



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**[2025] UKUT 260 (AAC)
Appeal No. UA-2024-001307-V**

Between:

IEO

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Citron, Ms Tynan and Mr Turner

Hearing date: 30 May 2025

Hearing venue: Field House, Brearms Buildings, London EC4

Representation:

Appellant: by Mrs Amaka Nnamani of counsel, instructed by Samuel Louis solicitors

Respondent: by Mr Andrew Webster of counsel, instructed by DLA Piper

The Upper Tribunal has made orders (pages 200-202 of the Upper Tribunal bundle) prohibiting the disclosure or publication of (i) the names of seven individuals or any matter likely to lead members of the public to identify any of them; and (ii) certain information relating to the proceedings

SUMMARY OF DECISION**SAFEGUARDING VULNERABLE GROUPS: Findings of fact (65.9)**

This appeal centred on DBS's factual findings about an incident at a care home involving the appellant, a care assistant there, and a vulnerable adult, who was a resident there. The evidence included CCTV footage of the incident. On the basis of the evidence, the Upper Tribunal found that DBS had not made a mistake in its factual finding. The appeal was dismissed.

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 Upper Tribunal follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the Respondent (DBS reference DBS6191 00967026684) made on 30 May 2024 to include IEO in the children's and adults' barred lists is confirmed.

REASONS FOR DECISION

This appeal

1. This is an appeal against the decision ("**DBS's decision**") of the Respondent ("**DBS**") dated 30 May 2024 to include IEO in the children's and adults' barred lists.

The legislation underlying DBS's decisions

2. DBS's decision as regards the adults' barred list was made under paragraph 9 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the "**Act**"). This provides that DBS must include a person in the adult's barred list if
 - a. it is satisfied that the person has engaged in relevant conduct,
 - b. it has reason to believe that the person is, or has been, or might in the future be, engaged in regulated activity relating to vulnerable adults, and
 - c. it is satisfied that it is appropriate to include the person in the list.
3. Under paragraph 10, "relevant conduct" for the purposes of paragraph 9 includes conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult; and a person's conduct "endangers" a vulnerable adult if she (amongst other things)
 - a. harms a vulnerable adult
 - b. causes a vulnerable adult to be harmed
 - c. puts a vulnerable adult at risk of harm or
 - d. attempts to harm a vulnerable adult.

4. DBS's decision as regards the children's barred list was made under paragraph 3 of Schedule 3 to the Act. This provides that DBS must include a person in the children's barred list if
 - a. it is satisfied that the person has engaged in relevant conduct,
 - b. it has reason to believe that the person is, or has been, or might in the future be, engaged in regulated activity relating to children, and
 - c. it is satisfied that it is appropriate to include the person in the list.
5. Under paragraph 4, "relevant conduct" for the purposes of paragraph 3 includes conduct which, if repeated against or in relation to child, would endanger that child or would be likely to endanger them; and a person's conduct "endangers" a child if she (amongst other things)
 - a. harms a child
 - b. causes a child to be harmed
 - c. puts a child at risk of harm or
 - d. attempts to harm a child.

Jurisdiction of the Upper Tribunal

6. Section 4(2) of the Act confers a right of appeal to the Upper Tribunal against a decision by DBS under paragraph 9 and 3 of Schedule 3 (amongst other provisions) only on grounds that DBS has made a mistake
 - a. on any point of law;
 - b. in any finding of fact on which the decision was based.
7. The Act says that "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" (section 4(3)).

The grant of permission to appeal

8. Permission to appeal was given by the Upper Tribunal (Judge Citron) in a decision (the “**permission decision**”) issued on 29 January 2025. The material parts of that decision were as follows:

1. DBS’s principal finding of fact was that on 27 July 2021 IEO, when working as a care assistant, grabbed, pulled and pushed an 86 year old service user (“SU”) from a room causing her to fall to the floor, then helped her up without assessing her for injury.

