



Neutral Citation Number: [2026] UKUT 350 (AAC)

Appeal No. UA-2025-001362-V

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

KD

Appellant

v

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Citron and Members Tynan and Bainbridge

Hearing date: 14 July 2026

Hearing mode: Cloud Video Platform

Representation:

Appellant: by himself

Respondent: by Ben Fullbrook of counsel, instructed by DAC Beachcroft

The Upper Tribunal has made an order prohibiting the disclosure or publication of the names of 13 individuals in relation to these proceedings, or of any matter likely to lead members of the public to identify any of them (see pages 398-399 of the bundle)

SUMMARY OF DECISION

SAFEGUARDING VULNERABLE GROUPS: Findings of fact (65.9)

The Appellant was included in the children's barred list on the basis of three main factual findings by the Disclosure and Barring Service (DBS), one of which was that the Appellant sent a sexual video of himself to a 15 year old who was a volunteer in an organisation where the Appellant, then aged 25, had managerial responsibilities. The permitted ground of appeal was that this factual finding was mistaken. DBS made

two other factual findings, both of which involved sexualised communications between the Appellant and adults, including adult volunteers in the organisation. On the basis of the Appellant's oral evidence at the Upper Tribunal hearing (no other witness to the incident provided oral evidence), the Upper Tribunal decided that the first factual finding was mistaken. The matter was remitted back to DBS for a new decision on the basis that the Appellant had not sent the video to the 15 year old, because the Appellant drew the line at sending such material to a person under 18 – but DBS's other factual findings, involving the Appellant's sending of sexual material to adults, remain in place.

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 **ALLOW** the appeal. The Respondent made a mistake in a finding of fact it made and on which its decision (DBS reference DBS6191 01042355908) of 6 July 2025 to include KD in the children's barred list was based.

The Upper Tribunal **REMIT**s the matter to the Respondent for a new decision, which must be based on the findings of fact referred to in paragraph 34 of the "Reasons" section below.

KD must remain in the children's barred list until the Respondent makes its new decision.

REASONS FOR DECISION

This appeal

1. This is an appeal against the decision ("**DBS's decision**") of the Respondent ("**DBS**") dated 6 July 2025 to include KD in the children's barred list.

The legislation underlying DBS's decision

2. DBS's decision was made under paragraph 3 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the "**Act**"). This provides that DBS must include a person in the children's 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 children, and
 - c. it is satisfied that it is appropriate to include the person in the list.
- 3. Under paragraph 4, “relevant conduct” for the purposes of paragraph 3 includes conduct which endangers a child or is likely to endanger a child; and a person’s conduct “endangers” a child if he (amongst other things)
 - a. harms a child
 - b. causes a child to be harmed
 - c. puts a child at risk of harm or
 - d. attempts to harm a child.
- 4. “Relevant conduct” also includes
 - a. conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger them; and
 - b. conduct of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate.

Jurisdiction of the Upper Tribunal

- 5. Section 4(2) of the Act confers a right of appeal to the Upper Tribunal against a decision by DBS under paragraph 3 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.
- 6. 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 decision

- 7. DBS’s decision made factual findings that:

- a. on an unknown date prior to 16th August 2022, KD sent a sexual video of himself masturbating to a 15 year old child, causing emotional harm
- b. on 20 May 2020, 21 May 2022 and 25 July 2022, whilst working as a volunteer for a heritage countryside railway (the “**railway**”), KD sent unwanted inappropriate sexualised messages to 2 colleagues, causing emotional harm
- c. on unknown dates prior to 2022, whilst working as a volunteer for the railway and a special police constable with the local county police force (the “**county police**”), KD set up a fake Facebook account as a woman and sent unwanted explicit videos and images to males and asked for explicit videos and images in return, causing emotional harm.

In what follows, these will be referred to as the “paragraph 7a finding”, the “paragraph 7b finding” and the “paragraph 7c finding”, respectively.

8. In the course of its decision letter, DBS
 - a. said it had concerns about KD’s “obsessive interest in sex and sexualised conversations”;
 - b. found that KD turned normal work discussions into conversations around sexuality and sexual innuendo; and that KD did not care who these conversations were with, which resulted in him sending a 15 year old child a video of KD masturbating during a simple conversation around his volunteering;
 - c. found that KD’s obsession with sex drove his harmful behaviour, raising significant concerns;
 - d. also had concerns about KD’s callousness in continuing his unwanted behaviour and his lack of empathy for those he contacted. KD had put his own wants and needs above those of others regardless of the consequences, sexual harm and emotional impact it caused and KD had tried to justify his behaviour as banter, joking and having fun, albeit at their expense;
 - e. was satisfied that KD had repeated this type of behaviour over a number of years and had been unable to manage his behaviour effectively, indicating he would repeat this in the future.

