

THORNLEYS SOLICITORS

COMMUNITY CARE ISSUES AND LONG TERM CARE PLANNING



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Growing older is something that worries all of us. One thing is certain, we cannot change life's natural processes. As we are all living longer these days it is sensible to plan ahead so that in retirement concerns about the possibility of moving into a Care home are alleviated.

Moving into a Care Home is not a decision to be taken lightly. It is most important that the decision you make is right for you and that the care home that you choose suits your personal needs.

When you are planning your retirement it is also a good opportunity for you to consider putting all your affairs in order. There are many issues which you should consider such as:

WHAT TYPE OF HOME SHOULD YOU LOOK FOR?

The care and assistance that you will require when moving into a care home will very much depend on your personal or nursing care needs. Some care homes only offer accommodation and personal care, others also employ registered nurses and offer nursing care. Previously these different types of home were known as residential and nursing homes. From 1 April 2002 this distinction was abolished and all homes became known as care homes. Each home should produce a brochure and a statement of purposes that can be used to decide whether the home will meet the needs set out in your needs assessment which will have been carried out on you before entering a home.

In a **care home** that provides accommodation and personal care only you will receive assistance with washing and dressing and having your meals prepared for you. The staff can attend to most of your personal needs but they are not generally qualified to provide specialist nursing care which other homes registered to provide **nursing care** are able to supply and where a qualified nurse would be on duty 24 hours a day.

Since 1st October 2001 the NHS has been responsible for meeting the cost of any care provided by registered nurses to residents who live in care homes which provide nursing care and who pay their own care fees. Previously such residents had to meet this cost themselves. Eligibility for **NHS funded nursing care** is decided on the basis of an assessment carried out by a registered nurse, using a standard assessment process. There are three levels of assistance for which you may be eligible (currently high band: £125.00, medium band: £77.50 and low band: £40.00 per week, depending on your personal nursing requirements). Primary Care Trusts who co-ordinate assessments will from 1st April 2004 have new flexibility

in deciding on a case by case basis to pay an amount between the low and medium band. This is known as the Registered Nursing Care Contribution (RNCC). The RNCC will be assessed by an NHS registered nurse when you enter a home and reviewed after three months and after that further reviewed annually. You can apply for a review of your initial assessment if your nursing requirements change as you may be eligible to receive a higher allowance.

If you have been assessed to receive the higher level of assistance, you should make sure that your needs for continuing health care have been considered. You may be eligible for **NHS Continuing Health Care** and have your care fully paid for by the NHS through your local Primary Care Trust. **NHS Continuing Health Care** is aimed at people who need a high level of continuing care; usually in a care home which provides nursing care. Anyone receiving NHS continuing health care will have their care fully funded by the NHS. **Continuing NHS health care may be provided in an NHS hospital, a care home, hospice or the individual's own home.**

Since October 2001 continence services and supplies (such as incontinence pads), and other related equipment have been provided free of charge by the NHS. The regulations regarding continence supplies have recently been further extended so that everyone living in a care home whether receiving personal or nursing care no longer have to pay for their continence supplies.

NHS FUNDING FOR LONG TERM CARE

In February 2003 the Health Service Ombudsman issued a report entitled **NHS funding for long term care**. The report drew attention to four complaints in which Health Authorities involved were still using unacceptably narrow criteria when assessing eligibility for fully funded care in a care home (despite an important judgement known as the Coughlan case and subsequent guidance issued) and it was stated that the criteria used may have been unlawfully restrictive. The Ombudsman upheld the complaints stating that the Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs) involved should make arrangements to reimburse any monies which those residents had paid out unnecessarily due to the NHS having failed to meet its responsibilities.

The Ombudsman recommended that SHAs and PCTs should:

- 1. Review the criteria used by their predecessor bodies, and the way those criteria were applied, since 1996, taking into account the Coughlan judgement, subsequent guidance and the Ombudsman's own findings.**
- 2. Make efforts to remedy any consequent financial injustice to patients, where the criteria, or the way they were applied, were not clearly appropriate or fair. This will include attempting to identify any patients in their area who may wrongly have been made to pay for their care in a home and making appropriate recompense to them or their estates.**

South West Peninsula Strategic Health Authority (SWPSHA) jointly with Plymouth Local Authority (PLA) Social Services Department must now review **all** individual cases since **1996** to ensure that the correct criteria was used when assessing eligibility for fully funded care provided by the NHS. It is expected that reviewing every case

will be a lengthy process, but there is no reason why you cannot ask for a review **now** rather than wait for the authorities to contact you!

