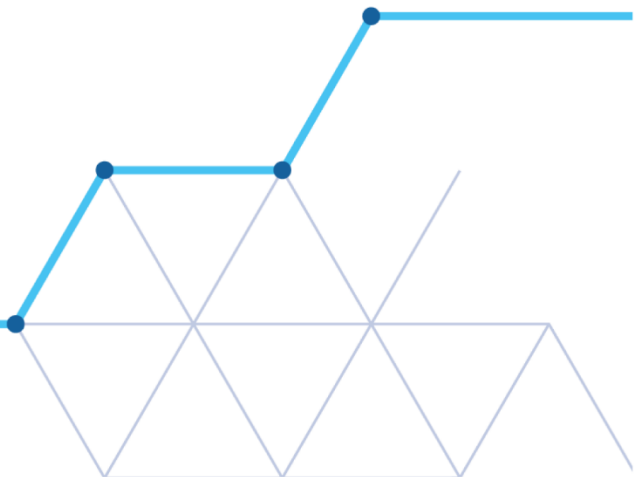




Ministry
of Justice

ANNEX A - STATEMENT OF REQUIREMENT

Provision of Surety Bonds - Missing Persons Guardianship



1. Purpose of Document

- 1.1. This document describes a requirement for the provision of surety bonds to guardians appointed by the court under the Guardianship (Missing Persons) Act 2017 ("the Act"). Surety bonds will provide security for the exercise of a guardian's functions.
- 1.2. The tender process will appoint an insurance broker who will be responsible and accountable for the administration and management of the provision of Guardianship (missing persons) surety bonds (Guardianship Surety Bonds).
- 1.3. The insurance broker will also be responsible and accountable for the procurement exercise to select a suitable insurer or insurers for the provision of Guardianship Surety Bonds.

2. Background

- 2.1. The Public Guardian has statutory functions set out in the Mental Capacity Act 2005 (MCA). The MCA protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as their health or finance. The Office of the Public Guardian (OPG) supports the Public Guardian in carrying out his legal functions. The Office of the Public Guardian (OPG) is an executive agency of the Ministry of Justice.
- 2.2. The Guardianship (Missing Persons) Act 2017 ("the Act") was passed in April 2017 to help families and others trying to cope with the disappearance of a loved one. The Act will extend the Public Guardian's functions from July 2019, these will now include supervision of guardians appointed by the Court to exercise rights and powers in respect of all or some of the property and financial affairs of a person who is missing. The court will only appoint a Guardian if a person has been missing for 90 days, or if there is an urgent reason that a Guardianship Order is required earlier.
- 2.3. It is anticipated that applications for guardianship will be made within the Chancery Division or the Family Division of the High Court. This is subject to secondary legislation which has yet to be passed.
- 2.4. The Public Guardian (PG), as well as holding responsibility for the supervision of Guardians appointed by the Court will also be responsible for maintaining a register of orders appointing Guardians, and for dealing with representations, including complaints, about the actions of a Guardian.
- 2.5. Data on the number of people who go missing in England and Wales, together with indications from other jurisdictions on the use of their legislation, suggest

that there may be between 50 and 300 Guardian appointments made annually. There may, however, be a significant spike in applications in the first two years, as many families have been awaiting this legislation.

2.6. Under the Act, the court may require a Guardian to give security for the exercise of their functions, in the form of a surety bond. This is similar to the requirement of deputies appointed under the MCA.

2.7. The Act brings benefits for missing persons and those left behind, whether they are family members, dependants or third parties, such as banks, financial institutions or creditors. The benefits may take the form of protecting property of the missing person that would otherwise deteriorate or be dissipated; or protecting the position of family members left behind by enabling mortgage and other financial commitments of the missing person to be met; or by creating greater certainty for third parties who have to decide whether to disclose information or to conduct a transaction.

2.8. It is intended that the Act will be implemented in July 2019.

3. Services to be provided

3.1. The Concessionaire shall be responsible and accountable to the Contracting Authority for the administration and management of the provision of Surety Bonds in accordance with this Statement of Requirements.

3.2. The Concessionaire shall further be responsible and accountable to OPG for appointing an appropriate insurer to act in relation to the provision of Guardian bonds in accordance with this Statement of Requirements.