9. DBS's two areas of definite concern in its 'structured judgement process' (part of its 'barring decision summary' document) were excessive/obsessive interest in sex and callousness/lack of empathy.

The appeal to the Upper Tribunal

10. Permission to appeal was given by the Upper Tribunal (Judge Citron) limited to the ground that DBS made a mistake in a finding of fact on which its decision was based, namely the paragraph 7a finding.
11. KD gave evidence at the hearing of his appeal, including via cross examination and answering questions from the panel.
12. KD had two witnesses who gave oral evidence: Cllr (Mrs) Calne Edgington-White (who had known KD since 2015, when he joined a town council) and Mr Nick Farress (who had known KD for 14 years in professional and voluntary capacities); both provided written statements as well.

Documentary evidence in the Upper Tribunal bundle

13. In addition to DBS's decision letter, evidence in the bundle of 453 pages included:
 - a. in respect of the paragraph 7a finding in particular:
 - i. witness statement of a police constable from the investigating police force (the "**investigating police**") dated 16 August 2022, who spoke with "Complainant 1" ("**C1**"), the person to whom KD (allegedly) sent the video, (accompanied by his mother) on the telephone; this recorded that C1 did not wish to attend court and for that reason he did not provide a statement; C1 was, however, happy to tell the police constable what happened, as follows: KD was the head of the guard department of the railway, where C1 was a volunteer; KD had arranged for C1 to shadow one of his colleagues; when the work finished, C1 messaged KD (via snapchat) saying words to the effect of, "Thank you for letting me do that, I owe you one"; KD responded "Owe me what?"; C1 then said "You're head of department, you tell me"; C1 then received something he thought was a message; he opened it to find a video of KD masturbating; the video was muted; C1 closed it as soon as he saw it; C1 sent KD a message saying he was a child of 15; KD replied saying he was sorry and asked C1 not to mention

it to anyone; this had happened about four weeks earlier; C1 had told another person about it, who was a director at the railway, and emailed him; C1 had heard that another volunteer had reported a similar thing so he felt he needed to say something.

- ii. statement of “Witness 2” (a member of paid staff and also a volunteer on the railway) of 5 September 2022; Witness 2 had met C1 when C1 was a 14-year-old volunteer on the railway; Witness 2 said they became friends and felt like an older brother to C1; Witness 2 said that around the end of July 2022 C1 sent him a message on snapchat saying that someone “really high up” had sent him a video of them masturbating; C1 said it was KD who had sent it; Witness 2 said he was shocked but not surprised; he advised C1 to report it (although C1 had said he did not want to get anyone into trouble).
- iii. a later statement of “Witness 2”, dated 4 May 2023, in which he added to his earlier statement by saying that he had never trusted KD and found him to be very sly; KD had previously tried to split up couples in the railway; KD’s behaviour towards a lot of people was influenced by his sexuality;
- iv. statement of “Witness 6” on page 50-51 (a director of the railway), of 5 September 2022 – Witness 6 said he had received an email from C1 about the video incident with KD, on 14 August 2022;
- v. witness statement of a police constable from the investigating police dated 1 May 2023 recording that on that day he spoke to C1 on the telephone about the investigation the police were conducting into KD’s conduct; the police constable asked C1 how he could be sure the video was in fact sent by KD – C1 said it was sent from KD’s snapchat account; C1 also stated that during the course of the conversation, KD had taken a photo of the room he was in, which appeared to be a bedroom – and the video had the same bedroom in the background; C1 also told the police constable that he did not wish to provide a statement as part of the investigation, as C1 did not feel he had time for that at the moment.

