

**LOCAL DIVISION CLINICAL SERVICE BASED POLICY
DOCUMENT**

**ADVANCE STATEMENT,
ADVANCE DECISION POLICY**

Policy Number:	SD 19
Scope of this Document:	All staff
Recommending Committee:	Patient Safety Group
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Lead Author(s):	Patient Experience/PALS Lead

**LOCAL DIVISION CLINICAL SERVICE BASED POLICY
DOCUMENT POLICY DOCUMENT**

2015 – Version 2

Quality, recovery and
wellbeing at the heart
of everything we do

**TRUST WIDE CLINICAL SERVICE BASED POLICY
DOCUMENT**

**ADVANCE STATEMENTS,
ADVANCE DECISIONS POLICY**

Further information about this document:

Document name	PATIENT PROPERTY POLICY SD19
Document summary	To explain the responsibilities relating to patient property and to outline good practice and process for the safe keeping and management of patient property whilst maintaining a safe environment and protecting vulnerable patients who may be at risk of potential harm.
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To be read in conjunction with	Human Rights Act 1998; Mental Capacity Act (MCA) 2005 (amendments 2007);Mental Health Act 1983
This document can be made available in a range of alternative formats including various languages, large print and braille etc	
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Version Control:

		Version History:
2015 - Version 2		

SUPPORTING STATEMENTS

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Trust recognizes that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognizes the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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1 PURPOSE AND RATIONALE

1.1 Purpose

To guide Staff, Service Users and Carers on the distinction between, the appropriate use of and the application of Advance Statements and Advance Decisions within the Trust.

1.2 Rationale

Service users should be empowered to say how they would like to be treated should they become unwell in the future. An Advance statement enables them to make their preferences known.

A person may make either an Advance Statement or an Advance Decision or both. However it is essential that all concerned parties understand that Advance Statements are not legally binding whereas, provided specific, statutory conditions are met, Advance Decisions are legally binding. Consequently, both the patient and staff must be aware that what is being requested falls under the correct category.

1.3 Advance Statement enable service users to make a request or state their wishes and preferences in advance.

An Advance Statement may refer to anything except refusal of medical treatment (since this would be an Advance Decision).

Advance Statements are based on the legal principle and good medical practice that a mentally competent adult has the right to be meaningfully involved in determining their care and/or treatment. Advance Statements are not legally binding.

1.4 Advance Decisions enable someone aged 18 and over, while still capable, to refuse specified medical treatment for a time in the future when they may lack the capacity to consent to or refuse that treatment. (Mental Capacity Act 2005 Code of Practice, 2007, p158)

Any personal statement relating to the refusal of medical treatment should be separately identified and dealt with either as a legally binding Advance Decision within the meaning of the Mental Capacity Act 2005 or as treatment subject to the statutory conditions of the Mental Health Act 1983.

1.5 The terms **Advance Directives and Living Wills** should be dealt with in exactly the same way as Advance Decisions.

2. OUTCOME FOCUSED AIMS AND OBJECTIVES

2.1 The aim of this policy is to inform staff, service users and carers of:

- The distinction between Advance Statements and Advance Decisions
- The legal status of both Advance Statements and Advance Decisions
- How to make an Advance Statement or Advance Decision
- Implementing and following Advance Statements or Advance Decisions

2.2 Advance Statements enable service users to set out their wishes about care, treatment and domestic matters should they become unwell or lack capacity in the future. It also helps communication with professionals who can turn to an Advance Statement for a clear expression of the service user's wishes, when the service user is not capable of expressing them. Advance Statements are not legally binding. Under the Mental Capacity Act 2005 staff and carers must, by law, *consider* an Advance Statement when acting in the person's best interests once it is confirmed that they no longer have capacity.

- 2.3 **Advance Decisions** only apply to the refusal of medical decisions. They enable service users to decide what medical treatment they will not consent to should they lack the capacity to make such decisions in the future. There are certain criteria that must be met before an Advance Decision becomes legally binding.
- 2.4 **Advance Statements and Advance Decisions**, to make either an Advance Statement or an Advance Decision a service user must have the mental capacity to do so, defined as follows:-

“If you have mental capacity it means that you are able to make your own decisions. The legal definition says that someone who lacks capacity cannot do one or more of the following things:

- Understand information given to them
- Retain that information long enough to be able to make a decision
- Weigh up the information available to make a decision
- Communicate their decision.” (*Making Decisions 2*; dca 2007, p10)

Consequently; “... a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.” (MCA 2005)

If the content of the Advance Statement or Advance Decision is unclear, then it must be discussed and clarified with the service user.

