**IN THE UPPER TRIBUNAL**
**ADMINISTRATIVE APPEALS CHAMBER**

**Appeal no. UA-2024-001691-V**
**[2026] UKUT 114 (AAC)**

*Summary: Safeguarding vulnerable groups: 65.2: 65.5: 65.9 (1) Mistake of fact (2) Mistake of law: (1) The DBS made two mistakes of fact in finding that the appellant requested money from a vulnerable adult and that she had ongoing financial problems. (2) The DBS made a mistake in law by making a finding on which the appellant did not have the opportunity to make representations.*

On appeal from a decision of the Disclosure and Barring Service

**Between:** SB Appellant

and

The Disclosure and Barring Service Respondent

**Before: Upper Tribunal Judge Johnston, Rachael Smith and Matthew Turner**

Decided on 06 March 2026 following an oral hearing, held by consent by video, on 04 February 2026

**Representation:**
Appellant: The appellant represented herself
DBS: Ms Bronia Hartley of counsel

**ANONYMITY ORDER**

On 27 January 2025, the Upper Tribunal made the following order which remains in force—

"3. Having considered the provisions of Rule 14(1)(b) of the 2008 Rules and the reasons given by the respondent in the 20 December 2024 letter, subject to any objection by the applicant, I order prohibiting publication of any matter or disclosure of any documents likely to lead members of the public directly or indirectly to identify the following persons:

a. DR
b. SR
c. IR
d. EF
e. DE
f. BA

4. Any breach of the order at paragraphs 3 above is liable to be treated as a contempt of court and punished accordingly (section 25 of the Tribunals, Courts and Enforcement Act 2007)."

## DECISION

1. The appeal is allowed, following an oral hearing on 04 February 2026.

2. The hearing was by consent held by video. The appellant represented herself. The DBS was represented by Ms Hartley of counsel. We are grateful to both for their submissions.

## REASONS FOR DECISION

### A. Introduction

3. The appellant appeals to the Upper Tribunal against the DBS's decision under reference 01019099374 communicated in the Final Decision letter dated 15 August 2024 (pages 65-69 of the bundle) to include her in the adults' barred list.

### B. Procedural Background

4. Permission to appeal was given by Upper Tribunal Judge Perez on 18 May 2025. Permission was given on four grounds:

> (1) **Ground 1:** the DBS arguably made a mistake of fact in finding that [the appellant] requested further money from the service user on 11 April 2024 (or at all).
>
> (2) **Ground 2:** the DBS arguably made a mistake of fact in finding that her "financial issues were not temporary or short term as you were still having financial problems the following year" and that, in effect, the DBS is not reassured that "your financial situation has changed for the better".
>
> (3) **Ground 3:** the DBS arguably erred in law in that it was disproportionate to include [the appellant] in the list if she did not in fact request further money on 11 April 2024 or at all. This third ground would be strengthened if Ground 2 were made out; that is, if the DBS were found to have been mistaken in finding that [the appellant] was still having financial problems "the following year", that is, in 2024 and in not being reassured that her financial situation had changed for the better.
>
> (4) **Ground 4:** the DBS arguably made a finding in the Final Decision letter which the DBS had not given [the appellant] the opportunity to comment on: the finding that it was likely that she had requested money in 2023.

## C. The Law

5. The relevant legislation is in the Safeguarding Vulnerable Groups Act 2006 (the Act).

6. Section 2 of the Act requires the DBS to maintain an adults' barred list. By virtue of section 2, Schedule 3 to the Act applies for the purpose of determining whether an individual is included in the list. Regulated activity is determined in accordance with section 5 and Schedule 4 to the Act.

