



Neutral Citation Number: [2026] UKUT 64 (AAC)
Appeal No. UA-2023-001403-V

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

CC

Appellant

- v -

THE DISCLOSURE AND BARRING SERVICE

Respondent

Pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:

No one shall publish or reveal:

the name or address of any of:

- a. the Appellant in these proceedings, who is referred to by the cipher CC**
- b. the complainants in respect of the assaults referred to in these proceedings by the ciphers WM, AA and EB**

or any information that would be likely to lead to the identification of any of them or any member of their families in connection with these proceedings.

Any breach of this Order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanction under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years' imprisonment or an unlimited fine.

Before: Upper Tribunal Judge Church
Tribunal Member Graham
Tribunal Member Jacoby

Hearing date: 08 January 2026

Mode of hearing: Face-to-face at Field House, London

Representation:

Appellant: Mr Michael Field of Messrs Freemans Law LLP

Respondent: Mr Ashley Serr of counsel, instructed by DBS Legal Services

On appeal from: The Disclosure and Barring Service

Case No: P0003RP4Q05 / 01019380470

Decision Date: 10 December 2024

SUMMARY OF DECISION

SAFEGUARDING VULNERABLE GROUPS (65)

This appeal is mainly about whether the DBS was mistaken to find that CC, a physiotherapist, engaged in sexual touching of three adult clients during physiotherapy appointments.

The Upper Tribunal dismissed the appeal, finding that the DBS had made no material mistake of fact or law. It confirmed the DBS's decision that CC's name should remain on the Adults' Barred List and the Children's Barred List.

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 judge follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

REASONS FOR DECISION

Introduction: what this appeal is about

1. This appeal is mainly about whether the DBS was mistaken to find that CC, a physiotherapist, engaged in sexual touching of three adult clients during physiotherapy appointments.

Agreed factual and procedural background

2. CC qualified as a physiotherapist in the Philippines and worked as a physiotherapist there from 2008 until 2014, mainly part time.
3. In 2015 CC moved to the United Kingdom and in 2016 she secured a full-time position as a "band 3" assistant physiotherapist with an NHS trust in London, being promoted to a "band 4" assistant physiotherapist role in 2020. CC's work as a physiotherapist in the NHS was principally in geriatric settings.
4. In 2022 CC moved to Doncaster to live with her partner and to take up a job as a "band 5" physiotherapist at a private sector provider. She began work at the private sector provider on 7 February 2022 on a probationary basis.
5. Within a 24-hour period on 15 and 16 March 2022, three clients (WM, AA and EB) complained to CC's employer about CC's conduct during physiotherapy appointments that had taken place on 15 March (WM and AA) and 16 March (EB) 2022.

6. The employer suspended CC from her role pending completion of an internal investigation and made a referral to the Respondent in respect of the allegations.
7. An internal investigation was carried out by a director of the employer, who obtained unsigned and undated written accounts from each of the complainants. CC declined to attend a disciplinary meeting in person due to anxiety, but she provided written responses to the allegations made by the complainants and to questions put to her by an HR consultant who was engaged by the employer to conduct the disciplinary process. CC vehemently denied all allegations of inappropriate or unprofessional behaviour. She said that the complainants' accounts were dishonest, and she suggested that the complainants might have colluded to make false accusations against her, possibly motivated by transphobia (CC being a trans woman) and/or racism (CC being Filipina).
8. Despite CC's firm denials, on 31 March 2022 the employer made a finding that CC had engaged in behaviour that was inappropriate and unprofessional, involving non-consensual sexual touching of each of the complainants that amounted to gross misconduct. The employer dismissed CC from her role.

Criminal proceedings

9. CC was not charged with any offence in connection with the allegations made by complainants WM or AA.
10. CC was charged with an offence of sexual assault (contrary to section 3 of the Sexual Offences Act 2003) in relation to the allegations of non-consensual sexual touching made by complainant EB. CC denied the allegations and was acquitted following a trial at Doncaster Magistrates' Court in April 2023, at which CC, EB and EB's partner gave evidence. The magistrates noted "inconsistencies in the evidence" and were not persuaded that the offence was made out to the standard required for a criminal conviction.

