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The Care Act 2014: Cases, controversies, and ordinary residence

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- Introduction
- Care Act 2014 case law update
 - Duty to meet needs
 - Social care and accommodation
 - Independent advocacy
 - Timeframes for making care decisions
 - Direct payment support providers
 - Miscellaneous
- Ordinary residence and the *Cornwall* decision



- Limited case law in judicial review following changes to legal aid
- Major case – *Davey v Oxfordshire* – on assessing needs and writing care plans where there is a major dispute between the person and the local authority as to what the person’s needs are
- Multiple cases dealing with the wellbeing principle
- Multiple cases on destitute asylum seekers, and the where the obligation to provide housing lies
- Review of ordinary residence under the Care Act, and the *Cornwall case*



Duty to meet needs

Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- Most notable case on the duty to meet eligible needs following the introduction of the Care Act in April 2015
- Deals with a number of issues relating to needs assessments, wellbeing principle and obligation of local authority to seek to reach agreement with the person in meeting needs



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

Background

- Luke Davey: in his 40s, quadriplegic, cerebral palsy, severe physical disabilities, cannot bear weight or mobilise, uses a wheelchair, registered blind
- Has suffered from depression, persistent low mood and anxiety
- Requires assistance in all activities of daily living
- Receives considerable assistance from his family
- Lives in his own adapted bungalow



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- Through May 2016, Mr Davey had a personal budget of £1651 per week to employ a team of carers, who had all been with him for a very long time – part of budget was from ILF payments, part from NHS and part from the local authority
- Some particularly long-standing carers were paid above market rates
- ILF closed down in June 2015, at which time all of the funding for Mr Davey's care came from Oxfordshire CC
- Oxfordshire CC took the decision to reduce his personal budget to £950 per week effective May 2016



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- Mr Davey argued that his needs had not changed, and Oxfordshire CC was obligated to fund the same care arrangements
- Oxfordshire CC argued that in order to meet Mr Davey's needs, £950/week was sufficient
- Mr Davey accepted a reduction to £1224 and 4 hours alone per day, so the dispute was between £950 and £1224/week
- Primary issues were around how much time Mr Davey should spend alone and whether the changes to funding would break up his staff team



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- Multiple assessments and reassessments by social workers and OTs
- Mr Davey obtained an independent OT report which said he could be on his own for up to 2 hours at a time, but not longer, due to his toileting needs – disputed by LA
- LA gave options of moving to residential care, accepting a personal budget which would require him to be on his own for 6 hours/day, or having a live-in carer
- Personal budget would have also dropped the above-market-rate payments for two of Mr Davey's long-standing carers – some controversy over whether they would resign



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- Four hours of time alone was implemented
- Final review and support plan before hearing:
 - Assistive technologies were in place for when Mr Davey was alone
 - Mr Davey was no longer suffering from depression, and had only occasional bouts of anxiety
 - Had declined offers of counseling for anxiety
 - Mr Davey had not identified any additional risks to his well-being as a result of spending more time alone
 - LA felt that he was adapting to more time alone



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

Grounds of challenge:

- Decision that he should be left alone was not lawful
- Personal budget was inadequate to meet needs
- LA failed to have regard to his psychological wellbeing, and needs for assistance with engaging in social activities
- LA didn't take reasonable steps to reach agreement on the care plan
- LA didn't consider risks to wellbeing if team of PAs changed
- Rates for PAs were not reasonable



The Claimant contends that the decision that the Claimant has an eligible need to spend more time alone was not made in compliance with the statutory purpose of the Act. The relevant "need" which is challenged is the statement in the September 2015 Assessment "provide the option for Luke to spend more time alone, safely, in his home, to develop his independence, and reduce anxiety".

