that the dispute arises, must therefore continue to do so until the dispute is resolved. If no local authority is currently meeting the individual's needs and it is clear that assessed needs are required to be met, the Council must accept provisional responsibility on a 'without prejudice' basis and not delay in responding to any care needs until any dispute is resolved.

The key to ensuring that an individual's care is continued, is through both local authorities working together and that the individual and their carer, if they are continuing to care for the adult, are at the centre of the process.

If no local authority is currently meeting the individuals needs and it is clear assessed needs are required to be met, the council must accept responsibility and not delay any care needs until any dispute is resolved.

These Croydon Council (Council) Ordinary Residence Procedures should be read in conjunction with the

- National Guidance and amendments as per Care Act 2014, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/252864/OR\\_Guidance\\_2013-10-01\\_Revised\\_with\\_new\\_contact\\_details\\_New\\_DH\\_template.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/252864/OR_Guidance_2013-10-01_Revised_with_new_contact_details_New_DH_template.pdf)

- The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 and <https://www.legislation.gov.uk/uksi/2014/2828/contents?view=plain>
- Care and Support Statutory Guidance . <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#contents>

The National Guidance and Care Act Guidance provide details of situations in which a person's ordinary residence may be an issue. Links to these documents can be found above and on the Council's online TRI-X site - [https://www.proceduresonline.com/croydon/adults/chapters/default\\_chapters/p\\_ordinary\\_resid.html#2.-local-policy-and-guidance-regarding-ordinary-residence](https://www.proceduresonline.com/croydon/adults/chapters/default_chapters/p_ordinary_resid.html#2.-local-policy-and-guidance-regarding-ordinary-residence)

Further reading on Ordinary Residence can also be found on the general Procedures Online site: [https://www.proceduresonline.com/resources/careact/p\\_ordinary\\_resid.html#1.-understanding-ordinary-residence](https://www.proceduresonline.com/resources/careact/p_ordinary_resid.html#1.-understanding-ordinary-residence)

Therefore to fulfil its duty under section 39 to 41 of the Care Act, the Council will, in working with its statutory, voluntary and private sector partners, comply with ordinary residence guidance relating to individuals who require care and support. The Council will make all reasonable adjustments to ensure that all people with disabilities have equal access to participate in the ordinary residence decision in line with the Equality Act 2010.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our ordinary residence decisions, the Council's complaints procedures will be made available and accessible.

## **2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY**

### **2.1 Ordinary Residence:**

No Legal definition is available under the care act, although chapter 19 and annex H of the Care and Support Statutory Guidance ('the statutory guidance') are dedicated to the subject and there is a significant body of legal case law and Secretary of State Determinations that are relevant to this issue.

The council will always have regard to the case of Shah v London Borough of Barnet (1983) in determining the ordinary residence of people who have capacity to make their own decision on where they wish to live. 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.’

### 2.2 Croydon:

All references to "Croydon" in this document mean, Croydon as a geographical location. Where it seems any references relate to Croydon Council, it will be clearly established and is likely to be referenced as "the council" or "council", for the sake of ease and consistency.

### 2.3 Urgent Needs:

The Care Act Section 19(3) provides local authorities with the powers to meet urgent needs where they have not completed an assessment. In this context, 'urgent' takes its everyday meaning, subject to interpretation by the courts, and may be related to, for example, time, severity etc. Authorities may meet urgent need for care and support regardless of the person’s ordinary residence. Where an individual with urgent needs approaches or is referred to the local authority, including circumstances such as provider failure, the local authority should provide an immediate response and meet the individual’s care and support needs. Meeting urgent needs can also apply to other organisations for example the completion of an NHS Continuing Health Care Fast Track Pathway Tool <https://www.legislation.gov.uk/ukpga/2014/23/section/19/enacted#section-19-3>

## 3. PROCEDURES

### 3.1 When to establish ordinary residence:

Ordinary residence should be established as soon as a person has been assessed and found to have eligible needs. Establishing ordinary residence is one of the considerations about how and who should meet those eligible needs. A person should not be declined an assessment on the basis that they may not be ordinarily resident in the Local Authority area.

The Croydon Adult Support Team (CAS) staff and community/locality teams can all gather information to inform the decision about ordinary residence. Assessment and provision of services should **not** be delayed because of uncertainty about ordinary residence.

### 3.2 How to establish if a person is Ordinarily Resident in Croydon or elsewhere:

The meaning of Ordinary Residence is outlined within the National Guidance (paragraphs 18 to 37). Ordinary Residence depends on the facts of each case; factors such as:

- time spent in the place,
- continuity of stay apart from temporary absences, and
- future intentions, are all relevant

The Care and Support Statutory Guidance advises, the term should be given its ordinary and natural meaning (Page 343, para 19.12). *Croydon's responsibility for meeting a person's eligible needs under the Care Act is based on the concept of ordinary residence, as there is no definition of ordinary residence in the Care Act, the term ordinary residence should be given its ordinary and natural meaning.*

In most cases it will be obvious that an individual is ordinarily resident in Croydon because they have always lived in Croydon; or they have made a decision to move to Croydon and settle here (and no other Local Authority was involved in 'placing' the person in Croydon).

In many cases it will be obvious that a person is **NOT** ordinarily resident in Croydon

There is a helpful document developed by ADASS and the Local Government Association here:

<https://proceduresonline.com/trixcms/media/1444/ordinary-residence-guide-lga-and-adass.pdf>

And this decision support tool is also available within TRI-X

<https://proceduresonline.com/trixcms/media/1098/ordinary-residence-decision-support-tool.pdf>

If you are in doubt about a person's ordinary residence you should check the following:

- Where does the person spend most of their time now?
- Where has the person spent most of their time in the past?
- Was any other local authority involved in arranging or funding the current placement?

- If the person does not have capacity to make a decision about where to live what was the outcome of the best interest decision about where they will live?
- What are the person's plans for the future in terms of settling down?

If you still need help to make a decision about Ordinary Residence you should refer to the Council's Ordinary Residence Flow chart (see below).

If, after checking the facts of the case, and reviewing these facts against the scenarios in the National Ordinary Residence Guidance, Care Act, Care Act Regulations and Care Act Statutory Guidance Oct 2014, it is still not clear whether the person is ordinarily resident in Croydon you should seek advice from your manager, service manager or head of service who might advise to contact the duty solicitor. If the case requires legal input, a referral can be made to the duty solicitor for more formal advice [DutySolicitor@croydon.gov.uk](mailto:DutySolicitor@croydon.gov.uk)

### **3.3 People Acquiring Ordinary Residence INTO Croydon, (also see sections below)**

A pathway document 'Continuity of Care' will assist staff who are working with people who have (or will) become ordinarily resident in Croydon.

[https://www.proceduresonline.com/croydon/adults/chapters/default\\_chapters/p\\_cont\\_care\\_arrang.html](https://www.proceduresonline.com/croydon/adults/chapters/default_chapters/p_cont_care_arrang.html)

### **3.4 People Acquiring Ordinary Residence OUT of Croydon, (also see sections below)**

A pathway document 'Continuity of Care' will assist staff who are working with people who have (or will) become ordinarily resident outside of Croydon.

