



## THE LAW AND THE ELDERLY

Those of you who have received our News Letters will be aware of the great concern we share for the shabby way in which the Elderly have been treated by successive governments. Most, but not all, the areas where we can assist arise from the provision, or lack of it, for the care of elderly people in old age. The National Insurance contributions paid by all of us throughout our working lives have been treated by both the parties of government since 1945, as general taxation. No fund was created into which the contributions taken from our pay, was invested. There are, therefore, inadequate funds to pay the benefits to which we should be entitled without placing an intolerable tax burden on those still in work.

The political answer is, of course, one of expediency; having made us pay once for our care in retirement the politicians see nothing wrong in making us pay a second time for the same service. This strikes at the very root of what we look for in retirement - security. This is normally the security of knowing that we have our own homes and adequate savings - it is this that the government now attacks by providing a morass of regulations which even health and social services professionals find impenetrable.

Whilst Section 1 of The National Health Service Act 1947 - enshrines the principle that we are entitled to free medical care from cradle to grave - we now have bureaucratic categories of how ill you need to be before you are considered ill enough to be entitled to free treatment by the National Health Service. There is a complicated system of scoring to establish how ill you are - but every score sheet we have seen has been completed incorrectly and the standards laid down by many Health Service trusts do not comply with the, government set, national guidelines. In other words, some Health Authorities are making up excuses for not paying for your care.

We feel so strongly about these matters that three of us, John Hawkridge, Malcolm McLean and Sarah Hassell are members of Solicitors for the Elderly, a specialist grouping of solicitors providing courses and advice to enable us to keep up to date with this rapidly changing area of the Law.

There are many areas where we can assist, Most of these are mentioned briefly below, but this is not an exhaustive list. If you have a problem, which is not referred to, please contact us and we will be pleased to discuss it at a fixed fee interview (£60 inclusive of VAT).

## ENDURING POWERS OF ATTORNEY/COURT OF PROTECTION APPLICATIONS

It is always a good idea, (whatever your age) to make an Enduring Power of Attorney which enables a trusted relative or friend to take over your financial affairs, should you be incapacitated through accident, illness or old age. The beauty of an Enduring Power of Attorney is that it continues, unless you revoke it, for the whole of your life - whether or not you lose your mental capacity at some point in the future. Many people leave this too late, when, after they have lost their mental faculties, the only other alternative for dealing with their property and finances is a Court of Protection application, which is both expensive and long-winded. Sarah has experience in both these areas and is happy to advise you or your elderly relative.

## CARE HOMES - NURSING AND RESIDENTIAL

If you are very ill, particularly if you are to be discharged from hospital, many people are unaware that it is possible to receive free care in a Nursing Home, but an assessment must be carried out by the Health Service Trust and if the degree of incapacity meets certain criteria - they will fund your care - you are not subject to any means test or financial assessment.

If they will not fund then it may be possible, by means of an "impaired life annuity" - to fund quite high nursing home fees through a Insurance Company without the risk of using up all your assets - thus leaving your beneficiaries with a reduced but still substantial benefit.

Before accepting any advice that you or your elderly relative should go into a "Care" home it is essential that a proper assessment of their needs is carried out with a medical professional, preferably a Doctor or Consultant, a Social Worker and the patient, with their next of kin. A proper legal assessment requires that all these are present. After that assessment is agreed a "Care Plan" also needs to be agreed by the same people although, apart from the patient, the same individuals are not required. If this assessment and Care Plan are not implemented there is a strong possibility that if, when funds run out, you ask Social Services to assist, they will move the patient to a cheaper home. It is now well established that such a move, for a patient who is elderly and frail, is fatal in the majority of cases.



It is our experience that many Health and Social Workers are unaware of these dire consequences of the failure to follow the correct procedures.

There are a number of cases where the patient's family may not agree with the Health or Social Workers on the future care. In such circumstances you should be specific on why you feel that your relative needs a particular type of care, for instance to provide for them to be cared for and to remain in their own home, it is our experience that logic and common sense will normally prevail.

## THE FAMILY HOME

Many people ask whether it is possible to gift the family home to children now and whether that gift can be set aside at a later date should you need to go into a Care home, the cost of which you are required to personally fund. Many Social Workers have told our clients that they can over-ride such a gift.

You can make a gift of your home provided that the purpose of such gift was not to avoid the payment of Care Home fees and the responsibility for proving this, unless the gift was made within 6 months of your entering "Care", is on the Local Authority. If the reason for your gift was to remove your responsibility for maintenance and or insurance then it has been decided that your gift cannot be set aside. This is, however, a particularly delicate area and each case will depend very much on the precise facts. You must get proper advice if you are considering the gift of your home and please bear in mind that it may not reduce your estate which is liable to Inheritance Tax and that your children may be liable for Capital Gains Tax. Even so, it may still be worth consideration.

## PENSION AND BENEFITS

Many elderly people, predominantly women, do not have an adequate pension and are having a real struggle, just to get by. There are many means and non-means tested benefits which are intended to improve this situation but the problems in claiming these may seem to be too daunting. We will be pleased to help with information on what benefits should be available and how to claim them or to inform you where you can get more information or assistance with such claims.

## HOME VISITS AVAILABLE

If you can't come to us, we can come to you! Whether you need an Enduring Power or advice on any of the other matters above or a more unusual problem, We will be happy to visit you at home, in hospital or in your Care home.

Contact either John Hawkridge, Malcolm McLean or Sarah Hassell on Freephone 0800 019396 or e-mail [john@hawklaw.co.uk](mailto:john@hawklaw.co.uk) or [malcolm@hawklaw.co.uk](mailto:malcolm@hawklaw.co.uk) or [sarah@hawklaw.co.uk](mailto:sarah@hawklaw.co.uk)