



Neutral Citation Number: [2024] EWHC 1639 (Fam)

Case No: LS23C00024

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SITTING AT TEESSIDE

Date: 26/06/2024

Before:

MR JUSTICE POOLE

Re BC (Child in Care: Change of Forename and Surname)

Between:

BC

Applicant

- and -

(1) A LOCAL AUTHORITY

(2) A MOTHER

(3) A FATHER

Respondents

Guy Swiffen (instructed by **Chivers Solicitors**) for the **Appellant**
Richard Harrington (instructed by the **Local Authority**) for the **First Respondent**
The **Second Respondent** in person
The **Third Respondent** not appearing

Hearing dates: 17 June 2024

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Poole:

Introduction

1. BC is a 15 year old girl, soon to be 16, who is a child subject to a care order, placed by the First Respondent Local Authority in long term foster care after police officers arrested her father, the Third Respondent, in 2021, and charged him with sexual assault including rape of BC. In the family public law proceedings that followed, HHJ Shelton made findings that BC's allegations against her father were true. A final care order was made on 24 June 2022. BC has been living with her current foster carers for over two and a half years. She is settled in her foster care placement and is excelling at school. She has no contact with her father but has face to face supervised contact with her mother, the Second Respondent, once ever half term and weekly indirect contact. She has three brothers. Two are now adults and one is younger than her. She usually sees her younger brother, D, and sometimes one of her older brothers at the face to face contact with her mother. BC wishes to become included in future family gatherings, but not to include her father.
2. On 27 September 2023 BC made an application for an order permitting her to change her forename to two forenames, JK, and her surname to L. The names she has chosen have no wider significance: they do not relate to her mother's maiden name or any other family names, for example. She has chosen the names because they are attractive to her and the actual initials of her new name would be of significance to her in relation to her recovery from the trauma inflicted by her father. I have anonymised her current and planned names.
3. BC is competent to instruct a solicitor. She has made a detailed statement explaining her position. In it she explains that she wants to change her forename and surname because both have a strong association with her father. She shares one name in common with her father, and her other name is a female version of his name. She has wanted to change her names since first expressing the wish to do so in November 2021. She has been constant in her expressed wish to change her names and as to the names she wishes to have. There is no dispute that she is competent to make the decision about changing her names.
4. The father has not engaged in these proceedings. The mother has engaged. She appeared in person at the hearing and has made a witness statement. She opposes her daughter's application and expresses the view that if BC wants to change her name, she should choose her mother's surname, which is different from the father's surname. B does not want to change her name to her mother's surname.
5. The Local Authority opposes the application. It is concerned that BC's actions concerning her names do not match her expressed wishes, that the change of names will be detrimental to her relationship with her family, that she is vulnerable to the impact of others asking her why she has changed her names, and that she will regret the decision.

6. I have not heard oral evidence but have been provided with a bundle of written evidence that includes the findings of fact judgment in the public law proceedings, evidence from the Guardian and a psychiatric report in those proceedings, evidence from the Applicant's family, from BC herself, from the Deputy Safeguarding Lead at her school, and from the social worker.

Background

7. In 2021, BC was living with her parents and three brothers when, at the age of 12 she contacted Childline to report that her father had sexually assaulted her. It was her third call to Childline in a period of about six weeks. Childline contacted the police who attended the family home and arrested the father. He was charged with rape of his daughter and granted bail. BC was taken to a place of safety and the Local Authority issued care proceedings. An Interim Care Order was made. In April 2022 HHJ Shelton conducted the final hearing and made findings of fact. The evidence before him was that her father had slept in the same bed with BC since she was about 6 to 7 years old. The Judge made findings which I need not repeat in detail but they included that:
 - i) The father had sexually and emotionally abused BC from March 2020.
 - ii) BC's accounts to Childline and to the police were true.
 - iii) When sharing a bed with BC, the father had sexually assaulted her, including by raping her.
 - iv) BC had suffered emotional harm as a result of the sexual abuse including having suicidal thoughts and self-harming.
8. BC was placed in foster care. She remains with the same foster carers.
9. BC has provided a powerful written statement to the court. She says:

3. I settled on the name [JKL] in November 2021. I expressed at the time to the professionals who were working with me, a desire to change my name. The advice I was given was to wait until I became settled in foster care and the care proceedings had concluded. I accepted that the abuse I suffered has had a significant impact on me emotionally. I also accepted the view of professionals at the time such as my social worker who said that it wouldn't have been right to change my name. However, I have stuck to this name for over three years, and I believe it to be part of me. It is now part of my identity and a part of who I am. My desire to change my name arose from being hurt by the people I trusted most. I really don't want to be associated with or have my identity linked to my father, who betrayed me in such a cruel way.

...

4. I was disappointed that I had to bring this application to Court as it couldn't be agreed by my family and professionals. I wrote

an entire double page, to the Social Worker as to why I feel my name should be changed and how I would feel if my name is not changed. I'm happy for her to show this to the Court. I am disappointed that even after the abuse I have suffered, people cannot understand why I ask that my name is changed. I am particularly upset about the view taken by [the Local Authority]. They applied to Court for a care order so they could keep me safe and make decisions in my welfare. I feel on this issue they have let me down and do not have my best interests at heart.

5. The people who I care about most, in and out of school, already know and for the most part call me J. I have thought about what would happen if I change my name when people that don't already know find out, yes they will be curious but they will just have to accept it. They are only people that don't know me, and they are temporary in my life. All my friends and the trusted adults in my life already know the things that have happened to me. It's only students that aren't my friends that don't really know at my school. I only have one year left in school after this in any event and if they asked why I changed my name then I will tell them.

