

Response to the Ministry of Justice's consultation on guardianship of the property and affairs of a missing person

This document outlines the UK charity Missing People's response to the Ministry of Justice's consultation on guardianship of the property and affairs of a missing person, published on 27 August 2014.

Missing People has been supporting families with the emotional trauma of having a missing loved one for more than 20 years. Over the past six years, the charity has increased our knowledge of the financial and legal issues that can arise when someone is missing through research, policy work and regular engagement with families of missing people and industry experts. This experience has led to the charity campaigning for new and improved legal provisions to better support missing people and their families, including guardianship.

With little information freely available about this area of law, the charity has by default become known as knowledge hub on financial and legal issues when someone is missing. As such, we are regularly contacted for support and guidance by families, and have had requests for help from legal and financial professionals and the police. Consequently, the charity holds a breadth of knowledge which means we are well-placed to respond to this consultation.

Q.1 Do you agree in principle that a new status of guardian of the property and affairs of a missing person should be created? Please give reasons for your answer.

The UK charity Missing People welcomes the Government's commitment to consulting on guardianship of the property and affairs of a missing person, and strongly supports the creation of a new status of guardian.

Missing People strongly supports a legal guardianship system which would to enable families to step in and protect a missing loved one's life from falling apart in their absence. The charity has been campaigning for these powers for a number of years, as we know of many families from across the UK who have faced immense challenges in safeguarding their missing loved one's finances and property. Many of these families have been waiting years for provisions to enable them to look after their loved one's affairs. We therefore hope that the outcome of this consultation will be new legislation to introduce a legal guardianship system in England and Wales as soon as is practicable, and that Scotland and Northern Ireland will follow suit.

We have included an Appendix with this submission which provides details of the legal and financial challenges that nine families of missing people have faced. These families' experiences clearly highlight how guardianship could benefit people who return from being missing and make a significant positive difference for the families left behind who are going through the toughest time of their lives. They also demonstrate how, without guardianship, families of missing people across the country are currently facing insurmountable challenges.

"Guardianship would have meant we were able to function and sort the things out that we needed to. Having a missing child is one thing but having a financial nightmare for 25 years, on top of the emotional distress of your child being missing, is something else. The financial implications are just crippling and have devastated our lives." Mother of a missing son as told to Missing People

The scale of the need for guardianship

Missing People provides support to large numbers of people who could benefit from guardianship provision. Analysis of Missing People's database shows that as of 18 November 2014, there were 2,414 missing adults on our database who had been missing for over three months, and for whom no outcome was known.¹ All of these adults and their families could potentially benefit from guardianship provisions being introduced. We therefore agree with the consultation paper that if guardianship was introduced, there would likely be a significant initial spike in applications.

Issues currently faced by missing people

We know that the present absence of a legal system for managing a missing person's affairs means that a missing person's finances can quickly fall into disarray. In the worst cases, a missing person can return to find their finances devastated and their home repossessed. This can happen relatively quickly after a missing person disappears, as wages and other payments into their bank account can stop abruptly, and yet Direct Debits, mortgage or rent payments and other standing orders may continue to drain their account for months or even years:

"Claudia was an adult who lived alone and had done for many years. She had a house with a mortgage, a car, bank accounts, investments, insurances. It became very clear that her assets would soon be at risk and that on her return she would not be in the same position as when she went missing. Why was this? Even as an experienced solicitor I could find no means of protecting Claudia's assets and managing her affairs." Father of a missing woman, submission to the Ministry of Justice

"I felt very responsible for making sure he didn't go into debt – the way I was brought up is that you don't have debts. I also wanted to try and protect his assets so his

¹ It is important to note that in some of these cases, the missing person may have returned, or may sadly have been found dead, without the charity being informed.

three daughters would have a legacy.” Mother of a missing son, as told to Missing People

The lack of provisions for protecting the assets of missing people creates additional challenges for people who return from being missing. The majority of people who go missing are vulnerable for a wide range of reasons, including mental health issues and financial problems,² and whilst they are away they may face further issues, such as becoming the victim of crime or homelessness. If these vulnerable people return from being missing to find their finances devastated or their home at risk or even repossessed, this can significantly add to the pressures they face, and make them yet more vulnerable.

