



Living Will Factsheet

To discuss making a Living Will, our Lifetime Planning and Wills team are available on **01225 755656**.

Most of us are familiar, at least in general terms, with the purpose and importance of both Wills and Lasting Powers of Attorney (LPAs). However, there is often some confusion over what an 'Advance Decision' (sometimes also called an 'Advance Directive') means, and more commonly known as a 'Living Will'. In particular, how do they differ from Lasting Powers of Attorney (LPAs)?

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 called an Advance Decision.

An Advance Decision has legally binding effect and will be followed by medical professionals.

What are the formalities for making 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.
- At the time of 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. But there is also an accepted procedure to follow if you are physically unable to sign the document. The witness should be somebody independent.
- You must say what treatments you wish to refuse. There is no requirement to record these in medical language, but they must be as specific as possible. However, you can simply record that you refuse 'all life-sustaining treatment' as it will be clear 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 wish 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 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 about your health care and personal welfare needs. These decisions can include expressly authorising your attorney(s) either to consent to or refuse life-sustaining treatment on your behalf.

Therefore, there are similarities between an LPA and an Advance Decision. However, your attorney(s) must make decisions based on what they believe to be in your best interest. If a doctor considers that an attorney is not acting in your best interest, they may not follow the attorney's decision.

Advanced Decision versus LPA: which takes precedence?

In so far as they relate to decisions concerning life-sustaining treatment (and as long as they are valid) each of these documents revokes the other, with the more recent document taking precedence.

Advance Decisions and LPAs are both very important documents, and it is very easy to make a mistake which may result in your wishes not being carried out. Accordingly, if you are considering making or reviewing an LPA and/or an Advance Decision, it is important to take legal advice to ensure that:

- your options are discussed fully;
- your wishes are clearly and properly recorded;
- the legal formalities are complied with; and
- there is no contradiction between documents.