However, the content of an Advance Statement or Advance Decision should be the service users’ own views and wishes, and should not be unduly influenced by any other person.

An Advance Statement or Advance Decision can name or nominate another person who they would like to be consulted at the time any significant decision by clinical staff has to be made about their care.

Service users may review, update, alter or withdraw their Advance Statements at any time. Any variation to an existing Advance Statement may be verbal but should be amended accordingly.

Service users may review, update, alter or withdraw their Advance Decisions at any time.. “If the advance decision refuses life-sustaining treatment, it must:

- be in writing (it can be written by a someone else or recorded in healthcare notes)
- be signed and witnessed, and state clearly that the decision applies even if life is at risk.” (MCA 2005 Code of Practice)

3 SCOPE

This policy applies to all Trust staff.

4 DEFINITIONS

- 4.1 The relevant terms and their definitions (within the context of this policy document) are outlined below:

Table 1: Definitions

Term	Definition
Advance	Is a document that is completed by a service user when they are well outlining how they would prefer to be treated should they become unwell in

Statement	the future
Advance decision	Is a document that enables someone aged 18 and over, while still capable, a process to refuse specified medical treatment for a time in the future when they may lack the capacity to consent to or refuse that treatment
Advance Directives and Living Wills	The terms Advance Directive and/or Living Will should be dealt with in exactly the same way as Advance Decisions within the meaning of the Mental Capacity Act 2005 Code of Practice.

5 DUTIES

- 5.1 **Lead Executive Director** – Ray walker Executive director of Nursing, delegated authority ensure policy is fit for purpose
- 5.2 **Policy Lead** Patient experience/PALS manager to ensure policy reviewed and updated
- 5.3 Service managers and ward/team managers are responsible for informing staff are aware of Advance Statements and Advance Decisions and the difference between them.
- 5.4 Healthcare professionals have a duty to comply with the policy.

6 PROCESS / PROCEDURE

- 6.1 Mersey Care NHS Trust provides a document for the completion of Advance Statements and guidance for Advance Statements and Advance Decisions (See Appendices).
- 6.2 The sole function of providing a witness signature to either an Advance Statement or an Advance Decision is to confirm that the document contains the wishes of the respective user.
- 6.3 Where the service user makes an End-of-Life Advance Decision their Care Co-ordinator and Consultant must refer and discuss the 'Resuscitation of any patients, staff, visitors in the event of collapse or medical emergency policy' (Policy Ref. SD07) with the service user. The form '*Withholding Cardiopulmonary Resuscitation*' must be completed and a copy attached to the service user's Advance Decision documentation.

Procedure

- 6.4 A note that either an Advance Statement and/or Advance Decision exists must be made and retained in a prominent position in the service users' clinical notes. All staff in the clinical team should be made aware of the existence and content of Statements/Decisions.
- 6.5 No Advance Statement or Advance Decision can require a doctor or member of the clinical team to do anything which is unlawful including involvement in assisted suicide or euthanasia.
- 6.6 If any of the service user's wishes or preferences contained within their Advance Statement cannot reasonably be met then this must be properly justified, documented and relayed to the service user at an appropriate time.
- 6.7 If the service user is not given this information or they are dissatisfied by the explanation given, they may require support to resolve this. They can do this through the Patient Advice and Liaison Service. If the service user remains dissatisfied they can make a formal complaint to the Complaints Department.

Guidelines for Advance Decisions.

6.8 For the service users' refusal to be valid, health professionals must be satisfied that the service user had capacity at the time of making the Advance Decision and was not affected by illness, medication, false information or pressure from other people.

