

# LIFE TIMES



## **Collaborative law - is it right for you?**

Putting your cards on the table  
to secure an amicable resolution

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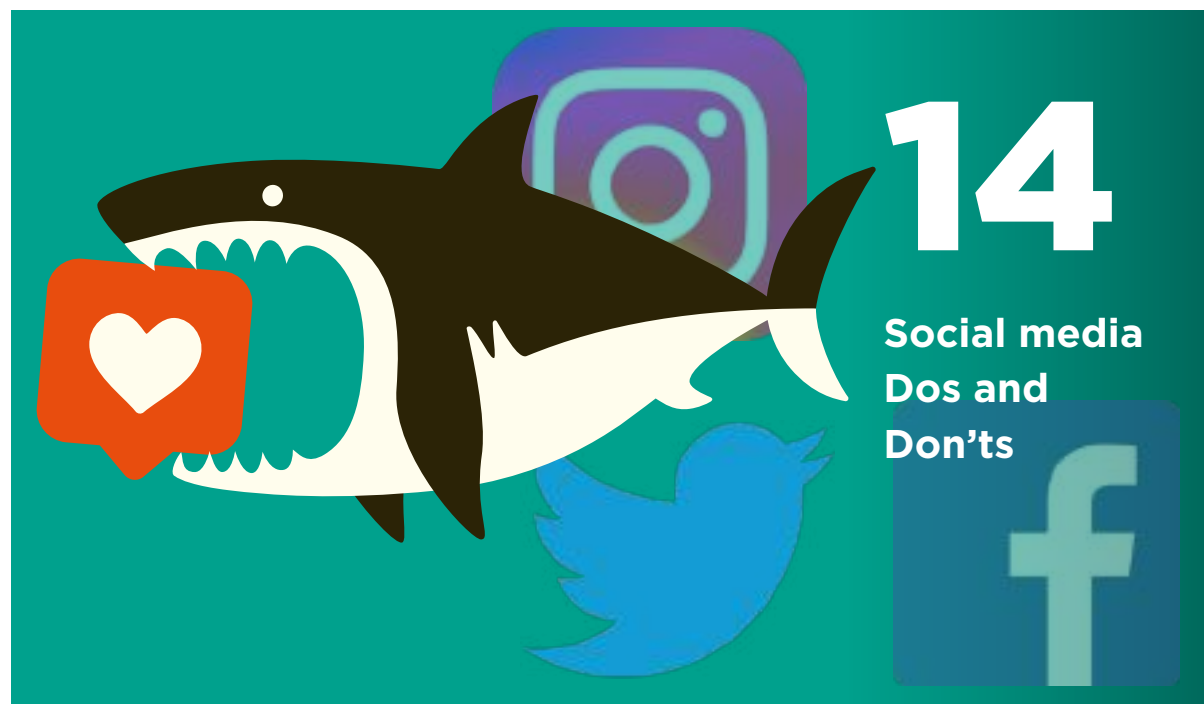
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# hello

A very warm and sunny welcome to the summer edition of **Life Times** – our private wealth and family magazine covering a range of topics and news we're sure you'll find of interest.

As the majority of travel restrictions have now been lifted many of us will be looking forward to spreading our wings a little further afield this summer but as we cover in this edition – travelling with family members with a different surname to yours can throw up some issues – so we have some valuable advice on what to do to avoid a stressful time.

And with the introduction of new divorce legislation (at long last!), we take an in-depth look at collaborative law and whether we might start to see an upturn in this type of mediation helping families move forward and thrive following family changes. We also welcome some new and, not so new, faces back to the wealth team.

We'd love to hear from you if there is any subject you would like to see covered in future editions and as always we are here to guide you through these ever changing times and look forward to advising and working with you.



# What rights do grandparents have?

The relationship between a grandparent and a grandchild is unlike any other. It can offer a level of support and understanding that can't be found with other relatives and is often a vital part of a child's upbringing.

## Mediation

If initial conversations don't go to plan, then mediation might be a good route to try, whether this is with a professional or another family member. Only after these options have failed should you consider making an application to the court.

