



Neutral Citation Number: [2021] EWHC 1121 (Fam)

Case No: FD20P00122

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/04/2021

Before:

MRS JUSTICE THEIS

Between:

AX & BX

1st & 2nd Applicants

- and -

SX

1st Respondent

- and -

JX

2nd Respondent

- and -

CT

3rd Respondent

- and -

A LOCAL AUTHORITY

4th Respondents

Ms Deirdre Fottrell QC & Ms Sally Bradley (instructed by **Powell Spencer & Partners**)
for the **1st & 2nd Applicants**

Mr Richard O'Sullivan & Mr Alexander Laing (instructed by **Alexander & Partners**)
for the **1st & 2nd Respondents**

Mr Tom Wilson (instructed by **Goodman Ray**) for the **3rd Respondent**

Ms Kate Tompkins (instructed by a **Local Authority**) for the **4th Respondent**

Ms Kathryn Cronin & Mr Christopher Osborne (instructed by **Cafcass Legal**)
as **Advocate to the Court**

Hearing dates: 9th 11th & 12th March 2021

Judgment: 23rd April 2021

Approved Judgment

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE:

Introduction and Summary

1. This matter concerns an application by A, 18 years, and B, 16 years, under the inherent jurisdiction to revoke adoption orders relating to them granted on 4 August 2011 to SX and JX.
2. The other parties to the application are SX and JX, CT (A and B's natural mother) and the local authority (responsible authority at the time the adoption orders were made, 'the first local authority').
3. At an earlier stage in the proceedings another local authority ('the second local authority') were given notice of these proceedings. They were the local authority responsible for providing the support under the adoption support plan and the applicant in the care proceedings issued in relation to A and B in 2018, which concluded in September 2019. They provided disclosure of documents but did not seek party status.
4. Since the autumn 2018 both A and B have been back living with the natural maternal family. A and her son, born in 2020, live with CT and her three younger children. B had been staying with CT's aunt, although spending time with CT. It is accepted the placement with Mr and Mrs X has permanently broken down, neither A or B have lived with them since autumn 2018, with only A having limited contact with them since then.
5. Although there is no dispute between the parties that the adoption order should be revoked, there remain issues about how the court should approach the relevant legal principles. As a consequence, the court invited Cafcass Legal to act as Advocate to the Court. This invitation was accepted and the court and parties have benefited from the clarity and analysis they have brought to the issues in the case.
6. This case has had the benefit of expert specialist representation with the consequence the written skeleton arguments and oral submissions have been of the highest quality. Mr O'Sullivan and Mr Laing have represented Mr and Mrs X pro bono, for which the court is extremely grateful, as it has ensured Mr and Mrs X have had the benefit of legal representation.
7. The hearing was largely taken up with legal submissions, although the court heard oral evidence from A and Ms N.
8. It is important for the court to recognise that behind the detailed legal submissions in this case the outcome of the application will have very significant consequences for A, B, CT and Mr and Mrs X. If granted, the order to revoke the adoption orders will change in a lifelong way the legal relationships they have with each other. It is an outcome they all support but that alone, whilst an important factor, does not determine the outcome of the case.
9. It is necessary for the court to determine the issues between the parties about the legal framework within which the court should consider this application. Only then will the court be able to consider the relevant factors in the case and determine whether it should exercise the court's discretion under the inherent jurisdiction to revoke the adoption orders.

10. The written and oral evidence has described how important the outcome of this application is for the people who are most directly affected. The statements detail, from their own perspectives, how enormously difficult this has been for them all, and is likely to continue to be so.
11. What is clear is how the continuing legal position impacts each of their lives in a very significant way. In her oral evidence, A very powerfully explained how her current legal status is present in so many aspects of her daily life. Everything about her is recorded with a surname, which she does not identify with as her name, it is not what she wants to be known by and does not reflect her own and her son's day to day life. A vivid example of this was when her son was born. She wished him to be known in the hospital with her natural mother's surname, that was not possible as all her relevant records are in the name of X. She described how the fact that this issue involves every aspect of her life means that she has to explain her circumstances each time, which causes her considerable distress. As she described, it makes her feel she is the odd one out in her family. She wants to be able to be in a position where she can say that in every aspect of her life that she is a member of the T family. Whilst B did not give evidence, the position A described is reflected in her written statement, she was present when A gave oral evidence and did not disagree with what was said.
12. Neither Ms T nor Mr and Mrs X gave oral evidence. In their statements, Mr and Mrs X convey from their different perspective why they do not object to the order to revoke the adoption orders being made, and how the continuing position impacts on their lives. They too have to explain their position when they are contacted, as they remain A and B's legal parents.
13. In deciding whether to exercise its discretion the court is required to consider a number of important factors, which include the following. The nature and effect of an adoption order. It is intended to be legally permanent and changes in a lifelong way the legal status as between the child and the natural parents (to extinguish any legal parent child status) and the child and the adoptive parent(s) (to treat them as if born as the child of the adopter(s)). There are strong public policy reasons for not permitting the revocation of adoption orders once lawfully made. The court's discretion under the inherent jurisdiction to revoke such an order can only be done in highly exceptional and very particular circumstances.
14. For the reasons set out below, I have concluded that the highly exceptional and very particular circumstances in this case do result in the court exercising its discretion to revoke the adoption orders in this case. The consequence of this is that the legal relationships between A and B and Ms T is restored to that prior to the adoption orders being made, with all the consequences that flow from that regarding their relationship with the wider members of the T family. The court hopes that now these proceedings are concluded each of the individuals most affected will now be able to move forward in the light of the orders the court has made.

Relevant background

15. A detailed chronology has been prepared on behalf of A and B. For the purposes of this judgment it is only necessary to provide a summary. A and B's father has taken no part

in these proceedings. He is currently serving a significant prison sentence, following his conviction of a serious criminal offence.

