

Memorandum

The Legal Process for Changing the Name of Children and Young People

1. INTRODUCTION

1.1 You have instructed us to research the legal process for changing the name of children under the age of 16 and young people aged 16 and 17 in England and Wales. This memorandum will outline:

1.1.1 the general principles for legally changing a name through usage;

1.1.2 the specific rules that apply to children and young people when changing a name through usage;

1.1.3 the purpose and legal effect of deed polls; and

1.1.4 the specific rules that apply to children and young people when completing a deed poll.

1.2 The legal position is outlined with reference to key principles that have been established in case law. Further discussion of these issues in case law is outlined in Annex 1, including:

1.2.1 factors to be considered on an application to the court to change the name of a person under 18;

1.2.2 factors to be considered when determining whether a change of name is in a child's best interests; and

1.2.3 factors to be considered when determining whether a child has the capacity to consent to their change of name.

1.3 This memorandum considers both common law and legislation. Some law can be found in legislation laid down by Parliament. Other principles are derived from common law. Common law is the body of law that is derived from customs and court decisions, rather than legislation laid down by Parliament. This includes case law, namely law that has been decided by judges in courts. Therefore, there is no single document that articulates the precise ways in which common law principles operate in practice, and individual cases must be analysed to identify the general principles that apply to a given scenario.

1.4 The sections below consider the legal position as articulated by common law and legislation. Where no position can be clearly identified, this is also made clear.

2. CHANGE OF NAME BY USAGE – GENERAL PRINCIPLES

2.1 Registered names

- 2.1.1 People born in the UK also have registered names, which are the names that are recorded on their birth registration under the Births and Deaths Registration Act 1953.¹
- 2.1.2 A child's birth, including the child's first name and surname, must be registered within 42 days of the child being born.²
- 2.1.3 However, the name can usually be changed within 12 months from the date of registration using the form prescribed in the Registration of Births and Deaths Regulations 1987. The effect of this form is to erase the previous registered name and treat this new name as the registered name.³

2.2 Change of legal name

- 2.2.1 It is a common law principle that a person's legal name can be changed through usage alone without the need for such a name to be enrolled or registered, so long as:
 - (a) the individual has genuinely changed their name in good faith;
 - (b) the individual has publicly assumed their new name; and
 - (c) there is no fraudulent reason for the change of name.⁴

2.3 This has been confirmed in:

2.3.1 *Davies v Lowndes* (1835), where Chief Justice Tindal held that:

*"[A] man may, if he pleases, and it is not for any fraudulent purpose, take a name and work his way in the world with his new name as well as he can."*⁵

2.3.2 *Cowley (Earl) v Cowley (Countess)* (1901), where Lord Lindley held that:

¹ Births and Deaths Registration Act 1953, section 1, available at <https://www.legislation.gov.uk/ukpga/Eliz2/1-2/20> (accessed 29 May 2023).

² Ibid, section 2.

³ Deed Poll Office, 'Changing the name on your birth certificate', available at <https://deedpolloffice.com/change-name/changing-your-birth-certificate/england-and-wales> (29 May 2023).

⁴ Deed Poll Office, 'Enrolling or registering a deed poll', available at <https://deedpolloffice.com/change-name/enrolling> (accessed 21 May 2023).

⁵ *Davies v Lowndes* (1835) 1 Bing (NC) 597, available at <https://deedpolloffice.com/change-name/law/case-law/Davies-v-Lowndes-1835> (accessed 23 May 2023).

"Speaking generally the law of this country allows any person to assume and use any name, provided its use is not calculated to deceive and to inflict pecuniary loss."⁶

3. CHANGE OF NAME BY USAGE – APPLICATION TO CHILDREN AND YOUNG PEOPLE

3.1 Application of common law principles to children

3.1.1 There is no known common law position that disapplies the general principle that a legal name can be changed by usage for children. Therefore, a child's legal name can also be changed by usage.

3.1.2 However, there is a connected question as to when a child can be deemed to consent to a change of name. In England, Wales and Northern Ireland, there is no statutory age limit at which a child can change their name without parental consent. There is a presumption that a child over 16 can consent to change their name, whereas the ability of children under 16 will need to be assessed on an individual basis. The court will consider the child's age, maturity, intelligence, and the matter in question. The older the child is, the more likely they are to give permission. Case law outlines how the courts determine the child's capacity to consent (see Annex 1, section 3).

3.1.3 When a court is required to make a decision about a child's change of name, it will use its discretion to decide whether or not a change of name would be in the child's best interests. The court will take into account certain factors and apply certain principles when making a decision. Previous cases that identify these factors are explored below (see Annex 1, sections 1 and 2).

3.2 Change of legal name where a child is deemed to be able to give consent

3.2.1 As a general rule, where a child is able to give consent, they have the right to change their own name. In these circumstances, a person with parental responsibility has no right to force a child to change or not to change their name, although they may be able to make the argument that the child is not, in fact, able to consent.

3.2.2 There are exceptions to this general rule if the child is subject to:

- (a) a Child Arrangement Order in England and Wales which includes arrangements relating to who the child is to live with, or when the child is to live with any person;
- (b) a Residence Order in England, Wales, or Northern Ireland;
- (c) a Special Guardianship Order in England and Wales;

⁶ *Cowley (Earl) v Cowley (Countess)* [1901] A.C. 450, available at <https://deedpolloffice.com/change-name/law/case-law/Cowley-v-Cowley-1901> (accessed 23 May 2023).

