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NETWORK

No
Recourse
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Funds

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organise

SUPPORTING MIGRANTS

**LACKING MENTAL CAPACITY
IN RELATION TO
IMMIGRATION MATTERS**



NOVEMBER 2022



Migrants Organise provides a platform for refugees and migrants to organise for power, dignity and justice to enable meaningful inclusion and integration. We combine advice and support for individuals affected by the hostile environment immigration policies with community organising, advocacy, research and campaigning to help dismantle structural racism.

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The No Recourse to Public Funds (NRPF) Network is a national network safeguarding the welfare of destitute families, adults and care leavers who are unable to access benefits due to their immigration status. The NRPF Network supports councils to prevent homelessness, alleviate child poverty, promote integration within local communities, and to operate cost-efficient services.

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About this report

This document is produced in collaboration between Migrants Organise and the No Recourse to Public Funds (NRPF) Network to provide guidance to social work practitioners when working and supporting migrants who may lack mental capacity to make decisions on immigration matters.

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INTRODUCTION

Individuals with no recourse to public funds often include migrants or people seeking asylum who do not yet have immigration status or are not even engaged with the process of regularising their status.

Social services can still be under a duty to provide support and assistance because social services' assistance is not a 'public fund' and therefore can be provided to individuals with no recourse to public funds. This includes duties under the Care Act 2014 and s117 Mental Health Act 1983 as more fully described in the [NRPF Network's guidance on Assessing and Supporting adults who have no recourse to public funds](#).

When working with individuals who do not have an immigration status, or who have other immigration issues, it is essential for local authorities to consider what assistance they can provide to help individuals resolve them.

Firstly, in line with the duty to promote individual wellbeing under the Care Act 2014, the resolution of immigration issues forms an integral element of the support that individuals are entitled to. For instance, without an immigration status, individuals are unable to access mainstream benefits and housing assistance and are not allowed to work, have a bank account, obtain a marriage licence, or rent a property. They are also at risk of enforcement actions including indefinite detention, removal or deportation.

Secondly, providing accommodation and subsistence support to people with no recourse to public funds can be a high-cost service for local authorities and a cost which is not reimbursed by the central government. In the majority of cases, providing assistance for individuals to resolve their immigration issue would therefore be the sustainable aim. When an individual obtains an immigration status, they would be able to access mainstream benefit and housing assistance (depending on the specific status) and/or employment, which would come at a lower cost to local authorities. NRPF Network research shows that the average time an adult without recourse to public hand, who has care and support needs, is provided with accommodation and financial support is 2.5 years. 60% of these adults exit support following a grant of leave to remain.

However, the immigration system is extremely complex, and many vulnerable individuals who require support and assistance might struggle to engage with immigration processes or to make the decisions necessary to resolve their immigration issues. Indeed some individuals might even lack the requisite mental capacity to make immigration related decisions.

This guidance sets out how local authorities can provide assistance for individuals (P) who have immigration issues and whose mental capacity to make decisions relating to their immigration matters is in question. This guidance will focus primarily on the assessment of mental capacity as it relates to immigration matters and how to obtain immigration advice and assistance for someone whose mental capacity in relation to these matters is in question.

This guidance complements and should be read in conjunction with the NRPF Network's wider practice guidance on supporting adults with NRPF and guidance on when and how to undertake a human rights assessment if exclusions to social services support apply.

Terminology

In this document "P" refers to an individual who might have problems with their mental capacity to take steps and make decisions necessary to resolve their immigration issues.

Best Practice

- In assessing mental capacity, it is important to remember that Immigration law is very complex and technical, particularly in its interaction with other areas of social welfare law and how it affects individuals' rights and entitlements.
- Many individuals who require immigration help and advice might also be vulnerable, either as a result of past trauma and/or due to other underlying mental health conditions. It is important to provide assistance in a trauma-informed way and provide reasonable adjustments to ensure ongoing positive relationships and to avoid retraumatisation. The Helen Bamber Foundation's Trauma Informed Code of Conduct when working with victims of trafficking sets a standard for good practice when working with vulnerable migrants.

