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Names in adoption law and policy: representations of family, rights and identities

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Key words: adoption, names, representations of family, children's rights, law & policy

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Law relating to the naming of children has multiple, diverse components, and is underpinned, inter alia, by legal constructs of parental rights and responsibilities, and of children's rights. In England, for example, the *Children Act* 1989, s.3 (1) details parental responsibility as encompassing 'All the rights, duties, powers, responsibilities and authority that by law a parent of a child has in relation to the child and his [sic] property', including to name a child and to change a child's names (at least those parents deemed in law to have parental responsibility, and subject to the consent of others with parental responsibility; see *Children Act* 1989 s.13). In terms of children's rights, the 1989 *United Nations Convention of the Rights of the Child* [UNCRC] specifies, inter alia, that children have 'the right from birth to a name' (Article 7) and the right to 'preserve his or her identity, including…[their] name…' (Article 8). Name-related rights of parents and of children within families are potentially conflictual, e.g., if a parent changes their child's birth surname when families are 'remade' through parental separation and/or divorce, re-partnering and/or the blending together of formerly separate families.

Tension between names, parents' rights and children's rights is likely to be especially latent in families (re)made through processes of adoption: parental naming rights gained by an adoptive parent (to name and/or rename their child) and the name rights of a child (to have a name from birth and to preserve their identity including their name) are complicated by the fact that, invariably, the child has previously been forenamed and surnamed at birth, by their birth parent(s). In this article we focus on the complexities of names in adoptive family life through examining two important but hitherto overlooked questions: how are names addressed in adoption law and in associated policy texts intended to inform and guide people affected by adoption?; and, what ideas of names, family, rights and identities are contained and projected within? The originality of our focus on names in adoption law and policy, and of representations of family, rights and identities therein, also lies in our drawing together for the first-time insights offered by the sociology of names, by critical law and policy studies, and by adoption studies. In sociology, names are increasingly seen as an important 'lens' through which family relationships, identities and rights can be examined and understood (Finch 2008: 713; e.g., Carter and Duncan 2018, Davies 2011). In critical law and policy studies, it is recognized that legal and statutory frameworks may contain myriad underlying

assumptions about, and projections of, family and kinship relations and of the rights of various people within families (e.g., Carling, Duncan and Edwards 2002, Cornford, Baines and Wilson 2013, Crossley 2016). In turn, adoption scholars regard adoption as a process through which understandings of family and identity are worked out and (re)produced, whether in the everyday experiences of these families or, as we focus on in this article, inlaid within the details of specific national legal and policy processes for families formed through adoption (e.g., Jones and Hackett 2011, Kirton 2013, Shanahan 2005), including in relation to names, rights and identities.

We use the example of law and policy on adoption in England to examine these issues. Our article begins with an account of changes in the governance and culture of adoption in England, and in the profile of children placed for adoption. We argue that these changes place names, and especially children's names, at the heart of key challenges of contemporary adoptive family life and make it necessary to examine how children's names are addressed within adoption law and policy texts shaping the milieu of people affected by adoption. Using critical discourse analysis, we then audit the key texts comprising the current legal and policy framework on adoption in England for content about names. We examine instructional content (points of law and/or advisory guidance) and discourses – ideas, values and meanings - contained and conveyed within the texts about adoption, names, family, rights and identity. Our key findings are that there is omission, inconsistency, and opacity within, and between, the content of adoption texts in relation to names, especially regarding forenames of children who are adopted. We argue the omissions, inconsistencies, and opacity of content are outcomes of normative imaginations of 'family' within the texts. In consequence, 'family surnaming', 'name change' and 'parental naming rights' are discursively constructed as pre-eminent naming issues in cases of adoption, positioning children's 'welfare rights' over and above children's name-based 'identity rights'. Our findings advance sociological understandings of the power names have in shaping and reflecting family relationships (Finch 2008: 721) and individual identities (Pilcher 2016), and of how law and policy can privilege some types of family and kinship relationships over others, and the rights of some family members over others.

