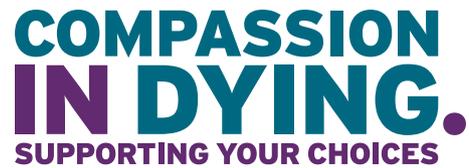


Information Line: 0800 999 2434

Website: compassionindying.org.uk



Advance Decision ('Living Will') and Lasting Power of Attorney for Health and Welfare: What is the difference and can I have both?

This factsheet is for people living in England and Wales. We provide separate information for people living in Scotland and Northern Ireland.

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 to make or communicate a decision for yourself.

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

An LPA for Health and Welfare allows you to give someone you trust the legal power to make decisions about your medical treatment and care for you, in case you later lack capacity to make or communicate a decision for yourself.

What is capacity?

Capacity is the ability to make a decision for yourself. Your capacity to make a decision depends on what the decision is, and when the decision needs to be made.

You might have capacity to make some decisions but not others. This may be because you have a brain injury and you can understand simple information, but not complex information. For instance, you might have capacity to decide what you want to eat and drink, but not to make a decision about life-sustaining treatment.

You might also have capacity to make decisions at certain times but not others. This may be because you have dementia and your capacity fluctuates throughout the day. For instance, you might have capacity to make decisions in the morning, but not later in the day.

The law says that people must be assumed to have capacity unless it is proven otherwise, and you should always be supported to make a decision for yourself if possible.

However, if a decision needs to be made and a healthcare professional thinks that you might lack capacity, then they will assess whether or not you have capacity to make that decision, at that time.

If you lack capacity to make a decision, and you have not registered an LPA for Health and Welfare or made an Advance Decision, the healthcare professional in charge of your care will decide how to treat you. They must make decisions based on what they think would be in your best interests, but there is no guarantee that this would be what you would choose for yourself. For more information about how ‘best interests’ decisions are made, see our factsheet ***What happens if I cannot make decisions about my care and treatment?***

What are the differences between an Advance Decision and an LPA for Health and Welfare?

What does it cover?

An Advance Decision covers the refusal of medical treatments that you do not want to be given in the future. You can refuse any medical treatments, including life-sustaining treatment. Your Advance Decision applies only to the treatments and situations that you include. It will not apply if you are in a situation that is not covered in your Advance Decision.

An LPA covers any decisions about treatment and care. This means your attorneys can make any decision about your health and personal welfare, including decisions about medical treatment, where you live and the type of care you receive, as well as day-to-day things like your diet and your daily routine.

Who can make decisions for me?

An Advance Decision is made by you in your own words. It must be followed if it applies to the situation you are in. If you are in a situation that is not covered in your Advance Decision, then the healthcare professional in charge of your care will make decisions on your behalf.

An LPA gives your attorneys the legal power to make any decisions about your treatment and care. Therefore, you should choose someone you trust to understand your wishes, respect your values, and be able to make the best decisions for you.

Your Advance Decision and LPA for Health and Welfare will only be used if you lack capacity to make decisions for yourself.

Who are the people involved in making it?

An Advance Decision is made by you, and one witness. You can also talk to your doctor about your Advance Decision if you would like to, but this is not a requirement.

To make an LPA you need the following people:

- At least one person to be your attorney (the person or people given the power to make decisions).
- A replacement attorney, in case the original attorneys can no longer act (optional).
- A certificate provider, who must ensure 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 teacher) or someone who has known you for at least two years (like a friend or a neighbour).
- A person to witness your signature and your attorney's/replacement attorney's signatures.
- Up to five 'people to notify' who will be informed when the LPA is registered (optional).

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

When and how does it become valid?

An Advance Decision is valid and can be used as soon as it is completed, signed and witnessed.

An LPA is valid and can be used once it is registered with the Office of the Public Guardian. **This can take up to ten weeks.**

How much does it cost?

It is free to make an Advance Decision.

In 2018, it was £82 to register an LPA. It is possible to get a reduced fee if you have an income under a certain amount, or are receiving certain benefits.

Can I have both an Advance Decision and an LPA for Health and Welfare?

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

If you have made an Advance Decision *before* registering an LPA – your attorneys will be able to override what is written in your Advance Decision, if you have given them the power to make the decision in question. However, your attorneys must always make decisions that are in your best interests. This includes taking into account anything that you have said or written down, such as an Advance Decision.

If you have made an Advance Decision *after* registering an LPA – your attorneys will not be able to override what is written in your Advance Decision. However, if a decision needs to be made about something that you have not included 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 discuss your Advance Decision with your attorneys and give them a photocopy. People often say that it is helpful to have someone's preferences for treatment and care written down when making decisions on their behalf, especially about life-sustaining treatment. You should always speak to your attorneys about your wishes, but having something in writing is also a great support for your attorneys when making difficult decisions.

How can we help?

Compassion in Dying can send you a free Advance Decision form with guidance notes. Alternatively, you can complete an Advance Decision online for free at www.mydecisions.org.uk

We can support you to complete an Advance Decision or Lasting Power of Attorney for Health and Welfare form over the phone.

If you have any questions about Advance Decisions, Lasting Powers of Attorney for Health and Welfare or decision-making more generally, call our information line.

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.

This resource is licensed by Compassion in Dying under a Creative Commons Attribution-Non Commercial – No Derivatives 4.0 License. To request a version with your organisation’s logo, please get in touch.

Compassion in Dying is a registered charity no. 1120203 and a company limited by guarantee no. 05856324.

Phone: **0800 999 2434**

9am - 5pm Monday-Friday

Email: info@compassionindying.org.uk

Address: Compassion in Dying
181 Oxford Street, London W1D 2JT

Factsheet code:

LPA03

Publication or last review date:

September 2018

Next review due:

September 2021

Version number:

6

A list of references is available on request

**COMPASSION
IN DYING.**
SUPPORTING YOUR CHOICES

