

Presumption of Death in England and Wales

This guidance is intended as an introduction to applying to court for the power to administer a missing relative's affairs when it is believed that they are likely to have died. Whilst written in good faith, it should not be taken as legal advice. Separate information is available on the systems in Scotland and Northern Ireland at www.missingpeople.org.uk/pod. For information on how Missing People can support you when you think a missing relative may have died, please see the end of this guidance.

Introduction

Only a small fraction of people who go missing remain so for many years. Yet those who are not found often leave behind family members that may eventually need, or want, to resolve their affairs, such as finances or property if they believe their loved one has died.

In England and Wales, you can apply to the court for a missing person to be declared presumed dead. This declaration will enable any property, money and other possessions of the missing person to be administered and will dissolve the missing person's marriage or civil partnership. An application to the High Court (i) is made under the Presumption of Death Act 2013, which came into force on 1 October 2014. (1)

(1) The old 'Leave to Swear Death' procedure is still available, though its use is discouraged, it may be phased out, and it does not have the same effect as a Presumption of Death application. See below for more information.

Before starting

Is a certificate of presumed death similar to a death certificate and allow me to do the same things, like apply for probate, and end marriages?

Once someone has successfully received a Declaration of Presumed Death, they can then:
Apply to the General Registry Office for a Certificate of Presumed Death; and
Apply for probate.

The declaration automatically ends any marriage or civil partnership.
A Certificate of Presumed Death can be used as evidence of death in the same way as a Death Certificate.

What is the effect of a declaration of presumed death?

The declaration of presumed death is legal proof of the missing person's status as being believed to have died, along with a date and time of the presumed death. The declaration will end any marriage or civil partnership. As mentioned above, it will enable the family to deal with any property, money or assets that the missing person had through the normal probate process.

The court can also deal with any questions around the missing person's property, assets and money that those close to the missing person may have an interest in or acquire as a result of a declaration. In addition the court can decide that the value of an asset cannot be recovered following any later change in the declaration (ii) (for example, if it is found that the missing person is alive, or if the terms of the declaration are challenged).

The declaration becomes final once the appeal window that follows the declaration has closed, and subject to the outcome of any appeal made. An appeal may be brought within 21 days of the declaration unless the court has specified a different length of time when making the declaration.

Note that one can apply for a variation order if a missing person returns (see below), but this will not necessarily lead to all of their belongings and affairs being returned to them.

What is the seven-year rule and how does it work?

A Declaration of Presumed Death will be granted if the court is satisfied *either*:
that the missing person has died; *or*
has not been known to be alive for at least seven years (iv).

If there is clear evidence that the person has died, a Presumption of Death application can be made immediately. What matters is the strength of the evidence, not the period of time. In general, though, the shorter the period of time since the person has been missing, the stronger the evidence will have to be. Suicide notes would be seen as strong evidence.

If there is insufficient evidence the person has died, you will have to show that the person has not been known to be alive for at least seven years.

Further information on the seven year period can also be found in Missing People's guidance sheet 'When can a missing person be declared dead: The seven year rule?' which can be found at <http://www.missingpeople.org.uk/files/FamilyGuidance/sevenyearcontactdetails.pdf>.

Which court issues the Declaration of Presumption of Death?

Presumptions of Death applications are dealt with by the High Court and they issue *Declarations* of Presumption of Death. *Certificates* of Presumed Death are then issued by the General Registry Office on application following a Declaration of Presumption of Death, which will allow the affairs of the person to be administered in the same way as a Death Certificate allows.

Who can apply to the High Court?

You can apply to the High Court if the missing person was domiciled (iii) in England or Wales, or was living in England or Wales for least one year before they went missing, or if you are the spouse or civil partner of the missing person and are domiciled in England or Wales, or have been living there for at least one year before making the application.

Whilst anyone can apply for a declaration of presumed death for a missing person, the court must refuse to hear an application if it considers that the applicant does not have 'sufficient interest' in the outcome of it, and if it is made by a person other than the missing person's spouse, civil partner, parent, child or sibling.

