



Managing a Missing Person's Affairs: Guardianship

*"[My daughter] is a chef. She has her own house, almost inevitably with a mortgage, house insurance, car insurance, bank accounts and investments. It was literally a very few weeks before I realised the difficulty in trying to deal with these matters when she is missing."*¹

- Father of a missing woman

Overview

Every year approximately 250,000 people go missing across the United Kingdom. Whilst most disappearances are resolved relatively quickly, others continue for weeks, months and even years, leaving family members to cope with the pain of not knowing where their loved one is or what has happened to them.

Yet in addition to this emotional trauma, relatives can encounter a range of practical, financial and legal difficulties as a result of a disappearance. For example, families may face challenges in engaging financial institutions on their relative's behalf, in renegotiating a mortgage held jointly with the missing person, or in selling jointly-owned property. The consequences of this can be devastating, especially if it puts the missing person's – and potentially their family's – home at risk:

*"I have got a very good family to support me. If I didn't have that support... I would probably have had my house repossessed..."*²

- Wife of a missing man

Missing People believes that a system must be introduced to help families cope with the legal and financial repercussions of having a missing loved one. The charity is therefore calling for a system of legal guardianship to enable families to apply for the legal right to manage a missing loved one's affairs whilst they are away.

Practical and legal issues stemming from a disappearance

Research demonstrates how families can experience a range of practical and legal issues following a loved one going missing.³ From banking, mortgages and insurance, to drawing benefit payments and dealing with utilities, families report various challenges whilst they attempt to protect their missing loved one's affairs so that they remain in order if their relative returns. They may struggle

¹ APPG for Runaway and Missing Children and Adults (2011) *Inquiry into Support for Families of Missing People: Report with Recommendations* London: Missing People p. 12

² House of Commons Justice Committee (2012) *Presumption of Death* London: The Stationery Office Limited. Ev 1.

³ Such includes Holmes, L. (2008) *Living in Limbo: The experiences of, and impacts on, the families of missing people.* London: Missing People.



to do even the most basic of things, like ensure that their loved one's home and finances are maintained and dependants cared for. They may face further challenges if a family member has joint assets or liabilities with the missing person or is financially dependent on them:

*"When my husband first went missing there was the huge impact of suddenly going from being a couple and having two wages to suddenly overnight becoming a single mum who could only work part time, with a mortgage and bills to pay. There was this traumatic thing going on that my husband was missing, and that in itself was traumatic enough, but there was still the everyday living to do as well."*⁴

- Wife of missing man

Problems can start to arise when a person is missing for a week or more, and the type of issues families seek to deal with tend to correspond with the length of time that their loved one has been away. For example, after a few weeks a family may seek to freeze or cancel debits which may be draining the missing person's account; after a few months they may look to rearrange joint mortgage payments to make them more manageable and avoid repossession, and; after some years they may seek a grant of probate to be able to sell a jointly owned property.

Encountering problems when attempting to resolve these issues can cause families worry and stress at an already difficult time, as they may fear the consequences should they not manage to protect their loved one's assets. Furthermore, whilst it often very important for families to protect these in a practical sense, some may also be driven to do so for emotional reasons, adding additional upset if they face challenges:

*"His bank was going overdrawn, and I know it sounds so petty in the great scheme of what's happened, but I didn't want my son's account to go overdrawn. It mattered so much to me."*⁵

- Mother of a missing man

Families' experiences of trying to resolve issues

Missing People is regularly contacted by families seeking advice as to how they can look after their missing relative's affairs, or those they share with them, in the months and years immediately following a disappearance. Whilst most assume there will be legislation or other provisions in place to protect their relative's assets or indeed their own, this is not the case at present. Instead, families can be told that they will have to wait, and if their relative is not found in some years, to seek presumption of death:

'Under the law of England and Wales there is no specific provision or procedure for the

⁴ As told to Missing People.

