

# Third Party Access Guardianship Order Explained

# Contents

|                                      | Page     |
|--------------------------------------|----------|
| <b>What is a Guardianship Order?</b> | <b>3</b> |
| <b>Managing Third Party Access</b>   | <b>4</b> |
| <b>Stopping Third Party Access</b>   | <b>6</b> |

# What is a Guardianship Order?

If a person goes missing, someone familiar with that person, for example a family member, close friend or business partner, can apply to the Courts for a Guardianship Order, which will allow them to manage the property and financial affairs of the missing person. The court will only consider an application for a guardianship order if a person has been missing for 90 days.

Guardianship Orders are personalised to each case and will say what powers the Guardian has and what matters the Guardian can deal with. Orders last for a maximum of four years but can be renewed.

A Guardian must act in the best interests of the missing person when dealing with his or her property and financial affairs. The Act applies in England and Wales only. There are no directly equivalent provisions in Scotland and Northern Ireland. (Scottish Guardianship Orders are not the same. They are more akin to Deputyship orders in England and Wales.)

## Who can apply for a Guardianship order?

Anyone over the age of 18 can apply for a guardianship order. The court will only hear applications where there is sufficient connection between the missing person or the applicant and the jurisdiction of the court. The Act provides that the spouse, civil partner, parent, child and sibling of the missing person are automatically considered to have a sufficient interest, as well as a person who was a guardian of the missing person at any time in the year preceding the day on which the application is made. Other applicants, such as friends and cohabitants, will have to demonstrate to the court why they have a sufficient interest.

## Restrictions

The Court order will determine exactly what level of access we can give you to the other party's bank account.

## What access does a court order give?

To see what powers a court order gives you over the other party's account, see our 'Managing Third Party Access' table. You'll find more information on a Guardian's powers on the [gov.uk](https://www.gov.uk) website.

## How do I obtain a Guardianship Order and lodge it with HSBC?

You can find details on how to apply for a Guardianship Order on the [gov.uk](https://www.gov.uk) website. Lodge a Guardianship Order with HSBC in branch. If you have been appointed as Guardian by the Court, you should bring the court order into an HSBC branch. There are some important things to know:

- ◆ You must supply suitable documents proving your identity and address (see examples below)
- ◆ We will ask you to provide a sample of your signature
- ◆ We will also ask you to provide certain information about the Guardianship Order to ensure we can provide you with suitable services. This information may include: circumstances in which the order was received, name, address, telephone number and if there are any restrictions. We will only accept the original Guardianship Order or an official copy certified by a solicitor.

## What ID documents are acceptable?

Example identification documents:

- ◆ Current passport
- ◆ Current National Identity Card
- ◆ Travel Documents (issued in the UK by the Home Office)

Example address documents:

- ◆ Council tax bill (valid for current year)
- ◆ Utility bill (dated within last four months)
- ◆ Telephone bill (dated within last four months) – mobile phone bills are not acceptable

For a list of all the documents we accept, please see our proof of ID and address page.

## When will third party access stop?

Certain events such as if you or the other party were to die would affect your Guardianship in different ways. The Courts can also revoke the order. For more information on events which may affect your Guardianship, see our 'Stopping Third Party Access table on page 6'.

You can also find more information on the [directgov.uk](https://www.directgov.uk) website.

\*1 See our useful links page at [www.hsbc.co.uk/help/life-events/assisting-someone-with-their-money/](https://www.hsbc.co.uk/help/life-events/assisting-someone-with-their-money/)

\*2 See our Third Party Access pages for explanation of other types of access at [www.hsbc.co.uk/help/life-events/assisting-someone-with-their-money/](https://www.hsbc.co.uk/help/life-events/assisting-someone-with-their-money/)

