IN THE UPPER TRIBUNAL **Appeal No. UA-2024-000204-V**
ADMINISTRATIVE APPEALS CHAMBER **[2025] UKUT 069 (AAC)**

Between:

DGW

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Citron, Mr Hutchinson and Ms Jacoby
Hearing date: 20 January 2025
Hearing mode: Cloud video platform

Representation:
Appellant: by himself
Respondent: by Toby Fisher of counsel, instructed by DBS Legal Advisor

The Upper Tribunal has ordered that the disclosure or publication of any matter likely to lead members of the public to identify DGW or GG is prohibited.

SUMMARY OF DECISION

SAFEGUARDING VULNERABLE GROUPS (65.1)

Appellant included in children's barred list in 2024, based on factual findings about events that occurred 23 years earlier, in 2001, between the appellant (then aged 26) and a 14 year old girl in social services residential care home – appellant had been convicted in 2002 of 'abducting an unmarried girl under 16' – permission to appeal granted on limited grounds – Upper Tribunal found no mistake of fact in DBS's findings that appellant had sexual relationship with the 14 year old girl and that he bought her alcohol and cannabis – Upper Tribunal also found no mistake in DBS's finding that appellant held, at the time of its decision, a belief that children under 16 could consent to sex, and an attitude that he could do what he wanted irrespective of the safety or concern of others – DBS had not taken into account the course of the appellant's life since 2001 – that was not a mistake on a point of law (as DBS had no information on that at the time of its decision) – nor was it a mistake of fact, as DBS's decision had been made on the basis of the appellant's belief and attitude (as above), and the Upper Tribunal had found no mistake in these – nor was the decision disproportionate – appeal dismissed.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the Upper Tribunal follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the Respondent made on 17 January 2024 (DBS reference DBS6191 01007562626) to include DGW in the children's barred list is confirmed.

REASONS FOR DECISION

This appeal

1. This is an appeal against the decision ("**DBS's decision**") of the Respondent ("**DBS**") dated 17 January 2024 to include DGW in the children's barred list.

DBS's decision

2. The decision was made under paragraph 3 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the "**Act**"). This provides that DBS must include a person in the children's barred list if

    a. it is satisfied that the person has engaged in relevant conduct,

    b. it has reason to believe that the person is, or has been, or might in the future be, engaged in regulated activity relating to children, and

    c. it is satisfied that it is appropriate to include the person in the list.

3. Under paragraph 4, "relevant conduct" for the purposes of paragraph 3 includes

    a. conduct which endangers a child or is likely to endanger a child; and a person's conduct "endangers" a child if he (amongst other things)

        i. harms a child

        ii. causes a child to be harmed

        iii. puts a child at risk of harm or

        iv. attempts to harm a child; and

b. conduct of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate.

4. The letter ("**DBS's decision letter**") conveying DBS's decision made the following factual findings, in support of its conclusion that DGW had engaged in relevant conduct:

a. in March 2002 DGW was convicted at a crown court of 'abducting an unmarried girl under 16'; the context for this was that, prior to a date in May 2001, DGW on several occasions, and without cause or permission, took a 14 year old girl away from her carers at a residential unit for children, in his car, whilst knowing her age, and despite warnings from police;

b. at various unknown times in 2001, DGW bought alcohol and, on at least one occasion, cannabis, for the 14 year old girl (whom he knew to be underage);

c. from approximately January 2001, when DGW was aged 26, DGW befriended the 14 year old girl, who was at a residential unit for children, and over a period of months developed an inappropriate and sexual relationship with her.

