Neutral Citation Number: [2026] UKUT 307 (AAC)
Appeal No. UA-2024-001546-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

The Upper Tribunal has made an order prohibiting the disclosure or publication of the names of the Appellant and 12 other individuals, or any matter likely to lead members of the public to identify any of them (see page 177 of the Upper Tribunal bundle)

Between:

HB

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Citron, Ms Tynan and Mr Turner
Hearing date: 11 June 2026
Hearing mode: Cloud Video Platform

Representation:
Appellant: by herself
Respondent: by Ashley Serr of counsel, instructed by DAC Beachcroft

SUMMARY OF DECISION

65. SAFEGUARDING VULNERABLE GROUPS
Proportionality (65.8)
Reading across between conduct towards child and adult (65.28)

The Appellant had a difficult mental health history including episodes of mental health crisis during which she caused harm to her children. The Disclosure and Barring Service (DBS) included her on both the children's and adults' barred lists; the Appellant appealed against her inclusion on the latter list, only. Her grounds were mistake of fact, that DBS's decision was disproportionate (as she had undertaken effective mental health therapy around the time the decision was made, and that her mental health had improved), and that her conduct vis-a-vis her children was not "relevant conduct" (as it could not be repeated in relation to a vulnerable adult). The Upper Tribunal finds that DBS did not make any material mistake in its findings of fact; that its decision was proportionate, given the seriousness of the risk posed by the appellant to vulnerable adults, if she had a mental health crisis, at the time of DBS's decision; and that the Appellant's conduct was "relevant conduct". The Upper Tribunal considers whether the reasoning on "relevant conduct" and 'proportionality' in an earlier decision of the Upper Tribunal, *LJCB v DBS* [2025] UKUT 117 (AAC), applies to this case by analogy, and decides that it does not. The appeal is accordingly dismissed.

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 follow.

DECISION

The decision of the Upper Tribunal is to DISMISS the appeal. The decision of the Respondent (DBS reference DBS6191 01013942075) made on 19 June 2024, to include HB in the adults' barred list, is confirmed. (There was no appeal against the Respondent's decision, made at the same time, to include HB in the children's barred list).

REASONS FOR DECISION

This appeal

1. This is an appeal against the decision ("**DBS's decision**") of the Respondent ("**DBS**") dated 19 June 2024 to include HB in the adults' barred list. **(**HB did not

appeal against the decision, made by DBS at the same time, to include her in the children's barred list).

The legislation underlying DBS's decision

2. DBS's decision was made under paragraph 9 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the "**Act**"). This provides that DBS must include a person in the adults' barred list if

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

    b. it has reason to believe that the person is, or has been, or might in the future be, engaged in regulated activity relating to vulnerable adults, and

    c. it is satisfied that it is appropriate to include the person in the list.

3. Under paragraph 10, "relevant conduct" for the purposes of paragraph 9 includes conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult; it is also conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger them; and a person's conduct "endangers" a vulnerable adult if she (amongst other things)

    a. harms a vulnerable adult

    b. causes a vulnerable adult to be harmed

    c. puts a vulnerable adult at risk of harm or

    d. attempts to harm a vulnerable adult.

Jurisdiction of the Upper Tribunal

4. Section 4(2) of the Act confers a right of appeal to the Upper Tribunal against a decision by DBS under paragraph 9 of Schedule 3 (amongst other provisions) only on grounds that DBS has made a mistake

    a. on any point of law;

    b. in any finding of fact on which the decision was based.

5. The Act says 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" (section 4(3)).

DBS's factual findings

6. In making its decision, DBS took into account HB's convictions in 2003 and was satisfied that their context was that between October 2002 and January 2003, HB purposefully injured her two year old child causing bruising and burns to her body; DBS was also satisfied that between 2010 and 2021, HB caused emotional harm to her three children, including manic behaviours linked to her mental health issues; the children's basic needs were not met and HB was unable to keep the children safe, resulting in their being removed from her care.

