

# Adult Social Care Policies and Procedures

## ORDINARY RESIDENCE

Including Disputes and Financial Adjustments

**WARNING!** Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

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## ORDINARY RESIDENCE

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## POLICY VERSION CONTROL

<b>POLICY NAME</b>	Ordinary Residence Including Disputes and Financial Adjustments		
<b>Document Description</b>	“Ordinary residence” is crucial in deciding which local authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is “ordinarily resident” in the area of the local authority is a key test in determining where responsibilities lie between local authorities for the funding and provision of care and support. A local authority is only required to meet needs in respect of an adult who is “ordinarily resident” in their area (or is present there but has no settled residence).		
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<b>Signed</b>		<b>Date Approved</b>	

DOCUMENT CHANGE HISTORY			
Version No	Date	Issues by	Reason for change

## 1. POLICY STATEMENT

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 applies to Social Services and 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 rests 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 assessed needs are required to be met, the Council must accept provisional responsibility 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 individual's 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 Lancashire County Council (Council) Ordinary Residence Procedures should be read in conjunction with the National Guidance and amendments as per Care Act 2014, The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 and Care Act Statutory Guidance Oct 2014. The National Guidance and Care Act Guidance provides details of situations in which a person's ordinary residence may be an issue.

Therefore to fulfil its duty under section 39 to 41 of the Care Act, the Council will, working with its statutory, voluntary and private sector partners, comply to ordinary residence guidance relating to individuals who require care and support.

The Council will make all reasonable adjustments to ensure that all disabled people have equal access to participate in the ordinary residence decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

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, this is why it is a complex area of decision making.

### **2.2 Lancashire:**

All references to "Lancashire" in this document mean, Lancashire as a geographical location. Where it seems any references relate to Lancashire County 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.

## **3. PROCEDURES**

### **3.1 When to establish ordinary residence:**

Ordinary residence should be determined as soon as possible after a person contacts us to request an assessment of social care needs and once any urgent needs have been met.

Customer Service Centre staff and community 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 Lancashire or elsewhere:**

The meaning of Ordinary Residence is outlined in 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 Act Statutory Guidance advises, the term should be given its ordinary and natural meaning (Page 343, para 19.12).

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

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

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?

To help you 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 Lancashire you should seek advice from your manager and/or the legal team.

### **3.3 People Acquiring Ordinary Residence INTO Lancashire, (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 Lancashire.

### **3.4 People Acquiring Ordinary Residence OUT of Lancashire, (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 Lancashire.

### **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 Oct 2014 (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. If staff are unclear they should seek assistance from their Advanced Practitioner/ Operations Manager and if necessary seek Legal advice ([adlegaladvice@lancashire.gov.uk](mailto:adlegaladvice@lancashire.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 Act Statutory Guidance Oct 2014 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 at the assessment and eligibility stage that an individual is the responsibility of Lancashire County Council i.e. an Ordinary Resident.

If staff are unclear about an individual's Ordinary Residence firstly they should discuss the case with an Advanced Practitioner. If after consulting the information available to them the individual's Ordinary Residence remains unclear they should contact Principal Social Worker(s). If it still remains unclear Lancashire's Legal Section should be contacted for advice and how to proceed.

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

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

On discussion with the Advanced Practitioner/ Operations Manager the Social Care 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 Care Worker is to urgently refer to Legal Section ([adlegaladvice@lancashire.gov.uk](mailto:adlegaladvice@lancashire.gov.uk)) with full details as per standard referral form.

