

## Factsheet 72

# Advance decisions, advance statements and living wills

April 2024

### About this factsheet

There are things you can



# 1 Making decisions about treatment and care

When you are ill, you usually discuss treatment options and their pros and cons with the doctor, to help you reach a doctor,

## 2 What is an advance decision to refuse treatment?

An advance decision to refuse treatment can be made while you have mental capacity. It lets you choose and explain which medical treatments  
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## 5.1 Are there things an advance decision cannot include?

You cannot:

choose to refuse basic care that is essential to keep you comfortable, for example nursing care, pain relief, or keeping you warm

choose to refuse the offer of food or drink by mouth

ask for anything unlawful e.g. euthanasia or help to take your own life

demand specific treatment. Healthcare professionals do not have to give treatment they consider clinically unnecessary, futile, or inappropriate

refuse treatment for a mental disorder if you meet relevant criteria to be detained under the *Mental Health Act 1983*.

## 5.2 Do I need to involve a doctor or solicitor?

You do not have to involve a doctor when making an advance decision but a doctor can:

help you understand the consequences, advantages, and disadvantages of what you are proposing, and

help you phrase your wishes, so you avoid making unclear statements that could raise doubts about its applicability in the future.

Involving your GP or medical team means they record your wishes in your medical notes. Reviewing your advance decision as your illness progresses ensures these notes continue to accurately reflect your

### **5.3 Does an advance decision need to be in writing?**

Although advisable for an advance decision to be in writing, if the treatment you want to refuse is not life-sustaining, you can

## 5.4 If you want to refuse life-sustaining treatment

To be legally valid, an advance decision to refuse *life-sustaining* treatment must be in writing, signed, and witnessed.

*Life-sustaining* treatment is treatment that, in the view of the person providing your healthcare, is necessary to keep you alive.

Examples of *life-sustaining* treatment include: being given food or drink by tube if you cannot take it by mouth (doctors call this *artificial nutrition and hydration*); kidney dialysis; organ transplant; chemotherapy or other cancer treatment; using a machine to help you breathe; restarting your heart or breathing using CPR (cardiopulmonary resuscitation).

Although not compulsory, the *Code* says it is very important to discuss decisions to refuse life-sustaining treatment with a health professional.

As well as recording details described in section 5.3, **you must include a clear, specific written statement that the advance decision is to apply to the specific treatment, even if your life is at risk.**

If you make an advance decision to refuse *life-sustaining* treatment at a different time, or in a separate document to another advance decision, you (or someone you direct) must sign and date it in the presence of a witness, who must also sign and date it.

## 5.5 Must a doctor always follow an advance decision?

If you prepare an advance decision according to the requirements of the *Act*, it is legally binding.

If medical professionals believe you lack capacity to make a decision about treatment covered in your advance decision, having followed the process in section 5 to determine mental capacity, they must follow your wishes, regardless of whether they believe it is in your *best interests*, if:

they are aware of your advance decision

it is valid, and

it applies to the current situation.

### Valid

To be **valid**, you must have been aged 18 or over and had mental capacity at the time you made it. Doctors must be sure you have not withdrawn it, or clearly said or done something that goes against it which would suggest you have changed your mind.

They must be sure that since you made it, you have not created a Lasting Power of Attorney (LPA) for health and



## Applicable

To be **applicable**, it must apply to the situation in question and in current circumstances. Doctors should consider whether there are new developments you did not anticipate at the time, which could have affected your decision, for example new developments in medical treatment, or changes in your personal circumstances.

If there is doubt over the existence, validity or applicability of an advance decision, doctors can provide treatment they believe is in your *best interests* while seeking clarification. See section 8 for more information.

## Emergency care

The Code states that doctors should not delay emergency treatment to look for an advance decision if there is no clear indication that one exists. If it is clear that an advance decision exists and is likely to be relevant, doctors should assess its validity and applicability as soon as possible. Sometimes the urgency of treatment decisions will make this difficult.

## 5.6 Ensuring others are aware of an advance decision

It is your responsibility, under the *Code*, to take steps to ensure your advance decision is drawn to the attention of your GP and other doctors who treat you and if it is written down, where they can find it.

