Neutral Citation Number: [2025] UKUT 202 (AAC)
Appeal No. UA- 2023-000993-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

On appeal from the Disclosure and Barring Service

GU

Appellant

- v -

The Disclosure and Barring Service

Respondent

Before: Judge Fiona Monk, Sitting as a Judge of the Upper Tribunal
Specialist Member Dr Beth Stuart-Cole
Specialist Member Ms Rachael Smith

Hearing date**:** 28 April 2025
Mode of hearing: In person hearing – Field House, London.

Representation:
Appellant: represented himself
Respondent**:** Mr Ryan instructed by the DBS

SUMMARY OF DECISION

Safeguarding Vulnerable Groups (65.1 and 65.2)

Safeguarding Vulnerable Groups Act 2006. The upper Tribunal made its own assessment of the evidence of a whole and found no mistake of fact in DSS' findings and assessed proportionality and found no error of law. DBS' decision confirmed.

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 judge follow.

ANONYMITY ORDER

THE UPPER TRIBUNAL confirms the order made on 27 November 2023 and 4 April 2024 and ORDERS that, without the permission of this Tribunal: No one shall publish or reveal the name or address of any of the following or any matter which might lead to identification of:

(a) GU, who is the Appellant in these proceedings;
(b) his then wife, his stepchildren and child, his sisters in law
(c) the stepchildren's schools
(d) Appellant's company

Any breach of this order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years' imprisonment or an unlimited fine.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

REASONS FOR DECISION

Introduction

1. This is the Appellant's appeal against the Disclosure and Barring Service's (DBS from now on) final decision, dated 3 October 2022 [8- 12] to include him on both the Adults' and Children's Barred List under Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 ('the 2006 Act'). The ground given was that the DBS were satisfied that "On several occasions between 2020 and 2021, you physically and emotionally abused your wife and stepchildren."

2. The appellant was granted permission to appeal on 16 April 2024 [136-142] on the grounds that it was arguable that the DBS had made a mistake of fact as there was a real prospect that the appellant's own oral evidence and the evidence of the several witnesses he said would support his account would be believed. The appeal is opposed by the Respondent.

3. There is no dispute that GU met the criteria for regulated activity under the relevant provisions of the Safeguarding Vulnerable Groups Act 2006 ('the SVGA') by reason of his application for roles as a support worker with adults and children.

4. The appellant lodged an appeal with the Upper Tribunal on 24 June 2023 [2-9].
5. We held an in-person hearing at Field House, London which the Appellant attended – he was not represented. The matter was listed for 2 days of hearing as initially the appellant had indicated that he would be calling 15 witnesses to give evidence in support of his appeal. As that was to include 4 members of his extended family who needed interpreters a generous time estimate was given. The appellant indicated that his, now ex-wife, was willing to attend to give evidence for him and arrangements were made for her to attend remotely so there could be no risk of any coercion. The appellant then reduced his witnesses to 7 and, in correspondence received shortly before the hearing, indicated that he would only actually be calling 3 people to give evidence, his ex-wife "MS", a neighbour "MB" and a friend "HJ".

6. In the event we heard oral evidence only from the Appellant in person and HJ who joined by video. When the Tribunal staff had sent MS joining details, she had responded by email on the morning of the hearing asking what the hearing was about and what she was expected to be giving evidence about. She was informed that attendance was voluntary and was given the opportunity to join by video but chose not to do so. MB had not been in recent contact with the appellant and on the morning of the hearing, had not answered his telephone when the appellant attempted to find out if he was attending.

7. We had an electronic bundle of documents and references in [ ] are to the page number in the bundle. We had a skeleton argument and a bundle of authorities from the Respondent. The Appellant had a hard copy of both. The appellant had a typed statement which he read out to the Tribunal.

8. This was a private hearing. We refer to the Appellant as "GU" or "the Appellant" throughout in order to preserve his privacy and anonymity. For that same reason, we make the rule 14 Order included at the head of this decision and will refer to other individuals by initials only.

