**Neutral Citation Number: [2025] UKUT 113 (AAC)**

**Appeal No. UA-2024-000776-V**

**RULE 14 Order:**

**Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the appellant or any other individuals referred to in these proceedings.**

**IN THE UPPER TRIBUNAL**
**ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**UV**

**Appellant**

**- v -**

**Disclosure and Barring Service**

**Respondent**

**Before: Upper Tribunal Judge Nicholas Wikeley, Tribunal Member Josephine Heggie and Tribunal Member Matthew Turner**

**Hearing date(s):** 18 March 2025
**Mode of hearing:** Oral hearing at Field House, London

**Representation:**
**Appellant:** In person
**Respondent:** Mr Andrew Webster (counsel)

*On appeal from:*
DBS registration number: 00999071475
DBS Decision Date: 11 March 2024

Judicial summary

The judge considers that this case raises no point of principle or practice that is of wider interest and so no summary of the decision is provided.

## DECISION

**The decision of the Upper Tribunal is to dismiss the appeal. The decision of the Disclosure and Barring Service was not based on any material mistake in any finding of fact and involved no mistake on any point of law.**

## REASONS FOR DECISION

### Introduction

1. This appeal is about whether the Disclosure and Barring Service (the **"DBS"**) based its decision made on 11 March 2024 under the Safeguarding Vulnerable Groups Act 2006 ("the **"2006 Act"**) to place the Appellant's name on the Children's Barred List (the **"Barring Decision"**) on one or more mistakes of fact (or errors of law).

2. We refer to the Appellant in the case reference by the initials 'UV', which are not his true initials, as a means of minimising the risk of jigsaw identification. We also confirm the Rule 14 Order intended to protect his anonymity and privacy and that of any others involved.

### A summary of the factual background

3. The Appellant, a gay man, had a successful career as a teacher before suffering some form of breakdown. In 2017 he returned to work, taking on a challenging role as the primary school teacher for a year 5 class that presented with considerable behavioural problems. At the same time, the Appellant experienced intense stress in his private life. He suffered with mental health issues and began abusing alcohol and drugs. He also exchanged sexual messages with strangers on social media platforms and engaged in casual sex with other gay men who he met through such apps and invited to his (shared) house.

4. In 2018 the Appellant was arrested by the police following a report by a witness (**"Witness A"**) that the Appellant had sent him an electronic message stating that he had engaged in sexual activity with one or more children. The police issued the Appellant with a caution for possession of a Class A drug (crystal meth), but after some investigation took no further action on the sexual messages sent using various platforms (nor did the police take action in relation to a memory stick containing indecent images of children ("**IIOC**") that the police somehow contrived to lose).

5. Late in 2022 the Teaching Regulatory Authority ("**TRA**") held a professional conduct hearing, which the Appellant did not attend (in the light of his concerns about his mental health). The TRA considered four allegations at the hearing, namely:

1. In or around April 2018, the Appellant was in possession of a Class A drug (Methamphetamine).

2. He accepted a police caution in respect of his conduct at allegation 1 for the offence of possession of a controlled substance contrary to Section 5(1) of the Misuse of Drugs Act 1971.

3. He exchanged electronic messages with [Witness A] in which he stated that he had engaged in sexual activity with one or more children or used words to that effect.

4. His conduct as may be proven at allegation 3 demonstrated a sexual interest in children and/or was sexually motivated.

6. In summary, the Appellant admitted the first two allegations put by the TRA but denied allegations 3 and 4. However, the TRA found all the charges to be made out and recommended that the Secretary of State should issue a prohibition order.

7. The DBS considered the Appellant's case in both 2020 and 2022 but on each occasion decided that it was not appropriate to bar the Appellant. However, in 2024 the DBS reviewed the case after the findings by the TRA panel (and further material disclosed from the police investigation) became available and then decided to include the Appellant on the Children's Barred List.

**The Upper Tribunal oral hearing**

8. We held an oral hearing of the Appellant's appeal on 18 March 2025. We heard submissions and oral evidence for nearly two hours from the Appellant, who was unrepresented. The DBS was represented by Mr A Webster of Counsel.