There are several things you can



## 9 Advance decisions made before 1 October 2007

The part of the *Act* relating to advance decisions came into force on 1 October 2007.

An advance decision made before then (often called an advance directive or living will) remains valid if it meets requirements described in sections 5 to 5.5. If it includes a wish to refuse *life-sustaining* treatment, it should include a statement that it is to apply even if your life is at risk.

Exceptionally an advance decision refusing life-sustaining treatment made before that date may be valid and applicable even if it does not include a statement about life being at risk, provided that it is writing and certain other conditions are met.

If you made an advance decision before or around the time the *Act* came into force and have not reviewed it, it is important to review, sign and date it as described in section 7. This ensures it reflects your current wishes and reduces the risk of a doctor questioning its validity.

## 10 Do Not Attempt Cardiopulmonary Resuscitation (DNACPR)

Cardiopulmonary Resuscitation (CPR) may be an option if you stop breathing or your heart stops beating. This can involve chest compressions, artificial ventilation, an injection of drugs, or a defibrillator may be used to try and restart your breathing or heart.

You may decide you do not want CPR should the need arise. If so, you can complete a DNACPR form with your GP or healthcare team in advance to be kept with your medical records. Practices may have their own forms, but you may see the following forms used:

Recommended Summary Plan for Emergency Care and Treatment (ReSPECT)

Treatment Escalation Plan (TEP)

These forms are intended to help guide clinicians in an emergency but are not legally binding – for the decision to be legally binding, you must create a valid and applicable advance decision (see section 5.5). It is a good idea to talk with family and friends about your preferences. Whilst this may be difficult, it helps to ensure

## Consent

A doctor can add a DNACPR decision to your records without your consent if they believe that by giving CPR, you will not live longer, or it may cause you more harm, for example, if your organs are already too damaged because of another illness. The decision should be discussed with you and your doctor should ask about your wishes and preferences. If you do not agree with a decision, you can ask for a second opinion.

If you are unable to discuss the DNACPR decision due to unconsciousness or a lack of mental capacity, the doctor should check if there is a valid and applicable Advance Decision to Refuse Treatment, or whether someone is appointed to make decisions on your behalf, such as a registered Lasting Power of Attorney for health and care decisions.

In the absence of the above, the healthcare team must make a decision *best interests'* and should consult family or friends where  
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## Useful organisations

### **Alzheimer's Society**

[www.alzheimers.org.uk](http://www.alzheimers.org.uk)

Support Line 0333 150 3456

Offers advice, information and support in England and Wales to people with dementia and their family. They produce an advance decision to refuse treatment template and factsheet.

### **Court of Protection**

[www.gov.uk/courts-tribunals/court-of-protection](http://www.gov.uk/courts-tribunals/court-of-protection)

Telephone 0300 456 4600

Its role is to protect individuals who lack capacity. This includes making rulings on decisions about their care and welfare, and appointing deputies to act on their behalf.

### **Macmillan Cancer Support**

[www.macmillan.org.uk](http://www.macmillan.org.uk)

Telephone 0808 808 00 00

Provides information, advice and financial support for people facing cancer, their carers and loved ones. They produce an advance decision to refuse treatment template *Planning ahead for the end of life, England and Wales*.

### **Marie Curie**

[www.mariecurie.org.uk](http://www.mariecurie.org.uk)

Support Line 0800 090 2309

Provides support for people living with any terminal illness and their families.

### **MedicAlert**

[www.medicalert.org.uk](http://www.medicalert.org.uk)

Telephone 01908 951045

A non-profit, membership organisation that offers a way for emergency services to access medical information from a secure database when you are unable to share this information with them yourself.

### **Office of the Public Guardian**

[www.gov.uk/government/organisations/office-of-the-public-guardian](http://www.gov.uk/government/organisations/office-of-the-public-guardian)

Telephone 0300 456 0300

The Office of the Public Guardian protects people in England and Wales who may not have the capacity to make certain decisions for themselves including about their health and finances. It supports the Public Guardian in carrying out the legal functions of the *Mental Capacity Act 2005*.



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