



# **Frequently Asked Questions about ADVANCE STATEMENTS**

**INFORMATION FOR USERS OF MENTAL HEALTH  
SERVICES IN DUMFRIES AND GALLOWAY, AND  
THEIR CARERS.**

# User and Carer Involvement

User and Carer Involvement is a registered Scottish Charity operating across the Dumfries and Galloway Health Board area to ensure that people who have mental illness, dementia and learning disabilities and their carers, have a voice.

We create safe forums where people can express their concerns and we take those concerns forward to the appropriate agencies. We also offer training and support to our members. We give our members easy access to important information and changes in legislation. We also signpost people on to other agencies as appropriate in order that they can get the support they require.

Carolyn Little is the project Co-ordinator for UCI. The project is overseen by a Board of management consisting of service users, carers and professionals from the voluntary sector.

Membership is free and open to all service users and carers. Professionals may join as associate members and will receive all mailings.

Other booklets in this series include: Know Your Rights - a guide to general rights under the Mental Health (Care and Treatment) (Scotland) Act 2003 and Guidance for Named Persons.

Further information on the work of UCI is available from the co-ordinator or accessible on the website: [www.userandcarer.co.uk](http://www.userandcarer.co.uk)

If you have any queries regarding any of the information in this booklet please contact us;

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## **INTRODUCTION – THE MENTAL HEALTH ACT**

The Mental Health (Care and Treatment) (Scotland) Act 2003 contains various safeguards to protect the rights of mental health service users. For example, service users aged 16 or over have the right to choose a 'named person' to support them and protect their interests if they become subject to compulsory treatment under the Act. There is also a right of appeal to the Mental Health Tribunal if you or your named person are unhappy with such care and treatment.

Information on the role of named persons, the Mental Health Tribunal and other important matters is contained in the User and Carer Involvement booklet Know Your Rights. Copies can be obtained from:

UCI, Kindar House, The Crichton, Bankend  
Road, Dumfries, DG1 4ZZ Tel: 01387 255330

Another important safeguard introduced by the Act is the 'Advance Statement', which is the subject of this booklet.

## FREQUENTLY ASKED QUESTIONS ABOUT ADVANCED STATEMENTS

### **Q. What is an Advance Statement?**

A. It is a statement made by you while you are well, setting out what care and treatment you would or would not like to receive if you become seriously ill at some time in the future.

Doctors and other people who are treating you for a mental disorder have a duty to take into account your wishes about how you would like to be treated. They will normally endeavour to work with you to find out what care and treatment options you think might be best for you. However, this might be difficult or impossible if, at some time in the future, you become so ill that you are unable to make your views clear. Or your ability to make decisions about treatment for your mental disorder has become significantly impaired as a result of that disorder.

Therefore, at any time while you are well, you have the right to make an Advance Statement – literally a statement made in advance - setting out what care and treatment you would or would not like to receive. It can include your wishes about medications, therapies and particular treatments or categories of treatment for mental disorder.

**Q. Who can make an Advance Statement?**

A. So long as you can understand what you are putting in the statement and the effect it might have on your future treatment, you can make an Advance Statement. It doesn't matter whether you are currently receiving treatment for a mental disorder, have done so in the past, or have never had treatment.

You can be under 16 years of age – so long as you meet the requirement of understanding what you are putting in your statement.

**Q. When should an Advance Statement be made, and when might it come into force?**

A. Your Advance Statement must be made while you are well enough to state your treatment preferences.

It will only come into force if, in the future, you become too unwell to make decisions about your treatment, and are receiving compulsory treatment under the Mental Health Act.

Where any person is giving medical treatment authorised by the Act, and they are satisfied that your current decision-making ability is significantly impaired by reason of mental disorder, they must have regard to any Advance Statement made by you which complies with the Act.

## **Q. Who must have regard to my Advance Statement?**

As stated above – any person who is providing you with compulsory care and treatment under the Mental Health Act.

Also, where you or your named person are unhappy with that treatment, or in any other circumstances where your case is brought to the attention of the Mental Health Tribunal, the Tribunal must have regard to the wishes specified in your Advance Statement.

