IN THE HIGH COURT OF JUSTICE **[2020] EWHC 279 (QB)**

QUEEN'S BENCH DIVISION

MASTER MCCLOUD

IN THE MATTER OF THE ENROLMENT OF DEEDS (NAME CHANGE) REGULATIONS 1994 and s.133(1) SENIOR COURTS ACT 1981

IN THE MATTER OF THE HUMAN RIGHTS ACT 1998

In re W, F, C and D (minors)(Name changes disclosing gender reassignment and other matters)

Keywords:

Children – gender reassignment – Deed Poll – name change – welfare considerations – parental consent to name change – child's consent - ECHR – Gender Recognition Act 2004 – Human Rights Act 1998 – privacy – Children Act 1989 s.1 – procedure – Article 8 – Article 14 – specific issue order

Judgment

(Corrected by the Court at para. 60 under the slip rule).

1. This decision relates to the 'Deed Poll' process currently in use in the Queen's Bench Division, and in particular the formal Deed Poll process relating to children. It has particular relevance, but not exclusively, to children who are changing their forenames as a result of re-assigning their gender. In recent times the numbers of name change applications to this court which seek to use the formal Deed Poll process has very greatly increased. A figure of 2000 such applications in total (perhaps half of which related to children but by no means all to gender reassignment) was mentioned to me by staff when I inquired as to practice and procedure in the last year.

2. I am giving this decision urgently in view of the potential impact on the affected children, of delay in the context of for example school examination board requirements about proof of name, which have led to parents expressing concern to court staff and pressing for the backlog of applications to be dealt with.

3. I express my gratitude to the staff here who assisted me by informing me of how the process works from their perspective and briefing me as to the problems they and court users have encountered and to the pressure this has placed on them as civil servants committed to promoting diversity and the interests of the public. Their input was helpful in writing this judgment. They produced for me a briefing on some the problems they have been encountering and raising about this process for a while now, within just one day of them discussing it with me. I am also grateful for input from Master Sullivan who at the time of drafting this judgment had a number of applications before her for consideration.

4. This decision is made in relation to the specific applications presently before me in a judicial capacity relating to children ranging in age from 4 to 17. It may be of interest and use in informing others, if only to enable them to disagree with me, but my focus must be on the particular young people whose interests are engaged in these applications. I direct that nothing be published without the leave of the court which identifies them in relation to this decision and application, subject to what I say below about publication of the Deeds themselves. However this judgment is not confidential.

5. To assist the reader I shall set out below a table which provides a summary of my conclusions in these applications and also includes an analysis of the position in other contexts arising from the regulations and so forth which are cited in this decision.

Facts	**Approach taken**	**Basis**
Name change due to gender reassignment, child UNDER 16	(1) Publication limited to surname only. (2) Deeds to be retained in court pending consideration of arrangements relating to storage in National Archives. (3) File to be marked Private and may be inspected only on application to the court.	Case of W, see reasons in this judgment. Arts. 8, 14 ECHR
Name change due to gender reassignment, child 16 or 17 and unmarried/not civilly partnered	(1) Publication limited to surname only. (2) Deeds to be retained in court pending consideration of arrangements relating to storage in National Archives. (3) File to be marked Private and may be inspected only on application to the court. (4) Deed MUST (in addition to other requirements) be endorsed with the consent of the child and signed in new and old names, and duly witnessed.	Case of F, see reasons in this judgment, Arts. 8, 14 ECHR, and Reg. 8(4) of the 1994 Regs.
ANY child aged 16 or 17 if unmarried/not civilly partnered	Deed MUST (in addition to other requirements) be endorsed with the consent of the child and signed in new and old names, and duly witnessed.	Reg. 8(4).