Regulatory proceedings

11. CC's regulator, the Health and Care Professions Council ("**HCP**C"), was notified of the allegations made by WM, AA and EB and initiated an investigation. Pending the outcome of the investigation and any potential regulatory proceedings, the Health and Care Professions Tribunal Service, sitting as the Investigating Committee of the HCP C, imposed an interim order on CC on 25 October 2025. That order has been renewed or varied (between conditions of practice and suspension) on several occasions by the Health and Care Professions Tribunal Service and twice by the High Court. The regulatory proceedings have still not even reached the stage of the Investigating Committee considering whether CC has a case to answer in respect of the allegations against her, and no findings have yet been made by the Health and Care Professions Tribunal Service in relation to the allegations.

The barring process

12. Following the referral to DBS by CC's employer, DBS carried out its own investigation. It did not interview any witnesses and instead relied on the documentary evidence created in the course of the employer's disciplinary investigation.

13. The DBS wrote to CC on 22 February 2023 to inform her that it was minded to place her name on the Children’s Barred List and the Adults’ Barred List (each a “**Barred List**”) on the basis of the following initial findings:
- “On at least three occasion [sic] you acted inappropriately towards three male patients including:*
- *Made inappropriate comments such as you smell nice, complementing [sic] their chest area, and complementing [sic] a patient’s tattoos, which proceeded to you sucking/kissing a patients [sic] nipple;*
 - *Being overly flirtatious in your manner during these sessions;*
 - *Used unnecessary touching including asking one to remove his top and then proceeded to massage/caress areas that were not necessary for the injury they had attended for;*
 - *Used leg stretches that were unnecessary and led to you having your elbow in a male patients (EB’s) groin area, then pointed to EB’s groin area suggesting he had an erect penis;*
 - *Failed to record such unnecessary stretches and massages on the patient logs.”*
14. The DBS said that it considered this to amount to “relevant conduct” in relation to vulnerable adults because it was conduct that endangered a vulnerable adult or was likely to endanger a vulnerable adult. It explained that it also considered that CC had engaged in “relevant conduct” in relation to children because if the conduct was repeated against or in relation to a child, it would endanger that child or would be likely to endanger him or her.
15. The DBS invited CC to make representations. On 30 June 2023 the DBS wrote to CC again, this time informing her that it had made a final decision to place her name on both Barred Lists.
16. On 19 September 2023 CC made an application to appeal that final decision. In response, the DBS decided to conduct a review of its decision of 30 June 2023 under paragraph 18A of Schedule 3 to the 2006 Act because it discovered that a number of the documents it relied upon in reaching its final decision had not been disclosed to CC when it sent its “Minded to Bar” letter.
17. On 12 April 2024 the DBS wrote to CC to inform her that it had concluded its paragraph 18A Review and that it was minded to retain her name on both Barred Lists. It invited her to make representations on that proposed outcome. CC duly provided written representations which disputed many of the DBS’s factual findings and she provided numerous positive character references from professional employers and colleagues. The DBS considered CC’s representations and produced a Barring Decision Process document which recorded its decision-making process. On 10 December 2024 the DBS decided to retain CC’s name on both Barred Lists (the “**Final Review Decision**”). It is the Final Review Decision that is the subject of this appeal.
18. The factual findings on which the Final Review Decision was based are set out in a letter from the DBS to CC dated 10 December 2024 (the “**Final Review Decision Letter**”). The findings in relation to complainant AA (in the Final Review Decision Letter at page 558 of the Upper Tribunal Bundle) were as follows:

“On 15/03/2022, you acted inappropriately and breached professional boundaries whilst providing physiotherapy treatment to an adult male, AA, by:

