THE COURT ORDERS that no one shall publish or reveal the name or address of X and Y who are the subject of these proceedings or reveal any information which would be likely to lead to their identification or to the identification of any member of their family in connection with these proceedings.

Easter Term
[2026] UKSC 13
On appeal from: [2025] EWCA Civ 2

JUDGMENT

In the matter of X and Y (Children: Adoption Order: Setting Aside)

before

Lord Reed, President
Lord Sales, Deputy President
Lord Stephens
Lady Simler
Lord Doherty

JUDGMENT GIVEN ON
22 April 2026

Heard on 4 February 2026

Appellant – AM
Nick Goodwin KC
Dorian Day
Samantha Smith
(Instructed by Boardman, Hawkins & Osborne LLP)

First Respondent – BM
Andrew Norton KC
Elisabeth Richards
Sapna Jain
(Instructed by David J Foster & Co)

Second Respondent – Y
Timothy Bowe KC
Mark Cooper-Hall
(Instructed by Whatley Recordon Solicitors)

Third Respondent – X
Hannah Markham KC
Kara Cann
(Instructed by Anthony Collins Solicitors)

Intervener – Secretary of State for Education
Louise MacLynn KC
Tom Wilson
(Instructed by Government Legal Department)

Intervener – CoramBAAF (written submissions only)
Alexandra Conroy Harris
(Instructed by CoramBAAF)

Intervener – The Association of Lawyers for Children (written submissions only)
Lorraine Cavanagh KC
Victoria Roberts
Daniel Currie
(Instructed by Dawson Cornwell LLP)

Intervener – The International Centre for Family Law, Policy and Practice (written submissions only)
Rob George KC

Edward Bennett
(Instructed by Hunters Law)

LORD STEPHENS AND LADY SIMLER (with whom Lord Reed, Lord Sales and Lord Doherty agree):

1. Introduction

1. Does the court have any jurisdiction to set aside a validly made order for the adoption of a child other than by way of an appeal? That is the central question raised by this appeal. The unique attribute of an adoption order, in contrast to any other order that may be made for the welfare of a child, is that it is final and permanent. The legal relationship of parenthood between parents and their natural child can only be extinguished by the making of a valid adoption order, and the question is whether the same must be true of the legal relationship established by adoption.

2. Adoption in the United Kingdom is entirely a creature of statute, first enacted in the Adoption of Children Act 1926 (discussed further below in section 8). In England and Wales, the statutory scheme for adoption is presently contained in the Adoption and Children Act 2002 ("the ACA 2002"). As discussed below, neither the ACA 2002 nor its predecessors have ever made provision for a court to revoke a validly made adoption order on welfare grounds.

3. Accordingly, the appellant, AM, who is the adoptive mother of X and Y, supported by them and by their natural mother, BM, contends that where an adoption order has been validly made and there is no scope for an appeal, there must be an alternative non-statutory route to revocation, because without this a child's specific circumstances and welfare cannot even be considered. The alternative route relied on by her is by invoking the inherent jurisdiction (the parens patriae jurisdiction) of the High Court.

4. AM submits that this jurisdiction has an important role in protecting children whose welfare requires it and that, in highly exceptional and very particular circumstances, a child's welfare may require the use of this inherent jurisdiction to revoke a properly made adoption order. Here, the welfare and identity needs of Y (and possibly X) require revocation of the adoption orders (made many years ago) to correct the so-called "legal fiction" by which their de facto parent, who is their natural mother, is not recognised in law as their parent.

5. In fact, in the present case, X and Y are no longer children. This means that no further adoption application could be made in either of their cases by virtue of section 49(4) of the ACA 2002 which provides that "an application for an adoption order may only be made if the person to be adopted has not attained the age of 18 on the date of the application" (although to provide security and status for the remainder of a child's minority where close to 18, the ACA 2002 provides that the period for the making of an adoption order can be extended until the child's 19th birthday). More significantly, it also

means that X and Y are no longer children in respect of whom the parens patriae jurisdiction (if it has any application here) could be applied. This was ultimately accepted by counsel on all sides. Nonetheless, even if academic in this case because no order under the inherent jurisdiction could be made in favour of X and Y as they are no longer children, we consider it appropriate to hear and determine the appeal. There is good reason in the public interest for doing so in the circumstances 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 (see *R v Secretary of State for the Home Department, Ex p Salem* [1999] 1 AC 450).

2. The essential facts

6. Because the issue raised by this appeal is a pure question of law, it is unnecessary to set out the facts in any detail. By way of short background and to provide some context for the legal question raised, the essential facts may be summarised as follows.

7. X and Y (then aged five and four years old) were placed for adoption with AM in 2012 following a prolonged period in foster care. An adoption order was made in favour of AM in May 2013. They maintained contact with BM. This was both facilitated and supported by AM.

8. In 2021, both X and Y left AM's home and moved to live with BM. Y remained with BM, but X moved to live with her natural father in 2022, having by then been introduced to him. The breakdown of the adoption in this case was not a consequence of AM rejecting either X or Y. AM's motivation has been to support them and give effect to their wishes and feelings.

9. The local authority issued care proceedings and sought interim supervision orders on the basis that X and Y were beyond parental control in February 2023. Interim supervision orders were made. The care proceedings concluded on 4 May 2023 with child arrangements orders reflecting the recommendation of the local authority that X live with her natural father and Y live with BM. An order was also made that X should spend time with BM. These orders conferred parental responsibility upon each respective resident natural parent.

10. X now lives with her husband and their baby. In February 2025, she resumed telephone contact with AM, and they have since met in person. Y continues to live with BM, and BM's other children. Since May 2023 her position has been formalised through the making of a child arrangements "lives with" order under section 8 of the Children Act 1989. She has not had contact with AM since leaving her care. Y gave birth to her first child in May 2025. Y continues to have regular contact with X.

3. The legislative scheme for adoption

11. To understand the legislative force and effect of an adoption order, it is helpful to describe the scheme for adoption provided for by the ACA 2002.

12. Section 1(2) of the ACA 2002 provides that the paramount consideration of the court or adoption agency when taking decisions under the Act must be the child's welfare, throughout his or her life. Section 1(3) requires courts and adoption agencies always to bear in mind that, in general, any delay in coming to a decision relating to the adoption of a child is likely to prejudice the child's welfare.

13. Section 1(4) then sets out a list of matters (the "welfare checklist") to which courts and adoption agencies must have regard when exercising their powers. These are:

> "(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
>
> (b) the child's particular needs,
>
> (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
>
> (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
>
> (e) any harm (within the meaning of the Children Act 1989 (c.41)) which the child has suffered or is at risk of suffering,
>
> (f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –
>
> > (i) the likelihood of any such relationship continuing and the value to the child of its doing so,

> (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
>
> (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

14. Section 1(6) provides:

> "In coming to a decision relating to the adoption of a child, a court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so."

15. Accordingly, the statutory scheme requires a once and for all determination based on a prospective assessment of "the child's welfare" looking forwards throughout their life (section 1(2)). The court must have regard to the likely effect on the child (throughout their life) of having ceased to be a member of the original family and become an adopted child (section 1(4)(c)). Moreover, as the Court of Appeal put it, the court must be satisfied that the child's welfare requires adoption, as opposed to any other lesser arrangement available. After a full welfare evaluation of the benefits and disadvantages, undertaken in a holistic rather than linear manner, the court must consider that the highest level of intervention, namely adoption, is proportionate and necessary to meet the child's welfare needs (section 1(6)).

16. The pathway to adoption for many children starts with the making of a care order under section 31 of the Children Act 1989, followed by a placement order under section 21 of the ACA 2002.

17. Section 31 of the 1989 Act empowers a court to make an order placing a child in the care of the local authority or putting the child under the local authority's supervision. Pursuant to section 31(2), such an order can only be made if the court is satisfied: "(a) that the child concerned is suffering, or is likely to suffer, significant harm; and (b) that the harm, or likelihood of harm, is attributable to—(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control."

18. Section 21 of the ACA 2002 provides for the making of a placement order by the court, authorising a local authority to place a child for adoption with a prospective adopter. The effect of a placement order is to give parental responsibility to the prospective adopter once the child has been placed and to restrict the parental responsibility of birth parents to the extent determined by the placing adoption agency (sections 25(3) and (4)). Pursuant to section 21(2), the court may not make a placement order in respect of a child who has a parent or guardian unless he or she is already subject to a care order or the conditions for making a care order (see above) are met. Section 21(3) permits the court to dispense with the parents' consent to the making of a placement order. This is subject to section 52 of the ACA 2002, which provides that parental consent cannot be dispensed with unless the parent cannot be found or is incapable of giving consent, or the welfare of the child requires the consent to be dispensed with.

19. Section 21(4) provides that a placement order continues in force until it is revoked or an adoption order is made in respect of the child. A local authority, parent or child can apply to revoke a placement order, but in the case of a parent, only before the child is placed for adoption. In such circumstances, leave is required and it may only be granted if the parent can demonstrate that there has been a change of circumstances since the making of the placement order (section 24(2) and (3)).

20. Once a placement order is made, the local authority (acting as adoption agency) will seek to identify a suitable placement and, subject to the recommendations of its Adoption Panel and the approval of its Agency Decision Maker, within the framework of the Adoption Agencies Regulations 2005, will place the child with a prospective adopter. The prospective adopter subsequently applies to adopt under sections 50 or 51 of the ACA 2002.

21. Section 46 of the ACA 2002 sets out the consequences of an adoption. Significantly, section 46(2) provides that an adoption order operates to extinguish the parental responsibility for the child of the natural parent and to transfer it to the adopter. So far as material section 46 of the ACA 2002 provides as follows:

> "46 Adoption orders
>
> (1) An adoption order is an order made by the court on an application under section 50 or 51 giving parental responsibility for a child to the adopters or adopter.
>
> (2) The making of an adoption order operates to extinguish - (a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order, …

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings."

22. Under section 47, an adoption order can only be made in the absence of the parents' consent where the child has been placed for adoption pursuant to a placement order and the court deems it appropriate for consent to be dispensed with (under section 52). Parents require leave of the court to oppose adoption orders where a child has been placed for adoption by an adoption agency with a prospective adopter. The court cannot give leave unless satisfied that there has been a change in circumstances since the placement order was made (section 47(7)).

23. The status conferred by an adoption order is addressed by section 67 of the ACA 2002 as follows:

"67 Status conferred by adoption

(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

(2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by - (a) a couple, or (b) one of a couple under section 51(2), is to be treated as the child of the relationship of the couple in question.

(3) An adopted person - (a) if adopted by one of a couple under section 51(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and (b) in any other case, is to be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter; but this subsection does not affect any reference in this Act to a person's natural parent or to any other natural relationship.

> (4) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.
>
> (5) This section has effect from the date of the adoption.
>
> (6) Subject to the provisions of this Chapter and Schedule 4, this section - (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication, and (b) has effect as respects things done, or events occurring, on or after the adoption."