- Health professionals must be satisfied that the service user had understanding of the consequences of their refusal at the time of making their Advance Decision. It must be remembered that capacity is assumed unless evidence suggests the contrary.
- Health professionals must be satisfied that the service user had received sufficient relevant information about the purpose and implications of any refusal of treatment which allows them to make informed choices.
- As long as the service user had capacity at the time of making the Advance Decision the reasons for refusal are irrelevant.
- The service user's Advance Decision should be discussed by the clinical team. Detailed notes of the discussion must be made and recorded in the medical notes. To deliberately ignore an Advance Decision may be a criminal offence (under section 44 of the MCA 2005) for which the member of staff may be held legally liable.

6.9.1 An advance decision to refuse treatment must be valid and applicable to current circumstances. If it is, it has the same effect as a decision that is made by a person with capacity: healthcare professionals must follow the decision. Healthcare professionals will be protected from liability if they:

- stop or withhold treatment because they reasonably believe that an advance decision exists, and that it is valid and applicable
- treat a person because, having taken all practical and appropriate steps to find out if the person has made an advance decision to refuse treatment, they do not know or are not satisfied that a valid and applicable advance decision exists.
- To establish whether an advance decision is valid and applicable, healthcare professionals must try to find out if the person:
 - has done anything that clearly goes against their advance decision
 - has withdrawn their decision
 - has subsequently conferred the power to make that decision on an attorney, or would have changed their decision if they had known more about the current circumstances.

6.10 Sometimes healthcare professionals will conclude that an advance decision does not exist, is not valid and/or applicable – but that it is an expression of the person's wishes. The healthcare professional must then consider what is set out in the advance decision as an expression of previous wishes when working out the person's best interests.

7 CONSULTATION

This policy and procedure reviews and replaces Policy No SD19.

This Policy and Procedure was submitted to the MCA Steering Group on 20/09/2007 and accepted in principle, there have been no significant changes to this policy.

This policy has been previously impact assessed and does not discriminate in its application.

8 TRAINING AND SUPPORT

The day to day responsibility for the ensuring compliance with this policy and the implementation, training and support lies with the departmental managers and those with delegated responsibility.

9 MONITORING

This policy will be available on trust website.

The policy will be monitored through Epex for numbers completed and through DATIX for issues related to implementation and compliance.

10 SUPPORTING DOCUMENTS

List of Supporting Documents

Ref No	Name	Purpose
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Human Rights Act 1998

Mental Capacity Act (MCA) 2005 (amendments 2007)

Mental Health Act 1983

Advance Statement Guidance Notes

An 'Advance Statement' is a document that gives you the opportunity to write down how you would like to be treated should you become unwell in the future. It gives you the opportunity to explain any domestic or financial arrangements.

Mental Capacity Act 2005

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. The Act enables people to plan ahead for a time when they may lose capacity.

Mental Health Act 1983

Consideration will always be given to the content of an advance statement but it must be noted that adherence with part IV of the Mental Health Act 1983 may require compulsory treatment. Where this is the case the reasons will be clearly documented for future reference. *(Please note this only applied to people detained under the Mental Health Act 1983)*

The Advantages of Advance Statements.

- Advance Statements empower you as a user of mental health/learning disability services they enable you to express your preferences about your treatment, care, support and recovery.
- Advance Statements often improve communication between you and health professions in that they encourage you to think and plan for the future.
- Advance Statements inform professionals about your wishes. This will be of great help in difficult and often fraught situations (such as when you become unwell, distressed or have to be admitted to hospital).
- It may also be beneficial to share your advance statement with other agencies to enable them to understand your needs and to help them to support and assist you in communicating and reduce any anxiety when you may be unwell. This may include agencies such as social care providers or Police. Your consent will be required for this.

This information is to help you fill in your advance statement

Many service users have found that writing an Advance Statement helps to reduce the worry about becoming unwell again and the effects this can have on themselves and those around them.

What can I put in my Advance Statement?

Treatment

This can apply to your treatment in hospital or at home, explaining what types of medications and therapies you would prefer should become unwell again. You can talk about which treatments that have or have not helped you when you have been unwell in the past.

- Signs and symptoms which may show when you are becoming unwell

- How you would like to be treated should you become unwell including possible interventions or restriction to keep you safe
- Medications that you feel may have worked before why
- Medications you may feel have not worked and why
- Other interventions that may help when you are unwell
- You should also mention any physical illnesses or allergies you have and any medications or treatments you receive for these.
- Who to contact, other agencies involved in your care.
- Who to share relevant information with, other agencies involved in your care or wellbeing, Police or support agencies.

