



advice and support for older age

**Independent
Age**

Factsheet

Managing my affairs if I become ill

There may be a time when you need someone to make decisions for you because of ill health.

This factsheet explains how you can prepare for someone you trust to manage your money or make decisions about your own care and welfare in the way you would wish.

Call FREE on **0800 319 6789** Visit **www.independentage.org**

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About Independent Age

Whatever happens as we get older, we all want to remain independent and live life on our own terms. That's why, as well as offering regular friendly contact and a strong campaigning voice, Independent Age can provide you and your family with clear, free and impartial advice on the issues that matter: care and support, money and benefits, health and mobility.

A charity founded over 150 years ago, we're independent so you can be.

The information in this factsheet applies to England only.

If you're in Wales, contact Age Cymru (0800 022 3444, agecymru.org.uk) for information and advice.

In Scotland, contact Age Scotland (0800 12 44 222, agescotland.org.uk).

In Northern Ireland, contact Age NI (0808 808 7575, ageni.org).

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1. What is mental capacity?

Mental capacity means having the ability to understand, retain and use information in order to make and express decisions about your life. If you are assessed as lacking mental capacity it means you are no longer able to make and/or communicate a decision when needed.

This might be a decision about an everyday thing, like choosing what to wear or when to pay a bill, or a more important decision like making a will or deciding whether to move into a care home. You may have the ability to make some decisions but not others.

Loss of mental capacity isn't always permanent. It could be temporary or it may change over time. If you lack mental capacity, someone else may need to make certain decisions for you.

Mental capacity has nothing to do with your age, behaviour or health conditions. However, there could be lots of reasons for not having mental capacity, including:

- being unconscious as a result of an accident or illness
- suffering a stroke

- having a degenerative disease
- having late-stage dementia.

2. How is mental capacity assessed?

A wide range of people may need to assess if you have the mental capacity to make a decision. This includes family members and paid carers who may make routine decisions such as what you will eat or what clothes you will wear.

Sometimes a formal assessment by a professional (such as a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker) may be needed. For example, if there is a disagreement about whether you lack mental capacity, or the decision that needs to be made is complex or will have significant consequences.

Anyone making a decision on behalf of someone else will need to take reasonable steps to establish that the person lacks mental capacity. They can do this by following the Mental Capacity Act 2005 Code of Practice, which uses a two-stage assessment.

The first stage looks at whether your mind or brain is impaired or disturbed in any way.

The second step looks at whether this impairment or disturbance means you're unable to make a specific decision when you need to. You will be treated as unable to make a decision if you can't:

- understand the information you need to make a decision
- retain that information
- use or weigh information as you make the decision
- communicate your decision in any way.

If you're unable to do any one of these things, you will be treated as unable to make the decision.

The assessment might also consider:

- if you might regain capacity, can the decision be delayed?
- do you understand what decision you need to make and why you need to make it?
- do you understand the likely consequences of making, or not making, the decision?

Every effort should be made to help you to have capacity and communicate your decision.

The Mental Capacity Act

The Mental Capacity Act 2005 sets out how people who lack mental capacity should be protected and treated. There are five main principles that should be used by someone who could make a decision on your behalf. They should:

- assume you have capacity, until it's shown that it's more likely than not that you lack it
- take all practical steps to help you make your own decision before anyone decides you're unable to do so
- respect your right to make eccentric or unwise decisions. You shouldn't be treated as unable to make a decision simply because you make an odd decision, or a decision they disagree with.
- ensure any decision or action taken on your behalf is made in your best interests
- choose the least restrictive intervention. They should consider all alternatives and choose the one which is the least restrictive of your basic rights.

For more information, see the Mental Capacity Act Code of Practice (gov.uk/opg/mca-code).

3. Challenging mental capacity assessments

If you or a friend or relative disagree with the outcome of a formal capacity assessment, you might want to challenge it. For example, you might think you could have made a decision yourself but weren't allowed to.

