



Guardianship (Missing Persons) Act 2017

An overview | 2019

**missing
people**

Registered charity in England and Wales (1020419)
and in Scotland (SC047419)

Introduction

When a person goes missing, their financial affairs are left unmanaged. This can cause practical difficulties for everyone affected by this person's absence, in addition to the emotional difficulties they already face.

These include:

- family members left without financial support;
- insolvency proceedings because the missing person is unable to pay their debts;
- banks or other financial institutions not able to release the assets or information about the assets to family;
- wasting money on automated payments that cannot be stopped.
- families left unable to pay mortgage payments with the loss of the missing person's income but unable to make changes or sell the property, potentially resulting in repossession

To address some of these issues, under the Guardianship (Missing Persons) Act 2017 which came into force on 31 July 2019, family members or representatives of a missing person can apply to court for a guardianship order.



What is guardianship?

- Guardianship is the legal right to manage the property and financial affairs of the missing person on their behalf.
- This means that the property and financial affairs of the missing person can be looked after and used for the benefit of the missing person and the missing person's family.
- Once they receive a guardianship order from the court, guardians can only do such things to manage the affairs of the missing person as are specified in the guardianship order.
- When making an application they will need to specify what they will need to manage and any major decisions that they expect to make, for example selling a property.
- Initially, guardians are appointed by the court for up to four years, but they may be reappointed to continue as the guardian if necessary.

? Who can apply?

To apply to become a guardian a person has to meet the following criteria:

- be at least 18 years old or a trust corporation;
- have consented to become a guardian; and
- be suitable to act as the guardian of the missing person's property or financial affairs.

To determine whether someone is suitable to act as a guardian, the court will consider:

- the proposed guardian's relationship with the missing person;
- the missing person's views on the proposed guardian (as far as the court is able to gauge such views);
- whether the proposed guardian has the skills and knowledge that are necessary to carry out the functions required by a guardian;
- whether the proposed guardian would act in the best interests of the missing person. To determine what is in the "best interests" of the missing person the court, and the guardian once appointed, has to look at factors such as:
 - any written statements from the missing person and/or any beliefs, values and wishes expressed by the missing person;
 - the views of any other person who they know have an interest in the missing person's finances (if practical to do so);
 - the consequences of making a certain decision.*

However, neither the court nor the guardian is required to ever take a decision based on what decision the missing person is likely to have made or based on whether they think the missing person is coming back. They just have to show that the decision was taken in consideration of the person's best interest.

- The court will also consider any potential conflict of interest between the proposed guardian and the missing person. To do this they will consider:
 - whether there is any connection between the missing person's property and financial affairs and the guardian's property and financial affairs; and
 - how this connection could affect the decisions the guardian takes with respect to the missing person's property and financial affairs.

There is no conflict merely because the guardian is the missing person's spouse/civil partner/parent/child/sibling/ other relative; or because the guardian was living with the missing person immediately before they went missing; or because the guardian may benefit directly or indirectly by being appointed as a guardian.

- If someone is opposed to a person's application for guardianship, they may intervene in the application proceeding, which means arguing before the court why they think this person is unsuitable and any other question that the court finds relevant.
- Unless you are the missing person's spouse, civil partner, parent, child or sibling, you must get permission from the court to intervene. In deciding this, the court will consider whether you have "sufficient interest" (discussed on the next page) in the missing person's property or affairs.

? What do applicants need in order to apply for guardianship?

In order to apply you must have (i) “sufficient interest” and (ii) give notice of application to the court

- The following people are treated as having “sufficient interest”:
 - the missing person and the missing person’s personal representatives;
 - the missing person’s spouse, civil partner, parent, child or sibling;
 - a person who was the guardian of some or all the missing person’s property and financial affairs for at least a year before the application is made.
- In order to make an application the proposed guardian has to follow the relevant rules of court. You may need the help of a solicitor to prepare an application, along with the evidence needed to support the application.

? What can applicants do before an application goes through?

Here are a few examples of steps that can be taken to manage the finances of the missing person while waiting for the guardianship application to be approved.

- If the missing person had a mortgage, it is useful to alert the mortgage provider so they can take adequate steps to deal with the account.
- Contact anyone else who might be waiting for payment from the missing person, for example, a landlord or company who the missing person has an item from on finance – although they are not obliged to anything it may be helpful to explain the situation.
- Contact the missing person's bank to make them aware of the situation and request any direct debits and standing orders to be stopped.
- If the missing person is receiving benefits, contact the benefits office of the local council to prevent any over payments as this could cause issues with the missing person’s welfare status.
- Start collecting any bank statements or relevant information about the missing person’s finances.





What does being a guardian involve?

- A guardian’s role is defined by a court order called the “guardianship order”. The guardianship order will set out the conditions and restrictions on managing the missing person’s property and estate.
- A guardianship order can be changed by the court at any time (subject to the change being in the best interests of the missing person), however, the guardian will be made aware of this with plenty of notice. The guardian and others can also apply to the court to change the terms of the order if new information or a change of circumstances means they need different terms.
- Guardians are bound to exercise their duties in the best interests of the missing person, which may include consulting with other people where relevant. This might include the missing person’s family members, partner or close friends.
- In certain circumstances, a guardian may be personally liable if they violate the guardianship order.
- A guardian must keep records of all their actions, including details of all discussions that they have had with other people who know the missing person. However, as much as possible these records must be kept confidential.
- A guardian is entitled to costs and expenses incurred in acting as a guardian (or if the court decides so, to be remunerated) out of the missing person’s property.
- A guardianship order will specify when the role ends with a maximum of four years. A court may, at its discretion, reappoint the guardian at the expiry of the guardianship order.
- A guardianship order automatically ends on the death of the missing person, on the presumption of the death of the missing person under the Presumption of Death Act of 2013, or on the death of the guardian.
- A court may end a guardianship order early, but only if the missing person is no longer missing, or if ending the order is in the missing person’s best interests.



What is the Office of the Public Guardian’s role?

The office of the Public Guardian is the body which supervises and facilitates a guardian’s duties.

Its activities include:

- receiving reports from guardians and generally supervising them;
- receiving complaints from other parties regarding a guardian’s activities; and
- maintaining a register of guardianship orders and other administrative roles in assisting the court and guardians carry out duties under the guardianship order.

Code of Practice

The Code of Practice to the Guardianship (Missing Persons) Act 2017, published by the Ministry of Justice in June 2019, provides more detailed information on all stages of the guardianship process. Click [here](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822418/missing-people-code-of-practice.pdf) for web link or copy the following to your browser:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822418/missing-people-code-of-practice.pdf

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