7. DBS's decision letter contains other factual findings, including:

    a. HB was now taking positive steps to address her mental health;

    b. HB was able to maintain a stable lifestyle for a period of time but when she is triggered by certain things, her mental health deteriorates and this impacts on her abilities and behaviours – she then displays a chaotic and unstable lifestyle, and when in the presence of her children, they have been emotionally harmed and placed at risk of physical harm by HB;

    c. HB's instability impacted her children's wellbeing as recently as 2021;

    d. there was an instance in 2022 when HB self-harmed;

    e. the support and therapy HB was accessing (at the time of DBS's decision) was intensive; this indicates that there was still a significant risk that HB could display concerning behaviours if her mental health were to deteriorate;

    f. it is likely that if employed in regulated activity with vulnerable adults, there may be occasions when HB is not supervised ("lone working") and therefore limited safeguarding for the vulnerable adults if HB were to experience a period of poor mental health;

    g. HB's mental health issues were ongoing and could cause HB's behaviours to become chaotic and erratic.

The Upper Tribunal proceedings

8. Permission to appeal, limited to the following grounds, was given in a decision of Judge Citron issued on 14 August 2025:

    a. that DBS made mistakes on points of law as follows:

i. that its decision was disproportionate (for the reasons advanced by HB, and/or by analogy with the reasoning in *LJCB v DBS* [2025] UKUT 117 (AAC) ("***LJCB***")), as follows: that the identified risks of HB's conduct (emotional harm to HB's children as a result of HB's "chaotic and unstable lifestyle" when her mental health deteriorates) are risks that only arise in personal and family contexts, which (by virtue of section 58 of the Act) are not regulated activities; there was therefore no rational connection between the objective of the barring scheme and the decision to bar HB; the risk HB posed could be addressed by less intrusive measures; and barring HB struck the wrong balance between her private rights and the objectives of the barring scheme; the reasoning in *LJCB* at [57-66] was referred to;

ii. that it was wrong in law to conclude that HB's causing physical and emotional harm to her children (the latter including manic behaviours linked to HB's mental health), was conduct capable of being repeated against a vulnerable adult so as to constitute relevant conduct within the meaning of paragraph 10(1)(b) of Schedule 3; the reasoning in *LJCB* at [52-53] was referred to;

b. that DBS made mistakes in any of the findings of fact listed at paragraph 7 above (the fact at paragraph 7e above was the one HB appeared most to be contesting), and those mistakes, individually or collectively, were material to its decision (the facts as set out in paragraph 6 above were excluded, as these did not appear to be challenged).

9. A hearing listed for 9 December 2025 was postponed due to HB then being in hospital recovering from surgery. The hearing on 11 June 2026 was held remotely as a video hearing, in part to enable HB's participation.

10. HB attended the hearing, as did Mr Serr representing DBS. We are grateful to them both, for presenting their respective arguments.

11. HB, representing herself, also gave evidence at the hearing, including via cross examination and answering questions from the panel.

12. Two witnesses for HB, Lee Saunders of Advice and Support in Custody and Court and Kara Mackintosh of the Nelson Trust, gave oral evidence at the hearing.

13. We acknowledge HB's courage in bringing this appeal, as it touched on difficult matters from her past, and her skill in presenting her case. We acknowledge the

steps HB has taken towards recovery from her difficulties and, whilst the outcome of the appeal is not as she would have liked, we salute her efforts in that regard.