## Child arrangements order

You can ask the court for permission to apply for a court order – unfortunately, grandparents don't have the same automatic right to go straight in and apply for a court order in the same way that parents do. Thankfully, family courts do recognise the importance and valuable role that grandparents can play in their grandchildren's lives so it's likely that permission will be granted to allow you to make the application for a child arrangements court order for contact.

The child arrangements order will determine who your grandchildren will have contact with and for how long. You can read more about child arrangement orders generally in [our guide](#) to making child arrangements during a divorce or separation.

## What if my grandchildren's parents break the child arrangements order?

If you have obtained a child arrangements order to see your grandchildren, and their parent does not adhere to this order, then you can return the matter to court and request that the order is enforced.

## Will a change in my grandchildren's circumstances change my grandparent's rights?

If there has been a change of circumstances, such as parental separation or the death of one or both of their parents, unfortunately, the same provisions still apply – no matter how harsh this may seem.

## Getting help with seeing your grandchildren

Family breakdowns can be emotional and difficult for everyone involved. However, what is usually overlooked is the emotional distress caused by a loss of the relationship between grandparents and grandchildren. If you're a grandparent and are experiencing barriers with having contact with your grandchildren then we can help. Speak to one of our [family lawyers](#) to discuss the options available to ensure you don't lose touch and maintain that vital relationship



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# How do I get to see my grandchildren?

The most common reason for grandparents not to be able to see their grandchildren is relationship breakdown. This could be between a grandparent and their children, or between the grandchildren's parents. Either way, the separation can be upsetting for the grandparents and the grandchildren.

## Speak to their parents

Before turning to legal action you should first try and speak to the parent that is preventing contact with your grandchildren. By having an honest conversation, the parent may begin to change their mind about access. Just remember that having a quick chat is unlikely to cause an immediate change of attitude, so this may involve several conversations. Therefore, it's vital not to threaten legal action after only one or two conversations, as this could increase tensions unnecessarily.



# Why business owners should have an up to date will



**Having an up to date will in place is the only way that you can guarantee that your wishes are carried out on your death. Dying without a will means your estate will pass in accordance with the intestacy rules. And if you are a business owner and this happens it could have massive implications for your business and your family.**

## What having a will in place means for your family

**There are several scenarios to consider:**

- What happens if your business assets are inherited by your spouse, civil partner, or other family members who are not “in the business” and know nothing about it or, worse perhaps, do not have the knowledge or skills to run it. Your business which you have spent years building could be damaged following your death and it may no longer be able to continue providing for your family into the future.
- Whether your business partners could work with your spouse, civil partner or other family members. Would they be prepared to bring them up to speed with the business or would they have the means to buy them out?
- If your business is run as a partnership, the death of a partner who has no will in place could lead to the business being dissolved automatically if there is no partnership agreement drawn up either. Regardless of the surviving partners’ wishes, they would need to sell off the business and its underlying assets.

Having an appropriately drafted will in place could mean that the most suitable people can continue to run the business and family can still benefit from the value of the business.

If your family has no desire to inherit the business, your will can stipulate that your business partners inherit the same and the cash value is inherited by family instead.

- It is important that, where possible, Business Property Relief (BPR) is available to your personal representatives in order to exempt the business assets from Inheritance Tax (IHT) and crystallise this relief as soon as possible ideally having had the position agreed by HMRC following your death.

To do this, it may be necessary to pass your business assets into a trust structure. A trust, unlike a surviving spouse or civil partner, is a non-exempt beneficiary for IHT purposes and as such, BPR would be claimed by your Personal Representatives to ensure that no IHT is payable still.

## Other options for your will

Your surviving spouse, civil partner or family can benefit from the business assets while they remain in the trust but the value of the business assets is outside of their own estates. Alternatively, your family could purchase the business assets from the trust using assets they have inherited from your estate swapping BPR assets in the trust for cash (which then falls out of their estate). Once they have owned the business assets for two years they will then again potentially qualify for BPR on their own deaths.

Be aware, however, that even if you have a will that deals with business assets, there should still be a shareholders agreement or partnership agreement in place and all business partners should be aware of what happens when one of them dies.

