




Linley James
Solicitors



Business Lasting Power of Attorney

What is it and why not having
this in place could leave your
business vulnerable



Introduction



Having a Business Lasting Power of Attorney (LPA) in place could protect your business from many potential future issues.

Like many things in life, you don't always know you need them until the worst happens. And then it's too late.

A Business LPA is like an insurance against the future of your business, but it is something that many companies have not yet considered.

While the chance of you ever needing to fall back on a lasting power of attorney may be small (thankfully), if your business did ever find itself in the unfortunate situation that one of its partners or directors lacks the capacity to make decisions, then without an LPA in place, the consequences could be quite severe.

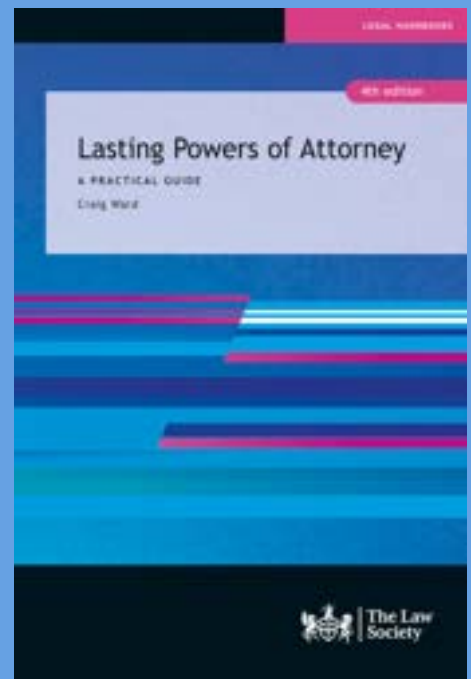
It could **even mean the end of your business**, without the remaining partners/directors having any control over it whatsoever.

If this concept is new to you, or you're not sure if it's right for your business, this guide shares all you need to know to help you make the right decision for your company.

We Wrote the Textbook - Literally

We can confidently say we're one of the UK's leading experts when it comes to Business Lasting Power of Attorneys.

Craig Ward, one of the solicitors at Linley James Solicitors, wrote the textbook on it: "Lasting Powers of Attorney (4th Edition) 2019". Craig started thinking about Business Lasting Powers of Attorney around 2009. Prior to this they were unheard of. Whilst reading around legislation and case law from the 1800s onwards, he found a legal gap regarding businesses and their protection, and thanks to his forward thinking, businesses can now secure themselves against this huge potential problem.





What is a Business Lasting Power of Attorney?

A Business Lasting Power of Attorney lets the business owner appoint someone they trust to make business decisions for them if they become unavailable or lack capacity.

If you are sole trader, partner or director and unable to make decisions as you're seriously ill or lack understanding, your business will be at risk.

- Banks can freeze your bank account.
- Banks may also want their business loan back if one of the business owners lacks understanding to make business decisions.
- Contracts may not be valid, declared void or unenforceable.
- There can be regulatory breaches affecting you and the other partners or directors.
- There is crisis management implications for the whole business.

Most businesses don't have a disaster recovery plan

In life there are two certainties: we're born and we come to an end. Everything else could be left to chance - or we could prepare to make the best of what's going to happen.

Some businesses haven't thought what might happen if the owner is unavailable or loses capacity. Business owners often treat their business like one of their children. If that's how you see your business - like it's one of our family - why not make a Business Lasting Power of Attorney to help protect it?

Having a disaster recovery plan in place could, quite literally, avoid disasters and protect your business against unnecessary problems.

Do I really need a Business LPA

You may think that you could just remove a partner or director who lacks mental capacity, so you won't be affected by these issues.