16. In 2007 A and B were placed in foster care via section 20 Children Act 1989 (CA 1989) agreement between the local authority and Ms T. At that time A was 5 and B almost 3. The concerns centred on Ms T's inability to protect the children from harm due to her parenting difficulties.
17. A and B settled in the foster placement, reportedly B more so than A. Contact with Ms T and the children was supervised twice a week. It was described as positive, although there were no rehabilitation plans. A parenting assessment of Ms T in December 2008 stated that she could not care for the children on her own, and the stress of doing so might risk her reverting to maladaptive ways of coping.
18. Care proceedings were commenced in relation to both children in early 2009, concluding in early 2010 with the making of care and placement orders. The care plan supported the children's adoption, providing it was arranged within a short timeframe (the reports refer to six months). By then A was 8 years and B 6 years. Ms T's third child T (born in mid-2009) was part of those care proceedings, but T remained in Ms T's care. Ms T's position was she wished to care for A and B, although she did not contest the care order or the plan for A and B's adoption.
19. In November 2010 A and B were matched and placed with Mr and Mrs X. The circumstances and decisions surrounding that placement have been the subject of some criticism by Ms Bradley in the documents she has filed on behalf of A and B and Ms N, in her reports in these proceedings. In the documents filed on their behalf Mr and Mrs X raise issues about the lack of consistent and reliable adoption support for the placement and A and B. In the skeleton argument filed by the first local authority they rely on their compliance with the relevant procedures in the Adoption Agency Regulations 2005, however they acknowledge their evaluation of the care and placement needs of A and B *'did not sufficiently reflect the emotional and behavioural needs of the applicants'* or properly address all the options such as long term fostering as a realistic option for the children. On behalf of the first local authority, Ms Tompkins makes the point that these decisions were taken prior to the guidance given in cases such as *Re B-S* [2014] 1 WLR 563.
20. The documents disclose difficulties with the placement with Mr and Mrs X from an early stage in terms of A and B's behaviour, Mr and Mrs X's response, and the difficulties in consistent and reliable support being provided, taken up and followed. The placement with Mr and Mrs X was supported by the second local authority. A located her natural mother on social media in 2015 and concerns were raised about B being beyond parental control. The relationship between Mr and Mrs X and A and B continued to experience difficulties. In early 2018 both A and B started having contact with Ms T, without Mr and Mrs X's knowledge.
21. Following further intervention by the second local authority a meeting was arranged between Mr and Mrs X and Ms T in May 2018. This resulted in an agreement being drawn up, setting out fortnightly contact arrangements and expectations.
22. In September/October 2018 relationships between A and B and Mr and Mrs X broke down completely. B moved to live with Ms T and A to a transitional residential

placement for a short period, before moving in to live with Ms T. Both A and B stated they did not wish to return to Mr and Mrs X's care. Mr and Mrs X did not seek their return and agreed to them remaining in the care of Ms T, under a s 20 CA 1989 agreement.

23. In November 2018 the second local authority issue care proceedings. An interim care order was made in early December 2018, with Mr and Mrs X not disputing the interim threshold criteria were met. Mr and Mrs X were parties to those proceedings, were legally represented although did not attend any of the hearings.
24. Ms N was appointed as the Children's Guardian. The proceedings concluded in September 2019 with a child arrangements order for B made in favour of Ms T, supported by a family assistance order. An earlier child arrangements order had been made in relation to A, prior to her 17th birthday. Mr and Mrs X accepted this outcome and did not seek A and B being returned to their care.
25. Ms N's report for the final hearing in the care proceedings first raised the issue of revocation of the adoption orders. B held stronger views than A and Ms N supported continued discussion with their solicitor about the issues such applications would raise.
26. These proceedings were commenced in February 2020. Directions were made for statements to be filed, disclosure of documents from the two local authorities and Ms N was appointed as the Children's Guardian, although A and B instruct their solicitor directly. In her reports in August and October 2020 Ms N recommended the adoption orders should be revoked.
27. The application was originally listed for hearing in November 2020. Due to the issues raised in the skeleton arguments the hearing was adjourned to December, and the court invited Cafcass Legal to be Advocate to the Court. The December hearing was further adjourned at the request of the parties due to the issues raised in the skeleton argument filed by Ms Cronin, on behalf of the Advocate to the Court.
28. At the hearing in March A and Ms N gave oral evidence.

Evidence

29. In their statements filed in support of the application both A and B powerfully describe their position.
30. In her three written statements and oral evidence A was clear she did not wish to be adopted. She described the sense of loss that she felt on being moved from her foster carer, where she had lived for over 3 years with regular contact with Ms T and T, with no continuing contact with the foster carer or the natural family. A describes not being able to identify as being a child of Mr and Mrs X and sought at the first opportunity to make contact with Ms T, which eventually led to her staying with Ms T from September 2018. She describes her happiness since returning to her natural family. In her second statement she sets out how her position regarding her identity came into sharper focus on the birth of her own child. If the adoption order remains in place Mr and Mrs X are the grandparents, whereas Ms T and the children who she regards as her siblings have no legal relationship with her or her child, which she views as a legal fiction and

factually incorrect. It causes her considerable distress as this situation means she has to explain her position on a very regular basis.

31. In her statement B describes her feelings about her situation with great care. The statement conveys the strength of her feelings that, as she puts it, '*the legal status between us our mum, siblings and birth family should be reinstated. It is something we want now and forever.*'
32. In their statements Mr and Mrs X set out the circumstances of A and B being placed with them and the difficulties they all experienced during the time they were with them. In her statement Mrs X states she can see no point in the adoption order continuing, as she described that reflects the reality.
33. Ms N provided two reports and gave oral evidence. During both the care proceedings in 2018/2019 and these proceedings she has had limited contact with Mr X, and no contact with Mrs X. In the care proceedings Mr X described to her the difficulties from their perspective with the placement of A and B in their care, the lack of support and how they have found the circumstances of the placement breakdown very hurtful. In these proceedings from her telephone conversations and email exchanges with Mr X, Ms N states they continue to be very distressed about the adoption placement breakdown. As regards the current position Mr X said as the legal parents they are sent post for A and B and still get contacted by the authorities (such as police and social services) about them. They want this to stop. Whenever these contacts happen, they have to explain they are not involved in A and B's lives. In her discussions with both A and B Ms N sets out their strong wishes for the adoption order to be revoked to recognise and reflect the reality of their lives, that the natural family are their family, who they identify with and feel most connected to. In her report Ms N concluded it will make a big difference psychologically to A and B if the adoption orders are revoked.

