Neutral Citation Number: [2024] EWCA Civ 1582

Case No: CA 2024 001723

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT READING
His Honour Judge Tolson
RG23P00696

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2024

Before:

LADY JUSTICE KING
LADY JUSTICE ASPLIN
and
LORD JUSTICE BAKER

- -

Between:

C (A CHILD)(CHANGE OF GIVEN NAME)

- -
- -

Andrew Duncan (instructed by **PS Law LLP**) for the **Appellant**
First Respondent appeared in person
Mani Singh Basi appeared Pro Bono for the **Second Respondent**

Hearing date: 5 November 2024

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Approved Judgment

This judgment was handed down remotely at 11.00am on 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

Introduction

1. This is an appeal by the Children's Guardian against an order made by HHJ Tolson on 21 June 2024 whereby he dismissed an application made by the mother of a child "C" to change the child's given name from one associated with that of a male person to one commonly used by either gender.

2. C identifies as non-binary. The issue before the Court is whether the judge fell into error by focusing on what he perceived to be the need not to endorse C's non-binary status by making the order sought at the expense of failing adequately to focus on the broader welfare aspects of the application.

3. For the reasons given in this judgment, the appeal will be allowed and an order substituted permitting the child's given name to be legally changed to C.

4. For reasons explained in paragraph [46] of this judgment, I shall refer to C throughout by C's preferred pronouns namely "they/them".

Background to the Appeal

5. C is one of three children who have been caught up in bitter litigation between their parents in relation to the living and contact arrangements for them and their two siblings. In 2016 an order was made for a shared care arrangement whereby the children spent alternate weeks with each of their parents and the holidays were divided equally. That order was upheld on appeal and continues to govern the lives of C's siblings.

6. C has a number of significant challenges to face. In 2018, they were diagnosed with a condition known as Complex Regional Pain Syndrome ("CRPS"), a debilitating condition which affects their mobility and requires, at least for some of the time, for them to use crutches. In November 2021 they were diagnosed as having Autistic Spectrum Disorder ("ASD"). C attends a school for students with social, emotional and mental health needs.

7. In about January 2021 C, then aged 12, told their parents that they believed themselves to be non-binary. They wished to be known by a new given name which, whilst retaining the initials of their male given name, substituted it for a gender neutral name.

8. Unfortunately for both C and their father, in around July 2021 matters came to a head and C's decision to be non-binary led to a serious rift between them, which breach continues to this day.

9. In December 2021 the mother took C to their GP for a referral to the Gender Identification Service ("GIDS"). In a statement written by C for GIDS in 2022, seen by the Children's Guardian, but not by the court, C was at that time, expressing an interest in puberty blockers and breast and vaginoplasty.

10. The father did not consider C mature enough to make decisions about their gender identity, did not trust GIDS and was very concerned that C would be given irreversible treatment without his (the father's) consent. Further he did not, and does not, agree to the use by C of they/them pronouns or to C using other than their given name. C for

their part was equally clear that they did not want their father to be given any medical information regarding their gender identity.

11. The father issued an application on 31 August 2023 under s.8 Children Act 1989 ("CA 1989") for a specific issue order seeking:

    a) All information in the mother's possession pertaining to C's gender identity

    b) Any medical treatments and interventions received or planned

    c) Any appointments attended over the past 18 months and which professionals C is currently engaged with

    d) The status of any referral to GIDS.

12. The father in addition sought disclosure of all C's medical notes together with a prohibited steps order preventing the mother from providing consent to C engaging in any gender related surgical procedures or hormonal treatment without his agreement.

13. The mother responded on 13 September 2023 with an application for a Specific Issue Order which would permit C to change their given name and surname.

14. The Children's Guardian saw C in November 2023 and again at school in February 2024. C told her that they were not currently receiving, or thinking about seeking, any gender related treatment. This confirmed what has now been C's consistent view since 2022. When the Guardian saw C again in February 2024, they said that they were now happy for their father to know that they were not currently receiving any treatment. The father was subsequently given that information.

