

A review to explore the low uptake of the Guardianship (Missing Persons) Act 2017 (Claudia's Law)

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Introduction

Every 90 seconds a child or adult goes missing in the UK. Going missing is a sign of crisis, and families are left in emotional turmoil, and sometimes struggling to deal with their missing person's affairs.

There are many reasons why a person goes missing. Some go against their will as the victim of serious crime or go unintentionally as the result of dementia or a mental health crisis. Others are drawn into exploitation or choose to leave because it feels safer than staying home. Every year almost 170,000 adults and children are reported missing to the police in nearly 350,000 separate incidents. More than 95,000 adults go missing each year in the UK equating to 130,000 separate reports as, like children, some go missing more than once.

Thankfully, 96% of missing people are found within the first 48 hours, and less than 1% will stay missing for longer than a month. However, this still means hundreds of people remain missing for extended periods every year, and across the UK more than 5,000 people are considered 'long-term' missing, many of whom have been away for years or decades. The families of long-term missing people are left with not only the emotional anguish of searching for a loved one, but can also face financial and practical challenges while waiting for news. Families are unable to manage their missing persons financial affairs including direct debit, standing orders, rent/mortgage payments, bills, and looking after dependents. Families are often not able to manage their loved ones accounts whilst they are away, which is why the Guardianship (Missing Persons) Act was introduced.

The Guardianship Act – Claudias Law

The Guardianship (Missing Persons) Act 2017 created a new legal status of guardian of the affairs of a missing person. Becoming a guardian allows families or friends to manage their missing person's financial affairs, with a responsibility to act in their best interests. Applications can be made when a person has been missing for 90 days or longer. It means that families can step in and safeguard their loved one's assets in their absence – for example, suspending direct debits for mobile phone and utility bills, making mortgage payments, or spending money to look after dependents.

Previously there was no mechanism in England and Wales to specifically protect the property and affairs of a missing person. Instead, families could only take over the financial affairs of a missing person if they applied for a certificate of presumed death, which would not be suitable for families who believe their loved one is still alive, and can add emotional pressure to families during an already difficult time. This meant they could be left unable to pay debts or prevent repossessions or insolvency.

Under the Guardianship (Missing Person's) Act 2017, families in England and Wales can apply to become a guardian. Successful applicants for the guardian role will be able to look after their loved one's affairs for up to 4 years with the option to renew. Applications are made via the High court and once appointed, guardians are supervised by the Office of the Public Guardian.

Becoming a guardian generally costs a minimum of £500 - £1,000. Most people will need to hire a solicitor to complete the application process, which can cost an additional £2,000, often significantly more. These costs can be reclaimed from the missing person's estate if Guardianship is awarded.

Since the Act came into play in 2017, there have only been 13¹ successful applications. This review explores the reasons as to why the uptake is so low through a survey and interviews with families of long-term missing people: both those who have and have not applied to become a guardian. This report provides a series of recommendations with the aim of improving people's access to Guardianship powers, and increasing the number of people using the legislation to manage their loved one's affairs.

The Guardianship Act Review

In light of the relatively low numbers of people using the Guardianship Act, Missing People alongside The Office of Public Guardian joined forces to understand what happened and what can be done to ensure the Act works for more people.

Missing People sent out a survey to families and loved ones on Missing People's database. We wanted to hear from those for whom Guardianship would have been most relevant, so only contacted those whose missing person was an adult at the time of their disappearance and who had been for 9 months – 10 years. Alongside the survey we also offered the opportunity to take part in a more in-depth interview. The aim of the survey and interviews with this group was to explore why people who might have benefited from Guardianship powers had not made an application. Seven people completed the survey, and two took part in an in-depth interview. Key themes from those who had not applied to become guardians are discussed in section 1 of this review.

The Office of Public Guardian sent out requests to take part in a research interview to the 13 guardians that had been granted a Guardianship Order via the High Court. The aim of these interviews was to understand what worked well and what could be improved throughout the application process and in their role as a guardian. Three guardians took part in interviews. Key themes from those who had not applied to become guardians are discussed in section 2 of this review.