## **Q. Why should I bother with an Advance Statement?**

A. When you are well, you may feel it is unlikely that the statement will ever be required. Or you might be apprehensive at the thought of writing down your wishes for future treatment – perhaps regarding it as ‘tempting fate’. Nevertheless, it does make sense to protect your rights...

Perhaps the best way to look at it is to remember that we all have to insure ourselves at some point in our lives - be it for protecting the contents of our home or for driving a car. It doesn't mean that we are expecting to have a fire or a crash, but we see the need to guard against such events ever happening. An Advance Statement is no different. It's simply a way of protecting yourself against the possibility – however remote - that you might require care and treatment at some time in the future when you are unable to make your wishes

clear. In such circumstances, by having set out how you would want to be treated should you become unwell and unable to express your views, you make it much easier for doctors and other health professionals to take into account your wishes with regard to your welfare and needs whilst you are in their care.

**Q. Must my Advance Statement be made in writing?**

A. Yes ... In order to ensure that your wishes are clear – because people may forget what you said to them months or years previously - your Advance Statement must be written. It does not need to be typed, but it must be written clearly enough to be read by those who will be caring for you.

**Q. What information should my Advance Statement contain?**

A. UCI's Advance Statement Package has copies of Scottish Government's suggested layout/form for completing an Advance Statement. Whether you choose to follow it or not, it is best for your statement to start with your name and address, and the name and address of your witness (see later) and your general practitioner, together with details of your named person, carer, guardian and welfare attorney if you have them. It is very important to include the date when the Advance Statement was completed.

Your Advance Statement may include a list of medical treatments which you have tried and have found to be beneficial, and a corresponding list of treatments you have found to be unhelpful.

Rather than simply stating your wishes in a list of wants and don't wants, it is best to give your reasons. For example:

"I prefer individual therapy to group therapy – because I am uncomfortable with strangers when I am unwell."

"I don't want to be given (a named medication) – because it makes me put on lots of weight."

Some authorities suggest that if you have been seriously ill in the past, you might also include information concerning previously observed, early changes in symptoms, thinking and behaviour – because this information might facilitate interventions aimed at preventing the need for treatment under compulsion.

### **Q. What else might I include?**

The main purpose of an Advance Statement is to set down your wishes in regard to possible future care and treatment. However, you might wish to make provisions regarding "patient confidentiality" issues.

The Data Protection Act (1998) ensures that information given by individuals to organisations is protected. This is an important issue, and there are

clear reasons for ensuring that a patient's personal information and medical details aren't divulged to third parties. However, this can cause distress to their family and carers.

The basic principle is that unless the patient has given permission, hospital and other health staff are obliged by law not to give out any information other than the most basic. Unfortunately this means they are unable to release information to people who may be desperate to understand what is happening to their friend or family member. But the law is very clear regarding this issue. They cannot talk to anyone unless the patient gives permission.

The best way to ensure that information can be given to a member of your family, friend or other carer, should you become too unwell to give nursing staff permission at the time, is to have your consent included in your Advance Statement. This allows you to choose who your care team should contact and are able to talk with if you are unwell in the future.

You can give a full or limited consent to the sharing of information. That is, you can give permission for all and any aspects of your care and treatment to be discussed, or you can say if there is some particular information about your illness or treatment that you don't want to be shared, while allowing other information to be passed on.

**Q. Are there any limitations on what I can ask for?**

A. Your wishes will only be followed if they are deemed reasonable and practical. For example, an Advance Statement cannot make a medical practitioner do anything that is illegal or unethical.

Nor can it bind a medical practitioner or member of the care team to provide, arrange or withhold specific services, medicines or treatments.

Nor can it insist on particular services, medicines or treatments because, for example, it might be that the medication you prefer would not be right for you any more.

**Q. Must my statement be signed and witnessed?**

A. Yes – the Act states that in order to be valid an Advance Statement must be made in writing, signed by you, and dated.

The Act also states that your Advance Statement must be made while you are well. Therefore, it must be signed and dated by a witness to confirm that, in their opinion, you are able to understand what you have written in the statement and the effect it might have on your future treatment.