**The legal framework for barring decisions**

9. Schedule 3 to the 2006 Act provides for several ways in which a person's name may be included by the DBS on a barred list. In the present case the DBS relied upon the 'relevant conduct' gateway, which required the DBS to be 'satisfied' of three things, namely:

a. that the Appellant was at the relevant time, had in the past been, or might in future be 'engaged' in, 'regulated activity' in relation to children;

b. that the Appellant had 'engaged' in 'relevant conduct'; and

c. that it was 'appropriate' to include the Appellant on the Children's Barred List.

10. If the DBS was satisfied of all three matters above, it was required by the 2006 Act to place the Appellant's name on the Children's Barred List.

11. The Appellant has worked as a teacher, so there is no dispute with regard to paragraph 9(a) above.

12. With regard to paragraph 9(b), the Appellant's case in essence was that he had not engaged in the conduct alleged and that the DBS's decision involved a series of mistakes of fact. In his grounds of appeal, he did not argue that the alleged conduct (assuming it were found proven) would not amount to 'relevant conduct' for the purposes of the 2006 Act.

13. In terms of paragraph 9(c) above, 'appropriateness' is not a matter for the Upper Tribunal (see below), unless the decision-making around appropriateness is irrational.

14. Section 4 of the 2006 Act sets out the circumstances in which an individual may appeal against the inclusion of their name in the barred lists or either of them. An appeal may be made only on grounds that the DBS has made a mistake on any point of law or in any finding of fact which it has made and on which the barring decision was based (see section 4(1) and (2)). Section 4(3) provides that, for the purposes of section 4(2), whether or not it is 'appropriate' for an individual to be included in a barred list is "not a question of law or fact" and so, to that extent at least, is non-appealable. An appeal under section 4 may only be made with the permission of the Upper Tribunal (see section 4(4)).

15. The relevant principles regarding factual mistakes have been set out in several recent decisions of the Court of Appeal, which are binding on the Upper Tribunal (see *DBS v JHB* [2023] EWCA Civ 982; *Kihembo v DBS* [2023] EWCA Civ 1547; and *DBS v RI* [2024] EWCA Civ 95 and see also *PF v DBS* [2020] UKUT 256 (AAC)). Latterly the Court of Appeal has confirmed that the Upper Tribunal is not bound by the findings of fact made by a professional regulatory body such as the TRA (see *XYZ v DBS* [2025] EWCA Civ 191).

16. As to whether it is 'appropriate' to include a person in a barred list, the Upper Tribunal has only limited powers to intervene, as noted above. This is clear from the section 4(3) of the 2006 Act and the relevant case law. The scope for challenge by way of an appeal is effectively limited to a challenge on proportionality or rationality grounds. Thus, at paragraph [55] of *DBS v AB*, the Court of Appeal cautioned:

> "[The Upper Tribunal] will need to distinguish carefully a finding of fact from value judgments or evaluations of the relevance or weight to be given to the fact in assessing appropriateness. The Upper Tribunal may do the former but not the latter…".

and at paragraph [43], the Court of Appeal stated:

> "…unless the decision of the DBS is legally or factually flawed, the assessment of the risk presented by the person concerned, and the appropriateness of including him in a list barring him from regulated activity…, is a matter for the DBS".

17. In the subsequent Upper Tribunal case, *AB v DBS* [2022] UKUT 134 (AAC), the Upper Tribunal decided (albeit in the context of a case that was based on the 'risk of harm' rather than the 'relevant conduct' gateway) that *DBS v AB* meant that the Upper Tribunal could consider, on appeal under the 2006 Act, a finding of fact by DBS that an individual poses "a risk" of harm but not a DBS assessment of the "level of the risk posed" (see [49]-[52] and [64]).

