

## \* Advance Decisions

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### Deciding your future medical treatment

Many of us have clear ideas as to how we would wish to be treated and cared for in the event of future illness or serious injury. These might include certain medical treatments or procedures that we would not want to receive. Far fewer of us, however, take active steps to formalise these wishes in writing. However, legal provision does exist for persons who lose capacity at some point to retain a degree of control over their medical treatment at that time and to refuse certain treatment. This is possible through entering into an Advance Decision.

Advance Decisions are governed by the Mental Capacity Act 2005 and prior to this were often referred to as "Living Wills". To enter into an Advance Decision the person making it must be over 18 and mentally competent. The Advance Decision should specify precisely what treatment is refused and, if this is life sustaining treatment, then the Advance Decision must be written, signed by the person making it, witnessed and include a statement that it is to apply even if life is at risk. A record made electronically or in medical notes will be regarded as being written. It is not possible to refuse basic nursing care or to request the acceleration of your death by drugs or other means or to refuse certain treatment if you are detained under the Mental Health Act.

For example, Harry, aged 70, is presently in good health and mentally competent, He enters into an Advance Decision stating that if he were to be diagnosed with a terminal illness, and expected to have less than three months to live, he would not wish to be resuscitated if he were to suffer cardiac arrest, or given artificial aid to breathe such as a ventilator, or given antibiotics to treat any infection that he might acquire.

### Implementation

Advance Decisions will only be implemented when the person making it has lost capacity as until that point the person concerned retains the ability to make decisions as the situation arises. If someone has done something inconsistent with the Advance Decision since making it then it may not be implemented. For example, Mary specified in her Advance Decision made in 2010 that if she does not have capacity then she would not wish to receive a blood transfusion even if her life depended on it. However, in 2013 Mary required a blood transfusion following an operation and she consented to this treatment. In 2015, Mary, who has been incapacitated by a stroke, requires another blood transfusion and this is given, despite the Advance Decision, as Mary's conduct since entering into the Advance Decision has been clearly inconsistent with its provisions in this respect.

Another situation when an Advance Decision might not be implemented is if circumstances arise which the medical staff believe that, had the patient anticipated them, would have affected his or her decision. So, for example, Jane has multiple sclerosis which may give rise to her incapacity at some point, although the form of the disease from which she suffers is such that she has a life expectancy of some years. Jane has entered into an Advance Decision specifying that if she loses capacity she does not wish to be resuscitated if the need arises. She then suffers a car accident which leaves her

unconscious and she requires emergency resuscitation as a result of the accident. The medical team treating Jane could well take the view that, had she anticipated these precise circumstances, Jane would not have refused treatment, and consequently decide not to implement her Advance Decision in this instance.

### **Other limitations**

An Advance Decision can only deal with the refusal of specified medical treatment in certain defined circumstances. It cannot require your medical team to give you specified treatment and it cannot give someone else the right to make medical decisions on your behalf if you are incapacitated. If the latter is required then this is possible to achieve by entering into a Health and Welfare Lasting Power of Attorney. If an attorney is appointed for this purpose this will mean that any prior Advance Decision will not then be implemented as the decision then lies with the attorney.

If, however, your objective is simply to deal with the refusal of medical treatment in the event of incapacity then it is likely that an Advance Decision will suit your needs better than the more formal Health and Welfare Lasting Power of Attorney.

### **Further information**

For further information on this or on any other Private Capital matter you may have, please contact us via:

[See key contacts](#)

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