OR v Disclosure and Barring Service
[2023] UKUT 160 (AAC)

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Appeal No. UA-2021-000088-V

Between:

OR

Appellant

- v –

DBS

Respondent

Before: Upper Tribunal Judge Church, and Tribunal Members Graham and Jacoby

Decided following an oral hearing at Field House, London held on 3 May 2023
at 10:30am.

Representation:

Appellant: In person
Respondent: Ms Bronia Hartley of counsel (instructed by DBS legal)

DECISION

On appeal from: Disclosure and Barring Service (**"DBS"**)
DBS Reference: DBS 6057
Final Decision Letter: 12 May 2021

The decision of the Upper Tribunal is to refuse the appeal. The decision of DBS made on 12 May 2021 to include the Appellant's name on both the adults' barred list and the children's barred list was not made in mistake of law and was not based on any mistake of fact. The decision is confirmed.

REASONS FOR DECISION

What this appeal is about

1. In legal terms, this appeal is about what the DBS needs to say about a decision to place an individual's name on the adults' barred list where there is no evidence of the individual engaging in relevant conduct relating to vulnerable adults, but there is evidence of relevant conduct relating to children. This is what the DBS calls 'transferability'.

2. In human terms it is a very sad case. At its centre is a man who until recently practised as a medical doctor. According to the references from former colleagues, he did much good in that role and attracted no complaints about his clinical practice. However, it was discovered that away from work he had accessed thousands of images of child sexual abuse over the course of a decade, which undeniably caused great harm to many children.

Factual and procedural background

3. On 25 September 2020 the Appellant was convicted of:

    a. three counts of 'making indecent photograph or pseudo-photograph of children', contrary to section 1(a) of the Protection of Children Act 1978, and

    b. one count of 'possession of extreme pornographic images of intercourse/oral sex with dead/live animal' contrary to section 63(1)(7)(d) of the Justice and Immigration Act 2008.

The indecent images had been accessed over a ten year period which ended only on the day before he was arrested and his devices were confiscated by the police.

4. The Appellant was referred to the Respondent which, having considered written representations from the Appellant, decided on 12 May 2021 to place his name on both the children's barred list and the adults' barred list (the **"Barring Decision"**). The Barring Decision was based on the offences for which he had been convicted and on the Respondent's separate finding (which was not disputed) that the Appellant had:

    a. used a web app that randomly connected him with other users,

    b. interacted online with one user who described himself as a 15 year old boy, and

    c. masturbated on camera and encouraged the other user to masturbate on camera.

5. While the Appellant did not dispute his convictions and showed some awareness of the suffering experienced by the children depicted in the images, for which he expressed remorse, he disagreed with the Barring Decision and applied to the Upper Tribunal for permission to appeal it.

6. He didn't challenge the decision to place his name on the children's barred list, but he maintained that it was neither appropriate nor proportionate to include his

name on the adults' barred list, and he said the decision to do so was not adequately explained.

7. The matter came before me. I considered permission on the papers and in my decision (which was addressed to the Appellant) I said:

> "5. You have made written submissions challenging the Respondent's decision-making, arguing that it was in error of law on the basis that:
>
> a. the Respondent's "Final Decision Letter" contained no, or no detailed reasoning for the decision to include your name on the Adults' Barred List and was not supported by evidence of any risk to vulnerable adults;
>
> b. the decision to include your name on the Adults' Barred List was neither appropriate nor proportionate.
>
> 6. You have also challenged aspects of the Respondent's fact finding
>
> 7. You have now had the opportunity to review the Respondent's full case file, but you have indicated that there is nothing in that extra material which necessitates any amendment to your grounds of appeal.
>
> 8. You have sought to challenge the "appropriateness" of the Respondent's decision to include your name on the Adults' Barred List. This element of your application is bound to fail because the Upper Tribunal simply has no jurisdiction to interfere with the Respondent's decision making on "appropriateness" unless it is also infected by being based on a mistake in a material finding of fact or an error of law.
>
> 9. The Respondent's decision is based mainly on your convictions following your guilty plea to three offences relating to the making of an indecent photograph/pseudo-photograph of a child. You do not seek to challenge the Respondent's decision to include your name on the Children's Barred List.
>
> 10. I am persuaded that it is arguable with a realistic (as opposed to fanciful) prospect of success that the Respondent may have erred in law in failing adequately to explain how your admitted offending against children is transferable to vulnerable adults."

