

ALL-PARTY PARLIAMENTARY GROUP  
FOR RUNAWAY AND MISSING CHILDREN AND ADULTS

PARLIAMENTARY INQUIRY SESSION TWO  
RESOLVING A MISSING PERSON'S PRACTICAL AFFAIRS:

PRESUMPTION OF DEATH

held in

Committee Room Five in the House of Commons

on

Thursday 16<sup>th</sup> June 2011

10:00 – 12:00

Panellists

Lord Boswell of Aynho, Lead Chair

Ann Coffey, MP

Chris Evans, MP

Baroness Kramer

(From the Shorthand Notes of  
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**Lord Boswell, Lead Chair:** I would like - on what I think is fair to say a fairly sobering occasion for most of us - to welcome you for this second session of the Parliamentary Inquiry into support for families of missing people, which was commissioned, and chaired by Ann to look into this, to experience the situation, and what can be done by it. Members of the All-Party Group – and I do stress this (they are represented on this table) heard earlier this year from families of missing people of the distress and barriers in law to continuing family life, rights to property, and personal support when someone you love goes missing. In Monday’s session - sorry I could not attend - we heard the emotional toll that having a missing loved one can have on families – today is more of a nuts and bolts day; we will look at the practical issues that families can also face as the result of a disappearance. I don’t want to editorialise, and there won’t indeed be time to editorialise today, but I would say that people have the trauma, or I sometimes call it the real world shock of a presumed loss or uncertainty, and then somehow to have the whole battery of the legal system is adding insult to injury. We have heard of this on previous occasions, we now need to concentrate on listening to the experience of our witnesses, to see what is said today, and this is the basis of putting things together.

Perhaps I should just say my name is Tim Boswell, I was in the Commons for twenty three years, and now in the Lords. I did introduce a Presumption of Death Bill, which was drafted by Patricia Barrett, who you will hear from later, which was pretty good, although I don’t think it was comprehensive enough, but anyway it hasn’t happened, at least in England and Wales, although there is in Scotland and Northern Ireland. One of the things we can do as Parliamentarians here, and it is difficult because not everyone will be expert in this area, although you, if I may say so, are the experts, is to focus on what practical help we can give, in trying to resolve these situations – a small amount of people but matters a huge amount to them. So that is what we are talking about today, specifically the presumption of death provisions for families, and whether the system in place in England and Wales is fit for purpose. We don’t just want you to be listeners, we want to achieve an understanding among the group with yourselves as interested persons, that we can present a set of recommendations where change is required, and we will then help the Coalition Government in its work with missing people and their families to get a proper system. To assist in that I have already mentioned Ann

Coffey, who chairs the Group, I have got Chris Evans on my right, (who happens to be a Labour member) and we have Susan Kramer who represents the Liberal Democrats and was the home MP for Missing People, so a good range. I am afraid that we have a lot of evidence to consider so there will be very little time for Parliamentarians who are present to ask supplementary questions, but I don't want to stop people making their contribution - this is your show not ours.

We want to start with Alan Smith and Rachel Elias. Can I just ask you as siblings of two missing people, can you both tell us who you are and why you are here?

**Rachel Elias:** My brother, Richey Edwards, went missing on 1 Feb 1995 from a hotel in London. Fourteen days later his car was found parked in the car park of the old Severn Bridge, and that is the last fact relating to his disappearance, and in 2008 a court order and a Grant of Representation.

**Lord Boswell, Lead Chair:** You were given?

**Rachel Elias:** We made an application, it took four years, and we were given a Grant of Representation.

**Lord Boswell, Lead Chair:** Do you want to say anything about that period? Give us a flavour, I take it you are not a lawyer?

**Rachel Elias:** We made an application, the applicants were my parents, and it was a court procedure in order to obtain a court order. I had to swear an oath in court to say we believed Richey was dead. Within that process there was a sworn affidavit, that had to be corroborated, and it took four years, because I wrote the affidavit it had to be corroborated, but then because he died without a will, another affidavit had to be sworn.

**Lord Boswell, Lead Chair:** I just feel that this says: "I lost my brother, and then spent four years in a lawyer's office trying to sort it out". Could I just ask Alan to introduce himself?

**Alan Smith:** My name is Alan Smith, my brother had a slight history of mental illness, and had run off on three occasions and then reappeared, and finally went missing in February 1988, and we have heard nothing of him in

that time. Because he had mental illness we were able to get control of his assets and debts, and were able to realise those assets and pay his debts. It was agreed within the family - I have another brother, my parents were alive at the time, only my mother survives now - that we wouldn't do anything until he reached his fifty fifth birthday, hoping he would reappear in that time. He had no dependants. So over the last two or three years I have been trying on and off to see what to do. The solicitors I have spoken to don't know what to do. In the end I was told to speak to the Probate office, which I did, and sent them off a letter with a whole load of evidence, and they sent me a letter back saying it was a complex situation, but they did mention the possibility they might, if we were able to provide indemnity cover. I haven't followed that up since, not something I enjoy doing, but it is a possible option.

**Lord Boswell, Lead Chair:** Unless I am mistaken - I do know a little bit about mental capacity - at this stage, paradoxically, it was in this case to your advantage that your brother was under the protection of the Court, so you were able to obtain an order? If he had not experienced mental illness you would be in even more difficulties than you were?

**Alan Smith:** It didn't quite work that way. He was not under the Court of Protection when he went missing, but he was being sectioned at the time he went missing, so the Psychologist then supported us in our application to the Court of Protection to get control of his money, so it happened post his disappearance that we got that, but we did get that.

**Lord Boswell, Lead Chair:** Thank you, that is very helpful. The second point I wanted to make quite clear, your brother's disappearance was in 1988, so we are now looking at twenty four years of unresolved issues.

**Alan Smith:** Yes.

**Chris Evans, MP:** Thank you for taking part, and all the work you are doing in this area, and I remember when you came to see me in my office in January, and thanks to you that I got involved in this. Thank you for telling us about your brother's disappearance, and I know how difficult this is for you. Can you tell us how straightforward after his disappearance was it, for your family to find information about this area?

**Rachel Elias:** It was very difficult. The solicitor hadn't done it before. We didn't know what was going to be the next step. If we knew what was going to lie ahead of us, it would have eased the situation, because I was constantly thinking, would we have a coroner involved, would we have an inquest, would we have a death certificate. I have been told in some instances that is some people's experience, but it wasn't ours, we didn't have a death certificate and that in itself later on brought additional problems; companies wouldn't release the money because it wasn't a death certificate. I was told in the case of John Darwin, they received a death certificate, so I am really confused about that.

**Chris Evans, MP:** What we have been looking at is the amount of people who have felt bounced around, didn't know what to do, did you ever feel in that situation? How easy was it to find a solicitor to help you and your family? Which solicitor did you use, if you don't mind me asking?

