IN THE UPPER TRIBUNAL **Appeal No UA-2022-001136-V**
ADMINISTRATIVE APPEALS CHAMBER **[2024] UKUT 129 (AAC)**

Between:

LW

Appellant

- v –

DBS

Respondent

Before: Upper Tribunal Judge Church and Tribunal Members Roger Graham and John Hutchinson

Decided following an oral hearing at Field House, London on 26 January 2024

Representation:
Appellant: Ms Samantha Maunder (lay representative)
Respondent: Ms Bronia Hartley of counsel

DECISION

The decision of the Upper Tribunal is to DISMISS the appeal: the Disclosure and Barring Service ("DBS") has not, in making its decision of 26 May 2022 to include the Appellant's name in the Adults' Barred List (the "Barring Decision"), made any material mistake on a point of law or in any finding of fact on which the Barring Decision was based.

The Barring Decision is confirmed.

REASONS FOR DECISION

What this appeal is about

1. The issue in this appeal is very straightforward: it is whether the DBS was "mistaken" or "wrong" in its findings that LW:

   had nude images of a 14-year-old child (**"Child A"**) in his possession,

   engaged in oral sex with Child A, and

   engaged in sexual intercourse with Child A.

2. LW does not dispute the DBS's finding that he bought alcohol and tobacco for Child A. Neither does he dispute that he has a conviction for possession of an

extreme pornographic image (although he says he didn't know it was illegal at the time and it was sent to him unsolicited on a group WhatsApp).

3. While LW accepts that he was wrong to buy Child A alcohol and tobacco, and regrets the extreme pornographic image conviction, he says those mistakes alone, made when he was an immature and impulsive 19-year-old with ADHD, are insufficient to justify his being barred now.

4. He asks the Upper Tribunal to rule that the findings set out in paragraph 1 above were mistaken and to direct the DBS to remove his name from the Adults' Barred List.

5. The DBS opposes the appeal and asks the Upper Tribunal to dismiss it and confirm the Barring Decision.

Factual background

6. The background to the appeal is that LW, who was 19 years old at the relevant time, was investigated by the police in relation to allegations that he had had sexual activity with Child A, who was a cousin of LW's then partner.

7. Child A alleged that she had been in a form of relationship with LW since about July 2016. She said LW would contact her on Snapchat, by text or by phone. This wasn't every day, but more when he wanted something, like when his partner wouldn't have sex with him. She said LW would from time to time give her lifts in his car, buy her food at McDonald's or KFC, and buy her alcohol and tobacco. Sometimes they would have sex in his car. She says the first occasion on which they had sex was in mid-July 2016 after a visit to McDonald's. She said LW drove her to an unknown location near Port Talbot near a tip and some factories. LW drove all the way under some bridges, where it was very dark. Child A describes another occasion in October 2016 when LW took Child A and a friend for a drive in his car and then, after they had dropped the friend off home, LW drove Child A to a dark place some garages in front of a horse's field near her home where they had sex in his car. Child A described another occasion, in December 2016, on which she was driven by LW with a friend of hers who was also 14 (**"Child B"**) and a friend of LW's who appeared of similar age to LW (**"KW"**) to an industrial park near the ruins of Neath Abbey. She said LW asked KW and Child B to leave the car and Child A and LW then had sexual intercourse in LW's car. She described this in some detail in her police interview. Child B made an allegation that she had sex with KW at the industrial estate when Child A and LW were in the car.

8. Child A described another occasion on which she was taken by LW alone in his car to the same location where he asked her for sex, but she said she didn't want to and she ended up giving him oral sex instead.

9. Child A didn't disclose her relationship with LW until her cousin saw the nude images she had sent to his Snapchat account and sent screenshots of them to Child A's mother. When challenged by her mother, Child A disclosed the relationship which her mother reported to the police on 11 January 2017.

10. LW was interviewed twice by police. Other than giving a clear denial of any sexual contact or sexual relationship with Child A, he responded "no comment" to the questions put to him. KW was also interviewed by police in relation to the allegations about the events at the industrial estate near Neath Abbey, and denied that any sexual activity took place. LW was charged with multiple counts of engaging in

sexual activity with a child and causing or inciting a child to engage in sexual activity. KW was charged with engaging in sexual activity with Child B.

