

Urgent Applications in the Court of Protection

Second Edition

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FOREWORD TO THE FIRST EDITION

It is now over two years since the implementation of the Mental Capacity Act 2005. Despite some well-publicised criticisms, it has achieved the fundamental objectives of improving perceptions of incapacity and how they should be approached. It has settled the principles which underpin decision making for those who lack capacity by incorporating common law jurisprudence and best practice into statute. It has unified the previously disparate areas of finance and personal welfare (including medical treatment), and brought them under the jurisdiction of a new Court of Protection with its own specialist judges. The legislation is supported by a statutory Code of Practice, and the court procedure has a framework of rules and practice directions.

This work introduces the practitioner to the new legislation and the approach of the courts. It explores current case law. It provides a practical guide to procedure and drafting, invaluable to practitioners at any level of experience. Its emphasis on the urgent application is of particular importance. The Court of Protection has not been regarded as the first port of call for an emergency remedy. Traditionally, it provided intensive care rather than first aid. However, the new legislation has brought different challenges. Orders resolving emotionally charged disputes about health or personal welfare may need to be sought urgently. Previously, financial orders were highly restrictive and protective of the person who lacked capacity. The move towards empowerment which enables autonomy and flexibility through the use of unrestricted orders, has highlighted associated risks of misuse by the unknowing and abuse by the unscrupulous. The use of emergency powers to protect the welfare and assets of those who lack capacity is therefore of increased significance in the new arena.

This handbook provides an essential easy reference. Its success is attributable to the expertise and experience of its contributors. Nazreen Pearce is a retired circuit judge and well-known writer of legal text books. Susan Jackson is a respected nominated judge of the Court of Protection who worked with me at the Court's Central Registry in Archway for two years overseeing the implementation of the Act.

Denzil Lush
Senior Judge of the Court of Protection