24. It is also relevant to note that section 115 of the ACA 2002 introduced the option of a special guardianship order, by introducing a new section 14A of the Children Act 1989. A special guardianship order is an order that can be made in any family proceedings concerning the welfare of a child, appointing one or more individuals to be a child's "special guardian" to exercise parental responsibility in respect of the child to the exclusion of any other person with parental responsibility for the child (apart from another special guardian) (section 14C(b)). Significantly, as the Explanatory Notes to the ACA 2002 confirm, "unlike adoption orders, special guardianship orders can be varied or discharged". Section 14D provides that special guardianship orders may be discharged on the application of a special guardian, a natural parent, the child, or a local authority designated in a care order with respect to the child (section 14D). There are leave and other requirements (including by section 14D(5) a requirement on a parent applying to vary or discharge a special guardianship order to show that there has been a significant change in circumstances since the making of the order).

25. In contrast to both special guardianship orders and placement orders, the only provision made by the ACA 2002 to revoke an adoption order is in section 55 of the ACA 2002. Section 55 provides a narrowly focussed basis for revocation of an adoption order in circumstances of subsequent legitimation of the adopted child as follows:

> "(1) Where any child adopted by one natural parent as sole adoptive parent subsequently becomes a legitimated person on the marriage of, or formation of a civil partnership by, the natural parents, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke the order."

As we explain below (para 117), this narrow exception is concerned with removing the perceived stigma of illegitimacy for an adopted child.

26. In addition, the statutory scheme in the ACA 2002 provides that where an adopted child is subsequently made the subject of a different adoption order, the subsequent adoption order has the effect of revoking the earlier order (section 46(5)).

27. It follows that within the ACA 2002, there is a scheme of increasing permanence for the placement of children outside the care of their natural parents:

> (a) A placement order permits the restriction of the parental responsibility of natural parents, who must demonstrate a change of circumstances to be able to apply to revoke the placement order or to oppose the making of an adoption order.
>
> (b) A special guardianship order permits the special guardian in whose favour the order is made to exercise parental responsibility to the exclusion of the birth parents and, while intended to be permanent, may be revoked if the parent can demonstrate a significant change of circumstances since the order was made.
>
> (c) An adoption order extinguishes the parental responsibility of the natural parents and gives parental responsibility to the adopters, who are to be treated in law as if the child was born to them and not to any other person (section 67(1)–(3)). There is no provision for revocation, save in the rare circumstances of legitimation. There is no provision for extinguishing an adoptive parent's parenthood, other than by the subsequent making of another adoption order.

28. In *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239; [1995] 2 FLR 1 ("*Re B*"), Sir Thomas Bingham MR described the unique and transformative effect of adoption as follows (pp 251–252):

> "The act of adoption has always been regarded in this country as possessing a peculiar finality. This is partly because it affects the status of the person adopted, and indeed adoption modifies the most fundamental of human relationships, that of parent and child. It effects a change intended to be permanent and concerning three parties. The first of these are the natural parents of the adopted person, who by adoption divest themselves of all rights and responsibilities in relation to that

> person. The second party is the adoptive parents, who assume the rights and responsibilities of parents in relation to the adopted person. And the third party is the subject of the adoption, who ceases in law to be the child of his or her natural parents and becomes the child of the adoptive parents."

29. All these features of the statutory scheme make plain that adoption is reserved for cases where the welfare of the child requires a level of intervention that involves removal of the child from their birth family, that, as a matter of law, is intended to be lifelong and to extinguish, in legal terms, natural family relationships so that it is as if the adopted child had been born to the adopter. The significant qualitative difference between adoption orders and any other arrangements by which a child may be looked after by those who are not the child's natural parents is well-recognised. An adoption order has a quite different standing to almost any other order made by a court. The severance of a natural family's factual and legal relationships, and the creation of a new set of legal family relationships, fundamentally impacts upon the life of all those involved.

30. There are strong public policy reasons for the "peculiar finality" of an adoption order once made, grounded in the nature and intended effect of an adoption order but also in the potential damage that would be done to the lifelong commitment of adopters to their adoptive children if there was a possibility of the child, or indeed the parents, subsequently challenging the validity of the order, and to the willingness and availability of prospective adopters if this possibility were to exist. These policy considerations militate against any measure which dilutes or undermines the finality and certainty of an adoption order.

31. In *Re V (Long-term Fostering or Adoption)* [2013] EWCA Civ 913; [2014] 1 FLR 1009, Black LJ described (para 96) the material differences between long-term fostering and adoption, drawing particular attention to the contrasting degree of security offered in either case, as follows: "Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely, therefore, to 'feel' different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement. Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time."

32. It is for these reasons that an adoption application is rightly subject to strict statutory requirements and safeguards, together with the procedure set out in Part 14 of the Family Procedure Rules 2010 and to particularly rigorous scrutiny by the courts to ensure that an adoption order is only made where nothing else will do.

33. In cases that do not involve adoption, there is no legal mechanism by which natural parents or children can extinguish the parent-child bond between them, however much they might wish to do so. The statutory scheme replicates this situation in respect of adoptive parents and adopted children. The only gateway out of a legal parent-child relationship is adoption, and as we have noted above, section 46(5) of the ACA 2002 makes express provision for an adoption order to be made even if the child to be adopted is already an adopted child.

34. In this judgment we use the terminology of: (a) a "natural parent", rather than a biological parent as used in article 16 of the European Convention on the Adoption of Children (Revised), because a natural parent is the terminology used in the ACA 2002: see for instance section 67; (b) "natural relatives" as meaning a natural relative of a child other than a natural parent; (c) "informal adoption" as meaning an arrangement for a child which is not legally binding, where persons have taken over and are bringing up as their own the children of others; and (d) "informal adopters" as meaning the persons, in an informal adoption, who have taken over and are bringing up as their own the children of others. We would have preferred to have avoided using adjectives such as legitimate and illegitimate to describe a child and to refer instead to the relationship between the parents: see *R (Johnson) v Secretary of State for the Home Department* [2016] UKSC 56; [2017] AC 365, para 15. However, it is necessary to use those adjectives as they are used in the ACA 2002: see for instance section 67(2).

35. We refer in this judgment to the legal bond of parentage or parenthood between parents and their child as "parental responsibility" as that term is defined by the Children Act 1989: "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property" (section 3(1)). A child's natural mother, and a father who is married or in a civil partnership with the natural mother when the child is born, automatically acquire parental responsibility for the child when the child is born (section 2(1) of the Children Act 1989). Others can acquire parental responsibility in certain circumstances, for example, as a step-parent (section 4A of the Children Act 1989) or by becoming the child's guardian or special guardian (sections 5(6) and 14C(1)(a) of the Children Act 1989 respectively). Further, the court can regulate, control and limit a person's ability to exercise parental responsibility, for example through the making of a prohibited steps order or a specific issue order (section 8 of the Children Act 1989). However, natural parents who have automatic parental responsibility (section 2(1) of the Children Act 1989) and adoptive parents cannot have their parental responsibility permanently extinguished unless an adoption order is made which extinguishes the parental responsibility of those parents or, in surrogacy cases, where a "parental order" is made in accordance with section 54 of the Human Fertilisation and Embryology Act 2008 (as suggested in *In re X (A Child) (Surrogacy: Time Limit)* [2014] EWHC 3135 (Fam); [2015] Fam 186, para 7). The position is different as explained above in the case of guardian and special guardian orders, and where parental responsibility is acquired pursuant to section 4(1) of the Children Act 1989, though even in such cases, termination is rare and requires significant circumstances to warrant such a step.

4. The proceedings below

36. In April 2023, AM made an application in the High Court seeking revocation of the adoption orders under the inherent jurisdiction of the High Court as it applies to children. The application was made on welfare grounds to give effect to the wishes and feelings of X and Y. AM's application to revoke the adoption orders was supported by both X and Y—at that time, X was 17 and Y was 16—who were held to be *Gillick* competent, and by BM. The application was heard by Lieven J (whose judgment is reported at [2024] EWHC 1059 (Fam); [2024] 1 WLR 5167).

37. The judge accepted 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 (para 76) but said that it could not be used solely on grounds relating to the adopted child's welfare (para 78). Accordingly, as this was the only ground relied on, she held that she had no power to revoke the adoption orders and refused the application. Lieven J recorded the fact that in the case of Y, had such a power existed, it would have been in her best interests to revoke the adoption order. That was because, as the judge observed (para 94), she has consistently found (and continues to find) the legal fiction produced by the adoption order deeply distressing and as not reflective of reality or her own sense of self. The position was less clear cut in respect of X. Nonetheless, the judge made orders allowing both young women to change their names back to BM's surname.

38. AM appealed. As originally constituted, there was no opposing party to the appeal. Further, although AM's case on appeal was that the statutory scheme for adoption in the ACA 2002 could be read compatibly with her and X and Y's rights under the European Convention on Human Rights ("the Convention") by interpreting the scheme as including a power to revoke the adoption orders in this case (using the strong interpretive obligation under section 3 of the Human Rights Act 1998), if that were not possible, she sought a declaration of incompatibility under section 4 of the 1998 Act. For those reasons, the Secretary of State for Education (as the government department responsible for adoption policy) was invited to intervene and accepted that invitation.

39. The appeal was heard by Sir Andrew McFarlane, President of the Family Division, Peter Jackson and Phillips LJJ. AM's counsel, Deirdre Fottrell KC, abandoned any reliance on Convention incompatibility and pursued the appeal on the basis of a power exercisable by the High Court to revoke the adoption order under the inherent jurisdiction. The Court of Appeal dismissed the appeal ([2025] EWCA Civ 2; [2025] Fam 237). It held that a first instance court has no jurisdiction to set aside a validly made adoption order, whether under the inherent jurisdiction of the High Court or otherwise. It held that this conclusion was inevitable in light of the statutory scheme in the ACA 2002, which makes it plain that an adoption order is intended to be permanent and lifelong (paras 43, 46(vi), 61–62 and 70). The court held, therefore, that the appropriate avenue for seeking to set aside an adoption order, if there is an appealable error, is by way of an application for

permission to appeal out of time, where the child's welfare could be considered. However, the fact that an adoption has "turned out badly and that revocation would serve the interests of the adopted person, whether a child or an adult, is not a reason for the court to supply a remedy that Parliament has chosen not to provide" (para 68).

40. AM now appeals to the Supreme Court against that decision, supported in her appeal by BM, Y and in some respects X.

5. The interveners

41. This court permitted written interventions in the appeal from three organisations involved with adoption work and has been assisted by their written cases. The court is especially grateful to counsel who acted pro bono on the appeal.

