

Adult Social Care Ordinary Residence Policy

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Ordinary Residence Policy		
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1. Introduction

1.1 Gloucestershire County Council (we / the Council) provides Adult Social Care services under the Care Act 2014 (the Care Act) and its regulations for:

- people aged 18 and over who because of illness, disability or some other impairment need help with everyday activities such as looking after themselves, doing household tasks or getting to work, and
- their carers. A carer is someone of any age who provides support to or looks after a family member, partner or friend who needs help because of frailty, physical or mental illness, or disability. This does not usually include people who are paid, employed or volunteer to act as carers.

1.2 This policy is about 'ordinary residence' determinations in Adult Social Care. All local authorities use ordinary residence as a key test to decide which local authority is responsible for meeting needs.

1.3 Deciding where someone is ordinarily resident is usually straightforward. Most people are ordinarily resident in the area where they have decided to live. Ordinary residence may be less clear in circumstances such as when people:

- lack mental capacity to make their own decisions about where they wish to live, or
- spend time living in more than one local authority area, for example because they have more than one home.

1.4 Care Act deeming provisions also affect ordinary residence determinations. Deeming provisions apply when local authorities meet eligible needs by arranging certain types of accommodation. When a local authority arranges accommodation in another local authority area, deeming provisions can result in someone living in one local authority area but being deemed under the Care Act to be ordinarily resident in another.

1.5 Sometimes local authorities disagree about which local authority is responsible for meeting needs. In these circumstances, the Care Act requires a lead authority to meet needs until the dispute is resolved.

2. About this policy

2.1 This policy sets out:

- what the Council considers when making an ordinary residence determination, and
- how the Council manages disputes with other local authorities about ordinary residence.

3. When this policy applies

- 3.1 This policy applies whenever the Council has to decide where someone with care and support needs or a carer is ordinarily resident.

4. Legal Context

- 4.1. This policy is based on the requirements of:

- [The Care Act 2014](#)
- [The Care and Support \(Ordinary Residence\) \(Specified Accommodation\) Regulations 2014](#)
- [The Care and Support \(Disputes between Local Authorities\) Regulations 2014](#) (the Disputes Regulations)
- [The Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in October 2014](#) (as amended).

- 4.2. Other relevant legislation includes but is not limited to:

- Mental Capacity Act 2005 (MCA)
- Mental Health Act 1983 (MHA)
- National Health Service Act 2006
- Equalities Act 2010
- Human Rights Act 1998
- Children Act 1989

5. Management responsibilities for ordinary residence determinations

- 5.1 The following senior managers have overall responsibility for ordinary residence determinations:

- Head of Service for Adult Social Care
- Lead Commissioner for Mental Health (Health/Social Care)

6. Ordinary residence and responsibilities for meeting needs

- 6.1 Where the Council has assessed needs for care and support / support as a carer and confirmed that at least some needs are eligible for state support, the Council will meet the unmet eligible needs of:

- a. adults with care and support needs who the Council has determined to be:
- ordinarily resident in Gloucestershire or
 - of no settled residence but physically present in Gloucestershire.
- b. carers who are caring for adults described in paragraph 6.1a.

- 6.2 Subject to the requirements of paragraphs 6.3 to 6.6, where an ordinary residence determination is delayed the Council will meet unmet eligible needs while the question of ordinary residence is being resolved.
- 6.3 Paragraphs 6.4 to 6.6 apply where ordinary residence is in dispute between the Council and another local authority(ies).
- 6.4 The date on which a dispute arises is the date on which the Council first provided written advice to, or received written advice from, another local authority to state that ordinary residence is disputed.
- 6.5 The Council will meet unmet eligible needs until such time as the dispute is resolved where:
- the Council was meeting needs on the date on which the dispute arose or
 - the person with care and support needs is living in Gloucestershire, or present in Gloucestershire if of no settled residence, **and** no local authority was meeting needs on the date on which the dispute arose.
- 6.6 Where another local authority was meeting needs on the date on which the dispute arose, the Council will not usually agree to meet needs until such time as the dispute is resolved and a determination is made that the Council has a duty to meet needs.
- 6.7 The Council may meet urgent needs arising in Gloucestershire for care and support or support as a carer even if the person concerned is known to be ordinarily resident in another local authority area.

7. What the Council considers when making an ordinary residence determination

- 7.1 The Council will make case by case decisions and will consider all relevant circumstances when deciding where someone is ordinarily resident or that they are of no settled residence. In particular, we will have regard to whether or not:
- Care Act deeming provisions apply - see [paragraph 7.2](#)
 - the person has capacity to make their own decisions about where they wish to live - see [paragraphs 7.3 - 7.5](#)
 - there are any other circumstances relevant to the ordinary residence decision, for example where someone spends time living in more than one local authority area because they have more than one home.

Care Act deeming provisions

7.2 The Council will make ordinary residence decisions as required by the Care Act where:

- *Eligible needs can only be met by living in specified accommodation*

Specified accommodation means care in a care home, shared lives scheme or supported living accommodation.