Documentary evidence in the Upper Tribunal bundle

14. Evidence in the Upper Tribunal bundle of 248 pages included:

    a. documents showing HB as being born in 1982 and so aged about 42 at the time of DBS's decision;

    b. extensive information from social services;

    c. HB's representations to DBS (two sets);

    d. 12 March 2024 reference from a registered mental health nurse;

    e. 20 March 2024 reference from a mental health nurse from Advice and Support in Custody and Court;

    f. 15 March 2024 reference from someone working with NHS mental health Assessment & Recovery;

    g. 11 March 2024 reference from someone working in the Advice and Support in Custody and Court team;

    h. references from HB's sister and brother in law;

    i. 20 March 2024 reference from Mr Saunders as lead peer support worker in Advice and Support in Custody and Court;

    j. 14 March 2024 letter from a dialectical behaviour therapy (DBT) trainee therapist working for NHS mental health Complex Psychological Interventions: reflecting what was on the system notes, the letter stated that HB had mental health difficulties and diagnosis of EUPD emotional unstable personality disorder, symptoms of low mood and complex PTSD; it said that HB was currently under secondary mental health services and had been referred to the complex psychological interventions team in March 2023 after a period of stabilisation work with her previous care coordinator in 2022; it said that HB had been engaging in DBT full programme;

    k. 3 June 2024 letter from the same person as the item immediately above, who described themselves as HB's DBT therapist; he said HB was currently under secondary mental health services within recovery mental

health services; she had attended both 1:1 sessions and skills group every week; there had been a great improvement in HB's mental health since starting therapy – she had engaged appropriately in both sessions and had not engaged in any risky behaviours towards herself or others;

l. 17 March 2024 reference from someone with a personal relationship with HB;

m. 10 March 2024 reference from a fellow peer support volunteer and friend;

n. reference from a security supervisor at a magistrates court who first met HB when she attended a hearing;

o. undated letter from Mr Saunders;

p. letter from the disclosure officer at the police force;

q. 8 May 2025 letter from a clinical psychologist working for NHS mental health Complex Psychological Interventions: this said that around April 2023 HB began pre-DBT sessions and completed nine of these; these included development of a personalised target behaviour diary sheet and identification of life worth living goals; it recorded that HB wanted to stop overdosing and self-harming behaviour and wanted suicidal and self-harming urges to reduce; it recorded that HB last took an overdose in October 2022 and last self-harmed by inserting a sharp object in her arm in April 2023 and had also cut herself with a sharp implement around the same time; it recorded that HB began the full DBT programme on 25 July 2023, and that this demanded a huge commitment – attendance at a weekly DBT skills training group, completion each week of a DBT skills worksheet and attendance of weekly DBT individual therapy sessions; HB graduated from the DBT skills training group on 4 February 2025; it recorded that HB last took an overdose in October 2022, but urges to do so remained frequent and intense for a long period after this; HB last told workers she had a plan to overdose in December 2023;

r. 12 May 2025 reference from HB's cousin;

s. 13 May 2025 reference from someone in the senior management team involved with NHS mental health;

t. a presentation about NHS "Peer Support & Service User Involvement Specialised Services" – HB is shown as a presenter and 'involvee';

u. an NHS newsletter from spring 2025 in which HB was guest editor;

v. DBS's barring decision summary document.

HB's case and evidence

15. In presenting her own case at the hearing, HB did not seek to minimise, or evade responsibility for, her conduct in the past; but she said she had now gained insight into the cycles of her mental health, into what triggered mental health crises (early warning signs) and had tools, coping strategies and a network around her. She had maintained stability for a two-year period (and in spite of physical health challenges in the last year).

16. In cross examination, DBS's counsel referred to documentary evidence of HB having taken an overdose in 2018 and again in 2019; HB said that these were linked to her mother having lost her life, in tragic circumstances, around that time.

17. DBS's counsel also referred to documentary evidence of HB having had a serious mental health (psychotic) episode in August 2021 in the presence of her children (then aged 6 and 13), linked to her having taken excess prescription drugs; she was described in the documents as having been in a manic state (but not violent); the documentary evidence indicated that HB was placed in handcuffs and limb restraints by the police and force having been used to restrain her in the ambulance when she was taken to hospital, in order to prevent her from harming herself or others; the documentary evidence also recorded concern about cleanliness in her home at the time as the premises were very messy and there was a strong smell of stale urine from the toilet. It was also recorded that there was a box of medication, some of which were strong medication, in plain sight and within easy access of the children; and that the children were taken home by their respective fathers, in the aftermath of the incident.

