

FAMILY PERSPECTIVES: Appendix to Missing People's submission to the Ministry of Justice's consultation on guardianship of the property and affairs of missing persons

This appendix presents the experiences of nine families who are currently living with a missing loved one and illustrates the practical and emotional difficulties they have encountered because no system of guardianship exists. The experiences are listed in the family members' own words, but some names have been changed to protect anonymity.

Family perspectives: a mother

"Trying to sort out my son's affairs left me feeling very frustrated and angry and totally helpless."

Chay was 41 when he went missing in 2010 whilst walking alone in the Lake District. Sadly, in July 2014 his remains were found in a remote area by walkers. The Coroner returned a verdict of accidental death. His mother Judy talks about her experiences trying to manage Chay's legal and financial affairs during the four years he was missing.

"It took about twelve months before we started experiencing any major issues because he had money in his bank account and direct debits set up to pay all the bills.

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 three daughters would have a legacy.

So I decided to look after the financial side. I wrote to the bank and tried to explain the situation, that Chay was missing and the money in his account would run out, and asked them for some help and advice on how to take it forward. I got no reply. I wrote a second letter. Again there was no response from the bank.

Next I decided to go into the local branch of the bank and speak to the manager. I wasn't sure if they would be able to help because his bank account was online but I didn't know what else to do. They were nice but just didn't know how to help me. They gave me an alternative address to write to which I did. Once again I got no reply.

Eventually his salary ceased to be paid into his bank account. I knew he had paid tax during April to September before he went missing and set about trying to recover that. Because Chay was technically absent without leave it was agreed, in consultation with the Union of which Chay was a member, to follow his employer's disciplinary process to terminate his employment. This meant that at the end of the financial year a refund for overpayment of tax was paid into his bank account which helped his financial situation a little but it was the last money that was paid in.

Eventually the money in his account ran out because nothing was being paid in but his direct debits were still paying out each month. Then one day I received a telephone call from the bank to say his account was overdrawn and what did I plan to do about it. I was so angry. I had contacted them so many times to try and sort the situation out but they wouldn't engage with me. Then, quite incorrectly, they must have used my telephone number from that communication to contact me about the overdraft.

I really wanted to protect his house. I didn't want it to be repossessed. So I wrote to the building society and asked for advice on what we could do, for example, whether we could pay off the mortgage, or continue making the monthly payments on his behalf. I got a reply from them and they were quite helpful. I did make the monthly payments but even then I would be made to feel as if I was doing something that I shouldn't by the questions they would ask me each time.

I also wrote to the utility companies to try and work out what we could do but again none of them replied. Eventually you end up having to phone the people. It is really difficult to have to do this; you have to take a deep breath before you do. The trouble is, when you do, they are at a complete loss themselves because there is no process or mechanism for them to follow and they just don't know what to do. It was a lot of hassle at the time but in the end we managed to close the accounts down because the property was unoccupied so there was zero usage of gas and electricity. Trying to sort all of this out left me feeling very frustrated and angry.

When asked how guardianship might have helped Chay's mother said:

"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."

Family perspectives: a wife

"When your loved one is missing you fall into a hole. There isn't an official category for missing. Organisations don't know what to do or how to deal with your situation."

Andrea's husband has been missing for ten years.

"When your loved one is missing you fall into a hole. There isn't an official category for missing. Organisations don't know what to do or how to deal with your situation. A system of guardianship would enable organisations to develop a way of working with families and relatives who have a loved one missing.

My situation was less complicated than for some other families because we had paid off our mortgage. Nevertheless over the years there have been niggly little things that I have had to deal with which could be upsetting depending on how people treated you. For example, 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 struggling, it is quite difficult to find the strength to handle all of that."

Family perspectives: a partner

“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.”

This is a post from a family member on Missing People’s online Missing Blog: www.themissingblog.com. Names have been changed to protect anonymity.

When I think back to those first days and weeks after my partner, Craig, went missing, I wonder how I got through that period. Initially I had to deal with the shock of being told by the authorities that he had disappeared. But within a very short space of time that shock was joined by confusion and stress. Craig and I didn’t live together, and we had no joint finances. But he had no family in the UK, so it was down to me to take action. I began to worry about what to do about his flat and his financial affairs. The short answer was that I couldn’t do a lot.

Within a few days of Craig’s disappearance, I told the police officer with whom I was dealing that I intended to go into his bank to explain the situation. She advised me not even to bother; I wasn’t their customer, so they had no reason to listen to me. She kindly rang them on my behalf, but that was the limit of her power. As the days went by, I found bills mounting up at Craig’s flat. The police suggested that I write to all the authorities and utility companies, simply informing them that Craig was missing. It took me a little while to gather all the relevant information, but I did this, following legal advice, and for a time I felt relieved. But 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 Craig’s 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. 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.

