



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**NCN: [2025] UKUT 388 (AAC)
Appeal No. UA-2023-000494-V**

Between:

CP

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Citron, Ms Jacoby and Ms Bainbridge

Hearing date: 25 September 2025

Hearing venue: Manchester Civil Justice Centre

Representation:

Appellant: by herself

Respondent: by Simon Lewis of counsel, instructed by DLA Piper

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

This appeal centred on one morning in May 2022, when the appellant was employed as a care worker visiting the homes of vulnerable adult service users. The Disclosure and Barring Service, in deciding to include the appellant in the adults' and children's barred lists, had made findings of fact, based on an investigation by the appellant's employer that concluded with her dismissal, that the appellant had falsified documents to show that she had visited and provided care to a number of vulnerable adults on that morning – but that in fact she had not. The Upper Tribunal, having heard evidence from the appellant, including under cross examination, as well as having seen the documentary evidence on which the Disclosure and Barring Service had relied, found that the Disclosure and Barring Service made material mistakes in those findings, as the appellant had, in fact, visited and provided care for the first two of the vulnerable adult service users on her rota that morning – and the only reason she had not done so for the next two in her rota, was that the employer instructed her to come to the office immediately. The appellant had not falsified documentation to give the impression that she had visited and provided care to vulnerable adults, when in fact she hadn't. The Upper Tribunal accordingly allowed the appeal and directed the appellant's removal from the barred lists.

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 **ALLOW** the appeal. The Respondent made a mistake in findings of fact it made and on which its decisions (DBS reference DBS6191 00986560419) of 28 September 2023 (children's barred list) and 22 February 2023 (adults' barred list) to include CP in the barred lists were based.

The Upper Tribunal **DIRECTS** CP's removal from both barred lists.

REASONS FOR DECISION

This appeal

1. This is an appeal against the decisions ("**DBS's decisions**") of the Respondent ("**DBS**") dated 28 September 2023 (children's barred list) and 22 February 2023 (adults' barred list) to include CP in the respective barred lists.

The legislation underlying DBS's decisions

2. DBS's decision of 22 February 2023 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 he (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 of 28 September 2023 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 he (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 paragraphs 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)).

DBS's decisions

8. DBS's decision letters stated that, on Tuesday 31 May 2022
- a. CP falsified call logs to indicate that she had attended a number of care calls when she had not and in doing so neglected the care of a number of vulnerable adults;
 - b. CP displayed deceptive, irresponsible and neglectful behaviour, which had the potential to cause significant harm, on a number of occasions on the same day;
 - c. CP failed to provide personal care and failed to administer medication to a number of service users and in doing so recklessly placed them at significant risk of physical and emotional harm;
 - d. CP attended one service user to advise the service user that she had been called to the office, yet CP had already submitted a call sheet to state that she had completed that particular call and performed the required personal care;
 - e. CP completed and submitted other manual call sheets without the care having been provided;
 - f. CP documented that she had administered the medication which was detailed in care plans but had not; and in making a conscious decision to be deceptive CP placed the vulnerable adults at significant risk of harm given that they were prescribed drugs.

The appeal to the Upper Tribunal

9. Permission to appeal was given by the Upper Tribunal Judge Wikeley, who gave the following as his reasons for giving permission:

... The events of 31 May 2022 concern 5 service users in 4 households namely (1) EP, (2) DT, (3) LS and (4) HC & (5) CC. A major aspect of the allegation is that CP is said to have falsified documentation to indicate she had administered prescribed medication when she had not in fact done so. I am not sure there is supporting evidence in this respect for the DBS case as regards EP and DT. The weight to be attached to any evidence from EP and DT may be questionable as both service users appear to be rather confused – note, for example, that there may be evidence that EP is not a reliable witness

as she appears to have denied pressing the Lifeline when she must have done to trigger the alert. There is, therefore, an arguable case that the DBS made a mistake of fact in concluding that CP did not give meds to EP and DT, contrary to her case. There may be other factual disputes based on the detailed contents of CP's letter of appeal.

10. CP gave evidence at the Upper Tribunal hearing, including via cross examination and answering questions from the panel.

