



COVID-19 Briefing: Commercial Lasting Powers of Attorney - Risk Management in Uncertain Times

The COVID-19 outbreak has now affected all aspects of life in the UK.

One of the biggest concerns for many is the impact that the crisis is having on the economy, with all businesses being affected to a greater or lesser degree.

Some businesses are very reliant on a single person, this could be because nobody else in the firm has direct access to the company bank account or because there is just one key decision-maker in the firm.

In these circumstances, it is very important to have plans in place in case a key person is unable to carry on as normal, a Commercial LPA can be an important part of that plan.

COULD YOUR BUSINESS COPE IF YOU WEREN'T ABLE TO MAKE IT IN TO WORK?

The current government lockdown that has been imposed due to the rapid spread of the Coronavirus has impacted millions of people across the country.

We are all finding new ways to adapt to the disruption in our lives as the effects of both the virus and the lockdown ripple through our families, businesses and local communities.

If you are a business owner, whether you are a sole trader, a

director of a company or in a partnership, the economic shock of the lockdown has already been felt and this will continue to be felt as time goes on. The government has intervened with emergency measures which we hope will go some way to mitigate this shock but no doubt many business owners are revisiting their risk assessment strategies.

These worrying times have given a stark indication as to the potential consequences should you suddenly find yourself unable to manage your business. However the situation arises be it a loss of capacity through illness or accident, the consequences for your business could be catastrophic.

You may be prevented from accessing your business bank accounts, leaving you unable to pay wages or suppliers, purchase new stock or enter into contracts. Even if there are others working within your business they may not have an automatic right to do these things on your behalf.

APPOINT A TRUSTED PERSON TO REPRESENT YOU

These problems can be avoided by creating a properly drafted Commercial Lasting Power of Attorney which can be registered with the Office of the Public Guardian.

A Business or Commercial Lasting Power of Attorney will allow you to appoint an appropriate person to handle your business affairs if you find yourself in a position where you are unable to do so yourself.

Civil

Commercial

Conveyancing

Family

Probate

WHAT IS A COMMERCIAL LASTING POWER OF ATTORNEY?

The Mental Capacity Act 2005 introduced Lasting Powers of Attorney (LPAs). An LPA is a legal document that allow you to appoint chosen representatives (Attorneys) to look after your affairs in the event you are unable to do so yourself.

There are two types of LPA that are more widely known. The first of these is an **LPA for Property and Finance** which allows your Attorney to take control of all of your financial decision making such as paying bills, making investments etc.

The second is an **LPA for Health and Care** decisions which allows the Attorney to make choices for you about care needs, medical treatment and issues around end of life treatment. Both are incredibly important documents and we should all give serious consideration to putting them in place to protect our future needs.

As LPAs have been with us now for well over a decade many people are familiar with them and may have first hand experience of acting as an Attorney. However, people are less aware of the existence of Commercial LPA. **A Commercial or Business LPA** works in the same way as the two types of LPA described above except they are specifically designed to meet the needs of your business.

IF I HAVE A PROPERTY AND FINANCIAL AFFAIRS LPA DO I NEED TO MAKE A COMMERCIAL LPA?

Even if you have an existing Lasting Power of Attorney, the person you have appointed as your Attorney to look after your personal finances might not be the person you would want to manage your business affairs.

By creating a Commercial Lasting Power of Attorney you will be able to appoint the person with the relevant level of expertise and experience required to help run your business.

CAN I APPOINT MORE THAN ONE PERSON TO BE MY ATTORNEY?

It is possible to appoint more than one person as your Attorney giving you the choice as to whether they are to act together or independently when making decisions for you. The Commercial

Lasting Power of Attorney is a flexible legal document that can be tailor-made to suit your needs. It allows you to give your appointed Attorneys guidance on how you would like them to manage your business affairs or even prevent them from carrying out certain actions on your behalf. All Attorneys appointed under a Lasting Power of Attorney have to follow a strict code of conduct that is set out under the Mental Capacity Act 2005.

Having a Commercial Lasting Power of Attorney could mean the difference between your business failing or continuing to provide financial security for you and your family at a time you need it the most.

PEACE OF MIND THROUGH DIFFICULT TIMES

In uncertain times, the only thing we can say for certain is that nothing will stay the same for long.

It is entirely possible, therefore, that new legislation will have been introduced which will mean that all or part of this briefing no longer reflects the current law.

Because of this, we ask you to consider that, although correct at time of printing, information in this sheet may no longer be up to date and it is always best practice to consult with a lawyer about anything contained in this briefing.

Although our office doors are closed, our lawyers are still available to help answer any of your questions about this or any other legal concern you have.

Please contact Fraser Dawbarns directly for up-to-date information on your specific circumstances.

LOOK OUT FOR OUR OTHER COVID-19 BRIEFINGS

- [Coronavirus, Employment Law and Your Rights](#)
- [Commercial Tenancies and Rights of Forfeiture](#)
- [The Three Month Ban on Evicting Tenants](#)
- [Making a Will While Under Lockdown](#)
- [Child Contact and the Coronavirus Lockdown](#)
- [Debt Recovery Under Lockdown](#)

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