- Mr Davey said he did not want to be alone and it was not open for the LA to find it would be best for him when he rejected that idea
- Mr Davey argued that this violated the well-being principle



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- Historically, Mr Davey had been found to need 24-hour support due to concerns over anxiety and depression if he were left alone
- He valued the variety of his carers and did not want to live in a residential care setting, or with a live-in carer
- Argued that his well-being was routed in preserving his carer arrangements (particularly his team) and not spending excessive time alone



s.9 Care Act: Assessment of an adult's needs for care and support

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—
 - (a) whether the adult does have needs for care and support, and
 - (b) if the adult does, what those needs are....
- (4) A needs assessment must include an assessment of—
 - (a) the impact of the adult's needs for care and support on the matters specified in section 1(2),
 - (b) the outcomes that the adult wishes to achieve in day-to-day life, and
 - (c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- In relation to needs assessments:

First, the assessment duty is a duty upon the local authority and the assessment under section 9(1)(a) and (b) is an objective assessment made by the local authority (usually acting through its social workers or occupational therapist).

Secondly, under section 9(4), there is no duty to achieve the outcomes which the adult wishes to achieve; rather it is a duty to assess whether the provision of care and support could contribute to those outcomes. On the other hand if, in the course of a needs assessment, the local authority does not assess the matters specified in s.9(4) (including the impact on wellbeing matters set out in s.1(2)) then there is a breach of the statutory duty. There is, thus, a duty on the part of the local authority to assess these factors.



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- A failure to consider the factors set out in the Care Act which must be considered will make the decision unlawful
- Factors which may but need not be considered will not make a decision unlawful
- Other factors ought to be considered because they are ‘obviously material’ to the relevant decision – this would include the person’s emotional and psychological health and wellbeing



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

In considering whether LA met the need by setting out an offer under which the claimant could have met his needs through a live-in carer or residential care:

- Court rejected contention by the LA that claimant could have used funding to meet his needs in other ways and thus his grounds of challenge fell – budget was designed around using a team of carers, and claimant’s concerns about making a change had been recognised by LA



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

In considering whether the LA had lawfully assessed claimant as having a need to ‘spend more time alone’:

First, the correct approach to this issue is that the Claimant's wishes are no more than that and are not "needs"; those "wishes", whilst of significant importance, are not paramount. The duties upon the Defendant in ss.1(3)(a) and (d) are duties to "have regard". These duties are a starting point and did not prevent Ms Lovelock and Ms Collins from taking a different view as to the Claimant's needs, based on their objective professional judgment and experience.



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

Secondly, it is now common ground that "developing independence" was a legitimate "need". In fact the need to develop independence and reducing anxiety had been identified as early as March 2015, by Ms Collins and by the Claimant himself (see paragraph 76 above). I find that the relevant statement referring to spending more time alone in the September 2015 Assessment (paragraph 103 above), is properly interpreted as identifying "developing independence and reducing anxiety" as the "need" and "spending more time alone" as the means of meeting that need.



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

Arguments as to whether the LA failed to consider the risk to the claimant's well-being in being left for more time alone:

- Risk had been well-documented over the years in previous assessments, including in claimant's self-assessment
- LA had not identified increased anxiety from being alone as a risk in the plan
- LA accepts that claimant does experience this anxiety
- LA contended that this ground has no basis in law, and effect on psychological health was not a relevant statutory consideration
- This factor had been considered, but anxiety was not outside of the normal range



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

In considering whether the LA failed to consider the risk to the claimant's well-being in being left for more time alone:

- While the risk of harm to Mr Davey's emotional and psychological health and wellbeing was not specifically enumerated in the care plan, it was clear the LA was aware of the risk, and was taking steps to reduce or eliminate anxiety
- Evidence filed in proceedings makes clear the possible risks were considered and a professional judgment was reached that anxieties were within the normal range, and were limited and manageable



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

In relation to the timings of the PA attendance preventing claimant from engaging in social activities important to his wellbeing:

- LA said that it had taken claimant's social activities into account, and he would have support to engage in activities every day
- Court found he would be able to engage in activities regularly
- Would potentially affect his ability to engage in activities out of town – or have to store up time by spending increased time alone
- This represented a limited curtailment of the range of social activities, and did not violate the well-being principle or the UNCRPD



Care Act s.27 Review of care and support plan or of support plan

(4) Where a local authority is satisfied that circumstances have changed in a way that affects a care and support plan or a support plan, the authority must—

(a) to the extent it thinks appropriate, carry out a needs or carer's assessment..., and

(b) revise the care and support plan or support plan accordingly.