- b. in respect of the paragraph 7b finding in particular:
 - i. statement of “Complainant 2” (a colleague of KD’s on the railway) of 16 August 2022; in this, Complainant 2 says that he had a colleague on the railway, C1, who confided in him that he was also having issues with KD and that he had received a video from KD of KD masturbating; this raised Complainant 2’s concerns and is why he went to the police;
 - ii. statement of “Witness 8” (a colleague of KD’s on the railway) of 8 May 2023; in this, Witness 8 says that, around January 2023, he heard rumours that KD had sent messages to another volunteer, C1; Witness 8 says he realised the messages that KD had sent him in 2020 and 2022 were similar to those sent to C1, and so felt he should report the messages that had been sent to him;
- c. in respect of the paragraph 7c finding in particular:
 - i. KD’s interviews by the investigating police, where it is said (by DBS) that he made admissions about the fake Facebook profile
 - ii. statement of “Complainant 2” of 3 May 2023, about Facebook messages
 - iii. statement of “Witness 7” of 17 May 2023, about snapchat and Facebook messages
 - iv. county police ‘accelerated misconduct hearing’ on 5 July 2024 – about the fake Facebook account; the outcome was that KD would have been dismissed, had he not already resigned
- d. record of 1 hour, 56 minute and 1 hour, 44 minute interviews of KD by investigating police on 23 May 2023;
- e. statement of “Witness 1”, dated 10 May 2023, who worked as managing director of the railway, who initially (in around October 2021) managed an investigation into whether KD had shared a semi-naked picture of one of the railway guards;

- f. record of 1 hour, 7 minute investigating police interview with KD on 16 August 2022;
- g. minutes of 'position of trust' meeting about KD, on 17 August 2022; it was noted that KD had three position of trust roles, local councillor, volunteer department lead at the railway, and special constable with the county police;
- h. minutes of a review position of trust meeting about KD, 8 July 2024: KD had resigned from the county police and been dismissed from the railway; he was 'in role' as councillor, and was an airline cabin crew member;
- i. the referral from the county police to DBS; this
 - i. showed KD as being born in 1997 i.e. he was 25 in the summer of 2022;
 - ii. recorded that in 2021 KD was a senior volunteer at the railway and a serving special constable with the county police at the time of his arrest in August 2021; C1 was a youth volunteer with the railway in 2021;
- j. DBS's barring decision summary document.

DBS's submissions

14. DBS's submissions on the evidence included the following:

- a. Whilst there was no direct evidence from C1 about the paragraph 7a finding, the accounts provided by Witnesses 6 and 2, and the investigating police officers, are remarkably consistent; and there is no obvious reason why C1 would fabricate them.
- b. In his August 2022 interview by investigating police, KD responded "no comment" to questions about whether he would have known C1's age and whether he had had contact with C1 on snapchat; whereas, in his May 2023 police interview, KD said he had known how old C1 was and had contact with him on snapchat. DBS said this was evidence of inconsistency on KD's part.
- c. Police emails include a statement on 11 November 2022 that "Snapchat isn't great in an evidential point of view to show that a video/image has

been sent/received due to its disappearing message features” (page 244).

- d. C1’s credibility was enhanced by the fact that he admitted that the video did not show KD’s face.

15. DBS submitted that KD’s behaviour towards C1 was consistent with a pattern of behaviour which KD displayed towards other individuals, including and in particular colleagues at the railway, in which KD was quick to sexualise conversations, and both sought and exchanged explicit material on social media platforms. This behaviour is captured by the paragraph 7b and 7c findings (against which there is no permission to appeal).
16. Taking all the above into account, DBS submitted that it had not made a mistake in concluding that the paragraph 7a finding had been proven on the balance of probabilities.
17. Even if there was a mistake of fact in the paragraph 7a finding, DBS submitted that it is just one part of a pattern of inappropriate sexual behaviour which KD had exhibited towards others, particularly colleagues at the railway, as demonstrated by the paragraph 7b and 7c findings. This behaviour caused emotional harm and KD demonstrated a lack of insight into this behaviour, claiming, for example, that it was (and would have been seen as) a joke or banter. This is recorded in DBS’s ‘barring decision summary’ document in the section about ‘callousness/lack of empathy’ (page 391). It also demonstrates a fixation with sex and sexual conversations, which led KD to engage in deception with a view to obtaining explicit images of others for sexual gratification (the paragraph 7c finding is being referred to). This pattern of conduct led to DBS’s concerns that KD was unable to manage his behaviour and that, in these circumstances, there was a risk that children would be exposed to sexual harm. Although the paragraph 7a finding is the only one directly linked with children, the paragraph 7b and 7c findings are broadly consistent with it and are sufficient by themselves to justify KD’s inclusion in the children’s barred list. Accordingly, even if DBS did make a mistake of fact in relation to the paragraph 7a finding, that mistake was not material.
18. DBS’s counsel drew our attention to what was said in *Birmingham City Council v Jones* [2023] UKSC 27, [2024] AC 168 (the following is taken from the headnote in the report of the case):

