



Department
of Health

Care and Support Statutory Guidance

Issued under the Care Act 2014

June 2014

Moving between areas:
inter-local authority and
cross-border issues

19. Ordinary residence

This chapter provides guidance on:

- Sections 39-41 of the Care Act 2014;
- *The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014;*
- *The Care and Support (Ordinary Residence Disputes etc.) Regulations 2014.*

This chapter covers:

- How ordinary residence affects the legal framework in the Care Act;
- How to determine ordinary residence;
- Determining ordinary residence when a person moves into certain types of accommodation out of area;
- Disputes between authorities, and the process for seeking a determination by the Secretary of State for Health or appointed person;
- Further information around ordinary residence and relevant scenarios (see annexes J1-J8).

19.1. It is critical to the effective operation of the care and support system that local authorities understand for which people they are responsible; and that people themselves know who to contact when they need care and support. Many of the local authority's care and support responsibilities relate to the entire local population (for instance, in relation to information and advice or preventive services). However, when it comes to determining which individuals have needs which a local authority is required to meet, the local authority is only required to provide needs in respect of an adult who is ordinarily resident in their area.

19.2. "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.

19.3. Ordinary residence is not a new concept – it has been used in care and support for many years. However, there have been in the past, and will continue to be cases in which it is difficult to establish precisely where a person is ordinarily resident, and this guidance is intended to

help resolve such situations. The Care Act also extends the principle of “deeming” certain people to be ordinarily resident in a particular local authority when some types of accommodation are arranged for them in another area, and the guidance also describes how these provisions should be put into practice.

19.4. This chapter of the guidance should also be read with Annexes J1-J8, which provides further detailed guidance on specific situations and circumstances which may arise, and where the question of ordinary residence may be unclear.

How does ordinary residence affect the provision of care and support?

19.5. Ordinary residence is one of the key tests which must be met to establish whether a local authority is required to meet a person’s eligible needs. It is therefore crucial that local authorities establish at the appropriate time whether a person is ordinarily resident in their area, and whether such duties arise.

19.6. The test for ordinary residence, which determines which local authority would be responsible for meeting needs, applies differently in relation to adults with needs for care and support and carers. For adults with care and support needs, the local authority in which the adult is ordinarily resident will be responsible for meeting their eligible needs. For carers, however, the responsible local authority will be the one where the adult for whom they care is ordinarily resident. Establishing responsibility for the provision of care and support for carers, therefore, requires the local authority to consider the ordinary residence of the adult needing care.

19.7. Local authorities **must** determine whether an individual is ordinarily resident in their area following the needs or carer’s assessment, and after determining whether the person has eligible needs (see chapter 6). Determining ordinary residence is a key additional requirement in establishing whether the duty to meet needs under section 18 or 20 of the Act is triggered, so this must be taken into consideration when deciding if the local authority is to meet the person’s needs.

19.8. Local authorities **should not** use a decision on ordinary residence to exclude people from the assessment process inappropriately.

19.9. The determination of ordinary residence **should not** delay the process of assessment or determination of eligible needs, nor should it stop the local authority from meeting the person’s needs. In cases where ordinary residence is not certain, the local authority **should** meet the individual’s needs first, and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between two or more local authorities.

How to determine ordinary residence

19.10. The local authority’s responsibility for meeting a person’s eligible needs under the Care Act is based on the concept of “ordinary residence”. However, there is no definition of “ordinary residence” in the Act. Therefore, the term should be given its ordinary and natural meaning.

19.11. In most cases, establishing the person’s ordinary residence is a straightforward matter. However, this is not always the case. There will be circumstances in which ordinary residence is not as clear-cut, for example when people spend their

time in more than one area, or move between areas. Where uncertainties arise, local authorities **should** always consider each case on its own merits.

