

# 11KBW

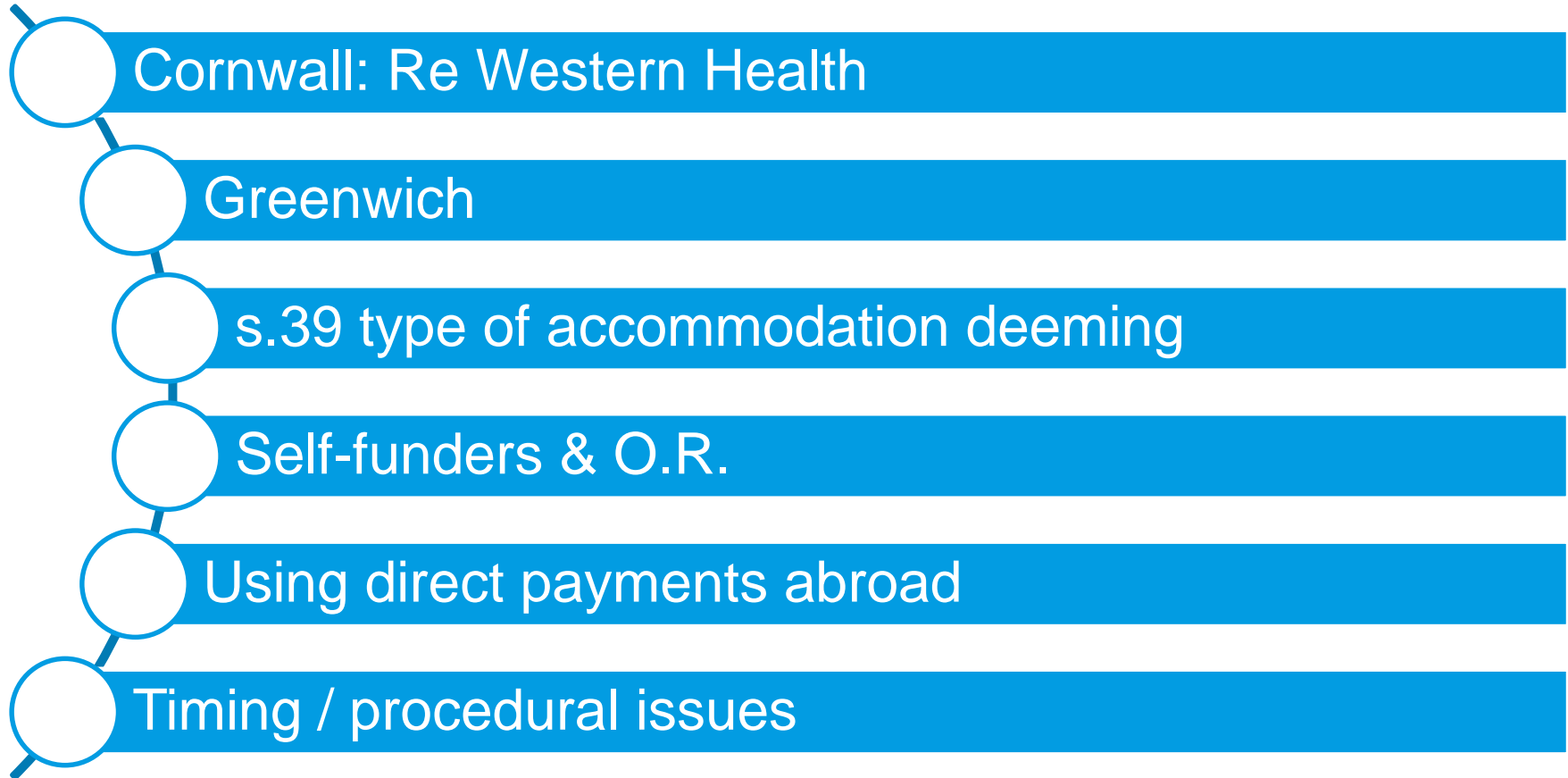
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## **CURRENT ISSUES IN ORDINARY RESIDENCE**

