Neutral Citation Number: [2026] UKUT 201 (AAC)
Appeal No: UA-2025-001574-GDI

IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

Between:

Shanaz Begum

Appellant

v

Registrar of Approved Driving Instructors

Respondent

Before: Upper Tribunal Judge Jacobs

Decided on 22 May 2026 following an oral hearing on 19 May 2026

Representation:

Ms Begum: Simon Clarke of Smith Bowyer Clarke solicitors

The Registrar: Ahtiq Raja, Deputy Registrar

Summary: Transport – Driving Instructors (101.8) – Fit and proper person – motoring offences

Driving instructor convicted of 'using' a hand-held mobile tele phone while driving – Registrar removed her name from register – First-tier Tribunal required to carry out a proportionality assessment of Registrar's decision, but failed to do so.

DECISION OF UPPER TRIBUNAL

On appeal from the First-tier Tribunal (General Regulatory Chamber)

Reference: FT/D/2025/0300
Decision date: 27 August 2025
Hearing: Online

As the decision of the First-tier Tribunal involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the tribunal for rehearing by a differently constituted panel.

REASONS FOR DECISION

1. This case is about the way that proportionality has to be considered and applied by the First-tier Tribunal on an appeal against a decision to remove the name of an instructor from the Register of Approved Driving Instructors.

A. A short history

2. On 18 February 2025, the Registrar removed Ms Begum's name from the register. On 22 October 2024, Ms Begum was seen by a police officer to pick up her mobile phone while she was driving. For this, she received 6 points on her licence. This led to the Registrar's decision. Ms Begum exercised her right of appeal to the First-tier Tribunal under section 131(1)(c) of the Traffic Act 1988, but the tribunal dismissed the appeal.

B. The case before the First-tier Tribunal

3. This is how the tribunal recorded Ms Begum's case on her conviction:

> 13. She described seeing her relative involved in a collision with a taxi. The Appellant knew her niece's children were likely to be in the car; the Appellant said in panic she had grabbed her phone. She described that her phone was in her bag in the passenger footwell and she reached into the bag, whilst the car was coming to a stop. She said a police officer happened to be in the area monitoring school traffic and saw her holding the phone. She was not using the phone when in the car, but after she got out she made various calls to the school and others. It was when she went to leave the area an officer asked her to pull over and reported her for the offence.
>
> 14. She said she had never committed any offences in her life. She indicated that she was well aware of the risks of using phones in the car, having had a family friend lose a relative due to a driver using their phone.
>
> 15. She said that she has the highest pass rate for her driving franchise company, and had won awards for her ADI skills. She described loving her job and relished the fact that she was viewed as having a very positive character.
>
> 16. She indicated losing her registration would have serious implications for her. She was going through a separation and losing her job would be very difficult for her.

4. This is the tribunal's analysis of the significance of the conviction:

> *Conclusion*
>
> 21. The Tribunal considered carefully all the evidence and papers before it.
>
> 22. Here the Appellant picked up her phone in panic. She had just witnessed an accident involving a family member, and the Tribunal accepted this would have been traumatic. However, the Appellant was able to, and thought it right to, pick up her phone whilst her car was moving and hold it in her hand. Whilst the Tribunal accepts the emotional issues at play at the time, there was no reason to pick up the phone whilst driving. It was a clear breach of the law. An instructor must know that such behaviour cannot be tolerated.
>
> 23. Allowing an instructor who has such an offence on their antecedents to remain on the Register sends out the wrong message. An instructor must be able

> to say to pupils you must not do this, without fear that the pupil could say, 'well you did.' The hypocrisy of such a stance undermines the whole Register.
>
> 24. The Tribunal comes to the view that the Registrar had no option but to remove the Appellant. The Registrar must ensure that the public has faith in the Register and the only way to do so is to ensure that only those suitable to instruct are on it. To allow the Appellant to appear on the Register would be to condone the offending.
>
> 25. Looking at the circumstances here the Tribunal comes to the view that the Appellant is no longer fit and proper.
>
> 26. The Tribunal gave careful consideration to the effect of removal, but when balanced against the offending came to the clear view that removal was still necessary.
>
> 27. The Appeal is dismissed with immediate effect.

5. In addition to the driving offence, the Registrar referred before the First-tier Tribunal to Ms Begum's failure to report the offence, describing this as 'unhelpful'. The tribunal recorded Ms Begum's evidence that she had reported the offence, but that the letter must have been lost in the Christmas post. That is the only reference to this point in the decision. The tribunal did not refer to it in its analysis. I assume either: (a) it accepted the claimant's evidence; or (b) it considered that the offence alone was sufficient to justify removal without the need to rely further on failure to disclose.

