
Missing Persons & Presumption of Death: When and how is a missing person presumed dead?

Each year around 250,000 people in the UK are reported missing. Most missing people are thankfully found safe and well but, in some cases, the missing person remains missing.

The Presumption of Death Act 2013 provides a way for the relatives of a missing person to apply for a Declaration of Presumed Death. The main purpose of this is to allow the relatives to deal with the financial affairs of the missing person. It can also provide closure, especially if the person has been missing for a long time.

In short, the Declaration of Presumed Death will allow the family and loved ones of a missing person to deal with the money and property of that person and distribute it in accordance with either their Will (if they left one), or in accordance with the Intestacy Rules (if there is no Will).

When can an application be made?

The Presumption of Death Act 2013 ('the Act') can be used to apply to the Court for a Declaration of Presumed Death if the missing person has been missing for a period of at least 7 years.

It can also be used if the person been missing for less than 7 years, if there are specific facts that suggest they have died. Such circumstances might include information that the person's last known location was the site of a catastrophic event or natural disaster, or evidence suggesting that they might have taken their own life.

Who can make the Application?

An application under the Act can be brought by the missing person's spouse, civil partner, parent, child or sibling.

If the missing person does not have any of these relatives living, then 'a person of sufficient interest, such as a distant relative, may apply instead. Whether or not you have a sufficient interest will be a matter for the Court to decide, based on the facts before them.

An application can be brought in the High Court of England and Wales if:

- the missing person was 'domiciled' (permanently based) in England or Wales; or
- they were living in England or Wales for at least one year before they went missing; or
- if the applicant is the spouse or civil partner of the missing person and they have been domiciled or living in England or Wales for at least one year before making the application to the Court.

What Evidence do I Need?

The evidence needed in each case will vary depending on the circumstances. It is therefore impossible to give a comprehensive list of evidence required.

Where a declaration under the Act is being sought because someone has simply been missing for a very long time (7 years or more), then the best and most common evidence will be Witness Statements from people close to the missing person, setting out when they were last known to be alive, where this was and the circumstances around their disappearance.

Where the person has not yet been missing for 7 years, but there is clear evidence that they are likely to have died, then other evidence may be appropriate.

Examples of this evidence may be:

- A suicide note, or other evidence that they are likely to have taken their own life;
- A witness or other evidence confirming that the person's last known location was site of catastrophic event or national disaster;
- A witness or other evidence confirming that the missing person's belongings were found near cliff edge or body of water.

Evidence from independent sources, such as tracing agencies, the police, the Salvation Army Family Tracing Service etc will also be useful in proving to the Court

that all reasonable steps have been taken to try to find the person during the time they have been missing.

What is the Process?

Applications are made to the High Court and if the Court is satisfied the missing person has either died or has not been known to be alive for a period of at least 7 years, then they will make a Declaration of Presumed Death.

A successful application will result in the Court granting a Declaration and notifying the Registrar General. The Registrar General will then issue a Certificate of Presumed Death, which can be used to apply for a Grant of Administration. The Grant can then in turn be used to identify and gather in the missing person's money and property and distribute it according to their Will or the Intestacy Rules.

The Certificate from the Court also allows the missing person's spouse or civil partner to dissolve the marriage or civil partnership.

Once the application is made, there is a 21-day period in which the decision can be appealed from the date of the declaration.

An Order to revoke a presumption of death can be made if the missing person is found, or if new evidence comes to light that suggests the missing person is still alive.

How much will it cost?

The Court fee at present is £528.

Legal fees for making the application are based on our standard hourly rates, which are as follows:

Type	Hourly Rate
Solicitor Director	£230 plus VAT (non-contested) £260 plus VAT (contested)
Senior Solicitor	£200 plus VAT (non-contested) £230 plus VAT (contested)
Solicitor	£150 plus VAT (non-contested) £180 plus VAT (contested)
Trainee Solicitor / Paralegal	£120 plus VAT (non-contested) £150 plus VAT (contested)
Junior Paralegal / Legal Assistant	£80 plus VAT

All fees will be payable by you in the first instance, as the Applicant. However, it may be possible for you to recover this amount from the missing person's estate once the Declaration has been received.

These Court fees and legal costs are accurate as at March 2018 but are subject to change without notice. You should not therefore rely on this costs information. Should you instruct Roche Legal to act for you in relation to the Application, then detailed costs information will be provided to you before we start carrying out any work.

How we can help?

We are here to help if you have any questions about a missing loved one.

For more information or to speak to one of our reassuring experts about how we can help you please contact us on the number below.

If you'd like more information call **01904 866139**
or email hello@rochelegal.co.uk



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