

Power of Attorney

What is it?

- A legal document/agreement that lets you give a trusted person/persons the legal power to make decisions on your behalf and manage areas of your life should it be required.
- A power of attorney can allow the trusted person/persons to manage your health and welfare or your assets, or both.

Why have one?

- Having a power of attorney can help in several situations. In the main it means that your affairs, personal and/or business, can be managed and continue in the event of you being unable to deal with them yourself.
- Looking at farm businesses this can help the business continue to operate even if you are unable to manage it for any reason.
- The main areas a power of attorney can help with are:
 - If you are incapacitated by an accident or illness the power of attorney can ensure that business does not stop because you are out of action. This can be as simple as ensuring bills are paid.
 - You are away for any reason and want someone else to have authority to continue the business in your absence.

How can a Power of Attorney help my business if I am incapacitated?

- Whilst setting up a power of attorney you will choose an attorney/attorneys to act on your behalf should something happen to you.
- The attorney should be someone you trust completely. It is a highly responsible role to take on. Make sure the person is willing to act for you should it be required.
- If you fall ill or are incapacitated, your trusted person can then act on your behalf ensuring that your business can continue to operate. Depending on the content of the Power of Attorney they may also be able to make decisions on your health and care.
- Critical items such as carrying your responsibility and authority for ordering items to paying bills will ensure that your business can continue until you are fit and healthy again, or other arrangements are made for the longer term.
- Not having a power of attorney can see your business effectively freeze and it becomes a lot harder for those left to make decisions for the good of the business.
- Having a Power of Attorney means that your wishes can be carried out in the event of your incapacity.
- In the event of death, the Power of Attorney falls and your Will becomes the most important document (***link to wills section***).

How do I set a Power of Attorney up?

- You can set them up on your own or you can use a solicitor. The best recommendation is to use a solicitor to help make sure that you get the right advice and that the Power of Attorney meets your needs.
- The solicitor will also help complete the forms and ensure they are properly registered so that the documents are legally binding.
- Whilst a solicitor will charge a fee to cover their time and the registration costs, their experience and skill will ensure that everything is done properly and you receive the right advice for your own circumstances.

When should I get a Power of Attorney?

- As soon as possible. If you are over 18 and of sound mind, then you can set a Power of Attorney up.
- Having one in place can make it easier for those close to you to keep your personal and business affairs in order if you are unable to do so.
- This is particularly relevant for family farming businesses to ensure that the business and the family involved can continue to function even if you are unable to play an active part, especially if you are the main proprietor/bank account signatory etc.

Power of Attorney Case Study

A farming business was run as a partnership between a brother and sister. Both parties also had children working in the business albeit not yet in the partnership nor with any authority in the business.

All signing requirements for legal documents, bank accounts etc were for both parties to jointly sign. Therefore, the continued operation of the family partnership and business was reliant on both partners being available to make decisions jointly and on behalf of the business.

Neither partner had a power of attorney in place.

The partners had just started proceedings to admit the children to the partnership when the brother suddenly fell gravely ill. He was incapacitated and unable to make decision, agree to changes or to sign paperwork.

Due to the structure of the partnership and the mandates that were in place, the inability of one partner being able to sign meant that the entire business effectively stopped functioning. Orders could not be placed, cheques could not be properly signed, bank accounts could not be accessed and succession planning stopped.

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With no power of attorney in place the only option was to apply to the Court of Protection to appoint a deputy to act for the incapacitated brother. This can be a slow and sometimes expensive process to complete meaning that the business can spend a long time in limbo.

Going down this route means that the Court of Protection makes decisions on the incapacitated persons behalf meaning they have had no say on who their deputy might be, what powers they may carry and what costs may be incurred in achieving this. This is in addition to the damage being done to the family farming business whilst all this happens.

The situation is difficult enough for the family to cope with due to the illness of the family member and with the paralysis of the business layered on top the pressure could be unbearable.

A properly constituted and registered Power of Attorney could have helped alleviate much, if not all, of the business paralysis. The attorney (trusted person) could have acted in place of the brother carrying his full authority to make decisions in the business and sign on his behalf. This would have built resilience into the business and allowed it to continue operating whilst the family dealt with the illness of a loved one.

The importance of a Power of Attorney cannot be underestimated when it comes to individual and business circumstances. Giving a trusted person the legal authority to deal with your affairs when you are unable can ensure your wishes are properly carried out and that your business and family interest can continue with your authority.

You can find further information here: <https://www.gov.uk/power-of-attorney> and it is recommended to consult a solicitor to receive the right advice for your individual circumstances. They can also help you draw up and register the Power of Attorney.



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