- (d) a Care Order (or interim Care Order) in England, Wales, or Northern Ireland; or
- (e) any other court order which says that the individual's name cannot be changed.⁷

3.2.3 If one of these exceptions apply, the child will need consent to change their name from everyone with parental responsibility. The order will come to an end on their 18th birthday, unless an earlier end date is specified in the order.

3.3 Change of legal name where a child is not deemed to be able to consent

3.3.1 Where a child is not deemed able to consent, then all person(s) with parental responsibility must consent to a change of name on their behalf.

3.4 Change of a legal name where there is disagreement between persons with parental responsibility

3.4.1 If at least one person with parental responsibility does not give consent to changing the child's name, then the persons with parental responsibility who do consent can apply to the court for a Specific Issue Order, asking the court to allow the change of name.

3.4.2 Applying for a court order should always be a last resort. The persons with parental responsibility making the application will need to demonstrate that they have taken all reasonable steps to reach an agreement with the other persons with parental responsibility first.

3.4.3 The most important factor for the court is whether the change of name is in the child's best interests. The court must take into consideration the child's own view and feelings. The court will consider the reasons of the persons with parental responsibility, but the court will ultimately decide in the best interests of the child.

3.4.4 To apply for a Specific Issue Order, the person with parental responsibility should complete Form C100⁸ and send it to their nearest court that deals with family matters.⁹ The application fee is £210, but help with court fees may be

⁷ Deed Poll Office, 'Advice for young people', available at <https://deedpolloffice.com/advice/young-people> (accessed 21 May 2023).

⁸ Gov.uk, 'Apply for a court order to make arrangements for a child or resolve a dispute about their upbringing: Form C100', available at <https://www.gov.uk/government/publications/form-c100-application-under-the-children-act-1989-for-a-child-arrangements-prohibited-steps-specific-issue-section-8-order-or-to-vary-or-discharge> (accessed 21 May 2023).

⁹ The child's nearest court or tribunal can be found here: <https://www.gov.uk/find-court-tribunal> (accessed 21 May 2023).

available if the persons with parental responsibility are on benefits or have a low income by completing the Help with Fees Form.¹⁰

3.5 Change of a legal name where no person with parental responsibility gives consent

3.5.1 A child can only change their name where no person with parental responsibility gives consent where they are deemed able to consent (see section 3 for further judicial treatment of this issue).

3.5.2 If no person with parental responsibility gives consent to change the child's name, then the child can apply to the court themselves for a Specific Issue Order.¹¹

3.5.3 Applying to the court should also be a last resort in this case. The persons with parental responsibility have legal responsibility for the child, so the child will need to show that they have tried to resolve their differences first.

3.5.4 To apply to the court for permission, the child will need to complete Form C2 and return it to their nearest court that deals with family matters.¹² A fee may be payable to the court. The child should also complete Form C100 to apply for the Specific Issue Order, and attach this to the application, along with the Help with Fees form if applicable.

3.5.5 The court has also prepared guidance on how to complete the form.¹³ The child will need to outline their personal details and the details of the persons with parental responsibility, known as the "respondents". The child will be required to notify the persons with parental responsibility of their application and provide them with a copy of the application for the Specific Issue Order and Form C2 (which is called "service"). This will give them the opportunity to submit a response to the application. The court will tell the child when and how to notify the persons with parental responsibility.

3.5.6 If the child is subject to a Child Arrangement Order, Specific Issue Order, or Prohibited Steps Order, there may be additional people the child has to notify, such as social services.

¹⁰ Gov.uk, 'Apply for help with court and tribunal fees: Form EX160', available at <https://www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees> (accessed 21 May 2023).

¹¹ Ibid (n 7).

¹² Gov.uk, 'C2 – Application', available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093209/C2_0722_save.pdf (accessed 20 May 2023).

¹³ HM Courts & Tribunals Service, 'Making an application', available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952043/cb1-eng.pdf (accessed 19 May 2023).

4. DEED POLLS AND THEIR LEGAL EFFECT

4.1 Unenrolled and enrolled deed polls

4.1.1 There are two types of deed poll:

- (a) unenrolled deed polls; and
- (b) enrolled deed polls.

4.1.2 Unenrolled deed polls are not submitted to any formal body for formal approval or registration, whereas enrolled deed polls must be sent to the Royal Courts of Justice, where they are officially published and a public record is made of the change in name.

4.1.3 There is no requirement to enrol a deed poll to make it effective as evidence of a legal name change. This was confirmed in *D. v B. (otherwise D.) (Surname: Birth Registration)* [1979] Fam 38, where Lord Justice Ormrod held that:

*"There are no regulations governing the execution of deeds poll. The [Enrolment of Deeds (Change of Name) Regulations] only apply to the enrolment of such deeds poll, and the purpose of enrolment is only evidential and formal. A deed poll is just as effective or ineffective whether it is enrolled or not; the only point of enrolment is that it will provide unquestionable proof, if proof is required. No more. So that the deed poll [in question] in this case is not vitiated in any way by failure to comply with those enrolment regulations."*¹⁴

4.1.4 Organisations should accept an unenrolled deed poll as proof of a new name. In practice. However, some organisations may request an enrolled deed poll instead. As a result, some individuals do choose to enrol their deed poll.