Documentary evidence in the Upper Tribunal bundle

11. In addition to DBS's decision letters, evidence in the bundle of 252 pages included:
 - a. the referral (to DBS) from the organisation that employed PEO at the time of the incidents; this
 - i. showed CP's date of birth; she had just turned 22 on the day in question;
 - ii. showed CP's job title as care worker, and her role description as supporting vulnerable client to live independently in their own home;
 - iii. showed CP as having worked for the employer for 18 months in total, prior to her dismissal in July 2022;
 - iv. summarised the circumstances of CP's dismissal as being that CP (on the day in question) "logged in and out of calls without providing care and falsified records to confirm that care had been completed";
 - v. showed the vulnerable adults (all service users of the employer) whose residences CP was due to attend (to give care) on the morning of the day in question as: EP, DT, LS and HC and CC (the latter two lived together).
 - b. the employer's 'investigation report' dated 1 July 2022; this said that
 - i. on the day in question, at 7.30 am, the employer's 'services team' received a call from 'Lifeline' (a personal alarm service) regarding their inability to contact service user EP;

- ii. the employer's 'roster' (this is the document at v. below) showed that CP had clocked in and out of a morning call at 7.01 am and 8.04 am and completed the care record to show that care and medication had been administered;
- iii. the employer was unable to reach CP by phone, following Lifeline's call;
- iv. a 'welfare check' (by a 'supervisor' at the employer) was conducted with EP on the same day – the supervisor arrived at EP's residence at 8.10 am – the blinds were closed and EP was upstairs in bed – EP told the supervisor that CP had not attended the call (and EP was just getting up out of bed); there was a manuscript note by the supervisor dated 31 May 2022 - it said, in addition, that when EP was asked if she had pressed the lifeline (alarm), she said 'no'; it also records that the 'box' had been unplugged and stored in a kitchen cupboard;
- v. the 'care log notes' completed by CP for EP stated that EP had shown her the "new careline gadget" and they had discussed flowers that EP had picked for herself; the 'care log notes' document itself was attached to the employer's report: it was headed "Visit with EP" and recorded as completed by CP; it showed "scheduled time" (7-8 am) and "actual time" (7.01 to 8.04 am); under the heading "AM: Personal Care", it had two pages of sub-headings, such as 'medication compliance', 'personal care', 'domestic-general', 'hydration', 'nutrition', etc; these were all shown with a tick beside them; a number of medications were specified, all with the word "administered" next to them; some headings had the words "task already completed" next to them ('personal care' and 'bathing');
- vi. in an 'interview' with the employer on 28 June 2022, CP said the reason she was not at EP's residence at 7.30 am, when Lifeline phoned EP, was that she had gone to the shops to get medical gloves. CP also said she had been with EP downstairs in her residence. As to why EP was in bed when the supervisor arrived at 8.10 am, CP observed that EP sometimes went back up to bed;

- vii. CP signed into a 'call' (i.e. a visit) with service user DT at 8.08 am. A member of staff of the employer (DK) contacted DT at 8.10 am and was told a neighbour had been to see her but that no care staff had attended the call;
- viii. the 'care log record' by CP regarding her DT visit stated that DT told her that she was feeling tired that day and was going to lie down on the couch when CP left;
- ix. the employer's 'services team' received a 'manual time sheet' for service user LS, submitted by CP (this is the document at c., below). The time logged in was 8.41 am and the time logged out was 9.07 am. On receiving this, a staff member of the employer contacted LS and was told that no care had been delivered at that point. LS stated in a statement that CP attended her residence (LS thought it was just before 10 am) and CP told her that she had accidentally (due to it being sunny) logged in to the call and, speaking with LS "through the door bell", said she would not be able to come in as she had been told to go to the office (of her employer) right away. CP said in the employer's 'interview' that she mistakenly completed the manual timesheet for LS as she submitted the wrong form to the 'services team' (DT had requested an earlier call time as a district nurse was visiting the following day – that had been the purpose of the manual form); a note signed by LS states that just before her conversation with CP "through the door bell", the employer's office had phoned LS to see if CP had been to the call;
- x. a 'manual time sheet' was submitted by CP at 8.40 am for a call with service user HC 9.14 am to 9.40 am (this is the document at d., below); on receipt of this, a staff member of the employer contacted HC (at 9.20 am), who told them that the care assistant was not then there;
- xi. a deputy manager of the employer contacted CP at 10.05 am using her personal mobile – CP told her she was just leaving service users HC and CC – the deputy manager said this could not be the case as the office had just contacted HC and been told that care had not been delivered;