Names in families formed through adoption: contexts and evidence

Two particularly significant changes since the 1970s have placed names at the heart of key challenges of adoptive family life in England. First, changes in adoption governance and

cultures led to a shift from 'closed' adoptions characterised by secrecy, including about birth names and birth family, to 'open' adoptions (Kornitzer 1968, O'Halloran 2015, Thomas 2013). Second, the typical profile of children placed for adoption has changed, from babies (many whose birth mothers were levered into 'giving them up' because of their unmarried status, and/or their social class and/or ethnicity; Garrett 2000), to children aged 1-9, often in sibling groups, who are 'in care' because their birth family was unable to look after them suitably (Coram 2019; Department for Education [DFE] 2019; Thomas 2013). In combination, 'expectations of openness' (Jones 2016) in contemporary adoptions and the typical profile of contemporary adoptees means that children will likely know their own birth forenames and surnames, and even the names of birth family members. Moreover, in digital societies it's easier for persons affected by adoption to use names to find, contact and communicate with birth relatives (e.g., Samuels 2018). Given that adoption is a process riven by inequalities (Kirton 2020), it is also likely that associations between names, social class and/or ethnicity (Pilcher 2016; Lindsay and Dempsey 2017) feature in adoption experiences. Children who are adopted join their new family with names, given by birth parents, that not only convey their individual identities and birth family affiliation, but may also signal their social class and ethnicity. There are, then, a good number of reasons why names might be issues of especial significance for people affected by adoption. However, research focused specifically on names in adoption is scarce, probably because of the prosaic and quotidian character of names (Pilcher 2016) and the foregrounding of child welfare issues; issues relating to identity in adoption have had much less attention (McMurray et al 2011).

The small body of existing studies reporting – directly, or indirectly – on names does support their significance in processes of adoption. Names are shown to be central in experiences relating to adoptees' birth heritage, culture, and identity, especially in cases of international (or inter-country) adoptions (Jacobson 2008; Ostler 2013; Reynolds et al 2017; Scherman and Harré 2004; Suter 2012). In international adoptions, parental practices of naming vary from 'culture keeping' by retaining their child's birth forename (e.g. Jacobson, 2008) to 'culture assimilation' by renaming their child with, say, an American-English forename (e.g. Suter, 2012). Names are also shown to be important to experiences of adoptive family-making and identity, whether as tools to cement belonging (e.g., Johnson et al 1991; Patterson and Farr 2017) or as hindrances to the management of 'roles, boundaries and identities in open adoptive families' (Horstman et al., 2018: 139. See also: Beek and Schofield 2002; Jones and Hackett 2011; MacDonald 2017; Watson et al 2015). As we argue elsewhere (Pilcher, Hooley

and Coffey 2020), names are significant in adoption because they are entangled with key challenges of contemporary adoptive family life: 'the requirement to create a new version of kinship that includes both adoptive relatives and birth relatives' (Jones and Hackett 2011: 45), and the respecting of identity rights of adopted individuals, to enable them to make sense of their 'adoptive identity' (Grotevant 1997) throughout their lives.

Evidence we summarise here clearly shows that names do feature strongly in experiences of adoption. There is a case, then, for our key concerns in this article: What content is there in adoption law and policy in England that might help people affected by adoption, and adoption professionals who support them, to navigate the complexities of naming issues in adoptive family life?; and what ideas of family, rights and identities are contained and projected within it?

Methodology

Our methodological approach to our examination of adoption law and policy is informed by critical discourse analysis (e.g., Ball 1993, Prior et al 2012). Although with differing philosophical underpinnings and having various iterations, critical discourse analysis perspectives typically position the macro-micro dynamics of law and policy as 'power-full' reflections of, and contributors to, socio-cultural contexts. There are three commonly shared, interlinked premises of critical discourse analysis: (i) 'discourses' are definitions and representations of aspects of the social world (including knowledge, actions and identities) present within language; (ii) it is, therefore, in language that law and policy are 'made'; (iii) discursive framings of social problems and policy solutions are key to understanding the social problem-related and policy-related experiences of individuals in the everyday world, including their decisions and actions (Prior et al 2012: 272). 'Official' discourses of law and policy are thus argued to shape people's milieu through the ideas, values, and meanings they contain and convey (Fairclough 2010; Willig 2013), including about normative ideas of family (see Crossley 2016), and as we argue in this article, their links with names, identities and rights.