Per curiam. There is only one civil standard of proof at common law and that is proof on the balance of probabilities. Nevertheless, the inherent improbability of an event having occurred will, as a matter of common sense, be a relevant factor when deciding whether

it did in fact occur. As a result, proof of an improbable event may require more cogent evidence than might otherwise be required. However, the seriousness of an allegation, or of the consequences which would follow for a defendant if an allegation is proved, does not necessarily affect the likelihood of its being true. As a result, there cannot be a general rule that the seriousness of an allegation or of the consequences of upholding an allegation justifies a requirement of more cogent evidence where the civil standard is applied. There is no such thing as a heightened civil standard (post, paras 51, 60).

KD's position and evidence

19. KD emphasised

- a. an email from the investigating police dated 16 January 2023 confirming no further action following review of a report on KD's phone (page 430)
- b. that C1 did not engage with or cooperate in the police investigation
- c. that the investigating police indicated that they would rely upon evidence recovered from KD's devices, however no evidence supporting the allegation was identified.

20. KD's witness statement of 26 May 2026:

- a. denied the allegation in the paragraph 7a finding
- b. stated that there had not been any safeguarding concerns during his time working at a secondary school, July 2020 to August 2021
- c. stated that he had volunteered at the railway for approximately 10 years, having joined at the age of 14 as an apprentice at one of the stations. Over time, he progressed to the role of station supervisor.

21. KD made the following submissions about the evidence adduced in support of the paragraph 7a finding:

- a. there was no direct evidence from C1
- b. there was no recovered video or image (from KD's phone)
- c. there was no forensic evidence demonstrating that such material was transmitted
- d. there was no independent eyewitness evidence
- e. the date of the incident was not specified.

22. KD submitted that none of these necessarily shows that the paragraph 7a finding was mistaken. However, when considered cumulatively, they represent substantial evidential deficiencies which significantly weaken the reliability of the evidence supporting the paragraph 7a finding.
23. KD submitted that DBS relies on the consistency of the evidence – but this is because it has only one source, the reported evidence of C1.
24. As to the materiality of the paragraph 7a finding – KD submitted that it is the only one involving a child, and so forms the essential factual basis for the decision to include KD in the children’s barred list.

Did DBS make a mistake in the paragraph 7a finding?

25. In deciding whether DBS made a mistake in its paragraph 7a finding, we are faced with conflicting evidence about a specific factual matter: whether, on one occasion approximately 4 weeks before C1 spoke to the police officer on 16 August 2022, KD sent C1 a video of himself masturbating. We have documentary evidence of C1 having told the police officer that this happened; we also have documentary evidence of C1 having told other colleagues on the railway (“Witness 2” and “Witness 6”), that this happened. On the other hand, we have documentary evidence of KD telling the police, and others, following the report by C1, that the sending of the “masturbating” video did not happen (although KD does not challenge C1’s account of an exchange of textual (snapchat) messages between them shortly after C1 completed a volunteer “shadowing” experience on the railway); KD maintained his denial of sending any video of himself masturbating, in oral evidence before us; he was cross-examined on it; there was nothing in his oral evidence, in our view, to indicate that KD was not telling us the truth.
26. We have not had oral evidence from C1 or, indeed, from the police officer or Witnesses 2 or 6 i.e. those to whom C1 reported the incident in 2022. C1’s account was not therefore tested in cross examination. C1 was 15 at the time he reported the incident; he would have been around 19 at the time of the hearing of this appeal. The documentary evidence records that, at the time he made his report to the police, he did not want to make a statement or otherwise be involved in judicial proceedings.
27. DBS’s strongest argument, in our view, was that it could fairly be inferred from the paragraph 7b and 7c findings – which are unchallenged, and against which there is no permission to appeal – that, on the balance of probabilities, C1’s account is accurate, and KD’s is not. In other words, because, on three dates in

2020 and 2022, KD sent unwanted inappropriate sexualised messages to 2 colleagues, and around the same time set up a fake Facebook account and sent explicit videos to men, it was likely that he sent a video of himself masturbating to C1, in around June 2022. KD's principal response is that his conduct, in these matters, towards C1 was materially different than it was towards adults working on the railway, because C1 was only 15 years old. Once again, KD was cross examined on this assertion and, in our view, what he said stood up. Based principally on his oral evidence, and to a limited extent on the positive views of his character held by his witnesses who also gave oral evidence and were cross examined, we think it more likely than not that KD did "draw a line" with C1, because C1 was only 15, and did not replicate the sort of conduct shown in the paragraph 7b and 7c findings, with C1. This, combined with our perception that, in general, KD was being truthful with the tribunal, is why we conclude that, on the balance of probabilities, KD did not send a video of himself masturbating to C1 in the summer of 2022, and so that the paragraph 7a finding is mistaken.

