A guide to advance decisions / statements

Information for service users and carers
Is an advance decision and an advance statement the same thing?

No. An advance decision is made under law (the Mental Capacity Act 2005). It’s a refusal of a specific treatment at some time in the future.

An advance statement is not made under law. It’s considered good clinical practice, allowing you to state your choices and preferences for care and treatment in the future.

**Advance decisions**

What is an advance decision?

An advance decision is a refusal of future treatment, if at that time you lack mental capacity. The decision should specify the treatment that is being refused and the circumstances in which the decision will apply.

An advance decision used to be known as a living will or advance directive. It was given legal standing through the Mental Capacity Act. Whilst you can refuse being given a particular treatment, you cannot insist on receiving a particular treatment.

Is an advance decision legally binding?

Yes, if it is valid and applicable to the medical circumstances in question. It will not be valid if you’ve given someone power of attorney (to make decisions on your behalf) since making the advance decision. If you’re detained under the Mental Health Act (1983), doctors have statutory authority to give you treatment for mental disorder. This may override your advance decision.
This is allowed for medication treatments, but not electroconvulsive therapy (ECT). An advance decision refusing ECT can only be over-ridden in an emergency where it is necessary to save life or prevent serious deterioration.

Advance decisions about physical health care treatments will remain valid if you are detained under the Mental Health Act.

**How can I make sure an advance decision is valid?**

To make an advance decision you must be 18 or over and be mentally capable of making and understanding the decision at the time it’s made.

If there’s any doubt about your mental capacity, or if the decision to refuse treatment has potentially serious consequences, it is best to have your mental capacity confirmed by a doctor.

An advance decision can be made verbally or in writing and must be clear and unambiguous. It should refer to the treatment in as clear terms as possible.

If the treatment being refused is medication, it should name any drugs you do not want. It should give reasons behind your decision. You should make it clear that you understand the consequences of refusing treatment.

If the refusal relates to life sustaining treatment then you need to include in your document that the decision to refuse treatment applies even if your life is at risk.

The document should be signed by you and witnessed if the advance decision relates to life sustaining treatment.
How do I make an advance decision?

If you make an advance decision verbally, make sure that the healthcare professional carefully records your wishes in your healthcare record. It’s better to make an advance decision in writing and this is a requirement in some cases.

It’s best to discuss your thoughts about an advance decision with your GP or hospital doctor beforehand so that the consequences of the refusal of treatment can be fully explained and you can make an informed decision.

People who can offer help with this are a solicitor, the Citizen’s Advice Bureau or an Independent Mental Capacity Advisor.

We can give you a form that you can use to make an advance decision.

What happens to the advance decision when it’s completed?

This should be given to your doctor or care coordinator. A copy will be placed in the healthcare record and possibly sent to others in the care team and your GP.

You should keep a copy yourself and consider giving a copy to your solicitor and a relative or carer. You should review your advance decision at regular intervals.

Can I change or withdraw my advance decision?

Yes, this can be changed at any time whilst you have mental capacity to do so. You need to make sure that the people involved in your care and anyone else who has a copy of your advance decision are made aware of this change and destroy copies which are no longer valid.
Advance statements

What is an advance statement?
An advance statement is a document that you complete when you are mentally well about your care and treatment preferences should you become unwell in the future.

During a crisis you may be too ill to make informed choices and decisions. This is a way of telling people what you want to happen before that situation occurs.

An advance statement is not legally binding but clarifies your views and preferences for treatment. It will be taken into account by the professionals treating you.

There are certain circumstances when it can be overridden, for example, if there is a risk to yourself or others or if you are detained under the Mental Health Act.

Who can make an advance statement?
Anyone who has mental capacity (or mental competence - a term used for persons under 16) can make an advance statement about how they would like their care to be managed if, at some point in the future, they become too unwell to express their wishes. If there’s doubt about a person’s mental capacity, the Mental Capacity Act provides guidance about mental capacity assessments of people aged 16 and above.

For younger people there’s a slightly different legal test of mental competence which healthcare staff may need to consider.
How do I make an advance statement?

You can write the document yourself or ask for help from a member of your care team or another person. The document can include:

- Who to contact if you become unwell
- Who you would like to be kept informed of your progress
- The people you prefer to visit you or not to visit you whilst you are unwell
- Your preferences for treatment and medication
- What has worked well for you in the past
- Matters that are important to you in respect of diet, health, religion, family, home circumstance and financial matters
- Arrangements that you wish to be made for your children, dependants or family pets
- How your home should be made secure and who should do this

The document doesn’t have to be witnessed as it’s not a legal document. We can give you a form which you can use to make an advance statement.

What happens to the advance statement when it’s completed?

It should be given to your doctor or care coordinator and placed in your healthcare record. With your agreement, it can be copied to other members of your care team, your GP and your relative or carer. You should keep a copy yourself.
Can I change or withdraw my advance statement?

You can change this at any time but you need to make sure that the people involved in your care, and anyone else who has a copy of the document, is informed of any change and replaces the old version with the new one.

If you have an advance statement it’s a good idea to remind healthcare professionals at care review meetings and review it at regular intervals.
Where can I find out more?

For more information on advance decisions and advance statements, ask a member of your care team or contact our Service Experience Desk on:

**Telephone:** 0300 555 0535  
**Email:** Sed@dwmh.nhs.uk  
**Online:** www.dwmh.nhs.uk  
**Post:** Freepost RSRA-TLAX-ETUU  
Service Experience Desk  
Dudley and Walsall Mental Health Partnership NHS Trust  
2nd Floor  
Trafalgar House  
Dudley  
DY2 8PS

You may also find the following website helpful [www.mind.org.uk](http://www.mind.org.uk)

If you require this leaflet in another language or format such as large print, braille or easy read please contact the communications team on 01384 325022 or email communication@dwmh.nhs.uk