Married or civilly partnered child of 16 or 17	Adult provisions apply	Reg. 8(2).
Child under 16, unmarried/not civilly partnered AND the applicant has by any order of the High Court, County Court or Family Proceedings Court been given parental responsibility for a child and applies for the enrolment of a Deed Poll to change the surname (family name) of the child who is under the age of 18 years. OR as above but where the application is to change surname AND there is a Child Arrangements Order affecting residence: see s.13 of the 1989 Act.	The application must be supported by the production of the consent in writing of every other person having parental responsibility.	Practice Direction 5A para. 6.3(1) and (2). In the absence of that consent, the application will be adjourned generally unless and until permission is given in the proceedings, in which the order was made, to change the surname of the child and the permission is produced to the Central Office, QBD. The wording of the PD does not sit perfectly with the wording of s.13 Children Act 1989, but is presumably intended to cover such cases.
Child under 16, unmarried/not civilly partnered. (But see above where there is an order granting PR or a Child Arrangements Order).	The application for enrolment must be supported— (a) by an affidavit showing that the change of name is for the benefit of the child, AND (i) that the application is submitted by all persons having parental responsibility for the child; OR (ii) that it is submitted by one person having parental responsibility for the child with the consent of every other such person; OR (iii) that it is submitted by one person having parental responsibility for the child without the consent of every other such person, or by some other person whose name and capacity are given, for reasons set out in the affidavit; AND (b) by such other evidence, if any, as the Master of the Rolls may require in the particular circumstances of the case.	Reg. 8(5), PD 5A para. 6.3(3). See also Cases of C and D, where only one parent with PR has signed and reasonable diligence has not been used to find the other parent. In the case of surnames, PD 5A 6.3(3) indicates that the court will grant an application even without the consent of one or more persons having PR if the other person(s) with PR is/are "*overseas or despite the exercise of reasonable diligence it has not been possible to find him or her for other good reason*" HOWEVER I have expressed doubt (where the other person(s) (with PR) is/are living and their consent has **not** been obtained), that an application for any change of name (but especially surname) should be approved in most cases without a Specific Issue order under s.8 of the Children Act 1989 (or a s.13 order if the case concerns surname and there is a Child Arrangements order in force affecting residence) from the Family Court so that the child's interests can be properly considered, applying Re Q, Re A, Re B (change of name) [1999] 2 FLR 930 at 933F, applying Dawson v Wearmouth [1999] UKHL 18 (and see also Re W (Children) [2013] EWCA Civ 1488). See discussion in judgment in Re C and D below.

Background

6. Masters generally in the last few years have had more experience of the process than would in the past have been the case. That is because such applications were conventionally handled solely by the Senior Master, but a change occurred in around late 2014 by which applications were directed to be allocated to ordinary Masters. However parts of the relevant Practice Direction (5A) still seem to imply that Deed Poll issues are a matter for the Senior Master and public guidance states that *"All applications for change of name of a minor are referred to the senior master for permission to enrol."* (form LOC019). It may be that the PD and guidance need to be amended in that regard. I note also that PD5A refers to 'the Practice Master' which was a role abolished about 2 or 3 years ago and hence may also need to be modernised in the text of the PD.

7. A significant number of applications for name change deeds to be enrolled relate to matters such as hyphenation of surnames after a marriage or civil partnership between the parents, a change of surname to adopt (say) the father's surname after marriage between the spouses, and so on. The process and practice of the court and the relevant regulations appears to have evolved with such things in mind.

This judgment

8. This judgment deals with applications of types which have given rise to inconsistency of approach by the court and in some instances concerns expressed, formally or informally to staff by members of the public using the procedure, and also by Masters including myself in seeking guidance for the last year or two.

9. Those concerns include issues over the clarity of the process, the relationship between what is said in the relevant practice direction (PD5A) and the Enrolment of Deeds (Name Change) Regulations (SI 1994/604), and as to significant matters such as concerns by parents and others over the way in which the Regulations and PD interrelate with the rights of applicants.

10. Issues are especially acute where children who seek a change of name are adopting a reassigned gender relative to the gender they were assigned at the time of registering their birth (which is typically a presumed cis-gender based on the view taken by adults present at birth on visual examination of the child). This judgment is necessitated by urgency in these cases partly due to such things as impending examination board requirements and deadlines for children and partly because of a risk of harm or distress to the children involved due to delay.

11. Specifically I have been informed by staff that one or more (perhaps all) examination boards are, according to parents calling the court, requiring children to go through the enrolled Deed Poll process before they will allow a child to sit an exam (or perhaps issue certificates) in the new name. I also am told that such places as foreign embassies require formal Deeds Poll as proof of change of name. So that children can sit exams in their new name they have been required to conclude the Deed Poll process by a deadline date of some weeks before the examination and hence understandably parents have been pressing staff by way of frequent calls to court to ensure that the backlog of such applications is dealt with, or at least that their own child is considered urgently.

12. In view of the observations I make in this judgment, especially as to the very public nature of the Deed Poll process and the implications it may have for the rights of children (and the same children when they become adults), public bodies insisting on fully enrolled Deeds rather than,

for example, non-enrolled Deeds or Statutory Declarations may wish to consider whether their policy is proportionate.

The court's experience

13. In addition to variation of practice arising over reassignment of gender and how to approach name changes in that context, there are also concerns as to what approach the Master should take where the matters raised in the application (with or without gender reassignment) engage welfare issues such as:

    - statements that the name change is in the context of convictions of the father for child abuse,
    - statements that in the light of a DNA test the father is probably unrelated,
    - that the father simply has little or no contact and the mother has re-married or has a new partner, and so on.

14. The current process was not, one suspects, designed for such things because it provides for very limited information to be given to the court, and as will be apparent the Regulations themselves do not strictly provide for the court to request further evidence (but only for the Master of the Rolls to do so).