2. This finding was based on the police’s summary of two CCTV records [(the “**CCTV footage**”)] of the incident. According to the police report of 19 November 2021 (see page 71 of the bundle at the bottom, and page 72 at the top), the first CCTV footage showed the length of the corridor and SU walking along the corridor interacting with IEO; at two points SU is seen coming from out of camera view forcefully; at the second point, SU has fallen and landed heavily. The second CCTV footage is from outside of the room in question and shows IEO “forcefully removing [SU from] the room on two occasions by pulling and pushing”. According to its barring decision summary document, DBS was not itself able to obtain a copy of the CCTV footage “despite extensive enquiries” (see page 133 of the bundle).

3. IEO’s case emphasises the context to DBS’s factual finding, being that

a. SU was known, occasionally, to be aggressive;

b. SU was in the room of a second user, and behaving inappropriately; IEO was trying to get SU to leave the other service user’s room;

c. the incident described in DBS’s main finding was the third of three interactions between IEO and SU in a short period of time, as a result of SU repeatedly entering the other service user’s room; in the first two incidents, IEO had managed to remove SU from the other service user’s room without IEO using any physical means to do so (although on the second occasion, SU had tried to hit IEO and IEO had “blocked” her in self-defence).

4. IEO’s case is that DBS’s factual finding is materially mistaken in that:

a. whilst IEO did have physical contact with SU to usher her out of the other service user’s room, this did not amount to “grabbing”, “pulling”, or “pushing” SU; and

- b. SU's fall was not as a result of IEO's physical contact with her.
- 5. IEO's case accepts that DBS's finding that IEO helped SU up without assessing her for injury, is not mistaken.
- 6. The principal evidence which IEO would present to the Upper Tribunal in a substantive hearing (and which was not available to DBS at the time of its decision) would be:
 - a. IEO's own oral evidence; and
 - b. the CCTV footage;
- 7. It seems to me realistically arguable that the evidence which IEO intends to present could, if deemed reliable and credible following examination by DBS's counsel at a hearing, prove that DBS made a material mistake in its principal factual finding.

The Upper Tribunal hearing

- 9. IEO attended the hearing and gave sworn evidence at the hearing, including via cross examination and answering questions from the panel. We are grateful to her for doing that, and to the respective counsel for their submissions.

DBS's decision

- 10. In addition to its principal factual finding, as referred to in the permission decision, DBS's decision letter found, amongst other things
 - a. that SU's fall to floor, during the incident in question, resulted in a fractured right pelvis;
 - b. that IEO acknowledged a lapse in judgement in helping SU up after her fall – IEO said it was a reflex reaction on her part. DBS did not consider IEO's remorse credible, as SU “appeared to be in significant pain, yet [IEO] picked her up anyway.” DBS thought this “particularly concerning” as IEO was aware that “such a vulnerable person would have brittle bones and be more likely to suffer a fracture following a fall”;
 - c. that IEO was found not guilty of an offence of ‘wounding/inflicting grievous bodily harm’ at court; DBS considered it “pertinent to take into consideration that the courts use the criminal standard of proof of ‘beyond reasonable

doubt', a higher standard of proof than the DBS use, which is the 'balance of probabilities' ”;

- d. that IEO did not intend to cause SU any injury;
- e. that IEO acted contrary to SU's care plan and used unreasonable force to move her. SU “reacted to certain triggers, such as being in her space and being ordered to do things, and she was likely to hit out if her needs were not met”; however, IEO was aware of this and that she needed to “issue simple instructions” for SU to “process”;
- f. IEO was trained in man handling techniques and knew it was wrong to pick up SU (as IEO had recently challenged a colleague when they asked her to do this). IEO therefore helped SU up from the floor “in an effort to hide what had occurred to her, rather than out of compassion, but this was hindered by your colleagues arriving on the scene”;
- g. IEO demonstrated an inclination to use unreasonable force against a vulnerable person and contravened the standards of care expected of her. IEO's behaviour had the potential to cause SU to feel threatened, intimidated and distressed;
- h. vulnerable adults could be at risk of physical harm and emotional harm from IEO, should IEO become impatient/frustrated with their behaviour in the future. DBS had concerns that, if faced with similar situations when responsible for the care and wellbeing of children, IEO would disregard her training, become impatient or frustrated and use unreasonable force when faced with challenging conduct by them.