4.2 Relationship between deed polls and change of name by usage

4.2.1 A deed poll (sometimes known as a "change of name deed") is a legal document used to prove a change of name, in which the individual promises to give up their old name and use a new name for all purposes. Once made, a deed poll can be 'enrolled' at the Royal Courts of Justice, although it is not necessary to do so.

4.2.2 Although it is usage that effects a change of name, rather than the signing of any legal documentation, an individual will often be required to provide a formal document to prove that this change has taken effect. For example, such a document is required to update a passport, driving license, and most other official documents.

4.2.3 A deed poll is accepted by government bodies in the UK, including His Majesty's Passport Office, the Driver and Vehicle Licensing Agency, retail banks, and most other organisations. If the individual's change of name is stated

¹⁴ *D. v B. (otherwise D.) (Surname: Birth Registration)* [1979] Fam 38, available at <https://deedpolloffice.com/advice/transgender> (accessed 21 May 2023).

on their Gender Recognition Certificate ("GRC") or a new birth certificate (for which a GRC is a prerequisite), then this can also be used to evidence a change of name. However, in practice, individuals will usually need to present a deed poll first in order to update their birth certificate.¹⁵

4.3 Making an unenrolled deed poll

4.3.1 An unenrolled deed poll is a document confirming that an individual, formerly known by their old name, has given up this name and has adopted for all purposes their new name. The document should include both their old and new names and their address, and should be signed (using both names), dated and witnessed as a deed.

4.3.2 For example, the UK Government proposes that the following wording can be used:

I [old name] of [address] have given up my name [old name] and have adopted for all purposes the name [new name].

Signed as a deed on [date] as [old name] and [new name] in the presence of [witness 1 name] of [witness 1 address], and [witness 2 name] of [witness 2 address].

[new signature], [old signature].

*"[witness 1 signature], [witness 2 signature]."*¹⁶

4.3.3 Alternatively, a specialist agency or a solicitor can make the deed poll, but they may charge a fee. For example, the Deed Poll Office charges £18 for an online application, or £28 for a postal application.¹⁷

4.4 Process of enrolling a deed poll

4.4.1 The process of enrolling a deed poll is outlined in the Enrolment of Deeds (Change of Name) Regulations 1994 (as amended), as reflected in the Civil Procedure Rules Practice Direction 5A, Appendix, sections 6 and 7. To comply with these requirements, an enrolled deed poll must:

- (a) provide additional information, including marital status and citizenship status;
- (b) be accompanied by additional documentation, including a Statutory Declaration (see below); and

¹⁵ Deed Poll Office, 'Advice for transgender people', available at <https://deedpolloffice.com/advice/transgender> (accessed 21 May 2023).

¹⁶ Gov.uk, 'Change your name by deed poll', available at <https://www.gov.uk/change-name-deed-poll/make-an-adult-deed-poll> (accessed 21 May 2023).

¹⁷ Deed Poll Office, 'How to apply', available at <https://deedpolloffice.com/apply> (accessed 19 May 2023).

- (c) be announced in the London Gazette (including both current and former name) both in print and on its website.¹⁸

4.4.2 A Statutory Declaration is a sworn document which declares in writing that the individual is who they say they are in the deed. For adults, this must be completed by:

- (a) a person who is not a near relative of the individual or the individual's spouse or civil partner;
- (b) a Commonwealth or British Citizen;
- (c) a person who has known the individual for no less than 10 years; and
- (d) a house holder, i.e., a person who owns or rents a property (this is required to prove the person is a permanent resident within the United Kingdom).¹⁹

4.4.3 If the individual does not know anyone meeting the criteria above, an additional affidavit must be included explaining the reasons why this is the case.

4.4.4 To enrol a deed poll, the individual must complete and send three forms to the King's Bench Division of the Royal Courts of Justice:

- (a) LOC020 – Change of Name Deed for an Adult (Deed Poll);
- (b) LOC021 – Statutory Declaration for an adult; and
- (c) LOC025 – Notice for the London Gazette for an adult.²⁰

4.4.5 There is an application fee of £42.44.

4.4.6 When the court receives the completed forms, they will seal the deed poll and allocate it a number. The court will forward the draft notice to the London Gazette to be published at its earliest convenience. The individual will receive a copy of the published notice. The original deed will then be returned to the individual as proof of their change of name.

4.5 Effect of enrolling a deed poll

¹⁸ Enrolment of Deeds (Change of Name) Regulations 1994, sections 6 and 7, available at <https://www.legislation.gov.uk/uksi/1994/604/made> (accessed 22 May 2023); Civil Procedure Rules Practice Direction 5A, Appendix, sections 6 and 7, available at https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05/pd_part05a (accessed 22 May 2023).

¹⁹ HM Courts & Tribunal Service, 'Enrolling a name change in the Royal Courts of Justice', p.2, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964986/loc019-adult-eng.pdf (accessed 19 May 2023).

²⁰ Ibid, p.1.

4.5.1 Enrolling a deed poll makes a permanent, public record of the individual's change of name and home address at the time of the enrolment:

(a) A copy of the deed poll will be kept in the Enrolment Books of the Senior Courts of England & Wales, at the Royal Courts of Justice in London. After 5–10 years, they are taken to the National Archives at Kew in Surrey.²¹

(b) The individual's old name, new name and home address will be published in the London Gazette. Any information contained in the London Gazette is open to review by members of the general public.