⁵ L. (2008) *Living in Limbo: The experiences of, and impacts on, the families of missing people*. London: Missing People. p.32

protection of assets of a person who has disappeared.’⁶

- Ministry of Justice



“Every solicitor I spoken to has just said it’s seven years and there is absolutely nothing I can do about it. I have got to wait until seven years, or obviously if [my husband] came back, but if it was after a seven year period then he would be pronounced dead and only then would the mortgage be sorted out and shares and things sorted out. It’s just the seven years, it seems an awful long time. The finances are an added stress that you don’t need at the time really.”⁷

- Wife of a missing man

This can be frightening and upsetting for families, as it leaves them in a legal grey area and requires them to negotiate with institutions one by one in an attempt to resolve issues. Yet without a legal mandate, these institutions are limited in how they can deal with those left behind. For example, in adherence to the terms of contract with their customers, financial institutions tend to require the signature of the account holder before altering any arrangements. This however, is not possible when a person is missing, and can cause serious issues and distress:

“I can’t do anything with my mortgage. If I had wanted to move house in the past five years I wouldn’t have been able to. I can’t sell my house. It’s horrendous enough that you’re in the situation that you’re in, but I think a lot of people don’t realise what the implications are. For five years I’ve been living this every single day.”⁸

- Wife of a missing man

Other families report that institutions will not engage with them if they are not the lead name on a financial product held jointly with the missing person.

If families are unable to deal with these issues, there can be potentially devastating repercussions. If the missing person returns, they can find their finances damaged and in the worse case scenario, they may have lost their home. For families, finances can also suffer if they have shared assets or liabilities with the missing person or if they depended on the missing person financially:

“My mortgage is in mine and husband’s name... My mortgage rate has gone up – the bank won’t have anything to do with it – I am potentially going to lose my home.”⁹

- Wife of a missing man

⁶ As stated in the MoJ’s submission to an APPG for Runaway and Missing Children and Adults’ inquiry . This is available at <https://www.missingpeople.org.uk/missing-people/about-the-issue/inquiry-into-support-for-families>

⁷ ⁸ As told to Missing People. Families should note that it is not always necessary to wait for seven years; for more information, see ‘When can a missing person be declared dead: The seven year rule?’ at www.missingpeople.org.uk/legalandfinancial.

⁹ APPG for Runaway and Missing Children and Adults (2011) *Inquiry into Support for Families of Missing People: Report with Recommendations* London: Missing People p. 10



Legal guardianship

Missing People believes there is compelling evidence to demonstrate that provisions need to be put in place to protect the affairs both of missing people and those they leave behind. Greater certainty as to the law in this area would additionally help those institutions whose customers may go missing, and other agencies that come into contact with families:

“Industry-wide guidance would be welcomed by the membership... I think insurers would like to know they can act in a certain way as regards data protection... I think they would like to be provided with that reassurance.”¹⁰

- Association of British Insurers

“It is a relatively big issue from our perspective... We are aware that families find these things distressing, and... police are often asked for indicators of this kind.”¹¹

- NPIA Missing Persons Bureau

Missing People believes a legal guardianship mechanism should be introduced to enable families to apply to the courts for the legal right to manage and safeguard a missing relative’s practical affairs whilst they are away – similar to a Power of Attorney. Whilst no such system currently exists in any of the UK nations, a precedent has been set in Australia where applications can be made after a person has been missing for 90 days or more.¹²

In terms of the level of need, whilst not all families would seek guardianship, it would not be unreasonable to expect that up to several thousand applications might be made each year.¹³ It is also likely that applications would be made by families of ‘long term’ missing people from previous years if any new mechanism was introduced.

Progress towards guardianship provisions

Presumption of death orders... can only solve some of the problems families face. It will only be appropriate to declare a missing person dead several years after their disappearance. In that time, their financial affairs can be devastated beyond hope of recovery...’¹⁴

- Justice Select Committee

The call for a guardianship mechanism forms part of Missing People’s Missing Rights campaign,

^{10, 11} APPG for Runaway and Missing Children and Adults (2011) *Inquiry into support for families of missing people: Report with recommendations*. London: Missing People. p.14.