[https://www.proceduresonline.com/croydon/adults/chapters/default\\_chapters/p\\_cont\\_care\\_arrang.html](https://www.proceduresonline.com/croydon/adults/chapters/default_chapters/p_cont_care_arrang.html)

### **3.5 Continuity of Care; individuals moving from one local authority to another and when to start/stop funding**

National Guidance on Ordinary Residence does not specify when responsibility for funding an ordinary residence case transfers from one Local Authority to another. The Care Act 2014, The Care and Support (Continuity of Care) Regulations 2014 and Statutory Guidance (section 20, pages 355-364) have introduced assistance to local authorities on how to implement such



situations, along with clarifying when a local authority would retain responsibility for an individual under the 'specified accommodation' Regulations <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#Chapter20>

If staff are unclear they should seek assistance from their Advanced Practitioner/Manager/Service Manager or Head of Service and if necessary contact the duty solicitor for further advice. If necessary, further referral to the legal department can then be made [DutySolicitor@croydon.gov.uk](mailto:DutySolicitor@croydon.gov.uk)

### 3.6 Capacity and Interface with Ordinary Residence

The Mental Capacity Act 2005 plays an important part in Ordinary Residence if a person lacks capacity, in relation to residence, care and treatment or other relevant key decisions. Please contact legal for preliminary advice if a dispute on Ordinary Residence seems to be likely. The usual rules of acquisition of Ordinary residence **do not apply**.

### 3.7 Ordinary Residence Disputes and Financial Adjustments

If there is a dispute between two or more Local Authorities about the ordinary residence status of an individual, staff can refer to the Ordinary Residence Guidance Part 5, additionally the Care Act 2014 has introduced The Care and Support (Disputes between Local Authorities) Regulations 2014. This is also considered in the Care and Support Statutory Guidance Section 19 (pages 341-353) and in Annex H1-H9 (pages 469-492).

Any urgent needs should be met, the local authority should use its power to meet needs in such circumstances, prior to a full assessment of need and eligibility determination.

Staff should consult the Ordinary Residence Flow Chart to assist in determining after the assessment and eligibility stage that an individual is the responsibility of Croydon Council i.e. an Ordinary Resident.

If staff are unclear about an individual's ordinary residence firstly they should discuss the case with their Advanced Practitioner/Manager/Service Manager or Head of Service. If after consulting the information available to them the individual's ordinary residence remains unclear they should contact the duty solicitor for further advice. If necessary, further referral to the legal department can then be made to [dutysolicitor@croydon.gov.uk](mailto:dutysolicitor@croydon.gov.uk)

If it is considered that the individual is **NOT** an Ordinary Resident of Croydon Council, then the Social Worker needs to contact the appropriate Local Authority to discuss/ advise why Croydon considers the individual to be an Ordinary Resident of that area.

If that Local Authority considers the individual is not their responsibility, the social worker needs to establish the reasons for this view and record this with full details of the individual making this decision on Liquid Logic (LAS) . The Social Worker needs to establish the other Local Authority's Legal Section contact details.

On discussion with the Advanced Practitioner/ Manager/Service Manager/Head of Service, the Social Worker needs to clearly advise that at this point the council is raising a 'Dispute' and will be referring to the council's Legal Section.

The Social Worker is to urgently refer to Duty Solicitor [dutysolicitor@croydon.gov.uk](mailto:dutysolicitor@croydon.gov.uk) with full details.

Any Legal advice given **must** be followed and acted upon urgently.

A team manager or senior manager should decide who should become the 'named' individual, for liaison throughout the dispute period.

At the conclusion of the 'dispute' any financial adjustment must be discussed with the appropriate Finance Section from both Croydon Council and other authority via the named individual through the dispute.

The adult and /or carer should be informed of the outcome as this decision may be of relevance for future care and support, as required, along with contact details of the authority to who the individual will be considered an ordinary resident.

Staff involved in a dispute are strongly advised to refer to the Care Act, Regulations and Statutory Guidance. In particular staff should be aware that:

- If the council is currently funding services for the individual we will be the 'lead Authority' for coordinating a resolution of the dispute between one or more local authorities.
- If another Authority is the Lead Authority, the council will still be required to nominate a named contact in relation to any dispute
- As soon as is reasonably practicable after the dispute arises (and certainly within **two weeks** of the dispute starting) the council must nominate a lead or named person as contact for resolution of the dispute. The nominated lead/named person for resolution must be agreed with a Team Manager (or lead for Adult Mental Health cases). The Team Manager will ensure that the legal department and Heads of Services are notified as appropriate of any ongoing disputes about Ordinary Residence.

- The Lead Contact should:
  - Gather information from all involved local authorities that may help clarify the facts and resolve the dispute, establishing the facts of the case will often be key to effective resolution of the dispute
  - Ensure that the individual and their family/representative as appropriate are kept up to date with progress on the dispute
  - If the dispute is not resolved within **four months** of the date on which it arose, then the 'lead authority' must refer the dispute to the Secretary of State/ appropriate person requesting that they make a determination.
- In cases of dispute the lead/named contact should keep a chronology of all action/contact around resolution of the dispute. Every attempt should be made to resolve the dispute rather than approaching the Secretary of State/ appropriate person.
- Care Act Regulations advise the following documents must be available to the Secretary of State/ appropriate person:

(1) The referral must include the following documents:

- (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred;
- (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (2);  
and
- (c) copies of all correspondence between the authorities which relates to the dispute.

(2) The specified information is:

- (a) an explanation of the nature of the dispute;
- (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose;
- (c) details of the needs of the adult ("the relevant adult") or carer to whom the dispute relates from the beginning of the period to which the dispute relates;

## Ordinary Residence Including Disputes and Financial Adjustments

- (d) a statement as to which local authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;
- (e) details of the relevant adult's place of residence, and of any former places of residence which are relevant to the dispute;
- (f) where the person to whom the dispute relates is a carer, details of the place of residence of the adult needing care, and of any former places of residence that are relevant to the dispute;
- (g) in a case where the relevant adult's capacity to decide where to live is relevant to the dispute, either—
  - (i) a statement that the authorities agree that the adult has, or lacks, such capacity; or
  - (ii) information which appears to any of the authorities to be relevant to the question of whether the adult has, or lacks, such capacity;
- (h) a statement as to any other steps taken by the authorities in relation to the relevant adult or carer which may be relevant to the dispute;
  - details of the steps that the authorities have taken to resolve the dispute between themselves; and
- (j) any other information which appears to any of the authorities to be relevant to the determination of the dispute.

Following authorisation to do so, all applications for determinations by the Secretary of State should be sent to:

The Department of Health and Social Care  
Social Care Oversight Team  
3rd Floor  
39 Victoria Street  
Westminster  
London  
SW1H 0EU

Once a determination has been made liaison will be required with the appropriate individual within Finance to ensure a financial adjustment is undertaken between the council and any other Local Authority involved i.e. the council may be required to reimburse another authority or the council may require reimbursement.

