

# Dealing with Someone Else's Affairs



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*Community  
Legal Service*

**Direct**



You may find that you have to help someone to deal with their affairs – perhaps an older or disabled relative or someone you care for.

Usually, the help they need is with financial affairs, but sometimes decisions may also be needed about healthcare or other matters.

This leaflet describes the arrangements that must be made to help with, or take over, the management of someone else's affairs. It is written for the relatives, friends and carers of people who can no longer cope on their own, but it may also be useful for people who want to prepare for a time when they may no longer be able to handle their own affairs.

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There are other Community Legal Service leaflets in this series which you may find useful, including:

- Wills and Probate
- Community Care
- Mental Health

The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 22 for sources of information and advice.

All adults have the right to manage their own affairs and make their own decisions about finance, healthcare and other matters. Some may ask for help in dealing with their affairs or may wish to appoint someone to do it for them. Other people may lack the mental capacity to make their own decisions, and legal arrangements may be needed for someone to take over their affairs.

This leaflet describes the powers available to enable you to deal with someone's affairs. These differ according to whether the person you are helping has the mental capacity to make their own decisions and supervise your actions. For people who lack capacity, there are special rules, particularly for making financial and healthcare decisions. The leaflet deals with four main issues:

- What the law says about mental capacity and decision-making (see right);
- Ways of arranging to deal with someone's financial affairs (see page 6);
- Decisions about someone's healthcare (see page 17); and
- What to do if you suspect that a vulnerable person is being abused (see page 21).

## What is 'mental capacity'?

The law says all adults have the right to make their own decisions, and it assumes that people have the mental capacity to do this unless it is proved otherwise. For most types of decision, 'capacity' means being able to understand and remember the information you need so that you can make balanced choices.

Very few people lack the capacity to make any decisions at all. Some people may have the capacity to manage some activities and make certain day-to-day decisions but not others. For example, an older person with dementia may be able to collect and spend their weekly pension, but be unable to deal with more complex financial matters, such as investments or selling a property.

## How is mental capacity assessed?

Each time someone needs help to make a decision or do something, their ability to make a choice must be assessed. Some people's mental capacity may deteriorate over a long period of time (for example, people with dementia), so the stage at which they are no longer able to understand or make a particular decision is hard to pinpoint. For others (such as people with certain mental health problems), their capacity may get better or worse over time.

For more serious or complicated decisions, it may be necessary for a doctor or other professional to give a more formal assessment of the person's capacity. If you care for someone and you are unsure of their capacity, you can ask a professional to make a formal assessment.

### **Who can assess mental capacity?**

There are different tests for assessing someone's mental capacity, depending on the decisions they have to make. For example, a solicitor helping someone make a will has to make sure that the person has the capacity to understand what the matter is about before he or she signs any documents. If necessary, the solicitor will get an opinion from a doctor or a psychiatrist. If consent is needed for medical treatment or an examination, then the doctor, nurse or other healthcare professional will need to decide whether the patient has the capacity to consent to or refuse consent to the procedure.

The person's family doctor should be able to give an opinion on their general condition and on their capacity to make particular decisions. If the doctor cannot make the assessment for some reason, they will be able to say who else can.

Advice agencies and voluntary organisations may have information or be able to suggest sources of expert help. For example, the Alzheimer's Society can advise on how to help someone with Alzheimer's disease. For details of some of these organisations see 'Further help', on page 22.

### **How can I help assess someone's mental capacity?**

As a carer or close relative, you are likely to know the person you care for very well, and be able to tell doctors and other healthcare professionals about their likes and dislikes. You will probably also know the best ways of communicating with the person and be able to explain them to those who help the person to make a decision or assess their capacity.

Some people may need help or support to make a decision or communicate their wishes. Voluntary organisations and other services may be able to help. For example, an advocate (someone outside the family and not part of the organisations the decision is about) may be able to help the person to make their wishes known or to make a choice. See 'Further help' on page 22 for details of voluntary organisations that may be able to help.

## **What can I do for someone who lacks capacity?**

Even with support, some people lack the capacity to make certain decisions, and actions may need to be taken for them. Generally, the law allows you to do things that are necessary in caring for a person who lacks the capacity to care for themselves, such as:

- personal care (for example, washing and dressing);
- buying their shopping; or
- paying their bills.

This is called the 'doctrine of necessity'.

