Neutral Citation Number: [2025] UKUT 228 (AAC)
Appeal No. UA-2023-001736-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

VMAC

Appellant

- v -

Disclosure and Barring Service

Respondent

Pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:

No one shall publish or reveal:

the name or address of any of:

a. **the Appellant in these proceedings, who is referred to by the cipher VMAC;**
b. **VMAC's wife, who is referred to by the cipher PC;**
c. **VLS, who is a relation of PC;**
d. **MS, who is a relation of PC,**
e. **NC who is a relation of VMAC;**
f. **LC, who worked with VMAC;**
g. **JM, who worked with VMAC; and**
h. **JD, a friend to VMAC,**

or any information that would be likely to lead to the identification of any of them or any member of their families in connection with these proceedings.

Any breach of this Order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanction 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.

Before: **Upper Tribunal Judge Butler, Tribunal Member Heggie and Tribunal Member Turner**

Hearing date(s): 09 April 2025
Mode of hearing: CVP hearing (by video)

Representation:
Appellant: Represented himself
Respondent: Mr Christopher Richards (Counsel)

On appeal from:
DBS registration number: 00989589895
DBS Decision Date: 05 September 2023

SUMMARY OF DECISION

Keywords: Mistake on point of law (65.5), Finding of fact (65.9)

The DBS's Barring Decision involved a mistake of fact on which the Barring decision was based and material mistakes of law. Remitted to the DBS to make a fresh decision.

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.

DECISION

The decision of the Upper Tribunal is to ALLOW the appeal and REMIT the matter to the Disclosure and Barring Service for a new decision.

The Disclosure and Barring Service's decision of 05 September 2023 involved a mistake of fact on which the decision was based and material errors of law.

REASONS FOR DECISION

Introduction

1. This appeal deals with whether the Disclosure and Barring Service (the **"DBS"**) based its decision made on 05 September 2023 under the Safeguarding Vulnerable Groups Act 2006 ("the **"SVGA 2006"**) to place the Appellant's name on the Adults' Barred List (the **"Barring Decision"**) on one or more mistakes of fact and / or law.

2. We refer to the Appellant in the case reference by the initials "VMAC". We confirm the Rule 14 Order previously made to protect his anonymity and privacy of others involved. The Rule 14 Order extends to specific individuals as well, who are described in the ciphers set out above.

A summary of the factual background

3. VMAC received a conditional caution on 02 December 2021 for an assault on his stepson on 28 November 2021. Social Services had been involved in VMAC's family situation since around May 2021, which resulted in a child in need plan in respect of VMAC's stepson and VMAC's daughter with his wife PC.

4. At the time of the conditional caution, VMAC worked as a tenancy support worker for a company ("AC"). On 23 October 2022, AC terminated VMAC's probation. This was during the DBS investigation, after AC had implemented supportive measures to manage while the DBS was investigating. The reasons given were that VMAC had not kept his work diary updated and was saving confidential client documents in a non-secure area. AC stated VMAC was unable to follow instructions despite supervision meetings, support and training being put in place.

5. VMAC applied for a DBS check to engage in regulated activity, following which the DBS received information from Northamptonshire Police about his caution for common assault on 02 December 2021. As a result, the DBS investigated whether to include VMAC in one or both of the barred lists.

6. On 28 October 2022, VMAC emailed the DBS about his belief that the DBS investigation was one of the main factors leading to his dismissal. VMAC asked for clarification of his ability to work with adults and / or children during the investigation. VMAC referred to names of people he had worked with whom he indicated could be contacted about his case and referred to a domestic abuse course and a victim awareness course he had undertaken (attaching documentation about the latter).

7. On 17 November 2022, "JM", the CEO of AC, sent the DBS what was described as relevant paperwork that had been discussed and which she thought might be of use to DBS's inquiry. JM also confirmed that VMAC had his probation terminated due to not following instructions and undertaking tasks. She observed there were no safeguarding concerns around VMAC's work

8. VMAC subsequently emailed the DBS on a number of occasions, including 02 January 2023, 02 February 2023, 20 March 2023, 24 April 2023, 10 May 2023 and 07 June 2023. Some of these emails attached documentation on which VMAC wanted to rely (for example, a parenting course certificate he had recently completed).

9. On 29 June 2023, the DBS issued a Minded to Bar letter to VMAC, dated 20 June 2023. The DBS invited VMAC to submit representations by 26 August 2023. VMAC sent the DBS an email dated 26 August 2023 at 11.30pm. Although there is disagreement between the parties about whether those representations were received in time, the DBS agreed to VMAC submitting later representations, which it received on 01 September 2023.

The Barring Decision

10. On 05 September 2023, the DBS decided (in a Final Decision Letter) to include VMAC in the Adults' Barred List on the basis of having made the following findings of relevant conduct:

    (a) VMAC had a conditional caution for common assault, received on 02 December 2021;

    (b) Over an extended period of time, VMAC exposed his wife and two children to domestic abuse – this was characterised by physical and emotional abuse; calling his 9-year-old stepson a "bastard", threatening his wife with a clenched fist and repeatedly physically assaulting both his wife and her son. This led to the children being placed on a Child in need plan due to safeguarding concerns.

Appeal grounds

11. A summary of VMAC's appeal grounds is:

    (a) The Respondent did not place any emphasis in the report on evidence from his former employer AC in reaching their final decision, despite having obtained information from them;

    (b) VMAC had worked with adults and children in various roles since August 2012 without any accusation or safeguarding concern being raised. On the other hand, he had been threatened by clients he has worked with. If DBS had contacted VMAC's employer as he requested, they would have been able to confirm that information;

    (c) DBS also did not contact other relevant people VMAC listed with contact details in an email in October 2022, including the coordinator for the EVE domestic violence charity where he completed a course following his caution;

    (d) VMAC asked for an oral hearing in July 2023, but DBS never replied to his request;

    (e) The Minded to Bar letter DBS sent VMAC dated 29.06.23 states: "*Your employer commented there has been no evidence of raised voices, temper or aggression in the six months you worked for [AC]. In fact they say you appeared to provide high level of support to individuals living in chaos and with changeable behaviours*". However, this information was not included in the Final Decision Letter dated 05 September 2023;

    (f) The language used in the Minded to Bar letter was that: "*based on the enclosed information, it appears on the balance of probabilities*" that VMAC exposed his wife and children to domestic abuse. The Final Decision Letter does not use the words: "*it appears that*" or "*on the balance of probabilities*". VMAC questioned what changed factually to justify the change in language;

(g) VMAC challenged whether it is correct to say there was domestic abuse at all, and that if he had done all the things that are alleged, his stepson would have been placed in foster care or even for adoption, and his wife and children would have been placed in a refuge;

(h) VMAC challenged whether the conditional caution dating from 02 December 2021 can be said to be recent in the way DBS asserts, given that it happened two years ago; and

(i) VMAC asked what evidence DBS has to support its assertion that on the balance of probabilities he had anger management issues, and he asked what the balance of probabilities is used to mean in this context.

