

Changing a Child's Name

The name by which a child should be known can become a very emotive subject when parents separate, particularly when new families are formed.

The consent of anyone who has parental responsibility (PR) is needed to make a change. If the parents have been married, they will both have PR. If the parents have not been married, then since December 2003, if the father is named on the child's Birth Certificate, he will have Parental Responsibility. The mother automatically has it. If there is a Residence Order in place (an Order setting out where a child lives) then the person who has the Residence Order will also have PR. This could be for example therefore a Grandparent.

If one of the parties with PR is not willing to give their consent to a change of name, then an application can be made to Court.

The cases that the Courts have dealt with, make it clear that on any application, the child's welfare is the Court's paramount consideration. The case law establishes that it is for the parent who wants to change the name to show why that would be in the child's best interest, and that this is a high hurdle. It is not sufficient therefore to say that the child should have the same name as their mother or sibling, nor will a child's wishes be conclusive. In one Court case therefore, even where the children were aged 17, 14 and 12 and were expressing a wish to be known by the surname of their mother's new partner, the Court refused to agree to the mother's application to formally change the children's surname. The Court expressed the view that nowadays there is no stigma for a child to carry a surname different from the adults in their home, and that a formal change 'would have sent out a wholly inappropriate message to the children... that their father was of the past, not the present'.

Whilst every case needs to be looked at on its own facts, there is a clear message from the Courts that they will go a long way to protect the connection a name gives a child to their genetic roots.

For enquiries about any family matters, please contact Heather Weavill at Alison Fielden & Co, 01285 653 261.