

**DETERMINATION BY THE SECRETARY OF STATE UNDER SECTION 32(3)
OF THE NATIONAL ASSISTANCE ACT 1948 OF THE ORDINARY
RESIDENCE OF MS X (OR 8 2012)**

DRAFT

1. I am asked by the CouncilA to make a determination under section 32(3) of the National Assistance Act 1948 (“the 1948 Act”) of the ordinary residence of Ms X.

The facts of the case

2. The following information has been ascertained from the joint statement of facts prepared by the authorities involved in the dispute, and the supporting documents supplied. The authorities concerned are CouncilA and CouncilB.

3. Ms X is a Kenyan national aged 40 (date of birth xdate 1972). Ms X entered the UK in 1995 and claimed asylum. In 1997 she was diagnosed with HIV/AIDS. In 1997 her claim for asylum was rejected and she was removed from the UK. She re-entered the UK in October 1997 on a false passport; she was detained and then released on temporary admission.

4. It appears that Ms X has claimed exceptional leave to remain on human rights grounds (although I note that this is not accepted by CouncilB). This claim has not yet been determined. Ms X’s immigration status means that she is not entitled to social security benefits.

5. From 2000 to April 2009 Ms X was supported by CouncilB Social Services pursuant to section 21 of the 1948 Act and was provided with accommodation at 24 Somewhere Road, Area1B in CouncilB.

6. In October 2008 Ms X was reassessed by CouncilB, and as a result of that reassessment CouncilB decided that Ms X was no longer eligible for support under section 21 of the 1948 Act. In April 2009 Ms X was discharged from 24 Somewhere Road.

7. Ms X states that she lived at 4 Another Street, Area1A in CouncilA, from April to October 2009. This is in CouncilA’s area.

8. On 29 October 2009 Ms X was admitted to HospitalQ following a stroke. On 18 December 2009 she was transferred to the RehabilitationUnitK in CouncilC (part of HospitalQ).

9. On 24 March 2010 Ms X’s solicitors sent a Judicial Review pre-action protocol letter to CouncilA requesting that they carry out a community care assessment on Ms X, as she was ready to leave hospital but could not be discharged until social services provision was available.

10. On 20 April 2010 CouncilA completed a community care assessment on Ms X. The assessment concluded that Ms X had mainly moderate to low care needs; however she had nowhere to live when she left hospital and had no recourse to public funds due

to her immigration status. The assessment concluded that Ms X was “destitute plus” and would be at risk should she become homeless.

11. On 21 April 2010 CouncilA accepted an interim duty to provide Ms X with residential accommodation under section 21. On 27 April 2010 Ms X was discharged from the RehabilitationUnitK to temporary bed and breakfast accommodation in HotelZ in the CouncilD, with a subsistence allowance of £30 per week and a care package provided by CouncilA.

12. On 24 May 2010 CouncilA wrote to CouncilB to put them on notice that there may be a claim that Ms X was the responsibility of CouncilB, and that the investigation was ongoing. CouncilB contend that this is the date that the dispute started.

13. On 26 July 2010 Ms X moved to accommodation at NoName Lane, AreaA2 in CouncilA’s area. She continues to reside there to date. Her accommodation costs are met by CouncilA and she receives a package of home care and a £30 per week subsistence allowance.

14. On 5 January 2011 CouncilA wrote to CouncilB stating that they considered Ms X to be the responsibility of CouncilB because she was ordinarily resident in their area. CouncilA contend that this is the date that the dispute started.

15. On 17 February 2011 CouncilB wrote to CouncilA denying that Ms X was their responsibility. On 31 May 2011 CouncilA referred the dispute to the Secretary of State.

16. It is not in dispute that Ms X has the capacity to decide where she wishes to live.

The relevant law

17. I have considered the joint statements of facts and chronology, the additional documentation, the legal submissions provided by CouncilA and CouncilB, the provisions of Part 3 of the 1948 Act and the Directions issued under it¹, the guidance on ordinary residence issued by the Department (“the OR guidance”)², and the leading case of *R v Barnet ex parte Shah* (1983) 2 AC 309 (“*Shah*”). My determination is not affected by CouncilA assuming provisional responsibility for funding Ms X’s care.