7. Section 2 of the Act requires the DBS to maintain the children's barred list and the adults' barred list. By virtue of section 2, Schedule 3 to the Act applies for the purpose of determining whether an individual is included in the lists. Section 3 provides that a person is barred from regulated activity relating to vulnerable adults if the person is included in the adults' barred list. Regulated activity is determined in accordance with section 5 of, and Schedule 4 to, the 2006 Act. Schedule 3 to the Act provides for inclusion by reference to, among other things, "relevant conduct" by the person included in the lists. Relevant conduct is what the DBS relied on in this case. The appellant must have been engaged in relevant conduct, and the regulated activity test must be met. That is, that the person has at any time engaged in relevant conduct and is, or has been or might in future be, engaged in regulated activity relating to vulnerable adults (paragraph 9(1)(a)(i) and (ii) of Schedule 3).

8. Relevant conduct is defined in the Act as, among other things, conduct which endangers or is likely to endanger a vulnerable adult, and conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him (paragraph 10(1)(a) and (b) of Schedule 3). A person's conduct endangers a vulnerable adult if he harms a vulnerable adult, causes a vulnerable adult to be harmed, puts a vulnerable adult at risk of harm, attempts to harm a vulnerable adult or incites another to harm a vulnerable adult (paragraph 10(2)(a)-(e)).

9. Schedule 3 paragraph 16(1) and (3) of Act provides-

> 16(1) A person who is, by virtue of any provision of this Schedule, given an opportunity to make representations must have the opportunity to make representations in relation to all of the information on which DBS intends to rely in taking a decision under this Schedule. …

10. Section 4 of the Act governs appeals. It provides that an appeal may be made to the Upper Tribunal against a DBS decision only on the grounds that the DBS has made a mistake on any point of law or in any finding of fact which the DBS has made and on which the decision was based. Subsection (3) of section 4 provides that, whether or not it is <u>appropriate</u> for an individual to be included in a barred list is not a question of law or fact (our emphasis).

11. In DBS v RI [2024] EWCA Civ 95 Bean LJ said this:

> "31. It seems to me plain that the Presidential Panel in PF were saying that where relevant oral evidence is adduced before the UT in an appeal under s 4(2)(b) of the 2006 Act the Tribunal may view the oral and written evidence as a whole and make its own findings of primary fact. I

> would add that whether or not A stole money from B cannot be considered a matter of "specialist judgment relating to the risk to the public" engaging the DBS's expertise. I reject Ms Patry's submission that the Upper Tribunal is in effect bound to ignore an appellant's oral evidence unless it contains something entirely new. Such an approach would be anomalous and unfair. It would be anomalous because, as Males LJ pointed out during oral argument, an appellant who attended the Upper Tribunal hearing and stated that she was innocent but was not cross-examined, would be liable to have her appeal dismissed because no item of fresh evidence had been put forward, whereas if she was cross-examined, and in the course of that cross-examination mentioned a new fact, that would confer on the UT a wider jurisdiction to allow the appeal on mistake of fact grounds. Usually courts and tribunals (and juries) think more highly of parties who have maintained a consistent account than those who come up with a new point for the first time in the witness box.
> …
> 35. Such a technical approach would also, in my view, be clearly unjust. The DBS has draconian powers under the 2006 Act. A decision to place an individual on either or both of the Barred Lists is likely to bring their career to an end, possibly indefinitely. Parliament has given such a person the right of appeal to an independent and impartial tribunal which can hear oral evidence. It is in my view open to an appellant to give evidence that she did not do the act complained of and for the UT, if it accepts that case on the balance of probabilities, to overturn the decision."

12. In Khakh v Independent Safeguarding Authority [2013] EWCA Civ 1341 Elias J, said as follows:

> "23. There is also a complaint about the adequacy of the ISA's reasons. In my view, the ISA has given perfectly adequate reasons. I would accept that the ISA must give sufficient reasons properly to enable the individual to pursue the right of appeal. This means that it must notify the barred person of the basic findings of fact on which its decision is based, and a short recitation of the reasons why it chose to maintain the person on the list notwithstanding the representations. But the ISA is not a court of law. It does not have to engage with every issue raised by the applicant; it is enough that intelligible reasons are stated sufficient to enable the applicant to know why his representations were to no avail."