There are special rules for decisions about:

- other financial matters – see 'When can I deal with someone's financial affairs?' on page 6;
- healthcare matters – see 'Can I deal with decisions about someone's healthcare?' on page 17; and
- dealing with any court proceedings the person may be involved in – see 'What if the person becomes involved in court proceedings?' on page 20.

## **What are 'best interests'?**

When you are dealing with the affairs of someone who lacks the capacity to make their own decisions,

you should always act in that person's 'best interests'. This means you must take into account the person's known wishes and beliefs and their general well-being, including their medical, emotional and welfare needs.

For example, in relation to medical treatment, the courts have said that the person's 'values and preferences when competent (that is, capable), their well-being and quality of life, relationships with family and other carers, spiritual and religious welfare and their financial interests' must be taken into account – not just what may be best for their physical health.

## **Changes in the law**

In April 2005, a new law, the Mental Capacity Act 2005, was passed that aims to help people take decisions for others who lack the capacity to make their own decisions, and to protect vulnerable people from abuse and neglect. The 2005 Act is based on what happens now (as described in this leaflet) but sets out clear rules for deciding:

- when someone lacks capacity;
- when decisions can be made on their behalf; and
- how those decisions should be made.

The new law will also change how you can plan for the future if there is a time when you become unable to make decisions about your own affairs. However, these changes won't come into effect until 2007 at the earliest.

### **When can I deal with someone's financial affairs?**

Most people want to remain independent for as long as possible, and keep the right to deal with their own affairs. It is important that control over financial affairs is never taken away from people against their wishes while they are still able to manage for themselves. But someone may need temporary or permanent help, for example, if they:

- are ill for a time or have an accident that means they have to stay in bed or cannot get out of their home;
- have to go into hospital;
- have a physical disability that means they have difficulty getting around;
- lose a partner or other person who used to deal with their financial affairs;
- change their living arrangements (such as moving in with relatives or into a care home);
- become forgetful or confused about money matters; or

- have a mental illness or disability, or brain damage as a result of accident or injury, that leaves them without the capacity to make financial decisions.

How you can take over looking after someone's financial affairs depends on:

- the type and value of the person's assets;
- whether they still have the capacity to deal with their own affairs; and
- whether they have made any plans in advance to say what they want to happen if they lose the capacity to deal with their own affairs.

Whatever the circumstances, it is important that the person whose affairs you are dealing with is involved as much as possible in decisions about their property and finances.

### **Do I need to get special permission to deal with someone's affairs?**

You may need to get formal powers to deal with someone's affairs, but this depends on:

- how complicated the person's affairs are; and
- what you need to do about them.

While the person can agree to and supervise what you do for them, and their affairs are relatively straightforward, informal arrangements are generally enough.

If you are caring for someone who has lost the capacity to make financial decisions, you may have to use that person's money on their behalf without having any special legal right – for example, to buy them food or pay their heating bills. The law allows you to do such things under the 'doctrine of necessity' (see 'What can I do for someone who lacks capacity?' on page 5) as long as you are acting in their best interests. But this does not give you the right to take control of the person's property or other affairs.

People who lack the mental capacity to manage their own finances are often most at risk of financial abuse. It may be better to make more formal arrangements, both to protect them and to make sure that you could not be accused of taking advantage of them.

In any case, for more complex or important issues (such as dealing with investments and property matters), you will need specific legal authority. This could be, for example, if you have been appointed as their:

- attorney (for more, see page 9); or
- receiver (for more, see page 15).

## How can I help someone to collect or spend their benefits and pensions?

People who receive social security benefits or pensions must choose to have them paid directly into a bank, building society or post office account, or, in certain circumstances, by cheque (for example, if they cannot get to the bank or Post Office). As long as they are still capable of understanding what they are doing, they can make arrangements for you to have access to the money, depending on how the benefit or pension is paid.

- If the benefit is being paid directly into a Post Office Card Account (a new type of account for receiving benefits), the person claiming the benefit will need to apply for you to get a post office card and personal identification number (PIN) to access the account.
- If the benefit is paid into the claimant's bank or building society account, they will need to make arrangements with the bank or building society to allow you to access the account (see 'When can I have access to someone's bank accounts?' on page 8).

- If the benefit is paid by cheque, the person claiming must sign each cheque on the back and you must also sign to declare that you are cashing the cheque on the claimant's behalf. You can then cash it at any post office, but you must have proof of identity for both you and the claimant. Alternatively, you can pay the cheque into the person's bank or building society account and they can then make arrangements to allow you to access the account.

You cannot keep or spend any of the person's money unless they specifically ask you, for example, to do some shopping or pay a bill.

