Neutral citation no: [2026] UKUT 122 (AAC)
**Appeal no. UA-2022-001784-V**

**IN THE UPPER TRIBUNAL**
**ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**MC**

**Appellant**

-v-

**Disclosure and Barring Service**

**Respondent**

| | |
|---|---|
| **Before:** | **Upper Tribunal Judge Mitchell**<br>**Upper Tribunal Member Bainbridge**<br>**Upper Tribunal Member Jacoby** |
| **Hearing:** | 6 May 2025, conducted remotely using Cloud Video Platform |
| **Representation:** | |
| **Appellant*:*** | in person |
| ***Respondent:*** | Ms Hartley (of counsel), instructed by DLA Piper UK LLP |

*On appeal from:*

| | |
|---|---|
| Decision maker: | Disclosure and Barring Service (DBS) |
| DBS ref: | 00959832578 |
| Date of decision: | 31 August 2022 |

## SUMMARY OF DECISION

### 65. Safeguarding Vulnerable Groups
### 65.17. Safeguarding Vulnerable Groups - Materiality

Judicial summary

While DBS' analysis of the Appellant's history of violence may have been flawed, DBS would have made the same decision even if that history had ignored. On DBS' findings, the Appellant's history of violence involved him slapping his partner in 2009, and punching a 14-year-old relative in 2012, which showed, according to DBS, that he had a propensity to use violence and held 'pro violence' beliefs. However, DBS also relied on far more recent incidents amounting, on DBS' findings, to a dereliction of the Appellant's duties as a care worker. The Upper Tribunal was satisfied that, had DBS only taken the more recent incidents into account, they would have made the same barring decision.

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

## DECISION

**The Upper Tribunal DISMISSES this appeal. The Tribunal decides that DBS made neither a mistake on a point of law nor a mistake in any finding of fact within section 4(2)(b) of the Safeguarding Vulnerable Groups Act 2006. Under section 4(5) of the 2006 Act, the Upper Tribunal confirms DBS' decision of 31 August 2022.**

## ORDER

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

**No one shall publish or reveal the name or address of any of the following:**

**(a) MC, who is the Appellant in these proceedings;**

**(b) TS and DS, who are service users mentioned in evidence;**

**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 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.*

## 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

2. On 31 August 2022, DBS decided to include the Appellant on the list of persons barred from working with children, as well as the list of persons barred from working with vulnerable adults. DBS made the following findings regarding the incident which prompted the Appellant's referral to DBS:

> "On 27 April 2021, whilst working as a Support Worker assisting two vulnerable adults (TS and DS) in the community, you (along with your colleague) left TS and DS alone and unsupervised in a vehicle for a period of at least 20 minutes. The Support Plans of TS and DS do not allow for the vulnerable adults to be left alone in such a manner. Given their support needs, such neglect left TS and DS at risk of both emotional and physical harm.
>
> …DBS does not accept that you were able to appropriately supervise TS and DS from within the TK Maxx store you entered on 27 April 2021. If DS had exited the vehicle on his own, or if he were to have had an epileptic seizure (for example), we do not believe you would have been aware enough or close enough to respond quickly enough in order to keep the vulnerable adult safe from harm.

> Your comments about why you entered the store with your colleague (instead of one of you remaining in the vehicle) gives us some concerns over your poor problem-solving skills. If you wanted to confer with your colleague over what items to buy for DS, there were other ways of achieving this which did not place the vulnerable adults at risk of harm due to being left unsupported.
>
> You seemingly did not accept that members of the public had legitimate cause for concern over the wellbeing of TS and DS, instead believing that this matter had been flagged with Police due to some other motivation on the part of the witnesses. Your lack of acknowledgement of the risk involved in leaving TS and DS unsupported, in addition to your apparent lack of concern for others in acting as you did above (as per your caution and the Allegations listed) give the DBS significant concerns over your lack of empathy towards others."

3. Regarding the Appellant's work as a support worker, DBS also relied on another incident. In relation to this incident, DBS found:

> "On 11 April 2011, whilst employed as Support Worker at Middlebeck Drive, you left your shift approximately 30 minutes before your designated rota finish time without permission to do so, and without informing the remaining colleague left on shift, thereby leaving unsafe staffing levels."

4. We are sure that DBS meant to describe the above incident as having occurred on 11 April 2021, because that is the date specified in records supplied to DBS by the Appellant's former employer.