Factual background

9. The appellant, at the time of the allegations which formed the basis of the DBS' decision was married to MS and they lived together as a family with their baby and three children who were 15, 13 and 7 years old from MS's previous relationship. They had been married since 2018. The appellant ran his own recruitment business which mainly recruited carers. He said that he had worked with vulnerable children and adults since 2016 in the UK and had an exemplary record. The appellant and his wife have since divorced.

10. The allegations against the appellant had been made initially by his 15-year-old stepson who had attended the local police station on 4 February 2021 and

disclosed a series of domestic related assaults, threats to kill and threats to damage property in the family home. The details were that on numerous occasions since September 2020 the appellant had slapped both him and his two younger brothers across their faces. Also, that his mother, MS had been subjected to various forms of violent abuse for over 2 years but it had become worse more recently – the abuse was described as slapping, punching and using a belt to cause injury. He told police that in December 2020 the appellant had used a belt to hit his mother, punched her in the face injuring her nose and threatened to burn the house down with them all inside. It was also alleged that the appellant walked round the house holding a knife.

11. The police had visited the home and arrested the appellant the same day on 4 February 2021, for criminal damage, threats to kill, assault, ABH and several counts of common assault against his partner and her three children. They had found the children and MS sitting packed and apparently ready to leave the house. The family were moved to temporary accommodation out of the area.

12. Initially MS offered to provide support to the police proceedings against the appellant but she then withdrew support. There were then further offers to support but these were met with reluctance because of apparent concern about repercussions for herself and her reliance on the appellant for everything because she does not speak English. MS is a Portuguese national and does not speak fluent English – she required an interpreter for her interviews with the police and an interpreter had been arranged for her attendance today at the hearing had she attended.

13. Whilst she declined to make a statement she did confirm to the police, when not being recorded, that her husband, the appellant, was extremely manipulative although he appeared to everyone else to be a lovely Christian man. She described him as being verbally abusive to her, making her feel worthless and calling her a prostitute for having children with another man and telling her to get rid of the children. She also disclosed that she was told that if she reported the appellant, the children would be taken away. She confirmed to the police an incident on the previous Boxing Day where the appellant had threatened her at knife point and said that she slept with a stick because she was afraid of him. She expressed gratitude to the police for saving the family as she had been fearful for all their lives which she said was why their bags had been packed.

14. The police were also given a 6-second video clip from mobile ‘phone footage which apparently showed the appellant following MS round the home with something in his hand and then a distressed voice calling out “No” and then “don’t hit me” a together with a sound that the police associate with a trouser belt cracking and a banging sound.

15. There was further confirmation of allegations of abuse in the interview given to the local authority by the oldest step-child.

16. On 5 February 2021 the appellant was interviewed by the police. He denied hitting his wife or any of the children. He denied intimidating the children and said that he did impose punishments such as grounding or confiscating their PlayStation. He denied the alleged assault of MS on Boxing Day and denied the threats to kill the family or burn the house down. The police decided, after investigation, to take no further action.
17. On 4 May 2021, after the appellant had applied for enhanced disclosure, the DBS sent him an early warning letter saying that they had received information from the police about their investigation into him and were considering whether to include him on one or both barred lists which would prevent him engaging in regulated activity.

18. On 9 August 2022 [17] the DBS sent a minded to bar letter which set out their findings which led them to conclude that

> "Based on the enclosed information, it appears, on the balance of probabilities, that: on several occasions between 2020 and 2021, you physically and emotionally abused you wife and stepchildren."

It recorded that his behaviour had resulted in significant emotional harm to his family such that they were willing to leave home to escape it and were frightened of repercussions after reporting it. It was noted that the Police had taken no further action but that decision had been taken on the criminal standard of proof and because MS had withdrawn her support but on the balance of probabilities DBS were satisfied that:

> "you slapped your stepchildren hard across the face on numerous occasions, sometimes for limited reasons such as making too much noise whilst playing with Lego, used a belt to hit your wife and punched her in the face, made threats to "end" your stepson and burn down the house with the family inside and threatened to take the youngest child away so that the other children would never see him again."