1) Families of long-term missing people who did not apply for a Guardianship Order: Key themes

Respondents to the survey and the interview participants all had a close relationship to their missing loved one, that be it parent, child, partner or sibling. Their missing loved ones went missing between 2016-2024. Their age, gender and ethnicity varied.

The need for Guardianship: struggling to manage the missing person's affairs

There was a clear shared experience amongst the respondents that they had at least one issue relating to managing their missing person's finances, shared accounts or a property whilst they were missing. Some had experienced multiple challenges. The issues that they had faced included:

¹ There had been 13 successful applications at the time of this review, the numbers may have since increased.

- Accessing saving accounts
- Managing the missing person's rent on a property
- Being unable to sell the missing person's home, or a property they shared with the missing person
- Managing the missing person's bills
- Managing shared financial commitments like a car owned on finance
- Accessing missing person's pensions
- Issues regarding who was appointed Next of Kin which led to the family member being unable to access anything.
- Applying for passports for their children.

Most participants had not been able to manage their missing loved one's finances at all. However, some had been able to deal with specific aspects: three people were able to engage with the missing person's bank in their absence, one successfully engaged with the missing person's utilities providers, and another had successfully managed their affairs by attaining a Presumption of Death Certificate.

It is clear that a Guardianship Order could have been useful to some of the participants, in light of the challenges they encountered when trying to manage their missing person's affairs. The low uptake of the legislation therefore seems to lie in the barriers to accessing it, rather than the powers not being useful to families of missing people.

Applying for Guardianship: barriers

Participants spoke about a number of barriers that prevented them from applying for or becoming a guardian for their missing person's affairs:

Low awareness

Firstly, the majority of the participants had not heard of the Guardianship Act as a legal route for managing a missing person's affairs. There is no consistent route to ensure that families and friends of missing people are aware of the legislation.

The police will often be the primary, professional point of contact during a missing investigation, but it is challenging to ensure that all relevant officers, across all English and Welsh forces, are aware of the legislation and confident to speak to families about their options.

Missing People will inform families about the legislation whenever appropriate, but we only support a small proportion of all families of missing people. Two participants spoke about the importance of the police ensuring that families are aware of the charity so they can access support and expertise relevant to the circumstances relevant to their missing person.

"One of the first things the police should do is tell people about the charity."

The NCA UK Missing Persons Unit may also signpost people to information about the Guardianship Act, but again, only a very small proportion of families will get in touch with the unit.

One participant had tried to contact the Citizens Advice Bureau about managing their missing person's affairs, but they weren't aware of the Guardianship Act and Presumption of Death Act to signpost to. The participant suggested it would be useful for organisations like CAB to all be aware and confident in where to refer people.

It is possible that people will find information about the legislation online, through search engines such as Google, but this relies on people proactively trying to search out the information, and using the appropriate search terms to find relevant guidance or links.

Even when people do seek legal advice, some solicitors are not familiar with the Guardianship Act, and will therefore not advise people of their options in making an application.

Unless addressed, this low awareness will obviously significantly limit people's access to the legislation and associated powers.

Expense and complicated nature of the application process

"Too complicated and too expensive."

The few participants that did know about the Act and opted against using it said that this was primarily due to the expense of becoming a guardian and/or the complexity of the application and supervision process.

None of the participants felt that the current cost associated with becoming a guardian was reasonable. For many it was a prohibitive factor, as they were not in a financial position to make an application, or there was not enough money in the missing person's estate to make recouping the costs viable.

"I can't afford to use it"

"If a solicitor takes it on, they might have to wait for a property to be sold to get their fees, but if it's a missing person the property might not be sold."

Participants also spoke about how challenging the application process can be when families are likely to be in turmoil and struggling to maintain the search for their missing person. Some people won't have access to relevant documentation or information about their missing person's affairs; some felt it was too complicated for non-legal professionals to undertake, but too expensive to hire a solicitor; others were concerned about the burden of ongoing supervision once an order had been granted, feeling intimidated by the expectations to record, justify and report all their decisions to the OPG annually.

"When a family member goes missing, like this, people are in trauma, and to just do this, being so complicated, they may not be fit to do it"

One participant suggested that applications should go to the Family Court rather than High Court as this would be less intimidating, and less expensive.

