

## Who will make decisions for you?

**Recently, the Court of Protection refused to allow the withdrawal of artificial nutrition and hydration to a woman in a minimally conscious state. Maybe you think this has little relevance to most of us. In this case, the Court decided (against the wishes of the family, who had the support of treating doctors) that they should take all steps to preserve life. The Mental Capacity Act 2005 requires the Court to take into account the wishes and feelings of the patient when determining what is in their best interests. Although in this case, the patient had expressed views before she became ill, there was no formal Advance Decision in place stating that she wanted artificial nutrition and hydration withdrawn in these circumstances.**

If this lady had put an Advance Decision in place which was relevant to the particular circumstances, or if she had appointed attorneys under a Health & Welfare Lasting Power of Attorney, her wishes would have carried far more weight in the consideration of treatment withdrawal.

The Mental Capacity Act allows us to state in advance what treatment we would wish to refuse should we become incapable of making that decision, known as an Advance Decision (or 'Living Will'). Alternatively, we can nominate friends or relatives ('attorneys') who are given authority to make such decisions. What is important is that these wishes are expressed and properly recorded when the individual understands fully what they are doing.

An Advance Decision must specify both the particular health circumstances and the treatment that is to be withdrawn. A Health & Welfare Lasting Power of Attorney leaves the decision very much in the hands of the attorneys, who are often best placed to reflect the wishes of the individual.

Many people envisage incapacity creeping up on us so that we have time to consider these issues (even though most people never get around to doing anything about it!), but the lady in the case above was only 48 when she was struck down by illness. None of us knows when incapacity might arise, but time spent now in considering these issues may give comfort to family and friends to know that they are making the same decision we would make for ourselves.

**If you would like to talk to us about the issues raised by this note, please contact:**

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