If you feel that you or a member of your family's case should be reviewed apply directly to SWPSHA. **If you feel that you may have been wrongly denied NHS funding**, further information is available from Age Concern or the Health Service Ombudsman's helpline: 0845 015 4033 Website: www.ombudsman.org.uk.

INTERMEDIATE CARE

Intermediate care is a recent innovation intended to provide rehabilitation and 'step down' services, particularly to older people who have finished their hospital treatment but who would benefit from a short period of rehabilitation. It may be provided in a care home or in a person's own home and is intended to be limited to a maximum of six weeks. You should not be charged for intermediate care provided by the NHS, including any care home fees if your care is provided in this setting.

LOCAL AUTHORITY ASSESSMENT

If it is decided your needs would be best suited by receiving personal care and accommodation in a care home, the local authority may need to assess your needs following guidelines under Community Care legislation, (particularly so if you are likely to need help towards payment of your fees). In this case the local authority having carried out a 'needs' assessment would be responsible for arranging the placement at the home of your choice and for payment of the home's fees.

They would also carry out a 'financial' assessment (also known as a 'means test') of your income, capital and savings to calculate how much you should pay towards the cost of your care. The local authority would also advise if you are able to make any claims for benefits to assist with the cost of your care, such as Attendance Allowance, Minimum Income Guarantee (soon to be known as Pension Credit). It is most important that you claim all the benefits to which you are entitled.

Unless you or your relative have sufficient capital and income to pay fees privately, it is essential that the first contact is with the local authority, Social Services Department. They will arrange for someone to visit you and make an assessment as to your needs. If your savings are below £19,500 you would be entitled to financial assistance towards your accommodation and personal care fees. If they are over £19,500 you would be expected to pay for your fees privately. If Social Services consider assistance is required with your care they will advise you accordingly and arrangements can then be made for you or a relative on your behalf to visit a few homes to find one that best suits your needs.

Finding the right Care Home is a very important personal decision, so take your time and ensure that the home which you choose is the right one for you!

DO YOU UNDERSTAND COMMUNITY CARE LEGISLATION?

Community Care Legislation is always changing and can sometimes be very worrying especially if you are concerned that you may have to sell your home to pay for long-

term care. There have been recent changes in legislation with regard to your home, in particular **the local authority now have to disregard the value of your home for the first 12 weeks that you are in care when assessing your contribution towards payment of your fees.**

You may not even have to sell your home at all and instead could have a Charge placed against your property for the payment of your fees after your death. You may also now enter into a ‘deferred payments’ agreement with the Local Authority whereby payment of your fees are deferred until after your death.

These new regulations laid down by the Government, allow a person to retain their property to pass on to the next generation. Your property could be rented out during your lifetime to provide income to help pay for your care fees – It is therefore vital that you obtain legal advice before selling your home.

DO YOU REQUIRE TAX PLANNING ADVICE?

Tax planning in many cases plays a very important part in the making of your Will and the possible saving of Inheritance Tax which may be payable from your estate after your death. You may have considered disposing of some of your wealth during your lifetime to avoid unnecessary Inheritance Tax payable in the event of your death. It is important that you obtain professional advice before you gift away any of your property, particularly if you propose to move into a Care Home. There are strict guidelines which the local authority must adhere to in valuing your property. Even if you no longer own your home but have transferred ownership to a relative you may still be caught by the **‘deprivation of capital’** rules whereby the value of your home is still taken into account even if you no longer own it.

DO YOU HAVE AN UP TO DATE WILL?

It is most important that you have a Will and that you review it regularly. Family circumstances and tax implications often change, so it is vital your Will is kept up to date.

DO YOU NEED A LASTING POWER OF ATTORNEY?

By completing a Lasting Power of Attorney, **you choose who you would wish** to look after your affairs during your lifetime by appointing an Attorney of your choice. If there ever comes a time when you either no longer wish or are unable to manage your financial affairs your Attorney can act for you. If you do not have a Lasting Power of Attorney and become mentally incapable of managing your affairs your money and investments may be frozen until the Court of Protection appoints a Receiver to act in your affairs.

DO YOU NEED FINANCIAL PLANNING ADVICE?

There are many financial packages on the market today. It is important that you obtain professional advice before investing your hard earned savings or proceeds of sale of your home for your future and possible long-term care.

HAVE YOU CLAIMED ALL YOUR BENEFITS?

You may be entitled to claim additional benefits from the Department for Work and Pensions (formerly called the DSS) such as Pensions Credit, Council Tax Benefit or Attendance Allowance – It is important that you claim all the benefits to which you are entitled.