## Managing Third Party Access

| Accounts to be done on behalf of the account holder                 | Third party mandate | Ordinary power of attorney | Lasting/ Enduring power of attorney | Court of protection order (Deputyship) | Department for Work and Pensions (DWP) Appointee<br>(Please note, the below applies only for the benefits received by the individual who has lost mental capacity) | Guardianship Order |
|---------------------------------------------------------------------|---------------------|----------------------------|-------------------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Hold a debit card                                                   | –                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Obtain information from account holder's account(s) from bank       | ✓                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Open/close accounts in the account holder's name                    | –                   | –                          | ✓                                   | ✓                                      | –                                                                                                                                                                  | ✓                  |
| Issue cheques                                                       | ✓                   | ✓                          | ✓                                   | ✓                                      | –                                                                                                                                                                  | ✓                  |
| Make payments (i.e. bills)                                          | ✓                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Withdraw cash                                                       | ✓                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Deposit cash/ cheques                                               | ✓                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Retrieve items from safekeeping                                     | ✓                   | ✓                          | ✓                                   | ✓                                      | –                                                                                                                                                                  | ✓                  |
| Apply for ISAs                                                      | –                   | –                          | ✓                                   | ✓                                      | –                                                                                                                                                                  | ✓                  |
| Access Internet Banking                                             | –                   | –                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Access Telephone Banking                                            | ✓                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Hold a cheque/ pay-in book                                          | –                   | ✓                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Manage the account if account holder becomes mentally incapacitated | –                   | –                          | ✓                                   | ✓                                      | ✓                                                                                                                                                                  | ✓                  |
| Sign a mortgage loan agreement                                      | –                   | ✓                          | ✓                                   | ✓                                      | –                                                                                                                                                                  | ✓                  |
| Arrange an overdraft                                                | –                   | –                          | –                                   | –                                      | –                                                                                                                                                                  | ✓                  |

The information in the table is for your guidance only. The powers we grant a third party over a customer's account may change from those listed above depending on the particular circumstances or changes to our procedures (and are subject always to our obligations under applicable laws and regulations). In particular, the power of attorney, court of protection order, Guardianship Order or third party mandate itself may contain restrictions on the third party's access to and powers over a customer's account(s). We will need to comply with any such restrictions which will override our general position set out in the table.

**1.** Third parties acting under a Third Party Mandate cannot hold a debit card. They can withdraw cash, provided that the third party mandate or power of attorney do not contain any relevant restrictions, by writing out a cheque to themselves. In an emergency, the third party may be able to visit a branch with suitable identification documents and request a withdrawal slip from the counter.

**2.** Appointees/Guardians can have a Debit Card for the other person's account and use it to withdraw money from an ATM. They can also hold a paying-in book.

**3.** Some third parties can have Telephone Banking access to the accounts of the individual they are acting for. Irrespective of the type of third party authority held (third party mandate or power of attorney), we are only able to provide telephone access if both of the following are true:

- ◆ The third party access is unrestricted. This means that the third party has full authority to operate a sole account or has the same signing authority on a joint account as the individual they are acting for and there is no clause limiting their authority.
- ◆ There is only one named third party OR There are multiple third parties acting jointly and severally.

Deputies under a Court of Protection order, Guardians under a Guardianship Order and Department for Work and Pensions appointees can have Telephone Banking access. Only certain types of third party access allow the third party to use Personal Internet Banking (PIB) to access the accounts of the individual they are acting for. Third party mandate holders and holders of ordinary powers of attorney cannot be set up for Internet Banking. Some third party authorities may be set up for Internet Banking access, provided that all of the following are true:

- ◆ The individual they are acting for has lost capacity OR if the individual retains capacity, he or she understands and agrees that only the attorney will have access to PIB. This is because only one person can access a sole account via PIB at a time; therefore, either the attorney or the individual they are acting for can have PIB access, not both.
- ◆ The Power is unrestricted. A power of attorney is unrestricted if the attorney has authority to operate a sole account or has the same signing authority on a joint account as the individual they are acting for and there is no clause limiting their authority.
- ◆ There is only one named attorney OR there are multiple attorneys acting jointly and severally – in the latter case only one of the attorneys will have Internet access. Deputies under a Court of Protection order and Department for Work and Pensions appointees can have Internet Banking access as they will have their own accounts opened instead of being added as signatories to the account of the individual they are acting for.
- ◆ They are acting as a Guardian on behalf of a missing person.