- xii. in the afternoon of that day, a carer contacted the employer's 'services team' reporting that the morning medication for HC and CC had not been provided as it was still in the blister pack;
- xiii. in her 'interview' with the employer, CP said that she had not attended HC and CC as she had been called to the office (and she had not been able to obtain medical gloves);
- c. a time sheet document, 'updated' by CP on 31 May 2022 at 8.07 am, concerning service user LS, showing time logged in 8.41 am, time logged out 9.07 am;
- d. a time sheet document, 'updated' by CP on 31 May 2022 at 8.40 am, concerning service user HC, showing time logged in 9.14 am, time logged out 9.40 am;
- e. employer's 'staff meeting records' of 20 and 28 June, and 18 July, 2022; these included manuscript 'interview' notes; in these, amongst other things, CP is recording as saying,
 - i. when questioned about her visit to LS starting at 8.41 am, that she thinks she mixed up a call (she wasn't sure); she said she spoke to service user LS "on doorbell"; when asked why the manual entry for the LS visit was timed prior to the visit taking place, CP is recorded as saying – *I think I signed into LS by mistake ... I was meant to sign into someone else* (but she could not say what other person she meant to sign in for);
 - ii. when questioned in the employer's disciplinary hearing about her visit to DT, CP said that she had spoken to DT's neighbour at the start of the visit about DT's shed (and this may have been what was happening when staff member DK rang DT, at 8.10 am, to ask if CP was there);
 - iii. when phoned by the employer's deputy manager at around 10.05 am, according to the deputy manager, CP first said that she had just left a visit to service users HC/CC; when the deputy manager pointed out that another member of staff had phoned HC and been told that CP was not there, that CP had then said she had gone to get gloves; it was on this phone call that CP was told that

she needed to come to the office to see “DC” “pending an investigation”. The record also states the deputy manager received a phone call from service user LS at around 10.30 am saying that CP was ready to come into the call (i.e. visit), but that CP was told at that point to stop all calls and come to the office;

- iv. per CP’s account to the employer’s disciplinary hearing on 18 July 2022, the deputy manager contacted her when she was going to the call with service user LS (not HC); CP’s account, at that hearing, was that she never attended the call with service users HC and CC, as she was asked to attend the office. In CP’s account at that hearing, it was a “system error” that she had submitted a “manual time sheet” for a visit to HC and CC – she had submitted the “wrong form”;
- f. a letter from CP’s employer with the outcome of the disciplinary hearing of 18 July 2022: this recorded that the specific allegation was that, on 31 May 2022, CP had logged in and out of her calls without providing care to clients and falsifying care records to confirm that care tasks had been completed; the employer had been persuaded on the balance of probability, on the evidence provided during the disciplinary hearing, that the allegation had been made out;
- g. DBS’s “barring decision summary” document.

CP’s account

12. CP’s evidence was that what happened on the day in question, was this:
- a. she began her work that day, as normal; it involved attending at the residences of a number of service users (all being vulnerable adults); and performing care tasks as set out in an app of her employer’s; by the day in question, she had been doing this work for some time, and had a regular series of visits, all within walking distance; the order of her visits on the day in question, so far as relevant to the events as they played out, was EP, then DT, then LS, then HC and CC;
 - b. her first two visits, to EP and DT, were unremarkable from CP’s point of view at the time (more will be said below about those visits, in the light of evidence relied on by DBS), save that CP left EP’s residence somewhat

earlier than she otherwise would have, because she had run out of medical gloves, and had left EP's to go to a local shop to buy some; in the event, this took her more time than she anticipated, so she did not, in the end, return to EP's, but went straight to DT, her next visit; however, in CP's account, she had completed the care tasks she needed to complete, with EP, before leaving to buy medical gloves;

- c. what made that morning different, from CP's point of view, was that around the time she was arriving at LS's residence, she took a call from her employer's office, requiring her to attend at the office immediately; she explained this to LS at her doorstep, and so never went inside to complete care tasks with LS; and she never attended on HC and CC, for the same reason.
13. CP's general position was that there was nothing remarkable about the manner in which she completed her employer's record-keeping on that morning – this was ordinarily done on an app provided by the employer for that purpose. CP did not have a complete or entirely certain explanation for the following aspects of those records
- a. why there were app-generated records (referred to in the employer's investigation report as 'care log notes') of the visits to CP and ET, but so-called "manual" records of her interactions with LS and HC/LC;
 - b. the inconsistencies of those "manual" records with her account, principally:
 - i. the times shown on her app-generated record of the visit to EP, did not appear to reflect the fact that she left early to buy medical gloves;
 - ii. the times shown on the "manual time sheet" for her visit to LS (8.41 to 9.07) seem out of kilter with other evidence;
 - iii. that there was a "manual time sheet" indicating she had visited HC/LC (9.14 to 9.41) (when CP's account was that she had not).