19.12. The concept of ordinary residence involves questions of both fact and degree. Factors such as time, intention and continuity (each of which may be given different weight according to the context) have to be taken into account. The courts have considered the meaning of "ordinary residence" and the leading case is that of *Shah v London Borough of Barnet* (1983). In this case, Lord Scarman stated that:

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

19.13. Local authorities **should** always have regard to this case when determining the ordinary residence of people who have capacity to make their own decisions about where they wish to live. For people who lack capacity to make decisions about their accommodation, an alternative approach is appropriate because a person's lack of mental capacity may mean that they are not able to voluntarily adopt a particular place.¹⁴⁴

19.14. Local authorities **should** in particular apply the principle that ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled

purposes, irrespective of whether they own, or have an interest in, a property in another local authority area. 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.

Cases where a person lacks capacity

19.15. All issues relating to mental capacity should be decided with reference to the Mental Capacity Act 2005 ("the 2005 Act").¹⁴⁵ Under this Act, it **should** always be assumed that adults have capacity to make their own decisions, including decisions relating to their accommodation and care, unless it is established to the contrary.

19.16. The test for capacity is specific to each decision at the time it needs to be made, and a person may be capable of making some decisions but not others. It is not necessary for a person to understand local authority funding arrangements to be able to decide where they want to live.

19.17. If it can be shown that a person lacks capacity to make a particular decision, the 2005 Act makes clear who can take decisions on behalf of others, in which situations and how they should go about doing this. For example, if a person lacks capacity to decide where to live, a best interests decision about their accommodation should be made under the 2005 Act. Under section 1(5) of the 2005 Act, any act done, or decision made (which would include a decision relating to where a person without capacity should live), must be done in the

¹⁴⁴ The use of this approach – known as Vale 1, is currently the subject of litigation and the guidance will be amended in due course

¹⁴⁵ The Mental Capacity Act 2005 Code of Practice is available at the following address: <http://www.dca.gov.uk/menincap/legis.htm#codeofpractice>

best interests of the person who lacks capacity. Section 4 of the 2005 Act sets out how to work out the best interests of a person who lacks capacity and provides a checklist of factors for this purpose.

19.18. If a person has been placed in accommodation following a best interests decision under the 2005 Act and uncertainties arise about their place of ordinary residence, an alternative test should be used to establish ordinary residence. However, a person's mental capacity **should** always be taken into account when making any decision about their ordinary residence and different tests should only be used where it can be shown that a person is not capable of forming their own decision as to where to live. This is because the use of a different test is based on the assumption that the person lacking capacity cannot have adopted their place of residence voluntarily, as would usually be the case.

19.19. In the case of a person whose parents are deceased, people who have become ordinarily resident in an area and then lost capacity or have limited contact with their parents, the approach known as Vale 2 is appropriate. This involves considering a person's ordinary residence as if they had capacity. All the facts of the person's case should be considered, including physical presence in a particular place and the nature and purpose of that presence but without requiring the person have voluntarily adopted the place of residence.

People with no settled residence

19.20. Where doubts arise in respect of a person's ordinary residence, it is usually possible for local authorities to decide that the person has resided in one place long enough, or has sufficiently firm intentions in relation to that place, to have acquired an ordinary residence there. Therefore, it should only be in rare circumstances that local authorities conclude that someone is of no settled residence. For example, if a person has clearly and intentionally left their previous residence and moved to stay elsewhere on a temporary basis during which time their circumstances change, a local authority may conclude the person to be of no settled residence.

19.21. Sections 18 and 20 of the Care Act make clear that local authorities have a duty to meet the eligible needs of people if they are present in its area but of no settled residence. In this regard, people who have no settled residence, but are physically present in the local authority's area, **should be treated the same as those who are ordinarily resident.**

19.22. A local authority may conclude that a person arriving from abroad is of no settled residence, including those people who are returning to England after a period of residing abroad and who have given up their previous home in this country. For more details on people returning to England after a period of living abroad, see Annex J6 (British citizens resuming permanent residence in England after a period abroad).

area in which the person concerned was ordinarily resident immediately before they were detained under the 1983 Act, even if the person becomes resident in another area where they are detained, or on leaving hospital. The responsible local authority may change, if the person is ordinarily resident in another area immediately before a subsequent period of detention.