**Rachel Elias:** We used David Ellis of Trevor Griffiths Humphries

**Chris Evans, MP:** How difficult was it, how easy did the solicitor find this?

**Rachel Elias:** It was difficult, that is why it took that long, and then, obviously, we had to provide information which took a long time as well, because when someone disappears and dies without making a will, we had to ascertain the values and particulars of the estate and possessions, and because I wrote the affidavit it was really involved, we had to evidence every single letter and advertisement we had made in our search for him, back it up with names and addresses, copies of letters, copies of the advertisements, exhibits, extracts from his diary, it was really difficult, but the District Probate thanked us on the way we had set up the evidence, because he thought it made the examination easier, but on my part it took me an incredible amount of time.

**Chris Evans, MP:** Time and expense?

**Rachel Elias:** Yes, a lot of extra paperwork and expense. I imagined myself in inquests, not Probate.

**Chris Evans, MP:** You managed to get Probate, have you had any problems before?

**Rachel Elias:** As I said before, he wasn't married, did not experience those sort of problems, but there were problems about accepting the Grant of Representation; it did not seem to be accepted by some organisations, even though it was a court order.

**Chris Evans, MP:** What kind of agencies did not accept it?

**Rachel Elias:** For example, one was the Publishing Rights Society.

**Chris Evans, MP:** Lastly, what do you think families in a position such as yours need to help them through presumption of death measures?

**Rachel Elias:** A clear, simple, and usable system, that is open to people, so people know what to expect.

**Lord Boswell, Lead Chair:** It would be helpful if there was a single point of reference, if there was a certain obligation to refer to a specialist, or an advice step-by-step package.

We will turn to Alan.

**Baroness Kramer:** We really appreciate you coming and contributing to this process. You obviously have spent an incredible amount of time and energy getting through the process. Was it at all straightforward to you getting through that first phase, just tell us about it?

**Alan Smith:** The process of the order, we applied in May 1988 and it was given to us in June 1988 – so it didn't take very long.

**Baroness Kramer:** Did you know what to do?

**Alan Smith:** I think the psychologist helped us, I did all the work, we didn't use a solicitor at that stage, but that went reasonably well.

**Lord Boswell, Lead Chair:** What you received was an Order of the Court of Protection?

**Alan Smith:** You had to keep going back to the court to ask for permission to do things, and you had to make a recommendation what to do with the assets. It took a lot of correspondence, and it was two or three years later that we got to the point there were no debts.

**Lord Boswell, Lead Chair:** Were they understanding?

**Alan Smith:** Most of them were understanding, we only had one visit from a debt collector, as soon as I said my brother was a patient of the Court of Protection, he went away.

**Baroness Kramer:** Do I understand correctly, it was your brother's mental capacity that was the basis of your ability to resolve a few immediate problems of your debt. So it is only more recently you are now having to deal with the issues that surround the presumption of death. Can you tell us a bit more about how straightforward it was for you to find information about this area?

**Alan Smith:** When we went back to the Court of Protection to ask them what we should do, it turns out that they had totally destroyed all records, because it had been inactive for seven years, they thought it must no longer be relevant.

**Lord Boswell, Lead Chair:** No reference to you?

**Alan Smith:** They just destroyed it. I wasn't notified, I only found by trying to ring them up, quoting the number, and they said that number does not exist on our systems any more, could we send the Court Order to them and they will have a look at it.

We went to a number of solicitors, and none of them had any experience of dealing with this type of case. In fact, in one case my mother went to a local solicitor, she was told it was not worth doing it, because it would cost more to do this than the estate was worth. I think my mother got the estate value wrong (factor of 10 wrong), but still not a helpful statement to make. Otherwise, no experience in this area, will have to look it up, or in some cases no response. One solicitor was helpful and said why don't you talk to Probate. They said send us evidence, a letter, and we will look at it. That was in 2010, and it took them about a month and a half to respond to that after being prodded hard by further correspondence.

**Baroness Kramer:** Could I ask you about that. Rachel said preparing papers for Probate was really demanding. Was that your experience as well?

**Alan Smith:** What I did was put together a whole set of papers, which went back to 1988. We moved several times, in fact it was the Salvation Army at that time who helped us, the Missing People charity wasn't in existence then. I put together a whole sequence of papers including adverts, and sent this to the Probate officer. They came back to us, and said either go through this complex court process, or he might consider doing the papers if we were able to produce an indemnity, but there was no guarantee that if my brother did reappear the insurance would pay out the money.

**Baroness Kramer:** Presumably you would have to bear the cost of the indemnity?

**Alan Smith:** I don't know if that would have come out of my pocket or the estate pocket. I believe that is the way that it works in Scotland and Northern Ireland, you are asked for an indemnity. The main problem is I don't want to have to pass it on to my daughters to sort out, I would like to get it sorted, I am not getting any younger.

**Baroness Kramer:** What would help you get this solved in a relatively straightforward way?

**Alan Smith:** I think if there were guidelines on how to approach it, and a standard way in approaching it, but bear in mind there may be complications, not one size fits all, and access to solicitors who have done this sort of thing, and can help you through the process.

**Ann Coffey, MP:** I am not a lawyer, there are two different issues, there is the issue of presumption of death, and then there is the issue of dealing with a missing person's affairs. This afternoon we are looking at the possibility of guardianship to enable relatives to manage the missing person's financial affairs in the short term, because presumably the presumption of death will be some years down the line. Do you see that in the same way; that it is important for families to have a way of immediately dealing with their relative's affairs?

**Rachel Elias:** I had to say explicitly I believed he was dead, and some people are not happy with that, so I think for some people, they could have a



guardianship so when they are ready to do that they can. But presumption of death you have to state, I had to go and swear an oath on the Bible.

**Alan Smith:** We were talking about it earlier that we both had siblings who died, but for a family who has a wage earner, that becomes a nightmare with no access to money.

**Lord Boswell, Lead Chair:** Or a spouse.

**Alan Smith:** Anything that would ease that is very important. I was lucky that I was able to get the Court of Protection involved, and I see that as very helpful to be able to have that facility to be able to do that.

**Rachel Elias:** I was told the order never leaves the registry, but within a few days of having the order it was all over the press.

**Lord Boswell, Lead Chair:** On behalf of us all, thank you. We will pass on, in the interests of time, to the evidence of Missing People themselves in the shape of Martin Houghton-Brown, Chief Executive, and Holly Towell, Policy Advisor.

**Martin Houghton-Brown, Chief Executive, Missing People:** I wonder if it might be helpful at this stage to read the evidence submitted by the Ministry of Justice because they outline their view of the current procedures, it might add some clarity?