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

The Operations Manager needs to refer to the Area Operations Manager to discuss 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 Lancashire 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 the Area Operational Manager (or lead for Adult Mental Health cases). The Area Operational 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



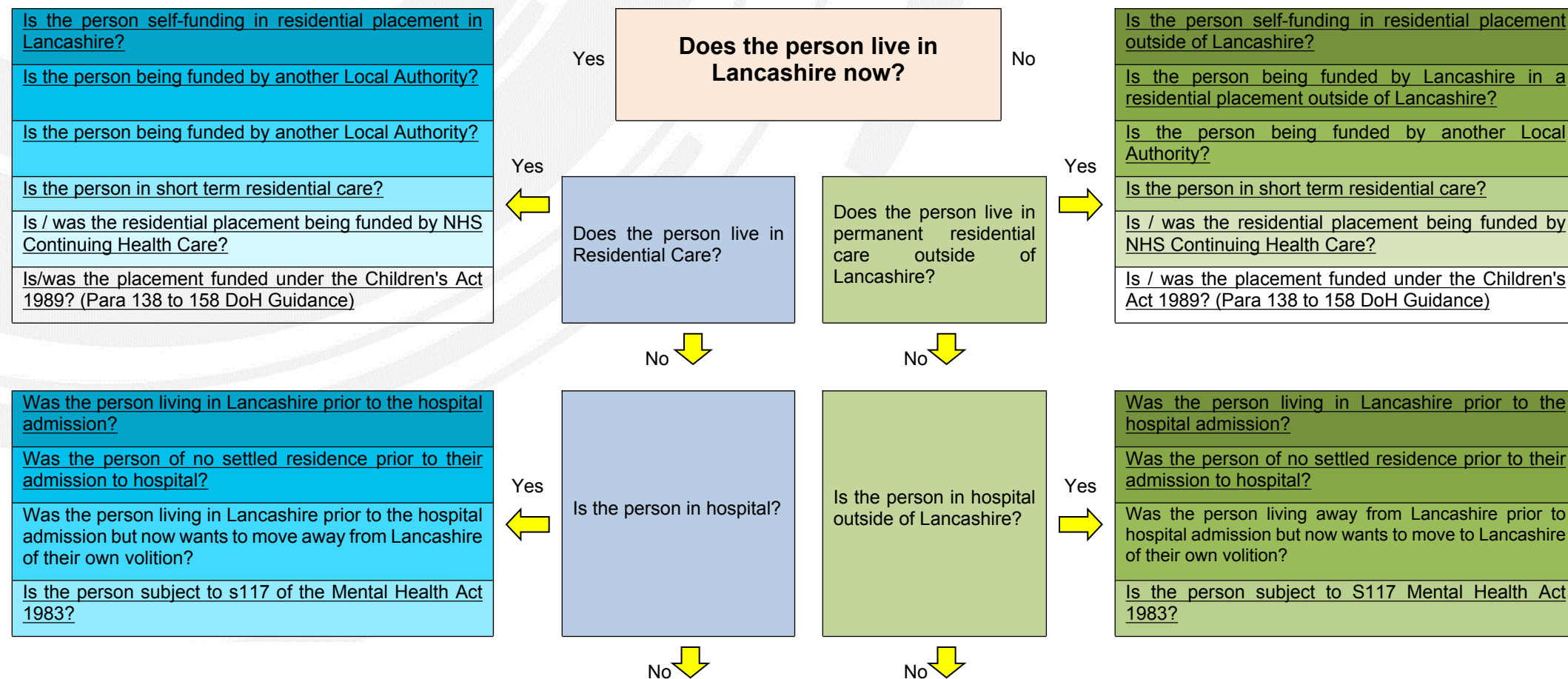
- Ensure that the individual and their family/representative as appropriate are kept up to date with progress on the dispute
- If the dispute is not resolved within four months of the date on which it arose, then the 'lead authority' must refer the dispute to the Secretary of State/ appropriate person 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;
    - (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;