Potential rule changes

15. I understand that very recently (in recent days) the Civil Procedure Rules Committee has been considering the question whether the Deed Poll procedure should be reviewed and revised. I understand that priority is being attached to that consideration. However it is necessary for me to give decisions in these and other applications which in some instances are urgent, in the interests of the children involved in view of the presumption under the Children Act 1989 that delay tends to prejudice their interests.

16. In the interim I am therefore giving this judgment relating to the applications in front of me

Privacy, Names, and Genders. Some background.

The Convention

17. I need not quote the text of Article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) (the right to respect for private and family life, home and correspondence) or Article 14 (against discrimination within the ambit of a Convention Right), save to note that they form part of our law by virtue of the Human Rights Act 1998 which binds me in the application of my judicial function and how I interpret legislation, and also will in appropriate cases affect how the court system as a whole operates. Children and adults alike benefit from their protection. I remind myself also that interferences with qualified rights must be in accordance with the law, which itself must be accessible.

Gender Recognition Act 2004

18. The Gender Recognition Act 2004 was introduced long after the applicable 1994 Regulations in this case. The 1994 Regulations pre-date not only the Human Rights Act and the Gender Recognition Act but also much of the case law which developed in relation to the rights of

transgendered people to protection against discrimination especially in the 1990s by an incremental process of claims being brought in the ECHR, and the EU, prior to incorporation of the Convention into directly applicable law here. Again I need not go into details of that case law.

19. The 2004 Act provides a means whereby a person can obtain a re-issued birth certificate showing their acquired gender (a term with which some would take issue, where they have experienced a particular, fixed, sense of gender since birth rather than feeling they have 'acquired' one later, but the context is specifically a 'legally' acquired gender, so the term is to be understood in that technical sense). I need not go into the legal process, and I am aware that in the public domain there is discussion of change to what evidence and so forth is required but that is not relevant to this decision.

20. Changes in medical practice widely publicised mean that transgendered people are not said to have a condition called 'gender identity disorder' which was a term previously included in the Diagnostic and Statistical Manual. The approach echoes the way in which 'homosexuality' was de-listed as a form of medical disorder in the past. Medical advisors still sometimes assist some gay and lesbian people if they need advice or support as with any other person[1] and likewise sometimes a person (child or not) seeks assistance from professionals (medical and otherwise) in their gender transition, but sometimes not.

21. The difference between cisgendered and transgendered people therefore is no longer one of 'health versus illness' but is about the variety of ways in which people experience and express their gender, if any, for themselves. It follows that a name change suggestive of gender reassignment therefore no more implies a need for a doctor in a long coat running over the fields than it does a similarly clothed priest, to echo Larkin's wonderful poem.

22. I was informed in the course of preparing this decision that there have been court users (parents I assume) who have complained and alleged discrimination by the court on the basis of their child's transgendered status because they have been asked by the court for medical evidence or information about the child, before the court has been willing approve the name change Deed. There are no provisions in the 1994 Regulations requiring such evidence.

23. An important further provision of the 2004 Act is section 22. It creates criminal offences in relation to the disclosure of the fact that a person is of an acquired gender under that Act. I shall simply call that 'outing' which I think by now is a term judges and the public all understand. It is (for example) a defence if the person who is 'outed' has consented, or if the 'outing' is done under a court order or pursuant to a relevant statute permitting it.

24. In parallel there is a system to enable re-issued birth certificates to be obtained from the Register and there are also various special protections created under other enactments which for example protect National Insurance Records against disproportionate access or disclosure and by which disclosure and barring checks such as for employment can be conducted properly

[1] When someone wishes to change their name from Jane to John, one does not ask whether a doctor agrees with their choice of name or whether there is a 'medical' need for it, any more than one would ask a girl or woman changing her names to "Anne Lister" (or conversely a boy or man to "Oscar Wilde") in honour of a same sex-oriented role model from history, may be in need of medical advice or assistance. (Obviously if issues of legal *capacity* arise, which is a different matter, medical evidence may be needed but the law presumes capacity, absent contrary evidence).

and fully for transgendered people under all previous names and genders but without improper disclosure to prospective employers.

Children Act 1989

25. The 1994 Regulations post-date the Children Act 1989 which came into force in the early 1990s. By s. 1(1) of the 1989 Act, when a court determines any question with respect to the upbringing of a child, the child's welfare is the paramount consideration. Parental Responsibility (PR) (as far as affects these decisions: there are of course other routes to PR) is held by the parents where they were married or civilly partnered at the time of the child's birth (or treatment such as insemination in the case of civil partners). Where they were not married or civilly partnered then the mother has PR and the other parent shall have it if they acquire it in accordance with the 1989 Act (for example by being registered in accordance with the Births and Deaths Registration Act 1953). (1989 Act, s.2(1), 2(2), and s.4). Where a child arrangements order is in force with respect to a child, no person may cause the child to be known by a new surname; without either the written consent of every person who has parental responsibility for the child or the leave of the court (s.13).

