



## WILL MAKING - LIVING WILLS

As we are living longer, we naturally want to have a say in the quality of our increased life span. Understandably we expect to be offered options and choices at all stages of life and therefore 'end of life' issues are no different from those arising at any other time.

Not only are we living longer, but developments in medical treatment enable us to keep alive often for extended periods of time in incurable or incapacitated states.

Many people now wish to choose how they would like the end of their lives to be; whether they would prefer to refuse treatment offered to them and be allowed to die of natural causes, even if, by so doing, their deaths are hastened.

### WHAT IS A LIVING WILL?

A "Living Will" is not a Will at all. It is technically known as an '**Advance Decision**'. It is a document in which a person, while still mentally competent, requests and directs that certain measures should be adopted if and when he/she becomes incapable of taking responsibility for his/her own health care, i.e. by consenting to or refusing treatment. This usually means the refusal of certain forms of treatment which would otherwise preserve or prolong the person's life.

### THE LEGAL POSITION

It has long been established in law that an adult may validly refuse medical treatment. However a patient cannot require a doctor to take a positive step which would cause the patient's death. It is also unlawful for a patient to refuse what is called 'basic care'. Basic care is 'care to maintain bodily cleanliness and alleviate severe pain and the provision of direct oral nutrition and hydration'.

There have been recent legal cases which have set out the conditions and requirements for creating a valid Advance Decision and the courts have confirmed and approved the right of refusal of medical treatment.

The BMA Code of Practice recommended by the House of Lords Select Committee on Medical Ethics was published in April 1995. The Code of Practice is voluntary and takes a broad and essentially practical approach to the subject of Advance Decisions. The Code states that its starting point is that '*advance statements have an important place in the development of a genuinely more balanced partnership between patients and health professionals*'.

## MENTAL CAPACITY ACT 2005

The Mental Capacity Act introduced two Lasting Powers of Attorney, one of which relates to Personal Welfare. This enables an individual (called a 'Donor') to appoint an Attorney to make decisions concerning the Donor's personal welfare if the Donor is unable to make his/her own decisions. This power can also include (if the Donor wishes) decisions about giving the Donor life-sustaining treatment. For more information, please see our leaflet entitled **Lasting Powers of Attorney**.

The Mental Capacity Act also gave legal force to Advance Decisions.

## HOW WE CAN HELP YOU

At Stone Rowe Brewer we will be pleased to advise you on a Living Will/Advance Decision and to explain the difference between an Advance Decision and a Lasting Power of Attorney (Personal Welfare). We will be pleased to prepare the document for you if you wish.

The Living Will should be notified to others and a copy should be placed with the patient's General Practitioner. Those close to the patient should be told that it exists. We will also be glad to hold a copy of the document.

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