What should I do about the missing person's mortgage, insurance, and finances?

It is generally better to contact mortgage companies to inform them about the missing person and your circumstances rather than ignore their letters. This can help avoid repossession proceedings. It is always a good idea to keep financial and legal institutions informed about any changes in the situation and ask them for clarification of the situation from their perspective.

It is recommended that you let the life insurance company of the missing person know about your application as soon as possible and that you update them on its progress.

Legal advice

Do I need a legal advice or a solicitor to help make an application?

You will probably need the help of a solicitor to prepare an application, along with the evidence needed to support the application.

If possible, it might be helpful to try and find a solicitor who has experience of dealing with presumption of death, or similar applications and has the expertise to deal with your case. A barrister is not required for a Presumption of Death application.

Where can I find a solicitor that will know about this and be good value for money?

When you ring a solicitor to discuss working on your case, it might be worth asking if they have worked on presumption of death cases before. If you would like help finding such a solicitor, the Law Society of England and Wales may be able to assist you. You can contact it via www.lawsociety.org.uk or on 020 7320 5650.

You can also ring Missing People to be directed to solicitors we know have worked on such cases, although we cannot make specific recommendations.

What are the potential costs involved?

As of October 2015, the application will cost approximately £680, not including solicitor's fees, if you choose to employ one. Solicitor's fees will vary from case to case. An average case can cost £5,000, but more complicated cases could cost a lot more.

The £680 is composed of a court fee of £480 and approximately £200 to advertise the application in the local newspaper, both of which are requirements for making the application.

If you wish to use a solicitor to help you compose the application and advise you on gathering the relevant evidence, it may be useful to discuss with the solicitor how much the application is likely to cost in advance of starting the process. You should get this in writing along with the basis on which you will be charged – hourly, etc. This should help you to understand the full cost of making an application.

Once one has acquired the presumption of death declaration, there will be other fees associated with gaining permission to administer the person's affairs and distributing their assets. These can vary, depending on the complexity of the case.