11. The matter went to trial. LW and KW pleaded "not guilty" to all charges. In March 2018, following a 5-day trial in the Crown Court at which LW, KW, Child A, Child B and others gave oral evidence. LW was acquitted of all charges against him.

12. In connection with its investigation into the allegations described above, LW's mobile phone was examined by the police and found to contain a video of an adult female being vaginally penetrated by a snake. On 13 April 2018 LW was charged with being in possession of "an extreme pornographic image (intercourse/oral sex with dead/live animal) on 11 January 2017". He pleaded "guilty" to this offence and received a 12-month community order.

13. When LW applied for a role as a Support Worker at First Advantage Europe Ltd (Nottingham) an Enhanced Disclosure Barred List check was conducted against the Adults' Barred List. This prompted DBS to write to LW on 23 February 2022 to say that it was considering placing his name on a barred list and to invite him to make representations (the **"Intention to Bar Letter"**). The Intention to Bar Letter did not make reference to the allegations of sexual activity with a child.

14. LW provided written representations in relation to the extreme pornography conviction and a positive reference from his employer.

15. On 4 May 2922 the DBS later sent another letter which set out additional findings of fact, this time in relation to the matters described in paragraph 1 above. In response LW provided the same representations and the same employer reference that he had provided previously. He did not address the allegations in relation to Child A.

16. On 26 May 2022 the DBS made the Barring Decision.

17. LW disagreed with the Barring Decision and sought permission to appeal. His application for permission was granted by Judge Rowland on 1 February 2023.

The statutory framework

18. Because the nature and extent of the Upper Tribunal's jurisdiction and powers in relation to appeals against barring decisions is somewhat unusual, we set out below an outline of the statutory framework for appeals such as this.

19. 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 (the **"Barred Lists"**, and each a **"Barred List"**). Its power and duty to do so arises under the Safeguarding Vulnerable Groups Act 2006 (the **"2006 Act"**).

Appeals of decisions to include, or not to remove, persons in the Barred Lists

20. 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 recent authorities on the Upper Tribunal's "mistake of fact" jurisdiction

21. The nature and extent of the Upper Tribunal's "mistake of fact" jurisdiction has been the subject of several recent decisions of the Upper Tribunal and the Court of Appeal.

22. What constitutes a mistake in the findings of fact made by the DBS on which the decision was based (for the purposes of section 4(2)(b)) was considered recently by the Upper Tribunal in *PF v DBS* [2020] UKUT 256 (AAC). At paragraph [39] the panel stated:

> "There is no limit to the form that a mistake of fact may take. It may consist of an incorrect finding, an incomplete finding, or an omission. It may relate to anything that may properly be the subject of a finding of fact. This includes matters such as who did what, when, where and how. It includes inactions as well as actions. It also includes states of mind like intentions, motives and beliefs."

23. In *AB v DBS*, in the context of discussing the Upper Tribunal's power to make findings of fact under section 4(7) of the 2006 Act, Lewis LJ noted (at [55]) in relation to the Upper Tribunal's jurisdiction to make findings of fact that it would:

> "need to distinguish carefully a finding of fact from value judgments or evaluations of the relevance or weight to be given to the fact in assessing appropriateness. The Upper Tribunal may do the former but not the latter. By way of example only, the fact that a person is married and the marriage subsists may be a finding of fact. A reference to marriage being a "strong" marriage or a "mutually supportive one" may be more of a value judgment rather than a finding of fact. A reference to a marriage being likely to reduce the risk of a person engaging in inappropriate conduct is an evaluation of the risk. The third "finding" would certainly not involve a finding of fact."

24. It was noted in *PF v DBS* that:

> "41. The mistake may be in a primary fact or in an inference... A primary fact is one found from direct evidence. An inference is a fact found by a process of rational reasoning from the primary facts likely to accompany those facts.
>
> 42. One way, but not the only way, to show a mistake is to call further evidence to show that a different finding should have been made. The mistake does not have to have been one on the evidence before the DBS. It is sufficient if the mistake only appears in the light of further evidence or consideration."

