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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 18/05/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**FAMILY DIVISION
OFFICE OF CARE AND PROTECTION**

IN THE MATTER OF BD

[Incapacitous adult; inherent jurisdiction; recognition]

**Michael Lavery (instructed by Hunt & Co) for the Applicant
Julie Ellison (instructed by Hewitt & Gilpin) for the Respondents**

HUMPHREYS J

Introduction

[1] This application is brought by BD, a woman in her 90s, who has two sons, CD and DD, who reside in Northern Ireland and Scotland respectively. It is evident that BD is an individual of considerable means who has lived in a variety of places around the world. There is in existence a trust fund settled by her late husband in Liechtenstein. Following the death of her husband, BD lived for a time in Scotland before moving back to Northern Ireland in October 2025. She resided for a time in a care home before moving to live with her son CD with the benefit of a care package.

[2] In her affidavit, BD makes reference to a combined power of attorney (“CPA”) executed in Scotland and registered with the Office of the Public Guardian in that jurisdiction.

[3] In her application to this court, made pursuant to its inherent jurisdiction, she seeks the following relief:

- (i) An order discharging, varying or suspending the Scottish “guardianship order”;
- (ii) If the applicant has capacity, a declaration that she can revoke any existing enduring power of attorney (“EPA”) and grant a new one;

- (iii) A declaration that the Northern Ireland courts have jurisdiction in respect of the applicant's welfare, property and affairs;
- (iv) In the event that the applicant lacks capacity, an order appointing CD as controller.

[4] The court sought submissions from the parties as to whether it had jurisdiction to make any of the orders sought.

The Scottish power of attorney

[5] On 14 February 2018, BD appointed DD and his wife, FD, as attorneys under a CPA, conferring property, financial and welfare powers, pursuant to sections 15 and 16 of the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act").

[6] The following are the material powers conferred on the attorneys:

- (i) To manage the grantor's whole affairs;
- (ii) To make decisions about the grantor's personal welfare;
- (iii) To make all financial decisions, including payment for residential care;
- (iv) To take any legal action, including on any issue relating to personal welfare;
- (v) To decide on the grantor's place of residence;
- (vi) To determine appropriate care and accommodation;
- (vii) To decide with whom the grantor should consort.

[7] The financial powers were limited to those relating to assets within the United Kingdom. The welfare powers are only exercisable when the grantor becomes incapable within the terms of the 2000 Act, or the attorney reasonably believes this to be the case.

[8] On 23 June 2018, the CPA was registered with the Office of the Public Guardian in Scotland. This occurred at a time when the applicant had capacity.

[9] In that sense, the Scottish system of execution and registration of powers of attorney differs from that in Northern Ireland. Under the Enduring Powers of Attorney (Northern Ireland) Order 1987 ("the 1987 Order"), an EPA can only be registered with the Office of Care and Protection once the donor lacks capacity. In Scotland, registration with the Office of the Public Guardian must be effected whilst the grantor has capacity in order that the power has effect.

The medical evidence

[10] A report was obtained from Dr Caroline McGechaen, Consultant Psychiatrist, dated 28 July 2025 on referral from the applicant's General Practitioner at a time BD was living in a care home in Scotland. It was noted that BD was unable to provide any information relating to her finances. Dr McGechaen found that the applicant is suffering from dementia, most likely caused by Alzheimer's disease. She concluded:

“I think it is clear that she lacks capacity to make decisions regarding her welfare and finances”

[11] On her return to Northern Ireland, solicitors acting on her behalf instructed Professor Bernadette McGuinness, Consultant Geriatrician, to prepare a report dated 8 April 2026. In the instructions provided it was stated that the applicant wished to change her attorney from DD to CD, as she no longer trusted DD and FD. In relation to her finances, it is recorded:

“[BD] was aware she was very well off, stating her husband had left her several hundred thousand pounds plus property as above but she was not sure about exact amount. She stated that she received a work pension and a state pension but was not sure of the amount.”

[12] There was no reference made to the fact that assets are held in a trust fund in Liechtenstein.

[13] In the opinion of the doctor, the applicant has mild Alzheimer's disease but had capacity to nominate her son CD as attorney and to revoke the appointment of DD and FD. In doing so, Prof McGuinness applied the criteria set out by Hoffman J in *Re K; Re F* [1988] Ch 310.

The Northern Irish EPA

[14] On 10 April 2026 the applicant executed an EPA appointing her son CD to be her attorney for the purposes of the 1987 Order with general authority to act in relation to all her property and affairs. It states:

“For the removal of all doubt this Enduring Power of Attorney shall cancel and revoke any previous powers granted by me in respect of my financial or medical care in any jurisdiction to any other person.