5. DBS's decision letter also made further findings, as follows:

a. that concerns remained that information in the case indicated that DGW was of the belief that children he knew to be under 16 were able to consent to sex;

b. that the information indicated that

i. DGW had sex on two occasions with the 14 year old girl (when was aged 26);

ii. a woman who was DGW's girlfriend at the time told the police that DGW had begun having sex with her when she was aged 15½ and when DGW would have been aged around 20/21; and

iii. DGW told someone that he wanted a relationship with the 14 year old girl and did not think the age difference mattered;

c. that DGW demonstrated an attitude that it was ok for him, as an adult, to have frequent communication with a 14 year old girl who was residing at a local authority residential unit;

d. that DGW would frequently take the 14 year old girl, and on occasion other children, out in his car without permission or authority from her care givers;

e. that DGW would play loud music and rev his engine to attract attention; when staff (from the residential care unit) confronted him that it was inappropriate for him to be there, he told them to 'fuck off and get back in' and laughed; this was also despite being warned by police not to have any contact with the 14 year old girl or other children at the residential care unit;

f. that DGW had an attitude that he would do what he wanted, irrespective of the safety or concern for others; and

g. that in knowingly giving and allowing alcohol to be consumed by a child, DGW failed to take responsibility for his actions or act responsibly as an adult.

6. DBS's decision letter said that it was unknown what DGW had done in the years since 2001 but it was of concern that DGW could repeat this behaviour in future if he was in a situation where he considered that a child under 16 was able to consent to and enjoy sex in the same way as an adult.

Jurisdiction of the Upper Tribunal

7. Section 4(2) of the Act confers a right of appeal to the Upper Tribunal against a decision by DBS under paragraph 3 of Schedule 3 (amongst other provisions) only on grounds that DBS has made a mistake

a. on any point of law;

b. in any finding of fact on which the decision was based.

8. The Act says that "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" (section 4(3)).

The grant of permission to appeal

9. Permission to appeal was given by the Upper Tribunal (Judge Citron) in a decision issued on 27 September 2024, limited to the following grounds:

    a. DBS's decision made a mistake in a finding of fact on which it was based, in that it found that, as at the time of the decision, DGW was "of the belief" that children under 16 could consent to sex (see for example page 293 of the Upper Tribunal bundle), and had "an attitude that" he could do what he wanted irrespective of the safety or concern of others (example at page 294). DBS made these findings based on evidence about DGW's beliefs and attitudes in 2001. It is realistically arguable that DGW, through his own evidence, could persuade a panel of the Upper Tribunal that, 23 years later, when DBS's decision was made, he did not hold such beliefs or have such attitudes (either because he never had, or because he had changed in that period of time);

    b. DBS's decision made a mistake in a finding of fact on which it was based, in that it found (see page 293) that, over a period of months in 2001, DGW developed an inappropriate and sexual relationship with the 14 year old. It is realistically arguable that DGW, through his own evidence (which would include the fact, which is significant if not determinative, that he was acquitted of two charges involving sex with an underage person, a fact seemingly not considered by DBS) could persuade a panel of the Upper Tribunal that he did not in fact have a sexual relationship with the 14 year old;

    c. DBS's decision made a mistake in a finding of fact on which it was based, in that it found (see page 293) that DGW had received warnings from the police prior to his taking the 14 year old away from the residential unit in his car, prior to May 2001; and that DGW had bought alcohol and cannabis for the 14 year old in 2001. It is realistically arguable that DGW, through his own evidence, could persuade a panel of the Upper Tribunal that he did not know, at the time, that he needed the unit's permission to take the 14 year old in his car; and that he did not buy alcohol or cannabis for her;

    d. DBS's decision made a mistake on a point of law by not taking relevant material into account, namely DGW's life story in the 23 years between the occurrence of the facts on which the decision was based, and the making of the decision. It is reasonably arguable that such material

included the fact that (per DGW's evidence) DGW's life story since then had not given rise to any cause for concerns about safeguarding children or vulnerable adults, that DGW had been in a relationship with the same partner since 2006 and had six children with her, now aged between 8 and 18, that DGW had been diagnosed with PTSD, and that DGW had been prescribed an antidepressant, mirtazapine, at a high dose (45 mg). In the alternative, the error of law was that DBS's decision was disproportionate, for the same reasons.