13. If the DBS has made an error of law or fact, the Upper Tribunal determines whether to remit or direct removal of the person's name from the list (section 4(6) of the Act). In Disclosure and Barring Service v AB [2021] EWCA Civ 1575, at paragraph 73 Lewis LJ says as follows:

> "For those reasons, I would interpret section 4(6) of the Act as permitting the Upper Tribunal to direct removal of the name of a person from a barred list where that is the only decision that the DBS could lawfully reach in the light of the law and the facts as found by the Upper Tribunal."

## D. Evidence admitted at the hearing

14. On the morning of the hearing the Upper Tribunal asked the appellant why she had not submitted the bank statements directed by Judge Perez in her

grant of permission. No clear explanation was given but the appellant said she could send them to us immediately. The DBS objected to the late evidence as the appellant should have submitted the bank statements within the time set out in Judge Perez's directions. Ms Hartley for the DBS indicated that if the evidence was admitted she would not anticipate an application to adjourn as the core factual findings remain the same.

15. We considered whether we should allow the appellant to send the evidence to the Upper Tribunal at that point. Rule 5 (2)(a) allows the Upper Tribunal to admit evidence whether or not it was available to a previous decision maker, in this case the DBS. Rule 5(2)(b) does allow the tribunal to exclude evidence that was not provided within the time allowed by a direction. However, rule 7 permits the tribunal to waive any non-compliance and, when applying any rule, we must seek to give effect to the overriding objective in Rule 2 which is to enable the Upper Tribunal to deal with cases justly and fairly.

16. We decided to give the appellant the opportunity to submit the bank statements and admit them as evidence. We recognised the appellant was not represented and therefore unfamiliar with the tribunal processes and with reading and understanding directions. We also took into account that Judge Perez in her permission decision recognised the bank statements would assist the Upper Tribunal in determining the grounds of appeal and we agreed. Whilst the DBS objected to the admission of this evidence, they did not think that it would fundamentally affect the core factual findings in the case and would not make an application to adjourn. Considering the overriding objective and the appellant's ability to participate in the proceedings and avoiding unnecessary formality and seeking flexibility in the proceedings, we decided that the late admission of the bank statements would enable us to deal with the case justly and fairly. We gave Ms Hartley the time she requested to take instructions on the new evidence.

## E. Factual background

17. The following facts are not disputed unless we indicate otherwise.

18. On 27 September 2023 the adult safeguarding team called the care agency for whom the appellant worked raising an allegation that one of the care assistants had taken a cheque for an unknown amount from one of the people who the agency provided care for namely DR. The allegation at that stage was that the carer was having problems with her husband and that she needed the money. The appellant was identified as that carer.

19. The appellant was then telephoned and invited to the office for supervision. A second call was received by the care agency from the safeguarding team. The cheque was for £1000 and DR had told a person from the safeguarding team that he willingly gave the money to her as she needed the money to visit her daughter. He told the safeguarding team that the appellant had messaged him that she had been invited into the office and she was worried that her career was over. DR was very unhappy about this as he had gifted her the money, and he was worried he would be left without care.

20. DR's family initially did not seem to think the money had been given to SB. His daughter confirmed that he said to her he had given the money to charity (page 46 of the bundle). However, by 27 September DR's son was spoken to by the care agency. He said he was unhappy with what had happened over the carer, and he felt his father was able to give gifts, so the family knew about the gift by this date. There is no question from the family over his capacity to make that decision.

21. On 29 September 2023 DR and his son in law confirmed they were unhappy with the way the appellant had been treated. The agency went to see four other clients that SB had cared for to "see if there were any issues, there is not." (page 51 of the bundle).

22. The appellant went to the office and admitted the allegation. She was suspended.

23. On the 28 September 2023 the manager of the care agency visited DR. He was very upset and said he felt responsible as he said he "forced" her to accept the money from him.

24. On 28 September 2023 the appellant in a meeting with her managers said she had accepted a cheque for £1000.00. She was also informed that they knew DR had given her other cheques. She explained that she had put these cheques into her account and paid him the cash. As she had accepted the gift of £1000.00 against company policy she was dismissed. The care agency also reported her to the police. The police visited DR and but took no further action.