6. J is part of my identity, and if you ask me, it is already my name. My name should not be something that a bunch of people, who barely know me have decided, it should be something I've decided. The legal age for someone not in foster care to change their name is 16. I turn 16 this year. I am not too young to decide this. I have decided this, and I have been dead set on this since I was 13. If I had any doubt that my name shouldn't be J and should be B, then I would have already felt it. I also know that I can change my name back. If the Court doesn't grant permission to me, then I will change my name when I am 18 anyway. I feel it is better for my name to be changed now, so that when I move onto college and university my name is legally formalised and the people I encounter in my life going forward will only know me as that. It will be a fresh start for me.

7. I considered that my name is an anchor that weighs me down and ties me to the man that made me hit rock bottom and not want to live anymore. I can't even imagine a future of not being called J, because for me the name BC, has me connected by one of the most important ways to a man that I've come to fear so much. This name is making me be associated to a man I am scared of. I'm mature enough to make this decision. You can see this through my school work and home life. I understand the consequences of changing my name, I know it will change my identity. The reality is that my identity changed when my father decided to abuse me.

8. A name change will make me feel like I am free of my father. I can finally say that I'm not his daughter and that I don't belong

to him in any way. I have already waited three years and waiting two more years will just be unbearable. I am disappointed that so many people don't understand the importance and significance of the reasons why I am changing my name. You can't even comprehend what it's like being owned by the man that you fear the most. If I can't change my name the impact on my mental health will be significant.”

9. I accept and understand that my family are unlikely to ever accept my name change. I know that my mum and brothers will not call me J. I'm willing to accept that. I'm just asking people to empathise with me for what it's like being called by the name that I have such negative connotations with. I have done my best to move on in life and my name is holding me back.”

10. The Deputy Safeguarding Lead at BC's school has provided a witness statement dated May 2024. In it she says:

BC started to attend school when she came into foster care in 2021. [She] was tearful, timid, and extremely nervous. She struggled to go into lessons without considerable support. She would access pastoral support around four times a day. Now BC has made amazing progress. She is confident, conscientious and a caring young lady. There has been such a huge change. BC is an articulate and studious young person. She is an absolute delight to teach within school and is thought of very highly by the teaching staff. She is on course to receive very good GCSE's across all subjects. [She] undertakes several roles within school, such as helping year seven pupils read ... She is very responsible... BC is extremely focused and mature for her age. She has a clear understanding of the issues which are taking place in her life. She will often remind me of meetings. BC likes to fully participate in meetings about her care and make her views known.

BC has maintained her wish to change her name since she started at school in 2021. I was aware that she wished to change her name to J. BC has a small friendship group in school, but they are very close. I'm aware that her friendship group has been calling her J for around the last six months. BC has also asked me to call her J. I have absolutely no worries about BC's capacity to make a decision to change her name. She has clearly thought it through, and I believe she has good reasons for wishing to change her name. I am aware that her name is associated to her father's.

6. School is happy to support BC in her name change however they can. We are happy for BC to trial changing her first name in school, if she so wishes. We were going to implement the

name change after the Easter break. However, BC preferred to wait for the Court, to seek permission from the Judge, before making the change as she knew it was not agreed by the Social Worker and family. BC is now thinking about whether she wishes to trial her name change within school after the next half term. BC and I have discussed how her name change would be approached in school. We will say [agreed plan set out].

7. I disagree that BC would have to have discussions with other students and staff about her name change. There would be no need for this. The people within the teaching staff at school, who need to know have a good understanding of why BC is in care. The staff are very protective and will make sure that BC is cared for within school.

8. I would also like to add that as a Secondary School we deal with many students who use assumed names in school. The most obvious example of this, is transgender students. School has experience of supporting pupils on this issue for around the last 12-13 years. In my experience when a young person changes their name in school, it is generally accepted by the other students without too much questioning. I do not think it would have any impact on BC from a school position.

9. BC's view about changing her name has been unwavering. I fully support BC in her wish to change her name.”

11. Mr Swiffen for BC told me that in the earlier care proceedings, BC’s Guardian also supported BC to change her name to JKL.
12. BC has lived with the same foster carers since 2021. The social worker reports the views of one of BC’s foster carers, E:

“E spoke about how BC has put a lot of thought into the name change and has remained consistent with the name that she has wanted. E believes that changing BC’s name will help her to feel better emotionally and help to stop the memories of her father. E explained that it is important for BC to be supported in making her own decisions as she has not always been very confident. We discussed how BC cannot accept that her interests may change over time and the possibility that she may regret the name change. E agreed that this would be a possibility and BC may regret her decision in the future”.
13. BC has been receiving counselling for her complex trauma and the social worker obtained the views of the counsellor, F:

“I spoke with F ... who has been working with BC at the clinic for complex trauma. F was aware that BC wished to change her name but believed that this would be done through deed poll as previously there has been no mention of going to court for the name change. F spoke about how BC does not like speaking about sensitive issues but can understand why she does not want to keep her father’s name. F did not feel that she could comment on the name change but said that she thought using a preferred name for the time being and it would be best for BC to wait until she was eighteen to formally change her name.”

14. BC’s mother, the Second Respondent, opposes the application. She has provided a short statement and made submissions to the court. If BC changes her surname she would like her to change it to the mother’s surname. She says that BC was not named after her father but for different, religious reasons. She says that she hopes that she will be reunited with BC in the future. She says that all the family oppose BC changing her name.

i) In relation to the mother’s evidence I note that HHJ Shelton found:

“The mother failed to prioritise BC’s welfare owing to the following:

(a) allowed BC to share a bed with the father;

(b) withdrew her consent for BC to have a forensic intimate assessment on [date in 2021];

(c) having confirmed her belief in her daughter’s allegations on [date in 2021] allowed the father to return to the family home on [date in 2022]. She allowed this to happen without informing the local authority and believed she could safeguard D;

(d) failed to co-operate with either the local authority’s parenting assessment and Professor Beal’s psychological assessment.”