- P might have delusional beliefs regarding their immigration status or entitlements, or present as non-engaging. Providing immediate and tangible care and support, particularly around basic needs, will help P establish a sense of security and safety. It is then likely to become easier to open up discussions with P about their immigration issues.
- One must be very careful not to assume the role of an immigration adviser as it is a criminal offence to provide immigration advice without proper accreditation. It is, however, useful to discuss P's immigration history using non-legal language in a safe and trauma-informed way. For example, instead of speaking in terms of asylum (e.g. "Why have you claimed asylum?"), ask P simply why they have come to the UK and how; whether they have any family in the UK or elsewhere; whether they like living in the UK. This type of information would be relevant for P's immigration case.
- In assessing the individual's capacity in relation to immigration matters, the first step should be to help them obtain immigration advice to identify precisely the decisions that the person might have to make. An assessment should address whether P can provide the required information to the adviser and whether P can understand the advice that they are being given to make a decision.
- It is important to remember that a holistic approach to support is still integral and that immigration issues are only one part of the wider picture – the fact that a person has no recourse to public funds, in itself, is also often a feature of a person's multiple disadvantages. Working together with local charities and community organisations can often be invaluable in ensuring that individuals receive the holistic support that they need. Many charities can also provide immigration advice and/or provide legal advocacy assistance to ensure that legal representatives carry out their job well and in line with standards of best practice.
- Cases involving lack of capacity to make relevant decisions should be flagged and, if possible, practitioners should speak to their managers or supervisors regarding the case. It is also best practice to speak to other professionals and individuals who are supporting P so that they understand how P's lack of capacity may affect their ability to engage with services.

THE CAPACITY ASSESSMENT

Mental Capacity Under the Mental Capacity Act 2005

Under the Mental Capacity Act 2005 (MCA'05) mental capacity is the ability to make a particular decision at a specific point in time.

This guidance proceeds on the basis that capacity is always to be assessed by reference to the functional test contained in the Mental Capacity Act 2005. Many pieces of legislations already specifically provide for this and, even in cases where legislation does not do so, applying the test contained in the MCA'05 will ensure that the relevant considerations are taken into account

The MCA'05 is not so much concerned with specific mental health conditions that people might suffer from, such as dementia or schizophrenia, but rather, with a person's functional ability to make a decision. The MCA'05 Code of Practice is clear that a specific diagnosis is not required to establish "disturbance in the functioning of the mind or brain".

Under the MCA'05 mental capacity is both decision- and time-specific. In the case of *A Local Authority v JB* (by his litigation friend, the Official Solicitor) [2021] UKSC 52, the Supreme Court confirms that a capacity assessment is an inquiry on "the matter" at the material time, taking into account the specific facts of a particular decision. The assessment therefore should not be carried out in an abstract vacuum or in hypothetical circumstances.

When working with mental capacity and the MCA'05, it is always important to note the 5 underlying principles as set out under s1 of the MCA'05:

1. A person must be assumed to have capacity unless it is established that they lack capacity;
2. A person is not to be treated as being unable to make decisions unless all practicable steps have been taken without success to help him to do so;
3. A person is not to be treated as unable to make a decision merely because he makes unwise decisions;
4. An act done, or decision made, under this act on behalf of a person who lacks capacity must be done, or made, in his best interests; and,
5. Before an act is done or the decision is made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

It is important to highlight principle 2 above, which imposes on those assessing P's mental capacity and on those acting on P's behalf an ongoing duty to encourage and maximise P's mental capacity to make decisions. In the context of immigration, P therefore should have access to a legal adviser who can advise fully and competently on the decisions that need to be made, while providing necessary reasonable adjustments.

The two stages of mental capacity assessment can be found in s2 of the Mental Capacity Act 2005. For further guidance on the mental capacity assessment, you can read this guidance on [Carrying Out and Recording Capacity Assessments](#) by 39 Essex Chambers.

Mental Capacity In Relation to Immigration Matter

There is yet to be any case law which provides guidance on what it means to lack mental capacity in relation to immigration matters. In this section, we will therefore provide our best framing of the position in order to assist practitioners in their work.