18. When considering appeals of this nature, the Upper Tribunal "must focus on the substance, not the form, and the appeal is against the decision as a whole and not the decision letter, let alone one paragraph…taken in isolation": *XY v ISA* [2011] UKUT 289 (AAC), [2012] AACR 13 (at [40]). As such, when considering the Barring Decision, the Upper Tribunal may need to consider both the final decision letter and the document headed 'Barring Decision Summary' that is generated by DBS as part of its decision-making process. The two documents together, in effect, set out the overall substantive decision and reasons (see *AB v DBS* [2016] UKUT 386 (AAC) at [35] and *Khakh v ISA* [2013] EWCA Civ 1341 at [6], [20] and [22]).

19. The statement of law in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 indicates that materiality and procedural fairness are essential features of an error of law. There is nothing in the 2006 Act which provides a basis for departing from that general principle (*CD v DBS* [2020] UKUT 219 (AAC)).

20. Finally, unless the Upper Tribunal finds that the DBS has made a mistake of law or fact, it must confirm the decision of the DBS (see section 4(5) of the 2006 Act). If the Upper Tribunal finds that the DBS has made such a mistake it must either direct the DBS to remove the person from the list or remit the matter to DBS for a new decision. Following *DBS v AB* [2021] EWCA Civ 1575, the usual order will be remission back to DBS unless no decision other than removal is possible on the facts. If the Upper Tribunal remits a matter to DBS under section 4(6)(b), the Upper Tribunal may set out any findings of fact which it has made (and on which the DBS must base its new decision) and the person must be removed from the list until the DBS makes its new decision, unless the Upper Tribunal directs otherwise.

**The Disclosure and Barring Service's decision in 2024 to bar the Appellant**

21. In its final decision letter, the DBS recorded that it had taken into account the following matters:

    - Competent Body Findings made by the Teaching Regulation Agency that:

      - you exchanged electronic messages with [Witness A] in which you stated that you had engaged in sexual activity with one or more children or used words to that effect;

- your conduct demonstrated a sexual interest in children and/or was sexually motivated

- You accepted a Caution for Possess Methylamphetamine a Class A Controlled Drug - 23/10/2018.

22. In this context the DBS final decision letter continued as follows:

> Your response disputed events that gave rise to your being struck off by the TRA. We have noted your response to this but consider this proven on the balance of probabilities. This is because the opportunity to make representations does not include the opportunity to make representations that findings of fact made by a competent body were wrongly made. Issues identified in representations including your inability to recall using Facebook and claims that the grammar and communication style used in various apps is not yours do not constitute new evidence.

23. Finally, the DBS also made the following finding of fact, meaning that it was satisfied that the Appellant had engaged in relevant conduct in relation to children:

- You were in possession of illicit images of children (IIOC) and category A videos containing footage of sexual activity between children and male adults.

**The Appellant's grounds of appeal**

24. The Appellant has not had the benefit of professional legal advice in the conduct of his appeal. As a result, and understandably enough, his grounds of appeal have not been drafted in the way that a legal specialist would do. However, Mr Webster, who prepared the written response to the appeal on behalf of the DBS, helpfully summarised the Appellant's grounds, as he understood them, in the following way:

> a. *Mistake of fact* – the Appellant:
> (i) did not exchange electronic messages with Witness A in which the Appellant stated that he had engaged in sexual activity with one or more children or used words to that effect;
>
> (ii) did not by his conduct demonstrate a sexual interest in children / engage in conduct that was sexually motivated; and
>
> (iii) was not in possession of illicit images of children and category A videos containing footage of sexual activity between children and male adults.
>
> b. *Error of law* – the Respondent failed to consider the evidence submitted by the Appellant (particularly character references, employment history & record).

> c. *Error of law* – the Respondent over-relied on the TRA's findings without obtaining the evidence that the TRA considered.
>
> d. *Error of law* – the Respondent attached too much significance to the (admitted) possession of a Class A drug and/or failed to have due regard to the context in which the Appellant used the drug and the low risk of recidivism.

25. We considered this to be a fair summary of the Appellant's primary grounds of appeal. The Appellant certainly did not suggest that it was anything other than an accurate account.