Relevant legal framework

34. The only statutory ground for revocation of an adoption order under s 55 of the Adoption and Children Act 2002 (ACA 2002) is not applicable in this case.
35. It is well established that the High Court has, by way of its inherent jurisdiction, power to revoke an adoption order. The circumstances in which a court may revoke a lawfully granted adoption order under the inherent jurisdiction is set out in a number of well-known authorities, both on appeal and at first instance. The authorities disclose no preference as between the use of the inherent jurisdiction or on appeal, save that Cobb J in *Re J (Adoption: Appeal)* [2018] 2 FLR 519 at paragraph 20 suggested an appeal may be the preferred route where procedural irregularity is the ground for revocation.
36. In *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 the Court of Appeal noted that the act of adoption is final, effecting a permanent change in the status of the child and the parties. At p. 245 Swinton Thomas LJ set out the following:

"An adoption order has a quite different standing to almost every other order made by a court. It provides the status of the adopted child and of the adoptive parents. The effect of an adoption order is to extinguish any parental responsibility of the natural parents. Once an adoption order has been made, the adoptive parents stand to one another and the child in precisely the same

relationship as if they were his legitimate parents, and the child stands in the same relationship to them as to legitimate parents. Once an adoption order has been made the adopted child ceases to be the child of his previous parent and becomes the child for all purposes of the adopters as though he were their legitimate child."

And Lord Bingham MR (as he then was) observed at p. 251 that:

"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."

37. Whilst these observations were made in the context of the provisions of the Adoption Act 1976, the coming into force of the Adoption and Children Act 2002, whilst introducing a number of reforms, did not change the fundamental characteristics of adoption or the legal effect of an adoption order. Within this context it also remained the position under the Adoption and Children Act 2002 that, as observed by Lord Bingham in *Re B* at p. 253:

"An adoption order is not immune from any challenge. A party to the proceedings can appeal against the order in the usual way. The authorities show, I am sure correctly, that where there has been a failure of natural justice, and a party with a right to be heard on the application for the adoption order has not been notified of the hearing 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. I would also have little hesitation in holding that the court could set aside an adoption order which was shown to have been obtained by fraud."

38. Lord Bingham observed in *Re B* that the courts have been *very* strict in their refusal to allow adoption orders to be challenged, otherwise than by way of appeal. In giving examples of the types of failure in natural justice that might justify the revocation of an adoption order, at pp. 245-246 in *Re B* Swinton Thomas LJ gave the following examples:

"There are cases where an adoption order has been set aside by reason of what is known as a procedural irregularity: see *In re F.(R.) (An Infant)* [1970] 1 Q.B. 385, *In re R.A. (Minors)* (1974) 4 Fam. Law 182 and *In re F. (Infants)(Adoption Order: Validity)* [1977] Fam. 165. Those cases concern a failure to effect proper service of the adoption proceedings on a natural parent or ignorance of the parent of the existence of the adoption proceedings. In each case the application to set aside the order was made reasonably expeditiously. It is fundamental to the making of an adoption order that the

natural parent should be informed of the application so that she can give or withhold her consent. If she has no knowledge at all of the application then, obviously, a fundamental injustice is perpetrated. I would prefer myself to regard those cases not as cases where the order has been set aside by reason of a procedural irregularity, although that has certainly occurred, but as cases where natural justice has been denied because the natural parent who may wish to challenge the adoption has never been told that it is going to happen. Whether an adoption order can be set aside by reason of fraud which is unrelated to a natural parent's ignorance of the proceedings was not a subject which was relevant to the present appeal...As the case law stood, certainly in 1976, the powers of the court to set aside an adoption order as known to Parliament would, in my view, have been limited to the power to set aside such an order on the basis of a breach of natural justice such as I have described above, and not an inherent power to set aside an adoption order by reason of a mistake or misrepresentation."

And at p. 248

"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."

39. More recently in *Re Webster v Norfolk County Council* [2009] 2 All ER 1156 the Court of Appeal noted under the Adoption and Children Act 2002 that adoption is the process whereby a child becomes a permanent and full member of a new family, and is treated for all purposes as if born to the adopters. Wall LJ (as he then was) set out the position at [149] as follows:

"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."

And at [163] that:

"[163] The question, therefore, is whether or not a substantial miscarriage of justice, assuming that this is what has occurred, is or can be sufficient to enable the adoption orders in the present case to be set aside."

40. With respect to what might be a substantial miscarriage of justice sufficient to justify the revocation of an adoption order, in *Webster* Wall LJ indicated that, given the public

policy considerations relating to adoption and the authorities to which he referred, even a serious injustice suffered by a natural parent will not justify the revocation of an adoption order. As he set out at paragraph 149, Wall LJ was clear that only highly exceptional and very particular circumstances could lead to such an outcome. Thus, in *Webster*, the fact that the children in that case had been denied the opportunity to argue that they should grow up together with their parents as a family in breach of the Article 8 rights and the fact that the parents had been wrongly accused of physically abusing one of their children and three of their children had been removed wrongly and permanently from their care, did *not* amount to sufficient justification to revoke the adoption orders in that case.

41. The relevant key principles applicable to an application for the revocation of an adoption order were summarised by Sir James Munby P, as he then was, in *Re O (A Child)(Human Fertilisation and Embryology: Adoption Revocation)* [2016] 4 WLR 148 at paragraph 26 – 28 as follows:

26. I have been taken to the authorities: see *In re F(R) (An Infant)* [1970] 1 QB 385, *Re RA (Minors)* (1974) 4 Fam Law 182, *In re F (Infants) (Adoption Order: Validity)* [1977] Fam 165, *Re M (Minors) (Adoption)* [1991] 1 FLR 458, *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 (affirming *Re B (Adoption: Setting Aside)* [1995] 1 FLR 1), *Re K (Adoption and Wardship)* [1997] 2 FLR 221, *Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378, *Re W (Adoption Order: Set Aside and Leave to Oppose)* [2010] EWCA Civ 1535, [2011] 1 FLR 2153, *Re PW (Adoption)* [2013] 1 FLR 96, *Re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)* [2013] EWHC 1957 (Fam), [2013] 2 FLR 1609, *Re C (Adoption Proceedings: Change of Circumstances)* [2013] EWCA Civ 431, [2013] 2 FLR 1393, and *PK v Mr and Mrs K* [2015] EWHC 2316 (Fam). See also, in relation to the revocation of a parental order made under section 54 of the 2008 Act, *G v G (Parental Order: Revocation)* [2012] EWHC 1979 (Fam), [2013] 1 FLR 286.

