

IN THE CARE TRIBUNAL FOR NORTHERN IRELAND

AMB

APPELLANT

v

DISCLOSURE & BARRING SERVICE

RESPONDENT

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1. By notice of appeal, received on 21st May 2020, the Appellant seeks leave to appeal a decision of the Respondent, the Disclosure & Barring Service ("DBS"), dated 13th February 2020, to include him on the barred list for children under paragraph 2 of Schedule 1 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ("the 2007 Order.") This application was received outside of the statutory time limit. Given that the delay was modest and caused by the ongoing Covid-19 pandemic and no issue being taken by the Respondent, I extend time pursuant to regulation 36 of the Care Tribunal Regulations (Northern Ireland) 2005, as amended, ("the 2005 Regulations.")
 2. As well as the notice of appeal and supporting documents, I have had the benefit of written submissions on behalf of the Appellant, dated 9th February 2021 and 24th February 2021, and on behalf of the Respondent dated 23rd February 2021 and 2nd March 2021.
 3. Article 8 (2) of the 2007 Order provides that an individual may appeal to the Care Tribunal against a decision under paragraph 2 of Schedule 1, to include him in a barred list ".....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 paragraph was based.

(3) For the purposes of paragraph (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 paragraph (1) may be made only with the leave of the Care Tribunal.

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

4. As per Article 8 (2) (4) of the 2007 Order, the Appellant seeks leave to appeal on one ground, a second ground having been earlier abandoned. The remaining ground of appeal, as set out in the notice of appeal, is that “DBS failed to properly consider the fact that the specific prohibitions attached to the applicant’s SOPO provides for the relevant bars on employment/association with children as created by the listing process.”
5. There is no issue taken by the Appellant with the facts of the incidents that led to him being placed on the barred list. On 16th April 2019 the Appellant was convicted of 5 offences of causing or inciting child prostitution or pornography of a person under 18 and one offence of meeting a child following sexual grooming. He was sentenced to 9 months imprisonment and made subject to a Sexual Offences Protection Order (“SOPO”) for a period of 5 years. The Appellant also concedes that the “regulated activity” criterion is met. In 2014 an Access NI check was made in respect of the Appellant for a role as “Unsupervised Volunteer in Regulated Activity Teaching Children” with Baptist Youth. Information received from PSNI states that the Appellant and his wife were involved with supervising church youth groups.
6. The Appellant acknowledges that the scope for this appeal is limited, as set out in Article 8 of the 2007 Order. The Appellant submits that the Respondent in reaching its decision, failed to properly consider the restrictions placed upon the Appellant by the SOPO and that the decision constitutes an error in law, by reason of it being irrational, unreasonable and disproportionate. Reliance is placed on the terms of the Appellant’s SOPO, which imposes restrictions on employment and association with children. These restrictions,

it is argued, render inclusion on the barred list disproportionate and duplicitous. I pause here to note that the final decision letter issued by the Respondent to the Appellant on 5 February 2020 acknowledges the restrictions placed on the Appellant by the SOPO, but sets out that the time-limited nature of that safeguard is not considered to be sufficient in this case.

7. The Appellant raises other arguments in supplemental submissions, including that the failure of the Respondent to defer its decision until after the SOPO had expired, was an error in law. In my assessment these submissions do not enhance the Appellant's appeal.
8. The Respondent's case is that there was no mistake in fact or law, that all relevant considerations were taken into account and that there is no realistic prospect of success for this appeal, therefore leave should not be granted. The Respondent contends that it has a free-standing statutory duty to maintain Barred Lists, this duty is not limited by other statutory regimes such as the imposition and consequences of a SOPO. Further, it is submitted that each statutory regime has its own distinct focus, and therefore different sanctions for breach, time frames for operation and procedures for operation as a safeguarding mechanism. Furthermore, it is submitted that there is no mechanism for a case to be referred back to DBS after a period of time or after a certain event, for example, at the expiration of the SOPO in this case.
9. I have carefully considered the notice of appeal and supporting submission, all of the papers provided, the very comprehensive written submissions from both parties' legal representatives and the relevant legislative provisions. Article 8(2) (5) of the 2007 Order provides that "Unless the Care Tribunal finds that DBS has made a mistake of law or fact, it must confirm the decision of the DBS." I am not persuaded that the Respondent has made a mistake on any point of law or in any finding of fact in arriving at the original decision which is the subject of this appeal. Accordingly, I am obliged to refuse leave and dismiss the application.

Sarah O'Reilly

Chair of the Care Tribunal

29th March 2021