

Missing Persons Guardianship: Looking after the property and financial affairs of a missing person

If a loved one has gone missing, the anguish and uncertainty can be overwhelming. To make matters worse, you may also have the frustration of seeing your loved one's property and finances suffer whilst there is no one with the legal rights to take care of them.

However, it is possible for the family of a missing person to take control of their loved one's affairs in their absence. The Guardianship (Missing Persons) Act 2017, which came into force on 31st July 2019, created a new legal role: the 'Guardian' of a missing person's financial and property affairs. Certain family members can apply to the court to take on this Guardianship role and be granted the authority to deal with the missing person's property.

This help guide looks at becoming a Guardian and how the role can be used to help your missing loved one.

When is a person classed as 'missing'?

The Guardianship (Missing Persons) Act 2017 (referred to as 'the Act' from here on in) has a specific definition of 'missing'. Your loved one must meet this definition for you to be able to apply for Guardianship.

There are several conditions:

- The person in question must be absent from their usual residence and from their usual daily activities; **and**
- At least one of the following must be true:
 - Their whereabouts are not known, or not known precisely enough, for them to be contacted about their financial affairs;
 - They are unable to make and/or communicate decisions about their financial affairs, for reasons beyond their control. However, injury, illness, or a lack of mental capacity will not count as valid 'reasons beyond their control'.

The Act states that someone who is detained, in prison or otherwise, will be treated as meeting the first condition listed above (i.e. that they are absent from their usual residence and place of usual daily activities.)

If your loved one meets the definition of missing, they must have been missing **for at least 90 days** before a court will grant a Guardianship Order. However, this can be

disregarded by the court if an urgent decision regarding the missing person's property is needed.

Who can make an application?

You can apply to the High Court for a Guardianship Order provided you have 'sufficient interest' in the missing person's property.

People with sufficient interest are defined as:

- The missing person themselves
- Their spouse or civil partner
- Their parent
- Their child
- Their sibling
- Their personal representatives (i.e. their executors or administrators)

You can apply to deal with all the missing person's property or just some specified parts of it. It will then be for the court to decide the extent of your Guardianship powers, providing they grant your application.

Who can be a Guardian?

The Guardian to be appointed does not have to be the same person that makes the application. You could make the application requesting that someone else is appointed as the Guardian, for example. Additionally, the court is free to choose a Guardian even if they have not been nominated in the application, provided they meet the other requirements of a Guardian.

To be appointed as a Guardian, you must:

- Be aged 18 or over;
- Consent to act as Guardian; **and**
- Be 'suitable' to act as Guardian.

Who is 'suitable' to be a Guardian?

The court will ultimately determine how suitable you are to act as a Guardian for the missing person and this will involve consideration of several factors:

- Your relationship with the missing person
- The missing person's views on you, as far as can be ascertained
- Whether you have the skills and knowledge to carry out the Guardian role

- Whether there is any possible conflict of interest between your interests and those of the missing person. This could arise from a connection between your property and financial affairs.

Conflicts of interest

In close family relationships, and situations where you lived with the missing person, it is likely that your financial affairs overlap with those of the missing person. This will not necessarily prevent you from becoming a Guardian, however. The Act states that such relationships do not automatically mean there is a conflict. Similarly, the possibility that you might benefit directly or indirectly does not, in itself, prevent you from becoming a Guardian.

It can be tricky to work out what might be a genuine conflict of interest between you and the person who is missing. If you would like advice on this matter, please just [get in touch](#) with us.

What can Guardians do?

The Guardianship Order, made by the court, will make clear what decisions the appointed Guardian can and cannot make. It might cover the whole of the missing person's property and financial affairs or just a specific part of them, such as their business or their home.

Some of the most common decisions which a Guardian might need to make include:

- Selling, letting, or mortgaging a property
- Making investments
- Executing deeds or signing other kinds of document
- Recovering debts owed to the missing person
- Paying off debts owed by the missing person
- Starting or continuing legal proceedings
- Make gifts, if they are authorised by the Guardianship Order
- Resigning Trusteeships which the missing person may hold

What can't Guardians do?