Unfortunately, there is evidence from BC that at one contact session her mother asked her privately not to give evidence against the father in his criminal proceedings.

15. The social worker’s notes of a discussion with one of BC’s elder brothers records that he did not think BC was mature enough to make the name changes, that her chosen names do not “suit her” and that he would find it “weird” for her to have a “separate” name. He considers that she would regret changing her names.

16. I have the full report of Professor Craig, Psychologist, who gave evidence in the care proceedings having examined BC. He saw BC in January 2022. Clearly, she has progressed very well in the intervening period but he reported that when he assessed

her, she was hypersensitive to feeling rejected and had difficulty trusting others. At that time BC wanted to have no contact with her family save for her younger brother, D.

17. The social worker has stated that she and the Local Authority oppose the application. She states that BC has not consistently asked to be called by her new name. She notes that BC's father's criminal trial on the charges of sexual assault including rape of BC begins later in 2024 and would roughly coincide with BC starting to use her new name if the application were granted. This will be a vulnerable time for BC. She is concerned that the name changes will draw unwanted attention to BC and generate some difficult questions from her peers. The social worker seems to be concerned that BC has overstated the effects on her of having her name. She states that the name change should be something to discuss in a therapeutic setting but that BC has not even begun to talk about her father's actions in therapy. There is concern that the name change will hinder the improving relations between BC and her mother and brothers. These are relationships that BC has said she wants to develop. It could be harmful to her if her name changes were to set that progress back.
18. BC's father's trial for her sexual assault and rape was due to take place in 2023 but was put back to the autumn of 2024. BC has given pre-recorded evidence when she was questioned. She will not be required to attend the trial. Her father denies the charges against him but I have the findings of the Family Court which I have referred to earlier.

Legal Framework

19. By Children Act 1989 ("CA 1989") s33(7)

“(7) While a care order is in force with respect to a child, no person may—

(a) 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.”

20. An adult can change their name by usage. Now, however, changing one's name by usage alone will not carry much weight with agencies such as the Passport Office or the DVLA. For an adult to change their name they should execute a deed poll. A deed poll is a declaration signed by two adult witnesses. Deeds poll can be enrolled which is a process governed by regulations involving notification in The Gazette and enrolment at the Royal Courts of Justice with the payment of a fee. In *D v B. (otherwise D.) (Surname: Birth Registration)* [1979] Fam 38; [1979] 1 All ER 92, the Court of Appeal considered the requirements for changing a name. Ormrod LJ giving the lead judgment referred to the Enrolment of Deeds (Change of Name) Regulations 1949 (now succeeded by Regulations of the same name dated 1994 as amended in 2005). He held:

“There are no regulations governing the execution of deeds poll. The 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 this case is not vitiated in any way by failure to comply with those enrolment regulations. It simply means that the deed cannot be enrolled.”

21. In *Re PC (change of Surname)* [1997] 2 FLR 730, Holman J surveyed the statutory provisions and case law on parental responsibility and name changes. He concluded:

“(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.

(iii) 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 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.

I repeat that none of these conclusions relate to a much older child, in particular over the age of 16, where the consent of that child may (I stress “may”, for I have not considered the point) be both necessary and sufficient.”

22. I note that the GOV.UK website states that you can change a child’s name (a child being someone under 18) by an enrolled or unenrolled deed poll, but that a 16 or 17 year old child can change their own name by making their own unenrolled deed poll. The Mental Capacity Act 2005 applies to 16 and 17 year olds as well as to adults. It provides that a person is assumed to have capacity unless otherwise proven. I have not been referred to and am unaware of any statutory provision that a 16 or 17 year old who is not subject to one of the orders set out below may or may not change their name without

the consent of those with parental responsibility, but it is clearly the convention, operating to allow people to change their names by unenrolled deed poll, that a 16 or 17 year old can do so without the consent of any person with parental responsibility or the leave of the court.

23. There are exceptions to this convention. As noted, CA 1989 s33(7) imposes a requirement “where a care order is in force with respect to a child” for the consent of “every person who has parental responsibility” or the leave of the court to be given before any person may cause a 16 to 17 year old to be known by a new surname. Similarly, by CA 1989 s13(1):

“Change of child’s name or removal from jurisdiction.

(1) Where a child arrangements order to which subsection (4) applies is in force with respect to a child, no person may—

(a) 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.”

...

(4) This subsection applies to a child arrangements order if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following—

(a) with whom the child concerned is to live, and

(b) when the child is to live with any person.”

And by CA 1989 s14C(3):

While a special guardianship order is in force with respect to a child, no person may—

(a) 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.”

24. Thus, a 16 or 17 year old may not cause their own surname to be changed without the consent of every person with parental responsibility or the leave of the court if they are the subject of a care order, child arrangements order with a “lives with” order, or a special guardianship order. Other 16 to 17 year olds may cause their own surname to be changed without consent or leave. They could do so by executing an unenrolled deed poll. The Enrolment of Deeds (Change of Name) Regulations 1994, as amended, prevent any deed poll executed by a child under the age of 18 being enrolled except by

someone with parental responsibility for the child (unless the child is a female aged at least 16 who is married). A child who is 16 or 17 has themselves to consent to the enrolment. But enrolment is not a pre-requisite for a formal change of name.