### 3.8 Maintenance of Records of Ordinary Residence Cases

In all ordinary residence cases, the lead person should ensure that they use Liquid Logic to keep a clear and accurate record of all contact with the adult and where appropriate, their carer, family member/s or representatives.

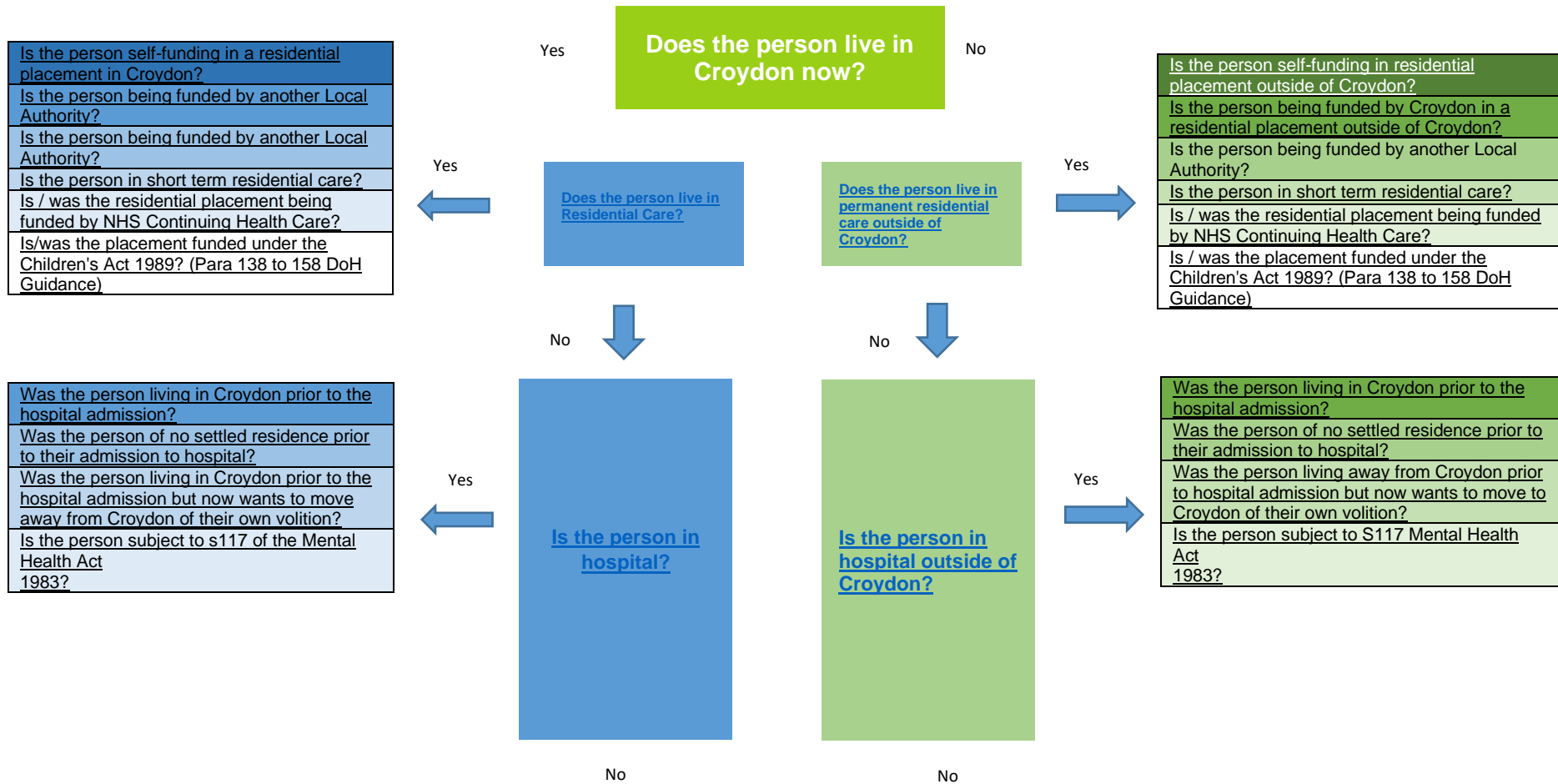
The lead person on the case, should also use Liquid Logic to record and maintain:

- All communication between the Council and other boroughs for confirming the ordinary residence of clients and transfer the responsibility of the ordinary residents
- Communication by the lead person with the legal team, team manager, head of service
- Referrals raised to the Secretary of State and
- Outcomes of referrals raised to the Secretary of State
- Any and or other communications in regard to ordinary residence should be recorded on Liquid Logic
- See also the standards outlined in the Recording Policy