The CCTV footage evidence before the Upper Tribunal

- 11. The CCTV footage evidence was before the Upper Tribunal, following an order of the Upper Tribunal (issued on 22 April 2025) to the Police to produce it. There were two pieces of CCTV footage in the evidence; both were clear visually, but had no intelligible “audio” element:
 - a. one was timed (at its start) at 00:20 (i.e. 12:20 am) and lasted for 5 minutes and 49 seconds;
 - i. it starts with two older women (one of whom was SU) walking in a corridor down the middle of the picture, with their backs to the camera; IEO emerges from a room on the left, in the foreground,

observes the two women, then turns to her right (and goes off camera);

- ii. the two women turn left (the other woman first, followed by SU), and go off camera;
- iii. there is no activity for about 15 seconds;
- iv. SU alone then emerges from the left, and turns to walk down the corridor, her back to the camera; she turns right at the far end of corridor, appears to try to open a door, appears to give up, and then returns back up the corridor, now facing the camera; she turns to what appears to be a door on the left side, briefly tries to open it, and again appears to give up; she continues to what appears to be the next door on the left, and this time enters (and goes off camera) very briefly; she comes back into the corridor and continues towards the camera – and at the same time IEO comes into view entering the corridor from the left, at the other end (closer to the camera); IEO then looks at something on the right;
- v. IEO then walks further up the corridor, so that she and SU pass one another in the corridor, and appear to very briefly exchange words;
- vi. by this time, the time is 00:22;
- vii. SU appears to start entering a room on the left, just as IEO emerges from a room on the left further up the corridor;
- viii. as SU enters the room (and goes off camera), IEO comes down the corridor at a relatively quick pace, and follows SU into the room (on the left);
- ix. about a second later, SU emerges at some speed from the room (there appears to be some propulsion from behind her), stops in the middle of the corridor, turns around to face the room, and steps towards the room and stands there for a few moments; she then steps backwards, further into the corridor, and stands facing the room; IEO then emerges from the room, and turns left,

heading down the corridor away from the camera; SU stays standing where she was, watching IEO;

- x. after about 10 seconds, and at the moment IEO reappears at the end of the corridor, now heading towards the camera, SU starts to move in the direction of the room on the left; she goes off camera; IEO is heading up the corridor in the direction of the room; she enters it (and goes off camera); there is no activity for 10 seconds (no one is on camera), and then SU emerges from the room with some propulsion, and off balance, and falls heavily to the floor;
 - xi. IEO immediately comes to her, takes SU's left arm, then uses her right arm to lift SU's head and shoulders off the ground, and then, standing behind her, lifts SU just below her shoulders up to her feet; using the wall to steady herself, SU, with IEO holding her right arm, then stands facing the camera; another person emerges from the left, near the camera, and walks towards SU and IEO, stops, and appears to start speaking to them; another person (in a blue uniform that looks like that of a nurse) then emerges from the left, and stands alongside the other person speaking with SU and IEO in the corridor; the conversation continues for half a minute or so; the two people (now clearly both with blue nurse-like uniforms) each take one of SU's arms and help her walk up the corridor towards the camera (IEO first stands to the side, and then follows them);
- b. the other CCTV footage was timed (at its start) at 00:22 on 27 July 2021 and lasted for 1 minutes and 53 seconds;
- i. it started with SU coming out of a room on the left of a corridor (which appears to the same corridor as in the first piece of footage; however, the camera is further forward in the corridor, much closer to the doorway where the relevant action takes place); she walks, towards the camera, a little unsteadily; pauses in the corridor opposite a door on the left of the picture; IEO passes her in the corridor, going in the opposite direction, away from the camera, and enters a room on the left of the picture; moments later, SU (having turned to face the door she was just outside, and having observed IEO go into that other room) starts

moving towards the door she was facing, which was part ajar; almost simultaneously, IEO comes out of the other room and heads up the corridor, towards the camera, and turns into the room SU is then entering; at this point there is a relatively quick flow of actions, that can be summarised as follows