Do you know when you are becoming unwell or may need more support?

In your Advance Statement you can, describe signs and symptoms that may show you are beginning to become unwell

- change in your behavior, thoughts, feelings, mood
- appetite
- sleep
- activities
- speech
- finances

This can be of great help to carers and health professionals, particularly if they are not familiar with you or have not treated you before. It enables them to give you support and intervention at an early stage which may then help to stop you from becoming more unwell.

Specific Needs

Do you need support with written information, or assistance to read or write. You may require additional support if you have a physical disability, if so explain how this can be best provided. If you have any food allergies or intolerances it would be useful to make a note of these.

Family

Is there a family member that you would like to be kept informed about your progress, or are there some family members or friends that you prefer do not visit you when you are unwell.

Caring Responsibilities

Do you have any caring responsibilities, partner, children, parents or other family member?

- What arrangements you have made for the person you care for to be looked after
- Who will take care of your children (this may require a more formal arrangement, your Care Co-ordinator or social worker will be able to advise)
- Who will explain to your children what is happening and inform them of your progress
- Will your children be visiting you, if so what arrangements have you made, who will be accompanying them, would you like to use the family room.
- Is the person you have caring responsibilities for aware that you have made an Advance Statement and the things that may affect them

- You could include relevant information about the person you have caring responsibilities for, their name, age etc.
- It is good to have these arrangements sorted out when you are well rather than wait until you are unwell or lose capacity when your specific wishes and concerns may not be known.

Domestic/Financial Arrangements.

In your Advance Statement you can nominate a person who has agreed to look after your home and finances whilst you are in hospital or lack capacity (Banks will require you to provide a 'Power of Attorney' to another person in order for them to take care of your money).

- You can say who you would like to be kept informed about your treatment and progress.
- A nominated person could also inform the benefits agency, your employer or landlord/housing association that you have become unwell. If you nominate an individual make sure you give their full name and contact phone number or address in your statement.
- Who will ensure that your home is secure (gas turned off, post taken in, windows locked, empty the fridge etc)
- You could say who has agreed to look after your pets.

Visitors

You may prefer not to see some people when you are unwell, you can make this clear in your advance statement. You may also prefer visits to be brief, time limited or with only one or two people, the staff can help you with this.

Additional information

Your Advance Statement can contain any other things which you feel are important to you or will help you in the event that you become unwell or your needs change. You could perhaps indicate

- cultural or religious preferences
- dietary requirements/preferences
- visiting arrangements for friends and family
- things that comfort or upset you

This is not an exhaustive list and you don't have to fill in every section of your Advance Statement – just fill in those that are relevant to you.

Remember **IT IS YOUR ADVANCE STATEMENT**. It's a statement of your views and wishes and is there to help you feel more in control about what happens when you are unwell.

If you have a nominated person to do a particular task in your Advance Statement, remember to inform them fully of your wishes and get their specific agreement that they have the time and ability to carry these out when necessary.

What happens to an Advance Statement once it is completed?

You need to send or give a copy of your Advance Statement to health professionals such as your GP, your Psychiatrist, or Care Co-ordinator. You can give a copy of your statement to any person you think would benefit from knowing your wishes. Remember to keep a copy for yourself.

If you give a copy of your Advance Statement to a member of Mersey Care staff, they will put it in your health records, a copy of your Statement will be kept on the Trusts' computerized patient records

system, this system will allow a copy of your Statement to be available to Trust staff involved in your care. With your consent your advance statement will be shared with anyone else that you have identified in your advance statement.

Try to review your Advance Statement at regular intervals (perhaps once a year) and if any changes are made, send new copies to the people who already hold your Advance Statement and ask them to update your records.

If you require any further information or would like support in completing an Advance Statement, or you have faced any problems with your Advance Statement being implemented you can contact the Patient Advice and Liaison Service, PALS .



0800 3282941



Mersey Care NHS Trust
PALS Office
Trust Offices
V7 Kings Business Park
Prescot
L34 1PJ



PALS@merseycare.nhs.uk

This document can be made available in other formats, audio, large print and community languages.

