



Neutral citation no: [2025] UKUT 329 (AAC)

Appeal no. UA-2022-001480-V

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

MM

Appellant

-v-

Disclosure and Barring Service

Respondent

DECISION OF THE UPPER TRIBUNAL

**Upper Tribunal Judge Mitchell
Upper Tribunal Member Jacoby
Upper Tribunal Member Tynan**

Hearing: 25 September 2024, conducted remotely using Cloud Video Platform

Representation:

Appellant: in person

Respondent: David Tinkler (of counsel), instructed by DBS Legal Department

On appeal from:

Decision maker: Disclosure and Barring Service (DBS)

DBS ref: 00961231655

Date of decision: 21 July 2022

SUMMARY OF DECISION

65. Safeguarding Vulnerable Groups

65.1. Children's Barred List

Judicial summary

DBS gave inadequate reasons for deciding that it was appropriate to include the Appellant on the children's barred list where the only evidence before DBS concerned the Appellant's two police cautions, and one conviction, for offences of threatening behaviour or violence committed between 2000 and 2004.

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

DECISION

The decision of the Upper Tribunal is to allow the appeal because Disclosure and Barring Service made a mistake of law. Under section 4(6)(b) of the Safeguarding Vulnerable Groups Act 2006, the Upper Tribunal remits this matter to DBS for a new decision. By virtue of section 4(7)(b) of the 2006 Act, the Appellant is removed from the children's barred list until the DBS make a new decision.

REASONS FOR DECISION

Introduction

1. In these reasons:

- "2006 Act" means the Safeguarding Vulnerable Groups Act 2006;
- "DBS" means Disclosure and Barring Service.

Factual background

Appellant's offending history

2. DBS' barring decision relied on the Appellant having been found to have committed certain criminal offences:

(a) 27 May 2000 - police caution (which means the Appellant admitted the offence) for committing the offence of disorderly behaviour or using threatening, abusive or insulting words likely to cause harassment, alarm or distress;

(b) 24 October 2003 – police caution for committing the offence of common assault;

(c) 23 February 2004 – conviction at Cardiff Crown Court for the offence of causing grievous bodily harm with the intent to do grievous bodily harm. The court sentenced the Appellant to a suspended sentence of two years' imprisonment.

DBS' decision making

3. On 20 August 2021, DBS issued an Enhanced Disclosure Certificate in respect of the Appellant. The 'position applied for' section of the Certificate stated, 'Child Workforce – Match Official'. The Certificate recorded the Appellant's 2004 conviction for causing grievous bodily harm.

4. It is not clear why DBS decided to address the Appellant's suitability to work with children shortly after issuing the August 2021 Certificate. Whatever the reason, DBS informed the Appellant, by letter dated 18 May 2022, that they were minded to include him on the list of people barred from working with children, and invited him to make representations. The letter clearly informed the Appellant that he should respond by 15 July 2022. The Appellant accepts that he did not make any representations in time and informs us that he deeply regrets not having done so.

DBS' decision

5. On 21 July 2022, DBS decided to include the Appellant on the list of persons barred from working with children.

6. DBS' decision letter included certain findings of fact. As well as the fact of the cautions and convictions mentioned above, these were:

(a) in relation to the Appellant's 2004 conviction for causing grievous bodily harm:

- "following an argument you punched your then partner to the ground, kicked her then stamped on her head";

- “[demonstrated] significant violence towards your partner at the time by punching her to the ground, kicking her and stamping on her head causing swelling, cuts and a fractured cheek bone”;

(b) in relation to the Appellant’s 2003 caution for common assault:

- “you punched a youth, unknown to you, to the head while walking home following a night out”;
- “this was a random violent attack on a person in the street while walking home, who was not known to you. In addition, the person was under 18 years old, demonstrating your disregard for the age or capacity of your victim and also the location of your behaviour was likely able to be viewed by members of the public, if it were in the street, and this also could have exposed vulnerable people to harm”;

(c) in relation to the Appellant’s 2000 caution, the decision letter stated, “whilst the context of your caution for using threatening behaviour is not known, the nature of the offence is considered to pose a risk of harm to a person and therefore potentially could be repeated to cause harm to a child if you were to engage in regulated activity with them”;

(d) “you demonstrated a pattern of threatening and violent behaviour between 2000-2004, which escalated in severity and was repeated despite sanction. You received a caution for your first and second offences and this did not deter you from repeating extreme violent behaviour towards your then partner, resulting in significant injury, having fractured her cheek bone”.