15. When asked by the Guardian about their name, C explained that they mostly just wanted their given name to be changed. They explained that they wanted their name legally changed to C because they "have lived with this name socially for a few years and don't feel comfortable with their given name and feel far more comfortable with the name C".

16. C is no longer expressing a wish for gender treatment but, in any event following the Cass Review (https://cass.independent-review.uk/home/publications/final-report/), the NHS announced on 12 March 2025 that from 1 April 2024 puberty blocker would no longer be prescribed and on 12 December 2024 they were banned indefinitely for all those under 18 years (https://www.gov.uk/government/news/ban-on-puberty-blockers-to-be-made-indefinite-on-experts-advice).

17. Both parents acknowledge that C's identification as non-binary may be a 'phase' for them and that at this age they are exploring their identity and may well reconsider "what feels right to them" as they get older. It remains the position however that whilst not seeking or planning to seek medical treatment, C continues to identify as non-binary.

18. The Guardian's view at trial, and again in bringing this appeal, is that C has been living as C for over three years. This, she submits, is a significant period of time for a 15 year old and their strongly held wish is that this should be reflected legally. The Guardian's

view is that the benefits of permitting the legal change of C's given name "far outweigh" the drawbacks.

19. The father told the Guardian that to endorse the use of C as their given name is "a form of psychological or emotional harm as it reinforced his distorted sense of identity in such a way as to potentially progress him towards harmful alterations of his body". The Guardian disagreed and said in her report that the fact that C has been using that given name and their preferred pronouns for over three years and that during that time they have not at any stage sought to pursue any medical gender treatment, is evidence that the father's worries are not substantiated.

C's legal position summarised:

20. When the matter came before the judge, the issues had narrowed considerably. As the judge put it: "the case now effectively involves one issue: whether the court should make a specific issue order under section 8 Children Act 1989 giving approval or permission to the change of a young person's name". Significantly for the purposes of the legal analysis, the parents agreed that the child arrangements order providing for a shared care arrangements should remain in force in relation not only to C's siblings, but also in relation to C, notwithstanding that they are not currently seeing their father.

21. The somewhat convoluted provisions relating to a change of their given name by C are set out below but can be summarised as follows: C is 16 in February 2025. Because the child arrangements order which their parents agreed should continue contains a provision prescribing where they will live, that order does not come to an end when they are 16, but continues until C reaches 18 years. Absent the child arrangements order, C at 16 (providing they have capacity) would be entirely at liberty to change their name (given and surname) for all purposes and without the consent of those with parental responsibility. Once C is 16, they can notwithstanding the 'lives with' order apply to change their given name by way of an unenrolled deed poll without parental consent, they cannot apply for an enrolled deed poll absent that consent until they are 18.

The Legal Route leading to C's position:

22. The mother's application for a specific issue order sought permission to change both C's given name and surname. The Children Act 1989 ("CA 1989") prohibits a person from causing "a child to be known by a new *surname*" where that child is subject to a court order under that Act.

23. For the purposes of this appeal, s.13 (1) (a) CA 1989 provides:

> "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;
>
> (b) …
>
> ...without either the written consent of every person who has parental responsibility for the child or the leave of the court.

24. S.13(4) says that s.13(1) applies where the child arrangements order relates to "with whom" and "when" a child is to live with a person. That is the case here as there is a shared care order in place determining where, and with whom, C will live. Although that order is not at present effective, all the parties agreed that it should continue in force. It follows therefore that C's *surname* cannot under the statute be changed absent their parent's consent or the leave of the court.

25. Identical restrictions are in play where there is a care order: s.33(7) CA 1989 or a special guardianship order: s.14C(3) CA 1989.

26. The duration of orders made under the CA 1989 is governed by s.91 CA 1989. A care order and a special guardianship order are each brought to an end when the child "reaches the age of eighteen" (s.91(10) CA 1989 and s.91(1) CA 1989). In relation to a child arrangements order s.91 CA 1989 provides:

> "(10) A section 8 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of sixteen, unless it is to have effect beyond that age by virtue of section 9(6)
>
> (10A) Subsection (10) does not apply to provision in a child arrangements order which regulates arrangements relating to—
>
> (a)with whom a child is to live, or
>
> (b)when a child is to live with any person.
>
> (11) Where a section 8 order has effect with respect to a child who has reached the age of sixteen, it shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen".

