**UPPER TRIBUNAL CASE NO: V/0628/2016**

# DECISION OF THE UPPER TRIBUNAL
# (ADMINISTRATIVE APPEALS CHAMBER)

This decision is given under section 4 of the Safeguarding Vulnerable Groups Act 2006 (SVGA):

The Disclosure and Barring Service (DBS), in its decision notified on 25 November 2015 under reference 08/57486 (DIT) including DS on the Children's Barred List, did not make mistakes in law or in the findings of fact on which its decision was based.

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted ANONYMITY. No report of these proceedings (in whatever form) shall directly or indirectly identify him or any member of his family. Failure to comply with this order could lead to a contempt of court.**

## REASONS FOR DECISION

### A. History

1. We refer to the history of this case only in so far as it is necessary in order to make our decision intelligible. We refer in more detail to some of the evidence when we come to the arguments of counsel.

2. DS has been subject to two sets of allegations concerning boys: one set was in 1998 (sometimes referred to as historic in the argument before us) and the other in 2010. The former involved DS's cousin; the latter involved a teenager whom DS was mentoring under the Youth Offender Team programme. Both sets of allegations led to a number of criminal charges from which DS was acquitted, in one case on the direction of the trial judge.

3. The 1998 allegations concerned DS's male cousin. The incidents were said to have occurred between 1991 and 1995 when the cousin was between 9 and 14 years old. They involved oral and manual masturbation while they were on holiday with other members of the family. This led to eight charges of indecent assault and gross indecency with a child. DS denied the charges and was acquitted.

4. The 2010 allegations concern LR, who was 13 at the time. He alleged two incidents. One occurred when he was sharing a tent with DS on a camping trip. He claimed that DS had touched his penis. The other occurred when he was staying overnight at DS's flat. He claimed that he had to share DS's bed, as the airbed that he had used on previous visits was not inflated, and that DS masturbated him manually during the night. This led to two charges of sexual assault on a male. The judge directed the jury to find him not guilty in respect of

the incident during the camping trip and the jury found him not guilty in respect of the incident at the flat.

5. The DBS assessed whether he should be added to a barred list on two occasions. The first assessment was made in respect of the 2010 allegations and without knowledge of the 1998 allegations. This assessment concluded that the allegations against DS were not proven. In May 2013, the DBS decided not to add him to the lists despite:

- having been trained in his duties and boundaries as a mentor;
- avoiding completing the necessary paperwork to record contact for over two months;
- failing to report safeguarding concerns when LR said his father was beating him;
- allowing him access to alcohol;
- taking him on a camping trip;
- allowing him to visit his flat and sleep there;
- realising that he was taking a risk.

The 1998 allegations came to light later in 2013 when DS applied for an enhanced criminal record check. This led to a further assessment by the DBS. This new assessment concluded that all the allegations, both those in 1998 and those in 2010, were proven on the balance of probabilities and the decision was taken to add DS to the Children's Barred List. That was in November 2015.

6. DS applied for permission to appeal to the Upper Tribunal and Judge Jacobs gave him permission to appeal, saying:

> I accept, of course, that the DBS was applying the civil standard rather than the criminal standard and that they were entitled to take account of the totality of DS's conduct. Nevertheless, I consider that the detailed grounds submitted on DS's behalf have a realistic prospect of success. Without limiting my permission, it is arguable that the DBS did not properly find the facts relating to DS's conduct with his nephew and LR.

7. Unlike the Upper Tribunal's appellate jurisdiction under sections 11 and 12 of the Tribunals, Courts and Enforcement Act 2007, our powers in this case are governed by section 4 of the Safeguarding Vulnerable Groups Act 2006:

> **4 Appeals**
>
> …
>
> (2) An appeal under subsection (1) may be made only on the grounds that DBS has made a mistake–
>
> (a) on any point of law;
>
> (b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.

> (3) For the purposes of subsection (2), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.

DS's grounds of appeal had argued that the DBS had made a mistake on a point of law under section 4(2)(a). That is how the case was presented on the appeal itself. There was no attempt to argue that the DBS had simply made a mistake in a finding of fact under section 4(2)(b), despite the suggestion in the grant of permission.