In the context of supporting individuals with immigration issues, the "matter" of concern is an individual's, P's, ability to take steps and make decisions necessary to resolve their immigration issues. Immigration-related processes are often long and complex, and in order for P to be able to resolve their immigration issues, there are many different interconnected decisions that need to be made.

At a macro-level, three connected decisions would need to be made for P to solve their immigration issues:

1. Which country does P want to reside in?
2. If P wants to reside in the UK, does P wish to regularise their status and/or resolve their immigration issues?
3. If yes, what steps does P want to take to regularise their status and/or resolve any immigration issues?

In our view, a person would need to have capacity to make all three macro-level decisions in order to be able to take steps to resolve their immigration issues. Taking these decisions in turn:

1. Which country does P want to reside in?

Immigration decisions ultimately relate to an individual's country of residence. For P to be able to engage with the immigration process, it is crucial that they have capacity to decide where they would like to live.

In order to have mental capacity in relation to this decision, they would need to understand the different options (in terms of country of residence) that are potentially available to them as well as the benefits and risks of choosing one country over another. P will therefore need to be able to understand the concept of an immigration status in the first place (i.e. the idea that to reside in a particular country, a person needs to be allowed to do that, such as by virtue of being a citizen or having an appropriate visa / "leave to remain").

They would also need to be able to weigh the pros and cons of each option. For instance, it might be that staying in the UK means that they would be unable to work or claim benefits. However, this has to be weighed against any risk that they might face if they were to return to their country of origin, and/or any impact on re-entry rights to the UK. P also may have to weigh-up and consider the availability of voluntary return routes or arrangements that would be required to ensure safe return to their country of origin.

P would need to be able to broadly articulate the reason for their decision to reside in a particular country.

2. If P wants to reside in the UK, does P wish to regularise their status and/or resolve their immigration issues?

P will need to understand the consequences of residing in the UK without an immigration status. Quite apart from the lack of access to statutory support and services, it is also a criminal offence to be residing in the UK without an immigration status. There will also be an ongoing risk of immigration enforcement including indefinite detention and removal.

Many individuals who lack capacity to engage with their immigration issues present simply as non-compliant / refusing support. Under the Migrants Mental Capacity Advocacy Project for example, Migrants Organise often encounters individuals with strong delusional beliefs about their immigration status and therefore refuse support because they do not think they need it. Non-engagement therefore should be carefully investigated, as it could actually stem from lack of mental capacity, as opposed to a carefully considered decision on P's part.

If P were to decide not to regularise their status, they would need to be able to broadly explain why that is in a coherent way. For example, it might be that they are on an end of life support or receiving palliative care and do not see the point in engaging with the immigration process. There is a presumption of mental capacity under s1(2) of the Mental Capacity Act 2005, and it is possible for an individual to make an unwise, but still capacitous, decision not to regularise their immigration status.

However it is important to note, as observed in *RBS v AB* [2020] UKAT18 2702, "the s1(2) presumption, like any other, has logical limits. When there is good reason for cause for concern, where there is legitimate doubt as to capacity to litigate, the presumption cannot be used to avoid taking responsibility for assessing and determining capacity. To do that would be to fail to respect personal autonomy in a different way."

3. If yes, what steps does P want to take to regularise their status and/or resolve any immigration issues?

In order to regularise their immigration status, P would need to obtain advice from an immigration adviser regarding their immigration options and then be able to make decisions as to how to proceed.

There will be a series of micro-decisions that would need to be made for P to be able to regularise their status/resolve any immigration issues, depending on P's circumstances. This might include, but is not limited to:

- Understanding the different routes that are available to P to resolve their immigration issues and making a decision on which route to go for. P would need to be able to consider the possible implications of the different routes in terms of the process that they would have to go through (what evidence needs to be gathered, who would need to be contacted, whether P would need to be interviewed by the Home Office, etc.), any fee requirements and corresponding fee waivers that can be used, and different "leave to remain" statuses that they might obtain. For example, P might be able to challenge a previous refusal via an appeal or make a fresh application to the Home Office.
- Deciding whether or not they want to instruct a lawyer or legal adviser, understanding the benefit of doing so and whether or not to try and obtain legal aid. If P is represented, they would also need to be able to give sufficiently clear instruction based on the adviser's guidance. For example, the adviser might recommend obtaining an expert report to strengthen P's position even though that might add to the delay of the case. P would need to be able to weigh up the positive impact of having a stronger case versus the negative impact of delaying action on their position and immigration status.