Start by talking to the person who carried out the assessment. Ask them to explain why they believe you lack the capacity to make a decision and any evidence they used to come to this decision. If a record of the assessment was made, request a copy of this. You may want the help of an independent advocate (see chapter 11).

If this doesn't help, you could consider making a formal complaint using the complaints procedure of the organisation involved. However, if the disagreement can't be resolved you may need to apply to the Court of Protection and ask them to decide if you lack mental capacity.

4. Arranging for someone to manage your financial affairs on your behalf

If you have mental capacity and can make your own decisions, there are ways you can organise your financial affairs so you can manage them more easily. This may suit you if you're physically unable to manage your money, but still mentally able to check how another person manages it for you.

Set up a direct debit or standing order

Setting up direct debits or standing orders on your bank account makes sure that your bills, loans and subscriptions are paid on a regular basis without you needing to arrange this each time. This is a simple way of managing your finances without anyone else needing to get involved.

To set up a direct debit, contact the company that the payments are due to, and ask for a direct debit instruction form. The company should tell you in advance how much they'll take and when.

A standing order is an instruction given by you to your bank to regularly pay out a fixed sum of money to another account. This may be helpful if you give someone a regular amount of money to do your shopping, for example.

Give someone access to your bank account

You can instruct your bank or building society to give someone you trust access to your bank account – this is known as a third-party mandate. You can decide what you want them to be able to do, such as withdraw a maximum amount or check your balance. Speak to your bank about how to set up a third-party mandate – they may have a standard form for you to fill out. The mandate may become invalid if you lose mental capacity at any time after setting it up.

Set up a joint account

You can set up a joint bank account with another person to give them direct access to your money. Both of you will be given a debit card to withdraw money from the account. You must completely trust this person to follow your wishes, as they can legally withdraw all of the money from the account without your

permission. You may also be held liable for any debts the other person builds up on your joint account. Contact your bank if you would like to set up a joint account.

If you lose mental capacity, the bank can decide to restrict the other person's use of your joint account until a lasting power of attorney or deputyship is registered (see chapters 6 and 10).

Write a letter to your bank

Your bank or building society may accept a 'letter of authority' from you to allow someone you trust to have access to your account if you're unable to get to the bank – perhaps because you're in hospital. Ask your bank or building society if they offer this and, if so, how to organise it. However, because of the risk of fraud, some financial institutions may not accept a letter of authority and may ask you to set up a third party mandate.

Get someone else to collect your benefits

If your benefits are paid into a building society or bank account but you're temporarily unable to collect your money, you can write to them to ask

for someone else to be allowed to operate your account and withdraw funds. The bank can decide whether or not they will agree to this request. If your benefit is paid by cheque, your nominated person can cash the cheque on your behalf. You will need to sign the back of the cheque to prove that you have asked someone else to cash it for you. If you need someone to permanently collect or manage your benefits on your behalf you could consider setting up an appointee (see below).

Set up an appointee to collect your benefits

An appointee can manage your benefits on your behalf if you have lost capacity and haven't set up a lasting power of attorney for property and financial affairs (see chapter 5). They can only manage your benefits.

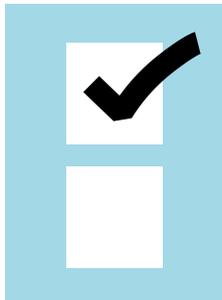
The Department for Work and Pensions (DWP) will appoint someone, such as a close relative, to receive your benefits on your behalf. They will visit them to check they are suitable.

Your appointee's responsibilities include:

- telling the benefits office about any changes which may affect how much you receive

- spending the benefits in your best interests
- paying back any overpaid benefits.

To do...