42. The International Centre for Family Law, Policy and Practice ("the ICFLPP") is a not-for-profit organisation closely linked with the University of Westminster, London, which brings together academic, practitioner and policy perspectives on all aspects of family and child law, with a particular focus on international family law and issues relating to legal status and identity within families. The ICFLPP's written case agrees with the Court of Appeal's reasons and conclusion (save only in relation to the Court of Appeal's obiter suggestion that different considerations might apply in a case of surrogacy) that the inherent jurisdiction cannot be used to create a power to revoke properly made adoption orders which Parliament has chosen not to provide.

43. In terms of background context, the ICFLPP's case indicates that adoption is the most stable type of placement for a child placed in care, but there are still a substantial number of adoption breakdowns. While earlier research suggested that around 3.2 per cent of adoption placements break down to the point where the child does not remain with the adoptive parents and instead returns to the local authority's care within 12 years of the adoption order being made, more recent reports suggest that numbers may be increasing, potentially connected to the increasingly complex background needs that children in care have and the stretched resources to meet them. The ICFLPP's concern in this regard is that, if the number of adoption breakdowns is increasing, the pool of cases in which adoption revocation might be considered will likewise be increasing. The ICFLPP's case also refers to a child's right to identity which is protected by article 8 of the UN Convention on the Rights of the Child 1989 ("the UNCRC") which specifies three particular aspects of identity, ie nationality, name, and family relations, as being included within its scope and highlights the particular problem for adopted children who may face attachment difficulties and disorders affecting identity formation and development. In effect, the ICFLPP submits that once the decision is made that an adoption order should be made, then everything should be done to make adoption part of the child's identity in a way that is not disrupted or undermined by the possibility of reversal, which might cause

the child not to invest itself in that aspect of their identity formation, and might cause the adoptive parents not to invest fully in that aspect of the child's identity formation.

44. The Association of Lawyers for Children also submits (in agreement with the Court of Appeal) that there is no first instance jurisdiction to revoke a properly made adoption order that exists outside the statutory exception in section 55 of the ACA 2002. The Association highlights statistical evidence that shows that adoption breakdown although unusual is not extraordinary; and can be placed at between 3-5% of all adoptions.

45. CoramBAAF describes itself as the UK's leading membership organisation for professionals working across adoption, fostering and kinship care. It too supports the Court of Appeal's decision. It has intervened to reflect concerns of its members about the impact that the use of the inherent jurisdiction to revoke a properly made adoption order could have. CoramBAAF's written case describes the substantial value to society of adoption through the permanence, stability and support it can offer children who cannot live with their birth families. These are some of society's most vulnerable children. The combination of early trauma and complex needs will impact a child's education, health and wellbeing, and the need for lifelong support is common. It cites evidence showing that adopted children and young people have enhanced outcomes across health, education and future employment compared to other placements, decreasing reliance on publicly funded services and support in childhood and later life. It refers to adoption disruption rates as remaining low and much lower than the number of placement changes for children who remain in care.

6. Whether there is power under the parens patriae jurisdiction to revoke a valid adoption order and thereby to transfer parental responsibility

46. In the absence of any statutory mechanism by which to revoke the legally valid adoption orders made in this case, AM's appeal depends entirely on her argument that the court has an inherent parens patriae jurisdiction to revoke a legally valid adoption order in exceptional circumstances of pressing need. Mr Nick Goodwin KC suggests that the success of a revocation application made on this basis would not depend exclusively on welfare; welfare considerations would need to be balanced alongside all relevant public policy considerations. He submits that invoking the inherent jurisdiction in these circumstances does not cut across the statutory scheme in the ACA 2002 because the scheme should not be interpreted as precluding use of the inherent jurisdiction where a child's welfare needs will otherwise not be met and their identity rights not respected.

47. AM's case is that there is a pressing need for the court to correct the legal fiction said to exist where BM is once again the de facto mother of Y (and possibly X), but AM remains their mother for all legal purposes and Y is trapped in an identity that she has totally rejected. The submission appears to be that the existence of that pressing need

means that the jurisdiction must exist. In our view, it is rather the other way around: if the jurisdiction exists in this context, it may be capable of being exercised in cases of pressing need. But the first question is whether there is an inherent jurisdiction in the High Court to set aside a legally valid adoption order.

48. In support of his case that there is, Mr Goodwin relies on several decisions of the Court of Appeal said to confirm the existence of this inherent jurisdiction in this particular context: *In re F (R) (An Infant)* [1970] 1 QB 385 ("*Re F*"); *Re M (Minors) (Adoption)* [1991] 1 FLR 458 ("*Re M*"); *Re B* (cited above at para 28); *Re K (Adoption and Wardship)* [1997] 2 FLR 221 ("*Re K*"); *Webster v Norfolk County Council* [2009] EWCA Civ 59; [2009] 2 All ER 1156; [2009]1 FLR 1378 ("*Webster*") and *Re W (Adoption Order: Set Aside and Leave to Oppose)* [2010] EWCA Civ 1535; [2011] 1 FLR 2153 ("*Re W*").

49. For the reasons given more fully below we do not accept that they support his contention. On the contrary, in all but one of these cases (*Re B* is the exception) the Court of Appeal was considering an application to extend time for appealing out of time against an adoption order on grounds of a failure of natural justice or other serious procedural irregularity (*Re F*, *Re K*), or a fundamental mistake of fact (*Re M*). We discuss the "appeal out of time" cases in section 7 below and explain why they provide no support for Mr Goodwin's argument. *Re B* is the only appellate decision in which consideration was in fact given to whether the High Court has an inherent power to revoke an adoption order. At first instance Sir Stephen Brown P held that the adoption order in that case had been regularly made and that the High Court had no power to set it aside, even in the unusual circumstances of that case. The Court of Appeal affirmed that decision (Sir Thomas Bingham MR, Simon Brown and Swinton Thomas LJJ) as we explain in paras 74–77 below. It too provides no support for Mr Goodwin's argument.

50. Mr Goodwin also relies on a series of first instance decisions in which High Court judges have accepted or asserted a power to revoke an adoption order under the inherent jurisdiction, albeit recognising it as a power that is severely curtailed where an adoption order has been lawfully made. He submits that these first instance authorities appropriately recognise that revocation can be achieved under the inherent jurisdiction by a process of balancing public policy and welfare considerations. The Court of Appeal in this case reviewed the first instance decisions carefully (paras 50–60 of the Court of Appeal judgment), as have we. It is unnecessary for us to set out a detailed analysis of these cases. In our view, and in agreement with the Court of Appeal, these cases reflect a misunderstanding of the appellate authorities. As the Court of Appeal observed, the misunderstanding that there is an inherent jurisdiction in the High Court to set aside an adoption order first appeared in *Re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)* [2013] EWHC 1957 (Fam); [2013] 2 FLR 1609 (Bodey J) and became "codified as received wisdom after that", in particular in *In re O (A Child) (Human Fertilisation and Embryology: Adoption Revocation)* [2016] EWHC 2273 (Fam); [2016] 4 WLR 148, where Sir James Munby P accepted the existence of an inherent jurisdiction to revoke a valid adoption order without explanation or analysis,

albeit emphasising the public policy considerations that ordinarily militate against revoking properly made adoption orders.

51. It is therefore necessary to go back to first principles and consider the nature of the jurisdiction and the context in which it is sought to be invoked in this case to determine whether it is available.

52. The parens patriae jurisdiction is an ancient prerogative jurisdiction belonging to the Crown going back to medieval times. Sir George Baker P described its history as "shrouded in the mists of the Middle Ages and in the feudal system" in the foreword to Professor Nigel Lowe and Professor Richard White, *Wards of Court*, 1st ed (Barry Rose, 1979). The phrase means "parent of the nation" and invokes a quasi-parental relationship between the Crown and a British national. Lord Denning MR described its roots in *In re L (An Infant)* [1968] p 119, 156:

> "It derives from the right and duty of the Crown as parens patriae to take care of those who are not able to take care of themselves. The Crown delegated this power to the Lord Chancellor, who exercised it in his Court of Chancery … the Court of Chancery had power to interfere for the protection of the infant by making whatever order might be appropriate … This wide jurisdiction of the old Court of Chancery is now vested in the High Court of Justice and can be exercised by any judge of the High Court."

In *Barnardo v McHugh* [1891] AC 388, Lord Halsbury LC explained (p 395) that the jurisdiction of the Court of Equity to interfere in relation to infants was not limited to cases where there was property involved, but was a jurisdiction to interfere "for the protection of infants, qua infants, by virtue of the prerogative which belongs to the Crown as parens patriae, and the exercise of which is delegated to the Great Seal" (citing *In re Spence* (1847) 2 Ph 247, 252). Under this jurisdiction, the Crown as parens patriae also had the power and the duty to protect those with serious cognitive or other mental health disabilities.

53. In an age of comprehensive statutory provision, the continued existence of an inherent parens patriae jurisdiction may be thought of as somewhat anomalous. In *Attorney General v De Keyser's Royal Hotel Ltd* [1920] AC 508, Lord Dunedin described it as a residual authority left in the hands of the Crown. He said (p 526):

> "The prerogative is defined by a learned constitutional writer as 'The residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown.'

> Inasmuch as the Crown is a party to every Act of Parliament it is logical enough to consider that when the Act deals with something which before the Act could be effected by the prerogative, and specially empowers the Crown to do the same thing, but subject to conditions, the Crown assents to that, and by that Act, to the prerogative being curtailed."

In his speech in the same case, Lord Atkinson adopted a passage (which he described as a "pregnant passage") from the judgment of Sir Charles Swinfen Eady MR in the Court of Appeal as follows (pp 538–539):

> "Those powers which the executive exercises without Parliamentary authority are comprised under the comprehensive term of the prerogative. Where, however, Parliament has intervened and has provided by statute for powers, previously within the prerogative, being exercised in a particular manner and subject to the limitations and provisions contained in the statute, they can only be so exercised. Otherwise, what use would there be in imposing limitations, if the Crown could at its pleasure disregard them and fall back on prerogative?"

Lord Parmoor made the same point (pp 575–576):

> "The constitutional principle is that when the power of the Executive to interfere with the property or liberty of subjects has been placed under Parliamentary control, and directly regulated by statute, the Executive no longer derives its authority from the Royal Prerogative of the Crown but from Parliament, and that in exercising such authority the Executive is bound to observe the restrictions which Parliament has imposed in favour of the subject. … It would be an untenable proposition to suggest that Courts of law could disregard the protective restrictions imposed by statute law where they are applicable. In this respect the sovereignty of Parliament is supreme. The principles of construction to be applied in deciding whether the Royal Prerogative has been taken away or abridged are well ascertained. It may be taken away or abridged by express words, by necessary implication, or, as stated in Bacon's Abridgement, where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong."

(See also *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5; [2018] AC 61, paras 42 and 48, where this court said that "it is not open to judges to apply or develop the common law in a way which is inconsistent with the law as laid down in or under statutes", and "a prerogative power will be displaced in a field which becomes occupied by a corresponding power conferred or regulated by statute.")