1. IEO, standing in the doorway and behind SU, makes physical contact with SU's arms;
 2. IEO, putting one arm behind SU's back, begins to guide or move SU so as to face out of the room, rather than in to the room;
 3. IEO's right arm is behind SU's back, and her left hand is guiding/pulling SU's left arm so as to move her out of the room;
 4. within 2 or 3 seconds, SU, guided by IEO's physical contact with her, is facing out of the room and moving out of the doorway and into the corridor;
 5. SU takes two or so steps into the corridor, at a slightly greater speed than she has been moving hitherto, indicating that IEO's physical contact has, to a degree, propelled her into the corridor;
 6. SU then turns around so she is again facing the room she has just left; IEO is at the entrance to the room and closes the door;
- ii. the room door is now closed and SU and IEO appear to have a short conversation, in the corridor outside the closed door of the room; IEO then turns to her left and goes back down the corridor, away from the camera; SU watches her, and then, after about 5 seconds, takes steps towards the closed door (and by this time, IEO has turned around and is heading up the corridor, in the direction of the camera and of the room);
- iii. SU gets to the room door, opens it and enters (and is no longer visible to the camera); at this point, IEO is in the corridor, a couple

of metres from the door to the room; IEO, walking quite quickly, gets to the room, stands on the right of the door frame (with her back to the door frame); there is then another quick flow of actions, which can be summarised as follows:

1. IEO starts to enter the room through the half-open door; SU is out of sight of the camera;
2. with one foot in the room (her right) and one foot out, standing virtually at 90 degrees to the doorframe, IEO appears to reach in to the room with her right arm; IEO's body pivots slightly in an anti-clockwise direction, and then SU's hand and lower arm come into view, positioned on IEO's chest; they then go off camera again; then, in one fluid action on IEO's part, SU is propelled out of the room into the corridor: the propulsion was provided by IEO's right arm being firmly applied to SU's upper left arm, and moving SU out of the room, and into the corridor;
3. SU is then in the corridor, a step or two from the room the room, and IEO's fully extended right arm becomes withdrawn from SU's upper left arm; SU, very unsteady from the force that has been applied to propel her out the room, and then withdrawn, loses balance and falls heavily;
- iv. immediately after withdrawing her right arm from SU's upper left arm, IEO, still standing in the doorway, turns into the room slightly and closes the door with her right arm; she then sees that SU has fallen, moves towards SU and then goes off camera.

Other documentary evidence before the Upper Tribunal

12. Other documentary evidence in the Upper Tribunal bundle included the following:
 - a. "Details of staff for proposed supply; care worker staff" document on the letterhead of the nursing agency, in respect of IEO, signed by a recruitment consultant on 18 June 2021; including that IEO took a manual handling course in May 2021;

- b. Police “crime report” document, 27 July 2021 (headed: “occurrence enquiry log report”); including a “Prepared statement of IEO dated 31 July 2021” – the latter included that
 - i. around midnight on 21/22 July 2021, IEO was checking on residents when she heard a resident screaming and went to their room; SU was in the room with the resident, who was very upset and screaming; IEO asked SU to come out of the room; SU then punched IEO to her upper arm; IEO told her to calm down and got her to leave the room of her own accord, which she did; then, when with another resident, IEO heard the same resident screaming again, so she went back to their room – and SU was back in that room. IEO stood at the door and asked SU to leave; as SU came to leave, she tried to punch IEO again; IEO put her arm up to defend herself and dodged the punch; SU fell to the floor;
 - ii. IEO denied pushing SU; IEO did raise her hand to block SU from hitting her; IEO did not know if her hand touched SU;
- c. “Detailed explanation of what occurred” document from IEO dated 20 August 2021; this included that
 - i. SU denied pushing or assaulting SU in any way;
 - ii. when IEO was busy with observations with a patient, IEO heard a resident screaming; IEO immediately went to see what was happening; she entered the room and saw SU and another resident; IEO immediately asked SU to leave the other resident’s room; when SU was leaving the room, she fell; as an automatic reflex reaction, IEO tried to help her by picking her up;
- d. “Police report”, 19 November 2021;
- e. “Care plan need for SU – mobility and falls” document; this had a section headed “History of falls”, which included a fall at the beginning of March 2021;
- f. letter dated 20 May 2024 to DBS from IEO’s solicitors; this said that

