A guide to Business Lasting Powers of Attorney

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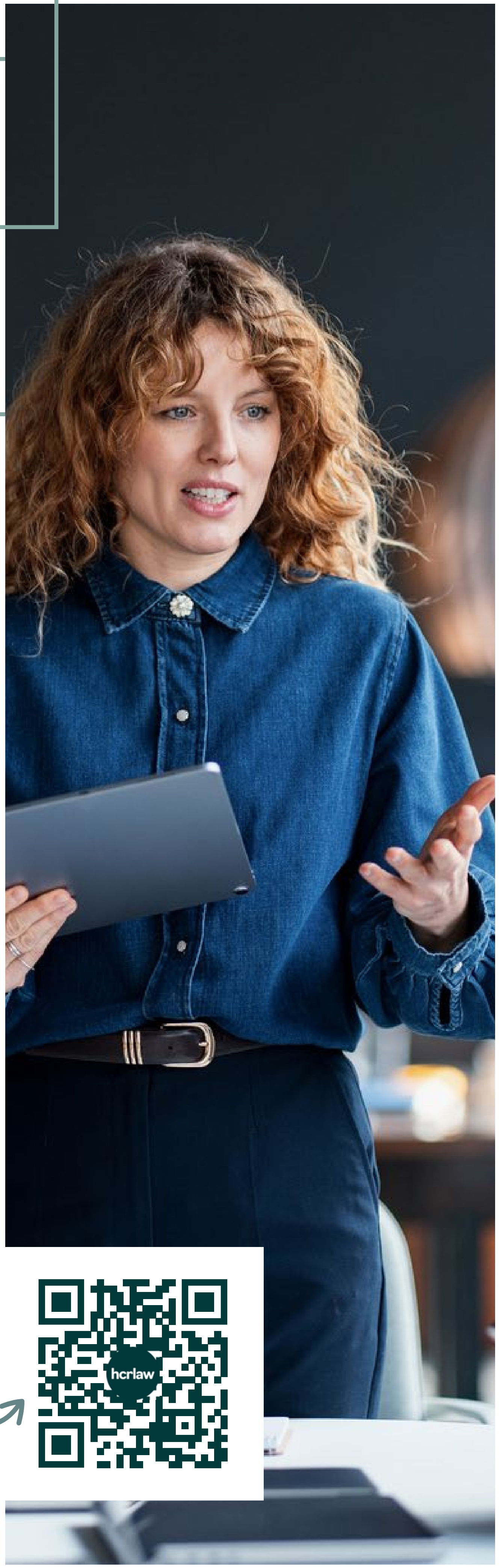
Protecting the business



For those with business interests, a business continuity plan and succession strategy are essential to the ongoing viability of the business.

An important part of this is to have a will that clearly addresses what should happen to your business interests when you die. But have you considered what would happen if you became unable to make decisions? Mental incapacity presents unforeseen challenges. Who will authorise the payment of bills, sign cheques, pay salaries? How will the business operate day to day?

To protect the business as far as possible in the event of incapacity, it is usually advisable to put in place a Business Lasting Power of Attorney (LPA) in which you appoint attorneys to act on your behalf in relation to business matters. Ideally, this should be done at an early stage, well before capacity becomes an issue.

This guide should be read alongside our guide to Lasting Powers of Attorney.

Commonly asked questions

What is a Business LPA?

A Business LPA is a type of Property and Financial Affairs LPA that authorises the named attorneys to deal exclusively with business matters. It can cover a wide range of activities from day-to-day operational matters to the sale or winding up of the business. Typically, it sits alongside a Property and Financial Affairs LPA for personal finances, ensuring that one set of attorneys manages personal matters while another handles business affairs. Careful drafting is essential to clearly define the scope of authority under each LPA and avoid any overlap or confusion.

A Property and Financial Affairs LPA which is not limited to business or personal matters will extend to both. The business element could, however, place a significant burden on the attorneys, and attorneys appointed with personal finances in mind may not be the most suitable people to make decisions in relation to the business.