The appellant was sent the evidence gathered by the police and the local authority that the DBS had relied upon. The appellant was given the opportunity to make representations but did not make any in the time period allowed and was refused an extension as the DBS were satisfied that he had signed for the minded to bar letter.

19. A final decision was issued on 11 October 2022 which confirmed that the DBS had decided that it was appropriate and proportionate to include the appellant on both the Children's and the Adult's Barred Lists [82].

20. The appellant's application to appeal the DBS's decision did not contain detailed grounds rather it stated that the evidence which they had relied upon was lies and asserted that he had never previously been in trouble. In advance of the

hearing, he provided a witness statement from HJ, a character reference from a former employer and a letter from the letting agency which he said showed he had not removed his wife's name from the tenancy as his stepson had alleged. [191-199]

Evidence

21. At the hearing the appellant relied on a written submission which he read out to the Tribunal panel in addition to giving oral evidence and being questioned.

22. We have explained at paragraph 5 above the witness evidence we heard at the hearing. Neither MS nor MB attended to give evidence. HJ, a friend of the appellant, gave brief evidence by way of a video link which was all directed at the appellant's good character. HJ had met the appellant's then wife only once and had no first-hand knowledge of the allegations against the appellant. He was aware of them as he had accompanied the appellant to answer bail.

23. The appellant, in his oral evidence and during cross examination, categorically denied all the allegations of physical and emotional abuse and asserted that the evidence relied upon by the DBS was inconsistent, speculative or false. He pointed out that he had not been given the opportunity to view the six second video footage and that the suggestion that a belt could be heard being cracked was purely speculative and so unreliable.

24. The appellant highlighted the inconsistent nature of his then wife's statements to the police, the lack of direct questioning of the children by social services and the vague nature of the allegations made. He believed that the stepchildren had been influenced by his sister-in-law to lie about him to the police in an attempt to get him excluded from the family. His statement confirmed that his wife and other family members were willing to provide testimony which directly contradicted the evidence against him. He suggested that racial and possibly religious bias had played a part in how his case had been handled. He said that the emotional and mental toll of the case had been significant and the decision was disproportionate and unfair.

25. The appellant explained that his oldest stepson "E" who made the allegations had been put up to it by his sister-in-law and he had told the police that he thought that was because he had tried to assert some parental authority to stop E falling into bad habits by grounding him and removing video games. He recognised that E had a father, his biological father, who was in France and that there was resentment towards the appellant when he imposed any rules or discipline. He thought that was his motivation for making up lies about the appellant and the alleged abuse. The appellant suggested that the motivation for his sister- in-law encouraging E to report him to the police was to do with complications in the relationship between him, her and her sister as there was some element of jealousy. He could not explain why his sister-in-law had originally apparently been

willing to give evidence on his behalf at the hearing but now was not able to attend.

26. The appellant said that he and his wife had argued on 4th February, as one of the children had told him his wife had been seeing someone else while they had been staying in France without the appellant. He had decided to leave the family home and then said that he already had a flight to Africa booked for a charity work related visit. He said that he had gone out for a walk to calm down after the argument and that he was intending to leave for his flight after that but when he came back, the police had arrived and he had already missed the time for his flight. He denied that his wife and stepchildren appeared to have bags packed and ready to go when the police arrived, saying it there was only one bag and it was his luggage ready for his flight to Africa.

27. The appellant could not explain why his wife had not attended the hearing to give evidence and seemed, from her email on the morning of the hearing, to be unaware that she was expected to give evidence. He said she had told him she knew E had lied and had said this in text messages to him multiple times. He had not provided these text messages.

28. The appellant explained the significant impact upon him of the barring decision as it meant he could not pursue his chosen career. He was however still undertaking charitable work in Africa on a fairly regular basis as he had done prior to the barring. He felt stigmatised and aggrieved that the DBS has accepted what he believed to be false evidence against him.