When assessing P's capacity at this stage, two steps should be taken:

1. First, one should note the decisions that P actually has to make at present, in order to regularise their immigration status (or resolve any immigration issue). It is important to avoid considering decisions that they hypothetically might have to make or even are likely to have to make in the future.
2. Second, taking into account all the different relevant decisions together, one should assess whether P has the overall macro-level capacity to make decisions or take necessary actions required to regularise their status/resolve any immigration issues.

¹ See case of CDM (Royal Borough of Greenwich v CDM [2019])

Example:

SZ suffers from chronic delusional disorder and is under mental health aftercare support provided by a Local Authority. SZ has grandiose beliefs that he is a very accomplished engineer with multiple inventions and businesses in the UK. He also states that he has worked and volunteered in various different organisations and charities in the UK. SZ is able to understand that he is currently in the UK without any status. He had reservations about obtaining a solicitor to advise him as he doesn't have any money, but after being told about the availability of legal aid, was happy to proceed. SZ instructs that he has been in the UK for 20 years and his Home Office records and various organisations would show this. He instructs that he doesn't have any health issues and would be fine going back to his country of origin where he still has family who he is in regular contact with. However, he wants to stay in the UK to continue with his businesses and research.

His solicitor then helps him obtain his records and contacts different organisations SZ claimed to have been involved in. Unfortunately his Home Office records show that he only arrived in the UK in 2011 and none of the organisations have any record of him. He is then advised that another route he could take (which would lead to the same exact leave to remain) is focused on his diagnosed mental health conditions and vulnerabilities and the fact that there would be very significant obstacles for him to reintegrate in his country of origin. SZ refuses to move forward with this second route and states that the Home Office and organisations are conspiring against him. He continues to deny any mental health issues and states that he would be able to manage himself as he is a very successful man, despite clear medical records and notes to the contrary. At this stage a capacity assessment is obtained. It is concluded that SZ's delusions interfered with his capacity to take steps to regularise his immigration status.

Who Should Assess Capacity?

Given the complexity of immigration matters, and of mental capacity in relation to immigration, we strongly suggest that the assessment of a person's capacity to make decisions in relation to immigration matters be done formally by a medical professional and/or social worker, particularly those who are working with P, as per the Mental Capacity Act Code of Practice.

This however should be carried out together and with close input from an immigration adviser / representative.

WHAT CAN BE DONE IF A PERSON LACKS CAPACITY IN RELATION TO THEIR IMMIGRATION MATTER?

If a person lacks capacity in relation to their immigration matter, then an authorised third party will be needed to make decisions on behalf of P, on the basis of their best interest, in relation to their immigration status.

This section deals specifically with how an authorised third party can be obtained.

Can Section 5 of the MCA'05 be Relied Upon?

Unfortunately the steps that need to be taken on P's behalf to resolve P's immigration issue are unlikely to fall under s5 of the MCA'05.

Firstly, s5 of the MCA'05 provides protection from liability for an "act in connection with the care or treatment", done in the best interest of another person who lacks mental capacity in relation to the matter in question.

It is unclear whether the steps that need to be taken by a third party on behalf of P to resolve P's immigration status would constitute an "act in connection with the care or treatment" of P. There is currently no clear statutory guidance or case law on this issue. The Mental Capacity Act code of guidance provides, as examples of circumstances where s5 can be relied on, acts such as helping someone to wash or providing medical treatment to another person. These acts clearly and intuitively fall within the ambit of "care or treatment" and are arguably different in nature to providing someone with assistance to resolve their immigration status.

It is therefore not advisable for reliance to be placed on s5 when allowing a third party to make decisions on P's behalf about P's immigration status.

Secondly, an application to the Home Office cannot be made on behalf of someone else without clear authorisation. Currently, the only Home Office policy which addresses the possibility of making an application on behalf of someone else who lacks mental capacity is the EU Settlement Scheme policy.² The Home Office, therefore, is unlikely to accept an application on behalf of P simply on the basis that the individual lacks capacity to do so themselves, without clearer authorisation.