**Jonathan Auburn**

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# 6 CURRENT ISSUES

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- 1 Cornwall: Re Western Health
  - 2 Greenwich
  - 3 s.39 type of accommodation deeming
  - 4 Self-funders & O.R.
  - 5 Using direct payments abroad
  - 6 Timing / procedural issues

# [1] Cornwall / capacity & O.R.

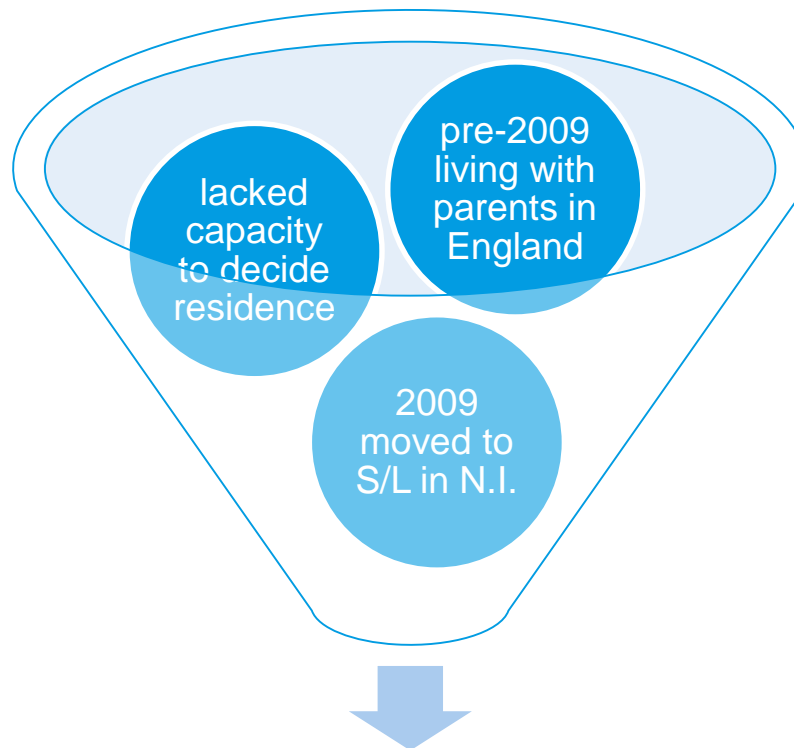
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# Re Western Health [2018] NIQB 67

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HELD: applying Cornwall, O.R. in N.I. since 2009 move there

# Re Western Health (ctd)

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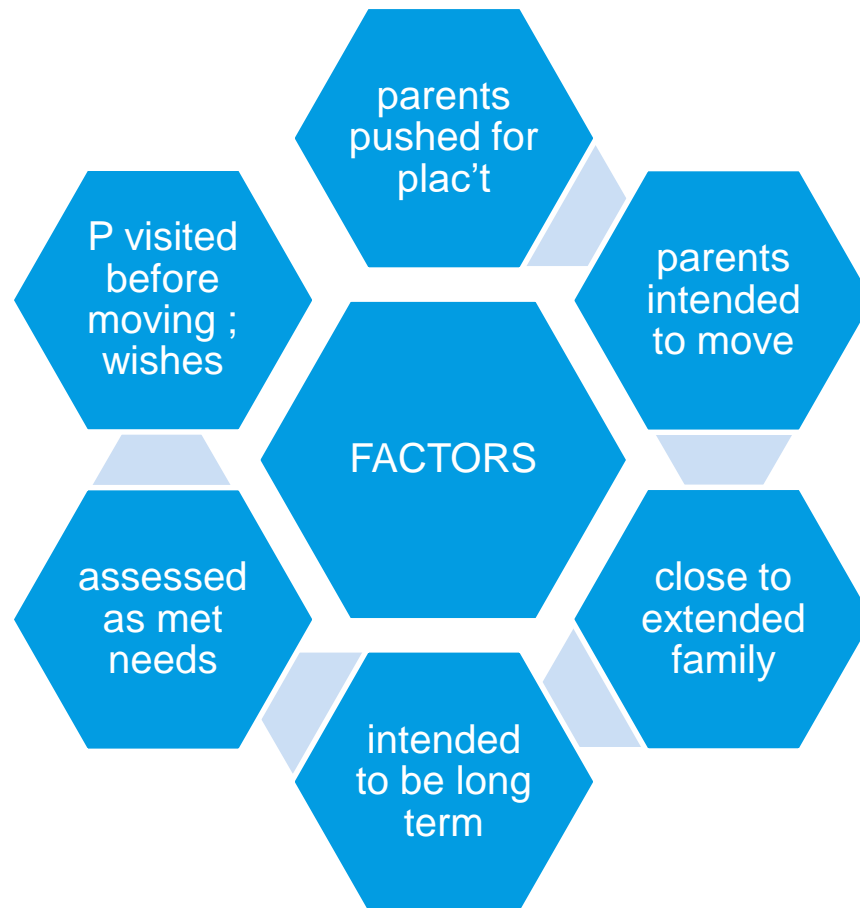
law  
Shah as  
modified  
by  
Cornwall