Documentary evidence in the Upper Tribunal bundle

10. In addition to DBS's decision letter, evidence in the bundle of 370 pages included:

    a. two 2-page police case summaries; these present the following:

        i. the 14 year old girl was interviewed by the police on 2 May 2001; during this, she "disclosed offences against" DGW;

        ii. the 14 year old girl had been introduced to DGW about two months before, by another resident at the residential care unit where they lived; during this time, DGW had contact with the 14 year old girl on most days; he would either telephone her at the unit or sit in his car outside;

        iii. shortly after they met, DGW and the 14 year old girl spent the evening, night and following morning at the home of a friend of DGW's; they had sex three times;

        iv. staff at the residential care unit became concerned for the 14 year old girl's welfare and safety whilst with DGW; they kept a log of DGW's daily visits to the unit and his contact with the 14 year old girl, including his taking her from the unit in his car;

        v. DGW knew the 14 year old girl's age;

        vi. the 14 year old girl said she had stayed overnight at DGW's home; she was seen on occasions by police in DGW's flat;

        vii. on 7 March 2001 the 14 year old girl was "recovered" on two occasions from DGW's home by police; on one of these occasions, she was "worse for wear" through alcohol

consumption; the 14 year old girl said she had been given alcohol by DGW, in the company of other "young females";

viii. on 9 April 2001, staff from the residential care unit told DGW the 14 year old girl's age and said she did not have permission to go out with him; but DGW continued his contact with the 14 year old girl;

ix. on 17 April 2001 the police child protection team informed DGW by letter that they had concerns regarding his relationship with the 14 year old girl and one other; he was asked to discontinue his associations with the children because of their ages and the fact they were spending significant periods of time away from their carers; DGW appeared to ignore this advice; he continued to visit the unit and the 14 year old girl;

x. on 10 May 2001 DGW was arrested on suspicion of child abduction and other offences involving the 14 year old girl; in his interview that day, DGW accepted that he had visited the residential care unit on many occasions and spent time with the 14 year old girl; he accepted that he took her away in his car on numerous occasions; he said he was continuing the contact because the 14 year old girl was threatening to harm herself; he denied committing any offences against the 14 year old girl; DGW was subsequently charged with child abduction and released on bail (with conditions); DGW was again interviewed by the police on 14 August 2001;

b. a 60 page transcript of the police interview with the 14 year old girl, in May 2001;

c. a 7 page note of the police interview with the 14 year old girl, in March 2001;

d. a 56 page transcript of the police interview with DGW, in May 2001;

e. a 21 page transcript of police interview with DGW, in August 2001;

f. police witness statements of several people employed by the local city council, social services department, concerning the young people's residential unit where the 14 year old girl lived and DGW's interactions with it in 2001 (and a log kept by the unit in that regard);

g. police witness statements of police officers involved in the case;

h. police witness statements from May and November 2001 of someone who knew DGW through her boyfriend at the time; she described herself as being best mates with DGW at the time; this described interactions between DGW and the 14 year old girl, at the time;

i. police witness statement of DGW's then-girlfriend, from May 2001;

j. DBS's barring decision summary document; and

k. an email from DGW to the Upper Tribunal of 6 June 2024, setting out his case.

The Upper Tribunal hearing

11. DGW attended the hearing, as did Mr Fisher representing DBS. We are grateful to them both, for presenting their respective arguments.

12. DGW, representing himself, also gave evidence at the hearing, including via cross examination and answering questions from the panel.

13. The "permission" hearing was held on the cloud video platform; the case management directions that followed gave the parties the opportunity to express a preference as between "video" and "face to face" in Birmingham, Cardiff, Exeter or London for the substantive hearing (the context being that DGW lived in Bristol); DGW expressed a preference for "video", based in part on his child-minding responsibilities; DBS had no preference as between "video" and "face to face". A "video" hearing was listed; and the panel (who were all located in the Rolls Building, London, for the hearing) was satisfied that, in the event, DGW participated in the hearing fully, fairly and justly.

