

Neutral Citation Number: [2026] UKUT 427 (AAC)
Appeal No. UA-2024-001693-V

IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

THE UPPER TRIBUNAL HAS ORDERED that, without the permission of the Tribunal, no one shall publish or reveal the name or address of the Appellant in these proceedings or any information that would be likely to lead to the identification of them or any member of their family in connection with these proceedings. Any breach of this order is liable to be treated and punished as a contempt of court.

Between:

HUZ

Appellant

v

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Jacobs
Tribunal Members Stammers And Waitt

Decided on 27 October 2026 without a hearing.

Representation:

HUZ: was not represented

DBS: Ashley Serr of counsel, instructed by DBS Legal Department

SUMMARY OF DECISION

Safeguarding Vulnerable Groups (65.13) – Regulated activity

Safeguarding Vulnerable Groups Act 2006 – Schedule 3, paragraph 2(6)(b) – DBS decided that appellant might in future be engaged in regulated activity relating to children – no mistake of fact or law.

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 judge follow.

DECISION OF THE UPPER TRIBUNAL

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

DBS reference: 01039308220
Decision letter: 13 August 2024, effective from 11 August 2024.

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

DBS did not make a mistake in relation to the test for regulated activity. Its decision is confirmed.

REASONS FOR DECISION

A. Introduction

1. On 11 June 2024, DBS included HUZ in the adults' barred list. This decision was made under paragraph 7 of Schedule 3 SVGA. It was based on HUZ's conviction on three counts of:

> Sexual activity with female person with mental disorder/learning disorder – care worker – no penetration.

There is no right of appeal against a decision under paragraph 7. The person involved was a patient in a unit where HUZ worked as a health care assistant. She was an adult, who had been admitted with depression.

2. On 11 August 2024, DBS included HUZ in the children's barred list. He was notified by letter on 13 August 2024. This decision was made under paragraph 2 of Schedule 3 SVGA. Upper Tribunal Judge Jacobs gave HUZ permission to appeal against this decision on the ground that he had a realistic chance of showing that he did not satisfy paragraph 2(6)(b) of Schedule 3 SVGA.

B. The legislation

The barring provisions

3. Paragraph 2 of Schedule 3 SVGA deals with inclusion in the children's barred list. It provides:

> *Inclusion subject to consideration of representations*
>
> **Paragraph 2**
>
> (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
>
> (2) Sub-paragraph (4) applies if it appears to DBS that—
>
> (a) this paragraph applies to a person, and
>
> (b) the person is or has been, or might in future be, engaged in regulated activity relating to children.
>
> (4) DBS must give the person the opportunity to make representations as to why the person should not be included in the children's barred list.
>
> (5) Sub-paragraph (6) applies if—

(a) the person does not make representations before the end of any time prescribed for the purpose, or

(b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

(6) If DBS—

(a) is satisfied that this paragraph applies to the person, and

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

it must include the person in the list.

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

(8) If DBS—

(a) is satisfied that this paragraph applies to the person,

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

(c) is satisfied that it is appropriate to include the person in the children's barred list,

it must include the person in the list.

The appeal provisions

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

4 Appeals

(1) An individual who is included in a barred list may appeal to the Upper Tribunal against–

…

(b) a decision under paragraph 2, 3, 5, 8, 9 or 11 of Schedule 3 to include him in the list;

(c) a decision under paragraph 17, 18 or 18A of that Schedule not to remove him from the list.

(2) An appeal under subsection (1) may be made only on the grounds that DBS has made a mistake–

(a) on any point of law;

(b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.

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

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

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

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

(a) direct DBS to remove the person from the list, or

(b) remit the matter to DBS for a new decision.

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

(a) the Upper Tribunal may set out any findings of fact which it has made (on which DBS must base its new decision); and

(b) the person must be removed from the list until DBS makes its new decision, unless the Upper Tribunal directs otherwise.

…

C. Our approach to the case

5. HUZ opted for this decision to be made without an oral hearing after considering the available choices: (a) a decision without a hearing; (b) an in-person oral hearing; or (c) an oral hearing online. These were explained in Judge Jacobs' grant of permission.

6. The burden of showing a mistake is on HUZ. See the Presidential Panel in *PF v Disclosure and Barring Service* [2020] UKUT 256 (AAC) at [8]. We have made our findings on the balance of probabilities: *Kihembo v Disclosure and Barring Service* [2023] EWCA Civ 1547 at [36].

7. In deciding whether DBS made a mistake, we had to consider the circumstances as they were at the date of DBS's decision, which was 11 August 2024. See *SD v Disclosure v Barring Service* [2024] UKUT 249 (AAC). We were entitled to take account of evidence that was not before DBS, provided that it could be related back to that date.

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

D. The legal test

9. For convenience, we repeat the language of the legal test in paragraph 2(6)(b). It is whether DBS:

> has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children

10. Under SVGA, a child is anyone under the age of 18: see section 60. Different definitions are used in other legislation. General usage is often less precise than legal language, so it is possible, probably likely, that someone aged 17 would not generally

be referred to as a child. HUZ has written about working with 'children'. When assessing his evidence, we have kept in mind that HUZ may not be referring to children as defined in SVGA.

E. Regulated activity

11. There are three parts to the test for regulated activity. DBS has only relied on the *might in future* part. We deal with all three parts, as some of the analysis will be relevant to the part in issue.

