



**The Upper Tribunal  
(Administrative Appeals Chamber)**

**UT NCN: [2025] UKUT 400 (AAC)  
UT Case Number: UA-2024-001037-V**

**Summary: Safeguarding Vulnerable Groups (65.8 - proportionality)**

*Safeguarding Vulnerable Groups Act 2006 - section 4(2)(a) – the appellant was included in the adults' barred list – he had worked in regulated activity in 2012 for a short period to fill in the time between college and obtaining employment in his chosen career – he had never worked with vulnerable adults since and had no wish or intention to do so – the Upper Tribunal decided that the test for regulated activity was satisfied, but that it was disproportionate to include him in the barred list.*

**Before**

**UPPER TRIBUNAL JUDGE JACOBS  
TRIBUNAL MEMBERS BAINBRIDGE AND HEGGIE**

**Between**

**JR**

**Appellant**

**v**

**Disclosure and Barring Service**

**Respondent**

**THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:**

**No one shall publish or reveal the name or address of JR, who is the Appellant in these proceedings, or any information that would be likely to lead to the identification of any member of his family 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 sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years' imprisonment or an unlimited fine.

Decided on 03 December 2025 following an oral hearing on 27 November 2025.

**Representatives**

Appellant: Spoke on his own behalf.

DBS: Ashley Serr of counsel, instructed by DAC Beachcroft

## **DECISION OF THE UPPER TRIBUNAL**

On appeal from the Disclosure and Barring Service (DBS from now on)

DBS reference: 01027273050 (modified by 010485996)

Decision letter: 7 June 2024 (modified on 2 October 2024)

This decision is given under section 4 of the Safeguarding Vulnerable Groups Act 2006 (SVGA from now on):

As DBS made a mistake in law, the Upper Tribunal, pursuant to section 4(6)(a) of SVGA, directs DBS to remove the appellant from the adult's barred list.

## **REASONS FOR DECISION**

### **A. What this appeal is about**

1. By the time this appeal came before us, JR was included only in the adults' barred list. His inclusion was based on a caution and relevant conduct in relation, not to an adult, but to his children. We take this statement from DBS's letter of 7 June 2002:

- You were issued with a conditional caution for the offence of Cause Assault/III Treatment/Neglect/Abandonment of Child/Young Person To Cause Unnecessary Suffering on 29/12/2023.
- In September 2023, you hit your 5 year old daughter with an ice pop which caused a bruise to her eye area.
- On or prior to 11 July 2022, you used excessive physical force when trying to put your 4 year old daughter in the 'naughty' corner/step, which caused marks/bruising to her arm.

The caution relates to the ice pop incident.

### **B. How the scope of the appeal narrowed**

2. On 22 January 2024, DBS sent an **Intention to bar** letter to JR in relation to the caution. JR made representations. On 10 May 2024, DBS invited JR to make further representations in relation to incidents of relevant conduct. JR again made representations. DBS made its final decision on 7 June 2024. DBS included JR in both the adults' barred list and the children's barred list. This was based on the matters we have listed together with an incident involving a young woman in a nightclub. It found that a further incident in the nightclub had not been proved. JR applied to the Upper Tribunal for permission to appeal in July 2024. Subsequently, on 2 October 2024, DBS removed JR from the children's barred list. Separately, DBS abandoned reliance on the remaining nightclub incident. These changes left the position as set out in paragraph 1.

### **C. The grounds of appeal**

3. Judge Jacobs gave JR permission to appeal to the Upper Tribunal on three grounds:

First, in the circumstances of this case, the test for regulated activity may not be satisfied.

Second, DBS may have made mistakes\* of fact in relation to the findings on which it continues to rely. [\*We have corrected the typo in the original.]

Third, given the above grounds, either individually or collectively, it may have been disproportionate to include JR in the adults' barred list.

4. Judge Jacobs explained:

I have given permission on the ground that there may be errors in the findings made or additional findings that would qualify the nature of the incidents. It is also possible that a decision based on the two remaining findings was disproportionate.

I have given permission on the ground that the test for regulated activity may not have been met. JR did work with vulnerable adults for a few months in 2012-2013. It was only as a stop-gap pending a decision on his future career. He has not worked or volunteered with vulnerable adults since and, he told me, has no intention to do so in the future. It is also possible that relying on such limited and historic activity may render the decision to include him in the list disproportionate.