### What happens if the person is not capable of making decisions about their money?

For people who receive social security benefits and are considered to be incapable of acting for themselves, the Department for Work and Pensions (DWP) can appoint someone else (an appointee) to claim and receive benefits and spend the money on the person's behalf. This should happen only if the claimant is no longer mentally capable of dealing with the claim and no-one else has been appointed to manage his or her affairs (such as an attorney or a receiver).

### How can I be made an appointee?

You must apply in writing to the DWP. Officials there must be certain that:

- the claimant cannot manage their own affairs; and
- you are suitable to be an appointee.

A close relative who lives with or often visits the claimant is normally considered the most suitable appointee.

As an appointee, you have authority to claim, collect and spend state benefits in the claimant's interests, but not to deal with savings, property or any other financial matters. You must provide the DWP with all relevant information when claiming benefits and you may be held personally responsible if the claimant receives more benefit than they should because you have provided the wrong information. If the DWP believes that you are not acting properly or in the best interests of the claimant, it may stop you being an appointee.

### When can I have access to someone's bank accounts?

While they are still mentally competent, the person who owns the bank or building society accounts must make arrangements allowing you to have access to their accounts. This can be done in several ways:

- The account-holder may draw up a third-party mandate, allowing you (the third party) to be a signatory to the account, so you can withdraw money or carry out other transactions. Banks and building societies have their own procedures for this – some require a single letter of authority or form signed by the account-holder, but others require a new form to be completed before each transaction.
- Some money could be put into an account held jointly by you and the person whose affairs you are dealing with. Many people living with a spouse or partner use joint accounts, and the arrangement can be used in other situations to give easy access to the account. However, there could be problems if the joint account-holders disagree.
- The account-holder may make a power of attorney, giving you authority to deal with financial affairs, including access to bank accounts. See 'What is a power of attorney?' right.

Some of these arrangements will not work if the account-holder becomes mentally incapable of managing the account. The account may then be frozen and no-one will be allowed to access it until formal arrangements have been put in place, either:

- through registration of an Enduring Power of Attorney (see 'What is a power of attorney?' below); or
- by order of the Court of Protection (see 'What is the Court of Protection?' on page 11).

## What is a power of attorney?

A power of attorney is a legal document that allows someone (the 'donor'), while they have the capacity to understand what they are doing, to appoint another person or group of people (the 'attorneys') to manage their financial affairs. Only the donor can decide to create a power of attorney. You cannot do it on someone's behalf, and you cannot force someone to appoint you as an attorney.

There are two main types of power of attorney:

- An 'ordinary power of attorney' lasts only as long as the donor has the capacity to manage their own affairs.
- An 'enduring power of attorney' (EPA) can continue after the donor has lost the capacity to manage their own affairs.

Both types of power of attorney can be general (covering all the donor's affairs, including money, investments and property) or the donor can set limits on what the attorney can do.

## **What does an ordinary power of attorney allow?**

An ordinary power is useful if someone needs an attorney to look after financial affairs for a temporary period – for example:

- while they are abroad, whether they are on holiday or working abroad;
- if they are in hospital or if they are physically unable to act for themselves; or
- if they want to give someone else the power to carry out a particular transaction, such as selling a house.

The donor can complete a preprinted form available from law stationers or arrange for a solicitor to prepare the power. The donor must sign the document and the signature must be witnessed. The document can then be produced by the attorney or attorneys as proof of their authority to act on the donor's behalf. However, an ordinary power of attorney automatically comes to an end if the donor becomes mentally incapable of managing their own affairs.

## **What does an enduring power of attorney (EPA) allow?**

An EPA is the best way to plan for possible future incapacity because it means that you can choose who you want and most trust to take over your financial affairs if you can no

longer manage for yourself. An EPA can be used to appoint an attorney or attorneys either to:

- manage the donor's financial affairs at any time while the donor still has capacity (in the same way as an ordinary power of attorney), and to continue to manage them after the donor becomes mentally incapable; or
- take over the donor's financial affairs only after the EPA has been 'registered', when the donor is no longer mentally capable of managing their own financial affairs. See 'What does registering an EPA mean?' on page 12.

There are important differences between an EPA and an ordinary power of attorney, as follows:

- An EPA must be made on a statutory form (a special form described in law).
- An EPA can be used after the donor has lost capacity, provided it has been registered by the Court of Protection.
- As well as looking after the donor's needs, with an EPA the attorney has certain powers to provide for other people (such as the donor's dependants) and to make limited gifts (such as birthday presents) on the donor's behalf.