People whose care is arranged by the Council in specified accommodation will be deemed to be ordinarily resident in the area where they were:

- ordinarily resident immediately before they began living in the specified accommodation (usually the area of the placing authority) **or**
- physically present if they were of no settled residence.

- *Accommodation is provided under s117 Mental Health Act 1983 (after-care)*

People provided with accommodation as part of after-care services under s117 Mental Health Act (MHA) will be deemed to be ordinarily resident in the area where they were ordinarily resident immediately before they were detained under the MHA.

- *NHS accommodation is provided*

People who are admitted to an NHS hospital will be deemed to be ordinarily resident in the area where they were:

- ordinarily resident immediately before they were admitted to hospital, **or**
- physically present if they were of no settled residence.

Whether or not the person has the mental capacity to make their own decisions about where they wish to live

7.3 The Council will assume that people are able to make their own decisions about where they wish to live until we have established that they cannot. We will follow [Gloucestershire Multi Agency Mental Capacity Act policy and guidance](#) where mental capacity is in doubt.

7.4 Where a person lacks capacity to decide where to live the Council will have regard to the case of *Shah v London Borough of Barnet* [1983] 1 All ER 226 in determining their ordinary residence. In this case, Lord Scarman described ordinary residence as the place that a person has adopted voluntarily and for settled purposes. As a person who lacks capacity to decide where to live cannot be said to be living there voluntarily, the Council will consider all the relevant facts to establish whether the nature of their residence is for settled purposes for the purposes of determining their ordinary residence.

7.5 Young people who lack capacity and who are transitioning from the jurisdiction of the Children Act 1989 to adult services under the Care Act 2014 will remain resident in the local authority area which had responsibility under the Children Act - R (on the application of Cornwall Council) v Secretary of State for Health.[2015] UKSC 46.

8. When the Council determines ordinary residence to be in another local authority area

8.1 Where the Council has determined that an adult with care and support needs is ordinarily resident in another local authority's area, we will advise the relevant local authority in writing of our determination and the reason why.

8.2 The Council will require local authorities which disagree with a Council determination to supply the following documents and information (if not already supplied) before the determination can be reconsidered:

- most recent Care Act assessment and where relevant mental health assessment
- capacity assessment and best interest decision documentation (where relevant)
- care and support plan
- Guardianship order under s7 MHA (where relevant)
- any relevant Court Orders / Court or other legal authorisations (for example DoLS / LPS)
- date on which the person was first placed / intended to be placed in Gloucestershire and the reason for the placement
- type of accommodation in which the person was / will be placed
- copy of the relevant agreement, for example tenancy, placement, shared lives
- any other documentation or information which the Council considers to be necessary to reach a determination.

9. Disputes with other local authorities about ordinary residence

9.1 The Council will co-operate with other local authorities and will take all reasonable steps to resolve ordinary residence disputes as quickly as possible.

9.2 The Council will act as the lead authority in resolving the dispute where the Council has accepted responsibility for meeting needs pending the resolution of a dispute (please see [paragraphs 6.3 - 6.6](#)).

9.3 When acting as the lead authority, the Council will:

- identify, and co-ordinate discussion between, the local authorities involved in the dispute
- collect from, and share between, the local authorities any information which may help to resolve the dispute
- keep the person (or their representative) informed about progress towards resolving the dispute
- refer the matter to the Secretary of State in accordance with the requirements of the Disputes Regulations and the Care and Support Statutory Guidance where the local authorities have been unable to resolve the dispute within four months of the date on which it arose (see [paragraph 6.4](#)).

9.4 The Council will consider making a referral to the Secretary of State where:

- another local authority is acting as lead authority, and
- the local authorities have been unable to resolve the dispute within four months of the date on which it arose (see [paragraph 6.4](#)) and
- the lead authority does not refer the dispute.

10. Recovering costs from other local authorities

10.1 The Council will recover the cost of meeting needs from the responsible local authority where:

- the Council has been meeting eligible needs pending the resolution of an ordinary residence dispute, and
- a subsequent determination between the local authorities involved in the dispute or by the Secretary of State finds another local authority to be responsible for meeting eligible needs.

11. Concerns and complaints

11.1. As a first step, the Council encourages people who are dissatisfied with Adult Social Care services or with an Adult Social Care decision to:

- discuss their concerns with the staff member they are dealing with or
- ask to speak to the staff member's manager instead.

We will try to resolve concerns quickly or explain why this is not possible.

11.2 If the concern is not resolved, or if preferred, people may use Council's [complaints procedure](#) to make a complaint. We will provide information about how to use our complaints procedure.

12. Implementing and monitoring policy

12.1. This policy will be published on the Council's website.

12.2 The Council will advise staff and where relevant commissioned services that policy has been revised.

12.3 The Council will monitor compliance with this policy through routine quality assurance processes such as manager / supervisor oversight of casework.

13. Review

13.1 The Council will review this policy by April 2023.