

# 7 Minute Briefing: Advance Decisions to Refuse Medical Treatment

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[Pages - Mental Capacity Act](#)  
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## What is an Advance Decision?

- It is a general principle of law and medical practice that people have a right to refuse treatment in advance even if this results in their death.
- This applies if the person is 18 or older, and they have the capacity to make an Advance Decision about treatment.
- People can only make Advance Decisions to refuse treatment. Nobody has the legal right to demand treatment healthcare professionals consider clinically unnecessary, futile or inappropriate.
- Healthcare professionals must** follow a valid and applicable Advance Decision, failure to do so could lead to a claim for damages, battery or assault.

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If in any doubt seek advice immediately  
Via the Legal Team

### What Protection as a Practitioner?

Healthcare professionals will be protected from liability if they:

- Stop or withhold treatment because they reasonably believe that an Advance Decision exists, and that it is valid and applicable

or

- Treat a person because, having taken all practical and appropriate steps to find out if the person has made an Advance Decision to refuse treatment, they do not know or are not satisfied that a valid and applicable Advance Decision exists.

### What about Emergency Situations?

Healthcare professionals should not delay emergency treatment to look for an Advance Decision if there is no clear indication that one exists.

But if it is clear that a person has made an Advance Decision that is likely to be relevant, healthcare professionals should assess its validity and applicability as soon as possible. Sometimes the urgency of treatment decisions will make this difficult.



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### What do I need to know about Advance Decisions in Practice?

-Before healthcare professionals can apply an Advance Decision, there must be proof that the decision: exists /is valid/ is applicable in the current circumstances.

An Advance Decision will not be **valid** if: -

- It has been subsequently withdrawn
- It has been overridden by subsequent Lasting Power of Attorney, which permits the Attorney to make decision in question.
- The person has acted in a way that is clearly inconsistent with the decision

An Advance Decision will not be **applicable** if: -

- The person has actual capacity
- To treatments or circumstances not specified
- If circumstances now exist that were not anticipated and are likely to have affected the decision

**If valid and applicable**, the Advance Decision has the effect of a contemporaneous capacitated refusal.

## 6 What if an Advance Decision is not valid or applicable?

Healthcare professionals must consider the Advance Decision as part of their assessment of the person's best interests if they have reasonable grounds to think it is a true expression of the person's wishes. They must not assume that because an Advance Decision is either invalid or not applicable, they should always provide the specified treatment (including life-sustaining treatment) – they must base this decision on what is in the person's best interests

### Advance Decisions to refuse Life Sustaining Treatment

The MCA 2005 imposes a legal requirement about what must be included within an Advance Decision to refuse life sustaining treatment. In practice staff must check to see if the following exists and contains the following information.

The Advance Decision to refuse life sustaining treatment:

- Must be writing and must be signed
- Must be signed in the presence of a witness
- Witness must sign in the presence of the person
- Must be clear in setting out what treatment is being refused and in what circumstances
- Must include a statement that the Advance Decision is to apply to the specific treatment **even if life is at risk**

## 5 Written Advance Decisions to refuse medical treatment

It is favourable that people write an Advance Decision to refuse treatment wherever possible as this will help to reduce any risk of confusion at the point it is required to be implemented. **In practice** you should always make a reasonable effort (time permitting) to see if a written Advance Decision exists.

If there is one check whether it sets out: Details of the person making the Advance Decision such as name, DOB, address, any distinguishing features-GP details and whether they have a copy- Statement of use when lacking capacity- Clear statement of the decision, the treatment to be refused and circumstances in which the decision will apply.- Date document written and any review undertaken- Signature (or person asked to sign in their presence)

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### Verbal Advance Decisions to refuse treatment

It is possible to make a verbal Advance Decision to refuse treatment. If you become aware of a verbal Advance Decision being made, the MCA code of practice sets out the following guidance:

- Where possible, record a verbal Advance Decision to refuse treatment in the persons notes.
- This will produce a written record that could prevent confusion about the decision in the future.

If possible, the record should include:

- A note that the decision should apply if the person lacks capacity to make treatment decisions in the future
- A clear note of the decision, the treatment to be refused and the circumstances in which the decision will apply
- Details of people present when the oral Advance Decision was recorded and the role in which they were present (for example, healthcare professional or family member),
- Whether you over heard the decision, took part in it or are just aware that it exists.