54. In *Burmah Oil Co Ltd v Lord Advocate* [1965] AC 75, Lord Reid said (p 101):

> "The prerogative is really a relic of a past age, not lost by disuse, but only available for a case not covered by statute. So I would think the proper approach is a historical one: how was it used in former times and how has it been used in modern times?"

55. Where a matter is regulated by statute, use of the inherent jurisdiction is limited not only when the statute expressly says so, but by implication by the very existence of the statute itself. 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.

56. The parens patriae jurisdiction has ceased to exist in relation to the protection of adults without mental capacity, having been displaced by a comprehensive statutory scheme under the Mental Health Act 1959. This was explained by Lord Brandon of Oakbrook in *In re F (Mental Patient: Sterilisation)* [1990] 2 AC 1, 58B-C:

> "The effect of section 1 of the Act of 1959, together with the Warrant of revocation referred to above, was to sweep away the previous statutory and prerogative jurisdiction in lunacy, leaving the law relating to persons of unsound mind to be governed solely, so far as statutory enactments are concerned, by the provisions of that Act. So far as matters not governed by those provisions are concerned, the common law relating to persons of unsound mind continued to apply. It follows that the parens patriae jurisdiction with respect to persons of unsound mind is not now available to be invoked in order to involve the court or a judge in the decision about the sterilisation of F".

57. So far as children are concerned, prior to the enactment of the Children Act 1989 the most frequent example of the exercise by the High Court of its inherent jurisdiction over children was in wardship cases. These were cases where children were made wards of court by virtue of an order to that effect granted by the High Court. A wardship order meant that custody of the child was vested in the court and although day to day control

over the child remained vested in the local authority or other relevant person, no important step could be taken in the child's life without the court's consent.

58. However, the passing of the Children Act 1989 meant that local authorities are no longer free simply to use the inherent power of the High Court to act for the protection of children (eg through wardship proceedings) as an alternative to care or supervision orders or otherwise to obtain compulsory powers over the child. Section 100 of the 1989 Act imposes specific prohibitions on the use of the parens patriae or inherent jurisdiction in cases involving a public law element. It provides that no application for any exercise of the court's inherent jurisdiction with respect to children may be made by the local authority unless that local authority has obtained the permission of the court (section 100(3)) and the court will only grant such permission if satisfied that there is a likelihood of significant harm to a child if these powers are not invoked and that the matter is one for which the 1989 Act makes no provision (section 100(4)).

59. Thus, even in the context of children who have suffered, or are at risk of suffering significant harm, the court's parens patriae jurisdiction to make orders in respect of such children is heavily curtailed. As Waite LJ explained in *In re T (A Minor) (Child: Representation)* [1994] Fam 49, 60:

> "The jurisdiction is not only circumscribed procedurally. The courts' undoubted discretion to allow wardship proceedings to go forward in a suitable case is subject to their clear duty, in loyalty to the scheme and purpose of the Children Act legislation, to permit recourse to wardship only when it becomes apparent to the judge in any particular case that the question which the court is determining in regard to the minor's upbringing or property cannot be resolved under the statutory procedures in Part II of the Act in a way which secures the best interests of the child; or where the minor's person is in a state of jeopardy from which he can only be protected by giving him the status of a ward of court; or where the court's functions need to be secured from the effects, potentially injurious to the child, of external influences (intrusive publicity for example) and it is decided that conferring on the child the status of a ward will prove a more effective deterrent than the ordinary sanctions of contempt of court which already protect all family proceedings."

60. It follows that to the extent that the protective parens patriae jurisdiction survives in relation to children as a residual prerogative power, it does so in 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. On this basis the parens patriae powers continue to be exercised to prevent the abduction of children from this jurisdiction or to order their return to another jurisdiction in cases to which the Hague Convention on the Civil Aspects of International Child Abduction 1980, set out in Schedule 1 to the Child Abduction and Custody Act 1985, does not apply, and no specific issue order is available under the Children Act 1989 (see by way of example, *In re NY (A Child)* [2019] UKSC 49; [2020] AC 665). Parens patriae powers have also been exercised by the High Court in cases where a British child requires protection even if the child is outside the jurisdiction at the time the order is made, for example to protect the child from a forced marriage or female genital mutilation (see by way of example, *In re M (Children)* [2015] EWHC 1433 (Fam); [2015] Fam Law 893).

61. Another well-established context in which parens patriae powers continue to be exercised is to regulate medical treatment decisions in relation to very ill children at or towards the end of life or in need of life-saving treatment. In that context, the parens patriae jurisdiction was considered recently by this court in *Abbasi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2025] UKSC 15; [2026] AC 63 which involved the court intervening in the care by an NHS trust of a child on life support, and having to decide which among available alternatives in medical treatment would serve the best interests of the child concerned (in fact there were two affected children being cared for by different trusts involved in the case). Lord Reed and Lord Briggs gave the lead judgment (with which Lords Hodge, Sales and Stephens agreed). They referred (para 38) to *Scott v Scott* [1913] AC 417, 437 where Viscount Haldane LC explained the basic role of the judge in relation to the parens patriae jurisdiction over wards of court and incapacitated adults:

> "There the judge who is administering their affairs, in the exercise of what has been called a paternal jurisdiction delegated to him from the Crown through the Lord Chancellor, is not sitting merely to decide a contested question ... the court is really sitting primarily to guard the interests of the ward or the lunatic. Its jurisdiction is in this respect parental and administrative, and the disposal of controverted questions is an incident only in the jurisdiction."

62. In *Abbasi* injunctions contra mundum had been granted (in purported exercise of parens patriae powers) restraining publication of any information identifying the child, the parents, the treating hospital, and any information likely to identify certain clinical and other hospital staff involved in the care of the relevant child. The judgment explains (paras 57 to 65) that the court's parens patriae powers only provide a source of jurisdiction (in cases involving terminally ill children in the care of an NHS trust) to grant such injunctions where and for so long as that is necessary to protect the interests of the child. Critically, *Abbasi* (para 61) explains:

> "The court's power to prohibit the publication of information about the child's carers, as derived from its parens patriae jurisdiction or alternatively from its jurisdiction to ensure the effectiveness of its orders in respect of the child's treatment, is based on the need to prevent interferences with the ability of the carers to care for the child. It is not based on concern for the carers' rights or interests for their own sake."

63. Against that understanding of the parens patriae powers, it is clear that there are fundamental problems with the argument advanced by AM that the inherent jurisdiction must be available to protect the interests of the child where necessary in this particular context.

64. First, the prerogative parens patriae powers are not and have not been concerned with the reordering of parental responsibility by extinguishing and/or transferring from one set of parents to another parental responsibility. The institution of wardship provides a strong illustration of this position. Parens patriae powers were used historically to protect orphans (and, more recently, other children with exceptional safeguarding needs) by the creation of wardship and orders by which the child was made a ward of court. Wardship vests parental responsibility for the child in the court so that significant decisions about the child (relating for example to medical treatment, protecting abducted children, returning children to or from another state) cannot be made without the court's approval but leaves the local authority or parent of the child with pre-existing parental responsibility for the child so that day to day care and oversight of the child remains with them. A wardship order does not (and cannot) reorder parental responsibility by extinguishing or transferring to "new" parents the existing parental responsibility for the child. Until the enactment of the Adoption of Children Act 1926, there was no power in the court that could be exercised to reorder parental responsibility by extinguishing it in the natural parent and transferring it to the adoptive parent. Thus, until the 1926 Act, no matter how pressing a child's need to have their parentage transferred away from their natural parents, there was simply no power to sever the legal and family life bond created by the birth of a child with their natural parents. The existence and ambit of prerogative powers are identified according to the historical approach explained by Lord Reid in *Burmah Oil* (para 54 above). There is no precedent in history for a prerogative power to change the parental relationship in the manner contended for by AM, BM and Y, so the conclusion must be that no such power existed. If the power to reorder parental responsibility has never existed, there is no basis on which this residual jurisdiction can be said to have been preserved.

65. It is significant in this context that the range of statutory powers available to control or restrict the exercise of parental responsibility in relation to a child (see for example the effect of a care order under section 33(3) of the Children Act 1989) does not include any power to reorder or transfer parental responsibility by extinguishing such responsibility in the natural parent and transferring it to new parents. Parental responsibility remains in

place notwithstanding the making of orders of this kind, and until the 1926 Act there was no legal mechanism by which natural parents or children could extinguish the parent-child bond between them, however much they might need or wish to do so. It is only by virtue of the making of an adoption order that it is possible to extinguish a natural parent's parental responsibility and transfer it to an adoptive parent.

66. Mr Goodwin contends that there is a material difference, in this context, between the creation of parental responsibility for an adoptive parent and the resumption of parental responsibility by the natural parent. He accepts that it never was and historically could not have been part of the parens patriae jurisdiction to move parental responsibility away from the natural parent to an adoptive parent. But once the statute created such a power, and absent any means of revoking a valid adoption order on welfare grounds, the parens patriae jurisdiction comes into play as a safety net in cases like those of X and Y to restore the natural parent's former status. Mr Norton KC initially adopted the same position on behalf of BM but on being pressed, asserted instead that there has always been an inherent jurisdiction in the court to change a person's parenthood, even in relation to a natural parent in circumstances of a pressing need. This assertion is unprincipled and unsupported. Adoption is entirely a creature of statute. Until the statutory power was enacted, no such power was ever invoked.

67. As to Mr Goodwin's argument, as a matter of fact there is no difference between the two cases. The transformative effect of section 67 of the ACA 2002 is such that an adoption order extinguishes the parental responsibility of the natural parents and gives parental responsibility to the adopters, who are treated in law as if the child was born to them and not to any other person. Just as for a natural parent, the only means of extinguishing an adoptive parent's parental responsibility is by the subsequent making of another adoption order (section 46(5) of the ACA 2002). There is no right to re-establish the original family life that has ended by adoption and any transfer back of parentage to the natural parent is achievable only by a further adoption order (see *Seddon v Oldham Metropolitan Borough Council* [2015] EWHC 2609 (Fam); [2016] Fam 171, para 51, Peter Jackson J).

68. Secondly, where parens patriae powers remain available—through wardship and in other residual contexts discussed above—it is to secure a child's protection and safety from harm where this is necessary. Accordingly, parens patriae powers only provide a source of jurisdiction (in cases involving children) where necessary to protect the child because no other statutory mechanism is adequate to achieve this purpose. Both points mean that this jurisdiction is not available in this context. At best AM's case seems to be that Y (and possibly X) needs to be protected from Parliament's failure to provide a statutory means for revoking the adoption orders made in their cases. This is not a proper basis on which to exercise this protective jurisdiction.