3.3. The Concessionaire must, as and when required by the Court/OPG:

3.3.1. ensure that Guardianship Surety Bonds are offered to both lay (i.e. family or friends) and professional (i.e. paid) Guardians as required and that such bonds cover the full value of the required security as set by the Court,

3.3.2. provide Guardians with the means to apply for a bond at the level ordered by the court as and when instructed by the Court or the OPG,

3.3.3. provide regular information to OPG including, but not limited to: details of new bonds issued; applications in progress; guardians who have failed to complete the application process; bonds discharged, transferred and expired; variations in level of security processed; non-payment of

premiums. In addition to regular reports, the Concessionaire will also respond to ad hoc case queries from OPG and the Court.

- 3.4. The Contracting Authority provides no guarantee to the Concessionaire in relation to the volume or associated value of work it may receive or generate from the Agreement (either in terms of number of Guardians appointed and how many will be required to give security or otherwise). The Contracting Authority cannot guarantee a minimum level of business.
- 3.5. The maximum length of a guardianship will be four years in duration. For the avoidance of doubt, the duration of a guardianship can be between 0 to 4 years and the length is decided by the Court.
- 3.6. The bond is required to remain in force for a period after the guardianship has ended or the guardian has replaced the bond with new security. These periods are set out in Regulation 37 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (as amended) (The Regulations) ¹. The regulations provide that security can only be discharged by an order of the court, or otherwise until the end of a period commencing with whichever of the following dates first occurs:
- a) 2 years from the date of death of the Missing Person;
 - b) 2 years from the date the court makes a declaration of presumed death of the missing person
 - c) 7 years from the date of death of the guardian;
 - d) 7 years from the date the guardian's appointment is terminated by the court (if the court does not also discharge security);
 - e) 7 years from the date the guardian otherwise ceases to be under a duty to discharge his functions
 - f) 2 years from the date security has been replaced by the guardian, provided that the new security complies with the Public Guardian's requirements.
- 3.7. The OPG will inform the Concessionaire of any changes in the Guardianship triggering the 2/7-year lapsing period. The Concessionaire must ensure that the bond contract put in place with the guardian provides for the bond to expire in line with the lapsing period set out in the Regulations. The Concessionaire shall alert the OPG when an existing surety bond is about to expire.
- 3.8. The Concessionaire acknowledges and accepts that the level of security to be provided via a Guardianship Surety Bond can only be set, or amended, by the High Court.

¹ Please note that at the time of publication, the amendment regulations that will add guardianship appointments to the 2007 regulations have not yet been laid in Parliament. Paragraph 3.6 sets out the intention for the regulations but could be subject to change by Parliament.

- 3.9. Neither the High Court nor the OPG will be a party to the Surety Bond contract, which will be a contract between the Concessionaire and the Guardian. The High Court and the OPG cannot mandate the use of any one Concessionaire or Insurer to Guardians. The High Court or OPG may only provide details of the recommended Concessionaire to prospective Guardians.
- 3.10. While the Concessionaire may require the applicant Guardian to provide whatever information the Concessionaire reasonably considers appropriate, it should be noted that:
- 3.10.1. the Concessionaire's application form shall be subject to OPG's approval;
 - 3.10.2. the information required by the Concessionaire should be limited to that which is reasonable in the circumstances and completion of the application form should not place a significant burden on the potential Guardian i.e. by the volume or nature of the information requested;
 - 3.10.3. the Concessionaire may vary the information required depending on the level of security to be provided i.e. more information is provided for higher value Surety Bonds.
- 3.11. The Concessionaire shall highlight discrepancies in the information shared with OPG, to assist in the supervision of Guardians. This may relate to case numbers, level of security, status of case, and the financial soundness of Guardians.

4. The Surety Process

- 4.1. The Court will make an order appointing a Guardian, which will specify whether security is required. The Guardian will be advised that security must be arranged and will be provided with details of the scheme(s) arranged by OPG. The Guardian will also be advised that they can make their own arrangements with a provider of their choice.
- 4.2. As part of the application process, the Court will want to be satisfied about the understanding of the proposed Guardian as to their obligations if appointed and their suitability for the role.

