

Refusing Medical Treatment In Advance – “What Can I Do?”

In planning for the future many clients take the sensible step of both making a Will and also setting up a Lasting Power of Attorney to cover their financial affairs. The latter enables named persons to assist and manage one's affairs in case of serious illness. They are called “attorneys” but they do not need to be lawyers in this context – they are usually family members.

Some clients feel strongly that they would not wish to be kept alive in certain cases of serious illness or accident.

What can be done to ensure one's wishes are carried out should such a situation arise? There have been recent important changes in the law. There are now two legal possibilities.

An Advance Decision – Your Pre-Written Instructions

There is now legal recognition of what is commonly called a “Living Will”. The law calls it an “Advance Decision”. As long as one has mental capacity when making this legal document it is possible to give legally binding instructions specifying the circumstances when you would not wish to be kept alive.

By its very nature this is a very delicate subject which should be considered extremely carefully before any such document is made. Legal advice at an early stage is highly recommended, as is detailed discussion with one's doctor. Once created it is advisable for copies to be lodged with doctors and close family members to increase the likelihood that your wishes will be carried out should the specified circumstances arise. To this end Milne Moser issues special copies of the documentation and also produces an optional notification card to be carried which can alert medical professionals to the existence of the Advance Decision.

A Lasting Power Of Attorney For Health And Welfare – Putting Other People In Charge

As an addition or an alternative one can create a Lasting Power of Attorney which relates to health and welfare matters (separately from one relating to financial affairs). By this document one is giving the attorneys the ability to make decisions regarding one's health and welfare at such future time when one is incapable of making such decision personally. One can make this wide-ranging, or can restrict the power being given. In particular one can incorporate an “Advance Decision” by giving the named attorneys authority to give or refuse consent to life sustaining treatment on your behalf.

This is a more flexible approach as the attorneys can consider the circumstances at the relevant time (as opposed to an Advance Decision statement which is a instruction made well in advance and thus cannot take account of any special circumstances applicable at the time of the illness). However one must also recognise it is putting a significant burden on the attorneys so must decide carefully whether it is fair and reasonable to put such a responsibility on them. In addition you need to be confident that they will make decisions in accordance with your way of thinking. One should assess any moral or religious views held by such attorneys and in particular whether those views are compatible with your own. Otherwise this would

place the attorney in a difficult position when faced with having to make a decision as to refusing life-sustaining treatment on your behalf.

Milne Moser Solicitors offer the full range of Lasting Powers of Attorney (relating to both financial affairs and also health and welfare matters) so please do contact us for advice and assistance regarding your general affairs.

“What is best for me?”

Putting in place legal provision for the future is essential for most clients. Both a Will and a Lasting Power of Attorney relating to financial affairs are key elements but some clients may feel an Advance Decision and/or a Lasting Power of Attorney for Health and Welfare matters are also a sensible third step. Once created all three should be kept regularly under review.

Milne Moser Solicitors can play an important role in ensuring proper, sensible legal planning is in place for you, your general affairs and for your family for the future. Contact either our Kendal or Milnthorpe office for more information and assistance.