18. Ms X, through her legal representatives, expressed a wish to make representations to the Secretary of State about her ordinary residence. Ms X is not a party to the dispute and does not have a formal right to make representations; however, I indicated that I would consider any information that was put before me, and Ms X’s solicitor was supplied with copies of the relevant documentation and was given an opportunity to make representations. Submissions were made on Ms X’s behalf, and Ms X and her family supplied witness statements. CouncilA and CouncilB were given the opportunity to respond to these; CouncilA commented on Ms X’s submissions and Ms X’s solicitors responded to those comments.

¹ Contained in LAC(93)10.

² “Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services in England” effective from 19 April 2010.

19. I have carefully considered all the submissions made. However I should make clear that it is not a usual part of the ordinary residence dispute procedure for the individual receiving care to take part in the proceedings. It is normally possible to determine the relevant facts from the information supplied by the local authorities, and the outcome ought not to have a significant effect on the care received because the individual's eligible care needs should be met by whichever authority is determined to have responsibility under the 1948 Act.

20. Section 21 of the 1948 Act empowers local authorities to make arrangements for providing residential accommodation for persons aged 18 or over who by reason of age, illness or disability or any other circumstances are in need of care and attention which is not otherwise available to them. Section 21(1A)(a) provides that "a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely... because he is destitute".

21. Section 24(1) provides that the local authority empowered to provide residential accommodation under Part 3 is, subject to further provisions of that Part, the authority in whose area the person is ordinarily resident. The Secretary of State's Directions under section 21 provide that the local authority is under a duty to make arrangements under that section "in relation to persons who are ordinarily resident in their area and other persons who are in urgent need thereof".

22. Under section 24(5) of the 1948 Act, a person who is provided with residential accommodation under the Act is deemed to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the residential accommodation was provided.

23. Section 24 makes further provision as to the meaning of ordinary residence. Section 24(6) provides that:

"For the purposes of the provision of residential accommodation under this Part, a patient ("P") for whom NHS accommodation is provided shall be deemed to be ordinarily resident in the area, if any, in which P was resident before the NHS accommodation was provided for P, whether or not P in fact continues to be ordinarily resident in that area."³.

24. "Ordinary residence" is not defined in the 1948 Act. The guidance (paragraph 18 onwards) notes that the term should be given its ordinary and natural meaning subject to any interpretation by the courts. The concept involves questions of fact and degree. Factors such as time, intention and continuity have to be taken into account. The leading case on ordinary residence is that of *Shah*. 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

³ Section 24(6) contains an error; see paragraphs 63 to 65 of the OR guidance. "P was resident" should be read as "P was ordinarily resident".

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”.

The application of the law

25. CouncilB submit that the Secretary of State should decline to accept the referral for a determination on the basis that the timetable for referral set out in the Disputes Directions⁴ has not been complied with. These Directions set out the procedure to be followed by local authorities where ordinary residence is disputed. CouncilB also submit that the delay in the referral is prejudicial to CouncilB as it is more difficult to establish the facts as time passes.

26. I have jurisdiction to determine questions as to a person’s ordinary residence under Part III of the 1948 Act. Whilst any delay in referring a case to me is regrettable, and I understand CouncilB’s concerns about the difficulty of establishing the facts after some time has elapsed, that does not remove my duty to make the determination. It is therefore not appropriate for me to refuse to make a determination on the grounds of delay.

27. I now turn to the question of Ms X’s ordinary residence. CouncilA and CouncilB both submit that the provisions in section 24(5) and (6) of the 1948 Act should operate to deem Ms X’s ordinary residence to be in the area in which she was ordinarily resident immediately before she was admitted to hospital. Therefore the key question to be determined is where Ms X was ordinarily resident before her admission to hospital on 29 October 2009.

28. Ms X has stated that after she was required to leave 24 Somewhere Road, she went to live with her niece at 4 Another Street, Area1A, in CouncilA’s area. She states that she lived there until her admission to hospital, ie from April to October 2009. CouncilB supports Ms X’s view.

29. CouncilA contend that Ms X was not living with her niece in Area1A during the whole of the period in question and that she was in fact ordinarily resident in CouncilB during this period, or at least for October 2009.

The evidence

30. The key document which supports CouncilA’s submissions is the witness statement of a social worker employed by CouncilA, Ms Y, dated 4 January 2011. Ms Y’s statement recounts a visit that she made to Ms X’s niece, on 6 July 2010 to ascertain further information about Ms X’s stay with her niece. At that meeting Ms Y spoke to Ms X’s niece and to Ms X’s niece’s partner.

