

1. Competency: <b>Three</b> Client Relations	Learning Outcome: <b>3.3 (b)</b> Provide clear legal advice to clients or service users
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2. Evidence provided:  
  
Email to client regarding Continuing Health Care needs of a service user

3. Outline how the evidence demonstrates you meet the outcome

**Advice, options and next steps:** The email provided advice in relation to the Local Authority's position regarding whether or not a service user was Ordinarily Resident in [redacted] (our area) or [redacted] for the purpose of continuing health care.

**Legal Advice Provided:** Having researched the legislation, I advised the client that I felt that having looked at the legislation there are two possible arguments to be had.

- (1) Parents now in [redacted] and were Ordinary Residents there at time CHC ceased so they should be responsible.
- (2) Parents only moved to [redacted] to be close to WT (where we placed him) and would not have moved there otherwise. In this sense the move was not voluntary and in any event WT was OR in [redacted] immediately prior to accident (new rules, although do not apply, are likely to be taken into consideration) so we should be responsible.

4. Reflection and Evaluation

Clients rely on the legal advice provided to them, so it is essential that the legal advice provided is accurate and complete to enable them to make a decision.

5. Completion date: 26 April 2013	
6. Signed (Applicant) [redacted]	Date: 17.10.13
7. Signed (Supervisor) [redacted]	Date: 19.10.13

To: [REDACTED]  
 Subject: Continuing Health Care

Dear [REDACTED]

**RE: S114 and 115 MHA and Continuing Health Care**

Further to our discussions I have been through the relevant legislation and my advice and next steps are detailed below.

Research:

The guidance states at 114 and continues into 115:

"...where a person is placed in a care home (or other accommodation funded by the NHS) in another local authority area for the purposes of receiving NHS CHC, they continue to be ordinary resident in the local authority area in which they were ordinarily resident before entering the NHS accommodation.

...it is possible that they may cease to be eligible for NHS CHC, but still need to remain in their care home, or to be provided with Part 3 accommodation elsewhere. In such a case,....the local authority in whose area the person was ordinary resident immediately before being provided with NHS accommodation would be the authority responsible for funding the person's accommodation under Part 3 of the 1948 Act".

However, the guidance goes on to state at 115b:

".....[the above] does not apply to anyone who was receiving NHS CHC immediately before 19<sup>th</sup> April 2010 and this remains the case for as long as they continue to be provided with that NHS CHC accommodation.... [In these circumstances] the dispute must be resolved in the light of the specific circumstances and not [the above].

Advice:

As you can see from the above there are no set rules in this circumstances given that WT has continued to receive NHS CHC prior to 19<sup>th</sup> April 2010. The guidance, rather unhelpfully, states that the determination of OR will be decided "in the light of the specific circumstances".

would say that there are two arguments:

- (1) The Parents are now in [REDACTED] and were Ordinary Residents (OR) there at time CHC ceased so they should be responsible.
- (2) Parents only moved to [REDACTED] to be close to WT (where we placed him) and would not have moved there otherwise. In this sense the move was not voluntary and in any event WT was OR in [REDACTED] immediately prior to accident (new rules, although do not apply, are likely to be taken into consideration) so we should be responsible.

I would like to discuss this with your further, so please contact me when you have had a chance to consider the above and we can schedule a meeting.

G.Inst L.Exec

Legal Officer,