25. In *DBS v JHB* [2023] EWCA Civ 982 the Court of Appeal returned to the issue of the extent of the Upper Tribunal's jurisdiction under the 2006 Act on issues of mistake of fact. Laing LJ said that a finding may be "wrong" even if there was some evidence to support it, or it was not irrational, and it may also be "wrong" if it is a finding about which the Upper Tribunal has heard evidence which was not before the DBS, and that new evidence shows that a finding by the DBS was wrong (see paragraph [95]).

26. However, the Court of Appeal decided that, while the Upper Tribunal had identified what it said were mistakes of fact, it did not explain why the relevant DBS findings were "wrong" or outside "the generous ambit within which reasonable disagreement is possible". Rather, it had looked at very substantially the same materials as the DBS and made its own findings on those materials, which differed from those of the DBS. This, the Court of Appeal said, was impermissible, because it was only entitled to carry out its own evaluation of the evidence that was before the DBS if it had first identified that the DBS had made a finding which was not available to it on the evidence on the balance of probabilities.

27. The scope of the mistake of fact jurisdiction was further considered by the Court of Appeal in the recent cases of *Kihembo v DBS* [2023] EWCA Civ 1547 and in *DBS v RI* [2024] EWCA Civ 95. The decision in *Kihembo* confirmed that *PF v DBS* remains good law. In *RI v DBS* Males LJ explained that the restrictive approach adopted by the Court of Appeal in *JHB* should be confined to those cases where the barred person does not give oral evidence at all, or gives no evidence relevant to the question of whether the barred person committed the relevant act relied upon. Where the barred person does give oral evidence before the Upper Tribunal:

> "the evidence before the Upper Tribunal is necessarily different from that which was before the DBS for a paper-based decision. Even if the appellant can do no more than repeat the account which they have already given in written representations, the fact that they submit to cross-examination, which may go well or badly, necessarily means that the

> Upper Tribunal has to assess the quality of that evidence in a way which did not arise before the DBS" (per Males LJ at [55])

28. Males LJ interpreted the scope of the Upper Tribunal's jurisdiction under section 4(2)(b) of the 2006 Act as follows:

> "In conferring a right of appeal in the terms of section 4(2)(b), Parliament must therefore have intended that it would be open to a person included on a barred list to contend before the Upper Tribunal that the DBS was mistaken to find that they committed the relevant act – or in other words, to contend that they did not commit the relevant act and that the decision of the DBS that they did was therefore mistaken. On its plain words, the section does not require any more granular mistake to be identified than that" (*RI v DBS,* per Males LJ at [49]).

29. Bean LJ rejected the DBS's argument that the Upper Tribunal was in effect bound to ignore an appellant's oral evidence unless it contains something entirely new. He said in *RI v DBS* at [37] that:

> "where Parliament has created a tribunal with the power to hear oral evidence it entrusts the tribunal with the task of deciding, by reference to all the oral and written evidence in the case, whether a witness is telling the truth."

The Barring Decision

30. The explanation that the DBS gave for the Barring Decision in its 'Final Decision Letter' was:

> "**How we reached this decision**
>
> We are satisfied that you meet the criteria for regulated activity. This is because an Enhanced Disclosure with Barred List check (EDBL) was conducted against the Adults' Barred List for the role of Support Worker with registered body FIRST ADVANTAGE EUROPE LTD (NOTTINGHAM). You have confirmed in your representatives you are working for [employer's name redacted]. Checks show the organisation offers Supported Living Services and Homecare for people with learning disabilities and autism and older people.
>
> As mentioned in our previous letter we have taken into account your conviction on 13/04/2018 for POSSESSION OF EXTREME PORNOGRAPHIC IMAGES – OF INTERCOURSE/ORAL SEX WITH DEAD/ALIVE ANIMAL on 11/01/2017.
>
> We have considered all the information we hold and are satisfied that prior to January 2017, at the age of 19 years old, you:
>
> - Bought alcohol and tobacco for a child
> - Had nude images of the same child in your possession
> - Engaged in oral sex with that same child
> - Engaged in sexual intercourse with that same child
>
> Having considered this, DBS is satisfied you engaged in relevant conduct in relation to vulnerable adults. This is because you have engaged in conduct which, if repeated against or in relation to a vulnerable adult,

would endanger that vulnerable adult or would be likely to endanger him or her.