26. At the time the 1994 Regulations were enacted even the 1989 Act had had little time to reveal its impact or to develop a great deal of case law, let alone in relation to reassignment of gender by children[2]. It would be fair to say that between 1994 and today there has been a vast change of approach to transgendered, and more recently to non-binary and other gender variant, people. That is still evolving legally.

The publication of name changes on the internet and elsewhere by the Court

27. The upshot of the above is that today there is a set of protections in place to afford some prospect to transgendered people that their privacy will be respected and those arose as a result of a long period of gradual law reform via courts and legislation.

28. However the current position in respect of formal Deeds is that the enrolment of a Deed is very public and leads to publication of the child's new and old names on the internet by the Court office, by way of publication of a notice in the London Gazette.

29. The internet enables easy search for people and makes it very easy to identify that a child such as Child W was formerly known as X and was from a particular date known as Y. Enrolling a name change Deed to all intents and purposes makes permanently public the name change and will in many instances therefore amount to what will later be taken as disclosure of a change of social or legal gender, whether by child or adult. In other words it 'outs' them.

30. In the course of preparing this decision I was informed by staff that on at least one occasion an adult transperson whose name had been changed as a child, using the Deed Poll process, complained and was upset about the fact, which they had by then discovered too late, that they been 'outed' by way of publication at the time their parents had changed the child's name. I understand staff have passed on such concerns as and when they have arisen.

[2] The regulations were amended after the advent of civil partnerships to refer to civil partnerships alongside marriage. See the Enrolment of Deeds (Name Change) Regulations 2005, SI 2005/2056.

31. Notably nowhere in the relevant court forms relating to Deeds of name change is there any requirement for the wishes of the child to be stated specifically, and nor is there any form published for the child to give their own consent.

32. A guidance note (LOC019) available to those enrolling Deeds says *"Enrolling a Deed Poll provides a public record of a person's name as the details of the name change are published in the London Gazette online. Deed Polls that have been enrolled at the Royal Courts of Justice in London remain with us for five years. After which, they can be found at the National Archives."* However contradictorily the National Archives website states that Deeds after the end of 2003 are held by this court, and not the archive[3]. The matter is unclear, as is the extent to which there is scope for archived Deeds to be restricted in any way once in the National Archive.

33. A parent who reads the Guidance note is thus presumed to be aware of the position in terms of publishing of the Deed but it may be a counsel of perfection to expect parents (not necessarily themselves transgendered), to be fully aware of the possible implications later in life for the child in terms of privacy protections and life chances. They may also be in a difficult position in balancing those impairments later in life against the need to (say) obtain proper school examination certificates now. Parents and children are arguably caught between a rock and a hard place leaving the family with a choice between incorrect exam certificates and a loss of privacy.

34. The legal underpinning of the publication of enrolled Deeds is reg. 7 of the 1994 Regulations which states *"Upon enrolment the deed poll shall be advertised in the London Gazette by the clerk in charge for the time being of the Filing and Record Department at the Central Office of the Supreme Court.".* It provides for no exceptions, but it does not state the details as to exactly what form the publication must take.

35. In practice the court staff have been using a form (LOC026) which supplies the full old and new names of the minor and date of the Deed (but not the address of the minor), and that is then what is published.

36. Parents and children considering using the Deed Poll process should carefully consider whether the public nature of the process – even with the slight modification which I make below in these applications - is in the best interests of the child. There are other, more private ways to change a name such as by non-enrolled Deed or Statutory Declaration. It would not be unreasonable in my view for a Master in some instances to request information from parents as to why in any given case it is in the child's best interests to use the public process, even where the remainder of the application is in good order technically.

The public Deed Poll Process as it applies to the Children in this judgment.

Child W – Age 15

37. I have set out above some points about the legal protection afforded to transgendered people so as to provide the context in which I now come to consider the applications before me, in respect of a child who for this judgment is referred to only as "Child W".

38. It may be safely presumed that Child W's application is fairly typical of many before the court, as are the others considered here.

[3] https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/changes-of-name/

39. The application before me as to Child W uses an application form. It bears a reference 'LOC' with a number, and various pages appear to carry revision dates between 2012 and 2015 and different LOC numbers. They appear at a website published by the Government at https://www.gov.uk/government/publications/change-your-childs-name-forms-loc022-loc023-loc024-and-loc026

    The forms are as follows, adopting the descriptions from the website:

    - "Form LOC022 (the change of name deed for a minor, also known as the 'deed poll') ,
    - LOC023 (the 'affidavit of best interest', in which you state as a parent that your child's name change is for their benefit),
    - LOC024 (the statutory declaration for the name change of a minor)
    - LOC026 (the Notice for the London Gazette for the name change of a minor)."

