



Advance Decisions and Mental Health

This factsheet is for people with a mental illness, or a history of mental illness, who want to understand when their Advance Decision will be followed. It also talks about how an Advance Statement can help in planning for future treatment and care. It is for people living in England and Wales.

The law that covers how people are treated for mental illness is called the Mental Health Act (MHA). The law that covers how a decision can be made in someone's best interests when they don't have the capacity to make it themselves, and how they can plan ahead for that, is called the Mental Capacity Act (MCA).

There is a glossary at the end of this factsheet with information about both of these laws and some of the terms used.

What rights do I have to make decisions about my medical treatment?

You have the right to make decisions about your treatment and care. You can decide if you want to consent to a treatment and you can also decide to refuse treatment, even if that treatment is necessary to save your life. You must have given your consent before you can be given medical treatment. This means that

if you refuse treatment, the healthcare professional treating you must respect your wishes. But if you have a mental illness and are detained under the MHA (known as being 'sectioned'), in some situations you can be given treatment for your condition without your consent.

You can plan ahead for a time when you might be unable to make a decision about your treatment. Planning ahead is a way to express what is important to you now, in case you lack capacity to make those decisions in the future. One of the ways you can do this is to make an Advance Decision.

What is capacity?

Capacity is the ability to make a decision for yourself. It is time and decision-specific. This means that whether or not you have capacity depends on when the decision needs to be made and what the decision is. So, you might lack capacity to make a decision on one day but be able to make that decision at a later date. This might be, for example, because you have dementia and your ability to remember information differs from one day to the next.

Also, you might have capacity to make some decisions but not others. For example, you might have capacity to decide what you want to eat every day but not to understand what will happen if you refuse life-sustaining treatment.

You lack capacity to make a decision if:

- you have an impairment or disturbance of the mind or brain (for example, because you are unconscious, have dementia, a mental health condition, a brain injury or a stroke)

and you cannot do one of these things:

- understand information relating to the decision
- retain that information for long enough to make the decision
- take that information into account when making the decision
- communicate the decision

The law says that people must be assumed to have capacity unless it is proven otherwise. You don't lack capacity to make a decision just because you have a mental illness.

What is an Advance Decision?

An Advance Decision allows you to record any medical treatments that you do not want to be given in the future, in case you later lack capacity and cannot make or communicate a decision for yourself. The legal name is an Advance Decision to Refuse Treatment, and it was previously known as a Living Will or Advance Directive.

Advance Decisions are legally binding as long as they are ‘valid’ and ‘applicable’ (see page 5). This means that if a healthcare professional is aware of your Advance Decision, they have to follow it. If they ignore an Advance Decision, they could be taken to court. The only exception to this is if you are sectioned and your Advance Decision refuses treatment for your mental illness. This is explained in more detail below.

There is no set form for making an Advance Decision. You can write one yourself, as long as it meets the requirements needed to be valid and applicable – there are additional requirements if you are refusing life-sustaining treatment. You can also use the free template forms provided by Compassion in Dying.

For more information on how to make an Advance Decision, see our factsheet *Advance Decisions (Living Wills) – An introduction*.

How can an Advance Decision help me?

Making an Advance Decision can:

- help you to make informed decisions about your treatment in your own time by thinking through your options
- support you to manage your condition in a way that works for you
- help you stay in control of your treatment if you lack capacity in the future

An Advance Decision is valid and applicable if:

- the person was over 18 when they made the Advance Decision
- the person had capacity at the time they made the Advance Decision
- the person lacks capacity to give or refuse consent to the treatment in question
- the treatment in question is the treatment specified in the Advance Decision
- the circumstances in question are the circumstances set out in the Advance Decision
- it has not been withdrawn by the person at a time when they had capacity to do so
- there are no reasonable grounds to believe that circumstances exist that the person did not or could not have anticipated at the time of making the Advance Decision, which would have affected their decision
- the person has not made a Lasting Power of Attorney for Health and Welfare (LPA) after the Advance Decision and
- since making the Advance Decision, the person has not acted in a way that is clearly inconsistent with the content of the Advance Decision.