DO YOU HAVE STRONG VIEWS ABOUT YOUR FUTURE MEDICAL TREATMENT?

There are many treatments today which offer a patient with a serious or terminal illness the chance to live longer. In some cases such treatments may offer little chance of recovery and may have side effects which are considered worse than the illness. If you have specific wishes an Advance Directive (also known as a 'Living Will' or Advance Statement) allows you to state which treatments you would or would not want if you became seriously ill in the future and were unable to state your wishes.

DO YOU NEED TO BUY A SMALLER HOME?

You may feel that your house is too big for your needs. You may also wish to reduce your monthly expenditure by selling your existing home and buying a smaller property.

ESTATE ADMINISTRATION

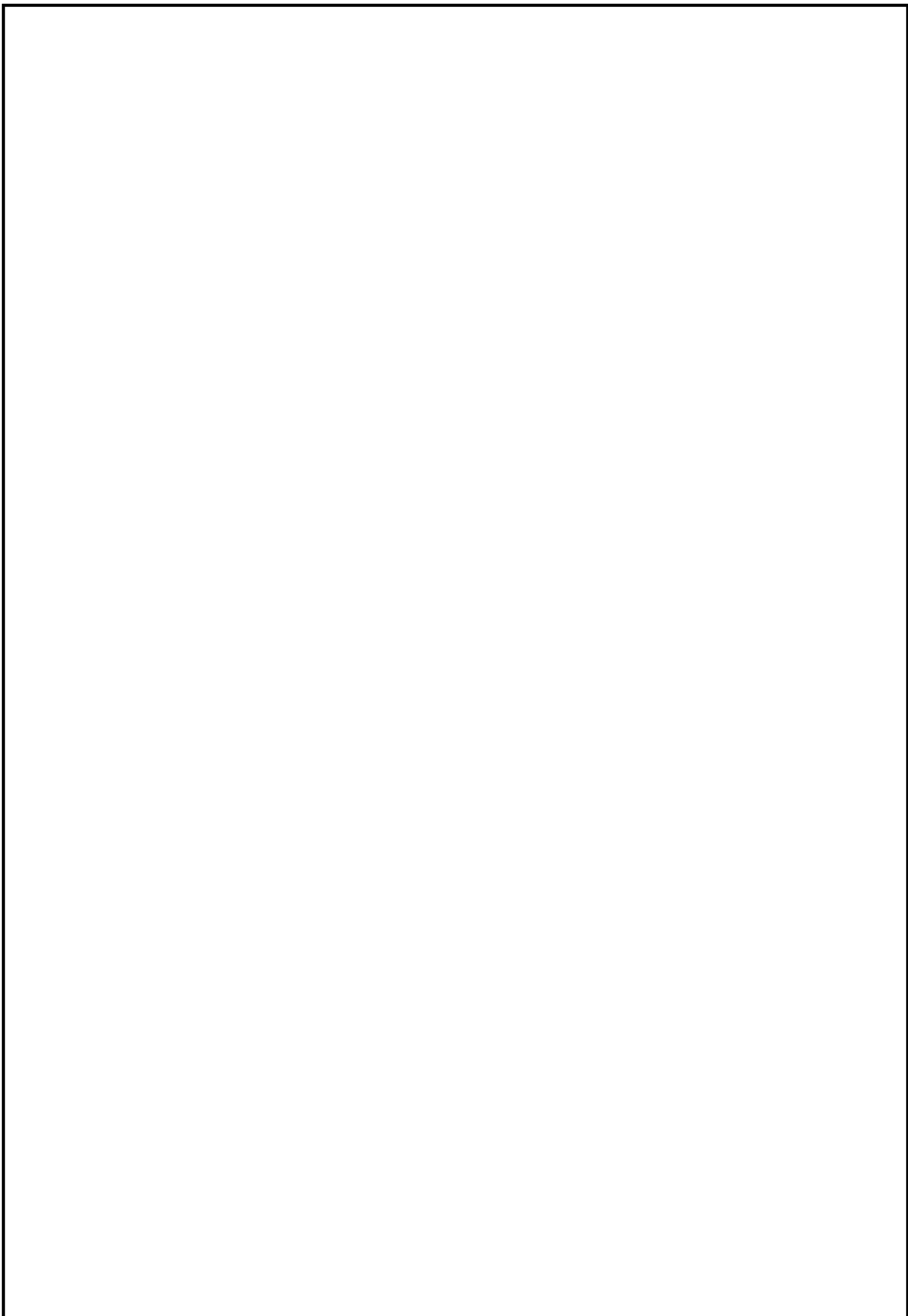
There may come a time when a member of your family sadly dies. You may need help with the administration of their estate.