8. I decided that this warranted a grant of permission, and I made directions for the parties to file skeleton arguments, and to attend an oral hearing of the appeal, which they duly did.

The oral hearing of the appeal and the positions of the parties

9. The oral hearing of the appeal was held on 03 May 2023 at Field House in London.

10. The Appellant gave evidence and made arguments in support of his appeal. He described being addicted to viewing extreme pornography, including images of child sexual abuse, and smoking cannabis as a way of coping with stress. He said that these addictions, which were symbiotic in the sense that he found smoking cannabis to be an aphrodisiac, overrode his thinking and led to him accessing progressively

more extreme (and illegal) pornographic material to help him to cope with stressors in his life.

11. He explained that he has since learned new strategies to cope with stress, including talking about his difficulties, both with professionals and with his wife, exercising and engaging in hobbies. He pointed to the supportive character references from colleagues, and the fact that he has received no complaints in relation to his clinical practice.

12. The Appellant said that, while he accepted that the Respondent had given an explanation of its reasons for deciding that his name should be placed on the adults' barred list as well as the children's barred list, the reasons given were inadequate because they weren't balanced and they were poorly researched. He maintained that the "balancing exercise" described by the Respondent was anything but balanced. He said its reasoning on risk was based on assumptions and suppositions rather than evidence, and it ran contrary to the opinions of the professionals with whom he had spent more than 50 hours of psychology sessions. He pointed, in particular, to the forensic psychologist's assessment of his presenting a "low" risk of reoffending, an assessment that, unlike the DBS assessment, was arrived at using clinically established forensic tools. He emphasised that he had not engaged in any contact offending and said that an assumption that a progression to contact offending was a significant risk was not supported by research.

13. The Appellant also identified a mistake of fact made by the Respondent, namely its finding that he had stopped receiving therapy in 2021, when in fact he continues to engage in therapy once every 4 or 5 weeks.

14. No other witnesses were called to give evidence.

15. Ms Hartley expanded on the arguments she had set out in her skeleton argument. She said that the Appellant had, in committing the offences that he did, transgressed boundaries which should be sacrosanct for anyone dealing either with children or with vulnerable adults.

16. Ms Hartley maintained that the standard to be applied to the reasons of the Respondent, which was neither a court nor a tribunal, was relatively low, and relied upon the House of Lords authority of *Khakh v Independent Safeguarding Authority (now the Disclosure and Barring Service)* [2012] EWCA Civ 1341 ***("Khakh")***.

17. We are grateful both to the Appellant and to Ms Hartley for their clear and helpful submissions and for the respectful and measured way they conducted their respective cases.

The issue to be decided in this appeal

18. The sole ground on which permission was granted was whether the Respondent's reasons were inadequate. However, the assessment of the adequacy of the reasons given inevitably requires consideration of the proper approach to the issue of 'transferability'.

19. We decided that the Respondent's reasons were adequate, and we explain why below.

The statutory framework

20. DBS was established by the Protection of Freedoms Act 2012, taking on the functions of the Criminal Records Bureau and the Independent Safeguarding Authority. One of its main functions is the maintenance of the children's barred list and the adults' barred list. Its power and duty to do so arises under the Safeguarding Vulnerable Groups Act 2006 (the **"2006 Act").**

DBS's duty to maintain the barred lists, and the criteria for inclusion

21. Section 2(1)(a) of the 2006 Act places a duty on DBS to maintain the barred lists. Schedule 3 to the 2006 Act applies for the purposes of DBS determining whether an individual is included in either or both barred lists.

