

Your guide to Bonds of Caution

In connection with the Adults with Incapacity (Scotland) Act 2000

Statement of demands and needs

A bond of caution provided by Zurich Insurance Public Limited Company ("Zurich") meets the demands and needs of those persons wishing to obtain a Guardianship or Intervention order in respect of an Adult in Scotland. Instruments of this nature are a compulsory requirement of Scots Law in certain circumstances and not a matter of choice upon which we can make, or do make, any recommendations.

Disclosure statement

- The Company which provides bonds of caution is Zurich Insurance Public Limited Company, Zurich House, Ballsbridge Park, Dublin 4 Ireland, a Company registered in Ireland (registration number 13460). UK branch registered in England and Wales registration number BR7985. Zurich Global Corporate UK is a trading name of Zurich Insurance Public Limited Company.
- Zurich Insurance Public Limited Company is authorised by the Irish Financial Regulator and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request. FSA registration number 203093.
- Our permitted business is Suretyship. We provide surety bonds and guarantees which includes bonds of caution required in certain circumstances by Scots Law.
- The above details can be confirmed by viewing the Financial Services Authority's Register by visiting the website <http://www.fsa.gov.uk/register> or by contacting the Financial Services Authority on **0845 606 1234**.
- You will not receive advice or recommendations from Zurich.
- Zurich will notify you or your appointed advisor the premium payable before the issue of a bond.
- The business of Zurich is covered by the Financial Services Compensation Scheme. A claimant under the bond may be entitled to compensation if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Further information can be found at:

Financial Services Compensation Scheme (FSCS)
7th Floor
Lloyds Chambers
1 Portsoken Street
London
E1 8BN

Tel: 020 7892 7300

Website address: <http://www.fscs.org.uk>

What is a bond of caution?

The Adults with Incapacity (Scotland) Act 2000 ('the Act'), is an Act of the Scottish Parliament to make provisions as to the property, financial affairs and personal welfare of adults who are incapable, by reason of mental disorder or by inability to communicate and for connected purposes.

This is a complex area of the law and Zurich cannot provide any legal advice. This brief guide is intended to provide some initial general background in respect of bonds of caution which may be of assistance to you in obtaining your own legal advice.

All persons proposing to apply or who may be affected by a Guardianship or Intervention order should obtain their own legal advice from a solicitor in Scotland.

Intervention Orders

If the incapable Adult needs help with a single decision or a series of decisions or transactions involved with, for example selling a house, the Sheriff can grant an Intervention Order. This gives the person(s) appointed (the 'Intervener') the right to make the decisions as noted in the Interlocutor but not any other decisions. A bond of caution may be required to guarantee the obligations of the Intervener.

Guardianship Orders

If the Adult needs help with a number of decisions, then an applicant can request the Sheriff to grant a Guardianship Order. This will allow the person(s) appointed (the "Guardian") to help the Adult with decisions all the time.

The initial period of Guardianship orders is generally three years although the Sheriff has discretion as to the exact duration.

Bond of caution

When making or varying a Guardianship or Intervention order the Sheriff may order the person authorised to provide a bond of caution. The bond is a guarantee of the obligations of the Guardian or Intervener appointed and protects the Adult from any loss arising as a result of the mishandling of their affairs.

Our obligations under the bond of caution and our contract with you will be governed by Scots Law and the Courts of Scotland will have jurisdiction over any disputes.

Applying for a bond of caution

To obtain a bond of caution from Zurich, an application form must be completed in full and the declaration on the final page signed by the Guardian(s)/Intervener(s) and witnessed by their appointed legal advisors. For estates up to and including £50,000 the Guardian(s)/Intervener(s) may submit an application directly to Zurich. If the Guardian(s)/Intervener(s) would like Zurich to consider an application for an estate greater than £50,001, Zurich will review the application and supporting documentation and advise whether it is possible to proceed without involvement from their appointed legal advisor.

The application should be completed in full. Partially completed forms or those submitted without the necessary supporting documentation may result in a delay in Zurich agreeing to issue a bond of caution.

Once completed, the application form should be submitted to Zurich together with:

- a copy of the Summary Application for the granting of the order;
- a copy of the Interlocutor issued by the court;
- completed cut out slip from this leaflet (to be found on page 6 at the back of this booklet);
- a copy of all documentation prepared in support of the Summary Application including forms AWI [2] Schedule 2 and/or AWI [8] Schedule 8 and/or AWI [10] Schedule 10 as required by Section 57(3)(b) and/or Section 57(3)(c) of the Act (only required for estates greater than £500,001).