Summary of DGW's evidence

14. DGW's evidence was that he was first arrested for the unlawful supply of a controlled drug – that is how he got into custody. He was later charged with two counts of unlawful sex with a child under 16, procuring prostitution and child abduction; he was sent to a bail hostel by the court and spent 12 months there; during this time the drug and procuring prostitution charges were dropped; that left abduction and the two counts of unlawful sex. DGW's evidence was that he had pleaded not guilty to these charges; but after speaking to a police officer and his solicitor, he decided to plead guilty "on a technicality" on the abduction charge;

but maintained his plea of not guilty on the two counts of unlawful sex. He went to court and was acquitted on the charges of unlawful sex. DGW's evidence was that he had a 12 month sentence for the abduction charge; and, after an appeal, his sentence was reduced and he was released immediately because of the time he had already spent in prison.

15. DGW's evidence was that his acquittal on the two unlawful sex charges was because the jury did not believe the 14 year old girl's evidence in the crown court; DGW evidence was that he did not have a sexual relationship with her, and he did not buy alcohol and cannabis for her.

16. DGW's evidence was that he had tried to get hold of documentary evidence to support what he said about the outcome of the crown court proceedings, including going back to his barrister at the time; but he had not been able to obtain any such documentation, mostly due to the passage of time (over 20 years).

17. DGW's evidence was that he now had six children, with his long-term partner; his evidence was that he had PTSD with anxiety and depression with bouts of suicidal intentions. The headmistress of one of his children's schools had asked him to do some caretaking; that is what led to him seeking DBS certification and, ultimately, to his being included in the children's barred list. He said he was now appealing that decision, out of principle.

18. DGW's evidence was that the 14 year old girl was the best friend of his then-girlfriend's younger sister. His evidence was that he befriended her because she was in care and unhappy and wanted someone to talk to; DGW said that he was able to help her because he had been in care himself. Under cross examination, DGW maintained that his relationship with the 14 year old girl at the time was not inappropriate.

19. DGW's evidence was that his then-girlfriend had told him she was 18 at the time they first had sexual relations (even though she was actually 15½); DGW said that his girlfriend was lying when she told police, in 2001, that DGW had known her true age when they first had sex.

Our conclusions on the permitted grounds of appeal

20. We begin with the grounds of appeal set out at paragraphs 9b and c above – these are disputes about primary facts found by DBS, where there is a conflict of evidence between

    a. the evidence, as set out in police interview transcripts and witness statements from 2001, of the 14 year old girl, certain other friends of DGW who were first hand witnesses to the relationship between DGW and the 14 year old girl, and staff at the residential care unit where the 14 year old girl lived; and

    b. the evidence of DGW, as set out in the transcript of his police interview in 2001, and in his oral and written evidence to the Upper Tribunal as part of these proceedings.

21. It is common ground (i.e. all the evidence agrees) that DGW had a personal relationship with the 14 year old girl over a period of months in 2001. The question posed by the ground of appeal at paragraph 9b above is whether the relationship was "inappropriate and sexual".

22. In our view, the evidence of the 14 year old girl, as recorded in the transcript of her police interview in 2001, and (importantly) corroborated by other young women or girls who described themselves as friends of DGW (all to the effect that DGW and the 14 year old girl did have sex) is, on the balance of probabilities, to be preferred to that of DGW (to the effect that they did not). We accept what DGW says about his having been acquitted by a jury of two counts of unlawful sex with a child under 16; however, the test for conviction in criminal proceedings ("beyond reasonable doubt") is quite different from the test we apply here (which version of events was more likely?). Factors that explain our evidential preference include (a) the element of corroboration in the former evidence, and (b) our judgement that it is more likely that DGW's evidence is "bending the truth", than that the evidence of the 14 year old girl and the other young women and girls is "bending the truth". It follows from our evaluation of the evidence that, in our view, DBS did not make a mistake in finding that DGW's relationship with the 14 year girl was sexual and (for that reason if for no other, given that DGW was 26) inappropriate; and so the ground of appeal at paragraph 9b above is not made out.