**Lord Boswell, Lead Chair:** That would be immensely helpful. You can then give us your opinion.

**Martin Houghton-Brown:** The Ministry of Justice state there is a common law presumption of death.

“Common law presumption of death

Under English law, when a person dies proof of their death is set out in a death certificate. This facilitates dealing with the affairs of the deceased. A death certificate will usually only be issued where there is an identifiable corpse in existence. In the case of a person who goes missing there is no corpse to prove death, and consequently no death certificate will be issued. Where this situation arises, there is a common law presumption that if a missing person,

has not, despite thorough enquiries, been seen or heard of for seven years, he or she is presumed to be dead. This presumption can be used generally, but it is only a presumption and not a rule and cannot be used to obtain a death certificate. The court can accept evidence of absence over a shorter period, if it wishes. In other words, an interested party does not have to wait for seven years to make an application for an order relating to the presumed death.

Questions as to whether a person is still alive might arise in various types of disputes and legal proceedings. For example, the terms of a trust may make the entitlement of a beneficiary dependant on the death of another person and the trustees may wish to obtain an order from the court authorising them to proceed on the basis that that person is dead without being in breach of trust. This type of order is often referred to as a Benjamin Order.

Alternatively, one of two joint owners may wish to deal with property owned jointly with the missing person and may need to prove that ownership has passed under the right of survivorship, which applies within joint tenancies. No one court has exclusive jurisdiction but it is likely that many of these cases would be heard in the Chancery Division of the High Court.

### Specific Procedures

Where a person goes missing and there is sufficient evidence that he or she is probably dead, then he or she may be presumed dead in one of four ways:

#### Coroner's Inquest

Where a person goes missing in suspicious circumstances the missing person's family can ask for a coroner's inquest to be held under section 15 of the Coroners Act 1988. Section 15 provides that a coroner may report to the Secretary of State where they have reason to believe that a death has occurred in or near their district in such circumstances that an inquest ought to be held; and that the body has been destroyed by fire or cannot be recovered. On receipt of such a report the Secretary of State, if he considers it desirable, may issue a direction to the coroner to hold an inquest.

The Ministry of Justice, in liaison with the Missing Persons Bureau (MPB) on drafting guidance to be published on the MPB website, which will contain details about when coroners can apply for a section 15 direction to open an

inquest. This is significant as, in these cases, it may be possible for families to obtain a death certificate following the opening of an inquest under section 15 which will enable them to undertake some administrative tasks surrounding the deceased's estate, and can help to provide some closure. In addition, more information in the public domain could aid some families, in certain circumstances where persons are missing, presumed dead and the body is believed to be irrecoverable, to become aware of the role of coroners and inquests.

Secondly:-

#### Decree of Presumption of Death and Dissolution of Marriage and Presumption of Death Order

Under section 19 of the Matrimonial Causes Act 1973 and section 37 of the Civil Partnership Act 2004, where a married person or civil partner goes missing and the surviving spouse or civil partner wishes to dissolve the marriage or civil partnership, he or she can apply for a 'decree of presumed death and dissolution of marriage' in the case of a marriage or in the case of a civil partnership a 'presumption of death order'. A decree of presumption of death can be obtained at any time after the spouse or civil partner goes missing and will be granted if the court is satisfied that there are reasonable grounds that the missing person is probably dead. The decree of presumption of death order can only be used to dissolve the marriage or civil partnership. They cannot be used to obtain a death certificate. Ancillary relief will only be available if the missing person returns.

The decree of presumption of death order will allow the spouse or civil partner left behind to marry or enter a civil partnership.

#### Leave to Swear Death

Where a person goes missing and in the absence of a certificate or other document establishing death or where there is no direct evidence of death but there are circumstances leading to a presumption of death and a member of the missing person's family wishes to obtain a grant of representation in order to administer the estate of the missing person then he or she can apply for an order giving leave to swear that death has occurred on or since a particular

date. A leave to swear death order is made pursuant to Rule 53 of the Non-Contentious Probate Rules 1987. It is an order made solely for the purpose of allowing Probate to be granted to the estate of a missing person. It is not, and will not be accepted as, conclusive proof of death. An application is made *ex parte* on affidavit, usually by the applicant for the Grant of Probate or Letters of Administration, to a District Judge of the Principal Registry of the Family Division or a District Probate Registrar. Appeals from the Probate registry are made to the Chancery Division of the High Court.

Probate is the process by which the estate of a deceased person is administered; that is gathered in, the debts paid and the net estate distributed in accordance with the will or the intestacy rules. The administration is conducted by executors named in the will under a Grant of Probate or administrators appointed by the court under Letters of Administration in the case of intestacy.

A leave to swear death order enables an application for Probate or Letters of Administration to be made. The estate of the missing person can then be administered.

### Social Security benefits

Section 8 of the Social Security Act 1998 governs the Secretary of State's power to make decisions in relation to a person's entitlement to a range of benefits, including decisions that a person's spouse may be presumed to have died. Specific provision is also made by section 3 of the Social Security Administration Act 1992 which deals with late claims for bereavement benefit where it is difficult to establish death.

### Certificate of Presumed Death

Where a person has gone missing in identifiable circumstances it may be possible to obtain a 'certificate of presumed death'. These can be made under a variety of Acts and regulations. They can apply where a member of the armed forces has gone missing in action; if a merchant seaman goes down with his ship; where someone cannot be found after a tragedy on an offshore installation; or where someone working in a particular Government

department cannot be found after an incident while he or she was on duty, for example, an Embassy worker who goes missing in a bomb blast.

These certificates are not usually issued by the courts but by the authority responsible for the missing person. They are issued once the authority is satisfied that the person probably died as a result of the incident. They can be used, at the discretion of the court, for Probate purposes, but they cannot be used to obtain death certificates.

### Emergency measure – the Asian Tsunami

In the aftermath of the Tsunami in South East Asia, the then Government agreed that the Foreign and Commonwealth Office (FCO) would register the death and issue a certified copy of the register entry for missing British nationals lost (and whose bodies could not be found) in the disaster. This would only be done at the request of the families and based on advice from the police. The service was provided free of charge. The FCO and the police agreed four criteria that would have to be satisfied before the FCO would register the death. These included:

- That evidence existed beyond reasonable doubt that the person concerned had travelled to the affected region;
- On the balance of probability they were in the area at the time the tsunami struck;
- There was no reasonable evidence of life since 26 December; and
- There was no reason on the balance of probability to believe that the person would want to disappear.

This emergency measure did not remove the requirement for a leave to swear death order to administer the estate or a decree of presumption of death to dissolve a marriage, but it did make the process of obtaining these orders a lot less onerous.

### Consular Death Registration

The FCO has the power to issue consular death registration documents. This type of document does not constitute a UK death certificate and does not replace a locally issued death certificate. Consular death registration is not a

legal requirement but it means: an entry will be made in the death register by the British Consulate in the country concerned; an applicant will be able to obtain a British style certificate; and a record of the death will be held by the General Register Office in the UK.”