27. There is no need for me to embark upon any detailed analysis of the case-law. For present purposes it is enough to draw attention to a few key propositions:

i) Under the inherent jurisdiction, the High Court can, in an appropriate case, revoke an adoption order. In relation to this jurisdictional issue I unhesitatingly prefer the view shared by Bodey J in *Re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)* [2013] EWHC 1957 (Fam), [2013] 2 FLR 1609, para 6, and Pauffley J in *PK v Mr and Mrs K* [2015] EWHC 2316 (Fam), para 4, to the contrary view of Parker J in *Re PW (Adoption)* [2013] 1 FLR 96, para 1.

ii) The effect of revoking an adoption order is to restore the status quo ante: see *Re W (Adoption Order: Set Aside and Leave to Oppose)* [2010] EWCA Civ 1535, [2011] 1 FLR 2153, paras 11-12.

iii) However, "The law sets a very high bar against any challenge to an adoption order. An adoption order once lawfully and properly made can be set aside "only in highly exceptional and very particular circumstances": *Re C (Adoption Proceedings: Change of Circumstances)* [2013] EWCA Civ 431, [2013] 2 FLR

1393, para 44, quoting *Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378, para 149. As Pauffley J said in *PK v Mr and Mrs K* [2015] EWHC 2316 (Fam), para 14, "public policy considerations ordinarily militate against revoking properly made adoption orders and rightly so."

iv) An adoption order regularly made, that is, an adoption order made in circumstances where there was no procedural irregularity, no breach of natural justice and no fraud, cannot be set aside either on the ground of mere mistake (*In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239) or even if there has been a miscarriage of justice (*Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378).

v) The fact that the circumstances are highly exceptional does not of itself justify revoking an adoption order. After all, one would hope that the kind of miscarriage of justice exemplified by *Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378, is highly exceptional, yet the attempt to have the adoption order set aside in that case failed.

28. I bear in mind, also, two important observations that appear in the authorities. The first is the observation of Sir Thomas Bingham MR in *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239, page 251:

"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."

The other is that of Hedley J in *G v G (Parental Order: Revocation)* [2012] EWHC 1979 (Fam), [2013] 1 FLR 286, para 33:

"the adoption authorities show that the feelings of an injured party are not germane necessarily to consideration of an application to set aside. The hurt of the applicants in both *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 ... and *Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378, was immeasurably greater than here and it availed them nothing."

42. No one has sought to suggest that is not a helpful distillation of the relevant key principles. I agree.

Submissions

43. In their focussed, well-structured written and oral submissions Ms Fottrell Q.C. and Ms Bradley placed emphasis of what they say are key features of the factual background. Ms Fottrell submits it was clear the adoptive placement with Mr and Mrs X was in jeopardy at an early stage. They tracked through the key events in the chronology leading to the time in September/October 2018 when both A and B had returned to Ms T's care, and the making of child arrangements orders in 2019 in favour of Ms T. She places great emphasis on the uniqueness and legal significance of this situation, whereby the natural mother shares parental responsibility with the adoptive parents in circumstances where the adoptive parents are clear that they do not wish to exercise parental responsibility in relation to either A or B. She submits from this point on A and B are trapped by a legal fiction, as are Mr and Mrs X. They are legally bound to children who as a matter of fact they are estranged from. There was only limited contact with A since then and none with B. Mr and Mrs X positively do not wish to be involved with or exercise parental responsibility in relation to them. They currently share parental responsibility with Ms T in relation to B, whose parental responsibility was extinguished by the making of the adoption order in 2011.
44. Ms Fottrell submits it is that constellation of factors that puts the circumstances of this case into the exceptional category, whereby the court should exercise its jurisdiction to revoke the adoption order. In plainer language, she asks can the circumstances in this case be consistent with the objects and purpose of the Adoption and Children Act 2002 (ACA 2002) whereby Ms T is deprived of parental responsibility, only to have it restored back.
45. The wider impact is demonstrated by the status of A's child, Z, who was born in 2020 who has no legal tie to the natural family. A gives a powerful description in her statement of the impact on her when Z was born, being known in hospital with Mr and Mrs X's surname, which was not what A wanted or how she perceives herself. As she noted in her oral evidence, it is a daily occurrence for her to explain her situation, including the fact that she has no legal relationship with those who she lives with, including who she regards as her three younger siblings.
46. Ms Fottrell carefully took the court through the relevant authorities, in particular *Re B* and *Webster*. She submits that on close analysis what *Re B* gives is by way of examples regarding grounds for revocation on the basis of procedural irregularity or natural justice. As Swinton Thomas LJ observed in *Re B* at 245 H '*Whether an adoption order can be set aside by reason of fraud which is unrelated to a natural parent's ignorance of the proceedings was not a subject which was relevant to the present appeal*'. Lord Bingham stated at 252 F '*An adoption order is not immune from challenge...[where there has been a failure of natural justice] the court has jurisdiction to set aside the order and so make good the failure of natural justice. I would also have little hesitation in holding that the court could set aside an adoption order which was shown to have been obtained by fraud.*'
47. In her analysis of *Webster* Ms Fottrell submits paragraph 149 provides the fundamental framework for these cases '*...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.*' *Re B* provides two categories of cases that may meet this test (breach of natural justice or fraud) but this, she submits, is not an

exhaustive list and, by its nature, each case is fact specific. It is in that context, when considering these applications, the court needs to consider whether it meets the requirements outlined in paragraph 149.