25. On 11 April 2024 the care agency was contacted by DR's son. In an email to the DBS from the care agency, they reported a telephone call from DR's son (page 40 of the bundle). The email says as follows:

> "He has just informed me he received a telephone call from his father who was very upset to say SB had been in touch this morning begging him for money and crying on the telephone. This was very upsetting for DR and he was asking his son how they can help SB and give her money."

26. The finding of fact that the appellant begged DR for more money or requested more money is disputed by the appellant and we address this in our analysis.

27. In the minded to bar letter the DBS said that they accepted that DR was not caused financial harm as he gifted her the money. They went onto say: (page 27 of the bundle):

> "However, the DBS believe that your behaviour has caused him some emotional harm. Firstly, by making him aware of your struggles, it is likely that [DR] felt obliged to help you out. Whilst he willingly gave you money it is likely that he felt sorry for you once he became aware of your predicament, yet this information should not have been disclosed by you in the first place. … He felt he was responsible for you losing your job, he was reportedly worried and anxious and had difficulty sleeping, worrying that he would be left without care."

28. The appellant accepts that she should not have accepted the money and that she caused him emotional harm.

29. Noting that they believed the family were not in support of any police action they also note that it appears the family's position has changed. They say:

> "Information received from your former employers is that they have been advised that on 11 April 2024 some 6 months after you ceased working for [DR] you have made contact with him requesting additional money. …Acting in this manner towards and elderly, vulnerable gentleman who is likely to have already been upset following your dismissal is likely to have caused him significant emotional harm. This new concerns [sic] leads the DBS to believe that your financial problems are still ongoing and you are willing to exploit your former relationship with [DR] and his good will. At the current time the DBS have no information to indicate that you understand how your actions have caused emotional harm and your apparent lack of insight and your willingness to take advantage of others leads the DBS to believe that you may act in a similar way towards other vulnerable adults."

30. The appellant does not accept that she requested more money on 11 April 2024. Following on from this she does not accept that she was willing to exploit her former relationship with DR or his good will. It also follows that she does not accept she caused him emotional harm in April as she did not request further money. Her denial is in the next section and we have addressed this in the analysis below. In response to this letter the appellant wrote to the DBS (page 58 of the bundle). In it she apologised and said she was "fully aware of the gravity of my misconduct and the mistrust that I have developed as a carer." She was referring to the cheque in 2023. She explained she was isolated and did develop a strong relationship with those she cared for. She acknowledges this was a breach of professional boundaries. She promises that a "similar breach will not happen again".

31. The final decision letter placing the appellant on the adults barred list finds that the appellant did accept £1000 from DR. In it the DBS also accept that the appellant has shown both insight and remorse and it was clear that she regretted that action. Again this is not in dispute. The DBS then note that the appellant does not accept that she requested more money during the telephone call in April 2024. They say it was this request which caused DR the most "significant harm" and that this shows a pattern of behaviour rather than the behaviour being an isolated incident. They go onto find that her financial problems were not temporary or short term given she contacted him again for money. As said above the appellant denies the further request for money, the pattern of behaviour and that she had ongoing financial problems.

## F. The hearing

32. In answer to questions put by Ms Hartley today about the amount of money given to the appellant by DR in 2023, the appellant said a ticket to South Africa would be about £700-800. When asked why she accepted more than the

fare and why she did not rip up the cheque and ask for another one for less she said she did not know and, “I should have. You are right”.

33. The appellant told the Upper Tribunal about contact she had with DR having been told not to have contact with him by the care agency. She said she had contact with him about three times after her dismissal when he phoned her. He would ask her to come and visit. She did visit once but there was another person there and she left. He also sent her a Christmas card. One time a lady knocked on her door and said there was a man at the top of the drive looking for her. When she looked out, she saw it was DR. She told to him to go home as she knew she would be in trouble. He did not come into the house.