Another participant spoke specifically about the challenges associated with their missing person having had debts before they went missing. The current guidance is unclear about how this can be managed, and the benefits in looking after dependents and maintaining the missing person's estate may be outweighed by the challenges surrounding paying off debts.

One person noted that going through the Presumption of Death Act route was much cheaper and simpler, suggesting that this is likely to be the preferred option for those who believe their missing person has likely died. However it's important to note that others would not want to pursue this route as it felt like giving up hope on finding their missing loved one who they still believed to be alive.

An alternative to Guardianship

One participant felt that there should be an alternative process for families who are missing a loved one, where Guardianship may not be appropriate, to deal directly with the missing person's banks and bills in a minimal way. Primarily just for the purpose of freezing accounts or direct debits. He felt this should be set out by the Financial Conduct Authority, who could ensure a better understanding within banks and building societies of what happens when someone is missing. This would be particularly valuable when the missing person has limited assets, but the family still want to protect what is there, and prevent a worsening financial situation (e.g. becoming overdrawn and accruing fees).

The same participant also raised the issue of accounts being closed, as missing people's accounts may eventually be considered 'lost'². They felt this alternative process should allow for a family member to elect an alternative account to be nominated for any remaining money in the account to be moved to, for example, the missing person's dependents or next of kin.

Inappropriate in the circumstances of their missing person's financial position or the nature of their disappearance

There were mixed feelings as to whether Guardianship would be/have been helpful in looking after their missing person's finances. People were unsure whether it would be beneficial in their specific situation, particularly in light of the complex nature of the application and supervision process. In light of this, there were also mixed responses amongst those who had not previously been aware of the legislation, as to whether they would think about now becoming a guardian after hearing about it through this consultation

One participant didn't think a guardianship application would be appropriate because their missing person was suspected to have been murdered, and they were therefore able to access other routes to address financial challenges and might also be able to attain a certificate of presumed death. However, they did think guardianship might have been helpful if it had been available before this information was known.

Summary

When asked what they thought the barriers are that might stop other families from applying for guardianship, participants generally all agreed that the three issues discussed above, which informed their decision not to make an application, would also be blockers for many other families:

- The cost of becoming a guardian: not many people have access to £3,000+ to finance a guardianship application. While guardians are allowed to recoup the application costs from the missing person's estate, some missing people have too little in assets to make this a viable option, and for others, even if the money is available, the families are concerned about depleting their loved one's savings.
- Guardianship not being an appropriate option based on their or their missing person's financial situation, or the circumstances of their disappearance (e.g. the missing person having debt; Presumption of Death Act would make more sense).
- The general complexity of the process.

² [The Dormant Assets Scheme - GOV.UK](#)

Insight from a legal professional

Sarah Young, of Ridley and Hall, is a solicitor that has been working with families of missing people for over 10 years. Sarah advises and assists families on the right path to take when their loved one is missing, whether this be the Guardianship Act, Presumption of Death Act, or other legal advice.

Earlier this year Sarah published an article setting out her reflections on the effectiveness of the Guardianship Act: [Guardianship for Missing People: Law in Practice Review](#). She also took part in an interview to inform this review.

Sarah has only ever advised one family to make an application under the Guardianship Act through her many discussions with families of missing people, and much more often advises a Presumption of Death Application. This is due to the expense, both financially and in people's time committed to becoming a guardian, and the emotional toll that the application process can take.

While Sarah recognises the benefits of the Guardianship Act for the few that need it, she is clear that the current costs and complicated nature of the application process will continue to act as prohibitive factors for most families of missing people.

Similarly to the participant that suggested an alternative, simpler route than guardianship when there are only minimal affairs to manage, Sarah considered it would be worth exploring a different mechanism, potentially an equivalent to being an Appointee - someone who manages a person's welfare benefits, that could better suit the circumstances of some missing person incidents.

2) Families who have successfully applied for a Guardianship Order: Key themes

The Office of the Public Guardian (OPG) arranged interviews with three participants who had all been granted a Guardianship Order. The following summaries outline why they applied for a guardianship order, and a brief overview of any challenges they experienced.