22. Under Section 3(2)(a) of the 2006 Act a person is barred from "regulated activity" relating to children if they are included in the children's barred list.

23. Under Section 3(3)(a) of the 2006 Act a person is barred from "regulated activity" relating to vulnerable adults if they are included in the adults' barred list.

24. "Regulated activity" is broadly defined and includes, in relation to children, "any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children". Where that expression is used in relation to vulnerable adults it includes "the provision to an adult of health care by, or under the direction or supervision of, a health care professional", "the provision to an adult of relevant personal care", as well as activities "involving, or connected with, the provision of health care or relevant personal care to adults".

25. A "child" means "a person who has not attained the age of 18" and a "vulnerable adult" means "any adult to whom an activity which is a regulated activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 is provided" (see section 60 of the 2006 Act).

26. The Appellant has been included by the DBS on the children's barred list pursuant to Schedule 3, Part 1, paragraph 2 of the 2006 Act (which relates to children and is headed *"Inclusion subject to consideration of representations"*) and on the adults' barred list pursuant to Schedule 3, Part 2, paragraph 8 of the 2006 Act (which relates to vulnerable adults and is headed *"Inclusion subject to consideration of representations"*).

27. Paragraph 2 of Part 1 of Schedule 3 to the 2006 Act provides:

> "(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.

…

(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."

28. Paragraph 8 of Part 1 of Schedule 3 to the 2006 Act provides as follows:

"(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 vulnerable adults.

…

(4) DBS must give the person the opportunity to make representations as to why the person should not be included in the adults' barred 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 vulnerable adults, and

(c) is satisfied that it is appropriate to include the person in the adults' barred list, it must include the person in the list."

Appeals of decisions to include, or not to remove, persons in the barred lists

29. Section 4 of the 2006 Act provides for a right of appeal to the Upper Tribunal in limited circumstances:

"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 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."

The authorities

30. The role of DBS is not to punish an individual for past conduct, but rather to protect all children or, as the case may be, vulnerable adults from potential future harm. In *R (on the application of SXM)* v *DBS* [2020] EWHC 624 (Admin), the Divisional Court observed that "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" (at [38]).

31. In *DBS v AB* [2021] EWCA Civ 1575 the Court of Appeal (LJ Lewis) considered the respective roles of the DBS and the Upper Tribunal. At paragraph [43] he said:

> "unless the decision of the DBS is legally or factually flawed, the assessment of the risk presented by the person concerned, and the appropriateness of including him in a list barring him from regulated activity with children or vulnerable adults, is a matter for the DBS"

32. Further, the comments of Elias LJ in *Khakh* were cited with approval by Lewis LJ at paragraph [44]:

> "44. The role of the Upper Tribunal was considered in relation to the Independent Safeguarding Authority or ISA (the predecessor to the DBS) in [*Khakh*]. At paragraph 18, Elias LJ, with whom the other members of the Court agreed, said:

> "18..... The jurisdiction of the UT when considering an appeal from a decision not to remove the appellant from a barred list is limited to cases where the ISA has made a mistake on any point of law, or in any finding of fact on which its decision was based: section 4(2). A point of law, as Mr Grodzinski QC, counsel for the ISA, properly concedes, includes a challenge on Wednesbury grounds and a human rights challenge. But it will not otherwise entitle an applicant to challenge the balancing exercise conducted by the ISA when determining whether or not it is appropriate to keep someone on the list. In my view that is plain from traditional principles of administrative law but in any event it is put beyond doubt by section 4(3) which states in terms that the decision whether or not it is appropriate to retain someone on a barred list is not a question of law or fact. It follows that an allegation of unreasonableness has to be a Wednesbury rationality challenge i.e. that the decision is perverse."

33. In *Khakh* the Court of Appeal addressed the standard to which the reasons given for barring decisions are to be held. In his judgment Elias LJ said of the obligation to give reasons:

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

34. On the proper interpretation of the decision letter, Lewis LJ said at paragraph [46]:

> "46. The starting point therefore is to consider the decision letter, read fairly and as a whole, to determine what it concluded and what reasons it gave for those conclusions. I have set out the decision letter at paragraph 22 above. It is not always well expressed or well structured. Read fairly, and as a whole, however, it is reasonable clear what the DBS was seeking to say."