28. We acknowledge the implication of this, being that C1's reports were inaccurate. However, given that we had no opportunity to question C1, or anyone that C1 had spoken to, about those reports, this is perhaps an unsurprising outcome, given the weakness of untested evidence. We note that the judiciary is well-able to make fair and reasonable adjustments to enable children, young persons, and vulnerable persons to give evidence (see the chapter in the Equal Treatment Bench Book on Children, young people and vulnerable adults); however, DBS, a government body and legally represented throughout these proceedings, indicated no desire to put in place any such arrangements to enable oral evidence of C1 (or any other witness) to be heard.

Was the paragraph 7a finding material to DBS's decision?

29. The paragraph 7a finding was the foundation for DBS's perception that KD did not care who his sexualised work conversations were with i.e. whether they were with an adult or with someone under 18. This perception was in turn, it seems to us, important to DBS's findings about KD's "obsessive interest in sex and sexualised conversations" – one of the two main justifications for the barring decision.
30. This view, that the paragraph 7a finding was material to DBS's decision, is reinforced by the facts that the paragraph 7a finding is referred to four times in DBS's 'structured judgement process', is the sole instance of "relevant conduct" relied upon in DBS's decision letter, and is referred to a further three times in that letter. On the evidence before us, it seems to us entirely unsafe to assume that

DBS's decision would have been the same, had there been only the paragraph 7b and 7c findings.

Conclusion and disposal of the appeal

31. It follows that the permitted ground of appeal is made out – the paragraph 7a finding was mistaken and was material to DBS's decision.
32. Given this, we are required either to direct KD's removal from the barred list, or to remit the matter to DBS for a new decision. In *DBS v AB* [2021] EWCA Civ 1575, the Court of Appeal said, at [72]:

Unless it is clear that the only decision that the DBS could lawfully come to is removal, the matter should be remitted to the DBS to consider. If, therefore, there is a question of whether it is appropriate to include a person's name on a barred list, the appropriate action under section 4(6) of the Act would be to remit the matter to the DBS so that it could decide the issue of appropriateness.

33. Whilst we have found that the paragraph 7a finding was mistaken, and our analysis is that KD did draw a line at those aged under 18, when it came to sending sexualised messages, other aspects of DBS's analysis remain intact: in particular, the paragraph 7b and 7c findings, and DBS's concerns under the head of 'callousness/lack of empathy' (being the harm caused, on DBS's analysis, to those who received his sexualised messages and were tricked by his Facebook account). The fact that those who, on DBS's analysis, were harmed, were not children, does not rule out DBS considering it appropriate to include KD in the children's barred list (that is a matter of risk-assessment, for DBS's expert judgement); and, as a pure legal matter, "relevant conduct" as regards children extends to conduct which, if repeated against or in relation to a child, would harm them. It follows that, even with our having decided that the paragraph 7a finding was mistaken and material, there remains a question of whether it is appropriate to include KD in the children's barred list. We accordingly must remit the matter to DBS for a new decision on that question.
34. DBS must base that new decision on the findings of fact made by us in this decision, namely, that KD did not send C1 a video of himself masturbating, and that KD did distinguish between those above and below the age of 18 when sending sexualised messages to work colleagues or explicit videos via his Facebook account; in other words, he would not send such a message, or video, to someone he knew was under 18.

35. KD must remain included in the children's barred list until DBS makes its new decision: the matters at stake here require most careful judgement, and it would benefit no one for KD to be removed from the list by us, only to have him returned to it by DBS's new decision, shortly afterwards. We trust that DBS will make the new decision as soon as it reasonably can.

Zachary Citron

Judge of the Upper Tribunal

Michele Tynan

Elizabeth Bainbridge

Members of the Upper Tribunal

Authorised by the Judge for issue on 9 September 2026