40. Child W is aged 15. Their proposed new name is stated in full (the forenames are all what one might call conventional 'male' forenames). It states the 'old' name which is an equally conventionally 'female' set of names. I should say that in making that observation I am not implying that in law there is any sense in which men or women, or people identifying in other ways should adopt particular 'types' of name, or that the law has anything at all to say about that in a common law jurisdiction such as ours. In this case the context is that the application itself specifically identifies that the child is changing gender from female to male and that that is the reason for the name changes to each of Child W's forenames.

41. In any event whatever may be the position in law, the press and many members of the public will regard certain names as 'female' names and others as 'male names' so that in practical terms a child who changes names from 'male' to 'female' is likely to be assumed to have reassigned their gender (in W's case, a correct assumption).

42. The form then continues with particulars of nationality and a declaration on behalf of Child W that they relinquish their old name and adopt the new one. The Deed is signed by both parents. There are two witnesses.

43. Child W neither signs nor gives evidence themselves in the application. There is no requirement in the Regulations for that to be provided in the case of a child under 16 (which I admit I find troublesome since the wishes of a child of 14 or 15 cannot be assumed to be irrelevant). W is aged 15 years so is thus not involved in signalling their consent or wishes unless those happen to be stated by the parents. (Although the Regulations of 1994 generally treat children as if they are the applicants, reg. 6 disapplies the requirement for the applicant to sign the documentation if they are under 16).

44. There is an affidavit of interest, again in a standard form. That is signed by both parents. It discloses marital status and whether Child W is the child of one or both parents, and is duly sworn.

45. As to the best interests of Child W it asserts, per the standard form used by the Court, only that "*I submit that the Deed Poll of the minor is in their benefit and accordingly I ask that the application to enrol the said Deed Poll be granted*". There is small box to state the reason for the change of name and in the case of Child W it is stated, as is commonplace in these Deeds, "*Change of gender (female to male)*".

46. There is a Statutory Declaration by which a third party witness identifies Child W and indicates how long they have known them and confirms the genuineness a passport and a birth certificate in this case for the child. It confirms the due execution of the Deed and confirms the parents' details.

47. In this case unusually I have also been provided with a State National Health Service (NHS) General Practitioner's letter which states that, in that person's opinion the change of 'gender/name change' is in their best interests and provides some information about some medical services they are receiving to assist them. This appears to have been filed at the court's direction because I see a letter from the court staff on file to the parents in which the court rejects the application on 18/11/19, and the reason is said to be that a Master has stated '*they would like you to obtain independent confirmation from the GP/treatment medical facilities that gender/name change is in the best interests of the minor*'.

48. It is important to note of course that a name change does not operate to reassign the legal gender of any person even though it has social implications which may be taken to suggest gender reassignment.

49. In terms of disposing of this application, in my judgment the publication of full details of the new and old names side by side on the internet and in the London Gazette would be a disproportionate interference with the Art. 8 rights to privacy of the child, and would seriously interfere with the child's later prospects of protection under the Gender Recognition Act 2004 against being 'outed' in the event that they follow the Gender Recognition Act process later in life.

50. I must interpret the 1994 Regulations as far as possible compatibly with the Convention. Regulation 7 of the 1994 Regulations does not prescribe a form for publication of the enrolled deed and nor does it mandate that the old and new names must be published in all circumstances. As things stand the address details of minors are not included in the advertisements (which I think is a local practice arguably not itself being 'accessible' law) and in my judgment Reg. 7 must now be applied so that **in the case of Child W (and F, see below) only (a) the date of the Deed and (b) the surname but not the forenames of the child (new or old) should be included.** The advertisement in that form provides enough information for authorities and others seeking to combat fraud to be able to seek the court's permission to access the full details if there is a proper reason thereby balancing the child's rights and interests with a very limited degree of intrusion into privacy due to the legitimate need to combat fraud. **Further, the court file must be marked Private and may be inspected only with the court's permission. The family must be informed of the content of this judgment especially in relation to the privacy matters which I have endeavoured to deal with.**

51. None of the applicants here are adults but it may well be that much the same approach might be taken for them since the right to privacy and the rights under the 2004 Act are not confined to children.

52. So that the availability of protections against 'outing' is rendered accessible for the purposes of Convention law it seems to me (but is not a matter for my decision) that any future published guidance should make the existence of such protections plain and that the form of advertisement in the Gazette, presently LOC026, needs to make provision for dealing with circumstances where gender reassignment is involved.

53. I note that the published guidance indicates that deeds are retained for 5 years at court (where access to them could be controlled by way of application) but thereafter they are lodged at the National Archive.

54. In that event, this Deed would become (and in other cases will now have become) fully public via the archive. In the case of Child W that lodgement in the National Archive would be a few years away but would nonetheless 'out' them in adulthood. Lodgement in the archive is not specifically required by the Regulations. **I therefore direct that for Child W in the first instance (and Child F, see below) as an interim step the Deed must be retained at court and not released to the national archive on a public basis until such time as the relevant authorities have considered the proper course in relation to access and storage in such cases.**

Child F - Age 17

55. Child F's application is signed by both parents on the basis they have PR for the child. The reason stated in the affidavit of best interest is that the child no longer identifies as female.