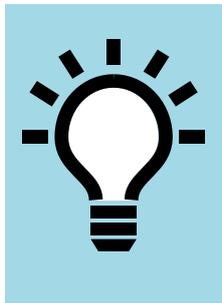


If you want to become an appointee for a friend or relative, contact the relevant benefit helpline:

- Attendance Allowance – contact the Attendance Allowance helpline on [0345 605 6055](tel:03456056055)
- Disability Living Allowance – contact the disability benefits helpline on [0345 712 3456](tel:03457123456)
- State Pension – contact your local pension centre or call [0345 606 0265](tel:03456060265)
- Personal Independence Payment (PIP) – contact the PIP new claims line on [0345 850 3322](tel:03458503322)
- all other benefits – contact Jobcentre Plus on [0345 604 3719](tel:03456043719).

For more information on becoming an appointee, visit [gov.uk/become-appointee-for-someone-claiming-benefits](https://www.gov.uk/become-appointee-for-someone-claiming-benefits).

Good to know



If you have already been approved by the DWP as an appointee for a benefit, you can also be an appointee for Housing Benefit and Council Tax Reduction, as long as you apply in writing to your local council.

5. What is a power of attorney?

A power of attorney is a legal document which lets you give someone you trust (the attorney) the authority to make decisions on your behalf. There are three types of attorney:

- ordinary power of attorney (see chapter 6)
- lasting power of attorney (see chapter 7)
- enduring power of attorney (see chapter 8).

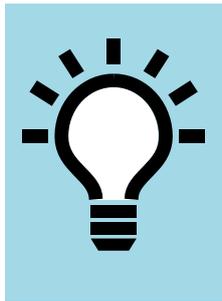
Best interest decisions

An attorney must make decisions in your best interests. The Mental Capacity Act Code of Practice says this means your attorney should:

- do everything they can to involve you in making a decision
- try to identify the things you would have taken into account when making a decision
- not make any assumptions about you simply based on your age, appearance, condition or behaviour
- consider whether you might regain capacity
- consider any past and present views, beliefs and values that might influence a decision

- if appropriate, consult others – such as your friends and relatives or anyone caring for you
- not restrict your rights.

Good to know



If you have been granted power of attorney and want advice on how you should and shouldn't act, contact the Office of the Public Guardian ([0300 456 0300](tel:03004560300), gov.uk/opg).

6. Ordinary power of attorney

You can set up an ordinary power of attorney if you need someone to act for you for a temporary period — for example, while you're in hospital or unable to take care of things because of ill health. It's valid only for as long as you still have mental capacity.

An ordinary power of attorney allows one or more people you trust, such as a relative, friend, or neighbour, to deal with your money, finances and property. You are known as the donor and the person you appoint to manage your financial affairs is the attorney.

You can either let your attorney manage your finances with no restrictions (general), or give them specific powers (limited). For example, you could state if you will allow your attorney to:

- sell your property on your behalf
- have access to your bank account
- make payments for you
- withdraw money from your account
- set up or cancel direct debits from your account
- sign cheques on your behalf.

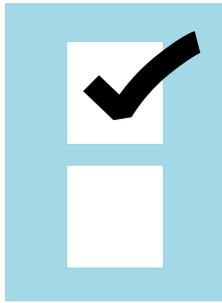
You must have full mental capacity to set up an ordinary power of attorney, as you will need to decide how your attorney deals with your affairs and be able to supervise their actions. You can remove the attorney's powers if you think they're not managing your money in your best interests, or you no longer need their help.

How do I set up an ordinary power of attorney?

It's important to get the wording right when setting up an ordinary power of attorney, so ask a solicitor or another legal adviser – such as at your local Citizens Advice – to write the document for you.

You don't need to register an ordinary power of attorney with the Office of the Public Guardian or Court of Protection. To end one, you need to issue a deed of revocation – ask a legal adviser for help.

To do...



To find a legal representative at your local Citizens Advice (if they have one) contact [03444 111 444](tel:03444111444), (citizensadvice.org.uk) to find your local office.

You might be able to get free initial legal advice through a Law Works legal advice clinic (lawworks.org.uk), or from the Disability Law Service ([020 7791 9800](tel:02077919800), dls.org.uk).