26. We also considered that in practice the fate of this appeal turned on our assessment of the evidence relating to two mistake of fact issues, being (1) the electronic messaging with Witness A; and (2) the alleged possession of IIOC. We say that as it appeared to us that if the DBS were correct in either of those two respects, and so one or other (or neither) of the decisions were not vitiated by a material mistake of fact, then the barring decision was inevitable. Accordingly, we made these two factual issues the principal focus of our consideration.

27. We start, however, with some general observations about the Appellant's evidence.

**The Appellant's oral evidence**

28. We had ample opportunity to assess the Appellant's evidence, albeit we accept it was given in a stressful environment. His opening submissions, in which he explained the background to his breakdown and the course of the police investigation, and set out his reasons for challenging the DBS's barring decision, took approximately 45 minutes. He was then cross-examined by Mr Webster on behalf of the DBS for just under 1 hour 15 minutes. On two occasions the Appellant declined the offer of an opportunity to take a break in the proceedings.

29. We recognise that the Appellant faced a difficult task in remembering details of events from nearly seven years ago. However, even making allowances for that, the Appellant's evidence was not persuasive in many respects. On critical issues his answers were at best vague – on several occasions his response to a pointed question from Mr Webster was that "I can't recall". His various attempted explanations for the electronic messaging with Witness A were, as Mr Webster argued, something of a "moveable feast". In addition, we bear in mind that at the time in question the Appellant was, mentally speaking, in a very dark place, as well as acting under the influence of both alcohol and drug abuse.

30. We recall that in *DBS v RI* [2024] EWCA Civ 95 Males LJ observed as follows (at [55]), namely that where an appellant gives oral evidence before the Upper Tribunal

> … the evidence before the Upper Tribunal is necessarily different from that which was before the DBS for a paper-based decision. Even if the appellant

> can do no more than repeat the account which they have already given in written representations, the fact that they submit to cross-examination, which may go well or badly, necessarily means that the Upper Tribunal has to assess the quality of that evidence in a way which did not arise before the DBS.

31. In short, the Appellant's oral evidence and cross-examination in this case did not go well.

32. In contrast, we therefore emphasise at the outset that we were impressed by the TRA panel's careful consideration of the documentary evidence. For the reasons that follow, we did not find that the TRA's findings were in any way undermined by the Appellant's oral evidence before us. As such, the DBS was entitled to place reliance on the TRA's findings to the extent that it did.

**Mistake of fact and the electronic messaging with Witness A**

33. The Appellant's case is that he did not exchange electronic messages with Witness A, in which the Appellant stated that he had engaged in sexual activity with one or more children (or used words to that effect), and that he did not by his conduct demonstrate a sexual interest in children and/or engage in conduct that was sexually motivated. It seems to us that this composite denial involves consideration of three discrete questions.

*Did the Appellant exchange electronic messages with Witness A?*

34. The Appellant's evidence on this first question was at best equivocal. On several occasions he told us that he took responsibility for messages that had been sent from his mobile phone. Yet at the same time he argued that the use of language, spelling, punctuation and grammar was not consistent with his own usage, and that this was indicative that the messaging – or at least some of it – was not genuinely his. There were also incorrect references in the messages to his age and sexual orientation. He explained that others, including casual visitors to his home he had made contact with through e.g. Grindr, would have had access to his phone.

35. We found this purported explanation implausible. When first questioned by the police, the Appellant accepted that he had used sites such as Grindr and did not suggest that the messages from his phone had been sent by any third party. There was no explanation as to how some other individual could have had access to the Appellant's phone over the period of several months covered by the messages in question. We accordingly are driven to agree with the TRA panel that all the messages in question were sent by the Appellant.

*Did the Appellant state that he had engaged in sexual activity with one or more children (or use words to that effect)*

36. The second question then is whether the messages sent by the Appellant stated in them that he had engaged in sexual activity with one or more children or used words to that effect.