AND

If an Advance Decision includes a refusal of life-sustaining treatment it must also:

- include a statement that the Advance Decision is to apply even if the person's life is at risk
- be in writing
- be signed and witnessed

See Compassion in Dying's factsheet *Advance Decisions (Living Wills) – When are they legally binding?* for more information.

Can I make an Advance Decision if I have a mental illness?

Yes, as long as you have capacity and are over 18 you can make an Advance Decision. This includes when you are sectioned, but if you are sectioned it might not be followed. In this situation, whether or not your Advance Decision will be followed depends upon whether you have refused treatment for your mental illness or for something physical that is unrelated to your mental illness.

Can I refuse treatment for my mental illness in an Advance Decision?

Yes, but if you are sectioned a healthcare professional does not have to follow it.

If you are sectioned you can be given treatment for your mental illness even if you do not consent to it. So you cannot use an Advance Decision to refuse treatment for your mental illness if you are sectioned. The only exception is if you have refused electroconvulsive therapy (ECT) because this refusal must be followed unless it's an emergency (when that refusal might not be followed, although these situations are rare).

Also, you cannot use an Advance Decision to refuse treatment for physical symptoms that are part of or a result of your mental illness while you are sectioned. An example of this is using an Advance Decision to refuse treatment for a fast heart rate that is sometimes caused by medication for schizophrenia. Even though the fast heart rate is a physical symptom, because it is caused by medication for your mental illness that refusal of treatment would not be followed if you were sectioned.

Even if your Advance Decision does not have to be followed, your healthcare team should still take it into account when making decisions about your treatment. They could do this by considering whether they could give an alternative treatment to the one you have refused.

If you are not sectioned and have refused treatment for your mental illness in an Advance Decision, this should be followed.

Can I refuse treatment for a physical condition in an Advance Decision?

Yes. If you have made an Advance Decision refusing treatment for a physical condition that is unrelated to your mental illness then, as long as it is valid and applicable, it must be followed even if you are sectioned.

Will doctors follow my Advance Decision if I have a history of mental illness or have been sectioned in the past?

If your Advance Decision is valid and applicable, healthcare professionals must follow it. The only situation where someone does not have to follow it is if you are sectioned and your Advance Decision refuses treatment for your mental illness (see above).

There are several conditions that need to be met for your Advance Decision to be valid – one of them is that you had capacity at the time you made it. If you lacked capacity to make your Advance Decision, it is not valid and will not be followed.

A healthcare professional must presume that you had capacity when you made your Advance Decision unless there is evidence that shows you did not. If you have a history of mental illness or have been sectioned in the past, it does not mean you necessarily lack capacity to make an Advance Decision. But if you are concerned that your Advance Decision might be challenged in the future, it would be helpful to get evidence that you have capacity to make it. One way of doing this is by getting a capacity assessment from your doctor. If you are concerned about this, you can talk to your GP or Compassion in Dying.

There is a flowchart on page 10 that explains when your Advance Decision will be followed.

How else can I plan ahead?

If you have other things that you would like people to know about your care or treatment, you can also make an Advance Statement. An Advance Statement helps to make sure that, if you lack capacity to consent to treatment or to make another decision about your care, your wishes are known and can be followed. It can also be helpful if you are just finding it hard to tell someone about your decision at the time, even if you still have capacity to make it.

In an Advance Statement, you can record anything that is important to you in relation to your health and wellbeing. For example, you can use it to express your preferences for care or to detail any values or beliefs that inform the decisions you make. This will give those around you (your family, carers and healthcare team) a clear idea of what you want if you are unable to communicate this yourself.