Our primary strategy for capturing evidence relevant to our research questions entailed using secondary literature on the recent history and policy of adoption in England to identify key legal and policy texts. This led us to focus on: *Adoption and Children Act* 2002 [the 2002 Act], *Adoption: Statutory Guidance* (DFE 2013) [Statutory Guidance], and *Adoption:*

National Minimum Standards (DFE 2014) [Minimum Standards]. Legal frameworks in England also develop through interpretations of legislation and judgements made in courts of law. In a supplementary research strategy, we therefore used keywords to search law databases (specifically *Lexis*, and the *British and Irish Legal Information Institute*) to identify cases in family courts in England since 2002 that addressed children's names in processes of adoption. This led us to focus on the following legal cases: (1) re DL and LA (Care: Change of Forenames) [2003] FLR 1 33 (2) re London Borough of Haringey v M [2014] EWHC 2883 Fam (3) re C (a child) [2014] WL 5311842 (4) re R and E (Children) [2017] WL 01552445. To generate a critical discursive reading of legal and policy texts under our scrutiny, we followed Thomson (2011) in systematically asking: what is being represented here as truth or as norm, and whose interests and which practices are - or are not - made possible and/or desirable by these ways of thinking and understanding? Our analysis of found texts entailed reading, note-making, and coding to map, index, and categorise content thematically in relation to our research questions (Braun and Clarke 2006).

We use critical discourse analysis, then, to analyse how names – and especially children's names - are discursively addressed in current law and policy on adoption in England, and the ideas about family, rights and identities represented within. We insist on the value of our close analysis of *adoption* law and policy in England, but also acknowledge that it does not exist in isolation, either nationally or internationally, from the complexities of wider social welfare/social justice frameworks relating to children and families, and to legal frameworks on names and naming rights. Our examination of names and ideas about family, rights and identities in adoption law and policy is also imbued with an understanding of adoption as a multifaceted, complex set of processes at the centre of which is a child with often difficult, if not traumatic, previous experiences.

Findings: names in English adoption law and policy

Our first research question asks: what content is there about names, and especially children's names, within adoption law and policy in England, content that might help people affected by adoption, and adoption professionals who support them, to navigate the complexities of naming issues in adoptive family life? Next, then, we examine (in publication date order) the texts under our scrutiny. We identify where in these texts instructional/guidance content on names can be found, and which aspects of names this content relates to.

The 2002 *Adoption and Children Act*

The 2002 Act is primarily concerned with regulating the circumstances whereby a child can be placed for adoption, and the consequences once such a placement is made. It also addresses issues of disclosure of adoption information. It is viewed as a long overdue and substantial overhaul of adoption legislation (e.g., Ball 2005) and as an outcome of the renewed policy emphasis on child adoption from the period of the late 1990s Labour government into the era of successive Conservative administrations (e.g., Kirton 2020). Nonetheless, and despite the increased saliency of names in adoption we evidenced earlier, there is scarce mention of names in the 2002 Act. There is no mention of names in sections of the Act detailing information to be kept about a person's adoption, or in the regulations on disclosure of 'identifying information' related to a person's adoption. The only mention of names is in relation to changing a child's name, and especially their birth family surname to a new adoptive family surname. The first instance of this is an outline of procedures to follow if an adopted person has been given or has taken a new 'name' within a year of the adoption order (section 77 (6), 4:2 of Schedule 1; it's unclear whether 'name' here refers only to forenames, to forenames and surnames, or only to surnames). The second instance of name content in the 2002 Act is a stipulation that the surname of a prospective adoptee must not be changed before the granting of the adoption order, unless birth parent(s) have consented to a change, or a Court allows a change (Section 28: 2 and 3a). Our audit of the 2002 Act also included official forms and accompanying guidance notes (form A58 and its variants A59 and A60, used by prospective adopters when applying for an adoption order). In form A58, and its variants, applicants are asked to provide the names ('first name(s) in full' and 'last name') they 'want the child to be known as', when the adoption order is made. Guidance notes on completing this section of the form explain: 'Please enter the name by which you want the child to be known following the adoption […]. You may wish the child to have a new name following the adoption, but there is no obligation to change the child's name if you do not want to do so'.

In the 2002 Act, and its accompanying official forms, content on names, is included although it is limited. Content is exclusively concerned with name changing for children, especially in relation to the changing of children's surnames. There is no content relating to names and information giving, or to children's name-based identity rights under the 1989 UNCRC.

