Neutral Citation No: [2026] NIFam 17	*Ref:* **HUM13092**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **23/06/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
(OFFICE OF CARE AND PROTECTION)

_____

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

and

JD

Respondent

_____

[Revocation of freeing order; inherent jurisdiction]

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Timothy Ritchie (instructed by Directorate of Legal Services) for the Applicant
Siobhán McCrory (instructed by Thompson Crooks) for the Respondent
Zara McKay (instructed by the Official Solicitor) on behalf of the child

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HUMPHREYS J

Introduction

[1] On 13 November 2023, Her Honour Judge Crawford, sitting in the Family Care Centre, made an order pursuant to Article 18(1) of the Adoption (Northern Ireland) Order 1987 ("the 1987 Order") freeing a child, HC, for adoption.

[2] At the relevant time there were in place specific plans for HC's adoption. Prospective adopters had been identified and assessed. Sadly, however, issues emerged and ultimately those prospective adopters indicated that they no longer wished to proceed.

[3] Following the breakdown of this option, further steps were taken to identify alternative adopters. Regrettably, none could be found either within the area of the applicant Trust or more widely. On 1 July 2025 the Trust wrote to the respondent mother, JD, informing her that no adoption placement could be found for HC.

[4] HC has been in the care of short term foster carers since the making of the freeing order. The Trust advises that he is presently in a state of "adoption limbo" whereby he is freed for adoption but the next legal stage is highly unlikely to occur.

[5] The Trust accepts that it does not have standing pursuant to the 1987 Order to make an application to the court to revoke the freeing order. However, in its opinion, it would be in HC's best interests for such an order to be made and seeks to invoke the court's inherent jurisdiction to do so.

[6] The initial question for the court to determine is whether, in light of the recent Supreme Court decision in *Re X and Y (Children: Adoption Order: Setting Aside)* [2026] UKSC 13, the court has jurisdiction to make such an order.

The legal framework

[7] Article 20 of the 1987 Order provides for revocation of freeing orders:

> "(1) The former parent, at any time more than 12 months after the making of the order freeing the child for adoption when—
>
> (a) no adoption order has been made in respect of the child, and
>
> (b) the child does not have his home with a person with whom he has been placed for adoption,
>
> may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume parental responsibility for the child.
>
> (2) While the application is pending the adoption agency having parental responsibility shall not place the child for adoption without the leave of the court.
>
> (3) The revocation of an order under Article 17(1) or 18(1) ("a freeing order") operates—
>
> (a) to extinguish the parental responsibility given to the adoption agency under the freeing order;
>
> (b) to give parental responsibility for the child to—
>
> (i) the child's mother; and

(ii) where the child's father and mother were married to, or civil partners of, each other at the time of his birth, the father; and

(c) to revive—

(i) any parental responsibility agreement,

(ii) any order under Article 7 of the Children (Northern Ireland) Order 1995, and

(iii) any appointment of a guardian in respect of the child (whether made by a court or otherwise),

extinguished by the making of a freeing order.

(3A) Subject to paragraph (3)(c), the revocation does not—

(a) operate to revive—

(i) any order under the Children (Northern Ireland) Order 1995,

or

(ii) any duty referred to in Article 12(3)(c),

extinguished by the making of the freeing order; or

(b) affect any person's parental responsibility so far as it relates to the period between the making of the freeing order and the date of revocation of that order.

(4) Subject to paragraph (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in Article 9—

(a) the former parent who made the application shall not be entitled to make any further application under paragraph (1) in respect of the child, and

(b) the adoption agency is released from the duty of complying further with Article 19(3) as respects that parent.

(5) Paragraph (4)(a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under paragraph (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made."

[8] Article 173 of the Children (Northern Ireland) Order 1995 ("the Children Order") provides:

"(1) The court shall not exercise its inherent jurisdiction with respect to children—

(a) so as to require a child to be placed in the care, or put under the supervision, of a Board or Health and Social Services trust;

(b) so as to require a child to be accommodated by or on behalf of a Board or Health and Social Services trust;

(c) so as to make a child who is the subject of a care order a ward of court; or

(d) for the purpose of conferring on any Board or Health and Social Services trust power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by an authority unless the authority has obtained the leave of the court.

(3) The court may only grant leave if it is satisfied that—

(a) the result which the authority wishes to achieve could not be achieved through the making of any order of a kind to which paragraph (4) applies; and

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

(4) This paragraph applies to any order—

(a) made otherwise than in the exercise of the court's inherent jurisdiction; and

(b) which the authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

(5) In this Article "the court" means the High Court."

[9] The Adoption and Children (Northern Ireland) Act 2022 was enacted on 27 April 2022 but, over four years later, the Act remains uncommenced save for six individual sections. If and when it comes into force, it will replace freeing orders with placement orders and, by section 21, will enable the subject child, the adoption authority or any other person (with the leave of the court) to apply for the revocation of such an order.

[10] However, under the existing statutory regime, only a former parent can apply for revocation of a freeing order. Any decision made on an Article 20 application must, in accordance with Article 9 of the 1987 Order, have the best interests of the subject child as its paramount consideration.