test  
whether  
residence  
in N.I.  
“sufficiently  
settled” to  
amount to  
O.R.

application  
factors ...

# Re Western Health: Cornwall factors

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# Re Western Health: “arranging” accomm 11KBW

Sch 1: if Eng LA “arranging for provision of accomm” in N.I., then O.R. remains with Eng LA

held: “arranging for provision of accomm” not a term of art

straightforward construction; directed attention to who orchestrated plac’t

here parents were “prime movers” in arranging plac’t & LA a “spectator”, agreeing in principle

funding + other conduct could amount to “arranging”; but here just a single factor

# [2] Greenwich

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# The Greenwich case

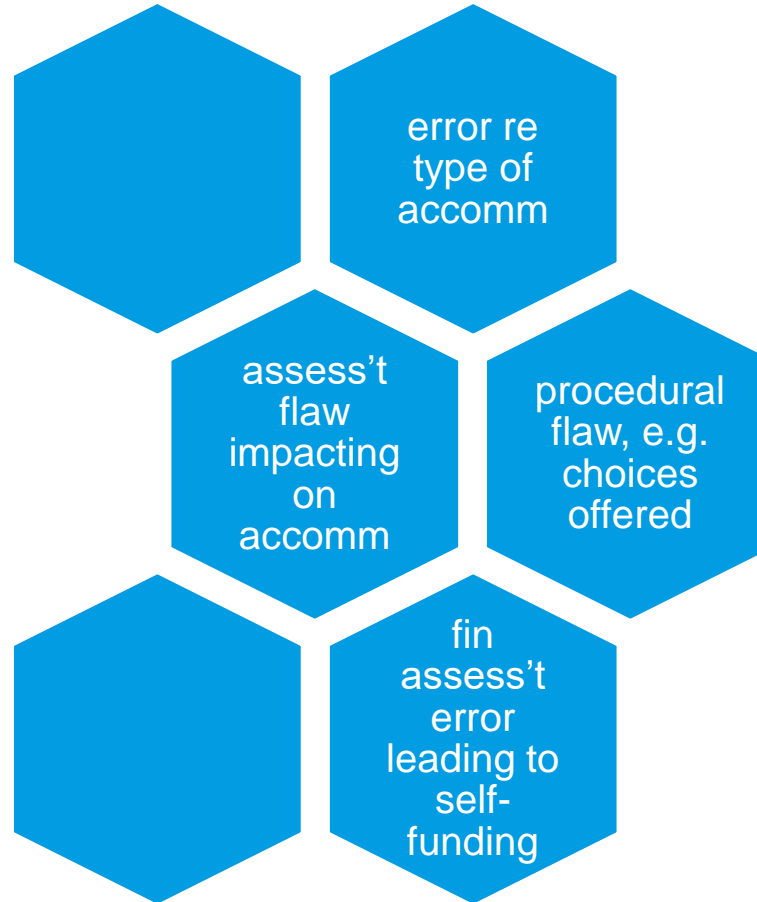
self-funder had to move urgently; only home available was in Greenwich

