

# Mental Capacity Act (2005) Subgroup

## Advance Decision to Refuse Treatment

### Who makes an advance decision?

An advance decision (sometimes known as an advance decision to refuse treatment, an ADRT, or a living will) is a decision you can make now to refuse a specific type of treatment at some time in the future. It lets your family, carers and health professionals know your wishes about refusing treatment if you're unable to make or communicate those decisions yourself. The treatments you're deciding to refuse must all be named in the advance decision.

You may want to refuse a treatment in some situations, but not others. If this is the case, you need to be clear about all the circumstances in which you want to refuse this treatment.

An advance decision is not the same as an advance statement.

### Who makes an advance decision?

You make the advance decision, as long as you have the mental capacity to make such decisions. You may want to make an advance decision with the support of a clinician.

If you decide to refuse life-sustaining treatment in the future, your advance decision needs to be:

- written down
- signed by you
- signed by a witness

If you wish to refuse life-sustaining treatments in circumstances where you might die as a result, you need to state this clearly in your advance decision. Life-sustaining treatment is sometimes called life-saving treatment.

You may find it helpful to talk to a doctor or nurse about the kinds of treatments you might be offered in the future, and what it might mean if you choose not to have them.

## Issue 8 – September 2024

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## **Advance Decision to refuse Treatment cont...**

Is an advance decision legally binding?

An advance decision is legally binding as long as it:

- complies with the Mental Capacity Act
- is valid
- applies to the situation

If your advance decision is binding, it takes precedence over decisions made in your best interest by other people.

An advance decision may only be considered valid if:

- you're aged 18 years old or over and had the capacity to make, understand and communicate your decision when you made it
- you specify clearly which treatments you wish to refuse
- you explain the circumstances in which you wish to refuse them
- it's signed by you (and by a witness if you want to refuse life-sustaining treatment)
- you have made the advance decision of your own accord, without any harassment by anyone else
- you have not said or done anything that would contradict the advance decision since you made it (for example, saying that you've changed your mind)

### **Does an advance decision need to be signed and witnessed?**

- Yes, if you're choosing to refuse life-sustaining treatment.
- In this case, the advance decision must be written down, and both you and a witness must sign it.

### **How does an advance decision help?**

As long as it's valid and applies to your situation, an advance decision gives your health and social care team clinical and legal instructions about your treatment choices.

An advance decision will only be used if, at some time in the future, you're not able to make your own decisions about your treatment.

### **Who should see it?**

You have the final say on who sees it, but you should make sure that your family, carers or health and social care professionals know about the decision. You should also let them know where to find it.

Your family or carers may have to find it quickly if you require emergency treatment and they need to tell the healthcare professionals your wishes.

You can keep a copy in your medical records.

For more information on this topic please refer to the following link:

[www.nhs.uk/conditions/end-of-life-care/planning-ahead/advance-decision-to-refuse-treatment](http://www.nhs.uk/conditions/end-of-life-care/planning-ahead/advance-decision-to-refuse-treatment)



# Law Society Guidance

## Law Society Guidance: Identifying a deprivation of Liberty- A practical guide

[Understanding when someone is deprived of their liberty | The Law Society](#)

This guidance draws together the assistance that can be found in the case law and from the practical experience of the authors who, in different contexts, advise upon and act in cases involving questions of deprivation of liberty.

It includes an overview of the legal framework, including the special considerations relating to those under 18.

The guidance applies that framework to different settings:

- hospitals
- psychiatric care
- care homes
- supported living/shared lives/extra care
- at home
- palliative care and hospices

For each setting, a list of potentially 'liberty-restricting' factors are given that may indicate that a deprivation of liberty is occurring.

Scenarios are also given, which illustrate:

- a deprivation of liberty
- a potential deprivation of liberty depending on the circumstances
- a situation unlikely to amount to a deprivation of liberty

Each chapter concludes with a list of questions that professionals can ask themselves whenever they are confronted with a situation which may amount to a deprivation of liberty.

## National Safeguarding Adults Awareness Week – Monday 18<sup>th</sup> – Friday 22<sup>nd</sup> November 2024

**Watch this space**

The Ann Craft Trust is working in partnership with Safeguarding Adults Boards across the country, to promote National Safeguarding Adults Week 2024. Safeguarding Adults Week is a time for organisations to come together to raise awareness of important safeguarding issues.

Derby and Derbyshire Safeguarding Adults Boards are coordinating a practice development week to present briefing events focussing on the theme 'Working in Partnership'.

During Safeguarding Adults Week 2024, we'll be collaborating with our partners to explore a different safeguarding theme each day and will be releasing information on these briefings soon. We believe that working in partnerships allows partners to share knowledge of safeguarding, learn from others and ultimately create safer cultures.

All sessions are **FREE** to professionals working with Derby and Derbyshire residents.



## 39 Essex Chambers: Mental Capacity Act Resource Centre

39 Essex Chambers is a really helpful source of information for practitioners who are interested in updates in case law and practice related to the Mental Capacity Act. They regularly publish reports and also have an area on their website with useful resources, all of which can be downloaded from their website at <https://www.39essex.com/information-hub/mental-capacity-resource-centre>.

### Useful Resources and Links:

- [Mental Capacity Act - A statutory framework for people who lack capacity to make decisions for themselves](#)
- [Guidance to Assessing Mental Capacity and Making Best Interests Decisions](#)
- [Mental Capacity Act](#)
- [Short video 'It's Your Decisions MCA'](#)