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"You Can't Take it With You"

Information Evening – Darrara Community Centre November 19th 2019

Transcript of Presentation

So the topic this evening is getting your will done and planning for succession and managing the prospect of loss of capacity. We talk about loss of capacity, we talk about the capacity to make decisions and to do things for ourselves .

Unfortunately this is a reality now that we are all facing as we age and as a society it is a huge issue for us and there are things that we can do practically to manage how we can deal with that. We can put things in place now that will allow us to, as they say, have control over our situation if anything were to happen to us.

One of the things I want to talk about at the start is, and I'm delighted to see so many people here to talk about this topic, because sometimes it's not the most exciting topic. It's a bit gloomy or some people think about it as depressing and, "Oh my God I just don't want to think about that, it's an awful thing to think about."

That's not the way to think about it. think about doing this as about actually taking control over your situation. Doing this is a simple thing to do. Making a will is a very, very simple thing to do. Putting in place an Enduring Power of Attorney as we are going to talk about. They are all relatively easy things to do and if you do them and then put them away you can then go on and live your life to the full. Knowing that you've taken care of all of those things and that you haven't left problems there for other people to deal with afterwards.

The only depressing aspect about any of this is the people who don't actually do anything and allow things to happen. Unfortunately then if we don't do things for ourselves when we can, we may end up in situations where it's too late for us to be able to do things for ourselves. That's unfortunately when we find ourselves in sad situations.

That's the overview of this evening.

We will start with wills. Which I guess everybody is pretty familiar with the concept of wills and everybody knows the basic idea of what it is but let's

look at the different types of wills. There are totally different types of will that are needed for different types of people and different situations in their lives. Look at different stages of life and the type of will that you might put in place as you go along.

A younger person we would look at a basic protection will. That's a very simple and straightforward document. It's almost like an insurance policy. Whenever I make a will for somebody, a younger person, I would always say, "This is like and insurance policy. You take it out on the basis that you'll never going to actually use it." I would hope that most of the wills that I write for young people are never going to be read. That you'll make another will, many, many years into the future to decide what you are going to do with the future.

This is a thing about thinking about wills. They are not one document that you do once in your life. It's a document that you are going to come back to review, revise and replace as your life changes and you need to update it.

The type of document we would put in place, when we are at a younger stage in our lives with young children is quite a formulaic document. It would be one that would leave everything to a spouse. The husband would leave everything to the wife and vice versa and if anything happened to both of them, they would appoint trustees to take care of things until the children reached their adulthood.

That's the sort of will that I have for instance. I have a very simple situation and we joke about it at home. Myself and Mags would say to the kids because we've got a very big mortgage on our house, I would say, “We're leaving you the mortgage", and the kids got a kick out of it. And the funny thing is that they think it's a joke!

That's the type of will you would have up until your 50's I guess. Until maybe children are mature and then as we get older we start thinking about specifics. About what are we going to do long-term in terms of our estate and who we are going to leave things to. Then as we grow older in life we may get to a point where we say, "Now I have a clearer idea and want to put my affairs in order and make some kind of document that I won't be coming back to again".

Again these are all different stages in our lives and the point I want to emphasize to you, is that this is something that you should feel free to do and change and not put off and do on an ongoing basis.

In the other kind of more elaborate will, while simple needs more details to be taken. It's more bespoke and customized for each individual person.

With the more elaborate will or document for someone who has accumulated a lot of assets and wants to do some estate planning then you would have a more elaborate will structure. For certain people that's necessary, for most of us it isn't.

The other situation when you would need a more elaborate will would be when dealing with somebody where a beneficiary is unable to take care of themselves longterm. So maybe if you have an incapacitated beneficiary, someone who is not able to care for themselves, then maybe you need to consider a more elaborate trust based will.

There are mechanisms in place for that but the procedure involved there is just a little bit more elaborate and needs a little more thought and care.

With that as the overview let's look at how they work and what's involved in them.

Essentially a will is a document that you create now, but if you create a will now it doesn't do anything immediately. Nobody gains any rights as a result. People think, "Oh my God if I put something in the will I may be creating some right or giving something to someone". You're not.