5. JR did not apply for permission to amend his grounds (as explained in Section III of *KS v Disclosure and Barring Service* [2025] UKUT 45 (AAC). Accordingly, we limited our consideration to the grounds on which permission was given, as required by *Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 at [97].

## D. The legislation

### *The barring provisions*

6. These are the provisions of Schedule 3 SVGA that are relevant to the adults' barred list.

#### *Inclusion subject to consideration of representations*

##### **Paragraph 8**

- (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) Sub-paragraph (4) applies if it appears to DBS that—
  - (a) this paragraph applies to a person, and
  - (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.
- (4) DBS must give the person the opportunity to make representations as to why the person should not be included in the adults' barred list.
- (5) Sub-paragraph (6) applies if—
  - (a) the person does not make representations before the end of any time prescribed for the purpose, or
  - (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
- (6) If DBS—
  - (a) is satisfied that this paragraph applies to the person, and

- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,

it must include the person in the list.

(7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

(8) If DBS—

- (a) is satisfied that this paragraph applies to the person,
- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and
- (c) is satisfied that it is appropriate to include the person in the adults' barred list,

it must include the person in the list.

### *Behaviour*

#### **Paragraph 9**

(1) This paragraph applies to a person if—

- (a) it appears to DBS that the person—
- (i) has (at any time) engaged in relevant conduct, and
- (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and

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

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

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

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

#### **Paragraph 10**

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

- (a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;
- (b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him;
- (c) conduct involving sexual material relating to children (including possession of such material);
- (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;

- (e) conduct of a sexual nature involving a vulnerable adult, if it appears to DBS that the conduct is inappropriate.
- (2) A person's conduct endangers a vulnerable adult if he–
  - (a) harms a vulnerable adult,
  - (b) causes a vulnerable adult to be harmed,
  - (c) puts a vulnerable adult at risk of harm,
  - (d) attempts to harm a vulnerable adult, or
  - (e) incites another to harm a vulnerable adult.
- (3) 'Sexual material relating to children' means–
  - (a) indecent images of children, or
  - (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.
- (4) 'Image' means an image produced by any means, whether of a real or imaginary subject.
- (5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (6) For the purposes of sub-paragraph (1)(d) and (e), DBS must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

*The appeal provisions*

7. Section 4 SVGA contains the Upper Tribunal's jurisdiction and powers.

**4 Appeals**

- (1) An individual who is included in a barred list may appeal to the Upper Tribunal against–
  - ...
  - (b) a decision under paragraph 2, 3, 5, 8, 9 or 11 of Schedule 3 to include him in the list;
  - (c) a decision under paragraph 17, 18 or 18A of that Schedule not to remove him from the list.
- (2) An appeal under subsection (1) may be made only on the grounds that DBS has made a mistake–
  - (a) on any point of law;
  - (b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.

(3) For the purposes of subsection (2), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.

(4) An appeal under subsection (1) may be made only with the permission of the Upper Tribunal.

(5) Unless the Upper Tribunal finds that DBS has made a mistake of law or fact, it must confirm the decision of DBS.

(6) If the Upper Tribunal finds that DBS has made such a mistake it must—

- (a) direct DBS to remove the person from the list, or
- (b) remit the matter to DBS for a new decision.

(7) If the Upper Tribunal remits a matter to DBS under subsection (6)(b)—

- (a) the Upper Tribunal may set out any findings of fact which it has made (on which DBS must base its new decision); and
- (b) the person must be removed from the list until DBS makes its new decision, unless the Upper Tribunal directs otherwise.

...

#### *Human Rights Act 1998 provisions*

8. The Article 8 Convention right is in Schedule 1:

#### *Article 8*

##### *Right to respect for private and family life*

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **E. Our approach to the evidence and findings of fact**

9. We heard evidence from JR, as we are entitled to do: *Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 at [95]. As he was not represented, he was not directed to provide a witness statement. Instead, he answered questions from the panel and on cross-examination by Mr Serr.

10. Having heard that evidence, we approached the case in accordance with the decision of the Court of Appeal in *RI v Disclosure and Barring Service* [2024] 1 WLR 4033. Bean LJ there approved at [29] the submission by counsel for RI at [28] that:

the Upper Tribunal is entitled to hear oral evidence from an appellant and to assess it against the documentary evidence on which the DBS based its decision.