Generic references to ‘names’ are unhelpfully opaque and, relatedly, there is no specific mention of children’s forenames.

Adoption: Statutory Guidance

Statutory Guidance (DFE 2013) is a text explaining the content of regulations made under the 2002 Act and the duties and responsibilities placed on adoption agencies. It also gives an overview of parental responsibilities of adopters. The intended audience of this text is ‘everyone involved in the adoption of children’ (DFE 2013: 3), including social workers and other adoption professionals, adoptive families, birth families, and adopted adults.

Our content audit found that names do feature within *Statutory Guidance*. For example, ‘naming the child or agreeing to the child's change of name’ (DFE 2013: 98) is listed as one of ten important elements of parental responsibility. It is unclear from the wording here whether ‘naming the child’ and changing a child’s ‘name’ implies both forenaming and surnaming, or just surnaming. A related reference to any changes of ‘names’ needing to be compliant with Section 28 of the 2002 Act (2013: 100) clarifies that it is, in fact, surnames at issue (given that Section 28 only specifies surnames and does not mention forenames). Elsewhere in the text, the issue is raised of ‘whether the surname of the birth parents, family and others should, in the context of openness in adoption, be included’ in life story work with children who are adopted (DFE 2013: 107). This is advisory content about names and information giving (albeit only focused on surnames). Also, in sections 11.8, 11.38 and 11.39 of *Statutory Guidance*, ‘names’ - of the adoptee, birth parents and other birth relatives, - are specified as key elements in processes for managing and disclosing ‘identifying information’ about persons involved in cases of adoption (DFE 2013: 208). For example, it is stated (DFE 2013: 215) that, where an applicant for information is the adopted person, applications for disclosure of information should include current and any previous forename(s) and surname, name on adoption ‘if different from current name’, as well as full names of adoptive parents and name at birth/prior to adoption, ‘if known’. Where the application is from a birth relative of an adopted person or from any other person, details should include applicant’s current forename(s) and surname, name of adopted person, ‘if known’, and original birth name of adopted person (DFE 2013: 215). This content also illustrates, inadvertently, the complexity of name issues in adoption.

Statutory Guidance contains relatively comprehensive content on names: it includes discussion of names in relation to 'information giving' as well as to 'name changing'. However, as in the 2002 Act, references to 'names' are often unhelpfully opaque, children's name-based identity rights under the 1989 UNCRC are not mentioned and there is no specific discussion of children's forenames.

Adoption: Minimum Standards

Minimum Standards (DFE 2014), issued under the *Care Standards Act* 2000 and linked to the 2002 Act, is concerned with the conduct of adoption and of adoption support services and agencies. It details two important principles which underpin standards applicable to the provision of adoption services. The first principle is 'values in relation to children', including: placing the child's welfare, safety and needs at the centre of adoption processes; seeking and taking fully into account the child's wishes and needs; and recognising that identity is important to the child's wellbeing, and must be valued and promoted. The second principle is 'values in relation to adopted adults and birth relatives', in recognition that, throughout their lives, services and information should be available to enable them to address their adoption experiences. Like *Statutory Guidance*, the target audience of *Minimum Standards* is a range of people involved in the adoption of children (see DFE 2014: 5), from social workers and other adoption practitioners to families formed through, and individuals affected by, adoption.

Despite its intended audience, we found that discussion of names is completely absent in *Minimum Standards* (DFE 2014). This is a significant omission, because names have obvious relevance to both of the 'principles' underpinning standards applicable to the provision of adoption services ('recognising that identity is important to the child's wellbeing'; 'values in relation to adopted adults and birth relatives', including availability of information to enable them to address their adoption experiences throughout their lives), as well as to many of the standards themselves.

Inclusions, opacity and omissions

In summary, our audit of instructional content relating to names within key texts of adoption law and policy in England has identified *inclusions* (surname changing, names in information giving), *opacity* (about which names and whose names are being discussed) and *omissions* (about children's name-based identity rights, about children's forenames, and in *Minimum*

Standards, names entirely). Of the three texts under our scrutiny, it is *Statutory Guidance* (DFE 2013) which contains the most comprehensive content on names; people seeking guidance about naming issues in adoption are best advised to consult this text.