The will is a confidential document. It doesn't leave your Solicitors office at least certainly without your permission. Nobody is aware of what's in it. It doesn't come into force and has no legal effect as long as you are alive. We talk about wills as being, the legal term is ambulatory, in that they walk along with us or they float along until if anything were to happen to us, they would crystallize and come into effect. The will as a document does not do anything immediately there and then. It just sits there until it's needed.

To create a will the first thing we need to think about is who do we appoint as Executors of the will. The Executors are the people who will actually do what's required to administer the estate of the person after they have died. So that is the person who will come along and will gather in whatever assets need to be gotten and then they will say, "Here's what the will says and here's what I must do." And they will then do that in accordance with the instructions in the will. Of course the Executor would be assisted most of the time by a Solicitor in doing that. But the Executor is the person with the decision making power to deal with the affairs of the estate.

It is important, when choosing an Executor, to choose somebody who is going to be comfortable dealing with that kind of stuff. Who is not going to get maybe over wrought by dealing with business matters, decisions or things like that. Many estates are simple and Executors are not going to be put under too much pressure but it is worth bearing in mind. Sometimes, some people find they're not really comfortable dealing with it. So choosing the right person there is important.

Every will needs Executors but in certain wills we will need what are called trustee's or guardian's. That would generally be a situation where we have minor beneficiaries or people who are benefiting in the will who are not adults. In those situations we would have to appoint Trustees and they may also be appointed as Guardians of the beneficiaries. They may be the same but they don't necessarily need to be.

Normally the Executor's job is quite a short term task. They deal with the administration of the estate, then they distribute the assets and then the Executors job is finished.

Trustees would generally have a much longer term role. Let's say, God forbid, if somebody was to die with young children and a Trustee was appointed, the Trustee would remain in place until the child became an adult. So the Trustees job would be a very long term job potentially. That is a different type of role.

The Trustee's job would be to look after the property, to make decisions about financial matters, to manage the financial matters and property and things like that, until the Trustees function would be finished when they would put the assets in the name of whoever the beneficiaries are.

The Guardians function would be slightly different. As parents, we would do both functions. We look after the finances and pay the bills and do all of that stuff and we also make decisions about healthcare and education and child rearing and those kinds of things.

In law, there are two different kinds of hats. The Trustees would deal with the practical business matters and the Guardians would have the functions to deal with where someone would go to school, if needed what medical decisions to be taken, they would be the people consulted as next-of-kin.

Where we make a will, with young people involved with young beneficiaries potentially, it is important to think of who we can appoint as Guardians and Trustees, and who would be comfortable with that role. We need to think of the ages of these people, are they going to be able to be around for as long as needed, do they live locally, things like that would need to be considered.

The next question that needs to be considered, in terms of wills, is who gets what. What I always say here is that it is really important to think big in this context and to think, not in terms of details of okay what am I going to with the carriage clock and the car.

Obviously there are so many things that you are going to change in your life as you go along. We don't obviously want to make a will that really detailed and specific. If something is named in a will and it isn't there when you die, then the person that was due to get it, doesn't get it. That can be disappointing.

Think about shares usually, maybe how would you apportion all of your property and shares to individuals or specific properties or assets or whatever the case may be. The point I'm trying to make is that it's important to not get too bound up in the detail of these things because at the end of the day as I do say, you can't take it with you and it's someone else's problem at that stage.

Some practical things to think about when it comes to making wills and these are some things that we take for granted as lawyers when we are doing these but it may not necessarily be obvious to everybody.

Marriage for instance revokes a will. Automatically, by operation of law, once you get married, any will you've made prior to your marriage is revoked. Not everybody knows that and maybe not everybody has thought of that. Obviously if you do have a fundamental change in your situation you do need to update your will.

Of course, marriage also creates relationships that have implications in terms of legal rights and so on. In creating a will you have to have regard for the people who might be entitled to expect a benefit in your estate.

In law your spouse, if you are married, has a legal right share, to take a share of your estate and you cannot exclude that legal right share. If you are married and you don't have any children your spouse is entitled to a half share in your estate. If you are married and have children, your spouse is entitled to a third share in your estate. You cannot disinherit a spouse. It is a very important thing to think about in terms of, the natural way we think in terms of how we benefit our family anyway but it is an important consideration. It is an operation of law that we have to deal with when we go to make a will.