25. Changes of forename for children subject to care orders or those subject to relevant child arrangements orders or special guardianship orders are not expressly governed by CA 1989 ss33(7), 13(1), or 14C(3). For a child subject to a care order, CA 1989 s33(3) gives the Local Authority parental responsibility:

“33(3) While a care order is in force with respect to a child, the local authority designated by the order shall—

(a) have parental responsibility for the child; and

(b) have the power (subject to the following provisions of this section) to determine the extent to which —

(i) a parent, guardian or special guardian of the child; or

(ii) a person who by virtue of section 4A has parental responsibility for the child, may meet his parental responsibility for him.

(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare.”

26. The Local Authority may not use its powers under CA1989 s33(3)(b) to prevent a parent using their parental responsibility to change the forename of a child in the Local Authority’s care - *Re C (Children: Power to Choose Forenames)* [2016] EWCA Civ 374. In that case, in which the Local Authority sought to prevent a parent giving a certain forename to a child, the Court of Appeal held:

"[104] ... there is a small category of cases where, notwithstanding the local authority's powers under s 33(3)(b) of the CA 1989, the consequences of the exercise of a particular act of parental responsibility are so profound and have such an impact on either the child his or herself, and/or the Art 8 European Convention rights of those other parties who share parental responsibility with a local authority, that the matter must come before the court for its consideration and determination...

[105] ... there may be rare cases, where a local authority believes that the forename chosen by a parent, and by which he or she intends to register a child, goes beyond the unusual, bizarre, extreme or plain foolish, and instead gives the local authority reasonable cause to believe that by calling him or her that name he or she is likely to be caused significant harm. In those highly unusual circumstances, the proper route by which the local authority seek to ensure that the course they propose is necessary and in the child's interests is (as was held by Butler-Sloss LJ in

Re D, L, and LA supra) by putting the matter before the High Court by way of an application to invoke its inherent jurisdiction.”

27. In *Re C (Change of Forename: Child in Care)* [2023] EWHC 2813 (Fam), Cobb J held that the same process – invoking the inherent jurisdiction of the High Court – should be used by a Local Authority to apply itself to change the name of a child in its care. In both *Re C* cases, the Local Authority was effectively seeking to override the name that the parent in question had chosen for their child. The children in both cases were only months old.
28. In *Re C* [2023] Cobb J distilled the principles applicable on such applications by Local Authorities:

“26. In resolving this issue, the following authorities have been drawn to my attention: *Dawson v Wearmouth* [1999] 1 FLR 1167; *Re W, Re A, Re B (Change of Name)* [1999] 2 FLR 930; *Re M, T, P, K and B (Care: Change of Name)* [2000] 2 FLR 645; *Re H (Child's Name: First Name)* [2002] EWCA Civ 190, [2002] 1 FLR 973 (CA); *Re D, L and LA (Care: Change of Forename)* [2003] 1 FLR 339; *Re C* (citation above); and *Re B & C (Change of Names: Parental Responsibility; Evidence)* [2017] EWHC 3250 (Fam).

27. From these authorities, the following principles emerge of relevance to the facts in this case (i.e., where the Local Authority seeks the court's approval to change the forename of a child in care):

When will the court intervene under the inherent jurisdiction in respect of a forename change to a child in care?

i) This is likely to happen only rarely. Indeed, only in a "most extreme" case should the court exercise its power to prevent a parent from registering a child with the name chosen by that parent for the child (*Re C* at [3]);

ii) The issue of whether there is a power within the inherent jurisdiction to prevent a parent with parental responsibility from naming their child with a particular name is dependent on whether the court is satisfied that to allow such a name to be used would likely cause that child significant harm (*Re C* at [108-109]);

iii) Although "it will only rarely be the case", nonetheless "the giving of a particular name to a child [i.e., like 'Cyanide' in *Re C* for instance] can give a court reasonable cause to believe that, absent its intervention, the child in question is likely to suffer significant emotional harm" (*Re C* at [102]);

Welfare decision

iv) The changing of a name (surname or forename) is a matter of importance, and in determining whether or not a change should take place the court must first and foremost have regard to the welfare of the child; section 1(1) and section 1(3) CA 1989 therefore apply;

v) The decision (on an application to change a forename) is highly fact-specific;

Registration of names at birth

vi) Registration of a particular name 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 (*Re W, A, B*);

Surname / forename

vii) The principles to be applied to change of name cases are the same regardless of whether a proposed name change relates to a forename or a surname (*Re D, L and LA* (Care: Change of Forename), in this regard challenging the earlier view of Thorpe LJ in *Re H* (*Child's Name: First Name*):

"To change a child's name is to take a significant step in a child's life. Forename or surname, it seems to me, the principles are the same, in general. A child has roots. A child has names given to him or her by parents. The child has a right to those names and retains that right, as indeed, the parents have rights to retention of the name of the child which they chose. Those rights should not be set to one side, other than for good reasons.... Having said that, one has to recognise, in reality, that names do change. Children acquire nicknames and even nicknames sometimes take over from the name that they were given as their chosen name. Children do have diminutives and they may themselves, as they get older, prefer their third name to their first name and choose to be called by it." (*Re D, L and LA*) (Emphasis by underlining added).

viii) Put another way, forenames hold the same importance as surnames and the same principles should apply in considering and resolving any issue relating to a forename and surname:

"... forenames are used almost exclusively for all purposes, social and business, often, it would seem, entirely in the absence of surnames. Further the increase in blended families means that

it is by no longer the universal norm for a family living all together to share the same surname" (*Re C* at [50]);

"...forename is now every bit as important to that child, and his or her identity, as is his or her surname" (*Re C* at [51]).