C. My grant of permission to appeal

6. These were my reasons for giving permission to appeal:

> 3. I have given permission because there is a 'point of law arising from a decision' (section 11(1) of the Tribunals, Courts and Enforcement Act 2007) on which there is a realistic prospect of an appeal succeeding: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.
>
> 4. The point of law is how proportionality operates in the context of removing an approved driving instructor from the register. This will cover both the principles governing the exercise and their application in this case. Nothing I saw below limits the scope of the grant.
>
> 5. The tribunal quoted from the Court of Appeal decision in *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808 at [30]. Of course, I accept the authority of that decision, which makes the point at [30] that the maintenance of public confidence is important. In addition, the court emphasised at [32] that removal depended upon a detailed assessment of the significance of the conviction, as opposed to being automatic. I note the reference to the 'Agency's own guidance'. I have not been able to find any such guidance nowadays and Mr Clarke could not refer me to any. The Registrar will be able on the appeal to refer me to any guidance available.
>
> 6. The tribunal set out the individual circumstances of the offence, but gave priority to public confidence in the register. It went as far as to say at [23] that the Registrar had no option but to remove Ms Begum given that she had 'such an offence on their antecedents' and at [24] that allowing her to remain on the register 'would be to condone the offending.'

7. I wonder whether such statements allow any scope for anyone to avoid removal. I note the points Mr Clarke made: (a) Ms Begum's clean record; (b) the fact that she did not use the phone to make a call; and (c) the emotional element, which makes the case very unusual.

D. The law – mobile phones

7. Ms Begum committed an offence under regulation 110 of the Road Vehicles (Construction and Use) Regulations 1986 (SI No 1078). I have included part of that regulation to show the range of ways in which the offence can be committed:

> **110. Mobile telephones**
>
> (1) No person shall drive a motor vehicle on a road if he is using—
>
> (a) a hand-held mobile telephone; or
>
> (b) a hand-held device of a kind specified in paragraph (4).
>
> …
>
> (4) A device referred to in paragraphs (1)(b), (2)(b) and (3)(b) is a device, other than a two-way radio, which is capable of transmitting and receiving data, whether or not those capabilities are enabled.
>
> …
>
> (6) For the purposes of this regulation—
>
> …
>
> (c) in paragraphs (1) to (3) the word 'using' includes the following—
>
> (i) illuminating the screen;
>
> (ii) checking the time;
>
> (iii) checking notifications;
>
> (iv) unlocking the device;
>
> (v) making, receiving, or rejecting a telephone or internet based call;
>
> (vi) sending, receiving or uploading oral or written content;
>
> (vii) sending, receiving or uploading a photo or video;
>
> (viii) utilising camera, video, or sound recording functionality;
>
> (ix) drafting any text;
>
> (x) accessing any stored data such as documents, books, audio files, photos, videos, films, playlists, notes or messages;
>
> (xi) accessing an application;
>
> (xii) accessing the internet; …

8. Mr Clarke argued that merely touching the phone would amount to an offence. He accepted, rightly, that *touching* was not used in the regulation. Nevertheless, I accept his general point. The offence is defined as *using*, but the usual meaning of that word is extended by the list that follows in sub-paragraph (6)(c), which covers a wide range of ways in which a driver may make contact with their phone.

E. The law – fit and proper person

9. Section 128(1) of the Traffic Act 1988 provides:

> (1) The Registrar may remove the name of a person from the register if he is satisfied that-
>
> …
>
> any of the relevant conditions was fulfilled in his case.

Section 128(2) contains the relevant conditions, which include:

> (e) that he ceased … to be a fit and proper person to have his name included in the register.

