

Protecting your business should you lose mental capacity

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10 October is World Mental Health Day 2023, and with that in mind, private client solicitor, [Lalita Kauldhar](#) looks at how business owners can protect their business interests, should they lose mental capacity.

Businesses are often more than just a profit-making machine for their owners. The business represents dreams and passions. Sometimes, following dreams and passions can take an unforeseen toll on an entrepreneur or a business owner's mental health. What happens when a business owner's mental health takes a downturn? Who can assist with business decisions in their absence?

What is a Business Lasting Power of Attorney (LPA)

A business LPA is a simple mechanism a business owner can use to safeguard their business interest and ensure certainty and continuity of the business. Business LPAs offer a vital lifeline when mental health issues arise.

The Mental Capacity Act 2005 created LPAs. They are pro forma documents which allow an individual to appoint an attorney (usually a friend or a family member) to step in and manage their day-to-day care and/or personal finances. These rights can only be granted by a validly executed LPA, as family members do not automatically have the right to make decisions for a mentally incapacitated person.

Individuals often only think of their personal assets when creating LPAs. However, you can make a separate LPA specifically to manage your business assets. This kind of LPA is essential when the attorney appointed for your personal finances does not have the necessary skills and experience needed to manage business operations. A business owner can appoint a trusted person with the

relevant skills and knowledge to handle business operations by creating a business LPA.

Ensuring clarity and continuity of the business in your absence

Business LPAs provide confidence to your suppliers, employees, and clients/customers as they will know that a legally binding authority is in place to manage your business affairs. Without it, there could be uncertainty as to who is in charge. This uncertainty could affect client confidence and create unrest amongst suppliers if bills are unpaid and the attorney fails to manage the business's day-to-day activities.

A business owner can continue fulfilling contractual obligations by having a Business LPA in place. For example, this could be the payment of business invoices, loans and, most importantly, employees' wages. These processes are vital to promote employee stability and client/consumer confidence and could avoid breach of contract claims and other subsequent legal issues.

The price of not having a business LPA in place can be disastrous for a business. Your next of kin would need to apply to the Court of Protection to appoint a deputy. These applications can take up to 12 months, leaving no one with the necessary legal authority to manage the business in the interim. As well as being a slow process, Deputyship applications are expensive and carry a heavy administrative burden. The person appointed may not have the business skills needed to maintain the business when in force. A business LPA, therefore, provides you with some peace of mind that you have safeguarded your business interests and that there will be very few business disruptions if your mental health takes a downturn.

Other benefits

A business LPA need not only come into force if you lose mental capacity. You can choose for your business LPA to be used by your attorney with your consent once you have registered it. Immediate registration can be beneficial if you frequently travel for work and need to provide wet signatures on documents. Your attorney can do this on your behalf to minimise transaction delays.

Before creating a Business LPA

Depending on the type of business you own, there may be documents in place which govern the constitution of your business and impose restrictions preventing the appointment of an outsider from acting for you/your business. It is, therefore, vital that you review these documents beforehand. For company directors/shareholders, you must consider the articles of association of your business or any shareholders' agreement. You should consider the partnership or members' agreement for any partnership or LLP.

It is also crucial to safeguard your business against possible abuse from your attorney by imposing certain restrictions on them or providing them with specific instructions in your Business LPA.

Discuss an LPA today with [Lalita Kauldhar](#).

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