- When an application is made to register the EPA and until it is registered, the attorney's powers are limited to maintaining the donor and preventing loss to the donor's estate.
- After the EPA has been registered, it comes under the jurisdiction of the Court of Protection, which has powers to intervene, restrict or supplement (add to) the attorney's authority. The Court of Protection can also revoke (cancel) the EPA if it believes the attorney is acting dishonestly or not in the donor's best interests.

### What is the Court of Protection?

The Court of Protection protects and manages the property and financial affairs of people who are no longer mentally able to manage their own affairs. The Public Guardianship Office (PGO) administers the decisions of the Court of Protection. The PGO provides information on making an EPA and acting as an attorney and also deals with applications to register EPAs. See 'Further help' on page 22 for contact details.

### How can I be appointed as attorney under an EPA?

The choice of attorney is entirely the donor's. It is important that donors choose attorneys who are both trustworthy and competent at dealing with financial matters. The attorneys can include friends, relatives or professionals (such as a solicitor or accountant).

The donor must complete a special legal form, available from the PGO, legal stationers, solicitors or legal advisers. If the wrong form is used or the form is not completed correctly, the EPA will be invalid. The form must be signed and dated by both the donor and the attorney or attorneys, each in the presence of a witness. The donor must sign first and must be mentally capable of understanding:

- what the EPA is;
- what it is intended to do; and
- that the attorney's authority will continue after the donor loses capacity.

### What if there is more than one attorney?

Donors can appoint as many attorneys as they like, but they must make clear whether they wish the attorneys to act 'jointly' or 'jointly and severally'.

- Joint attorneys must always act together with the other attorney or attorneys, and they must all agree or sign the relevant documents before any transaction can be carried out. This is often used as a safeguard against possible fraud or abuse by one attorney. However, if one of the joint attorneys dies or becomes mentally incapacitated, the power of attorney is no longer valid.
- Joint and several attorneys can act either independently or together, so that, for example, only one signature is needed for a transaction. If one of the attorneys dies or becomes mentally incapacitated, the power of attorney continues, and the remaining attorney or attorneys can continue to act.
- act in good faith, telling the donor of any conflicts of interest you face;
- keep the donor's money in a separate bank account and not mix it with your own;
- keep separate up-to-date accounts of the donor's affairs; and
- apply for registration of the EPA and tell the donor and certain members of the donor's family as soon as the donor becomes or is becoming mentally incapable of managing their own affairs.

### What does registering an EPA mean?

As soon as you believe the donor has become, or is becoming, mentally incapable of managing their own affairs, you must apply to the Public Guardianship Office (PGO) to have the EPA registered by the Court of Protection. If the EPA is not registered, it will stop being valid as soon as the donor loses their mental capacity. The PGO can send you a registration pack with information and the forms you need to fill in. You can also download these from the PGO website.

You must tell the donor and three of the donor's closest relatives that you are applying for the EPA to be registered. The particular relatives you must tell are set out in rules that the PGO will give you. The people you tell can object if they think:

## What must an attorney do?

As an attorney you may do only the things you have been authorised to do, as stated in the EPA document. Whatever the document says, you must always:

- use the same degree of care and skill as if you were conducting your own affairs;
- exercise proper professional competence, if you are a paid attorney acting in the course of your profession;

- the EPA is invalid;
- the donor was put under undue pressure to create the EPA, or it was created fraudulently;
- the person is not yet becoming mentally incapable; or
- you (or another attorney) are unsuitable.

If the donor or a relative objects, the Court of Protection will decide whether the EPA can be registered.

You have to pay to register the EPA, but this can be paid for out of the donor's money. The PGO will tell you the current fee. If neither you nor the donor can afford the fee, you can apply to the PGO to delay paying the fee or for it to be waived.

### What happens after the EPA is registered?

Once the EPA is registered, you (and any other attorneys) can take over handling the donor's property and affairs, in line with what is in the EPA document. The donor cannot then cancel the EPA without the Court of Protection's agreement. Usually the donor stops making their own financial decisions, but any decisions should be discussed with them as much as possible.

There are no automatic checks that attorneys are fulfilling their duties properly. However, the donor can make arrangements for some checks in the EPA, for example by requiring the attorney to provide annual accounts or having an accountant or solicitor check them.