5. DEED POLLS AND THEIR APPLICATION TO CHILDREN AND YOUNG PEOPLE

5.1 Young people aged 16 or 17 years

5.1.1 Young people aged 16 or 17 years can generally choose to make an unenrolled deed poll themselves. However, if any of the exceptions that prevent a child from changing their legal name apply, then it will not be possible for a legally effective deed poll to be entered into by such a child without consent from all persons with parental responsibility.

5.1.2 Young people aged 16 or 17 years do, however, require the consent of all persons with parental responsibility for them to enrol a deed poll. Deed poll agencies, solicitors and the courts will usually insist on seeing the deed poll, along with the written consent, before the child's records can be updated.

5.1.3 If parental consent cannot be universally received, then the process of applying for a Specific Issue Order, as set out at section 3.4, may be considered.

5.1.4 If everyone with parental responsibility agrees, one of the persons with parental responsibility must complete and send four forms to the King's Bench Division of the Royal Courts of Justice:

(a) LOC022 – Change of Name Deed for a Minor (Deed Poll);

(b) LOC023 – Affidavit of Best Interest;

(c) LOC024 – Statutory Declaration for a Minor; and

(d) LOC026 – Notice for the London Gazette for a Minor.²²

5.1.5 The application fee is £42.44.

5.1.6 The Affidavit of Best Interest states the reasons why it is in the child's best interests to change their name. Previous judicial consideration of this matter is

²¹ Ibid (n 4).

²² Ibid (n 19), p.1.

set out at section 2 above. There is no set format for this document, but it must be completed by the persons with parental responsibility and sworn before a Solicitor, Commissioner of Oaths, or an Officer of the Senior Courts.²³

5.1.7 The Statutory Declaration for a Minor must be completed by an individual meeting the same criteria as the Statutory Declaration for adults. In addition, they must declare how long they have known the person with parental responsibility, which must be for no less than 10 years, and how long they have known the child.²⁴

5.2 Children under 16

5.2.1 Deed polls, both unenrolled and enrolled, must be consented to by all person(s) with parental responsibility. As above, where parental consent cannot be universally received, then the process of applying for a Specific Issue Order, as set out at section 3.4, may be considered.

5.3 Requirement for children and young people to enrol a deed poll

5.3.1 There is no known legal decision that varies the general position that an unenrolled deed poll is sufficient to evidence a change of name for a child. However, see section 5.4 for further judicial consideration of this issue.

5.4 Enforceability of requiring an enrolled deed poll for a child under 16

5.4.1 In *Re W, F, C and D (Children) (Name Changes Disclosing Gender Reassignment and Other Matters)* (2020), the High Court considered the legality of exam boards requiring an enrolled deed poll for children who have changed gender to sit exams in their new name. Enrolling a deed poll requires publication of the child's old and new name in the London Gazette and storage in the National Archive, which consequently discloses a gender change to the general public. This was held to be a disproportionate interference with children's rights under:

- (a) Article 8 of the European Convention on Human Rights ("ECHR"), the right to respect for private and family life; and
- (b) Section 22 of the Gender Recognition Act 2004 (the "**2004 Act**"), which makes it a criminal offence to disclose the fact that a person is of an acquired gender, unless the person consented to the disclosure, or it is done under a court order or pursuant to a relevant statute permitting it.²⁵

²³ Ibid (n 19), p.3.

²⁴ Ibid (n 19), p.2-3.

²⁵ *Re W, F, C and D (Children) (Name Changes Disclosing Gender Reassignment and Other Matters)* [2020] EWHC 279, available at <https://www.casemine.com/judgement/uk/5e4646a22c94e02804337601> (accessed 23 May 2023).

5.4.2 The Court determined that:

- (a) Only the child's surname should be published;
- (b) The court file should be marked private and only inspected with the court's permission; and
- (c) The deed should be retained in court and not released to the National Archive until the relevant authorities (including the Master of the Rolls) have considered the protocol regarding access and storage.²⁶

5.4.3 The Court held that, in view of the public nature of the deed poll process and the implications that it might have for the rights of children, public bodies insisting on enrolled deeds rather than non-enrolled deeds or statutory declarations should consider whether their policy is proportionate. The Court recommended that the position of deed poll applications for children be drawn to the attention of the Master of the Rolls, as the Practice Direction and the forms and guidance currently in use require review to ensure adherence to modern diversity standards and clearer communication of procedures to applicants.²⁷

5.4.4 The Court held that although none of the applicants in the case were adults, it may be that the same approach can be taken for adults because the rights under Article 8 of the ECHR and the 2004 Act are not confined to children.²⁸

5.5 Despite the Court's decision in this case, there is no evidence to suggest that this ruling has changed practice yet. No further guidance has been issued.

²⁶ Payne Hicks Bench, 'A Transgender Rights' Update', 13 March 2023, available at <https://www.phb.co.uk/article/an-update-on-transgender-rights/> (accessed 22 May 2023).

²⁷ Ibid (n 25), para 77.

²⁸ Ibid (n 25), para 51.