(Section 9(6) CA 1989 prohibits the making of a section 8 order which ends after the child attains the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.)

27. It follows that in C's case as a child who is subject to a child arrangements order which relates to "with whom" they live and "when" they live with them, the shared care order, unless earlier discharged, will continue until they are 18 years old.

28. As this statutory canvas applies to C there could be no change of C's *surname* absent the consent of both parents or a court order. In the event, during the course of the hearing, the issue of C's change of surname effectively fell away with the emphasis being on C's desire to change their given name to the non-binary first name that they had been using for over three years. The judge's decision related only to C's given name and it is against the judge's refusal to sanction that change that the Guardian, supported by the mother, now seeks to appeal.

29. Given that s13(1)(a) CA 1989 applies only to C's surname and not their given name, the jurisdictional basis for the judge's decision was properly made by way of the

mother's cross application for a specific issue order under s8(1) CA 1989, an application which will be determined by reference to the paramountcy principle found in s1 CA 1989 "the child's welfare shall be the court's paramount consideration". The Guardian's ground of appeal which sought to assert otherwise was sensibly not pursued by Mr Duncan on behalf of the Guardian at the oral hearing of the appeal.

30. The question therefore arises as to whether the approach is different when considering the statutory restrictions in relation to surnames from that which applies to the pure welfare considerations governing an application for a specific issue order concerning a given name. The answer in my judgment is that it is now well established that the approach is identical regardless of whether a court is considering a given name or a surname.

31. *Dawson v Wearmouth* [1999] 2 WLR 960; [1999] 1FLR 1167, remains the lodestar for any court when contemplating an application for a change of surname of a child regardless of whether that child is in care, is subject to a special guardianship order or to a child arrangements order. Each of their Lordships emphasised that the decision was to be informed by the welfare principle. Lord Jauncey said:

> "…the changing of a child's surname is a matter of importance and that in determining whether or not a change should take place the court must first and foremost have regard to the welfare of the child. There are many factors which must be taken into account, not only those pertaining to the present situation but also those which are likely to affect the child in the future."

32. In 2016 in *Re C* [2016] EWCA Civ 374, [2017] 1 FLR 487, [2016] 3WLR 1557, *(Re C)* I had cause to trace the changing approach of society to the routine use of *given* names. I noted at [48] that "In contrast to surnames, 'given' names or 'forenames' have not, until relatively recently, been regarded as carrying the same level of importance to a child as his or her surname". I referred to *Re H (Child's Name: First Name)* [2002] EWCA Civ 190; [2002] 1 FLR 1989 in which Thorpe LJ described "given" names as having a "much less concrete character" than surnames.

33. I then referred at [49] to *Re D, L and LA (Care: Change of Forename)* [2003] 1 FLR 339, a case heard several months later, in which Butler-Sloss LJ took a different view saying that "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."

34. In considering the two cases side by side I concluded:

> "50. I would, with respect to Thorpe LJ, endorse the view of Butler-Sloss LJ. By 2002, when Thorpe LJ decided *Re H,* custom had already moved a long way from the days when the formal combination of a person's title together with their surname was the almost universal way in which a person would be addressed, with the use of the forename being reserved for only the closest friends and family. But, even by 2002, convention had nowhere near relaxed to the stage where, as now, 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 together all to share the same surname.
>
> "51. Whilst Butler Sloss LJ in *Re D, L and LA,* was focussing on the effect on a child of changing its forename once it is sentient, in my judgement given the fact that in the 21st century a child will predominantly use his or her forenames for most purposes throughout his or her life, that forename is now every bit as important to that child, and his or her identity, as is his or her surname."

35. This trend has continued and in the eight years since *Re C,* the use of forenames has become ever more prevalent, not least through their use in all forms of social media.