69. Moreover, even if there were grounds for believing Y or X to be in physical or other danger by virtue of their identity concerns (and we acknowledge the points made by the Association of Lawyers for Children about the range of unique and challenging cases that can arise in relation to adopted children's circumstances in this regard), we cannot see how a case of this kind could ever justify the exercise of this protective jurisdiction to transfer parental responsibility by revoking a valid adoption order. There are ample powers under the Children Act 1989 available to a local authority and the courts to protect adopted children from harm (including self-harm) in the event of adoption breakdown. These orders can all be made in relation to adopted children just as they can in relation to natural children and can confer parental responsibility on carers who are not their legal parents while retaining the existing parental responsibility (albeit often restricted in its exercise) of the parent. Contact with adoptive parents can be regulated or even terminated. Adopted children can be taken into care or made the subject of special guardianship orders and they can be adopted again in appropriate circumstances. The court can also give permission for adopted children to change their surnames (as Lieven J did in this case).

70. These measures can all be considered with the welfare of the adopted children as the court's paramount consideration. The only measure precluded by the legislation is the ability for a natural or adoptive parent or child to extinguish the legal parent-child relationship, other than by way of adoption. This places adoptive parents and their children in the same position as natural parents and their children. As the Secretary of State for Education submits, this parity of treatment has been a fundamental principle of adoption legislation from the outset.

71. Thirdly, the parens patriae powers are only available for a case not adequately covered by statute (see paras 53–55 above). Even if, contrary to the position we have explained at para 64 above, the parens patriae powers ever extended as far as AM, BM and Y contend, the ACA 2002 has occupied the ground in this context. Any claimed power under the inherent jurisdiction to revoke a valid adoption order would have the effect of circumventing the detailed and comprehensive statutory scheme in the ACA 2002 governing adoption and the singularly permanent effect of such an order. The exercise of the parens patriae powers to circumvent the statutory scheme would mean that the court would be exercising a residual general power, entirely outside any statutory scheme, to revoke an order that has been lawfully made and which the statutory scheme put in place by Parliament intends to be permanent and irrevocable (save only in the case of legitimation). This would be an impermissible attempt to side-step the clear scheme of the ACA 2002.

72. The case of *In re T (A Child)* [2021] UKSC 35; [2022] AC 723 has no application. Where the inherent jurisdiction exists for the protection of children, *Re T* holds that courts should be slow to hold that an inherent power has been abrogated or restricted by Parliament and should only do so where it is clear that Parliament so intended (para 113).

But here there never was a parens patriae power to extinguish and then transfer parental responsibility.

73. For these reasons, the court has no parens patriae powers that can be exercised to revoke a valid adoption order to extinguish and then transfer parental responsibility outside the statutory scheme in the ACA 2002.

74. Our conclusion is reinforced by the decision in *Re B* to which we have referred above (para 28). The case concerned a claim that there was a fundamental mistake of fact at the time of the original adoption application in relation to the Jewish identity of a child adopted by a Jewish couple. The adoptee (by then a man aged 36) applied to set aside the adoption order 35 years after it was made. (The adoptive parents had discovered this mistake 11 years after the adoption order was made and the Court of Appeal noted (p 244) that had they applied to set it aside following the information they received in 1968, "they would have had no prospect whatsoever of doing so"). The application was refused on the basis that there was no power in the court to set it aside. On appeal, B argued that the High Court had an inherent power to set aside the order based on fundamental mistake. The Court of Appeal rejected this submission. Swinton Thomas LJ, giving the leading judgment, concluded (p 249):

> "There is no case which has been brought to our attention in which it has been held that the court has an inherent power to set aside an adoption order by reason of a misapprehension or mistake. To allow considerations such as those put forward in this case to invalidate an otherwise properly made adoption order would, in my view, undermine the whole basis on which adoption orders are made, namely that they are final and for life as regards the adopters, the natural parents, and the child. In my judgment Mr Holman, who appeared as amicus curiae, is right when he submits that it would gravely damage the lifelong commitment of adopters to their adoptive children if there is a possibility of the child, or indeed the parents, subsequently challenging the validity of the order. I am satisfied that there is no inherent power in the courts in circumstances such as arise in this case to set aside an adoption order. Nobody could have other than the greatest sympathy with the applicant but, in my judgment, the circumstances of this case do not provide any ground for setting aside an adoption order which was regularly made."

Although this passage is couched in terms of "misapprehension or mistake", the principle enunciated is of general application: the court has no inherent jurisdiction to set aside a validly made adoption order.

75. The other members of the court agreed. Simon Brown LJ accepted that there had been a fundamental mistake that went to the very nature of the adoptive placement and that an appeal within a short time of the adoption order being made might well have succeeded. But he held that to come to B's aid would involve "a radical and impermissible distortion of the long established adoption regime" (p 250). As he explained, it is one thing "to allow an appeal (even an appeal out of time) on the ground of mistake; quite another to recognise it as a broad general basis of challenge available on judicial review or upon such unique form of process as is now before us" (p 251).

76. Sir Thomas Bingham MR also agreed that where there has been a failure of natural justice, and a party with a right to be heard on the application for adoption has not been notified or has not for some other reason been heard, the court has jurisdiction to set aside the order and so make good the failure of natural justice (p 252). But the position was different where the order was validly made, and there was no procedural irregularity of any kind. He said that the Court of Appeal was not "opening the door to a new and wide-ranging jurisdiction to set aside adoption orders" in the earlier appeal cases (p 253).

77. It follows that *Re B* (which is the only Court of Appeal authority to address the High Court's parens patriae or inherent jurisdiction) does not establish a principled basis for exercising the parens patriae jurisdiction to revoke a valid adoption order, even in exceptional circumstances. *Re B* is clear authority for the contrary proposition. No other principled basis for its exercise in this context has been shown.

7. Appeals out of time against adoption orders

78. Our conclusion does not mean that an adoption order is immune from any challenge. An adoption order can be appealed in the usual way if there is an appealable error. Moreover, time for an appeal can be extended, months or even years out of time, again where there is an appealable error (see for example, *In re J (A Child) (Adoption: Non-party Appeal)* [2018] EWFC 8; [2018] 4 WLR 38, where Cobb J granted permission to appeal three years after the making of a step-parent adoption order, on the basis that the order had been obtained by deception). In cases of this kind an extension is not granted lightly. The child's interest must be considered, having regard to what has happened since the order was made. The public interest in recognising the importance of not undermining the irrevocability of adoption orders must also be considered. The longer the period between the making of the order and the later the application to appeal out of time, the harder it is likely to be to persuade the court to exercise discretion to extend time for appealing.

79. The authorities dealing with appeals out of time in this context have on occasion referred to the court's "inherent jurisdiction" (see for example *Re F* discussed below) but this is not a reference to the parens patriae jurisdiction. The court in these cases did not

exercise power under the inherent jurisdiction to make a substantive order with the effect of setting aside the adoption order. Rather, in both *Re F* and *Webster* such references were to the court's inherent powers which exist to enable the court to act effectively in the administration of justice; the power is used as a procedural tool to extend time for an appeal, with the appeal then proceeding on standard legal principles (see paras 79 and 85 below).

80. In *Re F* the natural mother applied for leave to appeal out of time to set aside an adoption order in circumstances where the court had proceeded on the basis that the mother could not be found when that was not true, and she had no opportunity to make a case with respect to the adoption application. The adopters opposed both the application to appeal out of time and the substantive appeal, contending that the Court of Appeal had no power at all in either respect given the statutory language of the Adoption Act 1958 (which was in materially similar terms so far as finality of an adoption order is concerned). The Court of Appeal (Salmon, Edmund Davies and Karminski LJJ) refused to accede to this argument and extended the time for appealing. It was in the context of this opposition that Salmon LJ (p 389G-H), Edmund Davies LJ (p 391G) and Karminski LJ (p 392D-E) all referred to the Court of Appeal's "inherent jurisdiction" to act in a procedurally fair way in the interests of justice by giving leave to appeal out of time and setting aside an adoption order on appeal, albeit emphasising the exceptional nature of the case which involved applicants for an adoption order misleading the court. *Re F* thus concerned the powers of the Court of Appeal and did not address the existence of the High Court's inherent jurisdiction to revoke a valid adoption order.

81. In *Re M* the Court of Appeal again considered an application for leave to appeal adoption orders out of time. It too was not concerned with the High Court's parens patriae jurisdiction and provides no authority for the existence of such a jurisdiction to revoke valid adoption orders. In *Re M*, ignorance of the mother's terminal health condition at the time of the adoption was treated as vitiating the natural father's consent to the adoption of the children by her new husband and appeals out of time were allowed following her death. Glidewell LJ described the natural father as being "wholly ignorant of his former wife's condition" (p 459) and said had he known of it he would not have consented to the adoption. The Court of Appeal emphasised the wholly exceptional circumstances of the case which combined to justify extending time and allowing the appeal.

82. *Re K* also concerned the powers of the Court of Appeal on an application for leave to appeal out of time, and not those of the High Court exercising its inherent jurisdiction. The case concerned a Bosnian child who had been adopted by an English couple. Fresh evidence subsequently showed that notice of the adoption had not been given to the child's extended family or state appointed guardian in Bosnia. The application was opposed by the adopters, who contended that leave should not be given to appeal out of time when the child was so settled with her adopters and where the prospects of the natural family contesting any reheard adoption application were poor. The Court of Appeal rejected those arguments and granted leave to appeal out of time. Butler-Sloss LJ, who

gave the only substantive judgment, conducted a review of the authorities and concluded (p 228) that the law was clear that there are cases where a fundamental breach of natural justice will require a court to set an adoption order aside; the failure to give proper notice at the time of the adoption application amounted to a "fundamental breach of natural justice" which involved "inept handling by the county court of the entire adoption process" (p 227) and vitiated the order. She considered that the child's long-term welfare interests weighed in favour of at the very least allowing a rehearing of the adoption application to consider the competing interests of the natural family and the adoptive family. Again, the Court of Appeal was rightly anxious to emphasise the wholly exceptional and unusual circumstances of this case because it did not want the setting aside of an adoption order in the cases where this was done by allowing an appeal out time, to be thought of as setting any sort of precedent for other similar fact cases.

83. *Webster* was another application for leave to appeal an adoption order out of time and the question of the High Court's inherent jurisdiction did not arise. In *Webster*, three young children had been removed from their parents' care and later adopted in December 2005 against a background of findings of non-accidental injury caused by the parents to one of the children. New evidence in 2007 suggested that there may have been an accidental explanation for the injury. The parents applied unsuccessfully to reopen the findings and thereafter sought permission to appeal the adoption orders out of time. The question (in 2009) for the Court of Appeal was whether leave to appeal out of time should be given in respect of "validly and regularly obtained" adoption orders. The Court of Appeal (Wall, Moore-Bick and Wilson LJJ) was prepared to proceed on the basis that the original findings of non-accidental injury were wrong, even that there had been a miscarriage of justice, but concluded that leave to appeal the adoption orders four years out of time could not be given.

