

Living Wills/Advanced Directives

One of the main issues concerning serious illnesses and palliative care is patients may not always be able to explain to their doctor what treatment they do, and do not want. Given the current state of medical science, this is potentially problematic, as it can result in patients who do not have much time left being subject to procedures which are ultimately of little practical benefit. This can be distressing both for the patient and their family, as it can deny the patient the chance to end their life as peacefully as possible.

The law has evolved ways for people to make their intentions known even if at that time they are not capable of giving instructions to a doctor. In England and Wales, following the Mental Capacity Act 2005, there is a specific legislative framework for making an 'advanced decision' setting out exactly what treatment/s a person does not consent to, this means a medical professional will not be legally allowed to carry out those treatments.

However, this is nothing new and it has been accepted in England and Wales for many years that a mentally capable adult has the right to refuse treatment, provided that;

- The person is able to understand and retain the information regarding treatment
- No undue influence has been brought to bear on the person making the decision.

Documents setting out what treatments a person does not want to consent to were in use long before the Mental Capacity Act, and were variously known as Living Wills, Advanced Directives or Do Not Resuscitates (DNRs), and were valid under English Common Law.

This means that, as Manx Law does not contain any legislative provisions to the contrary, and as there is no comparable legislation to the Mental Capacity act in the Isle of Man, English common law should apply here.

This means that, for those living on the Isle of Man, it is worthwhile preparing a document setting out what treatments they wish to refuse, and under what circumstances.

At the present time, there is no way to be certain that this document is enforceable, but it is likely to be highly persuasive should any dispute regarding treatment arise.

Another issue, besides patients wishing to reject treatment, is pain management. Whilst a person cannot demand any form of treatment, they can express the wish that if they are suffering from a terminal illness, they do not want to be in pain, even if this means levels of pain killers that may actually shorten their lives. Again, this is not legally enforceable, but will serve as a guide to health care professionals regarding how the person wants to be treated if they are not capable of expressing the wish themselves.

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