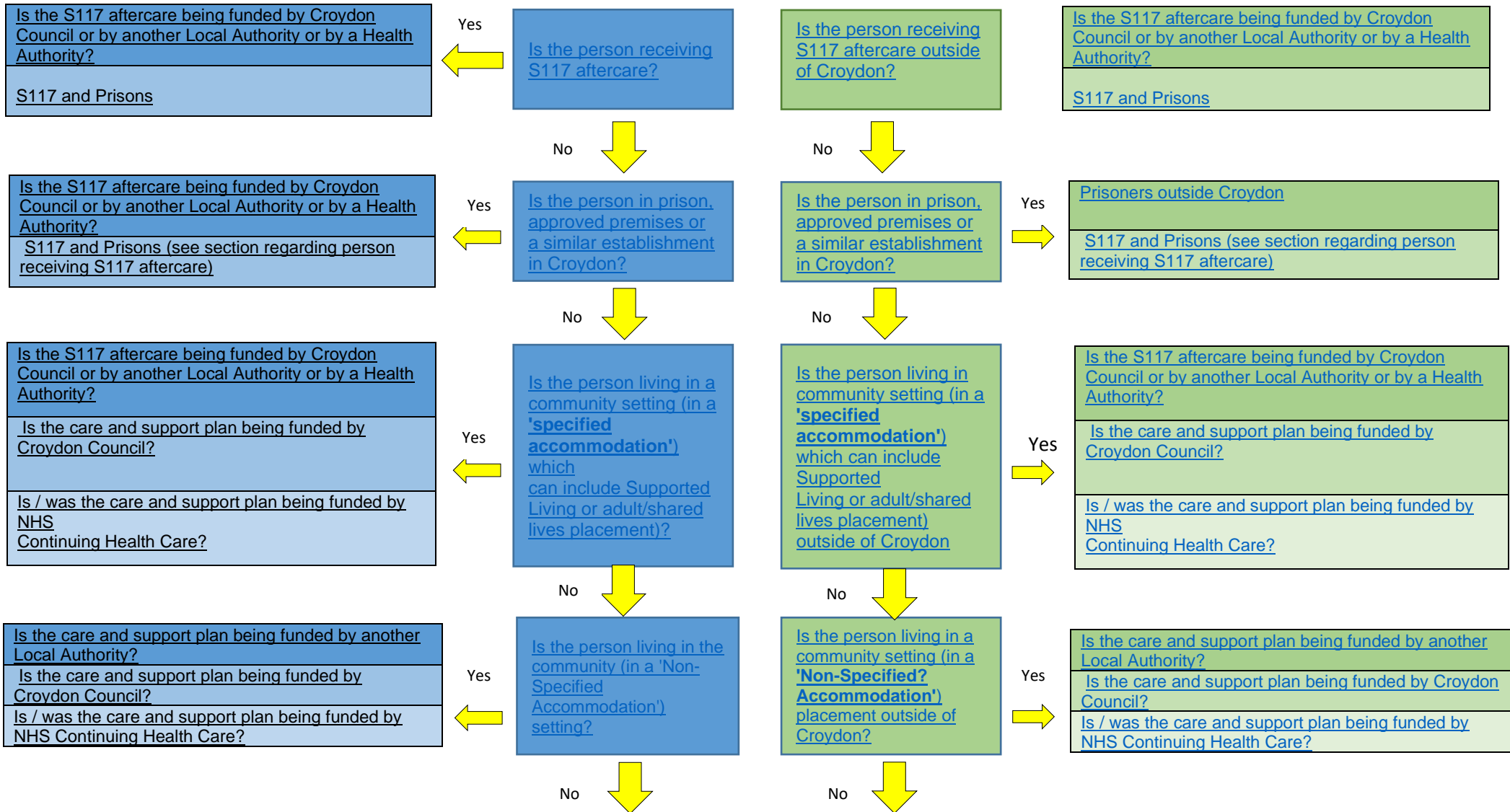
### 4 FLOW CHARTS/ DIAGRAMS OR EXAMPLES

To use this document: Please view the flowchart below and find the section that applies to the case you are working with, hover the cursor over the relevant section and press 'control and click' this will take you to the full text with information relevant to your case. If you want to return to the flowchart press 'back to top' and you will be returned to the flowchart.

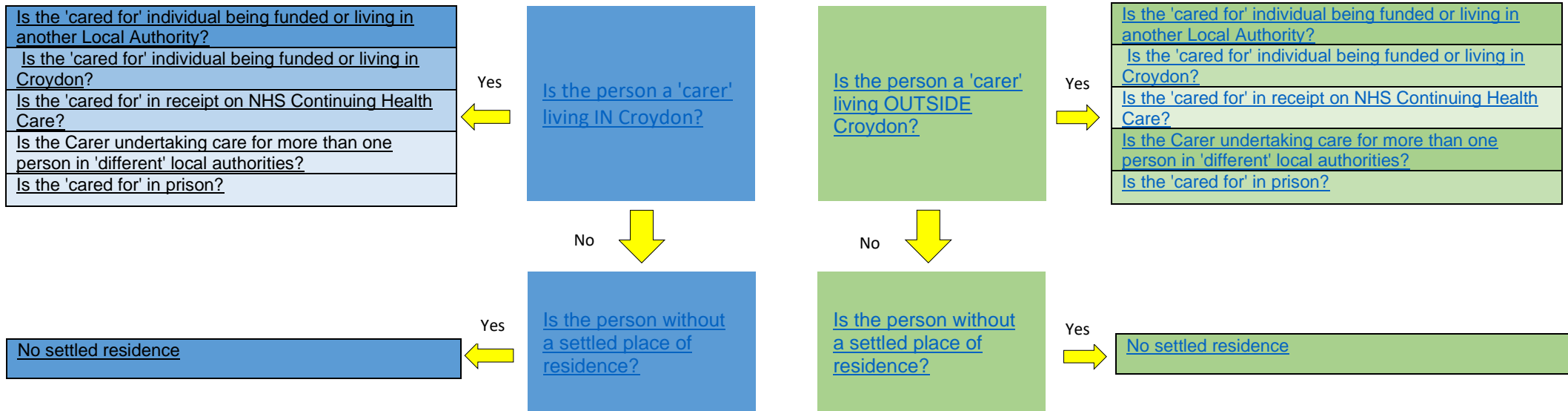
# Ordinary Residence Including Disputes and Financial Adjustments



# Ordinary Residence Including Disputes and Financial Adjustments



## Ordinary Residence Including Disputes and Financial Adjustments





**Does the person live in Residential Care?**

**Is the person self-funding in residential placement in Croydon? (para 72 to 76 of DoH guidance)**

A person who had the capacity to consent to a move to a permanent residential care in Croydon under a private agreement will usually be ordinarily resident in Croydon. This would usually be when an individual or family have made their own arrangements and the local authority has not assisted in any way, other than perhaps sign posting.

If another Authority funded the first 12 weeks of the placement under the property disregard rules the person may still acquire ordinary residence in Croydon after the 12 week disregard period (para 84 to 86 of DoH Guidance) - depending on the specifics of each case. Care and Support Statutory Guidance (Annex H3, page 472) advises this could occur when an individual becomes self-funding, this includes declining other possible funding assistance from the originating authority, such as a Deferred Payment Agreement.

During the 12 week disregard period, an authority should be offering a Deferred Payment Agreement to those who qualify. If the person accepts a deferred payment agreement from the originating Local Authority after the 12 week property disregard period then the individual remains the responsibility of that Local Authority until the Deferred Payment Agreement is concluded (Care and Support Statutory Guidance Annex H2, page 471)

If the person did not have capacity to enter into the private arrangement to pay the home fees and in the absence of anyone else another Authority made the arrangement for the person to move into the home (even though the person might be self –funding) then the person remains the responsibility of the Local Authority that made arrangements for their residential accommodation in the first instance

**Is the person being funded by another Local Authority? (Para 55 to 59 of DoH guidance)**

(Care and Support Statutory Guidance pages 346-348) (Section 39 Care Act 2014).

If another Local Authority made arrangements for the provision of the person's residential accommodation in Croydon the person is deemed to be ordinarily resident in the place (first authority) where they were ordinarily resident immediately before the residential accommodation was provided. The placing Local Authority should inform Croydon that they have placed the person in our area. The Local Authority that made the placement will continue to be the responsible Authority until there is a relevant change of circumstances, e.g. –

If the person chooses to leave residential accommodation (and had capacity to make such a decision) a new ordinary residence decision will be made depending on the facts of their new situation, if it is a move to alternative 'specified accommodation' the originating authority would remain responsible for the person and be involved in any decision making process regarding this.

If the person is detained while a resident in Croydon under section 3 (or other qualifying section) of the Mental Health Act and becomes entitled to s117 aftercare Croydon will become responsible for their mental health aftercare only (para 179 to 189 DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority.