Applications to the Court of Protection

In order to receive the appropriate authorisation, an application can be made to the Court of Protection. The Court of Protection can give clear authorisation allowing the Local Authority to instruct an independent third party or third parties to make decisions and act on behalf of P in relation to P's immigration issue. Please find on appendix A, a redacted example of the order that could be obtained.

This will need to be done through each Local Authority's legal team who will provide advice on the steps that need to be taken in relation to Court of Protection Applications.

We suggest that an application is made under s16 of the MCA'05 to obtain a welfare order allowing social services to appoint a third party/parties. These third parties can then take steps and make decisions on behalf of P to assist P in resolving their immigration issues. Such an order provides certainty and clear protection from liability, and provides the Home Office with clear authorisation for the third party to act on P's behalf.

We believe that in many circumstances involving a vulnerable migrant with NRPF, a welfare order is the most appropriate given that the immigration decision will have a lot of impact on P's welfare, e.g. their ability to access services such as the NHS, access to welfare benefits, housing, etc. If P is eligible for legal aid, their property and affairs also would unlikely be affected by any decision made on their behalf. A welfare order application is much more straightforward than a limited deputyship which makes it preferable. Under the Migrants Mental Capacity Advocacy project, Migrants Organise has had no issue in using a welfare order to progress P's immigration matter with the Home Office.

² For further information on the EU Settlement Scheme Policy, see the [EUSS Caseworker Guidance](#).

Nonetheless ultimately, the question of which specific application to make to the Court of Protection depends on the circumstances of the case and should be discussed with the legal team. Local Authority might find themselves supporting someone with financial means, for example, who does not qualify for legal aid. In such a case, an application for property and affairs order or limited deputyship might be more appropriate.

The main idea is to obtain a clear authorisation from the Court of Protection so that an independent third party can make immigration related decisions on behalf of P.

Please note that, while very similar, technically-speaking the authorised third party is not a "litigation friend". A litigation friend is someone who is appointed by a court or tribunal to litigate on behalf of an individual, who has been found to lack capacity to litigate (or "conduct proceedings").³ In the immigration context, the immigration tribunals have the power to appoint a litigation friend for an appellant who lacks capacity to litigate.

If P does not have any immigration appeal ongoing and needs an application to be submitted to the Home Office (such as asylum or human rights applications), then the tribunal is not involved and would not be able to appoint a litigation friend.

Instead the application needs to be to the Court of Protection as discussed above.

³ For more guidance on the role of litigation friend, read this guidance on "[Acting as a Litigation Friend in the Court of Protection](#)" by Alex Ruck Keene KC (Hon)

Who Can Be A Suitable Third Party?

When looking for a suitable third party, local authorities should first consider whether P has any family or friends who are suitable (please see further below). Otherwise, we believe that Independent Mental Capacity Advocates (IMCAs) would be suitable to take on the role given their independence and familiarity with the principles of MCA'05. Local authorities can also try approaching charities who are working with P.

Funding should be provided to ensure continuity of the third party given that immigration cases can take a long time to resolve and a change in the third party would cause significant disruption.

What are the requirements for a third party to be suitable?

We suggest that to be a suitable third party, the person has to:

1. Consent to being appointed;
2. Be able to fairly, competently and diligently conduct proceedings on behalf of the protected party; and
3. Be able to act in the best interest of the protected party and have no interest adverse to the protected party which would prevent them from acting properly as litigation friend.⁴

When appointed by the Court of Protection, the court will also expect the third party to follow the general principles of the Mental Capacity Act 2005.

The independent third party does not need to be an immigration specialist as an immigration legal representative will still need to be instructed to advise and assist with the application. It is more important that the third party has experience working with vulnerable individuals and is familiar with the principles of the Mental Capacity Act 2005.