Later at [31], Bean LJ said that:

where relevant oral evidence is adduced before the UT ... the Tribunal may view the oral and written evidence as a whole and make its own findings of primary fact.

And Males LJ said at [50] that the Upper Tribunal is:

entitled to evaluate that evidence, together with all the other evidence in the case  
...

11. Our assessment of the evidence is made with the benefit of the practical knowledge and experience that the specialist members bring to this jurisdiction. We refer to what the Upper Tribunal said about their qualifications for appointment in *CM v Disclosure and Barring Service* [2015] UKUT 707 (AAC) at [59] to [64].

12. In deciding whether DBS made a mistake of fact or law, we had to consider the circumstances as they were at the date of DBS's decision, which was 10 January 2024. See *SD v Disclosure v Barring Service* [2024] UKUT 249 (AAC). We are entitled to take account of evidence that was not before DBS, provided that it can be related back to that date.

#### **F. The legal basis of the decision to include JR in the barred lists**

13. DBS's letter of 7 June 2024 explained why it had included JR in the barred lists. It identified paragraphs 2 and 8 of Schedule 3 to SVGA as the legal basis for the decision. Paragraph 2 relates to the children's barred list and is no longer relevant. Paragraph 8 relates to the adults' barred list. It is still relevant, but it only relates to the caution and the ice pop incident in September 2023.

14. DBS accepted in its letter that JR was not cautioned in relation to the naughty step incident, so paragraph 8 was not relevant. The appropriate provision for that incident was paragraph 9, but DBS did not identify it as a legal basis for the decision. At the hearing, DBS relied on both paragraphs 8 and 9; we have decided the appeal on that basis.

15. It is unfortunate that the decision letter was not clear about the provisions on which DBS had relied for each list. It would have been clearer if DBS had dealt with the lists and grounds separately. That approach would have provided JR (and his representative if he had one) with a clear statement of why he was included in the adults' barred list. It would also have saved a considerable amount of judicial time.

#### **G. The caution and relevant conduct**

16. We begin with the caution. JR accepted the caution, which involves admitting his guilt of the offence stated. Specifically, the offence related to the injury caused in the ice pop incident.

17. JR provided a context for the injury. His children were outside playing with children from other families who lived in the street. His daughter wanted an ice pop and he came in to fetch her one. She did not like the flavour he had chosen and demanded a different one. It was in the course of this disagreement that JR caught his

child causing an injury. It may have been caused by his hand or the ice pop; it does not matter which. Normally, he told us, he would have laughed this off rather than engaged directly with the child's behaviour. The reason he did not do so was a result of a combination of the circumstances at the time. He had sole care of his children and his relationship with a neighbour had recently broken down. He had resorted to cocaine and was tired as a result of having little sleep. These factors together affected how he dealt with his children. He told us that he had admitted immediately to a neighbour who saw the injury that he had caused it, and he had reported it when he took the child to school on the following Monday.

18. Coming now to the naughty seat incident, his daughter was throwing a tantrum. He told her to go to the naughty seat, but she refused. He took hold of her by the upper arm to lead her to the seat, but she resisted and dug in her heels. The marks and bruises were caused when he applied sufficient force to override her resistance. Again, he admitted his responsibility.

19. So JR admits the facts underpinning the caution and the bare facts as found by DBS. He accepts responsibility and said he did so at the time. The context he has provided shows that his behaviour was influenced by the circumstances at the time. We accept that the circumstances have since changed.

20. Two issues arise.

21. First, we accept Mr Serr's argument that if this conduct were repeated against a vulnerable adult, it would or be likely to, endanger them. That satisfies paragraph 10(1)(b) of Schedule 3.

22. Second, we also accept Mr Serr's argument that JR used force that was excessive in the circumstances. We accept that the circumstances affected how JR behaved, but we find that the behaviour could be repeated. The precise combination of circumstances may not recur, but different circumstances may arise that put him under similar pressure. If it is the pressure that ultimately led him act as he did, that could lead to similar behaviour.

23. Accordingly, we find that there was no mistake in DBS's findings of fact on relevant conduct. This was the second ground of appeal.