Eventually Craig’s flat had to be reclaimed by the housing association that owned it. They were sympathetic in their dealings with me, and I managed to put as many of his possessions as I could into storage, either in a lock-up or with friends. I was fortunate to have their help, otherwise I could not possibly have afforded the expense of further storage. Once I returned the key to Craig’s flat, I could no longer keep an eye on the post (and I did not have the authority to have it forwarded), but I know that things would have remained unresolved with the on-going bills. I could not help thinking that I had somehow failed and let Craig down, because it all seemed such a mess.

I received helpful advice from Missing People, and through them I became aware of the campaign to introduce legal guardianship to enable families to manage the affairs of a missing loved one. It would have been a huge help to me to have had guidance on such matters when Craig disappeared, and to have been able to take a clear course of action. 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.”

Family perspectives: a mother

“Your hands are tied. It just makes no sense.”

Philippa’s son has been missing since 1989.

“I have been paying the mortgage and managing the upkeep of my son’s property for the last 25 years. I have paid all the bills associated with the property, including Council Tax, which is charged at the full amount. I have maintained the garden and dealt with any repairs that were needed and the general upkeep of the property. I used to put the heating on in the winter but I can’t afford to do that anymore. The outside of the house needs painting but, again, I just don’t have the money to do it. If I hadn’t done all of this, the house would be derelict by now.

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.

I am aware that the presumption of death legislation has been enacted and need to find 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. If I die, his property will go to the state. 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.”

Family perspectives: a sister

“All the red tape that is put on families when we are already in the depths of despair.”

Rob¹ was 27 years old when he went missing in 1995.

“We started to encounter financial and legal problems immediately after my brother’s disappearance. We had to liaise with a wide range of institutions. For example, we needed to contact the utility providers regarding payment of bills and, similarly, the council tax department at the local authority about payment of his council tax. We also had to liaise with the managing agent of his flat which included looking at the payment of concierge charges for his property.

From the outset we were not permitted access to any form of information. None of the bank providers (he held a few bank accounts) were willing to speak to us regarding his affairs. Equally the utility providers, council tax department and managing agent of his flat all proved the same, citing the ‘Data Protection Act 1984’ as the reason they could not discuss his affairs with us.

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. One member of the family

also made fortnightly visits to the flat for safety and security reasons. 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.

In 2005, ten years after his disappearance, we sought legal advice with a view to obtaining some form of presumption of death certificate in order to resolve his financial affairs. This was, of course, before the presumption of death legislation was passed. It was a lengthy procedure - the process of receiving a 'Grant of Representation' took over three years to complete. Eventually the court order was obtained and we were finally able to start managing my brother's financial affairs. In 2012, we were able to sell the flat by which time my father had been paying the bills for my missing brother for 17 years, which amounted to a huge sum of money.

Another issue was that my brother did not pay any form of tax on his income because he was not here to authorise his HM Revenue returns. It was only when we received the court order that my parents were able to do anything about payment of his income tax. HMRC required payment for the amount of income tax he owed for the thirteen years between the point at which he went missing and when the court order was obtained. In addition, they have threatened to impose a large penalty fee for each of the thirteen years he failed to pay his income tax. We have had to contest the penalty fee through the assistance of our accountant on the grounds of exceptional circumstances. The case is still ongoing.

Guardianship legislation would have helped Rob's family manage his financial affairs at a much earlier point. It would have provided a mechanism and process through which the family could do this and helped them minimise the emotional distress and financial worry at a time when they were already in "the depths of despair."

Family perspectives: a mother

"When you go to try and sort things out, you are made to feel like a criminal. There should be a system for families in the same situation as me where we can sort things out without being made to feel like a criminal or under suspicion."

Neil was 32 when he went missing in 2003. Over eleven years on, his mother would like to be able to sort out his bank accounts so that they do not get 'lost in the system'.

"There are one or two bank accounts that need sorting out. There is some money in one of them and a very small amount in the others.

I didn't want to sort things out for ages. I've left it a long time. It is a difficult thing to approach, it is quite upsetting and I am sure other people feel the same. It brings too many sad things to mind. I find it daunting to have to look into it.

Eventually I thought I ought to sort it out. I am not interested in having the money I just think it is important that it is sorted out correctly in case anything happens to me. I want to have the money in an account that one of his siblings could then manage, or keep an eye on, on his behalf.

At first I had difficulty trying to find out the numbers of his accounts. One account was put on hold by the police when he went missing in case someone should access it.

Eventually I managed to find his account details, and went to the bank. The manager saw me and the way she dealt with me was quite upsetting. She was not very nice. She was not very helpful and just did not understand what it was all about and what I was trying to do.

I was so upset by the response that I received from the bank manager. I felt: 'I can't do that again.' So I haven't. I think my next step is to go to a solicitor but I don't know how to go about that, where to find someone who can help. I also worry about how much the process will cost and whether I have the funds to pay for it."

