ALC intervention: Supreme Court: Revocation of adoption orders

The Supreme Court has handed down its judgment *In the matter of X and Y (Children: Adoption Order: Setting Aside)* [2026] UKSC 13, in which the ALC intervened.

The judgment concerned whether the court holds jurisdiction to set aside or revoke a validly made order for the adoption of a child other than by way of an appeal, or via the narrow statutory routes to revocation of adoption orders set out in the Adoption of Children Act 2002 (upon legitimation or second adoption of the child).

In the first instance decision ([2024] EWHC 1059 (Fam)) in respect of the children, 'X' and 'Y', Mrs Justice Lieven had determined that there is a category of case in respect of which the power to revoke a validly made adoption order exists under the inherent jurisdiction [76] but held that it could not be used solely on grounds relating to the adopted child's welfare [78]. As that was the only ground relied on, she refused the application to revoke the adoption orders in respect of X and Y.

X and Y's adoptive mother appealed to the Court of Appeal and was supported by the other parties. The Court of Appeal dismissed the appeal ([2025] EWCA Civ 2) and held that a first instance court has no jurisdiction to revoke a validly made adoption order other than in the narrow circumstances prescribed by statute or by set aside on appeal.

The Court of Appeal did however identify at [63] that there may be '*very narrow and specific instances in which the High Court finds it necessary to entertain an application to revoke an adoption order, but they will only arise where for some reason an appeal, in or out of time, is not possible*.' Furthermore, at [69] the Court of Appeal found that '*it is possible to imagine such an extreme situation arising that the revocation of an adoption order becomes necessary if the court is to comply with its Convention obligations*.'

AM appealed to the Supreme Court, supported by X, Y and their birth mother, BM. She contended that there must be an alternative route to revocation of an adoption order outside those identified above where there is no scope for an appeal. She relied on the inherent jurisdiction of the High Court.

By the time of the appeal, X and Y were no longer children and the *parens patriae* jurisdiction was no longer available to them, rendering the appeal academic. The

Supreme Court determined there was good reason in the public interest for determining the appeal in any event, given the likelihood that there will be other cases like this one and resolution of the question raised does not depend on the facts of this case [5].

The ALC considered its position on intervening in the appeal very carefully. An extensive review of the history of adoption in England & Wales was undertaken. The domestic case law was considered from a child's rights perspective, as were the obligations under the ECHR, the UNCRC and the European Conventions on Adoption. It was clear upon undertaking that review that:

- No first instance jurisdiction to revoke an adoption order is available outside the limited statutory exception at s 55 Adoption and Children Act 2002, concerning legitimation, and as a result of a second adoption;
- Adoptions in England and Wales have always been intended to be permanent and transformatory in nature;
- There are strong policy reasons in favour of adoptions being irrevocable outside of the narrow exceptions identified: a wider power to revoke would undermine the status of adopted children;
- Those policy reasons had been explicitly identified and adopted by Parliament in the various statutes providing for the adoption of children since its creation as a legal status in 1926; and
- None of the international instruments require signatories to them to create a power to revoke adoption orders.

Given the positions of the respective parties in support of the appeal, which were contrary to the research undertaken by the ALC, the ALC decided to seek permission to intervene in the appeal. **The ALC's written case is available to download via the Supreme Court's website** here.

The Supreme Court discussed the scope of the inherent jurisdiction at [46]-[77]. This is an important discussion of the law as it relates to the High Court's *parens patriae* or inherent jurisdiction and is recommended to members in full.

The Supreme Court highlighted that the use of the inherent jurisdiction '*cannot be used to circumvent the legislation, either by achieving the same aim by a different procedural route, or by achieving different aims which are incompatible with the statutory scheme'* [55]. Its existence and ambit must be identified according to a historical approach [54]; [64].

Even the use of the *parens patriae* jurisdiction to protect children from significant harm is now '*heavily curtailed'* [59] and only survives cases where '*the court is required to perform the Crown's residual function of protecting those who stand in need of protection from significant harm because no other statutory mechanism is available or adequate to achieve this purpose'*, such as return orders in cases where the Hague Convention 1980 does not apply and no specific issue order is available under the

Children Act 1989, or where British children require protection from forced marriage or female genital mutilation outside of the jurisdiction, or in serious medical treatment cases [60]-[61].

The Supreme Court identified various barriers to the use of the inherent jurisdiction that the appellants sought to rely on: (1) prerogative powers have not been concerned with the reordering of parental responsibility by extinguishing and/or transferring it from one set of parents to another. Until the Adoption Act 1926, there was no power of a court to reorder parental responsibility by extinguishing it in one parent and transferring it to an adoptive parent [64]; (2) the exercise of the prerogative cannot be used to protect children from harm created by the statutory scheme, and there are ample powers available under the Children Act 1989 to protect children from harm, meaning an alternative statutory scheme is available which puts adopted children in the same position as biological children [68]-[70]; (3) the ACA 2002 has occupied the ground in respect of the orders sought, meaning there is a comprehensive statutory scheme governing '*adoption and the singularly permanent effect of such an order*.' The inherent jurisdiction cannot be used to circumvent that statutory scheme [71].

Adoption orders can still be challenged via appeals out of time. That was the case in some of the authorities relied upon by the appellants, where the court's inherent jurisdiction to enable the court to act effectively in the administration of justice was used to extend time for an appeal (as opposed to being a reference to the *parens patriae* jurisdiction) [78]-[79].

The Supreme Court then undertook a review of the history of adoption in England & Wales, which is a creature of statute starting with the Adoption Act 1926 [91]-[127]. The Supreme Court identified powerful policy arguments '*in favour of the permanent and irrevocable transfer of parentage from the natural parents to the adoptive parents upon the making of an adoption order*' at [126], noting that those policy arguments had been adopted by successive governments throughout the history of adoption.

As to the two remaining narrow powers identified by the Court of Appeal at [63] and [69] of its judgment, the Supreme Court found they do not exist. As to a power to revoke an adoption order where an appeal is not possible, as identified by the Court of Appeal at [63] of its judgment, the Supreme Court found that no reliance can be placed on the authority identified for the proposition, and reiterated that in any event '*there is no inherent power to revoke an adoption orde*r' [131]. As to the power to revoke adoption orders where it becomes necessary to comply with Convention obligations identified by the Court of Appeal at [69] of its judgment, the Supreme Court found that there is no such jurisdiction [132]-[133], and it is '*impossible to imagine such an extreme situation arising as would justify the revocation of a valid adoption order in order for the court to comply with its Convention obligations'* [134]. The Supreme Court confirmed there is nothing in the UNCRC of the ECHR which requires 'a validly made adoption order to be capable of revocation' [135]-[136].

As a result, the appeal was dismissed.

We are extremely grateful to the work of Forum Shah and Gemma Adams from Dawson Cornwell who instructed Lorraine Cavanagh KC, Victoria Roberts and Daniel Currie on behalf of the ALC, all acting pro bono in the intervention.

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