18. DBS's counsel referred to documentary evidence of another mental health crisis, in October 2022; this involved the police attending HB's home and finding her engaged in self-harm with sharp implements; the police had to use a chemical spray to get HB into handcuffs to prevent her harming herself or them; HB had become tearful and attributed her bad behaviour to her (imaginary) alter-ego; mental health triage had been called; they decided it was very unlikely HB would harm herself further and so could stay at home rather than be taken to hospital.

19. HB did not challenge the essential accuracy of the documentary records referred to by DBS's counsel. She had very limited recall of her actions during these episodes of mental health 'crisis'.

20. In closing her case, HB said that she had not been given any mental health therapy, prior to the dialectical behaviour therapy she underwent in 2023-2025. She emphasised the very positive effect her volunteering with Advice and Support in Custody and Court had had on her mental wellbeing. She said she could now take preventive measures to avoid harming her children, if she felt a mental health episode coming on. In any case, her mental health was now much better. HB compared her position, having volunteered with Advice and Support in Custody and Court but now being prevented from working with them, due to DBS's decision, to having been taught to fish, but then not given a rod.

Evidence of HB's witnesses at the hearing

21. Mr Saunders was the lead "peer support worker" in Advice and Support in Custody and Court, which he described (in his reference letter of 20 March 2024) as a client-facing all-vulnerability service offering people support whilst they are involved in the criminal justice system. Mr Saunders said HB had volunteered with the organisation since around 2021, as a "peer support mentor". He said that HB had always been open and honest about her past convictions and mental health struggles; the organisation felt that HB's volunteering could be managed safely with close supervision; Mr Saunders said that HB had developed into a very good support worker; HB had a "wellbeing plan" when volunteering with the organisation; the organisation managed it through supervision; HB had had short stints when she needed time out and away from work; but she stayed engaged with the organisation and continued to attend meetings. Mr Saunders could not highlight enough how beneficial this work had been to HB and her overall wellbeing; it had been massive in her stabilisation. He said that the organisation felt that HB was now in a position to be employed.

22. Ms Mackintosh was a key worker with the Nelson Trust, a charity which operates a women's centre near to where HB lives. HB had self-referred to Nelson Trust in March 2025, seeking some extra support, in part due to HB's physical health difficulties. Ms Mackintosh initially met with HB weekly, then reducing to once every two weeks. She described HB as extremely motivated and was seeing no evidence of drug or alcohol abuse on HB's part.

DBS's arguments in brief

23. DBS submitted that *LJCB* is a quite different case to the present one and can be confined to its particular facts:

a. the appellant in LJCB did not have criminal convictions or serious mental health conditions and had not directly engaged in harmful conduct towards her own children;

b. the fact that the appellant in *LJCB* remained with an abusive partner was not considered 'relevant conduct' in relation to a vulnerable adult. Any risk was rationally confined only to her own domestic circumstances which is excluded as regulated activity under the Act - and accordingly the barring decision was disproportionate;

c. in this case there is "relevant conduct" in respect of HB's own children (indeed, her inclusion in the children's barred list is not challenged). This is conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him.

24. As regards proportionality, DBS pointed to the following:

a. HB was convicted of serious offences, albeit many years before DBS's decision;

b. evidence that HB was planning self-harm as close to the date of DBS's decision as December 2023;

c. as of the date of DBS's decision, HB's children were not in her care;

d. there is no medical evidence that HB's mental health condition was fully controlled as at the date of DBS's decision;

e. DBS's decision did not interfere with a previously established career or have a serious pecuniary impact;

f. HB's inclusion in the children's barred list is not disputed;

g. there were no 'lesser' measures available to DBS.