To find a solicitor in your local area, contact The Law Society ([020 7320 5650](tel:02073205650), solicitors.lawsociety.org.uk).

What if I lose mental capacity?

An ordinary power of attorney becomes invalid if you lose mental capacity.

If you want someone to be able to act as your attorney both now and in the future if you lose mental capacity, you could set up a lasting power of attorney rather than an ordinary power of attorney. A lasting power of attorney must be arranged while you still have capacity to make the decision, but you can set it up so the powers only become valid if you then lose capacity.

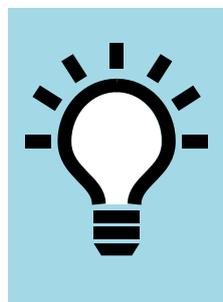
7. Lasting power of attorney

A lasting power of attorney (LPA) gives someone you trust the legal power to deal with your affairs in the future if you lose mental capacity. Lasting powers of attorney (LPA) replaced enduring powers of attorney (EPA) (see chapter 8).

There are two types of LPA:

- Financial decisions – lets the attorney make decisions about your money and property. This could include managing your bank account, paying bills, collecting benefits or pensions or selling your house.
- Health and care decisions – lets the attorney make decisions about your personal welfare and healthcare. This could include decisions about your daily routine, medical care, moving into a care home or receiving life-sustaining treatment.

Good to know

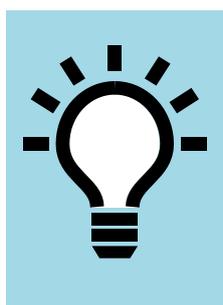


You can have the same attorney for both types of lasting power of attorney, but you have to apply on different forms to set up each one.

The LPA for financial decisions can be used while you still have capacity, if you want to. The LPA for personal welfare can only be used once you

have lost mental capacity to make such decisions yourself. Both types of LPA need to be registered with the Office of the Public Guardian (OPG) before the documents can legally be used.

Good to know



OPG works to protect people who lack capacity from abuse. Contact them for more information about their work (0300 456 0300, gov.uk/government/organisations/office-of-the-public-guardian).

OPG produces a leaflet, **Who needs a lasting power of attorney**, which explains the benefits of setting up an LPA (gov.uk/government/publications/who-needs-a-lasting-power-of-attorney).

Who can be my attorney?

Your attorney can be given complete authority over your financial affairs and your personal welfare, so it's important that you choose someone you feel you can trust completely to make decisions in your best interests.

Your attorney could be a family member, friend, spouse, partner, or a professional such as a

solicitor. An attorney must be over 18 and shouldn't be a paid care worker, except in exceptional circumstances. Your attorney won't get any money for their role, unless they're a professional, but they can claim back expenses such as postage, travel costs or photocopying costs.

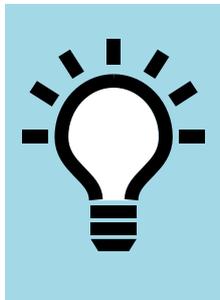
You may wish to appoint more than one person as an attorney. In this instance, you will have to say if your attorneys can make decisions on their own, if they can make some decisions on their own and others together or if they must all agree on a decision. If you decide that your attorneys must act jointly on a decision, they must all agree or else the decision cannot be made.

How do I set up a lasting power of attorney?

You need to complete an official form from the Office of the Public Guardian (OPG) and then register it with them. You will need to complete separate forms if you decide to set up both a financial decisions LPA and a health and care decisions LPA. It costs £110 to register an LPA but you may pay less, or even nothing at all, if you're on a low income or receiving certain benefits.

You can specify exactly what decisions your attorney can or can't take on your behalf in your LPA form. This may be important if there is the potential for disagreements between family members or friends as to what decision might be in your best interest.

