

Answer by **Isobel Symonds, Solicitor in the Corporate Department at Payne Hicks Beach** originally published by Financial Times online on 10 December 2019 and reproduced with kind permission

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# FINANCIAL TIMES

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## How can I manage the succession of our family business?

My mother has early onset dementia and her health is deteriorating rapidly



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[Lucy Warwick-Ching](#) 4 HOURS AGO

**My mother is the sole director-shareholder of our family business. She built the company from scratch and has made a great success of it. However, she has early onset dementia. I'm concerned about how to manage the succession of the business. My mother's health is deteriorating rapidly.**

**Isobel Symonds, corporate solicitor at Payne Hicks Beach,** says it is important to take steps now, while your mother still has capacity, to ensure that the business she has built up can continue in the event that her condition deteriorates to the point where she no longer has mental capacity. If not, the company could end up without either a shareholder or a director capable of acting, a vulnerable position that may lead to the business's collapse.

To avoid that from happening, your mother should consider appointing someone (perhaps a [family member or a trusted friend or business adviser](#)) as her attorney under a [lasting power of attorney \(LPA\)](#) who can exercise her rights as sole

[shareholder if she loses mental capacity](#). She may appoint more than one attorney if she wishes.

Your mother's attorney will not be able to exercise her power to act as a director of the company under the LPA, however. As such, the first act of your mother's attorney will necessarily be to appoint a new director of the company, who can ensure that suppliers and staff continue to be paid and contracts are fulfilled in the period after your mother has lost capacity.

Should your mother lose capacity without an LPA in place, an application to the Court of the Protection will need to be made to appoint an individual (known as a "deputy") to step into her shoes as shareholder. These applications tend to be expensive and time-consuming. Indeed, it can take up to nine months for the court to appoint a deputy. Without a director capable of overseeing day-to-day management, the business may fold during this period.



Isobel Symonds, corporate solicitor at  
Payne Hicks Beach © Handout

At the same time as making the LPA, your mother should pass a special resolution to amend the articles of association of the company to give herself (as sole shareholder) an explicit right to appoint one or more attorneys under an LPA to exercise her [shareholder rights](#) if she loses capacity, and in those circumstances to give those attorneys an explicit right to appoint a director. The provisions relating to incapacity of a director should also be reviewed. These often provide that the office of a director is vacated in the event of incapacity or absence.

Your mother could also make a memorandum of wishes to sit alongside her LPA. This would be a private document between your mother and her attorneys, in which she could set out her detailed wishes as to how her attorneys should run the business. Although the memorandum will not be legally binding on your mother's attorney, they would need a very good reason not to follow it.

**Owen Byrne, legal director at BDB Pitmans,** says you should take legal advice urgently. It is not being overly melodramatic to suggest that the failure to implement any business succession planning could see the destruction of her legacy.

It is not uncommon to find owner-managers who are so involved in the business that they pay little attention to their own planning. Some will consider and plan for their own mortality, but planning for incapacity is rarer still. A 45-year-old business owner recently said to me: "I'm exiting anyway in two years and I'm young enough not to get dementia. I don't need an LPA."

The risk for a company of mental incapacity striking a sole director shareholder who has not put the requisite planning in place is total paralysis: no governance and direction for the staff; the inability to do business essentials such as entering into (or getting out of) contracts, recruiting, banking, accounting and in such politically uncertain times, the ability to alter the company's business plans in the face of turbulent market circumstances.

Such paralysis can be avoided by making an LPA for her property and financial affairs. Some business owners will make one for their general (say, domestic) finances and a separate one for their business activities, appointing separate attorneys.

Specific inquiry has to be made as to the company's constitutional documents, starting with the articles of association which might have provision in place for what should happen on the incapacity of a director. In relation to shareholders lacking capacity, a company with multiple shareholders may have provisions in place under a shareholders' agreement.

At the very least it would put an attorney in her shoes as a shareholder, and subject to the provisions of the company's articles, it could give the attorney the power to appoint a new director.

Given the mention of early onset dementia, a solicitor should advise you to call in a medical expert to advise on whether your mother has the capacity to enter into an

LPA. Given the significant authority conferred by the LPA, your mother should be asked a number of questions about the business and her intentions for it to test her capacity.

If the medical practitioner advises that she lacks the requisite capacity, you will need to make an urgent application to the Court of Protection for it to appoint a deputy to manage her affairs. This is a time-consuming and expensive process but for the business to be saved it has to be done.

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10 New Square, Lincoln's Inn, London WC2A 3QG  
DX 40 London/Chancery Lane  
Tel: 020 7465 4300 Fax: 020 7465 4400 [www.phb.co.uk](http://www.phb.co.uk)

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