## B. The oral hearing

8. We held an oral hearing on 27 June 2016. DS was represented by Ms Anita Davies of counsel. Ms Zoe Leventhal of counsel represented the DBS, speaking to a skeleton prepared by Ms Galena Ward of counsel. We refer to DBS's argument as being put by Ms Leventhal merely as a convenient way of referring to the joint contribution.

9. Ms Davies argued that the DBS had made mistakes on points of law in three respects:

- reasonableness;
- Article 6(2) of the European Convention on Human Rights;
- Article 8 of that Convention.

We take her arguments in turn.

## C. Reasonableness

*The arguments*

10. Ms Davies argued that it was unreasonable to reach a different conclusion in November 2015 from the earlier decision just because of the historic allegations. There was no evidence of the earlier trial itself, the summing up or the nature of the jury's acquittal. The DBS did not analyse the evidence that was available, merely repeating the allegations. Turning to the 2010 allegations, the DBS's reasoning was circular, using each set of allegations to establish the truth of the other. The reasoning was unconvincing. As to the camping trip, it was irrational to find the allegation proved when LR himself had said in court that any touching was not deliberate. Finally, it was unreasonable to criticise the representations made on DS's behalf for providing no further evidence, since he did not know what evidence was held by the DBS and, anyway, what sort of evidence could be produced?

11. Ms Leventhal accepted that unreasonableness and rationality would show an error of law and that detailed analysis of the allegations by reference to the evidence was required. But it was not enough to show that a different analysis was possible. The documentation showed that the DBS had undertaken a very detailed analysis of the allegations. It could not consider evidence that was not

available. It could not be realistically argued that the decision was not open to the DBS.

*Our analysis – the 1998 allegations*

12. *The change of assessment*: it was not unreasonable to come to a different conclusion in 2015 from the one reached in 2013 once the 1998 allegations were available; quite the reverse. Those allegations were significant because of the clear similarities between the allegations:

- Both sets of allegation involved boys of around the same age;
- There was no sensible reason for them to invent their accounts;
- Both boys were vulnerable;
- DS befriended them;
- He shared a bed with them;
- He masturbated them without asking for any reciprocation

The fact that LR was not aware of the allegations that had been made by DS's cousin strengthens the significance of these similarities.

13. *Incomplete evidence*: it was not unreasonable to rely on the evidence of the 1998 allegations despite it being incomplete. It is untenable to argue that allegations should be ignored just because all the evidence that had at one time existed was no longer available. The fact that the evidence is incomplete goes to the significance that can be attached to it, not to its relevance or its admissibility.

14. There is support in the authorities for the proposition that the DBS should make enquiries to obtain all relevant evidence. As Ms Leventhal showed us, the DBS had tried and failed to obtain any additional evidence that might be available. The evidence is at page 329 and reads:

> Attempts were made to get the Judge's Summing Up for the Court case heard on 27 January 2000 [the 1998 allegations]. However, the Court Transcribers confirmed that the tapes for the hearings are only retained for 5 years and as a consequence the Summing Up is not available.
>
> Essex Police also stated they were unable to supply reason/reasons for the not guilty verdict in the 2000 case as the information was no longer held by the Court.

We note that this is in a section of the structured decision document headed: **If further information was required but could not be obtained, please provide details**. After 15 years, we cannot see what more the DBS could have done and Ms Davies did not suggest anything, arguing only that the evidence should have been ignored.

15. Ms Davies drew our attention to a number of authorities. In *R (S) v Chief Constable of West Mercia Constabulary and the Criminal Records Bureau* [[2008] EWHA 2811 (Admin), Wyn Williams J criticised a decision to disclose an

acquittal for having been taken on the basis of very limited material: see [38]. However, the judge went on to say:

> 39. … a reasonable decision maker in the context of a case such as the present would not disclose the existence of allegations without first taking reasonable steps to ascertain whether they might be true. One of the most obvious reasonable steps to take in ascertaining whether the allegations might be true was to find out why the alleged perpetrator was acquitted by a criminal court.
>
> 70. I stress, however, that this decision is very specific to the facts of this case. I do not suggest for one minute that allegations should not be disclosed in an ECRC [enhanced criminal records check] simply because the alleged offender has been acquitted. The circumstances surrounding the acquittal are all important. …