37. We recognise that in the lexicon of adult gay males the use of the term 'boy' (or even 'teen') does not necessarily connote a male under the age of 18, but rather an adult male younger than the speaker. Likewise, we acknowledge that the use of numbers (e.g. 'a lovely 7') may be referring to another male's anatomy (specifically his penis size) rather than a child's age in years. We therefore accept that this linguistic explanation may well account for some of the messages sent by the Appellant, which as such may not be untoward in the sense of being indicative of child sexual abuse.

38. The difficulty for the Appellant is that this somewhat semantic explanation is only partially effective. In particular, it does not account for all the messages that he posted via his mobile phone. Two examples will suffice. First, Witness A sent the Appellant a message on Wickr stating "Age is just a number" and posing the question "How low have you been?". To which the Appellant replies "13". The Appellant sought to argue that that may have been a response to a different question as the question and answer appear on different screen shots, but the message are timed at 03:19 and 03:20 respectively. Secondly, and a little later in the same conversation on Wickr, Witness A asks "How old are ur regulars?" to which the immediate response (on the same screenshot) is "14".

39. The TRA panel dealt with both examples in its fully reasoned decision. As to the former, the TRA panel concluded that "the answer '13' was more likely than not a reference to the youngest sexual partner that [the Appellant] was asserting he had had." The panel observed that the explanation premised on the size of the male anatomy made no sense in this context. As to the latter, the panel understandably concluded that "given the specific and unambiguous nature of the question … [the Appellant's] answer was more likely than not a reference to the expressed age of his regular sexual partners." We agree with the TRA panel's analysis and as such conclude that the DBS did not make any mistake of fact in concluding that the Appellant had stated that he had engaged in sexual activity with one or more children or used words to that effect.

40. For the avoidance of doubt, and in the same way as the TRA panel, we make no finding to the effect that the Appellant did in fact engage in sexual activity with one or more children. The most we can say on the balance of probabilities is that he said he had.

*Did the Appellant's conduct demonstrate a sexual interest in children and/or was sexually motivated?*

41. As to the third question, in evidence before us the Appellant insisted that he was an adult gay male with an interest in older men and absolutely no interest in male children.

42. There can be no doubt that the Appellant's conduct in messaging was sexually motivated. As the TRA panel observed, "there was no other plausible reason for this conduct", and that motive was amply demonstrated by the substance and tone of the Appellant's messaging. Again, as the TRA panel noted, his comments "arose in the context of sexually explicit messaging on social media sites which [the Appellant] stated he was using for the purpose of finding sexual partners". We acknowledge that such usage does not, in and of itself, necessarily entail a sexual interest in children. However, for the reasons indicated above, we find that at least some (but certainly not all) of the messaging demonstrated a sexual interest in children. We also recognise that at the time in question the Appellant found himself mentally in a very dark place which may well not reflect his current outlook. However, we must bear in mind that the issue of appropriateness for barring is in effect non-appealable, as we explained above.

**Mistake of fact and the alleged possession of IIOC**

43. The DBS also found the following allegation was made out, namely that the Appellant was "in possession of illicit images of children (IIOC) and category A videos containing footage of sexual activity between children and male adults." The Appellant contends that the DBS made a mistake of fact in this respect.

44. The DBS's final decision letter explained its reasoning for finding this allegation as proven as follows:

> Following your arrest your property was searched and several items of hardware were seized. Whilst it is acknowledged no indecent mages of children (IIOC) were found on your phone or your laptop the DBS is satisfied there were search terms on both indicative of searching for IIOC, including "hot naked 11 boy".
>
> The DBS is also satisfied that files containing images/movies of sexual activity between children and movies of sexual activity between adult males and young boys were found on a USB stick taken from your home. One movie titled "kitchen then bed fuck 12yo and 14yo" was found on the USB and was also shown to have been accessed on your laptop via an external hard drive.
>
> … The DBS acknowledge the USB stick found in your home was lost after being forensically examined and thus was not available for any further potential action by the police. The DBS however work to a lesser burden of proof than the courts i.e. the balance of probabilities, and is in possession of two statements signed by a named detective; the first attesting to material he had seen on the USB stick, and the second stating that a named Digital Forensic Technician had confirmed by email on 23/07/2019 that he had found Cat A videos of male adults and young boys on the same exhibit. This is considered to be credible evidence from a reliable source.