Representations of family, rights and identities

Our second research question asks, what ideas of family, rights and identities are embedded within content on names in key texts of adoption law and policy? We organise our discussion of our findings using two recurrent, and interlinked, sets of ideas about names, family, rights and identities that emerged from our critical discursive analysis of the key texts and which, we argue, underpin the inclusions, opacity, and omissions found within them. These are 'surnames and family-making', within which parental naming rights are prioritised, the changing of children's surnames in adoption is normalised, and children's surnames are elevated in importance above children's forenames; and 'names and children's rights', in which children's 'welfare rights' are positioned above their forename-linked 'identity rights'.

'Surnames and family-making'

Our mapping of where, in the texts under our scrutiny, content on names can be found, and what is addressed, reveals a consistent focus on name-changing in adoption and especially in relation to children's surnames. It is evident that the key name issue is the timing of changes made to adoptees' surnames, rather than the changing of their surnames *per se*. Although it must be done at the right time, and/or in line with the rights of parents, adoption law and policy portray the changing of children's surnames, post-adoption, as an expected, routine, and inconsequential practice, core to adoptive family-making and as marking children's legal transfer from one set of parents to another.

Judgements in legal cases involving children's surnames in adoption have confirmed principles of the 2002 Act about the timing of and parental consent for surname changes, and thereby the importance of parental naming rights, and in so doing provide further illustration of the primacy of 'surnames and family-making' as a set of ideas about names, family, rights and identities in adoption law and policy. In Re C (a child) [2014] WL 5311842, the birth parents had consented to the early change of their child's surname and so the judge allowed this to take place prior to the adoption order being made. In Re R and E (Children) [2017] EWFC B22, a father alleged that a local authority had acted unlawfully in causing two of his

children to be known by the surname of their prospective adopters, prior to the issuing of the adoption order. The judgement in this case was that the local authority, in allowing this to happen, had acted contrary to section 28 of the 2002 Act; it had acted without the consent of the father and in violation of his parental naming rights.

The attention given to children's surnames within the 2002 Act and within *Statutory Guidance* (DFE 2013), and confirmed through case law, can be argued to both reflect and to reproduce normative understandings about the sharing of surnames as an important component of collective family 'belonging', marking and displaying the boundaries of (nuclear) familial affiliation (Finch 2008). In English-speaking countries, and despite some shifts in marital surnaming practices, it remains the norm for a heterosexual woman marrying a man to discard her birth surname and to take the surname of her husband (Pilcher 2017). Moreover, there remain normative expectations that children of heterosexual couples, irrespective of the marital status or marital surnaming practice of their parents, are surnamed after their father (Nugent 2010). Evidence from the US suggests that adoptive couples who are heterosexual do follow normative familial surnaming conventions, in that the adoptive father's surname is taken by/given to all members of the adoptive family (Patterson and Farr 2017). The emphasis we found on changing children's surnames in English adoption law and policy is, then, a representation of normative (patriarchal, heteronormative) ideas about surnames and family and kinship identities of 'belonging', and of men's privileged embodied named identities (Pilcher 2017). These patriarchal, (hetero)normative assumptions are embedded in adoption law and policy despite evidence, first, of the decreasing reliability of surnames for signaling family in contexts of diverse, fluid, and complicated kinship relations (Davies 2011, Finch 2008, Klett-Davis 2012), and second, that most adoptive couples who are same-sex give their child(ren) a hyphenated surname, created from the surname of each parent (Patterson and Farr 2017). Yet the emphasis we found in the texts on changing children's surnames could also be a recognition that, in being a family form that is already 'other', sharing a surname may be especially meaningful for families formed through adoption (e.g., Patterson and Farr 2017), including for adopted children themselves (Beek and Schofield 2002; Sinclair, Wilson, and Gibbs, 2001).