**Lord Boswell, Lead Chair:** Thank you, I think we can all go now! This has been thought out so well. I am going to say something trivial and personal – although not trivial at the time – my late father died in the United States, I had an American death certificate, I went to the Consulate and got a British death certificate and I now find it is not even a death certificate, it is a Consulate death certificate. There is a kind of mad logic about all this, with four different channels, and the Tsunami.

I think, now you have raised it, perhaps you could say from the point of the view of the charity, what is the sort of service you provide, the scale of what you do, and the extent of what you do? Those issues, at least on the administrative side, not the pastoral side, match on to the, not only formidable but clearly very anomalous legal position you have just read?

**Martin Houghton-Brown, Chief Executive, Missing People:** Yes, I would recommend if anyone’s property is affected by disappearance they should take legal advice! The question for us is that we are not lawyers and therefore, can’t give legal advice, and don’t do so. Our Services department find that people are immensely distressed when they are processing these things, and that pain does not let up as the years pass. The nature of someone being missing leaves you with this process some people call “ambiguous loss” or we have entitled our research called “living in limbo”, where you are in a cycle of incomplete grief. You cannot let go. Most people who come to this stage, and I think Rachel spoke about this very clearly, have a huge reluctance to swear death when they are not entirely sure what has happened, so, therefore, they cannot rule out, however small the possibility, their loved one is still alive and may one day still return, however, they do need to draw a conclusion to their affairs. It strikes me, in listening to the evidence of the Ministry of Justice, they themselves acknowledge the process is deeply complex, and I think it is very interesting the Tsunami order was made in order to make the process less onerous. I think, from their own admission, these are onerous processes that can be simplified, and indeed were simplified for an individual circumstance,

and it is only my regret that they didn't use that opportunity to write legislation there and then, for all people affected. It also strikes me that they have acknowledged that if you happen to be a Crown Servant in a set of circumstances, in the armed forces, a merchant seaman, or Government department, you are allowed presumption of death support and aid to get through the processes. But if you a seaman and go missing at sea, but not a merchant seaman, then the same rights are not available to you, because you don't sit as a merchant seaman in the sea, but as a civilian, and as such you don't have the same rights. And I think by their own admission, therefore, the complexity that families we advise find themselves in, the tortuous processes, the expensive processes, the multiple processes, can be made less complex, can be simplified, have indeed been made more simple in Scotland and Northern Ireland, yet unless you are in a subscribed profession, you are not given the support of the Government.

**Lord Boswell, Lead Chair:** There is potential discriminatory treatment, because, in effect, you are saying one rule for civilians, one rule for military personnel?

**Martin Houghton-Brown, Chief Executive, Missing People:** Absolutely. If you are a merchant seaman, you are not a member of the military, but you are a civilian Government employee, you are entitled to the slimmed down process, but if you are a civilian seaman recreationally sailing on the seas and you go missing, you are not entitled to the same processes.

**Lord Boswell, Lead Chair:** Your charity does work in Scotland and Northern Ireland?

**Martin Houghton-Brown, Chief Executive, Missing People:** Indeed we do.

**Lord Boswell, Lead Chair:** Are there any bug bears, are you troubled by the possibility of fraud, for example? Do you feel the magnificent complexity set up by the English system is eroded by what is available in Scotland or does it work?

**Holly Towell, Policy Advisor, Missing People:** Well, again I am a Policy Advisor and not legally trained, we did not necessarily set out to be the

organisation that would give advice to families. Then we did the research report, came nearer to having some sort of knowledge about this issue, and through talking to families, our knowledge of this area has grown by default. We have ended up being the organisation that people turn to; that doesn't mean we are any clearer than the families we talk to. It is worrying, because I have personally been working in this area for two years, and it concerns me that I find it confusing, so I can't imagine what it would be like for families doing it. Talking to families, which I do on a very regular basis, I find it extremely challenging, and very difficult to justify why, because they live in a different part of the United Kingdom from other families, they have to go through this terribly onerous and cumbersome process, often going through processes where they are not sure entirely what they are going to get at the end of it, and what it will actually be worth, for example, if they go through a process which might dissolve their marriage, but what does that mean? It is very challenging to justify to families why they have to go through a different process from their counterparts in other parts of the UK.

**Martin Houghton-Brown, Chief Executive, Missing People:** Our understanding is, that since 1977, when the Scottish Act was brought into place, there have not been any regrettable circumstances to lead the Scottish Parliament to believe that this was a mistake and from the families' experiences, we don't have any evidence to suggest that this was a negative step, and the evidence was very carefully weighed by the Northern Ireland Assembly in order to bring an Act into place just two years ago, and plenty of evidence to consider from Scotland.

**Lord Boswell, Lead Chair:** Some quite sensitive sectarian issues which could well have created a political storm?

**Martin Houghton-Brown, Chief Executive, Missing People:** Exactly that, and the Northern Ireland Assembly found, on the basis of the evidence in front of them, it was materially the decent thing to do, to bring in a presumption of death piece of legislation to support the families who are left behind, some of them in extremely difficult circumstances, because of the sectarian violence.

**Baroness Kramer:** The piece you read out in a sense almost says it all. I assume the reason we are in the situation we are in, is that different strands, if



you like, of law develop their own particular route of dealing with the issues. Is it your view that what you need is a comprehensive framework which covers all aspects, whether it is the right to remarry, or to administer the estate, that a single piece of legislation should set up a single framework, and a single process to get people to that point? Is that what you are aiming for?

**Martin Houghton-Brown, Chief Executive, Missing People:** Not to trivialise the matter, but it is a crazy paving of legislation, and the risk in setting out crazy paving is there are gaps between the stones, and it is very clear that a large number of the group who are affected, fall between the gaps. If you don't happen to be in one of the elements currently covered, then you don't have any protection or support at all, which means that not only are lawyers confused, but Probate courts are confused, coroners are confused, and families find themselves in distress. Therefore, a simplification process which says what you actually need to do is concrete this piece, we need to make a single piece of legislation which draws together the strands, that comprehensively deals with all of the evidence and enables all of the evidence to cover every family and every circumstance, would safeguard families, protect them from not only emotional distress but also the prospect of potentially losing out financially. Families have already been through a tortuous process leading up to this. In many European states it is possible to obtain, potentially, a death certificate within two years of the person going missing, and thereby concluding matters much earlier where there is a body of evidence to suggest it is likely that the person has died.