Legal framework

29. There are several ways under Schedule 3 to the 2006 Act in which a person may be included on one or other of the two barred lists. This appeal is concerned with discretionary barring. This may be on the basis of either an individual's "relevant conduct" – in effect their past behaviour – (paragraphs 9 & 10) or the risk of harm they pose now and for the future (paragraph 11). This appeal concerns the former of those two discretionary routes to barring.

The basis for a "relevant conduct" barring decision

30. Paragraphs 9 and 10 of Schedule 3 to the 2006 Act deal with behaviour or "relevant conduct" in relation to adults and are in issue in the present case. So far as is relevant, they provide as follows:

> **9.**(1) This paragraph applies to a person if—
>
> (a) it appears to DBS that the person —
>
> (i) has (at any time) engaged in relevant conduct, and

(ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and

(b) DBS proposes to include him in the adults' barred list.

(2) DBS must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.

(3) DBS must include the person in the adults' barred list if—

(a) it is satisfied that the person has engaged in relevant conduct,
(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and

(b) it is satisfied that it is appropriate to include the person in the list.

10.(1) For the purposes of paragraph 9 relevant conduct is—

(a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;

(b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him;
...

(2) A person's conduct endangers a vulnerable adult if he—

(a) harms a vulnerable adult,

(b) causes a vulnerable adult to be harmed,

(c) puts a vulnerable adult at risk of harm,

(d) attempts to harm a vulnerable adult, or

(e) incites another to harm a vulnerable adult.

Rights of appeal

31. An individual's appeal rights against a DBS barring decision are governed by section 4 of the 2006 Act:

4.(1) An individual who is included in a barred list may appeal to the Upper Tribunal against—

(a) …

(b) a decision under paragraph 2, 3, 5, 8, 9 or 11 of Schedule 3 to include him in the list;

> (c) a decision under paragraph 17, 18 or 18A of that Schedule not to remove him from the list.
>
> (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.
>
> (4) An appeal under subsection (1) may be made only with the permission of the Upper Tribunal.
>
> (5) Unless the Upper Tribunal finds that has made a mistake of law or fact, it must confirm the decision of DBS.
>
> (6) If the Upper Tribunal finds that DBS has made such a mistake it must—
>
> (a) direct DBS to remove the person from the list, or
>
> (b) remit the matter to DBS for a new decision.
>
> (7) If the Upper Tribunal remits a matter to DBS under subsection (6)(b)—
>
> (a) the Upper Tribunal may set out any findings of fact which it has made (on which DBS must base its new decision); and
>
> (b) the person must be removed from the list until DBS makes its new decision, unless the Upper Tribunal directs otherwise.

Caselaw

32. In Disclosure and Barring Service v AB [2021] EWCA Civ 1575 [2022] 1 WLR 1002 (DBS v AB) the Court of Appeal considered the respective roles of the Upper Tribunal and the DBS. In particular:

> [43] By way of preliminary observation, the role of the Upper Tribunal on considering an appeal needs to be borne in mind. The Act is intended to ensure the protection of children and vulnerable adults. It does so by providing that the DBS may include people within a list of persons who are barred from engaging in certain activities with children or vulnerable adults. The DBS must decide whether or not the criteria for inclusion of a person within the relevant barred list are satisfied, or, as here, if it is satisfied that it is no longer appropriate to continue to include a person's name in the list. The role of the Upper Tribunal on an appeal is to consider if the DBS has made a mistake on any point of law or in any finding of fact. It cannot consider the appropriateness of listing (see section 4(3) of the

> Act). That is, 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 with children or vulnerable adults, is a matter for the DBS.

