

Set In Stone

No Inherent Jurisdiction to Revoke Adoption Orders

BY JORDAN WARREN

Introduction

1. In **Re X and Y (Children: Adoption Order: Setting Aside) [2025] EWCA Civ 2** the Court of Appeal considered whether the Court has the jurisdiction to set aside an order for adoption, which has been validly made, other than through an appeal.
2. The conclusion reached by the Court of Appeal was that no such power existed, and that a number of decisions which purported otherwise were wrongly decided.
3. The decision is likely to have significant consequences in a landscape where an estimated 3-9% of adoptions break down (Adoption UK Website, FAQs (2022)).

The facts

4. The proceedings concerned the children, X and Y, who were aged 17 and 16 respectively at the time of the first instance hearing in the High Court.
5. In 2012, when aged 5 and 4, they were placed with their adoptive mother, AM. This followed a lengthy period in foster care, during which they had continued to have a significant amount of contact with their birth mother, BM.
6. Neither of the two children settled well in AM's care. Between 2017 and 2019, X made it known that she wished to live with BM. In contrast, Y wanted to remain with AM.
7. During the Covid lockdown of 2020, BM and her youngest (non-subject) child, Z, moved in with AM alongside X and Y.
8. In August 2021, X and Y left AM's home and moved in with BM. In May 2022, X left BM's home to live with her birth father, BFX.

9. Care proceedings were issued in February 2023. Y wished to remain with BM and did not want AM to have continuing parental responsibility. X wanted to continue to live with BFX, but wished to maintain a relationship with AM.
10. AM applied to revoke the adoption orders. Child arrangement orders for Y to live with BM and for X to live BFX were made in May 2023.

Decision at first instance

11. The matter came before Mrs Justice Lieven, sitting in the Family Division of the High Court, in April 2024. Both X and Y were in support of the application to be 'unadopted'.
12. The primary submission advanced by AM at first instance was that the court could utilise its inherent jurisdiction to revoke the adoption order.
13. In the alternative, it was submitted that Section 31F(6) of the Matrimonial and Family Proceedings Act 1984 provided the Court with a power to revoke an adoption order:

(6) The family court has power to vary, suspend, rescind or revive any order made by it, including—

(a) power to rescind an order and re-list the application on which it was made,

(b) power to replace an order which for any reason appears to be invalid by another which the court has power to make, and

(c) power to vary an order with effect from when it was originally made.

14. In relation to the submissions regarding s31F, Lieven J ordered that an analysis of Hansard be undertaken, in accordance with the principles of **Pepper v Hart [1993] AC 593**, to determine whether Parliament had considered the applicability of that section to adoption orders.
15. My colleague, Katie Goodman, and I undertook this work under the direction of Timothy Bowe KC and Mark Cooper-Hall, who acted on behalf of Y at first instance and on appeal.
16. This research did not suggest that Parliament had considered that Section 31F could be used in such a manner. Instead, the finality and irrevocability of adoption orders was reiterated throughout

discussions, both in the House of Lords and House of Commons. These findings were reported to the Court in advance of the hearing.

17. Lieven J held that, in cases where revocation of an adoption was sought solely on welfare grounds, the Court did not have the power to revoke the adoption order. Whilst the inherent jurisdiction of the High Court could be used in cases where there had been some form of procedural irregularity, this was not such a case.
18. Parliament had considered circumstances where such an order may need to be revoked, and Section 55 of the Adoption and Children Act 2002 provided the court with a power to revoke where a child becomes a legitimated person. However, Parliament had not provided any wider power.
19. Further, there was nothing to suggest that Parliament had envisaged that Section 31F(6) could be used to revoke an adoption order.
20. The application was therefore refused. The decision is reported as **Re X and Y (Revocation of Adoption Orders) [2024] EWHC 1059 (Fam)**.

The Appeal

21. AM appealed the decision of Lieven J, and the matter was heard by the Court of Appeal in November 2024.
22. Whilst the application was essentially unopposed, the Secretary of State for Education (SoS) was invited to join the proceedings as an intervenor, as head of the government department responsible for policies relating to adoption.

Submissions

23. It was argued on behalf of the SoS that adoption stood apart from other orders in family proceedings, on the basis that they are 'definitive and final'. If it were held that the courts had a wider power to revoke adoption orders, it would therefore undermine the certainty that they currently provide.
24. On behalf of AM, it was argued that the court did have the power to revoke adoption orders outside of the specific circumstances set out within the legislation, although it was accepted that the bar for doing so was very high.

