



Guardianship (Missing Persons) Act 2017

2017 CHAPTER 27

Guardians

8 Guardians and effect of guardianship order

- (1) A guardian must act in what the guardian reasonably believes to be the missing person's best interests (see section 18).
- (2) A guardian is to be treated as the missing person's agent with the authority conferred by the guardianship order and this Act.
- (3) Before taking a decision in relation to which it would be reasonable to expect the missing person to consult a particular person, the guardian must consult that person unless it is not reasonably practicable to do so.
- (4) A guardianship order does not affect any rights, powers or other interests of third parties in relation to the missing person's property or financial affairs.

9 Expenses, remuneration and records

- (1) A guardian is entitled to be reimbursed out of the missing person's property for reasonable expenses incurred in connection with the exercise of functions as a guardian.
- (2) The court may direct that a guardian is entitled to remuneration payable out of the missing person's property for exercising functions as a guardian.
- (3) A guardian must—
 - (a) keep records of the exercise of functions as a guardian, including accounts relating to the exercise of those functions, and
 - (b) on ceasing to be a guardian, give a copy of the records to such persons as the court directs.
- (4) The court may, on an application, order a person to provide the applicant with accounts or other information relating to the person's exercise of functions as a guardian in the form and manner specified in the order.

- (5) When giving a direction under subsection (3) or considering an application under subsection (4), the court must have regard to—
- (a) the need to keep the missing person's affairs confidential, and
 - (b) the need to impose only such requirements as are reasonable in all the circumstances,
- (and, regarding applications, see also sections 19 and 20).
- (6) Directions under subsection (3) and orders under subsection (4) may include conditions and restrictions.

10 Directions by the court to guardians

- (1) The court may give a direction to a guardian about—
- (a) whether or how to act in a particular case, or
 - (b) the scope of the guardian's authority under the guardianship order and this Act.
- (2) The court may do so on an application or without an application being made (and see sections 19 and 20).

11 Actions outside guardian's authority etc

- (1) The court may make a declaration—
- (a) that action taken by a guardian, when purporting to exercise functions as a guardian, was within or outside the scope of the guardian's authority under the guardianship order and this Act, or
 - (b) that a guardian performed or failed to perform a duty under the guardianship order, this Act or regulations under section 58 of the Mental Capacity Act 2005 or a duty owed to the missing person under a rule of law.
- (2) It may do so on an application or without an application being made (and see sections 19 and 20).
- (3) If the court makes a declaration under subsection (1) that a guardian acted outside the scope of the guardian's authority or failed to perform a duty as described in that subsection, it may—
- (a) make an order disallowing expenses incurred by the guardian or remuneration to which the guardian would otherwise be entitled;
 - (b) make an order requiring the guardian to make a payment of an amount determined by the court to the missing person or the missing person's estate;
 - (c) make such other order as the court considers appropriate for the purpose of compensating the missing person or the missing person's estate for any loss resulting from the action or failure.
- (4) Subsection (3) does not prevent the court from exercising powers available to it otherwise than by virtue of that subsection.
- (5) If the court makes a declaration under subsection (1), or otherwise determines, that a guardian acted outside the scope of the guardian's authority or failed to perform a duty as described in that subsection but—
- (a) the guardian shows that the guardian behaved honestly and reasonably in doing so, and

- (b) the court considers that, having regard to all the circumstances, the guardian ought to be relieved of personal liability,

the court may relieve the guardian, either entirely or partly, of personal liability in respect of the action or failure.
- (6) In considering whether to relieve a guardian of personal liability, the court must have regard to—
 - (a) the care and skill that it is reasonable to expect the guardian to have exercised in the circumstances, and
 - (b) in the case of a person acting as a guardian in the course of a business or profession, any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.