**Is the person being funded by another Local Authority?**

(Care and Support Statutory Guidance Chapters 19 & 20)

This person is ordinarily resident in the area of the Local (first) Authority that is funding the placement. If the person wants to move to a 'non-specified' community placement in Croydon we may have responsibility for them in the future and should be aware of the person moving into the area and the assessment of their social care needs. (Refer to Care Act Continuity of Care protocols) If they want to move to a new residential placement in Croydon and require Local Authority funding then the existing funding authority should arrange that placement. They would then remain responsible for such funding.

**Is the person in hospital? Was the person living in Croydon prior to the hospital admission?**

If the person was living in Croydon previously and intends to return to Croydon on discharge they will be ordinarily resident in Croydon.

If a person who was ordinarily resident in Croydon prior to admission is to be discharged from hospital to residential or 'specified' accommodation outside of Croydon we retain funding responsibility for that person – unless they are self-funders (para 60 to 65 of the DoH Guidance) and would not be entitled to the 12 week disregard or a Deferred Payment Agreement.

If there is a dispute about the ordinary residence of a patient requiring discharge see (Para 159 to 166 of the DoH Guidance). Also see Care Act Sections 39-41, Regulations and Statutory Guidance Chapter 19 and Annexes H1-H9. See also, Ordinary Residence Disputes and Financial Adjustments procedures.

Care will need to be taken regarding funding and savings. The person may dip under the threshold of the cap and may still acquire Ordinary Residence in the area where the home currently is. This will be determined by other factors such as capacity to make decisions to make the initial move to the home and any assistance that was had by any authority. Please revert to legal for any clarification on such matters.

**Was the person of no settled residence prior to their admission to hospital?**

The person will usually be deemed to be ordinarily resident in the place where the hospital is (para 162 of the DoH Guidance), also see Care and Support Statutory Guidance Chapter 19 para 19.22-19.24 and Annex H9 page 488

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), also see Care and Support Statutory Guidance paras 19.53-19.66 and Annex H9 page 488 and s40/41 care Act 2005.

**Is the person in short term residential care?**

The decision on Ordinary Residence will depend on where the person was living prior to the short term placement combined with information about their current funding arrangements and intentions for the future.

**Is/was the residential placement being funded by NHS Continuing Health Care?**

- If placement was made on or before 18<sup>th</sup> April 2010 – possibly seek Legal advice (These cases are determined on a case by case basis) (para 115b of the DoH Guidance applies)

- If placement was after 19<sup>th</sup> April 2010 and the NHS was funding the residential or 'specified accommodation' placement but following a review the person is no longer entitled to free NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS Continuing Health Care. (Para 112 to 115 of the DoH Guidance) (Care and Support Statutory Guidance Annex H5 pages 475-476).

**Is/was the placement funded under the Children's Act 1989? (Para 138 to 158**

**DoH Guidance)**

If the person is a young person placed in residential accommodation out of area as a child under the Children's Act 1989 then the starting presumption is that they acquire ordinary residence in the area of the placing local authority, however this is not always the case it depends on the facts and such presumption can easily be rebutted. Consider how long has the person lived in Croydon, what is their intention for the future, what connections if any do they retain in the placing authority area, (paragraphs 138 to 158 of the National Guidance apply).

For example when a young person aged 18 or over who may be entitled to leaving care services, provided by the placing authority under the Children Act 1989 Act. As leaving care provisions do not include accommodation (with the exception of vacation accommodation if attending college or university and accommodation that is provided in exceptional circumstances). If a former relevant child has been placed out of area as a looked after child, and wishes to remain in this area on reaching the age of 18, they may then be found to be ordinarily resident Croydon. In this situation, their accommodation would be provided by Croydon but the provision of their leaving care would remain the responsibility of the local authority that had responsibility for them under the 1989 Act.

Bear in mind at all times consideration of the young person's capacity to make decisions on residence.

The Children's Act 1989,(sec105)(6)), provides when determining the Ordinary residence of a Child for any purpose of the Act, any period in which the child lives in a school [or other institution, pursuant to a supervision order under the 1989 Act, or youth rehabilitation order under part I of the Criminal justice Act 2008, or while being provided with accommodation by or on behalf of another authority] should be disregarded. NB, The Local Authority responsible for leaving care services will remain that in which the young person is ordinary resident for the purposes of the Children Act 1989.

**Is the person subject to s117 Mental Health Act 1983 Amended 2007?**

If the person is detained under a qualifying section of the MHA 1983 (i.e. section 3, 37, 45A, 47 and 48) they will become subject to s117 after-care when they leave hospital, which may not be the same time as when they are discharged from detention, and the Local Authority where the person was Ordinarily Resident immediately prior to their detention will become responsible for their aftercare (para 179 to 189 DoH guidance).

This is a continuing duty until both health and social services are satisfied that the person no longer has a need of the services (s117 (2)) MHA 1983 as amended 2007. Noteworthy that s117 (6) introduces a definition for the first time of aftercare services. Section 117 of the Mental Health Act says that aftercare services are services which are intended to: meet a need that arises from or relates to your mental health problem, and reduce the risk of your mental condition getting worse, and you having to go back to hospital

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority. The effect of the s39 (4) is that if aftercare services under S117 includes provision of accommodation. The person does not acquire the Ordinary Residence in the area where he is being provided with that accommodation- if it is different from his existing place of Ordinary residence.

– Regardless of which organisation the AMHP is from, good practice would dictate that the Local Authority of residence be notified of any such application under the MHA 1983.

**Note that:**

***- If a person is discharged on a Community Treatment Order and that CTO is then revoked and the person recalled to hospital the original detention is re-instated as though the person had never been a community patient so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the CTO)***

***- If a person is discharged on leave of absence under s17 the patient can be recalled under the same authority to detain from which they were granted leave so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the s17 leave)***

**Does the person live in permanent residential care OUTSIDE of Croydon?**

**Is the person self-funding in residential placement outside of Croydon?**

(Para 72 to 76 of DoH guidance)

A person who moved to permanent residential care under a private agreement will usually be ordinarily resident in the area where the residential home is based, even if Croydon gave advice and some information prior to a move into the residential placement.

If Croydon Council funded the first 12 weeks of the placement under the property disregard rules the person may still acquire ordinary residence in the new area (para 84 to 86 of DoH Guidance). Care and Support Statutory Guidance (Annex H3, page 472) advises this would occur when an individual becomes self-funding, this includes declining other possible funding assistance from the originating (Croydon) authority, such as a Deferred Payment Agreement.

During the 12 week disregard period, an authority (Croydon) should be offering a Deferred Payment Agreement to those who qualify. If the person accepts a deferred payment agreement from Croydon Local Authority after the 12 week property disregard period then the individual remains the responsibility of Croydon Local Authority until the Deferred Payment Agreement is concluded (Care Act Statutory Guidance Annex H2, page 471)

If the person did not have capacity to enter into the private arrangement to pay the home fees and in the absence of anyone else Croydon made the arrangement then the person remains ordinarily resident in Croydon because we have made arrangements for their accommodation. However, there ought to have been a Best Interests Meeting prior to this and a decision made and evidenced as to why such a move was in the individuals' Best interests.