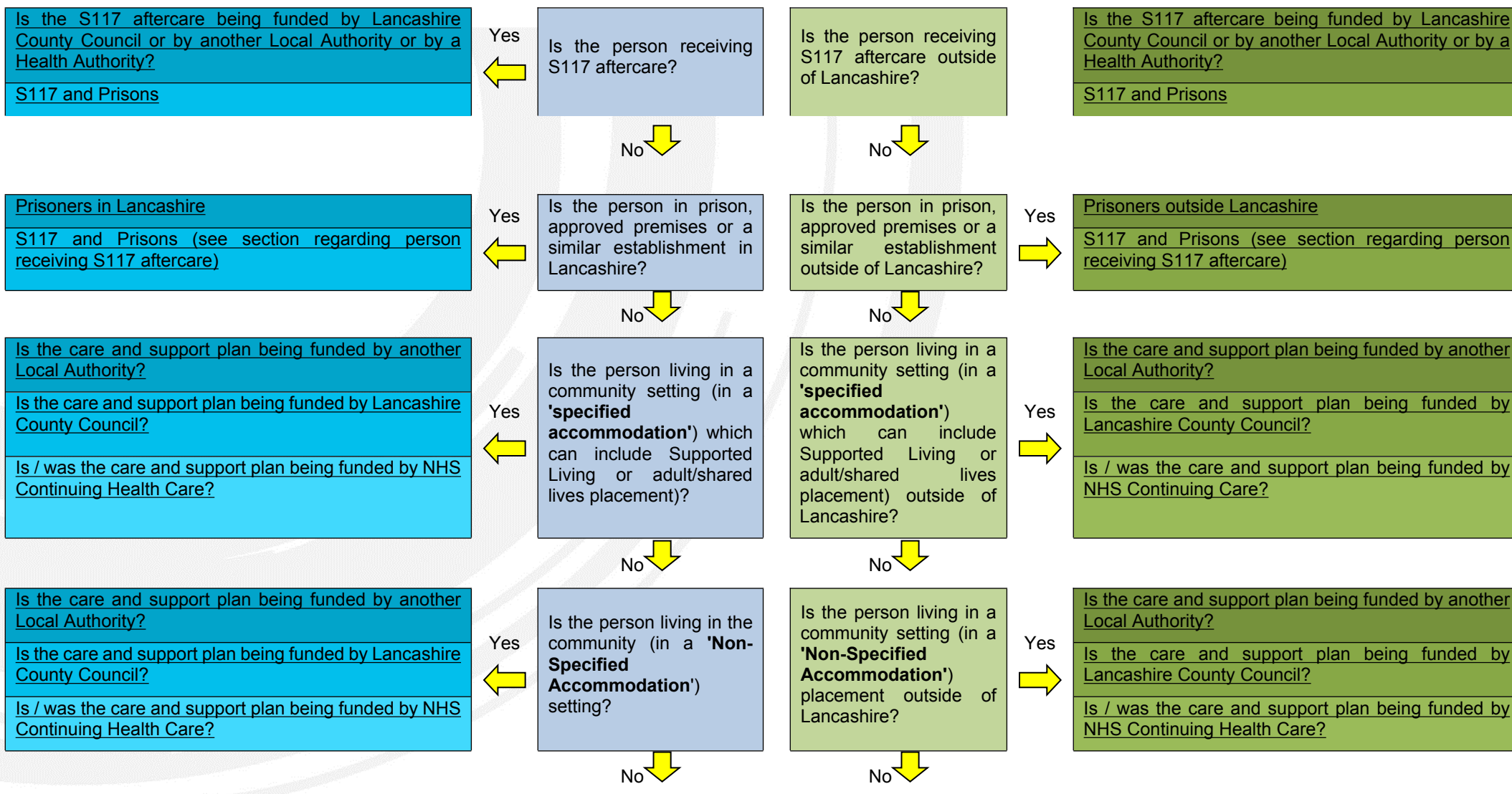
- (i) details of the steps that the authorities have taken to resolve the dispute between themselves; and
- (j) any other information which appears to any of the authorities to be relevant to the determination of the dispute.

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.