⁴ The Ordinary Residence Disputes (National Assistance Act 1948) Directions 2010, which came into force on 19 April 2010.

31. The Social Worker Ms Y states that according to Ms X's niece, Ms X had been working and living in Area1B (CouncilB) for 14 years prior to her stroke. Ms X's niece believed that Ms X had rented a room in Area1B, and Ms X's niece had agreed that Ms X could stay with her on a temporary basis (anticipated to be no more than six months) while renovations were being carried out to this property. Ms X's niece did not seem to be aware that CouncilB had evicted Ms X from her accommodation in Area1B. Ms X's niece and niece's partner were unable to provide exact dates of when Ms X came to stay with them, but they both believed it was some time before the summer of 2009.

32. According to Ms Y's statement, Ms X's niece stated that Ms X did not stay with her on a continuous basis; she used the address "mainly as a base" but spent the majority of her time in the south where she worked. On reflection, Ms X's niece changed her mind and said that Ms X stayed more in Area1A in CouncilA, although according to Ms Y's statement the niece's partner "was very clear that the opposite was true". During the time that Ms X lived with her niece, she had never been visited by friends and had no mail delivered, and Ms X's niece and the niece's partner could give no information as to how she spent her time.

33. Ms Y's statement records that when the niece's partner moved in to live with Ms X's niece in September 2009, they could no longer accommodate Ms X and by that time she was no longer living there at all. The living arrangements prior to the niece's partner moving in were that Ms X's niece and her son lived in one room, and Ms X lived in the other with her sister. Ms Y subsequently telephoned Ms X's niece on 14 December 2010; she reports in her statement that during this conversation Ms X's niece said that her partner had moved in during October 2009, and that Ms X had gone by that time.

34. Ms Y went to visit Ms X on 13 July 2010. She explained to Ms X that she had received information indicating that Ms X's main base was not in CouncilA, and that Ms X had advised Ms X's niece that she was only staying with them temporarily while her accommodation was renovated. Ms X said that her niece was mistaken regarding the dates and that she may have been confused about other times that Ms X had stayed with her. However she did agree that she was only going to stay with Ms X's niece on a temporary basis, as her sister was to look for accommodation for both of them.

35. Ms Y advised Ms X that Ms X's niece has said she was working in the south; Ms X then stated that she spent 50% of her time in the south and 50% in CouncilA. She stated that she worked as a child minder in Area1B and stayed at the house where she was working. Ms Y formed the view that this appeared to be an au pair job. She asked Ms X for the address in Area1B where she had been staying, but she was told that Ms X could not remember it.

36. I have also considered the witness statement of Social Worker2, dated 5 January 2011. Social Worker2 is the social worker who carried out the assessment on Ms X in April 2010. Social Worker2 recounts a discussion she had with Ms X at that assessment about her living arrangements before she went into hospital. Ms X stated that she was not well at the time and spent most of her time in the accommodation at 4 Another Street; she did not often go to CouncilB because she wasn't well enough. However she

also stated that her mail was sent to her old address in Area1B; she arranged for the man who managed the accommodation to collect it for her and she went periodically to pick up the mail when she could. Social Worker2 asked Ms X where she had been staying when she was taken into hospital; she said she could not remember, and got confused about things. Social Worker2 formed the impression that Ms X was not familiar with Area1A in CouncilA; however Ms X indicated that the whole of her time between April and October 2009 had been spent at 4 Another Street.

37. Social Worker2 states that she was advised by the ward staff at the hospital that Ms X “occasionally gets muddled and therefore could have a slight cognitive loss due to her stroke, but that this was not substantial”.

38. In response to the witness statements of Ms Y and Social Worker2, Ms X’s solicitors provided witness statements from Ms X (dated 27 October 2011), Ms X’s niece (28 October 2011), the niece’s partner (28 October 2011) and Ms X’s sister (19 December 2011).