Is engaged in regulated activity

12. This relates to the present, which means the time of DBS's decision. HUZ denies working with children at that time. DBS has not disputed this. There is no evidence on which we could find that HUZ was engaged in regulated activity relating to children on 11 August 2024. We find that he was not.

Has been engaged in regulated activity

13. This relates to the past, which means before the time of DBS's decision.

14. HUZ had been engaged in regulated activity relating to vulnerable adults from 2017 to 2019. That is not in dispute.

15. HUZ denies working with children before that time. We accept that, but the position is not as straightforward as HUZ has claimed.

16. On 22 June 2017, an enhanced disclosure barred list application was made in respect of HUZ. In the section of the application completed by the prospective employer, the post applied for was given as 'Health Care Assistant – Child and Adult Workforce', and the work was identified as being with vulnerable adults and with children. The inclusion of children cannot be explained as purely precautionary. An application for both lists costs more than for a single list, and guidance advises against applying more widely than is appropriate for the post. From HUZ's description, he was based in an adult unit, but given the job title there was potential for redeployment from working with adults to working with children. It is also possible for children to be placed on an adult ward if no other placement is available; this is a recognised last-resort measure. So HUZ held a post that could have involved working with children.

17. That said, DBS has not argued that HUZ did work with children and we accept HUZ's denial. The only evidence relevant to this period shows that there was a potential for HUZ to have been engaged in regulated activity relating to children. We find that HUZ had not been so engaged.

Might in future be engaged in regulated activity

18. DBS relies on this part of the test and argues that it is satisfied. We accept that argument. This is why.

19. Before being employed as a health care assistant, HUZ had worked in the hospitality industry. When employed as a health care assistant, the place of work contained only adult wards. HUZ was never deployed elsewhere and never worked with children. Afterwards, HUZ first worked in a factory and then trained as an HGV driver, qualifying in December 2024 and working for the same employer since April 2025. We accept all of that, subject to the point we have made about the legal definition of a child.

20. However, we do not accept the statement in the grounds of appeal that HUZ had never worked 'within an organisation which works with Children'. As we have said, HUZ applied for and was appointed to a job as a health care assistant in the child and adult workforce. That would have been clear to him from the title. HUZ has said that DBS has confused his employer with the organisation that was later formed by the merger of his employer and another body. We accept that there was a merger, but do not accept that there has been any confusion. We are satisfied from the evidence relevant to the time of the appointment that the employer provided services to both adults and children. We have relied on a Care Quality Commission report for the employer that was published on 27 January 2017, the same year when HUZ was appointed. It described the employer as providing specialist mental health services for children and young people. We have also taken into account the application for enhanced disclosure that related to both vulnerable adults and children. This dual application was unnecessary if the employer did not provide a service for children. We have not relied on evidence after the merger, which we understand only took place after HUZ ceased to work as a health care assistant.

21. We do, as we have said, accept that HUZ did not actually work with children. That is not enough to show that DBS was wrong about what might happen in the future. HUZ has written that:

> … purely on the firm fact that I have never worked with children, I believe I shouldn't be [barred].

We do not accept that approach, because it is not how the law works.

22. HUZ has denied any intention to work with children in regulated activity. In the grounds of appeal, HUZ wrote:

> I never wish to work within the healthcare industry again, let alone with Children, or any work related to Children.

HUZ has presented the work as a health care assistant as a temporary or transitional stop towards a life-time career in transport:

> In life, I believe, you have to work a number of different jobs, before you find the right one for you. Something you particularly enjoy and want to do. Driving has always been a favourite activity of mine, and I firmly believe that I will stay at my current company for a very long time.

This approach to life is confirmed by HUZ's progression from hospitality to care work to factory work and now to transport. That history shows a willingness to try different kinds of work. We note that HUZ has written:

> Working within the care sector wasn't for me and I fully regret ever thinking that it could some day be a possible career for myself, and I will never work within that sector again.

We accept that that is how HUZ now feels. Despite those feelings, the employment as a health care assistant lasted from 2017 to 2019 and only ended because of the offences he committed. We do not accept that at the time HUZ felt that the work 'wasn't for me'. It would have been easy to move on, if that was how he felt.

23. For those reasons in combination, we find that HUZ *might* in future be engaged in regulated activity relating to children. Bringing those points together, HUZ applied for a post that by its title might involve working with children, was appointed and

remained in post until required to leave as a result of the offences. HUZ's work history shows a willingness to try new forms of employment. At the moment, and at the time when DBS made its decision, HUZ has no wish or intention to work with children. Despite that DBS did not make a mistake, in the context of protective legislation, when it found that the test for regulated activity relating to children was satisfied.

F. Finally

24. We do not want HUZ to misunderstand our decision. We have not found that HUZ's evidence of present intentions was misleading. We have had to decide whether DBS made a mistake in applying the legal test. We have found that it did not. The issue was whether HUZ *might in future* be engaged in regulated activity relating to children. The test looks to what might happen. It is not about what *will* happen. Nor is it about how HUZ feels about the future now, or more precisely, felt at the time of DBS's decision. No one has suggested, and this decision does not imply, that HUZ might engage in sexual activity with a child.

Authorised for issue
on 2 November 2026

Edward Jacobs
Upper Tribunal Judge

Members
Helen Stammers
Dora Waitt