Advance statement guidance, Kim Guy 11//15

ADVANCE STATEMENT

My Care Co-ordinator is:

Name _____





My Consultant/Psychiatrist is:

Name _____





To my family, carers and care professionals this is my advance statement. As a result of my mental health or learning disability the level of care provided to me may have to change. This advance statement is used to provide information and assist in my care and treatment.

My Name is _____

Date of birth _____



Signed _____

Date _____

Witnesses

We confirm that the above person is the maker of this advance statement and signed it in our presence and that they made it clear to us that they made it of their own free will and understood what it meant.

Witnessed by:

Name _____

Name _____

Signature _____

Signature _____





Date _____

Date _____

My Advance Statement

Treatment

Signs and symptoms that may show I am becoming unwell

Things that have helped me in the past, including medications

Things that have **not** helped me in the past, including medications

Any other conditions you may have or any other treatments you receive, including medications,

Specific Needs

Do you need support to read or write?

Do you have a physical disability do you require additional support, if so what and

how?

Caring Responsibilities

Do you provide care for someone else, children, partner or relative, if so have you made arrangements for them to be cared for by someone else? Please give details of the arrangements you have made.

Personal Matters

Is there any one that will be helping you with your finances?

What arrangements have you made for your home and pets?

Visitors

I would like/not like these people to visit me when I am unwell.

Additional Information

Please use this space to state anything else you would like to comment on they may be useful.

I would like the following people to be contacted in the event of my advance statement being acted upon.

Name _____		Name _____
_____		_____
_____		_____
_____		_____
 _____		 _____

The Advance Statement was reviewed by me on

Date _____ **Signature** _____

When you have completed your Advance Statement give a copy to your care co-ordinator or psychiatrist. It is your document and you can give a copy to who ever you think may require one, GP, family member or carer, keep a copy for yourself.

You may wish to carry a small card with you in your wallet or purse stating that you have made an Advance Statement and who to contact.

My Name is _____

I have completed an Advance Statement, it advises on my wishes regarding my care, treatment and domestic matters in the case of an emergency.

Please contact _____

To obtain a copy of my Advance Statement

Patient Advice Liaison Service (PALS)

If you require any further information or would like support in completing an Advance Statement, or you have faced any problems with your Advance Statement being implemented you can contact the Patient Advice and Liaison Service, PALS .



0800 3282941



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Advance Decision Guidance Notes

These notes are based on the Mental Capacity Act 2005 (MCA) and the Code of Practice. They should not be taken as a substitute for legal advice. If you require legal advice you should speak with someone who is legally qualified to give it, such as a solicitor.

An advance decision is a statement, made when a person has the capacity to do so, in which they refuse specified medical treatment. It is intended to apply in the future, when the person has lost the capacity to make decisions about that treatment. If when the time comes, the patient is incapable, then, provided the advance decision is valid and applicable, the patient may not be given treatment they have refused.

Where an incapable person is to receive treatment under the Mental Health Act 1983 (2007) (MHA) any advance decision they have made will be of limited use.

“Advance Decisions can refuse any kind of treatment, whether for a physical or mental disorder. But generally an advance decision to refuse treatment for a mental disorder can be overruled if the person is detained in hospital under the Mental Health Act 1983, and the treatment could be given without consent under part 4 of the Act. Advance decisions to refuse treatment for other illnesses or conditions are not affected by the fact that a person is detained under the Mental Health Act.” (Chapter 13 of the Mental Capacity Act 2005)

To make an advance decision it is not necessary to involve a solicitor, although you may wish to do so. The law relating to advance decisions is detailed and the consequences of any misunderstanding might be unfortunate. You might therefore consider taking legal advice before making an advance decision.

It is advisable to discuss your decision with family or friends and also with the professionals who provide your care and treatment.

Provided you have the capacity to do so you may alter or revoke your advance decision at any time. Circumstances change and new treatments become available. You should therefore review your advance decision and ensure that anyone who knows about your advance decision is made aware that you have changed it.

If you wish to refuse life sustaining treatment your advance decision will have to be in writing and any alterations will also have to be in writing.