Earlier, we noted that content in *Statutory Guidance* (2013) does reference names in discussion of processes for managing and disclosing 'identifying information' about persons involved in cases of adoption and in 'information giving' throughout the lives of people

affected by adoption. Yet the role of names in 'information giving' and for the identity rights for people affected by adoption are otherwise decentered by the dominance of ideas within *Statutory Guidance* about 'surnames and family-making', within which name-changing for children is normalised. For example, as shown earlier, sections 11.38 and 11.39 of *Statutory Guidance* focus on information giving in relation to names (DFE 2013: 215). The wording ('current' and 'previous' names, 'original birth name', 'if known') of this otherwise straightforward instructional content signals the complexities of entanglements of names and identity in adoption processes, caused *by* name-changing, and which continue long beyond the granting of an adoption order, and throughout the lifetimes of people affected by adoption. Names are, of course, the key elements of 'identifying information': applicants seeking disclosure of information are likely to face difficulties if, *due to name-changing* in adoption, they lack knowledge of current or previous names of all or of some persons involved.

As we previously noted, children's forenames are not specifically discussed either in the 2002 Act, nor in *Statutory Guidance* (DFE 2013) nor in *Minimum Standards* (DFE 2014). We see this as a further manifestation of the dominance of 'surnames and family-making' as a set of ideas about family, rights and identities in adoption law and policy texts, and the normalisation of surname change for children that it (re)produces. In consequence, adopted children's surnames are elevated in importance over and above their forenames, with implications for their identity rights, both in their here-and-now and in their adult futures. We explore this further next as we discuss the second, interlinked, set of ideas about family, rights and identities embedded within the name content of adoption law and policy: 'names and children's rights'.

'Names and children's rights'

Welbourne (2002) argues that although there are recognised complexities and tensions in law about children's rights in adoption, it is the 'welfare and best interests rights' of adopted children, not their 'identity rights', that underpin English adoption law and decisions made in reference to it (see also McMurray et al 2011). Albeit unarticulated in the 2002 Act, nor in *Statutory Guidance* or *Minimum Standards*, we surmise that it is ideas about children's rights of 'welfare and best interests' that underpin representations of surname changing as routine and expected for children who have been adopted, and for the importance their surnames are held to have for their (new) family affiliation. Children's rights of welfare and best interests

certainly featured in the judgement of a legal case we cited earlier, Re R and E (Children) [2017] EWFC B22. Here, a father won his argument that a local authority had acted unlawfully in causing two of his children to be known (albeit informally) by the surname of their prospective adopters, prior to the issuing of the adoption order. However, the judge noted that, had the local authority made an application to the court to change informally the children's surnames ('as they should have done'), it likely would have been allowed on grounds of the welfare and best interests of the children.

We argue that a key consequence of the predominance of discourses of 'surnames and family-making' in key texts of adoption law and policy is the eclipsing of the issue of children's forenames. Direct discussion of children's forenames, and of their forename-related identity rights, is not evident in the content of the 2002 Act, nor in *Statutory Guidance* or *Minimum Standards*. However, children's forenames in adoption have been addressed in legal judgements in family courts in England since 2002. At issue in the case of re DL and LA (Care: Change of Forenames) [2003] FLR 1 339 was a change of forenames of children, made by their prospective adopters. The judge disallowed a change of forenames, arguing (in a legal precedent) that the principles underlying the law on surname change for children placed for adoption also apply to forename change. That is, forenames for children placed for adoption should not be changed prior to an adoption order being made, unless birth parents have consented to a change, or a Court allows a change on grounds of the welfare or best interests of a child. This interpretation thus extended the law on changing children's surnames in cases of adoption and applied it to children's forenames. In so doing, we argue that the normalcy of name-changing in adoption is (re)produced and the importance of parental naming rights reiterated, along with the primacy of children's rights of welfare and best interests.

Law in relation to forenames in adoption developed further in a 2014 case involving two children placed for adoption, within which ideas about 'names and children's rights' also featured. In Re London Borough of Haringey v M [2014] EWHC 2883 Fam, the judge allowed a change of forenames and surnames for the children, prior to the adoption order being made, on grounds of their welfare and best interests. The birth parents had made determined efforts (including via digital searches) to find their children, and the distinctiveness of the children's birth forenames was held to be an issue. It was argued that the children deserved a secure home with their soon-to-be adopters, and this could only be

achieved if the children had a new identity (that is, new forenames and surname). Clearly, in this case, children's name-related welfare and best interest rights were held to be paramount, above the naming rights of birth parents.