Other common situations

Temporary absences

19.40. Having established ordinary residence in a particular place, this **should not** be affected by the individual taking a temporary absence from the area.¹⁵¹ The courts have held that temporary or accidental absences, including for example holidays or hospital visits in another area,¹⁵² should not break the continuity of ordinary residence, and local authorities should take this into account.

19.41. The fact that the person may be temporarily away from the local authority in which they are ordinarily resident, does not preclude them from receiving any type of care and support from another local authority if they become in urgent need (see Annex J1 for further guidance regarding persons in “urgent need”). Local authorities have powers in the Care Act to meet the needs of people who are known to be ordinarily resident in another area, at their discretion and subject to their informing the authority where the person is ordinarily resident.

People with more than one home

19.42. Although in general terms it may be possible for a person to have more than one ordinary residence (for example, a person who divides their time equally between two homes), this is not possible for the purposes of the Care Act 2014. The purpose of the ordinary residence test in the Act is to determine which single local authority has responsibility for meeting a person’s eligible needs, and this purpose would be defeated if a person could have more than one ordinary residence.

19.43. If a person appears genuinely to divide their time equally between two homes, it would be necessary to establish (from all of the circumstances) to which of the two homes the person has the stronger link. Where this is the case, it would be the responsibility of the local authority in which the person is ordinarily resident, to provide or arrange care and support to meet the needs during the time the person is temporarily away at their second home.

19.44. Further scenarios which may occur are set out in Annex J, and may be used by local authorities to support cases where there may be uncertainty as to an individual’s ordinary residence.

Resolving ordinary residence and continuity of care disputes

19.45. In the majority of cases, determining ordinary residence should be straightforward. However, there will be occasions where a person’s residency status is more complicated to define, and in such cases, disputes may arise between two or more local authorities as to which should be responsible for meeting that person’s needs.

¹⁵¹ *Levene v Inland Revenue Commissioners* (1928) AC 217

¹⁵² *Fox v Stirk* 1970 2 QB 463

19.46. As required in the regulations, where disputes occur, local authorities **must** take all reasonable steps to resolve the dispute between the various parties. This may include one local authority agreeing responsibility, or bespoke agreements to share any costs involved in meeting the person's needs. Where disputes cannot be resolved through discussion, the Secretary of State or an appointed person may be required to determine disputes.

19.47. Disputes **should not** run on indefinitely. Local authorities **must** take all steps necessary to resolve the dispute themselves before making a referral for a determination. If having taken appropriate legal advice and considered the position they are still unable to resolve a particular dispute, they must apply for a determination. A determination by the Secretary of State or appointed person **should only** be considered as a last resort.

19.48. It is critical that the person does not go without the care they need, should local authorities be in dispute. One of the local authorities involved in the dispute **must** provisionally accept responsibility for the person at the centre of the dispute and be providing services. Where local authorities cannot agree which authority should accept provisional responsibility for the provision of services, *the Care and Support (Ordinary Residence Disputes) Regulations 2014*¹⁵³ provide that the local authority in which the person is living or is physically present **must** accept responsibility until the dispute is resolved. If the person is homeless, the authority in whose area that person is physically present must do so. The local authority which has accepted provisional

responsibility is referred as the “the lead local authority”.

19.49. The Secretary of State or appointed person will not make a determination unless there is evidence that one local authority has provisionally accepted responsibility for the provision of services. The provisional acceptance of responsibility by one local authority does not influence any determination made by the Secretary of State.

19.50. If a determination by the Secretary of State or an appointed person subsequently finds another local authority to be the authority of ordinary residence, the lead local authority can recover costs from the authority which should have been providing the relevant care and support.

19.51. The Secretary of State or appointed person cannot make determinations in relation to services that may be provided in the future. Local authorities should note that where disputes arise as set out in the regulations, the assessed needs of the person **should** be met during the period of dispute. Local authorities **should not** provide reduced packages of care while the dispute is being determined.

19.52. A question as to a person's ordinary residence can only arise where two or more local authorities are in dispute about the place of ordinary residence of a person. In such a case, the authorities may apply for a determination. Where the local authorities concerned are in agreement about a person's ordinary residence, but the person is unhappy with the decision, the person would have to pursue this with the authorities concerned, and could not apply to the Secretary of State or an appointed person for a determination.