[11] The courts in England & Wales had occasion to consider the impact of the analogue provisions of the Adoption Act 1976. Section 20 of that Act was framed in similar terms to Article 20 of the 1987 Order. In *Re C (A Minor) (Adoption: Freeing Order)* [1999] Fam 240, Wall J found that it was clearly in the best interests of the subject child that a freeing order be revoked. However, neither the local authority nor the mother had standing to make such an application since she had signed a declaration to the effect she did not wish to be consulted further about the child's future. However, the court concluded that it could not have been the intention of Parliament to make "statutory orphans" or leave children in this state of limbo where no adoptive parents could be found. Wall J concluded:

> "Accordingly, in my judgment, it is open to me to exercise the inherent jurisdiction to "fill the gap" and to protect S.C. by acting in what is plainly his best interests by discharging the freeing order. In so doing I do not think that I am in any sense seeking to thwart, contradict or interfere with the will of Parliament."

[12] In arriving at this conclusion the court noted the distinction between freeing and adoption orders. The former is a temporary order, designed to enable adoption to take place in the future whilst the latter confers a permanent legal status. An adoption order therefore had a status of irrevocability (save in certain defined circumstances) which did not pertain to a freeing order.

[13] In *Re J* [2000] 2 FLR 58 Black J revoked a freeing order on the application of a local authority and stated:

> "In view of the existence of Section 20 of the Adoption Act 1976, I have approached the exercise of the courts inherent jurisdiction cautiously. However, in my judgment in the particular circumstances of this case J's interest would be likely to be harmed if there was no power to revoke the freeing order made in relation to him. This cannot realistically be done without reliance on the inherent jurisdiction. There is presently no applicant entitled to apply under Section 20 (just as was the case in *Re C*) and the reality is that no application is ever likely to be made, even once M becomes so entitled. The freeing provisions are designed to facilitate the placing and adoption of children so that their welfare can be secured. Parliament cannot, in my view, have intended that the statutory provisions should work so as to cause harm to children when plans have changed and in my judgment it is open to me to exercise the inherent jurisdiction to supplement the statutory powers and thereby protect J."

[14] In *Re C and D* [2016] NIFam 3, O'Hara J did not need to invoke the inherent jurisdiction but commented:

> "Of course that jurisdiction should not be too freely exercised in the face of the legislation but when the rights and interests of children are not sufficiently or properly protected by statute the High Court can and should intervene to achieve those ends. That is what has happened in cases such as *Re J* and it should similarly happen in Northern Ireland if necessary."

[15] In *Re X and Y* the Supreme Court considered whether the inherent jurisdiction could be used to revoke a validly made adoption order. There is no statutory route by which revocation of this type of order can be made, save on the very narrow ground of legitimation, regardless of the identity of the applicant. The appellant's case was 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." (para [46])

[16] However, the court held:

> "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." (para [71])

[17] The fundamental principle, as expressed by the Supreme Court, is that the inherent jurisdiction cannot be used to circumvent a statutory scheme. In the particular context of adoption orders, it was clear that the courts had never enjoyed an inherent jurisdiction to extinguish and transfer parental responsibility.

[18] Importantly, the court identified that Parliament intended adoption orders to be "permanent and irrevocable", a characteristic which is "the unique attribute" of the adoption order (para [1]). This is not the case with freeing orders which are only ever intended to confer a temporary status on a child.

[19] In his book "Wards of Court and the Inherent Jurisdiction" (published prior to the decision in *X and Y*), Professor Rob George KC comments:

> "It might therefore be thought that the statute is the beginning and the end of the court's powers in relation to adoption, but that is not so. There are several areas where the court has invoked its inherent jurisdiction." [para 11.4]

[20] The author goes on to reference cases concerning post-adoption contact prior to the 2002 Act, recognition of certain foreign adoptions and the revocation of placement and freeing orders. In relation to the latter, Prof George cites *Re C* and *Re J*,

describing the outcomes in these cases as a "pragmatic solution to an unsatisfactory statutory position."

[21] The author is critical of some judicial dicta to the effect that the inherent jurisdiction could be used to revoke adoption orders, a view ultimately shared by a unanimous Supreme Court in *X and Y*.

[22] It is not surprising that the Supreme Court did not consider, still less overrule, the caselaw in relation to freeing orders since these are a legal relic in England & Wales.

[23] I am satisfied that the inherent jurisdiction can still be used in Northern Ireland, in limited circumstances, to revoke a validly made freeing order when this is in the best interests of the child. I have reached this conclusion on the basis of the fundamental difference in the nature of the order under consideration in this case when contrasted to an adoption order. The revocation of a temporary freeing order in circumstances where it is evident that adoption will never happen is fundamentally different from revoking an adoption order with its central characteristic of legal permanence. To do the former is not to subvert the statutory scheme but to fill a lacuna in it; to do the latter constitutes just such an impermissible course of action.

An alternative remedy?

[24] The Family Court in England & Wales enjoys a power pursuant to section 31F(6) of the Matrimonial and Family Proceedings Act 1984 to "vary, suspend, rescind or revive" any orders made which could, at least on its face, be invoked in this type of situation. However, there is no equivalent statutory power in this jurisdiction.

[25] It is conceivable that, in an appropriate case, a court could extend the time for leave to appeal against a freeing order or set aside on the grounds of mistake or some material change of circumstances.

[26] However, since I have concluded that it is still open to the court to exercise the inherent jurisdiction to discharge a freeing order in an appropriate case, it is not necessary to explore these options any further.

Conclusion

[27] Having established that the jurisdiction still exists, I will hear the parties on the question of whether the statutory test imposed by Article 173 of the Children Order is met in the circumstances of this case.