33. At Paragraph 54 there was a warning that the UT could not simply remake a decision with which it disagreed. And at paragraph [55] of Lewis LJ made the following observations on the nature of the findings of fact made by the Upper Tribunal:

> [55]. The Upper Tribunal also made findings of fact and made comments on other matters. Section 4(7) of the Act provides that where the Upper Tribunal remits a matter to the DBS it "may set out any findings of fact which it has made (on which DBS must base its new decision)". It is neither necessary nor feasible to set out precisely the limits on that power. The following should, however, be borne in mind. First, the Upper Tribunal may set out findings of fact. It 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. By way of example only, the fact that a person is married and the marriage subsists may be a finding of fact. A reference to a marriage being a "strong" marriage or a "mutually supportive one" may be more of a value judgment rather than a finding of fact. A reference to a marriage being likely to reduce the risk of a person engaging in inappropriate conduct is an evaluation of the risk. The third "finding" would certainly not involve a finding of fact. Secondly, an Upper Tribunal will need to consider carefully whether it is appropriate for it to set out particular facts on which the DBS must base its decision when remitting a matter to the DBS for a new decision. For example, Upper Tribunal would have to have sufficient evidence to find a fact. Further, given that the primary responsibility for assessing the appropriateness of including a person in the children's barred list (or the adults' barred list) is for the DBS, the Upper Tribunal will have to consider whether, in context, it is appropriate for it to find facts on which the DBS must base its new decision.'

34. There is also the guidance of the Upper Tribunal (Farbey J, Upper Tribunal (UT) Judge Jacobs and UT Specialist Member Ms Joffe) in PF v Disclosure and Barring Service [2020] UKUT 256 (AAC); [2021] AACR 3:

> [39] There is no limit to the form that a mistake of fact may take. It may consist of an incorrect finding, an incomplete finding, or an omission. It may relate to anything that may properly be the subject of a finding of fact. This includes matters such as who did what, when where and how. It includes inactions as well as actions. It also includes states of mind like intentions, motives and beliefs.

And at:

> [49] We prefer to avoid talking in terms of respect, or in terms of the starting point for the tribunal's consideration beyond saying that an appellant must demonstrate a mistake of law or fact. We put it like this. The DBS's reasoning will be before the Upper Tribunal and the tribunal will take account of it for what it is worth in the context of the evidence as a whole. At one extreme, it may be of little

> assistance. If the tribunal has received significant further evidence (such as oral evidence that would not have been available to the DBS), it is likely that its evaluation of the evidence that was before it will have been overtaken so that the only appropriate approach will be for the Upper Tribunal to begin afresh. At the opposite extreme, it may play a significant role.

And they concluded as follows:

Summary

> [51] Drawing the various strands together, we conclude as follows:
>
> a) In those narrow but well-established circumstances in which an error of fact may give rise to an error of law, the tribunal has jurisdiction an error of fact may give rise to an error of law, the tribunal has jurisdiction to interfere with a decision of the DBS under section 4(2)(a).
>
> b) In relation to factual mistakes, the tribunal may only interfere with the DBS decision if the decision was based on the mistaken finding of fact. This means that the mistake of fact must be material to the decision: it must have made a material contribution to the overall decision.
>
> c) In determining whether the DBS has made a mistake of fact, the tribunal will consider all the evidence before it and is not confined to the evidence before the decision-maker. The tribunal may hear oral evidence for this purpose.
> d) The tribunal has the power to consider all factual matters other than those relating only to whether or not it is appropriate for an individual to be included in a barred list, which is a matter for the DBS (section 4(3)).
>
> e) In reaching its own factual findings, the tribunal is able to make findings based directly on the evidence and to draw inferences from the evidence before it.
>
> f) The tribunal will not defer to the DBS in factual matters but will give appropriate weight to the DBS's factual findings in matters that engage its expertise. Matters of specialist judgment relating to the risk to the public which an appellant may pose are likely to engage the DBS's expertise and will therefore in general be accorded weight.
>
> g) The starting point for the tribunal's consideration of factual matters is the DBS decision in the sense that an appellant must demonstrate a mistake of law or fact. However, given that the tribunal may consider factual matters for itself, the starting point may not determine the outcome of the appeal. The starting point is likely to make no practical difference in those cases in which the tribunal receives evidence that was not before the decision-maker.

35. In AB v DBS [2022] UKUT 134 (AAC) the Upper Tribunal considered the competing arguments in AB v DBS [2021] EWCA Civ 1575 and PF v DBS:

> 45. The question is then where this all leaves the Upper Tribunal in practical terms in the exercise of its appellate jurisdiction in safeguarding cases.