12. On 09 July 2024, Upper Tribunal Judge Butler granted VMAC permission to appeal on limited grounds on the basis of the papers.

13. The grounds on which Upper Tribunal Judge Butler granted VMAC permission to appeal were:

(a) The DBS may have made a material mistake of fact or a material mistake in law by failing to take adequately into account the evidence it received of the risk assessment carried out by [AC] on 30 September 2022 that:

> "*There has been no evidence of raised voices temper or aggression in the 6 months [VMAC] has worked for [AC]. In fact he appears to be one of the most calm, placid member of the team who provides high levels of support to individuals living in chaos and with changeable behaviours*."

(b) The evidence from AC was not consistent with the statements in the Final Decision Letter and in the Barring Decision process document that VMAC failed to provide any testimonials, references or any supporting evidence that would mitigate any future safeguarding concerns the DBS had and that DBS had not been provided with any supporting primary evidence to mitigate the future risk identified (pages 13 and 232 of bundle);

(c) The fact the Final Decision Letter did not refer to this evidence, was not, of itself, sufficient to demonstrate that the DBS failed to take the evidence into account. This was because there was a reference to some of that evidence in the Barring Decision process document, which evidenced the entire decision-making process the DBS employed. However, from the written analysis the DBS provided at pages 213 and 232 of the bundle, it appeared the DBS failed to take account of the evidence from AC when assessing and making findings of fact about:

(i) Whether VMAC had anger management issues;

(ii) Whether VMAC had engaged in relevant conduct in terms of the second allegation (domestic violence and a failure to safeguard his children); and / or

(iii) future safeguarding concerns if VMAC were allowed to work with vulnerable adults

which might constitute both a finding and a factor relevant to assessing risk - see paragraphs 39 to 40 of ***PF v DBS [2020] UKUT 256 (AAC)***;

(d) Alternatively, it was arguable that DBS failed to consider that evidence at all as part of the wider evaluation of risk. This is indicated by the statement that it (DBS) had not been provided with supporting primary evidence to mitigate the future risk identified. This arguably represented:

(i) An error of fact in that DBS incorrectly stated in the Barring Decision Process document and its Final Decision Letter that it had not been provided with any supporting primary evidence to mitigate the future risk identified; and / or

(ii) an error of law in terms of:

(aa) DBS' position that there was no supporting evidence representing one no reasonable decision maker could adopt on the evidence before it; or

(bb) DBS failing to discharge the duty placed on it by paragraph 13 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 to ensure that it considered whether the information it received from VMAC's former employer in October 2022 was relevant to its consideration of whether he should be included in the barred list;

(e) Although some of the risk assessment evidence provided by AC was mentioned in the Barring Process document under the assessment of "Minded to Bar Appropriateness and Proportionality" (pages 222 to 223), the decision of the Upper Tribunal in ***VW v Independent Safeguarding Authority [2011] UKUT 435 (AAC)*** confirmed that where the treatment of evidence by DBS was flawed in a specific respect, this could not necessarily be cured by the same evidence being considered in a less flawed manner elsewhere within the Barring Decision process document (see paragraphs 53 to 54 of that decision).

14. Upper Tribunal Judge Butler indicated the grant of permission to appeal reflected the grounds summarised at paragraph 11(a) and (e) above.

15. Upper Tribunal Judge Butler explained she was not granting permission in relation to the other grounds VMAC had raised. The grant of permission to appeal was therefore limited. The permission to appeal decision explained VMAC was entitled to apply for the decision to limit the grant of permission to matters set out at paragraph 13 above, to be reconsidered at an oral hearing.

16. VMAC did not apply for the limited grant of permission to appeal to be reconsidered at an oral hearing. The matter therefore proceeded to a substantive hearing on the basis of the grounds set out at paragraph 13 above.

The Upper Tribunal substantive oral hearing

17. We held an oral hearing of the Appellant's appeal on 09 April 2025. VMAC represented himself. The DBS was represented by Mr Richards of counsel. We were grateful to them for their participation in the hearing. There was an observer from the DBS, who played no part in the hearing other than to observe it.

18. We heard evidence from VMAC and from his witnesses, LC (his former line manager, including at AC), and from his family friend JD. We are grateful to LC and JD for participating and giving evidence to the Tribunal.

19. VMAC submitted further evidence on 08 April 2025, including an updated witness statement, which he wrote he had produced in response to the skeleton argument Mr Richards had provided on behalf of the DBS.

The legal framework for Barring Decisions

20. The SVGA 2006 provides a person to be included in one, or both, of two Barred Lists, one for vulnerable adults and the other for children.

21. Schedule 3 to the SVGA 2006 sets out provisions relating to children (paragraphs 3 to 4) and relating to adults (paragraphs 9 to 10).

22. Schedule 3 to the SVGA 2006 Act sets out a number of ways in which the DBS may decide to include a person's name on a Barred List. In the present case the DBS relied upon the 'relevant conduct' gateway. This required the DBS to be 'satisfied' of three matters, namely:

    (a) that VMAC was at the relevant time, had in the past been, or might in future be, 'engaged' in, 'regulated activity' in relation to vulnerable adults (paragraph 9(3)(aa) of Schedule 3 to the SVGA 2006);

    (b) that VMAC had 'engaged' in "relevant conduct" (paragraph 9(3)(a) and paragraph 10 of Schedule 3); and

    (c) that it was 'appropriate' to include VMAC on the Adults' Barred List (paragraph 9(3)(b) of Schedule 3 to the SBGA 2006).