Guardianship would provide these people with a mechanism through which their property, finances and other affairs could be safeguarded, and their dependents cared for. As such, should a missing person return, they would not have the added burden of trying to repair any damage to their affairs whilst also seeking to reintegrate and deal with any issues that may have led to their disappearance.

Issues currently faced by families of missing people

The lack of guardianship provisions can create huge challenges for missing people's families. Family members often want to safeguard a missing relative's financial and legal affairs so that they are in order if they return. When someone goes missing, many families expect provisions to be in place to enable them to protect a missing person's affairs, and are left shocked and frustrated when they find out there is no such system in place, and struggle to get advice on the best course of action. This situation can be extremely stressful, upsetting and frightening for families at a time at which they are going through immense emotional trauma and want to be able to focus on the search for their loved one:

“I wanted to safeguard his belongings and do my best for him, but nobody could tell me what was the right thing, the correct thing, to do. I felt overwhelmed... When families are already at their lowest ebb, they could certainly do without the extra worry of the gas bill and Council Tax. I very much hope that the Government will introduce guardianship provisions, so that in future families will be spared additional distress and frustration when trying to deal with the financial affairs of a missing person.” Partner of a missing man, as told to Missing People

“Trying to sort out my son's affairs left me feeling very frustrated and angry and totally helpless. I was trying to help all the organisations by contacting them, informing them of what had happened and work with them to identify a way of managing the situation. I was being honest and transparent. But they make you feel like you are the guilty party, like you are doing something wrong, that your intentions

² When the Search is Over, reconnecting missing children and adults (2014), Lucy Holmes, Missing People; Geographies of Missing People: processes, experiences and responses (2013) Stevenson, O et al.

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are dishonest. It is very hard to deal with." Mother of a missing son, as told to Missing People

The current absence of legal provisions means there is almost nothing relatives can do to protect their missing loved one's affairs. Families find that they are powerless to stop unneeded Direct Debits and standing orders draining their relative's bank account, unable to move money from one of the missing person's bank accounts to another to pay bills, can do nothing to sort out benefit payments and cannot negotiate payment holidays or suspensions on mortgages and loans:

"The bills kept arriving at Craig's flat, and were soon followed by final demands and warnings of legal action. I rang the companies to explain the situation. Some were sympathetic, but said they could not close [his] accounts without his authority. Others were far less reasonable; one national company told me that their debt collectors would find Craig. The situation made me extremely anxious, and I began to dread visiting Craig's flat. I think he would have been very upset to know how the stress was affecting me." Partner of a missing man, as told to Missing People

Relatives who share assets or liabilities with the missing person face significant additional challenges. Family members often find that they are unable to change the conditions of a contract (such as changing a joint mortgage product) without the missing person's approval and signature. They can also find that without the missing person's signature, they are unable to sell a jointly owned home to reduce mortgage payments:

"During the past eight years I have not only had to deal with the fact that my husband is missing, I have also had to continue to pay the mortgage and bills etc. It has been at times extremely difficult and one of the worst experiences I have ever had to deal with. I have spoken to quite a few solicitors and have yet to meet one who has dealt with anything like this, while I understand that my case is very rare I am absolutely astounded that in this day and age there is no proper measures in place to offer families like myself the proper help and guidance we deserve." Wife of a missing man, as told to Missing People

Family members can also encounter problems with sorting out joint bills and accounts that may be difficult to afford for the family members left behind:

"After a few years, I needed to budget and decided to apply to the Council to pay the single person's rate of Council Tax. I filled in the forms but it was quite difficult dealing with the local authority. They wanted to know where my husband was if he was no longer living at our home but, of course, I couldn't tell them because I didn't know myself. They refused the application and then I appealed. Eventually they agreed to let me pay the single person's amount but, when you are already