10. *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808 is the leading authority on the meaning of 'fit and proper person' in this legislation. The case concerned a failure to disclose convictions for a variety of offences over a number of years. Speaking for the Court of Appeal, Richards LJ said:

> 30. I turn to my conclusions on the rival submissions of counsel. First, I do not accept that the scope of the 'fit and proper person' condition is as narrow as Mr Leviseur contended. Of course, a central question is an applicant's fitness to be a driving instructor – that he has the requisite instructional ability and driving ability and that he does not pose a risk in any respect to his pupils or other users of the road. The 'fit and proper person' condition has obvious relevance to that issue, though the more technical aspects are covered by other, more specific conditions relating to tests, driving licence and the like. But the condition is not simply that the applicant is a fit and proper person to be a driving instructor; it is that he is a fit and proper person *to have his name entered in the register*. Registration carries with it an official seal of approval: those registered are known as 'Driving Standards Agency Approved Driving Instructors'. I see no reason to doubt the view expressed by the Secretary of State in *ex parte Nixon* (see [23] above) as to how a person's entry in the register is viewed by members of the public. It seems to me that the maintenance of public confidence in the register is important. For that purpose the Registrar must be in a position to carry out his function of scrutiny effectively, including consideration of the implications of any convictions of an applicant or a registered ADI. That is why there are stringent disclosure requirements. If an applicant or registered ADI fails to disclose convictions or makes a false declaration that he has no convictions, it strikes at the heart of the registration process and the reliability of the register. In my view such conduct is plainly relevant – indeed, highly relevant - to the question whether an applicant is a fit and proper person.
>
> …
>
> 32. In the course of argument, Toulson LJ raised a question which in my view needs to be addressed. It arises from the statement at the end of para 25 of the tribunal's reasons that the appellant 'knew that disclosure [of his convictions] would result in his registration being withdrawn, since he had ceased to be a fit and proper person'. The question is whether the tribunal was assuming erroneously that the appellant's convictions would result automatically in his registration being withdrawn (whereas it is clear from the general law and the Agency's own guidance that the decision whether to withdraw registration following a conviction must depend upon a detailed assessment of the

> significance of the conviction), and whether that error infected the rest of the tribunal's reasoning.

11. Mr Raja also referred me to the decision of the Court of Appeal in *Bolton v Law Society* [1994] 1 WLR 512. The Court there distinguished between punishment and protection. Sir Thomas Bingham MR said at 518-519:

> It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

The Administrative Court in *R (SXM) v Disclosure and Barring Service* [2020] 1 WLR 3259 made the same point. That case concerning barring under the Safeguarding Vulnerable Groups Act 2006. The Court said:

> 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. …

12. Those remarks were made in the context of very different regulatory regimes, but their common emphasis on protection rather than punishment is equally applicable to driving instructors.

F. Registrar's policy or guidance

13. I mentioned this in my grant of permission to appeal, because the Court of Appeal had referred to guidance in *Harris* at [32]. I am grateful to Mr Raja for producing a copy of the **Approved driving instructor (ADI) register guide**, as updated on 12 May 2026. These are the parts that are relevant to this case:

> **2.4 Being a 'fit and proper' person**
>
> You must be a 'fit and proper' person to be an ADI.
>
> ADIs are in a position of considerable trust. The ADI Registrar protects the image of the register and maintains the public's confidence in the ADI industry.
>
> **What 'fit and proper' means**
>
> The law says you must be a 'fit and proper' person, but does not define what it means.
>
> The ADI Registrar interprets it as the personal and professional standards, conduct or behaviour that could be unacceptable in the eyes of the public and other ADIs.
>
> It's not possible to be definitive about what's classed as 'fit and proper'.
>
> There has to be some discretion to take into account the circumstances of each case.
>
> The ADI Registrar makes an assessment of the risk you're likely to pose to the public.
>
> **Personal conduct**
>
> When deciding if you're a 'fit and proper' person, DVSA will check if you have:
>
> - any motoring or non-motoring cautions, convictions or fixed penalty notices
> - been disqualified from driving
> - any court proceedings pending against you
> - been banned or barred from working with children under 18 years of age
> - had any substantiated complaints of inappropriate behaviour or misconduct
> - had any substantiated complaints for financially inappropriate or fraudulent activity.

14. I accept Mr Clarke's argument that this is not a statement of policy on how the Registrar will apply the fit and proper person test. It is what it purports to be: a guide for those who are, or wish to be, registered driving instructors. As such, I can see nothing to criticise in what it says about being a fit and proper person.

