

Preface

The Mental Capacity Act (MCA) 2005 is an extraordinarily wide-reaching piece of legislation: any of us at any time could find ourselves incapable of taking decisions about our health, our welfare, or our finances. The Court of Protection, the specialist court established by the MCA 2005 as the ultimate decision-maker in relation to those lacking capacity to take those decisions, is, in consequence a court with a very wide reach.

There are many books which deal with the MCA 2005, and there are also a number of books which deal with the Court of Protection. However, when the first edition was published in 2014, it was the first book to set out to address in detail the practice and processes of the court – across the whole range of its work – in terms aimed not solely at lawyers who are advising those bringing or responding to applications but also to the increasing numbers of people who either by choice or otherwise are involved in proceedings before the Court of Protection without the help of lawyers or specialist advisers. Suffice it has changed in the practice and procedure of the court since the first edition of the book that the time has now come for a second edition.

The book is accompanied by a website: www.courtofprotectionhandbook.com, upon which will be found links to relevant statutory materials and other guidance that space precluded us from including in the appendices, together with updates on practice and procedure before the Court of Protection cross-referenced to the relevant paragraphs in the book. We make more use of the website in this second edition than we did in the first, and all our precedent orders are now to be found there as opposed to within the covers of this book.

This edition of the book (but hopefully only this edition) is hamstrung by the fact that it appears during the life of the Case Management Pilot. This Pilot, explained at paras 4.101–4.103, gives

rise to a set of different rules which apply for cases on it. We refer to those rules using the form COPR PrXX, by contrast with COPR rXX for the rules applying outside the Pilot. The Pilot rules (new Parts 1–5 and 15) are to be found at appendix B to this book, together with the ‘old’ versions of those rules. We hope that by the time of the next edition (as to the timing of which we make no promises) matters will no longer be as cumbersome.

We are very grateful to all those who have contributed their thoughts and expertise at various stages of the two editions of this book's life, and in particular Alastair Pitblado (the Official Solicitor to the Senior Courts), Neil Allen, Romana Canneti, Gordon Ashton OBE, Victoria Butler-Cole, Helen Clift, Penny Cooper, Joan Goulbourn, Janet Ilett, Nicola Mackintosh QC (Hon), Michelle Pratley, Lucy Series, Emma Stacey, Beverley Taylor, Susan Thompson and Aswini Weeraratne QC. We are grateful to Floyd Porter and the other partners at Miles and Partners LLP for allowing us to reproduce some of their precedents. We also very grateful to Hilary O'Keefe for undertaking the thankless task of producing what is now appendix C translating the Civil Procedure Rules costs provisions into the COPR, and to Lucy Logan-Green for her assistance in wrestling the text of the second edition into shape. Thanks still remain due to Stephen Knafler QC for his invaluable input at the planning stages of the first edition and his work in pulling together resources.

Special thanks must go to Mark Neary for taking the time to describe a Court of Protection case from the perspective of those most affected by the outcome – his son Steven and himself. We are also very fortunate that Dr Ian Hall was kind enough to contribute a concise account of how to get the best from an expert psychiatric witness, and Lynne Phair to give her perspective as an expert nursing witness. We would also particularly like to thank Esther Pilger, our publisher at Legal Action Group for – yet again – corralling, in her inimitable style, busy practitioners into producing their best work and to translating that work into so user-friendly a format.

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We state the law as at 1 November 2016.

We welcome feedback, which should be sent to the editors at courtofprotectionhandbook@gmail.com.

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