84. Wall LJ gave the lead judgment. At paras 145-164 he considered whether it was open "to this court" (ie the Court of Appeal) to set aside the adoption orders some years after they were made. He reviewed *Re F*, *Re M*, *Re B* and *Re K*, and concluded (para 161) that they reinforced the proposition that adoption orders, validly and regularly obtained, will not be disturbed even if, as in *Re B*, that left the adopted person denied a proper ethnic identity; even a substantial miscarriage of justice was not sufficient to enable valid adoption orders to be set aside (para 163). He concluded, accordingly, that the applications should be dismissed because the orders were made in good faith on the evidence then available, and should therefore stand; and because the further evidence could have been obtained for use at the trial with reasonable diligence (para 180).

85. In his judgment in *Webster*, Wall LJ made the following observations (to which we return below):

> "148. In my judgment … the public policy considerations relating to adoption, and the authorities on the point - which are

> binding on this court - simply make it impossible for this court to set aside the adoption orders even if, as Mr and Mrs Webster argue, they have suffered a serious injustice.
>
> 149. This is a case in which the court has to go back to first principles. Adoption is a statutory process. The law relating to it is very clear. The scope for the exercise of judicial discretion is severely curtailed. Once orders for adoption have been lawfully and properly made, it is only in highly exceptional and very particular circumstances that the court will permit them to be set aside."

Wilson LJ agreed with Wall LJ that it was far too late (having regard to the children's interests and the public policy interests of upholding the finality of the adoption regime) for the parents to bring appeals out of time.

86. The question whether the High Court has power to revoke an adoption order in exercise of its powers under the inherent jurisdiction did not arise in *Webster*, and accordingly there is no reference in the judgments to that question. When Wall LJ referred to the "scope for the exercise of judicial discretion" being curtailed in para 149, he was clearly referring to the powers of the Court of Appeal and not to those of the High Court. That distinction was misunderstood in subsequent decisions and misinterpreted as an acknowledgment that the inherent jurisdiction can be used for revocation, but only in "highly exceptional and very particular circumstances" (see for example, Bodey J's judgment in *In re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)* referred to above).

87. Finally, *Re W* involved an appeal against a decision of Holman J setting aside an adoption order and granting permission to the natural mother under section 47(5) of the ACA 2002 to oppose the making of a fresh adoption order in circumstances where a placement order had for some time been in place. Holman J regarded it as "permissible, pragmatic and most purposive to the statutory mechanism" with the purpose of the ACA 2002 to set aside the adoption order (later described by Thorpe LJ in the Court of Appeal, para 16, as "so procedurally flawed that it could not stand"), with the consequence that the legal position reverted to the status quo ante, and the placement order was again in force. He appears to have assumed the existence of a first instance power in these circumstances, but without explaining or analysing where such a power came from or arose. He then considered section 47(5) and held, despite the valid placement order, that the mother should have leave to oppose the making of an adoption order.

88. The adopters did not appeal the order setting aside the adoption order and Thorpe LJ's extempore judgment does not reflect any argument in relation to this issue in the

Court of Appeal, nor any discussion of *Re B* or the other appellate authorities referred to above. The adopters' focus on appeal was on Holman J's decision under section 47(5) to grant the mother leave to oppose the adoption. As to that, Thorpe LJ held that the judge had been wrong to grant this order (which had no merit), set it aside and exercising the Court of Appeal's own first instance powers, set aside the adoption order and remade it. He did so (perhaps understandably in the circumstances of that case) assuming the existence of a power enabling the court to do so, but again, without explanation or analysis. Accordingly, *Re W* also affords no reliable basis for the existence of a parens patriae power of the High Court to set aside a valid adoption order.

8. Finality and permanence of an adoption order

89. Our conclusion that the High Court's parens patriae powers cannot be used to revoke valid adoption orders like those made in favour of AM, thereby extinguishing her parental responsibility and reinstating the parental responsibility of BM, is sufficient to dispose of this appeal.

90. Nevertheless, we consider it appropriate to address in more detail AM's contention (supported by BM and Y) that the use of the inherent jurisdiction to revoke a valid adoption order, as a safety net to protect children in exceptional circumstances, would not undermine Parliamentary intent or cut across the statutory scheme. The contrary argument, advanced by the Secretary of State for Education and all the interveners, is that the use of any such inherent jurisdiction would impermissibly cut across the statutory scheme in the ACA 2002 given that adoption orders are: (a) final and permanent; and (b) irrevocable except on one very limited ground, namely the legitimation exception: see para 117 below.

(a) The history of informal adoptions and the reports leading to the Adoption of Children Act 1926

91. Historically, the informal adoption of children by family members other than their natural parents or by other altruistic carers has taken place in England and Wales for a long time. These informal arrangements were unregulated by law, did not provide safeguards for the children, and might have placed children in great danger. Furthermore, such arrangements did not provide informal adopters with legal rights in relation to the children so that they, and the children, ran the grave risk that at any time the natural parents might appear and disrupt the attachments between the children and the informal adopters by taking the children away.

92. The legislature in England and Wales was not at the forefront in addressing the problems of informal adoptions. Legislation on the subject of adoption had been passed in the State of Massachusetts in 1851, in New Zealand in 1881, in Western Australia in

1896, and in British Columbia in 1920. The catastrophic losses sustained in the First World War, which left so many children fatherless, caused an increase in the number of informal adoptions. This increase led to consideration being given to the introduction of legislation in England and Wales making legal provision for the adoption of children.

93. On 3 August 1920, the Secretary of State for the Home Department, the Rt. Hon. Edward Shortt KC MP, appointed several persons to a committee under the chairmanship of Sir Alfred Hopkinson KC ("the Hopkinson Committee") "to consider whether it is desirable to make legal provision for the adoption of children in this Country and if so, what form such provision should take."

94. On 9 February 1921, having completed its enquiry into those questions the Hopkinson Committee presented its report to Parliament entitled "Report of the Committee on Child Adoption" (Cmd 1254) ("the Hopkinson Report").

95. In answer to the first question the Committee recommended that "legal provision should be made for the adoption of children in this country" and that "adoption should be regulated by law and definite legal effect given to it." In making those recommendations the Committee identified several policy reasons in favour of making legal provision for adoption. First, the Committee considered, at para 13, that there should be safeguards for informal adopters so that natural parents could not exercise their parental rights to take an informally adopted child away from them. Secondly, the Committee referred, in the same paragraph, to persons being deterred from coming forward to adopt a child "by the fear of subsequent claims" by the natural parents. Legal provision for adoption would dispel this fear and would enable more persons to come forward to adopt a child. Thirdly, the Committee considered that suitable persons would be encouraged to adopt a child if there were a legal system for adoption. The Committee stated, at para 13, that "… suitable persons … would find encouragement in the knowledge that a definite legal status would be given to them as adopting parents and that any attempted interference by the natural parents could be summarily restrained." Fourthly, the Committee considered that a legal system for adoption would benefit children as it would make "adopting parents realise the serious character of the obligations they undertake, that the relationship created between them and the child is a permanent one, and that they shall not at any time give up their responsibility and leave the child unprovided for."

96. In answer to the second question as to the recommended form of the provision for adoption, the Committee considered that judicial sanction of an adoption order was necessary and that the consent of, amongst others, both natural parents should be required which should be freely and deliberately given. Furthermore, prior to giving their consent the natural parents should understand its effect, which was that upon an adoption being sanctioned they were giving up their parental rights and duties in relation to their child: see paras 13 and 41. In certain specified situations the Committee recommended that the consent of a parent might be dispensed with: see para 34.

97. In relation to the status of the adopters and of the child once adoption was sanctioned the Committee considered, at para 52, that "the relationship between the adopter and the person adopted … should be the same as those of the natural parent and child." This new relationship created by the adoption order was to be "of a binding and permanent character": see paras 25 and 57.

98. In paras 57 and 58 of the Hopkinson Report the Committee made recommendations in relation to two issues. The first was whether there should be provision for re-adoption of a child by annulling the original adoption order and then making a further adoption order so that the child was re-adopted by persons other than the original adopters. The second was the issue which arises on this appeal as to whether an adoption order once made can be revoked. In paras 57 and 58 the Hopkinson Report recommended that there should be provision for re-adoption and that an adoption order could be revoked by the court. The report stated:

> "57. Adoption once sanctioned should be regarded as permanent and revocable only by Order of the Court. The grounds on which an Order annulling the adoption may be made should be specified by statute.
>
> The welfare of the child should be the paramount consideration in deciding whether revocation should be allowed. There will, no doubt, be some cases in which owing to change in the character, habits, or ability of the parties, or other circumstances, it would be desirable to annul the adoption, especially with a view to re-adoption of the child by other persons or even [the child's] return to its natural parents….
>
> 58. It might be well also to give the Judge a discretion to annul the adoption on other special grounds, such as serious misconduct towards the child on the part of the adopting parent, or the development of criminal or habitually vicious habits and propensities in the person adopted…."

99. Following on from the Hopkinson Report several private members' Bills were introduced into Parliament in 1921. They all failed to pass into law.

100. On 4 April 1924 the Secretary of State for the Home Department, the Rt Hon Arthur Henderson, appointed several persons to a committee under the chairmanship of Mr Justice Tomlin ("the Tomlin Committee") to examine the problem of child adoption from the point of view of possible legislation and to report upon the main provisions which in their view should be included in any Bill on the subject.

101. On 6 April 1925 the Tomlin Committee presented its report to the Secretary of State for the Home Department ("the Tomlin Report"). The Tomlin Committee had considered the earlier Hopkinson Report and it acknowledged, in para 3, that its conclusions were not wholly in accordance with the conclusions in the earlier report.

102. The Tomlin Report recognised, at para 4, that it was impossible under the law as it then stood "for a natural parent voluntarily to divest himself of his right and liabilities in respect of his child." The Committee acknowledged, at para 9, that in the existing state of the law in which the natural parents retain parental rights there is "a measure of genuine apprehension" on the part of informal adopters that the natural parents might at some future time interfere. The Committee stated, at para 28, that a legalised system of adoption should go far to dispel this fear. The Committee also considered, at para 9, that the relation between adopter and adopted should be given some recognition by the community. Therefore, the Committee considered, at para 9, that a case was made for an alteration in the law whereby it should be possible under proper safeguards for a parent to transfer to another his or her parental rights and duties.

103. In relation to the main provisions which should be included in any Bill on the subject the Committee agreed with the Hopkinson Report that adoption should require judicial sanction. In relation to the rights and statuses which were to be created and the obligations which were to be imposed by the legal act of adoption the Committee thought, at para 17, that:

> "… adoption should operate to *take from* the natural parent and *transfer to* the adopting parent all those rights duties and liabilities in relation to guardianship custody and maintenance which the natural parent has or is under vis-à-vis the child … and that so far as the child is concerned he should in all similar respects stand to the adopting parent in the position which before the adoption he occupied in relation to his natural parent." (Emphasis added.)

