

Information Line: 0800 999 2434

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Advance Decisions and Lasting Powers of Attorney for Health and Welfare – What is best for me and can I have both?

This factsheet is about the differences between Advance Decisions and Lasting Powers of Attorney for Health and Welfare. It is for people living in England and Wales. If you live in Scotland or Northern Ireland, or if you would like more information about planning ahead for your future care and treatment, please contact us.

For more information about making an Advance Decision or Lasting Power of Attorney for Health and Welfare, please see our factsheets *Advance Decisions (Living Wills) – An introduction* and *Lasting Power of Attorney for Health and Welfare – An introduction*.

There are two different types of Lasting Power of Attorney (LPA).

- An LPA for Property and Financial Affairs covers decisions about money and property.
- An LPA for Health and Welfare covers decisions about health and personal welfare.

This factsheet is only about the LPA for Health and Welfare.

What is a Lasting Power of Attorney for Health and Welfare?

A Lasting Power of Attorney for Health and Welfare (LPA) allows you to give someone you trust the legal power to make decisions about your health and personal welfare on your behalf, in case you later become unable to make decisions for yourself. The person who makes the LPA is known as the ‘donor’ and the person given the power to make decisions is known as the ‘attorney’.

Your attorney can make decisions about anything to do with your health and personal welfare. This can include refusing medical treatment, where you are cared for and the type of care you receive, as well as day-to-day things like your diet, how you dress and your daily routine. You can also list any instructions that your attorney must follow, or any preferences that you would like them to take into account when making decisions on your behalf.

You must also choose whether or not you want your attorney to be able to make decisions about life-sustaining treatment. Your attorney can only make decisions for you if you cannot make the decision yourself.

What is an Advance Decision?

An Advance Decision allows you to write down any medical treatments that you do not want to have in the future, in case you later become unable to make or communicate decisions for yourself. It will only be used if you cannot make or communicate a decision for yourself. The legal name is an Advance Decision to Refuse Treatment, and it is also sometimes called a Living Will or an Advance Directive.

Advance Decisions are legally binding in England and Wales, as long as they meet certain requirements. This means that if a healthcare professional knows

you have made an Advance Decision, they have to follow it. If they ignore an Advance Decision then they could be taken to court. See our factsheet *Advance Decisions (Living Wills) - Is my form legally binding?* for more information on the requirements an Advance Decision needs to meet.

Why might I be unable to make decisions for myself?

There are many reasons why you might be unable to make decisions for yourself. For example, you could become unconscious or have dementia, a mental health condition, a brain injury or a stroke. If you cannot make decisions for yourself, it is called not having ‘capacity’. You lack capacity to make a decision if you cannot do one of these things:

- understand and retain information relating to the decision;
- understand the consequences of any choice you make;
- take that information into account; or
- communicate your wishes.

The Mental Capacity Act says that people must be assumed to have capacity unless it is proven otherwise. However, if a decision needs to be made about your health or care and a healthcare professional thinks that you might lack capacity, then they will need to assess whether or not you have the capacity to make that decision.

Whether or not you have capacity is decided on a decision-by-decision basis. For example, you might have capacity to decide what you want to eat every day but not have capacity to understand what will happen if you refuse life-sustaining treatment.

You might lose capacity to make a decision for a short time (for example, if you

are knocked unconscious) or for the indefinite future (for example, if you are in a vegetative state).

Can I have both an Advance Decision and an LPA?

You can have both an Advance Decision and an LPA. If you do, the one that you made more recently will take priority when a decision needs to be made about your treatment and care. For example:

If you make an LPA after making an Advance Decision – your attorney will be able to override what is written in your Advance Decision as long as, when you made the LPA, you gave them the power to make the decision in question (for example, by choosing that they can make decisions about life-sustaining treatment).

If you make an Advance Decision after making an LPA – your attorney will not be able to override what is written in your Advance Decision.