Parental attitudes and attitudes of others

ix) The attitude and views of the individual parents and/or proposed carers are only relevant as far as they may affect the conduct of those persons and therefore indirectly affect the welfare of the child (*Dawson v Wearmouth*);

Link to the past

x) "The sharing of a forename with a parent or grandparent or bearing a forename which readily identifies a child as belonging to his or her particular religious or cultural background, can be a source of great pride to a child and give him or her an important sense of 'belonging' which will be invaluable throughout his or her life." (*Re C* at [40]);

Article 8

xi) Article 8 ECHR is engaged. It would be "a significant interference in the ECHR, Art 8 rights of a parent right in play – a right to private and family life to prevent them from giving the child the name of their choice" (*Re C* at [21]).

29. The Local Authority does not seek permission to change B's forename or surname, indeed it opposes the child's application to do so. Here, it is the child herself who makes the application for permission, an application that in two months' time she would not need to make if she were not subject to a care order (and not subject to a child arrangements order or special guardianship order). At 16 she could, if not restricted by the provisions of the CA 1989, apply to change both her forename and surname by unenrolled deed poll. Why does the law draw a distinction between 16 and 17 year old children who are the subject of a care, child arrangements, or special guardianship orders, and other young people of the same age?
30. A care order gives the Local Authority parental responsibility but the exercise of that parental responsibility might conflict with the wishes of others with parental responsibility. The same might apply to those given parental responsibility under a child arrangements lives with order or a Special Guardianship order. The statutory requirement to seek the leave of the court to change a surname in the absence of the agreement of every person with parental responsibility can be seen as a protection of the Art 8 rights of those with parental responsibility for the child. Likewise, the requirement identified by the Court of Appeal in *Re C* [2016] to apply for leave under the inherent jurisdiction to change the forename of a child subject to a care order was grounded on the importance of the decision and the protection of the Article 8 rights of

others with parental responsibility. In contrast, it is accepted procedure for a 16 or 17 year old who is not subject to a relevant CA 1989 order to change their forename and/or surname by deed poll without the consent of any person with parental responsibility. That acceptance seems to recognise that in this context the Article 8 rights of the young person always outweigh the Article 8 rights of anyone with parental responsibility. 16 and 17 year olds are presumed to have capacity to decide to change their names. The execution of a deed poll by a 16 or 17 year old requires the use of a certain form of words and the signatures of two witnesses who must be over 18. It does not require any notice to be given to those with parental responsibility. There would be no opportunity to them to object before the deed poll were executed.

31. Hence, whilst the potential conflicts between those exercising parental responsibility for a child in care might be the justification for requiring the court's leave to change a child's names, that justification does not appear to be regarded as material when a child of 16 or 17 who is not subject to a relevant CA 1989 order seeks to change their name. Similarly, although the authorities to which I have referred stress the significance of name changes for a child, a child of 16 or 17 years who is not subject to a relevant order can change their forenames and surnames by unenrolled deed poll by doing no more than making a witnessed declaration.
32. The principles set out by Cobb J in *Re C* [2023] above are not all directly applicable to an application made by the child concerned, but they do speak to the significance of the decision. Cobb J referred to the case law determining that it will be in rare cases or in "extreme" circumstances that the court will interfere with the choice of forename made by a parent for their child. He was concerned with a very young child. Is the position different for a Gillick competent child under 16, or a young person aged 16 or 17 with capacity to make the decision for themselves?
33. In *Re S (Change of Surname)* [1998] EWCA Civ 1950, [1999] 1 FLR 672, the Court of Appeal was concerned with an application by a child in care aged 15 to change her surname (not their forename). Thorpe LJ put significant weight on the wishes and feelings of the child. The applicant's sister had been allegedly sexually abused by their father. The applicant wished to change her surname from her father's surname to her mother's surname. The judge at first instance had reviewed the authorities on name changes and refused the application. It appears that at the time of the first instance judgment the father had not been tried for the alleged sexual offences but that subsequently, and prior to the Court of Appeal hearing, he had been acquitted. The Court of Appeal allowed the applicant's appeal. In a short judgment, Thorpe LJ held:

“[The Judge] reviewed authorities in relation to change of surname over the last 35 years, although it seems that he was not referred to one of the latest decisions in this court. From those authorities he drew guidance which in my opinion simply did not stand transplanting into the ground that he surveyed. It may be that those authorities distracted him from the analysis which he would have carried out had he continued from his starting point, namely that there was no authority directly in point.

...

I do not think that the judge sufficiently identified the fact that K is clearly a Gillick competent child. Such an application clearly requires special consideration.

... In determining an application by a Gillick competent child in the care of a local authority, the welfare principle must of course be paramount. However, in addition, the judge should give very careful consideration to the wishes, feelings, needs and objectives of the applicant. If he has the advantage of advice from a guardian ad litem who has had the opportunity to make a thorough investigation of the family dynamics, he should pay particular heed. Next, he must give searching scrutiny to the motives and stated objectives of the respondent. Here, the father's stated objective was to maintain and restore his relationship with his daughter. It is hard to see how that objective would be advanced by requiring her to be cross-examined in the family proceedings, by requiring her attendance at the crown court trial and by opposing this appeal. The inconsistency must cast doubt upon the stated motive. Finally, the fresh evidence only reinforces my opinion that the application should have been granted on 29th July. The acquittal probably retards rather than advances the prospects of any contact between K and her father. K is now 15. The letter of 1st September is sad but determined in her rejection of her father. Her right to determine her surname without the leave of the court is likely to arrive before there has been a change sufficient to weigh in the scale which we balance."