**Is the person being funded by Croydon Council in a residential placement outside of Croydon?** (Para 55 to 59 of DoH guidance) (See Care Act Statutory Guidance pages 346 - 348)

If Croydon Council has made arrangements for the provision of residential accommodation the person is deemed to be ordinarily resident in the area where they were ordinarily resident immediately before the residential accommodation was provided. The host Local Authority should be informed that we are placing someone in their area. Croydon Council will continue to be the responsible Authority.

If the person chooses to leave residential accommodation a new ordinary residence decision will be made depending on the facts of their new situation, if it is a move to alternative 'specified accommodation' the originating authority would remain responsible for the person- this would be the same if a best Interests decision has made.

If the person is detained under section 3 of the Mental Health Act and becomes entitled to s117 aftercare then the Local Authority where the person was resident immediately prior to the Section 3 admission will become responsible for their aftercare (para 179 to 189 DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of Croydon Council (the 'first') authority.

**Is the person being funded by another Local Authority?**

(See Care and Support Statutory Guidance Chapters 19 & 20)

This person is ordinarily resident in the area of the funding authority. However if they want to move to a 'non-specified' community placement in Croydon we may have responsibility for them in the future and should be involved in an assessment of their social care needs. (Refer to Care Act Continuity of Care protocols).

If they want to move to a residential or 'specified accommodation' placement in Croydon and require Local Authority funding then the existing funding authority (first authority) where the person lives or lived should arrange that placement.



**Is the person in short term residential care??**

The decision on Ordinary Residence will depend on where the person was living prior to the short term placement combined with information about their current funding arrangements and intentions for the future.

**Is the person in hospital OUTSIDE of Croydon?**

**Was the person living in Croydon prior to the hospital admission?**

If the person was living in Croydon previously and intends to return to Croydon on discharge (even after a lengthy stay in hospital) they will most likely be ordinarily resident in Croydon.

If a person is to be discharged from hospital to residential or 'specified' accommodation outside of Croydon arranged by this Local Authority then we will retain funding responsibility for that person – unless they are self-funders (para 60 to 65 of the DoH Guidance) and would not be entitled to the 12 week disregard or a Deferred Payment Agreement.

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), Also see Care Act Sections 39-41, Regulations and Statutory Guidance Chapter 19 and Annexes H1-H9.

**Was the person of no settled residence prior to their admission to hospital?**

The person will usually be deemed to be ordinarily resident in the place where the hospital is (para 162 of the DoH Guidance), also see Care and Support Statutory Guidance

Chapter 19 para 19.22-19.24 and Annex H9 page 488

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), also see Care and Support Statutory Guidance

### **S117 and Prisons**

Where prisoners have been detained under s47 and s48 of MHA 1983 and transferred back to prison their S117 aftercare should be dealt with in the same way as it would be in the community apart from any provisions that are not applied in custodial settings such as direct payments and choice of accommodation. S117 (3) applies to determine which is the responsible local authority.

Therefore if the individual was in a Croydon Prison when detained they will remain the responsibility of Croydon for S117 after care (**only**) when moving to another area. For example this could be on discharge from Secure Hospital to an open prison/ accommodation outside Croydon, then Croydon would need to meet any S117 aftercare needs (but only these needs, not physical care needs, which would be the responsibility of the area of the prison or the individuals settled residence).

(Care and Support Statutory Guidance Page 322 Chapter 17.6.)

**Is the person receiving S117 aftercare OUTSIDE of Croydon?**

**Is the s117 aftercare being funded by Croydon Council or by another Local Authority or by a Health Authority?**

Once entitlement to s117 after-care is established responsibility rests with the same local Authority even if the person moves to a new area. Guidance on section 117 of the 1983 Act was given in the case of R v Mental Health Review Tribunal Ex p. Hall (1999) 4 All ER 883.

There are a few exceptions to this, contact legal if you are uncertain.

The s117 responsibility is re-considered if the person is re-detained under a provision of the 1983 Act.

*However:*

*- If a person is discharged on a Community Treatment Order and that CTO is then revoked and the person recalled to hospital the original detention is re-instated as though the person had never been a community patient so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the CTO)*

*- If a person is discharged on leave of absence under s17 the patient can be recalled under the same authority to detain from which they were granted leave so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the s17 leave)*

The Authority where the person was living immediately prior to the most recent detention is responsible for the s117 care, even if the person does not return to live in that area. (Para 182 to 189 of the DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority.

### **S117 and Prisons**

Where prisoners have been detained under s47 and s48 of MHA 1983 and transferred back to prison their S117 aftercare should be dealt with in the same way as it would be in the community apart from any provisions that are not applied in custodial settings such as direct payments and choice of accommodation. S117 (3) applies to determine which is the responsible local authority.

Therefore if the individual was in a Croydon Prison when detained they will remain the responsibility of Croydon for S117 after care (**only**) when moving to another area. For example this could be on discharge from Secure Hospital to an open prison/ accommodation outside Croydon, then Croydon would need to meet any S117 aftercare needs (but only these needs, not physical care needs, which would be the responsibility of the area of the prison or the individuals settled residence).

**Is the person in a prison, approved premises or a similar establishment due to imposed bail conditions in criminal proceedings IN Croydon?**

**Prisoners etc.** (Care Act Section 76(1), Care and Support Statutory Guidance Oct 2014

Chapter 17, DoH Ordinary Residence Guidance Oct 2013 para 107 to 111):

The Care Act 2014 highlights that people in custody or custodial settings who have needs for care and support should be able to access the care they need, just like anyone else. Adults detained or residing in a custodial setting are treated as if they were ordinarily resident in the area where the custodial setting is located i.e. whilst resident in a prison, approved premises etc. they are to be considered as an ordinary resident of Croydon. The individual in such setting is entitled to all other aspects of the health and care systems i.e. consideration of NHS Continuing Health, unless prohibited by Acts, Regulations or Guidance.

If an individual is transferred to another custodial establishment in a different local authority area i.e. no longer in Croydon, the responsibility for care and support will transfer to the new area/ Local Authority. In these situations Continuity of Care (Care and Support Statutory Guidance Section 20) processes should be followed if possible.

In some circumstances Local Authorities may not be informed of a prisoners pending transfer and therefore can only undertake liaison with previous authority after transfer, however the provision of appropriate care and support needs to be maintained.

On being discharged from prison, approved premises etc. if the individual is requiring care and support each case must be considered individually having regard to where the person lived prior to going into prison and where they want to live on discharge. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification

If the person needs residential accommodation it might be possible to argue that this should be arranged by the Local Authority where the person lived prior to entering prison. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification.

Consideration of 17.55 of the Care and Support Statutory Guidance as it makes it clear that the deeming provisions in s39 of the Care Act 2014 do not apply to people leaving prison. Therefore, the newly released prisoner's Ordinary residence is not deemed to be the Local Authority in which they resided before their imprisonment. The statutory guidance acknowledges that working out the OR of a newly released prisoners is not straightforward- as it might not be possible for the offender to return to their previous area.