Interesting now of course, in terms of the evolution of families, we have the concept of civil partnership and we have all different kinds of spouses now of course. They would have the same rights and entitlements in terms of succession in the context of making wills.

Where we differ over here is in the area of partners and cohabitants. Where marriage or civil partnership hasn't happened this is a slightly more grey area and it would depend on the facts of the particular case.

We do have a provision in law now, where cohabitants can claim rights and entitlements. It's not automatic and they don't have any automatic entitlements in relation to wills but there is a possibility for a cohabitant to make a claim in an estate depending on the circumstances. So it is just something to bear in mind again, depending on the circumstances of the individual making the will.

You're probably looking at me thinking why is he talking about beneficiaries when obviously we are going to leave our property to our spouse or our children.

Yeah okay but you know, unfortunately that hasn't always happened that way and the law has brought in provisions to protect spouses and to protect children.

Children don't have any automatic entitlements in an estate. There is no automatic share that they are entitled to if you make a will but if you make

a will and don't provide properly for children in the will, children can apply in law to make a claim in the estate for proper provision to be made for them by the Court.

There is an obvious entitlement or expectation that children would be taken care of in a will and if they are not, they have an entitlement to apply to the Court to remedy that but they don't get any automatic share, in the same way that a spouse would get.

We also in modern life have more provisions in place to manage the whole situation of relationship breakdown and separation and divorce and so on. This is something that obviously would be often dealt with if you have a judicial separation, divorce proceedings or agreement. Usually succession would be dealt with in the agreement reached or the orders that have been made by the Court.

The important thing that I want to emphasize here though, for anybody who might find themselves dealing with those considerations, is that when marriage will revoke a will and if you get married it immediately wipes the slate clean in relation to any will that you might have made in the past, separation or divorce doesn't.

So if anybody were to find themselves where their situation changed and they were in a relationship and are no longer now, and they made a will previously, if you do not go and change or revoke that will, you may end up in a situation where, if anything were to happen to you, perhaps someone might be benefiting in your estate that you mightn't have intended to if you had gone back and reviewed the will. It's an important thing to think about and bear in mind that as circumstances change we need to update and amend our will to deal with that.

Some other things to think about. This is very general in terms of wills and again it's coming back to the point that I mentioned earlier, which is to think big, don't sweat the small stuff and think about this in terms of the long term and the bigger picture and it's for another day in terms of how the smaller details are going to be taken care of once you've taken care of the big decisions.

The other thing to think about and this is very sensitive and important one that some of us have to deal with is taking care of people who can't take care of themselves and putting in place wills to deal with that situation.

Where we have beneficiaries who maybe are going to live for quite a long period of time, who may not be able to make decisions for themselves or to care for themselves and who are going to survive their parents in all likelihood.

That's obviously a very difficult situation for any parent to have to face but that is something that can be managed or provided for to some extent in a will and we can deal with that through Trust arrangements in wills.

We have to be careful here because there is an interaction happening between what might be left to provide for someone in a will and whether that is going to maybe interfere with what they are entitled to benefit from under Social Welfare or Medical Cards or things like that. So it is important just that that is managed very carefully and it can be complex and require careful thought in terms of planning.

The point about it is that any of these situations that are not the most ideal situations or ones that we don't necessarily want to have to think about they are certainly going to be a lot easier to deal with if we do think about them and do something about them and put in place the best that we can to manage them. The problems only really manifest themselves when we ignore them or neglect them essentially.

The other thing to mention around wills generally is the idea of changes to your will. To come back to the point that I was talking about previously when I was talking about the idea of different wills applying to different stages of your life.

Some people come in that they've made it a very big task in their mind of this will that has to be the perfect document that has to provide for everything for ever and until they have the perfect wisdom and decision in their mind, they can't do anything. Of course that's ridiculous because things change all the time, you do something now with the best you can for the situation you have now. Then when the situation changes in the future you come back make another one and change it again, and it's simple to do. It's not a big deal.

So, it's about this idea that perfect can be the enemy of good and we're looking for the perfect thing before we will actually do anything at all. So it's about putting something in place, something will do for now, you can improve on that in the future, if things change you have to come back and revisit that but you do the best you can at the time and keep going.

