

Fam Div ([Holman J](#)) 19/6/96

FAMILY LAW

CHANGE OF NAME : DEED POLL

Persons who can lawfully change child's surname and responsibilities of schools, doctors etc in using and recording such a change.

Three legitimate children, aged 12, 10 and 6, lived with their mother following their parents' divorce. There was no residence order as the arrangements were agreed at the time of the divorce. At the time of the hearing there had been no direct contact between the father and the children for 18 months. The mother remarried to Mr P and sought to change the children's surname from C to P. Their doctor made a change in the records but the local education authority on behalf of their school refused to do so without proof that everyone with parental responsibility had given their consent to the change. The mother and children signed a deed of name change to change the children's surname. The mother issued an application for a specific issue order naming the father as formal respondent but stating that notice should also be given to the County Council, who were subsequently joined as a respondent to the proceedings. The issues in the case were as follows. (1) Following the [Children Act 1989](#) can one of two or more people who each have parental responsibility for a child, lawfully, unilaterally cause that child to be known by a new surname without the consent of the other or others? (2) Should schools, doctors and other holders of 'official' or formal records record or use a new surname without evidence of all requisite consents or a court order?

HELD: (1) The provisions of the 1989 Act should be considered in their historical context and s.13 (change of name etc) replicated r.92(8) of the Matrimonial Causes Rules 1973 which in turn codified the ruling in *Y v Y* (1973) Fam 147. The approach in that case and the 1973 Rules was that neither parent of a legitimate child could change the surname of the child without the agreement of the other or a court order and that held good even if the parent who wanted to change the name had sole custody. The purpose of s.13 of the 1993 Act was to make it clear that a residence order no more carried a right or power to change the surname than had a custody order. In cases where there is no residence order, the old law derived from *Y v Y* (supra) held good. Therefore (except in the case of a much older child and in particular one over 16 where the consent of that child may be both necessary and sufficient): (i) where only one person has parental responsibility for a child that person has the right and power lawfully to cause a change of surname without any permission or consent; (ii) 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 (not necessarily in writing but that may be the practical effect of [Practice Direction of 11 April 1994](#)); (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 (s.13(1) or s.33(7)); (iv) in any other situation an appropriate order of a court is required. (2) When one parent or person with parental responsibility asks a school, doctor or similar responsible person or body to start using a new surname that person or body should establish to its own satisfaction who has parental responsibility for that child. Once so satisfied it should only use or record the new surname if satisfied that all persons who have parental responsibility consent to the change or there is a court order authorising or giving leave for the change. (3) (per curiam) Children as young as these should not be asked to sign a formal document such as a deed poll.

Anthony Ward instructed by Humphries Kirk for the mother. Jonathan P Swift instructed by the local authority solicitor for the local authority. The father appeared in person.

(1997) 2 FLR 730 : (1997) 3 FCR 310

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Document No. AC8600076

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