16. Ms Davies also drew our attention to *R (RK) v Chief Constable of South Yorkshire Police and the DBS* [2013] EWHC 1555 (Admin), where Collins J said of disclosure of an acquittal:

> 57. … If the ECRC is going to disclose information in relation to allegations that have been rejected by the jury, on the grounds that the allegations could still be "substantiated", then at the very least that requires a detailed analysis of those allegations by reference to the evidence. …'

17. We find no support in those cases for the argument that evidence should be rejected just because it is incomplete. In DS's case, as we have said, the DBS did take all steps that were reasonable to find out more about the acquittals in respect of the 1998 allegations. The circumstances of *S* were such that it was most unlikely that he had committed the offences of which he was charged. What is required, as Collin J said, was a detailed analysis of the allegations by reference to the evidence. That is precisely what the DBS did, as its structured decision document discloses.

18. *Circular reasoning*: the DBS's reasoning was not circular. It did not assume that each set of allegations was true in order to establish the truth of the other. That is an illusion created by the way that the DBS sets out its analysis in its structured decision document. Each allegation is there set out and assessed individually. But that does not mean that the allegations as a whole have not been considered in reaching the conclusions there recorded. What the DBS did, and properly did, was to assess the evidence as a whole. That is how courts proceed. It was the evidence as a whole that led to each of the allegations being found proven.

19. *Lack of analysis*: Ms Davies was wrong to say that the DBS merely recorded the 1998 allegations without analysis. As Ms Leventhal showed us, the DBS recorded the allegations and incorporated DS's response into the narrative. That is apparent from the penultimate paragraph of page 325. There are limited references to what DS said in response, but that is inevitable given his denial of

the allegations. Following the statement of the evidence, the DBS set out its assessment. The statement of its reasoning discloses a balanced approach that recognised the points for and against DS. The conclusion was a rational one and not unreasonable.

*Our analysis – the 2010 allegations*

20. We now deal with the allegations made by LR.

21. *The camping trip*: we begin with his evidence in cross examination that he thought DS had not touched him deliberately on the camping trip. It was on the basis of that evidence that the judge directed the jury to acquit DS on that charge. LR told the police that at the time he had not thought it was deliberate, only changing his mind when the incident occurred in DS's flat. There had been doubt in his mind, as he admitted, right from the start about the camping incident. He had changed his mind when the second incident occurred and again during the trial. Given that state of uncertainty, as opposed to a clear and consistent view, the DBS was entitled to find that the incident had been deliberate, especially in the light of the 1998 allegations, of which LR was not aware.

22. *The DNA*: with regard to the DNA evidence, DS had been adamant that there would be none of his DNA on LR's body or his shorts or the sheets. For some reason, the sheets were not tested. The tests on LR and his shorts did not find any of DS's DNA. They found LR's DNA, although not on all swabs, and additionally DNA of a female. The judge's summing up of the agreed expert evidence was that 'the scientific findings neither support nor refute the prosecution's or defence's version of events.' The DBS dealt with the DNA evidence in its structured decision document at two places. On page 319 it says that 'no evidential weighting can be attributed to this information', whilst at page 320 it says 'little weight is given to this evidence.' We see no contradiction between those conclusions. They were dealing with slightly different matters and really say no more than judges regularly say: 'this evidence carries little or no weight.' That is just what the experts agreed. That was not unreasonable. The DNA is indeed puzzling. Why were the sheets not tested? Why was none of LR's DNA found on some of his swabs? Whose was the female DNA? The best assessment of the evidence that was available was that of the experts and it came to this: it is impossible to say that this supports either side. The same was true when the evidence was assessed by reference to the civil standard.

23. *The airbed*: with regard to the airbed evidence, the judge summed up to the jury on the basis that DS had 12 minutes in which to collect his thoughts and inflate the airbed to support his account that that was where LR had slept. The DBS recorded that, but went on to decide that he had had 2½ hours before the police arrived. As a matter of mathematics, that was correct. This was but one part of a detailed paragraph that included points in DS's favour. As a matter of law, there is no significance in the differences between what the judge told the jury and what the DBS decided.

