

Advance decisions versus lasting powers of attorney

Advance decisions

Lasting powers of attorney

It is free.	Cost	£82 registration cost for one or £164 for two (can apply for reduction if have a low income). Professional fees if using a solicitor.
The refusal of treatment only. A person may name one or a number of specific treatments.	Powers	The refusal of and consent to treatment plus, the refusal of and consent to social care and also financial decisions. The donor can state the scope of the attorney's powers.
No forms required. It can be made verbally to another person. If life-sustaining treatment is refused it must be in writing, signed and witnessed.	Process	Standard forms from the Office of the Public Guardian which must be witnessed, certificated and registered with the OPG.
A person states their wishes to refuse treatment verbally or in writing (for life-sustaining treatment) when they have capacity and these must be followed if the person later loses capacity.	Method	An attorney (chosen by the individual) makes decisions on their behalf. The person can let them know any prior wishes before they lose capacity. More flexible as the attorney can deal with issues that may not have been predicted in an advance decision and covers more than treatment.
The advance decision can be changed at any point whilst the person has capacity at no cost.	Changes	Can be changed even if it has already been registered as long as the donor has capacity. This may attract a charge. See: www.gov.uk/power-of-attorney/change-your-lasting-power-of-attorney
A valid and applicable advance decision must be followed where it applies to treatment that is proposed for the person but note exceptions under the Mental Health Act 1983.	Authority	The attorney (depending on scope of powers given) has full authority to make all health, welfare and financial decisions but note exceptions under the Mental Health Act 1983.
An advance decision can be overridden if it does not meet the requirements of the Act or there is a significant change in circumstances.	Problems	Concerns about an attorney can be reported to the Office of the Public Guardian who can investigate. Attorneys can be removed by the Court of Protection if they are not acting in the person's best interests.
A person should carry something with them indicating they have an advance decision. An advance decision could be written on a credit card sized piece of paper.	Evidence	A person should carry evidence with them that they have a lasting power of attorney and ensure the attorney is easily contactable. The attorney should also present evidence of their powers. The OPG have a searchable register.
Only has authority when a person lacks capacity and the treatment stated in the advance decision is the one that is being proposed for the person.	Limits	For health and welfare decisions the attorney only has authority when the person lacks capacity. For financial decisions the attorney can have authority before the person lacks capacity, but this must be stated on the form. In either case, the attorney only has authority over decisions stated in the lasting power of attorney.

This is not a substitute for the Act or case law. Nothing in it is intended to be, or should be, relied upon as legal advice.

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