Consider putting in place a cross option agreement if you leave your business assets to anyone other than your business partners as this will enable the surviving business partners to purchase the business assets from your family under the terms of a shareholders agreement or partnership agreement.

There is a lot to consider and many options available and it is essential that you get the right advice to ensure the survival of your business, and the best outcome for your employees and your family.

To find out more, fill in [our enquiry form](#) and we will contact you at your convenience.



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## Meet the team

# New head of charities for Shakespeare Martineau

### Catherine Rustomji has joined Shakespeare Martineau to head up its national charity team.

For more than 20 years, Catherine has been exclusively advising charities, social enterprises and not for profit organisations – specialising in charity law and governance, not for profit legal structures, trustee training and board development.

Catherine has joined us after five years as a partner and charities practice head at Browne Jacobson. Prior to this, she worked at DWF, Hempsons,

Dickinson Dees and Stone King, and was a charity trustee for Yorkshire Cancer Research.

Over the years, she has supported national, regional and local charities, not for profit organisations, community groups, schools, colleges, churches, welfare and professional associations – operating across the health, education, arts, public and private sectors.

As well as broad expertise in charity law, the team is able to support organisations with legacies, employment law, funding and corporate advice, intellectual property

“Shakespeare Martineau is a focused firm, which has a clear strategy for its people and itself, so I am delighted to be working at the core of a strong team to offer a complete service to our charities and not for profit clients.”

considerations, and real estate advice. The team also has particular and unique expertise advising [charities](#) on contentious probate issues.

Operating in the charity and not for profit sector has never been more challenging or more stimulating, with social, economic and political upheavals, scarce resources, and mounting needs and expectations.

Catherine's appointment is the latest in a string of new partner hires as part of the firm's growth strategy, broadening its footprint both north and south.



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“This area of law continues to develop and evolve, meaning it is constantly challenging to keep up to date with latest developments. I particularly enjoy working with different boards of trustees – often at times of stress or pressure – and seeing them thrive.”

## What's in a name? Your holiday could be riding on it



**The main holiday season is fast approaching and for the first time in a couple of years, many people will be taking their children off to sunnier climes. As well as packing the usual beachwear, sun cream and passports (do check they are still valid and have the required time left on them!), it could be necessary to take a little extra paperwork along for those people whose surname is different to their child's.**

A different surname might arise for a host of reasons, such as a divorce and subsequent name change, keeping a maiden name on marriage or re-marriage, or having a child with a double-barrelled surname.

If a child, who is coming on holiday with an adult, does have a different surname, it's important to be aware of the pitfalls of not having sufficient paperwork to show that the child is perfectly entitled to be on holiday with that person.

As well as the child's passport, taking a paper trail to prove who their parents are is vital. This includes the child's birth certificate, as well as the parent's, and if they have changed their surname upon divorce, the change of name deed and a copy of the final order (old decree nisi) is also necessary. Bringing along an expired passport, which proves the name change could also be helpful.

Obtaining the written consent of the other parent or anyone who has parental responsibility for the child is another wise move. A properly drawn up consent form, or if that's not possible, a letter from the other parent, confirming their full contact details, that they are the parent of the child and that they have given consent for the holiday, along with their signature, should suffice.

Having an awareness of the questions that might be asked at the immigration desk is important, as it allows a level of preparation between parent and child. They might be asked the identity of the other parent, for example.

Consent is not legally required by the other parent if the holiday is for less than 28 days and a Child Arrangements Court order is already in place to confirm the child lives with the parent taking them on holiday, but it is always better to have it, rather than run the risk.

If the other parent won't agree to the holiday, it's not too late. Speaking to a family lawyer about obtaining an order from the court is an option.



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# What is collaborative law? Is it right for you?



**Collaborative law is a method of dispute resolution where parties' seek to work together to secure an amicable resolution driven by the issues which are important to them, and working to their time scales.**

It can be used in a variety of family situations, such as parties pursuing a divorce or informal separation or the division of finances or arrangements for children following the breakdown of a relationship. It can also be a very useful tool for drawing up nuptial agreements.

At the heart of the process is a 'cards on the table' approach, where both parties 'show their hand' and actively seek to reach a resolution by agreement between them.

