



Living Wills Factsheet

What is an Advance Decision?

Providing you have mental capacity, you have the right to either refuse medical treatment altogether or to set out the specific circumstances in which you would not wish to undergo medical treatment, even if this will lead to your death. These wishes can be discussed with your GP and recorded in your medical records. However, many people now choose to record their wishes in a formal document known as an Advance Decision, commonly referred to as a 'Living Will'. An Advance Decision has *legally binding effect*, meaning that medical professionals will follow your wishes.

What are the formalities to make a Living Will?

Should your Advance Decision include a refusal to receive life-sustaining treatment, for it to be legally binding, it must comply with certain formalities, namely:

- You must be 18 or over.
- When making your Advance Decision, you must have mental capacity to make the decisions that it records. For example, you must be able to understand the consequences of refusing medical treatment.
- It must be in writing, signed by you and witnessed. The witness must see you signing the document, although there is also an accepted procedure to follow if you are physically unable to sign. If at all possible, the witness should be somebody independent.
- You must specify what treatments you wish to refuse. You do not have to record this in medical language, but you must as specific as possible. However, if that is your wish, you can simply record that you refuse "*all life-sustaining treatment*" as it will be apparent to a doctor what is and is not "life-sustaining" in a particular situation. Examples of life-sustaining treatment include providing you with artificial hydration and nutrition, artificial ventilation or cardiopulmonary resuscitation (CPR).
- You should record the circumstances in which you wish the refusal of treatment to apply. For example, you may only want to refuse treatment if you have dementia or have suffered a stroke or cardiac arrest.
- It must include a statement confirming that you understand you will die as a result of your refusal. The law says this is important as it demonstrates you have considered your decisions and understand the consequences.

Mental Capacity Act 2005

If you made an Advanced Decision *before* 1 October 2007, you must review it to ensure that it complies with the Mental Capacity Act 2005, which came into force on that date.

Lasting Powers of Attorney (Health and Welfare Decisions)

A Lasting Power of Attorney for Health and Welfare Decisions (LPA) allows you to appoint one or more people who may take decisions on your behalf concerning your health care and personal welfare needs. These decisions can include expressly authorising your attorney(s) to either consent to, or refuse, life-sustaining treatment on your behalf.

If you make an LPA after making an Advance Decision your attorney will be able to override what is written in your Advance Decision as long as, when you made the LPA, you gave them the power to make the decision in question (for example, by choosing that they can make decisions about life-sustaining treatment).

If you make an Advance Decision after making an LPA your attorney will not be able to override what is written in your Advance Decision. In this situation, if a decision needs to be made about something that you have not detailed in your Advance Decision, then your attorney will still be able to act on your behalf.

To discuss making an Advance Decision, or should you have any questions, our Lifetime Planning and Wills team are available on 01225 755656.