*Our analysis – the no evidence point*

24. The DBS remarked in its assessment of the representations made by DS's solicitors that they had produced no evidence. It is possible that DS might have provided more evidence of the 1998 allegations and, in particular, the subsequent trial and acquittal. In respect of the 2010 allegations, he might have provided the transcript of the trial. This was available; it was subsequently obtained and was in evidence before us. The DBS could certainly have made itself clearer about this, but it was, after all and as a matter of fact, correct. We do not consider that it is permissible to draw the conclusion that this shows that the DBS was imposing too demanding a requirement on DS or made any other mistake in law. The worst that we can say is that the passage could have been better expressed. In isolation and in the context of the analysis as a whole, there is no mistake of law on this count.

## D. Article 6(2) of the Human Rights Convention

25. This provides:

> *ARTICLE 6*
> *RIGHT TO A FAIR TRIAL*
>
> ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

*The arguments*

26. Ms Davies argued that the DBS had been wrong (i) to base its decision on findings that, although made by reference to the civil standard, had criminal features and (ii) to use language that set aside DS's acquittal or cast doubt on their correctness.

27. She argued that the decision to bar DS was sufficiently linked to the criminal charges in that:

- The decision to bar required an examination of the criminal proceedings;
- The DBS analysed the criminal judgment and engaged in a review of evidence on the criminal file;
- The DBS assessed DS's participation in some or all of the events leading to the charges; and
- The DBS commented on the subsisting indications of guilt.

28. She also argued that the decision cast doubt on the correctness of the acquittals and imputed a finding of guilt. She quoted extensively, although not exhaustively, from the language used by the DBS. We do not set those out. The strongest, it seems to us, are those that use the language of sexual assault, such as: 'You sexually assaulted a 13-year-old boy, LR, by masturbating him.'

29. Despite the reliance on the civil standard, the DBS overstepped the bounds of the civil forum by treating him as guilty of the offences. It made no difference that the decision was not in the public domain.

30. At the hearing, Ms Davies admitted that this was a challenge to the structure of the barring regime in cases where a person has been charged and acquitted.

31. Ms Leventhal challenged the analysis of the authorities relied on by Ms Davies and submitted that they showed that the DBS had acted properly in compliance with Article 6(2).

*Our analysis*

32. We find nothing incompatible between Article 6(2) and either (a) the barring regime in principle or (b) the DBS's analysis of the evidence in this case. There is no objection in principle to the same evidence being considered in both criminal and civil proceedings with the appropriate burden being applied to each. If the civil burden is satisfied, that does not imply or impute guilt. It is compatible with the person not being guilty of the offence, because guilt requires proof to the criminal standard. That is what the Court of Appeal said in *R (AR) v the Chief Constable of Greater Manchester Force and the Secretary of State for the Home Department* [2016] EWCA Civ 490. Ms Leventhal said that this case was fatal to Ms Davies' argument and we accept that submission. The Court analysed the factors that were relevant:

- the effect of the decision – did it undermine the effect of the acquittal?
- the language used; and
- whether there was a procedural link between the civil and criminal proceedings?

Ms Davies' argument sought to establish all those elements. We come to the particulars of her argument shortly, but she cannot overcome the Court's reasoning:

> 58. … a statement that allegations were more likely to be true on the balance of probabilities does not cast doubt on an acquittal in view of the different, and more exacting, standard of proof in criminal proceedings. … Up to the present the ECtHR has only applied Article 6.2, in a 'post criminal proceedings' context to the *public* statements of state organ and not to documents, such as the reviewing officer's reasons in this case, which are not in the general public domain.

33. The European Court of Human Rights has taken the same approach. In *Allen v United Kingdom* (Application 25424/09) [2013] ECHR 678, the Grand Chamber said:

> 123. In cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, the Court has emphasised that while exoneration from criminal

liability ought to be respected in the civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention (see *Ringvold*, cited above, § 38; *Y.*, cited above §§ 41-42; *Orr*, cited above, §§ 49 and 51; and *Diacenco*, cited above, §§ 59-60). This approach has also been followed in cases concerning civil claims lodged by acquitted applicants against insurers (see *Lundkvist* and *Reeves*, both cited above).