ANNEX 1

1. FACTORS TO BE CONSIDERED IN AN APPLICATION FOR THE CHANGE OF NAME OF A CHILD

1.1 In *Re W, Re A, Re B (Change of Name)* (1999), Lady Justice Butler-Sloss summarised the factors that a child should consider in an application for the change of a child's surname. These factors are not exhaustive; each case has to be decided on its own facts in the best interests of the child:

1.1.1 On any application the welfare of the child is paramount and the judge must have regard to the criteria outlined in section 1(3) of the Children Act 1989;

1.1.2 The court should have regard to the registered surname of the child and the reasons for the registration, for instance recognition of the biological link with the child's father. Registration is always a relevant and an important consideration but it is not in itself decisive;

1.1.3 The relevant considerations should include factors which may arise in the future as well as the present situation;

1.1.4 Reasons given for changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent making the application do not generally carry much weight;

1.1.5 The reasons for an earlier unilateral decision to change a child's name may be relevant;

1.1.6 Any changes of circumstances of the child since the original registration may be relevant;

1.1.7 In the case of a child whose parents were married to each other, the fact of the marriage is important and there would have to be strong reasons to change the name from the father's surname if the child was so registered; and

1.1.8 Where the child's parents were not married to each other, the mother has control over registration. Consequently, on an application to change the surname of the child, the degree of commitment of the father to the child, the quality of contact, if it occurs, between father and child, the existence or absence of parental responsibility are all relevant factors to take into account.²⁹

1.2 Therefore, although it is important to maintain a link between a parent and child through their surname, this should be considered in light of their relationship, the amount and quality of contact between them, and the degree of commitment of the parent to the

²⁹ *Re W, Re A, Re B (Change of Name)* [1999] EWCA Civ 2030, para 9, available at <https://deedpolloffice.com/change-name/children/case-law/Re-W-Re-A-Re-B-Change-of-Name-1999-EWCA-Civ-2030> (accessed 23 May 2023).

child. The court should not give much weight to the fact that the child's name is or is not the same as the parent making the application.

- 1.3 In *Dawson v Wearmouth*, Lord Mackay emphasised the importance of the child's registered surname, but recognised that there may be circumstances which justify a change in surname:

*"[I]n order to justify changing [a] name from that which was registered, circumstances justifying the change would be required."*³⁰

- 1.4 In the same case, Lord Jauncey noted the importance of a child's surname:

*"A surname which is given to a child at birth is not simply a name plucked out of the air. Where the parents are married the child will normally be given the surname or patronymic of the father thereby demonstrating its relationship to him. The surname is thus a biological label which tells the world at large that the blood of the name flows in its veins. To suggest that a surname is unimportant because it may be changed at any time by deed poll when the child has obtained more mature years ignores the importance of initially applying an appropriate label to that child."*³¹

- 1.5 However, Lord Jauncey also states that the child's registered name is not a major factor in every case:

*"[...] I do not accept that [registration] is necessarily a major factor in every case. When a child has for a number of years been known by its registered name, where it is aware of that name and where, for example, it has been entered at school or on the list of a General Practitioner by that name no doubt the fact of such registration will be an important factor in the exercise of discretion. However where the child, as in this case, was of such an age as to be incapable of understanding the significance of its registered surname, registration as a factor must assume very much less importance. The weight to be attached to the fact of registration in an application to change a child's name must always depend upon the surrounding circumstances as they affect the welfare of the child."*³²

- 1.6 Although *Dawson v Wearmouth* was a dispute about a child's surname, the welfare of the child is also paramount in disputes about a child's forename.³³

- 1.7 The leading case for a change of a child's first name is *Re H (a Child) (Child's First Name)* (2002). The application was not to change the child's first name outright, but to allow the mother to use her choice of first name. Lord Justice Thorpe held that previous cases regarding surnames were of little relevance in disputes about first names. While

³⁰ *Dawson v Wearmouth* [1999] UKHL 18, p.966, available at <https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/dawson1.htm> (accessed 23 May 2023).

³¹ *Ibid*, p.968.

³² *Ibid*, p.968.

³³ *Re W (Children)* [2013] EWCA Civ 1488, para 13, available at <https://deedpolloffice.com/change-name/children/case-law/Re-W-Children-2013-EWCA-Civ-1488> (accessed 23 May 2023).

registered surnames have particular significance in denoting the family to which the child belongs:

*"Given names have a much less concrete character. It is commonplace for a child to receive statutory registration with one or more given names and, subsequently, to receive different given names, maybe at baptism or, maybe, by custom and adoption. During the course of family life, as a child develops personality and individuality, parents or other members of the family, may be attracted to some nickname or some alternative given name which will then adhere, possibly for the rest of the child's life, or possibly only until the child's individuality and maturity allow it to make a choice for itself as to the name by which he or she wishes to be known."*³⁴

1.8 Lord Justice Thorpe held that courts should not place too much importance on the child's registered name:

*"[J]udges must look in a worldly, common-sense way at what is likely to be best for the child and must not place too much emphasis upon the statutory process of registration."*³⁵

1.9 There may be circumstances where one person with parental responsibility changes a child's name without following the correct legal procedure. When a child's name has been changed by one person with parental responsibility before the appropriate court order, the court has a number of options:

1.9.1 to change the child's name back to what it was before;

1.9.2 to allow the new name to continue to be used in particular contexts, e.g. school;

1.9.3 to change the child's name to something else; or

1.9.4 to allow the change of name to stand.³⁶

1.10 The court will take into account certain factors, including:

1.10.1 the amount of time that has gone by since the child's name was changed; the more time that has passed, the more likely the change of name will be upheld;

1.10.2 the child's age; the older the child, the more damaging it may be to reverse their name;

1.10.3 the child's wishes and feelings; and

³⁴ *Re H (a Child) (Child's First Name)* [2002] EWCA Civ 190, available at <https://deedpolloffice.com/change-name/children/case-law/Re-H-a-Child-Childs-First-Name-2002-EWCA-Civ-190> (accessed 23 May 2023).