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struggling, it is quite difficult to find the strength to handle all of that.” Wife of a missing man, as told to Missing People

In the absence of guardianship provisions, families may explore Presumption of Death provisions as the only legal process that enables them to deal with the missing person's financial and legal issues. Families may feel they have no option but to apply for a Declaration of Presumed Death for their missing relative at a point they are not ready to this (due to the emotional pain this causes and / or because they remain hopeful that their missing loved one is alive), because there simply is no other option through which they can step in to deal with the missing person's financial and legal issues.

“I am aware that the Presumption of Death legislation has been enacted and need to pluck up the courage to contact a solicitor to discuss this. But I think having to go through a presumption of death process would be an emotional nightmare. It feels like giving him up for dead before you have got him in your arms and it is just awful to be forced to take this action. But there comes a time when you feel you have to do something...I feel that if I don't do anything then all the effort of maintaining his property would be in vain. Guardianship legislation might offer me an alternative route to presumption of death.” Mother of a missing son, as told to Missing People

Additionally, a proportion of families will be unable to access the Presumption of Death system until seven years have passed from the time at which the person went missing, leaving a long period when the missing person's affairs are left unmanaged. Common law states that life is presumed, without evidence to the contrary, for seven years after someone goes missing. These families are therefore left in a limbo for seven years before they can pursue Presumption of Death, during which time there is no legal recourse available to them to protect their loved one's affairs.

As a result, families have no options except to use their own funds, if they are able, to protect their loved one's assets, liabilities or dependents (but with no guarantee that they will ever be able to recoup this expenditure), or to stand by and watch their loved one's estate dissipate. This situation is devastating for families, as they are neither able to protect the relative's estate, or administer it in accordance to their wishes, such as through a will.

“We were stuck. We could not use any of Rob's money to pay his bills and at the same time we could not cancel the bills. In the end, my father became so fed up with the whole affair that he ended up using his own money to pay all the bills himself. He paid for every utility bill attached to the flat, the concierge charges and the council tax... There was nothing else we could do about it – we couldn't sell or rent the flat and the bills had to be paid. There is always that hope that he will return and, if he did, we wanted to make sure he would still have his home to come back to.” Sister of a missing man, as told to Missing People

“The loss of one’s partner is one of the worst things in life; to lose your partner without knowing for sure what happened to them, not to have their body, not to be able to organize a funeral, is unbearable. There is no sense of closure. The lack of clear guidance since my partner’s disappearance has been incredibly frustrating; I feel utterly abandoned, and my uncertainty about the future causes me a great deal of stress. At this time I have no idea when my partner’s estate may be settled. I wish to see things resolved primarily for my partner’s sake, but also to allow me at least to attempt to get on with my life without this constant worry about his affairs.” Partner of a missing man, evidence to the Justice Committee 2011³

Guardianship would enable families of missing people to step in and protect a missing relative’s property and affairs, and would create a system for families to use in circumstances whereby Presumption of Death is not appropriate or not yet possible. It would introduce legal clarity for families where there is currently little, and would provide them with a pathway to follow. It would also allow families to be able to manage any assets or liabilities that they share with their missing relative, and would give them the legal right to engage with institutions on their relative’s behalf and so that they can effectively safeguard their loved one’s affairs.

“Guardianship would have meant there was a process to follow to try and sort all of these affairs out. Instead, trying to sort out my son’s affairs left me feeling very frustrated and angry and totally helpless. I was trying to help all the organisations by contacting them, informing them of what had happened and work with them to identify a way of managing the situation. I was being honest and transparent. But they make you feel like you are the guilty party, like you are doing something wrong, that your intentions are dishonest. It is very hard to deal with. It would help the financial institutions too. Guardianship legislation would give them a process to follow and a way to manage the situation. As it stands they feel their hands are tied by the Data Protection Act and that there is nothing they can do.” Mother of a missing son, as told to Missing People