Good to know



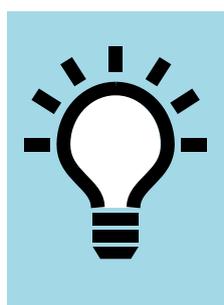
The LPA forms can be completed online, or you can download all the relevant forms – and guides on completing a lasting power of attorney – from the Office of the Public Guardian website ([gov.uk/power-of-attorney/make-lasting-power](https://www.gov.uk/power-of-attorney/make-lasting-power)).

8. What happens to existing enduring powers of attorney?

Lasting power of attorney (LPA) has replaced enduring power of attorney (EPA).

An EPA allows an attorney to make financial decisions on behalf of someone who couldn't make such decisions. You can no longer set up a new enduring power of attorney, but if you already have one set up, it remains valid. Alternatively, you can choose to cancel your EPA and set up an LPA for property and financial affairs. If you have set up an EPA and you lose mental capacity, your attorney must register the EPA with the Office of the Public Guardian.

Good to know



If you have an EPA set up, you may also wish to set up an LPA to give someone the authority to make decisions about your health and wellbeing.

9. Ending or changing a lasting or enduring power of attorney

If you still have mental capacity, you can change or end your lasting power of attorney (LPA). You can end an enduring power of attorney (EPA) but you can't make changes to it – you'll need to cancel it and set up an LPA instead.

Ending or changing your lasting power of attorney

To end your lasting power of attorney, you'll need to send a written statement called a deed of revocation to the Office of the Public Guardian. You'll need to use specific wording. The government website has detailed information about this ([gov.uk/power-of-attorney/end](https://www.gov.uk/power-of-attorney/end)) or call the Office of the Public Guardian (0300 456 0300).

If you want to change your lasting power of attorney by removing someone from it, you can make a partial deed of revocation. Again, you'll need to include specific information when writing this ([gov.uk/power-of-attorney/end](https://www.gov.uk/power-of-attorney/end)).

Send your completed deed to the Office of the Public Guardian. You'll also need to inform your attorney that you're ending the LPA.

Your attorney can also end an LPA by stating that they no longer wish to carry out the role. To do this, they have to complete a form and send it to you, the Office of the Public Guardian and any other attorneys

(gov.uk/government/publications/disclaim-a-lasting-power-of-attorney).

Ending an enduring power of attorney

If you still have mental capacity, you can cancel an enduring power of attorney. Details of how to do this can be found at gov.uk/use-or-cancel-an-enduring-power-of-attorney or call the Office of the Public Guardian (0300 456 0300). Your attorney can also end an EPA by stating that they no longer wish to carry out the role.

If you no longer have mental capacity, your enduring power of attorney can only be revoked if the Court of Protection confirms the revocation. There are two forms to fill in and a fee of £400 for this.

Other ways a power of attorney can end

Your power of attorney will end automatically if you die. It may also end if your attorney dies, loses mental capacity or is found to have abused their power, depending on whether there are other attorneys who can still act.

For an EPA or a property and financial affairs LPA, the power of attorney will end if you or your attorney becomes bankrupt.

For an LPA or a registered EPA, if you are the attorney for someone who has died, inform the Office of the Public Guardian ([0300 456 0300](tel:03004560300)) of the death. You'll need to send them the power of attorney document and a copy of the death certificate.

10. What happens if someone has lost capacity but has not set up a power of attorney?

If someone has already lost capacity but hasn't set up a lasting power of attorney, the Court of Protection can appoint a deputy to make decisions on their behalf.

The Court of Protection

The Court of Protection can make decisions about the property, financial affairs, healthcare and personal welfare of adults who lack capacity. It can:

- decide whether someone has the capacity to make a particular decision
- make decisions about financial and/or welfare matters affecting people who lack capacity
- appoint a deputy to make decisions for someone lacking capacity
- monitor how a deputy or attorney carries out their duties, and remove them if they fail to fulfil their duties
- hear cases concerning objections to register a LPA or EPA and decide whether or not an LPA or EPA is valid
- protect people from abuse.