39. Ms X states that she moved to live with her niece in April 2009. This was suggested to her by her sister (the niece’s mother), who at the time was also living with Ms X’s niece. The plan had been for Ms X to stay with her niece for about six months, after which Ms X’s sister would find accommodation for both Ms herself and Ms X, in the same area so they could remain near to Ms X’s niece. Ms X states that she regarded 4 Another Street (CouncilA) as her settled home. Ms X says that Ms X’s sister knew that she had to move because her support from CouncilB had been withdrawn; she did not discuss with Ms X’s niece why she needed to move and did not tell her that renovation work was being done on the house in Area1B.

40. Ms X states that she stayed at 4 Another Street until she suffered a stroke in October 2009. She says that the niece’s partner moved in while she was still living there, but she cannot remember exactly when. Ms X says that she spent a lot of the time at 4 Another Street alone in her room because she was unwell; she also says that she did not go out much because she had no money. She states that she spent by far the majority of her time at Another Street and regarded it as her settled home. She decided to keep her mail going to her old address in Area1B until she moved into a more permanent place with her sister.

41. Ms X states that she did not change her GP surgery while living with Ms X’s niece because she was expecting to move again when Ms X’s sister found them a place of their own, and she did not want the upheaval of changing GPs twice, particularly given her complex medical needs.

42. Ms X states that when she was well enough she did some child-minding for a friend, FriendTWO, in Area1B, and that for a period of about two months she stayed at FriendTWO’s house on average two nights a week; occasionally she stayed four nights in a row but mostly it was one or two nights. Ms X states that she cannot remember FriendTWO’s address, and has now lost touch with FriendTWO who has returned to Ghana.

43. Ms X states that at the time of her stroke she was visiting another friend, FriendONE, in Area1B; she was just visiting her for the day. FriendONE has since been deported and Ms X has no contact with her.

44. Ms X states that she definitely spent most of her time in Area1A in CouncilA, and she does not remember telling Ms Y that she spent about 50% of her time in each place. She says that she would not have used the word “percentage” as she does not think in those terms, and her speech is slurred as a result of the stroke and it is possible that Ms Y did not understand her.

45. Ms X’s niece says she cannot recall exactly when Ms X moved in, but says she stayed with them for several months. She says that niece’s partner moved in towards the end of Ms X’s time there. She says that Ms X brought all her clothing and possessions with her, and lived as one of the family, although she did spend a lot of time in her bedroom because she was unwell. Ms X’s niece says she is very clear that Ms X spent much more time at her home than in Area1B, and she does not recall either herself or the niece’s partner telling CouncilA social workers the contrary. She says that the niece’s partner only overlapped with Ms X for a few weeks so was not well-placed to comment on where she had been living. She says that Ms X was living there until she had the stroke, and on the day she suffered the stroke she was visiting a friend in Area1B.

46. The niece’s partner states that he moved into 4 Another Street in September 2009, just before starting a university course. He says that Ms X was living there when he moved in, and remained living with them until she suffered a stroke and was admitted to hospital. The niece’s partner says it is difficult for him to estimate the amount of time that Ms X spent at their home as he was usually out of the house during the day, but he says she definitely was living there; she slept there most nights, and had her clothes and belongings there. The niece’s partner does not recall telling Ms Y that Ms X spent more time in Area1B (CouncilB) than CouncilA; he thinks it was the other way round.

47. Ms X’s sister’s statement supports Ms X’s. Ms X’s sister says that she told Ms X’s niece that Ms X needed to stay with her because renovations were being done on her home in Area1B; she says she did not tell Ms X’s niece the real reason because she did not want to worry her, and also because Ms X’s niece did not know about Ms X’s HIV status. Ms X’s sister states that the niece’s partner moved in with Ms X’s niece some months after Ms X moved in, but before Ms X had a stroke. She says that Ms X was living at Ms X’s niece’s home up until she had her stroke; Ms X’s sister cannot say exactly how much time Ms X spent at the house as she was working full-time, but she is certain that Ms X spent more time at her niece’s home than anywhere else. She also states that on the day Ms X had the stroke, she was visiting a friend in Area1B.

48. CouncilA submit that the evidence of Ms Y indicates that Ms X was ordinarily resident in CouncilB during period in question (April to October 2009), and that she had certainly moved out of Ms X’s niece’s home before she had her stroke. CouncilA also submit that Ms X’s residence should not be considered to be in CouncilA because-

- she was admitted to hospital from an address in Area1B;
- she continued to report to the Home Office in South London;

- she continued to collect mail from 24 Somewhere Road;
- she continued to receive medical treatment in CouncilB (from her GP in Area3B in CouncilB and at HospitalQ);
- she had a long standing association with CouncilB.