56. No birth certificate is provided, which would be problematic if this were to be a case (for example) where a father and mother were not married or civilly partnered at the date of birth and the child were under 16, since PR would have had to be acquired by the father such as by registration under the 1953 Act.

57. I note, thanks to staff informing me, that the Guidance Note LOC019 issued by the Government indicates that a copy passport OR birth certificate must be provided[4], and does not draw attention to the need for proof of PR of any of the applicants in some instances, which could readily be shown by including a birth certificate showing registration of (say) the father.

58. By regulation 8(4) of the 1994 Regulations it is provided that *"(4) If the child has attained the age of 16, the deed poll must, except in the case of a person mentioned in paragraph (2)[5], be executed by a person having parental responsibility for the child and be endorsed with the child's consent signed in both his old and new names and duly witnessed."*

59. In this instance Child F has **NOT** provided the signature etc required by the Regulations. Perhaps that is not surprising since:

    (a) there is no form made available to the parents or child which provides for that; and

    (b) the Guidance note LOC019 states vaguely only that *"The court will also require permission from minors between the age of 16-18, that they are aware and give consent to the name change."*

60. In my judgment Child F's application must be referred back to the family so that the proper approval by F can be sought as set out in Regulation 8(4). That is necessary to comply with the law and ensure there is confirmation of informed consent and confirmation of the child's wishes. The family must be informed of the content of this judgment especially in relation to the privacy matters which I have endeavoured to deal with.

[4] In this respect the Guidance is consistent with the Regs, see reg. 3.

[5] (2) relates to married or civilly partnered children over 16 years old.

61. Thereafter if the Deed is approved, the procedure as to publication and storage shall be as in the case of Child W.

62. Since there is no form for showing the consent of a child over 16 years old, and anecdotally I cannot recall seeing the consent of such children having been obtained (nor can staff), and since the guidance is arguably vague, it may very well be the case that there are other enrolled and published Deeds for Children over 16 which were enrolled and published without the evidenced consent of the child as required by Reg. 8(4), whether gender reassignment was involved or not. I am informed by a colleague that in none of the applications for children over 16 has she seen the consent of the child being indicated formally.

Children C and D - Ages 8 and 4

63. These cases do not arise from gender reassignment. In the cases of these children only one parent has signed and that is the mother. The applications are for a change of surname only. The affidavit of best interests states that the father was convicted of sexual assaults and other offences against the children of the family and has had no contact for 3 years. It is stated that the father has PR and a birth certificate is provided. There is no formal evidence of the father's conviction or what efforts if any have been made to confirm consent by him.

64. In this case, regulation 8(5)(iii) is applicable. By that regulation the affidavit in support must state that that (i) the application is submitted by all persons having parental responsibility for the child; or (ii) that it is submitted by one person having parental responsibility for the child with the consent of every other such person; or **(iii) that it is submitted by one person having parental responsibility for the child without the consent of every other such person, or by some other person whose name and capacity are given, for reasons set out in the affidavit**.

65. The same regulation then indicates that the application must also be supported by such evidence as the Master of the Rolls may require in the particular circumstances of the case.

66. I am asked by staff whether to require proof of the conviction to be supplied. It seems to me that the application conforms to the requirements of reg. 8(5)(iii), and there is no direction of which I am aware by which the Master of the Rolls has required in this case or cases like it that any other evidence is to be provided beyond the sworn affidavit.

67. Practice Direction 5A comes into play however. I have included the relevant part of it as an annex to this decision. The most relevant part is para. 6.3(iii) (I have used bold italic text to emphasise the part which is most relevant here):

> "Where an application is made to the Central Office by a person who has not been given parental responsibility for a child by any order of the High Court, County Court or Family Proceedings Court for the enrolment of a Deed Poll to change the surname of the child ... ***permission of the Court to enrol the Deed will be granted*** if the consent in writing of every person having parental responsibility is produced or ***if* the person** (or, if more than one, persons) ***having parental responsibility is dead or overseas or despite the exercise of reasonable diligence it has not been possible to find him or her for other good reason.*"**

68. Since in C and D's cases the mother has PR by virtue of being the birth mother, she is therefore a person who has 'not been given' PR by an order of the court. It is with respect an awkward form of words (see the issues listed at the end of this decision which staff raised with me as to parents' understanding of PR), since a lay person may read it as meaning that it applies to applications by persons who lack PR altogether and are making an application with consent of all

people who do. Nonetheless it applies here. Based simply on the regulations and the PD then one would grant the application provided it is shown that the mother has exercised reasonable diligence but it has not been possible to find the father 'for good reason'.

