

**Information Line:** 0800 999 2434

**Website:** [compassionindying.org.uk](http://compassionindying.org.uk)

## Resolving disagreements about someone's treatment or care

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**This factsheet explains what you can do if there is a disagreement over how someone should be treated or cared for. It includes information about how treatment and care decisions are made on someone's behalf if they are unable to make or communicate a decision, and what steps you can take if you disagree with the person in charge of their care. It also explains how disagreements are resolved if someone has made an Advance Decision ('Living Will') or a Lasting Power of Attorney for Health and Welfare.**

The information is for people living in England and Wales. If you live in Scotland or Northern Ireland please contact us.

### **What happens if there is a disagreement about someone's treatment or care?**

If someone is unable to make or communicate a decision then treatment and care decisions may need to be made on their behalf. Sometimes family members may disagree with each other about how someone should be treated or you may disagree with the decisions made by someone's doctor.

If there is a disagreement about how someone should be treated or cared for, then the person responsible for making the decision (normally their GP, hospital doctor or attorney) should review all the information available to them before making a decision. This means they should gather information from the people involved in their care and try to balance everyone's concerns when making a decision. Any decisions about their treatment and care must always be made in their best interests.

For more information on 'capacity' see our factsheet *What happens if I cannot make decisions about my care and treatment?*

### **How are decisions made in someone's best interests?**

The Mental Capacity Act 2005 says that any decision made on behalf of a person who lacks capacity must be made in their best interests.

The Mental Capacity Act 2005 Code of Practice provides a list of things that must be considered when someone is deciding what is in a person's best interests. This list is not exhaustive, which means that there might be other things that also need to be considered as part of the decision.

The decision-maker must take the following into account:

#### **All the relevant information**

If the decision is about medical treatment, relevant information could include:

- the person's medical needs
- the potential benefits or risks of the treatment
- any long term consequences of giving or withholding the treatment such as the impact on life expectancy or quality of life

### **The person's past and present wishes and feelings**

This means taking into account any wishes they may have previously expressed, or what they have said they want now. They might have written their wishes in an Advance Statement or an Advance Care Plan. They might also have previously spoken to you about what they would want in a particular situation.

### **Any values and beliefs that would be relevant to the decision**

This includes any cultural values or religious beliefs that they have.

### **The views of family members, carers and other relevant people**

This includes anyone the person has previously named as someone they want to be involved in decisions about their care. It also includes people they have not specifically named, such as family members, as well as others involved in their care such as a carer or social worker.

The decision-maker should speak to these people to find out what the person's values or wishes are, and to see what they think is in their best interests. If there are people that the person has expressly said that they do not want to be involved in their care, then the decision-maker must also take this into account.

## **How can I settle a disagreement about someone's treatment or care?**

If there is a disagreement about which treatment or type of care is in someone's best interests, then there are a few things you can do.

### **Ask for a meeting**

You can ask for a meeting with the doctor in charge of the person's care, family members and other people close to them. The purpose of this meeting is for each person to explain what they feel is best for the person and to decide on a way forward.

## **Get a second opinion**

You can ask the doctor in charge of the person's care to arrange for a second opinion from another healthcare professional. You do not have the legal right to a second opinion, but the doctor should consider your request.

## **Advocacy**

An advocate is an independent person who can represent a person who lacks capacity when decisions need to be made on their behalf. An advocate cannot make decisions about treatment or care, but the decision-maker must consider any information the advocate gives them.

## **Mediation**

If the disagreement cannot be resolved then the hospital may arrange for mediation. This is when an independent person discusses the problem or disagreement with everyone involved in the person's care and helps the group to find a solution.

## **Make a formal complaint**

If someone lacks capacity to make a decision and you are unhappy with the treatment or care they have received, or are receiving, you can make a complaint on their behalf. You can make a complaint to either the service provider (such as the GP surgery or the hospital) or the organisation that commissions the service (such as NHS England for GPs or the local clinical commissioning group (CCG) for hospitals). You cannot complain to both.

When you make your complaint you should explain that you are starting the complaints procedure. You should include all the relevant details and the names of anyone involved.

For more information on making a complaint see our factsheet *Making decisions about my medical treatment*.

## **Court of Protection**

If all of these attempts to resolve a disagreement fail, the Court of Protection can be asked to make a decision. The Court of Protection was set up to protect people who are unable to make decisions for themselves. It has the power to decide what is in someone's best interests, based on all the evidence presented to it. There are also emergency procedures so that urgent cases can be dealt with quickly.