⁴ Given the similar nature of the role of the third party and that of a litigation friend, we believe that the suitability criteria to be appointed as a third party could also follow that of a litigation friend as per *E (Mental Health Patient)* [1984] 1 WLR 320

Migrants Organise has produced guidance on the use of litigation friends in the immigration tribunal. On page 7 the guidance considers the issue of conflict of interest when it comes to litigation friends, reproduced below, which equally applies here:

"When considering a potential conflict of interest it is important to look out for:

- Cases where the potential litigation friend has a personal conflict or there is a risk of such a conflict, such as where they have a financial interest in the outcome of proceedings, they may have to defend their previous conduct or where they may come into conflict with their employer.
- Cases where the potential litigation friend has a professional or third party conflict, such as where their duty to another person or company may create a conflict of interest.

There is no reason why a professional, acting in a paid capacity, cannot be appointed as a litigation friend. The Official Solicitors' office is funded for its work, professional mental health or capacity advocates can act as litigation friends in the Court of Protection⁵ and, where a professional is appointed as a property and affairs deputy by the Court of Protection they are permitted to be appropriately remunerated for their time. However, it is important that the professional has no potentially conflicting interest in the outcome of the proceedings.

In general, it is not advisable for a Local Authority social worker or Director of Adult Social Services to be appointed as a litigation friend, because the Local Authority may not be able to pursue reliably any one person's best interests without balancing those with the other demands on their service and their budget. For example, in cases where there is an age dispute or potential dispute around entitlement to services (such as due to schedule 3 of the Nationality, Immigration and Asylum Act 2002) then the interests of the Local Authority and person in need of a litigation friend are at odds.

⁵ See for example *AB v LCC and The Care Manager of BCH* [2011] EWCOP 3151 at [43].

The Local Authority may have a duty to address a person's needs as part of a care plan, which may include procuring or facilitating access to legal support in legal/immigration proceedings. If a Local Authority representative is proposed as a potential litigation friend, they should demonstrate that there are specific mechanisms in place to avoid a conflict of interest⁶ or alternatively the Local Authority could identify an independent person/advocate who could act as a litigation friend.

It is not advisable for a legal representative to act as a litigation friend (whether the same fee earner does so or someone else in the firm does). This does not allow for sufficient oversight of the legal representative's work or meaningful scrutiny/instructions, since the litigation friend will have a financial and professional interest in the profitability of the case for the legal representative and in protecting the reputation of the firm. Migrants Organise has heard of arrangements between firms where (due to the lack of alternatives) solicitors at different firms have agreed to act as litigation friends for each others' cases. There is again nothing inherently wrong with this, but in our view, in such a case, the Tribunal should take steps to ascertain the independence of the litigation friend. Solicitors should be aware of their own professional obligations around conflicts of interests."

Immigration Solicitors and Legal Aid

It is a criminal offence, punishable by fine and/or imprisonment, for anyone to provide, or offer to provide, immigration advice and services without being approved to do so as per s84 of the Immigration and Asylum Act 1999.

Immigration advice needs to be provided by an accredited adviser including solicitors, direct-access-accredited barrister and advisers accredited by the Office of the Immigration Service Commission (OISC).

To find an OISC accredited adviser you can use this [link](#).

Legal aid is available for individuals who cannot afford advice and representation for certain immigration matters. Asylum applications are automatically covered by legal aid. For applications under Article 8 (the right to family and private life), while legal aid is technically not available, Exceptional Case Funding (ECF) could be obtained. Legal aid providers have a duty to advise on the availability of ECF.

⁶ See 8.60 of the Mental Capacity Act Code of Practice

Some providers might only be able to take on a case once the Legal Aid Agency has given a positive indication that ECF would be granted. In that case an individual can make a direct application for ECF first. Many charities provide individuals with assistance in obtaining ECF through direct applications. You can also read this [self help guidance](#) produced by the Public Law Project.

For a full list of legal aid providers who carry out immigration work, use the following [link](#)

Examples

KR

KR is a Bulgarian national who claimed to have arrived in the UK in 2005 through an unknown method. KR was not exercising treaty rights. She has an expired Bulgarian passport. KR has a diagnosis of paranoid schizophrenia and presents with continuous delusional beliefs. She instructs, for example, that she was trained as a spy since she was young and had been convicted for murder in India and Bulgaria in the past. She is under the care of social services under s117 of the Mental Health Act 1983. KR's engagement with her immigration status also fluctuates: while she understood the nature of an immigration status and the fact that she is Bulgarian, she initially refused assistance to regularise her immigration status, stating that she already had a solicitor working on her case. The solicitor was unidentified and she was not able to provide any details.

