

[Home](#) > [Ordinary residence: anonymised determinations 2020](#)

[Department](#)

[of](#)

[Health](#)

[&](#)

[Social](#)

[Care](#)

[\(https://www.gov.uk/government/organisations/department-](https://www.gov.uk/government/organisations/department-)

[of-](#)

[health-](#)

[and-](#)

[social-](#)

[care\)](#)

Guidance

# Ordinary residence 1: 2020

Updated 28 October 2022

## Contents

[Determination by the Secretary Of State Under Section 40 of the Care Act 2014 of the Ordinary Residence of X](#)

[The parties' submissions](#)

[The submissions of the parties](#)

[Legal framework](#)

[Application of law to the facts](#)



© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gov.uk](mailto:psi@nationalarchives.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications/ordinary-residence-anonymised-determinations-2020/ordinary-residence-1-2020>

# Determination by the Secretary Of State Under Section 40 of the Care Act 2014 of the Ordinary Residence of X

- 1) I have been asked by Council A and Council B to make a determination under section 40 of the 2014 Act (“the 2014 Act”) of the ordinary residence of Mr X (“X”).
- 2) On 1 April 2015 relevant provisions of the Care Act 2014 (“the 2014 Act”) came into force. Article 5 of the Care Act (Transitional Provision) Order 2015/995 requires that any question as to a person’s ordinary residence arising under the 1948 Act which is to be determined by me on or after 1 April 2015 is to be determined in accordance with section 40 of the 2014 Act.
- 3) 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 parties’ submissions

- 4) X has a diagnosis of cerebral palsy which he has had since birth. As a result of this condition, X is a full time wheelchair user. X has no active movement in his lower limbs and has reduced upper limb strength and reduced grip control. X has been assessed as requiring a care package comprising 24-hour live-in care in order to meet his support needs, which include personal care, meal preparation, domestic tasks, hoisting, and accessing the community.
- 5) Until 5 October 2015, X lived in a 2-bedroomed flat in the area of Council A. The property was general local authority housing stock but was adapted to take account of X’s physical disability, with widened doorways, ramps, a wet room, a ceiling track hoist, lowered worktops, and adequate turning space throughout the property. It seems that X had lived there for around 25 years with his mother, but that his mother then moved out into a nearby property in order to allow X to be more independent.
- 6) X received a direct payment from Council A which he used to fund a 24-hour live-in carer.
- 7) It seems that X decided, of his own volition, to move to Council B in pursuit of better employment opportunities. X moved to Council B via the Housing Moves scheme. This is a scheme run by the Mayor of London which helps social tenants

in London to move from one borough to another, by allowing them to bid for available social housing properties in other parts of London.

8) My papers contain an undated “occupational therapy initial assessment”. This records that X requested an OT to complete a housing report “to support his application for moving to a new property out of borough.”

9) The subsequent housing report is dated 17 September 2015. It reported on the adaptations to X’s existing home and advised that X had a need for a 2-bedroom property with a similar level of adaptations.

10) X applied for and was accepted at Address 1, in the area of Council B. The property was already adapted when X moved there. The landlord describes it as a “wheelchair adapted property with drop down rails and automated front door.” The landlord further explains that the property is normal (albeit adapted) social housing stock, available for occupation via the usual social housing allocation schemes. As it is adapted, the property will invariably be paired via those allocation schemes with those who have a need for an adapted property. Thus anyone with a physical disability – although preferably a wheelchair user – would be eligible to bid for the property. The applicant does not need to have needs for care and support as such – someone with a relevant physical disability, but who manages all their own care needs independently without the need for additional services, is as eligible for a tenancy as someone with a care package.

11) No special arrangements are made within the premises for providing care and support. The landlord is an ordinary social landlord providing an adapted flat in an otherwise ordinary building. Any care package, including one which provides personal care, would need to be arranged separately through the local authority, NHS (for those eligible for continuing healthcare), or privately.

12) Finally, I have been provided with a support plan prepared by Council A which refers in several places to a care package consisting of 24-hour live in care. It makes no reference to supported living or extra-care living. It seems that X had had this care package for a number of years at the time of his move. There is no suggestion in the documents that this care package and accommodation was unsuitable. Neither is there any suggestion that X’s current care package and accommodation is unsuitable.

## Capacity

13) Both parties agree that X has capacity to make decisions about where he should live.

# The submissions of the parties

14) The parties agree that this case turns on the question of whether or not X's new accommodation meets the statutory definition of "supported living" or not. If it does, then it is specified accommodation to which the deeming provision in section 39 of the Care Act 2014 applies and X will be deemed ordinarily resident in Council A despite his move to Council B. If it does not, then it is not specified accommodation, the deeming provision will not apply, and X's ordinary residence will fall to be determined by reference to ordinary Shah principles.

## Council B

15) Council B contends that Address 1 meets the definition of "supported living", is therefore specified accommodation for the purposes of engaging the deeming provision, and that as such X remains deemed ordinarily resident in Council A notwithstanding his move.