¹⁵³ The Care and Support (Ordinary Residence Disputes) Regulations 2014. These regulations also apply to disputes in relation to continuity of care and provider failure (see chapters X and Y)

19.59. If during a determination of the ordinary residence dispute by the Secretary of State or appointed person, a local authority in dispute is asked to provide further information to the Secretary of State or appointed person, that local authority **must** provide that information without delay.

19.60. If the local authorities involved in the dispute reach an agreement whilst the Secretary of State is considering the determination, they **should** notify the Department of Health at the above address. Both parties must confirm that the dispute has been resolved after which the determination will be closed down.

19.61. The Department of Health makes available anonymised copies of determinations it has made.¹⁵⁴ Although these do not set a precedent, as each case must be considered in the light of its own particular facts, they may provide local authorities with useful guidance when faced with similar circumstances.

19.62. Disputes about a person's ordinary residence in connection with section 117 arising between a local authority in England and a local authority in Wales, can be referred to the Secretary of State or appointed person, or Welsh Minister for determination.

Reconsidering disputes

19.63. If further facts come to light after a determination has been made, it may be appropriate for the Secretary of State or appointed person to reconsider the original determination. As a consequence of this, a different determination may be substituted. For example, because of the first determination, local authority A has paid an amount to local authority B but because of the effect of the second determination, some

or all of the amount paid by local authority A to local authority B was not required to be paid. In this situation local authority B must repay that sum to local authority A.

19.64. Any review of the determination must begin within three months of the date of the original determination. This is needed to ensure clarity and fairness in the process and minimise the amount of time taken for determinations to be made.

Financial adjustments between local authorities

19.65. Sometimes a local authority has been paying for a person's care and support, but it becomes apparent that the person is in fact ordinarily resident elsewhere. In these circumstances the local authority which has been paying for that person's care can reclaim the costs from the local authority where the person was ordinarily resident.

19.66. This can occur in cases where it is not clear initially where the person is ordinarily resident. In order to ensure that the individual does not experience any delay to their care due to uncertainty over their ordinary residence, local authorities **should** be able to recover any losses due to initial errors in deciding where a person is ordinarily resident. This also extends to costs spent supporting the carer of the person whose ordinary residence was in dispute.

19.67. However it does not apply where the local authority has chosen to meet the person's needs in the knowledge they were ordinarily resident elsewhere. If a determination has been revised as referred to in the paragraphs above that covers reconsideration of dispute, and because of the first determination, local authority A has paid an amount to local authority B, but because of the effect of the second

¹⁵⁴ <https://www.gov.uk/government/collections/ordinary-residence-pages>

determination, some or all of the amount paid by local authority A to local authority B was not required to be paid, local authority B must repay that sum to local authority A.

The types of settings and scenarios where these issues arise

19.68. The following annexes signposts other areas of legislation and guidance which are of relevance to ordinary residence. It provides information and scenarios in which a person's ordinary residence may be an issue. It also provides information regarding other legislation under which an ordinary residence determination can be sought.

Annex J1 – Persons in urgent need.

Annex J2 – People who are party to deferred payment agreements.

Annex J3 – People who are accommodated under the 12 week property disregard.

Annex J4 – People who are arranging and paying for their own care.

Annex J5 – NHS Continuing Health Care.

Annex J6 – British citizens resuming permanent residence in England after period abroad.

Annex J7 – Armed forces veterans and the families of armed forces personnel.

Annex J8 – Young people in transition from children's services to adult care and support.

Annex J9 – Other provisions under which an ordinary residence determination can be sought.

20. Continuity of care

This section provides guidance on:

- Sections 37-38 of the Care Act 2014;
- The Care and Support (Continuity of Care) Regulations 2014.

This chapter covers:

- Making an informed decision to move to a different local authority; confirming intention to move; supporting people to be fully involved in the process;
- What local authorities take into account when they are planning the move with people;
- How to ensure continuity of the person's care if the second local authority has not carried out an assessment ahead of the day of the move;
- What happens if a person does not move.