7. The appropriateness of barring the Appellant from working with children was justified by reference to the following considerations:

- (a) “you have engaged in conduct which, if repeated against or in relation to a child, would endanger that child or be likely to endanger him or her”;
- (b) “if similar behaviour [to that leading to the Appellant’s cautions and conviction] were to be repeated in regulated activity with children, it is likely harm would be caused to a child”;
- (c) “the DBS has serious concerns that you pose an unacceptable risk of physical harm to children if you were to engage in regulated activity, as you may repeat violent behaviour”;
- (d) “it is acknowledged the date of the offences was 18+ years ago, the passage of time alone cannot be considered sufficient mitigation to the risk. It is also not known what drove your harmful behaviour, nor is there any assurance in the evidence that such behaviour would not be repeated again. You have not been deterred by police sanction and your harmful behaviour appears to have escalated in severity”;

(e) “although police disclosure information has been released upon your current application for a role in regulated activity, this cannot be relied upon to be released in regard to all future applications you may make and prospective employers may choose to recruit you, regardless of such information...it is not considered that any current, robust safeguarding measures are in place to protect children from the risk you are considered to pose”.

8. DBS’ decision letter noted that barring might have financial implications for the Appellant (although the barring process was set in train by the Appellant’s application for a voluntary role), and “there may be an emotional impact upon you and your well being and lifestyle may be affected”.

9. DBS’ concluded that “in order to safeguard children from the risk of harm you are considered to pose, the DBS is now satisfied that it is appropriate to include your name in the Children’s Barred List”, and “it is both a necessary and proportionate response to include your name in the Children’s Barred List”.

What the Appellant did next

10. Having received DBS’ barring decision letter, on 28 July 2022 the Appellant emailed DBS stating that he wished to discuss the letter, he already had a DBS certificate for the next couple of years, had refereed junior football matches for 10 years, and that it was disgraceful to bar him for an incident that occurred almost 20 years ago.

11. On 4 August 2022, the Appellant made a formal request for permission to make late representations against barring although he candidly accepted that he did not have a “good excuse” for not responding to DBS’ minded to bar letter. Briefly, the Appellant described how his life had changed in the last 20 years and that he devoted much of his spare time to football coaching, and refereeing, for local children.

12. On 22 August 2022, DBS refused to allow the Appellant to make late representations against barring because “your letters appear to be signed for...and also you have not provided any extenuating circumstances that prevented you from submitting reps on time”.

Legal framework

13. The right of appeal against a DBS decision to include a person in a barred list, provided for by section 4(2) of the 2006 Act, is as follows:

“(2) An appeal...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...was based.”

14. Section 4(3) of the 2006 Act provides that “the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact”. In other words, there is no right of appeal against DBS’ decision that it is appropriate for an individual to be included in a barred list. The Act’s barring criteria do not mention ‘risk’ but the level of risk posed to children is clearly something that DBS will consider relevant when determining if it is appropriate to include a person in the children’s barred list. In *Disclosure & Barring Service v AB* [2021] EWCA Civ 1575 the Court of Appeal said:

“43...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.”

15. If the Upper Tribunal finds that DBS made a mistake of fact or law, within section 4(2) of the 2006 Act, it must either direct DBS to remove the individual from the barred list or remit the matter to DBS for a new decision (section 4(6)). If the Upper Tribunal remits to DBS, it may set out findings of fact on which DBS must base its new decision (section 4(7)(a)). In *AB*, the Court of Appeal held:

“73...I would interpret section 4(6) of the Act as permitting the Upper Tribunal to direct removal of the name of a person from a barred list where that is the only decision that the DBS could lawfully reach in the light of the law and the facts as found by the Upper Tribunal...”.