23. The question posed by the ground of appeal at paragraph 9c above is whether DGW had received warnings from the police prior to his taking the 14 year old girl away from the residential unit in his car; and whether DGW bought alcohol and cannabis for her.

24. It seems from the contemporaneous written evidence that DGW accepted that he received a letter from the police in April 2001 asking him to stop seeing the 14 year old girl; and yet he continued to see her, including taking her in his car. We therefore find no mistake in DBS's finding that DGW received warnings from police as regards his taking the 14 year old girl away in his car.

25. As regards whether DGW bought alcohol for the 14 year old girl, we again prefer the evidence of the 14 year old girl, as recorded in the transcript of her police interview in 2001, and (importantly) corroborated by other young women or girls who described themselves as friends of DGW, and a police officer (all to the effect that DGW did buy her alcohol) to that of DGW (to the effect that he did not). The factors explaining our evidential preference are the same as those referred to in paragraph 22 above.

26. The evidence for DGW having bought cannabis for the 14 year old girl is somewhat thinner (and may explain why DBS's finding is somewhat tempered by the words "at least once …"): it was said by the 14 year girl herself in her police interview; and corroborated by the police statement of two members of staff at the residential unit. On the balance of probabilities, and for much the same reasons as set out in the preceding paragraphs, we prefer that evidence to DGW's.

27. We accordingly find no mistake in DBS's finding that DGW had bought alcohol and cannabis for the 14 year old girl; and so the ground of appeal at paragraph 9c above is not made out.

28. Turning now to the ground of appeal at paragraph 9a above, one of the findings of DBS considered in that ground was set out as follows in DBS's decision letter (with the finding focused on in the appeal ground, highlighted):

> Concerns remain that the information in the case indicates that ***you are of the belief that children you know to be under 16 to be able to consent to sex***. Whilst you denied having sex with children under the age of consent, the information indicates that you had sex on two occasions with the 14 year old female when you were aged 26 and a second female considered to be your girlfriend at that time disclosed to police

> you had began having sex when she was aged 15 and a half when you would have been aged around 20/21.

29. DGW denies having the belief highlighted in the finding above – but he also denies having had sex with the 14 year old girl (whereas we find no mistake in DBS's primary factual finding, that he did). In our view, the correct way to the view the finding highlighted in the extract above is that it is DBS's inference, from its primary factual finding that DGW had sex with the 14 year old girl, that he must have thought she could give consent. We see no mistake in that inference, as to DGW's beliefs at the time. As to whether DGW's beliefs, at the time DBS made its decision, had changed, DGW's evidence did not persuade us that they had, largely because he continued to deny that he had sex with the 14 year old girl at the time, and that he knew the true age of his then-girlfriend when he first had sex with her when she was 15½ (whereas, on the evidence, we think it likely that he did know her age at the time); we are unpersuaded that DGW's beliefs with regard to having sex with under-18 year olds have changed since 2001 – and since we consider it a valid inference to suppose that DGW thought such persons could give consent back then, we have to conclude that he still held the same views at the time of DBS's decision.

30. The other finding of DBS considered in the ground of appeal at paragraph 9a above was set out three paragraphs down in DBS's decision letter, as follows (with the finding focused on in the ground of appeal again highlighted):

> Taken together this indicates that ***you have an attitude that you will do what you want, irrespective of the safety or concern for others***. You demonstrated a willing (sic) to behave this way, irrespective of the potential harm for vulnerable children.

31. The intervening paragraphs of DBS's decision letter, to which "Taken together …" at the beginning of the extract above refers, included some additional factual findings, as follows:

> You demonstrate an attitude that it is ok for you, as an adult to have frequent communication with a 14 year old female who was residing at a local authority residential unit. You would frequently take the female, and on occasion other children, out in your car without permission or authority from her care givers. Furthermore, you would play loud music and rev your engine to attract attention and when staff have confronted you that it was inappropriate for you to be there, you told them to 'fuck off and get back in' and laughed. This was also despite being warned by police not to have any contact with the female or other children at the residential unit and you were subsequently convicted of abducting an unmarried girl under 16. Whilst you stated

> you would have contact because you knew what it was like to be in care and the female would threaten to harm herself, this does not seem plausible due to the frequency and level of contact and police were unable to corroborate that you had been under the care of social services.