The court must follow the principles set out in the Mental Capacity Act and make decisions in the person's best interests (see chapter 2).

What does a deputy do?

You can apply to the Court of Protection to be a deputy for someone who has lost mental capacity. A deputy is usually a relative or friend of the person, but professionals such as solicitors or council representatives can also apply.

A deputy has a similar role to an attorney. They might be responsible for property and financial decisions and/or health and welfare decisions. A deputy can only make decisions that they have been authorised to make, and they must make sure that they follow the five main principles of the Mental Capacity Act (see chapter 1).

A deputy's duty stops when the person has died or if the deputy stands down. A deputy won't have any involvement with the deceased person's estate.

Applying to become a deputy

You will need to complete a number of forms when making an application to become a deputy.

This will include an Assessment of Capacity form, which requires a professional (such as a GP, psychiatrist, social worker) to conduct a formal capacity assessment for the person you would like to become a deputy for.

You will also need to formally notify the person you're applying to be a deputy for and anyone you think might have an interest in making decision for that person (such as their relatives) about your application.

Finally, you will be asked to pay a £400 application fee when you submit your application to the Court of Protection. You'll need to pay the fee twice if you're applying to be both types of deputy.

If the Court of Protection decides to hold a hearing for your case, you will need to pay a further £500. Further supervision fees will be required every year – these range between £35 and £320. You can usually claim back the fees from the funds of the person whose deputy you're applying to be, but check with the Court of Protection in advance. You may also be able to get help to pay the fees if your income is low.

Reporting concerns about an attorney or deputy

If you are worried that an attorney or deputy isn't doing their job properly, contact the Office of the Public Guardian ([0300 456 0300](tel:03004560300), [gov.uk/report-concern-about-attorney-deputy](https://www.opg.gov.uk/report-concern-about-attorney-deputy)).

If you feel serious financial, physical or other forms of abuse are taking place, you should immediately contact the police or the council's social services department and ask to speak to the safeguarding adults team. Read our guide **Staying in control when you're older** for more information on safeguarding ([0800 319 6789](tel:08003196789), [independentage.org](https://www.independentage.org)).

11. Independent advocates

Advocates can help older or vulnerable people to share their views, get information and access services, defend their rights and explore different options for health, care and housing.

There are different kinds of advocate depending on the level of help you need. Independent advocates can help you if you're unable to make or communicate a decision for yourself.

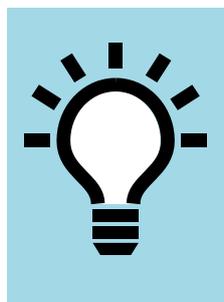
Independent Mental Capacity Advocate (IMCA)

An Independent Mental Capacity Advocate (IMCA) can help you if you lack mental capacity and don't have any family or friends who can be consulted, or it would be inappropriate or impractical to consult them. An IMCA would be involved when there is a serious decision to make on your behalf, such as about your medical treatment or whether you should move into a care home. They may also be involved in reviews of your care.

The IMCA will aim to find out what you would consider if you were making the decision yourself, help you to make the decision where

possible and ensure decisions that are made on your behalf are in your best interests.

Good to know



Under the Mental Capacity Act, council and NHS staff such as doctors and social workers must instruct an IMCA for you if you lack mental capacity, don't have family or friends to represent you and your wishes, and a serious decision has to be made.

What does an IMCA do?

The IMCA will meet you to gather as much information as possible about your wishes and what you would like to happen. They will also have the right to see your health and care records. They should represent your rights and past wishes (if known) to the professionals involved in your care and treatment. Any information or evidence they provide must be taken into account during the best interests decision-making process (see chapter 2). They can also challenge any decisions which may not be in your best interests.

Independent Mental Health Advocate (IMHA)

If you're detained under the Mental Health Act 1983 or are under a community treatment order, you will qualify for support from an Independent Mental Health Advocate (IMHA). You can contact an IMHA directly or ask a health or care professional to get in touch on your behalf.