45. In our view it is important to distinguish two quite separate questions in connection with this allegation of relevant conduct. The first question is whether the missing USB stick held IIOC. The second question is whether the Appellant was knowingly in possession of such IIOC.

46. On the first question, we are left in no reasonable doubt that the missing USB stick contained IIOC. We find that the detective's witness statements as to what he found on the memory stick are both detailed and reliable as to their accuracy. We further find that the reliability of those statements is in no way lessened by the fact that the statements were not countersigned by another police officer. The fact that the police later managed to lose the evidence in question, while it understandably meant that criminal charges could not be pursued, does not in any way undermine a finding in civil proceedings that it is more likely than not that the USB stick in question contained IIOC.

47. As to the second question, however, we are left in some significant doubt as to whether the Appellant was in possession of the IIOC. We regard it as significant that no IIOC were found on the Appellant's mobile phone or laptop or other devices that were seized by the police. We note also that the TRA did not bring any charges relating to the alleged possession of IIOC. We recognise that there was a handful of search items indicative of someone searching for IIOC and that there was a trace of an indecent movie file having been accessed. However, whilst we were not persuaded by the Appellant's argument that his mobile phone messages over an extended period of time were in some way attributable to a third party, we cannot rule out the real possibility that a casual visitor to the Appellant's home (met through e.g. Grindr) introduced the USB stick with the IIOC and made inappropriate searches on his laptop. We recognise the force of Mr Webster's argument that a positive finding as to the mobile phone messaging may provide support for finding that the memory stick allegation is also made out. Thus, we accept that the findings may be found to be mutually reinforcing to some extent. However, we cannot say on the balance of probabilities that it is more likely than not that the Appellant was knowingly in possession of IIOC. It is possible that he was, but in our estimation, taking into account all the evidence, it was not more likely than not that he was.

**The error of law arguments**

48. The first error of law ground of appeal is that the DBS failed to consider the character references and related materials provided by the Appellant in support of his representations. However, the DBS acknowledged that there had been no safeguarding concerns in relation to the Appellant's behaviour and conduct in his former teaching roles. The weight to be attached to such character references was ultimately a matter for the DBS to determine. Furthermore, and in any event, such materials did not directly undermine the evidence pertaining to the relevant conduct allegations considered by the DBS.

49. The second error of law ground of appeal is that the DBS is said to have placed too much reliance on the TRA's findings without considering the actual evidence considered by the TRA. However, as the Upper Tribunal noted in *LMM v DBS* [2024] UKUT 379 (AAC), "whilst it is always possible for someone to point to further information or evidence which could be gathered, the question is whether the information so gathered was sufficient for the purposes for which the DBS required it. The DBS is not an investigative body: it is therefore reliant upon information which is provided to it by other (public) bodies" (at paragraph 46). In any event, this ground falls away now that the evidence before the TRA has been made available to this Tribunal. Furthermore, at the material time the evidence in question had been in the possession of the Appellant and he could have disclosed it to the DBS in its entirety rather than in selected snippets.

50. The third error of law ground of appeal is that the DBS is said to have attached too much significance to the (admitted) possession of a Class A drug and/or failed to have proper regard to the context and to the low risk of recidivism. However, this submission is not made out on closer scrutiny. The DBS did not rely on the Appellant's past drug abuse as 'relevant conduct' and acknowledged that there was no evidence that his previous drug abuse had interfered with his professional duties. Rather, the DBS had placed some reliance on the Appellant's use of drugs as a factor to be taken into account in the structured judgement process. It is axiomatic that the assessment of the level of risk involved in such matters is primarily a matter for the judgement of the DBS.