- 4.3. The Concessionaire is required to develop an application form to be sent to applicant Guardian or Guardians.
- 4.4. Guardians will complete the form and submit it directly to the Concessionaire for processing.
- 4.5. The Concessionaire shall offer the Guardian different options for applying for a Guardianship Surety Bond, including digital methods and telephone and post. The Concessionaire shall offer a variety of payment methods for Guardians, including cheque, and card payments, online or via telephone.
- 4.6. The Concessionaire will inform the OPG when the bond has been put into place. The Concessionaire will also inform OPG if the Guardian has failed to complete the process for applying for a bond.

5. Enforcement of the Surety Bond

- 5.1. Where a Guardian breaches his powers and obligations, a sum not exceeding the amount of the endorsement, representing the loss to the Missing Persons estate, can be claimed.
- 5.2. The bond is enforced by making an application to the Court. In most cases, the OPG will make the application, but anyone can apply to the Court to enforce a bond.
- 5.3. Any application which calls in the bond will normally be made at the same time, or will follow, an application to remove the Guardian from post.
- 5.4. It is anticipated that the OPG will send a letter to the Guardian indicating that the bond may be claimed in advance of any court application.
- 5.5. The sum claimed must be paid to the Missing Person's estate, following an order from the court, on first demand and there must be no onus on the PG or the Court to prove fraud or quantify the amount of the loss.
- 5.6. When the OPG sends the Concessionaire an Order calling in the bond, the Concessionaire shall ensure that the payment is made within 7 working days of receiving such Order.

6. Monitoring and Reporting requirements

- 6.1 The OPG and High Court will require management information from the Concessionaire in relation to the provision of Guardianship Surety Bonds.

6.2 The Concessionaire shall attend meetings with the OPG, and as required with the High Court, monthly for the first 3 (three) months of the contract, then quarterly for the remainder of the contract and then bi-annually.

6.3 The Concessionaire shall obtain information from the Insurer(s) upon request by the OPG/High Court.

6.4 The Concessionaire shall supply management information on a monthly basis including, but not limited to, the following:

- 6.4.1 total number of live bonds (split into annual/single)
- 6.4.2 volumes and value of new bonds (lay/professional split)
- 6.4.3 volumes and value of transferred bonds (lay/professional split)
- 6.4.4 volumes and value of renewed bonds (lay/professional split)
- 6.4.5 total amount of security provided
- 6.4.6 average value of security provided
- 6.4.7 Concessionaire's commission on each bond
- 6.4.8 underwriter for each bond (if multiple insurers are appointed)
- 6.4.9 lapsed bonds/bonds awaiting expiry
- 6.4.10 size of premiums collected
- 6.4.11 average bond premium
- 6.4.12 amended security
- 6.4.13 non-compliant Guardians/unpaid premiums
- 6.4.14 number of claims and why the claims arose (e.g. negligence, theft, poor decisions)
- 6.4.15 value of claims
- 6.4.16 trends
- 6.4.17 issues
- 6.4.18 complaints
- 6.4.19 average timeframes for processing bonds
- 6.4.20 average timeframes for paying out bonds
- 6.4.21 results of credit checks

6.5 The Concessionaire shall continue to share this information with OPG, monthly and on request, after the contract end date, while they still hold bonds for Guardians.

6.6 The Concessionaire shall highlight discrepancies in the information to assist in the safeguarding of Missing Persons. This may relate to case numbers, level of security, status of case (lapsing, closed).

6.7 Updates or amendments to bonds must be confirmed by the Concessionaire in writing to OPG.

6.8 The Concessionaire shall acknowledge OPG and High Court queries within two working days or as required in compliance with a Court Order.

6.9 The Concessionaire shall be deemed to have satisfied themselves as regards the nature and extent of the Concession services to be performed. No claims by the Concessionaire for additional payments shall be allowed on the grounds of misunderstanding or misinterpretation due to lack of knowledge of the requirements as set out in this Statement of Requirements.

7 Payment of Fees and Premiums

7.1 The Concessionaire will collect fees and premiums due for the service from the Guardian.

7.2 The Concessionaire will also be responsible for monitoring and enforcing debts as a result of unpaid fees or premiums.