35. As regards matters relating to risk to the public, in *PF v Disclosure and Barring Service* [2020] UKUT 256 (AAC) (a decision of a three judge panel of the Upper Tribunal), Farbey J said at paragraph [51(f)]:

> "The tribunal will not defer to the DBS in factual matters but will give appropriate weight to the DBS's factual findings in matters that engage its expertise. Matters of specialist judgment relating to the risk to the public which an appellant may pose are likely to engage the DBS's expertise and will therefore in general be accorded weight."

36. While the threshold for a grant of permission to appeal to the Upper Tribunal is whether the ground is "arguable", the hurdle at the substantive stage is considerably higher: for an appeal against the Barring Decision to succeed we must be satisfied that it was more likely than not that the Barring Decision involved the making of an

error of law which was material, or that the decision was based on a material mistake of fact.

The reasons given by DBS for finding the Appellant's relevant conduct against children to be "transferable" to vulnerable adults

37. In its final decision letter, the Respondent said in relation to its decision to include the Appellant's name on the adults' barred list:

> "It is also acknowledged that the offending behaviour was in relation to children and there is no record of harmful behaviours commissioned [sic] against a vulnerable adult; indeed it is acknowledged that you are described as providing a high standard of care to patients resulting in one senior member of staff stating he would re-employ you. However, whilst you were in possession of material depicting pre-pubescent children; and therefore the subjects were clearly child-like. You also viewed and attained sexual gratification by viewing the sexual abuse and exploitation of post pubescent children as well as engaging in online sexual behaviour with a person stating he was 15. It is deemed that, in both instances, the victims displayed the physical attributes of adults.
>
> Your use of material exploiting the vulnerabilities of the children and depicting the pain and abuse suffered by them, your willingness to ignore the suffering of those being subjected to pain and humiliation through their abuse and having such material posted online where others could view their ordeal and your failure to take any measures to safeguard victims and protect them from further ongoing abuse; are deemed to be transferable to the care of vulnerable adults who could be exploited in a similar manner for sexual purposes."

Discussion

38. Although the permission I gave was in relation to the adequacy of reasons only, to assess the adequacy of the Respondent's reasons on 'transferability' it is necessary to consider the proper approach to 'transferability' of relevant conduct from the provisions relating to children to those relating to vulnerable adults.

39. While it is fair to say that DBS's reasons for finding the Appellant's conduct in relation to children to be 'transferable' to vulnerable adults could have been improved, it is clear from the authorities that the standard to which such reasons are to be held is a standard not of perfection but of 'adequacy'. The reasons don't have to be elegant and they don't need to be exhaustive in their coverage, but they must do the job of explaining why the Appellant's representations didn't succeed in persuading the Respondent not to include his name on the adults' barred list, and they must explain enough of the Respondent's decision making to allow him to decide whether to pursue an appeal.

40. Paragraph [14] of the final decision letter (quoted in paragraph 37 above) appears to proceed from an understanding that to demonstrate 'transferability' the Respondent needed to show that the Appellant had a sexual interest in adults, and

viewed some material which included subjects who displayed ‘adult-like’ features. For the reasons that we will explain below, that is a misapprehension.

41. The ‘transferability’ issue was considered by the Upper Tribunal in *MG v DBS* [2022] UKUT 89 (AAC) (***“MG”***). In that case, while MG accepted the inclusion of his name on the adults’ barred list, he appealed the inclusion of his name on the children’s barred list on the basis that there was no evidence of his engaging in any relevant conduct in relation to children.