25. The local authority echoed this argument and submitted that there was a need to prevent the children being ‘trapped in a legal fiction’.
26. On behalf of Y, it was submitted that AM’s status as her adoptive parent was completely at odds with the reality of her situation. Unless the adoption order was revoked, she would be “trapped in an identity that she totally rejected”.
27. BM supported the position advanced by AM and Y, but X declined to play any part in the appeal. BFX played no role at first instance or in the appeal.

Judgment

28. The President of the Family Division, Sir Andrew McFarlane, Lord Justice Peter Jackson and Lord Justice Phillips handed down their judgment, to which all three members of the Court had contributed, dismissing the appeal.
29. The Court disagreed with the accepted view of the parties that, firstly, the High Court has an inherent jurisdiction to revoke an adoption order and, secondly, that the welfare of the child can be considered when determining an application for revocation.
30. A significant number of authorities were considered, many of which had been relied on by the parties as authority for the proposition that the Court does have an inherent jurisdiction to revoke an adoption order.
31. The Court regarded **Re B (Adoption: Jurisdiction to Set Aside) [1995] 2 FLR 1** as the key authority which guided their decision making. In that decision, the Court of Appeal held that adoption orders stood apart from almost all other orders in terms of their finality, and that revocation was only permitted by legislation in very specific circumstances.
32. When analysing cases where adoption orders had been revoked, such as **Re M (Minors)(Adoption) [1991] 1 FLR 458** and **Re K (Adoption and Wardship) [1997] 2 FLR 221**, the Court held that these were actually cases involving appeals out of time relating to fundamental procedural issues.
33. In *Re M* the father agreed to the adoption due to a mistake of fact, and in *Re K* notice was not given to the child’s guardian or surviving members of their family. The Court of Appeal therefore held that these were not examples where the Court had used an inherent power to revoke the orders.

34. The Court stated that, in their Lordships' view, the decision of ***Webster v Norfolk County Council* [2009] EWCA Civ 59** had been misunderstood, which had in turn led to the mistaken belief that the Court wielded a more far-reaching power.
35. In *Webster*, Wall J referred to the Court's discretion being "severely curtailed [148]". However, the Court stated that the existence of a discretionary power did not even arise in that case, and Wall J was referring to the powers of the Court of Appeal rather than the High Court. Subsequent decisions in which adoption orders had been revoked for welfare reasons where, therefore, incorrect, i.e. ***PK v Mr and Mrs K* [2015] EWHC 2316 (Fam), [2016] 2 FLR 576** (Pauffley J) and ***AX v BX (Revocation of Adoption Order)* [2021] EWHC 1121 (Fam), [2021] 4 WLR 80, [2022] 1 FLR 759** (Theis J).
36. As a result of this analysis, the Court concluded that there was no power to revoke the adoption orders made in respect of X and Y.

Analysis

37. It is clear that the Court of Appeal was faced with a difficult balancing exercise when reaching this decision, and their Lordships were clearly influenced by the conspicuous absence of any general power to revoke within the legislation.
38. The finality and stability that adoption orders provide for parties formed a significant part of the Court's decision making. In particular, there was concern that if the High Court had the power to revoke adoption orders based on welfare grounds "it would gravely damage the lifelong commitment of adopters to their adoptive children [70]".
39. This is clearly an important consideration given that other arrangements, such as long-term foster care, tend to have a significantly higher chance of breaking down than adoptions.
40. If the Court of Appeal had found that an inherent jurisdiction existed, even if it could only be used in exceptional circumstances, such a small opening could have led to an increase in adoptive parents and children attempting to end their adoptive relationship. From a public policy point of view, this is hugely significant, given that when a child is adopted, they are henceforth treated as if they had been born to their adoptive parent(s).
41. On the other hand, both children in this case (particularly Y) are now trapped in a situation where the legal position is at odds with their identity, and contrary to the wishes of everyone involved. It was noted that, if the Court did have the jurisdiction to revoke an adoption order on welfare grounds, the

outcome would likely have been different. As the Court noted, Y was particularly distressed by her situation, which is likely to have a lasting impact upon her.

42. Despite this, the Court stated, “the temptations of convenience must not become a slippery slope towards the assumption of a legal power [37]”. It therefore appears that, absent any intervention by the legislature, X and Y will have no means of revoking their adoption orders in the future. However, an alternative remedy – albeit an unusual one (and subject to an assessment and further proceedings) – could be for BM to adopt her children, which would have the effect of extinguishing the adoption orders made in favour of AM, and restoring the children’s status as the legal children of BM.



Jordan Warren
St Ives Chambers

Law is correct as at 3rd February 2025

Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.