34. She vehemently denied asking him for money on 11 April 2024. She had agreed to go and have tea with him but was in “two minds”. When DR’s daughter telephoned her accusing her of asking for money, she denied this. She repeated what she had said in her appeal to us (at page 5 of the bundle) that she did not ask for £5000 or any money and she is able to look after herself financially. The only evidence of the phone call came from the appellant herself. In her evidence today after she received that phone call she blocked both the daughter’s number and DR’s number and has not had contact since. She did not go and see DR.

35. In answer to questions about other clients, she said she did build up friendships with them. After she was dismissed, she had contact by telephone with a former client but did not visit as the client lived upstairs from DR. She also attended a funeral of another client at that client’s daughter’s request.

36. She told us she was able to look after herself financially. She had started a relationship with her current partner around January 2024 and that has helped. She pays some bills and provides food. She does some cleaning and office work.

37. She provided her bank statements on the day of the hearing for January 2024 to August 2024. They show she has little money but has only once had a negative balance in February 2024 for £40.04. Around the time of the alleged request for more money on 11 April 2024, she had £46.57 in her bank account. On 12 April 2024 she received £78.75 into her account and then on 15 April she received £101.00; both payments for work undertaken.

38. When she came to the UK in what must have been 2021 having been sponsored by the care agency, she was made to pay back money to them that they had spent on arranging her visa. She did not know she would have to do this so there were a few months that were very hard as she was not receiving much money from work.

## G. Analysis of the grounds of appeal on which permission was granted.

*Ground 1: the DBS made a mistake of fact in finding that [the appellant] requested further money from the service user on 11 April 2024 (or at all).*

39. The evidence before the Upper Tribunal which supports the finding that the appellant did ask for more money in April 2024 is found in an email reporting the telephone call by DR's son to the care agency on 11 April 2024 (page 40 of the bundle). It also appears that at the time she took the money in 2023 the family were against any action taken against her. However, the email and the call described by her in paragraph 31 point to that support changing.

40. The evidence against the truth of the allegation is that the appellant has denied asking for money on 11 April to the DBS, in her written appeal to the Upper Tribunal, in her oral evidence to Judge Perez at the permission hearing and to us today. She has been consistent in her denial despite admitting taking the money given to her by DR in 2023. She accepts and accepted at the time of her dismissal that she should not have accepted this money and she says she would not do so again. She has expressed considerable remorse and insight about accepting the money offered to her by DR in 2023. At the time of the dismissal the care agency visited her four other clients and there was no evidence of money being given to her by them. The only evidence of the telephone call from the daughter came from the appellant. She was shocked by the call, reiterated to the daughter of DR that she did not ask for money and thereafter blocked the daughter's number and DR's number on her phone.

41. We heard oral evidence from her today. We did not have the opportunity to hear evidence from DR's son who made the allegation which was only reported in an email through a third party. No witnesses were called by the DBS. DR said he "forced" [the appellant] to accept the earlier gift in 2023, she had insight that she should not have accepted it and she has consistently denied asking for more money. The evidence is that DR gave the money willingly, had capacity to do so and the means to do so.

42. We find as a fact that on the balance of probabilities that she did not directly request money from DR on 11 April 2024. There is no direct evidence of an explicit request from DR, and we find her denial of this convincing in her evidence before us today when taken with the other evidence we set out in the preceding paragraphs. We find the DBS made a mistake of fact in finding that she did so.

*Ground 2: the DBS made a mistake of fact in finding that her "financial issues were not temporary or short term as you were still having financial problems the following year" and that, in effect, the DBS is not reassured that "your financial situation has changed for the better".*

43. The appellant supplied her bank statements which show she is consistently a low paid worker but that she was only in overdraft once between January and August 2024. This was in February 2024. On 11 April 2024 she had £46.57 in her bank account and so the balance was low. But on 12 April 2024 she received £78.75 into her account and then on 15 April she received £101.00; both payments for work undertaken. Although this may seem low to us she is a low paid worker. There is no evidence of debts that she cannot pay or could not pay in April 2024.