23. Where the DBS was satisfied of all three matters above, paragraph 9(3) of Schedule 3 to the SVGA 2006 required it to place a person's name on the Adults' Barred List.

24. VMAC has worked as a tenancy support worker for vulnerable adults. The parties do not dispute that he satisfies paragraph 22(a) above.

25. With regard to paragraph 22(b), VMAC's appeal grounds did not argue that if the alleged conduct were found to be proved, it would not amount to 'relevant conduct' for the purposes of the SVGA 2006.

26. In terms of paragraph 22(c) above, "appropriateness" is not a matter for the Upper Tribunal, unless the decision-making around appropriateness is irrational.

27. Section 4 of the SVGA 2006 sets out the circumstances in which an individual may appeal against the inclusion of their name in either or both of the Barred Lists.

28. 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)).

29. 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)).

30. Section 4(5) of the SVGA 2006 provides that unless the Upper Tribunal finds that the DBS has made a mistake of law or fact, it must confirm the DBS's decision. Section 4(6) of the SVGA 2006 sets out the outcomes available to the Upper Tribunal if it decides the DBS has made a mistake of law or fact. These are to either: (a) direct the DBS to remove the person from the barred list(s) or (b) to remit the matter to the DBS to make a new decision. Following ***DBS v AB [2021]*** EWCA Civ. 1575 ("***DBS v AB"***), the usual order will be for the Upper Tribunal to remit a matter back to the DBS unless no decision other than removal is possible on the facts.

31. As explained at section 4(7) of the SVGA 2006, if the Upper Tribunal remits a matter to the DBS under section 4(6)(b), it may set out any findings of fact it has made on which the DBS must base its new decision. The person must be removed from the list until the DBS makes its new decision unless the Upper Tribunal directs otherwise.

32. The appeal is against the decision made by the DBS, not simply the contents of the decision letter: see ***XY v ISA [2012]*** 13 AACR (***"XY v ISA"***) at paragraph 40. The DBS's decision must *"be read fairly and as a whole"* (***DBS v AB***, at paragraph 46).

33. The relevant principles regarding the Upper Tribunal's mistake of fact jurisdiction 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. The decision of a presidential panel of the Upper Tribunal in ***PF v DBS [2020]*** UKUT 256 (AAC) is also relevant to the mistake of fact jurisdiction of the Upper Tribunal.

34. Section 4(3) of the SVGA 2006 makes clear that the Upper Tribunal only has limited powers to intervene in relation to whether it is appropriate to include a person in a barred list. The scope for challenge by way of an appeal is effectively limited to a challenge on proportionality or rationality grounds.

35. At paragraph 43 of ***DBS v AB***, 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".

36. At paragraph 55 of ***DBS v AB***, the Court of Appeal explained:

> "[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…".

37. **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. The SVGA 2006 does not contain any provisions to provide a basis for departing from that general principle. See ***CD v DBS [2020]*** UKUT 219 (AAC).

Oral evidence at the hearing

38. VMAC gave evidence. He also called two additional witnesses at the hearing, JD, a family friend, and LC, who was his former line manager at AC, and had also been his line manager at AT, the company VMAC worked for before joining AC.

VMAC's evidence

39. VMAC confirmed the contents of his written witness statements dated 20 September 2024 (pages 273-5 of bundle), 17 October 2024 (page 317 of bundle), 05 November 2024 (pages 338-42 of bundle) and 08 April 2025.

40. VMAC told us he worked as a tenancy support worker at AC from April 2022 to October 2022. He worked with homeless clients, helping them with applying for benefits, managing their money, budgeting skills and keeping a tenancy, because some of them were living in the streets or rough sleeping for several years and had never had their own tenancies. The criteria for a service user to be eligible for AC's support was that they had been referred by the local authority and had to have some kind of need in terms of either being homeless, or problems with drug and / or alcohol misuse, and sometimes they might have a history of separation, children in care proceedings, or domestic violence. They could stay in AC properties for a maximum of 2 years.

41. VMAC told us LC was his line manager at AC, and also at AT, the company he worked for before moving to AC. VMAC started work at AT in May 2020, during the pandemic, as housing agency staff, and then joined AT permanently in August 2020. He left in in April 2022 to join AC. The work at AT had involved working at three different sites in different towns, with more clients. The work itself was similar. During the pandemic, VMAC's work at AT included health and safety checks and making sure clients were ok. At AT, VMAC was the key worker for an average of 15 clients and might be called on to help in emergencies and different situations, for example,

tenants causing disruption, problems with their neighbours, causing damage to property. His work involved a lot of working on his own, one to one with clients.

42. VMAC told us he left AT to find a job closer to him, and lived in the town where AC was based. LC was his line manager at AT from November 2020 until around December 2021. She was a senior housing worker and VMAC was a housing worker during that time. LC continued as VMAC's line manager at AC. At AC, VMAC had an average of 10 clients, occasionally more, but things could change very quickly. It was a small team and VMC had to cover for other colleagues and then meet their clients along with his own.

43. VMAC told us that after he received his conditional caution, LC helped to accommodate him because he was homeless. VMAC then lived in a hostel and carried on working for AC. He was allowed to carry on working at AC after this. When VMAC applied for the role at AC, he told them from the outset about the conditional caution. VMAC offered to apply for a new DBS certificate, which was delayed from April to September 2022. AC allowed VMAC to work immediately and put in the risk assessment. VMAC was also buddied with a colleague.

44. When asked by the Tribunal what he had learned from the courses he had undertaken after his caution, VMAC described that the husband and wife should be in charge of the family home and should act as a united team deciding what is wrong and right. VMAC stated one of the main things that had failed in his relationship with his wife and led to the main family breakdown was that they were not in sync. VMAC said the parenting course was helpful but at the same time, his wife and mother-in-law (MS) could not see issues the same way that he saw them, and from his point of view, VMAC felt like a stranger in the family home.

45. Asked about the Eve course for perpetrators of domestic violence, VMAC said that he learned mainly how to deal with children's tantrums and to accept what was wrong and right in a relationship in terms of abuse. He told us he learned how to control his emotions, how to keep calm and how to have a good relationship with his wife and how to listen to the children as well as how to keep calm in difficult situations where other people might expect a reaction out of him.