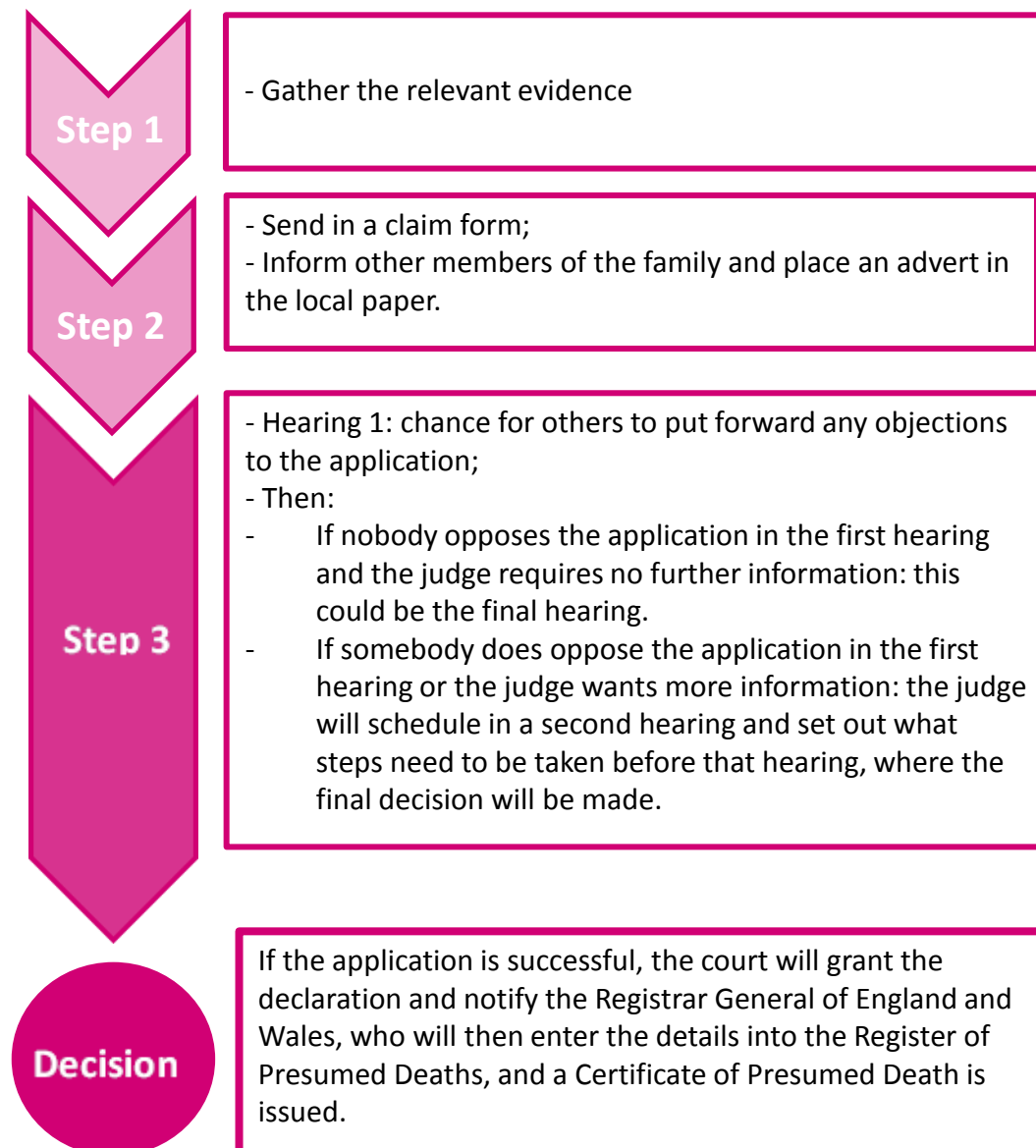
If I can't afford a solicitor, what do I do?

Some solicitors will ask for payment upfront. Others may be willing to delay payment until after the case is complete and you have access to the assets in the estate. Alternatively, they may be willing to work on the case and be paid only if the application is successful (no-win-no-fee). If a solicitor acts on a no-win-no-fee basis they may charge you a 'success fee' in addition to their normal costs. Not all solicitors will offer these options and it is worth explaining your situation to a solicitor to see whether these options are available. For help finding an experienced solicitor, you can contact the Law Society of England and Wales, who may be able to assist you. You can contact them via www.lawsociety.org.uk or on 020 7320 5650. For more information and for recommended solicitors you can also ring Missing People.

Getting going

What are the steps for getting a Presumption of Death declaration?

The Presumption of Death Application Process



Are the assets of the missing person passed on straight after the Declaration of Presumed Death is made?

If the person's assets total less than £5,000, banks and some other organisations might not require any further steps before they pass on the assets. In other cases, however, you must then apply for 'probate' before you can administer the missing person's affairs and distribute any assets:

If the missing person has a will: one must apply for a grant of probate. The executor of the will is usually indicated in the will;

- If the missing person does not have a will: one must apply for a grant of letters of administration. In this case, then the administrator must be the missing person's closest living relative.

For more information on these steps, see the relevant questions below.

How long does the whole process take?

The process of acquiring the presumption of death declaration takes from four to six months. The length of each stage can vary. This doesn't include the time required for gaining permission to administer the missing person's affairs and distribute any assets.

Step 1: Gather the relevant evidence and send in a claim form

What kind of evidence is needed to submit to the court and who provides this?

If you decide to make an application, you will need to gather evidence that demonstrates the likelihood that your missing relative has died.