(5) Where, in a case within subsection (4), the local authority is proposing to change how it meets the needs in question, it must, in performing the duty under subsection (2)(b)(i) or (3)(b)(i), take all reasonable steps to reach agreement with the adult concerned about how it should meet those needs.



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

In relation to the alleged failure to take all reasonable steps to reach agreement with Mr Davey about how to meet his needs:

- *‘The obligation upon the Defendant in s.27(5) is not an obligation “to reach agreement” at any cost. Rather it is an obligation to “take reasonable steps to reach agreement.”’*
- There was considerable engagement between the claimant and the LA, including 6 months of assessments
- LA made a ‘very substantial amount of effort’ to assuage claimant’s concerns – no failure to take a specific step except actually agreeing



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

- In considering the risk to claimant's well-being and mental health from the risk that team of PAs will be broken up:
 - Court found that LA was under a duty to 'have regard' to the particular circumstances of the individual
 - LA did record claimant's view on this issue
 - *The Defendant did not consider that a change in the team, even if it did occur, would have an adverse impact upon the Claimant's mental health and wellbeing...changes in the Claimant's current care team would be positive for the Claimant and his emotional wellbeing, enabling him to reduce dependence upon specific carers. This would be unsettling in the short term, but bring important benefits in the longer term. In this way, the Defendant, did, in general terms, take account of the importance of the existing team of carers.*



Davey, R (On the Application Of) v Oxfordshire County Council [2017] EWHC 354 (Admin)

In considering whether the proposed rates for carers were reasonable:

- LA was required to take the rates of pay of PAs into account as a relevant factor in setting personal budget
- Rate set was based on a national average, and was reasonable even if it did not include above-market rates for more experienced carers
- If claimant had difficulty recruiting carers, LA would considering raising the relevant amounts



R(SG) v Haringey [2015] EWHC 2579 (Admin)

Appeal in this matter to be heard tomorrow, so watch this space*

- SG was an asylum-seeker, granted asylum in July 2014
- Afghan national who arrived in the UK in October 2013; history of torture, rape and emotional and physical abuse.
- Received accommodation and limited housing support as an asylum-seeker
- Suffered from severe mental health problems, including complex PTSD, insomnia, depression, and anxiety.



R(SG) v Haringey [2015] EWHC 2579 (Admin)

- Required services to meet her needs for care and support
- Challenged decision by Haringey to refuse to provide her with accommodation under the National Assistance Act, and found that she was eligible only for limited support in the community under the Care Act 2014
- Clear that SG's needs were eligible under the Care Act criteria, but question was whether they were accommodation-related needs entitling her to residential care



National Assistance Act framework for destitute asylum-seeker

- No general entitlement to housing, but...
- If the person *'had a need for accommodation-related care and attention not otherwise available to them which did not arise solely because of destitution or its anticipated effects must be "looked after" by the relevant local authority'*
- If the person requires accommodation-related care, it does not matter if the person might be otherwise housed
- If the person was able-bodied, recourse for accommodation was to the Home Secretary only



Care Act 2014 framework for destitute asylum-seeker

- Care Act replicates NAA's language on point:

S.21(1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely—

(a) because the adult is destitute, or

(b) because of the physical effects, or anticipated physical effects, of being destitute.