We are satisfied a barring decision is appropriate. This is because on or prior to January 2017, at the age of 19 years old, you engaged in a sexual relationship with a child. The child was more vulnerable than you due to age, you exploited this vulnerability for sexual gratification.

The chid did not alert authorities to the relationship herself but was sufficiently harmed by your behaviour that she was willing to go through Police and Court processes. You have neither acknowledged your concerning behaviour or the emotional harm it caused.

It is acknowledged you were honest with your employer regarding your extreme image offence and that your employer gives a very positive account of you. It is however noted that your mother works for the same company; it is considered unlikely the employer is fully aware of the extent of your concerning behaviour. In light of this the risk assessment and measures put in place as a result can not [sic] be considered sufficient safeguards, also, should such measures not be in place, it can not [sic] be known that you would not repeat your offending or concerning behaviour. This limits the mitigating nature of such a positive reference and it can not [sic] be known that such measures would be undertaken by other employers in future.

You being found not guilty for your concerning behaviour at Court suggest you have denied it. There is therefore no mitigation in relation to it. You took advantage of a power imbalance in your favour for your own sexual gratification, you have not addressed this, shown any insight in to [sic] the harm caused or provided any information to provide assurance that your behaviour would not be repeated. In light of the above it is considered that there is insufficient evidence to suggest repetition of behaviour can be ruled out.

It is acknowledged that you are working in regulated activity successfully at present. It is also acknowledged that there is no evidence of you harming a vulnerable adult and that your offence was towards a child. That said, it is not known what vulnerabilities the adults you are working with have or their age. The DBS therefore have insufficient mitigating information to show you may have had opportunity to repeat similar behaviour in a regulated activity setting and have not done so.

The concern is that you have obtained sexual gratification from a post pubescent female. Some vulnerable adults' particular vulnerabilities can be such that they present physically and/or mentally younger than they are and can be coerced or exploited in similar ways to 14 year olds and your victim. In a regulated activity role with such people, you would have an elevated position of power in your favour. If you were to repeat your concerning behaviour, exploiting a power imbalance and disregarding harm for your sexual gratification, significant emotional and sexual harm could be caused. As already stated, repetition of concerning behaviour can not [sic] be ruled out and therefore you being placed on the Adults' Barred List is considered appropriate.

> Your conviction for extreme images and Enhanced Disclosure with Barred List check (EDBL) will be visible to future employers however, they are unlikely to have all information available that DBS have had and so would not be aware of your other concerning behaviour. For these reasons, your conviction and EDBL are not considered adequate protective factors.
>
> It is acknowledged your Human Rights (Article 8 of European Convention on Human Rights) will be impacted by being placed on the Adults' Barred List because it will limit employment/volunteer opportunities and leisure activities. You are working in regulated activity at present and will be unable to fulfill [sic] such a role in future, if you are added to the Adults' Barred List, which is likely to have negative financial and emotional consequences. That said, you present as an unacceptable risk of sexual and emotional harm to vulnerable adults, a safeguarding decision needs to take this in to [sic] consideration as well as the Rights of you as an individual. In light of this it is considered both appropriate and proportionate to include you on the Adults' Barred List."

The scope of the Upper Tribunal's task

31. When it made the Barring Decision the DBS was aware that "not guilty" verdicts had been returned in relation to each of the charges on the indictment in the Crown Court trial. LW's acquittal by the jury at his Crown Court trial was relevant but, contrary to what LW says, it did not establish his innocence of the charges against him. That is not the way that English law works. The "not guilty" verdicts established only that the jury was not sure that all the elements of the offences charged were present.

32. While the jury at the Crown Court trial had to be *sure* of LW's guilt to convict him on any particular charge (what is often referred to as the "criminal standard" of proof), for the DBS to make a finding of fact it only had to be satisfied that it was *more likely than not* (which is often referred to as the "civil standard").