**Holly Towell, Policy Advisor, Missing People:** Clarification is needed for families and also for solicitors; it is quite clear, for example, as a charity looking into this area, they themselves don't necessarily know their own role. For example, I have been trying to get some sort of documentation from the Principal Probate Registry, to find out what the standard procedures would be if a missing person wanted to make some sort of application, and they have not got back to me. Similarly, we have lawyers ring us up, and one of them told me they had heard on the grapevine that if you go to the county court you can apply there, and I contacted a couple of county courts and asked them if they could provide me with details of what they do, and they both said they don't do that, and couldn't point me in the right direction, so it seems really

clear, that in bringing in a streamlined consolidated process in this area, it would help not only families, but help those involved.

**Lord Boswell, Lead Chair:** Can I ask one question. You are bringing together four regimes, there are bound to be swings and roundabouts, can you give at least the same similar level of protection without losing anything which is available under that extraordinary list you read out?

**Martin Houghton-Brown, Chief Executive, Missing People:** I think in a normal death process, a death certificate is, if you like, a licence, which grants you the capacity to move forward on all fronts, and an equivalent presumption of death certificate gives you that same licence to move on all fronts. Once a court has been satisfied that a presumption of death certificate can be issued, it should have the same power as a death certificate, should proceed on the same basis.

**Chris Evans, MP:** When you have talked to the Ministry of Justice what has been their stumbling block?

**Martin Houghton-Brown, Chief Executive, Missing People:** I don't think it is a matter of contention, I think it is a matter of prioritisation, and when the Ministry of Justice set out their business priorities for this coming Parliament, this matter was not a business priority, as such they have been unwilling to take the matter forward. I believe there is scope within any Government department to have traction, to develop a policy which is outside a business priority as long as it sits alongside those priorities. I believe the Home Office has clearly proved that in relation to missing persons, and the Department of Education is proving that in relation to missing children, and I think the Ministry of Justice should be doing the same. I think the very least that I would hope to hear is they would be willing to advance the process to a stage where they would be prepared to consider it for the following Parliament's business priorities. Not just not being willing to attend, but also blocking civil servants, coroners and judges from attending these sessions, I think is a statement that in their view they cannot give any time to this. Not on the basis of it being an inappropriate case, but on the basis of it not being a business priority.

**Chris Evans, MP:** Was this the case with the previous Government?

**Martin Houghton-Brown, Chief Executive, Missing People:** We were making progress, although the Private Members Bill Lord Boswell, then MP, took forward, did fall at the second reading, which suggests we did not have all the support we needed, however, we have done more work since that point, and I think there is an opportunity for the Ministry of Justice to say we can advance things.

**Chris Evans, MP:** On average how much money are some of the families spending?

**Holly Towell, Policy Advisor, Missing People:** I have spoken to a few families about this, but because it is an area so unknown, there is no ball park figure, I have heard anything from several thousand pounds to tens of thousands of pounds.

**Chris Evans, MP:** Have you any experience of anyone being ripped off?

**Lord Boswell, Lead Chair:** Or failed?

**Holly Towell, Policy Advisor, Missing People:** There have definitely been instances where applications have failed, and I think because the processes - people are not aware of them - so a lot of people are really tentative, they are worried it might come back on them if the person reappeared. Alan was saying Probate would consider it if there was an indemnity insurance. To be honest, in my experience, I only know about three families who have gone through Probate, so I don't have a big enough pool of knowledge to give feedback as to whether they feel ripped off. That links to another issue; some people say they have gone through Probate and still have problems. I have spoken to another gentleman who has managed to get through Probate, his sibling went missing, and on the Grant of Probate they put he had died on the date he went missing, and then after seven years when the gentleman finally managed to go through the Probate procedure, he was then given an inheritance tax bill dated back to the date his sibling had gone missing.

**Lord Boswell, Lead Chair:** With interest.

**Holly Towell, Policy Advisor, Missing People:** Yes, it just shows you this process needs tightening up. Luckily he was able to talk to them and get them

to realise this was inappropriate. Families, once they have gone through all these initial hurdles, they think they have got there, and then still don't.

**Baroness Kramer:** You make a powerful case for a comprehensive piece of legislation, but what can be done more rapidly to try and alleviate the current situation? Is there a strategy you can see to get people much more quickly to a solicitor, one, understand what is going on, and two, help them get through the early steps? Are there any other interim strategies?

**Martin Houghton-Brown, Chief Executive, Missing People:** The charity has begun work with STEP, which is the solicitors association that deals with matters relating to Probate, and we would like to work with them to draw up a guidance document for lawyers to be able to signpost people to the STEP website. To get some expertise in this area, we would like to train up some lawyers, preferably working with Ministry of Justice officials and Probate officials, we would like Probate to cooperate, coroners to cooperate, to set out, at the very least, a guidance document which enables everyone concerned to know what this complex set of measures are, and what is available at present, and what in effect this process looks like. The charity has made the sad decision, in some respects, we have lost our Director of Policy and Research, and we have replaced him, not with a Policy and Research Director, but with a Policy and Advocacy Director, because we now recognise that we are going to advocate for families.

**Lord Boswell, Lead Chair:** Thank you very much, I think it is a reflection of the complexity - we will try and end by 12.00 - but what we have heard already has been very productive. I would like now to turn to Patricia Barratt, who is an old friend of mine, we worked together on the Presumption of Death Bill, we are still alive and the seven years is not quite up. It has been really helpful that you have bothered to come, and I would like to recognise the part that you and Clifford Chance have played in this, for the public good, and you are in the legal profession which we are not. Can you give your take on the predicament that families face in England and Wales, and how this differs from Scotland and Northern Ireland?

**Patricia Barratt, Senior Associate, Clifford Chance:** I didn't know much about this area until I was approached by Missing People, who were telling us

what the families were going through. When I looked into it, it became clear that this was a confused area of law, a patchwork of statutory legislation, primary legislation, secondary legislation, Probate rules, mixed with common law provisions, and this does create a very difficult and challenging area, and comparing that system to what you have in Scotland and Northern Ireland, this seems to me to be the route England ought to go. They had a nice simple system. I don't think it would be that difficult to set it up here in England and Wales. I am not surprised lawyers find it difficult to advise; this is a complex area of law. Regarding specialised solicitors, it sounds like a good idea, I don't know how it would work in practice, because obviously the families are going to want to go to a local solicitor, and they are not going to get one solicitor in an area who is able to build up a practice in that area. So perhaps an alternative route would be through STEP or the Law Society. They could perhaps create a set of guidelines that they could then hand out to families with these sort of problems.

**Lord Boswell, Lead Chair:** Subsequent to our consideration of the Bill which you were close to, and I was close enough to, the issue of the administration of the affairs of a person who has gone missing, and for all the reasons said here and indeed the evidential proof there may not yet be a presumption of death. The sheer nuts and bolts - how you would pay for a mortgage of someone not here - is it something that can be bolted on to the kind of bill we have got?