44. Although it appears from perusal of the bank statements the appellant's financial situation has not improved significantly, there have been two changes

since 2023 and before the final decision letter. She began living with her partner in January 2024 before the final decision letter and therefore was not paying rent. She was also not paying the care agency back for her visa. Despite being a low paid worker, we find that there is no evidence of her having financial problems between January to August 2024. There is a consistent pattern of her managing on her low pay with expenditure on ordinary day to day costs and expenses evident during this period. There is nothing out of the ordinary to be seen from the statements provided. She was only in overdraft once and that was remedied quickly. There was no evidence of ongoing debt during 2024 or at the time of the final decision letter dated 15 August 2024. There is no evidence of, for example, payday loans or other debts. We find that there is no evidence that she is having financial problems and is in fact managing on her low pay. Therefore, the DBS made a mistake of fact in finding that the appellant had financial problems.

*Ground 4: The DBS made a finding in the Final Decision letter which the DBS had not given [the appellant] the opportunity to comment on: the finding that it was likely that she had requested money in 2023.*

45. In the minded to bar letter the DBS said, "We have limited information about how this offer came about…" and further "It is, therefore, more likely than not that [DR] became concerned about you and your money worries and he wanted to help you out" (page 25 and 26 of the bundle). In their final decision letter, the DBS made a finding that it was "likely that you requested money in 2023." (page 66 paragraph 5).

46. The finding that it was "likely" that the appellant requested money in 2023 is different from that in the minded to bar letter. The finding in the final decision letter was one on which the appellant was not given the opportunity to comment. Although as in Khakh above, we accept the DBS is not a court of law they must give the appellant the opportunity to make representations on significant findings. The DBS relied on its finding that it was likely that the appellant <u>requested</u> money in 2023. They relied on this finding to decide it that the appellant did request more money in 2024, which we have found was a mistake of fact. The DBS accept that the appellant has taken responsibility for the fact that she accepted the money in 2023, not that she asked for it. The DBS did not give the appellant the opportunity to comment on this finding.

*Ground 3: the DBS arguably erred in law in that it was disproportionate to include [the appellant] in the list if she did not in fact request further money on 11 April 2024 or at all.*

47. We do not consider it appropriate to make a finding on this ground as we are remitting this case to the DBS for a further decision. The DBS made the decision on whether it was proportionate to bar the appellant on the facts they found at the time. We have decided that they were mistaken on two facts. The first was that the appellant requested further money in April 2024. The second was that the appellant had ongoing financial problems. We have also found that the DBS made a mistake in law by finding that it was <u>likely</u> that she requested money in 2023 without giving her the opportunity to comment on this finding.

48. Given our findings of fact in paragraph 41 the only finding of fact that any new inclusion can be based on is that the appellant accepted money when she should have refused it in 2023. We do note the DBS accepted in the final decision letter that, "[the appellant] has shown both insight and remorse regarding your initial failings regarding the acceptance of the cheque and it is clear that you regret your actions. Your representations also indicate that you understand how as a carer you are in a trusted and privileged position and the DBS is satisfied that you are genuinely sorry for causing emotional harm to [DR] and his family. You have also recognized that your actions had wider ramifications for your former employer too". They go on to say that "As explained in our previous correspondence it was your decision to contact [DR] some six months after your dismissal to request more money that caused him the most significant harm."

49. However, we have decided that this decision is a matter for the DBS as we have remitted the decision. We therefore make no finding on this ground.

## H. Conclusion

50. As we have identified mistakes of fact and a mistake of law, and we must apply section 4(6) of the SGVA to direct the DBS to either remove the person from the list or remit the matter to the DBS for a new decision. Unless removal is the only decision the DBS could make, we should remit the matter to the DBS following the decision in Disclosure and Barring Service v AB above. In this case we remit the case to the DBS for a new decision given our findings that Ground 1, the appellant did not request money in April 2024; Ground 2, the appellant did not have financial problems and Ground 4, that the DBS made a finding that the appellant was likely to have requested money from DR in 2023 in the final decision letter on which the appellant had no opportunity to make representations.

51. We therefore direct the case is remitted to the DBS for a new decision.

**Upper Tribunal Judge Sarah Johnston**
**Rachael Smith**
**Matthew Turner**

**06 March 2026**