



**Leeds Safeguarding  
Adults Partnership**

# **Planning for a time when you cannot make decisions for yourself**

**An information leaflet for members of the public**

# Introduction

The Mental Capacity Act 2005 allows you to plan ahead for a time in the future when you might lack the mental capacity to make decisions for yourself.

A lack of mental capacity can be caused by many reasons, including:

- Dementia
- Mental health problems
- Brain injury
- Alcohol or drug misuse
- The side-effects of medical treatment
- Any other illness or disability.

If you lack the mental capacity to make decisions for yourself, other people will need to make decisions in your best interests. Planning ahead allows you to have more control over how decisions are made. It allows you to set out your wishes and to decide who has the legal authority to act for you.

This leaflet outlines how decisions are made if you lack the mental capacity to make them yourself, and the options available for you to plan ahead.

## What is mental capacity?

If you have mental capacity, you are able to make decisions for yourself. The legal definition says that someone who lacks mental capacity has “an impairment of the functioning of the mind or brain” and cannot do one or more of the following things:

- Understand information given to them
- Retain that information long enough to be able to make a decision
- Weigh up the information available to make a decision
- Communicate their decision. This could be by talking, using sign language or by any other means.

Mental capacity is time and decision specific. This means that some people may have mental capacity to make some decisions and not others, or their mental capacity to make decisions may change over time.

The types of decision covered by the Mental Capacity Act 2005 range from day-to-day decisions about things such as what to wear or eat, as well as major decisions such as where you live, whether you should have an operation or what to do with your money and property.

However, some types of decisions (such as marriage or civil partnership, divorce, adoption and voting) can never be made by another person on your behalf if you lack mental capacity. This is because these decisions or actions are either too personal to you or because other laws govern them.

# Best Interests

The law says that if you lack mental capacity in relation to a decision, then a decision will need to be made for you in your 'best interests'.

When someone makes a decision in your best interests they must:

- Consider if the decision can be delayed until you have regained the ability to make the decision, for example, this may be the case if you are recovering from an illness, learning new skills, or getting support with communicating your wishes
- Involve you as much as possible in decisions affecting you
- Try to identify all the things that you would take into account if you were making the decision
- Consider your wishes, feelings, values and beliefs. This includes any views you have expressed in the past that would help to understand what your wishes and feelings might be. This might be things you have said to other people, how you have behaved in similar circumstances in the past and especially things you have written down. This places you at the centre of any decision being made on your behalf
- Consider the views of your family members, parents, carers and other relevant people who care for you or are interested in your welfare, if this is practical and appropriate. If you have named someone particular to be consulted then their views should be sought.

They must not:

- Make a decision based simply on your appearance, age, medical condition or behaviour
- Make decisions about life-sustaining treatment that are motivated by a desire to bring about your death, and they must not make assumptions about the quality of your life.

If there are other relevant considerations these must also be considered.

The Mental Capacity Act 2005 allows people to legally carry out certain actions to do with your care or treatment provided they have assessed that you lack mental capacity in relation to the decision and that these actions are in your best interests.

This means that family members, carers and professionals can in these circumstances make decisions about your care and support needs, such as the care you need, what you wear, what you eat, where you live, what medication you take, and who you can visit.

## Planning ahead

You can plan ahead for a time when you might lack mental capacity. Planning ahead lets you decide who makes decisions for you in the future, and lets people know your wishes and preferences.

You may wish to consider taking out a Lasting Power of Attorney or make an Advance Statement or Advance Decision to Refuse Treatment.

## What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney (LPA) allows you to give someone you trust the legal authority to make decisions on your behalf.

The person you have decided to trust with these decisions is called an Attorney. They must act in your best interests as set out in the Mental Capacity Act 2005, Code of Practice.

There are two types of LPA. In each case you can specify the types of decisions that your Attorney can make, or you can allow them to make all the decisions on your behalf.

### Property and Financial Affairs LPA

This gives powers to your chosen Attorney to make decisions about financial and property matters for you, such as:

- Paying bills
- Claiming your benefits or pension
- Opening or closing bank accounts
- Investing your money
- Buying or selling property

With a Property and Financial Affairs LPA you can specify that the Attorney should only start managing your financial affairs after you lack mental capacity sometime in the future. If you do not specify this, the Attorney can start using the LPA after it is registered, but while you still have mental capacity to make these decisions yourself.

Whilst many decisions can be made in your best interests without an LPA, if someone is making financial arrangements for you, then they will often need formal evidence of their authority to act on your behalf. An LPA can provide this.

If you set up a Property and Financial Affairs LPA, your Attorney must keep accounts and make sure their money is kept separate from your money.

## **Personal Welfare LPA**

This covers decisions about healthcare as well as personal welfare. An Attorney can generally make decisions about things such as:

- Your leisure activities
- Your diet and how you should dress
- Who you should have contact with
- Consenting to a certain type of medical treatment
- Where you should live

A Personal Welfare LPA can only be used once a person has lost mental capacity in the future. Your Attorney will be able to make decisions in your best interests.