- i. IEO's evidence in the criminal trial was that SU had a tendency to lash out when challenged; the other resident (whose room SU was in) was screaming for IEO to leave her alone;
 - ii. IEO was entitled to use reasonable force to protect herself from harm in the face of an attack (by SU) and had a duty similarly to protect the other resident from harm (which was all IEO was trying to do);
 - iii. there was some physical interaction between IEO and SU as IEO had to ward off a blow SU had directed at her;
 - iv. helping SU up after the fall was a purely reflex reaction and IEO expressed remorse for it;
- g. assessment for SU, 12 January 2021: this said, amongst other things, that SU had "high dependency"; this was not a document on which DBS relied when it made its decision;
- h. fall risk review for SU, 24 November 2021: this said, amongst other things, that SU remained at high risk of falls; that she was supervised by staff, when walking in the community, to minimise this risk; her score was "very high risk"; this was not a document on which DBS relied when it made its decision;
- i. general purpose risk assessment for SU, 5 November 2021; this mentioned the risk of altercations with other people if SU entered their apartments; it also recorded this, under 20 September 2021:

A family member reported that a resident SU allegedly punched their friend who was visiting them. This resident is said to have entered the room of a family member/ friend they were visiting. This family member, friend has been given a welfare check, and they say they are okay. This incident has been reported to the safeguarding team, and SU's care plan and risk assessment regarding maintaining her safety and the safety of others in the community have been reviewed, with details of supporting SU to minimize this risk

this was not a document on which DBS relied when it made its decision;

- j. care team meeting notes, 28 October 2021, this said, amongst other things, that “staff need to be vigilant with supporting SU to maintain her safety and the safety of others. SU as she can become victim as well as starting an incident/altercation. For example, SU may react to a resident’s movement so this will trigger SU to react in a form of punching or hitting ...”; this was not a document on which DBS relied when it made its decision;
- k. personal behaviour support plan for SU, 1 November 2021: this was not a document on which DBS relied when it made its decision; this said, amongst other things, that
 - i. SU may hit at other sometimes, physically when she is trying to express a need, or react to communication;
 - ii. SU may follow other people around, or into their apartments; there is a risk of altercation as other residents may not welcome SU following them around;
 - iii. under “possible triggers”, there was: “things that make me feel angry and agitated”, including “SU may be looking for her apartment, and does get lost and to into other people’s apartments”; and “SU is reluctant with receiving any support, supervision or directions”;
 - iv. under “when I start to feel anxious”, and “things I do if I start to feel anxious, upset, angry or agitated”, it said: “SU may attempting to hit at others”; and “SU may be in other people’s personal space”;
 - v. under “secondary interventions”, the following were listed:
 - 1. 3 November 2021: aggressive, challenging or inappropriate behaviour: SU punched one person in the left arm and hit another person in the stomach;
 - 2. 29 October 2021: SU observed to be eager to enter other people’s apartments, attracting unwelcome attention;

3. 20 October 2021: aggressive, challenging or inappropriate behaviour: SU punched another resident, unprovoked and without warning signs;
 4. 20 September 2021 incident (as above);
 5. 11 September 2021: aggressive, challenging or inappropriate behaviour;
 6. 8 September 2021: SU and another resident shouting at each other; SU's mouth was bleeding and small graze on her left cheek: "SU may get very agitated, hit at spit at, scream, and shout at others - this is usually when prompted with personal hygiene, to leave other people's apartments as SU likes to walk around the community. SU may use her walking stick as a weapon to hit staff;
 7. 4 July 2021: "SU went into another residents apartment with cutlery with knife spoon and a fork. Staff then asked if she could please leave a lady apartment as she has had a tumble SU then went to hit [the other resident] with them and caught her forehead. Staff calmly asked SU to leave";
 8. 2 July 2021: a note says that, "for example, telling SU, don't take that, or telling her to get out of someone's apartment, when SU is in another resident's apartment is a TRIGGER, for SU to hit at staff";
 9. 11 June 2021: inappropriate behaviour: episode of challenging behaviour when assisting SU with personal care; SU repeatedly hit, scratched and kicked staff as they supported her with a shower;
- I. certificate of acquittal, Guildford Crown Court re: offence of wound/inflict grievous bodily harm without intent (27 July 2021); particulars of

offence: on that date, IEO unlawfully and maliciously inflicted grievous bodily harm upon SU;