- a) Caressing AA’s back rather than providing any manipulation or treatment;*
- b) Kneeling on the treatment bed on top of AA whilst touching his back and with your hair draped over him;*
- c) Rubbing and caressing AA’s arms up and down;*
- d) Stroking AA’s face and his beard several times;*
- e) Placing your breasts unnecessarily close to AA’s head when you were stood in front of him; and*
- f) Making comments to AA which had a sexual connotation, such as ‘You so stressed sergeant’, ‘You need to relax, sergeant, I will take your stress away’. ‘You’re my special patient so I do this for you’. ‘Your beard feels so nice, I love it’.*

19. The findings in relation to complainant WM (in the Final Review Decision Letter at page 560 of the Upper Tribunal Bundle) were as follows:

“On 15/03/2022, you acted inappropriately and breached professional boundaries whilst providing physiotherapy treatment to an adult male, WM, by:

- a) Carrying out leg stretches that were unnecessary for the injuries presented by WM;*
- b) Touching WM’s genitals over his clothing with your elbow and moving your hand across his crotch;*
- c) Commenting on WM’s aftershave and how good he smelt [sic]; and*
- d) Unnecessarily touched WM’s left arm whilst looking at his tattoos.”*

20. The findings in relation to complainant EB (in the Final Review Decision Letter at page 561 of the Upper Tribunal Bundle) were as follows:

“On 16/03/2022, you acted inappropriately and breached professional boundaries whilst providing physiotherapy treatment to an adult male, EB, by:

- a) Unnecessarily massaging EB’s pectoral muscles and stretching his legs;*
- b) Sucking/kissing EB’s right nipple;*
- c) Making a sexualised comment to EB implying that his penis was erect;*
- d) Stating that EB had a nice chest and asking to kiss it; and*
- e) Asking EB to ‘pinkie promise’ that he was ok before concluding the treatment session.”*

21. We shall refer to the matters the DBS found proved on the balance of probabilities and on which it based the Final Review Decision (set out in paragraphs #, # and # above) as the **“Allegations”**.

The Legal Framework

The statutory scheme

22. There are multiple gateways under Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the “**2006 Act**”) to a person’s name being included on a barred list. The Final Review Decision (which is the subject of this appeal) relied on the “relevant conduct” gateway, which is explained further below.

The ‘relevant conduct’ gateway

23. The provisions relating to the “relevant conduct” gateway under the 2006 Act require the DBS to be ‘satisfied’ of three things:
- a. that CC was at the relevant time, had in the past been, or might in future be “engaged” in, “regulated activity” in relation to children and/or vulnerable adults (see paragraphs 3(3)(aa) (in relation to children) and 9(3)(aa) (in relation to vulnerable adults) of Schedule 3 to the 2006 Act);
 - b. that CC had “engaged” in (see paragraphs 3(3)(a) (in relation to children) and 9(3)(a) (in relation to vulnerable adults) of Schedule 3 to the 2006 Act) “relevant conduct” (defined in paragraph 4 (in relation to children) and paragraph 10 (in relation to vulnerable adults) of Schedule 3 to the 2006 Act); and
 - c. that it was “appropriate” (and proportionate) to include CC on the barred list(s) (see paragraph 3(3)(b) (in relation to children) and 9(3)(b) (in relation to vulnerable adults) of Schedule 3 to the 2006 Act).
24. If the DBS was satisfied of all three matters above, it was required to place CC’s name on both barred lists.
25. CC does not dispute that the “regulated activity” requirement is met in this case by reason of her work as a physiotherapist, so item a. in paragraph [23] above was not in issue in this appeal.
26. At the hearing before the Upper Tribunal Mr Field, for CC, clarified that CC accepted that the Allegations, if true, would amount to “relevant conduct” and would make barring both appropriate and proportionate, but her case was that, but for the allegation that she commented on WM’s aftershave, each of the Allegations was false and there was, therefore, no proper basis for her name being placed on either barred list.