51. It follows that we conclude that none of the error of law grounds of appeal succeeds.

**The Appellant's other arguments**

52. The Appellant advanced several other arguments. He helpfully provided a skeleton argument for the oral hearing setting out in a systematic way his main submissions in support of his appeal. We deal with each of those six heads in the following section.

53. First, the Appellant argues that the outcome of his case was predetermined given the wording of the final decision letter closely mirrored that of the preceding minded to bar letter. We reject the inference that the Appellant seeks to draw. It is only fair and right that a person at risk of being barred should be given the opportunity to make representations about the DBS's provisional findings. The statutory scheme requires the DBS to 'put its cards on the table' and so explain the basis for that provisional view. The Barring Decision Summary document shows that those representations were conscientiously considered by the relevant DBS officer before reaching a final decision. The similarity in wording simply reflects the fact that those representations were found to be not persuasive – they are not indicative of pre-judgement.

54. Second, the Appellant points out that the DBS decided to take no action when reviewing his case in 2020 and 2022 and yet made a barring decision in 2023 "despite no new evidence emerging", at least according to the Appellant. There are two reasons why this argument is misconceived. First, it is clear that as a matter of principle the DBS can revisit a case which it has previously closed as not requiring a barring decision following a first consideration (see e.g. *SV v DBS* [2022] UKUT 55 (AAC) and *MS v DBS* [2022] UKUT 184 (AAC)). Secondly, and in any event, the DBS did have new evidence – it had the TRA panel's detailed analysis of the sexualised app messaging and now, in addition, had the two witness statements from the investigating detective (and not simply the police summary).

55. Third, the Appellant deals with the allegation of possession of IIOC. We need say no more about that matter, given our findings above.

56. Fourth, the Appellant makes several points in relation to the disputed electronic messages and their context. We have also dealt with these issues above and so again need say no more about the subject.

57. Fifth, the Appellant deals with the caution for possession of Class A drugs. The DBS was entitled to have regard to this as part of the overall background of the case. That said, the police caution did not play a major part in the DBS's thinking – as Mr Webster put it, the caution was not a central plank of the DBS case. We concur that it did not 'tip the balance' one way or the other.

58. Lastly, the Appellant refers to what he describes as the "lack of witness testimony and evidence gaps" in the case. In particular, he points out that neither the police detective nor Witness A gave live evidence at the TRA hearing. Whilst that was undoubtedly the case, the TRA panel undertook a careful and detailed analysis of the documentary evidence in the light of the Appellant's written representations before reaching its conclusions. They also, of course, did not have the benefit of oral evidence from the Appellant. However, we have had that oral evidence but found it to be wanting for the reasons outlined above.

## Disposal

59. The DBS's barring decision was principally based on two findings of relevant conduct – the exchange of sexual messaging and the possession of IIOC. For the reasons above we find no mistake of fact in the former although we conclude there was a mistake of fact as regards the latter. However, we consider the mistake in relation to the second finding of relevant conduct does not materially impact on the DBS's decision overall to include the Appellant in the Children's Barred List. This is because we consider there is no error of law or mistake of fact on which the Respondent's decision was based in relation to the first finding of relevant conduct. Furthermore, this first finding of fact is sufficiently serious by itself to justify inclusion on the Children's Barred List, irrespective of the outcome in relation to the second finding. Thus, we are satisfied that it is inevitable that the DBS would have decided to include the Appellant on the Children's Barred List

based on the first finding of relevant conduct alone. Accordingly, the mistake in relation to the possession of IIOC was not material to the outcome of the process.

## Conclusion

60. The Upper Tribunal therefore concludes that the decision of the DBS was not based on any material mistake in any finding of fact and involved no error on any point of law. As such, we confirm the Barring Decision.

61. Accordingly, we dismiss the appeal.

**Nicholas Wikeley**
**Judge of the Upper Tribunal**

**Josephine Heggie**
**Specialist Member of the Upper Tribunal**

**Matthew Turner**
**Specialist Member of the Upper Tribunal**

Authorised by the Judge for issue on 27 March 2025