5. In addition to the above findings, DBS also found that there was evidence of "multiple incidents" in which the Appellant used violence against persons whom he considered had mistreated him. The Appellant had "an apparent propensity towards using violence", had used violence "against a range of victims in a number of different contexts", and the DBS had "significant concerns over your apparent pro-violence beliefs".

6. Despite DBS' analysis, only two incidents of violence were the subject of findings of fact in DBS' barring decision letter. The first occurred in 2009, twelve years before the Appellant's referral to DBS and, on DBS' findings, involved him slapping his partner twice (to the head and face) and pulling her hair. The Appellant was given a police

caution for common assault. The police evidence supplied to DBS about this incident stated:

> "[Appellant] slapped the head of his 27 year old female partner, then grabbed her ponytail and pulled her hair causing pain. [Appellant] was arrested and fully admitted the offence in interview and was given a caution."

7. The other incident occurred in 2012 and, on DBS' findings, involved him grabbing a 14-year-old boy (his brother-in-law) by the neck and punching him repeatedly. The police evidence about this incident stated:

> "On 27/11/2012 [Appellant] and his 14 year old brother in law had a verbal altercation about the 14 year old not babysitting for [Appellant]. The following day [Appellant] allegedly entered the home address of the victim, grabbed him by the neck and punched him twice to the face, causing a bruised eye and bloody nose. The mother of the victim pulled [Appellant] off her Son.
>
> [Appellant] was arrested and denied the assault in interview. However he was charged with Battery, which was later discontinued at court due to [*the police report ends at this point*]".

8. DBS' case file also includes police records of allegations that the Appellant assaulted his partner, in 2011 and 2012, but none of these were the subject of findings of fact in DBS' decision letter.

9. DBS noted the "lack of acknowledgement of the harm you placed individuals in / directly caused them", was "concerned that you may repeat such actions in the future", and considered that there was no evidence "of insight, credible remorse or empathy shown in respect of the harm you have caused multiple individuals". DBS concluded that it was appropriate to include the Appellant in both barred lists.

## Legal framework

Right of appeal against DBS' barring decisions

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

> "(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."

11. On an appeal, it is for the appellant to demonstrate a mistake of fact or law: see *PF v DBS* [2020] UKUT 256 (AAC), at [49]. A mistake of fact is not established simply because the Upper Tribunal thinks that it would have made different findings of fact than those made by DBS (*PF* at [38]). Unless and until the Upper Tribunal finds a mistake of fact or law, it is "not free to make its own assessment of the written evidence" (*Disclosure and Barring Service v JHB* [2023] EWCA Civ 982, at [90]).

12. A mistake of fact means a finding of fact that is 'wrong' (*PF* at [38]). A finding may be wrong even if there was some evidence to support it, or it was not irrational (*JHB* at [95]). A finding may also be 'wrong' where the Upper Tribunal has heard evidence not before DBS, which shows that DBS' finding was wrong (*JHB* at [95]). While a value judgement is not a finding of fact, the dividing line between the two can be difficult to draw (*Disclosure and Barring Service v AB* [2021] EWCA Civ 1575 at [55]).

13. 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 or vulnerable adults is clearly something that DBS will consider relevant when determining if it is appropriate to include a person in a barred list. In *AB*, the Court of Appeal held:

> "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."

14. The required standard for reasons for a barring decision was addressed in *Khakh v Independent Safeguarding Authority* [2012] EWCA Civ 1341:

> '23…. I would accept that the ISA [now DBS] must give sufficient reasons properly to enable the individual to pursue the right of appeal. This means that it must notify the barred person of the basic findings of fact on which its decision is based, and a short recitation of the reasons why it chose to maintain the person on the list notwithstanding the representations. But the ISA is not a court of law. It does not have to engage with every issue raised by the applicant; it is enough that intelligible reasons are stated sufficient to enable the applicant to know why his representations were to no avail.'

Barring criteria

15. Part 2 of Schedule 3 to the 2006 Act sets out criteria for including a person in the list of persons barred from working with vulnerable adults within which paragraph 9(3) provides as follows:

> "(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."

16. The definition of "relevant conduct" includes "conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult" and "conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him" (paragraph 10(1) of Schedule 3 to the 2006 Act).

17. Similar barring criteria to those described in relation to vulnerable adults are provided for in relation to the children's barred list by Part 1 of Schedule 3 to the 2006 Act.

