

Information for patients, relatives and carers

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The Mental Capacity Act 2005 enables a mentally capable adult to make plans for a time when they may no longer have capacity.

There are two ways in which this can be done:

- Lasting Powers of Attorney; and
- Advance Decisions.

Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is a legal process that allows you to choose someone else to manage your future affairs, on your behalf. This person is known as an Attorney.

There are two kinds of LPA.

- A Property and Affairs LPA gives the Attorney powers to make decisions about your property and finance.
- A Personal Welfare LPA gives the Attorney the powers to makes decision about your health and personal welfare, such as medical treatment or where you live.

LPAs replace the Enduring Power of Attorney.

For more information about Enduring Power of Attorney, contact the Office of the Public Guardian.

Making a Lasting Power of Attorney

To make a LPA you must be aged 18 years or over and be able to understand what an LPA is and what its effect would be.

To make an LPA you need to complete a legal form. Forms and further guidance is available from the Office of the Public Guardian.

 **0300 456 0300**

 www.publicguardian.gov.uk

Although it is not necessary to use the services of a solicitor, you may find their advice helpful.

Advance Decisions to Refuse Treatment

What is an Advance Decision?

An Advance Decision enables someone aged 18 or over, while they are still capable, to refuse specific medical treatment for a time in the future when they may lack capacity to consent to or refuse that treatment.

When does an Advance Decision take effect?

An Advance Decision will only come into effect if you have lost the mental capacity to make the decision about the medical treatment you require at the time the decision has to be made.

Healthcare professionals must follow an Advance Decision if it is valid and applicable to the specific treatment you have refused and the circumstances which have arisen.

An Advance Decision can refuse treatment for a physical or mental disorder. A refusal of treatment for mental disorder can be overruled by the Mental Health Act.

How Do I Make an Advance Decision?

It is recommended that you talk to health professionals before making an Advance Decision. They will help you to understand the advantages and disadvantages of refusing certain specific medical procedures in advance.

There are no specific legal requirements about the form of an Advance Decision, unless you are refusing life-sustaining treatment (see below). However, an Advance Decision should state clearly what treatment is to be refused.

It is also useful to explain the reasoning behind your Advance Decision. This will help to show that you had the necessary capacity to make the decision. You may wish to ask a solicitor to draft an Advance Decision for you.

Important Points when writing an Advance Decision

- An Advance Decision should refer specifically to treatment.
- An Advance Decision should not be a substitute to discussing your treatment with your doctor or your wishes with your family.
- You cannot ask for specific treatment, only

If my Advance Decision includes a refusal of life-sustaining treatment

If you are refusing life-sustaining treatment, to ensure your Advance Decision is valid and applicable it must:

- be in writing;
- be signed, dated and witnessed; and
- state clearly that the decision applies even if life is at risk.

Whom should I inform of my Advance Decision?

You should keep a copy of the Advance Decision document and give a copy to your GP to keep with your medical records. Consider also giving copies to:

- your hospital;
- close family and friends; and
- your Attorney under a Personal Welfare LPA (if one has been appointed).

Remember, it is your responsibility to show that you have made an Advance Decision.

Can I withdraw an Advance Decision?

An Advance Decision can be cancelled or altered while you still have capacity to do so. It is advisable to put a cancellation of the decision in writing and to let everyone you have informed of its existence know.

How does an Advance Decision relate to Lasting Powers of Attorney?

If you appoint an Attorney under a Personal Welfare LPA after you have made an Advance Decision, this can invalidate the Advance Decision, if the Attorney is given power to make decisions about the same treatment mentioned in your Advance Decision.

However, if an Advance Decision is made after the appointment of an Attorney, the Advance Decision would overrule the decision of the Attorney.

Where can I get further advice or support?

The staff responsible for your care, including your doctors and nurses will be able to discuss this with you.

Useful websites:

www.publicguardian.gov.uk

www.adrtnhs.co.uk

Tell us what you think

We hope that you found this leaflet helpful. If you would like to tell us what you think, please contact Kath Sartain, Macmillan Lead Cancer Nurse, Trust Headquarters, Scarborough Hospital, YO12 6QL or telephone 01723 236254.

Teaching, Training and Research

Our Trust is committed to teaching, training and research to support the development of staff and improve health and healthcare in our community. Staff or students in training may attend consultations for this purpose. You can opt-out if you do not want trainees to attend. Staff may also ask you to be involved in our research.

Patient Advice and Liaison Service (PALS)

The York based team can be contacted on 01904 726262, or via email at pals.york@york.nhs.uk

The Scarborough based team can be contacted on 01723 342434, or via email at pals.scarborough@york.nhs.uk

Answer phones are available out of hours.

Providing care together

in York, Scarborough, Bridlington, Whitby, Malton, Selby and Easingwold

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