

## Practice Guidance

### Name changes for children placed for adoption

## 1. Introduction

This practice guidance details the legal context, value base and practice considerations in regards to name changes for children placed for adoption through Adopt South West.

This practice guidance is for Adopt South West social workers, Local Authority children's social workers, independent reviewing officers, adoption panel members and legal services. The following legislation and statutory guidance also underpin this policy:

- Section 28 Adoption and Children Act 2002
- Article 7 United Nations Conventions on the Rights of the Child

### Key Principles:

Every child has the right to a/their name, and this is enshrined within the United Nations Conventions on the Rights of the Child which states:

*"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."* (Article 7)

Section 28 Adoption and Children Act 2002 states that whilst a child is subject to a Placement Order, a child's name should not be changed;

*"...unless the court gives leave, or each parent or guardian gives written consent".*

## 2. Legal context and value base

A child's recognition of their name is dependent upon their age and stage of development. However, it is also intrinsically linked to their roots and sense of identity. It will have significance for them as they grow older and for them as adopted adults. It can be argued that maintaining the child's name acknowledges an acceptance and positive recognition and respect for the child's past history and provides the child with continuity.

In the Court of Appeal in *Re D, L and LA (change of forename) 2003*, Butler-Sloss stated:

*"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. These rights should not be set to one side, other than for good reasons”.

Butler–Sloss considered adopters’ rights to change the name of a child placed in their care for the purpose of adoption. The judgement firmly concluded that adopters should not change the child’s name prior to the granting of the adoption order.

In the Court of appeal, Re C (children) 2016, Lady Justice King stated-

“If a baby cannot be brought up by his or her parents, often the forename given to him or her by their mother is the only lasting gift they have from her. It may be the first, and only, act of parental responsibility by his or her mother. It is likely, therefore, to be of infinite value to that child as part of his or her identity. That remains the case, even if the name used in his or her new family and thereafter throughout their lives, is different from that given to him or her by their birth mother”.

Adopt South West supports this position from both a legal and best practice perspective.

In no circumstances should the child’s surname(s) be changed prior to the granting of the adoption order. The child’s surname(s) will usually be changed to that of the adopters’ surname(s) when this name is entered into the adoption certificate.

Only in exceptional circumstances will a change of the child’s first name(s) be considered before the adoption order. In these circumstances the decision to change the child’s name should not be made unilaterally by the prospective adopters and should only occur with the agreement of the Children’s Team Manager, or that of the court or with the birth parents’ consent, as appropriate.

As pointed out in the judgement of Lady Justice King in the Court of appeal, Re C (children) 2016, the Local Authority shares parental responsibility with birth parents before an adoption order and can limit PR (including the right to name the child) but only “if it is necessary to do so in order to safeguard or promote a child’s welfare”. (Children Act 1989.)

Where a change of name is under consideration a thorough discussion should take place and, if the name appears to present a risk to the child’s placement being identified and there is a threat to the child or their adoptive family, a risk assessment identifying the nature of the threat and any protective factors should be recorded.

This should include factors such as the uniqueness of the name, any evidence to suggest that birth family will seek out the child, any evidence to suggest that there is a threat of disruption or aggression and any actions that the adoptive family can take to safeguard the child’s confidentiality without changing the child’s forename.

Depending on the child’s age their views and wishes should always be considered. First names can be legally changed after the adoption order by deed poll if all those with parental responsibility agree. However, adopters should be advised of the advantages of retaining the child’s forename(s) even after the adoption order.

### **3. Practice considerations**

The adoption preparation groups attended by all prospective adopters should address the legal issues and Adopt South West practice guidance on maintaining the child’s name(s). The reasons for, and the importance of retaining the child’s name(s), should also be explored with prospective adopters in the home study assessment.

The local authority social worker for the child should clearly specify in the matching considerations the importance of maintaining the child's name(s). This should be discussed with prospective adopters and it should be recorded that they understand the legal requirements. Before the adoption order the child must be registered with agencies such as the GP and school in their birth name.