#### **H. Regulated activity – DBS decision-making**

24. In its letter of 7 June 2024, DBS explained why the criteria for regulated activity were met:

We are satisfied that you meet the criteria for regulated activity. This is because you applied for an enhanced disclosure to work or volunteer in the child and adult workforces as a Support Worker with Nottingham Emergency Medical Services.

The caseworker explained in the **Barring Decision Summary** why DBS was satisfied on regulated activity:

JR applied for an enhanced disclosure to work or volunteer in the child workforce as a Support Worker with Nottingham Emergency Medical Services. His initial reps do not challenge this. Therefore, it appears that the test for regulated activity is met for the Children's List.

JR applied for an enhanced disclosure to work or volunteer in the adult workforce as a Support Worker with Nottingham Emergency Medical Services. His initial reps do not challenge this. Therefore, it appears that the test for regulated activity is met for the Adults' List.

Post Further Reps Period: No new information has been provided to challenge the TRA [Test for Regulated Activity] assessment. Given the information outlined above, the DBS is satisfied that the test for regulated activity is met for both the Children's List and the Adults' List.

25. The only relevant evidence is an application for a criminal records and safeguarding check. It was made in the name of Nottingham Emergency Medical Services (NEMS). It is dated September 2012. In the section completed by the Registered Body, it is identified as an organisation providing care and JR's role was identified as 'Support Worker'.

26. On 2 October 2024, DBS removed JR's name from the children's barred list using its power under paragraph 18A of Schedule 3 to SVGA. The letter explained the reason for the decision:

We have carefully considered the information we hold about you and it does not appear that you have previously, are currently or might in future carry out regulated activity with children.

We only know more than that because of what Mr Serr told Judge Jacobs at the permission hearing. We are grateful to him, but it would have been better if it had been included in DBS's decision or included in the papers before the Upper Tribunal. As explained, DBS was misled by the request coming from NEMS. It seems that they make requests for two bodies, one of which involves children and one of which does not. The relevant body for whom JR would be working was a care home for adults. That is why the test for regulated activity was satisfied for vulnerable adults, but not for children.

## **I. Regulated activity – evidence and findings**

### *Evidence*

27. JR told us about his career. After leaving school, he went to college to learn joinery and qualified at the age of 18. While he was waiting to find employment as a joiner, his mother encouraged him to find some work. His only experience before then had been working with his father in building. His mother was a support worker for a company providing care to vulnerable adults and advised him to apply to that company. He did so and was appointed. This was when NEMS made the application on behalf of the employer. The work involved undertaking tasks like cleaning or accompanying service users on trips to the shops or for a meal. In other words, his work did not require any particular qualifications.

28. JR remained with the company until he found work as a joiner. He cannot now remember how soon that was, but it was just a few months later. Since then, he has not worked with vulnerable adults, or children for that matter, either on an employed or voluntary basis, full-time or part-time. He has no wish or intention to do so.

29. Since leaving the care provider, he has worked as a joiner, and also had his own hardware business, which has closed. He works full-time as an employed joiner. His

work is undertaken at clients' premises, which are industrial or commercial. They are never domestic.

#### *Why we accept JR's evidence*

30. We accept JR's evidence of what he has done and of his intentions for the future. It is plausible and there is no evidence to cast any doubt on it. It is consistent with his later career. He has no qualifications relevant to working with vulnerable adults or children. There is no evidence that he has ever studied for any.

#### *Conclusion*

31. DBS found that JR had worked in regulated activity. That accords with JR's evidence. It follows that paragraph 8(8)(b) of Schedule 3 SVGA was satisfied for the caution, as was paragraph 9(3)(aa) for the findings of relevant conduct. Accordingly, we find that there was no mistake in DBS's findings of fact on these matters. This was the first ground of appeal.

32. We have, however, concluded and find as a fact that JR's work in regulated activity was an isolated stop-gap measure, probably undertaken to appease his mother. We are able to make that finding from the perspective of JR's entire working life to date.

33. Mr Serr referred us to *A v Disclosure and Barring Service* [2025] EWCA Civ 124 at [22]. We did not need to rely on that decision, as it was concerned with the 'might in future' aspect of paragraphs 8(2)(b) and 9(1)(a)(ii) of Schedule. In this case, JR satisfied the 'has been' aspect of those paragraphs. We do, though, note that the Court said:

22. ... Whilst the threshold was low, "there must be evidence upon which to base this assessment. It cannot be based on speculation alone." ...