69. Here the application gives no evidence of efforts to 'find' the father so as to obtain consent. **For that reason I shall adjourn the application so that reasonable diligence can be shown.** However let us suppose that I adjourn the application so that evidence can be produced that reasonable diligence has been used to find him, with no success, and the matter then comes back to me. On the face of it the procedure has been followed and the PD anticipates that I would grant the application to change the child's surname.

70. However in my judgment to approve a change of surname of two young children on the basis of a unilateral Deed Poll application in the absence of consent by a person (here the father) having PR for the child (as he appears to do, given that he is registered as father and I have seen no family court orders affecting exercise by him of PR) would, given the sparseness of the evidence lodged in a Deed Poll application, be to elevate the status of Reg. 8(5)(iii) and PD 5A para 6.3(iii) beyond what they, and s.1(1) of the 1989 Act can bear. Requesting proof of conviction and proof that 'reasonable diligence' has been used to find the father (who, nb, is not in fact alleged to be untraceable in the application) would not be a substitute for consideration by a Family Court. I say that, despite having regard to the presumption in s.1(2) of the Act that delay is likely to prejudice the welfare of the child.

71. In my judgment it is therefore not appropriate to approve the enrolment of the deeds for children C and D at present and I also adjourn the applications **until such time as a Family Court has considered C and D's interests in the context of a Specific Issue order application** under s.8 of the Children Act 1989 (or a s.13 order instead of a s.8 order if, which I do not know, there is in force a Child Arrangements Order falling within s13(4)) and until the provision for demonstrating 'due diligence' in trying to 'find' the father has been satisfied (if indeed finding him is a difficulty, which I do not know). **The family must be informed of the content of this judgment.**

72. Referring to jurisprudence of the family courts, I note that for example Butler-Sloss LJ as she then was, in Re Q, Re A, Re B (change of name) [1999] 2 FLR 930 at 933F, applying Dawson v Wearmouth [1999] UKHL 18 said (and see also Re W (Children) [2013] EWCA Civ 1488):

"9. The present position, in summary, would appear to be as follows:

> "(a) If parents are married, they both have the power and the duty to register their child's names.
>
> (b) If they are not married the mother has the sole duty and power to do so.
>
> (c) After registration of the child's names, the grant of a residence order[6] obliges any person wishing to change the surname to obtain the leave of the court or the written consent of all those who have parental responsibility.

[6] Now called a Child Arrangements Order (see s.8 and s.13 of the 1989 Act).

(d) In the absence of a residence order, the person wishing to change the surname from the registered name ought to obtain the relevant written consent or the leave of the court by making an application for a specific issue order.

(e) On any application, the welfare of the child is paramount and the judge must have regard to the s.1(3) criteria.

(f) Among the factors to which the court should have regard is 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. The weight to be given to it by the court will depend upon the other relevant factors or valid countervailing reasons which may tip the balance the other way.

(g) The relevant considerations should include factors which may arise in the future as well as the present situation.

(h) 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.

(i) The reasons for an earlier unilateral decision to change a child's name may be relevant.

(j) Any changes of circumstances of the child since the original registration may be relevant.

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

(l) 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 existence or absence of parental responsibility are all relevant factors to take into account."

Summary

73. In the cases of children W and F I have made directions by which I construe the relevant part of the 1994 Regulations compatibly with the Convention so as to permit the advertised form of the deed to state only the surname of the child and also so that the deed will be retained in court and not lodged at the national archive until such time as the relevant authorities (presumably including the Master of the Rolls) has considered the position. I adjourned the

applications for C and D until such time as a Family Court has considered whether to make a Specific Issue order (or s.13 Order) and the requirement to show reasonable diligence in locating the father is shown.

74. In my judgment it would be an unusual case in which a Deed Poll application would be approved where no Specific Issue order or s.13 order has been obtained in cases where the other parent does not consent but has PR, even if that parent has not been located after reasonable diligence, given the family court case law especially where a change of surname relative to the birth certificate is involved.

75. Similarly if an application discloses welfare issues as part of the basis for the application, such as DNA tests or irregular contact with the other parent, that appears to me to be all the more reason for the family court to be the destination in terms, at least, of a Specific Issue order application or s.13 order as a prior step to obtaining approval for a Deed Poll application by one parent without the other's consent.

76. QB Masters are not a part of the Division of the High Court to which applications under the Children Act 1989 are allocated (and unlike Puisne judges, masters cannot exercise jurisdiction which is allocated to other Divisions), so that other than applying s.1(1) and 1(2) of the 1989 Act they cannot venture into for example making s.8 orders. Yet in this Division we see welfare issues referred to, sometimes obliquely and sometimes less so, in Deed Poll applications (and collaterally one sometimes has concerns in the course of civil cases), and there have been instances where Masters have felt the need to consider the best interests of the child further than the Regulations on the face of it require such as where a Master seeks more information about aspects of the basis for the change of name, in the light of what is said in the application.