G. Article 1, Protocol 1

15. This provides:

> **THE FIRST PROTOCOL**
>
> *ARTICLE 1*
>
> *PROTECTION OF PROPERTY*
>
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

16. I accept that an entry on the register is a possession for the purpose of this Article. An entry on the register is the source of an economic benefit. As Mr Clarke argued, it is akin to a licence, which is protected under this Article: *Malik v United Kingdom* [2012] ECHR 438 at [90]-[91]. The entry is personal to the individual and cannot be transferred, but this does not prevent it being a possession. In its decision on the admissibility of the applications in *Stec v United Kingdom* [2005] ECHR 924, the Grand Chamber of the European Court of Human Rights decided that social security benefits were within the ambit of Article 1, Protocol 1. The Court said:

> 54. It must, nonetheless, be emphasised that the principles, most recently summarised in *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, which apply generally in cases under Article 1 of Protocol No. 1, are equally relevant when it comes to welfare benefits. In particular, the Article does not create a right to acquire property. It places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme (see, *mutatis mutandis*, *Kopecký*, § 35 (d)). If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (ibid.).

The point to note is that the benefits in that case – reduced earnings allowance and retirement allowance - like most social security benefits, cannot be assigned: see section 187 of the Social Security Contributions and Benefits Act 1992. In that respect, they are the same as an entitlement to practice as an approved driving instructor.

17. Proportionality is one of the *conditions provided for by law*. That is how it comes to apply to the decision under appeal in this case.

H. The Upper Tribunal's jurisdiction

18. My jurisdiction derives from the Tribunals, Courts and Enforcement Act 2007. By section 11(1), it is limited to 'any point of law arising from a decision made by the First-tier Tribunal'. Having given permission to appeal, the issue for me is whether 'the making of the decision concerned involved the making of an error on a point of law.' The *decision concerned* is that of the First-tier Tribunal.

19. I mention this for two reasons. First, some of Mr Clarke's argument related to the Registrar's decision rather than the tribunal's. He accepted that he needed to show an error of law in the tribunal's decision. Second, I need to identify the correct approach to proportionality, which I come to next.

I. Proportionality in the First-tier Tribunal and the Upper Tribunal

20. The approach to proportionality is different in the First-tier Tribunal and in the Upper Tribunal. The difference arises because the First-tier Tribunal is dealing with an appeal from a decision-maker, whereas the Upper Tribunal is dealing with an appeal from a tribunal. Lord Neuberger expressed the distinction succinctly in *In re B (Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911:

> 84. It is well established that a court entertaining a challenge to an administrative decision, ie a decision of the executive rather than a decision of a

> judge, must decide the issue of proportionality for itself … However, this does not mean that an appellate court entertaining a challenge to a judicial decision, as opposed to an executive decision, must similarly decide the issue of proportionality for itself. …

21. It follows that, as the First-tier Tribunal's decision was the first judicial consideration of proportionality, it had to make its own assessment. Mr Raja accepted that that was the case.

22. The position in the Upper Tribunal was considered by the Supreme Court in *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] 3 WLR 30:

> 142. … In some cases the appellate court treats its role as confined to a review to check whether the first instance court's assessment in relation to the proportionality of a measure was arrived at on the basis of a proper self-direction as to the test to be applied and whether the result arrived at was reasonable, in the sense of being within the legitimate parameters of judgment for the judge; if it is satisfied on these points, the appellate court will not intervene, even though it thinks that it might have reached a different view if it had been deciding the issue for itself. … In other cases, the appellate court does not treat its role as so limited, but instead, in order to decide whether the appeal should be allowed, it makes its own fresh assessment of the proportionality of the measure in question. This approach gives priority to the authority vested in the appellate court to decide and give guidance on legal questions.

The Court considered the first (review) approach in [143] before discussing the second (fresh assessment) approach:

> 144. The fresh determination approach is appropriate where it is important that the appellate court should give its own opinion about the proportionality of a measure and its compatibility with Convention rights, rather than defer to the assessment of the first instance judge. This is likely to be an important consideration in cases where the decision will provide guidance for other cases or where the subject matter has major social or political significance so that the public will rightly expect the senior judges in the appellate court to exercise their own judgment as to whether the measure in question is proportionate and lawful or not. …

23. I have to decide which approach is appropriate in this case. There is no dispute that the First-tier Tribunal was required to make a proportionality assessment of the Registrar's decision. My decision will provide an authority on that point and may say something useful about how proportionality works in this jurisdiction. That may suggest that I should take the fresh assessment approach. However, the legal position is not in doubt and, to anticipate, my decision turns on whether the tribunal directed itself on the need to carry out a proportionality assessment. The nature of my reasoning matches the circumstances described in *Shvidler* at [147]:

> 147. It may be that what is in issue is a one-off decision which only affects persons involved in the proceedings, there is no controversy about the content and Convention compatibility of the general law which is applicable and the case turns essentially on a factual assessment of the circumstances which the lower court was particularly well placed to make. In such a case it will be appropriate for the appellate court to adopt an approach according to which it asks whether

> the lower court directed itself correctly, has had due regard to relevant matters and has reached a conclusion reasonably open to it, without any need to second-guess that court's proportionality assessment if it has …

That is why I have taken a review approach.

