

# A simple business tip - prepare for the unexpected

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**Business continuity planning may range across various disaster scenarios - from cyber-attack to fire or flood - but can overlook the obvious, which is how the business will cope if the owner isn't available to manage financial matters and decision making.**

A simple solution is for a business owner to make a Lasting Power of Attorney (LPA) appointing someone to look after their financial affairs and act on their behalf. Shareholders, partners and sole traders can all benefit from appointing an attorney in this way.

An LPA allows a business owner to leave instructions with an attorney to manage certain aspects of the day-to-day running of their business affairs, say if the owner goes on holiday or is otherwise incapacitated. LPAs can also safeguard against a more serious situation, where someone loses mental capacity and is unable to make decisions for themselves, at which point the attorney can stand in.

Where no one is authorised to run the business and its finances, day-to-day operations may cease, and the business could be crippled.

In the worst-case scenario, where the owner lacks mental capacity and there is no LPA in place, affairs will have to be managed by a deputy appointed by the [Court of Protection](#). This can be slow and expensive, and the court can take up to nine months to appoint a deputy; let alone the time it takes to grant permission for business transactions.

The company's bank could freeze its accounts if a signatory lacks mental capacity. Similarly, some contracts may become unenforceable if the person who entered into them now lacks mental capacity. An owner's family can also be heavily impacted upon if they are reliant on

an income from the business. Even in a temporary situation, simply paying creditors or wages can become difficult, and contracts may be lost if no one has the authority to negotiate or sign them.

Private client solicitor, [Lalita Kauldhar](#), said:

*"When people think of an LPA, they often think of them as for older people who want to have someone in place to manage their personal affairs or to make health decisions if dementia sets in. However, LPAs have a place in both people's business and personal life, at every age. Accidents or illness can affect the young or middle-aged just as they can affect the elderly. By appointing a business attorney under an LPA, and registering it with the [Office of the Public Guardian](#), business owners take a simple step with far-reaching benefits for safeguarding the future of their enterprise.*

*To avoid disruption, making a business LPA should be part of any business owner's continuity plan and crisis management strategy. While it's a simple process, it is crucial to consider carefully who you are appointing as your attorneys, whether you wish to place any restrictions on what they can agree on your behalf and whether they can use the business LPA while you still retain mental capacity. As Business LPAs can also impact on aspects such as the articles of association in a limited company or partnership agreements, it's also important to get professional advice to avoid contradiction and disputes within the business."*

Once an LPA has been made, it must be registered with the Office of the Public Guardian before attorneys can act, with a fee of £82 per LPA. It can then be submitted to any institution (such as a bank), enabling the institution to deal directly with the appointed attorneys.

The attorneys will have the power to enter into any transaction that is within the scope of the LPA unless you have specifically forbidden it. If you are mentally capable, the attorney should only do what you authorise them to do, but if you become mentally incapable and are no longer able to authorise or consent to the attorney's decisions or actions, the attorney will be able to make decisions and take action on your behalf, such as making business decisions and authorising payments or writing cheques. However, there is no cut-off point at which you are presumed to be incapable; capacity is decided on a decision-by-decision basis and the attorney must do everything practicable to help you arrive at your own decision on every occasion.

There are two kinds of Lasting Power of Attorney – one covering financial and property affairs which can be used for both business and personal affairs, and another covering personal health and welfare.

Where a business owner decides to do an LPA for financial and property affairs, it is worth considering having two separate LPAs for business and personal finance, as the decision on who is a suitable attorney may be quite different.

## Attorney checklist

### 1. Choose your attorney carefully

An attorney has far-reaching powers and problems are likely to arise if they do not appreciate the role they are undertaking, or if there are insufficient checks and balances in the process. Before appointing an attorney, think about their business experience, how well they look after their own finances, how well you know them and how sure you are that they will make the right decisions for you.

### 2. Make attorneys accountable

You can appoint more than one attorney and require that they are involved in each decision, although that can make transactions more complicated. Alongside, a professional attorney can be appointed whose job is to oversee how matters are being handled. Alternatively, you can include a requirement within the LPA for the attorney to consult with a third party if a decision exceeds a given threshold or for specific assets. For example, this would allow you to restrict the sale of property or investments without the input of a professional.

### 3. Give good guidance

Attorneys should understand their fiduciary and statutory responsibilities, and how to satisfy them, from the outset. They should appreciate their role with reference to the [Mental Capacity Act Code of Practice](#), particularly when consulting with the donor of the LPA, and help the donor to make their own decisions. Recognising that they may need to get expert advice, whether legal, financial or otherwise, is also important if they are to act within the reasonable standards of care and skill required by an LPA.

If you would like to secure your business' future, contact [Lalita Kauldhar](#) today.

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