The other thing to mention around wills is around the idea of capacity. The old Latin phrase that people know is compos mentis and the idea of being able to know what is going on. This is a huge area in society in general now as you will be well aware, we'll come to it now in a second in the context of the other documents we'll talk about.

In order to make a will you have to have capacity. You have to have what is called testamentary capacity to be able to make a will. It's a legal test as to what you must know what you have to deal with, you must know who might be entitled to benefit in your estate and you must know then how you would like to benefit those people that might be entitled to benefit in your estate.

You need to be able to make those decisions not what somebody else might like you to do or what somebody else might suggest you to do. You

have to be independently capable of doing that yourself. If you can't. You can't make a will.

Unfortunately if you lose capacity, that ability to make decisions for yourself is gone. That's why it's so important to do that when you can do that and put measures in place and not get into a situation where unfortunately events overtake us and we find ourselves too late to be able to do something about it.

The point is that once the will is made, if you subsequently lose capacity, that doesn't matter. The will that you made when you were in a decision making capacity will be around for as long as you are and will be good after you're gone.

There are three documents we are looking at. The first document was wills and we've spoken about those and we can come back and answer any questions you might have at the end.

The next document we are coming to now are called Enduring Power of Attorney. I look back at my career and I think, they've been around a long time but I actually remember that they came in after I qualified in 1996 so I feel quite old when I think about Enduring Power of Attorney. Until we had Enduring Power of Attorney, we didn't have any mechanism to deal with this.

This essentially is a situation whereby if somebody loses their capacity and they are still perfectly healthy and we all know the situation. You said you had recently the discussion about Dementia and Alzheimer's and all of those different things that all of us know. There is no family in the country that isn't affected by it. Up until 1996, we didn't have a mechanism for dealing with that and the only way you could deal with that then was someone would have to be appointed a Ward of Court. That is a really cumbersome and old fashioned process that is dealt with through the High Court in Dublin. It's expensive, slow and tedious and it's completely inappropriate for dealing with people who need to be able to manage their affairs.

Enduring Powers of Attorney were introduced in 1996 and they introduced a very simple mechanism to enable us to put in place instruments that allow us to manage our affairs if we lose our capacity. They only thing about them is that you have to do them and if you don't do them and you lose capacity, and you haven't got one put it place then it's too late to do it at that point.

Who are they for? They are for those of us who are getting older and, spoiler alert folks, we're all getting older.

This is about Aging with Dignity and this is the document that we need to enable us to do that. So what do they do? They allow us to chose who will make decisions for us and what they can do on your behalf. They enable the people that you trust to take care of you when you're not able to do so yourself.

So you can say now, if I lost my capacity I would like this person to make decisions for me and they're the person who I trust to be able to say where I should live, who's supposed to come see me, deal with my bank accounts, deal with all of the day to day things in terms of organizing our lives. This isn't going to be someone who steps in and say, "I should do that" or they feel self appointed that they are going to be the one. You can say who that is.

You appoint them now and you choose them and you say exactly what provisions and powers they have so that they are able to look after things if you are not able to do so for yourself. It's a really simple document. It's a really powerful document but it's a document you have to put in place now or at least while you have capacity to be there when you don't, or if you don't, God forbid.

How do they work? Enduring Power of Attorney, are called EPA's for short and you create one now, and this is the other important thing, it's a bit like the will, you create an Enduring Power of Attorney now, you give somebody power if it's need but they have no power for the time being. So this person has no rights whatsoever unless you lose capacity. As long as you are able to make decisions for yourself the Enduring Power of Attorney is a dead instrument. It's useless. But if you lose capacity it can be brought into effect. By setting one up it's not like you're giving somebody power to access your bank account or deal with your property or sign things on your behalf like a Power of Attorney but it's just there in case it's needed. It only comes into effect after you've lost capacity, if that were to happen if you don't it never comes into effect.