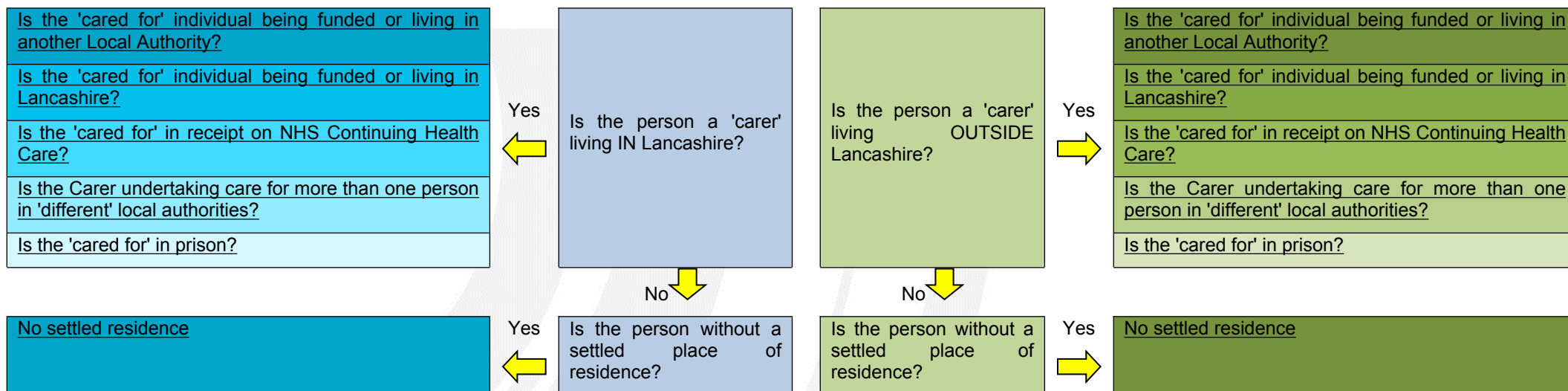
## 4 FLOW CHARTS/ DIAGRAMS OR EXAMPLES

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 the flowchart.









## Ordinary Residence

### Does the person live in Residential Care?

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

A person who had the capacity to consent to a move to a permanent residential care in Lancashire under a private agreement will usually be ordinarily resident in Lancashire. 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 Lancashire after the 12 week disregard period (para 84 to 86 of DoH Guidance)- depending on the specifics of each case. Care Act 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 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 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.

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

(Care Act Statutory Guidance pages 346-348) (section 39 Care Act 2005).

If another Local Authority made arrangements for the provision of the person's residential accommodation in Lancashire 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 Lancashire 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 Lancashire under section 3 (or other qualifying section) of the Mental Health Act and becomes entitled to s117 aftercare Lancashire 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.

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

(Care Act 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 Lancashire 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 Lancashire and require Local Authority funding then the existing funding authority should arrange that placement. They would then remain responsible for such funding.

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**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.

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**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 Act Statutory Guidance Annex H5 pages 475-476).

This includes NHS continuing Care and case management and will include GP practices.

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**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 Lancashire, 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 Lancashire. In this situation, their accommodation would be provided by Lancashire 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 (105(6)) of the 1989 Act 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.

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

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

If a person who was ordinarily resident in Lancashire prior to admission is to be discharged from hospital to residential or 'specified' accommodation outside of Lancashire 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.

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**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 Act 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 Act Statutory Guidance paras 19.53-19.66 and Annex H9 page 488 and s40/41 care Act 2005.

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**Was the person living in Lancashire prior to the hospital admission but now wants to move away from Lancashire**

Where a person has decided that they want to move out of Lancashire on discharge to a 'non-specified' community placement (for example to be closer to family) it is likely they will become ordinarily resident in the area that they move to. We should contact the receiving 'second' Local Authority to include them in the discharge process.

If the person will be moving to a residential or 'specified' placement outside of Lancashire on discharge the person will be deemed for the purpose of arranging that placement to be ordinarily resident in the area where they were living immediately before admission to hospital (para 60 to 65 of the DoH guidance). If they resided in Lancashire, then that person would remain the responsibility of Lancashire County Council. If however the person self-funds the residential placement they will become ordinarily resident in the area where the residential home is situated, if they do not qualify for the 12 week disregard or 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, section 40/41 care Act 2005 and seek legal advice, if required and prior to any dispute discussions taking place with the other authority.

If a best interest decision has been made regarding a change of location, then this means that the person lacks capacity to make decisions in this area. Paragraph 19.21 of the statutory guidance and the recent Cornwall case state this clearly. The supreme court ruling might be challenged but it is good law at the time of writing the policy. A person who lacks the capacity to make decisions around residence "cannot voluntarily adopt a place of ordinary residence".