77. I recommend that the position generally as to Deed Poll applications for minors be drawn to the attention of the Master of the Rolls, as the PD anticipates, since it appears to me that the forms and guidance currently in use, and the Practice Direction governing enrolment of such Deeds now needs close attention both to ensure adherence to modern diversity standards and to ensure consistency between regulations, PD, forms and guidance, and also clearer communication of procedures to applicants.

78. This judgment cannot deal with wider situations well beyond the applications before the court but I shall set out issues raised with me below.

79. Staff have informed me of the following examples of concerns which they have notified before, but which they raised with me specifically in the course of this judgment:

    (i) They correctly follow the procedure to obtain an affidavit under reg. 8(5)(iii) where the consent of all persons with PR cannot be obtained, but it appears this does make the process cumbersome by leading to returned applications and delay. It would be preferable if guidance and forms etc ensured that the process operated to ensure as far as possible that returns can be avoided by having the evidence in order first. However in view of the family law jurisprudence referred to above it appears probable that in many instances, an application for a Specific Issue or s.13 order is likely to be required.

(ii) They frequently encounter disagreements between staff and parents over the meaning of Parental Responsibility and how it is obtained, etc. It is not a term well understood by many parents and it would be preferable if Guidance could be clearer so that staff do not bear the brunt.

(iii) There is confusion among parents about the role which Family Court orders play. The way in which PD 5A para 6.3 is written perhaps does not help. I am told that parents submit a Deed application despite having some form of family court order, and that there is inconsistency of approach by external agencies as to whether in the case where permission has been given by a court to change a child's name, a Deed is still needed. Having to follow the Deed process, even after a Family Court case, is leading to delay and complaints to court staff that they are being told they have to enrol Deeds as well. I note that there is no clear part of the process in which the applicant is required to inform the court whether (and if so what) orders of the Family Court have been made. From the judicial perspective one sees, eg, references to DNA tests and is in the dark as to the true picture given the limited nature of the procedure.

(iv) Staff are receiving high levels of complaints from parents about a lack of clear or accessible guidance, inconsistent procedure and so forth where children are changing name due to gender reassignment. There have been allegations of discrimination to staff where Masters have required medical evidence, and also complaints about the delay which such requests impose. I have mentioned above the case which I was told about, of a now adult transperson who complained due to having been 'outed' via the publication of the Deed when he or she was a child. I very much doubt there is wide appreciation of the public nature of the process despite it being, strictly, mentioned in Guidance, and I have noted in any event that if bodies such as exam boards require enrolled deeds the parents and child are in a difficult position.

(v) I do not have full details but a further issue raised with me is that judges are I am told asking for further evidence or for other requirements to be fulfilled which the parents find they cannot comply with in terms of information. Applications I am told are then rejected and there are then complaints and requests for compensation.

(vi) The guidance pack at present requests a passport or birth certificate to register a minor deed poll but court staff generally require a full birth certificate with parent's details as evidence of parental responsibility for enrolment.

MASTER VICTORIA MCCLOUD

11/2/20

ANNEX – PD5A paras. 6.1-6.3

Enrolment of deeds and other documents

6.1

(1) Any deed or document which by virtue of any enactment is required or authorised to be enrolled in the Senior Courts may be enrolled in the Central Office of the High Court.

(2) Attention is drawn to the Enrolment of Deeds (Change of Name) Regulations 1994 which are reproduced in the Appendix to this Practice Direction.

6.2 The following paragraph of the Practice Direction describes the practice to be followed in any case in which a child's name is to be changed and to which the 1994 Regulations apply.

6.3

(1) Where a person has by any order of the High Court, County Court or Family Proceedings Court been given parental responsibility for a child and applies to the Central Office, Filing Department, for the enrolment of a Deed Poll to change the surname (family name) of a child who is under the age of 18 years (unless a child who is or has been married or has formed a civil partnership), the application must be supported by the production of the consent in writing of every other person having parental responsibility.

(2) In the absence of that consent, the application will be adjourned generally unless and until permission is given in the proceedings, in which the said order was made, to change the surname of the child and the permission is produced to the Central Office.

(3) Where an application is made to the Central Office by a person who has not been given parental responsibility for a child by any order of the High Court, County Court or Family Proceedings Court for the enrolment of a Deed Poll to change the surname of the child who is under the age of 18 years (unless the child is or has been married or has formed a civil partnership), permission of the Court to enrol the Deed will be granted if the consent in writing of every person having parental responsibility is produced or if the person (or, if more than one, persons) having parental responsibility is dead or overseas or despite the exercise of reasonable diligence it has not been possible to find him or her for other good reason.

(4) In cases of doubt the Senior Master or, in his absence, the Practice Master will refer the matter to the Master of the Rolls.

(5) In the absence of any of the conditions specified above the Senior Master or the Master of the Rolls, as the case may be, may refer the matter to the Official Solicitor for investigation and report.