

*A version of this article first appeared in **Coutts Woman**, December 2011.*

Name Changing: Fad or Fraud?

Concern is rising within the business community over the increase in fraudulent activity arising from individuals legally changing their names. With prices ranging between 50 pence and £33, it is now easier to change your name than it is to do your online banking. It is estimated that, by the end of this year, more than 60,000 people will have new legal identities.

The reasons for changing name are usually innocent enough, but in some cases the underlying motives are causing problems for businesses and authorities alike, with people shedding old names and adopting new ones to avoid criminal liability or facilitate fraudulent activity.

This phenomenon adds a further potential pitfall to the existing minefield facing entrepreneurs and smaller enterprises considering recruitment or expansion. Any recruitment process should as a matter of course include thorough checks into the individual's background, including inspection of identity documents and taking references. This process is made more difficult when the individual involved, up until recently, had been someone else. This is cause for concern in a legal climate where companies and directors can find themselves both criminally and financially liable for the actions of their employees at the drop of a hat.

The best way to avoid liability in these circumstances is to prove that all possible precautionary measures have been taken to avoid the commission of offences within your organisation. This includes authenticating the identity and character of any potential candidates for recruitment, as well as existing employees, if you have concerns.

The main problem is that it is difficult to check if someone has changed their name if they do not tell you themselves. Although an individual is obliged to notify various government departments and organisations of their change of name, data protection legislation prevents most of these organisations from confirming that fact to a recruiter. Another problem is that certified Deed

Polls (issued upon change of name) can be used to change the name on both driving licences and passports. The only documents which cannot be altered as a result of changing one's name are birth certificates, marriage and civil partner certificates, educational certificates and decrees absolute.

Notwithstanding this, there are steps you can take to avoid liability in the event that you unwittingly employ someone with a criminal or fraudulent background. Firstly, you can stipulate that one of the forms of identification to be provided during the recruitment process includes the candidate's birth certificate. Secondly, you can ensure you make full use of character references, stipulating that any referees must have known the candidate for a set period of time.

Another simple measure to take is to ask the candidate. In this way employers can protect themselves in the same way they would when asking about a person's previous convictions. Incidentally, a change of name does not relieve an individual of their obligation to disclose criminal convictions received under a different name. In the event that a candidate misleads you on either of these issues, you have a remedy in contract and, provided there is no evidence to imply that you knew or suspected that the company had been misled, you can rely on that fact as part of your defence in the criminal courts. It is of course still preferable to ensure that you do not employ such a person in the first place, as there is no guarantee the individual would be able to pay any damages awarded, and action in the criminal courts could cause untold damage to your company's reputation, as well as its bank balance.

It is important to take a common sense approach to this issue. Guidance from the Serious Fraud Office and the Ministry of Justice recognises that the compliance requirements of small and medium sized enterprises in preventing fraud within their organisation will not be as high as those of larger corporations. However, the SFO has indicated that the smaller the corporation, the more likely it is that knowledge of the criminal actions of their employees could be attributable to the directors, and subsequently the company.

The best approach to take therefore is to be proactive and transparent. If you have concerns about an individual's identity, record them. Take steps to alleviate them. If your concerns are dispelled to your satisfaction, make a record. If they are not, the best advice would be to not employ that

individual. It will only make it harder down the line to prove that you took all reasonable steps to avoid fraudulent activity within your organisation.

If you would like to talk to us about the issues raised by this note, please contact:

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