16. If the Upper Tribunal remits a matter to DBS for a new decision, the person must be removed from the barred list until DBS makes its new decision unless the Upper Tribunal directs otherwise (section 4(7)(b) of the 2006 Act).

17. Schedule 3 to the 2006 Act sets out criteria for including a person in the children’s barred list. Paragraph 3 of the Schedule provides as follows:

“(3) DBS must include the person in the children’s barred list if –

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

(aa) it has reason to believe that the person...might in future be, engaged in regulated activity relating to children, and

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

18. The definition of “relevant conduct” includes “conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him” (paragraph 4(1) of Schedule 3 to the 2006 Act). It is not disputed that the Appellant might in future be engaged in regulated activity relating to children.

19. Where DBS propose to include a person in the children's barred list under paragraph 3 of Schedule 3 to the 2006 Act, they "must give the person the opportunity to make representations as to why he should not be included in the children's barred list" (paragraph 3(2)).

20. Regulation 2 of the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008 provides as follows:

"(5) A person to whom notice is given in accordance with paragraph (3) [*right to make representations*] may make representations as to his removal from, or inclusion in, a barred list within the period of 8 weeks starting on the day on which he is treated as having received the notice.

(6) Where—

(i) a person has not completed making his representations within the period provided for under paragraph (5), and

(ii) DBS is satisfied that the person has good reason for not doing so,

DBS may allow that person such further period to make his representations as DBS considers reasonable."

Grounds of appeal

21. As the Upper Tribunal observed when granting the Appellant permission to appeal against DBS' barring decision, his failure to make representations about DBS' proposal to include him in a barred list placed practical limits on the arguments open to him on appeal. Nevertheless, the Upper Tribunal was persuaded to grant the Appellant permission to appeal on two grounds.

Ground 1

22. The first ground of appeal is that DBS arguably made a mistake of fact in finding that the Appellant's May 2000 conviction was part of a pattern of threatening and violent behaviour. It seems that all DBS knew about this incident was that the Appellant had been cautioned for the offence provided for by section 4A(1)(a) of the Public Order Act 1986. That offence is framed as follows:

"(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b)...

thereby causing that or another person harassment, alarm or distress.”

23. Section 4A(1)(a) of the 1986 Act covers a multitude of wrongdoing. At the less serious end of the spectrum, it describes a person who, with the intent to cause alarm, uses insulting words that alarm another person. At the more serious end, section 4A(1)(a) describes a person who, with intent to cause distress, uses threatening words or behaviour that distress another person.

25. DBS knew nothing of the circumstances of the May 2000 caution (“the context of which is not known”: see barring decision letter) yet they found it to be part of “a pattern of threatening and violent behaviour”. That might be a sustainable finding had the May 2000 caution related, for instance, to threatening behaviour that intentionally caused another distress. DBS seem to have assumed that the caution must have been given in response to some sort of threatening behaviour. Arguably, that was a mistake of fact because DBS knew nothing of what the Appellant did to justify the caution. Alternatively, DBS arguably erred in law by failing to give adequate reasons for their finding that the May 2000 caution was given due to the Appellant’s threatening behaviour.

Ground 2

26. Arguably, the essence of DBS’ barring reasoning was this. Between 2000 and 2004, the Appellant’s behaviour became increasingly threatening and violent (“a pattern of threatening and violent behaviour between 2000 and 2004, which escalated in severity and was repeated despite sanction”). The Appellant is therefore a person who, at times, is unable to control his temper and, if he loses his temper, might harm a child (“serious concerns that you pose an unacceptable risk of physical harm to child”). Arguably, DBS’ reasoning only works if (a) the Appellant’s current anger management capabilities are the same as they were in 2004; and (b) his deficient anger management is such that, if he loses his temper, he might harm a child.

27. Arguably, DBS made a mistake on a point of law by failing to give adequate reasons for finding that the Appellant continued to have the same propensity to violence which, on DBS’ findings, he demonstrated in 2000 to 2004, and which included a propensity to cause physical harm to a child. Arguably, adequate reasons called for some explanation as to why:

(a) despite the absence of any proven violent acts since 2004, the Appellant continued to have a propensity to violence; and

(b) despite the absence of any proven acts of violence against a child (the 2000 incident, whatever it involved, was not an act of violence and, since it involved a “youth”, may not even have been directed at a child).