46. While he accepted he had hit his stepson on 28 November 2021, VMAC denied hitting or emotionally abusing his family members. He said he did a one-off offence, which he regretted and had lost his temper.

47. When asked about references in the bundle to other situations in his domestic life that social services found concerning, VMAC described his stepson and mother-in-law coming from a different country and said he had acted with his best intentions for them to be a family. VMAC said his wife's family's religion (Jehovah's Witnesses), the racial differences between him and his new family (his mother-in-law did not approve of VMAC being white) and the pandemic, caused tension in the family. He said he received verbal abuse from his mother-in-law, which later also started from his wife. This showed cracks in the family. VMAC said his wife and mother-in-law started dictating how to raise the children and finances. He said that they showed no

respect for him as the man of the house and so he felt like a stranger, disrespected, in his own home.

48. When asked about what the bundle contained in terms of stated problems in the household, VMAC said he did not remember any other incident where he was abusive to his family members, and he disagreed with the records from social services. The Tribunal asked about the wording of the Child and Family assessment document dated 22 May 2023 about his verbal communication and behaviours, which appeared to involve VMAC admitting some other behaviours of pushing his stepson and clenching his fist (see pages 107 to 108 of bundle). VMAC said he did not recall admitting to this with social services but that he did admit he was remorseful about the incident on 28 November 2021.

Evidence from JD

49. In addition to his letter dated 13 October 2024, JD gave evidence that his family and VMAC's had known each other for about 6 or 7 years. He had never known VMAC to act as a violent person during that time. JD knew that VMAC was not able to carry on in his work because an official body had stopped him doing that work. JD added that he and his wife knew VMAC and PC before her son and mother-in-law came to the UK. They had seen VMAC's family come together and saw such good qualifies in each of them, but recognised it was difficult for any family to come together, especially one from many different backgrounds. JD observed he thought that if only they could see the qualities in each other, but sometimes there is focus on negative traits.

50. When questioned by Mr Richards, JD confirmed he knew about the allegations that VMAC had hit his stepson when he wrote his supportive letter dated 13 October 2024.

Evidence from LC

51. LC confirmed the contents of her statement dated 17 October 2024. She explained she was aware of the problems VMAC had in his personal life while at AT. LC stated she saw no risk from VMAC to vulnerable adults while she worked with him, over the period from November 2020 to around December 2021. LC said there was a period of about 3 months when she left the company, but otherwise she was VMAC's direct line manager, and she resumed as his line manager from April 2022 onwards. When line managing VMAC, LC described a small team of three, and a small office where they worked very closely. VMAC might have 10 to 15 clients at any point in time.

52. LC told us every member of staff would have had a risk assessment completed, there is a template at AC that would have been followed, for all job roles. It highlights all risks within the role, including slips, trips and falls, health and safety and any front line working, including lone working, for example. Asked about the statement in the risk assessment dated 30 September 2022, LC said she didn't believe she had made that statement, but she would agree with that comment. She said VMAC had to work with chaos and changeable behaviours. Clients were aged 18 to 65 and they could

be working with violent offenders, drug addicts, alcoholics, even repetitive homelessness causes its own trauma.

53. LC described VMAC as calm, resilient and intelligent. He was resilient in the sense that the people they worked with could be quite frustrating and the work can be quite repetitive. Her experience was that VMAC would not give up on challenging clients, he would try another way of working with them, another angle or approach, and he would not leave a stone unturned if he could. In terms of calmness, LC said this was a key attribute for VMAC. She described, as a prime example, a resident that she and VMAC worked with intensively to support. VMAC had a very good working relationship with this person, who then stole VMAC's phone from him. VMAC had to report it to the police and watch the CCTV footage. While LC would have been furious if it had happened to her, VMAC kept extremely calmed, even when he was telephoned as the on-call manager. LC said the enormity of this event was not only the fact VMAC had his phone stolen, it was also the massive breakdown in trust in an instant with the person with whom VMAC had felt he had a good working relationship.

54. Asked by the Tribunal, LC said she could not confirm whether she completed the risk assessment for VMAC, or it was her manager (JM). It would have been one of the two of them. It was potentially her, but she could not say for certain. When VMAC arrived with them, his current DBS certificate was not affected but they were aware that the DBS were investigating. VMAC had disclosed the issue at interview, so AC made a decision to risk assess him and understand what was needed. The issue was how AC could mitigate the risk, because VMAC had all the tools and skills (for the role), so how could they mitigate the risk raised by the DBS investigation, mainly around the lone working VMAC would be asked to do.

55. LC said safeguarding is in everything she does, every day, and the risk of vulnerable adults and what they can be exposed to. She thought they looked at the issue in the context of having worked with VMAC previously and knowing how he interacted with adults and the situations he was put into. This was hand in hand with the incident they were aware of, which to their knowledge was a one-off. Knowing the DBS investigation was going through, and the fact VMAC would be on probation any way, they could mitigate the risk of lone working and have people work alongside VMAC to ensure there were no issues.

56. LC clarified the risk they were mitigating was how VMAC would interact physically and verbally with the people he worked with and how he would deal with situations where clients might push things verbally and physically. They were considering how VMAC presented himself verbally, they would want to ensure he had a calm manner, and about how he was dealing with clients, maintaining professional boundaries ensuring his physical presence was appropriate.

57. LC described AC carrying out a second risk assessment in September 2022 and then seeking advice from Croner, a human resources company, in October 2022. AC sought advice because the DBS investigation was taking quite a time to come

through and they wanted to understand whether they could extend VMAC's probation or not.

58. Mr Richards asked LC about the wording of the April 2022 risk assessment in terms of the allegations. These were stated to be that in November 2021, VMAC slapped his 9-year-old stepson around the face and his wife called the police to report him. LC said the wording would have come from VMAC's disclosure at interview. LC said that to her knowledge, they knew that VMAC hitting his stepson was a one off. LC confirmed she was not aware of the other matters talked about in the hearing (which Mr Richards described as VMAC appearing to admit to social services that he had pushed his stepson, clenched his fist and had a broader problem with his non-verbal communication and behaviours). Asked if she was aware of the other incidents in the background when AC carried out the risk assessment, LC stated she was only aware of the one disclosed.

