



MOMENTS  
THAT MATTER

A guide to  
business LPAs

**hcr**

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If you have business interests, you may have already detailed in your will what will happen to them when you die, but have you considered what would happen if you became incapacitated? Have you put steps in place to allow your business to continue if you are unable to work, either temporarily or in the longer term?

## What is a business LPA and why do I need one?

If you become incapacitated, be it temporarily or permanently, you may need someone to make business decisions on your behalf.

Support may be needed should you lose mental or physical capacity, for example, if you have been injured or undergone a medical procedure. Being incapacitated also includes potentially being abroad or physically unable to attend your business premises to carry out operational tasks such as signing documents or carrying out elements of the work itself.

A business lasting power of attorney (LPA) is a type of financial LPA which relates purely to your business interests. You may already have one or more LPAs in place covering your personal finances and health and welfare, but it is always advisable to create



a specific one for your business interests. This avoids undue burden being placed upon your attorney(s) to manage both your personal and business affairs at what can be a difficult and stressful time for all involved. It also gives you the ability to choose who you would wish to make business related and personal financial decisions on your behalf as these people may not be the same.

Depending on the complexity of your business assets, you might even want to consider more than one business LPA to deal with different elements of your business interests or to make decisions at different levels. Business LPAs can cover a range of activities from day-to-day operational support to selling or winding up a business. When putting a business LPA in place, it is therefore critical to specify the scope of the LPA and the roles that each attorney will take on to ensure that there are no grey areas or overlaps which could lead to difficulties further down the line.

It is also important to ensure that the attorneys you appoint under your business LPA don't have a conflict of interest. If, for example, you choose to appoint another significant shareholder in the business, they may have a conflicting opinion on decisions which need to be taken. This could then place them in a position of conflict, when it comes to exercising their own powers and exercising powers on your behalf, if they have to make decisions for you due to your loss of capacity.

If you do not have a business LPA in place and you are incapacitated, someone will need to apply to the Court of Protection to be appointed to manage your business affairs for you. This is a more complicated and expensive process, and you may end up with someone who you would not necessarily have chosen acting as a deputy and making decisions on your behalf.

## Who should have a business LPA?

Anyone who has business interests should consider putting a business LPA in place:

### Sole traders

As a sole trader, you are your business. If something were to happen to you there will be no back up and, without an LPA, the only way for the business to continue trading would be for someone to apply to the Court of Protection. Having an LPA in place could avoid your business being unable to trade and the knock-on effects in terms of losing clients, staff (if wages are unpaid) and income which you and your loved ones may be reliant upon.

### Directors of companies

If your organisation is small, there may be no-one else to manage it, or the remaining individuals may not be able or in a position to undertake the day-to-day management themselves. Larger organisations may have articles of association which deal with incapacity - you should check what yours say and whether you need a business LPA as well to support these powers. We are happy to undertake a review of your corporate documents to establish the position and advise you accordingly.

It is worth noting that your attorney(s) will have the ability to vote on your behalf as a shareholder but can't act as a director. This is a personal appointment which cannot be delegated in this way.

### Partnerships

Your partnership agreement may cover a scenario in which a partner has lost capacity but, again, it is important to check this document and to put in place an appropriate LPA as required.



**If you do not have a business LPA in place and you are incapacitated, someone will have to apply for a Deputyship in order for your business to continue to function.**



**It is always advisable to create a specific LPA for your business interests to avoid undue burden being placed upon your attorney(s) to manage both your personal and business affairs at the same time.**

## What makes a good attorney?

Your attorneys must always make decisions in your best interests.

An ideal attorney for a business LPA would be someone commercially minded, with both your and the business's interests at heart, and who will follow your values and ethos.

You should consider whether there are any specialist skills or knowledge which the attorney(s) would need to carry out the role. For instance, your business may require the attorney to have a particular qualification to perform certain aspects of the business. You should also ensure that they are reliable and trustworthy as they may need to carry out a range of tasks including accessing bank accounts, ensuring payroll functions correctly and client management. You ideally need between two and four attorneys. You can specify if you would want certain people to have authority in specific areas and also whether they can make decisions individually or by way of a majority (or even a unanimous) agreement. If you are considering an attorney who is an existing employee, you should also decide if they should be paid for the extra responsibility.

**An ideal attorney for a business LPA would be someone commercially minded, with both your and the business's interests at heart and who will follow your values and ethos.**

## What else should I think about when considering a business LPA?

As part of the LPA, you should also compile a list of wishes. This will give the attorneys guidance on your future plans and aspirations for the business which they can use to base their decisions around.

When looking at your succession planning and putting LPAs in place, you should review company documents such as your memorandum and articles of association or partnership agreement. Do they contain any restrictions about delegating decisions; do they give you the freedom to hand over your share of the business to whoever you wish or are there pre-emption rights which give others first refusal?

Finally, you should make sure that you also have a valid will in place which is up to date and in line with your current wishes, for both your business and personal interests.

For more information about business LPAs, contact a member of the HCR Private Client team.



[Click here  
to contact  
the team](#)

## Glossary

### Lasting Power of Attorney (LPA)

A legal document which allows someone else to make decisions on your behalf if you become unable to do so in the future

### Court of Protection

A court which has the authority to appoint a Deputy if you have not already put an LPA in place

### Deputy Order/ Deputyship

An order which must be applied for to manage someone's affairs if they do not have a Lasting Power of Attorney and are incapacitated

### Attorney

An individual over the age of eighteen who is nominated to act on your behalf if you lose capacity

### Donor

The individual who has a Lasting Power of Attorney allowing others to make decisions on their behalf if they become incapacitated

### Enduring Power of Attorney (EPA)

A previous type of Power of Attorney. These are no longer created however it is still valid if you have one which was fully signed before 1 October 2007

### Office of the Public Guardian (OPG)

The OPG registers LPAs and keeps a register of attorneys, deputies and guardians. It ensures they carry out their duties and investigates any concerns about decisions made

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