In this situation, if a decision needs to be made about something that you haven't detailed in your Advance Decision, then your attorney will still be able to act on your behalf.

If you have both an Advance Decision and an LPA you should make sure that you tell your attorney about your Advance Decision and give them a copy.

What else should I consider when thinking about whether to make an Advance Decision or an LPA?

There are some differences between an Advance Decision and an LPA that you might want to consider. These differences are outlined in the sections that follow.

How long does it take for an Advance Decision and an LPA to become valid?

An Advance Decision can be used as soon as it has been completed, signed and witnessed.

An LPA can only be used after it has been registered with the Office of the Public Guardian. This can take up to three months.

What do an Advance Decision and an LPA cover?

An Advance Decision covers refusals of medical treatment. It also only applies to the treatments and circumstances that you write about in the form. It will not apply if you are in a situation that is not covered in your Advance Decision.

An LPA allows your attorney to make any decision about your health and personal welfare. This includes where you live and how you are cared for, your diet and what you wear as well as decisions about medical treatment.

Who makes decisions for me if I make an Advance Decision or an LPA?

In an Advance Decision, you make a refusal of medical treatment. It is in your own words.

In an LPA, *your attorney* will make decisions on your behalf. You therefore need to trust your attorney to understand your wishes, respect your values and be able to make the best decisions for you.

Who is involved in an Advance Decision and an LPA?

To make an Advance Decision you need yourself and a witness. It is also a good idea to talk to your GP about your Advance Decision.

To make an LPA you need the following people:

- at least one person to be your attorney;
- a 'certificate provider', who must sign the form to check that you understand what you are doing and that nobody is putting pressure on you to make the LPA. They can be either a professional (like a GP or a solicitor) or someone who has known you for at least two years (like a friend or a neighbour).
- a person to witness both you and your attorney's signatures (this witness can be the same person)
- up to five people who will be notified when the LPA is sent to be registered. This is optional so you do not have to choose any people to be notified if you do not want to.

You do not need to use a solicitor to make an Advance Decision or an LPA.

How much does it cost to make an Advance Decision and an LPA?

It is free to make an Advance Decision.

It currently costs £110 to register an LPA. Some people with low incomes or on certain benefits can pay a reduced fee.

How will people know that I have made an Advance Decision and an LPA?

An Advance Decision and an LPA are both legally binding, but you need to make sure that anyone involved in your care is aware that you have made one. You can do this in different ways.

There is no central register of Advance Decisions. You should give a copy to your GP, those close to you such as family members and friends, and anyone else involved in your care. You can give a copy to your local hospital and some Ambulance Trusts are happy to record that you have one. You can also carry a Notice of Advance Decision card in your wallet or wear a Medic Alert bracelet.

Once an LPA has been registered the Office of the Public Guardian records it on a national register. People can then apply to search the register to find out if you have an LPA, however this can take up to ten working days. It is therefore important to let your GP, those close to you such as family members and friends, and anyone else involved in your care know that you have made an LPA.

How can we help?

Compassion in Dying can send you a free Advance Decision form and guidance notes that explain how to complete it. We can also support you to complete your form over the phone.

If you have any questions about Advance Decisions, Lasting Powers of Attorney for Health and Welfare, planning ahead or decision making more generally then please contact our Information Line (our contact details are on the last page).

- We can send you a copy of *Planning Ahead: Making Choices for the End of Life*, a free and comprehensive guide to planning ahead for your future care and treatment.

The following Compassion in Dying factsheets may also be helpful:

- *Advance Decisions (Living Wills) – An introduction*
- *Lasting Power of Attorney for Health and Welfare – An introduction*

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Contact our Information Line:

Phone: **0800 999 2434**

10am-4pm Monday-Friday

Email: info@compassionindying.org.uk

Address: Compassion in Dying

181 Oxford Street, London W1D 2JT

Compassion in Dying supports people to plan ahead to ensure their wishes for treatment and care are respected.

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A list of references is available on request