An IMHA can give you information about your rights under the Mental Health Act and other aspects of your care and treatment. They can help you get your views and wishes heard by the people treating you. They can also help with appealing against a section. Mental health professionals must allow advocates access to relevant parts of your records, if you give the IMHA permission to do so.

IMCAs and IMHAs are independent. They are not employed by the NHS or councils.

Independent advocacy

An independent advocate may be able to help if you:

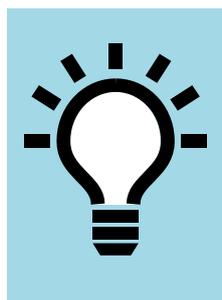
- have mental capacity, but need help to communicate your needs and wishes; or

- have lost capacity, but don't qualify for IMCA services.

Independent advocacy is important because:

- your past wishes should be taken into consideration when important decisions about your care are being made. For example, you may have regularly said you want to stay in your own home rather than move into a care home. An advocate will ensure your wishes are taken into account by those involved in your care
- if you have dementia or other mental health problems you may not be able to deal with complex or detailed information, but you may be able to make one-off important decisions, such as where you wish to live. An advocate can help you to understand all the facts so you can make that decision
- an independent advocate will ensure that your rights, needs and wishes are taken into account by those involved in your care if there's a conflict of interest, such as a dispute among family members or between you and the professionals. An advocate will make sure your best interests are given the correct consideration.

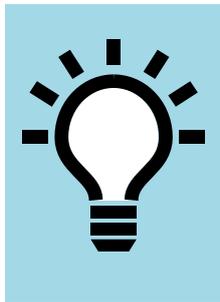
Good to know



Under the Care Act 2014, your council must arrange an independent advocate for you if:

- they think you have care and support needs
- you find it very difficult to get involved in decisions about your care and support, or a safeguarding enquiry
- you don't have anyone to support you.

To do...



Find a local advocacy scheme for older people by searching on the Older People's Advocacy Alliance website (opaal.org.uk) or by contacting:

- your local Age UK ([0800 169 2081](http://08001692081), ageuk.org.uk)
- the mental health charities Mind ([0300 123 3393](http://03001233393), mind.org.uk) or Rethink ([0300 5000 927](http://03005000927), rethink.org), who may also provide an advocacy service.

For more information about advocacy, see our factsheet **Independent advocacy** ([0800 319 6789](http://08003196789), independentage.org).

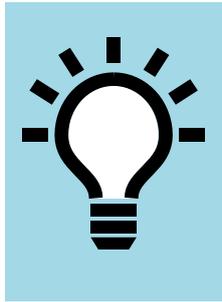
12. Advance decisions

An advance decision is a way to refuse treatment or care if there comes a time when you're unable to make and/or communicate your decision. You may have heard this referred to as a 'living will' or an advance decision to refuse treatment (ADRT).

You can use an advance decision to refuse any treatment including life-sustaining ones such as artificial feeding, mechanical ventilation to help you breathe or Cardiopulmonary Resuscitation (CPR) to re-start your heart. You can't use an advance decision to refuse food or drink by mouth or request particular treatments.

You could write an advance decision to make sure your doctors, other professionals and family are clear about any treatment or care you wouldn't want to receive in certain circumstances, if there comes a time when you can't make these views known.

To do...



Discuss any advance decisions to refuse life-sustaining treatment with your GP or healthcare professional so you can think through all the possible implications and consequences of refusing such treatment in different circumstances.

You may also wish to discuss it with your family and friends to get their perspective on your choices. Remember that the final decision is up to you.

Making an advance decision legally binding

If an advance decision is valid it will be legally binding, which means a doctor or other health professional must follow it.