34. Thorpe LJ observed that there was no authority directly on point. It appears that there has been no subsequent authority on point and that *Re S* is the only previous reported case in which a child in care has themselves applied for leave to change their name. Thorpe LJ did not provide comprehensive guidance on the principles to be applied, but from his judgment and the judgments in the two *Re C* cases and previous jurisprudence, it seems to me that the following principles apply to an application by a competent child in care to change their forename and/or surname:
- i) The court's paramount consideration is the child's best interests.
 - ii) In assessing best interests, the wishes, feelings, needs and objectives of an applicant who is competent to make a decision about changing their name(s) should be given careful consideration.
 - iii) The motives and objectives of any family member who objects to the application will require careful scrutiny.
 - iv) Advice from a guardian will be valuable to the court.

- v) The principles to be applied to a change of name are the same regardless of whether the change is to a forename or surname. If the application is to change both, then the implications will need to be considered accordingly.
 - vi) Regard should be had to the fact that at 18 the child will be free to change their name(s) without hinderance and that at 16 a child who is not in care or subject to a child arrangements order or special guardianship order is free to change their name by deed poll without the consent of any person with parental responsibility.
 - vii) The views of others and proposed carers are relevant only as they may affect the conduct of those persons and therefore indirectly affect the welfare of the child.
 - viii) The name(s) chosen by the child's parent(s) may link them to particular religious or cultural backgrounds which are of significance to the child's identity.
 - ix) The Article 8 rights of both the child and their parents/family members are engaged. However, the balance of those rights should be considered in the context that a 16 year old who is not subject to relevant Children Act orders is free to change their name(s) by unenrolled deed poll without the knowledge or consent of their parents or other family members.
35. I would add that the views of any Local Authority having parental responsibility must also be taken into account.
36. What is the process for a child subject to a care order to apply to change her forename and/or surname? An application by a child in care for leave to change their surname requires the court to consider exercising its power to give leave under CA 1989 s33(7). That application can be made under the FPR Part 18 procedure. It seems to me that the procedure recommended in *Re C* [2016] for the Local Authority ought to apply also to an application by a child who is the subject of a care order to change their forename. Such an application is made in the High Court, seeking the exercise of the inherent jurisdiction. The application herein was made under the FPR Part 18 procedure but the application has been transferred with my authorisation, to the High Court.

Submissions

37. Mr Swiffen submitted that the Court should adopt the approach in *Re S* (above) and that the authorities concerning disputes between parents, or between the Local Authority and a parent, about a name change were not directly on the point. He relied heavily on BC's own statement and that of the Deputy Safeguarding Lead at her school. This was compelling evidence that the change in names would not be harmful to BC but would in fact be beneficial to her welfare. In contrast, a refusal of her application would be harmful to her emotional and psychological wellbeing. He submitted that the Local Authority's opposition to the application had naturally caused BC to withdraw from discussions with the social worker about her proposed name changes and that BC was justified in deciding to await the court's decision before committing to the changes.

38. Mr Harrington for the Local Authority submitted that the application should be refused for three main reasons:
- “i) BC can use her preferred name without needing to change it legally, and given her hesitancy in using her preferred name, changing her name legally at this stage would not be in her best interests;
 - ii) There is a real risk that her relationship with her family will break down should she legally change her name; and
 - iii) BC’s case is vastly different to the facts before the court in *Re S*.”
39. The distinguishing features of *Re S* are that (i) it concerned the daughter of a man accused of sexual assault but the assault was on her sister; (ii) the proposed change was to her surname only; and (iii) she wanted to change her surname to her mother’s surname and so the link with the family would remain strong.
40. Mr Harrington submitted that applying the principles set out by Cobb J in *Re C* [2023], the court should only permit a change of forename “if continuing to use her current name would be likely to cause BC significant harm.”
41. Mr Harrington provided a list of examples which he submitted showed that BC was hesitant, indecisive, and reluctant to use her preferred names. These included that BC had not used her preferred names at school. She had not raised the issue in some discussions for example with her social worker. She had advised the Deputy Safeguarding Lead at her school that she wished to await the court’s decision before using her preferred name at school. She refused to speak to the social worker after being informed of the Local Authority’s decision to oppose her application. She had only asked her trusted friends and teachers to use her preferred name, not a wider group of people. In April 2024, she introduced herself at a work experience placement as BC.

It was submitted that BC was not as emotionally mature as she was academically mature. The Local Authority was concerned about the reaction of BC’s peers at school to her changing her name, the timing of the change since it was close to her father’s trial, and the adverse impact on relations with her family. It would be preferable for the proposed changes of her names to be worked through with BC in therapy. BC would benefit from flexibility rather than making formal commitment to changing her names. She could trial her name first before making the changes.

Analysis and Conclusion

42. In my judgment, care has to be taken in applying some of the authorities to the case of an application by a Gillick competent 15 year old, or indeed a capacitous 16 or 17 year old, in care. I reject the submission that the court may only permit the change of a name if the continued use of the current name would be likely to cause the child “significant

harm”. In *Re C* [2023] Cobb J said that, “The issue of whether there is a power within the inherent jurisdiction to prevent a parent with parental responsibility from naming their child with a particular name is dependent on whether the court is satisfied that to allow such a name to be used would likely cause that child significant harm.” He was dealing with an infant whose name was said to be unsuitable, similarly to the name ‘Cyanide’ considered in *Re C* [2016]. As Thorpe LJ found in *Re S*, some of the principles in the authorities do not stand transplanting into an application of the kind now being considered.