Issues currently faced by professionals and institutions

Financial institutions and professionals

Without a legal system of guardianship, financial and legal institutions are very limited in how they can help families manage and protect a missing loved relative’s affairs, even when they are sympathetic to a family’s situation. Data protection law prevents banks, insurance companies and other financial organisations being able to discuss the missing person’s financial arrangements with a relative. The conditions of customer contracts for bank accounts, insurance policies etc prevent banks and other institutions from accepting instructions from anyone except the missing person. The lack of clear legal mandate means

³ Evidence submitted to [Justice Committee Inquiry into Presumption of Death 2011 -2012](#)

that many financial institutions struggle to know how best to proceed when approached by a family going through this challenging situation:

“When an individual signs a mandate with a bank for an account or loan, that mandate must be upheld else the bank will be in breach of duty to the customer under law and contract. Any deviation from this mandate would ordinarily require a legal request, a legislative duty or some other compelling reason... Without this legal requirement or legislative duty there is limited room for banks to act on a discretionary basis” British Bankers’ Association⁴

“I think insurers would like to know they can act in a certain way as regards data protection...I think they would like to be provided with that reassurance.” Tim Humphreys, Association of British Insurers⁵

As a result, many institutions default to standard procedures to deal with what is a unique situation. For example, as detailed above, a family member holding a joint mortgage with a missing loved one may be told that no changes can be made to the product without the approval of a the missing person through their signature. This can be very frustrating and distressing for families for whom such a request is not possible. Furthermore, it can be costly for institutions to enact cost-recovery action (for example, to repossess a house) if the missing person – and any joint contract owners – cannot make loan repayments.

Financial institutions would benefit from the introduction of a legal guardian status. The introduction of guardianship would provide their staff with much needed clarity on how to deal with family members who want to manage a missing person’s affairs. It could also benefit institutions through reducing defaults on loans, mortgages and other payments which currently happen due to a missing person’s affairs being left unmanaged, and any subsequent action they might need to take as a result. Institutions are keen to find a solution to the challenges they face from the lack of a legal framework for managing a missing person’s affairs, and Missing People believes that the proposals outlined by the Ministry of Justice would provide this solution.

Legal professionals

As it stands, legal professionals do not have clear provisions to access when approached by families of missing people for advice and support. In the absence of guardianship, the only clear process for legal professionals to refer families to, in order to deal with financial and

⁴ Evidence from the British Bankers Association to the APPG for Runaway and Missing Children and Adults 2011 Inquiry into Support for Families of Missing People

⁵ Evidence to the APPG for Runaway and Missing Children and Adults 2011 Inquiry into Support for Families of Missing People

legal issues is Presumption of Death, and this will not always be appropriate for the reasons outlined earlier.

The legal professionals Missing People has been in contact with agree that a system that would enable families to deal with the affairs of a missing person in circumstances when Presumption of Death is not appropriate or possible (e.g. for the first seven years after someone goes missing in most instances) would be beneficial. Missing People has had positive responses from the legal professionals it has engaged throughout the campaign for guardianship, as it is clear that law on guardianship would enable them to provide important legal support where they are not able to at present.

The police

Families often approach the police for answers to their questions about how to manage a missing person's affairs because of the police's lead role in investigating missing person incidents, and their family liaison role. However, police are unable to give families clear guidance, because of the lack of legal provisions.

"It is a relatively big issue from our perspective...We are aware that families find these things distressing and...police are often asked for indicators of this kind." Sean Sutton, National Policing Improvement Agency⁶

A guardianship system would help police here by providing a system to refer families to.

International precedent

Guardianship systems are operating effectively in other jurisdictions. As the consultation proposals state, legal mechanisms to enable people to become the guardian of a missing person's affairs are operating successfully in Australia and Canada, and a Bill has been introduced in the Irish Parliament that would introduce similar provisions if enacted.