**Patricia Barratt, Senior Associate, Clifford Chance:** It is a very good question. I do recognise that is possibly a more immediate problem for families - what do we do on day one, what do we do after a month, what do we do after eighteen months? I know you are looking at guardianship - not something I am very familiar with - but it sounds that this would be a possible route to go down. In Alan's evidence, if you were able to get an equivalent order in the case of a missing person that would definitely help.

**Chris Evans, MP:** In your opinion, is there likely to be any cost saving to the State if the system was changed, regarding the financial situation we find ourselves in?

**Patricia Barratt, Senior Associate, Clifford Chance:** In my opinion, it is just as likely to have cost saving than cost more money, because I think that at the moment families go to different solicitors themselves, having one system where they can go to court and get a certificate of presumed death would cut down on court time, would cut down on legal costs.

**Lord Boswell, Lead Chair:** I sense it might cut down on benefits, because some people may fall into the benefits system, because they were unable to access assets.

**Chris Evans, MP:** What would in your professional opinion be your advice to a missing family member?

**Patricia Barratt, Senior Associate, Clifford Chance:** It would depend on the situation of that family member, to what extent they would be dependant, and what assets they have in common with that person, and what you believe happened.

**Chris Evans, MP:** Where would the starting point be, would it be high street firms, or a bit more specialised like a human rights solicitor? Where would you make a start?

**Patricia Barratt, Senior Associate, Clifford Chance:** The best solicitors to deal with are the people who deal with Probate. They are the people most likely to have a handle on what to do.

**Lord Boswell, Lead Chair:** Thank you, and thank you for sticking with the case. We will get there in the end. Now we have two further tranches of evidence, the first one is Matt Searle, Operations Manager and Consular Liaison, Missing Abroad, and we also have Jacqui Hoyland. Perhaps I could just say having had a relative die abroad, I have some sense of the kind of thing you go through. Would you like to go first, Jacqui, and tell us your circumstances?

**Jacqui Hoyland:** My husband, Jeremy, went to Bali and went missing off the coast jet skiing in October 2008. He was out there because he was invited by the Indonesian Government, because it was the first Asian Beach Games, and my husband had thirteen years' experience, not only professionally, but also managing jet skiing around the world.

On his arrival, he was concerned about the distance of the race, and there was no map, so he went out with friends to ensure the people racing would be safe. He actually went out on the safety boat, but one of the gentleman at the back, who was 70 years old, couldn't cope with the current, and my husband turned back to look for him because he lost sight of him. About 40 minutes later, the other two jet skiers arrived back on the beach, and went back to the hotel assuming he would arrive. Two hours later - he had a mobile with him, he always had a mobile phone with his jet ski - he managed to get a signal to raise the alarm to say where he was, the boat was taking on water, he was sinking, the only thing showing was the handlebars, and he was in the water wearing a lifejacket. He was able to keep his connection, but it wasn't until later that the helicopter was launched, but they went to where he was left, and didn't find him. Within an hour the search was ended, he was left in the ocean, even though he made several SOS calls to say he was in the water with 15 foot waves and he couldn't hang on any longer.

When I found out, I asked specifically the location data which would help minimise the search, and the information was never passed to the Indonesian Consulate. I went out on the next flight, and before I left I got a call from the Foreign Office in London to say a British citizen had been found alive, only to find later it was a hoax call and nobody had been found. I got to Bali on the Sunday, and when I got there I worked with the Navy and the Airforce. I even got Richard Branson involved. The big question was where the search had been, and by badgering, I actually did get the information as to where it had been, and I found the search had taken place 15 miles east of where he was in the water.

**Lord Boswell, Lead Chair:** I think you have told us enough, why don't you pause for a moment, just take a rest, don't worry. Have some water. Would you like to come back in a minute? Whenever you are ready. Would you like to come back in a minute?

**Jacqui Hoyland:** No, I am okay. So I returned back to the UK, and found there was nobody to help. We were told by the Consulate that the police believed he was dead, and within a year I could get a death certificate, but they haven't given me a certificate, because they say I have to follow a process. I met the Indonesian Embassy, and they are very happy to help me,

but they want something from the British Government, a letter, and if I get that I can take that to court and get a death certificate. I got a letter from the Secretary of State saying if I got a death certificate from Bali they would issue a British Consulate death certificate. Unfortunately, the Foreign Office won't speak to me. The Indonesian Embassy want to help me but they want the British Government to write to them, the British Government won't listen. My MP has failed in the last year to get them to meet with me so I can explain the situation. I went to the Embassy and explained the situation and they told me that when a person (who was not a British citizen) in the UK went missing, the police in the UK looked for him, helped his family, and found his body, and returned it to Indonesia. Why can't a British citizen be looked after when they are abroad? I guess my case is very different from what we have heard today, my husband died at sea and his body has now perished, unfortunately, I will never get the body or any wreckage. I am still in limbo, I can't do anything.

**Lord Boswell, Lead Chair:** We are all very appreciative of you coming. You have said a great deal which has been very helpful to us. We are very grateful.

Everyone has a different experience, would you like to give us your take on what you might call the "pass the parcel" of one side saying "give us the evidence then we will help", and then the other side saying "well, when they give us the evidence we will help", and then to use Martin's analogy, people falling down the crazy paving?

**Matt Searle, Operations Manager and Consulate Liaison, Missing Abroad:** Absolutely. The crazy paving analogy is brilliant; especially when you are working overseas someone has taken a sledgehammer to that crazy paving. All the problems you are getting quite often come under a completely different culture, completely different legal system, completely different religion, and trying to pick the pieces out of that, and get what should be quite a simple thing to happen could take years. We were set up to fill the gaps between what the Foreign Office can provide, what police in the UK can provide, and what families absolutely need. We rely on cases being referred to us by word of mouth, and now that I have heard your story - we work in close partnership with the Foreign and Commonwealth Office - I am in there almost every week - I am going to bring this up to see what we can do.



**Lord Boswell, Lead Chair:** Three and a half years to make that connection - which is almost accidental, can you imagine everybody in that situation?

**Matt Searle, Operations Manager and Consulate Liaison, Missing Abroad:** Absolutely. When we started this, which was almost two and half years ago, we set up a partnership with the Foreign Office to refer every single case to us. It has taken till now to get these.

**Lord Boswell, Lead Chair:** You are separate from Missing People?

**Matt Searle, Operations Manager and Consulate Liaison, Missing Abroad:** We are part of the Lucie Blackman Trust. The Foreign Office now do pass on things that they get referred to them, but that relies on someone in that country referring it to the Consulate or Embassy in that country in the first place, so there are still hundreds of families that are falling through the gap and are looking for help. They might come to us through Missing People, through the police force, there are so many strands coming in and we just rely on trying to get as many people as we can. We might pick up stories from the news sometimes, and when that happens we do try and make contact with the family or the local police to try and support as best as we can.