> 46. On the one hand, the Court of Appeal has stated that "the assessment of the risk presented by the person concerned… is a matter for the DBS" (DBS v AB at paragraph [43]).
>
> 47. On the other hand, in cases in which the DBS relies on a risk of harm under paragraph 5 of Schedule 3, rather than 'relevant conduct' under paragraph 3, the Upper Tribunal may have to determine as a question of fact whether a person "may—(a) harm a child, (b) cause a child to be harmed, (c) put a child at risk of harm" (etc) (see paragraph 5(4)).
>
> 48. There is, in our view, a way of squaring this circle while respecting both Court of Appeal authority and the primacy of statute (and in particular section 4(1) to (3) of the 2006 Act). We return to the ambiguity we identified in the passage from DBS v AB discussed at paragraph 34 above. We are satisfied that the Court of Appeal was saying no more than that the element of the risk assessment which is part and parcel of the assessment of appropriateness for the purposes of deciding whether to place the individual on a barred list is non-appealable. This reading is consistent with the fact that any decision taken under paragraph 5 of Schedule 3 – which, as we have seen, necessarily includes some findings as to risk – to include an individual on the Children's Barred List is undoubtedly appealable (see section 4(1)(b)). To that extent we do agree with Mr Geering.
>
> 49. In this context, however, we make a distinction between (i) deciding as a matter of fact whether a person poses a risk; and (ii) deciding on the level of the risk posed by way of a risk assessment.

Concluding that they could make findings about the risk issues which were findings of fact whereas findings on the level of risk were not.

36. We also bear in mind the analysis of the Upper Tribunal panel in the more recent decision of EB v Disclosure and Barring Service [2023] UKUT 105 (AAC) and particularly the discussion at paragraphs [13]-[36]. In that case the Upper Tribunal concluded as follows:

> 35. However, where an appellant wishes to give evidence at an oral hearing and the Upper Tribunal accedes to that request, which it will do if the appellant has an arguable case and it appears unlikely that disputes of fact will fairly be resolved without such evidence being admitted, it may make its own findings of fact, in which case it will allow the appeal if its findings are materially different from those made by DBS, in the sense that they would or might lead to a different conclusion as to the appropriateness of including the appellant in the relevant List(s). We do not consider it necessary for the Upper Tribunal to identify an error in DBS's reasoning, but it must explain why it reaches a different conclusion and that may in practice result in one or more defects being identified. If arguments of law have also been raised in such a case, the new findings may make it unnecessary to address those arguments independently, although the arguments may be relevant to the approach that the Upper Tribunal takes to the evidence. In our view, it follows that the Upper Tribunal may make different findings when it considers an appeal without an oral hearing, again without necessarily finding

> an error in DBS's reasoning but explaining its own. There are therefore different ways in which an appeal may be approached.
>
> 36. Thus, the fundamental point relevant to this case is that unlike in an appeal under section 11 of the Tribunals, Courts and Enforcement Act 2007, it is not necessary for the Upper Tribunal to find an error of law in DBS's fact-finding before it substitutes its own findings of fact. While the Upper Tribunal's decision should show why it is differing from DBS on matters of fact, it is not obliged to find a defect in DBS's reasoning; it is enough that it takes a different view of the evidence.

37. There is further guidance in DBS v JHB [2023] EWCA Civ 982:

> (90) On the reasoning in PF, the decision of the DBS was therefore the starting point for the UT's consideration of the appeal. JHB did not claim that the DBS had erred in law. The UT could not exercise any powers on the appeal, therefore, unless it identified an error of fact in the approach of the DBS to the findings of fact on which the Decision was based. Those findings were the conviction for the Offence, which JHB did not challenge, finding 1, which JHB admitted, and findings 2 and 3. Those findings of fact did not include the DBS's assessment of the weight to given to the reports. The UT was not free to make its own assessment of the written evidence unless, and until, it found such an error.