Either way, the PGO can be asked to investigate any concerns about the way attorneys use their powers. Any serious problems will be referred to the Court of Protection. The court has power to call for accounts from an attorney and can remove the attorney if it believes the attorney is abusing their power or otherwise not fulfilling their duties.

As an attorney acting under an EPA, you have authority to deal only with the donor's finances and property, as outlined in the EPA document. You do not have any right to make decisions about the donor's personal care or welfare, or about healthcare or treatment. However, being in control of the donor's money may mean that you could be involved in these decisions.

## If the donor is a trustee

A trust is a legal arrangement where someone (a beneficiary) can arrange for other people (trustees) to look after money or property for them. A common form of trust is when two or more people own a property jointly – in this case, the owners are both trustees and beneficiaries.

An attorney acting under an EPA can carry out a donor's trustee role if it is to do with property that the donor owns or is a beneficiary of. But if the donor is a trustee of any other kind of trust, the situation is more complicated, and you will need to seek expert legal advice.

## What if there is no enduring power of attorney?

If the only financial support of the person you want to help is from social security benefits and pensions, then the Department for Work and Pensions (DWP) could make you an 'appointee' to take over the person's claim for benefits and pensions (see 'What happens if the person is not capable of making decisions about their money?' on page 8).

If the person does have property or assets but has not made a valid EPA, then the Court of Protection can appoint someone to manage their finances.

## What powers does the Court of Protection have?

Anyone who believes that someone they know needs help in dealing with their financial affairs can apply to the Court of Protection. The court will need medical evidence that the person is 'incapable, by reason of mental disorder, of managing their property and affairs' and will also need details of all the person's belongings, including property and money.

The court may make an order, called a 'short order', allowing someone to do whatever needs to be done to deal with the person's money. This usually happens if the value of everything the person owns is not great (currently less than £16,000) and there is no property to be sold.

If the person has more than this, including, for example, a house or flat, or stocks and shares, the court can appoint a 'receiver'. This can be either:

- a family member;
- some other suitable person;
- a professional, such as a solicitor or accountant; or
- the director of the social services department of the person's local authority (council).

The person the court wants to be the receiver must complete a declaration that confirms they are willing and able to take on the role. If no one is willing or able to act as receiver, the court can appoint a receiver from an approved panel (independent people who are often solicitors).

You can get more information about these applications and the role and duties of a receiver from the PGO – see 'Further help' on page 22.

### **What must a 'receiver' do?**

If the court appoints you as a receiver, your duties will be set out in your order of appointment. The Receiver's Handbook, from the PGO, has a list of general duties, including the following:

- Act in the best interests of the client (the person whose affairs you are dealing with) at all times and make sure the client's money is being used to give him or her the best possible quality of life.
- Look after the client's property.
- Claim benefits due to the client, and make sure all their other income is collected and their bills paid on time.
- Keep the client's money and property separate from your own and keep proper records so that you can prepare accounts every year or whenever the court requires it.

- Tell the PGO about any changes in the client's financial situation or personal circumstances.
- Get the court's agreement before dealing with any savings or investments.
- Keep to all orders or directions (instructions) the court makes.
- Consult the client, as far as is reasonable and practicable, about any financial decisions.

As with being an attorney, the Court of Protection (and therefore a receiver) can deal only with property and financial affairs. They cannot make personal or healthcare decisions on behalf of the person they act for, but they may need to be consulted.

### **Is an EPA better than the court appointing a receiver?**

This depends on your wishes and your particular situation. There are two main advantages to making an EPA, rather than leaving the Court of Protection to appoint a receiver to deal with your financial affairs if you become unable to:

- You can choose your own attorney. You have no choice of who is appointed as receiver (although the court would try to take your views into account).

- With an EPA, you normally must pay only the registration fee, unless you choose an attorney who charges for their services. If you have a receiver, you must pay for legal proceedings in the court and for ongoing monitoring of the receiver's work.

However, in some cases, having a receiver can be better:

- If you have large assets, regular monitoring by the court may help to ensure these are being managed properly. This could happen if, for example, you received a large court award from a personal injury claim for an injury that left you unable to manage your affairs.
- If there is a risk of conflict among family members it may be better to allow the court to appoint a professional receiver who is independent of the family.

### What if the person recovers their mental capacity?

Sometimes, a person who has lost their capacity to make their own decisions recovers enough to manage their own affairs. If they have made no formal arrangement to allow others to make decisions for them, the person can simply start making their own decisions again.

If the DWP has made someone an appointee, the person who has recovered will need to explain this to the DWP and make a new application for benefits.