**Baroness Kramer:** Thank you for coming and sharing this. I am in shock, because like most people, I would assume people in the Consular Service would be able to put together the pieces to cope with a situation like this, which is clearly very far from your experience, and I would encourage you to go back to your MP, who has dealt with cases of similar complexity, until you find a Minister who is willing to put the goal ahead of the procedure. Obviously no-one should be in this situation.

I wonder if you could give us some sense of what it is that would help create a path. Although this is an incredibly tragic and difficult case, there must be many people that it just happens, someone dies overseas in an accident or circumstance or goes missing. You are certainly not alone.

Are there things you would say to us, these are things that would make a real difference?

**Matt Searle, Operations Manager and Consular Liaison, Missing**

**Abroad:** The first thing, we discussed on Monday, it is down to signposting, whoever gets that information in authority, whatever it is, for us we want to know straightaway. If there is a missing person report that occurred in Thailand, we need to know from the police who received that report immediately.

**Baroness Kramer:** You said the answer is signposting to you rather than setting up some other guidance system?

**Matt Searle, Operations Manager and Consular Liaison, Missing**

**Abroad:** My worry with guidance systems being set up, in a missing case quite often the first few hours are the vital ones. We have been through a system where, for example, someone was missing, it was reported to local police in the UK, the constable took the details, the following day it was escalated to his duty sergeant, who looked at it and said we should put this through to the lead on missing persons, who the day after 'phoned us and said do you think you could help with this.

**Baroness Kramer:** There are a whole series – I think we are all thinking my goodness why couldn't we get search and rescue there – but today we are looking at the situation where the presumption of death is an appropriate next step. Can I ask you in that circumstance what would make a difference?

**Matt Searle, Operations Manager and Consular Liaison, Missing**

**Abroad:** Absolutely. Interim orders or guardianships we are discussing later, are absolutely vital. I will give you another case study. A man has been missing on the other side of the world, he has been missing for three years, and a few weeks ago his house was repossessed. All his belongings were destroyed, not sold off to cover the debt, including all his kids stuff. His partner went to the mortgage company and bank and said I want to take this on, I want to pay his arrears, they said we can't, we can only talk to the borrower, she said he is missing, they said okay get a letter from the police force that is investigating and we will talk to you, of course that can't happen, because the local police investigating are no use at all, they are not remotely interested in writing a letter to a local bank, so the house is gone, the kids have got nothing to remember their dad by whatsoever. Another case, if you

consider a case of someone who has been a hostage or been mugged and they think they can get help, they find their way to a cash point or a bank and think they can get help, and they get there and find their direct debits - direct debits for their gym - have wiped out all their money and accounts, and they haven't got money to make a vital call, they can't call for help. Getting some kind of guardianship which can take over and access their affairs immediately is vital in my view.

**Baroness Kramer:** Jacqui?

**Jacqui Hoyland:** I am in the same situation with my mortgage company. My mortgage is in my name and my husband's name. My husband didn't have any debt other than the mortgage. My mortgage rate has gone up - the bank won't have anything to do with it - I am potentially going to lose my home.

**Chris Evans, MP:** What nuts and bolts, what legislation, would improve the way you work?

**Matt Searle, Operations Manager and Consular Liaison, Missing Abroad:** Quick signposting, quick referral to the people who need to know, the Foreign Office, us, Missing People, the police forces local to them, quickly. It can all be over in two days. I would much rather spend time booking flights, talking to Embassies, checking the local media, find him drunk and he stayed at the hostel, than find out tomorrow he is now dead.

**Chris Evans, MP:** Is that policy or procedure?

**Matt Searle, Operations Manager and Consular Liaison, Missing Abroad:** We are talking about changing the ACPO guidance, it is that sort of level we need to do that.

**Lord Boswell:** Just one point, I don't think you are setting up a distinction between the necessary executive action that has to be taken, for example in the case of Jacqui, for example search and rescue, local police, and the authorities of the countries involved, and the British Consulate, and if we do have presumption of death, the earlier that process is started, or evidence is produced - there is not a real distinction between the admin and executive side and the legal side.

**Matt Searle, Operations Manager and Consular Liaison, Missing**

**Abroad:** Regarding evidence overseas, quite often that is difficult in itself. In many countries they don't want to talk to anyone else about providing evidence or agreeing that something has happened, because it is bad for tourism. I am insanely jealous of Missing People's poster campaign, because as fast as we put up posters in areas the authorities rip them down.

**Baroness Kramer:** I was just wondering, I am not a lawyer, but I would assume that a death certificate is universally recognised between one country and another. Do we need to make sure that there is a presumption of death document, if you like, would that make a significant difference?

**Matt Searle, Operations Manager and Consular Liaison, Missing**

**Abroad:** Yes absolutely. A death certificate from one country can be a scribbled piece of A4 paper with a different signature at the bottom – I have seen that – what is it? It is a death certificate. If you take that to a court in the UK, they would say, thank you, could we have a real one. So yes something that is recognisable worldwide would be hugely advantageous.

**Lord Boswell:** Thank you, Matt for the work you are doing.

So you are Sean Sutton, could you simply tell us what your Bureau's involvement is in missing persons?

**Sean Sutton, Head of the NPIA Missing Persons Bureau:** Our main role is to assist police forces and identify bodies that are discovered and give tactical advice and support. We all accept many cases are very complex and very challenging. We estimate from our current database, something in the region of 5,000 cases which are outstanding, and behind each one of those cases is a story of family members who want closure to these cases, and some sort of explanation as to what has happened. Many of these people believe the missing person is dead but struggle to obtain a death certificate. We are aware that Missing People would like the presumption of death in England and Wales, similar to that which exists in Scotland and Northern Ireland. From our perspective, we have a job to signpost, so leading people to NGOs, Missing People, the Citizen Advice Bureau.

**Lord Boswell:** I just want to check, if you are in this position as a family, have reason to think your son is missing, quite understandably, you would go to the local police. Clearly, if they had a recent case they might signpost you to Missing People, but it is not protocol or operational procedure?

**Sean Sutton, Head of the NPIA Missing Persons Bureau:** Of course we have to accept that. We are very grateful to the Missing People charity for highlighting these issues to us, advising and educating police, and obviously we would be very interested in the outcome of the Inquiry itself to pass that on to our police colleagues.

**Lord Boswell:** Two points, one is picking up the interruption I made, I will take it from what you said there is no standard procedure for advising, unless the police has prior experience of a case?

