

What is an Advance Directive or Living Will?



Don't leave your choice of medical treatment to chance. Without an Advance Directive -

- ! You may not be able to convey your wishes to hospital staff verbally and so, any medical treatment you receive will be decided upon by the medical profession.
- ! Your friends and relatives may not be fully aware of your wishes.
- ! Only an Advance Directive/Living Will is legally binding.

In Detail

What is an Advance Directive or Living Will?

When you are ill, you can usually discuss treatment options with your Doctor and then jointly, reach a decision about your future Care.

However, you may be admitted to hospital when unconscious or become unable on a temporary, or permanent basis, to make your own decisions about your treatment, or communicate your wishes. This may happen for example, if you have a car accident, a stroke, or develop dementia.

To use the technical term - you would 'lack mental capacity' to make an informed decision and/or communicate your wishes. In such situations, doctors have a legal and ethical obligation to act in your best interests. One exception to this is if you have made an Advance Decision refusing treatment. If this decision is valid and applicable to the circumstances, medical professionals providing your care are bound to follow it.

The term 'Living Will' could be used to refer to an Advance Decision/Directive or an Advance statement. An Advance Decision is a decision to refuse treatment; an Advance Statement is any other decision about how you would like to be treated.

Only an Advance Decision is legally binding, but an Advance Decision should be taken into account when deciding what is in your best interests.

You may wish to make an Advance Decision if you have strong feelings about a particular situation that could arise in the future.

This might relate to having a limb amputated following an accident or having a blood transfusion. More commonly, you may have been told that you have a terminal illness or form of dementia. You may wish to prepare an Advance Decision indicating the type of treatment you would not want to receive in the future.

Making an Advance Decision may give you peace of mind in knowing that your wishes should not be ignored if you are unable to take part in the decision making process at the relevant time.

Advance Decisions made before 1st October 2007

The part of the Mental Capacity Act 2005 relating to Advance Decisions came into force on 1st October 2007. An advance decision made before that date can still be valid if it meets the requirements set out in the Act. If you made an Advance Decision refusing life - sustaining treatment before 1st October 2007, you should review it to make sure it meets the requirements of the Act.

What is an Advance Decision to refuse treatment?

An advance decision to refuse treatment is the only type of living will that is legally binding. An adult with mental capacity can refuse treatment for any reason, even if this might lead to their death. However, no one is able to insist that a particular medical treatment is given, if it conflicts with what the medical professionals providing the treatment conclude is in the patient's best interests. This is why an Advance Decision can only be a refusal of treatment.

An advance decision to refuse treatment must indicate exactly what type of treatment you wish to refuse and should give as much detail as necessary about the circumstances under which this refusal would apply. It is not necessary to use precise medical terms, as long as it is clear what treatment is to be refused in what circumstances. An Advance Decision can only be made by someone over age 18 who has the mental capacity to make the decision. This means they must be able to understand, weigh up and retain the relevant information in order to make the decision to refuse treatment; and they are then able to communicate that decision.

An Advance Decision cannot be used to:

- Ask for anything that is illegal such as euthanasia or for help to commit suicide.
- Demand care that your healthcare team consider inappropriate in your case.
- Refuse the offer of food and drink by mouth.
- Refuse the use of measures solely designed to maintain your comfort such as providing appropriate pain relief, warmth or shelter.
- Refuse basic nursing care that is essential to keep you comfortable such as washing, bathing and mouth care.

Advance Decisions and Lasting Powers of Attorney

Alternatively, you could consider creating a Lasting Power of Attorney, which would allow you to choose who should make decisions about your treatment if you are not able to do so yourself. There is a section in the personal welfare LPA document where you can specify if you want your Attorney(s) to have the power to make decisions about life-sustaining treatment.

If you have made an Advance Decision refusing treatment this will become invalid if you later create an LPA giving someone else the power to refuse medical treatment on your behalf, when you no longer have capacity to make that decision yourself.

If you make an Advance Decision after creating an LPA, this will overrule the LPA. Your attorney cannot make a decision about treatment which you have made an Advance Decision to refuse, as long as the Advance Decision was made after you signed the LPA.

Who to consult about an Advance Decision

It is always advisable to discuss your intentions with a medical professional such as your GP and your family and friends.

If you have a terminal illness, you may wish to speak to the Doctor involved in your care. He / she can help you understand the consequences of refusing or opting for a particular treatment and relate specific decisions to the likely course of your illness. This Doctor can also help you express your wishes clearly and verify you were competent at the time you prepared and signed the document.

Reviewing your Advance Decision

It is important for the people providing your treatment to feel confident that you have not changed your mind since your advance decision was made. If new or improved medical treatments become available, or your personal circumstances have changed, its validity may be questioned if you signed it many years ago. You will also want to check it on a regular basis to be sure it continues to reflect your views.

How to cancel an Advance Decision

You can cancel an Advance Decision at any time while you still have capacity to do so. The cancellation does not have to be in writing; a verbal statement cancelling the decision should be respected. To avoid the risk that the relevant people do not know you have cancelled your decision, it is advisable to put the cancellation in writing if possible and to inform everyone who was aware of the decision's existence. You should destroy the original document, or mark on it that it has been withdrawn.