Arguments

Appellant

28. The Appellant's written submissions provide his description of the events which led to his May 2000 caution for an offence under section 4A(1)(a) of the Public Order Act 1986:

"I was on a night out after my birthday celebrations and was singing the national anthem outside of a nightclub...I was asked to be quiet by the police and refused to quieten down believing I was well within my rights to be singing. The police asked me again to be quiet and I called them several names which resulted in them giving me a caution. I understand I was out of order by shouting at them with abusive language and completely accept this was wrong in this case. However, this is the background to the caution which did not yield any harm to a child."

29. The Appellant describes the circumstances of the 2003 caution for common assault as follows:

"[the] incident...occurred after a night out with my then partner. We were walking home and we were being overly loud walking. At this point, someone came out of their house and told me to shut up and be quiet. This person, approached me and pushed me and I reacted by punching back once which struck him. This person then went home and nothing more was mentioned. I was not aware of this person being of that age and although I should not have punched back, i was defending myself against someone who at the time, even though I was older, was in fact bigger than I was at the time. I was not aware of this person being that age they were. This person struck me first. I accepted the caution due to lack of understanding at the time."

30. In relation to the third, and clearly most significant, offence, the Appellant accepts that it was a serious assault and wrote "there is no excuse for this incident". However, he argues that it should not, some 20 years later, have any bearing on whether he can work with children. At the hearing, the Appellant informed us that there was no excuse for his behaviour, he was in an abusive relationship and 'took it too far'. He remained disturbed by his actions and it 'still hurts', although he has remained close to the woman who was the victim of the assault and with whom he shares a child.

31. The Appellant provided a reference from the Head Coach of a local football club. Dated 30 November 2023, the reference states as follows:

"I first met [the Appellant] in March 2016 when his son...joined [the club's] u11s who I was coaching. The following season [the Appellant] began refereeing matches for [the club's] u12s at my request. He continued refereeing matches for this team as they progressed through the age groups, during which time [the Appellant] became a qualified referee."

I was always impressed with the way that [the Appellant] would conduct himself whilst officiating matches, talking to the players and explaining decisions without prejudice or arrogance. He was able to apply humour while maintaining authority and dignity.

Such was the impression he made upon me as a referee that I subsequently asked him to officiate matches for [T] Football Academy where I was also coaching. [The Appellant] handled the step up to...Premier level very well, demonstrating that he was not only technically capable but also able to handle the increased pressure at that level.

There was never an occasion that [the Appellant] became stressed or frustrated, keeping calm at all times, and I have had no safeguarding concerns regarding [the Appellant] as either a referee or a parent.

His approach set the precedent for the behaviour of players that he refereed. I would have no hesitation in saying that [the Appellant] was an impeccable role model for the children he came into contact with.

[The Appellant's son], inspired by his father, became a qualified referee himself during his time playing for [the club]. After [the son] stopped playing football (post u16s) I continued to call on the services of [the Appellant] to referee matches for me.

In all my interactions with him I have found [the Appellant] to be honest, trustworthy and virtuous. It is my opinion that [the Appellant] is not only a good referee but a good human being with sound values and morals."

32. At the hearing, the Appellant said that, over the last 20 years, he had played an increasingly active role in the life of his community and believed that his football coaching for children had had a particularly positive impact. His youngest son found it very difficult to understand why his father was not allowed to be a football coach.

33. The Appellant told us that he was a changed person, and not who he was 20 years ago. He was 'very confused' as to why DBS, after issuing Enhanced Disclosure Certificates in connection with his football coaching / refereeing, suddenly decided that he was unsafe to be around children.

Appellant's cross-examination at the hearing

34. At the hearing, Mr Tinkler, for DBS, examined the Appellant.

35. Mr Tinkler put it to the Appellant that, by saying he accepted a police caution due to a 'lack of understanding' he was attempting to play down the incident's significance. The Appellant said he was not trying to pass on blame and did not consider any of the three incidents to be 'small'. His point was only that he did not, at the time, understand the consequences of accepting a police caution. The Appellant added that he was not 'a nice person' 20 or so years ago but with the support of probation services, and therapy, realised that he needed to ensure he did not continue down the wrong path. He had worked all his life and now had a stable, responsible job in the IT sector.