If you are making the application then you will be responsible for providing the relevant evidence. The court will require sight of the missing person's bank statements, in particular from the date of disappearance, so that they can investigate any suspicious transactions. It is therefore very important not to destroy bank statements. Hold onto any credit card bills that have been paid off by the family. Whilst it may be helpful to get legal advice as to what other kind of evidence is relevant in your circumstances, this will include evidence that either suggests they have died, or shows that they have not been known to be alive for at least seven years.

The following are some examples of the kinds of evidence that might be helpful in your application:

- Written statements from witnesses who can assist the Court with relevant information about the missing person and/or their disappearance; that might include an employer or colleague, close friend and/or relatives who would have expected to have been contacted by the missing person. These should be signed and dated by the person that has written the statement and include the name of the court and the case. The paragraphs should be numbered. (At least one is required, but more might strengthen the case.)
- Evidence of the search for your relative. This can include statements from the police and other search agencies that were involved, such as Missing People. If the person has gone missing abroad, reports from foreign police forces will be helpful. These must be translated by a court-approved translator.
- Newspaper clippings about searches for the missing person or about them going missing.
- Information on the missing person's current and savings accounts.
- Information on the missing person's life insurance.

Some information is always required for the court application. This is listed in the box below.

Information always required by the court

A. Information about you (the claimant)

1. Your name and address
2. Your relationship with the missing person
3. If you are not the spouse, civil partner, parent, child or sibling, details of your interest in the application

B. Information about the missing person

1. Full name, and any other names by which the missing person has been known
2. Gender
3. Maiden surname (if any)
4. Date and place of birth
5. Occupation
6. Occupation, name and surname of the missing person's spouse or civil partner, or parents if the missing person was under 16
7. National Insurance number
8. Date on which the missing person is thought to have died, or when the missing person was last known to have been alive
9. Grounds on which the court has jurisdiction (i.e. either the missing person was domiciled in England and Wales, or was resident for one year before his or her disappearance, or, if you are the spouse or civil partner of the missing person, that you are domiciled in England or Wales, or have been living there for at least one year before making the application)
10. Name and address of the spouse or civil partner, parents, children or siblings of the missing person (if any, and if not the claimant).

C. Information about steps taken to trace the missing person

1. Details of any enquiries made or other steps taken to trace the missing person or confirm when the missing person was last known to be alive
2. Details of the results of such enquiries or other steps

D. Information about the missing person's property

1. An estimate of the total value of the assets of the missing person
2. Details of property owned by the missing person
3. Details of the interest of any other person in the missing person's property where the court is being asked to make a decision

E. Information about advertising the claim

1. Details of the newspaper in which the claimant proposes to advertise the claim
2. Details of the persons to whom the claimant is giving notice of the claim and, where a person is not related to the missing person, the nature of that person's interest

Step 2: Send in a claim form, inform family members, and advertise the application in the local newspapers

Will I know if an application for a declaration has been made regarding my missing relative by another person?

When an application for presumed death is made for a missing person, the applicant must notify the missing person's spouse or civil partner and any parent, child or sibling they might have (or else the nearest relative, if there is no one from this list), and any 'other person' that might have an interest. Here, the 'other person' can include companies, such as insurers who may hold a missing person's life insurance policy. This notification must be made within seven days of the application being issued by the Court.

In addition, within these seven days the applicant must also ensure that notice of the application is put in one or more newspapers which circulate in the area where the missing person was last known to live. You will have to provide a copy of the newspaper advertisement to the court at least five days before the hearing. The advertisement must set out the details of the claim.

As such, if you are the close relative of a missing person, it is likely that you would be aware of any application being made to declare them as presumed dead.

If you are the spouse, civil partner, parent, child or sibling of the missing person, you have a right to intervene in proceedings. This will happen at the first hearing and will involve presenting evidence and your understanding of events. Other people may intervene also, but only with the court's permission.

Step 3: Hearings and final decision

Will the next-of-kin have to go to court to give evidence?

If the claimant (applicant) does not have a solicitor, then attendance will be required. If the claimant has a solicitor, most judges will excuse attendance of the claimant. However, the judge might ask the claimant to attend, so it is best to get the solicitor to ask the judge whether this will be necessary. If the judge asks the claimant to attend then attendance is compulsory.