It is of importance that the social worker checks the child's name against their birth certificate to ensure accuracy of the full name and spelling and for this to be checked at stages during case transfer between teams to avoid errors and mistakes.

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Adopt SW recognises the significance for the child in retaining their birth name in that their birth parents named them has enormous emotional significance and importance and this should be taken into consideration and any changes to the child's name should not underestimate the lifelong seriousness of any changes.

#### **Circumstances where a change of name should be considered:**

There will always be exceptions and in those circumstances careful consideration should be given to the issues by the professionals involved. Exceptional reasons for the agency to consider a name change are:

- If the name given causes ridicule or potential emotional harm. A professional discussion would need to take place between the Child's team and Adoption team, with a clear management decision recorded with the reasons.
- If there is a known, identified and significant risk to the child which cannot be ameliorated by the child being placed outside the local geographical area.
- If there is a known, identified and significant risk to the child and it is not appropriate to place outside the geographical area e.g. the child is being placed with a sibling already in an adopted placement.
- The name is more identifiable due to its non-traditional spelling, which would increase a **known risk and/or threat** to the child. In these instances, the name may be changed to the correct spelling.
- The identified prospective adopter has a child already at home with the same name **and** they are the only prospective adopters who can adopt the child. The reasons for this must be identified in the matching criteria.

#### **Relinquished baby:**

In circumstances where a child has been relinquished, a name change will still not be agreed unless any reasons outlined in section 2 apply.

#### **Registration of birth and naming the child.**

- Registration of birth: to be completed by birth mother/father.

- If they refuse/ are unable to do this, this can be completed by the Local Authority Social Worker. However, they should be given every encouragement and support to do this themselves and may need the support of the SW in registering the birth.
- Birth parents sometimes offer this opportunity to foster for adoption carers and see themselves as 'gifting' the opportunity to name the child to carers.
- However, this is not a child centred approach. Birth parents need to give this 'gift' to their child. Our experience of adult adoption counselling teaches us how significant the name birth parents choose for their child is.

If the local authority does have to name the child,

The following issues should be considered (advice given by Local Authority legal):

- Ethnicity;
- Religion of parents;
- Cultural background;
- Nationality;
- Wishes and feelings of parents or siblings if known;
- Given that the child may know nothing about their parents except for the name, consideration should be given to making the name similar to the parents.

The decision to name the child should be given to the Service Manager in consultation with the social worker.

This should be ratified by a Senior Manager in the Local Authority acting as Corporate Parent.

The reasons for the name given should be clearly recorded and kept on the child's file and also a letter, which can be used in life story work.

### **Foster Carers:**

Foster carers are to refer to the child by their given name and not to use 'nicknames' or other names of endearment. The reason for this is to not confuse the child regarding their own identity when moving onto an adopted placement from their foster placement. However, the foster carer may call the child a different name if there is a justification that relates to section 2 of the policy and again for this to be agreed at management level.

The following circumstances provide the exception where a name change may be considered:

- in the case of an older child at the child's request
- for cultural and religious reasons where the name change would serve to integrate the child within the family and wider community
- to ensure the continued safety and protection of the child in extremely risky situations
- where the adoption household has another child with the same name and the placement is the most appropriate placement when all other matching requirements are considered.

Support will not be given to changing the name of a child aged over two years unless significant risks associated with the name being identifiable can be demonstrated.

Adopt SW will chair a linking meeting prior to a match being agreed and any views regarding a change of name will be discussed at this meeting and will formally record the discussions.

Prior to the matching Adoption Panel, the issue of changing the child's name should be discussed with the social worker for the child. The reasons and motivation for seeking to change the child's name should be fully explored, explained in writing by the social worker for the child and presented to the Children's Team Manager for agreement in principle. This should be recorded as a key decision on the child's electronic social care record. Where agreement in principle is given legal advice should be sought regarding the issue of parental or legal consent, if necessary.

The issue of the child's name should be specifically addressed at the Adoption Panel considering recommendation of placement for adoption. Where there is agreement in principle for the child's name to be changed, the Adoption Panel can take this into account when making its recommendation.

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