124. In cases concerning disciplinary proceedings, the Court accepted that there was no automatic infringement of Article 6 § 2 where an applicant was found guilty of a disciplinary offence arising out of the same facts as a previous criminal charge which had not resulted in a conviction. It emphasised that the disciplinary bodies were empowered to, and capable of, establishing independently the facts of the cases before them and that the constitutive elements of the criminal and disciplinary offences were not identical (see *Vanjak*, cited above, §§ 69-72; and *Šikić*, cited above, §§ 54-56).

125. It emerges from the above examination of the Court's case-law under Article 6 § 2 that there is no single approach to ascertaining the circumstances in which that Article will be violated in the context of proceedings which follow the conclusion of criminal proceedings. As illustrated by the Court's existing case-law, much will depend on the nature and context of the proceedings in which the impugned decision was adopted.

126. In all cases and no matter what the approach applied, the language used by the decision-maker will be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 (see, for example, *Y.*, cited above, §§ 43-46; *O.*, cited above, §§ 39-40; *Hammern*, cited above, §§ 47-48; *Baars*, cited above, §§ 29-31; *Reeves*, cited above; *Panteleyenko*, cited above, § 70; *Grabchuk*, cited above, § 45; and *Konstas v. Greece*, no. 53466/07, § 34, 24 May 2011). Thus in a case where the domestic court held that it was "clearly probable" that the applicant had "committed the offences ... with which he was charged", the Court found that it had overstepped the bounds of the civil forum and had thereby cast doubt on the correctness of the acquittal (see *Y.*, cited above, § 46; see also *Orr*, cited above, § 51; and *Diacenco*, cited above, § 64). Similarly, where the domestic court indicated that the criminal file contained enough evidence to establish that a criminal offence had been committed, the language used was found to have violated the presumption of innocence (see *Panteleyenko*, cited above, § 70). In cases where the Court's judgment expressly referred to the failure to dispel the suspicion of criminal guilt, a violation of Article 6 § 2 was established (see, for example, *Sekanina*, cited above, §§ 29-30; and *Rushiti*, cited above, §§ 30-31). However, when regard is had to the nature and context of the particular proceedings, even the use of some unfortunate

> language may not be decisive (see paragraph 125 above). The Court's case-law provides some examples of instances where no violation of Article 6 § 2 has been found even though the language used by domestic authorities and courts was criticised (see *Reeves*, cited above; and *A.L.*, cited above, §§ 38-39).

34. Ms Davies' attempt to bring this case within the scope of the authorities in which there had been a breach of Article 6(2) fails for these reasons.

35. As to the effect of the decision to bar, this did not undermine the acquittal. It was expressly made on the basis of the civil standard and with recognition that DS had been acquitted of the criminal charges. The decision letter itself and the structured reasoning document could hardly have been clearer.

36. As to the language used, Ms Davies strongest argument is on the use of 'sexual assault'. That is the language of a criminal offence and it would have been better if the DBS had not used it, if only to avoid an argument that it had breached Article 6(2). But that does not mean that the language is only used as a reference to a criminal charge. It is an expression that in everyday speech can mean 'molest sexually' without implying any criminal liability. We are sure that that is how it was used in this case, because the decision letter states 'The DBS is not precluded from making findings of fact on the balance of probabilities despite the allegations behind those findings not having been proved beyond reasonable doubt in a criminal trial.' The reasons confirm that that is how the DBS approached the case.

37. As to the procedural link, we can see none. The only relationship is that the same evidence was used in both. That does not show a procedural link. The DBS decision did not arise as a consequence of the criminal proceedings; it arose as a result of the allegations that also gave rise to those proceedings.

## E. Article 8 of the Human Rights Convention

38. This provides:

> *ARTICLE 8*
> *RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE*
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*The arguments*

39. Ms Davies argued that the DBS decision was in breach of this Article. The right to practice a profession or occupation could constitute an aspect of private life. Barring a person from doing so could give rise to stigma and interfere with personal relationships. The decision was disproportionate for these reasons:

- DS could no longer carry out his chosen profession;
- Inadequate consideration had been given to the time that had elapsed since the historic allegations and the lack of concerns since the 2010 allegations;
- DS's employer was fully away of both sets of allegations and acquittals and had continued to employ him subject to a risk plan.

There was a less intrusive alternative to a ban in the form of a risk management plan.