There are several big advantages when considering using the collaborative law process to resolve issues. It promotes good future working relationships, essential when a couple have children. It allows for all issues to remain wholly private and confidential. This can be very important to some individuals, keen to keep sensitive issues (either personal or commercial) away from the public eye. Increasingly, there is a move towards transparency within the traditional court based process – including in some circumstances the publishing of judgments. Collaborative law offers the security of privacy.

This route also enables matters which are not necessarily legal issues to be addressed, if appropriate and considered important to the parties to help them get through what may be one of the most difficult times in their lives. In short, the parties set the agenda which contrasts sharply with a traditional court setting. They also control the time frame within which matters can be resolved, subject only to the diary

availability of all concerned, rather than the already overstretched court lists, with the added risk of hearings being adjourned due to lack of judicial availability.

## How is collaborative law conducted?

It's conducted primarily in a series of four way meetings, attended by the couple, and their own trained collaborative lawyers. Occasionally other people, for example accountants or family counsellors, can be invited into meetings to deal with certain aspects – all designed to limit the time involved in resolving an issue. The meetings cut through issues which have the potential to create otherwise costly correspondence. As the parties involved get to set their own agenda, which is agreed in advance so everyone is clear about what is to be discussed and resolved, any information that needs to be provided beforehand can be dealt with.

A main element of collaborative law is that all parties' will be asked to provide anchor statements in which they will set out, in their own words, their reasons for wanting to pursue their matter collaboratively. Examples often include wanting to maintain a positive relationship for the benefit of children following separation or wanting to resolve matters amicably without going to court.

The parties also enter into an agreement that neither party will go to court and if the collaborative process breaks down, both parties' will instruct new legal representatives if they wish to commence court proceedings. This effectively binds parties to the process, and gives a real incentive to "make it work".





What is the difference between collaborative law and mediation?

Both are forms of dispute resolution, with the aim to avoid litigation through the courts.

The main difference between collaborative law and mediation is the existence of anchor statements, and signing a “Participation agreement” binding people to the collaborative law process.

Both parties and their legal representatives are present at meetings and as both parties have the benefit of legal advice throughout the meeting, this generally enables matters to progress at a quicker pace. The

legal advisors may also raise matters which the parties had not considered and which they may not have thought of in mediation.

Legal advice is generally given openly during the roundtable discussions and if an alternative view is taken by the other parties’ representative this can be openly discussed.

The parties’ legal advisors will have been involved in every part of the case from disclosure to correspondence, so they have a full understanding of what the issues are that need to be resolved and the background of the case. When an agreement has been reached, the parties’ legal advisors will prepare a Consent Order to be approved and signed by all. Once filed with the court and approved it becomes legally binding.

Traditionally, in mediation, both parties’ attend alone. The mediator is a neutral person and does not give either party any

legal advice although they may suggest that legal advice is sought on certain issues. The parties’ may, therefore, have to adjourn a meeting so that advice can be sought and return at a later date. The mediator’s role is solely to facilitate an agreement between the parties.

When an agreement is reached through mediation, a Memorandum of Understanding is prepared by the mediator. This document remains privileged, and so cannot be referred to if an individual decides to step away from the terms. The parties’ legal advisors will then have to prepare the Consent Order to be agreed by all before it is filed with the court. If the parties’ have not sought legal advice before this stage, this can often be a time when issues will be raised about the fairness of an agreement reached or how it could be practically implemented.

Might it work for me?

For collaborative law to be effective, both parties must really want it to work. There must be a desire to resolve matters amicably and fairly. All collaborative lawyers are members of Resolution, an organisation committed to a Code of Practice and promoting a constructive approach to family issues that considers the needs of the whole family. In suitable cases, a family consultant can be appointed to assist with any block to resolution. Collaborative lawyers have all undertaken specialist training to allow them to take part in the collaborative process.

In cases where collaborative law is successful, there may still be sadness that a relationship has come to an end for example, but there is also often a feeling of contentment that things have been dealt with in a constructive

way. The knowledge that in years to come parties can reflect that they did all they could to resolve matters amicably, can bring great personal comfort to individuals.