Held: although Bexley made some arrangements, O.R. in Greenwich as had sold home & severed all ties with the Bexley area

obiter: what not decided yet is what position should be if arrangements should have been made & not made; common ground that LA should have made arrangements

if LA had acted unlawfully in not making arrangements, apply deeming provision “on the basis that they had actually been put in place by the appropriate LA”

# Greenwich case: applications

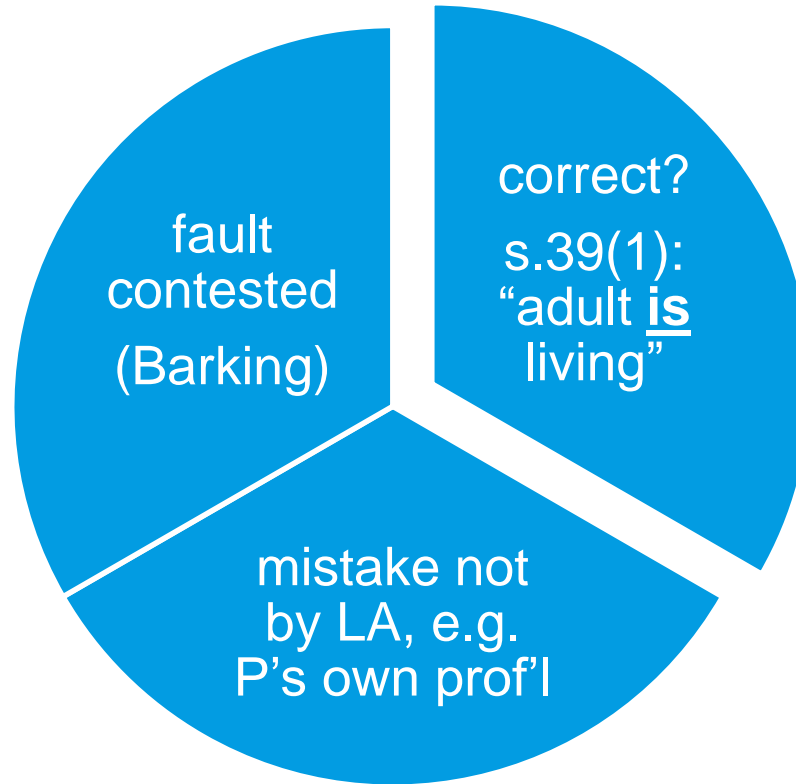


# Greenwich: meaning / scope of principle

- Greenwich was (1) obiter, (2) a concession
- R (LB Barking & Dagenham) v SoS for Health [2017] EWHC 2449 (Admin), para 43:

“I accept the principle that where a LA unlawfully fails to comply with its statutory duty under s.21, the Court should proceed on the basis that the s.21 arrangements had actually been put in place (*Greenwich case*). However it is not for the Court to substitute its own views about HR's care. The Court, and the SoS in making a determination about ordinary residence, must restrict their considerations to matters of unlawfulness. In this context the SoS applied the correct legal test when concluding that Redbridge had arrived at its decision on HR's needs 'lawfully and rationally'.”

# Greenwich: caveats



# [3] s.39 Type of accomm deeming

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## SUPPORTED LIVING

HELPING PEOPLE RETAIN THEIR INDEPENDENCE



## s.39 Type of accomm deeming

**s.39(1) CA 2014:** “Where an adult has needs for care and support **which can be met only** if the adult is living in accommodation of a type specified in regulations, and the adult is living in accommodation in England of a type so specified, the adult is to be treated ...”

**Guidance para 19.50:** Need should be judged to be ‘able to be met’ or of a kind that ‘can be met only’ through a specified type of accommodation where LA has made this decision following an assessment and a care and support planning process involving the person.

