

# Making a Lasting Power of Attorney (LPA) for Health and Welfare

**Making a Lasting Power of Attorney (LPA) for Health & Welfare, and how this works alongside an Advance Decision (otherwise known as an Advance Directive and previously known as a Living Will)**

An LPA for Health & Welfare allows you to appoint a person/people you would trust to speak on your behalf, as if they were you, if you were too ill to talk to doctors and other medical and healthcare professionals.

If you were unwell, the person/people you have appointed as your attorneys would be able to step in and make decisions about the following matters:

- The type of healthcare and medical treatment you receive, including life-sustaining treatment (if you have given them the right to do that)
- Where you live
- Day to day matters, such as diet and daily routine

## HOW ARE DECISIONS MADE ON MY BEHALF IF I LACK CAPACITY?

The Mental Capacity Act sets out how doctors and those close to you make decisions on your behalf if you lack capacity. The person that makes decisions will depend on whether you've made an Advance Decision or an LPA for Health & Welfare.

So why should a Health & Welfare LPA be put in place?

### 1. To keep control

There is no automatic legal right for your family or friends to make medical or care decisions on your behalf, even if they are your spouse or child. However, by signing a Health & Welfare LPA, you can appoint someone of your choosing to make medical and care decisions for you, and so taking that power away from doctors and social workers.

### 2. To protect your best interests

If you are unable to make medical and care decisions for yourself, your attorney is there to act in your best interests, taking into account all that they know or you have communicated to them about your feelings, wishes and beliefs. This could include consulting with others interested in your health and welfare.



### 3. To avoid conflict

If there is potential for disagreement amongst family members – whether that is between your spouse and children from a previous relationship, or otherwise – then stating in advance who has the authority to make medical and care decisions for you can be extremely helpful. This is especially so when it is considered that in the event of disagreement, Social Services can step in and make decisions which relate to your living arrangements and medical care etc.

### 4. To save time and money

Without a Health & Welfare LPA in place, in certain circumstances an application to the Court of Protection may be required to appoint a Deputy to make such decisions for you. This is an expensive and time-consuming process.

If the Court determines that you are not mentally capable of making decisions for yourself, then it will appoint a Deputy to act in your best interests, which could be the Local Authority. Having a Health & Welfare LPA in place avoids this situation.

### 5. So that you are prepared

Planning in advance means that you will be prepared for all eventualities. By creating a legal document, you can have some certainty over your healthcare should you reach a point where you can no longer make decisions independently. Postponing making these arrangements could mean that you miss the opportunity to make your wishes known.

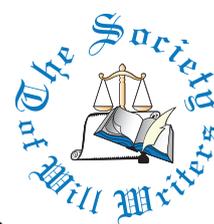
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## ADVANCE DECISION (LIVING WILL) – WHAT IS IT?

An Advance Decision allows you to write down any treatments that you don't want to have in the future, in case you later become unable to make or communicate decisions for yourself.

You can use it to refuse any medical treatment including life-sustaining treatment, such as:

- cardiopulmonary resuscitation (CPR) if your heart stops
- being put on a ventilator if you cannot breathe on your own
- being given food or fluids artificially, for example through a drip, a tube through the nose or through a tube directly into the stomach
- antibiotics for a life-threatening infection

It will only be used if you can't make or communicate a decision for yourself. The legal name is an Advance Decision to Refuse Treatment, and it's also sometimes called an Advance Directive. A Living Will is the old name for the document but it is still commonly used.

Advance Decisions are legally binding in England and Wales, as long as they meet certain requirements. This means that if a healthcare professional knows you've made an Advance Decision, they have to follow it. If they ignore an Advance Decision then they could be taken to court.

### Can you have both an Advance Decision and an LPA for Health & Welfare.

Yes, but if you do, the one that you made more recently will take priority when a decision needs to be made about your treatment and care.



For example:

- If you make an LPA after making an Advance Decision your attorney will be able to override what's written in your Advance Decision as long as, when you made the LPA, you gave them the power to make the decision in question (for example, by choosing that they can make decisions about life-sustaining treatment).
- If you make an Advance Decision after making an LPA your attorney won't be able to override what is written in your Advance Decision. In this situation, if a decision needs to be made about something that you haven't detailed 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, make sure that you tell your attorney/s about your Advance Decision and give them a copy.

### What do I do next?

Call A R K on 01438 746977 or email [info@arkpowers.com](mailto:info@arkpowers.com) to discuss making an LPA and/or an Advance Decision. We will answer any questions you may have, and take you step by step through the process of making the documents.

Fees will depend on whether you are making more than one type of LPA (you may also require one for Finance & Property and/or Business). If you are only making one type of LPA the fee will be £280 + VAT\* plus £200 + VAT for any additional LPAs. For an Advance Decision, where A R K haven't drafted your Will the fee will be £90, and where we have it will be £65.

\*If you decide to register your LPA for immediate use (which is the more sensible option if you are making an LPA for Health & Welfare) you will also have to pay the Office of the Public Guardian registration fee of up to £82.

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