Accommodation-related needs

- SG argued that LA was bound to conclude that her needs were accommodation-related, as until she stabilised, she could not get the medical attention that she required
- SG had been assessed as requiring help with *'basic practical support before she can be referred for more structured activities'*
- LA had also failed to consider whether services would have been rendered useless if claimant was to become homeless, and was ordered by the court to re-do its care plan to take account of this possibility



Accommodation-related needs

- However, court found that old case law still applied, as ‘care and support’ was not materially different from ‘care and attention’ as discussed in the National Assistance Act
- While local authorities have a power to provide accommodation in order to meet needs, this is discretionary
- Court should be reluctant to intervene in the discretionary conclusion of experienced social workers that residential care is not required



Accommodation-related needs

- Court found that very few of her needs were ‘accommodation-related’, and that it would still be within the discretion of the LA to decide that it was not appropriate to provide accommodation
- While LA was obliged to re-do the assessment and specifically consider the need for accommodation-related support, it was not obliged to find that this was required, and could use its discretion to decline to provide this



Independent advocacy

- LA accepted that SG was entitled to have an independent advocate for her assessment under the terms of the Care Act, as she would have substantial difficulty being involved without such support
- SG did not have an advocate at the time of the assessment
- LA argued that this did not lead to a flawed assessment process, as it subsequently made the referral for an advocate and it was unlikely to change the outcome of the assessment



Independent advocacy

- Court rejected the local authority's argument and found that Haringey had acted unlawfully by failing to provide SG with an advocate
- Court did not accept that it was unlikely that the advocate would have made a difference
- Court found that without an advocate, SG was 'in no position to influence matters'
- Assessment was found to be flawed and must be redone as a result
- Assessment also flawed due to failure to consult with SG's GP and counsellor



R (GS) v Camden [2016] EWHC 1762 (Admin)

- Claimant was an Afghanistan-born Swiss national who suffered from physical and mental health problems
- Lived in Switzerland from 1992-2013
- Stated that she had been discriminated against and raped on two occasions while living there
- Persistent delusional disorder and lacked capacity
- Arrived in the UK in June 2013 and remained at Heathrow for 6 months
- Admitted to hospital, and later to a hostel with the help of her adoptive mother in Canada



R (GS) v Camden [2016] EWHC 1762 (Admin)

- Found to be ineligible for accommodation or assistance under the National Assistance Act
- Later found to be ineligible under the Care Act
- Claimant was found to be eligible for a Personal Independence Payment from the DWP, but was not entitled to any other benefits, including care and support under the Care Act
- Agreed among the parties that claimant could not be lawfully returned to Switzerland because she lacked capacity to make that decision, and had fragile mental health



R (GS) v Camden [2016] EWHC 1762 (Admin)

- Initial question of whether *‘a need for accommodation is capable of amounting to a "need for care and support" under the Care Act 2014.’*
- Though claimant was not entitled to care and support under the Care Act, Camden had a discretionary power that it was entitled to use to meet the claimant’s needs to prevent a breach of her human rights
- However, a local authority is not entitled to meet needs for care and support by taking actions that it is required to provide under the Housing Act



R (GS) v Camden [2016] EWHC 1762 (Admin)

- The court agreed with the finding in *SG v Haringey* that the relevant case law on the National Assistance Act applied, and found that the services provided must be ‘accommodation-related’ for accommodation to be a duty
- The court found that the ordinary meaning of ‘care and support’ does not include accommodation on its own
- The outcomes specified in the eligibility criteria do not include accommodation as a need, but assume that it exists
- Other legislation governs providing accommodation for those in need



R (GS) v Camden [2016] EWHC 1762 (Admin)

- No obligation to ignore accommodation provided when assessing needs
- Camden was right to conclude that GS's requirement was for accommodation alone, which is not a need for care and support under the Care Act
- But...