33. The DBS did not have to accept the evidence before it at face value. Rather, it had to evaluate all the relevant evidence before it and decide what weight to give each piece of evidence. Where the evidence conflicted, DBS had to resolve the conflict of evidence by deciding which evidence to prefer.

34. The DBS had a broad discretion in assessing the evidence and deciding what weight to place on it and how to resolve conflicts of evidence. We are satisfied that the findings that it made were comfortably within the range of reasonable options open to it on the evidence that it had, even though it is possible that another decision maker might have assessed things differently.

35. However, that is not the end of our task in deciding whether the DBS made any material mistake of fact, because the Upper Tribunal is not restricted to considering the evidence that was before the DBS when it made its decision: we can consider fresh evidence.

36. We had the benefit of two additional pieces of evidence that were not before the DBS when it made the Barring Decision: the transcript of the judge's summing up in the Crown Court trial, and the oral evidence that LW gave at the hearing before the

Upper Tribunal. We had the benefit of seeing LW cross-examined by the DBS's counsel, and we had the opportunity to question him ourselves.

Summary of the evidence at the oral hearing before the Upper Tribunal

37. When asked by Ms Maunder why he pleaded "guilty" to the pornography conviction he said that when he received the message he hadn't realised that it was illegal, and had he done so he would have reported it to the police and deleted the image. He explained that it had been sent to him unsolicited on a group WhatsApp and he had never downloaded anything similar.

38. He explained that when he was first contacted by the DBS the letter was only about the pornography conviction. There was nothing about the allegations of sexual activity with a child. In his response to the second letter, he didn't say anything about the allegations of sexual activity with a child. This was because he had been acquitted of those charges, so he didn't think he needed to explain himself. He confirmed that he didn't tell his employer about the allegations of sexual activity with a child either, because he said he hadn't done the things alleged and that had been confirmed by his acquittal. He was, however, open about his pornography conviction.

39. LW said he first came to know Child A through his then partner, who was Child A's cousin. He accepted that he knew Child A's age at the time. He admitted to providing Child A with alcohol and tobacco despite knowing her to be only 14. He acknowledged that this was wrong, and against the law, and said he shouldn't have done it.

40. LW accepted that he gave Child A lifts in his car on many occasions, saying that sometimes his then partner would be in the car as well, sometimes friends would be in the car, and sometimes it would be just him and Child A. He said Child A would message him to ask for lifts, and this was normal in rural Wales.

41. Ms Hartley took LW to the police report (at pages 54-55 of the appeal bundle), which describes a text message exchange between LW and Child A about meeting up and being secretive behind LW's then partner's back. Ms Hartley asked why he and Child A would be secretive about LW giving her lifts if there was nothing untoward in their relationship. LW said he had no explanation for this.

42. Ms Hartley put to LW that Child A had used the "number withheld" function when messaging him. He denied this. Ms Hartley took him to the judge's summing up of the evidence in the Crown Court trial, which showed that he accepted in his evidence in court that Child A did withhold her number, but he said that "it was her idea". LW said he didn't know why he would have said that. Ms Hartley suggested that it was because Child A did indeed withhold her number, and that she had done so because she was trying to conceal an inappropriate relationship with LW from LW's then partner.

43. Ms Hartley took LW to page 243 of the appeal bundle, in which the judge says in relation to "the text messages of 7 January and his request to her that she comes alone" that LW was asked why he said that to her. LW's response was recorded by the judge to have been: "I don't know why I said that to her". Ms Hartley put to LW that the only reason why he might ask Child A to come alone was if he was having

sex with her. LW agreed with this proposition, but denied having asked Child A to come alone. He also denied saying "I don't know why I said that to her".

44. With regard to the two nude images of Child A, LW accepted that these were sent to his Snapchat account, but he denied having had them in his possession, saying that he didn't open them himself. Rather, his then partner had logged into his Snapchat account and viewed them, and had taken screenshots of them. It was only the screenshots that LW saw.

45. LW denied having solicited the images from Child A. In cross-examination, Ms Hartley suggested it would be very odd for a 14-year-old child to think that LW would want her to send nude images of herself if he hadn't expressed any sexual interest in her. He agreed that it would, but denied being in any kind of sexual relationship with Child A and denied having asked Child A to send any nude images.