- m. letter from IEO to Upper Tribunal, 9 August 2024; this said, amongst other things, that
 - i. after SU came out of the room, she walked on her own for some distance before falling; and it showed SU, when on the floor, stretching out her hand asking IEO for help
 - ii. IEO led SU out of the room; IEO never pushed SU
 - iii. it was a fallacy on DBS's part that IEO picked up SU to cover her action.

IEO's oral evidence

13. IEO's oral evidence at the hearing included that:

- a. she started working at the home in question, as a agency worker, in 2021; she worked there 4 or 5 days a week; her shift was 8 am to 8 pm;
- b. she had a good relationship with SU;
- c. on the night in question, she was working on the second floor, a different floor than the one she was booked for;
- d. SU was in another resident's room at the time of the incident; IEO was intervening because the other resident was crying out for SU to leave her alone; IEO came to the room and saw that SU was hitting the other resident; IEO told SU to stop; SU turned to hit IEO; IEO again asked SU to "stop" and leave the room; SU then followed IEO out;
- e. IEO then saw SU going back into the other resident's toom; IEO attended the room when she heard the other resident's voice again; the other resident was not happy; IEO gave SU a gap in which to leave the room; SU was hitting IEO; IEO was shutting the door to the resident's room, when she noticed that SU had fallen; IEO then rushed over to her;

- f. when SU was hitting her, IEO held one of SU's hands; and IEO put her other hand on SU's back to lead her out of the room. IEO said she never "used force" on SU;
- g. when SU fell, she was screaming and asking IEO for help; IEO's instinct, if she saw someone fall down, was to help them; she was not trying to hide anything (there were many CCTV cameras in the home);
- h. IEO knew, from her recent training, that she should not pick up someone immediately after a fall;
- i. IEO did not know about SU's history of falls, although it was in her care plan;
- j. IEO knew that SU was in some pain as a result of the fall; afterwards, she sat with her for over an hour, waiting for the ambulance; she did not realise the seriousness of the pain SU was in, until she sat with her in the lounge waiting for the ambulance.

Did DBS make a mistake in its principal factual finding?

Summary of submissions

- 14. Mrs Nnamani submitted that the CCTV footage did not show IEO grabbing, pulling and pushing SU from a room, causing her to fall to the floor (DBS's principal finding of fact). She submitted that IEO's oral evidence filled in gaps in the CCTV footage evidence, such as the fact that the other resident was "screaming" (for help), and that SU "attacked" IEO. She submitted that it assisted IEO's case, that IEO admitted helping SU up, when she shouldn't have done this.

Analysis

- 15. It is clear to us from all the evidence, and in particular the CCTV footage evidence (see paragraph 11 a.x and b.iii-iv above) , that DBS did not make a mistake in its principal finding of fact, that IEO "grabbed pulled and pushed" SU from the room which SU had entered (and which belonged to another resident), and that this "manhandling" of SU is what caused her to fall to the floor. (It is not in dispute that DBS made no mistake in finding that IEO then helped her up without assessing her for injury). In our view, this is an accurate summary of what is caught on film in the CCTV footage.