**Is the person living in a community setting (in a 'Specified Accommodation' which can include Supported Living or adult/shared lives placement)?**

**Is the care and support plan being funded by another Local Authority?**

If the person is living in a '**specified accommodation**' setting even with a tenancy then they will remain the responsibility of the originating (first) Local Authority. They **will not** become the responsibility of Croydon unless moving into a 'non-specified' accommodation setting. (The Care and Support (Ordinary Residence) (Specified accommodation) Regulations 2014)

**Is the care and support plan being funded by Croydon?**

(See Care and Support Statutory Guidance Chapters 19 & 20)

Croydon will remain responsible for the care and support of the individual whilst they remain in a 'specified accommodation' setting. If the individual needs to move to an alternative 'specified accommodation' outside or within Croydon, we (Croydon) will remain responsible for these transfers.

Should the individual be able to move to a '**non-specified**' accommodation setting **within** Croydon then they will clearly remain an ordinary resident of Croydon.

Should the individual be able to move to a '**non-specified**' accommodation setting **outside** Croydon then they will become an ordinary resident in the new (second) Local Authority. In such circumstances Croydon should instigate the Continuity of Care protocols.

**Is/was the care and support plan being funded by NHS Continuing Health Care?**

If the NHS was funding the placement but following a review the person is no longer entitled to free NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS Continuing Health Care. (Para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

**Is the person living in the community (in a 'Non-Specified Accommodation') setting?**

**Is the care and support plan being funded by another Local Authority?**

(See Care Act Statutory Guidance Chapters 19 & 20)

If the individual has moved into their own accommodation within Croydon, then in most situations an individual should have had an assessment prior to the move, as per the Care Act Continuity of Care protocols and will therefore be aware of the care and support/funding that will be in place from the first day of residence. If this assessment and care and support plan is not in place, then Croydon Council must continue with the previous care and support received from the previous Local Authority until has completed an (re)assessment and advised the individual of any changes. The council are responsible for funding this placement from the day they are advised of this change of residence.

Bear in mind that the individual has capacity to consent to the move in the first instance. Also, if the former LA it seems has assisted and supported a move and has not adopted the principles of "continuity of care protocols"- then contact legal for advice as it might be possible that a dispute might arise.

**Is the care and support plan being funded by Croydon Council?**

If the individual is receiving care and support from the council and wishes to move from present to new accommodation **within** Croydon, then this is their decision. Prior to the move a re-assessment should be undertaken to ensure that the individual will be aware of the care and support that may be available following the move or that the current care and support plan will continue to meet their needs.

If the individual is receiving care and support from Croydon and wishes to move from present to new accommodation **outside** Croydon, then this is their decision. At this time the individual or Croydon should contact the Local Authority whose geographical area to which they are considering moving. This will enable the individual to receive 'Advice and Information' about that Local Authority to assist their decision making. If the individual decides the move is to go ahead then the receiving/ new (second) Local Authority should undertake an assessment prior to the move, as per Continuity of Care protocols. The second Local Authority will become financially responsible from the first day of moving into the new authority, whether they have undertaken an assessment or not.



**Is/was the care and support plan being funded by NHS Continuing Health care?**

- If the individual had chosen to move to Croydon as the individual is in non-specified accommodation the individual would become the responsibility for services/ funding of the council if remaining in that environment and no longer meeting the threshold for free NHS Continuing Health Care.

-If however on no longer meeting the threshold for NHS Continuing Healthcare but at that time would require placement in 'specified accommodation' then the individual is the responsibility of the authority where they were resident before meeting NHS Continuing Healthcare.

For example if they had been resident in Cumbria and had moved to Croydon to be with relatives, if dropping out of NHS Continuing Healthcare and immediately requiring 'specified accommodation' then this will be the responsibility of Cumbria to fund.

Discuss with your Advanced Practitioner/Manager on a case by case basis and seek Legal advice as necessary

(para 112 to 115 of the DoH Guidance) (Care and Support Statutory Guidance Annex H5pages 475-476)

**Is the person in prison, approved premises or a similar establishment due to imposed bail conditions in criminal proceedings OUTSIDE of Croydon?**

**Prisoners etc.** (Care Act Section 76(1), Care and Support Statutory Guidance Chapter 17, DoH Ordinary Residence Guidance Oct 2013 para 107 to 111):

The Care Act highlights that people in custody or custodial settings who have needs for care and support should be able to access the care they need, just like anyone else. Adults detained or residing in a custodial setting are treated as if they were ordinarily resident in the area where the custodial setting is located i.e. if the prison etc. is in Surrey for example then Surrey County Council would be responsible whilst resident. The individual in such settings is entitled to all other aspects of the health and care systems i.e. consideration of NHS Continuing Health, unless prohibited by Acts, Regulations or Guidance.

If an individual is transferred to another custodial establishment in a different local authority area i.e. no longer in Sutton for example, the responsibility for care and support will transfer to the new area/ Local Authority. In these situations Continuity of Care (Care and Support Statutory Guidance Section 20) processes should be followed if possible. In some circumstances Local Authorities may not be informed of a prisoners pending transfer and therefore can only undertake liaison with previous authority after transfer, however the provision of appropriate care and support needs to be maintained.

On being discharged from prison, approved premises etc. if the individual is requiring care and support each case must be considered individually having regard to where the person lived prior to going into prison and where they want to live on discharge. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification.

If the person needs residential accommodation it might be possible to argue that this should be arranged by the Local Authority where the person lived prior to entering prison. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification. Paragraph 17.55 of the Care and Support Statutory Guidance, makes it clear that the deeming provisions in s 39 of the Care Act 2014 do not apply to people leaving prison. Therefore, the newly released prisoners Ordinary Residence is not deemed to be the local Authority area in which they resided before their imprisonment.

The statutory guidance acknowledges that working out the OR of a newly released prisoner is not straightforward- as it might not be possible for the offender to return to their previous area.

**Is the person living in a community setting (in a 'Specified Accommodation' which can include Supported Living or adult/shared lives placement) OUTSIDE of Croydon?**

**Is the care and support plan being funded by another Local Authority?**

(See the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014)

The person is most likely ordinarily resident of the Local Authority that is currently funding the placement.

If the person is currently living in a '**specified accommodation**' setting even with a tenancy and wishes to move to another '**specified accommodation**' settings the Local Authority currently funding the placement is likely to be responsible.

If the person is making **plans to move to a residential placement in Croydon** which needs to be arranged by a Local Authority then the Local Authority where the person is currently ordinarily resident or the authority currently funding the individual would be responsible (Para 55 to 50 of the DoH guidance)

If the person is making **plans to move to a 'non-specified' community placement in Croydon** of their own volition then the council need to be aware of the move and assessment and care planning process as the person may become ordinarily resident in Croydon in the future. Once made aware of this the council should instigate the Continuity of Care protocols

**Is the care and support plan being funded by Croydon Council?**

(Care Act Statutory Guidance Chapters 19 & 20)

Croydon Council will remain responsible for the care and support of the individual whilst they remain in a '**specified accommodation**' setting. If the individual needs to move to an alternative 'specified accommodation' outside or within Croydon, we (the council) will remain responsible for these transfers.

