

Health and Welfare Lasting Powers of Attorney /Advance Directives (Living Wills)



The Health and Welfare Lasting Power of Attorney is a document that appoints an attorney or attorneys to make decisions about personal welfare which can include healthcare and medical treatment decisions.

Health and Welfare Lasting Powers of Attorney might include decisions about:-

- Where you should live and who you should live with;
- Your day to day care including diet and dress;
- Who you may have contact with;
- Consenting to or refusing medical examination and treatment on your behalf;
- Arrangements needed for you to be given medical, dental or optical treatment;
- Assessments for and provision of community care services;
- Whether you should take part in social activities, leisure activities, education or training;
- Your personal correspondence and papers;
- Rights of access to personal information about you; or
- Complaints about your care or treatment.

The standard form allows attorneys to make decisions about your personal welfare but you can add restrictions or conditions to areas where you would not wish your attorney to have power to act.

Before making a decision under a Health and Welfare Lasting Power of Attorney your attorney or attorneys must be sure that:-

1. The Lasting Power of Attorney has been registered with the Office of the Public Guardian;
2. You lack the capacity to make a particular decision or your attorney reasonably believes that you lack the capacity to take decisions

covered by the Lasting Power of Attorney;

3. The attorney is making the decision in your best interests.

One helpful aspect of the document is when healthcare or social care staff are involved in preparing a care plan for somebody who has appointed a health and welfare attorney. They must first assess whether the person who gave the power of attorney has capacity to agree to the care plan or to parts of it. If the person lacks capacity professionals must then consult the attorney and get their agreement to the care plan. They will also need to consult the attorney when considering what action is in your best interests.

A Health and Welfare Lasting Power of Attorney can allow an attorney or attorneys to make decisions to accept or refuse life sustaining treatment. An attorney can only consent or refuse life sustaining treatment on your behalf if you specifically state in the document that you want them to have this authority. As with all decisions the attorney must act in your best interests when making decisions about such treatment and there must be consultation with carers, family members and others interested in your welfare. In particular, the attorney must not be motivated in any way by the desire to bring about your death.

It is therefore a powerful document and also a personal document particularly when it comes to the refusal of life sustaining treatment. Many people do not feel comfortable putting the burden of making decisions about life sustaining treatment on an attorney or attorneys.

If you feel strongly about refusing life sustaining treatment then it may be preferable to make an Advance Directive. An Advance Directive is also known as a Living Will.

An Advance Directive is stating at a time when you have full capacity that in certain situations you would not wish to receive treatment that could prolong your life. It states that you fear indignity more than you fear death itself. You anticipate in

advance the type of conditions in which you would want the Advance Directive to be applied. By definition you would be unconscious or unable to communicate a decision at the time.

Advance Directives have been valid at common law in this country for many years and there is now statutory authority under the Mental Capacity Act 2005 as to their legitimacy. Often medics will welcome an Advance Directive as it gives clarity as to a person's care plan and treatment.

If you would like to discuss the above or require any more information please contact Jenny Pierce on 0117 929 2811 or [**jenny.pierce@wards.uk.com**](mailto:jenny.pierce@wards.uk.com)

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