16. We have no reason to doubt IEO's evidence that, in the immediate prelude to the incident caught on camera and referred to in DBS's primary factual finding, SU was acting in a hostile manner to both the other resident and to IEO, and that SU made physical contact with IEO with a clenched fist in the manner of a "punch". But it is clear from the evidence, particularly the CCTV footage, that SU, a frail elderly lady, was no physical threat to IEO, who was much younger (she was around 40 at the time) and showed no sign of physical frailty. It is therefore not correct, on our view of the evidence, to say that IEO's actions, as described in DBS's principal finding of fact, were "in self-defence".
17. Further, it was no material mistake, in our view, for DBS to have omitted to make further factual findings about
- a. whether SU had laid her fist on, or hit out at, IEO in the immediate prelude to the incident, or
 - b. SU's proclivity to hit out and behave aggressively (noting that DBS did find that SU "reacted to certain triggers, such as being in her space and being ordered to do things, and she was likely to hit out if her needs were not met"), or
 - c. whether the other resident had been "screaming" for help just before SU entered the room and intervened;

in our view, such further factual findings would have been immaterial, in the sense that they would have made no difference to the outcome, being DBS's conclusion that IEO had used unreasonable force on SU in the circumstances.

18. In coming to the conclusions just set out, we have accepted much of IEO's testimony. To the (limited) extent that our view of the facts differs from her evidence, it is because we rely on the more powerful evidence of the CCTV footage, in preference to IEO's memory of what happened in an understandably stressful incident: human memory is an imperfect thing, and in particular where someone has a strong (and understandable) self-interest in a particular version of events.

Conclusion

19. It follows that, in our view, DBS did not make any mistake in its principal factual finding.

The position as regards other mistakes of fact or law

20. Although the permission decision was not expressly limited to mistake by DBS in its principal factual finding, the “Reasons” section of that decision referred only to that mistake (and decided that it was arguable); it did not refer to any other mistakes by DBS, in findings of fact or on points of law.
21. At the hearing, Mrs Nnamani, referring to the grounds in IEO’s application to the Upper Tribunal for permission to appeal, made submissions that DBS made other mistakes in its decision:
- a. a mistake in DBS’s predictive finding that IEO could cause harm in the future, to adults or to children;
 - b. flaws in DBS’s assessment: its over-reliance on police reports; it did not consider the context of the incident (that SU was unpredictable, could be “triggered” and be aggressive); it was not a procedurally fair review of the incident; there was a lack of “objective material”;
 - c. DBS’s decision was disproportionate in law (IEO contends that no issue had ever arisen as regards her conduct; she had never been accused of child abuse; she was acquitted of a related criminal offence; inclusion in the barred lists prevents IEO from finding work in her chosen field);
 - d. a factual mistake in finding that IEO’s motive for picking up SU was not compassionate but rather to cover up the incident wherein SU felt to the ground.
22. The question of whether mistakes by DBS, other than in its principal factual finding, fell outside the scope of the permission decision, surfaced briefly in the hearing; three weeks later, on 20 June 2025, the Upper Tribunal received, from DBS, written submissions of counsel submitting that, because the reasons given in the permission decision were confined to arguable mistakes in DBS’s principal factual finding, it was not open to IEO to argue that DBS made any other factual or legal mistakes (and certainly not mistakes that were not included in the grounds in IEO’s original application for permission to appeal). The Upper Tribunal had not invited the making of these post-hearing written submissions, and so DBS applied for permission to make them, should that be necessary.
23. Whilst we are inclined to accept, principally on the authority of the Court of Appeal’s decision in *Sarkar v SSHD* [2014] EWCA Civ 195 at [16-17], DBS’s submission that

the grounds of appeal in this case were, by reason of the wording of the permission decision, confined to mistakes by DBS in its principal factual finding, we do not think it fair and just, in all the circumstances, to prolong these proceedings by inviting IEO to make written submissions in response to DBS's, for the simple reason that, even if IEO were, contrary to DBS's submissions, entitled to pursue these other arguments, they would, in our view, fail.