36. It follows that the principles to be applied to change of name cases are the same regardless of whether the proposed name change relates to a given name or to a surname. That this is the case is now settled law and, as was observed by Cobb J in *Re C (Change of Forename: Child in Care)* [2023] EWHC 2813 (Fam), *(Re C 2023)* at [27] (viii), "Forenames hold the same importance as surnames and the same principles should apply in considering and resolving any issue relating to a forename and a surname."

37. The High Court has twice recently considered the issues relating to a change of the given name of a child in care. In *Re C 2023,* Cobb J was considering a local authority's application to change the name of a male infant child in care. The mother had given the baby a name more usually recognised to be a female name. In *Re BC (Child in Care: Change of Forename and Surname)* [2024] EWHC 1639 (Fam) *(Re BC)* Poole J was considering an application of a 15 year old young person who was in care and wished to change both her names in order to remove any remaining connection she may have had with her abusive father.

38. In *Re BC,* Poole J helpfully and clearly set out at [20] the formalities which relate to changing one's name. He quoted the judgment of Ormrod LJ in *D v B (otherwise D) (Surname: Birth Registration)* [1979] Fam 38; [1979] 1 All ER 92 in which he explained that there are no regulations governing the execution of deeds poll.

39. Ormrod LJ was referring to the fact that the regulations only apply to the enrolment of such deeds. See https://www.gov.uk/change-name-deed-poll/make-an-adult-deed-poll which sets out that any person over 16 with capacity can change their name (given and /or surname) by deed poll which should be evidenced by two witnesses who are not related to him or her and who are each over 18. Such a deed poll will result in an unenrolled change of name.

40. The Enrolment of Deeds (Change of Name) Regulations 1994 ("the 1994 Regulations") govern the enrolment of deeds evidencing a change of name. By Reg.8(4) of the 1994 Regulations, in order to enrol a deed poll where a child is over 16 but under 18, the deed poll must be consented to by everyone having parental responsibility and endorsed with the child's consent.

41. The purpose of enrolment Ormrod LJ said, is "only evidential and formal to provide proof of the name change to those organisations who require it."

42. It follows that from February 2025 when they reach 16 years:

i) C could change their given name by unenrolled deed poll (Government website); but
ii) Unlike a 16 year old unconstrained by a child arrangements order, they could not change their surname without the consent of their parents or the leave of the court (s.91(10A) CA 1989); and
iii) They could not enrol the deed poll without the consent of both parents (Reg. 8(4) 1994 Regulations).

43. Poole J considered in *Re BC* why a distinction is made as between young people subject to CA 1989 orders and those who are not. At para.[30] he explained that the distinction between those young people subject to a CA 1989 order and those who are not may be justified by the very fact that such orders have been made, a fact which indicates that there may well be conflict and differing views as to the welfare imperatives in relation to the child in question as between the various people who have parental responsibility. The distinction between children subject to court orders and those who are not can, he said, "be seen as a protection of the Art 8 rights of those with parental responsibility for the child." He went on:

> "30…..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.
>
> 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."

The Judgment

44. The judge gave his decision to refuse the application to make a specific issue order permitting the change of C's given name in a short reserved judgment.

45. The judge noted that C prefers the gender neutral pronoun, but said that he would not do so in the judgment because "the question of gender identity is at the heart of this

case and to use anything other than the biologically appropriate 'he' risks giving the appearance of pre-judging the issues".

46. I do not agree with this approach for two reasons:

    i) Whilst gender identity was undoubtedly at the "heart of the case" when the application was first made by the father at the time prior to the Cass report when he was seeking orders which included a prohibited steps orders preventing gender related medical treatment and the disclosure of C's medical records, that was no longer the case. There was therefore no question of the granting of the order pre-judging "the issues". Whilst the decision in respect of C's given name was to be made in the context of C identifying as non-binary and their change of name came about as part of their confirmation of their non-binary status, in reality the sole remaining live issue to be determined by the court was whether the given name which had been used for all purposes for a period in excess of three years by this young person, then aged 15 years 4 months, should now be given the legal recognition they greatly desired. Whilst C wished to change their surname, their absolute priority was to have their given name formalised.

    ii) The new edition of the Equal Treatment Bench Book (ETBB) was published in July 2024. Chapter 12 relates to Trans People. Para.19 says as follows:

        > "It should be possible to work on the basis of a person's chosen gender identity and their preferred name/pronouns, "he/she or they", for most court and tribunal purposes, regardless of whether they have obtained legal recognition of their sex/gender by way of a GRC…."