However, it can be hard to remove a partner or director who lacks mental capacity as they cannot consent to being removed. If there's not a Business LPA in place, an application can be made to the Court of Protection to have a financial Deputy appointed. But this application can take several months, during which time:

- Your business will not be able to operate properly
- Decisions may not be appropriately made
- Other businesses may not wish to do business with you even if there are other partners or directors

For what is a simple procedure, it can protect your business and ensure it keeps running. Without a Business LPA in place, you could effectively even block your fellow directors from being able to move things forward.

Perhaps at your next business meeting, this could be something to discuss.

Types of Lasting Power of Attorney

There are two types of Lasting Power of Attorney or LPA.

- Property and Financial LPA
- Health and Welfare LPA

These are separate documents and we would recommend making both types. Business owners should make a separate Property and Financial LPA.

The person you appoint is required by law to make decisions in your best interests:

- They have to try and include you as much as possible in the decision making process.
- They have to think how you would make a decision.
- They also have to consider any documents or information you've written which might help them make decisions for you.

If you want more than one person to make decisions for you, that's no problem. They can either act jointly, or jointly and severally.

- Jointly means they must always agree and make decisions together
- Jointly and severally means they may make decisions independent of each other or together. Usually they would have decided how this will operate.

How to Choose an Attorney

You should choose an attorney that understands your business practice, ideally working in a related field. The attorney should appreciate contractual obligations, health and safety issues, business insurance, business risks, and tax and employment issues.

This is not to say the attorney should have expert knowledge in all these areas. But they need to realise when they should ask for further assistance when making decisions about the business.

As a guidelines, an attorney should:

- understand how and why you make your business decisions
- be able to perform your role to the required standard within that business
- possess similar business skills to you
- understand your role and responsibilities within the business
- appreciate they have a duty to act reasonably in applying business skills
- be subject to the same regulatory measures as you, if necessary

Attorneys from within the business

It is acceptable for a person to choose an attorney from within their own business, providing there are no conflicts of interest.

A perceived conflict could arise, for example, where you own 45% of the business and you appoint a fellow partner who owns 10%. If the attorney were to attend a meeting on your behalf, even though the other partners would know that they are there as an attorney making decisions using your 45%, the fact that they have their own 10% separately may cause conflict.

Here, the attorney may wish to declare a conflict of interest and appoint someone via a power of attorney to act on their behalf.

Another 'perceived' attorney conflict might be between husband and wife or siblings. Attorneys should be transparent about how they decide on and confirm their independency.

If you've made a Financial Lasting Power of Attorney appointing your spouse, a relative or a friend, that's good. However, it's important to make sure that whomever you appoint is confident in making business decisions. Just because they know you well, doesn't mean they'll know your business well.

If they've never run a business or do not know how your business operates, perhaps appoint someone who does.

Attorneys from outside the business

You may wish to appoint your accountant or solicitor as an attorney. Alternatively, you could appoint someone who has similar business experience to you.

It is useful to introduce outsiders to other business owners before the Business LPA needs to be used, so they can get to know them. There may be some hesitation or reluctance if others believe internal business confidences are being exposed.

Your Choice

Without a Business LPA in place, if you lose capacity, the bank can freeze the business bank account, invoices would remain unpaid, and contracts unfulfilled, with creditors claiming against the business.

To manage this situation, an application may be made to the Court of Protection for a deputy to be appointed, which may take six months or longer. Most businesses would not survive such a wait.


It is your free choice to make a Business LPA. But if you don't, you do run the risk that if you lose capacity, someone will have to make a deputy application to make your business decisions. This could be a deputy who may not be familiar with your business or your wishes.

It is also important to share that many things in business are tax deductible, including a Business Lasting Power of Attorney.





Next Steps



If you'd like to find out more about Business LPAs and begin the process of getting one set up, Linley James Solicitors can help.

As part of making a Lasting Power of Attorney with us we'll:

- Conduct an overview business audit
- Review your financial situation to advise on points to consider
- Review your will to confirm it has a business clause
- Provide a one year after care service

Get in touch for any further enquiries or to make your appointment to get started.



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