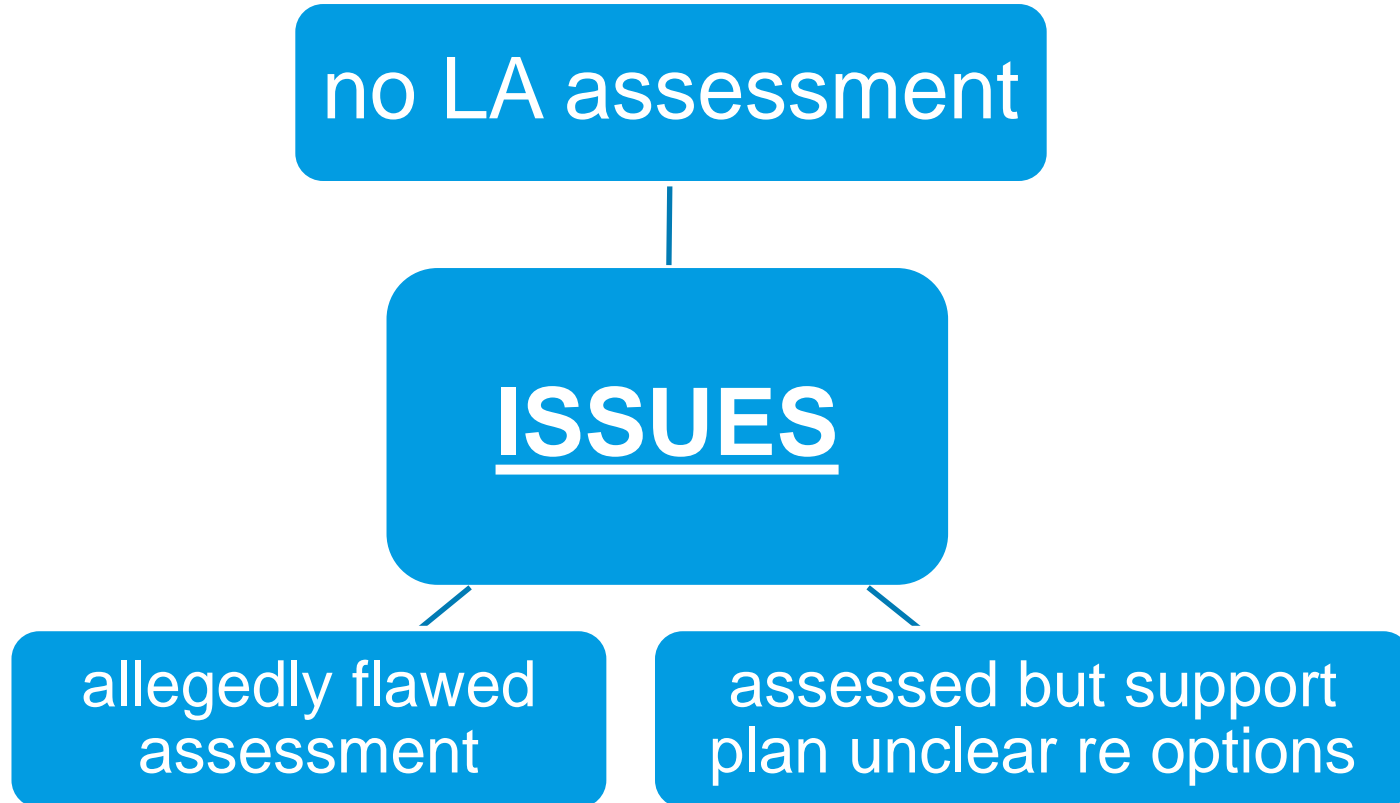
Decisions on how needs are to be met ... should evidence that needs can only be met in that manner. Where the outcome of the care planning process is a decision to meet needs in one of the specified types of accomm and it is LA’s view it should be assumed that needs can only be met in that type of accomm for the purposes of ‘deeming’ O.R..

This should be clearly recorded in the care and support plan.

LA is not required to demonstrate that needs cannot be met by any other type of support. LA must have assessed those needs in order to make such a decision - the ‘deeming’ principle therefore does not apply to cases where a person arranges their own accomm and LA does not meet their needs.

## s.39 Type of accomm deeming (ctd)

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## [4] Self-funders & O.R.