24. To explain the two points we have just made:

a. The relevant parts of *Sarkar v SSHD* (with particularly relevant passages emboldened by us):

16. [Counsel for the appellant] sought to rely on the Upper Tribunal's grant of permission to appeal in general terms as entitling the appellants to argue all their grounds of appeal He accepted that the Upper Tribunal has power to limit the grounds on which it grants permission appeal (as the Tribunal Procedure (Upper Tribunal) Rules 2008 clearly imply), but he submitted that in this case **the operative sentence granting permission to appeal was entirely unqualified and could not properly be limited by what [the Upper Tribunal Judge] said in the reasons he gave for his decision. In my view, however, that is not how an order of this kind is to be read.** In *Sans Souci Ltd v VRL Services Ltd* [2012] UKPC 6 ... the Privy Council held that an order of the Jamaican Court of Appeal remitting an award to arbitrators "to determine the issue of damages only" was to be read together with the court's reasons for its decision, which were "an overt and authoritative statement of the circumstances which it regarded as relevant." (per Lord Sumption, paragraph 13). As a result, **the apparently unqualified remission for the determination of damages in that case was to be understood as limited to the specific issues that had formed the basis of the appeal.** It did not give the tribunal jurisdiction to reconsider the issue of damages generally and did not entitle the defendant to raise issues that it had not previously raised. The decision was applied in this jurisdiction in *JSC BTA Bank v Ablyazov* [2013] EWCA Civ 928.

17. In the present case the apparently unqualified grant of permission to appeal must be read in the context of the reasons which [the Upper Tribunal Judge] gave for his decision, which make it quite clear that he intended to limit it to the ground that he had identified

b. as to why, in our view, IEO's other arguments, in any event, fail:

- i. DBS's assessment that IEO posed a safeguarding risk to vulnerable adults and children, was an opinion or an evaluative judgement (as opposed to a finding of primary fact) on DBS's part; it was based on DBS's principal factual finding (which we find not to be mistaken), and reasoning that (a) the incident stemmed from IEO's feeling impatient or frustrated with a vulnerable adult, and (b) that it could be reproduced if IEO's became impatient with a vulnerable adult, or a child, in the future. In our view, there is no mistake in this line of reasoning, or in the primary facts on which it is based;
- ii. there was no legal error in DBS's treatment of the evidence before it (see paragraph 13a to e above, including IEO's accounts at b and c); its decision was not one that no reasonable barring service could have reach on that evidence; in making the decision, DBS did not disregard something material, or take into account something immaterial, in its decision (the materials at paragraph 12g to k were not before DBS; but even if they had been, it would not have affected the outcome, for the same reason as explained at paragraph 17 above); nor was there procedural unfairness on DBS's part;
- iii. an argument that DBS's decision was disproportionate would fail - the limb of the test of proportionality most relevant to the analysis here is the one which asks whether, balancing the severity of the measure's effect on IEO's rights against the importance of the objective of the measure (safeguarding vulnerable adults and children), to the extent the measure will contribute to its achievement, the former outweighs the latter (this is "step four" of the test as articulated by Lord Reed in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 at [74]).

Here, the effect of the measure is to stop IEO working with vulnerable adults and children. We can see this will have a significant negative impact on IEO, who has been, and wishes to continue, working in the care sector. On the other side is the importance of safeguarding vulnerable groups, to the extent barring IEO will contribute to it. DBS's judgement, as the expert and regulating body in safeguarding, that the balance favours barring in this case, is to be accorded appropriate weight. It seems to us that the combination of DBS's principal factual finding, in which we have found no material mistake, and its rationale as to why IEO poses safeguarding risk (see sub-paragraph i above), which we find to be coherent, mean that the effect on IEO is

outweighed by the contribution to safeguarding vulnerable groups achieved by including IEO in the barred lists;

- iv. IEO expressed disagreement with DBS's factual finding about her motivation for picking up SU (see paragraph 10f above) ("to hide what had occurred" to SU, rather than "compassion") in her statement to the Upper Tribunal of 9 August 2024 (see paragraph 12m iii above). We see no mistake by DBS in making this finding of fact: in our view, and agreeing with IEO, picking up SU was a reflexive, spur-of-the-moment act on her part; but the main motivation propelling it was to try to undo what had been done (the incident leading to SU's fall to the floor), rather than putting SU's wellbeing first; it was a hopeless endeavour and one she, rightly, regrets.

Disposal

- 25. DBS's decision did not make material factual or legal mistakes. The decision is accordingly confirmed.

Zachary Citron
Judge of the Upper Tribunal

Michele Tynan
Matthew Turner
Members of the Upper Tribunal

Authorised by the Judge for issue on 4 August 2025