Participant 1 used the Guardianship Act to manage their missing son's property and finances, including his house maintenance and overseeing his shares in the family business. Participant 1's experience highlights the need for increased awareness and education about the Guardianship Act, particularly among banks and legal firms. This suggests that many professionals may not be aware of the Guardianship Act, leading to unnecessary obstacles for guardians. The cost of this guardianship was very high, around £9,000-£10,000, making it completely inaccessible to most people.

Participant 2 used the Guardianship Act to access their missing husbands' finances to support their family. The guardianship process provided essential support for Participant 2 and her family, both financially and emotionally. However, there are potential barriers to guardianship in terms of financial accessibility and the awareness of guardianship within other organisations and professionals.

Participant 3 used the Guardianship Act to access their younger missing daughter's finances. Participant 3 found the application process extremely complex and difficult. She did not use a solicitor. Participant 3 finds the annual reporting form very complicated. She said it is too generic and lacks the ability to be tailored to individual circumstances. Her daughter's situation is quite simple as she only had cash in bank accounts and no property. She feels like the form should be able to be much simpler in those circumstances. Participant 3 feels that the £160 cost for the annual report is unfair. She does not feel that she gets anything for the £160 and after the 4 years is up she will withdraw her daughter's money and put it in a safe, relinquishing the guardianship at that point.

Recommendations

It is clear that the Guardianship Act has been beneficial and important for those that can access it. For the 3 guardians that were interviewed for this review, and presumably for the other 10 who were not, there has been clear value in being able to manage their missing person's affairs. However, it seems they are some of the few that were aware of their options under the legislation, and for whom the expense and time commitment was possible.

For the majority of families that live in a limbo state with their missing loved ones affairs, there must be additional measures put in place to help and support these families through an already traumatic time.

While a Presumption of Death application may be best for some families, this is not a suitable alternative for all. Some may not have grounds to make an application: before seven years the court must consider there to be sufficient evidence to judge that the person has died, and some may not have enough information to show this is the case. Others will not want to make an application: many families continue to hope that their loved one will be found alive, even after long periods of time, and making an application to presume them dead would feel fundamentally wrong, or like a betrayal of that hope.

We therefore recommend that changes are made to improve access to guardianship powers, for those that need them, and that an additional process is created for those in circumstances that guardianship would not be appropriate for.

The following recommendations, if implemented, would help more families of missing people:

- 1. Increased Awareness:** For guardianship to be accessible to more families and loved ones that need it, there needs to be more awareness about the legislation amongst professionals that families will be in contact with. The police play a key role, as the primary professional in any missing person investigation. All England and Wales police forces should have a process for informing families of long-term missing people about the options for managing their loved one's affairs, as well as accessing support. This should be built into the long-term case review process.

Solicitors also need to be more consistently aware of the available options so they can fully advise families of missing people that might come to them regarding financial issues.

Banks, building societies, utility providers and other financial organisations should be aware of the issues facing families of missing people, including guardianship powers.

Recommendation: The Ministry of Justice should work with Missing People, the Law Society, the Financial Conduct Authority and other national bodies to raise awareness amongst key stakeholders, ensuring that information about guardianship is available for families at any relevant touchpoint with professional services.

- 2. Reducing economic barriers to seeking guardianship powers:** The cost of the Guardianship Act needs to be reviewed. For a family to spend up to £10,000 on becoming a guardian is unfeasible for most people.

Recommendation: The Ministry of Justice should review the court fees and other associated costs.

Recommendation: The government should consider whether the Guardianship (Missing Persons) Act can be amended to provide a more accessible option for families of missing people to apply for more limited powers than provided by a full Guardianship Order.

Recommendation: Missing People should work with legal firms to identify pro bono opportunities for legal support for families who would benefit from guardianship powers and are unable to finance an application.

3. **Alternative options for managing basic financial issues for families who do not require full guardianship powers:** For some families, guardianship will not be suitable due to their missing person's financial situation, or the circumstances of the disappearance. In these cases families still need routes to manage basic financial affairs, like cancelling direct debits and paying urgent bills. It is unreasonable to expect a family to make a costly application to the High Court for these basic matters.

Recommendation: The Financial Conduct Authority and financial institutions should develop good practice guidance regarding support for missing customers and their families, including routes for people to make basic financial decisions. This guidance should include safeguards to protect missing people and other vulnerable customers from malevolent use of any given powers.