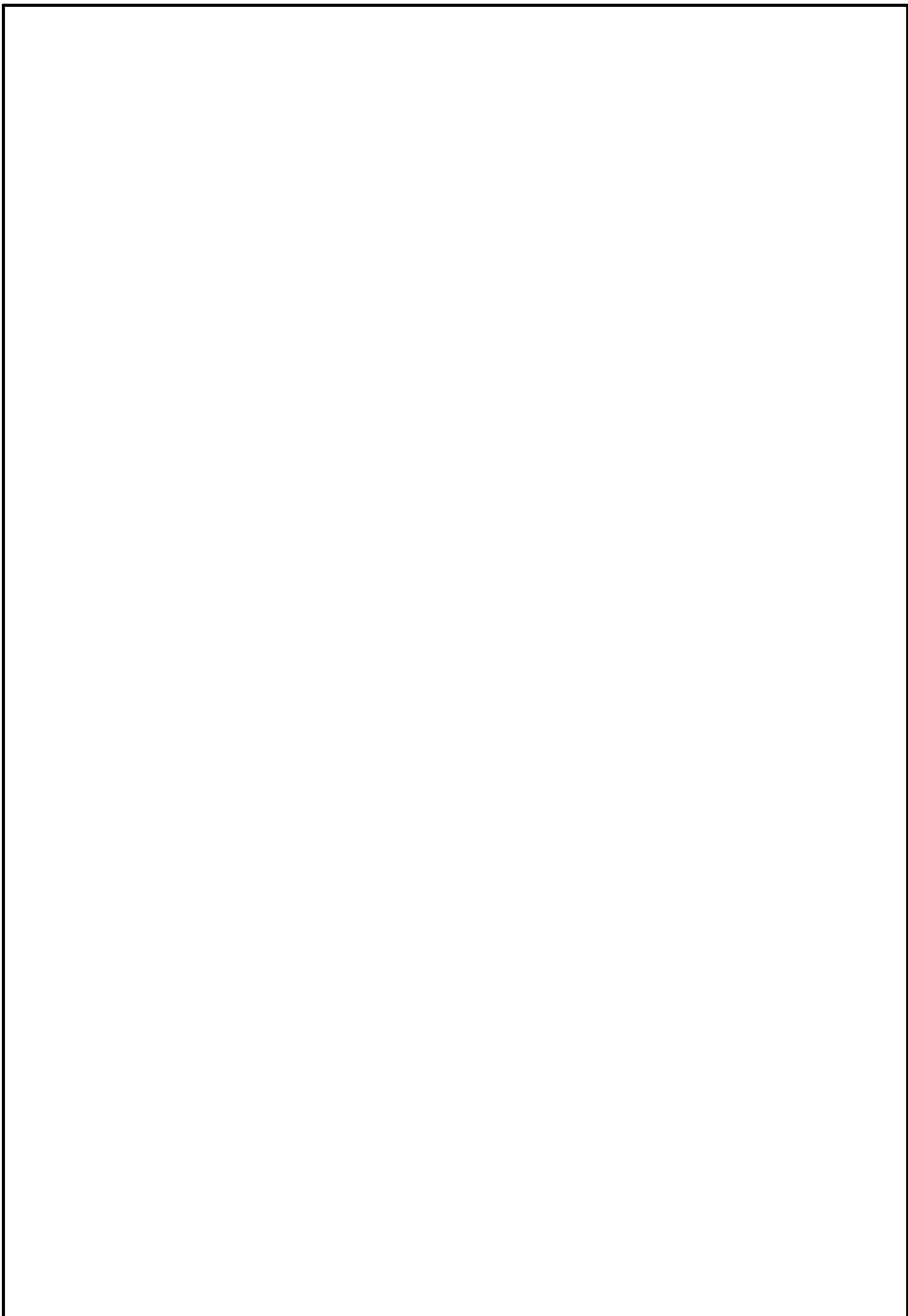
Many of the above issues are addressed in detail by Age Concern. Age Concern provides an excellent free factsheet service (publishing over 45 factsheets) dealing with many issues for older people, their families and people who work with them. You can find out more about Age Concern by contacting them at Age Concern England, Astral House 1268 London Road, SW16 4ER, **telephone 0870 500 99 66** or by looking at their very informative website at www.ageconcern.org.uk
If you or a member of your family are worried or concerned about any of the above issues why not come and talk to us. We are sure we will be able to help you!



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