R (GS) v Camden [2016] EWHC 1762 (Admin)

- Under s.1 Localism Act, Camden had a power to provide GS with accommodation
- The Care Act does not provide a limitation on the effect of the Localism Act, and was enacted after the Localism Act
- The court found that claimant's support under the PIP was insufficient to provide her with suitable accommodation and the necessities of life



R (GS) v Camden [2016] EWHC 1762 (Admin)

- Claimant had made a showing that she would be subject to ‘serious suffering’ if she were to become homeless, given her disabilities, mental health issues, suicidal ideation and likelihood that homeless would exacerbate all of these
- Court found that it would constitute ‘inhuman and degrading’ treatment in her case
- Claimant had no other resources, and had proved that it was likely there was no suitable accommodation that she would be able to afford
- Thus, Camden was obliged to provide housing



R (D) v Brent Council [2015] EWHC 3224 (Admin)

- D: 23 years old with autism spectrum disorder and severe communication difficulties.
- Until July 2015, attended a specialist school on a residential basis
- Was assessed as requiring specialist accommodation in Brent upon leaving the school
- However, no arrangements were put in place following his leaving, so he returned home to reside with his mother



R (D) v Brent Council [2015] EWHC 3224 (Admin)

- Judicial review brought almost six months after D was assessed as having a need for accommodation, and Brent had not taken a decision regarding his placement
- Mother argued that D's skills were deteriorating due to the length of time he had gone residing in an inappropriate setting
- Mother alleged that they were delaying placing him until she agreed to pay a top-up for his care at an appropriate placement
- Challenge was brought that Brent had acted unlawfully in delaying its decision



R (D) v Brent Council [2015] EWHC 3224 (Admin)

- Claimant argued that Brent was under an obligation to make a decision regarding the most suitable way of meeting D's needs by the time he left school in July 2015
- LA argued that there was no statutory obligation to make a decision by a certain date, only a general duty to make decisions in a 'reasonable' amount of time, depending on the relevant factors
- LA argued that it was exploring multiple options, and should not be rushed to choose one while this process was ongoing



R (D) v Brent Council [2015] EWHC 3224 (Admin)

- Court found that local authorities are obligated to act within reasonable timescales when carrying out their Care Act duties, though no specific timescales exist in statute around assessing needs or writing care plans
- What is reasonable will depend on all the circumstances of the case
- No final deadline existed for July 2015, and delay was not unreasonable under the circumstances, where other options were being explored and delays were caused by a number of factors (provider, LA, D's mother)
- Thus, claimant failed in the challenge



R (Collins) v Nottinghamshire County Council [2016] EWHC 996(Admin)

- Application by three service users to challenge a decision to suspend Direct Payment Service Users Ltd. (DPSU) from a list of accredited providers
- Claimants had all used DPSU to help them manage their direct payments, and wished to continue to do so



R (Collins) v Nottinghamshire County Council [2016] EWHC 996(Admin)

- Local authority had carried out an investigation following a report by former employees of DPSU about its conduct and financial practices
- Trading Standards Department commenced a criminal investigation, finding that the DPSU had committed fraud
- DPSU refused to provide information to the local authority when presented with the concerns
- The local authority suspended the DPSU's accreditation



R (Collins) v Nottinghamshire County Council [2016] EWHC 996(Admin)

- Court rejected challenges that:
 - The well-being duty to give the person choice and control over his or her care outweighed the ss.31 and 32 duties regarding direct payments
 - The local authority was not entitled to conduct a safeguarding investigation because ‘there was no evidence to show that service users were unable to protect themselves’
 - It was a breach of Article 8 to suspend the provider without consulting service users



R (Collins) v Nottinghamshire County Council [2016] EWHC 996(Admin)

- Court found that while in general, people should not be limited to a list of accredited providers, the exceptional circumstances in this case justified a departure from guidance to ensure service users were given information about trustworthy providers
- Thus, the challenge failed



Care Act Ordinary Residence

- Easy case: person is living in Area A of his own free choice, then seeks services -> Area A is responsible
- Deeming provisions: person being supported by Area A requires accommodation in a care home, nursing home, supported living accommodation or shared lives placement and is placed in Area B by Area A -> Area A remains responsible
- Person lacking capacity to choose his or her residence:
???