The Upper Tribunal’s jurisdiction under the 2006 Act

27. Section 4 of the 2006 Act sets out the circumstances in which an individual may appeal against the inclusion of their name in the barred lists or either of them. An appeal may be made only on grounds that the DBS has made a mistake on any point of law or in any finding of fact which it has made and on which the barring decision was made (see section 4(1) and (2) of the 2006 Act).
28. An appeal under section 4 of the 2006 Act may only be made with the permission of the Upper Tribunal (see section 4(4) of the 2006 Act).
29. Unless the Upper Tribunal finds that the DBS has made a mistake of law or fact it *must* confirm the decision of the DBS (see section 4(5) of the 2006 Act). If the Upper Tribunal finds that the DBS has made such a mistake it must either direct

the DBS to remove the person from the list or remit the matter to DBS for a new decision.

30. If the Upper Tribunal remits a matter to DBS under section 4(6)(b) of the 2006 Act the Upper Tribunal may set out any findings of fact which it has made (and on which the DBS must base its new decision) and the person must be removed from the list until the DBS makes its new decision, unless the Upper Tribunal directs otherwise.
31. Section 4(3) of the 2006 Act provides that, for the purposes of section 4(2) of the 2006 Act, whether or not it is “appropriate” for an individual to be included in a barred list is “not a question of law or fact”.

The relevant authorities

32. An appeal under section 4 of the 2006 Act is not a full merits appeal permitting the Upper Tribunal to substitute its own judgment on the question of appropriateness. An appeal can succeed only if the appellant can demonstrate an error in a material finding of fact or in the approach taken by the DBS as a matter of law.
33. In relation to whether it is “appropriate” to include a person in a barred list, the tribunal has only limited powers to intervene. This is clear from section 4(3) of the 2006 Act and relevant case law. In particular, the judgment as to appropriateness (described by Wyn Williams J in *R (RCN) v SSHD & ISA* [2010] EWHC 2761 (Admin) as “*the ultimate question*”) may only be challenged on the grounds that it is irrational, disproportionate or otherwise unlawful (see §104 and see also *DBS v AB* [2021] EWCA Civ 1575 (“*AB*”). The DBS is well-equipped to make safeguarding decisions of this kind (see *AB* at §§43-44, 55 and 66-75)).
34. When it comes to mistakes of fact, the “starting point” for the tribunal’s consideration will be the DBS decision: *PF v DBS* [2020] UKUT 256 (“*PF*”), §51(g). Notwithstanding that, the tribunal will not defer to the DBS on factual matters, but the amount of weight given to the DBS’s findings of fact will depend on all the circumstances: *PF* at §§49 and 51(f). The evaluation of evidence is not a mistake of fact and therefore, if an appellant does not produce evidence on appeal which was not available to the DBS, then the tribunal may only find that there has been a mistake of fact if it concludes that there is no evidence to support that finding of fact or that it was irrational: *DBS v JHB* [2023] EWCA Civ 982 (“*JHB*”) at §§93-95.
35. If the tribunal hears evidence which was not before the DBS, it may be entitled to reach the view that, having heard that evidence, a factual finding of the DBS was wrong: *JHB*, §95; *DBS v RI* [2024] EWHC Civ 95 (“*RI*”), §§28-29. Any mistake of fact must be material in the sense of making a material contribution to the overall decision, to warrant the setting aside of a barring decision: *PF*, §51(b).
36. Where it is submitted that a decision to include a person on the Adults’ Barred List or Children’s Barred List amounts to a disproportionate interference with that person’s rights under the European Convention on Human Rights (“*ECHR*”), the tribunal must accord “appropriate” weight to the conclusions reached by the DBS on this matter, noting its particular expertise in these matters: *B v ISA* [2013] 1 WLR 308. If the tribunal finds that the DBS has exercised its power rationally and in accordance with the purpose of the 2006 Act, “*it would require very unusual*

facts for it to amount to a disproportionate restriction on Convention rights": **Belfast City Council v Miss Behavin' Ltd** [2007] 1 WLR 1420.