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

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. Noteworthy that s117 (6) introduces a definition for the first time of aftercare services.

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 s 117 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 where 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)

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### Is the person receiving S117 aftercare?

#### Is the s117 aftercare being funded by Lancashire County Council or by another Local Authority or by a Health Authority?

Once entitlement to s117 aftercare is established responsibility rests with the same Local Authority even if the person moves to a new area.

The s117 responsibility is **re-considered** if the person is **re-detained** under a provision of the 1983 Act and continues to be eligible for s117 aftercare until formally discharged.

The Authority where the person was living immediately prior to the most recent detention is responsible for the s117 after-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.

#### 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)

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### **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 disapplied 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 Lancashire Prison when detained they will remain the responsibility of Lancashire 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 Lancashire, then Lancashire 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.)

**Please note there is a s75 Agreement with LCFT and Lancashire County Council to facilitate any required needs of prisoners. Please seek legal advice should you require any further discussions and/or information on this matter.**

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

**Prisoners etc.** (Care Act Section 76(1), Care Act Statutory Guidance Oct 2014 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. whilst resident in a prison, approved premises etc. they are to be considered as an ordinary resident of Lancashire. 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 Lancashire, the responsibility for care and support will transfer to the new area/ Local Authority. In these situations Continuity of Care (Care Act 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 Statutory Guidance as it makes it clear that the deeming provisions in s39 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. Ten 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.

Please note there is a s75 Agreement with LCFT and Lancashire County Council to facilitate any required needs of prisoners. Please seek legal advice should you require any further discussions and/or information on this matter.

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**S117 and Prisons** (see section regarding person receiving S117 aftercare)

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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 Lancashire unless moving into a 'non-specified' accommodation setting. (The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014)

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

(see Care Act Statutory Guidance Chapters 19 & 20)

Lancashire 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 Lancashire, we (Lancashire) will remain responsible for these transfers.

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

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

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**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)

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Is the person living in a 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 Lancashire, 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 Lancashire County 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.

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

If the individual is receiving care and support from the council and wishes to move from present to new accommodation **within** Lancashire, 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 Lancashire and wishes to move from present to new accommodation **outside** Lancashire, then this is their decision. At this time the individual or Lancashire 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.

This is accurate as long as it is established that the individual has the capacity to make this decision

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

- If the individual had chosen to move to Lancashire 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 Lancashire 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 Manager/ Advanced Practitioner on a case by case basis and seek Legal advice as necessary

(para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

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## Is the person a 'carer' living IN Lancashire?

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

If the carer lives in Lancashire 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 Act Statutory Guidance Chapters 19.6)

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### Is the 'cared for' individual being funded by Lancashire County Council or living in Lancashire

(see Care Act Statutory Guidance Chapters 19.6)

If the carer and the 'cared for' both live in Lancashire then the carer is the responsibility of Lancashire County 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 Lancashire, then the carer is the responsibility of Lancashire County 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 Lancashire County Council the carer is the responsibility of Lancashire County Council for the carers assessment, carers eligibility decision and for the provision of carers support as per Lancashire County Council procedures.

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

If the 'cared for' would be the responsibility of Lancashire County 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 Lancashire County Council whether they live in Lancashire 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 Lancashire County 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.

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**Is the Carer undertaking care for more than one person in 'different' local authorities**

(see Care Act 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.

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

If the 'cared for' is in a prison in Lancashire, then any request for a carers assessment would be the responsibility of Lancashire County 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 carers 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 Act Statutory Guidance)

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**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 Act Statutory Guidance para 19.23)

S 18 & S 20 Care Act 2005 states that it is highly likely that a person physically present within Lancashire with no settled residence (prior to moving to Lancashire) would become Ordinarily resident within Lancashire.

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 Act Statutory Guidance Annex H6 page 477.

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**Does the person live in permanent residential care OUTSIDE of Lancashire?****Is the person self-funding in residential placement outside of Lancashire?**  
(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 Lancashire gave advice and some information prior to a move into the residential placement.

If Lancashire County 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 Act 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 (Lancashire) authority, such as a Deferred Payment Agreement.