48. In considering the first instance decisions Ms Fottrell focuses on *PK v Mr and Mrs K* [2015] EWHC 2316 (Fam), which on its facts is similar to the circumstances in this case. The application to revoke the adoption order was made on behalf of a 14 year old child who had been estranged from the adoptive parents, and had returned to the care of the natural family. The adoptive parents in that case who had attended earlier wardship proceedings did not object to orders for the child to live with the natural family. They played no part in the proceedings to revoke the adoption order, although they had notice of them. As Pauffley J observed at [11] *'All the signs are Mr and Mrs K have relinquished responsibility for PK'* continuing a little later to state at [12] *'There are two obvious inferences to be drawn from the history combined with the lack of engagement on the part of Mr and Mrs K. The first is that they relinquished actual responsibility for looking after PK 9 years ago. The second is that they have no intention to oppose her applications which will have the effect of breaking the legal links between them and PK'*. Ms Fottrell aligns herself with the succinct analysis undertaken by Pauffley J, which includes aspects of the child's welfare, such as PK's strong feelings about her legal status resulting in Pauffley J's assessment at [25] *'If I were to decline to revoke the adoption order and refuse to allow PK to change her name back to that of her natural mother, it would seem to me there would be profound disadvantages in terms of her welfare needs'* and the fact that all relevant adults are aware of the application and either support or tacitly accept it. At [27] – [28] Pauffley J states *'The only advantage of a refusal of the application to revoke the adoption order would be the public policy considerations in upholding a validly made adoption order. I am in no doubt. The right course is to allow both applications in these highly exceptional and very particular circumstances and for the reasons given.'*
49. Ms Fottrell submits the analysis in *PK* involves considerations of welfare and signposts the significance of circumstances where the child concerned has returned to the natural family. In *Re O* Sir James Munby P described the circumstances in that case as *'unprecedented'*, where the adoption order had been made following a mistake of law which went to the very root of the need for an adoption order at all. The entire adoption proceeded upon what, in law, was a fundamentally flawed basis. A consideration in that case was that by revoking the adoption order it would not result in uprooting the child, it would recognise a legal and factual reality and put an end to a legal and factual fiction. Sir James Munby P agreed the revocation would meet the child's welfare needs and stated *'I can detect no convincing argument of public policy pointing in the other direction; on the contrary, in this most unusual and highly exceptional case public policy marches in step with justice to X, Y and C1; public policy demands that I make the order which so manifestly is required in C1's best interests'*.
50. Ms Fottrell submits her analysis is supported by cases such as *Re B*, *Webster* and *Re W (Inherent Jurisdiction: permission Application: Revocation and Adoption Order)* [2013] 2 FLR 1609. In each of these cases the child concerned had not been restored to the care of the natural family, or the natural family were not aware of the proceedings and/or the child had been placed with the adoptive parents for a considerable period of time. In those circumstances, the analysis undertaken by the court did not result in the adoption order being revoked. Whilst Ms Fottrell recognised the concern that by

allowing this application to be granted it risked other similar applications, she emphasised the exceptional facts of this case.

51. A further feature of this case which Ms Fottrell relied upon concerned identity. She submits the factual identity of A and B is being denied by operation of law. The background establishes that both A and B identify themselves as T children, they are living within the T family but by operation of law they remain tied to Mr and Mrs X, who have relinquished them. Through the child arrangement orders Ms T re-acquired parental responsibility, which she now (in so far as it is still operative) shares with Mr and Mrs X, who no longer wish to exercise it. The Article 8 issues considered in *Webster* were in a different context, they centred on the opportunity lost to the children in that case who were adopted from being brought up by their natural family. This situation is different, it centres on the disconnect between the adoption order and the child arrangements order, with the additional feature that parental responsibility under a child arrangements order ceases to operate when the child turns 18 years, yet the legal consequences of the adoption order are lifelong. As Ms Fottrell put it, both A and B are trapped by operation of law in an identity they have rejected and it has rejected them.
52. Article 8 includes the obligation to protect identity. There is a positive obligation on the State to ensure that de facto relationships are recognised and protected by law (*Marckx v Belgium ECHR 330 [31]*) and to provide protection of the rights of children which are real and effective, not theoretical and illusory (*Goodwin v UK (ECHR) [2002] 2 FLR 487 [74]*). In *A v P* [2011] EWHC 1738 (Fam), a case concerning parental orders, this court recognised the importance of the concept of identity and the need to safeguard such rights under Article 8. This approach was approved by Sir James Munby P in *Re X (A Child) (Surrogacy: Time Limit)* [2014] at [52] – [61].
53. The position on behalf of Mr and Mrs X is that whilst supporting the orders being revoked, they raise a number of issues that they submit the court must consider. Mr O’Sullivan and Mr Laing’s position is founded on their submission that the circumstances in which an adoption order may be revoked or set aside are limited in the *Webster* analysis to (i) a failure of natural justice, such as a natural parent not being informed (paras 152 and 160), vitiated consent (para 158) and a flawed adoption procedure (para 162); and (ii) fraud (para 155 and 160). Thereafter following consideration of the then leading authorities on article 8 ECHR at paragraphs 166 – 175, the court reached the conclusion that despite what was described as a ‘*substantial miscarriage of justice*’ the adoption orders in that case could not be set aside (para 177). Mr O’Sullivan sought to characterise these situations being exceptional as a description rather than a test.
54. They question the extent of the relevance of welfare considerations to the exercise of the inherent jurisdiction due to the limited categories in *Webster* and, in any event, welfare is limited to revocation cases under s 55 ACA 2002, by virtue of s 1 (7) ACA 2002. They seek to explain the reference to welfare in the headnote in *Re W* being unclear as to whether it is referring to the issue in the context of s 100 (4) CA 1989 and in *Re PK* limited by the fact that the case was only one sided, followed a relatively brief hearing and lacked the necessary examination of the case law, suggesting Pauffley J extended the test without any reference to the cases outlining what is highly exceptional.