## Grounds of appeal

18. DBS concluded that, since the Appellant had been violent on two occasions, once in 2009 and again in 2012, he was now, some nine years after the last incident, to be considered a person with a propensity to violence who held pro-violence beliefs. The Appellant was granted permission to appeal on grounds that were limited to DBS' findings that the Appellant had a propensity to violence, held pro-violence beliefs and engaged in multiple incidents of violence. The grounds are:

(1) arguably, DBS' reasons were inadequate because they failed to explain why two incidents of violence occurring nine and 12 years previously which, while no doubt unpleasant (on the DBS' findings) were not at the more serious end of the violence-spectrum, established a continuing propensity to violence and the holding of pro-violence beliefs;

(2) arguably the propensity to violence and pro-violence belief findings were irrational given the passage of time and the nature of the acts of violence (as found by the DBS);

(3) arguably, DBS unfairly relied on, and/or their reasoning was robbed of rationality by reliance on, evidence which it had not subjected to any fact-finding analysis. The finding that the Appellant used violence in 'multiple incidents' is arguably inexplicable by reference to the two violent incidents found as fact to have occurred. Arguably,

therefore, the DBS improperly relied on the unscrutinised allegations of domestic violence in 2011 and 2012;

(4) the 2009 incident resulted in the Appellant accepting a police caution for common assault, but the 2012 incident did not lead to any conviction. The police report at p.159 omits the reason why the planned trial did not proceed, stating "he was charged with Battery which was later discontinued at court due to [*sentence unfinished*]". Arguably, the DBS' reasons were inadequate because they failed to explain why an incident that had not resulted in a criminal conviction was in fact proven.

## Arguments, and the Appellant's oral evidence

Appellant

19. The Appellant argues that DBS should not have barred him for things that happened a long time ago, and which arose in the context of family disputes. He denies having any propensity to violence and says he has never been violent towards a service user.

20. The first violence-related incident relied on by DBS happened because an argument with the Appellant's wife got out of hand. The Appellant accepted a caution because a police officer told him it was 'a slap on the wrists and all finished'. The Appellant said in oral evidence that he pushed his partner but was 'not sure' if he also slapped her. The panel asked the Appellant to confirm if his evidence was that he could positively remember pushing his partner but was unsure whether he also slapped her. The Appellant confirmed that it was.

21. The second incident happened when everyone involved was drunk, but the Appellant insists that his 14-year-old brother-in-law was left with 'no marks'.

22. The incident in which service users were left unattended in a car was an isolated case, which has never been repeated. The Appellant has 'lived to regret' it, and accepts it was misconduct, but told us it was a 'one off'. The panel put it to the Appellant that the other care-related incident relied on by DBS (leaving work before the end of the Appellant's shift) might be considered similar in that it also involved the Appellant neglecting his caring duties. The Appellant said that, on that occasion, he saw the handover staff member coming towards the workplace, from the car in which the Appellant was waiting, and thought it was safe to leave.

DBS

*Ground 1*

23. DBS submit that the severity of offending behaviour is not relevant to the 2006 Act's concept of 'relevant conduct'. Conduct either falls within the definition of such conduct or it does not. It follows that DBS could not have erred, in fact or law, by omitting to locate the Appellant's offending on a spectrum of severity.

24. It is reasonably clear what DBS meant by the Appellant having a 'propensity towards using violence' and holding 'pro-violence beliefs'. DBS' decision letter sought to convey their significant concerns about the Appellant's apparent pro-violence beliefs in the light of the occasions on which he demonstrated an inclination to use, or threaten, violence. Moreover, absent a legal or factual flaw, the assessment of risk is a matter for DBS (see *AB*).

25. DBS' statutory "requirement to bar" was engaged whether or not the Appellant was regarded as having a continuing propensity to violence. Nevertheless, DBS were entitled to conclude that someone who assaulted a pregnant woman and a child had a favourable attitude towards the use or threat of violence. The age of the offences did not undermine DBS' analysis, particularly if regard is had to: the nature of the offences; that DBS was not concerned with a single isolated incident; and the Appellant's continued total or partial denial of both offences.

*Ground 2*

26. DBS' finding was not irrational in the sense described by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935 at [410]: "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it". The Appellant assaulted his pregnant wife and walked into someone else's house and assaulted a 14-year-old child. The Appellant's denials meant that DBS were entitled to conclude that he has a favourable attitude and inclination towards the use or threat of violence despite the passage of time. DBS' finding was certainly not 'in defiance of logic'.

27. DBS' analysis was that the Appellant resorted to violence when he thought another had mistreated him, and that characterisation of the Appellant was supported by the evidence. The two incidents of violence indisputably fell within the 2006 Act's definition of 'relevant conduct'.