Our conclusions in the face of the conflicting evidence

14. CP's account of the morning in question stands in direct contrast to DBS's factual findings that CP did not attend on EP or DT (and provide the care she was

required to), and then “falsified” documents to make it look as if she had done so. CP’s account is consistent with DBS’s findings as regards the fact that she did not provide care to LS, and to HC and CC; but CP’s account is, contrary to DBS’s factual finding, that she did not “falsify” documents to give the impression that she had.

15. We heard oral evidence from CP and generally found her to be a straightforward witness, trying honestly to recall events that occurred over three years earlier. CP’s evidence was not consistent or fully compelling in every detail – for example, we are left unsure exactly if, when, and how she obtained new medical gloves on the morning in question – however, this does not overturn our overall impression of her straightforwardness and honesty; and we think this vagueness on some details is understandable when, for her, the morning in question was an unremarkable one, in which she was not attempting to memorise or document every detail of what happened.
16. We had no oral evidence from anyone on the employer’s staff; and we had little or no evidence, written or oral, from the employer about its procedures and practices as regards record-keeping (and, specifically, procedures and practices as to using the app-based record-keeping, as opposed to the “manual time sheets”). We did have two “manual time sheets”, which included the following wording: *If you are unable to log into the visit for any reason, please complete the following form. As you are unable to log into the visit, please ensure you leave a note on the customer visit explaining the tasks completed.* There is then a heading, *Reason for not being able to log into the call*; this was blank on both the “manual time sheets” in the evidence in this case. We also had evidence in the form of staff member DK being recorded in a ‘staff meeting record’ of 20 June 2022 as saying that CP started sending “time sheets” at 8.07 am and that these “are used short calls/cancellations and can’t log in”; DK is recorded as saying that the first that came through was for service user LS – it was submitted at 8.07 am and for time logged in at 8.41 to 9.07 am (this will have been the document described at 11c above); another came in at 8.40 am, concerning service user HC and showing time logged as 9.14 to 9.40 am (the document at 11d above).
17. On a number of matters where CP’s account appeared to clash with evidence provided by the employer (and relied on by DBS), we have found it relatively

straightforward to prefer CP's evidence, given the fuller account we heard from her, including being tested by cross examination:

- a. we prefer CP's account of her visit with EP, to that implied by EP's answers to questions asked by the 'supervisor' from the employer: we accept CP's account that EP, whom she knew well, had significant memory difficulties; this is borne out by the supervisor's note recording that EP had told the supervisor that she had *not* activated the "Lifeline" alarm a short time before (when, on the employer's own account, she *had*); we also accept CP's account that it was not unusual for EP to go back to bed, having been downstairs during CP's visit; and that there was nothing unusual about the blinds in CP's front room being closed when the supervisor arrived; in making these findings, we also take into account the inherent unlikelihood of CP, on a one-off basis (as DBS's finding is isolated to one particular day), failing to undertake care tasks for service users whom we found her clearly to have known well and had a responsible attitude towards; in contrast, the employer's evidence come from someone who appears not to have known EP at all, and was dealing with her for the first time;
- b. we accept CP's evidence that the reason she did not take phone calls from her employer's office that morning, is that she had a poor relationship with the management and did not want to be "shouted at" by them; there had clearly been some degree of breakdown in relationship between CP and the employer; it is not for us to delve into, or find facts about, the rights and wrongs of that breakdown; suffice to say, we find that that it did not interfere with CP's care for the vulnerable adults for whom she had responsibility;
- c. we accept that CP left EP's a little earlier than she otherwise would have, in order to buy medical gloves (usually these would be provided from the employer's office but CP avoided going there due to the poor relationship as just described); however, this did not prevent her from completing her care tasks for EP, which we find that she did; and it may explain why CP was not at EP's at the time that Lifeline phoned about the alarm having been triggered;
- d. we accept that CP attended at DT's and provided care as necessary; we prefer CP's evidence over inferences that could be drawn from the 2-minute difference between CP's record of when she arrived (9.08 am)

and the record of a call from the employer's office to DT at 9.10 am (in which DT is recorded as saying CP was not there); apart from this being a very small time-differential (which could be explained by slight errors in time-recording), CP gives plausible reasons as to why DT may not have given an accurate reply: it could have been that CP was speaking with DT's neighbour about DT's shed; or it could have been down to DT's hearing difficulties;