40. Ms Leventhal emphasised that DBS only reported that a person's name was on a list; it did not disclose its reasoning. She argued that DBS's structured analysis contained an adequate assessment of the Article 8 proportionality balance, with the tribunal required to weight to its assessment. On the basis of the factual findings, DS could not succeed on Article 8 grounds.

*Our analysis*

41. The DBS carried out a proportionality assessment, but did not expressly mention Article 8. It would have been better if it had, if only to avoid any argument that it was not considered. [Ms Davies did not put such an argument in this case.] Our concern, though, is with substance, not form. We accept that our role is to decide whether the DBS made a mistake on a point of law rather than to undertake our own assessment afresh, and in doing so to 'accord "appropriate weight" to the decision of the [DBS]': *B v Independent Safeguarding Authority* [2013] 1 WLR 308 at [22].

42. DS undoubtedly has a private life which is entitled to respect within the limits of Article 8. We proceed on the basis that interference with his work would have an impact on his personal relationships. That is consistent with the decisions of the House of Lords in *R (Wright) Secretary of State for Health* [2009] 1 AC 739 and of the Supreme Court in *R (L) v Commissioner of Police for the Metropolis* [2010] 1 AC 419. We accept Ms Leventhal's argument that DBS does not disclose its reasoning. But realistically we also recognise that information leaks and it is only natural that people will speculate. As the House of Lords said in *Wright*:

> 36. … The ban is also likely to have an effect in practice going beyond its effect in law. Even though the lists are not made public, the fact is likely to get about and the stigma will be considerable. …

43. Being on a barred list will prevent DS following his chosen line of work and that will constitute an interference for the purposes of Article 8. The reason for that interference is for the protection of the rights and freedoms of others,

specifically the children he would otherwise teach. The issue is whether the interference would be in accordance with law. That in turn depends on whether the interference is proportionate. If it is not proportionate, the DBS will have made a mistake on a point of law: *B v Independent Safeguarding Authority* [2013] 1 WLR 308 at [14].

44. We now consider Ms Davies' criticisms of the DBS analysis.

45. As to the fact that DS will no longer be able to carry out his profession, the DBS was aware of that. It could not have been otherwise, as it formed the background to whole case.

46. As to the time that had elapsed since the 1998 allegations, the DBS was aware of them. These were 'historic' only in the sense that they had occurred in the past. They were still relevant. The DBS treated them as such and that was a rational approach. The similarities between the two allegations were too stark to ignore.

47. As to the lack of concern about DS's behaviour since the 2010 allegations, it is correct that DS has been subject to a plan to protect the child he teaches. However, that plan was set in the light of the 2010 allegations alone. The 1998 allegations were not taken into account. The DBS took that into account and it was rational to do so. The conclusion reached was that the plan was not 'a sufficient safeguard or protective measure given [DS]'s behaviour.' That behaviour includes his own admission that, despite being subject to a plan to protect the children he was mentoring, he ignored the guidance and bypassed the procedures intended to protect the children. For that reason, Ms Davies' proposed alternative plan would not be adequate.

48. Proportionality only arises when the facts have been found. We have to judge the DBS assessment on the basis of those facts. And we have to do so in the context of legislation that protects children and vulnerable adults. Given the findings, the DBS was entitled to assess the risk posed as sufficient to justify adding DS to the barred list. It did not make a mistake on a point of law in any of the respects identified by Ms Davies. In substance, if not in express terms, its analysis dealt with the issues relevant to Article 8.

## F. Conclusion

49. We dismiss the appeal. No mistake of fact was relied on and we have rejected each of the arguments on points of law. In doing so, we have made a couple of points about the DBS's language and approach in the hope that they be useful in the future. They were:

- To avoid the use of the language of a criminal offence when someone has been acquitted. It should be sufficient to describe the facts that have been found without further classifying or describing them. The facts should speak for themselves.

**UPPER TRIBUNAL CASE NO: V/0628/2016**

- To make clear that the proportionality assessment includes a consider of a person's Article 8 rights.

**Decision made**
**on 11 July 2016**

**Edward Jacobs**
**Upper Tribunal Judge**

**Caroline Joffe**
**Janice Funnell**
**Members**