36. Mr Tinkler asked the Appellant if he was now saying that he did not commit the assault that was the subject of his second police caution. The Appellant said he was not, but the first blow was struck by the youth, and he thinks that the youth should also have received some kind of punishment.

37. Mr Tinkler put it to the Appellant that his argument that the assault on his partner should have 'no bearing' on his suitability to work with children demonstrated a lack of understanding that such an assault could give rise to legitimate concerns. The Appellant replied, 'I accept what you're saying' but asked for some consideration to be given to the fact that he is not a particularly articulate person. Mr Tinkler suggested that this was indicative of the Appellant's belief that his actions could be 'swept away'.

38. The Appellant was asked why he had not provided evidence of the therapy he claimed to have undergone. He replied that it did not end until January this year. Mr Tinkler asked if this was therapy connected to the incidents 20 or so years ago. He said no and that support in coming to terms with those incidents was provided by a probation officer. Mr Tinkler asked the Appellant why he had not provided evidence from the probation service. He replied that he was 'not used to this sort of thing' and 'maybe I should have got representation', but that, anyway, the probation office was now closed. Mr Tinkler asked the Appellant why he did not mention therapy in correspondence. The Appellant replied that he 'could not answer that' but could obtain a letter from his therapist if that would be useful.

39. Mr Tinkler put it to the Appellant that DBS' minded to bar letter clearly demonstrated that they were aware of his criminal history and considered that it raised doubts about his suitability to work with children. He might not have agreed with that analysis, but he surely understood it DBS. The Appellant replied, 'I completely understand' but added that he had

previously been issued with a number of DBS certificates. However, he regretted ignoring DBS' minded to bar letter.

DBS

40. In relation to ground 1, DBS accept that, when they made their barring decision, they knew nothing of the circumstances of the Appellant's first caution other than that it related to an offence under section 4A(1) of the Public Order Act 1986. Indeed, DBS' barring decision letter made it clear that the context to the caution was unknown. Nevertheless, DBS was entitled to find that the 3 offences were "a pattern of threatening and violent behaviour which escalated in severity and repeated despite sanction." Whether the conduct which led to the Appellant's caution was threatening or abusive or insulting does not matter. In *R(R) v DPP* [2006] EWHC 1375 (Admin), the High Court described harassment, alarm and distress as relatively strong words befitting an offence which may carry imprisonment or a substantial fine and that the word 'distress' in this context requires emotional disturbance or upset.

41. At the hearing, Mr Tinkler submitted that the Appellant's oral evidence about the three incidents reinforced DBS' finding of a pattern of increasing violence. Regarding the 2000 caution, the Appellant said he got into an argument with police and used abusive language. It could not be dismissed as a 'childish prank', as the Appellant seemed to suggest. On the material before DBS, they were perfectly entitled to find a pattern of escalating violence in which, in fairly short succession, the Appellant first acted towards police in a threatening or abusive manner, then assaulted a young person and, finally, committed an 'exceptionally serious' assault on his then partner.

42. Most of DBS' written submissions on ground 2 dwell on the question whether the 'youth' victim of one of the Appellant's offences was or was not a child. In other respects, it is as if DBS' written submissions are drafted not by reference to the actual ground of appeal but by reference to the ground as DBS consider it should have been framed. The submissions read as follows:

"Risk assessment is usually a matter for the DBS not the UT as the case law makes clear.

The DBS fully recorded in its decision that the offences were committed more than 18 years ago and [the Appellant] has not committed any relevant conduct since that time. However, [the Appellant] has not produced any evidence of insight or reflection. He has provided no details about the offences that were committed. He has provided no evidence of any community element of his suspended sentence to show how it

was completed or any probation reports. He has provided no expert report from a psychiatrist/psychologist addressing current risk.