        C is a party in these proceedings through their Children's Guardian. The Guardian has been clear that C's preferred name is [C] and preferred pronouns are they/them. That choice should in my judgment be respected. I should say for completeness that whilst this advice is found in the chapter on trans people in the ETBB, it applies equally across the board. Many people now choose to use neutral pronouns regardless of their gender identity and the courts should equally respect their choice.

47. The judge had no clear evidence as to what a passport or any other agency may require in order to act on a revised name, nor it would seem was the impact of continuing with the child arrangements order after C attained 16 years appreciated by either the court or the parties. In the event in my view the judge was faced with a simple welfare evaluation which did not centre around the need for a deed poll for any specific practical reason other than C's desire for the legal recognition of the name they used exclusively. It follows that the lack of evidence in relation to the need (if any) for an enrolled deed poll for obtaining passports/bank accounts and for university entrance does not present this court with any difficulty in considering the appeal.

48. The judge regarded as significant that C is not now "seeking, or thinking about, any gender-related treatment" and that the parents "have both acknowledged that R's non-binary status, and what I shall call the current rejection of his biological gender may just be a 'phase'".

49. Having factored in those features, the judge went on to summarise the law:

> "7. The law which applies is relatively simply stated. *Dawson v Wearmouth* 1999 UKHL 18 established that the welfare test applies: [C's] welfare is my paramount consideration and I must apply the welfare checklist within section 1 of the Children Act 1989. Although *Dawson* concerned itself with a change of surname, any change in a child's name is a serious matter and not to be made lightly. It has to be established that the change would be better for the child than the status quo."

50. The judge went on:

> "8. My conclusion is clear notwithstanding that it differs from the view of the guardian: it is not for me to sanction a change of [C's] given name. Insofar as the point is pressed (and it is not) I reach exactly the same conclusion in respect of [C's] surname. There is no real point in any court approval or order, it is unlikely to have much if any practical effect and it risks giving a very weighty official imprimatur or steer on the issue of gender when what is required is no steer at all, but that this young person is left to decide such matters concerning his future identity for himself."

51. Having noted that so far as he could tell C is using the name C for most purposes and they would be able to use the changed name on a passport in a few months the judge concluded that "it was hard to identify any welfare benefit in the proposed change".

52. The judge said that he was happy to accept that C feels strongly about the change but that that brought him to what he saw as a "clear detriment in any official sanction of a change" saying:

> "12. The desire in R to change his name is plainly linked to both (i) R's current issues with his male gender; and, (ii) the dispute between his parents. On the gender point, in circumstances where both society's views and those of R appear to be changing it seems to me unwise to sanction or approve a change which might serve to cement the idea that R has now reached a fixed position that he is non-binary. Neither parent sees R's current views as necessarily permanent and nor in my judgment should they. R's views seem to have softened in terms of his gender identity as time has gone by, not hardened. Moreover, I see the question of a change of name as raising the same issues that were previously raised in terms of treatment, albeit with a much softer and less significant focus. The fact is, however, that R should in my judgment be left to sort these things out for himself and make his own mind up as time goes by. He does not need his name to seem somehow 'fixed' by a court at this point in time."

53. The judge at no stage considered the obvious countervailing benefits of the change, his Article 8 rights as a young person approaching 16 years, and nor did he refer to the

Guardian's clear evidence that the change of name was not endorsing C's gender identity given that they had so clearly moved away from any desire for medical treatment and had done for some time.