Court judgements in England have established, then, that forename changes for children placed for adoption are subject to the same legal principles as surname changes in terms of timing, parental rights of consent and the superior importance of the welfare and best interests of a child. Such legal judgements, although not as readily accessible as *Statutory Guidance, Minimum Standards* or even the 2002 Act itself, do compensate somewhat for the omission of content on forenames we have identified within these three key texts of adoption law and policy. Even more significantly, as we discuss next, a landmark legal case involving forenames in adoption represents a challenge to the parental naming rights of adopters and, relatedly, elevates identity rights of children embedded in their birth forenames.

In the detail of the landmark case of re DL and LA (Care: Change of Forenames) [2003] FLR 1 339 (discussed above), in which a change of forenames was disallowed prior to an adoption order, the judge Lady Justice Butler-Sloss nonetheless argued that birth forenames are pre-eminent bearers of identity rights for a child who is adopted. Lady Justice Butler-Sloss emphasised the 'significant' and 'underlying importance' of a forename for identity, even for a 'very young child' who would likely know their own forename: 'To change [a forename] is to affect the child's identity…There is an underlying importance to the principle that the [fore]name should not be changed' (2003: 346). The 'welfare principle', linked to children's rights of welfare and best interest, was argued to provide the only justificatory rationale, and only then in exceptional circumstances, for children's forenames to be changed prior to an adoption order being made. This is a judgement that addresses ideas about children's name-based identity rights specified in Articles 7 and 8 of the 1989 UNCRC: that children have 'the right from birth to a name' and the right to 'preserve his or her identity, including…[their] name…'.

The significance of Butler-Sloss' 2003 judgement on children's forenames and identity rights in cases of adoption has evolved exponentially. Essentially, the Butler-Sloss principle that birth forenames are key bearers of a child's identity rights has become the 'official' position amongst adoption professionals in England (Brain and Dibben 2010; Featherstone, Gupta and Mills 2018). Moreover, it is held to have relevance beyond the point at which an adoption

order is made and via which adopters gain rights of parental responsibility including over name choices for their child. Consequently, in case law and in adoption professional practice, changing a child's birth forename (at any stage) is now portrayed as inadvisable, if not disallowed, in recognition of their identity rights, unless there are exceptional reasons for doing so. Both *Statutory Guidance* (DFE 2013) and *National Minimum Standards* (DFE 2014) were published a full decade after the Butler-Sloss judgement of 2003. Yet as we have shown, in these texts, it is either implied that changing birth forenames of children who are adopted is, like changing surnames, entirely normative, expected and inconsequential, or the issue of changing forenames is not directly addressed at all.

The widespread acceptance and enactment of the Butler-Sloss principle amongst adoption professionals means that there is disparity and inconsistency between, on one hand, instructional content in key texts of adoption law and policy and, on the other, professional practice in relation to the forenames of children who are adopted. In our view, the disparity and inconsistency between professional practice and official statutory guidance texts regarding children's forenames in adoption is problematic for at least two reasons. First, both *Statutory Guidance* (DFE 2013) and *Minimum Standards* (DFE 2104) are more accessible sources of information and guidance than are court judgements and case law. Yet, as we have shown, both are in and of themselves inadequate, being out-of-date with regard to landmark legal thinking and professional adoption practice about the identity rights now held to be inherent in children's forenames. Second and relatedly, if case law and professional practice since 2003 endorses the retention of children's forenames post-adoption order but statutory processes, forms and guidance (without mentioning forenames specifically) represent forename change as both possible and desirable, which official and 'power-full' discursive framing is to be trusted by adoptive families, birth families, and adopted adults as the most authoritative purveyor of truth and norm on the issue of forenames and the identity interests of children? The inconsistency of messaging here might help explain why, in the words of an adoption social worker in Featherstone, Gupta and Mills' (2018: 19) study, "We do really go into them [adoptive parents] about identity, not changing [children's fore]names – but they do".

The 'mixed messaging' about names, and especially about children's forename-based identity rights within key texts of adoption law and policy in England, we argue, are ultimately related to what Eekelarr (2020: 798) has called the 'legal fiction' of adoption. As expressed

in the 2002 Act (Section 67, 1), this is the idea that 'An adopted person is to be treated in law as if born as the child of the adopters or adopter'. It is this construction of adoption, entangled as it is with English common law on parental rights and responsibilities - and the positioning of children as property to be passed between one set of parents and another - that ultimately enables and normalises name-changing for children who are adopted. It does so irrespective of relevant articles of the 1989 UNCRC, the Butler-Sloss judgement of 2003, or the professional ethos of adoption practitioners, all of which endow children's birth name-based identity rights with great significance.