Submissions from the parties

59. For the DBS, Mr Richards adopted the structure of his skeleton argument. He submitted the legal principles were fairly well settled. He emphasised that in ***DBS v JHB***, the Court of Appeal emphasised the scope of an appeal under the SVGA 2006. Mr Richards submitted it is tempting in cases like this to treat the hearing almost as a rehearing, and the waters are muddied a little by the fact new evidence is admitted (so it is not solely a review of the DBS decision). Mr Richards submitted the focus remains on the decision made by the authority and whether an error can be found in it.

60. Mr Richards submitted that the grant of permission to appeal in the case was quite narrow, and turned on the risk assessment of 30 September 2022. He acknowledged that VMAC had brought other matters to the Tribunal's attention at the hearing, and in written statements. Mr Richards stated he made no criticism of VMAC for raising those matters because VMAC would be anxious to make sure the full breadth of what he wanted to say was before the Upper Tribunal. Mr Richards argued, however, that much of what VMAC wanted to say was irrelevant to what the Upper Tribunal needed to decide.

61. Mr Richards referred to the decision in ***DBS v RI***, and the distinction the Court of Appeal identified between hunting for errors of fact or law (that this Tribunal was charged with) and replicating the job done by the DBS and coming to a broad conclusion (which was not its role).

62. Mr Richards submitted there were three broad questions the DBS said should be answered. The first was whether the DBS failed to take into account the content of the risk assessment. He submitted the answer to this question was "No". The DBS relied on the fact the content of the assessment is referred to by the DBS and on a number of different occasions. Mr Richards submitted this was not a situation where an appellant can come to court and say there was no mention of it in the Minded to Bar letter and the Barring Decision Process summary.

63. Mr Richards submitted that if there is any criticism in terms of the content of the Final Decision Letter dated 05 September 2023, one has to consider each of those letters going to VMAC in totality. It is not right to pick and choose just because one is the Minded to Bar letter and another is the Final Decision Letter.

64. Mr Richards argued that as explained in the skeleton argument, the risk assessment is not mentioned in passing but the DBS appears to be performing a balancing exercise in respect of it. In the Minded to Bar letter, the DBS explains the content of the risk assessment helps VMAC but goes on to say that it has concerns. Mr Richards submitted that the DBS had demonstrated some engagement with the risk assessment but in a helpful way.

65. The second question was, if the DBS had not taken into account the risk assessment, was this an error of fact or law? Mr Richards submitted that again, the answer was "No". Mr Richards submitted that when the DBS referred to VMAC failing to provide testimonials etc., the plain reading of what the DBS wrote is that VMAC provided these, but they were not sufficient. This was consistent with the fact that it is known that VMAC had provided the documents, and it is known that the content of the risk assessment was referred to in the Minded to Bar letter. Mr Richards submitted that the plain reading of the excerpt was effectively that VMAC had not done enough. Mr Richards emphasised the wording on pages 197 to 198 of the bundle indicated the DBS was making an evaluative judgment of the evidence VMAC had provided. The gist of it was: "*We have these concerns, you could have provided sufficient evidence to mitigate them, you have not done so and that is a problem*.".

66. In response to questions from the Tribunal, Mr Richards submitted that one reading of the wording at pages 13 and 213 was that the DBS had not ~~been~~ given anything, full stop. The difficulty with this reading was that the DBS had plainly been given the risk assessment and had clearly considered it. If the sentence in question is to be read to mean the DBS had not been given anything at all, it was difficult to square with the knowledge that the DBS had been given it and had reviewed it. The other reading of the wording was that the DBS had not been given anything sufficient to mitigate the future risk. Mr Richards submitted that the only sensible way to read that sentence was that the DBS had not been given anything that would mitigate its concerns. Mr Richards argued that there was only one sensible way of reading that wording, and it was the interpretation he was inviting the Tribunal to accept.

67. Mr Richards also submitted that the DBS has to be given the freedom to express themselves in a way that fits their decision-making process. He submitted that there was a danger in asking too much from the DBS in its written reasoning, because it would mean letters became bloated with content and started to resemble one of the longer judgments in the civil world. Mr Richards submitted that the analysis that was done on pages 73 and 223 was evidence of the DBS looking at the evidence carefully and it was sufficient.

68. Mr Richards submitted the third question was whether, if the DBS had made an error of fact or law, it had contributed materially to the final decision. Mr Richards submitted that if, for the sake of argument, the DBS did not pay sufficient attention

to the content of the risk assessment, the assessment was not a robust piece of evidence. He described it as not being something that moved the needle on its own in terms of the decision the DBS made.

69. Mr Richards submitted that this had already been addressed in the skeleton argument but further evidence had come to light during the hearing to support the DBS's position. He argued that LC was only aware of the hitting incident that led to the conditional caution. LC therefore only had a partial picture and it was clear that the DBS had taken into account not only that incident, but the background to it, evidence of which created at least a realistic suspicion that the hitting incident was not the incident that took place.

70. Mr Richards argued that the risk assessment is a small part of the puzzle, not a major part of the evidence and it was not robust. It is a short document, clearly based on incomplete information. If the DBS are to be criticised for the breadth of its reasoning, similar consideration has to be given to the quality of the risk assessment dated 30 September 2022. For example, the assessment did not explore whether VMAC would be on his own with clients, or interrogate the view it was putting forward. It was not the sort of forensic detailed document to which significant weight can be attached The DBS's position was that it did not help matters.

71. Mr Richards submitted that the DBS's reasoning involved a careful and methodical reviewing of the whole of the evidence and then the decision being made. It had taken into account evidence from a variety of different sources, but also VMAC's representations, and the reasons for having him on the barring list are set out. These include a reference to VMAC obtaining support from different agencies, and a lack of insight or remorse for the incident with his stepson. Mr Richards submitted that DBS had given careful consideration to these matters and concluded VMAC should be included in the Barred List. He submitted that this is not the sort of flimsy process that can be significantly disturbed by something like the risk assessment.

72. Mr Richards explained the DBS's position was therefore that even if there was an error, it does not materially contribute to the decision outcome.