Other documents may also be requested in support of the application after the initial review has taken place by Zurich. If an application for a bond is accepted, the bond can usually be issued within 24 to 48 hours of receipt of your application.

Details of the premium payable can be found in Zurich's application forms. Individual application forms detail premiums for estates up to and including £50,000. Application forms where the Guardian(s)/Intervener(s) have appointed a legal advisor to assist them lists premiums for estates up to and including £750,000.

For estates greater than £750,001, the Guardian(s)/Intervener(s) will be provided, via their legal advisor if appointed, with terms which clearly state the bond amount and the premium payable for the initial period. This will include details of the formula used to calculate the premium.

For both Guardianship and Intervener bonds, the premium is payable for an initial charge period of 18 months; premiums are payable annually thereafter.

The premium charged by Zurich is exclusive of all court and/or legal costs which may be incurred by the applicant during the process of obtaining a bond of caution. It is the Guardian(s)/Intervener(s) responsibility to settle any such court and/or legal costs.

A bond of caution is not a contract of insurance and there is accordingly no insurance premium tax (IPT) or value added tax (VAT) payable upon the issue of a bond.

Important notice: Guardian(s)/Intervener(s) right of cancellation

You have the right to cancel the Bond of Caution provided by Zurich within 14 days from the date you receive the executed bond from Zurich if the original bond is returned to Zurich together with a signed confirmation that it has not been lodged with the Office of the Public Guardian. Zurich will then be pleased to confirm that the bond has been cancelled and refund any premium paid. No administration fee will be retained by Zurich if a bond is cancelled in this way.

You may be unable to exercise your cancellation rights if you decide to lodge or deposit the bond with the Office of the Public Guardian (in which case Zurich will become fully committed to perform all obligations of a Cautioner) during the 14 day cancellation period.

Cancellation of a Bond of Caution by Zurich

In accordance with a provision contained within the bond, Zurich may, by providing written notice upon a period of thirty days, cancel the bond of caution at any time. Cancellation of the bond at any time after it has been registered with the Office of the Public Guardian does not affect liability in relation to the period from registration to the effective date of cancellation (expiry of notice period) and premium is payable for the duration the bond is effective. Any refund of premium paid will be calculated on a pro rata basis.

Once a bond has been lodged with the Office of the Public Guardian, you may incur costs and legal expenses in procuring cancellation. Although Zurich will not make any administration or other charge for cancellation, you will be responsible for all costs and expenses, including any external or legal costs incurred by Zurich, if after lodging the bond with the Office of the Public Guardian you wish to procure cancellation.

Once you have received the bond of caution from Zurich, all Guardian(s)/Intervener(s) must complete the bond by signing the final section (if not already done) before sending it to the Office of the Public Guardian.

Once the order has been granted

Guardianship

Upon receipt of the bond of caution the Office of the Public Guardian will issue a certificate of appointment at which time the Guardian(s) may begin to act. The Office of the Public Guardian will normally specify the initial period for which the Guardian(s) will be required to lodge an account of all financial transactions. This is normally slightly longer than a year from the date of appointment.

The Guardian(s) is required to notify Zurich of this initial period and the deadline for submitting accounts. Copies of the approved management plan and inventory should also be provided to Zurich at this time.

Guidance notes and suggested forms for the inventory, management plan and annual account are available from the Office of the Public Guardian.

Bond of caution review

Once a bond of caution has been issued, the Guardian(s)/Intervener(s) must inform Zurich as soon as is practicable of any claim or dispute affecting the estate. If a legal advisor was appointed by the Guardian(s)/Intervener(s) and submitted the application for the bond of caution, they must remain under the instruction of the Guardian(s)/Intervener(s) throughout the period the bond is in force and if the Guardian(s)/Intervener(s) wish to change legal advisors during the time that the bond of caution is in force they must request permission to do so in writing from Zurich.

In any event Zurich will contact the Guardian(s)/Intervener(s) or the legal advisor (if appointed) at least one month prior to the anniversary of their appointment in order to carry out a review.

We will request copies of the management plan and inventory (if not already received) and also copies of the audited accounts and associated report / audit certificate / statement for review issued by the Office of the Public Guardian. Upon receipt of the available items and any other relevant information, Zurich will then advise the Guardian(s)/Intervener(s) or their legal advisor (if appointed) either that the bond of caution will remain in force or give written notice of intention to cancel the bond.