55. Additionally, they submit A's position is that she is no longer a child, even though she was at the date of the application. Issues relating to parental responsibility no longer apply in relation to A as she is no longer a child (ss 105 and 12 (2) CA 1989). They also raise a question about Ms T having parental responsibility in relation to B, as even though B is under 18 years she no longer lives with Ms T (s12 (2) CA 1989).
56. As a consequence, they submit the court cannot invoke the UNCRC in relation to A, as by virtue of s 105 CA 1989 and s 144 ACA 2002 A is no longer a child.
57. Ms Fottrell's position is supported by Mr Wilson, on behalf of Ms T. He submits the following three factors render the circumstances of this case as being highly exceptional and very particular:
- (1) All relevant individuals, including the natural family, adoptive family and the children agree that the adoption has irretrievably broken down and the lived day to day reality for all individuals is that A and B are living as members of their natural family. That position has been endorsed by a court by agreement in September 2019.
 - (2) The consequences of the making of the child arrangement orders is that (i) the court has already sanctioned the de facto return of the children into their natural family but (ii) has done so in a manner which renders the legal relationship between A and B and Ms T wholly contrived.
 - (3) The application is made by the children concerned, A and B. Their welfare, both generally and specifically in terms of their identity needs, overwhelmingly militates in favour of the legal recognition of their lived reality.
58. As a consequence, Mr Wilson submits, these particular features of this case render the ordinarily strong public policy considerations less acute than in other cases and, in any event, outweigh such considerations in the final analysis.
59. His eloquent written and oral submissions highlighted a number of matters.
60. First, in relation to *Webster*. He submits the starting point is what is set out in paragraph 149 and what needs to be established is '*highly exceptional and very particular circumstances*'. He draws attention to what Wilson LJ (as he then was) stated at paragraph 204 as to why the application in that case failed and was therefore was not highly exceptional '*...first is the level at which the interests of the three children fall to be considered: almost four years ago they moved into alternative homes which they were told would be permanent and of which they would be full, legal members; and at that time they ceased even to see the applicants. The second is the level which demands recognition of the vast social importance of not undermining the irrevocability of adoption orders.*' As Mr Wilson put it, consideration of both best interests and public policy. He does not accept the submissions on behalf of Mr and Mrs X that *Webster* limited revocation to cases of breach of natural justice or other irregularity.
61. Second, he submits this is entirely in tune with what was said in the earlier case of *Re B*, in particular the judgment of Butler Sloss LJ. There she lists the 6 factors that distinguished the outcome in *Re B* (which did not revoke the adoption order) and *Re M* [1991] 1 FLR 458 (which did), in particular consideration of the best interests of the

children, that no injustice would result to any party in *Re M* and stressing the wholly exceptional nature of *Re M*. *Re M* revoked an adoption order that had been made in circumstances where, following an adoption by a step-father with the agreement of the natural father, the natural mother died of cancer and the children returned to live with the natural father. Mr Wilson submits it is of note that in *Re M* the child had returned to live with the natural family, whereas in *Re B* although there were identity issues, the adult applicant had always lived with the adoptive parents. He submitted the different outcomes in *Re B* and *Re M* are consistent with the principle in *Webster* in paragraph 149. As, he submits, is the position in *Re O*, which was not concerned with procedural irregularity. That case concerned a mistake of law that was exceptional. In that case it was said that public policy and best interests marched in step.

62. Third, welfare can be a relevant consideration and has been in the cases. For example, in *Webster* the fact that the children had remained living with the adoptive parents for 4 years was considered (per Wilson LJ at paragraph 204). It is notable that in the majority of the decisions where the order has been revoked the child lived within the natural family (*Re M* with the grandparents and natural father; *PK* natural mother; *Re O* natural family and in *Re ZH* the plan was to restore the child to the care of the natural mother).
63. Fourth, welfare and public policy considerations need to be balanced in a nuanced way, one does not trump the other and each case needs to be considered on its own particular facts. In *Re O* they marched in step with each other. In *Re PK* the only countervailing factor was the public policy considerations.
64. Fifth, welfare can be looked at having regard to the welfare checklist. In *G v G* [2013] 1 FLR 286 Hedley J was considering an application to set aside a parental order and drew on the principles in the adoption revocation cases which Hedley J concluded, albeit in the context of revocation of a parental order, included consideration of the child's welfare with reference to section 1 ACA 2002. This accords with the court's approach when considering the exercise of the court's inherent jurisdiction as in *Re C (Detention: Medical Treatment)* [1997] 2 FLR 180.
65. Sixth, the ACA 2002 envisages welfare considerations in relation to an 18 year old. The statutory power to revoke in section 55 is not limited to applications by children, so by virtue of s 1 (7) welfare can be a relevant consideration in that context.
66. Seventh, by their nature adoption orders impact on the Article 8 rights of those involved. In this case Ms T's Article 8 rights have been re-established factually and legally by the children returning to her care, which has been endorsed by the child arrangements orders that secured that factual position. There is an obligation on the court to recognise those ties. A striking feature of this case is that Mr and Mrs X do not seek to rely on their Article 8 rights. Consideration of the Article 8 rights involves the court needing to balance the interests of the individuals concerned with the wider interests, including public policy considerations, albeit recognising the factual reality of this case. Any suggestion of a different approach being taken in relation to A and B would fail to properly recognise their respective Article 8 rights.
67. Finally, Mr Wilson observed that the legal fiction in this case serves no good purpose, it has already been undermined by the child arrangement orders and everything points in favour of the adoption orders being revoked.

68. On behalf of the first local authority, Ms Tompkins does not oppose the revocation of the adoption order and supports the legal analysis on behalf of Ms T. In her submissions she emphasises the public policy considerations set out in the cases and the underlying rationale for that, including any impact on the availability of prospective adopters. The way the case is now put forward by the applicants ameliorates the floodgates argument, as it is founded on the very exceptional and particular circumstances of this case which does not involve a detailed evaluation of the decisions taken at the time the adoption order was made.
69. Ms Cronin's oral submissions were relatively brief as she, together with Mr Osborne, had laid very secure foundations in their excellent written skeleton, upon which the other parties have based their submissions. Those written submissions provided the necessary focus on the relevant legal principles and their impact on the facts of this case. Importantly, she emphasised that exceptionality as described in *Webster* is not a mechanism for ruling out cases, or a straightjacket. Each case needs to be considered within the context of that threshold, test or description as it applies to the facts of that particular case, in the context of the wider issues, such as public policy. Ms Cronin emphasised the impact of an adoption order, how it changes the status of the individuals involved in many aspects of their life, which are lifelong. By way of example, she notes the observation by Mr X to Ms N of their wish not to be the point of contact for the children by the authorities which comes about from their status through the adoption order. Equally, A wished her child to be known by the T surname but that was not possible as a result of her status by virtue of the adoption order. The change in status following an adoption order has lifelong consequences, lasting well beyond an adopted child attaining the age of 18 years.
70. As regards the submission on behalf of Mr and Mrs X that welfare considerations may no longer apply to A as she is 18 years, Ms Cronin submits that is too prescriptive. The obligations under the statutory regime in certain circumstances extend beyond the age of 18 years (for example, section 23C CA 1989) and the inherent jurisdiction is sufficiently flexible to include that. To do otherwise in this case would create a perverse legal situation, where the inherent jurisdiction could assist B, but not A. At the time the application was made A was a child, the time it has taken for the application to be heard was outside the control of A. A heeded the advice at the time the child arrangements order was made in September 2019, to carefully consider the position before making any application. The extent of the inherent jurisdiction was recently considered by Sir James Munby P in *FS v RS* [2020] EWFC 63 at paragraphs 100 – 105 where he agreed the flexible nature of the remedy, with the need for any extension to be principled.