**Q. Who can witness my statement?**

A. A limited and specific group of people can witness a statement. These are a medical practitioner (doctor), clinical psychologist, occupational therapist registered with the Health Professions

Council, a registered nurse, social worker, solicitor or specified people working in or managing certain care services.

**Q. What if my witness wants to alter the contents of my statement?**

A. The role of the witness is to certify that in their opinion the patient has capacity to understand and intend the statement about the treatments mentioned. They do not need to have been involved in the drafting of the Advance Statement.

Remember that it is your statement and while your witness might make suggestions for you to consider, they cannot dictate what you should include or leave out. The witness has no power to edit, endorse or veto the contents of the Advance Statement - only to assess the patient's capacity to intend the wishes recorded in it. However, they do have the right to decline witnessing your statement, in which case you will have to find somebody else who will.

**Q. What if I don't know enough about treatments to decide which to include or exclude?**

A. As stated, your witness – or anybody else helping you to prepare your Advance Statement - cannot tell you what to say, but if a member of your existing care team wishes to discuss your experiences and preferences, and to make sure you are clear about when and how your Advance Statement might be

used, this could be very advantageous to you.

Where a medical practitioner or other member of your care team is assisting you to produce a list of preferred treatments to be included in your Advance Statement – whether or not he/she is to act as your witness - it is considered “best practice” for them to ensure that you are aware that clinical practice in the future might mean some medicines may be unavailable or less appropriate and substitutions might need to be used.

Best practice guidelines should also be followed with respect to informing you of the possible benefits, risks and side-effects of receiving, or rejecting, each treatment. Where they are assisting you to produce a list of treatments you would, or would not, wish to receive in future, it would be best practice for them to ensure that you understand the relevant safeguards provided in the Act for treatments for mental disorder. If you understand such safeguards, you will be better able to make an informed decision about which treatments you do or do not wish to have in the future. Further details of the relevant safeguards are included in the User and Carer Involvement booklet Know Your Rights.

Incidentally, such discussions may provide you with a valuable opportunity to discuss your care and treatment - providing you with the necessary information to participate more fully in current

care and treatment decisions. Whether or not an Advance Statement is produced, such a dialogue should be encouraged, where relevant and appropriate, as an ongoing part of your current care and treatment.

**Q. Why might somebody refuse to witness my statement?**

It was mentioned earlier that a health professional might decline to witness your Advance Statement. It is important to recognise that they may have good reasons for doing so.

For example, they may feel that there is a risk of future conflict of duty if they witness an Advance Statement which they might, at some future time, have to override in order to provide care and treatment appropriate to your needs. For example, a health professional witnessing an Advance Statement might subsequently be involved in authorising or administering treatment which conflicts with the wishes specified in your statement. This may be of particular concern for medical practitioners in rural or remote locations who may be not only the preferred witness (or only witness available) but also the person called upon to administer treatment measures compulsorily.

In such circumstances, it would be considered “best practice” for the person you have asked to witness your statement to discuss with you any potential

risk of conflict of interest and to confirm with you that you still wish them to act as a witness. Alternatively, they may decline to act as witness if, in their opinion, the risk of future conflict of duty is too high. In declining to witness your Advance Statement, they may help identify another suitably qualified witness who is further removed from the risk of conflict, or another person independent of the care and treatment process, such as a solicitor, who could be asked to witness it.

**Q. Will it cost me anything?**

A. Before you ask someone to help you write or review an Advance Statement, or to witness it, it is important that you ask them if it will cost you anything. If you decide to use a solicitor, you may wish to ask whether Legal Aid will pay for some or all of the cost.

**Q. What if I can't find a suitable witness?**

User and Carer Involvement (UCI) can also offer advice if you are having trouble in finding someone to witness your document. Contact details below.

**Q. Is free assistance available with writing my statement?**

User and Carer Involvement (UCI) offers free help with preparing and writing Advance Statements. You can contact us at UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ  
Tel: 01387 255330.

Preparing an Advance Statement needs careful thought and shouldn't be rushed. We cannot stress too strongly the importance of your being satisfied that your Advance Statement accurately reflects your wishes.