## **What happens if there is a disagreement about someone's Advance Decision ('Living Will')?**

An Advance Decision allows a person to record any medical treatments that they do not want to be given in the future, in case they later become unable to make or communicate a decision. It can only be used if the person cannot make or communicate a decision for themselves. The legal name is an Advance Decision to Refuse Treatment, and it used to be called a Living Will.

## **Is an Advance Decision legally binding?**

In England and Wales, as long as an Advance Decision is valid and applicable then it is legally binding and cannot be overruled. Giving unwanted medical treatment that has been refused in an Advance Decision can be classed as assault. The only exception to this is if the person has registered a Lasting Power of Attorney for Health and Welfare after their Advance Decision was completed. In this case the document that was made most recently will take priority when a decision needs to be made about a person's treatment and care.

If a doctor believes that the Advance Decision is not valid or applicable to the situation, they may decide not to follow it.

There are many reasons why a doctor may believe that an Advance Decision is not valid or applicable. These might include, for example, if someone has acted in a way that suggests they have changed their mind about their Advance Decision, or if the Advance Decision was made a long time ago.

For more information about what makes an Advance Decision valid and applicable, see our factsheet *Advance Decisions (Living Wills): When is my form legally binding?*

### **Disagreements about a doctor's assessment of the validity and applicability of someone's Advance Decision**

If there is a disagreement about whether someone's Advance Decision is valid and applicable, ask for a meeting with the doctor in charge of their treatment. Explain why you think their assessment of the person's refusal of treatment is wrong and discuss the doctor's reasons for disagreeing.

The doctor in charge of the person's treatment is responsible for making the final decisions, but they should first consider all the evidence available to them. This includes having conversations with the family and consulting with the rest of the healthcare team.

If you and the doctor still disagree about whether the Advance Decision is valid and applicable, you can ask for a second opinion or involve an advocate. If this does not work you can make a formal complaint to the service provider, or the organisation that commissions the service, about the doctor. You can also speak to a solicitor.

If you are still not able to come to an agreement about the person's treatment, you can apply to the Court of Protection to decide whether the Advance Decision is valid and applicable.

## **What rights does an attorney have under a Lasting Power of Attorney for Health and Welfare?**

A Lasting Power of Attorney for Health and Welfare gives a person (known as the attorney) the legal authority to make decisions on behalf of someone else if that person cannot make decisions for themselves. Decisions made by an attorney can include decisions about medical treatment, where the person is cared for and the type of care they receive. It can also include life-sustaining treatment if the attorney has been given that power.

The decisions an attorney makes must always be in the best interests of the person they are representing. If you are acting as an attorney, the doctor in charge of their care should explain their treatment options to you, including the risks and benefits of each option.

### **Why might a doctor choose not to follow an attorney's decisions?**

There are a few reasons why a doctor may not follow an attorney's decisions:

- They may believe that the attorney is not acting in the person's best interests.
- The attorney may not have been given the authority to make a particular decision.

If the person made an Advance Decision after registering their Lasting Power of Attorney, then the attorney cannot override the decisions made in their Advance Decision. However, if a decision needs to be made about something that they have not specified in their Advance Decision, then the attorney will still be able to act on their behalf.

## **What happens if the doctor does not follow my decisions as an attorney?**

If the doctor in charge of the person's care does not follow your decisions as an attorney, ask for a meeting with them. At this meeting you should explain your decision and discuss their reasons for disagreeing.

If you and the doctor still disagree about which treatment is in the person's best interests, you can ask for a second opinion or involve an advocate.

If this doesn't work you can make a formal complaint to the care provider, or the organisation that commissions the service. You can also speak to a solicitor.

If you are still unable to settle the disagreement you can apply to the Court of Protection to make a decision.

## **How can we help?**

Compassion in Dying can answer questions you might have which relate to disagreements about someone's treatment or care. We may also be able to put you in touch with a legal expert.

We can send you a free Advance Decision and 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](http://www.MyDecisions.org.uk)

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

If you have any questions about making decisions on someone else's behalf, Advance Decisions, Lasting Powers of Attorney or decision making more generally, then please call us.

**The following Compassion in Dying factsheets may also be helpful:**

- *Advance Decisions (Living Wills) – An introduction*
- *Advance Decisions (Living Wills) – Is my form legally binding?*
- *Lasting Powers of Attorney for Health and Welfare – An introduction*
- *Making decisions about my medical treatment*
- *What happens if I cannot make decisions about my care and treatment?*

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**We can help you prepare for the end of life. How to talk about it, plan for it, and record your wishes. Have any questions? Talk to us.**

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A list of references is available on request