Discussion and decision

71. This application involves profound issues of status and identity for all parties.
72. It is important to recognise when considering the evidence in this case that it is largely being done through the prism of hindsight, with all the limitations that involves. It is said that at the time they were placed with Mr and Mrs X, A and B were vulnerable children with complex attachment issues. The decision to arrange their adoption upset and replaced their settled routine of placement with the foster carer, where they had been for some time, and the regular contact with Ms T. The move broke the link with the natural family, including with their younger sibling, who they were aware had remained living with Ms T. The intention had been that the foster carer would play a

role in assisting with the transfer to Mr and Mrs X, that did not take place. A and B appear to have had limited outside support to help them adjust to their lost security and routine, and their very different new home. It was in this context they vented their distress and anger towards Mr and Mrs X. There was a deficit in appropriate support in what appears now, with the benefit of hindsight, to have been a poor and insensitively managed introduction and transition to Mr and Mrs X's home. The anticipated robust post adoption support plan was not in place, with the result that Mr and Mrs X, understandably, felt let down. It appears a combination of factors may have contributed to this, including the social worker in the local authority with most knowledge of the case leaving her post about the time of the adoption, insufficient alternative arrangements being put in place and the position, possibly, being further complicated as the first three years following the adoption support was to be funded by the first local authority, although provided by the second local authority. Mr and Mrs X were inexperienced parents and unprepared for the insecurity, anger and distress felt by A and B following their removal from foster care and losing their natural family contact. The strength and persistence of those feelings over the 7 years they lived with Mr and Mrs X are apparent. Whilst Mr and Mrs X make reference to some settled and calmer times, it is acknowledged by them their relationship with A and B has permanently and irretrievably broken down.

73. In making these observations no party, rightly, seeks findings from the court about the history. However, it is the context in which the court is considering the issues in the case.
74. A curious feature of this case is that despite the agreement as to the outcome there have been wide ranging submissions about what the relevant framework is for the court to determine this case. Mr O'Sullivan clarified Mr and Mrs X's position in an email sent during the hearing that their submission is not that the court cannot revoke the adoption order of an adult but rather: (i) The justice system possesses an inherent power to correct flaws within its process, which applies to all. But this should be used "exceptionally", with the focus being on ensuring natural justice; (ii) They query, as the law currently stands, whether there is a discretionary jurisdiction based on welfare; and (iii) If such a jurisdiction does exist, they identify a number of potential difficulties, one of which is that the court's inherent welfare jurisdiction is limited to children and vulnerable adults. A is neither.
75. Consequently, the three issues between the parties are, first, what limitations, if any, there are in the categories of cases the court can consider whether to exercise its inherent jurisdiction to revoke an adoption order, second, whether welfare can play any part in the exercise of the court's discretion relating to the inherent jurisdiction to revoke an adoption order, and, third, the extent to which the court can exercise jurisdiction in relation to A who is now 18 years, although 17 at the time the proceedings were commenced.
76. I do not accept the submissions on behalf of Mr and Mrs X that the cases, in particular *Webster*, have in some way placed a limit by categories of cases where the court will exercise its inherent jurisdiction to revoke an adoption order and that limit does not include considerations of welfare. That bifurcated approach fails to properly engage with the principles set out in the cases.

77. The starting point in these applications is the lodestar provided in paragraph 149 in *Webster*. The position could not be set out more clearly. The court's discretion under the inherent jurisdiction to revoke a lawfully made adoption order is severely curtailed and can only be exercised in '*highly exceptional and very particular circumstances*'. The permanent and lifelong nature of adoption orders and the very powerful public policy reasons, as articulated in the cases, underpin this rationale. The cases, *Webster* included, have given examples of when, on the very particular facts of the case, the discretion has and has not been exercised. Obviously, each case is highly fact dependent. In my judgment, there is no exhaustive category of cases where the court may exercise its discretion, although *Webster* and other cases make it clear the very steep hill that has to be climbed and why.
78. I also reject the submission that welfare can play no part in the exercise of the court's discretion. The cases demonstrate it clearly has been to a greater or lesser extent, depending on the circumstances of the case (for example *Re M, PK and Re O*). That approach is not inconsistent with the provisions in s 1 (7) ACA 2002, which expressly includes welfare considerations in applications to revoke an adoption order. It is not necessary for me to determine whether welfare in the exercise of the court's inherent jurisdiction should specifically be guided by the statutory framework for welfare as set out in s 1 ACA 2002, although I agree with the submissions that it should not be inconsistent with it.
79. Turning to the issue of A's age and whether, as seems to be suggested on behalf of Mr and Mrs X, the court is either prevented from exercising its jurisdiction due to her being 18 years, so no longer a child, or if it can exercise its jurisdiction it is prevented from considering any aspects of her welfare due to her age. That cannot be right. Just considering the consequences if it is will demonstrate the difficulties in that position. It could end up with the order being revoked for B, due to the court being able to consider her welfare, but not for A. As was observed during the hearing, that would produce a perverse result that would not sit comfortably with the underlying principles of the exercise of the inherent jurisdiction in this type of application. There is nothing in the authorities the court was referred to that limited these applications to children (the application in *Re B* was an adult). I agree with Ms Cronin that it is too prescriptive within this jurisdiction in relation to these type of applications to say that welfare considerations simply do not apply once a person has attained the age of 18 years. As she submitted, there is provision in the CA 1989 that provides obligations on local authorities to make provision for children after they attain the age of 18 years, recognising that their welfare needs extend beyond that age. The relevance or weight to be given to welfare will depend on the circumstances of the case, but I am satisfied this court can consider, so far as it is relevant within the applicable principles in this type of application, welfare considerations. The suggestion by Mr O'Sullivan that if the court took this approach welfare would dominate the outcome, fails to properly understand the nature of the jurisdiction being exercised and, in particular, the balancing exercise that the court is required to undertake in exercising its discretion.
80. I consider the relevant legal principles can be summarised as follows:
- (1) An adoption order is a transformative order that changes the child's status in a way that is intended to be legally permanent.