37. The appeal is against the decision made by the DBS, not simply the contents of the decision letter: see **XY v ISA** [2011] UKUT 289 (AAC) ("**XY v ISA**") at §40. The DBS's decision must "*be read fairly and as a whole*": **AB**, §46.
38. At §55 of **AB**, the Court cautioned: "*[The Upper Tribunal] will 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...*". At §[43], the Court stated: "*...unless the decision of the DBS is legally or factually flawed, the assessment of the risk presented by the person concerned, and the appropriateness of including him in a list barring him from regulated activity..., is a matter for the DBS*".
39. In the subsequent Upper Tribunal case, **AB v DBS** [2022] UKUT 134 (AAC), the Upper Tribunal decided (albeit in the context of a case that was based on the "risk of harm" rather than the "relevant conduct" gateway) that **AB** meant that the Upper Tribunal could consider, on appeal under the 2006 Act, a finding of fact by DBS that an individual poses "a risk" of harm but not a DBS assessment of the "level of the risk posed" (see §§49-52 and 64).
40. When considering appeals of this nature, the tribunal "must focus on the substance, not the form, and the appeal is against the decision as a whole and not the decision letter, let alone one paragraph...taken in isolation": **XY v ISA** at §40).
41. When considering a barring decision, the tribunal may need to consider both the Final Decision Letter and the document headed 'Barring Decision Summary' that is generated by DBS in the course of its decision-making process. The two together, in effect, set out the overall substantive decision and reasons (see **AB v DBS** [2016] UKUT 386 (AAC) at [35] and **Khakh v ISA** [2013] EWCA Civ 1341 at §§6, 20 and 22).
42. The statement of law in **R (Iran) v Secretary of State for the Home Department** [2005] EWCA Civ 982 indicates that materiality and procedural fairness are essential features of an error of law and there is nothing in the 2006 Act which provides a basis for departing from that general principle (see **CD v DBS** [2020] UKUT 219 (AAC)).
43. The DBS is not a court of law. Reasons need only be sufficient/adequate. The DBS does not need to engage with every potential issue raised. There are limits, too, as to how far the DBS needs to go in terms of any duty to "investigate" matters or to gather further information for itself, but it must carry out its role in a way that is procedurally fair.
44. If the Upper Tribunal finds that the DBS made a material mistake of fact or law under section 4(2) of the 2006 Act, it is required under section 4(6) either (i) to direct that DBS removes the person from the relevant list(s) or (ii) to remit the matter to DBS for a new decision. Following **AB**, the usual order will be remission back to DBS unless no decision other than removal is possible on the facts.

The permission stage

45. In her application for permission to appeal CC said that most of the factual findings upon which the DBS relied as establishing that she had engaged in “relevant conduct” were mistaken. While she accepted that the physiotherapy appointments with AA, WM and EB on 15 and 16 March 2022 happened, and accepted that she complimented one of the complainants on his aftershave, she vehemently denied that any sexualised or otherwise unprofessional or inappropriate touching occurred.
46. Judge Church granted CC permission to appeal to the Upper Tribunal on the papers. The judge was persuaded that since CC disputed key factual findings upon which the Final Review Decision was based, and since CC proposed to give evidence at an oral hearing at which her evidence could be tested under cross-examination, there was a realistic prospect of CC establishing that the DBS had based its Final Review Decision on material mistakes of fact. Judge Church made Case Management Directions and directed an oral hearing of the substantive appeal.

The oral hearing before the Upper Tribunal

47. The oral hearing of the substantive appeal took place on 8 January 2026 at Field House, London.
48. CC attended the hearing and gave evidence under oath. CC’s partner also attended the hearing. Because there was no dispute about what he said in his witness statement dated 19 December 2025, he was not required to give live evidence.