If the person has made an EPA that has been registered (so the attorneys are taking decisions on their behalf), the person (the donor) can revoke (cancel) the EPA. They must ask the Court of Protection to confirm this, and will need to convince the court that they have recovered and they understand what they are doing. They must then notify the attorneys that the EPA is no longer valid.

If the court has appointed a receiver, it will need medical evidence that the person now has the capacity to manage their own affairs. Once the court accepts that the person has recovered, the person will need to tell other organisations dealing with their money or property, such as banks and solicitors, and provide proof of the court's decision.

### How can I make sure a disabled relative is cared for after I die?

This question is raised most often by parents of a child with a long-term disability, who want to make sure that their son or daughter will continue to be cared for, and to have financial security, after the parents' death. This could be done by:

- making a will leaving money to the disabled relative, or to other family members who could be trusted to take care of the disabled relative;
- making a will leaving money to a charity which provides specialist care for the disabled relative; or
- creating a trust with discretionary powers for the trustees to provide for the disabled relative's care needs.

However, when money is provided for the disabled person under a trust or other legal arrangement, including a will, their income or benefits from the DWP could be reduced or stopped, and charges for care services could increase. If you are in this position, you will need to consider this decision carefully, and seek specialist legal advice. Solicitors who belong to the Probate Section of the Law Society or Solicitors for the Elderly may be able to help. See 'Further help' on page 22 for details.

### **Can I deal with decisions about someone's healthcare?**

If the person you care for needs medical treatment, only they can agree to that treatment. No-one – not even husbands or wives, partners, close relatives, professional carers or independent advocates – can legally give or withhold consent to medical treatment on behalf of another adult.

If you have been appointed as attorney or receiver, you have no power to make healthcare or welfare decisions. However, if you are closely involved with the person's affairs, healthcare professionals may consult you when making decisions about their medical treatment and what would be in their best interests (unless the person had made it known that they wouldn't want you to be involved).

### **Can care and treatment be given without consent?**

Doctors, nurses and other healthcare professionals can and should provide treatment without consent for people who are unable to agree to it if:

- they consider it to be necessary to treat the person's illness or condition; and
- it is in the person's best interests.

They should always consult people close to the person to agree the best course of action or treatment, unless the person has made clear in the past that they would not want a particular person involved.

You should never be asked to sign a consent form on behalf of the person you care for, but you may be asked to sign a form to say that the doctors or other healthcare professionals have discussed the person's best interests with you.

## Can decisions about healthcare be made in advance?

While people still have mental capacity, they can state their wishes about the forms of medical treatment that they would or would not want, if they should later lose the capacity to decide for themselves. This is called an 'advance statement'. In the case of someone's wishes to refuse future medical treatment, even life-sustaining treatment, it is sometimes called an 'advance directive' or a 'living will'.

You should try to find out whether the person you care for has made any such plans. They may have already discussed these plans with you or other people close to them while they still had the capacity to make such decisions. If the person has made an advance statement, you should tell the doctor, nurse or other healthcare professional involved and give a copy of any signed document to them.

If someone has made an advance statement but later wants to change their mind, they can simply destroy any written document and tell everyone who knew about it that it is no longer valid. As long as a person has the mental capacity, they can make a new statement at any time.

## What can advance statements include?

There are various things you can include in an advance statement, such as:

- your individual wishes and treatment preferences;
- general beliefs and aspects of life that you value;
- naming a person who should be consulted when a healthcare decision needs to be made;
- asking to receive certain types of treatment in certain circumstances;
- a clear instruction refusing some or all medical treatments in certain circumstances; and
- stating the point when, if your condition deteriorates, you would not want life-sustaining treatment to be given.

Advance statements can be a combination of some or all of the above.

No form of advance statement can make a doctor do something unlawful, including action that is meant to end someone's life, such as assisting suicide.

## Are advance statements legally binding?

Advance statements are legally binding only in certain circumstances. An advance directive refusing treatment is legally binding, even if carers and relatives or healthcare professionals disagree with it, as long as:

- the refusal was made while the person still had mental capacity and they understood what their decision would mean;
- the refusal of treatment is clear and applies in the circumstances that have arisen;
- the advance directive was made without undue pressure from other people; and
- there is no reason to believe that the person has changed their mind.

However, an advance directive refusing treatment for mental disorder can be overruled if the person is admitted to hospital for treatment under the Mental Health Act 1983.

