



**Neutral Citation Number: [2025] UKUT 392 (AAC)**

**Appeal No. UA-2024-000488-V**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**JR**

**Appellant**

**- v -**

**Disclosure and Barring Service**

**Respondent**

**By an order made on 29 May 2024 and pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, THE UPPER TRIBUNAL ORDERED 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 JR**
  - b. the service user (RJ) and their family members (ZJ and KS),**
- 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 L. Joanne Smith  
Decided on consideration of the papers**

**On an application for costs in respect of a Disclosure and Barring Service decision dated 22 March 2024.**

**Representation:**

**Appellant:** Unrepresented  
**Respondent:** Mr A. Webster of Counsel

### **SUMMARY OF DECISION**

The Appellant made an application for costs in respect of the time spent preparing for and applying for permission to appeal the decision of the Disclosure and Barring Service dated 22 March 2024, to include her name on the Adults' Barred List and the Children's Barred List. Permission to appeal was granted after an oral hearing, following which, the Disclosure and Barring Service reviewed its decision and removed the Appellant's name from the barred lists. The application for costs is refused.

**KEYWORD NAME (Keyword Number)** Safeguarding; costs application

*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 REFUSE the Appellant's application for costs.**

### **REASONS FOR DECISION**

#### **Introduction**

1. The Appellant made an application for permission to appeal against the decision of the Disclosure and Barring Service (the "DBS"), set out in a Final Decision Letter ("FDL") dated 22 March 2024, to include her name on the Adults' Barred List ("ABL") and the Children's Barred List ("CBL") in accordance with paragraphs 9 and 3 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 ("the Act"), respectively. After an oral hearing on 26 March 2025, I granted permission to appeal on 8 April 2025.
2. On 17 June 2025, the Respondent notified the Upper Tribunal that it had concluded a review of its barring decision, under paragraph 18A of Schedule 3 to the Act, and it had removed the Appellant's name from both barred lists with effect from the same date.
3. As the decision was reviewed in favour of the Appellant, the appeal became academic. The appeal was automatically struck out on 29 August 2025.

### The application for costs

4. Following the outcome of the respondent's review, which resulted in the Appellant's name being removed from the barred lists, the Appellant submitted an application for costs (the "application").
5. The Appellant's case is that, while she is relieved by the review decision, she had been prevented from pursuing her chosen career from 22 March 2024, the date of the barring decision. The appeal against the barring decision has caused anxiety and stress which have brought about a deterioration in her health, including heart palpitations, pain and emotional stress. Although she initially obtained some pro-bono legal assistance, the Appellant conducted the appeal herself. She seeks costs in relation to her time spent understanding the law and preparing the case, in order to appeal the decision which she submits was wrongly made by the Respondent. She feels the Respondent's erroneous decision has had far-reaching and damaging consequences on her life, career and health. She considers that four months have been spent dealing with the proceedings since the decision was made, while the Respondent's decision to withdraw from proceedings having reviewed the decision took a matter of days.
6. The Respondent prepared a written submission in response to the application, dated 4 September 2025. It defends the application on the basis that firstly, the application for costs is fatally defective as it does not follow the requirements in the procedural rules, nor does it set out quantum (the amount claimed). Secondly, the Respondent submits that it "considered that the bar was appropriate, proportionate and otherwise within its powers and, accordingly, the Respondent cannot be said to have acted unreasonably in the manner in which it defended and/or conducted the proceedings." It argues that the power to award costs should be exercised with restraint (*Thapa v Entry Clearance Officer* [2018] UKUT 54 (IAC)).

### The Composition of the Tribunal to determine the costs application

7. The composition of the tribunal to determine this costs application is governed by the Practice Statement for "*Composition of tribunals in relation to matters that fall to be decided by the Administrative Appeals Chamber of the Upper Tribunal on or after 26th March 2014*" (the "Practice Statement"). Paragraph 3 of the Practice Statement provides, so far as is relevant to this application:

*"3. In accordance with articles 3 and 4 of the 2008 Order, any matter that falls to be decided by the Administrative Appeals Chamber of*

*the Upper Tribunal is to be decided by one judge of the Upper Tribunal (or by a Registrar if the Senior President of Tribunals has approved that they may decide the matter) except that –*

*b. where the matter is the determination of an appeal brought under section 4 of the Safeguarding Vulnerable Groups Act 2006 (otherwise than by the striking out of the appeal under rule 8(2) or (3)(a) or (b) of the 2008 Rules), the matter is to be decided by – i. one judge and two other members of the Upper Tribunal; or ii. where the Senior President of Tribunals or Chamber President considers that the matter involves a question of law of special difficulty or an important point of principle or practice, or that it is otherwise appropriate, two judges and one other member of the Upper Tribunal.”*

8. Paragraph 10 of the Practice Statement provides:

*“10. Where the Upper Tribunal has given a decision that disposes of proceedings (“the substantive decision”), any matter decided under, or in accordance with, rule 5(3)(l) or Part 7 of the 2008 Rules or section 10 of the 2007 Act must be decided by the same member or members of the Upper Tribunal as gave the substantive decision.”*

9. A costs application is decided under Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the “UT Rules”). It is not an appeal therefore it does not fall within paragraph 3b of the Practice Statement and does not require a panel. As it is not decided under Rule 5(3)(l) (suspension of decision pending appeal or review), or Part 7 of the UT Rules (which contains rules 41 to 48) or section 10 of the Tribunals, Courts and Enforcement Act 2007 (the “2007 Act”) (reviews), the application for costs falls squarely within paragraph 3 of the Practice Statement, requiring it to be decided by a single judge of the Upper Tribunal. I have therefore determined this application alone.