You have to have capacity to establish Enduring Power of Attorney. If you lose capacity the Enduring Power of Attorney comes into effect on registration. It has to be registered in the High Court in Dublin in order for it to be effective. That's a safety mechanism so what it means is that someone can't do that without registering the document. To register the document you have to give notice to certain next-of-kin to say we're doing this now. It's another safety mechanism that other people might say, "Well hold on, Flor's perfectly fine. There's nothing wrong with him. He doesn't need Enduring Power of Attorney." Someone could object if someone tried to register Enduring Power of Attorney and you were perfectly capable of making decisions for yourself. So it only comes into effect on registration and then when it is registered the Attorney can then deal with your affairs as fully as you could have done so yourself.

So it's a document that effectively allows everything that you need to have done for you be done in relation to your financial, business and practical affairs. That can all be taken care of. It's a really powerful and important document.

In order to create an Enduring Power of Attorney what you need to do is choose an Attorney or Attorney's. An Attorney in this context is a bit like the concept of an Executor in the context of a will it's who you will appoint to do

things for you. You decide what powers the Attorney can have. You can restrict the powers the Attorney might have, you can do that, personally I always say to people, "Don't do that." Give them full power because you never know what they're going to need to be able to do and don't restrict the powers. Ultimately they may not have to do anything or they may have to do a lot of things but don't restrict them because you just don't know what it is that they might need to do on your behalf and you're not there to be able to do it for yourself.

You then have to get your GP to confirm that you have capacity so the document can't be created without a certificate from a GP saying, "This person is able to do this and they have the capacity to do it."

There is a list of next-of-kin that you have to notify. A number of them in the order of priority that are listed there. A spouse is somebody who must be notified on creating an Enduring Power of Attorney. It's an interesting thing, naturally that would be who you would expect the spouse to appoint but in some cases, maybe where relationships have broken down unfortunately the spouse may still have to be notified on creation of an Enduring Power of Attorney.

An important point is that you must notify two next-of-kin who are not going to act in any official capacity in the document such as the Attorney's. Again, this is a safety mechanism. If this is being done surreptitiously or when it shouldn't be done, the idea is that by notifying someone close to the person, they would raise an objection if there was a problem.

Then your Solicitor, creating the document, will also have to certify that you actually understood what was being done.

When this is put in place, there are a number of procedures done. They are all quite simple and straightforward. It's a bit more complex and a bit more work involved than creating a will but it's can all be done quite simply and then you have a robust document that shows that at the time that it was made, the person was perfect, at full capacity, understood what was being done, everybody who should have been notified was notified and the documents were properly constituted.

It then goes in abeyance, it doesn't come into effect immediately and as long as you retain capacity, it never comes into effect. It only then comes into effect if it is subsequently registered because it is needed.

In terms of what to think about in creating an Enduring Power of Attorney, you just need to think of the Attorney, like an Executor they need to be a practical person who is going to be able to deal with situations, who's not going to be found overwrought or maybe overwhelmed by having to deal with things. Not everybody is suitable for that kind of role.

You then might consider whether you might appoint more than one. You can appoint any number but you might just decide to appoint two in case

one person isn't available and you also need to consider where someone is going to be, are they living locally are they going to be around are they going to be able to deal with stuff.

You can consider the question, whether you limit powers, again it's an option I don't recommend it but it certainly is there. The critical thing here, that I mention continuously and unfortunately it is because we have seen it where it isn't done, it's just such a tragedy, don't leave it too late. You cannot create an Enduring Power of Attorney after you begin to lose capacity. It is one of those things that unfortunately sometimes people say, "Oh we need enduring power of attorney because so and so suddenly needs to into a home." And we can't do it now because the Doctor is not going to be able to certify that they are able to do that.

Frankly, in the modern world we have this mechanism here, we have people suffering from dementia and Alzheimer's who may be living for long periods of time and in very difficult situations because we don't have the mechanisms in place to take care of them. This is something we can do. It's very powerful and is very effective but it must be done when we are able to do it.

I mentioned just at the end here the general Power of Attorney. These are similar to Enduring Power of Attorney except that they come into force when you create them. Sometimes a general Power of Attorney is a suitable document to use. Let's say somebody has got full mental capacity but maybe they're not able to get out and do things that they would like to do for themselves. You can give general Power of Attorney to somebody else to do things for you. It's a perfectly valuable, useful legal tool that needs to be used carefully because if you give somebody general Power of Attorney they can go and sign things on your behalf and so on.