The quotation comes from DBS's guidance to its operational staff.

## **J. Proportionality**

#### *How proportionality affects the statutory scheme*

34. DBS was also satisfied that it was appropriate to include JR under paragraphs 8(8)(c) and 9(3)(b). That decision engaged his Article 8 Convention right under the Human Rights Act 1998. This is a qualified right, which permits interference that is 'in accordance with the law and is necessary in a democratic society ...' whether the interference is permitted depends on a proportionality analysis.

35. Section 4(3) provides that appropriateness is neither a question of law nor fact. In other words, it cannot be challenged on appeal to the Upper Tribunal. However, in *R (Royal College of Nursing) v Secretary of State for the Home Department* [2010] EWHC 2761 (Admin), [2011] PTSR 1193, the Administrative Court decided at [104] that making a disproportionate decision would be an error of law under section 4(2)(a). That is why we were entitled to consider whether the decision to include JR in the adults' barred list was proportionate.

*The structured analysis of proportionality*

36. We approached proportionality in accordance with Section V of the decision of the Presidential Panel in *KS v Disclosure and Barring Service* [2025] UKUT 45 (AAC). In order to do so, we considered the four elements of the assessment as set out by Lord Reed in *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700 at [74]:

*(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right*

37. In a general sense, the measure is the barring scheme under SVGA. The objective of the scheme is to protect vulnerable adults from harm by those entrusted with their care in regulated activity. That objective is sufficiently important to justify interfering with a person's exercise of their Article 8 Convention right.

38. More specifically in this case, the measure is DBS's decision under the scheme to include JR in the adults' barred list. When we consider the measure in that way, it is important to note that the objective is not simply to protect vulnerable adults from harm. It is to protect them from the risk of harm by those entrusted with their care in regulated activity. And the purpose of JR's inclusion in the barred list was to protect those adults in the future. As the Administrative Court explained in *R (SXM) v Disclosure and Barring Service* [2020] EWHC 624 (Admin), [2020] 1 WLR 3259:

38. ... 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. It may, as part of its task, have to form a view as to whether a person has engaged in conduct likely to endanger a child or sexually inappropriate conduct, or the case may involve conduct posing a risk of harm. It will need also to consider questions as to whether it is appropriate to include the person on the children's barred list. ...

The final sentence of that quotation makes the point that working in relevant conduct and appropriateness are separate questions. The same is true of regulated activity and appropriateness.

*(2) whether the measure is rationally connected to the objective*

39. Again, it is important to distinguish between the measure in a general sense and more specifically in this case. In a general sense, inclusion in a barred list prevents a person from engaging in regulated activity. That is rationally connected to the objective of the scheme. More specifically, though, in this case the measure is DBS's decision under the scheme to prevent JR from engaging in regulated activity with vulnerable adults. Whether that is rationally connected to the objective of the scheme has to be assessed in the context of the scheme's 'protective forward-looking function', to quote SXM.

*(3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective*

40. Neither DBS nor JR has suggested that there might be a less intrusive measure. If he were to apply to work in regulated activity, DBS might be able to link that with the

records it holds on him. That does provide a measure of protection, but we do not consider that it amounts to or involves a less intrusive measure.

*(4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter*

41. This requires a balance between JR's Article 8 Convention right and the rights of those vulnerable adults who might be harmed if he were allowed to engage in regulated activity.

#### **K. Why DBS's decision was not proportionate**

42. This is what DBS said in the decision letter of 7 June 2024:

In examining the proportionality of inclusion in the Children's and Adults' Barred Lists, your right to a private life under your Article 8 rights under the European Convention on Human Rights has been considered and it is acknowledged that, inclusion in the Children's and Adults' Barred Lists will impact on your ability to gain positions such as that you previously applied for as a Support Worker with Nottingham Emergency Medical Services.

It is also acknowledged that your wider employment and volunteering opportunities will be limited as it will remove you entirely from the child and adult workforces, which may have a financial impact and carry a degree of personal and social stigma. It is also acknowledged that inclusion in the Children's and Adults' Barred Lists may impact on your well-being, mental health and lifestyle.