42. In *MG* the Upper Tribunal said:

> “54. … We accept that MG had no reason to think that the Victim might have been under 18, and we also accept that he was in possession of some contextual information that made it unlikely that she was under 18, but that doesn’t mean that the risk associated with his offending behaviour is not transferable to regulated activity with children. In its assessment of risk DBS was entitled to take into account that the Victim was only 7 years older than someone who would meet the definition of “child” under the 2006 Act, and that he wasn’t put off by the large gap in age between him and his victim (who was younger than MG’s own daughters). It was clearly also entitled to base its decision not on a particular sexual attraction to female children but instead on his willingness to exploit vulnerabilities, which was demonstrated starkly by the circumstances of the Index Offence: the Victim was not only substantially younger than MG and in a much more junior role at Hestia, she was also incapacitated, had just attended the funeral of a service user, and she was expecting that her care for that service user was to be investigated by none other than MG.”

43. In this case the Appellant’s situation is the reverse of MG’s: the Appellant accepts his inclusion on the children’s barred list, but says there is no logical or evidential basis for his being placed on the adults’ barred list. The same logic applies.

44. ‘Transferability’ need not be literal. Indeed, in the context of an individual who has created, possessed or viewed images of child sexual abuse, taking a literal approach to transferability is liable to result in error. This is for the simple reason that, whatever view one might take as to its desirability, most pornography featuring adults only is perfectly legal and its possession would not, by itself, be expected to render someone liable to inclusion on any barred list.

45. The reason possession of sexual images of children is treated so differently is that, while it is generally presumed that in mainstream adult pornography the consent of the participants has been freely given, where a child is depicted in sexual images his or her consent to any sexual activity is necessarily lacking. The images are not “’pornography’: they are a record of sexual abuse being perpetrated on a child. The accessing of such images generates demand for more images, the creation of which involves the perpetrating of more abuse, and the inflicting of yet more harm on children.

46. Barring decisions will usually have very little to do with the sexual interests of the relevant individual per se: an individual is not liable to be placed on the adults’ barred list simply because he or she has a sexual attraction to adults. It adds little to add the word “vulnerable” because, given the definition of ‘vulnerable adults’ in the

2006 Act, we are all likely to be 'vulnerable' from time to time. A sexual attraction on its own is not liable to cause harm to the object of the attraction. What gives rise to the risk of harm, which may make it appropriate for the DBS to exercise its protective powers under the 2006 Act, is a willingness to exploit vulnerabilities and to cross ethical boundaries. Sexual attraction of itself is not problematic, and neither is sexual activity per se, but unconsented sexual activity is, and so is sexual activity in circumstances where there are inequalities of power in the relationship, such as between a clinician and a patient, a lecturer and a student, or between a manager and a subordinate.

47. The Respondent did not need to be satisfied that the Appellant was sexually attracted to vulnerable adults for it to conclude that it was appropriate to include his name on the adults' barred list. It only needed to be satisfied that he was willing to transgress boundaries to exploit vulnerable adults and that there was an unacceptable risk that he might do so.

48. For these reasons, we are satisfied that what the Respondent says in paragraph [14] of its final decision letter reveals that it misunderstood the proper test for transferability. This amounts to an error of law, but the error was not material because it simply had the effect of raising the bar for the case for placing the Appellant's name on the adults' barred list. Had the error not been made the outcome would have been just the same, for the reasons we explain below.

49. Paragraph [15] of the final decision letter expresses another rationale for the Respondent's concerns in relation to vulnerable adults:

> "Your use of material exploiting the vulnerabilities of the children and depicting the pain and abuse suffered by them, your willingness to ignore the suffering of those being subjected to pain and humiliation through their abuse and having such material posted online where others could view their ordeal and your failure to take any measures to safeguard victims and protect them from further ongoing abuse; are deemed to be transferable to the care of vulnerable adults who could be exploited in a similar manner for sexual purposes."

50. The Appellant has explained his possession and viewing of such images principally in terms of 'stress relief', as a wish to 'escape reality' and as an 'addiction', rather than particularly being about his having a sexual interest in children. He says that he developed an addiction to pornography in his late teens at a difficult time in his life, and while it started with legal mainstream adult pornography, he was driven by his addiction and/or his wish to manage his stress to seek out more and more extreme images, culminating in the kind of material which resulted in his criminal convictions:

> "Due to the nature of my addiction, and tolerance building up…"
>
> (see the Appellant's representations at [61]).