[The Appellant] committed very serious offences culminating in a serious assault against a partner in a domestic violence context which resulted in a lengthy custodial sentence (albeit suspended). Applying [*DBS v JHB* (2023) EWCA Civ. 982] there is no mistake of fact in the barring decision which is essentially an appropriateness challenge based on the time since the offences were committed. The appeal should be dismissed.”

43. DBS’ skeleton argument for the hearing before the Upper Tribunal submits that its barring decision letter did address the “passage of time of these offences” and that the Appellant has “shown little reflection on the actual offences” given his failure to provide evidence “of rehabilitative work to address the offending”.

44. At the hearing, Mr Tinkler argued that it should have been obvious to the Appellant why he had been barred from working with children and therefore the barring decision was adequately reasoned. DBS’ view was that the Appellant’s criminal history established an ongoing risk. Their decision letter addressed the passage of time by stating that, of itself, this does not mitigate risk. DBS’ decision was not flawed by omitting to find that the Appellant presented some quantifiable level of risk. DBS found that the Appellant posed an unacceptable risk to children, which was in the nature of a risk assessment; a matter which the Court of Appeal has held is exclusively for DBS to evaluate. The Ground 2 issue was essentially the magnitude of risk posed by this individual. It is for DBS to determine risk, and it is uniquely qualified to do so, as the case law authorities recognise. Mr Tinkler also disputed the Appellant’s assertions that none of his offences involved children. The victim of the second offence seemed to be aged 16.

45. Mr Tinkler submitted that the Appellant had not demonstrated any serious level of reflection on the nature of his offending. The public order incident was passed off as a drunken escapade, the assault on the youth was not viewed by him as a serious matter and the very serious assault on his partner was simply taking matters ‘too far’.

46. At the hearing, Mr Tinkler submitted that DBS were unable to take account of the Appellant’s football coaching experience because he failed to make representations in response to DBS’ minded to bar letter.

47. Mr Tinkler argued that, if the appeal were allowed, the matter should be remitted to DBS for a new decision. He did not submit that, pending such a decision, the Appellant should remain on the children's barred list.

Panel's questioning of the Appellant

48. Upper Tribunal Member Jacoby asked the Appellant, 'who were you twenty years ago?'. He said he was young, naïve, silly and growing up in an environment where violence was commonplace. The Appellant said he spent 16 years being physically abused by his mother and her partner and, when he left home, took out his anger on other people. That was his mentality a long time ago, but he had reconciled with his mother and, 'I know that's why I've changed'.

49. Member Jacoby asked the Appellant how he had learned to be different. He said it was having children and being aware that he was an influence on them. The Appellant said he had learnt how to deal with his emotions, which was important so that his children did not become like the person he used to be.

50. The Appellant became tearful when Member Jacoby asked him about the serious assault of his ex-partner in 2004, but he declined the offer of a short adjournment break. Member Jacoby asked him to explain why he said he 'hurt a lot then and now'. The Appellant replied that he did not like who he was then, and his environment 'pushed me into a world of violence'. The Appellant hated what he had done and added, 'it's just disgusting'.

51. Member Jacoby asked the Appellant to provide details of the therapy he mentioned in evidence. He named the therapist that he started seeing in August 2022 after breaking up with a partner. They discussed how he coped with his emotions and feeling that he did not 'want to be here'. The Appellant said that the therapy sessions ended in January 2024. Initially, he had weekly sessions but, from October 2023, saw the therapist fortnightly. Member Jacoby asked the Appellant what type of therapist he saw. He was unsure but he described what they used to talk about. The Appellant said he found the therapist himself, from a *Google* search.

Analysis

Ground 2

52. We shall deal with Ground 2 first.

53. We recognise that, under section 4(3) of the 2006 Act, the decision whether it is appropriate for an individual to be included in a barred list may not be challenged on appeal to the Upper Tribunal. We also recognise that *AB*, which binds the Upper Tribunal, held that “unless the decision of the DBS is legally or factually flawed, the assessment of the risk presented by the person concerned...is a matter for the DBS”. However, we do not accept that these limitations on the Upper Tribunal’s jurisdiction permit DBS to make barring decisions that are inadequately reasoned. Had that been Parliament’s intention, we would have expected the 2006 Act to include express provision along the lines of ‘the question whether DBS have given adequate reasons for a decision that it is appropriate to include a person in a barred list is not a question of law or fact’.