CC’s evidence

49. CC adopted what she said in her witness statement dated 19 December 2025, which she confirmed to be accurate and up to date. CC was cross-examined by Mr Serr, who put each of the factual findings comprised in the Allegations to her in turn. CC’s evidence under cross-examination by Mr Serr, questioning by the panel, and re-examination by Mr Field included that:
 - a. she complimented WM on the smell of his cologne, telling him it was “nice”, but this was not inappropriate: she was merely being friendly and responding to WM having complimented her on her perfume;
 - b. she carried out a hamstring stretch on WM, which was clinically appropriate;
 - c. she did not mention the stretch she performed on WM in her treatment notes because she had only 5 minutes between appointments to write her notes up on the electronic patient record;
 - d. her notes were incomplete because they do not mention the hamstring stretch performed on WM, and this represents bad practice. She now understands the importance of keeping a full record of the treatment provided for each appointment;
 - e. the account that the director of her employer gave of the meeting that she had with him following WM’s complaint was accurate (albeit that she denied the allegations against her). At that meeting CC demonstrated to the director the kind of hamstring stretch she had performed on WM;

- f. she did not carry out leg/hamstring stretches on EB;
- g. she carried out trigger point therapy on EB but no massage;;
- h. she carried out lumbar stretches on EB, but failed to record these in the notes;
- i. EB mentioned going to the gym and asked CC whether she went to the gym, and there was discussion about EB's chest but this was not as described in the Allegations;
- j. EB asked for her Snapchat details but she did not mention that in her notes;
- k. although she was an experienced physiotherapist, CC had not had any problems with any of her patients before March 2022;
- l. she discussed AA's police officer role with him out of friendliness, and to understand how his role might be affected by the injury for which he was receiving treatment, but denied any of the comments attributed to her by AA;
- m. she massaged AA's head but did not stroke his beard;
- n. no inappropriate touching of WM, EB or AA occurred;
- o. WM's appointment on 15 March 2022 was scheduled for 15:00;
- p. AA's appointment was scheduled for 15:30, but AA attended early for his appointment and when CC came to reception to call WM in for his 15:00 appointment, WM and AA were both in the reception area;
- q. the clinic was part of the gym, the reception area was small, and WM and AA were sat next to each other;
- r. she did not see WM and AA interact and does not know whether they spoke;
- s. when WM's appointment ended, she waited for WM to leave the treatment room, then wrote up her notes for about 5 minutes, and then went to the reception area to call AA in for his appointment;
- t. when she went to the reception area to call AA for his 15:30 appointment she did not see WM there;
- u. "looking back", she believes that WM might have been motivated to make up the allegations against her because she is transgender. This was because during his previous session with her WM had asked about Thailand (as WM had assumed CC to be Thai) and about "ladyboys", which made CC feel uncomfortable;
- v. she did not record anything in the patient record about WM's comments that made her feel uncomfortable, and she did not complain to her line manager because she did not feel unsafe or clinically compromised and felt OK answering WM's questions. She didn't want to think anything bad about her patient;
- w. she is not aware of WM having made any civil claim for damages in respect of the allegations he made against her;

- x. she believes WM and EB were motivated to make up the allegations against her because they held discriminatory beliefs;
 - y. she did not believe that AA was motivated by discriminatory beliefs;
 - z. when her director told her he had received a complaint from a patient she assumed that it was from AA and told him she was not surprised to receive a complaint. This was because AA had told her he was upset by her starting his previous appointment 5 minutes late;
 - aa. she did not know why AA had made up the allegations against her;
 - bb. when she was notified of her dismissal from her job she was devastated; and
 - cc. she did not appeal her dismissal or bring a discrimination claim in the employment tribunal.
50. CC did not suggest that any of the allegations made by the complainants about inappropriate touching resulted from their misunderstanding legitimate treatment that she carried out. Rather, she insisted that none of it happened at all.