However, any interference with your human rights must be balanced against the rights of vulnerable groups and, as it is believed that you pose a risk of causing significant harm to children and vulnerable adults, the DBS is satisfied that your inclusion in the Children's and Adults' Barred Lists is a necessary and proportionate safeguarding measure.

Whilst details of your conviction will show on an enhanced disclosure, this is not considered to be a sufficient safeguard as it cannot be relied upon to prevent you from working or volunteering with children and vulnerable adults in the future as an employer or voluntary organisation may choose to employ you or use your services regardless. We therefore consider that there are no other suitable safeguarding measures in place and we are satisfied that it is both appropriate and proportionate to include you in the Children's and Adults' Barred Lists.

43. That analysis was written at the time when JR was being included in both barred lists. DBS did not update the analysis when he was removed from the children's barred list. Even making allowance for this, it is very general and is not particularised to JR's individual circumstances.

44. Mr Serr's statement of DBS's case in his skeleton argument was more specific:

34. The decision to add JR to the ABL is not disproportionate:-

34.1 JR's conduct which was excessive physical force and punishment was exhibited against a very young child (aged 4 and then 5).

- 34.2 It was repeated on more than one occasion and resulted in the intervention of social services.
- 34.3 The chronology produced by social services at pp53-64 covering a period 2021-2024 has a number of troubling references.
- 34.4 The conduct was relatively recent and did result in police action of a sort.
- 34.5 The child protection plan is still in place. There seems to be some but limited evidence of insight or reflection and remorse.
- 34.6 Misuse of drugs have been part of the factual matrix-p.64.
- 34.7 The impact of barring on JR will be limited as he states he does not intend to work with vulnerable adults in the future and does not at present. He is not barred from working with children.

The focus of this was on JR's conduct. It does not deal with the limited extent to which he worked in regulated activity. Mr Serr did, though, have a chance to add that during the hearing. He argued that the test for regulated activity was satisfied in this case, but accepted that the limited amount of historic regulated activity might feed into the proportionality analysis.

45. We have found that JR was engaged in regulated activity. We have also found that he engaged in relevant conduct with his children, which if repeated against vulnerable adults would or be likely to endanger them. There is also the caution, which he accepted. Despite those findings, we have decided that DBS's decision was disproportionate, as we now explain.

46. We have set out JR's evidence on regulated activity and explained why we accepted it. There is no need to repeat it here. It is sufficient to say this. JR worked with vulnerable adults for a few months when he was 18. He had no experience of doing so before then and has had none since. He undertook the work as a stop-gap between studying and finding permanent employment. His life since then has shown that it was nothing more than a stop-gap. We do not in any way diminish the value of the support he provided for the adults in his care. But it was basic work that required no experience or qualifications. He has shown no interest or inclination to undertake any type of work with vulnerable adults since, let alone has he taken any steps towards doing so.

47. This could be analysed under the first, second or fourth element of the *Bank Mellat* structure; the third element does not arise, as we have said. For the first element, the evidence does not support a finding that there is any need for forward-looking protection from JR at all, let alone a need that is sufficient to justify interfering with his Convention right. For the second element, the evidence does not show a rational connection between JR and the objective of providing forward-looking protection. For the fourth element, on our conclusions so far, the effect of barring may not significantly limit JR's exercise of his Convention right in respect of employment. It does, though, carry 'a degree of personal and social stigma', as DBS accepted in its decision letter. In turn, this may also affect the way that a person is treated by children's social care and in proceedings before the family court. (JR's children have been involved with both.) Even this can be sufficient to outweigh the importance of the

objective of the measure in an appropriate case. This is such a case, because there is no need for forward-looking protection.

48. Mr Serr did not argue that the mere fact of being on the adults' barred list would impede JR's employment to so minimal an extent, if at all, that the balance should be struck in favour of public protection. We would have rejected that argument if it had been made. If that approach were permissible, it would subvert the purpose of the scheme. It would change the scheme from one that provides forward-looking protection to one that penalises past conduct. Inclusion in the list must be justified on the basis of rational reasoning based in likelihood and reality.

49. Accordingly, we allow the appeal on the third ground and direct DBS to remove JR from the adults' barred list.

**Authorised for issue  
on 03 December 2025**

**Edward Jacobs**  
**Upper Tribunal Judge**  
**Elizabeth Bainbridge**  
**Josephine Heggie**  
**Members**