32. Our analysis of whether DBS made a mistake in finding that DGW had the "attitude" set out in the extract at paragraph 30 above, is essentially similar to our analysis at paragraph 29 above about whether DGW had the "belief" in the extract at paragraph 28 above:

    a. we find that, on the balance of probabilities, there is no mistake in the factual findings from which DBS inferred that DGW had that "attitude";

    b. we find that that inference is a reasonable one for DBS to have made (given, in particular, that DGW was not swayed by advice and warnings from both staff at the residential care unit, and the police, to stay away from the 14 year old girl); and

    c. because DGW continues to deny that there was anything unsafe or concerning about his relationship with the 14 year old girl (including a sexual relationship), it seems valid to infer that DGW continued to have the "attitude" (of doing what he wants, irrespective of the safety or concern of others) at the time of DBS's decision.

33. It follows from what we conclude at paragraphs 29 and 32 above that the ground of appeal at paragraph 9a above is not made out.

34. As regards the ground of appeal set out at paragraph 9d above, we are persuaded by Mr Fisher's argument that it cannot be a mistake of law for DBS to have failed to take into account information that it did not have when making its decision. On the other hand, if the information is relevant, in our view it can be a mistake in a finding of fact to omit to make relevant factual findings on the basis of such information (see [39] of *PF v DBS* [2020] UKUT 256 (AAC)). In this case, however, what DGW has told us about the course of his life since 2001 – that there have been no reported concerns with regard to safeguarding children or vulnerable adults, that he has been in a relationship with the same partner since 2006 and had six children with her, now aged between 8 and 18, and that he has (unfortunately) experienced mental health difficulties – do not seem to us to be facts which would have made a difference to DBS's decision. This is because, looking at the "barring decision summary" document which encapsulated DBS's reasoning, DBS had "definite" concerns in the areas of "child abuse supportive

beliefs" and "attitudes endorsing harmful behaviour" – which engage the findings about DGW's *continuing* beliefs and attitudes that were the subject matter of the ground of appeal at paragraph 9a above – and in respect of which we have found no mistake. The information about the course of DGW's life since 2001 do not disturb these findings. It follows that the ground of appeal at paragraph 9b above discloses no *material* factual mistake on DBS's part.

35. The ground of appeal refers, in the alternative, to DBS's decision being disproportionate, in the light of the facts about the course of DGW's life since 2001. In our view, the limb of the test of proportionality most relevant to the analysis here is the one which asks whether, balancing the severity of the measure's effect on DGW's rights against the importance of the objective of the measure (safeguarding children), to the extent the measure will contribute to its achievement, the former outweighs the latter (this is "step four" of the test as articulated by Lord Reed in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 at [74]).

36. Here, the effect of the measure is to stop DGW carrying out the caretaking role that was offered to him at the school of one of his children. We can see that preventing him taking this role will have a negative impact on DGW financially and also in terms of his mental wellbeing, as he would like to take up the role. On the other side is the importance of safeguarding children, to the extent barring DGW will contribute to it. DBS's judgement, as the expert and regulating body in safeguarding, that the balance favours barring in this case, is to be accorded appropriate weight. In our view, and having regard to DBS's factual findings, in which we have found no material mistake, the effect on DGW is outweighed by the contribution to safeguarding children achieved by including DGW in the barred list. DBS's decision was not, therefore, mistaken on a point of law by reason of being disproportionate.

Conclusion

37. None of the grounds on which permission to appeal was given have been made out. DBS's decision is accordingly confirmed.

Zachary Citron
Judge of the Upper Tribunal

John Hutchinson
Suzanna Jacoby
Members of the Upper Tribunal

Authorised by the Judge for issue on 24 February 2025