

Your rights in Northern Ireland

This factsheet is a quick guide to your rights at the end of life in Northern Ireland. If you would like further information about your end-of-life rights and choices call our free Information Line on **0800 999 2434**

What rights do I have towards the end of life in Northern Ireland?

At the moment there is no law in Northern Ireland that gives you the legal right to refuse medical treatment in advance of a time that you lose the capacity to communicate what you want. However, an advance refusal of treatment is an important statement of your wishes and should be taken into account if decisions are being made on your behalf.

What is capacity?

Mental capacity is the ability to make decisions for yourself about a particular matter. Having 'capacity' means having the ability to understand and retain information relating to the decision, understanding the consequences of any choice you make, taking that information into account, and being able to communicate your wishes. You might 'lack capacity' because, for example, you have:

- dementia
- a mental health problem
- a brain injury
- had a stroke
- been given end-of-life sedation

If you are an adult with mental capacity you have the legal right to refuse any medical treatment, and the law assumes that individuals have the capacity to make decisions unless it is proven otherwise. For decisions about your health, care and consent to or refusal of treatment, a doctor or other healthcare professional will need to decide whether you have the capacity to make that decision.

In Northern Ireland, a 'common law' (court law) test is used to determine capacity:

- Can the patient understand and retain information about their treatment?
- Does the patient believe that information?
- Can the patient weigh up that information, balancing risks and needs, to arrive at a decision?

Who decides what treatment I receive?

If you have mental capacity, you can make the decision about what treatment you want from the options offered to you by the doctor. You have the legal right to refuse any medical treatment, including life-sustaining treatment (like resuscitation, artificial nutrition and hydration, or breathing machines).

The General Medical Council's (GMC) Guidance on treatment and care towards the end of life states that your doctor should help you decide which treatment is right for you. Your doctor:

- should explain to you in clear language what your treatment options are;
- should explain the pros and cons of each treatment and give you time, information and help so that you can make your decision;
- can recommend a treatment to you, but not pressure you to accept it.

Unlike the refusal of treatment, a request for treatment is not legally binding. This is because no one has the legal right to demand treatment. If you ask for a treatment that your doctor does not believe is appropriate, they should:

- discuss your reasons for wanting the treatment with you;
- explain why they don't think it is appropriate and discuss other options;
- refer you to another doctor for a second opinion if you ask for one.

What if I am losing mental capacity?

The doctor should talk to you about the future and encourage you to think about the care or treatment you would want. They should support you to make decisions about what you want in advance.

What options do I have for making decisions in advance?

If you live in England, Wales or Scotland you can refuse treatment in Advance by making an Advance Decision or Advance Directive (also known as a Living Will), and you can give another person the legal right to make decisions on your behalf by making a Power of Attorney.

In Northern Ireland there is no Parliamentary or Assembly law on Advance Decisions. This means there is no statutory recognition of Advance Decisions, and therefore any wishes set out within an Advance Decision form are not legally binding. However, an Advance Decision could potentially be upheld in Northern Ireland under common law (in court).

In Northern Ireland there is also no way to give another person the legal power to make decisions about your health or care on your behalf. However, if you lacked capacity your doctor should consult with and try to reach an agreement with your loved ones about what treatment would be in your best interests.

The Mental Capacity (Health, Welfare & Finance) Bill is under discussion, and it is hoped that it will be enacted in Northern Ireland in 2014. It will cover various issues around mental capacity including the refusal of medical treatment.

Why would I want to make an Advance Decision?

One of the general principles of the GMC's guidance on end of life care is that if someone lacks capacity to make a decision for themselves and needs medical treatment, the wishes of the person should be taken into consideration when making a decision on their behalf. So although Advance Decisions aren't legally binding in Northern Ireland, health professionals should take them into account when deciding on how to treat you. Family and friends can also use them as evidence of your wishes.

If you lose the ability to communicate or the capacity to make a decision then an Advance Decision is a direct communication between you and the doctors treating you. It allows you to speak for yourself and means that other people will have a much better idea of what you want.

If you have ideas about what kind of treatment you would want to refuse or accept in specific circumstances then an Advance Decision will help to ensure your wishes are followed.

Preparing an Advance Decision can open a dialogue between you and your friends, family or healthcare professionals, enabling you to talk about what you want and to make your wishes known.

How can we help?

- Compassion in Dying can send you a free Advance Decision form
- We provide a free and comprehensive guide to *Your Rights at the End of Life*

- The following Compassion in Dying factsheets may be helpful:
 - *Helpful questions to consider when making an Advance Decision*
 - *How well do you know my wishes?*
 - *Reviewing and updating your Advance Decision*

If you would like any of the factsheets mentioned here or want information about end-of-life rights more generally please call our free **Information Line** on **0800 999 2434** or visit our website **www.compassionindying.org.uk**.