During the 12 week disregard period, an authority (Lancashire) should be offering a Deferred Payment Agreement to those who qualify. If the person accepts a deferred payment agreement from Lancashire Local Authority after the 12 week property disregard period then the individual remains the responsibility of Lancashire 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 Lancashire made the arrangement then the person remains ordinarily resident in Lancashire 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.

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

If Lancashire County 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. Lancashire County 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 Lancashire County Council (the 'first') authority.

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

(see Care Act 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 Lancashire 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 Lancashire and require Local Authority funding then the existing funding authority (first authority) where the person lives or lived should arrange that placement.

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

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

[Back to top](#)**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)

-if placement was after 19<sup>th</sup> April 2010 then, if 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 Act Statutory Guidance Annex H5 pages 475-476)

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**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 Lancashire, 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 provisions, provided by the placing authority under the Children Act 1989 Act. As leaving care services 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 Lancashire. In this situation, their accommodation would be provided by Lancashire but the provision of their leaving care would remain the responsibility of the local authority that had responsibility for them under the 1989 Act.

Please note, 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's Act.

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**Is the person in hospital OUTSIDE of Lancashire?****Was the person living in Lancashire prior to the hospital admission?**

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

If a person is to be discharged from hospital to residential or 'specified' accommodation outside of Lancashire 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.

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**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 Act 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 Act Statutory Guidance paras 19.53-19.66 and Annex H9 page 488

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**Was the person living away from Lancashire prior to the hospital admission but now wants to move to Lancashire of their own volition.**

Where a person has decided that they want to move to Lancashire on discharge to a 'non-specified' community placement (for example to be closer to family) to move to Lancashire it is likely they will become ordinarily resident in Lancashire and we should undertake a social care assessment for a 'non-specified' community placement – as long as the individual had the capacity to make such decisions.

However if the person will be moving to a residential or 'specified accommodation' placement the person will be deemed for the purpose of arranging that placement to be ordinarily resident in the area where they were living immediately before admission to hospital (para 60 to 65 of the DoH guidance). If the person self-funds the placement they will become ordinarily resident in Lancashire, if they do qualify for the 12 week disregard or Deferred Payment Agreement from the 'first' Local Authority.

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), Also, section 40/41 care Act 2005 and seek legal advice, if required and prior to any dispute discussions taking place with the other authority.

If a best interest decision has been made regarding a change of location, then this means that the person lacks capacity to make decisions in this area. Paragraph 19.21 of the statutory guidance and the recent Cornwall case will be considered. The supreme court ruling might be challenged but it is good law at the time of writing this policy. A person who lacks the capacity to make decisions around residence "cannot voluntarily adopt a place of ordinary residence".

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

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 immediately resident prior to their detention will become responsible for their aftercare (para 179 to 189 DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority. However, this is a continuing duty until both Health and Social Services are satisfied that the individual no longer has a need of services (s117(92)) MHA 1983. S 117(6) introduces a definition of aftercare services for the first time. The effect of s39(4) is that if aftercare services under s117 includes provision of accommodation, the individual does not acquire the Ordinary residence in the area where he has been provided with that accommodation- if different from his existing place of Ordinary residence.

**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)

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**Is the person receiving S117 aftercare OUTSIDE of Lancashire?****Is the s117 aftercare being funded by Lancashire County 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. 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.

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### **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 disapplied 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 Lancashire Prison when detained they will remain the responsibility of Lancashire County Council 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 Lancashire, then Lancashire County Council 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).

**There is a s75 agreement in place between the Local Authority and LCFT to facilitate any required needs of prisoners in Lancashire. Any queries will need to take into consideration of the s 75 agreement.**

[Care and Support Statutory Guidance Page 322 Chapter 17.6.]

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

**Prisoners etc.** (Care Act Section 76(1), Care Act Statutory Guidance Oct 2014 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 Manchester for example then Manchester 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 Manchester for example, the responsibility for care and support will transfer to the new area/ Local Authority. In these situations Continuity of Care (Care Act 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 Statutory Guidance as it makes it clear that the deeming provisions in s 39 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.