Specifically, the Continuing Power of Attorney which I granted to my son [DD] and his wife [FD] in Scotland shall cease to have effect.”

[15] On the same date the applicant executed a “Deed of Revocation” which purports to revoke the CPA in Scotland.

The Scottish legal framework

[16] As its title indicates, matters concerning incapacitous adults in Scotland are addressed by the provisions of the 2000 Act. It provides for a detailed statutory framework for the creation and registration of continuing and welfare powers of attorney. Notably, a welfare power of attorney (“WPA”) shall not be exercisable unless the granter is incapable in relation to welfare decisions, or the attorney reasonably believes this to be the case (section 16(5)). In relation to continuing powers, they may only be exercisable in the case of incapacity but this depends on the terms of the document (section 15(3)(ba)).

[17] In either case, the attorney has no authority to act until the document has been registered under section 19.

[18] Section 22A sets out a detailed scheme for the revocation of powers of attorney. A revocation notice is only valid if it:

- “(a) is subscribed by the granter; and
- (b) incorporates a certificate in the prescribed form by a practising solicitor or by a member of another prescribed class that—
 - (i) he has interviewed the granter immediately before the granter subscribed the document;
 - (ii) he is satisfied, either because of his own knowledge of the granter or because he has consulted another person (whom he names in the certificate) who has knowledge of the granter, that at the time the revocation is made the granter understands its effect;
 - (iii) he has no reason to believe that the granter is acting under undue influence or that any other factor vitiates the revocation of the power.”

[19] Such a revocation only takes effect when the revocation notice is registered under section 22A(4).

The Hague Convention 2000

[20] The United Kingdom is a signatory to the Hague Convention on the International Protection of Adults 2000 (“Hague Convention 2000”) but has only ratified it in relation to Scotland. It provides for legal recognition and enforcement of measures relating to the protection of incapacitous adults across member states. Article 5 states:

- “(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the adult have jurisdiction to take measures directed to the protection of the adult's person or property.
- (2) In case of a change of the adult's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.”

[21] Article 9 of Hague Convention 2000 provides:

“The authorities of a Contracting State where property of the adult is situated have jurisdiction to take measures of protection concerning that property to the extent that such measures are compatible with those taken by the authorities having jurisdiction under Article 5...”

[22] By Article 10(1):

“In all cases of urgency, the authorities of any Contracting State in whose territory the adult or property belonging to the adult is present have jurisdiction to take any necessary measures of protection.”

[23] Articles 22 to 27 provide for the recognition of measures taken in one contracting state in all other contracting states.

The Northern Ireland legal framework

[24] Paragraph 8(1) of schedule 9 to the Mental Capacity (Northern Ireland) Act 2016 (“the 2016 Act”) provides:

- “(1) The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to –
 - (a) an adult habitually resident in Northern Ireland;
 - (b) an adult’s property in Northern Ireland;

- (c) an adult present in Northern Ireland or who has property there, if the matter is urgent; or
- (d) an adult present in Northern Ireland, if a protective measure which is temporary and limited in its effect to Northern Ireland is proposed in relation to the adult.”

[25] Part 5 of the 2016 Act creates lasting powers of attorney, intended to replace EPAs and designed to include authority to make decisions about care, treatment and personal welfare, as well as property and affairs. EPAs created under the 1987 Order can only extend to property and affairs, not matters relating to welfare.

[26] Section 283 and paras 20 to 23 of schedule 9 to the 2016 Act set out a system of recognition and enforcement in Northern Ireland of protective measures taken in relation to an adult in another country.

[27] However, although certain provisions of the 2016 Act have been commenced for specified purposes, the legislative scheme relevant to the court’s exercise of powers in relation to property, affairs, welfare, and recognition of foreign protective measures has not been fully brought into operation.

[28] As matters stand, therefore, there is no statutory regime permitting the recognition of a Scottish CPA in Northern Ireland. However, the common law does provide for recognition of protective measures created in other jurisdictions.

[29] The Mental Health (Northern Ireland) Order 1986 (“the 1986 Order”) provides for a statutory scheme (at Part VIII) for the management by the court of the property and affairs of those who are incapable, by reason of mental disorder, of managing and administering them themselves. It does not, however, give the court any powers in relation to non-financial or welfare issues.