43. I acknowledge that there are differences on the facts between *Re S* and the present case including that BC is asking to change both her forename and surname. I accept that the double name change requires particular consideration. BC is not asking to adopt her mother’s surname in place of her father’s surname. A request to change to a name that has no association with the family is a matter to be weighed in the court’s determination. On the other hand, it might be said that even more weight should be given to BC’s wishes and feelings than in the case of the young applicant in *Re S* because (i) BC was the actual victim of the sexual abuse by her father and so her motivation to make the change might be given even more weight, and (ii) the father has been found by the Family Court to have sexually abused her whereas no findings had been made in the *Re S* case. Findings have also been made against her mother as set out above.
44. I consider that I should follow the authority of *Re S* and consider very carefully the wishes, feelings, needs, and objectives of the applicant when giving paramount consideration to her best interests. It is not disputed that BC is competent to make a decision for herself about her change of name. The evidence from her school is very persuasive that she is mature for her age. She will be 16 in a few weeks from now. She will have capacity to make the decision to change her names. Change of name deeds poll are effective for 16 year olds who are not in care, and not subject to child arrangements orders or special guardianship orders.
45. A change of either a forename or a surname is a serious matter. Whatever the reason why the law requires the consent of those with parental responsibility or the leave of the court for a change in surname for a 16 or 17 year old in care or subject to relevant orders, but not for others of the same age who are not subject to relevant CA 1989 orders, the law is clear. The court should not give leave simply because a Gillick competent child applies for leave. The court must consider the benefits and harm to the applicant from either granting or refusing the application but taking into account also that rights under Article 8 of the European Convention on Human Rights are engaged and that when the child is 18 they will be able to change their name without consent or leave. The views of those with parental responsibility including the Local Authority, and other relevant individuals and agencies should be taken into account.
46. In my judgement, BC is a mature young person who has reached a settled decision on the names she would prefer to have and to be known by. I reject the Local Authority’s case that she has been hesitant or indecisive on the issue. BC’s dissatisfaction with the Local Authority’s opposition should not be taken as indecision. Her choice to await the court’s determination before committing more publicly to the name changes seems to me to be a mature approach not a hesitant one. The fact that BC has asked close friends and some teachers to use her chosen first forename is further confirmation of BC’s settled and firm wish to make the change not evidence of any doubts in her own mind. I am also struck by BC’s choice to allow family members to continue to call her by her

first name. She does not want to require them to use a name they do not wish to use. Again, that seems to me to be a mature and pragmatic decision.

47. The names chosen by BC are not frivolous or provocative. They are not likely to draw attention. They do not fall into the category of names that are in themselves liable to risk harm to the child or young person. However, the names have no connection with BC's family and would symbolise a break from the family and, to an extent, from BC's heritage and culture. After all, BC wants to change her name so as to break the link with her father whose name is so obviously close to both her names, and with a deeply traumatic period of her life. I have to weigh the symbolic severance from her father, and to an extent other members of her family, that the name changes would represent. Her mother does not share her father's surname, but her brothers do. In that context, BC has no contact with her father and is unlikely to do so for the foreseeable future. She does have contact with her mother and brothers albeit on a supervised basis. It is hoped by her and the family that that contact and those relationships will develop further and be rewarding to BC.
48. BC has a good reason to want to change her names. She wants to dissociate herself from her father. The Family Court has found that he perpetrated appalling sexual abuse on her over a prolonged period. The Deputy Safeguarding Lead's statement gives a small glimpse of the trauma BC has suffered as a consequence. Professor Craig's report confirms the severe impact of the father's actions on BC. The evidence suggests that she has made very good progress since being in foster care and starting a new school but she continues to be emotionally and psychologically very vulnerable. I accept that she has not been through a formal therapeutic process to explore her motivations for changing her name, but she has articulated her motivations very clearly to the court and they are understandable.
49. BC's statement is powerful. It shows the depth of her wish to change her names. It shows that she has thought through the implications of the decision. It shows the serious emotional and psychological impact that a refusal of leave would be liable to have on her. The evidence from her school shows that she will have support from the school to make the changes and that name changes are not as uncommon amongst children at secondary school as might be thought.
50. BC will be supported through any name change not only by her school, but also by her foster carers.
51. I take into account the caution expressed by BC's therapist as reported by the social worker. It is not clear what information was given to the therapist and their reported opinion was hedged.
52. I must take into account the family's views. The father has not engaged in the proceedings but I would be unlikely to give his views much weight in the circumstances. The mother opposes the application although her submissions to me at court suggested that she would be content for BC to change her surname so long as it was to the mother's surname. She told me that her sons also oppose the application. Following *Re S*, I should scrutinise the motivations for the mother's opposition. I note the findings made against her by HHJ Shelton as set out above. I note that the father's criminal trial is pending and I note the allegation that she has privately asked BC not to give evidence against the father. I have no doubt that the mother loves BC but, even

allowing for the fact that the mother is unrepresented, her statement does not demonstrate a full understanding of the trauma caused to her daughter and why that lies behind the application. She says, "I have not let my husband back into the home as I know this would be upsetting to her and I am waiting for the outcome of the other court case [the criminal trial]". She does go on to say that if he is acquitted he will not return to the family home but her sons would go to visit him in his flat. However, she does not indicate that she has fully accepted her daughter's allegations to be true nor that it is his actions that might cause her to exclude him from the family home rather than the wish not to upset BC. The elder brother's attitude, as recorded by the social worker, likewise reveals a lack of appreciation of the trauma inflicted on BC by the father.