20.1. People with care and support needs may decide to move home just like anyone else, such as to be closer to family or to pursue education or employment opportunities, or because they want to live in another area. Where they do decide to move to a new area, it is important that the person's well-being is maintained, and ensuring that their care and support is in place during the move will be key to doing this.

20.2. In circumstances where a person is receiving local authority support and moves within their current local authority (for example, moving between homes in the same area), they would remain ordinary resident within that authority and it **must** continue to meet their needs. Where the person chooses to live in a different local authority area, the local authority that is currently arranging care and support and the authority to which they are moving **must** work

together to ensure that there is no interruption to their care and support.

20.3. The "continuity of care" procedures set out the processes local authorities **must** follow to ensure that the person's care and support continue, without disruption, during the move. These procedures also apply where the person's carer is receiving support and is moving with the individual. In addition to meeting their responsibilities in these sections, authorities are reminded that the other requirements of Part 1 of the Act apply during this process, and authorities **should** refer to the guidance on wellbeing, prevention, information and advice, integration, assessment and eligibility, and care and support planning.

20.4. The aim of this process is to ensure that the person with care and support needs, and any carer moving with them, will be able to move with the confidence that

arrangements will be in place on the day of the move. To achieve this local authorities have to place the adult and their carer, if he or she is also moving, at the centre of the process. Local authorities should work together and maintain contact with the adult and carer throughout the process.

Definitions

20.5. For the purpose of this chapter the following meaning applies:

- ‘Adult’ means the person who needs care and support, and is or is intending to move to another authority.
- ‘Carer(s)’ refers to any carer(s) that the person may have who has decided to move with the adult.
- ‘New carer’ refers to any new person who will take over the caring role when the adult moves to the new area.
- ‘Person’ or ‘individual’ refer to both the adult needing care and support and the carer.
- ‘First authority’ means the local authority where the person lives and is ordinarily resident prior to moving.
- ‘Second authority’ means the local authority the person is wishing to move to.
- ‘Assessment’ refers to both a needs assessment and a carer’s assessment.

Making an informed decision to move to a different local authority

20.6. When an adult with care and support needs and any carer, if moving with the adult, are contemplating the possibility of moving, they **must** be provided with information and advice about the care and support available

in the authority they are thinking of moving to. A person may want to find out information about the care and support available in two or more local authorities. In any case where a local authority is approached by an individual considering moving to that area, the local authority **should** provide relevant information and advice, in accordance with its general duties under the Care Act (see also Chapter 3).

20.7. Local authorities may find out about the person’s intention to move from the individual directly or through someone acting on their behalf, who may contact either the first authority or the second authority to tell them of their intentions. If the person has approached the first authority and informed them of their intention to move, the first authority **should** make contact with the second authority to tell them that the person is planning on moving to their area.

20.8. When the second authority has been informed of the person’s intentions, it **must** provide the adult and the carer if also intending to move, with information about the care and support available in its area. This **should** include but is not limited to, details about:

- the types of care and support available to people with similar needs;
- support for carers;
- the local care market and organisations that could meet their needs;
- the local authority’s charging policy, including any charges which the person may be expected to meet for particular services in that area.

20.9. Where the person moving currently receives a direct payment to meet some or all of their needs, the first authority **should** advise the person that they will need to consider how to meet any contractual

arrangements put in place for the provision of their care and support. For instance, any contracts a person may have with personal assistants who may not be moving with them.

20.10. Both authorities can provide the adult and their carer with relevant information or advice to help inform their decision. When providing relevant information and advice, local authorities **should** guard against influence over the final decision. The authorities can, for example, provide advice on the implications for the individual's care and support (and their carer's support), but the final decision on whether or not to move is for the adult and, if relevant, the carer to make.

Confirming the intention to move

20.11. When the person has confirmed their intention to move with the second authority, the authority **must** assure itself that the person's intention is genuine. This is because the duties in the Act flow from this point.

20.12. To assure itself that the intention is genuine, the second authority **should**:

- establish and maintain contact with the person and their carer to keep abreast of their intentions to move;
- continue to speak with the original authority to get their view on the person's intentions;
- ask if the person has any information or contacts that can verify their intention.