73. VMAC asked the Tribunal to look at the whole case in a holistic manner. He argued that the Final Decision Letter dated 05 September 2023 said the DBS had evaluated evidence from the police and social services but made no mention of AC at all. VMAC argued that the DBS had not addressed the fact there was no other evidence from the police saying they had attended his house to investigate domestic violence. VMAC argued that social services had not provided full information about what happened, for example, nothing had been mentioned about his attempts to adopt his stepson or the fact he attended all the school meetings arranged for his stepson. VMAC argued that the DBS cannot pick and choose what information they disclose.

74. VMAC also argued that the DBS had a period of approximately one year for its investigation, and could have asked for further evidence, but never did. Nor did the DBS offer VMAC an oral hearing. VMAC argued there were clear errors in the findings of fact and errors of law. A simple finding of fact was that DBS said he had

submitted his representations late on 01 September 2023, but he submitted them before the deadline. VMAC argued that the fact the DBS had made its final decision on 05 September 2023, only a few days after he had submitted his second set of representations, indicates the DBS didn't give a proper look at what he was saying. The DBS should have taken more time to deal with it rather than dismiss it in a few days.

75. In response to what Mr Richards had argued about him having a lack of insight and remorse, VMAC argued he had full insight and remorse about what he did. He said he regretted it very much and pleaded guilty and admitted what he did.

Our analysis

76. We recognise that VMAC raised a wide-ranging set of challenges to the DBS's Barring Decision dated 05 September 2023. However, the Upper Tribunal granted VMAC permission to appeal on limited grounds, and he did not ask to have the limited grant of permission reconsidered at an oral hearing.

77. We have therefore considered his appeal in terms of the grounds where permission to appeal was granted, which are summarised at paragraph 13 above.

78. We took particular account of the Upper Tribunal's decision in ***XY v ISA [2012]*** 13 AACR. The Independent Safeguarding Authority was the predecessor body to the DBS and made equivalent decisions under SVGA 2006.

79. At paragraph 40 of its decision in ***XY v ISA***, the Upper Tribunal stated:

> "Third, we echo the criticisms made by both counsel of the terms of ISA's letter of 19 July 2010. However, the appellant's right of appeal lies against "a decision under paragraph 3 … of that Schedule to include him in the list" (section 4(1)(b) of the 2006 Act). The decision in question was the decision ultimately taken on 26 May 2010 by the ISA Board's Case Committee. For the reasons set out above, that decision itself was not flawed by any misapplication of the burden of proof. In short, we 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 in that letter, taken in isolation."

80. We also took account of the decision of ***VW v ISA [2011]*** UKUR 435 (AAC) ("***VW***"). In ***VW***, the Upper Tribunal emphasised that the Barring Decision Process document is what primarily sets out the decision. At paragraph 45 of ***VW***, the Upper Tribunal addressed the argument for the ISA that the Barring Decision Process document was primarily an internal decision-making document, not one written by lawyers and should be read in a commonsense way and as a whole. The Upper Tribunal wrote:

> "While not disagreeing with such an approach, the seriousness of the impact of a decision to bar or not to remove a person from the list for that individual means that even if applying the above test the occasional infelicity of

> language may be overlooked, the sort of commonsense approach required will involve a challenging approach to the substance of what is said."

81. In ***VW***, the Upper Tribunal decided that the ISA made errors of law and fact in terms of the testimonials that ***VW*** had provided. The Upper Tribunal explained that the ISA caseworker noted that only two of the testimonials seemed to be aware of ***VW***'s conviction, but three testimonials stated they were aware of the conviction, and it was to be inferred from four other testimonials that they were also aware. The Upper Tribunal decided that the statement in the Barring Decision Process summary about how many of the testimonials knew about the conviction was a finding of fact (even if its purpose was to assist the respondent in evaluating the evidence) and as such, was incorrect. The Upper Tribunal also decided that the statement was an error of law because it was a position no reasonable decision maker could adopt on the evidence before it. This was because on any possible view, the number of testimonials that knew about the conviction were three, and in the Upper Tribunal's view, it was six. See paragraph 53 of the decision in ***VW***.

82. In ***VW***, the Upper Tribunal proceeded to address the argument for the ISA that any shortcomings in relation to the references were cured by how they were treated elsewhere in the Barring Decision Process summary. The Upper Tribunal did not accept this. It acknowledged the ISA had used the references elsewhere but concluded that although the ISA was acknowledging their relevance in doing so, its conclusion to give them little weight remained unaffected. For the same reason, the Upper Tribunal rejected the ISA's argument that the reasoning in respect of weight was more copious than stated. See paragraph 54 of the decision in ***VW***.

The wording used in the Barring Decision Process summary (and in turn, in the Minded to Bar and Final Decision Letters)

83. The specific wording of pages 2 and 3 of the Minded to Bar letter dated 29 June 2023 is largely drawn from the Barring Decision Summary process document at pages 222 to 223, under the heading "MTB Appropriateness and Proportionality".

84. The wording provided about the information and evidence provided by AC in the Barring Decision Process summary is the following:

> "Although it appears that [VMAC] was dismissed from his role at AC this does not appear to be in regard to any safeguarding concerns. The employer commented that there had been no evidence of raised voices, temper or aggression in the 6 months he worked at AC. It was noted that he appeared to provide high levels of support to individuals living in chaos and with changeable behaviours.
>
> However, DBS have safeguarding concerns raised by his previous behaviour within his domestic life which have been considered by social services to be a repeated concern." (page 223 of bundle)

85. The specific wording of the bottom portion of page 3 and page 4 of the Final Decision Letter dated 05 September 2023, is very similar to what is set out in the Barring Decision Process document at pages 212 to 213, under the heading "Post reps evaluation".

86. The wording provided in these documents about the issue is:

> "He has worked with vulnerable adults for years and was never a threat to them and does not agree that he could 'cause similar harm to those you were engaged to provide care'. There is no previous pattern in his behaviour at work to suggest this.
>
> There is no supporting evidence to mitigate the future risk identified and [VMAC] appears to show no insight or remorse". (Barring Decision Process summary at page 213 of bundle).
>
> -
>
> "You say you have worked with vulnerable adults for years and was never a threat to them and do not agree that you 'could cause similar harm to those you were engaged to provide care'.
>
> You also dispute that there is any previous pattern in your behaviour at work to suggest this.
>
> However, the DBS have not been provided with any supporting primary, evidence to mitigate the future risk identified. This is also because you have shown no insight or remorse for the assault on your stepson and are primarily concerned with the impact of a Police caution on your own career prospects." (Final Decision Letter, page 13 of bundle)

87. There are no other references to the risk assessment evidence from AC in the Barring Decision process summary or the Minded to Bar letter and Final Decision Letter.