25. DBS drew attention to what was said in *NC v DBS* [2024] UKUT 42 (AAC) at [24]: section 58 of the Act "does not preclude from the consideration as to what is "relevant conduct" any 'activity' which is carried out in the course of a family relationship or a personal relationship."

26. DBS drew attention to what was said in *SD v DBS* [2024] UKUT 249 (AAC) at [23]: any mistake of fact must be judged on the circumstances obtaining at the time the DBS made its decision.

27. DBS accepted that HB's mental health improved with the therapy she undertook; that her volunteering role had a beneficial effect on her mental health; and that undertaking the paid role may further benefit her. But DBS submitted that HB had been in therapy for only a relatively short period prior to DBS's decision; her past conduct was extremely serious; and there was a relapse as recently as 2023.

28. DBS accepted that HB had made significant progress in respect of addressing her mental health condition. DBS submitted that, on analysis, her appeal is a challenge to the assessment of the risk she posed to vulnerable adults as at the time of DBS's decision; but this was a matter for DBS, and its decision was rational, and the only reasonable one open to it on the evidence.

Our conclusions on the grounds on which permission to appeal was given

29. We now go through the grounds on which permission to appeal was given (but in reverse order to that laid out at paragraph 8 above, as we find that more logical):

Mistake in findings of fact at paragraph 7 above

30. The main factual finding by DBS, of those set out at paragraph 7 above, that HB took issue with in her grounds of appeal was that at paragraph 7e above, to the effect that the support and therapy HB was accessing (at the time of DBS's decision) was "intensive"; based on the documentary evidence of mental health professionals working for the complex psychological interventions part of NHS mental health (see evidence summarised at paragraph 14j, k and q above), we think this characterisation ("intensive") of the dialectical behaviour therapy programme, in which HB was participating at that time, was fair and not mistaken.

31. The 'mistake of fact' ground of appeal is therefore not made out.

Mistake on a point of law – relevant conduct

32. *LJCB* was a case in which the only evidence of 'conduct' on the part of the appellant, was the appellant's remaining in relationships with abusive men (see paragraph [52] of the decision). The question for the Upper Tribunal in *LJCB* was whether that 'conduct' - remaining in an abusive relationship - could, rationally, be regarded as "relevant conduct" per paragraph 10(1)(b) of Schedule 3 to the Act i.e. *conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or be likely to endanger him*. The Upper Tribunal, in paragraph [53] of *LJCB*, found that the 'conduct' of the appellant, in staying with abusive partners, *could not be repeated* in relation to a vulnerable adult: the risk to the appellant's child arose from the child being the appellant's own baby for

whom she was responsible and who was living with her and her abusive partner; those were risks specific to the family relationship and living arrangements - a vulnerable adult would not have that family relationship or living arrangement with the appellant.

33. We find, agreeing with DBS, that the position in this case is materially different to that in *LJCB*: in this case, HB's relevant 'conduct', expressed in general terms, is conduct, when HB was in a mental health 'crisis', which harmed HB's children or put them at risk of harm; that conduct *was* capable of being repeated against or in respect to a vulnerable adult, if HB was in mental health 'crisis' at the time; the risk in this case was *not* specific to the family relationship and living arrangement.

34. It follows that the ground that DBS made a mistake on a point of law, in identifying HB's conduct as "relevant conduct" per paragraph 10(1)(b) of Schedule 3 to the Act, is not made out.