Submissions on behalf of CC

51. In submissions Mr Field, for CC, said that if all the Allegations were true, CC should remain on the Barred Lists, and there was no question of them not amounting to “relevant conduct” or the sanction being disproportionate.
52. However, Mr Field invited the panel to give weight to CC’s evidence, which had been tested, and to prefer it to the evidence of WM, EB and AA. Of those witnesses, only EB’s had been tested at all (at the criminal trial in Doncaster), and having heard EB’s evidence and CC’s evidence, the magistrates had acquitted CC.
53. Mr Field said that if the panel was satisfied that none of the Allegations were true then it had no choice but to allow the appeal, to set the Final Review Decision aside, and to order CC’s removal from both Barred Lists.
54. If the panel was persuaded that some of the Allegations were true but others were untrue, then the appropriate disposal would be to allow the appeal, set the Final Review Decision aside and remit the matter to the DBS with appropriate findings for DBS to reconsider.

Submissions on behalf of the DBS

55. Mr Serr, for the DBS, pointed out that there were three complainants who reported similar conduct on the part of CC, and whose similar accounts corroborate each other. He pointed out that there was no direct evidence that the complainants were related, were friends, or had worked together. He pointed out that one of the complainants was, at the time of his complaint, a serving police officer who would understand the seriousness of making a false allegation of sexual assault. He said there was no credible reason for the three complainants to collaborate to concoct lies about a physiotherapist whom they hardly knew. While CC reported comments about “ladyboys” that made her feel uncomfortable once the allegations of misconduct had been levelled at her, she did not record the comments in her notes or raise them with her line manager *before* the complaints were made against her. Mr Serr encouraged us to find that CC’s

complaints were manufactured by CC to deflect from the complainants' allegations against her.

56. While Mr Serr said that CC was not placed on the Barred Lists because she had kept incomplete records, he said the panel was entitled to draw adverse inferences from her failure to make a complete and accurate record.
57. Mr Serr pointed out that CC did not say that *everything* the complainants said was lies: she accepted that some of it was true, such as CC having commented on WM's cologne. Mr Serr asked "If WM was right about that, why not about the rest?"
58. Mr Serr pointed out that CC had engaged only in a limited way with her employer's disciplinary process, had not sought to appeal it, and had not commenced proceedings in the employment tribunal. He said CC could have done this without prejudicing her position in the criminal proceedings, as she could have stayed the employment proceedings pending the outcome of any criminal trial.
59. Mr Serr invited the panel to find that the Final Review Decision was not based on any material mistake of fact, to confirm the Final Review Decision and to dismiss the appeal.

Analysis

60. The issue the Upper Tribunal must decide is a very simple one: "did the DBS base its Final Review Decision on a material mistake or mistakes of fact?" Put another way, "are the Allegations true or false?"
61. This is not a case that might turn on whether innocent actions have been misinterpreted. It cannot be that both CC and the complainants are telling the truth about what happened during the appointments on 15 and 16 March 2022. If CC's evidence is to be believed it follows that the evidence of each of the complainants must be largely untruthful. Our task is therefore to decide whether CC is telling the truth.
62. In coming to our decision, we considered all the submissions, both written and oral, and all the evidence before us. This included all the material that was before the DBS as well as the new evidence adduced in the appeal including CC's oral evidence.
63. When assessing CC's evidence, we bore in mind that English is not her first language and she did not have the assistance of an interpreter when giving her evidence before us. However, having heard CC give her evidence we were able to assess her facility for English, which we found to be excellent. At no point did CC appear to struggle to understand the questions put to her or to express herself clearly.
64. We took into account that CC was asked about events that occurred in 2022, nearly four years ago, and we reminded ourselves that memories fade over time. However, CC did not appear to have difficulty recalling the events of March 2022.
65. When considering the evidence of WM, EB and AA we bore in mind that none of them gave oral evidence at the hearing before us, so we did not have the opportunity to see them being questioned to make a first-hand assessment of their credibility. As a result, we treated their evidence with some caution.