If the person is requiring a **residential placement** in current area or is considering returning to residential placement in Croydon, then we (the council) remain responsible for arranging and funding the placements.

Should the individual be able to move to a '**non-specified**' accommodation setting **within** Croydon then they will clearly remain an ordinary resident of Croydon Council.

Should the individual be able to move to a '**non-specified**' accommodation setting **outside** Croydon then they will become an ordinary resident in the new (second) Local Authority. In such circumstances the council should instigate the Continuity of Care protocols.

If the person is entitled to s117 aftercare see the relevant section of this flow chart above.

**Is/was the support plan being funded by NHS Continuing Health Care?**

If the NHS was funding the placement, which was/is a '**specified accommodation**' setting, but following a review the person is no longer entitled to NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS continuing Health Care. (Para 112 to 115 of the DoH Guidance) (Care and Support Statutory Guidance Annex H5 pages 475-476)

Therefore if they previously lived in Croydon and were moved into another Local Authority under NHS CHC they would revert to being a Croydon Council funding responsibility from the date when they are no longer eligible for CHC Funding.

If the individual lives in '**non-specified**' accommodation setting and they intend to remain in their current location, then they are likely to become the responsibility of the current Local Authority.

**Is the person living in a community setting (in a 'Non-Specified Accommodation' placement) OUTSIDE of Croydon?**

**Is the care and support plan being funded by another Local Authority?**

(Care and Support Statutory Guidance Chapters 19 & 20)

This person is likely to become ordinary resident of the Local Authority where they reside – unless they lack the capacity to make decisions regarding residence. If the person is planning to move into 'non-specified' accommodation in Croydon of either their own volition or because of a best interest decision has determined that it is in their best interest to move to Croydon, then we would need to follow the continuity of Care protocols. This would include ideally undertaking an assessment prior to the individual moving into Croydon.

**Is the care and support plan being funded by Croydon?**

If the individual is making plans to move to into a 'non-specified' accommodation placement then Croydon Council need to contact the Local Authority in which the accommodation is situated and undertake the Continuity of Care protocols

**Is/ was the care and support plan being funded by NHS Continuing Health Care?**

- If the individual had chosen to move to another authority ( and had the capacity to make such a decision), as the individual is in non-specified accommodation the individual would become the responsibility for services/ funding, (if remaining in that environment and no longer meeting the threshold for free NHS Continuing Health Care), of the local authority of that geographical area.

- If, however, on no longer meeting the threshold for NHS Continuing Healthcare but at that time would require placement in 'specified accommodation' then the individual is the responsibility of the authority where they were resident before meeting NHS Continuing Healthcare. For example if they had been resident in Croydon and had moved to Manchester to be with relatives, if dropping out of NHS Continuing Healthcare and immediately requiring 'specified accommodation' then this will be the responsibility of Croydon Council to fund.

Discuss with your Advanced Practitioner/Manager on a case by case basis and seek Legal advice as necessary.

(Para 112 to 115 of the DoH Guidance) (Care and Support Statutory Guidance Annex H5 pages 475-476)

**Is the person a 'carer' living IN Croydon?**

**Is the 'cared for' individual being funded or living in another Local Authority**

If the carer lives in Croydon but the 'cared for' person lives in another Local Authority area then that Local Authority will also be responsible for the carers assessment, carers eligibility decision and for the provision of carers support services as per that Local Authorities procedures (para 137 of the DoH Guidance) (see Care and Support Statutory Guidance Chapters 19.6)

**Is the 'cared for' individual being funded by Croydon Council or living in Croydon?**

(See Care and Support Statutory Guidance Chapters 19.6)

If the carer and the 'cared for' both live in Croydon then the carer is the responsibility of Croydon Council for assessment, eligibility decision and for the provision of carers support. Unless a cared for person has relocated from another authority with a care package.

If the carer lives in another local authority but the 'cared for' lives in Croydon, then the carer is the responsibility of Croydon Council for the carers assessment, carers eligibility decision and for the provision of carers support as per the Council procedures.

If the 'cared for' lives in another Local Authority but is funded by Croydon Council the carer is the responsibility of Croydon Council for the carers assessment, carers eligibility decision and for the provision of carers support as per Croydon Council procedures.

**Is the 'cared for' in receipt of NHS Continuing Health Care?**

If the 'cared for' would be the responsibility of Croydon Council, even though at present they will not be receiving such services, as these are the responsibility of the NHS, then the 'carer' will be the responsibility of Croydon Council whether they live in Croydon or another Local Authority. They will therefore, if required receive the carers assessment, carers eligibility decision and for any provision of carers support as per Croydon Council procedures. Please note these services are **for direct services to the carer, NOT** to supplement the package of care being provided to the 'cared for' which is the responsibility of the NHS.

**Is the Carer undertaking care for more than one person in 'different' local authorities?** (See Care and Support Statutory Guidance Chapters 19.8)

Such cases are likely to be rare.

Discuss with you Manager/ Advanced Practitioner on a case by case basis.

Legal advice may need to be sought.

**Is the 'cared for' in prison?**

If the 'cared for' is in a prison in Croydon, then any request for a carers assessment would be the responsibility of Croydon Council.

However, Section 76 of the Care Act that a person caring for an adult in prison has the same rights as a carer under the act. Therefore a staff member of the prison or fellow inmate can assist with some aspects of establishment routine, e.g. assisting an individual to mobilise to the dining table but assistance such as 'personal care' should not be provided by such individuals. Therefore it is very unlikely that a carer's assessment would be required.

If a request was made by family member for a carers assessment then Care Act S13 (5) would need to be followed. If receiving such a request seek advice from your Manager/ Advanced Practitioner and if necessary seek Legal advice.

(See Chapter 17 of Care and Support Statutory Guidance)



**Is the person without a settled place of residence?**

**No Settled Residence:**

If a person has more than one home and divides their time between those homes the Local Authority should try to decide on the facts of the case where the person is ordinarily resident (para 26 DoH guidance)

It will be rare for someone to have no settled place of residence. If a person without settled residence is in urgent need of care and support the local authority in which they are physically resident has a duty to meet that need (para 47 to 50 of the DoH guidance) (Care and Support Statutory Guidance para 19.23)

A local authority may conclude that a person arriving from abroad is of no settled residence. British citizens returning to England after a period of residing abroad (who had given up their previous home in this country) are entitled to an assessment as soon as they return if they appear to have needs for care and support. A returning British citizen would usually acquire an ordinary residence in the area in which they chose to locate, if their intention was to stay living there for settled purposes. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place. For more details on British citizens returning to England after a period of living abroad, see Care and Support Statutory Guidance Annex H6 page 477.