

Advance Decisions and Statements

A Will is a crucial legal document for making your post-death intentions known, but it cannot be used to set out your wishes for the medical care you wish to receive while still alive. Advance Decisions and Advance Statements, however, are legal documents you can use to make your preferences clear should certain medical situations arise. They are sometimes referred to as 'Living Wills', though this term can be misleading.

This help guide explains what Advance Decisions and Advance Statements are, what the differences are between them and which kinds of choices they can be used to make.

What is an Advance Decision?

An Advance Decision is a legal document used to specify situations where you would wish to refuse particular kinds of medical treatment in the future. It would take effect if you were to require medical treatment but were not in a position to consent to it yourself.

This might be because you had suffered an accident, were unconscious, or were suffering from a condition that meant you were no longer mentally capable to make decisions about the medical treatment you receive.

You always have the right to choose how – or even if – you are treated. An Advance Decision allows you to legally record those choices while you are able to make them, in case you are not able to communicate them in the future.

Every Advance Decision is different as it is tailored to reflect the wishes of the person who has made it. Many people have strong beliefs in relation to certain kinds of medical treatment.

For example, you might wish to use an Advance Decision to refuse treatment such as:

- Being resuscitated if your heart stops
- Receiving a blood transfusion
- Being put on a life-support machine
- Undergoing kidney dialysis
- Receiving an organ transplant
- Undergoing chemotherapy
- Being fed artificially

In many cases, an Advance Decision is used to specify the circumstances in which you would want **to refuse life-sustaining treatment**. However, you cannot use an Advance Decision to **request or authorise assisted dying**.

You also cannot use an Advance Decision to:

- Refuse the offer of food or drink by mouth
- Refuse medical treatment to make you comfortable, such as pain relief
- Ask for specific medical treatments to be performed
- Nominate someone else to make decisions on your behalf (this must be done with a Lasting Power of Attorney)

Are Advance Decisions legally binding?

Advance Decisions are legally binding, assuming they meet certain criteria.

The Advance Decision must have been written when you were over the age of 18 and had the mental capacity to do so. The doctors treating you must also be confident that you haven't changed your mind since it was made.

Your Advance Decision also needs to be:

- In writing
- Signed and witnessed
- Clear about the specific treatments you wish to refuse
- Clear about the circumstances you wish to refuse treatments in
- Clear that you wish your decision to be followed even if it means your life will be at risk

Although it is not legally required, in some cases it can be helpful to include an explanation for your wishes (for example, refusing certain treatments due to religious beliefs). This provides context to your decision and can be helpful should any disputes arise as to whether the Advance Decision represents your true feelings.

For an Advance Decision to take effect, your loved ones and your doctors must be aware of it. It's a good idea to tell your loved ones that you have made an Advance Decision and discuss the contents with them. You should also tell your doctor and make sure a copy of the Advance Decision is lodged with your medical records.

We recommend that you update an Advance Decision every two years, or any time your circumstances change.

It's also important to note that if you made an Advance Decision or Advance Statement before 1 October 2007 you should review it or discuss it with a solicitor, as this is when the statutory requirements under the Mental Capacity Act 2005 came into force.

Seeking advice

If your Advance Decision is important to you, you will want to take all steps possible to ensure it would be considered legally binding in a life-threatening situation. Though you do not need a solicitor to make an Advance Decision, seeking legal advice may mean your document is more likely to be considered valid.

You might also find it helpful to speak to your doctor before making an Advance Decision, as they will be able to ensure you understand the full medical implications of your decisions.

Speaking to legal and medical professionals during the course of making your Advance Decision can also demonstrate that you had full mental capacity at the time of it being made.

Summary - Advance Decisions

- Allow you to specify situations in which you would refuse certain medical treatment.
- Take effect should the specified circumstances arise when you do not have the mental capacity to decide upon your treatment at the time.
- Are legally binding, if properly made.
- Can allow you to refuse life-sustaining treatment but cannot be used to request assisted suicide or refuse treatments to make you comfortable.

Advance Statements

What is an Advance Statement?

An Advance Statement is a document that can be used to set out your wishes regarding future care and/or medical treatment. Like Advance Decisions, Advance Statements are made in preparation for a possible loss of mental capacity in future and allow you to make sure your intentions are known before the time they might be needed.

However, there are two key differences between Advance Statements and Advance Decisions.

Advance Statements:

- Are not legally binding
- Do not have any formal requirements

As Advance Statements do not have any formal requirements for how they should be presented, technically they can be communicated verbally and still be valid. However, we would always recommend making an Advance Statement in writing if at all possible.

Why make an Advance Statement?

Unlike an Advance Decision, an Advance Statement can detail the care or treatment you would like to receive. Because of this, you might wish to make an Advance Statement in order to set out your care preferences. This could include where you would like to live if your needs change, or the type of care and support you would wish to be put in place.

Your Advance Statement can also be used to name individuals – such as your partner, family or other loved ones – you would wish to be involved in decisions about your care and treatment.

Even though Advance Statements are not legally binding, any statement you make would be taken into account in the event of decisions needing to be made about your care and treatment. However, it is important to understand that the choices you set out in an Advance Statement can be overruled by healthcare professionals or anyone making a decision on your behalf, such as your next of kin.

Summary – Advance Statements

- Allow you to specify your wishes or intentions relating to care or medical treatment.
- Are **not** legally binding.
- Do not have to be written or meet other formalities to be valid, although it is advisable to make an Advance Statement in writing.

Advance Decisions, Advance Statements and Lasting Powers of Attorney

There is significant crossover between Advance Decisions, Advance Statements and Lasting Powers of Attorney (LPAs).

Health and care LPAs allow you to nominate one or more people (known as attorneys) to make decisions on your behalf, including:

- What your daily routine should be (e.g. what to eat and what to wear)
- What medical treatment you should receive
- What care arrangements should be put in place for you

You can also give your attorney(s) the authority to consent to or refuse life-sustaining treatment on your behalf.

In our experience, a health and care LPA is often a more comprehensive solution than an Advance Decision or Advance Statement. However, every situation is different and you

might feel that an Advance Decision, an Advance Statement or even a combination of all three is a better fit for you.

Combinations of Advance Decision, Advance Statement and LPA

Should you decide to make any combination of Advance Decision, Advance Statement and health and care LPA, it's important to consider how the different documents interact with each other. You will need to ensure that they don't contradict each other, and that your attorneys are granted any decision-making powers you want them to have.

An experienced solicitor will be able to help you review all the legal documents you have in place and make sure they all fit neatly together.

If you already have an LPA in place, it's important to let your attorneys know if you have made an Advance Decision and/or Advance Statement. It is also wise to discuss the content of these provisions with them in advance as, depending on the Advance Decision or Advance Statement, these could bind or influence any future decisions they make on your behalf.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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