54. The judge said:

> "15. In short, I cannot see any element within the welfare checklist which points towards a change of name. R's wishes and feelings do not seem to be fixed on the gender issues which are said currently to dictate (or heavily influence) his choice of name. He needs space to make up his own mind and not a judge to make it up for him. He equally needs space from the conflict between his parents and not a court order which aligns him with one parent over the other. And he does not need a legal change via a court order when he has already achieved some, perhaps most, of the change informally and is able to undertake all legal formalities himself in but a short while. Up to a point, a change also risks harm. His character and personality should be left alone so that he can play out these issues for himself. The conflict between his parents has not served him well (I attribute no blame as between them) and he needs some distance from it".

55. It goes without saying that the judge was entirely right to say that C needs "space and time to make up [their] own mind" as to their gender identity. But whilst it may well have been the case that gender issues dictated their choice of name in 2021 when they first identified as non-binary, the judge was in error in saying that that remained the case. C was very clear in saying to the Guardian that they wanted to change their name because "they have lived with this name socially for a few years and don't feel comfortable with their given name and feel far more comfortable with the name C." C's desire to change their given name was not, or no longer, "fixed on gender issues" his focus was on the social aspect and his wish to have his choice recognised and respected in a formal way by the court who had been concerned with his living arrangements and welfare for a number of years.

56. The judge made no reference in his judgment to the challenges C faces both physically and emotionally notwithstanding that they are dealt with in detail in the Guardian's report. Other than in the most general terms, he did not consider s.1(3)(b) CA 1989 which requires the court to take into account C's emotional needs. Had he done so he would have taken into account the Guardian's views of the importance in welfare terms for the order to be made and also that this vulnerable young person had a strong emotional need to have their social identity endorsed through the legal recognition of their chosen given name.

57. The judge also rightly observed that C needs 'space from the conflict between [their] parents'. In my judgment however the making of the order would not as the judge suggested, serve to 'align [them] with one parent over the other'. The parents had come a long way to reach close to a compromise in these highly charged proceedings. Far from the making of an order permitting the change of given name aligning C with their mother over their father, by agreeing between them that the child arrangements order should continue even though the shared care provision is currently in name only, the

mother, to her credit, was sending a clear message to C that she believed in the importance of C resuming their relationship with the father.

The Grounds of Appeal

58. The original grounds of appeal were helpfully refined in oral submissions by Mr Duncan behalf of the Guardian and can be summarised by reference to his oral submission to the Court that: (i) the judge erred in his application of the welfare checklist by applying it in a negative rather than a holistic way; (ii) the judge failed to give sufficient weight to the fact that C had been using the name for three years and instead put disproportionate weight on a hypothetical acceptance that the gender related issues might be a phase; and (iii) further he submitted, the judge failed to apply and consider Article 8 ECHR.

Discussion

59. In my judgment, for understandable reasons given the history and background to the case, C's gender identity whilst relevant, got in the way of what had become the real welfare issue at trial. The judge, as did the father, took the view that to endorse C's name change by way of a legal order was in some way endorsing their non-binary status. With respect to both the judge and the father to have linked exclusively the issue of C's name to their gender identity was wrong when one considers the position as it was by the time of the hearing:

  i) C had been using a completely conventional gender neutral forename for all purposes since about January 2021, a period of 3 years and 10 months by the date of the appeal. Given that the father is not currently seeing C, that means that ever since C left primary school they have never been known as, or called, anything other than C.

  ii) C has told the Guardian that they wanted to change the name legally "because they have lived with this name socially for a few years and don't feel comfortable with their given name and feel far more comfortable with the name C". Their wishes in relation to their name relate to their strongly held sense of social personal identity and not simply to their gender identity and their desire for legal recognition of their chosen given name are not solely anchored to being non-binary although that was the reason for the initial change. They have not been seeking any gender related treatment since long before the Cass Review and the subsequent prohibition on the prescription of puberty blockers. Put simply, for a large portion of their sentient life 'C' is who they have been to the outside world and who they feel themselves to be.

  iii) The shared care order dating from 2017 remains in place by agreement between the parents, as the judge said: "as a reminder to C of how things should be". Had that order been discharged, as on one view would have been the more appropriate course given C's age and the fact that they have not seen their father since about July 2021, C would, in February 2025 when they turn 16, be able to change their name (given and surname) by unenrolled deed poll without the consent of either parent. Only the existence of the 'lives with' order will prevent them from changing both their given name and their surname should they in due course choose to do so.