Supporting people to be fully involved

20.13. The person may request assistance from either the first or second authority in helping them understand the implications of their move on their care and support, and

the authority **should** ensure that they have access to all relevant information and advice. This **should** include consideration of the need for an independent advocate in helping the person to weigh up their options (see chapter 7 on advocacy).

20.14. There will be situations where the adult lacks capacity to make a decision about a move, but the family wish to move the adult closer to where they live.

20.15. The local authority **must** in these situations carry out supported decision making, supporting the adult to be as involved as possible and **must** carry out a capacity assessment and take "best interests" decisions. The requirements of the Mental Capacity Act 2005 apply to all those who may lack capacity.¹⁵⁵

People receiving services under children's legislation

20.16. The continuity of care provisions will not apply for people receiving services under children's legislation. Where such a person has had a transition assessment (see chapter 16) but is moving area before the actual transition to adult care and support takes place, the first local authority **should** ensure that the second is provided with a copy of the assessment and any resulting transition plan. Similarly, where a child's carer is having needs met by adult care and support in advance of the child turning 18 (following a transition assessment), the first local authority **should** ensure that the second is provided with a copy of the assessment and the carer's support plan.

¹⁵⁵ <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>
<http://www.legislation.gov.uk/ukpga/2005/9/contents>

Preparing for the move

20.17. Once the second authority has assured itself that the adult's and where relevant the carer's intentions to move are genuine, it **must** inform the first authority. At this stage, both authorities **should** identify a named staff member to lead on the case and be the ongoing contact during the move. These contacts **should** lead on the sharing of information and maintaining contact on progress towards arranging the care and support arrangements for the adult and support for the carer.

20.18. The second authority **should** provide the adult and carer with any relevant information that it did not supply when the person was considering whether to move.

20.19. When the first authority has been notified by the second authority that it is satisfied that the person's intention to move is genuine, the first authority **must** provide it with:

- a copy of the person's most recent care and support plan;
- a copy of the most recent support plan where the person's carer is moving with them; and
- any other information relating to the person or the carer (whether or not the carer has needs for support), that the second authority may request. The information requested should be reasonable and should include information about the person's financial assessment.

Assessment and care and support planning

20.20. If the person has substantial difficulty and requires help to be fully involved in the assessment or care planning process and there is no other suitable person who can support them, the Act requires that they **must** be provided with an independent advocate. In this case the advocate **should** be provided by the second authority because it takes over the responsibility for carrying out the assessment and care planning with the individual. As an understanding of the new area and its community may be important, the advocacy or advocate **should** wherever possible, and subject to the person's preference and advocate's view, be from the area where the person is moving to.

20.21. The second authority **must** contact the adult and the carer to carry out an assessment and to discuss how arrangements might be made. The second authority **should** also consider whether the person might be moving to be closer to a new carer and whether that new carer would benefit from an assessment.

20.22. Throughout the assessment process, the first authority **must** keep in contact with the second authority about progress being made towards arranging necessary care and support for the day of the move. The first authority **must** also keep the adult and the carer informed and involved of progress so that they have confidence in the process. This **should** include involving them in any relevant meetings about the move. Meetings **may** not always be face-to-face where there are long distances between the local authorities involved. Having this three-way contact will keep the individuals at the centre of the process, and help ensure that arrangements are in place on the day of the move.

20.23. All assessments, for adults with care and support needs and carers, **must** be carried out in line with the processes described in chapter 6 of this guidance. The adult and the carer, and anyone else requested, **must** be involved in the respective assessments. The assessments **must** identify the person's needs and the outcomes they want to achieve. These could be the same as the outcomes the first authority was meeting or they could have changed with the person's circumstances.

20.24. The assessment **must** consider whether any preventative services or advice and information would help either person meet those outcomes. The assessments **should** also consider the individuals' own strengths and capabilities and whether support might be available from family, friends or within the new community to achieve their outcomes. In carrying out the assessments, the second authority **must** take into account the previous care and support plan (or support plan) which has been provided by the first authority.