24. Mr Raja relied on the *plainly wrong* test from *Henderson v Foxworth Investments Ltd* [2014] 1 WLR 2600 at [66]-[67]. I am not sure there is much difference, if any in practice, between that and the test set out in *Shvidler* at [142] and [147]. I prefer to rely on that latter, as the most recent decision of the Supreme Court on proportionality.

J. Proportionality

25. I come, at last, to proportionality. The Supreme Court gave the authoritative decision on the four elements of a proportionality assessment in *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700. The decision contains different versions, but they mean the same thing. I am using Lord Reed's version at [74]. These are the four elements with Mr Clarke's arguments.

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

26. The measure in this case is the decision to remove Ms Begum from the Register of Approved Driving Instructors under the Traffic Act 1988. Its objective is to protect the public and pupils from instructors who do not satisfy the statutory conditions. Mr Clarke accepted that that objective is sufficiently important to justify interfering with Ms Begum's Convention rights.

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

27. Mr Clarke

> … conceded that the measure adopted by the Registrar can meet his legitimate objective. But a seemingly blanket approach cannot logically advance the stated aim in circumstances in which that measure is applied to all, circumstances regardless of context. Such an approach cannot logically advance the objective to a point at which that objective becomes the only consideration in play.

28. I consider that these points better fit into the next two elements.

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

29. Mr Clarke argued that there were less intrusive measures that would have been appropriate ways of achieving the objective. He suggested that the Registrar could have issued Ms Begum with a written warning or suspended her entry on the register. He pointed out, correctly, that other regulatory regimes allow for these possibilities. The issue for me is: are they part of this regime?

30. The Registrar's powers are statutory. There is no express power to issue a written warning or impose a suspension. On the other hand, there is nothing that compels the Registrar to remove an instructor if any of the conditions for removal exists. Section 128(1) merely provides that 'The Registrar *may* remove the name of a person from the register'. That allows the Registrar an element of freedom, indeed a duty, to take account of any relevant circumstances or considerations in making a decision. It does

not, though, allow the First-tier Tribunal or the Upper Tribunal to impose a new menu of alternatives to the statutory options of leaving a name on the register or removing it.

(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

31. This requires a balance. On one side is the severity of the effect of removing Ms Begum's name from the register. She had a successful career as a driving instructor and had previously not committed a criminal offence. Were it not for this single incident, she would no doubt still be pursuing her career. On the other side, is the harm that might occur to Ms Begum's pupils, road users and pedestrians whose safety might be affected, and the confidence of the general public in the register.

32. The issue now is: did the tribunal undertake a proportionality assessment?

K. Did the tribunal apply a proportionality analysis?

33. I have decided that the tribunal did not apply a proportionality assessment.

34. The tribunal did not say that it was undertaking an assessment. It is not essential to state this expressly, but it is usual for tribunals to do so and to set out their reasons under the structure I have used or something similar. The tribunal did neither in this case.

35. I have considered whether the tribunal's reasons show that it did in substance carry out an assessment. On the one hand, there is an express reference to *balance* (paragraph 26 of the written reasons) and the tribunal set out the circumstances and recognised the 'emotional issues at play' (paragraph 22). On the other hand, there are references that suggest the tribunal considered there was only one possible response to the offence. I have in mind the references to 'such behaviour cannot be tolerated' (paragraph 22), 'sends out the wrong message' (paragraph 23), and 'condone the offending' (paragraph 24). The last of those in particular does not sit easily with the focus on the protective rather than the punitive role of the regulator. These remarks must be read in their context, but they do not read like balanced conclusions reached after considering all the relevant factors. They read like conclusions that removal was inevitable once the offence was established without considering the individual circumstances of the particular case.

36. I have read the tribunal's reasons as a whole, as I am required to do. Having done so, I am satisfied that the tribunal did not direct itself correctly that it had to apply a proportionality assessment. Rather, it seems to have considered how it should exercise afresh the discretion (if that is the right word) in section 128(1). Those two exercises are similar and may overlap, but they are not identical.

37. That is why I have set the tribunal's decision aside and directed a rehearing.

Authorised for issue
on 22 May 2026

Edward Jacobs
Upper Tribunal Judge