Renewal premiums are detailed in the bond of caution application form and/or indicative terms enclosed with Zurich's renewal correspondence.

The review process will be conducted on an annual basis whilst the bond remains in force.

If the information requested in connection with the review is not provided within a reasonable period of Zurich's request this may result in Zurich giving notice to cancel the bond. In addition, non-payment of the premium when due may also result in Zurich giving notice of cancellation.

Claims

The Office of the Public Guardian has a responsibility to investigate all complaints regarding the actions of Guardian(s) /Intervener(s). A person who is dissatisfied with the actions of the Guardian(s)/Intervener(s) should obtain legal advice and may also apply to the Sheriff. Where the Office of the Public Guardian or Sheriff agree that the Adult has suffered a loss as a result of the acts or omissions of the Guardian(s)/Intervener(s) and that a claim may be made under the bond of caution, the Office of the Public Guardian may write to Zurich with details of the claim. The Guardian(s) /Intervener(s) retain the principal liability to discharge any valid claim and Zurich acts as a guarantor of that obligation. Zurich will respond to all claims promptly and keep the Guardian(s)/Intervener(s) informed throughout the claims process.

The liability of the Guardian/Intervener

A bond of caution is **not** an insurance policy which provides cover or protection to the Guardian(s) /Intervener(s) but operates to protect the interests of the Adult's estate. The Guardian(s) /Intervener(s) at all times retains the primary legal obligation to exercise their powers according to law. Where a valid claim is made under the bond, Zurich will pay the claim and the Guardian(s) /Intervener(s) will be bound to make reimbursement of this amount to Zurich plus any costs.

A short explanation of the terms used is set out below.

Glossary of terms	
Adult	the person in respect of whom the Guardian/Intervener is appointed by the court
Claim	a demand or claim for payment based upon a breach of the Guardian's/Intervener's obligations which may be presented by the Office of the Public Guardian
Guardian/Intervener	the person(s) named in the Interlocutor having powers granted by the court
Interlocutor	a formal minute of the court's decision following the hearing of the Summary Application
Inventory	a list of the Adult's assets
Management plan	a document detailing the Financial Guardian's intentions for the management, investment and realisation of all of the Adult's estate for which the Financial Guardian has been given authority by the court order and for its application to meet the Adult's needs
Office of the Public Guardian	the Office of the Public Guardian ("OPG") which was established by the Act. The Act provides for the Accountant of Court, a senior official in the Scottish Court Service, to assume the role of the Public Guardian
Summary Application	a formal request submitted to the court for the appointment of a Guardian or Intervener
Review	an assessment by Zurich of the actions conducted by the Guardian(s)/Intervener(s)
Zurich	Guarantor/Cautioner

Every effort is made to ensure that the information contained in this publication is correct at the time of going to press.

Specimen bond of caution

Bond of Caution

Bond No:

Name and Address of Adult or other Subjects:

Name and Address of Nominee:

Court of Appointment:

Sheriff Court

Date of Appointment:

 / /

Amount of Caution:

 £ (Pounds Sterling)

Name and Address of Cautioners:

Zurich Insurance Public Limited Company a public limited company incorporated in Ireland (Registration No. 13460) whose registered office is at Zurich House Ballsbridge Park Dublin 4 Ireland UK branch registered in England and Wales Registration No. BR7985 and whose address for service for the purposes of this Bond is Zurich Surety Cypress House 3 Grove Avenue Wilmslow Cheshire SK9 5EG England or such other address as shall be notified in writing from time to time

The expression "Nominee" shall include the office of a Guardian or Intervener appointed under the Adults with Incapacity (Scotland) Act 2000 or Judicial Factor appointed under the Judicial Factors Act 1849, Judicial Factors (Scotland) Act 1880 and 1889, all as amended, as appropriate.