¹² In Australia, when a person has been missing for 90 days or more, Section 54 of the NSW Trustee and Guardianship 2009 Act allows for an application to be made to the courts to declare them as formally missing and appoint a financial manager to look after their estate.

¹³ An accurate estimate here is challenging due to limited data on the duration of missing incidents. Yet the UK Missing Persons Bureau’s Missing Persons Data and Analysis 2010/11 report states that approximately 327,000 reports of missing people were made to police forces across Great Britain that year. Research suggests that up to about three percent of cases remain open for more than a month each year, equating to almost 10,000 cases, and evidence suggests that one-third of reports relate to adults.

¹⁴ House of Commons Justice Committee (2012) *Presumption of Death* London: The Stationery Office Limited. p.3.



launched in December 2011. It is distinct from the charity's previous calls for a Presumption of Death Act, as guardianship orders would enable families to *manage and maintain* a missing loved one's practical affairs in case of a return, whereas presumption of death allows them to *resolve* them in cases where a return is unlikely.

In 2011, guardianship was the focus of an All-Party Parliamentary Group for Runaway and Missing Children and Adult's inquiry session into support for families of missing people. Following this, the Justice Select Committee then considered guardianship within its inquiry into presumption of death. Both took evidence from a range of stakeholders, and made similar recommendations to the Coalition Government around exploring guardianship:

*'The inquiry recommends that the Ministry of Justice provides a framework for consultation on... guardianship provisions, exploring the evidence base that exists in... relation to guardianship in Australia. The Inquiry recommends that this framework, along with a timetable for future action, should be in place by the end of the current session, with any resulting provisions to be implemented by the end of the current Parliament.'*¹⁵

- APPG for Runaway and Missing Children and Adults

*'We recommend that the Government take steps to introduce provision for 'guardianship' orders modelled on the approach adopted by states in Australia, either via the introduction of the presumption of death legislation we have recommended, or some alternative legislative mechanism. This will protect the financial position of the missing person and his or her dependents.'*¹⁶

- Justice Select Committee

The government responded that 'before any final decision is reached on the need for legislation to create a status of guardian for the affairs of a missing person within England and Wales there needs to be a detailed examination of the issues involved.'¹⁷ In June 2013, it then announced proposals to introduce a new power of guardianship, stating that 'a consultation with detailed proposals is due to be launched later this year with a view to taking a final decision in 2014.'

*"When a person disappears with no explanation, their friends and family are left with an unbelievable amount to cope with... That is why we want to put measures in place so they can make alternative arrangements for the legal and financial affairs of their missing loved one. By having guardianship powers in place in those early months we can reduce some of the burdens when people's lives are turned upside down."*¹⁸

- Former Justice Minister Helen Grant

Missing People has agreed to support the Ministry of Justice in its work toward the

¹⁵ APPG for Runaway and Missing Children and Adults (2011) *Inquiry into support for families of missing people: Report with recommendations*. London: Missing People. p.4

¹⁶ House of Commons Justice Committee (2012) *Presumption of Death* London: The Stationery Office Limited. p.26

¹⁷ Ministry of Justice (2012) *Government Response to the Justice Committee's Twelfth Report of Session 2010-12: Presumption of Death (HC 1663)* London: The Stationery Office Limited. p.9

¹⁸ As stated in the MoJ press release, 20 June 2013, <https://www.gov.uk/government/news/more-help-for-families-of-missing-people--2>

consultation, along with the charity's pro bono lawyers at Clifford Chance, and hopes that the outcome of the consultation will be positive.



For more information on Missing People's campaign for guardianship, please contact Holly Towell at holly.towell@missingpeople.org.uk. If you are a family looking for information on dealing with practical and legal issues, see www.missingpeople.org.uk/legalandfinancial.

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