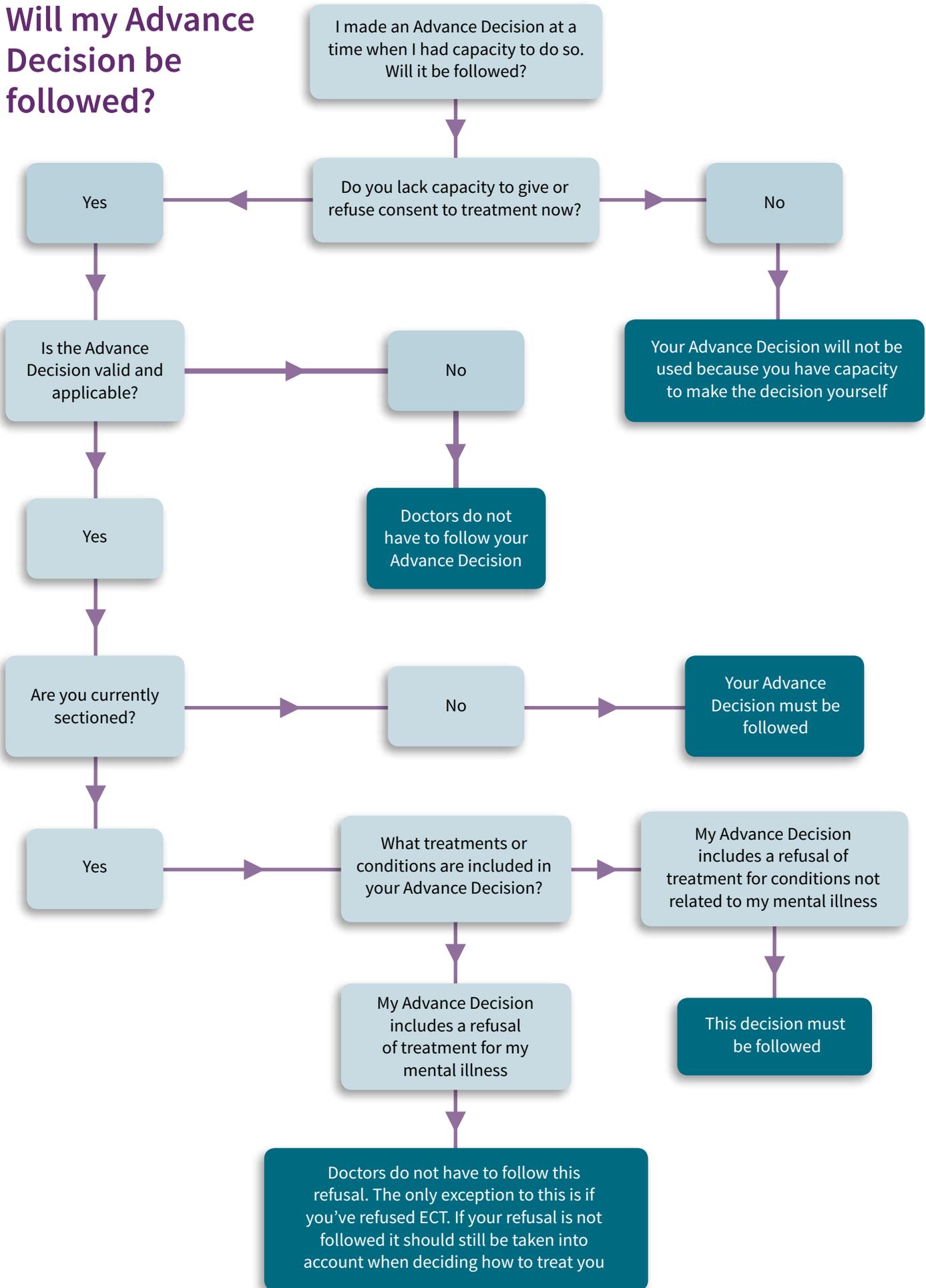
Making an Advance Statement can:

- help you to maintain control over your care and treatment
- encourage collaboration between you and your healthcare team
- support people involved in your care to understand your wishes if you cannot communicate or make decisions for yourself

In an Advance Statement, you can record anything that is important to you, for example:

- Are there any people you would like to be informed if you are unwell?
- Are there any people you would **not** like to be informed if you are unwell?
- What things do you enjoy doing? For example, going for walks or playing sport?
- What things do you like or not like to eat and drink?
- Do you have any pets? Who would you like to look after them if you are unable to do that yourself?
- Do you find any particular therapy helpful? (For example, art therapy, cognitive behavioural therapy, complementary or alternative therapy, dialectical behavioural therapy, mindfulness?)
- Do you have a diagnosis of a specific condition?
- Are you currently taking any medication?
- Are there any types of medication that you would prefer to have or prefer not to have?
- Do you experience any side effects from certain medication?
- What symptoms do you experience? How do they feel for you and what is the best way to approach them?
- What would you like to happen with your psychiatric treatment if you become pregnant?

Will my Advance Decision be followed?



How will people know about my wishes?

It is very important that a copy of your Advance Decision and/or Advance Statement is recorded in your medical notes or care plan. You should also let anyone involved in your care know that you have made one.

Glossary

Consent

Consent means giving your permission for a healthcare professional to give you a particular medical examination or treatment. You must be given all of the information you need to make a decision about whether or not to consent. This includes: what the examination or treatment involves, any benefits or risks, whether there are any reasonable alternatives, and what will happen if you do not have the treatment. Consent must be voluntary. This means that you must make the decision whether or not to consent, and must not be pressured by anyone else. You must also have capacity to give consent.

Mental Capacity Act 2005 (amended 2007) (MCA)

The MCA is the legal framework setting out how a decision can be made in someone's best interests when they don't have the capacity to make it for themselves. It also allows people to plan ahead for a time when they lack capacity to make some decisions by making an Advance Decision, Advance Statement or Lasting Power of Attorney.

Mental Health Act 1983 (amended 2007) (MHA)

The MHA is the legal framework for treating people with mental illness. It allows people with a mental illness to be detained in hospital for assessment and treatment if certain procedures are followed – this is often called ‘being sectioned’.

If you are sectioned under the MHA you are known as a ‘formal patient’. If you are sectioned under the MHA, you can be treated for your mental illness even if you do not consent to the treatment. The MHA only applies to treatment for a mental illness and physical symptoms that are a result of the mental illness.

If you have not been sectioned but have voluntarily admitted yourself to hospital, you are known as an ‘informal patient’.

Mental illness

Mental illness is called ‘mental disorder’ in the MHA. This is defined as any disorder or disability of the mind. It can include any mental illness normally diagnosed in psychiatry, for example: schizophrenia, bipolar disorder or depression. It can also include learning disabilities if the disability is ‘associated with abnormally aggressive or seriously irresponsible conduct’.

Electroconvulsive Therapy (ECT)

ECT is a treatment used to treat severe depression. It involves sending an electric current through the brain to cause an epileptic fit.

Further sources of help and support

Compassion in Dying

We can send you a free Advance Decision or Advance Statement form along with guidance notes that explain how to complete them. Alternatively, you can complete these documents online for free at www.MyDecisions.org.uk

We can also support you to complete your forms over the phone.

See our factsheets:

- ***Advance Decisions (Living Wills) – An introduction*** for more information on Advance Decisions and how to make one
- ***Advance Decisions (Living Wills) – When is my form legally binding?*** for more information on the requirements an Advance Decision must meet in order to be valid and applicable
- ***Advance Statements*** for more information on Advance Statements and how to make one

If you have any questions, please contact our Information Line (our contact details are at the end of this factsheet).

Mind

Mind is the leading mental health charity in England and Wales. It aims to make sure anyone with a mental health problem has somewhere to turn for advice and support, and offers a range of mental health information on:

- diagnoses
- treatments
- practical help for wellbeing
- mental health legislation
- where to get help

To read or print Mind's information booklets for free, visit: mind.org.uk or contact Mind Infoline on 0300 123 3393 or: info@mind.org.uk

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

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IN DYING.**
SUPPORTING YOUR CHOICES

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