**Q. Who should have a copy of my Advance Statement?**

A. When your Advance Statement has been completed, signed and witnessed, you should give a copy to the witness and all those people who need to know about it: your Responsible Medical Officer (RMO) and Mental Health Officer (MHO) if you have them, the hospital managers if you are in hospital, and your general practitioner – who should ensure that the copy of your Advance Statement is included in your medical records. Also your named person, carer(s), family, solicitor, nurse, independent advocate, guardian, welfare attorney, and any other people who are close to you. Of course you will want to keep a copy for yourself.

It is very important to keep a list of the names and contact details of everyone who has a copy of your Advance Statement. If you later decide to change your statement, you will need to notify them all. This list can be attached to all copies of your Advance Statement.

**Q. Should my Advance Statement be placed with my medical records?**

A. Yes – this is most important in order to ensure that, if the need arises, it is brought to the attention of your care team with a minimum of delay. This is why it is so important to ensure that a copy of your Advance Statement is given to your general practitioner, and the hospital managers if you are in hospital. They are duty bound by the Act to ensure that any Advance Statement is placed with your medical records.

Notice that where an Advance Statement is lodged in a patient's medical records, it will be treated as a medical record in terms of patient confidentiality.

Practice in Dumfries and Galloway Health Board region is that a copy of Advance Statement is also lodged with Medical Records in Crichton Hall. When this has been done a letter confirming it is sent to you by Medical Records.

**Q. What other information might be taken into account in deciding my future treatment?**

A. If the need arises, a competently made Advance Statement will be considered a strong indication of your wishes about medical treatment, but it should not be considered in isolation. It isn't the only means of ascertaining your past and present wishes and feelings, and other relevant sources of information should be taken into account by

doctors and other persons discharging functions under the Act when decisions are being made about your care and treatment – whether an Advance Statement exists or not.

Because you have made an Advance Statement doesn't mean that your doctor and/or other members of your care team won't discuss your present wishes in regard to care and treatment.

At the same time, your designated medical practitioner must have regard to the views of your named person, your carer(s), and your guardian or welfare attorney if you have them, unless it is unreasonable or impracticable to do so.

**Q. What shouldn't be included in my Advance Statement?**

A. You may have concerns regarding various issues that might arise in the event of your becoming unwell at some time in the future. For example, who will look after your pets if you are admitted to hospital? However, while such things might be very important to you, dealing with them is not part of your care and treatment as such, and therefore should not be included in your Advance Statement. Instead, you can set down your wishes in what is known as a 'personal statement'.

**Q. What is a personal statement?**

A. As just described, you may write a personal statement to explain about important things apart from your treatment (which is dealt with in your Advance Statement). You might include contact details for your employer and what they are to be told if you are taken into hospital, any special dietary needs, how you like to relax, details of your spiritual life, who should be informed when you are going home, who can arrange for some food to be in the house and the heating to be switched on, who will look after your dependants or pets, and so on.

A personal statement is not part of your Advance Statement. It doesn't need to be signed or witnessed, nor does it have the same effect in law. However, you can attach it to your Advance Statement, so that they are kept safely and can both be referred to in the future, should you become unwell.

**Q. Might my Advance Statement be overlooked?**

A. There are safeguards to ensure that your Advance Statement will come to the attention of the mental health professionals undertaking your care and treatment if, at some time in the future, you become too unwell to make your wishes known or easily understood.

They must undertake certain checks to ascertain whether the patient for whom treatment is being

considered has made (and not subsequently withdrawn – see later) an Advance Statement, and to view a copy of that statement. The designated medical practitioner is required to do this in order to comply with the statutory requirement included in the Act to have regard to the wishes specified in such a statement.

The person giving treatment should ask you if you have an Advance Statement and if so where it is stored, and explain that they wish to see it before making their decision regarding medical treatment. If you don't or cannot provide the person giving treatment with the Advance Statement or the name of any person holding a copy of it (for example because you have become too ill to understand the request) they should, if you are in hospital, check your hospital notes for a copy of your Advance Statement or for any reference to an Advance Statement. Where a copy of your Advance Statement is stored in your records, it should have been prominently labelled to ensure it can be located quickly.