Advance directives are relevant only when the person has lost mental capacity. If you make a decision after you have made an advanced directive, this overrides the advance directive, as long as you made the decision when you were able to do so.

Any advance statements asking for (rather than refusing) specific treatments or expressing wishes or preferences should be respected and taken into account. They can help healthcare professionals know how a person would like to be treated and what form of treatment may be in their best interests. However, professionals may not have to follow with those wishes if, in their professional judgement, the treatment would be pointless, unnecessary for the person's health, or inappropriate.

Doctors must give special consideration to advance statements that ask for life-sustaining treatment, such as artificial nutrition and hydration (ANH). Wherever possible, doctors should take all steps to prolong someone's life, but, in exceptional cases or if someone is close to death, providing ANH may cause them great suffering and loss of dignity. Doctors must take account of a patient's wishes in their advance statement but weigh these carefully against all other relevant factors in deciding whether it is in the best interests of the patient to provide or continue ANH. Doctors sometimes must apply to the High Court if they want to withhold or withdraw life-sustaining treatment where there is doubt about the patient's best interests.

Whatever the situation, professionals who ignore or override an advance statement must do so carefully and must be able to give clear reasons to justify their decision.

### **What if there is a disagreement about someone's capacity or best interests?**

Healthcare or other professionals and people close to the person can usually agree on whether someone has the capacity to make a particular decision or what would be in their best interests. However, if this proves impossible, anyone involved can ask the High Court to decide what is in the person's best interests.

The courts have decided that some decisions about medical treatment are so serious that they must give a ruling in each case. These are:

- withholding or withdrawing of life-sustaining treatment from patients in a permanent vegetative state (PVS); and
- sterilising someone who does not have the capacity to agree to it, unless it must be done for their health.

The court can be asked to make other healthcare decisions, such as those involving ethical dilemmas or untested treatments (for example, new treatments for variant CJD).

The court can also be asked to decide about the person's personal welfare, such as where they should live or whether they should have contact with other family members, in cases where there are conflicts that can't be resolved between professionals or family members.

If it seems that court procedures may be needed, you should seek advice from a solicitor.

### **What if the person becomes involved in court proceedings?**

If someone becomes involved in court proceedings, and they lack capacity to deal with it themselves, they must be represented by a suitable person, called a 'litigation friend', who is appointed by the court. The court proceedings can be to do with disagreements about their capacity, or for another matter (for example, divorce or personal injury). In most cases, a relative, friend, attorney or receiver can ask to be appointed as litigation friend. If someone you are close to needs a litigation friend, you must seek advice from a solicitor about who would be most suitable, and how they can be appointed.

If there is no suitable person willing and able to be the litigation friend, the Official Solicitor can be asked to act as litigation friend. The Official

Solicitor is appointed by the Lord Chancellor to provide representation in court proceedings for children and adults who lack the capacity to represent themselves. See 'Further help' on page 22 for details of the Official Solicitor's office.

## Protecting vulnerable people from abuse

People who need help with their affairs may be vulnerable to abuse, neglect and exploitation. The vast majority of people who care for vulnerable people are entirely trustworthy, but everyone should be alert to signs of abuse and take action to stop it.

### What if I think someone is being abused, exploited or neglected?

If you think anyone is acting inappropriately, unlawfully or not in the best interests of a vulnerable person, you should report it to the relevant authorities:

- If you are concerned about the collection or use of social security benefits, contact the local Jobcentre Plus. If the benefits are for someone who is over 60, contact the Pension Service.
- If you are concerned about the actions of an attorney or receiver, contact the Public Guardianship Office.

- If you think someone has committed a crime against a vulnerable person, such as theft or physical or sexual assault, contact the police. You should also contact social services, who can help support the person while investigations go on.
- If you think someone is not being properly looked after, for example if you think their carer is neglecting them, contact social services.
- If you are concerned about the standard of care in a care home, contact the Commission for Social Care Inspection (in England) or the Care Standards Inspectorate (in Wales). See 'Further help' on page 22 for details.

If you want to make a complaint about treatment or care provided by the NHS:

- In England, contact your local Patient Advice and Liaison Service (PALS). It can put you in touch with your local Independent Complaints Advisory Service if you need to make a formal complaint.
- In Wales, contact your local Community Health Council (CHC), which can help you bring a complaint.

If you need help to pursue a complaint, contact an advice agency or a solicitor or one of the organisations in 'Further help' on page 22.

## **Further help**

### **Community Legal Service Direct**

Provides free information, help and advice direct to the public on a range of common legal issues.

