

Living wills (advance decisions)

An advance decision, often referred to as a 'living will', is a document that can set out, in advance, your wishes and preferences for medical treatment. It is a relatively straightforward document that can speak for you, should you ever lose mental capacity.

This fact sheet gives only a general explanation. We advise that you make an appointment to discuss your own circumstances and wishes in more detail.

Our expert and experienced lawyers are easy to talk to and will give clear and straightforward advice.

What is an advance decision?

An advance decision is a decision to refuse treatment, including refusal of life-sustaining treatment.

Providing it is correctly prepared, the document allows you to set out details of particular types of treatment or procedures you don't want to have. It can also state that you don't want treatment to keep you alive.

Advance decisions (which used to be called advance directives) were recognised in law in April 2007 under the Mental Capacity Act 2005. They are the only form of 'living will' that is legally binding.

I made a living will before 2007. Do I need to make an advance decision?

Living wills made before the Mental Capacity Act came into force in 2007 are not legally binding in the same way. We recommend that you update your living will to an advance decision.

Who can make an advance decision?

Any adult may make an advance decision providing they have the mental capacity to do so. In this context, mental capacity means the person is able to make decisions and understand the consequences. The advance decision only comes into effect if you lose mental capacity at some future time.

In what situation would I want to make an advance decision?

It can be useful in a number of situations, for example:

- if you have strong views about prolonged treatment
- have ongoing and chronic health problems
- have received a specific prognosis
- have religious convictions that could affect your treatment.

How do I make an advance decision to refuse treatment?

Although there is no set format, there are certain legal requirements that must be followed for it to be valid. For example, it must be in writing and specific procedures must be followed regarding signing and witnessing the document.

Can I use an advance decision to request not to be resuscitated?

Yes. An adult with mental capacity has the legal right to refuse medical treatment, even if this results in their death. Providing this wish is set out in an advance decision, doctors are legally bound to respect it. By law, a valid advance decision refusing life-saving treatment means you can't be treated. If a doctor did treat you, legal action might be taken against them.

Can I refuse life-sustaining treatment?

Life-sustaining treatment is defined in the Act as treatment that, in the view of the person providing health care to you, is necessary to sustain your life. This could, for example, include artificial nutrition and hydration to someone who cannot eat or drink in the normal way.

If you wish to refuse life-sustaining treatment, the advance decision must specify what kind of treatment is to be refused, even if your life would be at risk. It is important that an advance decision is worded as carefully as possible otherwise it might not apply to a particular treatment or in particular circumstances.

We can give some guidance in helping you to consider treatment you would like to have or not to have. For more detailed consideration and advice, particularly if you already have a medical condition, you may wish to discuss this with your doctor(s).

Is there any other way of ensuring my wishes are known and acted upon?

You can choose someone you trust to make decisions about your treatment, by making what is called a lasting power of attorney (LPA). You can keep your attorney up-to-date with your views on treatment and/or keep notes with your LPA.

A fact sheet on LPAs is available from the downloads section of our website. Alternatively contact our wills, probate and trusts department on 01242 514000 for a copy.

Can I cancel an advance decision?

You can cancel an advance decision at any time while you still have capacity to do so.

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Is there an alternative if I don't want to make an advance decision or an LPA?

Yes, you could make an advance statement, which is a general expression of your wishes and views. It allows you to state your preferences and indicate what treatment or care you would like to receive. It can include non-medical things such as food preferences, religious beliefs and any aspect of life you particularly value. It is not legally binding but should be taken into account when others are deciding what is in your best interests.

Notification

As your solicitors, we will hold a copy of your advance decision on record. We recommend that a copy be lodged with your family, your GP and any other medical professionals attending you.

Advice and support

Please contact us to arrange a meeting to discuss your personal circumstances and wishes. We will be happy to advise on your specific concerns, in confidence, and prepare a document tailored to your needs.

Our office hours are 9.00 am to 5.30 pm Monday to Friday. Out-of-hours appointments can be arranged if these times are difficult. We may arrange home or hospital visits if you are not able to travel to us.

There are several steps leading into each of our buildings. If access is likely to be a problem, please let us know.

Contact

Please contact the lead partner in our wills, probate and trusts team.

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