- (2) Once made the effect of an adoption order is to extinguish any parental responsibility of the natural parents and any continuing legal relationship between the natural parent and the child. By virtue of s 67 ACA 2002 the child is treated in law as if born as the child of the adoptive parent(s).
- (3) The only statutory ground for revocation is provided by s 55 ACA 2002 when, pursuant to s 1(7) ACA 2002, the court's paramount consideration is child's welfare throughout his life.
- (4) There are strong public policy reasons for not permitting the revocation of adoption orders once made based on (i) the intended permanent and lifelong nature of such orders; (ii) the damage to the lifelong commitment of adopters if there was a possibility of challenge to the validity of the order, and (iii) the impact on the availability of prospective adopters if they thought the natural parents could, even in limited circumstances, secure the return of the child after the adoption order was made.
- (5) There is jurisdiction to revoke an adoption order under the inherent jurisdiction of the High Court. Any discretion is severely curtailed where an adoption order has been lawfully and properly made and can only be exercised '*in highly exceptional and very particular circumstances*' (per *Webster* [149])
- (6) Although each case will turn on its own facts, the highly exceptional circumstances must comprise more than mistake or misrepresentation or serious injustice and amount to matters such as a fundamental breach of natural justice.
- (7) Welfare can, in appropriate cases, be taken into account in deciding whether to exercise the court's discretion where the highly exceptional and particular circumstances of the case justify it (see *Re M*, *Re B*, *Re PK* and *Re O*). The extent to which it can, or should be taken into account will vary, depending on the circumstances of the particular case.

81. The relevant considerations in this case are as follows:

- (1) The order sought in this case is supported by all parties and reflects the factual reality of their respective day to day position, both in the short and long term.
- (2) For A she has been living back with her natural family for over two years and shares a home with her natural mother, three younger siblings and her own child. They live and identify as one family.
- (3) For B she has been back living within her natural family for over two years. Although, not currently being cared for by Ms T, Ms T continues to exercise de facto parental responsibility in relation to B and B identifies herself as a member of the natural family.
- (4) Both A and B feel very strongly about their legal status, they feel very much a part of the natural family and want their legal status and identity to reflect that.
- (5) Ms T has directly and indirectly cared and provided for both A and B over the last two years. The child arrangement orders in relation to both A and B in 2019 restored

her parental responsibility in relation to both of them. Ms T identifies with A and B as her children and as siblings to her three younger children. Ms T provides a home for A's child, who she regards as her grandchild although at the moment she has no legal relationship with him.

- (6) Mr and Mrs X accept the relationship between them and A and B has permanently and irretrievably broken down. They accepted the interim threshold criteria were established in the care proceedings in 2018 and made it clear to Ms N in her recent report their position to no longer wanting to be regarded as the legal parents of A and B.

82. Having regard to these considerations, and in the light of the principles outlined above, I have reached the conclusion that the adoption orders made in relation to A and B should both be revoked, due to the highly exceptional and very particular circumstances of this case. This conclusion is reached for the following reasons:

- (1) Whilst the court recognises the strong public policy considerations that normally, rightly, weigh against revoking properly made adoption orders for the cogent reasons outlined above, the cases have demonstrated the inherent jurisdiction can be invoked to do that in the circumstances set out in *Webster* [149].
- (2) The authorities make it clear that jurisdiction can only be exercised in highly exceptional and very particular circumstances.
- (3) In this case there are compelling highly exceptional and particular circumstances that support revocation.
- (4) Whilst at the time the adoption orders were made the hope and intention was that both A and B would have the security and stability that would come with the adoptive placement, that did not turn out to be the case. It was not envisaged at the time of the order, that within their minority they would have returned back to live with the natural family, and for that placement to be secured by legal orders that restored parental responsibility to the natural mother through orders that a court determined met their welfare needs.
- (5) The relationship between Mr and Mrs X and A and B has completely broken down, that fact is agreed even if the reasons why remain in issue. They actively do not seek to exercise parental responsibility or to continue to have any remaining legal status or connection in relation to A and B.
- (6) If the court did not grant the application it is likely to have an adverse impact on A and B. They would remain in a legal fiction, unrelated to their day to day reality going forward which will impact on their day to day life, both psychologically and emotionally in the short and long term.
- (7) Any suggestion that A and B should be treated differently solely due to their ages is unjustified and does not readily sit with the essential characteristic of the inherent jurisdiction being a flexible remedy, albeit in this context within the confines of what is regarded as very exceptional and particular circumstances. It would create an unfair and perverse result. It was not suggested in *Re B* that there was no jurisdiction to seek the order applied for by the adult adopted person. In that case it

was refused on the particular facts of the case, unrelated to the applicant's age. The situation in *FS* was a different context, there an applicant adult sought to invoke the inherent jurisdiction to compel third parties to provide money or services. Also, the situation in this case is different than the vulnerable adult line of cases, such as *DL v A Local Authority* [2012] EWCA Civ 253, where the inherent jurisdiction is sought to be invoked for the court to make an order to enable a vulnerable adult to maintain capacity. In this case an order is already in place, which it is sought to revoke.

- (8) The Article 8 rights of A, B, Ms T and Mr and Mrs X are engaged. As has been made clear (in cases such as *A v P* and *Re X*) Article 8 rights include identity. A and B are clear their identity is inextricably linked with the natural family. It is where they are both living, intend to remain and want their legal status to reflect. Ms T supports that, she has resumed their care, her parental responsibility has been restored through the child arrangements orders and she wants the legal status between them to reflect that. Mr and Mrs X have had no contact or communication with A and B for over two and a half years. They do not suggest they should seek to retain any legal status with A and B, in fact they see positive reasons for that legal status to be extinguished. It could be said their Article 8 rights, from their perspective, support the orders being revoked.
- (9) The only factor weighing against the application are the public policy considerations, whilst not doubting their importance they have to be balanced with the other considerations.
- (10) No one factor is determinative but when looked at as a whole, even bearing in mind the important public policy considerations, in these highly exceptional and very particular circumstances the balancing exercise comes down firmly in favour of the orders being revoked.