We believe that this indicates that the proposed system, which was inspired by those in place internationally, should provide a workable solution to the issues presently faced by missing people, their families, and professionals.

Summary

In summary, our answer to this question is that we believe that creating a new legal status of guardian of a missing person's property and affairs is essential- to help families facing one of the toughest times of their lives who currently struggle to protect the life of their missing loved one, to help ensure vulnerable missing people's lives do not fall apart in their absence,

⁶ Evidence from Sean Sutton, National Policing Improvement Agency to the APPG for Runaway and Missing Children and Adults 2011 Inquiry into Support for Families of Missing People

and to help professionals by providing a legal framework they can operate in to support families and administer their customers' affairs.

Q.2 Do you broadly agree with our proposals for the status, role and duties of a guardian of the property and affairs of a missing person? If not, please state why. If you consider that some additional or alternative provision should be made, please explain what that provision should be, giving your reasons.

Missing People broadly agrees with the proposal for the status, role and duties of a guardian.

How a guardian should act

We agree that the role of the guardian should act to protect the missing person's property and also act for the maintenance and benefit of anyone wholly or partly dependent on the missing person, if that is in the interests of the missing person.

We agree that the court must be sure when appointing an applicant as a guardian that the applicant will be able to act in the best interests of the missing person and has the ability to undertake this very responsible position.

We agree that acting in the best interests of the missing person should be the guiding principle for the guardian. We agree that in considering what is in the missing person's best interests, the guardian should take account of all the relevant circumstances, including the missing person's known wishes regarding his or her property, family including dependents and other affairs. We also agree that many important decisions will be difficult for a guardian, and in these instances they should obtain and consider proper advice in the way a trustee is required to do; and that they should be able to seek advice from the court in relation to significant decisions.

However, the concept of 'best interests' in the proposals is complex and would benefit from further clarification. We additionally believe that clarity is needed on how a guardian should respond if a missing person's best interests clash with their known wishes. For example, if it is clearly in a missing person's best interests financially for their house to be sold at a time when most profit could be elicited from the sale, but the missing person's perceived wishes would be that they would want their original home to come back to, what should a guardian do?

Furthermore, we believe that more clarity is needed about the kinds of decisions for which a guardian should seek professional advice or the advice of the court. For example, would

these be limited to decisions of financial significance (such as buying or selling property, or lending or borrowing money) or are there other instances whereby advice should be sought? To ensure that guardians are able to operate effectively from the outset, we suggest that applicants should be able to seek advice from the court about significant financial decisions (such as buying or selling a property) when their application for guardianship is heard, as well as for them to be able return to the court for advice at a later stage.

Given the responsible and potentially challenging nature of the role of a guardian, we believe that guidance must be made available to them. This guidance should explain in detail what the role involves, what a guardian is and is not permitted to do, a full explanation of what 'best interests' means in the context of guardians, and the potential of legal recourse if the position is mishandled (along with information on getting a security bond if appropriate).

Access to information

We agree with the principle that a guardian should only have access to information necessary to carry out their role. However, we believe that further clarity is needed on the consequences for a guardian if they intentionally or inadvertently gain access to or misuse private information outside the scope of their role.

Q.3 Do you agree with our proposals for the procedure for appointing a guardian of the property and affairs of a missing person? If not, please state why. If you consider that some additional or alternative provision should be made, please explain what that should be, giving your reasons.

We believe it is important that the most suitable person in each individual situation should be able to carry out the role of guardian, and therefore we agree with the principle of not restricting who can apply as long as they have sufficient interest. For example, if the spouse and adult children of a missing person feel unable to apply to become guardian whilst additionally dealing with the emotional trauma and searching for their loved one, another person, such as a family friend, might seek to apply. However, we believe that the person must be able to demonstrate knowledge and understanding of the missing person's interests and priorities.

Timing of applications

Missing People understands that a balance must be struck between the duration of the missing episode, and the need to protect the missing person's interests (and those of any dependents) when determining at what point an application for guardianship can be made.