³⁵ *Ibid.*

³⁶ Deed Poll Office, 'An earlier, unilateral change of name', available at <https://deedpolloffice.com/change-name/children/courts-decision/earlier-unilateral-change> (accessed 22 May 2023).

1.10.4 the welfare of the child.³⁷

- 1.11 Therefore, even if the court determines that the change of name was not in the child's best interests, the court may allow the change of name to stand if it is not in the child's best interests to revert back to their old name.

2. ASSESSING THE BEST INTERESTS OF THE CHILD

- 2.1 In matters relating to children, the courts must act in the child's best interests. In *Dawson v Wearmouth* (1999), Lord Mackay held that:

*"The name of a child is not a trivial matter but an important matter, and is not a question to be resolved without regard to the child's welfare."*³⁸

- 2.2 The Children Act 1989, section 1, lays down fundamental principles which the courts have to follow in matters relating to children.³⁹ The court must weigh up a number of factors, in light of the section 1 criteria, to decide whether the change of name would improve the child's welfare. As Lord Mackay stated:

*"[T]he right course, in my opinion, must be to apply the criteria in section 1 of the Act of 1989 including section 1(5) and not make an order for the change of name unless there is some evidence that this would lead to an improvement from the point of view of the welfare of the child."*⁴⁰

- 2.3 Although the term "improvement" is used, there does not need to be any added value for the child concerned in any change proposed. As Lord Justice Ryder held in *Re W (Children)* (2013):

*"Dawson v Wearmouth above is often characterized as authority for the proposition that there has to be added value for the child concerned in any change proposed. That is not strictly accurate. The test is welfare, pure and simple. It is because the court has to analyse welfare by reference to the check-list, in which an analysis of the effect of change and of risk of harm is undertaken, that in every name-change case the question of harm will arise. That is not to say that there is a presumption of harm arising out of a proposed change that has to be rebutted. On the facts, a change may be beneficial, because, for example, the circumstances that led to registration may be harmful."*⁴¹

- 2.4 Under section 1(1), the child's welfare must be the court's "paramount consideration" when making any decision about a child's change of name. The courts must therefore consider both the material welfare of the child, including their home and standard of

³⁷ Ibid.

³⁸ Ibid (n 30).

³⁹ Children Act 1989, section 1, available at <https://www.legislation.gov.uk/ukpga/1989/41/section/1> (accessed 23 May 2023).

⁴⁰ Ibid (n 30).

⁴¹ Ibid (n 33), para 13.

living, and the moral and religious welfare of the child, including their safety, stability, care and relationships.⁴²

2.5 In *Re McGrath (Infants)* (1893), Lord Justice Lindley held that:

*"The welfare of the child is not to be measured by money only, nor by physical comfort only. The word welfare must be considered in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."*⁴³

2.6 In *Re G (Children)* (2012), Lord Justice Munby stated that:

*"[In evaluating a child's best interests] everything that conduces to a child's welfare and happiness, or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account."*⁴⁴

2.7 Under section 1(2), in any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child. The court must therefore reduce delay as much as possible.

2.8 Under section 1(2A), on any application for a Specific Issue Order, there is a presumption that each parent being involved in the child's life will be good for the child's welfare.

2.9 On any application for a Specific Issue Order, the court must have particular regard to the checklist in section 1(3), including:

2.9.1 the ascertainable wishes and feelings of the child concerned, considered in the light of their age and understanding;

2.9.2 their physical, emotional and educational needs;

2.9.3 the likely effect on them of any change in his circumstances;

2.9.4 their age, sex, background and any characteristics of theirs which the court considers relevant;

2.9.5 any harm which they have suffered or are at risk of suffering;

⁴² Deed Poll Office, 'A child's welfare (the "section 1 criteria")', available at <https://deedpolloffice.com/change-name/children/welfare> (accessed 22 May 2023).

⁴³ *Re McGrath (Infants)* [1893] 1 Ch 143, p.148, available at <http://www.commonlii.org/uk/cases/UKLawRpCh/1892/159.html> (accessed 23 May 2023).

⁴⁴ *Re G (Children)* [2012] EWCA Civ 1233, para 27, available at <https://www.bailii.org/ew/cases/EWCA/Civ/2012/1233.html> (accessed 23 May 2023).

- 2.9.6 how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs; and
- 2.9.7 the range of powers available to the court under the Children Act 1989 in the proceedings in question.
- 2.10 Under section 1(5), the court should not make an order unless it considers that doing so would be better for the child than making no order at all. The court should therefore be satisfied that allowing the child to change their name would be better for the child than keeping their old name.