## **Choosing an Attorney**

Your Attorney could be your spouse, partner or civil partner, a family member, or a friend. Alternatively they could be a professional, such as a solicitor. An Attorney will have much control over your life, so it's important that you trust the person and that they are comfortable with the responsibility. Think carefully about who you trust to make these decisions for you.

## **How do I set up a Lasting Power of Attorney?**

To make an LPA you need to complete a form which you can get from the Office of the Public Guardian (OPG). You can ask for these to be sent to you or you can complete them on-line. The form must be completed whilst you have mental capacity to make this decision.

Some people choose to ask a solicitor or a local advice agency to help them to set up an LPA and register it.

Contact the OPG for information about LPA registration fees. If you have a low income, you may be entitled to a 50% discount. If you are receiving certain benefits then registration will be free.

## **What if I have already made an Enduring Power of Attorney?**

Enduring Powers of Attorney (EPAs) cover decisions about property and financial affairs only. They have been replaced by Lasting Powers of Attorney (LPA) but if you have an existing EPA it can still continue to be used. If at some time in the future you are no longer able to make financial decisions for yourself then the EPA will need to be registered before it can continue to be used by your Attorney.

If you have already made an EPA and you still have mental capacity, you can either replace it with a new Property and Affairs LPA or you can keep your existing EPA.

# What is an Advance Statement?

An Advance Statement is a verbal or written statement that lets people know your wishes and preferences at a time when you are unable to make decisions.

An Advance Statement is not legally binding but it makes your wishes clear so that these can be taken into account in the future when decisions are being made in your 'best interests'.

An Advance Statement can cover any aspect of your future health or social care needs. This could include:

- Where you would like to be cared for, for example at home or in a hospital, a nursing home, or a hospice
- How you like to do things, for example if you prefer showers or baths, or like to sleep with the light on
- How you want any religious or spiritual beliefs to be reflected in your care
- Concerns about practical issues, for example, who will look after your pets if you become ill.

Advance Statements can also be used to let the people treating you know who you would like to be consulted when a decision has to be made.

## How do I complete an Advance Statement?

You can only make an Advance Statement if you have the mental capacity to do so. You may just wish to tell people what you want to happen in the future, but it is often better to put this in writing, it makes your views much clearer.

If you are going to put your Advance Statement in writing, **you do not need a special form**. You can just write or type the Advance Statement yourself, with support from relatives, carers, or health and social care professionals if you wish. You do not have to sign an Advance Statement, but adding your signature and a date makes it clear that it is your wishes that have been written down.

People will only be able to act on your wishes if they know about your Advance Statement. You should keep your Advance Statement somewhere safe and tell people where it is in case they need to find it in the future. Think about who you might need to give a copy to.

You should review your Advance Statement from time to time to make sure it reflects your views. It is a good idea to make a note on the Advance Statement that you have reviewed it, so that people know that it contains your current views.

If you have a Lasting Power of Attorney (LPA) your Attorney(s) must take your Advance Statement into account when deciding what is in your best interests.

# What are Advance Decisions to Refuse Treatment?

Under the Mental Capacity Act 2005, if you have the mental capacity to make decisions about the medical treatment being offered, you are entitled to refuse it.

An Advance Decision to Refuse Treatment allows you to plan ahead for a time when you lack the mental capacity to decide about the treatment being offered. It allows you to state particular types of treatment that you do not want to have.

An Advance Decision to Refuse Treatment is legally binding and must be followed by doctors and other health professionals, as long as it is 'valid' and 'applicable'. These terms are explained on the next page.

You will need to make sure people know about your Advance Decision. You will need to let doctors and healthcare professionals who are providing you with treatment know about your decisions. You can ask for a copy to be kept in your medical notes. It may also be helpful to talk to your family and friends about your Advance Decision.

## How to make an Advance Decision to Refuse Treatment

If you are considering making an Advance Decision to Refuse Treatment, then it is strongly recommended that you discuss this with your doctor. They will be able to help you understand and weigh up the implications of your decisions.

An Advance Decision does not have to be in writing, unless it is a decision to refuse life-sustaining treatment. Verbal instructions to a medical practitioner, such as a GP can amount to a valid Advance Decision. However, to avoid uncertainty over your decision, you may wish to put it in writing, or ask someone else to write it down for you if possible. **You do not need to use a specific form.**

The following guidelines are not legal requirements, but might prove to be helpful:

- Put the decision in writing
- Include your name, date of birth, home address, your GP and any distinguishing features (in case healthcare professionals need to identify you when you are unconscious)
- Include a statement that you wish the Advance Decision to apply if you lack the mental capacity to make the decision yourself at the relevant time
- Specify exactly what kind of treatment is to be refused and in precisely what circumstances, giving as much detail as possible. It may be useful to explain your reasons, such as particular religious beliefs, so that people fully understand your wishes
- Sign and date the document
- Ask someone to witness your signature.

If your Advance Decision to Refuse Treatment involves life-sustaining treatment, then there are specific requirements in law that must be complied with.