49. CouncilB submit that there is evidence that the address available to Ms X as a home was 4 Another Street, and that this raises a presumption of ordinary residence at that address. They state that the arguments put forward by CouncilA are insufficient to rebut that presumption. In particular they state that the fact that she was admitted to hospital from an address in Area1B is irrelevant, as she could have suffered a stroke anywhere; furthermore they do not understand CouncilA to be alleging that Ms X was resident at the address from which she was admitted to hospital. They also state that the facts that Ms X had her post sent to Somewhere Road, and continued to report to the Home Office in South London because the Home Office still believed her address to be in Somewhere Road, are irrelevant because it is accepted that at that time, Ms X was no longer living at Somewhere Road (CouncilB).

50. CouncilA made further submissions in response to the witness statements of Ms X and her family. CouncilA state that Social Worker Ms Y and SocialWorker2 had reviewed their statements in the light of the new witness statements, but considered that their original statements were still accurate.

51. CouncilA note that it is in the interests of Ms X and her family to argue that Ms X is ordinarily resident in CouncilA, as she is happy in her current accommodation and none of them wants her to move. CouncilA also state that there are reasons to doubt the credibility of the witnesses. They suggest that Ms X may have been unwilling to divulge her true residence in April to October 2009 because she was working as a childminder in CouncilB during that period, in breach of immigration rules. They also point out that Ms X's sister admits lying to her daughter about the reason for Ms X's move, and they suggest that this indicates that Ms X's sister is willing to lie when she considers there is sufficient justification.

52. CouncilA also draw attention to the living conditions at 4 Another Street in October 2009. They point out that it would have been very cramped after the niece's partner had moved in, and they note that in her statement Ms X's niece stated that she could not have Ms X back to live with her on her discharge from hospital as she did not have enough room "now that niece's partner is living with me and my son is older". They suggest that Ms X's niece's son being only a few months older would not have made an appreciable difference to the situation, and that it is likely that the conditions would have been equally difficult when the niece's partner moved in and so there would have been pressure for Ms X to leave at that time.

53. CouncilA also queried why Ms X was unable to recall any details (other than first names, FriendTWO and FriendONE) of the friends she stayed with in Area1B. Ms X's solicitors subsequently explained that Ms X never knew her friends' surnames, but the solicitors were later able to provide FriendTWO's and FriendONE's former addresses. The solicitors also suggested that some of the inconsistencies in information provided

by Ms X may have been misunderstandings due to language difficulties, as Ms X's first language is not English.

Conclusion

54. This is a difficult case and the issues are finely balanced. I have carefully considered all the submissions and witness statements.

55. I accept the arguments of CouncilB (summarised in paragraph 49 above) that little weight should be accorded to the facts that Ms X was admitted to hospital from an address in CouncilB, that she reported to the Home Office in South London, and that she had her post sent to her old address in Area1B. The latter point is also explained by Ms X in her own statement, as is the reason why she chose not to change her GP.

56. The crucial evidence in this case is the witness statements. The statements given by Ms X, Ms X's niece and the niece's partner conflict with their reported earlier statements recorded in the witness statement of Ms Y the social worker. I am required to weigh up all the evidence and make a decision on the balance of probabilities as to which is most reliable.

57. Ms Y's statement records conversations that took place some six months earlier. It is possible that her recollection of events is mistaken; however Ms Y was given the opportunity to review her statement after seeing the statements of Ms X and her family, and still considered it to be accurate.

58. In accordance with the test in *Shah* it is necessary to determine the place that Ms X had adopted as her home "for settled purposes as part of the regular order of [his] life for the time being". Whilst it appears to be common ground that Ms X's stay at her niece's home was only ever intended to be temporary, it is clear from the *Shah* test that a person's stay in a place does not have to be permanent, or even long-term, for ordinary residence to be acquired: it merely has to be "part of the regular order of his life *for the time being*, whether of short or long duration" (emphasis added).

59. Ms X says clearly in her witness statement that she considered 4 Another Street to be her home. The witness statements of Ms X's niece, Ms X's sister and the niece's partner support this. All four witnesses state that Ms X was resident in Another Street (CouncilA) at the time she had her stroke on 29 October 2009.