It is something that may be suitable in situations where somebody still has capacity but wants somebody else to help them and look after things for them and be able to take care of practical or business matters for them.

The last document or instrument we are going to look at is called an Advanced Healthcare Directive. This is quite a new development. These were really only introduced in 2015 and they really haven't been fully introduced yet.

I mention them because I think they are really important. I think they are really powerful. I would do one, I would have my family do one, I think they are an essential legal document and we have a Statutory Framework in place now for doing them even though the full legislation for implementing all of them isn't fully in place yet and I'll fully explain that as we go along.

Advanced Healthcare Directives are for anybody who may need medical treatment in the future. So the difference here now is between an Enduring Power of Attorney, if you like is a business document or a practical document that deals with bank accounts, property, entering into a contract

with a nursing home all of those kinds of practical things you would need to do, the person with Enduring Power of Attorney can do all those things but they can't make medical decisions on your behalf because that's not that realm if you like.

The Enduring Power of Attorney gives you power to do things that are legally operative but they don't cover medical personal decisions and an Enduring Power of Attorney specifically can't do it.

The Advanced Healthcare Directive is the document that will deal with that and it is an absolutely essential document and now that we have one, I think that we should all use them.

So what do they do? In Irish legislation they are called Advanced Healthcare Directive in common parlance we would call them "living will". The ideal of a living will is that you create this instrument that says, "If I'm in some kind of extreme medical situation and I'm not in a position to give medical instruction myself, then here is what I want to happen."

Let's say I would not receive maybe some extreme resuscitation or whatever the case may be. So you can specify now and say, "God forbid, if I find myself in that situation and I'm not conscious or I don't have mental capacity, then I don't want to be given this, I don't want these things to be done to me." You can specify this now.

So what they do is that they allow you to state now, what medical treatment you should or should not receive if you are not able to state that for yourself at the time.

It gives power to someone you trust to make medical decisions and to give directions on your behalf and a Doctor has to listen to that. They can go and say they said they don't want to receive that and that will not happen if you specifically state it and it is stated clearly in the document. As I say here, an Enduring Power of Attorney does not cover medical decisions so this is an essential document that we would put in place.

The three together I would consider to be the Holy Trinity of Aging and Planning with Dignity. We have our will that takes care of situations after we die, we have the Enduring Power of Attorney that covers situations if we are living and not able to make decisions for ourselves and then we have the Advanced Healthcare Directive or the living will that deals with how we want ourselves to have medical treatment and we say now what we do or don't want to receive, if you find yourself not able to make that decision at the time.

So how do they work? Again you create the Advanced Healthcare Directive now but it doesn't come into effect, unless and until it is needed. It is very similar to the Enduring Power of Attorney. You need to have capacity to create the Enduring Power of Attorney so again the old chestnut that I keep harping on about, you can't do them after you lose capacity. You have to do them in advance and if you lose capacity, the Advanced Healthcare Directive

comes into effect and there is no need to register it. It's not like the Enduring Power of Attorney. There is no mechanism for registration. It comes into effect automatically if you lose the capacity and it can be relied on and produced to say to a healthcare professional, "Look they told us at the time they do want to receive this and they don't want to receive that." It can be referred to and a Doctor will respect that.

The thing you need to do is that you need to be specific about what treatment you do or do not wish to receive in the document. That needs to be stated and considered. There are a lot of quite common things that we can look at and say if this were to happen I would not want that or I would want that and you can specify exactly what you believe.

You appoint a person called a Healthcare Representative. These are similar kinds of people, we talk about the Executor in the context of the will and the Attorney in the context of the Enduring Power of Attorney and in the context of the Advanced Healthcare Directive we talk about a Healthcare Representative.

In most of our lives it's probably going to be the same person. It's going to be the person you trust as Executor, who's going to be the Attorney and who's going to be the Healthcare Representative. They are distinct separate functions.

The Advanced Healthcare Directive has to be executed in the presence of two witnesses, who need to witness the person signing and there is no need to notify anybody. The document can be created anyway. You don't even need a Solicitor to do it but you do need two witnesses.