To be valid an Advance Decision needs to:

- Be made by a person over 18 years of age
- Be made when a person has capacity to do so
- Specify precisely the treatment to be refused
- Specify the circumstances that would apply
- It must not have been made under coercion

An advance decision that is valid will only apply

- when the person who made the advance decision has become incapable (whilst that person remains capable they can give or withhold consent to the relevant treatment in their own right)
- Be made without influence or pressure from any one else
- Only apply when a person lacks capacity to consent to a specified treatment

To refuse life sustaining treatment the Advance Decision will need to:

- Be in writing

If the person is unable to write, someone else should write the advance decision for them. For example, a healthcare professional can record it in the person's healthcare notes. If that is done the patient must sign the advance decision, or if they are unable to do so, they must direct someone else to sign it on their behalf in their presence.

- Be dated, signed and witnessed

The MCA Code of Practice states that the person making the advance decision must sign in the presence of a witness to the signature. The witness must then sign the document in the presence of the person making the advance decision. If the person making the advance decision is unable to sign, the witness can witness them directing someone else to sign on their behalf. The witness must then sign to indicate that they have witnessed the nominated person signing the document in front of the person making the advance decision.

- Include a statement by the patient that the advance decision is to apply even if their life is at risk.

Although there is no set form, it would be useful if any written advance decision include the following details:

- The full name of the person making the advance decision
- Their date of birth, and any distinguishing features
- Their address
- The name and contact details of their GP
- The date the document was written (or changed)
- Where a copy of the document is kept or is available

An Advance Decision will not:

- Permit the use of euthanasia or make it lawful to assist suicide, or perform any other illegal act
- Enable its maker to require that they be given a particular treatment, demand care
- Compel healthcare professionals to refrain from giving a patient basic care (warmth, shelter, appropriate pain relief), measures intended to maintain comfort
- Refuse basic nursing care, essential to keep you comfortable, washing, bathing or mouth care
- Prevent the giving of treatment for a mental disorder where that treatment is to be given compulsorily, under the Mental Health Act 1983

Circumstances that might make an Advance Decision invalid:

- The person making the advance decision, being capable of doing so, has revoked the advance decision
- The circumstances are different from those anticipated in the Advance Decision
- The person making the advance decision has acted in a way that is inconsistent with the advance decision

If it is unclear whether an advance decision is valid, the position must be clarified, possibly by means of an application to the Court of Protection. In the mean time a patient may be given necessary treatment to stop their condition getting seriously worse. Where what is proposed is emergency medical treatment health care professionals should not delay that treatment to look for an advance decision if there is no clear indication that one exists.

If for any reason an advance decision is not followed this fact and the rationale for it must be clearly documented in the patient's notes.

It is the responsibility of the person making the advance decision to bring it to the attention of those who might otherwise provide the treatment they wish to refuse. Where a patient is incapable of decision whether to have treatment, health care professionals must give the treatment to them unless they are satisfied that there is an advance decision that is both valid and applicable.

Equality and Human Rights Analysis

Title: SD19 Advance Statement , Advance Decision Policy

Area covered: Local Division Clinical Service Based Policy

What are the intended outcomes of this work?

Service users should be empowered to say how they would like to be treated should they become unwell in the future. An Advance statement enables them to make their preferences known.

A person may make either an Advance Statement or an Advance Decision or both. However it is essential that all concerned parties understand that Advance Statements are not legally binding whereas, provided specific, statutory conditions are met, Advance Decisions are legally binding. Consequently, both the patient and staff must be aware that what is being requested falls under the correct category. To guide Staff, Service Users and Carers on the distinction between, the appropriate use of and the application of Advance Statements and Advance Decisions within the Trust.

Who will be affected?

Service users /patients

All staff implementing this policy

Evidence

What evidence have you considered?

The Policy.

The last equality assessment.