60. It is unclear why Ms X's niece, the niece's partner and Ms X apparently gave different information to Ms Y when she interviewed them in July 2010. They all now say that they do not recollect making those statements. I note that according to Social Worker2's statement, Ms X had a slight cognitive loss as a result of her stroke and occasionally got confused; this could explain some of the discrepancies in her accounts of events.

61. Whilst there is evidence that Ms X spent some time in Area1B (CouncilB) during the period from April to October 2009, I am not persuaded that she had made her home there. I am unable to identify any address in Area1B at which Ms X could have been

resident. Ms X acknowledges that she spent some time staying with FriendTWO, but there is nothing to suggest that she had made her home at FriendTWO's address. It is clear that Ms X was living, at least for part of the time, at 4 Another Street, and she and her family state clearly that this was her main residence. Whilst there is some confusion as to how much time she actually spent there, I accept that Ms X viewed 4 Another Street as her main home, and I consider that this is sufficient to meet the test in *Shah*.

62. I therefore consider that Ms X was ordinarily resident in CouncilA for at least part of the period after she left Somewhere Road. It appears to me that she was resident at 4 Another Street from April 2009 until some time in September or October 2009. However, there is conflicting evidence about whether she continued to reside there up until 29 October 2009, which is the date that she was admitted to hospital.

63. Ms X and her family all maintain in their witness statements that Ms X was residing at Another Street until 29 October 2009; however, this is contradicted by the statement of Ms Y. Ms Y reports that Ms X's niece informed her at the meeting in July 2010 that Ms X had moved out by the time the niece's partner moved in, in September 2009. Ms Y also recounts a telephone conversation with Ms X's niece in December 2010 in which Ms X's niece reiterated that Ms X had moved out before the niece's partner moved in, although on this occasion she gave the date of the partner's arrival as October rather than September 2009.

64. It is not possible to reconcile these two very different accounts of events. I have weighed them up very carefully and I have come to the conclusion that Ms Y's account is more likely to be accurate. Ms Y visited Ms X's niece in July 2010 with the specific intention of establishing the facts about Ms X's stay with Ms X's niece. She records clearly that Ms X's niece said that Ms X had moved out before niece's partner moved in. It is possible that this may have been a misunderstanding; however Ms Y also reports a telephone conversation with Ms X's niece in December 2010 in which Ms X's niece again said that Ms X had gone by the time niece's partner moved in (although she gave a different date on the second occasion).

65. I consider that Ms X's niece's first account of events (as reported by Ms Y) is more likely to be correct. In my view it is unlikely that Ms X's niece would misremember whether Ms X was still living at the property when her partner moved in, as the property was clearly quite crowded at the time and the situation would have been difficult. When Ms X's niece was specifically asked about this she stated to Ms Y on two separate occasions, six months apart, that Ms X was no longer living with her when the niece's partner moved in. I consider that these conversations are most likely to represent an accurate account of the situation.

66. It is not possible to determine why Ms X's niece subsequently gave a different version of events in her witness statement. It is clear that when they provided their witness statements, Ms X and her family understood why they were being asked to supply this information, and were aware of the possible consequences of a decision that Ms X was not ordinarily resident in CouncilA; Ms X, Ms X's niece and Ms X's sister all stated that Ms X was happy in CouncilA and would be very distressed if she had to leave. It appears to me that Ms X's niece's original statements to Ms Y, when the

family was less likely to have felt under pressure to produce a result that was favourable to Ms X, are more likely to be accurate.

67. I therefore accept Ms X's niece's original statements, as reported by Ms Y, that Ms X had moved out of 4 Another Street by the time of her admission to hospital on 29 October 2009.

68. I now need to consider where Ms X was in fact residing at that date. Unfortunately I do not have sufficient information before me to determine this. Ms X and her family have not suggested any alternative address for Ms X, and say that Ms X was still living at 4 Another Street at that time. Whilst CouncilA assert that Ms X was ordinarily resident in CouncilB, they are unable to point to a specific address in CouncilB at which she was living. It is acknowledged that Ms X was staying with FriendONE on the day she went into hospital, but there is no evidence that she was living at FriendONE's address.