## Stopping Third Party Access

|                                             | <b>Third Party Mandate</b>                                                                                   | <b>Ordinary Power of Attorney</b>                                                                          | <b>Lasting Power of Attorney</b>                                                                                                                                         | <b>Enduring Power of Attorney</b>                                                                                                                                        | <b>Court of Protection Order (Deputyship)</b>                                                                          | <b>Department for Work and Pensions Appointee Account</b>                                                       | <b>Guardianship Order</b>           |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <b>Account holder dies</b>                  | The mandate is automatically revoked and the balance of the account will form part of the deceased's estate. | The power is automatically revoked and the balance of the account will form part of the deceased's estate. | The power is automatically revoked and the balance of the account will form part of the deceased's estate. See note 3.                                                   | The power is automatically revoked and the balance of the account will form part of the deceased's estate. See note 3.                                                   | The order is automatically revoked and the balance of the account will form part of the deceased's estate. See note 4. | Authority of the appointee is cancelled and the balance of the account will form part of the deceased's estate. | The order is automatically revoked. |
| <b>Account holder loses mental capacity</b> | The mandate is automatically revoked.                                                                        | The power is automatically revoked.                                                                        | No change—the power remains valid and the attorney retains full authority.                                                                                               | If the power is unregistered, it is temporarily suspended until registration is completed. A registered power will remain valid and the attorney regains full authority. | The Court of Protection order would only be used in case of mental incapacity.                                         | The Appointee account would only be used in case of mental incapacity or severe physical disability.            | N/A                                 |
| <b>Account holder wants to cancel</b>       | The mandate is revoked upon receipt of account holder's instruction.                                         | The power is cancelled by Deed of Revocation.                                                              | Written evidence by either the Court of Protection confirming Deed of Revocation or by the Office of the Public Guardian advising cancellation of the power. See note 3. | Written evidence by either the Court of Protection confirming Deed of Revocation or by the Office of the Public Guardian advising cancellation of the power. See note 3. | Written evidence by Court of Protection needed to confirm Deed of Revocation. See note 4.                              | See note 2.                                                                                                     | N/A                                 |
| <b>Account holder returns</b>               | N/A                                                                                                          | N/A                                                                                                        | N/A                                                                                                                                                                      | N/A                                                                                                                                                                      | N/A                                                                                                                    | N/A                                                                                                             | The order                           |

|                                          | Third Party Mandate                                  | Ordinary Power of Attorney                      | Lasting Power of Attorney                             | Enduring Power of Attorney                            | Court of Protection Order (Deputyship)                                                                  | Department for Work and Pensions Appointee Account                                 | Guardianship Order                                     |
|------------------------------------------|------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------|
| <b>Third party dies</b>                  | The mandate is automatically revoked.                | The power is automatically revoked. See note 1. | The power is automatically revoked. See note 1 and 3. | The power is automatically revoked. See note 1 and 3. | The order is automatically revoked. The Court needs to appoint new deputy. See note 4.                  | The appointment is revoked and the appointee's authority is cancelled immediately. | The order is automatically revoked. guardian.          |
| <b>Third party loses mental capacity</b> | The mandate is automatically revoked.                | The power is automatically revoked. See note 1. | See note 3.                                           | See note 3.                                           | The order is automatically revoked. The Court needs to appoint new deputy. See note 4.                  | See note 2.                                                                        | The order revoked.                                     |
| <b>Third party wants to cancel</b>       | The mandate has to be revoked by the account holder. | The power is automatically revoked.             | See note 3.                                           | See note 3.                                           | The order may be revoked upon application by deputy. The Court needs to appoint new deputy. See note 4. | See note 2.                                                                        | The order may be revoked upon application by guardian. |

### When will third party access stop?

You can obtain a copy at any HSBC branch or at the following link: [www.hsbc.co.uk/1/2/legal](http://www.hsbc.co.uk/1/2/legal) If the information above differs from that in the terms and conditions, the terms and conditions override the above.

**1.** All powers of attorney (General, Lasting, and Enduring: These legal documents allow the individual granting a Power of Attorney to name multiple or replacement attorneys. Subject to the text of the order, a replacement attorney may be able to take over in the event of bankruptcy, loss of capacity or death of an existing attorney. If there are multiple attorneys appointed jointly and severally and one of them cannot continue to act for some reason, the other attorney(s) may continue to act on behalf of the individual who granted the Power of Attorney.

**2.** See the Guide for Agents, Appointees and Attorneys on the webpage of the Department for Work and Pensions at <http://www.dwp.gov.uk>

**3.** Find out more information under "Cancelling or ending a Lasting or Enduring Guardianship on the DirectGov page at [www.direct.gov.uk](http://www.direct.gov.uk)

**4.** Find out more information under "Cancelling or ending a deputy's responsibilities" on the DirectGov page at [www.direct.gov.uk](http://www.direct.gov.uk)

**5.** A deputy's appointment can be revoked at any time by the Court of Protection.

**6.** Find out more information under "Cancelling or ending a Guardian's responsibilities" on the DirectGov page at [www.direct.gov.uk](http://www.direct.gov.uk)

\*1 See our useful links page at [www.hsbc.co.uk/help/life-events/assisting-someone-with-their-money/](http://www.hsbc.co.uk/help/life-events/assisting-someone-with-their-money/)

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## Accessibility

To find out more about our accessible services please visit [www.hsbc.co.uk/accessibility](https://www.hsbc.co.uk/accessibility) or ask at any of our branches.

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