The following were used and referenced in the development of this policy

**Mental Capacity Act 2005- specifically the Guiding Principle
section 1 MCA 2005**

Mental Capacity Act Code of Practice

Deprivation of Liberty Safeguards 2009

Human Rights Act 1998
Disability inc. learning disability
Sex
Race
Age To make an advance statement a patient/service user has to be over the age of 18
Gender reassignment (including transgender)
Sexual orientation
Religion or belief No issues identified within discussions.
Pregnancy and maternity No issues identified within discussions.
Carers
Other identified groups No issues identified within discussions.
<p>Cross cutting All service users/patients will be supported to make advance statements were possible. Capacity will be assessed on a number of occasions and will not be subject /considered on the basis of a one off or first assessment. Capacity will assessed continually. When you make your advance statement, you need to have the mental capacity to do so. Otherwise doctors and other professionals may not accept it. The law defines mental capacity as being able to:</p> <ul style="list-style-type: none"> • understand information and keep it in mind • use and weigh up information before making a decision • communicate your decision. <p>Only a specified refusal of a treatment is legally binding, (but can still be overridden by The Mental Act 1983).</p>

• Informal patients have a right to refuse medication. However, formal patients (detained under Sections 2, 3 and 4) can be given treatment without their consent.

Human Rights	Is there an impact? How this right could be protected?
This section must not be left blank. If the Article is not engaged then this must be stated.	
Right to life (Article 2)	This policy guides staff in the process set out in law to ensure a patient's wishes are respected as far as possible, specifically an advance decision to refuse treatment. However a refusal of life sustaining treatment compromises a patient's Art 2 right to life but this is clinically justified.
Right of freedom from inhuman and degrading treatment (Article 3)	The policy is designed to guide staff on ensuring patients are treated in accordance with their wishes as far as possible, thereby protecting the patient against torture, degrading or inhumane treatment (Art 3).
Right to liberty (Article 5)	No issues identified within discussions.
Right to a fair trial (Article 6)	No issues identified within discussions.
Right to private and family life (Article 8)	This policy complies with the MCA 2005 and ensures that people who lack capacity to consent to their care and treatment have any pre-recorded wishes respected,

	protecting a patient's Art 8 right to private life as far as possible.
Right of freedom of religion or belief (Article 9)	No issues identified within discussions.
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	No issues identified within discussions.
Right freedom from discrimination (Article 14)	No issues identified within discussions.

Engagement and involvement

This policy and procedure was submitted to the MCA steering group.

Summary of Analysis

Eliminate discrimination, harassment and victimisation

Due to the nature of the service provided and decision making capacity being integral to the delivery of care and treatment to service users/patients. All staff must work within the guiding principles of the Mental Capacity Act. The principles are clear and ensure that the characteristic contained within this Equality and Human Rights Analysis are protected and the use of the the Mental Capacity Act is lawful and informed by good practice. It is therefore envisage that this policy will impact positively on all of the protected characteristics.

Advance equality of opportunity

The policy requires staff to presume that all patients have capacity as the default position and to adhere to the principles of the MCA 2005. It is designed to ensure that staff consider advance statements and the validity and applicability of advance decisions. Upholding a patient's wishes as far as possible promotes patient participation and autonomy at times where patients typically cannot involve themselves.

Promote good relations between groups

The policy is designed to support staff and patients in recording, monitoring and reviewing advance decisions and statements and ensuring these form part of their care plan. As each patient will require a different care plan which meets their individual needs and each patient presents differently with different risks, this policy is designed to guide staff on the key considerations when treating a patient who lacks capacity. Publishing this guidance will demonstrate to patients, staff and the public that the Trust are concerned with ensuring patient participation into care and treatment which will promote trust and therefore good relations.

What is the overall impact?

Equality considered.

Positive impact in relation to the Protected groups.

Addressing the impact on equalities

Policy, strategy or service addresses quality of outcome and is positive in its language and terminology. It promotes equality and fosters good community relations.

For the record

Name of persons who carried out this assessment (Min of 3):

George Sullivan Equality and Human Rights Advisor

Collette Irving People Participation

Kim Guy Patient Experience/PALS Lead

Date assessment completed:

20.11.2015

Name of responsible Director:

Date assessment was signed: November 2016

Action plan template

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Target date	Person responsible and their Directorate
Data collection and review	Review data in relation to the protected characteristics within appropriate forum. Report to Trust equality steering group.	2016	Kim Guy
Monitoring, evaluating and reviewing	Advance statements available for service users and should be updated as part of annual care review	On going	Service user's lead clinician
Transparency (including publication)	The policy should be placed on the Trust website. The policy shall not be placed on the website without the equality and human rights analysis.	November 2015	Kim Guy