88. The risk assessment carried out by AC on 30 September 2022 (pages 127 to 128 of bundle) refers to its safeguarding policy. It stated the following under the heading "**Risk they pose to those they may work with**":

> "There has been no evidence of raised voices, temper or aggression in the 6 months [VMAC] has worked for AC. In fact he appears to be one of the most calm, placid member of the team who provides high levels of support to individuals living in chaos and with changeable behaviours."

89. We took full account of Mr Richards' submissions. We do not, however, agree with him that the only sensible reading of the specific wording in the Barring Decision Process summary and Final Decision letter is one concluding DBS had taken the AC

evidence into account, and had assessed that it provided insufficient evidence to mitigate future risk.

90. We have approached this issue starting with the wording that was on page 223 and in the Minded to Bar letter at page 73 (see paragraph 86 above). This reflects the starting point taken by the DBS in Mr Richards' skeleton argument (see paragraph 20, where the content of the risks assessment is described as referred to specifically on multiple occasions). It also reflects Mr Richards' arguments at the hearing about how to interpret the wording in the Final Decision Letter and the equivalent wording in the Barring Decision Process summary.

91. Mr Richards argued that what is on page 223 (and in the Minded to Bar letter) represents a careful evaluation of risk taking into account the evidence from AC, and evidenced by using the word "*However*", and what then followed in terms of the DBS's analysis.

92. The wording following "*However*" on pages 73 and 223 of the bundle refers to: (i) what happened to VMAC's stepson, (ii) a statement that the concerns regarding VMAC's future risk lie in the prospect he might repeat the actions against his stepson within regulated activity, (iii) a statement that VMAC had failed to protect his children from exposure to domestic abuse, and (iv) statements about VMAC recognising he has been unable to cope at times, and accepting some offers of help from authorities (but an assessment that this was not consistent engagement and VMAC had declined help from his GP). Within these paragraphs, there is no analysis made of how the evidence provided by AC was being balanced against those matters.

93. Furthermore, the extract taken from the AC risk assessment dated 30 September 2022 appears largely to copy and paste some of what was in it, without any specific analysis being performed in relation to what it said. The DBS also leaves out some of the wording in the middle of the section it quotes, which stated: "*In fact, he seems to be one of the most calm, placid member [sic] of the team*.". This was important evidence within the overall risk assessment, because it not only considered VMAC's behaviours in their own terms. It also compared VMAC's behaviours to others within the same team, indicating he was at the top end of demonstrating calm behaviours that would not respond negatively to challenging behaviours from service users.

94. As a result, we did not accept Mr Richards' argument that the wording quoted at paragraph 84 above (which went, in similar terms, into the Minded to Bar letter), represented a methodical evaluation and balancing of the positive evidence provided about VMAC's behaviours at AC against the assessed risks of his future behaviours. We also did not accept the argument that the AC evidence was referred to on multiple occasions within the overall decision-making documentation. It was referred to within one part of the Barring Decision Process summary document, and that wording was clearly used to set out the content of pages 2 and 3 of the Minded to Bar letter. We considered that it overstated the position to describe this as being specifically referred to on multiple occasions.

95. Following on from this, we proceeded to assess what the DBS wrote in the Final Decision Letter at pages 12 to 13, reflected in the similar wording used at page 213 of the Barring Decision summary. Here, Mr Richards placed substantial weight on (a) what had been said in the wording reflected at paragraph 84 above and how he invited us to interpret it, and (b) the use of the word "*mitigate*". Mr Richards submitted the word mitigate should not be read as the DBS stating no evidence at all had been submitted, but instead as stating that what had been provided was not sufficient to balance against the future risks it had identified.

96. We did not accept that the natural reading of the wording in the Final Decision Letter on page 13, and in the Barring Decision Process summary at page 213, is to interpret it as being about sufficiency of evidence. The wording cited at paragraph 88 above is stark and clear. It states that there is no supporting evidence to mitigate the future risk (Barring Decision Process summary) or that the DBS has not been provided with any supporting primary evidence to mitigate that risk (the Final Decision Letter). If the DBS meant to say that the evidence that had been provided was not sufficient to mitigate that risk, it could, and should, have said so.

97. We did not consider that the DBS's reliance on paragraph 56 of the Upper Tribunal decision in ***PG v DBS*** (UA-2022-001349-V, unreported) took matters substantially further. As stated above, we have applied the decisions in ***XY v ISA*** and ***VW*** to look at the full content of the Barring Decision Process summary, rather than simply considering the Barring Decision in terms of the Final Decision Letter.

98. In any event, for the reasons set out above, we do not consider that the DBS's reliance on ***PG*** (including the reference to ***DBS v AB*** at paragraphs 61 and 62) assists the DBS. We agree that the DBS decision letter had to be read fairly and as a whole (***DBS v AB***). We acknowledge that the DBS did not have to programmatically recite every piece of evidence at every stage of its analysis. In our assessment, the difficulty with what the DBS wrote in the Final Decision Letter and the equivalent part of the Barring Decision Process summary is that the wording stated, in clear terms, that the DBS had not been provided with any evidence on an issue where it had.

99. We do not agree with Mr Richards that the only sensible way to read the wording in the documents is in the way he invited us to do so. Nor do we consider this is an example of the DBS merely using infelicitous language to express its position.

100. Mr Richards argued his first question was whether the DBS had taken account of the risk assessment. However, the terms in which VMAC was granted permission to appeal included whether the DBS had taken *adequate* account of the risk assessment (our emphasis added). We have proceeded to consider that matter as part of considering whether there was one or more mistake of fact or mistake of law in the DBS's decision.

Was there a mistake of fact and / or was there a mistake or mistakes of law?