It will be interesting to see whether the recent change in law and the introduction of no fault divorce will see a rise in the number of cases dealt with via the collaborative law route. After all, the abolishment of the ‘blame game’ and an opportunity to start divorce proceedings together certainly sets the right tone.

Collaborative law is by no means suitable in every case – and collaborative lawyers are trained to identify cases where the process is not appropriate, for example if the process could extend the abuse of a party. But for the right cases, it represents an amicable and respectful approach to what can be a stressful time for those involved.



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# Social media

When going through a divorce, it can be easy to be tempted to post about how we're feeling on social media. After all, social media is part of our lives and in its best form it can be a wonderful tool to connect, inform, and entertain people. However, it also has the opportunity to cause harm, distress and hurt and be used in a vindictive, spiteful and unhealthy way. Divorce can be an incredibly emotional time for both parties involved and their families – so don't make it any harder than it needs to be.

Here are few Dos and Don'ts of using social media, especially during divorce proceedings. Remember much of this information will be available to a court and could have a bearing on any outcome.

## Dos

### DO change your passwords

Be sure to take ownership of any social media accounts eg Facebook, Instagram etc. Do also change the passwords of your email accounts. Remember, whether the split is amicable or not, you do not want your partner to have access to accounts that could contain sensitive information.

The same goes for bank accounts, credit cards, music streaming services etc. There have been occasions where these have been used and manipulated in divorce proceedings.

Even if you know your partner's passwords, do not log into their accounts. Everyone has a right to privacy and you could be in breach by doing this. Unauthorised access to your partner's computer may be a breach of the Computer Misuse Act 1990.

### DO check, and if necessary change your privacy settings

Make sure that if you do post, however innocently, only your friends list sees it and you cannot be tagged into any posts without your permission.

This applies to all social media so minimise the risk on all platforms. If you work in the same organisation as your partner, also check your company's social media policy.

### DO follow people and organisations that can offer help and support

Seeing how people have come through this crisis can be motivating and beneficial. There are lots of organisations and charities who can offer free guidance and support too.

### DO turn off any location tracking features on apps you may use

It is a 'feature' of more apps than you might realise. This could cause an embarrassing and hurtful meeting or unfortunately, in more sinister circumstances, can provide your partner with your exact location from a stalking / abuse perspective.

If you are a victim of domestic abuse and continue to feel vulnerable, you can change your mobile number to avoid receiving nuisance calls or messages from them, but beware that many apps access the contacts from your phone or email address. So block their number.



Remember – keeping things amicable is almost always the best route but if your inner calling bird is getting the better of you... Take a deep breath and move away from the keyboard.

## Don'ts

### Don't bad mouth your partner online

Tempting as it might be – do not bad mouth your partner online, especially if children are involved. Remember children could read and learn more than you'd like them to and be hurt or distressed by it.

This is also the case with wider family too. Remind friends and family not to post negative comments about your partner online. It can also play a big part when looking to come to an agreement with your partner. An upset partner can make things very difficult, drawn out and expensive.

### Don't share any personal data you have about your partner

As you may breach data protection laws. This includes intimate and sensitive details of the relationship.

### Don't chat about court proceedings, children or financial information

By doing so you could be in breach of legislation which could be classed as a serious offence AND anything you share online can and could be used against you by the other party.

### Don't be tempted to share a new romance online

Thrilling as it may be, be discreet and remember that if the shoe was on the other foot, how hurtful it would be to read/see this.

Any pictures of you and your new beau together could evidence possible cohabitation and have a big effect on any financial settlements and child arrangements.

### Don't post pictures of children you share online

This is a very emotive issue and one that comes up time and time again in proceedings. Parents often have polar opposite views on how, when and if this should happen.

Send any photos directly, not on a public platform, especially if you are aware of your partner's objections. Posting pictures without consent can have data protection implications and affect a person's right to a private life. Err on the side of caution.

### Don't be tempted to stalk, trail or follow your partner

This can be exhausting, upsetting and often fruitless. Social media can be all-consuming, particularly if you are the injured party. Give yourself some time to rest and recover.