What's it like, if I do go?

The hearing will involve the claimant (and their solicitor, if they have one) in the room with a district judge looking through the paperwork. They may ask some questions. The court will look at the evidence presented to it and will grant a declaration of presumed death if it is satisfied that the missing person is more likely than not to have died (i.e. on the balance of probabilities, which means 51% or more likely).

If the application is opposed it will be listed for what's called a 'contested hearing' and then it might be in front of a more senior judge, called a circuit judge at another hearing.

If the court grants a declaration, it will state the date and time of the presumed death. Where it is not certain when the missing person is likely to have died, the court will find that they died at the end of the period of time in which the missing person's fate was uncertain (for example, if it

is likely the person died between 1 March and 7 April 2005, the court would find they died on 7 April 2005). This is also the case if you are applying on the basis that the person has not been known to have been alive for a period of seven years, i.e. the court will find that the missing person died at the end of the seven year period. The date of presumed death may be relevant, for example, in the context of inheritances.

Once you have successfully received a Declaration of Presumed Death, you can then:

- Apply to the General Registry Office for a Certificate of Presumed Death; and
- Apply for probate, if required (see above: 'Are the assets of the missing person passed on straight after the Declaration of Presumed Death is made?').

Challenging Presumption of Death applications and declarations

What happens if the declaration is factually or legally wrong?

When the court proceedings have finished, there are 21 days in which you can appeal the judgement (unless the court has specified a different time period). The objection can be on the grounds of a mistake in fact or law.

If the judge has already taken into account some facts or arguments by someone objecting to the case, it is very unlikely that an appeal would be made or be successful.

What if my relative is found to be alive or there's new evidence?

There may also be circumstances in which someone may wish to apply to vary or revoke the declaration of presumed death, for example if the missing person returns, alive, or if evidence comes to light which shows that the missing person was alive at a time later than that declared as the time of death in the original declaration. If so, an application can be made to the High Court for a 'variation order'.

A variation order is a court order that may vary (that is, change) or cancel a declaration of presumed death following an application by any person it sees as having sufficient interest. A variation order will not reinstate any marriage or civil partnership, and does not itself affect the ownership of property obtained for value and in good faith as a result of the declaration. The court can, for example, order property to be transferred from a person who has inherited it under the will of the missing person, either back to the missing person (if found to be alive), or to another person who should have inherited it, but did not because the date on which the missing person was declared presumed dead was incorrect. However, where the property has been sold to a buyer, who has purchased it in good faith, the court order will not affect the buyer's ownership of the property. A variation order will not affect income that has accrued from the date the missing person was declared presumed dead until the date of the variation order in relation to property acquired as a result of the declaration.

The court will not generally include any provisions relating to the property of a missing person in a variation order if the application for a variation order is made more than five years after the date on which the original declaration of presumed death was made, unless there are 'exceptional circumstances.' (v)

The court, when making the original declaration of presumed death, may order the trustee of a trust affected by a declaration to take out an insurance policy against the possibility of a variation order being made. Money held under the trust can be used to pay the insurance premiums.

Where an insurance company is to make a pay out as a result of a declaration (for example, under a life insurance policy), it can require the beneficiary to take out insurance against the possibility of a future variation order being made as a result of the missing person being found to be alive.

If an insurance company has paid out a capital sum as a result of a declaration of presumed death, and a variation order is sought, the court will follow the principle that the insurer is entitled to repayment of that capital sum (if justified by the facts which give rise to the variation order). This means there will be a presumption that the capital sum must be repaid, but that the court will have some flexibility in making that decision.

There is also an opportunity to appeal against the decision of the court to make a variation order. Appeals must be brought within 21 days of the decision (or within the period of time ordered by the court if that is different). As above, they must be on the grounds of a factual or legal mistake.

