

## Understanding 'Ordinary Residence' / 'Ordinarily Resident' (OR) in relation to the NHS

'Ordinarily resident' is not defined in the NHS Act 2006. The concept was considered by the House of Lords in 1982 in the case of *Shah v. Barnet LBC*<sup>1</sup> and although the case being considered was concerned with the meaning of ordinary residence in the context of the Education Acts, the decision is recognised as having a wider application and applies to the NHS Act 2006 and Charging Regulations.

The definition of Ordinary Residence being used in these Regulations is as follows: *living lawfully in the United Kingdom, voluntarily and for settled purposes as part of the regular order of their life for the time being.*

The concept of 'settled purpose' has been developed by the courts: There must be an identifiable purpose for the residence here, there can be one purpose or several and it may be for a limited period. The purpose for living in the UK must have a sufficient degree of continuity to be properly described as "settled".

So, whether a person is ordinarily resident here is essentially a threefold test (fourfold for non-EEA nationals subject to immigration control), assessing whether that individual

- i) is lawfully in the UK;
- ii) is here voluntarily (it will be rare for a person not to be in the UK voluntarily);
- iii) is properly settled here for the time being; and
- iv) (for non-EEA nationals subject to immigration control) has the immigration status of indefinite leave to remain.

Whether a patient is ordinarily resident is determined in the light of the circumstances of each individual patient. Overseas Visitor Managers in hospitals are accustomed to establishing a person's ordinary residence status, and a tool has been developed to assist them in applying the new regulations and regime in a fair and transparent way.

A person can be absent from the UK for a temporary or finite period and still be ordinarily resident here. Those acting as missionaries or volunteers overseas, and their family members, may not intend to live overseas indefinitely, and may maintain a base in the UK to which they return regularly or periodically, including, but not exclusively, between assignments. This base may be their own home or the home of close friends or family. (Though it is likely that the longer someone is overseas, the more difficult it may be to prove OR.)

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<sup>1</sup> *Shah v Barnet London Borough Council and other appeals* [1983] 1 All ER 226