1. The Nominee hereby undertakes to account for all intromissions with, and management of, the estate and to observe and perform every duty incumbent upon him or her, in terms of the Rules prescribed or to be prescribed.
2. The bond of the Cautioners is limited to the amount of Caution stated above. Such sum (or lesser sum) as determined by the Office of the Public Guardian shall become payable only upon the pronouncement of an Interlocutor by the Court of Appointment.
3. This Bond may be cancelled by the Cautioners by written notice upon a period of thirty days. The cancellation of the Bond does not affect the liability in relation to the period preceding the expiry of the period of notice.
4. The Cautioners hereby oblige their heirs, successors and executors to make payment of the sums for which they have become Cautioner to the party to whom they are bound as validly and in the same manner as the Nominee and his or her heirs and successors, for whom they are Cautioner, are obliged.
5. The Nominee hereby obliges his or her heirs, successors and executors to relieve the Cautioners of the whole obligations undertaken by them and of all loss, damages and expenses which may be incurred in this case.
6. The Nominee and the Cautioners agree to be subject to the exclusive jurisdiction of the Court of Appointment and hold the Court of Appointment as the place which may be cited in any action or proceedings connected with this Bond.
7. In witness whereof these presents are subscribed by me the said _____ at _____ on the _____ day of _____ Two Thousand and _____ in the presence of _____ of _____ and _____ on behalf of the said Cautioners at Cypress House, Wilmslow on the _____ day of _____ Two Thousand and _____

Nominee	Witness
---------	---------

For the Cautioners Zurich Insurance Public Limited Company

Authorised signatory	Authorised signatory
----------------------	----------------------

Complaints procedure

Our Commitment to Customer Service

We value the opportunity to look into any concerns you may have with the service we've provided and we're committed to dealing with all complaints fairly, consistently and promptly.

Who to contact in the first instance

Many concerns can be resolved straightaway, therefore in the first instance please get in touch with the advisor at Zurich who arranged the bond of caution for you. Please quote the bond number (if applicable), your full name and the full name of the Adult. The address for all correspondence is:-

Zurich Surety, Cypress House, 3 Grove Avenue, Wilmslow, Cheshire, SK9 5EG
Telephone: 01625 527 242
Email: surety.bonds@uk.zurich.com

If, upon advice of your complaint, we cannot resolve it straightaway we will aim to resolve your concerns as soon as possible and we will keep you informed of progress while our enquiries are continuing. The majority of complaints we receive are resolved within four weeks of receipt.

The Financial Ombudsman Service (FOS)

If we are unable to resolve your complaint to your satisfaction within eight weeks or if you remain dissatisfied following receipt of our final response letter you may be able to ask the FOS to formally review your case. You must contact the FOS within six months of our final response.

The FOS contact details are as follows:

Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London, E14 9SR

You can telephone for free on:

08000 234 567 for people phoning from a 'fixed line' (for example, a landline at home)

0300 123 9 123 for mobile-phone users who pay a monthly charge for calls to numbers starting 01 or 02

or e-mail: complaint.info@financial-ombudsman.org.uk

This is a free and impartial service and will not affect your legal rights. The FOS can help with most complaints if you are:

- a consumer
- a business employing fewer than 10 persons that has an annual turnover or balance sheet that does not exceed Euro2 million
- a charity with an annual income of less than £1 million
- a trustee of a trust with a net asset value of less than £1 million

If you are unsure whether the FOS will consider your complaint please contact them directly for further information. You are entitled to contact the FOS at any stage of your complaint.

I confirm that I have read and understood this Zurich Guide to bonds of caution in connection with the Adults with Incapacity (Scotland) Act 2000

Print Full Name of Applicant

Applicant's Address

Signature of Applicant

Print Full Name of Adult

Date / /

Zurich Surety

**Cypress House, 3 Grove Avenue ,
Wilmslow, Cheshire SK9 5EG, England**
Telephone: 01625 527 242
Fax: 01625 549 499

Email: surety.bonds@uk.zurich.com
www.zurich.co.uk/surety

Also at:

The London Underwriting Centre, 3 Minster Court
Mincing Lane, London, EC3R 7DD, England
Telephone: 0207 648 3200
Fax: 0207 648 3299

Zurich Surety is a division of Zurich Global Corporate UK. Zurich Global Corporate UK is a trading name of Zurich Insurance Public Limited Company

Zurich Insurance Public Limited Company is a public limited company incorporated in Ireland. Registration No. 13460
Registered Office: Zurich House, Ballsbridge Park, Dublin 4, Ireland
UK branch registered in England and Wales Registration No. BR7985
UK Branch Head Office: The Zurich Centre, 3000 Parkway, Whiteley, Fareham, Hampshire PO15 7JZ.

Authorised by the Irish Financial Regulator and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request. FSA registration number 203093. These details can be checked on the FSA's register by visiting their website www.fsa.gov.uk/register or by contacting them on 0845 606 1234