The Court of Appeal said that was impermissible, because the UT was only entitled to carry out its own evaluation of the evidence that was before the DBS if it had first identified that the DBS had made a finding which was not available to it on the evidence on the balance of probabilities.

38. The scope of the mistake of fact jurisdiction was further considered by the Court of Appeal in the recent cases of Kihembo v DBS [2023] EWCA Civ 1547 and in DBS v RI [2024] EWCA Civ 95. The decision in Kihembo confirmed that PF v DBS remains good law. In RI v DBS Males LJ explained that the restrictive approach adopted by the Court of Appeal in JHB should be confined to those cases where the barred person does not give oral evidence at all or gives no evidence relevant to the question of whether the barred person committed the relevant act relied upon. Where the barred person does give 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" (per Males LJ at [55]) LW -v- DBS Case no: UA-2022-001136-V [2024] UKUT 129 (AAC)6.

39. Males LJ interpreted the scope of the Upper Tribunal's jurisdiction under section 4(2)(b) of the 2006 Act as follows: "In conferring a right of appeal in the terms of section 4(2)(b), Parliament must therefore have intended that it would be open to a person included on a barred list to contend before the Upper Tribunal that the

DBS was mistaken to find that they committed the relevant act – or in other words, to contend that they did not commit the relevant act and that the decision of the DBS that they did was therefore mistaken. On its plain words, the section does not require any more granular mistake to be identified than that" (RI v DBS, per Males LJ at [49]).

40. Bean LJ rejected the DBS's argument that the Upper Tribunal was in effect bound to ignore an appellant's oral evidence unless it contains something entirely new. He said in RI v DBS at [37] that: "where Parliament has created a tribunal with the power to hear oral evidence it entrusts the tribunal with the task of deciding, by reference to all the oral and written evidence in the case, whether a witness is telling the truth.

Conclusion

41. The central question for us was whether the DBS made a mistake of fact or law in their decision to place GU on the Vulnerable Adults and Children's Barred Lists. We have had the benefit of hearing from GU and have listened carefully to all his evidence. Without in any way wishing to diminish the importance of the outcome of this case to the appellant this, in essence, is a straightforward matter of whether the DBS made any errors in the findings of fact that they relied upon in concluding he was guilty of emotional and physical abuse. The DBS say the facts are as set out in the Barring Decision Summary and above and the appellant says those facts are lies.

42. The appellant was given permission to appeal to this tribunal because he said he had numerous witnesses, including his wife and sister-in-law who would support his version of events as well as the possibility that his own oral evidence would prove compelling. That has not proved to be the case as his only witness was a friend who could give only a good character testimonial and could not assist with any direct evidence about the subject of the allegations.

43. The fact that his now ex-wife appeared to be unaware of these proceedings or her expected role in them undermined the appellant's credibility. The fact that his sister-in-law did not attend to give evidence in support and that he produced no other evidence, such as the alleged text messages which he said would support his arguments that the allegations were made up by E, further undermined his evidence.

44. Having had the benefit of hearing and questioning the appellant we did not find his evidence to be convincing; it was in places inconsistent and lacking in clarity. The other evidence before us was the evidence which had been before the DBS and which provided a credible picture of the appellant having emotionally and physically abused his wife and stepchildren. There was nothing in his evidence to the Tribunal which convinced us that those findings were mistaken or that there was something missing.

45. Permission had not been given on the issue of proportionality but it has been raised by appellant in his submission. We accept that he is of previous good character and there are testimonials to his charitable nature and good work and he is undoubtedly being denied opportunities to work in his chosen field. But on the basis of evidence of emotional and physical abuse of family members, it cannot be said to be a disproportionate decision to bar him from working with children or vulnerable adults because of the risks identified.

46. We find no error of law in the DBS' decision and this appeal is dismissed.

Judge Fiona Monk
Chamber President of the WPAFCC
Sitting as a judge of the Upper Tribunal
Upper Tribunal Member Dr Beth Stuart-Cole
Upper Tribunal Member Miss Rachel Smith

Authorised by the Judge for issue on 23 June 2025