3. THE CHILD'S CAPACITY TO CONSENT

- 3.1 Under section 1(3) of the Children Act 1989, courts must have regard to the ascertainable wishes and feelings of the child concerned. Although a child's feelings are always important, the child's wishes are given less weight when the child is still very young.⁴⁵
- 3.2 In *W v A (Minor: Surname)* (1981), Lord Justice Dunn disregarded the wishes of the two children concerned, aged 10 and 12, to change their surname to their mother's. The children would be strongly influenced by the views of their mother, whom they lived with, and this would not necessarily be in the children's best interests.⁴⁶
- 3.3 Children under 16 must get consent from everyone with parental responsibility to change their name, or otherwise apply to the court for a Specific Issue Order. In *Re PC (Change of Surname)* (1997), Mr Justice Holman held that:

"(i) Where only one person has parental responsibility for a child (e.g. a surviving parent after the death of the other; or the mother of a non-marital child where there has been no order or agreement for parental responsibility) that person has the right and power lawfully to cause a change of surname without any other permission or consent.

(ii) Where two or more people have parental responsibility for a child then one of those people can only lawfully cause a change of surname if all other people having parental responsibility consent or agree. Subject to (iii) below, there is no necessary requirement that that consent be in writing (although the practical effect of the Practice Direction of 11th April 1994 is to require writing before enrolment of a deed poll).

(iii) Where two or more people have parental responsibility for a child and either a residence order or a care order is in force, then one of those people can only lawfully

⁴⁵ Deed Poll Office, 'A child's wishes and feelings about their name', available at <https://deedpolloffice.com/change-name/children/courts-decision/childs-wishes#:~:text=The%20wishes%20of%20a%20more,about%20their%20change%20of%20name> (accessed 23 May 2023).

⁴⁶ *W v A (Minor: Surname)* [1981] Fam 14, available at <https://deedpolloffice.com/change-name/children/case-law/W-v-A-Minor-Surname-1981-Fam-14> (accessed 23 May 2023).

cause a change of surname if all other people having parental responsibility consent in writing (ss. 13(1) or 33(7)).

(iv) *In any other situation an appropriate order of a court is required.*⁴⁷

3.4 Therefore, parental consent does not generally need to be written; spoken consent should suffice, unless a court order is in place which requires written consent to be modified. If the deed poll is to be enrolled, however, written consent will be needed.

3.5 Similarly, in *Re T (Change of Name)* (1998), Lord Justice Thorpe held that:

*"[C]hildren's names are important and in any situation of dispute, either the consent of the other parent or the leave of the Court is an essential prerequisite, certainly where both parents have parental responsibility."*⁴⁸

3.6 However, Mr Justice Holman in *Re PC (Change of Surname)* held that different rules apply to children aged 16 or 17:

*"[N]one of these conclusions relate to a much older child, in particular over the age of 16, where the consent of that child may [...] be both necessary and sufficient."*⁴⁹

3.7 Therefore, children aged 16 and 17 can legally change their own name, unless ongoing court orders require parental consent. There is a presumption of capacity for children aged 16 and 17 under section 8 of the Family Law Reform Act 1969.⁵⁰ In general, however, children of any age can make their own decision about the change of the name if they have sufficient understanding and intelligence.

3.8 The leading case on the capacity of a child to make a decision is *Gillick v West Norfolk and Wisbech Health Authority* (1986), where the House of Lords held that a doctor could lawfully give contraceptive advice and treatment to a girl aged under 16 if she had sufficient maturity and intelligence to understand that nature and implications of the proposed treatment and provided that certain conditions were satisfied. Lord Fraser held that:

"Provided the patient, whether the boy or a girl, is capable of understanding what is proposed, and of expressing his or her own wishes, I see no good reason for holding that he or she lacks the capacity to express them validly and effectively and to authorise the medical man to make the examination or give the treatment which he advises. After all, a minor under the age of 16 can, with certain limits, enter into a contract. He or she can also sue and be sued, and can give evidence on oath. [...] Accordingly, I am not disposed to hold now, for the first time, that a girl less than 16 lacks the power to

⁴⁷ *Re PC (Change of Surname)* [1997] 2 FLR 730, available at <https://deedpolloffice.com/change-name/children/case-law/Re-PC-Change-of-Surname-1997-2-FLR-730> (accessed 23 May 2023).

⁴⁸ *Re T (Change of Name)* [1998] EWCA Civ 854, available at <https://deedpolloffice.com/change-name/children/case-law/Re-T-Change-of-Name-1998-EWCA-Civ-854> (accessed 23 May 2023).

⁴⁹ *Ibid* (n 47).

⁵⁰ Family Law Reform Act 1969, section 8, available at <https://www.legislation.gov.uk/ukpga/1969/46/section/8> (accessed 23 May 2023).

*give valid consent to contraceptive advice or treatment, merely on account of her age.*⁵¹

3.9 Lord Scarman said:

*“[T]here is much that has to be understood by a girl under the age of 16 if she is to have legal capacity to consent to such treatment. It is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved.”*⁵²

3.10 In *R (Axon) v Secretary of State for Health (Family Planning Association Intervening)* (2006), the Court held that *Gillick* must be considered in the context of Article 8 of the ECHR (the right to respect for private and family life), the United Nations Convention on the Rights of the Child, and the increasing emphasis on the autonomy of the child. The Court held that *Gillick* applies to the provision of all advice and treatment to children in relation to sexual matters, including abortion.