We recognise that 90 days is the common international standard where such a system is already in place. However, from our work with families, we understand that issues can escalate quickly and that a missing person's finances (and potentially their family's) could already be in difficulty within 90 days. It is likely that the application process and hearing would extend this period, meaning additional time where the missing person's affairs are unmanaged.

As such, we would ideally like to see the period at which someone could start their application reduced to 60 days. If this is not possible or deemed appropriate, we believe that provision should be built into legislation to enable the time period for applications to be adjusted at a later date should this be considered appropriate. For example, with technology development increasing people's digital footprint, it may later be deemed that a shorter period without activity will be appropriate to consider applications.

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The charity agrees that there should be prerequisites in notifying interested parties of an application, in case they want to seek to alter an application (for example, another family member might want to amend an application so that they can become joint guardians) or to appeal if they feel the application or applicant is not suitable. It is therefore essential that interested parties have sufficient time to respond to advertisements and notifications before the court proceedings commence.

Jurisdiction

Missing People acknowledges the importance of jurisdiction within legal systems and that there must be a sufficient connection to England and Wales for an applicant to use the legal system here. The proposals outline that either the missing person, or the applicant must meet jurisdiction criteria. However, we are concerned that the applicant criteria only suggests spouses or civil partners who are domiciled in England or Wales, or have lived in England and Wales at least a year prior to the application are at liberty to apply if the domicile criteria for the missing person is not met.

We feel that this restriction on applicants being a spouse or civil partner does not take account of modern families and couples, and are concerned that it may be unfair for young partners who are less likely to be married. We suggest that the restriction is reconsidered so that proven romantic partners of the missing people, or the missing person's parents, are also able to apply, as long as they meet the other criteria.

Q4 Do you agree with our proposals for the criteria for appointing a guardian of the property and affairs of a missing person? If not, please state why. If you consider that different criteria should be used, please explain what they should be, giving your reasons.

We agree that someone other than the potential guardian should be able to make the guardianship application. We agree with the criteria for appointing a guardian as outlined in paragraphs 96 and 97. We also agree that the court should be able to appoint more than one guardian as outlined in paragraph 99. However, we believe extra clarity is needed on how multiple guardians should work together, including responsibilities to consult each other on decisions and to share relevant information. This could be contained in guidance for guardians issued by the Office of the Public Guardian. However, such requirements should not affect the validity of decisions taken by a guardian.

Q5 Do you agree with our proposals relating to the terms of appointment? If not, please state why and explain what terms you would suggest instead.

Duration of appointment

Missing People strongly supports the Ministry of Justice proposal for the term of an appointment to be four years, extendable by another four years. We acknowledge that in existing international systems, two years appears to be the present standard for an appointment, however we feel that this is too short in most instances and that following this would be burdensome for both families and the courts. We agree that the appointment and extension period should together be longer than the seven year period that must pass before a significant proportion of applications for presumption of death can be made. We believe that any application made to extend the appointment for a further four years should be streamlined (insofar as possible whilst maintaining checks and balances) to make it less costly and cumbersome for families, the courts and legal professionals.

We appreciate that the court must work to the best interests of the missing person, and as such this might include considering whether an application for presumption of death might be preferable to a reapplication for guardianship after eight years. However, whilst we believe that the court should be able to advise the family on such matters, we do not feel that any family should be compelled to seek a declaration under the Presumption of Death Act 2013. The courts must be sensitive to the family's beliefs regarding the status of their missing relative, and whether they want to follow a presumption of death process. We feel that the proposal, outlined in paragraph 102, that if there remained a need for a guardian after the initial and extended appointments had expired, a new application could be made is

very important for families who would not want seek a declaration under the Presumption of Death Act.

Termination of the appointment

We think that in addition to the situations outlined for terminating an appointment, consideration should be given to what happens if a guardian dies or suddenly becomes unable to continue with their role, for example due to significant health problems. In these cases, a procedure would be needed that did not require the guardian to apply to the Court for termination.