46. In response to questioning from the panel, LW said Child A wasn't aware that he and his then partner were able to access each other's Snapchat messages, and accepted that she would have assumed that any Snapchat messages she sent to LW's account would be opened only by him. However, he said she may have sent them to him in the hope that he would open the messages on his device in his partner's presence.

47. LW said that all of Child A's allegations about sexual activity between them were lies and fantasy. He said he didn't know why she would tell lies against him, but she did.

The Upper Tribunal's evaluation of the new evidence and analysis

48. We did not find LW to be a compelling witness. We did not accept his evidence that there was nothing sexual in his relationship with Child A. We explain why below.

49. LW sought to portray his relationship with Child A to be wholly non-sexual in nature: while accepting that he gave her lifts in his car, he maintained that there was nothing remarkable in this, and it was common practice in rural Wales for people with cars to give lifts to people without cars. He said there was nothing secretive about it. Indeed, he said his then partner was in the car with them sometimes. We reject his characterisation of their relationship because:

a. the account of the message exchange between Child A and LW in the police report (pages 54-55 of the appeal bundle) shows they were secretive about their meetings,

b. we infer from the message exchanges and from the judge's summary of LW's evidence in the Crown Court trial (which will have been produced from the judge's contemporaneous note and is therefore reliable) that LW asked Child A to "come alone" to meet him and we find the request to "come alone" to be inconsistent with LW's characterisation of the relationship, and

c. if LW was simply assisting Child A to get from A to B there was no reason for him to stop at remote, dark and decidedly unprepossessing locations such as the Neath Abbey industrial estate.

50. Further, LW accepted that, as well as giving Child A lifts in his car, he was in the habit of buying alcohol and tobacco for Child A. He recognised that this was wrong,

and that he shouldn't have done it. Considering all the evidence in the round, we think it most likely that the buying of alcohol and tobacco for Child A was part of a campaign of sexual grooming. He took Child A to the Neath Abbey location because it was remote and dark, and because he was therefore unlikely to be witnessed doing something he knew to be wrong and against the law.

51. While LW accepted that Child A had sent nude images to his Snapchat account, his evidence was that she did so wholly without prompting or encouragement from him. We do not accept this evidence, because we think it much more likely that Child A sent the nude pictures to LW because he had asked her for nude pictures, either then or in the past. We do not think it at all likely that Child A would have sent such pictures to her cousin's boyfriend if the circumstances were as LW said they were (i.e. there was nothing sexual in the relationship between them).

52. We are also unpersuaded by LW's suggestion that Child A sent the images to his Snapchat account in the hope of them being seen by LW's then partner to make her jealous. That is because if Child A wanted LW's partner to see the images (rather than LW himself) it is most unlikely that she would seek to do so by sending them to LW's Snapchat account, given that she was unaware that LW's partner was able to access the account. It was much more likely that she sent the images in the way that she did because she expected only LW to be able to access them, and because she knew that the images would not be saved on the app, and so they would be *unlikely* to be viewed by LW's partner.

53. We find Child A's sending of nude images to LW's Snapchat account to be compelling evidence in support of the existence of a sexual relationship between LW and Child A.

54. Having read the judge's summing up of the evidence given by each of the witnesses at the trial (including their evidence under cross-examination), we conclude that there is nothing which casts particular doubt on the reliability of the prosecution witnesses. Indeed, the evidence of Child A and Child B is remarkably consistent with LW's evidence as to the events up to the point when Child A says that she had sex with LW in his car. As to what happened after, we prefer Child A's and Child B's accounts to LW's and KW's.

55. In short, nothing in the new evidence before the Upper Tribunal persuaded us that the DBS was mistaken to find, on the balance of probabilities, that LW bought alcohol and tobacco for Child A, had nude images of Child A in his possession, engaged in oral sex with Child A, and engaged in sexual intercourse with Child A.

56. For these reasons we dismiss the appeal and confirm the Barring Decision.

Thomas Church
Judge of the Upper Tribunal

Mr Roger Graham
Tribunal Member

Mr John Hutchinson
Tribunal Member

Authorised for issue on 29 April 2024