Mistake on a point of law – proportionality

35. The challenge in this case to the proportionality of DBS's decision is directed at the second, third and fourth of the issues formulated by Lord Reed in *Bank Mellat v HM Treasury* (No 2) [2014] AC 700, as follows:

The second proportionality issue: whether the measure is rationally connected to the objective

36. In *LJCB*, the Upper Tribunal found that the objective of the Act was the protection of children and vulnerable adults *in the context of regulated activity* – which (per s58 of the Act) excludes activity "carried out in the course of a family relationship", or "in the course of a personal relationship … for no commercial consideration" (see paragraphs [57-58] of *LJCB*); at paragraph [59] of *LJCB*, the Upper Tribunal reasoned that, since the risks of the appellant's conduct in that case related solely to her remaining in relationships with abusive partners, the risks were rationally only capable of arising in the context of activities that she may carry out for children and vulnerable adults *in the course of a family or personal relationship* - only such persons were realistically likely to be at any risk as a result of the appellant remaining in abusive relationships. There was no rational basis for supposing that the appellant's abusive partner(s) would visit her at work so that her conduct in remaining in that relationship could pose a risk to children or vulnerable adults in a professional context by exposing them to the risk of abuse or witnessing abusive conduct. There was also no evidence of her conduct when away from her abusive partners posing a risk to children or vulnerable adults. The Upper Tribunal concluded, at [61] of *LJCB*, that there was no rational connection

between the barring decision in that case and its object of protecting children and vulnerable adults in the context of regulated activity.

37. We find, agreeing with DBS, that the position in this case is materially different to that in *LJCB* (and for similar reasons to those explaining our view in relation to the "relevant conduct" ground above): in this case, the risks arising from HB's conduct are *not* restricted to arising in the context of activities that HB may carry out for vulnerable adults *in the course of a family or personal relationship*; they could arise in *any* context, if HB became subject to mental health 'crisis'. It thus seems to us that the measure – i.e. including HB in the adults' barred list – *is* rationally connected to the object of protecting vulnerable adults in the context of regulated activity.

The third proportionality issue: whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective

38. In *LJCB*, the Upper Tribunal decided, at [63], that there were less intrusive measures, being "other frameworks for protecting children and vulnerable adults within the context of personal and family relationships, and for protecting those who are cared for in a non-family relationship within a person's home" (such as social services, the family courts, and the criminal justice system). But in this case, because, as explained above, the risks associated with HB's conduct were *not* confined to family or personal relationships, achieving the objective of protecting vulnerable adults in the context of regulated activity *would have been* unacceptably compromised if those 'other frameworks' (alone) were used.

The fourth proportionality issue: 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

39. In *LJCB*, the Upper Tribunal found that the risk posed by the appellant in the context of regulated activity was so small that DBS had struck the wrong balance in that case: see [64] of *LJCB*; the tribunal found that such risk as there was arose not from the appellant's conduct, but from personality traits such as poor problem-solving and coping skills.

40. The position in this case is quite different: the risk posed by HB at the time of DBS's decision, in the context of regulated activity, was real and significant, should she go into mental health 'crisis'. Against this we must set the impact of inclusion in the barred list on HB – chiefly, that she was prevented from being

employed by Advice and Support in Custody and Court, which would have benefitted her psychologically as well as financially.

41. Our judgement is that, as at the time of DBS's decision, these effects on HB were outweighed by the importance of the objective of protecting vulnerable adults in the context of regulated activity: the risk of HB going into mental health crisis, at that time, was real and significant, and the risk of this resulting in harm to vulnerable adults in the context of regulated activity was, similarly, real and significant. We accept that, at that time, HB's mental health was on an upward trajectory; but she had had serious mental health 'crises' within the preceding 20 months, and she was in the middle of an intensive course of mental health therapy; the risks remained real and significant.

42. Whilst we have taken account of DBS's judgement on this matter, to reflect its role as the primary decision-maker, we have made this decision for ourselves. Also, given the facts on which DBS's decision was based, we find there is no concern that including HB in the adults' barred list would affect public confidence in the system.

Conclusion on proportionality

43. The ground that DBS made a mistake on a point of law, by making a disproportionate decision, is not therefore made out.

Disposal

44. As none of the permitted grounds of appeal have been made out, it follows that we must confirm DBS's decision.

Zachary Citron
Judge of the Upper Tribunal

Michele Tynan
Matthew Turner
Members of the Upper Tribunal

Authorised by the Judge for issue on 7 August 2026