28. DBS' conclusion that the Appellant had a propensity to violence was in the nature of a value judgement, rather than a finding of fact. As such, and in accordance with *AB*, this was a matter for DBS and not open to challenge on appeal as if it were a finding of fact.

29. Moreover, the Appellant still appears to deny having committed the assault or, at least, shows no real remorse or reflection as to why he used violence against two vulnerable persons. This was not a case in which no reasonable person could describe the Appellant as having a propensity to use violence. Note that DBS' decision letter clearly reflected the Appellant's lack of contrition and the passage of time since misconduct occurred does not necessarily make a barring decision disproportionate.

*Ground 3*

30. There is no justification for assuming that DBS' reference to 'multiple instances' in which the Appellant used violence shows that DBS must have relied on incidents that were unproven. In any event, two is a multiple.

*Ground 4*

31. DBS remind the Upper Tribunal that the absence of a criminal conviction does not prevent DBS from finding, on a balance of probabilities, that particular misconduct occurred. It is reasonably clear that DBS were satisfied, on the evidence, that the Appellant assaulted his 14-year-old brother-in-law. In any event, the question whether DBS' reasons were adequate is immaterial given: (a) the signed statements made by the brother-in-law and his mother, both bearing a statement of truth; (b) the clear, detailed accounts in both statements are inconsistent with fabricated allegations; (c) the police considered there to be sufficient evidence to charge the Appellant; (d) the Appellant provides no plausible reason why the complainants might fabricate allegations against him.

*Materiality*

32. DBS also make the 'overarching' argument that, even if the 2009 and 2012 incidents are ignored, the Appellant's conduct in relation to TS and DS alone warrants

barring, and submit that "the barring decision given is analogousness to the care worker offence of wilful neglect under section 20 of the Criminal Justice and Courts Act 2015".

## Analysis

33. We continue to harbour the doubts expressed when granting the Appellant permission to appeal about the soundness of DBS' analysis of the two occasions in which he was found to have used violence. In particular, we doubt that DBS' characterisation of the Appellant's offending history as involving the use of violence on 'multiple' occasions may be considered rational. 'Multiple' is synonymous with 'many' and we doubt two incidents may properly be described as multiple incidents. Nevertheless, as we shall now explain, our doubts about DBS' analysis of the Appellant's history of violence do not undermine DBS' barring decisions.

34. We accept DBS' submission that, even if the 2009 and 2012 violent incidents were ignored, DBS would have come to the same decision. On DBS' other findings, within a matter of weeks in April 2021 the Appellant both took it upon himself to leave work before the end of his allocated shift and left two clearly very vulnerable adults alone in a car while he and another member of staff went shopping. In essence, DBS considered the Appellant's actions to amount to a dereliction of duty and, while the April 2021 findings are not the subject of any ground of appeal, our view is that DBS were both entitled to view the Appellant's actions in that way and to treat the car incident as particularly serious and tantamount to neglect.

35. Given DBS' statutory purpose, as part of a system designed to minimise the innate risks faced by children and vulnerable adults, we are satisfied that, even if the 2009 and 2012 incidents were left out of account, DBS would have made the same barring decision. We arrive at that conclusion because (a) on any reasonable view, the car incident was a particularly serious breach of the Appellant's duties as a care worker; (b) the evidence before the DBS showed that the Appellant sought to minimise the seriousness of the car incident; and (c) the car incident came shortly after the Appellant took it upon himself to depart the workplace before the end of his allocated shift. We are sure that, even if DBS had ignored the 2009 and 2012 incidents, the above considerations would, in combination, have led the DBS to conclude that the Appellant was a person who failed to take seriously his professional caring responsibilities and would pose too great a risk to the welfare of children or vulnerable adults were he to engage in regulated activity relating to either group. To use the language of section

4(2)(b) of the 2006 Act, DBS' findings of fact relating to the 2009 and 2012 were not findings on which the barring decisions were based so that, even if DBS made a mistakes in those findings, that would not permit the Upper Tribunal to allow this appeal.

## Conclusion

36. This appeal is dismissed and the Upper Tribunal confirms DBS' decision of 31 August 2022. The Appellant remains barred from working with children and vulnerable adults in accordance with that decision. Finally, the judge apologises for the delay in giving this decision, caused by his absence from duties due to illness as well the demands of his other judicial responsibilities.

**Authorised for issue by Upper Tribunal Judge Mitchell on 7 March 2026**

Section 4(5) of the Safeguarding Vulnerable Groups Act 2006