66. We bore in mind that those of the Allegations that relate to EB had been tested in a criminal trial and CC had been acquitted. However, given that the criminal courts apply a very different standard of proof (being “sure”, rather than persuaded “on the balance of probabilities”), the acquittal had little bearing on the issue we had to resolve.
67. We kept in mind the importance of avoiding making assumptions when determining issues relating to allegations of sexual assault. We had in mind that different people can respond to unwanted sexual activity in different ways. Some may protest immediately, but others may not.
68. We kept in mind that just because a person gives a consistent account about an event does not necessarily mean that that account must be true, any more than inconsistent accounts must be untrue.
69. CC conceded that she had complimented WM on his cologne as he had claimed. Mr Serr suggested that if WM was truthful and accurate in his evidence on that point it was more likely that he was truthful about the other matters. We did not find this to be persuasive. A person may be truthful about one matter, and untruthful about another. The agreement between CC and WM on this matter did not help us to determine the veracity of the Allegations.
70. While Mr Serr encouraged us to view AA’s evidence favourably given that he was, at the time of the disputed incident, a serving police officer, and would have been aware of the seriousness of making a false complaint about a criminal matter, Mr Field argued that AA’s failure to make a criminal complaint or to participate as a witness in the criminal trial of the allegations made by EB, suggested that his evidence might not be reliable. We did not consider that the fact of AA being a police officer either supported or undermined his reliability as a witness.
71. We bore in mind that CC had no convictions or cautions, and no history of complaints having been made about sexualised or otherwise unprofessional behaviour on her part. We found it difficult to see why CC, having had a long and successful career as a physiotherapist for which she received glowing testimonials and in relation to which she had received no complaints, would do the things described in the Allegations. However, ultimately we preferred the evidence of the three complainants to CC’s evidence. We found each of the Allegations to be truthful and we found CC’s denial of each of the Allegations to be untruthful.
72. This was chiefly because, while we struggled to understand why CC would engage in such conduct (and to do so with three patients over the course of a 48 hour period) when she had not done anything like this before, we found it to be inherently improbable that three people who we find did not know each other, and who we find did not stand to gain financially or in any other way from making false allegations against CC, would conspire between them to fabricate such allegations.
73. While CC suggested that, in the case of two of the complainants, they might have been motivated by transphobia and/or racism, there was no evidence to suggest that the complainants might be transphobic or racist other than CC saying that one of them referred to “ladyboys”, something that she found offensive but which did not report until after that individual had made allegations against her. CC did not report EB to have said anything to indicate that he held transphobic or racist

beliefs. Her stated belief that EB might have been motivated by his holding such beliefs appears to have been based solely on the fact that she has experienced transphobic and racist comments from others since moving to Doncaster from London. However, the existence of prejudice in Doncaster does not provide an adequate evidential basis for a finding that EB held such beliefs.

74. There was insufficient evidence to find that either WM or EB held racist or transphobic views and, even if they did, we consider it much more likely that, having had a screening appointment with a physiotherapist whom they realised to be trans and Filipina, they would simply have asked to be assigned a different physiotherapist for their treatment appointment than that they would conspire to make untrue allegations against CC.
75. Further, CC did not suggest that AA was motivated by transphobia or racism. We found her suggestion that he might have been motivated to make a false claim of sexual assault against her because CC had been 5 minutes late for a previous appointment to be wholly improbable.
76. The three separate, and very similar, complaints made by WM, EB and AA provided a degree of corroboration for each other. There was no evidence to indicate any prior relationship between the complainants. While there was a window of a few minutes when WM and AA were in the waiting room together on 15 March 2022, there is no evidence that they spoke during that time. Even had they spoken, it is wholly improbable that they would in those few minutes have conspired to fabricate a dishonest scheme to make untrue allegations against CC. Further, EB attended for his appointment on the day after the incidents of which WM and AA complain of, and there is no evidence that EB had any contact with either WM or AA before making his complaint.
77. Having considered all the evidence including CC's oral evidence at the hearing, which was tested, we are not persuaded that the Final Review Decision was based on any material mistake of fact.

Conclusion

78. The Final Review Decision was not based on any material mistake of fact, and it involved no material mistake of law. It is confirmed.

Thomas Church
Judge of the Upper Tribunal

Roger Graham
Tribunal Member

Suzanna Jacoby
Tribunal Member

Authorised by the Judge for issue on 9 February 2026