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**S117 and Prisons** (see section regarding person receiving S117 aftercare)

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

**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 Lancashire** 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 Lancashire** 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 Lancashire in the future. Once made aware of this the council should instigate the Continuity of Care protocols

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

(Care Act Statutory Guidance Chapters 19 & 20)

Lancashire County 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 Lancashire, 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 Lancashire, 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** Lancashire then they will clearly remain an ordinary resident of Lancashire County Council.

Should the individual be able to move to a '**non-specified**' accommodation setting **outside** Lancashire 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

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**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 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)

Therefore if they previously lived in Lancashire and were moved into another Local Authority under NHS CHC they would revert to being a Lancashire County Council funding responsibility from the date when they no longer meet.

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.

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**Is the person living in a community setting (in a 'Non-Specified Accommodation' placement) OUTSIDE of Lancashire?****Is the care and support plan being funded by another Local Authority**

(Care Act 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 any decisions regarding residence.

If the person is planning to move into 'non-specified' accommodation in Lancashire of either their own volition or because of a best interest decision has determined that it is in their best interest to move to Lancashire, then we would need to follow the Continuity of Care protocols. This would include ideally undertaking an assessment prior to the individual moving into Lancashire.

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**Is the care and support plan being funded by Lancashire**

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

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**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 Lancashire 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 Lancashire County council to fund.

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

(para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

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## Is the person a 'carer' living OUTSIDE Lancashire?

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

(Care Act Statutory Guidance Chapters 19.6)

If the carer lives in Lancashire but the 'cared for' lives in another Local Authority, and is not funded by Lancashire County Council, then the carer is the responsibility of the authority where the 'cared for' lives or the funding authority.

If the carer lives **outside** of Lancashire but the 'cared for' person lives in Lancashire but is funded by another Local Authority that 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.

If the carer and individual live outside Lancashire and Lancashire County Council are not funding the care/placement, then neither 'cared for' or carer are the responsibility of Lancashire

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### Is the 'cared for' individual being funded by Lancashire County Council or living in Lancashire

(Care Act Statutory Guidance Chapters 19.6)

If the carer lives **outside** of Lancashire but the 'cared for' person lives in Lancashire then Lancashire County Council will also be responsible for the carers assessment, carers eligibility decision and for the provision of carers support services as per our procedures

If the carer lives **outside** of Lancashire and the 'cared for' lives outside of Lancashire but is funded by Lancashire County Council, both carer and cared for are the responsibility of Lancashire for assessment, eligibility decisions and funding as per our procedures.

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

If the 'cared for' person would be considered and 'ordinary resident' of Lancashire, 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 Lancashire County Council whether they live in Lancashire 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 Lancashire County 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**

(Care Act 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.

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

If the 'cared for' is in a prison outside Lancashire, then any request for a carers assessment would be the responsibility of the geographical area where the prison is situated. Therefore any request for such an assessment needs to be re-directed to the appropriate local authority who will have agreement how such assessment are undertaken.

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.

**Please note there is a s75 agreement between the Local Authority and LCFT around providing some mental health services to prisoners.**

(see Chapter 17 of Care Act Statutory Guidance)

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**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 Act 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 Act Statutory Guidance Annex H6 page 477.

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## 5 DOCUMENT HISTORY

RELATED DOCUMENTS	
OTHER RELATED DOCUMENTS	<ul style="list-style-type: none"> <li>• Continuity of Care Policy</li> <li>• Cross Border Placements Policy</li> </ul>
LEGISLATION OR OTHER STATUTORY REGULATIONS	<ul style="list-style-type: none"> <li>• The Care Act 2014 - Part 1 Sections 39 to 41</li> <li>• The Care and Support (Disputes Between Local Authorities) Regulations 2014.</li> <li>• The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014</li> <li>• Chapter 19 Ordinary residence, Statutory Guidance October 2014</li> <li>• ORDINARY RESIDENCE: Guidance on the identification of the ordinary residence of people in need of community care services, England</li> <li>• Mental Capacity Act 2005</li> </ul>