- e. CP attended at LS's and communicated with her at the doorstep (to say that she could not come in to give care, as she had been summoned to the employer's office); the evidence is broadly consistent on this, including a statement of LS's to that effect. LS's evidence confirming CP's attendance at her doorstep, more broadly supports CP's account over DBS's fact-finding, as it seems unlikely that CP entirely failed to attend at EP's and DT's at all (per DBS's fact-finding), and yet turned up to LS's.
18. As respects the "manual time sheets" in respect of visits to LS and HC and CC, these appear to have been 'updated' (i.e. submitted) at times prior to the "logging in" recorded in the document itself; and, in the case of the LS visit, the log in time is earlier than the sort of time CP arrived at LS's; and, in the case of HC, it indicates a logging in whereas, in fact, by all accounts, CP never visited HC on that day. In the absence of reliable evidence from the employer as to their rules and procedures as to submitting "manual time sheets" (as opposed to the app-based recording system), we are unable to draw any firm conclusions from this evidence. We note the oddity of a system of time keeping that enabled a form to be submitted at a time prior to the logging in time shown on the form itself. We are clear, however, that this evidence does not support an inference that CP filled in these forms in advance of the logging in times shown on them, as she did, *in order to* cover up, or obscure, the fact that she did not ever intend to visit the service users concerned and provide the required care: if that had been her intention, she would have done the same for EP and DT, and yet clearly she did not. The most likely explanation of CP's completion of these manual time sheets prior to the logging in times shown on them, is that she had fallen into the practice of filling in manual time sheets for these service users in advance; and the reason they were rendered inaccurate, was not that CP had a nefarious plan never to attend on these service users but rather that, unexpectedly, she was instructed

by her employer not to attend on these service users shortly before the expected visit times, and instead to attend at the office.

Conclusion as to DBS having made a mistake in its findings of fact

19. It follows from the above that, in our finding, on the day in question,

- a. CP visited and provided care for EP, and then DT, in the usual and required way, including giving medication as required; CP left EP's somewhat earlier than she otherwise would have, because she had run out of medical gloves, and had went to a local shop to buy some; in the event, this took her more time than she anticipated, so she did not, in the end, return to EP's, but went straight to DT's; however, CP had completed the care tasks she needed to complete, with EP, before leaving to buy medical gloves;
- b. around the time EP arrived at LS's, she took a call from her employer's office, requiring her to attend at the office immediately; CP explained this to LS at her doorstep, and so never went inside to complete care tasks with LS; and she never attended on HC and CC, for the same reason;
- c. CP did not "falsify" documentation of her employer (app-based records of care given) to give the impression that she had given care to EP and DT when she had not (as, in reality, she *had* given care to EP and DT);
- d. CP completed "manual time sheets" of the employer's regarding visits by CP to LS and HC/CC respectively, and submitted them at times prior to the logging in time on both time sheets; it seems that CP had fallen into the practice of filling in time sheets for these service users in advance; but the reason they were rendered inaccurate, was not that CP had a nefarious plan never to attend on these service users but rather that, unexpectedly, she was instructed by her employer not to attend on these service users shortly before the expected visit times, and instead to attend at the office. It was a mistake to find that CP "falsified" these documents in an attempt to give an impression that she had provided care for these individuals when she had, in fact, not.

20. It follows that DBS made mistakes in the findings of fact on which its decisions were based: CP did not, on 31 May 2022, falsify call logs to give a false impression; nor did she neglect the care of the vulnerable adults she had to visit

on that day; the manual time sheets she completed for LS and HC, submitted at times prior to the “log in time” shown in the document, turned out to be inaccurate, but this was because she was (unexpectedly) instructed by her employer not to proceed with those visits. There was no deceptive, irresponsible or neglectful behaviour on CP’s part.

Disposal

21. Given our finding that DBS made material factual mistakes, we are required either to direct CP’s removal from the barred lists, or to remit the matter to DBS for a new decision. In *DBS v AB* [2021] EWCA Civ 1575, the Court Appeal said, at [72]:

Unless it is clear that the only decision that the DBS could lawfully come to is removal, the matter should be remitted to the DBS to consider. If, therefore, there is a question of whether it is appropriate to include a person’s name on a barred list, the appropriate action under section 4(6) of the Act would be to remit the matter to the DBS so that it could decide the issue of appropriateness.

22. On the facts that we have found them, CP did nothing wrong in her interactions with vulnerable adults in her care on Tuesday 22 May 2022: the only decision that the DBS could lawfully come to is removal of CP from the barred lists. We have accordingly made an order to that effect.

Zachary Citron
Judge of the Upper Tribunal

Suzanna Jacoby
Elizabeth Bainbridge
Members of the Upper Tribunal

Authorised by the Judge for issue on 19 November 2025