The police think my loved one committed suicide, but I don't want them to be declared dead.

What can I do?

In the United Kingdom, the police cannot apply for a Declaration of Presumption of Death, only the family can. Also, note that there is no requirement on a family to apply for a Declaration of Presumed Death even if they think their loved one may have died.

The most recent police guidance, as of January 2016 (vi), states that '[w]here the missing person has not been found, the case must remain open' (section 4.14). The case should not be closed without finding the person or their body.

Another relative of the missing person is instigating presumption of death proceedings, but I don't want them to. What can I do?

If you are the spouse, civil partner, parent, child or sibling of the missing person, you have a right to intervene in proceedings. This will happen at the first hearing. Other people may intervene also, but only with the court's permission.

If the proceedings have already finished, you can appeal the decision within 21-days (or longer if the judge specifies) of the decision date. Alternatively, you can apply for a variation order. See 'What if my relative is found to be alive or there's new evidence?' above for more.

Who can support me through this time?

Missing People understands that administering a missing relative's affairs can be daunting and upsetting. Our support team is available around the clock if you would like to talk about how you are feeling throughout this process, or require practical advice on managing and resolving a loved one's affairs and can be reached for free by phone or text on 116 000 or at 116000@missingpeople.org.uk.

Presumption of Death or Leave to Swear Death?

The old 'Leave to Swear Death' procedure is still effective – although its use is discouraged because of the introduction of the new Presumption of Death Act and it may be phased out. It may be an option worth considering for some people, particularly those who are scared of the idea of a court hearing and don't want to serve the claim on family members or place an advertisement in a local paper. However, one disadvantage of the Leave to Swear Death process is that it does not end a marriage in the way that a Declaration of Presumed Death does. You might want to contact a solicitor or a legal advice service for further guidance.

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For further information and guidance on the issues addressed in this guidance sheet, or for support relating to any aspect of someone going missing, call Missing People's free and confidential 24 hour helpline on 116 000 or email 116000@missingpeople.org.uk. You can also use these contact details to get a copy of this guidance by post.

Whilst this information has been provided in good faith, it should not be taken as legal advice. For information tailored to your circumstances, please contact your police force, solicitor or an advisory organisation as appropriate to your query.

Please let us know whether this guidance has been useful, either by answering a few short questions at <https://www.surveymonkey.com/s/MissingPeopleGuidance> or by emailing your comments to policyandresearch@missingpeople.org.uk.

For professional advice, or advice tailored to your circumstances, you may wish to contact a solicitor or legal advice service.

The Presumption of Death Act 2013 followed a campaign by Missing People, in partnership with families, to have the presumption of death system in England and Wales reformed along the lines of the more straightforward and clear systems already in place in Scotland and Northern Ireland. Following the introduction of the new system in 2014, the charity has launched a project to monitor the experiences of families who use it whilst providing them with support throughout. If you are interested in taking part in this, please contact the policy and research team through emailing policyandresearch@missingpeople.org.uk.

This leaflet has been produced with the kind assistance of Clifford Chance LLP and Ridley and Hall Solicitors.

Endnotes

- i. The application is made, in either the Chancery Division or the Family Division, by issuing a claim form in accordance with Part 8 of the Civil Procedure Rules; specific rules relating to proceedings under the Presumption of Death Act 2013 are set out in Part 57, see Practice Direction 57B - <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part57/practice-direction-57b-proceedings-under-the-presumption-of-death-act-2013>
- ii. A declaration of presumed death may be changed by a variation order (see below)
- iii. This is a legal term regarding where a person has their permanent home.
- iv. Presumption of Death Act 2013 2(1)
- v. Presumption of Death Act 2013 7(3) Missing People would like to thank The Big Lottery Fund for supporting the work of the charity
- vi. [ACPO \(2010\) Guidance on the Management, Recording and Investigation of Missing Persons \(Second Edition\)](#). This is due for review following a recent consultation. See [here](#) to check for recent changes.