If you are not in hospital, the person giving medical treatment should contact your general practitioner to ascertain whether they have a copy of any Advance Statement in your medical records. If the general practitioner holds a copy of the Advance Statement, the person giving medical treatment should request a copy. The general practitioner

should treat this request in the same manner as a request for any other of the patient's medical records.

When trying to locate a patient's Advance Statement it would be reasonable to ask the patient's named person and/or their carer(s) if they know of the existence and location of any Advance Statement.

So you see, the chances of your Advance Statement being overlooked are very remote and shouldn't be a cause for concern.

**Q. What if my Advance Statement is ignored or over-ruled?**

A. You may worry that your Advance Statement will be ignored – that the health professionals will take an attitude that “doctor knows best” - if you become so unwell as to be unable to make your wishes clear. However, where a person giving medical treatment under the Act or a designated medical practitioner, or the Mental Health Tribunal makes a decision which conflicts with the Advance Statement, the Act requires that they record this in writing - stating how the treatment conflicted with your requests, and the reasons why this treatment decision was made. In other words, they must justify their decision. This record must be placed in the patient's medical records. Also, they must send a copy of this record to the patient, the named person, any guardian or welfare attorney and to

the Mental Welfare Commission who may decide to investigate further.

A decision to act in agreement or in conflict with an Advance Statement should not be made on the basis of the costs involved.

**Q. What is the Mental Welfare Commission?**

A. The Mental Welfare Commission is an independent organisation, whose job is to protect the rights and welfare of everyone in Scotland with a mental illness or learning disability. It is a group of people – including medical practitioners and lawyers - with experience of mental health and learning disabilities services, medicine, and social care and law.

The Mental Welfare Commission has a free phone advice line for people who are concerned about their rights or the rights of others - you can call 0800 389 6809 during office hours to access this. Their web site is found at [www.mwscot.org.uk](http://www.mwscot.org.uk).

**Q. What if I change my mind, or want to make changes to my statement?**

A. If you change your mind about your Advance Statement, you can withdraw it. This will allow you to replace it with an up-to-date version of your wishes in regard to any possible future treatment. The process by which an Advance Statement may be withdrawn is similar to that for making one.

It requires a simple document stating:

“I hereby withdraw the Advance Statement made by me, (write your full name) on (write the date your previous statement was signed and witnessed).”

A qualified witness must ensure that you have the necessary capacity to understand the consequences of withdrawing your statement. They should write: “I hereby certify that I am of the opinion that at the time of withdrawing this Advance Statement, (your name) has the capacity of properly intending their wishes,” before adding their own signature, their full name and the date.

The person who witnesses the withdrawal of your advanced statement does not have to be the same person who witnessed it, but they must be suitably qualified as described in the list of those who can act as a witness (see earlier).

It is very important that you make sure that everyone who received a copy of your original advanced statement now receives a copy of your withdrawal of same. It is especially important that people involved in your care, such as your General Practitioner, Responsible Medical Officer and Mental Health Officer receive notification.

There are printed documents that make this process as straightforward as possible. UCI can provide these as part of their “Advance Statement Pack”. You only have to ask.

**Q. Should I review my statement on a regular basis?**

A. You don't have to review your Advance Statement, but it is a good idea to read it through from time to time – perhaps every six months and certainly on an annual basis.

If your views have changed, you will need to withdraw your current Advance Statement and make a new one. As stated earlier, both the withdrawal and the new statement must be witnessed, and copies of both sent to all those people who received the previous copy. That is why it is so important for you to keep a list of all who received it.

You can review your personal statement at the same time. This doesn't need to be witnessed. Send copies of your new personal statement attached to your new advanced statement to everybody on your list and remember to keep one for your own records.

**Q. What if I'm still not sure?**

A. For further advice on Advance Statements and personal statements, or for assistance in getting them completed or reviewed or finding a suitable witness, contact User and Carer Involvement at: UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ Tel: 01387 255330.

# Notes



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