The terms of the Guardianship Order will define the limits of a Guardian's powers in each case. However, there are some restrictions that apply to all Guardians:

- Make a Will or codicil on behalf of the missing person
- Use any Trustee powers that the missing person might have over property held on Trust for someone else
- Make gifts beyond those authorised by the Guardianship Order

If you are acting as a Guardian and you are in any doubt over whether you can take a particular action, you should seek legal advice. In some situations, it may be necessary to ask the court to give a ruling whether your intended action is permitted.

What must Guardians do?

If you are appointed as a Guardian, you must fulfil certain responsibilities and duties. These are intended to protect the missing person. The Office of the Public Guardian is responsible for supervising missing persons Guardians and ensuring they are fulfilling their duties correctly.

Guardians share many similarities with Attorneys (under a [Lasting Power of Attorney](#)), and [Deputies](#) appointed by the Court of Protection.

As a Guardian, you must:

- Act in the best interests of the missing person
- Consult people who the missing person would have been expected to consult before taking a decision
- Keep records and accounts concerning the use of your powers
- Make reports to the Office of the Public Guardian if required
- Comply with any other duties or conditions imposed on you by the court

Best interests

It might seem difficult to determine what someone's best interests might be. In general, it involves considering all relevant circumstances, including the opinions of others and anything which might indicate the missing person's opinion. After weighing all of the available information, you should then act in a way which you reasonably believe would be in the missing person's best interests.

This doesn't necessarily mean acting as you think the missing person would have done, especially if other information indicates that such a decision would not be in their best interests.

If you are ever unsure of your obligations as a Guardian, it is recommended that you seek legal advice before taking any action.

How long do Guardianship Orders last?

The maximum term for a Guardianship is four years. If the missing person is still missing when the Guardianship Order expires, then there are generally two options available:

1. You can re-apply for another Guardianship Order; or
2. Someone else can apply for a Guardianship Order instead.

In either case, a Guardian can continue to look after the missing person's affairs whilst they are away.

A Guardianship will also end if:

- The missing person dies or is formally presumed dead
- The Guardian dies
- The court revokes the Guardianship

Are Guardians personally liable for the decisions they make?

If you are acting as a Guardian within the scope of your authorised duties contained in the Guardianship Order, then you will not be personally liable for the action you take. You will be acting on behalf of the missing person's 'estate' instead. For example, if you were to incur a debt as part of your duties, the estate would be liable for it.

However, if you act outside the scope of your authority, then it is possible you may be held personally liable to the missing person's estate for any losses incurred.

Can anyone else challenge my actions as a Guardian?

The court has the power to override your actions as Guardian. It can also impose extra conditions, change the terms of your Guardianship, or even revoke it altogether. Ordinarily, such measures would only result if a party applied to the court for this.

The only parties that are able to make such applications are the Office of the Public Guardian and people with 'sufficient interest' (as detailed above).

Doing all you can to comply with your duties as a Guardian is the best way to avoid or defend against any challenges. If you believe your actions may be challenged, your first step should be to obtain specialist legal advice.

What if the missing person comes back?

If the missing person comes home, or is found alive elsewhere, then you have a duty, as Guardian, to inform the court that the person is no longer missing.

You must then also apply to the court to have the Guardianship Order revoked.

If a Guardian continues to act under a Guardianship Order after they are aware that the missing person is no longer missing, then they will be outside the scope of their authority and may be held liable to the missing person's estate for any losses.

What if the missing person doesn't come back?

Although this is something no one wants to think about, if it appears likely that the missing person has passed away during the period they have been missing, then you may wish to consider two further legal options:

1. You can apply for leave to swear the death of the missing person, if you wish to gather and distribute their estate; or
2. You can apply for a declaration of Presumed of Death.

Presumptions of Death

Both of the options above are covered in more detail in our [help guide](#): 'Presumption of Death'. You should be aware, however, that a Presumption of Death can usually only be obtained once someone has been missing for at least seven years.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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