

IN THE CARE TRIBUNAL FOR NORTHERN IRELAND

PWG

APPLICANT

v

DISCLOSURE & BARRING SERVICE

RESPONDENT

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1. By notice of appeal by way of Care Tribunal Appeal form dated 6 August 2022, the Applicant seeks leave to appeal a decision of the Respondent, the Disclosure & Barring Service ("DBS"), dated 11 May 2022, to include him on the barred lists for Children and Vulnerable Adults under paragraph 2 of Schedule 1 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ("the 2007 Order")
 2. As per Article 8 (2) (4) of the 2007 Order, the Applicant seeks leave to appeal. As well as the notice of appeal and supporting documents, and the Respondent's response and supporting documents, I have had the benefit of written submissions on behalf of the Applicant dated 7 March 2023 and on behalf of the Respondent dated 21 March 2023.
 3. It is common case that the Applicant accepted a caution on 3 March 2021 in respect of two separate offences:
 - (i) Making of indecent photographs or pseudo photographs of children under article 2(1)(a) of the Protection of Children (NI) Order 1978;
 - (ii) Distributing indecent photographs of children under article 3 of the Protection of Children (NI) Order 1978.
 4. It is also common case that at the time of the commission of the offences for which the Applicant was cautioned, he was employed in regulated activity.

Grounds of appeal

5. From the Appeal form and the contents of the Applicant's written submissions dated 7 March 2023 I have derived the following grounds of appeal.

- i) The Applicant asserts that the DBS made a material error in relying on the caution as a finding of fact as to his guilt for both offences.
 - ii) The Applicant asserts that the DBS made a material error in respect of the settings/security features which were enabled on his mobile telephone at the time of the offence and thereby, whether the phone was accessible by persons other than the Applicant at the relevant time.
 - iii) The Applicant asserts that the DBS decision was procedurally unfair in that the DBS failed to consider representations made by him and provided to First Housing and NISCC in 2020.
6. In considering this application for leave I am mindful of the fact that the Applicant accepted a caution in respect of both offences. However, the Applicant's case is that he accepted the caution on the basis of only partial acceptance of responsibility, and that he did so on legal advice.
7. In respect of the second ground of appeal, I note the differing versions proffered by the Applicant as to the precise settings on his mobile phone at the relevant time and remind myself that an error must have been "material" to the decision.
8. The third ground of appeal must be set against the Applicant's failure to make fulsome representations when invited to do so in March 2022. However, this appears to have been on the basis of a misunderstanding rather than an unwillingness to engage in the process, as he did reply to the DBS via email on 10 March 2023
9. The Applicant makes the case that he had provided submissions to both First Housing and NISCC in 2020. It would appear that DBS did not consider these submissions, which the Applicant claims provided an alternative explanation for the distribution offence, essentially that he was framed. He also appears to suggest that some corroborative evidence may exist in this regard, which again does not appear to have been considered by DBS.
10. Guidance on the test to be applied in determining leave is provided by the Upper Tribunal in the case of *AB v DBS* [2016] UKUT 386 at paragraph 19 of the Notice of Determination of Application for Permission to Appeal as:

"the Upper Tribunal has discretion to give permission to appeal if there is a realistic prospect of success or if there is some other good reason to do so".

11. It appears that DBS did not consider submissions the Applicant claims to have made to both First Housing and NISCC in 2020. Therefore DBS may not have considered all relevant information when arriving at its decision. I am persuaded, in the particular circumstances of this case, to grant the Applicant leave to appeal. A preliminary hearing, pursuant to Regulation 6 of the 2005 Regulations, will be listed on a date to be fixed, for the purposes of issuing directions and fixing a hearing date for this appeal.

Sarah O'Reilly

Chair of the Care Tribunal

22 June 2023