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## Meet the team

# Welcome back Iwan Williams

The team has recently welcomed back Iwan Williams who has joined us as a partner in the private client team. Iwan specialises in tax and succession planning.

Iwan returns to the firm with over 11 years' experience working for high net worth and ultra-high net worth clients nationally.

Iwan has a deep knowledge of all aspects of estate and succession planning and has particular expertise in advising landed estate owners, clients with agricultural interests and business-owning families in relation to a wide range of succession and tax matters.

### What attracted you back to Shakespeare Martineau?

The firm is at a very exciting time in its evolution and growth - it is forward thinking, dynamic and very much geared towards delivering the exceptional client service which is at the heart of everything we do. It is a pleasure to be back and part of such a bright future.

### What do you find exciting about your area of expertise?

I regularly advise families in relation to their long-term succession planning objectives and so I enjoy developing a deep understanding of their overall aims and wishes. It is fascinating to see how different businesses operate, and how

objectives and strategies vary between families. I am really passionate about building lasting relationships and delivering the exceptional client service that our clients deserve. It is incredibly rewarding when you can play a part in shaping how a family's succession plan will operate into the future. It is certainly not "one size fits all" and variety is the spice of the work we do.

### What do you hope to achieve while working at Shakespeare Martineau?

One of the areas I am really looking forward to help grow is our estate and succession planning offering for landed estates and clients with rural businesses. I am already working closely with our agricultural and rural affairs team to provide long-term, sophisticated planning advice to a range of clients. It is an incredibly challenging time for rural businesses, with change and opportunity on the horizon in equal measure. With the expertise we have across the firm, we are extremely well placed to help our landed estate and agricultural clients navigate through these uncertain times. I hope to use my technical knowledge and experience to really strengthen and grow our offering in this area.



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# Shakespeare Martineau recognised as top large employer nationally

Shakespeare Martineau - as part of legal and professional services group Ampa - has been named one of the top 100 best large companies to work for in the UK by Best Companies.

**Ranked 61 in top 100 best large companies**

**Ranked 12 in top 25 law firms**

**Ranked 25 in top 75 East Midlands companies**

**Ranked 25 in top 75 West Midlands companies**

**Ranked 33 in top 50 large London companies**

The Best Companies lists are the highest regarded league tables for great places to work - recognising business' commitment to employee engagement and positive culture. Rankings are produced based on an independent and anonymous survey of people within the business.

Ampa brands were also awarded Best Companies' second-highest standard two star accreditation - representing 'outstanding' levels of and commitment to workplace engagement.

Last year was Ampa's first time being involved in the awards - ranking 58 in the top 100 Midlands companies and 42 in the top 75 large London companies.

Last year, we featured on three lists and to have retained and, in some cases, significantly improved our places on these league tables while also ranking so high nationally too is great news.

We are also delighted to have received such high levels of engagement from our people and a two star 'outstanding' accreditation. Our people and teams are our greatest assets, greatest advocates and what we are all about. They drive our business forward and by investing in them, their ambitions, development, and wellbeing, we are able to provide the best service and outcomes for our clients.

Ampa also has pending B Corporation status.

**“It is truly fantastic to have achieved recognition as a top large employer nationally, as well as in law, the East Midlands, West Midlands and London, which is testament to our positive, passionate and authentic culture.”**





Working with organisations of all sizes, the firm delivers a broad range of specialist legal services and has particular expertise across areas including but not limited to: energy, education, banking & finance, healthcare, investment funds, manufacturing, agriculture, family business, Islamic finance, later living, social housing and real estate. Shakespeare Martineau also provides services for families and private clients.

The firm's purpose is clear;  
to unlock potential, and its ambitions  
are unlimited; aiming to become one  
of the most admired **top 30 law firms**  
by 2025.

Shakespeare Martineau has been  
listed in Best Companies 2022 for top  
25 law firms, top 75 East Midlands  
and West Midlands businesses and  
top 50 large London businesses.

With more than 900 people, Shakespeare Martineau has offices in Birmingham, Glasgow, Leicester, Lincoln, London, Milton Keynes, Nottingham, Sheffield, Solihull and Stratford-upon-Avon.

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