iv) By the time of the hearing, as the judge put it, he was left with "the vestiges of more profound issues". The issue of C's surname had effectively evaporated, the emphasis being on C's profound desire to have C recognised legally as his given name, and whilst the father's applications technically remained 'live', all the sting had gone from those applications in the light of the Cass report and C's willingness to have their father told that he has not, is not and does not, have any intention of having medical treatment. The judge rightly and appropriately therefore was able to dispense with those applications in one crisp paragraph as follows:

> "17. Other issues which once dominated this case are now easily disposed of. The father sought a prohibited steps order in respect of gender-related treatment. There is no such treatment currently available and [C] is certainly competent to consent to any talking therapy he may wish to undertake. The father also sought an order requiring the mother to inform him of any proposed treatment or gender-related issues. Of course a parent with whom a child is living should keep the absent parent informed of developments in a child's life. However, this cannot extend to disclosing treatment to which the child is competent to give consent and wishes to remain confidential. The same point applies to medical records. In the context of this case, given [C's] age, it is better to make no order at all on these issues."

60. In my judgment, the issue before the judge was a straightforward welfare issue now effectively uncoupled from any issues surrounding C's non-binary status. The question was whether C's welfare and Article 8 right to respect for their private life required regard to be given to C's wishes to have complete control over their name and legal recognition of their given name. I do not agree with the judge that three years is not a long time or as somehow supporting the idea that the decision has been "made for all time". In my judgment three years is a very long time in the life of a 15 year old. I would endorse the view expressed by Poole J in *Re BC* that the Article 8 rights of the young person of this age in respect of a change of name will ordinarily outweigh the Article 8 rights of anyone with parental responsibility. As is recognised by the 1994 Regulations, 16 and 17 year olds are presumed to have capacity to decide to change their names and their wishes and feelings whilst not determinative, are a powerful factor in the welfare analysis.

61. The judge made reference to the welfare checklist, and one would not expect a judge with the experience of this judge to go slavishly through each factor. Nevertheless in my judgment had the judge made a more detailed reference to the checklist, he would not have fallen into the trap of paying what in my view amounted to lip service to C's wishes and feelings and instead substitute his own view that to make the order would be in some way represent the court wrongly endorsing C's non-binary status. Rather the judge would have set against his reluctance to endorse C's non binary status what the Guardian regarded as the undoubted welfare benefits of making the order sought.

62. The welfare checklist requires a court to have regard not only to C's wishes and feelings but also their emotional needs. The judge made no mention in his judgment of C's considerable physical and emotional vulnerability and their psychological need to have the name with which they felt most comfortable recognised officially. The judge was

mistaken in saying that they would be able to 'undertake all legal formalities [themselves] in a short while'. That was not correct; so long as the child arrangement order remains in place, C will only be able to obtain an unenrolled deed poll in relation to their given name but not their surname at 16. For a change of surname or for those matters which require an enrolled deed poll, C will for a further two years require the consent of the parent from whom they have been estranged for over three years.

63. It does not matter that neither the court below nor this Court has been provided with a list of what matters would require a deed poll to be enrolled. The point is that the judge's refusal to permit the name change intrudes upon C's Article 8 rights to respect for their private life and that, with C having full capacity and strongly expressed wishes, those wishes in my judgment and in accordance with the views of the Children's Guardian who represented C and had had the opportunity of discussing their motivation with them on two occasions, should have been determinative.

64. It follows that the appeal will be allowed. I should emphasise that this appeal has been allowed because I have concluded that the judge fell into error in his approach and application to the critical welfare analysis which comes from a proper application of the welfare checklist. It is trite law to say that each case will turn on its own particular facts and this appeal should not be regarded as a 'gender' appeal, but rather as a case involving a change of name in respect of a capacitous young person who is shortly to reach the age of 16 years.

Lady Justice Asplin:

65. I agree.

Lord Justice Baker:

I also agree.