

# Lasting Power Of Attorney for Business Decisions

## Guidance

**ProTrust**   
Estate Planning

ProTrust Estate Planning  
25 North Row  
Marble Arch  
London W1K 6DJ  
0207 123 6189

Email: [info@protrustconsulting.co.uk](mailto:info@protrustconsulting.co.uk)

Website: [www.protrustestateplanning.co.uk](http://www.protrustestateplanning.co.uk)

## Introduction

### Lasting Power of Attorney and Business Decisions

Most people are aware of the importance to put in place Lasting Powers of Attorney (LPAs).

An LPA is a legal document which empowers other people (Attorneys) to make decisions for you where you are unable or unwilling to do yourself. LPAs are usually considered to be with an eye on later life potential for physical or mental incapacity. There are two types of LPA – one for financial decisions and one for health and welfare decisions.

Without a Power of Attorney in place, if a person loses mental capacity, the only other legal method of being able to assist in the management of their affairs is the more formal and costly route of applying for Deputyship at the Court of Protection.

The LPA for financial decisions is wider in its scope. It can be used both when you have mental capacity (for example, for executing documents on your behalf if you are away on holiday) and if you later lose physical or mental capacity. The health LPA covers health decisions when you lack capacity to make them.

A common issue to arise with any financial LPA is the extent to which attorneys are empowered to take business-related decisions.

### When should you have a Business LPA?

Typically for a standard LPA, most people appoint their nearest and dearest as Attorneys, such as a spouse and/or adult children whether jointly or independently of each other.

However, for persons operating a business interest, such as those in a partnership or as director of a company, it can be problematic.

- the Attorney, being the nearest relative, may have little or no involvement and experience in the Donor's business affairs;
- not only that but it can then be daunting for the standard 'Attorney' to have the power to make decisions under the usual LPA; and
- it can be unsettling for those partners/co-directors to have the family Attorney making decisions on behalf of their partner/co-director and without apparent direction or instruction, other than under the normal LPA powers.
- finally, the business set up (and regulation/insurance requirements) may make it difficult or impossible for a spouse, partner or children to make decisions on your behalf. There is no guarantee that your business would be able to operate successfully if you have not made appropriate arrangements.

### How will a Business LPA differ from the standard financial LPA

Under the standard LPA, your spouse or children make day to day decisions about your finances and that is within their reasonable remit, no doubt.

Would that apply to your business interests? Do they understand what is required day to day? Do they have appropriate expertise or professional qualifications?

So, there is a real need for action here. Many business people only make LPAs with their personal family considerations in mind. Do they consider the wider impact of potential incapacity during working years?

A Business LPA will differ from the standard financial LPA in that you can appoint and earmark specific personnel to undertake certain important functions relating to the Business.

## The Business LPA – its scope

For the above reasons, it is important to consider making two separate LPAs for financial decisions. One LPA covers specifically your business and the other to cover other personal (non-business) decision-making.

### Some basic examples of when a Business LPA could be needed and helpful:

- Authorising payroll
- Making payments to your suppliers
- Contract decisions - signing a contract or engagement on behalf of the business
- Ensuring secure and trusted access to the business bank accounts for making payments and ensuring transactions are completed. Giving CHAPS payment authorisation or other significant payments outside of the standard scope.
- More important decisions such as those relating to the status and structure of the business, including sale and transfer of shares.

An existing LPA for financial decisions may not be appropriate or indeed, practicable for some or all of the above.

## Other considerations

If you are a member of a partnership or LLP or a director of a company with another person or entity, what are the wider considerations? How is decision-making made within that business?

Our best advice in such cases is to approach the matter openly with your co-business partners/directors and to consider whether you seek advice as a collective on the matter. A review and understanding of your existing partnership agreements/shareholders agreements (if you have them) would be appropriate before you finalise your Business LPA. Are there specific director duties that need to be factored in – or decisions as shareholder?

If you are in a family business: incapacity of a close family member can be compounded where there is a business involved.

Please seek our advice to ensure that your Business LPAs are in keeping with your business continuity and succession planning.

## Registration of a Business LPA

As for standard financial and health types of LPA, a Business LPA must be registered at the Office of Public Guardian (OPG) before it can be used. Therefore, it is usual for us to arrange preparation of the LPA and also to complete the registration process at the same time so that it is ready for use at the right time, without delay.

## Choosing your Attorneys

Business Attorneys are usually your most trusted people relating to the business. Of course, you will usually have more than one such persons and it may be necessary to detail the scope of operations of the roles you wish to subscribe them to. Business attorneys can also be professionals such as your trusted accountant.

You can appoint a single sole Attorney or two or more Attorneys. It is also possible to appoint substitutes in the event that any of your primary Attorneys are unable to act. You will have the choice of deciding whether joint attorneys can act jointly and independently of each other (with just one signature for example) or whether they have to act jointly together (with both having to sign).

We will advise and guide you through those choices, so you make an appropriate choice that suits you best.

## Lasting Power of Attorney Process

There is a three-staged process for the Business LPA preparation and registration:

- Stage (1): Advising, taking instructions and preparation of the Business LPA document. Completing the required certificate to confirm capacity.
- Stage (2): Reviewing other business governance documentation to ensure that the Business LPA is fully compatible and compliant.
- Stage (3): Preparing and submitting all registration documents to the Office of the Public Guardian (OPG) and providing certified copies of the registered documents once received.

## LPA Costs & Registration Fees

### Document Preparation

Our standard charge for a Business LPA is £350 + VAT for advice and preparation of the Business LPA document, which includes the following:

- (i) Advice and guidance at a meeting; and taking instructions;
- (ii) Drafting of the document;
- (iii) Attending with you to explain all provisions;
- (iv) Witnessing your signing where required; and
- (v) Completing the Certification

### Registration Work

We charge £200 + VAT to complete the registration process of an LPA at the Office of the Public Guardian, which includes the following:

- (i) Completing the application for registration, copying and scanning all signed documents; preparing accompanying correspondence;
- (ii) Receiving initial notices from the OPG and communicating the progress of the registration; and
- (iii) Upon receipt of the original registered document, preparing copies for your use and scanning originals.

## Contact Us

Please contact us to discuss drawing up your Business LPA. As business people our advice is to undertake a Business LPAs as soon as possible, either when undertaking your Will and LPA updates or reviews, or simply alongside reviewing your business documents, shareholders agreements etc. Believe us when we say that it is ideal to create them when you are in good health and young in life and when it is not a sensitive issue for you, rather than having to do so when there is an impending likelihood of lack of capacity. Whatever your circumstances, we will be sensitive to your requirements and help you achieve your desired outcome.

For more information and for an initial discussion for advice please contact us on:

**Email:** [info@protrustconsulting.co.uk](mailto:info@protrustconsulting.co.uk)

**Telephone:** 0207 123 6189