16) Council B relies upon paragraph 19.48 of the Care and Support Statutory Guidance, which provides that:

"19.48 The specified accommodation regulations specify the types of accommodation to which this provision applies. The specified accommodation regulations explicitly set out 3 types of accommodation:

- nursing homes/care homes: accommodation which includes either nursing care or personal care
- supported living/extra care housing this is either:
  - **specialist or adapted accommodation: this means accommodation which includes features that have been built in or changed to in order to meet the needs of adults with care and support needs. This may include safety systems and features which enable accessibility and navigation around the accommodation and minimise the risk of harm, as appropriate to the individual**
  - accommodation which is intended for occupation by adults with care and support needs, in which personal care is also available, usually from a different provider
  - shared lives schemes: accommodation which is provided together with care and support for an adult by a shared lives carer, approved by the scheme, in the shared lives carer's home under the terms of an agreement between the

adult, the carer and any local authority responsible for making the arrangement. The shared lives carer will normally be providing personal care but they will not need to provide it in every case.” **(Emphasis added)**

17) With that definition in mind, Council B points out that before moving to Address 1, X was living in a property that had been adapted to meet his needs as a wheelchair user. There have been no observed changes in his care and support needs since then and he still therefore required an adapted property. Moreover, the OT recommended in her housing report dated 17.9.15 that X required an adapted property. Address 1 is itself adapted and is designated for those with physical disabilities, and the fact that X was eligible for it demonstrates that he required specialist adapted accommodation.

18) Council B suggests that although X’s care and support plan does not expressly mention X’s need for specialist adapted property, his need for such a property is to be inferred from the nature of his disability and his high level of need for care and support.

## Council A

19) Council A contends that the accommodation in which X is currently placed does not meet the definition of “supported living”, that the deeming provision is not engaged, and that X has therefore become ordinarily resident in the area of Council B.

20) Council A submits that the statutory definition of supported living as set out in the 2014 Regulations is limited to supported living schemes “of the type found across the country”. It considers that the expanded definition at paragraph 19.49 of the Care and Support Statutory Guidance includes what it refers to as “extra care housing”, which is a concept that would include for example sheltered housing, but would not include a residential property with ad hoc adaptations such as a wheelchair ramp or wet room. Though adaptations themselves can be important parts of these schemes, an adaptation on its own cannot mean that a residential property becomes supported living. The property in question in this case is adapted for those with physical disabilities, but not necessarily for those with care and support needs.

21) Council A further points out that:

a. The CQC defines supported living as schemes that provide personal care to people as part of the support they need to live in their own homes; and extra care housing as accommodation in a building or campus of similar households specifically designed to facilitate the delivery of care to people either now or when they need it in the future

b. The Town and Country Planning (Use Classes) Order 1987 (as amended) refers specifically to supported living at C3(b) as “up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.”

22) Council A did not assess X as having a need for supported living or extra housing care, but rather a need to receive a domiciliary care package in his own home.

23) Council A submits that that gives rise to a conflict as between the Regulations and the Statutory Guidance and that in such circumstances the statutory definition is the one to be preferred.

## Legal framework

24) I have considered all the documents submitted by the 3 authorities, the provisions of Part 1 of the 2014 Act and the Regulations made under it, the guidance on ordinary residence issued by the Department, and the cases of R (Cornwall Council) v Secretary of State for Health [2015] UKSC 46 (“Cornwall”); R (Shah) v London Borough of Barnet (1983) 2 AC 309 (“Shah”), R (Greenwich) v Secretary of State for Health and LBC Bexley [2006] EWHC 2576 (“Greenwich”), Chief Adjudication Officer v Quinn and Gibbon [1996] 1 WLR 1184 (“Quinn Gibbon”), and Mohammed v Hammersmith & Fulham LBC [2001] UKHL 57 (“Mohammed”).

## The Care Act 2014

### The relevant local authority

25) Section 18 of the Care Act provides that a local authority, having made a determination that an adult has needs for care and support that meet its eligibility criteria, must meet those needs if, amongst other things, the adult is ordinarily resident in the authority’s area or is present in its area but of no settled residence.

### The deeming provision

26) Section 39 of the Care Act 2014 provides:

“39 Where a person’s ordinary residence is (1) Where an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations, and the adult is living in accommodation in England of a type so specified, the adult is to be treated for the purposes of this Part as ordinarily resident— (a) in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation of a type specified in

the regulations, or (b) if the adult was of no settled residence immediately before the adult began to live in accommodation of a type so specified, in the area in which the adult was present at that time.”

27) Regulation 2(1) of the Care and Support (Ordinary Residence) Regulations 2014 (SI 2828/2014) provide, as amended, that for the purposes of section 39(1) of the Care Act 2014, the following types of accommodation are specified: care home accommodation, shared lives scheme accommodation, and supported living accommodation.

28) Regulation 5 of the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 provides as follows:

“5 – Supported living etc.