53. The position of the mother, and apparently the brothers, is that BC has always been known by her forename within the family and so that should not change. There is no adequate recognition of the impact on BC of her father's appalling sexual abuse. There is little evidence that they have properly understood why BC is making this application.
54. BC has said that she will not insist on family members using her chosen first name. That will help maintain relations within the family.
55. The views of the Local Authority are of importance. The Local Authority has parental responsibility. However, I do not find the Local Authority's grounds of opposition to be substantial. I cannot see any evidence to justify the Local Authority's concern that permitting BC to change her names will set back the ongoing re-building of family relationships. The family do not say that it will, and in any event BC will not insist that they use her new names. BC now has a life that is largely separate from her birth family. In all the circumstances the change of names would not impinge greatly upon them. The most important issue affecting family relationships is the father's conduct and the pending criminal trial. I do take into account that the trial is likely to be a time of stress for BC and all the family. If he is found guilty he is liable to be sentenced to a long period of imprisonment. Relationships within the family might well come under considerable strain. In my judgement, having considered the written evidence and submissions, the change of name will not be a significant contributor to any strain on relationships at the time or after the trial. The father's conduct, the verdict, and the sentence will be much more significant.
56. I do take the family's views into account but in the circumstances I do not give them much weight. I acknowledge that the parents chose BC's name for her and that the law provides that the court's leave is required for that to be changed. Leave should not be given lightly. However, the views of the parents and the wider family are not determinative of the application and are but one factor that the court must consider. Their attitude and views are relevant insofar as they may affect their conduct and attitude but I do not believe that the name changes will actually adversely affect the attitude and conduct of the mother or brothers to the detriment of BC.
57. Likewise, I am not persuaded that the other concerns raised by the Local Authority have the weight it is submitted they should be given. The school will support BC as she changes her names. They have dealt with similar situations before and they are sanguine about the impact on BC of doing so. I rely on the professional opinion of the Deputy Safeguarding Lead in that respect. The foster carers, in whose care BC has thrived, will also provide her with support through the process. I accept that the name changes might prompt questioning of BC but she has thought about that, as has the school, and she is

prepared for it. I accept that there is a possibility that BC might regret making the changes. If she does so, and she believes that it would be better to revert to the name BC, she can apply to do so, or in just over two years, she can change her name without the need for consent or leave.

58. If I were to refuse to give leave, particularly if I were to do so now, so close to the father's trial, there could be serious adverse consequences for BC's emotional and psychological welfare. In particular, if her father were acquitted, BC will doubtless feel very vulnerable and the refusal of permission to her to change her name could cause her considerable distress in such circumstances. To be clear, BC does not seek to change her name to avoid other people recognising a connection between her and her father. The changes would be for her own psychological and emotional benefit. When her name is used it is a constant reminder of her trauma. Her name is part of her identity and affects her self-perception. She wants to extinguish the association of her name with her abuser to help her develop a more positive experience of being herself.
59. BC has been steadfast in her wish to change her name to JKL for over two and a half years. This is not an application made on a whim. In my judgment it is likely that BC will maintain the same wish until she is 18, when she will be free to change her name without anybody's consent or the leave of the court. BC suggests in her statement that it would be better for her to have established her name change now, before she goes further in her education, and well before she goes to university (which is the academic progress she is on course to achieve). I agree with her.
60. The Local Authority suggests that BC could simply try out her new names without making a formal change. To an extent it appears BC's therapist may share that view, albeit their reported view is hedged. In fact, CA 1989 s33(7) requires the court's leave to "cause" a child "to be known by a new surname". Arguably, changing her name by usage, without the court's leave, as the Local Authority suggest, would offend that provision. Put another way, if I were to give permission for BC to use a different surname even informally without making a change by deed poll, I would in fact be giving permission under CA 1989 s33(7) as has been sought. In any event, BC seeks to change her name in an official manner, to make a formal break with her current names and I recognise that wish. If there were no court order permitting a change of names, BC's objective would not be met: the Local Authority's suggestion would not serve the purpose sought by BC. She wants a formal court order permitting her to change her names in order to reflect the seriousness and significance of the change.
61. A change of forename and/or surname for a child is a serious decision whatever the age of the child. The court's paramount consideration is the best interests of the child. The views of others, in particular of those with parental responsibility, are to be taken into account. The family's views are relevant insofar as they may affect their conduct and attitude and therefore affect the welfare of the child. The views of the Local Authority, having parental responsibility in respect of a child in care, are of importance. The court must take into account the child's competence to make the decision, their age and maturity, the steadfastness of their wish to change their names, and the reasons behind the wish to make the changes. The court should consider the choice of name(s) – are they frivolous or would they be liable to be detrimental to the welfare of the child because of their nature or associations? The court should have close regard to the impact on the child of allowing them to change their name(s) as well as the impact of refusing them leave to do so. In the case of an older child, the court can have regard to the fact

that a 16 or 17 year old not in care and not subject to a relevant child arrangements order or special guardianship order, could change their name without consent or leave, as could any 18 year old.

62. Having regard to the legal framework and all the evidence and circumstances in this case, I have little hesitation in allowing the application and in giving leave to BC to change her forename and surname so that she shall be known as JKL. I suggest that if she wishes to do so, once she is 16 years old, she should be assisted to change her name by unenrolled deed poll. My order gives her leave to do so. I give considerable weight to the settled wishes of a mature, competent 15 year old who has good reason to wish to change both her forename and surname, who has chosen sensible new names that are not frivolous or provocative or liable to be detrimental to her welfare in any way. I am content that she has thought through the decision and is aware of the significance of the changes proposed. I am confident that she will be well supported at school and in her foster placement in the change process, that she will enjoy psychological and emotional benefit from the changes, and that she would be liable to suffer psychological and emotional harm were her application to be refused. The Local Authority might consider funding further therapy to support her through the process of the name changes (and the pending trial of her father). I do not believe that her family relationships will be harmed by the proposed name changes. In my judgement it is clearly in BC's best interests to allow this application.
63. I have referred throughout this judgment to BC but from the making of my order she may be known as JKL. I wish JKL well for the future.