It is usually helpful to prepare a letter of wishes for attorneys named in a Business LPA, to guide them on key aspects of the business and help them in their decision-making.

In more complex business structures, it may be appropriate to sign more than one Business LPA to deal with different elements of the business.

Having a separate Business LPA ensures your business is managed by the right people

Who should I appoint as attorneys under the Business LPA?

It is advisable to appoint at least two attorneys in a Business LPA. Choose individuals with the right skill set, including their business acumen, knowledge and involvement. Ideally they should be people you trust who are commercially minded and understand the business. They must also have the time to fulfil the role effectively and the ability to work well together.

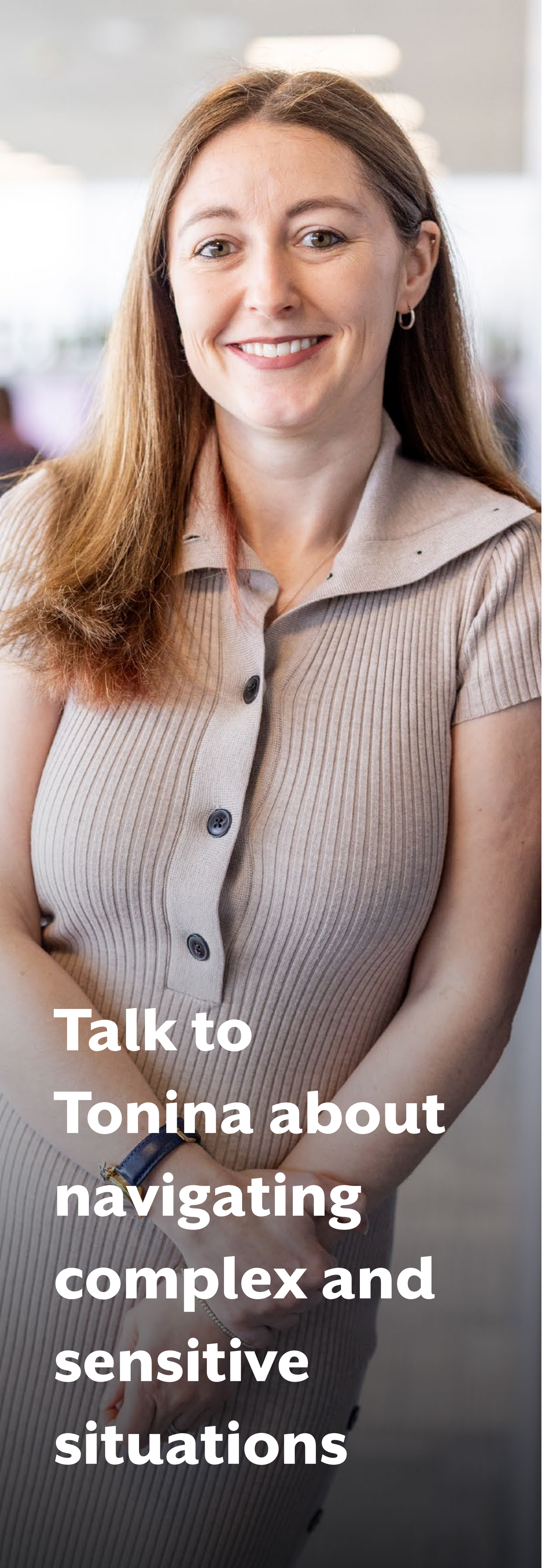
Responsibilities may include accessing business accounts and ensuring payroll runs smoothly, as well as general client management.

Attorneys should understand that they are in a position of trust and responsibility and must avoid any conflicts of interest. They are legally required to act in your best interests and follow the guidance set out in the Mental Capacity Act Code of Practice.

Do attorneys have to act together?

While attorneys can be appointed jointly, requiring them to make decisions together, it is more flexible to allow them to act individually. The best approach, however, will depend on the specific circumstances.

Talk to Tom about the benefits of LPAs



How does the business structure affect the position?