### **Why I have refused this application for costs**

10. Section 29 of the 2007 Act outlines the position in respect of costs applications made to the Upper Tribunal, and states:

#### **29. Costs or expenses**

*(1) The costs of and incidental to—*

- (a) all proceedings in the First-tier Tribunal, and*  
*(b) all proceedings in the Upper Tribunal,*  
*shall be in the discretion of the Tribunal in which the proceedings take place.*
- (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.*
- (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.*
- (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—*  
*(a) disallow, or*  
*(b) (as the case may be) order the legal or other representative concerned to meet,*  
*the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.*
- (5) In subsection (4) “wasted costs” means any costs incurred by a party—*  
*(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or*  
*(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.*
- (6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.*
- (7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.*

11. Consequently, by virtue of s.29 of the 2007 Act, I have a discretion to make a costs order in respect of any wasted costs arising from the costs of and incidental to the Appellant's application for permission to appeal to the Upper Tribunal, and in accordance with the UT Rules.

12. Rule 10 of the UT Rules states, as is relevant to this application:

**Orders for costs**

**10.—**(1) *The Upper Tribunal may not make an order in respect of costs (or, in Scotland, expenses) in proceedings transferred or referred by, or on appeal from, another tribunal except—*

*(aa) in a national security certificate appeal, to the extent permitted by paragraph (1A);*

*(a) in proceedings transferred by, or on appeal from, the Tax Chamber of the First-tier Tribunal; or*

*(b) to the extent and in the circumstances that the other tribunal had the power to make an order in respect of costs (or, in Scotland, expenses)....*

*(3) In other proceedings, the Upper Tribunal may not make an order in respect of costs or expenses except—*

*(a) in judicial review proceedings;*

*(b) . . . . .*

*(c) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;...*

*(d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings; ...*

*(4) The Upper Tribunal may make an order for costs (or, in Scotland, expenses) on an application or on its own initiative.*

*(5) A person making an application for an order for costs or expenses must—*

*(a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and*

*(b) send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the Upper Tribunal.*

*(6) An application for an order for costs or expenses may be made at any time during the proceedings but may not be made later than 1 month after the date on which the Upper Tribunal sends—*

*(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or*

*(b) notice under rule 17(5) that a withdrawal which ends the proceedings has taken effect.*

*(7) The Upper Tribunal may not make an order for costs or expenses against a person (the “paying person”) without first—*

*(a) giving that person an opportunity to make representations; and*

*(b) if the paying person is an individual and the order is to be made under paragraph (3)(a), (b) or (d), considering that person's financial means.*

*(8) The amount of costs or expenses to be paid under an order under this rule may be ascertained by—*

*(a) summary assessment by the Upper Tribunal;*

*(b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses ("the receiving person"); or*

*(c) assessment of the whole or a specified part of the costs or expenses, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.*

*(9) Following an order for assessment under paragraph (8)(c), the paying person or the receiving person may apply—*

*(a) in England and Wales, to the High Court or the Costs Office of the Supreme Court (as specified in the order) for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998 shall apply, with necessary modifications, to that application and assessment as if the proceedings in the tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply;*

*(b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in that court; or*

*(c) in Northern Ireland, to the Taxing Office of the High Court of Northern Ireland for taxation on the standard basis or, if specified in the order, on the indemnity basis.*

*(10) Upon making an order for the assessment of costs, the Upper Tribunal may order an amount to be paid on account before the costs or expenses are assessed.*

13. In the first instance, the Respondent has raised a procedural error in this application for costs and suggests that it should not be admitted. Indeed, as there is no schedule of costs accompanying the application, there is a procedural error (Rule 10(5)(b)). Nevertheless, I am exercising my case management powers under Rule 7(2)(a) of the UT Rules to waive the requirement for a schedule of costs to be supplied upon application as this application is being made by an unrepresented litigant, and some flexibility should be accorded. I am therefore admitting the application for consideration.
14. The power under which I can consider this application for costs, falls within Rule 10(3)(c) and (d). This relates to a wasted costs order, which can be made if the Upper Tribunal "considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings." The

application of Rule 10(3)(d) was considered in *Thapa v Entry Clearance Officer* [2018] UKUT 54 (IAC). At paragraph 25, the Hon. Mr Justice Lane highlights what amounts to “unreasonable”:

*“In Cancino (costs – First-tier Tribunal – new powers) [2015] UKFTT 00059 (IAC), the then President of the Immigration and Asylum Chamber of the Upper Tribunal, sitting in the First-tier Tribunal with the President of the Immigration and Asylum Chamber of that Tribunal, gave guidance on the issue of costs, including rule 10(2)(b) of the 2008 Rules (which corresponds with rule 9(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014). In Cancino, the Tribunal drew upon a number of judgments of the Court of Appeal, including Ridehalgh v Horsefield [1994] Ch 205. At [232] in that case, the Court held that the word “unreasonable” was such as aptly to describe – “... conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment, but it is not unreasonable.”*

15. The judgement continues, at paragraph 28:

*“What emerges from Cancino is that the power to award costs under rule 10 of the 2008 Rules (or rule 9 of the 2014 Rules) is to be exercised with significant restraint. In particular, the parties and their representatives must realise that these powers are of a fundamentally different character from the procedural provisions and practices found in the courts and some tribunals, whereby costs regularly “follow the event”; in other words, where a successful party will normally be awarded his or her costs.”*

16. While not specifically stated in her application for costs, the Appellant’s case must be that the DBS acted unreasonably by relying on the evidence before it and making the decision to bar her from working with vulnerable adults and children. Upon the barring decision being made, the Appellant immediately took steps to appeal that decision and has spent time and resources in order to prepare her case. This is time and resources that she would not have needed



to spend had the decision not been made. Furthermore, she suggests that the review decision to remove the Appellant's name from the barred lists, highlights an error having been made in the initial barring decision, such that it highlights the unreasonableness.

17. Permission to appeal was granted on 8 April 2025 following an oral hearing. The DBS was directed to obtain further evidence in preparation for the appeal hearing, as I found it to be arguable that the DBS had made a mistake of fact upon which the decision to bar was based. Upon receipt of this further evidence, which it did not have at the date of the barring decision, the DBS decided to conduct a review and thereafter removed the Appellant's name from the barred lists.
18. The DBS is the body corporate, established under s.87 of the Protection of Freedoms Act 2012, which has the responsibility of performing the functions under the Safeguarding Vulnerable Groups Act 2006 (the "2006 Act"). The 2006 Act is concerned with the protection of children and vulnerable adults, and provides a mechanism by which individuals may be barred from working with children or vulnerable adults in prescribed statutory circumstances. In *R (on the application of SXM) v DBS* [2020] EWHC 624 (Admin), the Upper Tribunal comments, at paragraph 38, that by virtue of the provisions within the 2006 Act, "the function of DBS is a protective forward-looking function, intended to prevent the risk of harm to children by excluding persons from involvement in regulated activities. DBS is not performing a prosecutorial or adjudicatory role, and it is not engaged in considering complaints from individuals and imposing punishments..." When considering the reasonableness of the DBS' in bringing, defending or conducting these proceedings, I must bear its statutory duty and function in mind.
19. Given this "protective" and "forward looking" function, which is intended to prevent the risk of harm to children and vulnerable adults, I do not find that the DBS has behaved unreasonably as required by rule 10(3)(d) in defending the appeal brought against its barring decision by the Appellant or in conducting proceedings. Applying the test from *Cancino*, the conduct of the DBS in barring the Appellant and thereafter defending appeal proceedings against that decision, has a reasonable explanation. On the information before it, at the date of the barring decision, the DBS believed the allegations against the Appellant were made out, and on that basis, having undertaken a risk assessment, considered that it was appropriate to include her name on the barred lists. As the body tasked with protecting children and vulnerable adults, the decision to bar the Appellant was within its power on that information. Thereafter, upon

receipt of new information, following the grant of permission to appeal, the DBS appropriately reviewed its decision and promptly removed the Appellant's name from the barred lists. It did not delay, nor did it behave vexatiously. The process of the Appellant challenging the decision, as she is entitled to do, brought about the change in the decision. This is exactly what happens in other successful appeals, save that this appeal was determined in a more timely fashion and without recourse to a full appeal hearing, or for a determination to be made by the Upper Tribunal.

20. In addition, I am guided by the commentary in *Thapa* which states that the power to award costs in the Upper Tribunal should be exercised with significant restraint. This was not a case where it was clear from the outset that the decision of the DBS was made in error of law or in material fact. My grant of permission was simply that the grounds raised by the Appellant made it *arguable* that the DBS had erred either in law or in material fact. As soon as the DBS became aware that its decision required review, it proceeded to conduct that review, and the Appellant succeeded in achieving her aim of being removed from the barred lists.

21. For the reasons outlined above, I conclude that any costs incurred by the Appellant were not incurred as a result of any improper, unreasonable or negligent act or omission on the part of the DBS, and the application for costs is refused.

**L. Joanne Smith**  
**Judge of the Upper Tribunal**

**(Authorised for issue on)**  
**21 November 2025**