## **How to make an Advance Decision to Refuse Life-Sustaining Treatment**

An Advance Decision to Refuse Life-Sustaining Treatment must meet specific additional requirements as set out in the Mental Capacity Act 2005. Life-sustaining treatment is treatment that a healthcare professional who is providing your care regards as necessary to sustain life. If you cannot eat or drink then this could include providing you with artificial nutrition and hydration. It is not compulsory to discuss your decision with a healthcare professional, but it is strongly recommended that you do.

The legal requirements for a valid Advance Decision to Refuse Life-Sustaining Treatment are as follows:

This type of Advance Decision must:

- Be in writing; if you are unable to write, some else can write it down for you, for example a family member or healthcare professional
- Contain a specific statement which says that your Advance Decision applies even if your life is at risk.

The decision must be:

- Signed by you (or by someone else that you appoint, in your presence, if you are unable to sign);
- Signed in front of a witness; and
- Signed by the witness in front of you.

If you do not follow these rules then your Advance Decision to Refuse Life-Sustaining Treatment may not be followed.

### **Deciding if an Advance Decision is valid and applicable**

Healthcare professionals providing you with treatment must consider if your Advance Decision to Refuse Treatment is both 'valid' and 'applicable'. To decide whether your Advance Decision is 'valid' they will need to consider:

- If you have withdrawn the decision whilst you still had the mental capacity to do so
- If you have subsequently made a Lasting Power of Attorney (LPA) giving someone else the authority to make the decision for you
- If you have done anything that clearly goes against the Advance Decision, which suggest that you have changed your mind.

To decide whether your Advance Decision is 'applicable' to the presenting circumstances, they will need to:

- Determine whether you have the capacity to accept or refuse the treatment at the time the decision needs to be made
- Make sure that your Advanced Decision applies to the treatment being proposed.

- Consider if there have been subsequent changes in your personal life, or new developments in medical treatment, that would have impacted on your decision if you had foreseen them.

For these reasons you should review your Advance Decision from time to time to make sure it reflects your views. It is a good idea to make a note on the Advance Decision that you have reviewed it, so that people know that it contains your current views.

It is important to remember that Advance Decisions to Refuse Treatment allow you to refuse treatment or certain types of treatment. They cannot be used to legally bind doctors or other healthcare professionals to provide you with a certain type of treatment that you would like to receive. You can however make an Advance Statement setting out your wishes that doctors and other healthcare professionals must take into account in deciding what is in your best interests.

## **What if I have not planned ahead?**

If you have not made a Lasting Power of Attorney (or prior to this, an Enduring Power of Attorney), and no longer have the mental capacity to do so, then the Mental Capacity Act 2005 allows for others, such as carers or professionals, to make day-to-day decisions in your best interests. However there may be circumstances when it is necessary for the Court of Protection to become involved.

### **Court of Protection**

The Court of Protection is a specialist court for all issues relating to mental capacity. If you lack mental capacity, other people can apply to the Court for decisions to be made in your best interests.

The Court of Protection can:

- Make an order about your personal welfare or property and financial affairs. For example, if it is your best interests, the Court could make an order for your house to be sold or for an insurance policy to be cashed.
- Appoint a deputy to make decisions on your behalf. This could be a relative.

There are two types of a Deputy, one for Property and Affairs and one for Health and Welfare. The Court will consider whether it is appropriate for this person to be making these decisions on your behalf.

If a Deputy is appointed, the Court will decide what decisions they are allowed to make on your behalf. The Deputy must then make these decisions in your best interests.

You cannot choose your Deputy, the Court will decide. Setting up an LPA in advance is a quicker process, less costly, and allows you more control over who is making decisions.

## Further Information and Advice

This information leaflet is a summary; a more comprehensive guide is available from the Office of the Public Guardian.

### Office of the Public Guardian

Office of the Public Guardian provides a range of useful booklets about mental capacity, including the following:

OPG 601 – About your health, welfare or finance – who decides when you can't

OPG 602 – A guide for family, friends and other unpaid carers

To get a copy sent to you (free of charge), you can either phone them or email them, or download a copy from their website.

You should also contact the Office of the Public Guardian to request a Lasting Powers of Attorney application pack, or you can apply on line through their website if you prefer.

Contact details:

Office of the Public Guardian  
PO Box 16185  
Birmingham  
B2 2WH

Phone number: 0300 456 0300

Email: [customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)

Website addresses:

Forms: [www.justice.gov.uk/forms/opg](http://www.justice.gov.uk/forms/opg)

Information booklets: [www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act](http://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act)

### Leeds Safeguarding Adults Partnership

This Leaflet has been produced on behalf of the Leeds Safeguarding Adults Partnership Board, together with one page factsheets about:

- Advance Statements
- Advanced Decisions to Refuse Treatment
- Lasting Powers of Attorney

These are available from [www.leedssafeguardingadults.org.uk](http://www.leedssafeguardingadults.org.uk).

This information can be provided in large print, Braille, audio or a community language, please telephone Leeds City Council Communications 0113 247 8630. Textphone for deaf and hard of hearing people 0113 222 4410