Conclusion

Findings presented in this article suggest that in the three key texts of still current adoption law and policy published in England between 2002 and 2014, content on names – an issue likely to be of especial significance for families (re)formed through adoption - is principally concerned with surnames and with name-changing and that specific discussion of children's forenames is absent. We have argued that the opacity of content and its inclusions and omissions are outcomes of discourses of 'surnames and family-making', within which normative representations of names, family, rights and identities are expressed, and which also elevate children's 'welfare and best interest' rights above their (fore)name-based 'identity rights'. Discourses of 'surnames and family-making' are themselves framed by the 'legal fiction' (Eekelaar 2020) of adoption which (re)constructs children as if they were born to their adoptive parents. Furthermore, developments in English case law since 2003, and subsequently in adoption professional practice, on children's forenames and identity rights mean that current guidance about names, family, rights and identities is outdated, especially within *Statutory Guidance* (DFE 2013) and *Minimum Standards* (DFE 2014).

To date, research literature has not addressed the nexus between names and law and policy on adoption, but our study of these issues using England as an example shows the value of doing so. First, our study advances sociological knowledge of normative, power-full, authoritatively heavy understandings of names that feed into the milieu of different types of families. We have shown that, within the content of adoption law and policy on names, having a shared surname across generations within a nuclear family is represented as core to family belonging - a portrayal that perpetuates the (hetero)normalcy of patriarchal and patrilineal naming practices which privilege men and mark children as belongings of parents. Uniformity of

surname is itself represented as achieved through the routine exercise of parental rights to name children, rights which extend to changing children's forenames, and which render name-changing for adopted children as normal and inconsequential - despite the denigration of children's identity rights it engenders. The mono-dimensionality of ideas about family and names in adoption law and policy sits at odds both with the complexities of issues of names in adoptive family life, and the diversity and fluidity of contemporary family relationships more broadly (e.g., Finch 2008). More multi-logical ideas about names, family, rights and identities in adoption law and policy texts might better support people affected by adoption to navigate the challenges and opportunities of adoptive family life. Second, and relatedly, our findings highlight a need for policymakers in England to amend and update current statutory guidance texts, and related official forms, on names and adoption, and especially, to incorporate fully developments arising from post-2003 case law on names in adoption. Our findings therefore extend arguments made by Doughty (2015: 331) as to 'mis-communications' within adoption legal frameworks, and the need families and practitioners have for greater clarity in statutory guidance. Third, our analysis of names in adoption law and policy exposes significant tensions between the 'legal fiction' of adoption (whereby a child's identity is legally reconstructed as if born to their adopter), the policy of 'openness' in adoption (which creates a new version of kinship inclusive of adoptive and birth relatives), and the name-based identity rights of people who are adopted. Our research therefore calls into question how, in contemporary adoption processes and practises predominant in England, parental rights and responsibilities to (re)name children can be balanced with children's own name-related identity rights, especially given that decisions about adopted children's welfare and best interests are invariably complex and challenging.

Our examination of discursive representations of names, family, rights and identity in legal frameworks governing adoption focuses on just one national context. Yet, our arguments do have implications for the vast majority of countries around the globe that have ratified the 1989 UNCRC, but whose own systems and practices of adoption, as in England, may not be in keeping with the spirit of its Articles relating to children's name-based identity rights. Case studies of other national contexts would develop scholarly understanding of differences and similarities between countries, including representations of names, family, rights and identities embedded within adoption law and policy. We have argued that such official power-full representations carry authoritative weight, shaping people's milieu through the ideas, values and meanings they contain and convey. The small body of direct and indirect

research on experiences and understandings of names in adoption has yet to address how legal principles on names and adoption, whether via legislation, statutory guidance or case law, are translated into adoption professionals' practices and the lived experiences of families formed through adoption. Future research should therefore engage with people affected by adoption, and adoption professionals, to uncover their understandings, and felt consequences, of points of law and of discourses contained and conveyed within legal and social policy frameworks on adoption and names.

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