On the Appellant's own case, his drive to access ever more extreme images is rooted in their taboo nature. He accessed them *because* they transgress boundaries, not in spite of them doing so.

51. The Respondent's reasoning is consistent with that explanation. It is by no means unreasonable for it to identify a risk that someone who has accessed

numerous child abuse images over a period of years, as well as illegal extreme pornography involving sexual activity between humans and animals, due to a drive to satisfy his need for increasingly 'extreme' images, might in the future be driven to transgress other boundaries to exploit another class of vulnerable people, namely adults in his care, to whom he would have access as a clinician/carer (albeit no longer as a doctor) if he were permitted to pursue his ambition to continue to work with vulnerable adults. Its decision making in this regard is adequately explained in paragraph [15] of its final decision letter.

52. In terms of mitigation of risk, the Appellant explained at the hearing that:

a. he is committed to treatment,

b. he continues to engage with therapy,

c. he has developed new, healthy, coping mechanisms, and

d. he has been assessed as a low risk of reoffending.

This was very good to hear, and the panel sincerely hopes that the Appellant continues with this important work to reduce the risk of any repetition of his offending further.

53. The Appellant says the Respondent has failed adequately to explain why it does not accept that these matters show that he should not be on the adults' barred list.

54. With regard to the risk assessment of Ms Appleyard (the psycho-sexual therapist from whom the Appellant has been receiving treatment) that the risk of him reoffending is "low", and her opinion that placing his name on the barred lists is unnecessary, Ms Appleyard herself acknowledged the limitations of her assessment:

> "Any assessment of risk can only be an opinion formed on a particular point in time and cannot, in this sense, be definitive."
>
> (see paragraph [55] of Ms Appleyard's report)

55. She expressed her conclusion in appropriately cautious terms:

> "At the point of this assessment I do not consider that there is a likelihood of situations or events that would raise the risk of [the Appellant] offending…"
>
> (see paragraph [58] of Ms Appleyard's report)

56. In its final decision letter, the Respondent acknowledged Ms Appleyard's assessment of his risk of reoffending and her opinion that it is unnecessary for his name to be included on the barred lists, and it acknowledged that he had attended around 60 hours of therapy with psychologists.

57. However, the Respondent had to make its own assessment of appropriateness and proportionality, which necessarily involved its own assessment of the potential risk to those whom it has a duty to protect. While its reasons would undoubtedly have been improved by more direct engagement with Ms Appleyard's evidence, we are not persuaded that the lack of such engagement is sufficient to render its reasons inadequate.

58. The Respondent acknowledged that the Appellant had engagement with treatment, and it acknowledged the positive testimonials it had received in relation to his clinical work. It also recognised that he had experienced significant stressors in his personal and work life, but it was entitled to take the view that it was 'early days' in terms of the work of reducing the risk of relapse to his previous maladaptive coping mechanisms (given that the Appellant's own evidence was that accessing pornography had

> "always been [his] fall back in times of increased stress"
>
> (paragraph [61] of the Appellant's representations)

59. Indeed, it was clear to the panel from what the Appellant said at the hearing that he continues to be in denial about the true extent of the harm caused by his offending, and to lack full insight.

60. The Respondent explained with adequate clarity, by reference to the evidence, why it made the Barring Decision, and why the Appellant's representations were to no avail, and it was adequately clear what tests the Respondent had applied in its decision making. That is what was important and, in all the circumstances, that was adequate to clear the bar set in *Khakh*.

Conclusion

61. The Respondent's Barring Decision was not based on any mistake of law or fact. We therefore dismiss this appeal and confirm the Barring Decision.

Thomas Church
Judge of the Upper Tribunal

Tribunal Member Graham
Tribunal Member Jacoby

Authorised for issue on 6 July 2023