3.11 Silber J held that a medical professional is entitled to provide medical advice and treatment on sexual matters without the parent’s knowledge or consent provided they are satisfied of the following matters:

3.11.1 the child under 16 understands all aspects of the advice with sufficient understanding and intelligence;

3.11.2 the medical professional cannot persuade the child to inform their parents or to allow the medical professional to inform the parents that their child is seeking advice and/or treatment on sexual matters;

3.11.3 in the context of contraception and sexually transmissible illnesses, the child is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment or treatment for a sexually transmissible illness;

3.11.4 unless the child receives advice and treatment on the relevant sexual matters, their physical or mental health or both are likely to suffer; and

3.11.5 the best interests of the child require them to receive advice and treatment on sexual matters without parental consent or notification.⁵³

⁵¹ *Gillick v West Norfolk and Wisbech Health Authority* [1986] AC 112, available at <https://www.bailii.org/uk/cases/UKHL/1985/7.html> (accessed 23 May 2023).

⁵² *Ibid.*

⁵³ *R (Axon) v Secretary of State for Health (Family Planning Association Intervening)* [2006] QB 539; UKCEN, 'Gillick rules OK: The Sue Axon case', available at https://www.ukcen.net/main/commentaries/gillick_rules_ok_the_sue_axon_case (accessed 23 May 2023).

- 3.12 *Gillick* was applied in the context of changing a child's surname in *Re S (Change of Surname)* (1998). The age of the child, who was 16, was important in determining that the child was "Gillick competent".⁵⁴
- 3.13 By contrast, in the case of *Re B (Minors) (Change of Surname)* (1996), where the children were aged 17, 14 and 12, the court refused the mother's application for leave to change the children's surnames to their stepfather's surname because court orders were in force which prohibited the mother from changing the children's surnames.⁵⁵
- 3.14 In *Re X (A child) (No 2)* (2021), Sir James Munby emphasised the distinction between the test of capacity under the Mental Capacity Act 2005 and "Gillick competence":

*"[T]he tests of capacity and of Gillick competence have nothing very obvious in common, not least because they are rooted in different areas of scientific knowledge and understanding. Capacity, or, more precisely, lack of capacity, derives from what Butler-Sloss LJ referred to in Re MB as "some impairment or disturbance of mental functioning", what in section 2(1) of the 2005 Act is referred to as "impairment of, or a disturbance in the functioning of, the mind or brain." Gillick competence, in contrast, is tied to the normal development over time of the typical child and teenager. In the first, one is therefore in the realm of psychiatry. Indeed, it is notorious that Thorpe J's analysis in In re C, from which everything since has flowed, was modelled on the analysis provided in the expert evidence of a psychiatrist, Dr Eastman. In the other, one is not in the realm of psychiatry, rather that of child and adolescent psychology."*⁵⁶

- 3.15 Most recently, *Gillick* was considered in *Bell & Anor v The Tavistock and Portman NHS Foundation Trust* (2021), regarding whether a child can consent to the administration of puberty blockers. The Divisional Court listed the information a child should be able to process to be able to consent to the administration of puberty blockers, and held that:

*"It is highly unlikely that a child aged 13 or under would ever be Gillick competent to give consent to being treated with puberty blockers. In respect of children aged 14 and 15, we are also very doubtful that a child of this age could understand the long-term risks and consequences of treatment in such a way as to have sufficient understanding to give consent."*⁵⁷

- 3.16 However, the Court of Appeal overturned this, stating:

⁵⁴ *Re S (Change of Surname)* [1998] EWCA Civ 1950, available at <https://deedpolloffice.com/change-name/children/case-law/Re-S-Change-of-Surname-1998-EWCA-Civ-1950> (accessed 23 May 2023).

⁵⁵ *Re B (Minors) (Change of Surname)* [1996] 1 FLR 791, available at <https://deedpolloffice.com/change-name/children/case-law/Re-B-Minors-Change-of-Surname-1996-1-FLR-791> (accessed 23 May 2023).

⁵⁶ *Re X (A child) (No 2)* [2021] 4 WLR 11, para 73, available at <https://www.bailii.org/ew/cases/EWHC/Fam/2021/65.html> (accessed 23 May 2023).

⁵⁷ *Bell & Anor v The Tavistock and Portman NHS Foundation Trust* [2020] EWHC 3274 (Admin), para 145, available at <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3274.html> (accessed 23 May 2023).

*"[B]y making the declaration accompanied by guidance requiring (probably frequent) court intervention, the Divisional Court had placed an improper restriction on the Gillick test of competence. In our judgment, whilst driven by the very best of intentions, the Divisional Court imposed such a restriction through the terms of the declaration itself, by the utilisation of age criteria and by the requirement to make applications to the court. As we have said, applications to the court may well be appropriate in specific difficult cases, but it was not appropriate to give guidance as to when such circumstances might arise."*⁵⁸

- 3.17 Therefore, the responsibility for determining whether a young person has the "Gillick competence" to consent to treatment lies with the clinician proposing that treatment.⁵⁹

⁵⁸ Ibid, para 94.

⁵⁹ Mental Capacity Law and Policy, 'Gillick competence, puberty-blockers and the Court of Appeal', 17 September 2021, available at <https://www.mentalcapacitylawandpolicy.org.uk/gillick-competence-puberty-blockers-and-the-court-of-appeal/> (accessed 23 May 2023).