There are specific considerations that will vary depending on the nature and structure of the business.

Sole Traders

As a sole trader, you are the business. A Business LPA can help ensure continuity if you become incapacitated, but its effectiveness will depend on the nature of the business and whether it relies heavily on your personal skills.

Partnerships

If you are a partner in a partnership, it is important to review the partnership agreement, as it may already set out what happens if a partner becomes incapacitated. If a Business LPA is put in place, care should be taken to ensure it does not conflict with the partnership agreement.

Companies

It is important to review the company's articles of association and any shareholder agreement, as these may contain provisions dealing with incapacity. For example, the articles may state that a director's appointment automatically terminates if they become incapacitated. While attorneys under a Business LPA can vote on behalf of a shareholder, the appointment of a director is personal role and cannot be delegated. However, attorneys may have authority to carry out certain functions typically performed by a director, such as paying bills, filing accounts and settling tax liabilities.

What if I lose capacity and do not have an LPA in place?

If you lose capacity without an LPA (or an older style Enduring Power of Attorney), someone will need to apply to the Court of Protection for a Deputy Order to make decisions on your behalf. This is a lengthy and costly process and the decision as to who is appointed is out of your hands. It can take several months for a Deputy to be appointed and this is likely to be a period of risk for the business.

Without a Business LPA, incapacity means a costly, lengthy Deputyship application to keep your business running

What if I sign a Business LPA and later change my mind?

You can revoke (cancel) an LPA at any time while you still have capacity. You should ideally sign a new LPA to replace the one you revoke.

About HCR Law

As an award-winning 'Top 50' UK law firm, we provide the full range of services that you would expect to organisations, business leaders and individuals. We are entrepreneurial in our outlook, so we're flexible and responsive to the needs of our clients, delivering the best outcomes for them.

We have more than 1,000 lawyers and support staff, including more than 180 partners. Our annual turnover is over £100m. Our roots go back to 1796 in Cheltenham and 1904 in Worcester, when our predecessor firms were founded. Our growth has been in response to client demand, and we have 13 offices in England and Wales, including an international HQ in London.

Clients value our honesty and our friendly approach, and we've been awarded the Law Society's Lexcel quality mark in recognition of our compliance and client care standards.

We truly partner with our clients and demonstrate our genuine commitment to them and what they're trying to achieve in all that we do. We are pragmatic and won't 'sit on the fence'. Clients have confidence in our advice because of our experience, specialist expertise, and the relationships we build with them.

Our awards

How we can help

A Business LPA gives attorneys wide powers, so it's essential to consider all implications alongside any relevant business documentation. At HCR, our Private Client team provides specialist advice on every aspect of LPAs for both business and personal affairs, including guidance on potential safeguards and the duties and responsibilities of attorneys.

We can prepare your LPAs, ensuring they are tailored to your needs, and register them with the Office of the Public Guardian, so they are ready for use if needed.

HCR Law is a Top 50 UK law firm with offices in England and Wales

Talk to Kerri to understand how LPAs can help you and those you care about

Contact us

To discuss the benefits of an LPA for your business or personal affairs, please get in touch

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"HCR are an exceptional firm who go above and beyond for their clients. They are transparent, provide pragmatic advice and are realistic with their expectations. With HCR, you feel as if they truly care about you and the matter at hand."

Legal 500 private client testimonial

Glossary

Lasting Power of Attorney (LPA)	A legal document which allows someone else to make decisions on your behalf in certain circumstances.
Donor	An individual who signs an LPA appointing others to make decisions on his or her behalf.
Attorney	An individual who the Donor appoints in an LPA to act on his or her behalf in relation to financial matters or health and welfare matters.
Enduring Power of Attorney (EPA)	A previous type of Power of Attorney which can no longer be created but (if validly created before 1 October 2007) can still be used.
Court of Protection	A Court which has authority to appoint a deputy to act on behalf of an individual who loses capacity without an LPA or an EPA in place.
Deputy Order	An Order by the Court of Protection appointing a deputy.

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