8 Concerns about the Guardian

8.1 After the Guardianship order has been made the OPG will register the order and supervise the Guardian appointed in much the same manner as it registers deputyship orders and supervises deputies at present.

8.2 Complaints about a Guardian can be made to the OPG outside of a Court process and the OPG can deal with them. The OPG can apply to the High Court for declarations that the Guardian has failed to exercise a power properly or breached a duty.

8.3 If the Court agrees it can make an order disallowing expenses; requiring payment; or such other things as would provide compensation.

8.4 The OPG can apply to the High Court for a revocation order (which ends the Guardianship) or variation order (which changes the terms of the Guardianship order) if there are concerns about the conduct of a Guardian.

8.5 Other interested parties may also apply for these orders. Rules of Court and practice directions (supported by the Code of Practice) will provide direction and guidance as to how the applications should be made.

8.6 On revocation of a Guardianship Order, the OPG may require the Guardian, or, in the case of the Guardian's death, their personal representatives, to submit a final report on the discharge of their functions before the end of such reasonable period and at such place as may be specified by written notice.

8.7 The OPG must consider the final report, together with any other information that it may have relating to the discharge by the Guardian of his or her functions.

8.8 Where the OPG is dissatisfied with any aspect of the final report it may apply to the Court for an appropriate remedy, including enforcement of security. Where the court orders the enforcement of an endorsed security, the OPG will notify the bond provider of the order; and notify the Court when payment has been made of the amount secured.

9 Contract Management

9.1 The Concessionaire shall fulfil the requirement to name an account manager, a point-of-contact, user access on-line, in person and over the telephone.

10 Complaints Handling

10.1 The Concessionaire shall provide a complaints handling process for dealing with complaints from the OPG/Court or the Guardian.

11 Helpline and Training

11.1 The Concessionaire shall offer services to Guardians both by digital and analogue means. This shall include a telephone helpline to be open during working hours (9am-5pm), and a monitored inbox for queries via email, as well as detailed information on the Concessionaire's website.

11.2 The Concessionaire shall provide monthly management information to the Contracting Authority, detailing as a minimum, the volume and nature of calls/ emails/ enquiries/ comments received.

11.3 The Concessionaire shall provide a training manual for OPG staff, detailing the end-to-end bond process. They shall also compile a Q&A document to assist OPG case managers and contact centre staff. This shall be updated quarterly, or as necessary based on any new developments during the period of the Agreement.

11.4 The Concessionaire shall develop and host a website to support Guardians and the OPG/Court. The OPG anticipate the development of digital features to assist the surety process. The Concessionaire shall provide a secure network with which to exchange information with the OPG.

11.5 The Act applies to England and Wales only. These Rules of Court, Practice Directions, Regulations and Code of Practice will also apply to England and Wales only.

12 Risk

12.1 The purpose of the security is to protect the missing person's estate from financial loss in the event of misbehaviour by the Guardian. It is therefore important that any risks associated with the provision and enforcement of such bonds are minimised.

13 Membership requirements

13.1 The Concessionaire should meet the requirements set out in Regulation 34 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (as amended).

13.2 The Broker should maintain full membership of British Brokers Association (BIBA) or successor or equivalent association.

14 Contract Duration

14.1 The duration shall be for two (2) years, with two (2), one (1) year options.

15 Implementation/Mobilisation

15.1 The Concessionaire shall provide a list of key processes, tasks and activities required to implement the contract by the required contract start date.

15.2 The Concessionaire shall include the following: resource implications for OPG/Court.

16 Contract Exit

16.1 The Concessionaire shall produce an exit plan within three (3) months of the start of the contract which ensures continuity of service. The parties shall use reasonable endeavours to agree the content of the exit plan.

- 16.2 If the parties are unable to agree the content of the plan within 28 days, then the dispute will be resolved in accordance with the Dispute Resolution Procedure in the Agreement.
- 16.3 When requested, the Concessionaire shall help the Contracting Authority migrate the services to a replacement Concessionaire in line with the exit plan. This shall be at the Concessionaire's expense if the contract ended before the expiry date due to termination.
- 16.4 The Concessionaire shall also provide the OPG with recommendations for improvements in the services.