104. The Committee considered whether, in respect of an adopted child, a further adoption order could be made. The Hopkinson Committee had approached this as part of its consideration as to whether an adoption order could be revoked: see para 97 above. The Tomlin Committee's approach to this issue differed. It considered that the issue of re-adoption was simply an aspect of the fact that after adoption the child was in law the natural child of the adoptive parents and an adoption order could be made in relation to a natural child. The Tomlin Report stated, at para 26, that "there is no reason why an adopted child should not just as a natural child be the subject of an adoption so that a child may be transferred from a first adopting parent to a second adopting parent."

105. The Committee addressed the important issue which arises on this appeal as to whether adoption once sanctioned should be revocable. In relation to this issue, it diametrically differed from the conclusion in the Hopkinson Report. The Tomlin Report stated, at para 26, that:

> "In our opinion the notion of revocation is inconsistent with the notion of adoption."

106. Following the Hopkinson Report and the Tomlin Report, Parliament enacted the Adoption of Children Act 1926. The courts in determining the true interpretation of that Act are seeking to ascertain the meaning of the words used in the light of their context and the purpose of the legislation. Both reports are external aids to interpretation as they disclose the background to the Act and assist in identifying the mischief which it addresses and its purpose. As external aids they play a secondary role: see *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 28–30.

107. As a secondary aid to interpretation of the Adoption of Children Act 1926 the views of both the Hopkinson Committee and the Tomlin Committee were that the purpose of the legislation should be that upon an adoption order being made: (a) the relationship between the adopter and the person adopted should be the same as those of the natural parent and child; (b) the adoptive parents should acquire parental rights and duties in relation to the child; (c) the natural parents should no longer have any parental rights or duties in relation to the child; and (d) an adopted child could be the subject of a further adoption.

108. However, the views of the two Committees differed as to whether an adoption order was capable of revocation. Applying ordinary principles of statutory interpretation, it is plain from the meaning of the words used that Parliament in enacting the Adoption of Children Act 1926 followed the recommendation in the Tomlin Report that "the notion of revocation is inconsistent with the notion of adoption." Furthermore, in all subsequent Acts concerning adoption, Parliament consistently maintained this choice, subject only to the legitimation exception (see para 117 below), not to make any provision for revocation of a validly made adoption order. If the parens patriae jurisdiction were to have been used to revoke a valid adoption order on welfare grounds, it would have cut across the statutory scheme and defeated the consistently expressed will of Parliament that the notion of revocation was inconsistent with the notion of adoption: see *Attorney General v De Keyser's Royal Hotel Ltd* (see above), *R (Miller) v Secretary of State for Exiting the European Union*, and *Richards v Richards* [1984] AC 174, 199H–200A.

(b) Adoption of Children Act 1926

109. The Tomlin Report led to the enactment of the Adoption of Children Act 1926 which provided a legal framework for adoption of children in England and Wales (the Act did not extend to Scotland or Northern Ireland). An adoption order required the consent of, amongst others, the natural parents though there was discretion to dispense with their consent: section 2(3). The application to the court for an adoption order could be made by a sole applicant including a sole applicant who was either the natural mother or father of an illegitimate child. Before making an adoption order the court had to be satisfied that the order if made would be for the welfare of the infant: section 3(b). This required the court to form a prospective welfare assessment at the time that it was considering making an adoption order. There was no provision in the Act for a court to review that welfare decision once an adoption order had been made.

110. The words used in the Adoption of Children Act 1926 clearly establish that the effect of an adoption order was to be permanent. First, section 3(a) provided that "[t]he Court before making an adoption order shall be satisfied that … [the natural parent] has consented to and understands … that the effect of an adoption order will be *permanently* to deprive him or her of his or her parental rights". (Emphasis added.) The understanding as to the permanent effect is not subject to any qualification, still less that the parental rights and duties of the natural parents might be restored by revoking the adoption order. Secondly, section 5(1) provided that upon an adoption order being made the parental rights of the natural parents are *extinguished* and all the parental rights shall *vest in and be exercisable by and enforceable against the adopter*. By extinguishing the parental rights and duties those rights and duties are put to a complete end. Thirdly, section 5(1) provided that the adopted child "shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock." The legal status of the child as a child born to the adopter was to the exclusion of the child's legal status as a child of his or her natural parents. The natural parents were permanently debarred from any legal status as the child's parent. Furthermore, an adoption order had a transformative effect treating the child as born to the adopter and putting the adoptive parent/child relationship in the same position as natural parentage, which is self-evidently irrevocable (save through an adoption order).

111. It is relevant to note for the purposes of the legitimation exception (see para 116 below) that by virtue of section 5(1) the legal status of an illegitimate child changed on adoption so that the child became a legitimate child born to the adopter.

112. Both the Hopkinson Committee and the Tomlin Committee had recommended that a further adoption order could be made in relation to an adopted child. Parliament followed that recommendation by enacting section 7 which provided that "[a]n adoption order … may be made in respect of an infant who has already been the subject of an adoption order…".

113. The Hopkinson Committee had recommended that adoption could be revocable by order of the court and that the grounds on which an order annulling the adoption may be made should be specified by statute. It envisaged that an adoption order might be revoked where there was a change in the character, habits, or abilities of the adopters or if the adopters were guilty of serious misconduct towards the child. The Tomlin Committee disagreed. In the event Parliament agreed with the recommendation in the Tomlin Report. There was no provision made in the Adoption of Children Act 1926 for revocation of an adoption order if it transpired that the prospective assessment of the child's welfare turned out to be incorrect because of, for instance, a change in the character, habits, or abilities of the adopters. Rather, Parliament made no provision for the revocation of an adoption order. Instead, Parliament provided that the effect of an adoption order was to *permanently deprive* the natural parents of their parental rights which rights were to be *extinguished* and the adopted child was to have the *exclusive status* of being in the position of a child born to the adopter. We consider that any use of the inherent jurisdiction to revoke an adoption order would have clearly cut across the Adoption of Children Act 1926.

(c) Subsequent legislation prior to the ACA 2002

114. The legislation enacted by Parliament between the Adoption of Children Act 1926 and the ACA 2002 demonstrates that the permanent and irrevocable transfer of parental rights and duties from the natural parents to the adoptive parents upon the making of an adoption order (subject only to the legitimation exception) is a feature of all subsequent legislation in England and Wales on the subject of adoption.

115. The Adoption of Children Act 1949 amended the Adoption of Children Act 1926 in several respects. However, it made no amendment to the permanent and irrevocable transfer of parental rights and duties from the natural parents to the adoptive parents upon the making of an adoption order.

116. The Adoption Act 1950 consolidated the enactments relating to the adoption of children. It extended to Scotland but only in part to Northern Ireland: section 47(2). It maintained the statutory scheme of the permanent and irrevocable transfer of parental rights and duties from the natural parents to the adoptive parents upon the making of an adoption order: see section 5(1) (*permanent deprivation* of the parental rights of the natural parents) and section 10(1) (*extinguishment* of the natural parents' rights and duties and the *status of the adopted child* as in law a child born to the adopters to the exclusion of the natural parents). The 1950 Act maintained the statutory scheme in that no provision was made for the revocation of an adoption order whilst also making provision for a further adoption order to be made in relation to an adopted child: section 7(1).

117. A further report to Parliament, the Hurst Report (see para 119 below) led to the enactment of the Adoption Act 1958. That Act introduced the legitimation exception which allowed a court to exercise discretion to revoke an adoption order. The mischief which this exception addressed was the misplaced stigma attaching to a child because at the time of their birth the parents were unmarried. As we have explained, an illegitimate child could be adopted by one of their natural parents as a sole adopter and upon an adoption order being made the child had the status of a child born legitimately to the adopter. Under the legitimation exception the court was provided with discretion to revoke the adoption order in circumstances where an illegitimate child had been adopted by his father or mother alone and the parents of the child subsequently married. The reasoning behind the exception was that the subsequent marriage of the parents had the effect of legitimating the child. It was considered that the status of the child might be more satisfactory as a legitimated child by virtue of the marriage of the child's parents than having acquired the status of a child born to the adopter legitimately by virtue of an adoption order. However, the status of a legitimated child by virtue of the marriage of the child's parents could only be acquired if the child no longer had the status acquired by virtue of the adoption order. Therefore, acquiring the status of a legitimated child by virtue of the marriage of the child's parents required revocation of the adoption order. Section 26(1) facilitated this. It provided:

> "Where any person adopted by his father or mother alone has subsequently become a legitimated person on the marriage of his father and mother, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order."

This sole exception allowing for revocation of an adoption order was a narrowly focussed exception to the irrevocable nature of an adoption order. No case has been cited to us in which an application was made to the court to revoke an adoption order relying on the legitimation exception.

118. Apart from the legitimation exception, the Adoption Act 1958 maintained the statutory scheme that an adoption order transferred parental rights and duties from the natural parents to the adoptive parents on a permanent and irrevocable basis: see section 7(1) (*permanent deprivation* of the parental rights of the natural parents) and section 13(1) (*extinguishment* of the natural parents rights and duties and the *status of the adopted child* as in law a child born to the adopters to the exclusion of the natural parents). The 1958 Act maintained the statutory scheme in that no other provision was made for the revocation of an adoption order, although it made provision for a further adoption order to be made in relation to an adopted child: section 1(4).

119. The Adoption Act 1976, which did not extend to Scotland or Northern Ireland, consolidated the enactments having effect in England and Wales in relation to adoption.

It maintained the same scheme as before: see section 12(3) (the *extinguishment* of the natural parents' rights and duties); section 39 (*the status* conferred by adoption as in law a child born to the adopter); and section 52 (the legitimation exception).

(d) Further reports after the Hopkinson and Tomlin Reports

120. On 26 January 1953, Sir David Maxwell Fyfe, the Secretary of State for the Home Department, and Sir James Stuart, the Secretary of State for Scotland, appointed several persons to a committee under the chairmanship of His Honour Sir Gerald Hurst QC TD ("the Hurst Committee") "to consider the present law relating to the adoption of children and to report whether any and, if so, what changes in policy or procedure are desirable in the interests of the welfare of children." The report of the Hurst Committee entitled the "Report of the Departmental Committee on the Adoption of Children" (Cmd 9248) ("the Hurst Report") was presented to Parliament by the Secretary of State for the Home Department and the Secretary of State for Scotland. The Hurst Report recommended the legitimation exception discussed at para 117 above. Apart from the legitimation exception the Hurst Report emphatically rejected any other change allowing for the revocation of adoption orders. The Hurst Report stated:

> "139. Some evidence was received about the advisability or otherwise of providing for an adoption order to be revoked or annulled in certain circumstances. *We are convinced that an adoption order should be final in all circumstances except (1) when it is quashed on appeal, (2) when it is superseded by a further adoption order, and (3) when a court has exercised the power (which we recommend in paragraph 247) to annul an adoption order after a child who has been adopted by his father or mother has been legitimated.* We heard of several cases where people, whose adopted child had developed a serious mental or physical defect, were anxious to have the adoption order revoked, but, as we said in paragraph 21, we do not think it would be right to provide for revocation in such circumstances. The result of doing so would surely be to undermine the position of adopted children by exposing them to hazards which do not exist for children living with their own parents. We were told of a case in which a County Court, on the application of an adopted person, made an order purporting to quash the adoption order which had been made by a Magistrates' Court years before. We do not consider it would be any more desirable to provide for an adoption order to be revocable on the application of the adopted person than it would be to enable the adopters to get the order revoked, for this also would tend to prevent the full assimilation of the adopted child into the family." (Emphasis added.)