20.25. Following the assessment and after determining whether the adult or carer has eligible needs, the second authority **must** involve the adult, the carer and any other individual the person requests, in the development of their care and support plan, or the carer's support plan as relevant, and take all reasonable steps to agree the plan. The development of the care and support plan or carer's support plan **should** include consideration of whether the person would like to receive a direct payment. Further guidance on care and support planning is provided in chapter 10.

20.26. The second authority **should** agree the adult's care and support plan and carer's support plan, including any personal budget, in advance of the move to ensure that arrangements are in place when the

person moves into the new area. This **should** be shared with the individuals before the move so that they are clear how their needs will be met, and this **must** also set out any differences between the person's original plan and their new care and support or support plan.

20.27. The care and support plan **should** include arrangements for the entire day of the move. This **should** be agreed by the adult, the carers (existing and new as relevant) and both authorities. The first authority **should** remain responsible for meeting the care and support needs the person has in their original home and when moving. The second authority is responsible for providing care and support when the person and their carer move in to the new area. The person moving is responsible for organising and paying for moving their belongings and furniture to their new home.

20.28. In considering the person's personal budget, the second authority **should** take into consideration any differences between the costs of making arrangements in the second authority compared with the first authority and provide explanation for such a difference where relevant. Where there is a difference in the amount of the personal budget, this should be explained to the person. It **should** also look to ensure that the person's direct payment is in place in a timely manner, for example, the person moving may have a personal assistant that is also moving and will require paying.

Integration

20.29. The adult and their carer may have health needs as well as care and support needs. Both local authorities **should** work with their local Clinical Commissioning Groups (CCGs) to ensure that all of the adult's and carer's health and care needs are being

dealt with in a joined up way. Guidance to CCGs is set out in *Who Pays*.¹⁵⁶

20.30. If the person also has health needs, the second authority **should** carry out the assessment jointly with their local CCG. Alternatively, if the CCG agrees, the second authority can carry out the assessment on its behalf. Having a joint assessment ensures that all of the person's needs are being assessed and the second authority can work together with the CCG to prepare a joint plan to meet the adult's care and support and health needs. Where relevant, the local authority may use the cooperation procedures set out in the Care Act to require cooperation from the CCG, or other relevant partner, in supporting with the move. More detail on these procedures is set out in chapter 15.

20.31. Providing joint care and support and health plans will avoid duplication of processes and the need for multiple monitoring regimes. Information **should** be shared as quickly as possible with the minimum of bureaucracy. Local authorities **should** work alongside health and other professionals where plans are developed jointly to establish a 'lead' organisation which undertakes monitoring and assurance of the combined plan. Consideration **should** be given to whether a person should receive a personal budget and a personal health budget to support integration of services. More information about personal health budgets can be found in chapter 11.

Equipment and adaptations

20.32. Many people with care and support needs will also have equipment installed and adaptations made to their home. Where the first authority has provided equipment,

it **should** move with the person to the second authority where this is the person's preference and it is still required. This **should** apply whatever the original cost of the item.

20.33. As adaptations are fitted based on the person's accommodation, it may be more practicable for the second authority to organise the installation of any adaptations. For example, walls need to be checked for the correct fixing of rails. The second authority **should** discuss this with the individual and the first authority. Further information and examples are provided in the annex.

20.34. Where the person has a piece of equipment on long-term loan from the NHS, the second local authority **should** discuss with the relevant NHS body. The parties are jointly responsible for ensuring that the person has adequate equipment with them when they move (see chapter 15 on cooperation and integration).

Copy of documentation

20.35. The second authority **must** provide the adult and the carer and anyone else requested with a copy of their assessments. This **must** include a written explanation where it has assessed the needs as being different to those in the care and support plan or the carer's support plan provided by the first authority. The second authority **must** also provide a written explanation if the adult's or carer's personal budget is different to that provided by the first authority.