Limitations on the appointment

We agree with the proposals for limiting the power of a guardian to act, especially in cases whereby a guardian may not have the knowledge or expertise to manage all of the missing person's affairs, or indeed may not want to (for example, a business partner may only want to look after the share of the missing person's business).

Recovery of expenses and fees by the guardian

We agree that the guardian should be entitled to recover his or her expenses from the property of the missing person, subject to the approval of the court. We think further guidance is needed (to supplement the court's ruling on expenses) regarding the kinds of expenses the guardian can and cannot recover from the missing person's property.

Q6 Do you agree with our proposals for safeguards for the missing person and the guardian of his or her property and affairs? If not, please state why. If you consider that some additional or alternative provision should be made, please explain what that should be, giving your reasons.

We agree that the safeguards outlined in the proposals are important for looking after the interests of the missing person, for safeguarding the guardian, and for ensuring public trust in the system. We agree that the guardian should have to report to the Office for the Public Guardian (or another supervisory body) on his or her activities, including filing accounts on an annual basis and additionally making a report within three to six months of the commencement of the appointment, when a significant proportion of the activity is likely to take place.

We agree that the court should be able to request that a guardian takes out a security bond for the tenure of their guardianship. This would compensate the estate of the missing person in the event of any wrongdoing or poor decision making by the guardian. However,

we think that a security bond may not be required in all cases, such as if the missing person's estate is very small, and that it is important that fee associated with the security bond is not prohibitive to guardians being able to afford to take on the role.

We also think that guidance for guardians should outline in more detail how they can take out a security bond, and whether there are relevant industry standards for these bonds.

Q.7 Do you agree with the costs and benefits of the proposals described in this cost-benefit analysis? If not, please explain why.

Scale of the issue

We agree with the analysis into the likely number of guardian applications. We believe that there is likely to be a significant spike in applications in the first year or two, because many families have been waiting for a number of years for this legislation; and because a spike was seen in applications made under the Presumption of Death (Scotland) Act 1977 when this was first introduced.

As stated in our response to Q1 above, analysis of Missing People's database shows that as of 18 November 2014, there were 2,414 missing adults on our database who had been missing for over three months, and for whom no outcome was known.⁷ All of these adults and their families could potentially benefit from guardianship provisions being introduced.

Costs and benefits

We believe that the benefits of the proposals would significantly outweigh the costs involved in implementing a new legal guardian status.

There may be system change and familiarisation costs for financial institutions and other businesses, however we believe that these, and ongoing costs, will be low because the proposals mirror similar systems for Deputies appointed by the Court of Protection.

Whilst there may be small costs to businesses and institutions as a consequence of decisions made by guardians, there are likely to be benefits for the same reason. For example, families may decide to cancel unneeded direct debits, but will ensure that bills are paid. We also believe that there will be benefits to missing people and their families, as well as the institutions that hold their assets or liabilities, if a scheme of guardianship is introduced, as these assets and liabilities would be maintained. As such, it is likely that there will be fewer

⁷ It is important to note that in some of these cases, the missing person may have returned, or may sadly have been found dead, without the charity being informed.

payments defaulted on, and so fewer companies and financial institutions will be required to take action such as repossession.

We additionally agree that any new power here is likely to result in more business for legal professionals. Guardianship would provide families and such professionals with a system to use and as such it is inevitable that this will encourage more potential guardians to seek legal advice and guidance.

A significant proportion of the costs associated with introducing guardianship will be in the early stages – linked to introducing legislation, and introducing guidance for the courts, for relevant organisations and for families. However, the benefits to missing people, to families and to financial and legal institutions will be cumulative and ongoing.

Q.8 Can you provide any evidence or sources of information that will help us better understand and inform our cost-benefit analysis of the proposals?

We have appended a number of case studies to this submission, which each outline the story of a family who have a missing relative and who have encountered financial and legal difficulties following their relative's disappearance, and for whom guardianship could be relevant.

*Missing People
November 2014*