121. On 21 July 1969 the Secretary of State for the Home Department and the Secretary of State for Scotland appointed a committee under the chairmanship of His Honour Sir William Houghton ("the Houghton Committee") "to consider the law, policy and procedure on the adoption of children and what changes are desirable." In October 1972 the report of the Houghton Committee entitled the "Report of the Departmental Committee on the Adoption of Children" (Cmnd 5107) ("the Houghton Report") was presented to Parliament. The Houghton Report defined adoption, at para 14, as meaning "the complete severance of the legal relationship between parents and child and the establishment of a new one between the child and his adoptive parents." The Houghton Report led to the Adoption Act 1976 which as we have stated maintained the statutory scheme that an adoption order transferred parental rights and duties from the natural parents to the adoptive parents on a permanent basis and that an adoption order was irrevocable subject only to the legitimation exception.

122. In December 2000 the Secretary of State for Health presented a White Paper to Parliament entitled "Adoption a new approach" (Cm 5017). The executive summary stated:

> "while for most children the **best place** to grow up is with their **birth parents**, others are unable to do so
>
> – where this is not possible, society has a **clear responsibility** to provide children with **stability and permanence** in their lives
>
> – adoption is traditionally a means of providing a **permanent alternative home** for children unable to return to their birth parents
>
> – the Government believes that more can and should be done to promote the **wider use of adoption**." (Emphasis in the original.)

There was no consideration in the White Paper of introducing the possibility of revoking an adoption order once validly made. Rather, the paper emphasised the permanence of adoption. For instance, at para 2.12, it was stated that "adoption provides legal permanence, but it requires absolute severance of legal ties with birth families."

(e) The Adoption and Children Act 2002

123. The current statutory scheme for adoption is in the ACA 2002. We have set out the centrally relevant provisions in section 3 above.

124. It is plain from the words used by Parliament (and by reference to the White Paper as a secondary aid to interpretation) that the ACA 2002 maintained the statutory scheme of the predecessor legislation as to the permanence and final effect of an adoption order: see sections 46 and 67 in particular. The sole provision made for revocation is narrow and limited to legitimation: section 55. This was a deliberate choice by Parliament as demonstrated above.

125. The central tenets of the ACA 2002 are that: (a) the making of an adoption order is definitive and final; (b) it is irrevocable except under the legitimation exception; (c) it has a transformative effect which treats the child as if born to the adopter; (d) the transformative effect persists on a lifetime basis unless the order is revoked under the legitimation exception or unless the child is re-adopted under section 46(5); if the child is re-adopted then again, the further adoption order has a transformative effect so as to treat the child as if born to the new adopter; and (e) the purpose of an adoption order is to effect a permanent transfer of parental status, regardless of subsequent events.

126. The reports and the White Paper referred to above, identified powerful policy considerations (which remain as relevant as ever) 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. They can be summarised as follows:

> (a) It will gravely damage the lifelong commitment of adopters to their adoptive children if there is a possibility of the child, the birth parents or adopters seeking to challenge the finality of an adoption order. That could lead to a public perception that adoption is reversible and a less serious undertaking than biological parenting and risks diminishing the value and importance of adoption as a means of providing a permanent family to children in care.
>
> (b) One of the central factors relevant to the success of an adoptive placement is the stability of the adoptive family relationships and the commitment of the adoptive parents to the child.
>
> (c) Any measure which weakens or undermines the finality and certainty of an adoption order risks deterring potential prospective adopters from seeking to adopt a child.

The Secretary of State also refers to further policy considerations which militate away from any measure which dilutes or undermines the permanent and irrevocable effect of an adoption order. They are:

> (i) Open adoptions, involving post-adoption contact between the child and their birth family, are increasingly common and are largely considered to be in a child's best interests, where it is safe to do so. However, such arrangements inevitably rely on adoptive parents having the confidence in the stability of their legal and familial relationship with the child, which may be undermined if the finality of adoption is weakened.
>
> (ii) Similarly, in the era of social media, it is increasingly likely that an adopted child, whether in the context of an adoption breakdown or not, will be able to make contact with their birth family. Again, the finality and certainty of the adoptive family relationships will be central to managing any such contact.

127. For all these reasons even if there were a parens patriae power as contended for by AM, the ACA 2002 has covered the ground, as explained at para 71 above. Such a power would impermissibly have cut across the statutory scheme in the ACA 2002 and would accordingly have been excluded.

(f) The powers of the court if its prospective assessment as to welfare turns out to be incorrect

128. In coming to a decision relating to the adoption of a child the court must make a prospective assessment as to whether adoption is in the child's welfare interests, throughout their life. There will be cases in which the prospective assessment turns out to be incorrect. For instance, as envisaged by the Hopkinson Committee, the character, habits or abilities of the adopters might change, or they might be guilty of serious misconduct towards the child. However, even though there may be welfare grounds for doing so, we have no sense of regret in holding that there is no inherent power to revoke an adoption order. First, the court has numerous carefully calibrated powers which are available to protect children, including making a further adoption order in respect of a child who has already been adopted. That power could have been used in this case. Second, the position of an adopted child is no different from the position of a child born to their natural parents. In relation to a child born to their natural parents there is no power to revoke parenthood, except by making an adoption order.

(g) Is there any remaining scope for the exercise of the inherent power to revoke an adoption order?

129. The Court of Appeal, in paras 63 and 69, considered that there might be some remaining scope for the High Court to exercise inherent powers to revoke an adoption order. We respectfully disagree.

130. The Court of Appeal stated, at para 63, that:

> "There may nevertheless 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. That was the position in *G v G* [2013] 1 FLR 286 (Hedley J), where the special statutory environment of surrogacy made it impracticable to bring an appeal."

131. We consider that no reliance can be placed on *G v G (Parental Order: Revocation)* [2012] EWHC 1979 (Fam); [2013] 1 FLR 286 to establish any instance in which the High Court can exercise its inherent jurisdiction to revoke an adoption order. This is for two reasons. First, *G v G* concerned an application brought by a commissioning father to set aside a parental order made under section 54 of the Human Fertilisation and Embryology Act 2008. *G v G* involved different legislation. It did not concern the inherent power to set aside an adoption order. Secondly, as we have explained there is no inherent power to revoke an adoption order.

132. The Court of Appeal stated, at para 69, that:

> "The court is of course required to act within a human rights framework and 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. However, the remedy in such a case would almost certainly be an appeal out of time, and not an originating application. Further, it is highly unlikely that the article 8 right to respect for family life or for personal identity could ever be of such weight as to justify an outcome that is at odds with the statutory scheme of adoption that has prevailed in this country for a century. Such an outcome would (per *In re B* at p 249) 'undermine the whole basis on which adoption orders are made, namely that they are final and for life as regards the adopters,

> the natural parents and the child'. Any change in that state of affairs is a matter for Parliament."

We make four points in response to the suggestion, in effect, that the possibility of a future case requiring revocation cannot be ruled out. First, it is wrong to approach the question of jurisdiction by saying that if a child's welfare makes it necessary, the jurisdiction must exist. As we have said (para 47 above), it is the other way around.

133. Secondly, the court's duty under section 6 of the Human Rights Act 1998 operates within the limits of the court's jurisdiction: it does not extend it. This is explained in *Abbasi*, para 85 as follows:

> "Section 6(1) does not confer any power on the court which it does not otherwise possess. Rather, it applies within the ambit of the powers which the court otherwise possesses. As Lord Nicholls observed in *In re S (Minors) (Care Order: Implementation of Care Plan)* [2002] 2 AC 291, para 80, 'Section 6 is prohibitory, not enabling'. Similarly, Lord Hope of Craighead explained in *In re British Broadcasting Corporation* [2010] 1 AC 145, para 13, that section 6(1) 'has an important part to play when a court is considering how it should exercise a power that has been conferred upon it by statute or, in the case of the High Court for example, is vested in it by an inherent jurisdiction', but 'it cannot confer on a court a power that it does not otherwise have'".

134. Thirdly, we find it 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. We note that the Court of Appeal gave no example of what it had in mind. The mere fact that problems can arise in adoptive families (just as they can in natural families) does not mean an avenue for revocation must be available. The point can be tested in this way: imagine a natural child who is so gravely upset with their natural parents that their self-identity is compromised in a way that leads to self-harm or other issues arising under articles 2, 3 or 8 of the Convention; there would be no scope for a court to intervene in such a case by changing or revoking the natural parents' parental responsibility. Instead, the state would respond by providing care and safeguarding for the child to protect them against article 2, 3 or 8 harms. Why should it be any different in the case of an adopted child? As we have discussed above there are many orders that can be made to protect an adopted child without any need to resort to revocation of a valid adoption order; re-adoption is just one of them. The United Kingdom discharges its positive obligations under the Convention by orders which can also be made under the Children Act 1989 and by, for instance, the work of child protection authorities. These afford ample powers to comply with Convention obligations to protect a child.

Accordingly, we cannot envisage any situation that could begin to compel the revocation of an adoption order to comply with the United Kingdom's Convention obligations. Finally, and in any event, there is no inherent parens patriae (or other) power to revoke a valid adoption order.

9. UNCRC and the European Convention on Human Rights

135. Written submissions were made in relation to the UNCRC, and the Convention, but these were abandoned in argument. In particular, Mr Goodwin made clear that he pursued no arguments based on asserted interference and incompatibility with any of the rights under these Conventions, and nor was he pursuing any arguments based on sections 3 and 4 of the Human Rights Act 1998.

136. For completeness we record our view that there is nothing in the UNCRC that requires a validly made adoption order to be capable of revocation. The finality achieved by the ACA 2002 is perfectly compatible with the Convention (as Mr Goodwin concedes). Moreover, article 8 of the UNCRC (which deals with identity rights and was relied on in writing by Mr Goodwin) simply reflects the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference. In the case of an adopted child, it is the adopted identity which is recognised by law that must be preserved and respected. The same is true of the Convention.

10. Conclusion

137. For all these reasons we would dismiss the appeal.