69. I cannot establish the precise date at which Ms X left 4 Another Street but according to Ms Y's statement, it was some time in September or October 2009. Therefore Ms X had left Another Street only a few weeks before she suffered her stroke. From the information available to me I conclude that Ms X had ceased to reside at 4 Another Street by 29 October 2009, but had not yet acquired a home anywhere else. It appears to me that during that period she would have been temporarily without a home. I therefore conclude that on the date of her admission to hospital, 29 October 2009, Ms X was of no settled residence.

70. I note that CouncilB submit that it is inappropriate to conclude that Ms X is of no settled residence at 29 October 2009 because she had an address available to her at 4 Another Street. However, for the reasons given above, my view is that Ms X had moved out of Another Street by that date.

71. As Ms X had no ordinary residence on 29 October 2009, the deeming provision in section 24(6) of the 1948 Act does not apply; this provision operates to deem a person's ordinary residence to *continue* in specified circumstances, but as Ms X had no ordinary residence at the key date, there is nothing to be continued by the operation of the deeming provision.

72. It is therefore necessary to ascertain where Ms X was ordinarily resident after her admission to hospital, on the basis of the facts applicable at the time. Ms X was admitted to HospitalQ on 29 October 2009 and was discharged to the RehabilitationUnitK in CouncilC, on 18 December 2009. She was discharged from that unit on 27 April 2010. She was therefore in the hospital for just under two months and in the rehabilitation unit for a little over four months.

73. I need to consider whether Ms X acquired ordinary residence in hospital. Normally a person would not acquire an ordinary residence during a stay in hospital because of the deeming provision in section 24(6) of the 1948 Act, but as explained at paragraph 71 above, that provision does not apply in Ms X's case.

74. Leaving aside the deeming provision in section 24(6), when a person is ordinarily resident in a place and goes temporarily into hospital, they would not normally lose their ordinary residence because of the hospital stay; in the case of *Fox v Stirk* (1970 2 QB 463) Lord Denning set out the principle that temporary absence does not deprive a person of their ordinary residence: “If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account”. This principle is set out at paragraphs 23 to 24 of the OR guidance.

75. However, it is possible for a person to acquire ordinary residence in hospital; if this were not so, the deeming provision in section 24(6) of the 1948 Act would not be necessary. Whether ordinary residence would be acquired will depend on the facts of the case, in accordance with the test in *Shah*.

76. Ms X was admitted to HospitalQ as an emergency following her stroke. It is clear that she was seriously ill, and remained so for some time. I have considered whether Ms X’s stay in hospital meets the *Shah* test of being an “abode in a particular place... 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”. It does not appear to me that this test is met. Ms X had not adopted the hospital as her residence “voluntarily”; she was taken there when she became unwell and it was not a matter of choice. Nor does it appear to me that Ms X was in the hospital “for settled purposes”; she was there to receive acute medical care and she remained there only for as long as she needed that care.

77. I have also considered whether Ms X could have acquired ordinary residence while in the RehabilitationUnitK. Her stay there was longer than her stay in hospital but it seems to me that the same considerations apply. Ms X was there solely for the purpose of rehabilitation; she was not in the Unit out of choice, but because her health issues required her to be there. Nor was it her decision to leave the unit; she left when those responsible for her care felt she was well enough to be discharged. It therefore does not appear to me that she had adopted the Unit as her residence “voluntarily and for settled purposes”..

78. The effect of my conclusions above is that Ms X was of no settled residence when she left the RehabilitationUnitK on 27 April 2010. Therefore the deeming provision in section 24(5) of the 1948 Act did not apply, and her ordinary residence since that date also falls to be determined on the facts, according to the test in *Shah*.

79. It is clear that since that time, Ms X has been ordinarily resident in CouncilA. CouncilA acknowledge this in their submissions but they argue that section 24(5) and (6) should operate to deem Ms X’s ordinary residence to be elsewhere. However as my conclusion is that the deeming provisions do not in fact apply, the result is that Ms X’s ordinary residence since 27 April 2010 has been in CouncilA.

80. I wish to emphasise that the circumstances of this case are very unusual, and cases of no settled residence are rare. Normally an acceptance of provisional responsibility by a local authority would not lead to the individual acquiring ordinary residence in that

authority's area. Therefore local authorities should not avoid accepting provisional responsibility.

Signed on behalf of the Secretary of State for Health

Dated