When asked how guardianship might have helped Neil's mother said:

"There needs to be someone with whom we can discuss the issue properly, who knows what they are talking about and knows how to deal with these sorts of things. It is the not knowing where to start that is difficult. We need a list of people who we can approach to help with sorting out the issues. The problem is that I don't think many people have come across it and they just don't realise the emotional impact of their actions and words. I don't want sympathy, I just want someone who can discuss it properly. I feel like I am swimming in a big pond and not getting anywhere.

I think a system of guardianship would help because it would give me guidelines as to how to go about resolving the situation with his bank accounts. It would mean I could go ahead and deal with these things."

Family perspectives: a father

"You are emotionally at your lowest ebb and then suddenly you are faced with these brick walls. It is almost impossible. It just makes it so much worse."

Claudia Lawrence was 35 when she went missing in 2009. Her father Peter would like a mechanism through which he can manage her affairs to prevent any financial risk to her assets.

"Soon after Claudia went missing I discovered that there are no means of allowing anyone to take charge of and deal with all the usual legal and practical affairs that the rest of us take for granted.

Claudia was 35 when she went missing and had lived alone 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. For example, she had a current and a savings account with one bank. There was soon no salary coming into her current account, but there were still liabilities to be met from it. That bank felt unable to transfer money even from one account of hers to the other. Not only did that cause problems with liabilities but the 'savings' account has been wasting away at something like 0.01% interest for over 5 years. Similarly, my daughter had a third account with another bank but they were also unable to transfer monies to the other bank.

Claudia also had a stocks and shares ISA which came to maturity shortly after she went missing. What had been quite a valuable investment has since been wasting away in a suspense account at nil interest because the bank could not accept instructions from anyone else even to transfer the monies into an interest bearing account.

I am a Family Representative for the charity Missing People and, through this, I have met many families who have also suffered, and are continuing to suffer, from the lack of any law permitting them to look after their missing loved one's affairs. All this at a time when the families are emotionally very low. For example, some have had to rely on relatives to contribute financially to prevent mortgage companies taking possession and selling a house. For others, when a fixed rate mortgage has come to an end, they have automatically been put on to more expensive SVRs because the mortgage company could not accept instructions to do otherwise. Over the years there must be thousands of families who have unnecessarily suffered and whose loved one's assets must have been dissipated for no good reason.

A system of 'guardianship' could prevent some of the distress families currently experience when trying to manage the affairs of their missing loved ones and provide peace of mind that their financial affairs will not be affected just because a mechanism through which they could be managed does not exist. There must of course be safeguards for such a system but these are adequately provided for in the Ministry of Justice consultation paper. With such safeguards in place there can be no valid arguments against such a law.

I don't want anyone else in the future to go through what I've gone through in not being able to deal with all the practical and financial affairs which we all take for granted."

Family perspectives: a son

I really feel for the families who are completely reliant on the missing person's finances, I can only imagine how hard it is for them when the financial issues can't be managed or resolved."

Kevin went missing in 2003.

"We have recently completed the legal process to get my dad presumed dead. It was a long and drawn out process – it took around two years. I could afford to pay for a solicitor who knew the different stages involved and what to expect. I also run a couple of businesses which means I am used to dealing with legal and financial issues so, in a sense, I am a good person to handle this kind of thing. I cannot imagine what it must feel like to even contemplate this process if you are not in that position.

I think guardianship legislation is really needed because families may not want, or feel able, to go down that road. For some families there is a more urgent need to get things sorted out, particularly if they are reliant on their missing relative's finances. A system of guardianship may have helped us too. At the time when my dad went missing, my sister was still living at home with my mum and I was at university. My parents had separated but my dad was making child maintenance payments to my mum which obviously stopped. It would be good to have had a mechanism to see if they could have continued. I really feel for the families who are completely reliant on the missing person's finances, I can only imagine how hard it is for them when the financial issues can't be managed or resolved."

Family perspectives: a father

“My son did have a bank account. This is still active and nothing we can do or say to the bank seems to prevent them from sending painful monthly statements.”

Andrew was 14 when he went missing in 2007. His parents would like to stop his bank statements arriving at their home.

“My son did have a bank account. This is still active and nothing we can do or say to the bank seems to prevent them from sending painful monthly statements. The bank account will long since be inaccessible to my son. If he is alive, any card he had will have expired years ago but I am unable to sort things out. It is a small amount of money in the account and not worth worrying over but we wish we could stop the statements at least. I have contacted the bank by phone and in branch. Each says to contact the other to stop statements from coming to the house. If someone had died it would obviously be considered deeply insensitive to keep sending them bank statements after seven years. Just because we have no resolution about what happened to Andrew does not make it any less insensitive to keep sending the bank statements. Because the account is in my son’s name I cannot close it.”

When asked how guardianship might have helped Andrew’s father said:

“In our case it would simply have meant that we would have been able to close things easily when we reached that point. But if the process is complex, or expensive, we might equally decide that it was not worth our while.”