Things that you need to think about in terms of the Advanced Healthcare Directive is, who is the best person, I know you're thinking he's repeating himself but it is the same consideration needed and I don't think we can lose sight of the fundamentals when we look at these types of arrangements.

Who is the best person to appoint and maybe the best person to make a decision about an Executor type of role mightn't be the best person to make a decision about a Guardianship role for children and mightn't be the best person to make medical decisions. So maybe we could have different people who would be more appropriate in our lives. Each of us will know personally who would be good at those kind of things and who wouldn't be good and so on.

You want to chose someone who you trust. You trust their decision making ability that they would share your values in terms of, if something were to happen, that they would say, "Well look, this is what they said and they don't want to do that or they do want to do that."

In this context the decisions are likely to be difficult. They are going to be decisions taken in possibly life or death situations. It's not an easy responsibility to place on somebody and has to be thought about carefully.

You need to say what treatment you do or do not wish to receive and that needs to be specifically stated in the document and if you are referring to the life sustaining treatment, and specifically if you are going to refer to the Refusal of Life Sustaining Treatment then it has to be specifically stated.

So if you want a Do Not Resuscitate request, if you want to put that in there and say, "I do not want extreme measures to be taken in relation to resuscitation depending on my circumstances." That needs to be specifically stated as that's life sustaining treatment a Doctor is not required to act on the instruction of a Healthcare Representative under and Advanced Healthcare Directive, in relation to life sustaining treatment, unless it has been specifically stated in the document, stating specifically what life sustaining treatment is not to be given. Again if that is something you feel strongly about you need to state it.

Of course, it can be changed or revoked at any time. It's not like you create the thing and it's done forever. You can change your mind in the morning and do it differently or not at all.

An important health warning with the Advanced Healthcare Directive is that the legislation has been passed but it has not yet been commenced. That is how we do things in this Country. We have legislation for a couple of decades before it actually commences, some of it.

The reason it has not been commenced is a long and boring topic. It's got to do with the Wards of Court Office that I mentioned to you earlier on which is the office where all the stuff would be administered through in the High Court in Dublin and unfortunately it's a question of resources. They haven't resourced it properly.

There are other things around Assisted Decision Making and I know Aisling asked me to mention Assisted Decision Making as it was mentioned in the posters, she said, "Tell them about the Assisted Decision Making." And I said, "I'm not going to do that Aisling because we'll be here for three hours if I mention that!" It's a huge topic and unfortunately the Assisted Decision Making Act 2015 has been passed but has not be implemented yet because we don't have the resources to be able to deal with that properly.

Someone might come back to you if there is a change to that.

The Advanced Healthcare Directive legislation has been brought in under that legislation. It's been passed but it hasn't been commenced. So you're saying, "Why is he telling me to do it, if it hasn't been commenced?" The reason I'm recommending it is because they are there, the Statute has been passed, which says exactly how they are to be created and how they work and how we do them and the Supreme Court and the Court of Appeal

have considered Advanced Healthcare Directives made by people without a Statutory Framework at all. They have said, "If somebody does this, a Doctor should pay attention to what they have said."

The case law decided by Judges is that the law of the land is an Advanced Healthcare Directive or living will, a document that has been properly created, should be listened to by a Doctor and instructions taken from someone who has been given power this way and therefore they're good and effective as far as I am concerned.

We have a Statutory mechanism for putting them in place. I can see no reason why you wouldn't do it. I would do it and I think they're an essential document to have, if you care about what medical treatment you should or shouldn't receive if it was the case that you were not able to call for it yourself.

That's basically the main meat of what I wanted to talk to you about. What we would love to do now is take some questions on different aspects of this and maybe some of the stuff we haven't touched at all.

As I've said to you, if you wouldn't mind, and if you want to just drop us back the forms, if you have questions on there we can look at those for you and pull some of those out.

In terms of what we are going to do, as I said, we have recorded the session, we're going to anonymize everything. Nobody will be identified by anything that we'll get transcribed. We'll just use the content of what I've spoken about here and I'll share all of that with you and you may find that useful to refer back to the notes afterwards and I'd be delighted to take any questions that you have and we'll have Cliona and Lorna here to speak about them as well.

So thank you very much for your attention.