Post-Brexit, the situation became urgent because KR refused to apply for an EU settled status, claiming again that her solicitor was working on her application. She did agree to receive assistance in applying for a new passport.

KR was then referred to Migrants Organise, an OISC-accredited advice charity, who provided KR with immigration advice and assisted her in obtaining a new Bulgarian passport. However, KR's delusion impacted her ability to make decisions about how she could regularise her immigration status, namely whether or not to make a settled status application under the EU Settlement Scheme. She was thus assessed as lacking capacity to make immigration decisions and a welfare order was sought from the Court of Protection. The order allowed Westminster Council to make a best interest decision on her behalf in relation to her immigration case.

In this case, it was relatively clear that making a settled status application would be in KR's best interest: it was a very straightforward process which did not require a lot of background information from KR. Migrants Organise was thus instructed to make this application on behalf of KR and the application was successful.

The order from the Court of Protection was also helpful as it allowed Migrants Organise to explain some of KR's instructions in relation to her criminal history, which was required in the EU settled status application.

EK

EK is an Afghani national who arrived in the UK in 2009 and claimed asylum. At some point his mental health deteriorated significantly. EK has a diagnosis of paranoid schizophrenia – he suffers from delusional beliefs. For example, he believes that there are “angels” who have stolen his papers and passport. He refuses to engage with the immigration process and can get very upset when speaking about his immigration issues. He has a history of making himself intentionally homeless and at the same time, insists that he has to stay around a specific area in London as he cannot be far away from the angels.

A Court of Protection application was made in order to authorise the Local Authority to instruct a third party to make immigration decisions on behalf of EK. Fortunately EK had a supportive brother here in the UK who was identified as the third party for EK’s case. At the same time, the Local Authority council also obtained funding for specialist casework support from Migrants Organise. This was done to ensure that, should EK’s brother no longer be able to act in EK’s case as a third party, Migrants Organise would be able to provide another suitable third party for EK. Migrants Organise is also assisting with preliminary immigration advice, including full Subject Access Request from the Home Office, obtaining Exceptional Case Funding from the Legal Aid Agency, and referring EK’s case to a legal aid provider.

APPENDIX A

IN THE COURT OF PROTECTION



Case No

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

AND IN THE MATTER

BETWEEN:

[Redacted]

Applicant

-and-

[Redacted]

Respondent

ORDER

BEFORE District Judge Eldergill at First Avenue House, 42-49 High Holborn, London, WC1V 6NP on [Redacted]

UPON the Court considering the welfare application of [Redacted] on the papers, seeking an order authorising it to instruct third party agencies to progress [Redacted] immigration application to regularise [Redacted] status in the UK.

AND UPON [Redacted] inviting the Court to make this order in the terms set out without the need for a hearing

WHEREAS

1. The court having considered [Redacted] application and mental capacity documents accompanied with it and is satisfied that there is reason to believe that [Redacted] lacks capacity in relation to the matter and considers it in [Redacted] best interests to make this order without delay.

IT IS ORDERED THAT:

2. The Local Authority is authorised to instruct third party agencies conduct in the name and on behalf of [Redacted] application to [Redacted]



regularise [REDACTED] status in the UK.

3. In order to give effect to paragraph (3) above, any third-party agency instructed by [REDACTED] progress [REDACTED] migration application is
 - a. required to apply the principles set out in section 1 of the Mental Capacity Act 2005 and have regard to the guidance in the Code of Practice to that Act; and
 - b. is authorised to execute or sign any necessary deeds or documents
4. This Order was made without a hearing and without notice. Any person affected by this Order must apply within 21 days of the date on which the order was served to have that order set aside or varied pursuant to Rule 13.4 of the Court of Protection Rules 2017 ("the Rules"). Such application must be made on Form COP9 and in accordance with Part 10 of the Rules.



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