Call 0845 345 4 345

Speak to a qualified legal adviser about benefits and tax credits, debt, education, housing or employment or find local advice services for other problems.

Click [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

Find a quality local legal adviser or solicitor and links to other sources of online information and help.

### **Public Guardianship Office**

phone: 0845 330 2900

[www.guardianship.gov.uk](http://www.guardianship.gov.uk)

### **Action on Elder Abuse**

For people concerned about abuse of older people

phone: 0808 808 8141

[www.elderabuse.org.uk](http://www.elderabuse.org.uk)

### **Age Concern**

Provides national information line for older people and their concerns

phone: 0800 00 99 66

[www.ageconcern.org.uk](http://www.ageconcern.org.uk)

### **Alzheimer's Society**

phone: 0845 300 0336

[www.alzheimers.org.uk](http://www.alzheimers.org.uk)

### **Care Standards Inspectorate for Wales**

phone: 01443 848450

[www.wales.gov.uk/csiw](http://www.wales.gov.uk/csiw)

### **Carers UK**

Supports family or friends caring for people who are ill, frail or have a disability

phone: 0808 808 7777

[www.carersuk.org](http://www.carersuk.org)

### **Citizens Advice**

Your local CAB is listed in the phone book  
[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### **Commission for Social Care Inspection**

phone: 0845 015 0120

[www.csci.org.uk](http://www.csci.org.uk)

### **Community Health Councils (Wales)**

For details of your local CHC

phone: 0845 644 7814

[www.patienthelp.wales.nhs.uk](http://www.patienthelp.wales.nhs.uk)

### **The Law Society**

For help finding a solicitor

phone: 020 7242 1222

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

### **Mencap**

Supports people with a learning disability and their families and carers

phone: 0808 808 1111

[www.mencap.org.uk](http://www.mencap.org.uk)

### **Mind (National Association for Mental Health)**

Supports people with mental distress and their families

phone: 0845 766 0163

[www.mind.org.uk](http://www.mind.org.uk)

### **National Autistic Society**

phone: 0845 070 4004

[www.nas.org.uk](http://www.nas.org.uk)

### **Official Solicitor and Public Trustee**

phone: 020 7911 7127

[www.offsol.demon.co.uk](http://www.offsol.demon.co.uk)

### **Patient Advice and Liaison Service (PALS)**

For information, support and advice in England. To contact your local PALS, phone your local hospital, clinic, GP surgery or health centre, or phone NHS Direct on 0845 46 47

### **Patients Association**

Help and advice to patients of healthcare services

phone: 0845 608 4455

[www.patients-association.com](http://www.patients-association.com)

### **People First**

Service user support for people with learning disabilities

phone: 01604 721 666

[www.peoplefirst.org.uk](http://www.peoplefirst.org.uk)

### **Solicitors for the Elderly**

phone: 01992 471 568

[www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com)

### **Values into Action**

Promotes the human and civil rights of people with learning difficulties

phone: 020 7729 5436

[www.viauk.org](http://www.viauk.org)

## **The Community Legal Service**

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

*Community  
Legal Service*



## **The Legal Services Commission (LSC)**

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) or find the details for your local Legal Services Commission office in the phone book.



The leaflets are also available online at: [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

- 1 Dealing with Debt
  - 2 Employment
  - 3 Divorce and Separation
  - 4 Renting and Letting
  - 5 Buying and Selling Property
  - 6 Losing your Home
  - 7 The Human Rights Act
  - 8 Claiming Asylum
  - 9 Welfare Benefits
  - 10 Wills and Probate
  - 11 Dealing with the Police
  - 12 No-win, No-fee Actions
  - 13 Problems with Goods and Services
  - 14 Medical Accidents
  - 15 Equal Opportunities
  - 16 Racial Discrimination
  - 17 Personal Injury
  - 18 Rights for Disabled People
  - 19 Community Care
  - 20 Education
  - 21 Immigration and Nationality
  - 22 Mental Health
  - 23 Alternatives to Court
  - 24 Family Mediation
  - 25 Veterans
  - 26 Domestic Violence, Abuse and Harassment
  - 27 Living Together and your Rights if you Separate
- 28 Dealing with Someone Else's Affairs**
- 29 Care Proceedings
  - 30 Neighbourhood and Community Disputes
  - 31 Changing your Name

The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343**  
or email [LSCLeaflets@ecgroup.uk.com](mailto:LSCLeaflets@ecgroup.uk.com) or Fax 020 8867 3225



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