R (on the application of Cornwall Council) v Secretary of State for Health [2015] UKSC 46

- Which local authority is responsible for meeting the needs of an adult lacking capacity to choose his residence where the adult had been moved to an out-of-area placement by the local authority meeting his needs as a child?
- Case also dealt with the issue of ordinary residence of those lacking capacity more generally



R (on the application of Cornwall Council) v Secretary of State for Health [2015] UKSC 46

- PH: severe disabilities, has always lacked capacity to make decisions as to his residence and care
- Lived with his family until the age of 4
- From ages 4-18, lived with foster parents in South Gloucestershire under the Children Act 1989
- Family then moved to Cornwall, where PH visited on holidays
- From 18, has lived in two care homes in Somerset, subject to NAA 1948 and later Care Act 2014



Which local authority is responsible?

Contenders:

Wiltshire: Area where PH's family was living when he first went into care, and which remained responsible under the Children Act throughout his childhood

Cornwall: Area where PH's family was living when PH became an adult

South Gloucestershire: Area where PH lived with his foster parents from 4-18



Procedural history

- Conflict emerged among the 3 local authorities
- Secretary of State had found Cornwall responsible on the basis of family's residence, attributing PH's ordinary residence to that of his family, finding that his 'base' was there
- Decision was upheld by the High Court
- High Court's decision reversed by Court of Appeal, which found that South Gloucestershire was responsible on the basis of PH's residence there upon turning 18



Children Act 1989

S.20(2): Where a local authority provides accommodation for a child who is ordinarily resident in another LA, the other LA may “take over” the provision of accommodation for the child, and recoup the costs of doing so under s.29

Section 105(6): *“In determining the ‘ordinary residence’ of a child for any purpose of this Act, there shall be disregarded any period in which he lives in any place -...*

(c) while he is being provided with accommodation by or on behalf of a local authority.”



National Assistance Act 1948

S.21: *“A local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing ...*

(a) residential accommodation for persons aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them.”

S.24(5): *“Where a person is provided with residential accommodation under this Part of this Act, he shall be deemed for the purposes of this Act to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the residential accommodation was provided for him.”*



Ordinary Residence

- In considering the history of the development of ordinary residence in the National Assistance Act, it was drawn from the ordinary residence of the person, rather than the person's family or anyone else
- Purpose is to fairly allocate the costs of providing care between local authorities
- Exception under s.24(5) where a person had been placed out of area by a local authority



Ordinary Residence

Normal test is drawn from *R v Barnet LBC, ex parte Shah* [1983] AC 309

“Unless, therefore, 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 of long duration.”



Ordinary Residence

The “mind” of the subject was relevant in two respects. First the residence must be “voluntarily adopted”, rather than for example “enforced presence by reason of kidnapping or imprisonment”. Secondly, there must be “a degree of settled purpose”:

“This is not to say that the (subject) intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. ... All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.” (p 344D)



Ordinary residence where the person lacks capacity

- Start with the person's residence and the nature of that residence
- Court endorsed 'common-sense' approaches of using the *Shah* test, less the voluntary adoption of a place
- Person can become 'settled' without choosing to live in a place on the basis of duration of and reason for staying
- Not helpful to start with a consideration where the person's 'base' is, or where the person's family are located



Deeming provisions

- However, periods of residence in an area should be ignored for the purposes of determining ordinary residence where they came about because a person was ‘placed’ there under the National Assistance Act 1948, Care Act 2014 or...
- Children Act 1989
- Where a person has been placed out of area as a child, the deeming provisions carry through for the purposes of adult services
- Note – s.117 services are distinct from these provisions



Cornwall case

- Start with *Shah*
- *Shah* test also applies to people lacking capacity, less the voluntary adoption of a place
- Not helpful to ask where the person's 'base' is, but to look at all the factors to determine where a person is residing with a settled intention
- Disregard periods where a person has been placed by a local authority
- Deeming provisions from placement as children carry over to adults



Any questions?

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