**Sean Sutton, Head of the NPIA Missing Persons Bureau:** There is standard documentation, and many forces have single point of contacts and coordinators, but this does vary. It is the NPIA's responsibility to ensure that there are standard guidance documents. You might ask does this cover presumption of death, and currently at the moment the simple answer is no. We have identified a lack of knowledge in police officers in this area, and we are hoping to issue new guidance and an addendum to 2010 Missing Persons guidance. This is likely to be done via the bureau staff over the course of the summer. Obviously signposting to relevant NGOs such as Missing People, Missing Abroad and Citizens Advice would assist. The Bureau obviously have an interest in the outcome of the Inquiry and will do our best to incorporate it.

**Lord Boswell:** The other point is there is an international aspect to this. Are you in touch with any counterpart professional organisations in other countries? How might this be improved? Perhaps I can draw on the analogy of the Tsunami. Is that beginning to build up the body of good practice?

**Sean Sutton, Head of the NPIA Missing Persons Bureau:** I think it is. We do have a responsibility to assist with investigations of foreign nationals in the UK and also UK nationals who go missing abroad. We do have a responsibility to assist, and take details in relation to those. Certainly international connections are growing. If anything, today, Jacqui's evidence

gives me a whole greater resolve to increase those connections. We do have connections with the FCO and other international organisations.

**Baroness Kramer:** I think there is a whole important conversation to be had, understanding how your role fits with Missing People and Missing Abroad, how the public perceives and understands those roles, I sure don't. I have been in too many situations where the confusion has been a really serious problem, notably around 7/7. There is a whole conversation there. Today we are looking at presumption of death, the role that you play, working closely with the police force, pulling together information that must be crucial, both at home and also abroad. Does that register as one of the significant roles that you play and the police play, or is the emphasis wholly on trying to find the person?

**Sean Sutton, Head of the NPIA Missing Persons Bureau:** It is a good question; obviously it is a police issue and therefore an issue for the NPIA. We don't tend to rule out what is on the periphery, particularly if we think it might be useful for police officers to be aware of it, not necessarily able to give the advice, but to know where to get it is of crucial importance. We liken it to the support given to victims. Police are not very good at signposting that, I think the Bureau definitely has to play a part in assisting forces to get it on to the same kind of level of response of the type we see in victim support. It would be interesting to see what applications the MOJ have had in the last ten years in relation to Section 15 approaches. We believe there has been quite a small set, quite a narrow set in relation to the very type of cases where it is almost a certainty but bodies have not been recovered. We believe the police don't know necessarily what the level of clarity is to make those applications, so we might be able to elaborate a little on that, so we can understand legislation which we have currently a bit better.

**Lord Boswell:** It is obviously work in progress, and what you are doing is very positive, and helpful. What we need to do, as I begin to wrap this up, is think of the bits that are not working, not necessarily under your control, and that is what we will do in the Inquiry. Thank you.

I think that will conclude the session, does anyone else have anything to say or ask before we start wrapping this up?

**Teji Singh:** My name is Teji, and I support Jacqui, and obviously everything about today is good, my sympathy goes to the families. With Jacqui, I have been following her case three years continuously. The only key we have is the FCO, not good enough to have a letter supporting you, they should do something to support the families as well, as you have heard; they have debts, and other issues as well. They need to get on with their lives. Obviously, I can understand where the police is coming from, but has anyone asked the question what can anyone do on a daily basis? Jacqui has had the door closed for two years now, and I came in to open the door for her in Indonesia, and the Government of Indonesia are willing to cooperate with the British Government here. All we are asking the Government here, is please write a letter to her so she can get on with her life. The Government need to review their policy so families can get on with their lives. It does affect families a lot, so please put yourselves in their shoes so you can feel what people have gone through. Please revise the Bill.

**Lord Boswell:** Thank you.

**Dr James Brown, Aston University:** I am Dr James Brown, Aston University, this area of research is painful, but much has been said about the interim position - after seven years you get presumption of death - but during this interim position there is talk about guardianship orders. I want people to think about the nature of the interim management position, or the interim guardianship position, and exactly what that entails. Is it an interim position for ownership rights for relatives left behind, or is it an interim management position you want to put in place in relation to the party in question? This has to be thought through very carefully as to exactly what we need during this interim period. Are we asking for power of attorney, or guardianship? Think of the mental health cases. These things need more preparation, and we need to be absolutely concise as to what we are looking at and what sort of device we need?

**Lord Boswell:** Thank you for that. That looks forward to the afternoon session which I fear I cannot come to. I can already see the potential for conflict of interest, because you are right in saying if someone who is alive and needs their property administered in their interest, or are they executor and

winding up the estate of the deceased person in the interests of the beneficiary, and those two are not the same person.

**Charlie Hedges, NPIA Missing Persons Bureau:** In Australia the coroner conducts an investigation to determine whether there is a presumption of death. Is that the position in the UK?

**Lord Boswell:** Patricia will remind me, but I think our position was it would be the High Court's decision to make an order, and if necessary matters could be referred to a coroner.

**Patricia Barratt, Senior Associate, Clifford Chance:** The coroner investigates suspicious deaths, whereas if there is no evidence, it's difficult for the coroner to investigate, not sure the coroner would be the right person to do it.

**Lord Boswell:** Can I give tremendous thanks to Alan, Rachel and Jacqui as the persons involved in this situation, it takes some doing to come, well worth it for us, we do appreciate you coming.

**Baroness Kramer:** We hope a link has been created with Jacqui and the FCO.

**Lord Boswell:** Yes, that's a start. Then huge thanks to my colleagues, to the other experts who have given evidence, the stenographer, Missing People, both for their evidence and for helping to inspire and set up this Inquiry, and to you as the audience.

Where do you sum up? Number one, we can start from a sense of humility and the determination something must happen. These are experiences which are set at a different scale from those that many of us have to go through, and we need to be aware of that. Hugely aware also of the insult added to injury by the accidental and not intended legal process we are in, and even the administration action, it is quite rare that public officials whether, in this country or another, are as it were maligned persons, but it is very difficult to get the system to work in a sensitive way, particularly when it is so complex. Increasingly, I realise there are overlaps between the people who are administering the affairs of people and the presumption of death, both very important, and there are overlaps between the different jurisdictions



at home and abroad, and there are overlaps between the different parties in the UK, and if nothing else, the Ministry of Justice document, shows there is no overall view. You haven't read out the Scottish Justice Department's submission. Have we received one? Not yet? It is promised. I think it may be shorter, and I am sure it will be clearer, and we need to look at that.

Standing back from this, what I would like, there has to be a simpler way of doing it. It does not have to compromise on the security of assets, or cut corners in any way, but it does need to work, and alongside that legal structure we need a better training and guidance and signposting system. As we have seen this morning, nobody chooses to be in this situation, nobody deserves to be in this situation, but what they do deserve is an appropriate response to get themselves through this situation, and that is our common resolve - we won't resolve it now, and it might take a year or two to get a final outcome, but we will get there in the end.

(From the Shorthand Notes of  
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