54. We also recognise that the Appellant’s failure to respond to DBS’ invitation to make representations against their proposal to include him in the children’s barred list is relevant to our analysis of the adequacy of DBS’ reasons. DBS could only work with the material available to them and cannot be criticised for having failed to address matters which the Appellant now says he would have raised had he responded to their minded to bar letter. However, the material available to DBS included at least one, and possibly more, recent disclosure certificates issued in respect of the Appellant for the position ‘child workforce – match official’. DBS were therefore aware that, whatever their concerns about the Appellant’s suitability to work with children, they did not include any reports made to DBS of instances of inappropriate behaviour (such as a loss of temper) while the Appellant was acting as a ‘child workforce – match official’. DBS were also aware that, since 2004, the Appellant had neither been convicted nor cautioned for any further offences involving violence or threatening behaviour.

55. The nature of DBS’ risk assessment was, in our judgment, transparent. Between 2000 and 2004, the Appellant’s behaviour became increasingly threatening and violent despite initial punishments. This showed that the Appellant was a person who, at times, was unable to control his temper. If he lost his temper, he might harm a child (“serious concerns that you pose an unacceptable risk of physical harm to child”).

56. DBS' reasons did not include any analysis by reference to academic or medical research. They did not, for instance, seek to rely on reported studies (if there are any) of the ongoing propensity to violence in middle age of men who, as young men, committed acts of violence. DBS' analysis was simply that, as a person whose behaviour during a four-year period that ended nearly 20 years ago became increasingly violent, the Appellant's anger management skills must remain deficient such that he posed an unacceptable risk of harm to children.

57. We acknowledge that DBS had little evidential material on which to base their assessment of risk. However, there were evidential absences that were themselves potentially relevant, namely the absence of evidence that, since 2004, the Appellant had committed further offences of violence and the absence of reports made to DBS about the Appellant's conduct as a junior football coach / referee. In our judgment, the requirement to give adequate reasons for a barring decision called for DBS to provide some explanation as to why, despite these evidential absences, what the Appellant did some twenty years ago demonstrated ongoing anger management deficiencies such that he posed an unacceptable risk of physical harm to children. We therefore decide that DBS made a mistake of law because they gave inadequate reasons for their barring decision. We allow this appeal.

Ground 1

58. It is not necessary for us to determine Ground 1, and we do not attempt to do so. That is not to be read as any expression of opinion about the merits, or demerits, of Ground 1. A new DBS decision is required in this case in which this and other aspects of the Appellant's case may be considered afresh by DBS.

Disposal

59. The Upper Tribunal allows this appeal and remits this matter to DBS for a new decision. We do not consider that this is a case in which, in accordance with *AB*, the Upper Tribunal may properly direct DBS to remove the Appellant from the children's barred list.

60. The default position under section 4(7)(b) of the 2006 Act is that a person is removed from a barred list pending a new DBS decision. We have not been asked to direct that the Appellant remains on the children's barred list pending DBS' new decision. We make no such direction and, therefore, the Appellant is removed from the children's barred list pending DBS' new decision.

61. Section 4 of the 2006 Act does not confer power on the Upper Tribunal to give directions about evidence to be obtained before DBS make a new decision. However, we would strongly recommend that evidence is obtained (whether by the DBS, the Appellant or jointly) in the form of a report from a psychiatrist or psychologist about the Appellant's ongoing propensity (if any) to violence, taking into account his three cautions and convictions between 2000 and 2004.

Conclusion

62. This appeal succeeds, and this matter is remitted to DBS for a new decision as to whether the Appellant should be included on a list maintained under the 2006 Act.

63. Finally, the judge apologises to the parties but, in particular, the Appellant for the delay in giving this decision, a result of a backlog of work that built up while the judge was absent from duties recovering from serious injuries sustained in an accident.

**Authorised for issue by the Upper
Tribunal panel on 30 September 2025**

Section 4(6) of the Safeguarding
Vulnerable Groups Act 2006