[30] This lacuna in the law was intended to be addressed by the 2016 Act which, at Part 6, provides for court powers in relation to care, treatment and welfare. Regrettably, however, these provisions are not yet in force. As a result, the inherent jurisdiction of the High Court continues to play an important role in the lives of incapacitous adults.

[31] In *Belfast Health & Social Care Trust v PT* [2017] NIFam 1, McBride J followed the seminal decision of Munby J in *Re SA* [2005] EWHC 2942 (Fam) and summarised the principles governing the use of the inherent jurisdiction:

- “(a) The inherent jurisdiction can be invoked in respect of adults who lack capacity and also in respect of vulnerable adults who do not lack capacity;

- (b) The jurisdiction can only be exercised where ‘gaps’ exist in the legislation. In Northern Ireland, the inherent jurisdiction of the court continues to be exercised in relation to welfare decisions in respect of incapacitated adults;
- (c) The test governing the operation of the inherent jurisdiction is “best interests”; and
- (d) The inherent jurisdiction must be exercised in accordance with law and in particular must be compatible with the Human Rights Act and ECHR rights.”

[32] Importantly, the courts have recognised that the inherent jurisdiction has no role to play where there is in place a legislative framework. In *Re X and Y* [2026] UKSC 13, Lord Stephens and Lady Simler held:

“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.” (para [55])

Consideration

[33] In the absence of any statutory recognition regime presently in force, the common law and considerations of judicial comity support recognition in this jurisdiction of the Scottish CPA insofar as it extends to property and affairs within the United Kingdom.

[34] It appears that BD has no property within this jurisdiction, save for some personal effects and her pension payments. There is no reason why these could not be managed by her attorneys under the Scottish power.

[35] The position is, however, different in respect of the welfare power. Northern Ireland does not presently have in force an operative statutory regime for WPAs equivalent to that created by Scottish law.

[36] Returning to the relief sought by the applicant in these proceedings, it is now accepted that this court could not discharge or suspend the operation of the Scottish CPA. There is in place in the 2000 Act a statutory process which can be invoked in

Scotland to seek revocation of the power. It would be entirely inappropriate, and contrary to principle, for a court in another jurisdiction to invoke its inherent jurisdiction to achieve such an aim.

[37] The declaratory relief sought in relation to the revocation of the existing power of attorney and the grant of a new one falls foul of the same principle. If the applicant wishes to revoke the Scottish CPA, then she must pursue the statutory route.

[38] It is evident that the “deed of revocation” and the declaration made when executing the EPA in Northern Ireland on 10 April 2026 do not comply with the statutory requirements for revocation. Ultimately, in any event, this will be a matter for the Office of the Public Guardian in Scotland or, if necessary, the Scottish courts.

[39] The applicant also seeks a declaration that the courts in Northern Ireland have jurisdiction in respect of her welfare, property and affairs. However, in these same proceedings, the applicant claims to be of full capacity and has adduced medical evidence to support that stance. If the applicant does enjoy full capacity, then the court has no jurisdiction at all in respect of the management of her property and affairs under the 1986 Order or in respect of welfare under the inherent jurisdiction, there being no case advanced that she is in any material respect vulnerable. The applicant’s case in this regard is therefore intrinsically contradictory.

[40] In the alternative, the applicant seeks an order, in the event that she lacks capacity, appointing CD as her controller under Article 101 of the 1986 Order. Again, this is problematic for the following reasons:

- (i) If the applicant lacks capacity to manage her property and affairs, the question must arise as to whether she has litigation capacity which would enable her to make this application. The court would need to be satisfied on this specific issue;
- (ii) Furthermore, the evidence relied upon by the applicant supports the contention that she has capacity which would prevent the making of a controllership order;
- (iii) The evidence indicates that the applicant does not have any property or assets within this jurisdiction. It is well-established that a controller will only be appointed where there is a need to do so, and no such need is apparent on the facts of this case.

[41] There remains an outstanding issue as to whether this applicant has capacity or not, and, if so, to what extent. However, it is entirely unnecessary and disproportionate for this court to make any determination in that regard since, for the reasons set out above, the applicant cannot obtain any of the relief sought in these proceedings.

[42] Whether the Scottish CPA could, or should, be revoked will be a matter for determination in that jurisdiction. If and when any application is made to register the EPA in this jurisdiction, the court can consider the merits of such application under Article 8 of the 1987 Order.

[43] Pending the outcome of any application to revoke, it is an appropriate exercise of judicial comity to recognise the Scottish power in this jurisdiction insofar as it relates to property and affairs.

Conclusion

[44] For these reasons, the application is dismissed and I make no order as to costs.