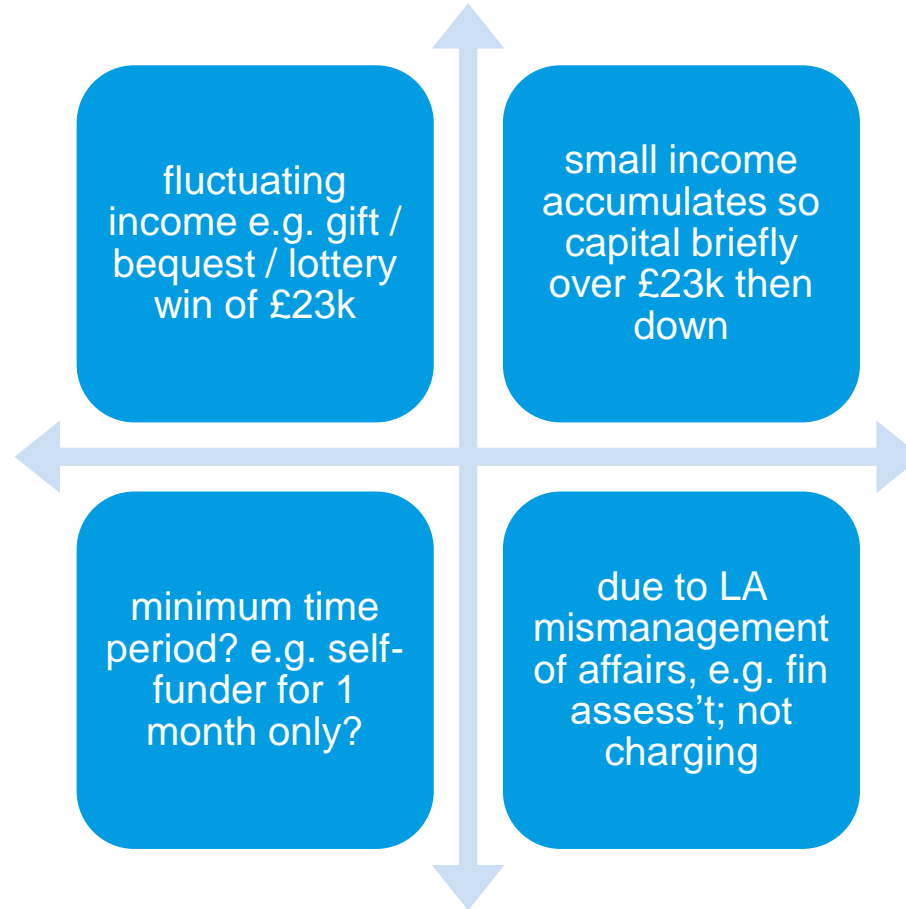
Care and Support (O.R.) (Specified Accommodation)  
Regs 2014/2828, Reg 2(2):

“The types of accomm referred to in para(1) are specified in relation to an adult for the purposes of s.39(1) of the Act only if the care and support needs of the adult are being met under Part 1 of the Act while the adult lives in that type of accomm”

**RESULT:** if paying for own care then not within Reg 2(2)



# Self-funders: issues



## [5] Using DPs abroad

DP recipient  
uses DPs to  
fund care  
abroad for  
part of year

can LA  
decline to  
fund on basis  
of dual O.R.?

Guidance:  
only one O.R.

Guidance is in  
context of 2  
UK LAs

# [6] Timing & procedural issues

time limit on referrals?

- current SoS practice
- Care and Support (Disputes Between LAs) Regs 2014, reg 3(7): “If LAs cannot resolve the dispute w/in 4 months of the date on which it arose, the lead authority must refer ....”
- any functional time limit?

going back beyond 6 years?

- SoS practice?
- FOR: not tied to Lim Act; source of power is from req to follow directions issues by SoS
- AGAINST: limits of civil claim for restitution

individual has passed away

- s.40(1): “Any dispute about where an adult *is* O.R. for the purposes of this Part ...”
- similarly Reg 2(1) Disputes Between LAs Regs 2014, reg 2(1) “is O.R.”
- similarly s.37: “This section applies where— (a) an adult’s needs for care and support are being met by a LA ...”.