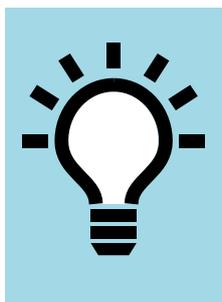
Your advance decision will be valid if:

- you have the mental capacity to make a decision about your future treatment when writing it
- you state which treatments you are refusing, and the circumstances in which you would refuse them

- you include the specific circumstances when you would like to refuse life-sustaining treatment
- you have made the decision without pressure from anyone else
- you understand the impact of refusing the medical treatment
- your signature is witnessed by someone who isn't your spouse, partner, civil partner or relative.

Your GP can also sign the advance decision. This will help the medical team treating you in the future to know you understood the implications of refusing certain treatment.

To do...



For more information about advance decisions, contact Compassion in Dying (0800 999 2434, compassionindying.org.uk). They can also provide forms to help you to complete your advance decision.

Will a valid advance decision always be respected?

There are some occasions when an advance decision will not be followed by doctors. This

could be if the decision needs to be made about a treatment which isn't mentioned in your advance decision, or if your circumstances have changed and the doctor believes this would have affected your decision.

If you already have a living will

Living wills made before the Mental Capacity Act came into force in October 2007 are still legally binding as long as they meet the conditions of the Mental Capacity Act. One of the key legal differences between a living will and an advance decision is that the refusal of life-sustaining treatment must be put in writing and must meet specific requirements to be legally valid. If you have an old living will, it's recommended you create a new advance decision to make sure your wishes are legally binding.

Where should an advance decision be kept?

You can ask for your advance decision to be kept in your healthcare records. This means it will be confidential, unless you decide to tell other healthcare professionals, family members or friends. Otherwise you should keep it in a safe place and make sure certain people, such as

close family members or your GP, know where it is kept.

How can I change or remove my advance decision?

It's a good idea to regularly review and update an advance decision to make sure it reflects your changing health needs.

If you wish to withdraw your advance decision, you can do so at any time, both verbally and in writing. You should then ensure the original written document is destroyed and that everyone who knew about its existence knows it has been cancelled.

How do advance decisions affect a lasting power of attorney?

If you make an advance decision after setting up a lasting power of attorney (LPA) for health and welfare, your attorney can't give consent to treatment that you have refused in this advance decision.

However, if you set up an LPA for health and welfare after you make your advance decision and the LPA authorises your attorney to make

decisions about the same treatment, the attorney can choose to overrule the advance decision.

Advance statements

An advance statement lets you record your wishes about how you'd like to be treated if you lose capacity. Unlike an advance decision, it is not legally binding, but it does allow you to make more general statements about your health or care preferences. Many people use it as a first step to creating an advance decision. You can have an advance decision and an advance statement. This can be helpful, as your advance statement can help your family or health and care professionals to get a better picture of your wishes than they would from an advance decision alone.

If you have set up a lasting power of attorney for health and welfare, an advance statement can help your attorney to understand your wishes.

For more information, contact Compassion in Dying ([0800 999 2434](tel:08009992434), compassionindying.org.uk).

13. Useful contacts

If you're unsure about anything that you have read in this factsheet and would like to talk to someone about it, ring our Helpline to arrange to speak to one of our expert advisers ([0800 319 6789](tel:08003196789)).

To find out about independent advocates for people who need support to have their say:

The Older People's Advocacy Alliance (opaal.org.uk).

To find out about someone else managing your benefits:

The Pension Service ([0845 60 60 265](tel:08456060265), gov.uk/contact-pension-service).

To find out about advance decisions (living wills):

Compassion in Dying ([0800 999 2434](tel:08009992434), compassionindying.org.uk).

To find a solicitor and set up a Power of Attorney:

The Law Society ([020 7320 5650](tel:02073205650), solicitors.lawsociety.org.uk)

If you are worried about the welfare of someone who does not have mental capacity:

The Office of the Public Guardian (0300 456 0300, [gov.uk/government/organisations/office-of-the-public-guardian](https://www.gov.uk/government/organisations/office-of-the-public-guardian))

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