¹⁵⁶ More detail can be found in NHS (August 2013) *Who Pays?*

Disputes about ordinary residence

20.36. Where local authorities are in dispute over the person's ordinary residence status, the authorities who are parties to the dispute **must not** allow their dispute to prevent, delay or adversely affect the meeting of the person's needs. Where the authorities cannot resolve their differences, the steps described in chapter 20 on ordinary residence disputes **must** be taken to ensure that the person is unaffected by the dispute and will continue to receive care for the needs that were identified by the first local authority.

Appealing decisions

20.37. It is important that individuals have confidence in the assessment process and the wider care and support system. Therefore any individual **should** be able to make a complaint and challenge decisions where they believe a wrong decision has been made in their case. Current complaints provision for care and support is set out in regulations Local Authority Social Services and NHS Complaints Regulations 2009, made under powers in Sections 113 to 115 of the Health and Social Care (Community Health and Standards Act) 2003. The provisions of the regulations mean that anyone who is dissatisfied with a decision made by the local authority would be able to make a complaint about that decision and have that complaint handled by the local authority. The local authority **must** make its own arrangements for dealing with complaints in accordance with the Local Authority Social Services and National Health Service (England) Complaints Regulations 2009 No. 309.

What happens where the second authority has not carried out an assessment?

Interim arrangements

20.38. The second authority **must** have made contact with the adult and their carer in advance of the move. However, there may be occasions where the authority has not carried out the assessments or has completed the assessments but has not made arrangements to have support in place. This might happen where the second authority wants to assess the person in their new home and consider if their needs have changed, for example because they have started a new job or are now in education, or they have moved to be closer to family.

20.39. Where the full assessment has not taken place prior to the move, the second authority **must** put in place interim arrangements that meet the adult's or carer's needs for care and support which were being met by the first authority. These interim arrangements **must** be in place on the day of the move and continue until the second authority has carried out its own assessment and put in place a care and support plan which has been developed with the person.

20.40. The second authority **must** involve the adult and carer, and any relevant independent advocate, as well as any other individual that either person may request, when deciding how to meet the care and support needs in the interim period. The authority **must** take all reasonable steps to agree these interim plans with the relevant person.

Matters local authorities must have regard to when planning interim arrangement

20.41. In developing the interim care and support plan, the second authority must have regard to the following matters:

- **Care and support plan:** The adult's care and support plan, and the carer's support plan if the carer is also moving, which were provided by the first authority. The second authority **should** discuss with the adult and the carer how to meet their eligible needs and any other needs that the first authority was meeting that are not deemed as eligible but were included in either plan.
- **Outcomes:** Whether the outcomes that the adult and the carer were achieving in day-to-day life in their first authority are the outcomes they want to achieve in the new authority, or whether their aims have changed because of the move.
- **Preferences and views:** The preferences and views of the adult and the carer on how their needs are met during the interim period.

20.42. The second authority **must** also consider any significant difference to the person's circumstances arising from a change in any of the following matters, where that change may impact on the individual's wellbeing:

- **Support from a carer:** Whether the adult is currently receiving support from a carer and whether that carer is also moving with them. Where the carer is not moving the second authority **must** consider how to meet any needs previously met by the carer, even if the first authority was not providing any service in relation to those needs.

- **Suitability of accommodation:** Where the new accommodation is significantly different from the original accommodation and this changes the response needed to meet the needs. For example, the adult may move from a ground floor flat to a first floor flat and now need assistance to manage stairs.
- Where the person has received **equipment or had adaptations** installed in their original home by the first authority, the procedures as set out in paragraphs 20.32 to 20.34 and Annex H **should** be followed.
- **Access to services and facilities:** Where the services and facilities in the new area are different, and in particular fewer than those in the originating area; for example access to food deliveries or other food outlets, access to public transport, or access to leisure or recreational facilities. A move from an urban to a rural environment could bring this about.
- **Access to other types of support:** Where the person was receiving support from friends, neighbours or the wider community and this may not readily be available in their new area.
- Where the person makes **use of universal services** such as council day services, drop in support, or befriending schemes, and these are not available in the new area.

20.43. If the person has substantial difficulty in being fully involved in the assessment, care planning or review process the second authority **should** consider whether the person needs an independent advocate or whether their original advocate is moving with them (see chapter 7 on advocacy).