



# Chadwick Lawrence

Yorkshire's Legal People

Lasting Powers of Attorney: Businesses

## Lasting Powers of Attorney for Business owners

As a business owner, a pivotal consideration should be to put in place a Lasting Power of Attorney to govern who can control your business affairs should you be unable to deal with them yourself. A Power of Attorney is used to authorise a certain person(s) (called an Attorney) to make certain decisions on your behalf. We recommend that if you are a business owner, you put in place a separate Power of Attorney to govern your business affairs as opposed to your personal affairs, which can be dealt with in a separate document.

### Why do I need a business Power of Attorney?

There are many different possibilities under which you may be unable to manage your business. For example, if you are on holiday or are in an accident that renders you unable to make decisions, this may jeopardise the day to day running of your business. Your colleagues may not have the automatic right to make decisions so appointing an Attorney who you trust is vital for business continuity so that your chosen individual can complete transactions, pay bills and salaries, sign cheques, insure property, obtain assets, deal with tax affairs and continue to access/operate the business bank accounts.

You can stipulate terms/directions in the Power of Attorney to ensure that the document is tailored to your individual circumstances. The Power of Attorney can be used by your Attorneys whenever you ask them to so if you were out of the country, they could use the Power for that duration, without taking full control of your finances indefinitely.

### Who should I appoint as an Attorney?

Your chosen Attorney should have knowledge on how to run your business, including an understanding of the suppliers, employees, financing and your customers. Your Attorneys have the duty to act in your best interests and must act in good faith, keep your affairs confidential and consult others.

### Considerations for different types of business.

The way in which you put in place a Power of attorney depends on your business structure:-

**Sole Traders** – As your business is run by you as an individual, a business Power of Attorney is essential to make provision for the continuity of your business.

**Partnerships** – Firstly, the Partnership Agreement should be consulted as this may contain provision on what should happen if a partner becomes incapacitated. Regardless, a Power of Attorney should be put in place to safeguard your interests if you do have capacity but cannot make a decision due to a holiday or accident.



**Limited Companies** – The Articles of Association (which are the 'rules' under which the company must be run) must be consulted to ascertain what happens in the event that a Director loses capacity and it is usual that the appointment will cease if a Director loses capacity as you are unable to delegate your director's duties.

If you are a sole Director, or a Director and a Shareholder, a business Lasting Power of Attorney may be appropriate and we can advise you on whether a Power of Attorney is necessary, depending on your circumstances.

#### What can I include in the document?

It may be that you would not wish to appoint the same person to deal with your business affairs and your personal affairs. It is possible to put two Powers of Attorney in place and the use of restrictions and directions in the two documents will detail what decisions can be made under each Power of Attorney. We will draft the documents so that the powers available to your Attorneys are tailored to your circumstances.

Sometimes, directions and restrictions in the documents will reduce the effectiveness of the Power itself. To overcome this issue, a letter of wishes can be drafted to accompany the Power of Attorney to direct your Attorneys so that they have the flexibility to make decisions without the binding limitations a restriction may often include. This letter may cover your aims for the business and your views on investments or mergers.

#### What happens if I do not have a Power of Attorney in place?

It would be necessary for someone to apply to the Court of Protection for the appointment of a deputy. This process is costly time-consuming (a standard application takes on average 6 – 9 months, which would result in uncertainty for your business) so a Power of Attorney is essential for business continuity.