

# Mental Capacity Act (2005) Subgroup

## Lasting Power of Attorney and Advance Decision to Refuse Treatment

The Mental Capacity Act 2005 created several ways for a person to make plans for their future if circumstances dictated, they can no longer make decisions for themselves. This means the person can make their wishes and feeling known to others who can then represent their views in the event they lack the capacity to communicate these in the future.



### Making a Lasting power of attorney (LPA)

A Lasting power of attorney (LPA) enables a person to appoint someone they trust to make decisions for them in future if they can't make a certain decision or decisions for themselves. The person (or people) they appoint will become their 'attorney'.

There are two types of LPA:

- LPA for property and financial affairs – this gives the attorney or attorneys the power to make decisions about things like selling the person's house or managing their bank account.
- LPA for health and welfare – this gives the attorney or attorneys the power to make decisions about the person's health and personal welfare, such as day-to-day care, medical treatment, or decisions about where they might live so that they can receive care and support, such as a care home.

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## **Using a valid Enduring Power of Attorney (EPA)**

Enduring power of attorney (EPA). These were used before LPAs were introduced in England and Wales under the Mental Capacity Act. If an EPA was made and signed before October 2007, it can still be registered and used.

An EPA only allows the attorney to make decisions about a person's finances and property. It does not cover health and welfare decisions.

## **Creating an advance decision**

The Mental Capacity Act also enables someone to create an advance decision to refuse treatment. This allows them to state the types of treatment they don't want to have if they don't have the mental capacity to decide this for themselves in the future. This may include refusing life-sustaining treatment.

## **Creating an advance statement**

Another way that people can plan ahead is by creating an advance statement. This is where they can set out their wishes and preferences for the future, including both what they want and what they don't want to happen.

The statement could include:

- their preferences about their care
- where they will live
- what they like or don't like to eat
- daytime activities they enjoy
- who they do and don't want to visit them.

For further information please refer to:

<https://www.gov.uk/government/publications/advice-workers-mental-capacity-act-decisions/making-decisions-a-guide-for-advice-workers#advising-people-on-planning-for-the-future>

## **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>.