(1) For the purposes of these Regulations “supported living accommodation” means

(a) accommodation in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; and

(b) accommodation which is provided –

(i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and

(ii) in circumstances in which personal care is available if required.

(2) For the purposes of paragraph (1)(b) personal care may be provided by a person other than the person who provides the accommodation.”

29) Paragraph 19.48 of the Care and Support Statutory Guidance further elaborates on the meaning of supported living as being either:

- “specialist or adapted accommodation: this means accommodation which includes features that have been built in or changed to in order to meet the needs of adults with care and support needs. This may include safety systems and features which enable accessibility and navigation around the accommodation and minimise the risk of harm, as appropriate to the individual
- “accommodation which is intended for occupation by adults with care and support needs, in which personal care is also available, usually from a different provider.”



## Ordinary residence

30) “Ordinary residence” is not defined in the 2014 Act. The Department of Health and Social Care has issued guidance to local authorities (and certain other bodies) on the question of identifying the ordinary residence of people in need of community care services.

31) In *Shah v London Borough of Barnet* (1983) 1 All ER 226, Lord Scarman stated that:

“ unless... it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that “ordinary residence” refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purpose as part of the regular order of his life for the time being, whether of short or long duration”

32) The courts have considered cases of temporary residence on a number of occasions, including in *Levene*, *Fox*, *Mohamed* and *Greenwich*. In *Fox*, the Court of Appeal considered *Levene* and Lord Denning MR derived 3 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 Widgey 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.

33) 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.”

## Application of law to the facts

34) The parties correctly identify that the issue in this case is whether X’s new accommodation meets the statutory definition of “supported living” or not.

35) I agree with Council B's construction of Regulation 5(1)(a) of the 2014 Regulations, namely that it refers to properties which are specifically designed or adapted for those with needs for care and support, not simply those with a physical disability (who may or may not have an additional need for care and support). The Care and Support Statutory Guidance also refers to property which "includes features that have been built in or changed to in order to meet the needs of adults with care and support needs." It is also legitimate in my view to have regard to the CQC guidance and Town and Country Planning (Use Classes) Regulations. I do not rely upon these directly as aids in construing any ambiguity in Regulation 5(1), but they do help to establish the factual context within which the Regulations fall to be interpreted by informing me as to the different models of residential care that are typically available.

36) In light of that interpretation of Regulation 5(1)(a), I have concluded that the accommodation at Address 1 does not meet the first part of the statutory definition of "supported living". The essential reason for this conclusion is that the property is intended for use by anyone with a physical disability, which is not the same thing as its being intended for use by anyone with a need for care and support. Only the latter is capable of satisfying the statutory test.

37) The above conclusion is consistent with the facts that:

a. The property from which X moved was ordinary local authority housing stock, as indicated for example by the fact that X's mother used to live in it with him as their family home. The mere fact that that property was adapted to meet X's needs as a physically disabled person did not make it supported living, any more than any other private home to which adaptations are made becomes a supported living placement by virtue of those adaptations.

b. The property to which X moved is open to anyone with a physical disability, whether or not they have needs for care and support.

c. There is nothing in X's support plan to suggest that he required supported living. His care package of 24-hour live-in support appears to have worked well for many years.

d. There was no change in X's care needs and he moved to Council B's area of his own volition in order to pursue better employment opportunities.

38) Nor does Address 1 meet the Reg.5(1)(b) conditions. Regulation 5(1)(b)(ii) of the 2014 Regulations provides that the accommodation must be provided "in circumstances in which personal care is available if required". Personal care is not "available if required" at Address 1, any more than such care is available by way of care package in any other ordinary household or home in the UK. In my view, regulation 5(1)(b) as a whole must be describing a situation which is in some way different from an ordinary arrangement whereby someone lives in their own home and receives planned domiciliary care from an external care agency via a care

package, otherwise it would deprive the concept of “supported living” of any real meaning. The reference in Regulation 5(1)(b)(ii) to accommodation being provided in a particular set of “circumstances”, when read in context with the whole of Regulation 5(1)(b), connotes in my view some form of recognisable, cohesive, scheme whereby the living arrangements and the personal care arrangements go in some sense hand in hand, even when not provided by the same organisation. It does not appear that X’s living and care arrangements can be described in this way.

39) The parties do not appear to dispute that, subject to the application of the deeming provision, X would fall to be regarded as being ordinarily resident in the area of Council B. For completeness, I would have reached the same conclusion were that in dispute. X moved to Council B voluntarily and with the settled purpose of seeking employment there. For these reasons, he clearly satisfies the criteria in Shah for acquiring ordinary residence in Council B.

## Conclusion

40) For the reasons given above, I determine that X is ordinarily resident in Council B and has been since the date of his move on 5 October 2015.

[↑ Back to top](#)

---

## OGI

All content is available under the [Open Government Licence v3.0](#), except where otherwise stated

© [Crown copyright](#)