101. Having performed the analysis set out above, we are satisfied that the DBS made mistakes of fact and mistakes of law in the following ways.

102. The DBS failed to take adequately into account the evidence it received of the risk assessment carried out by AC on 30 September 2022. As explained above, the DBS has not set out the full paragraph of the evidence from which it cited in the Minded to Bar letter and the equivalent part of the Barring Decision process summary. As explained above, the part that the DBS left out was a particularly important part of the evidence. We are satisfied this indicates the DBS did not take it into account, especially as it largely appeared to copy and paste the remainder of the paragraph. There were other parts of the AC risk assessment that were also potentially important, for example, the explanation of what work VMAC would be doing.

103. In our assessment, the DBS did not engage adequately with the individual elements of that evidence, to perform the evaluation process the DBS needed to carry out. This extends to, and includes, failing to take account of the evidence at the later stage in the decision-making process, which fed into the Final Decision Letter. The DBS' failure to take the evidence adequately into account was an error of law.

104. The statement in the Final Decision Letter (and the equivalent part of the Barring Decision Process summary) that the DBS had not been provided with any supporting evidence to mitigate future risk, was a finding of fact that involved a mistake of fact. It was also an error of law because the statement that there was no supporting evidence represented one that no reasonable decision-maker could adopt on the evidence before it.

Was any mistake of fact one on which the Barring Decision was based and was any mistake of law material?

105. We have considered whether the mistake of fact identified above was, in accordance with section 4(2)(b), one on which the Barring Decision was based, and we have considered whether the mistakes of law were material.

106. We did not accept Mr Richards' argument that the mistake of fact made by the DBS was not one on which the Barring Decision was based within the meaning of section 4(2)(b) of the SVGA 2006.

107. The DBS stated in the Final Decision Letter dated 05 September 2023 and the equivalent wording of the Barring Decision Process summary, that it had not been provided with any supporting evidence to mitigate the future risk identified. It is adequately clear from that wording, read fairly as a whole, that the DBS based its Barring Decision on there being no supporting evidence to mitigate the risk if VMAC were allowed to work with vulnerable adults. This was incorrect because there was evidence, in the form of the AC risk assessment dated 30 September 2022.

108. The earlier acknowledgement that there was evidence from AC, in the way set out in the Minded to Bar letter, does not cure that defect. We rely on, and adopt, the approach indicated in ***VW*** where the Upper Tribunal confirmed that where DBS had

treated evidence in a flawed way, it could not necessarily be cured by considering the same evidence in a less flawed manner elsewhere in the Barring Decision process document.

109. In any event, when the DBS referred to the AC evidence elsewhere in its decision-making process, it still considered it in a flawed manner. For the reasons set out above, we have concluded the DBS did not adequately address the AC risk assessment when it did refer to it. This includes the failure to reflect the full extent of the specific paragraph from which the DBS quoted. It also includes the failure to consider other parts of the risk assessment, for example, its assessment of what work VMAC would be undertaking.

110. We were not persuaded by Mr Richards' arguments that the AC risk assessment dated 30 September 2022 could not be seen as a robust piece of evidence. We acknowledge that it was considering risk in the context of AC's specific work and their specific service users. However, the safeguarding policy set out within the risk assessment, the individual elements of the assessment and LC's explanation of the approach AC took towards evaluating risk in safeguarding, provide evidence of an employer that had vulnerable users at the forefront of its assessment, had identified what challenges those users would present to VMAC, and the type of work he would carry out in respect of them. We did not accept Mr Richards' arguments that the risk assessment was insufficiently robust and therefore it would not be material for the DBS to fail to take it into account (including failing to do so adequately).

111. Finally, we considered Mr Richards' arguments at the hearing that the evidence LC gave at the hearing indicates the AC risk assessment had only considered the conditional caution and not the wider circumstances that the DBS had taken into account. In his skeleton argument, Mr Richards argued that the risk assessment appeared to wrongly minimise VMAC's wrongdoing. Mr Richards argued that this, together with the remainder of the reasoning the DBS used in the Final Decision Letter dated 05 September 2023, would be insufficient to move the needle to conclude that the mistake of fact or law was material.

112. We are not certain that Mr Richards' analogy with moving the needle, reflects the test we have to apply. We prefer the explanation of materiality given in ***R(Iran) v SSHD [2005]*** EWCA Civ. 982. As explained in ***CD v DBS [2020]***, the SVGA 2006 does not provide any basis for departing from the principles established in ***R(Iran)*** in relation to errors of law. As stated by the Court of Appeal at paragraph 10 of ***R(Iran)***:

> *"Each of these grounds for detecting an error of law contain the word "material" (or "immaterial"). Errors of law of which it can be said that they would have made no difference to the outcome do not matter."*

113. Applying that test, we are satisfied that the errors of law identified above were material, and, to the extent the test for mistake of fact set out in section 4(2)(b) imports materiality (see ***PF v DBS [2020]*** UKUT 256 (AAC)), it was material. In circumstances where the DBS has not set out any clear analysis of the evidence from AC dated 30 September 2022, and has elsewhere stated that (despite the AC evidence) there was no supporting evidence to mitigate the future risk it had

identified, it cannot be said that the errors of law and the error of fact, would have made no difference to the outcome. Putting it another way (as set out in ***CD v DBS***), we cannot say the same decision would be bound to have been reached had the DBS not made the mistakes of law and the mistake of fact in question.

Conclusion

114. We have found that the DBS made a mistake of fact on which the Barring Decision was based within the meaning of section 4(2)(b) of the SVGA 2006. We have also found that the DBS made errors of law that were material.

115. Where the Upper Tribunal finds that the DBS has made mistakes of fact on which the Barring Decision was based and / or material mistakes of law, the Upper Tribunal must either direct the DBS to remove the person from the list or remit the matter back to the DBS for a new decision.

116. In the circumstances, we have decided, in accordance with section 4(6) and (7) of the SVGA 2006, to remit this matter to the DBS to decide afresh whether to make a Barring Decision. Applying the principles in ***DBS v AB***, we are not satisfied that no other decision than removal is possible on the facts.

117. We direct that VMAC's name shall not be removed from the Adults' Barred List pending the DBS remaking the Barring Decision.

Judith Butler
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 09 July 2025