Neutral Citation Number: [2026] UKUT 189 (AAC)
Appeal no. UA-2022-000158-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

LB

Appellant

and

The Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Johnston, Josephine Heggie and John Hutchinson

Decided on 11 May 2026 following an oral hearing in Birmingham on 16 March 2026

Representation:
Appellant: Laura Herbert of counsel
DBS: Ms Bronia Hartley of counsel

On appeal from a decision of the Disclosure and Barring Service

ANONYMITY ORDER

On 8 August 2022 Judge Wright made an order as follows:

"Pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify any of the people identified on pages 80B and 80C of the Upper Tribunal's bundle on this case (that is, the people identified on pages 2 and 3 of DLA Piper's letter to the Upper Tribunal (Administrative Appeals Chamber) on this case dated 16 May 2022)"

The page in the hearing bundle is now 83 and this order applies to those named on page 83.

SUMMARY
(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.
Keyword name (keyword numbers): safeguarding vulnerable groups (65.2: 65.5: 65.9)

DECISION

1. The appeal is allowed and remitted to the DBS, following an oral hearing on 16 March 2026.

2. The hearing was held in Birmingham. The appellant was represented by Laura Herbert. The DBS was represented by Ms Hartley. We are grateful to both for their submissions and representation.

REASONS FOR DECISION

A. Introduction

3. The appellant appeals to the Upper Tribunal against the DBS's decision under reference 00939497085 communicated in the Final Decision letter dated 27 October 2021 and 30 December 2021 (pages 191-198 and 199-202 of the bundle) to include her in the adults' barred list and the children's barred list.

B. Procedural Background

4. Permission to appeal was given by Upper Tribunal Judge Smith on 09 January 2025. Permission was given on the grounds of mistakes of fact in respect of the five allegations detailed below.

5. UTJ Smith also gave permission on mistakes of law: unfair process and/or procedural irregularity in not giving the appellant the opportunity to lodge a signed statement for AG and disregarding the unsigned statement; irrationality in relying on unseen CCTV evidence existing and showing the events described with respect to allegation 3; irrationality in deciding that the employer's policies were breached in the absence of the policies; proportionality of including the appellant on the barred lists if impacted by any mistakes of fact or law found on the appeal.

6. Mistake of fact grounds.

> (1) **Ground 1:** the DBS arguably made a mistake of fact in finding that 1 2 4 and 5 were proved. The allegations are set out in the Final Decision letter dated 27 October 2021 as follows:
>
> (a) Allegation 1
>
> Some time prior to 8 August 2020, while employed as a Care Worker, you caused emotional harm to [DG] by:
>
> - teasing DG about having dementia, when she did not
>
> - stating "that's disgusting" when DG soiled herself having been unable to reach the toilet in time due to mobility issues

- asking “why don't you hurry up and go to the toilet” when DG was struggling to reach the toilet due to mobility issues

(b) Allegation 2

Some time prior to 8 August 2020, while employed as a Care Worker, you caused emotional harm to [DG]’s and [IMS] by staring at them while they showered, used the toilet or watching them while they received personal care.

(c) Allegation 3

Prior to 20 June 2020, while employed as a Care Worker, you caused emotional and financial harm to [IMS] by burning an ironing board cover with a steam iron and attempting to conceal this damage.

(d) Allegation 4

Some time prior to 26 June 2020, while employed as a care worker, you caused a bruise on the arm of [VB]

(e) Allegation 5

Prior to 11 August 2020, while employed as a care worker, you ignored the policies of her employer by:

- engaging in an unprofessional relationship with [H], kissing him on the cheek in spite of Covid-19 regulations
- visiting [H]’s home when not scheduled to provide care, contacting the family outside of work hours to arrange such visits
- obtaining sensitive medical information on [H] from hospital staff which you then shared with the other care staff

7. Mistake of law

(a) The DBS’ process in disregarding the statement of AG was unfair and/or procedurally irregular in not giving the appellant the opportunity to lodge a signed statement and disregarding the unsigned statement;

(b) The DBS was irrational in relying on unseen CCTV evidence existing and showing the events described with respect to allegation;

(c) The DBS’s decision that the appellant breached the employer’s policy was irrational in the absence of the policies;

(d) The DBS decision to include the appellant on the barred lists was disproportionate if impacted by any mistakes of fact or law found on the appeal.

C. The Law

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

9. Section 2 of the Act requires the DBS to maintain an adults' barred list and a children's 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.

10. Section 3 provides that a person is barred from regulated activity relating to children and vulnerable adults if the person is included in the children's and adults' barred lists. 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 3(1)(a)(i) and (ii) paragraph 9(1)(a)(i) and (ii) of Schedule 3).

11. Relevant conduct is defined in the Act as, among other things, conduct which endangers or is likely to endanger a child or vulnerable adult, and conduct which, if repeated against or in relation to a child or 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 4(2)(a) –(e) and paragraph 10(2)(a)-(e)).

12. 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. …

13. 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).

14. 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."

15. 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. Factual background

16. The appellant was employed as a care worker by [the company] at the time of the allegations. She worked there from 1 July 2019 until she resigned on 10 August 2020. The DBS referral was made on 4 November 2020 by BR one of the managers at [the company]. The appellant's witness AG also worked at [the company] but does not work there now.

17. A CQC inspection of [the company] was carried out on 24 September 2020 and 14 October 2020. The CQC identified issues with ineffective monitoring of the service, recruitment, staff conduct and disciplinary procedures, safeguarding and complaints management. The CQC found that [the company] required improvement in safety of the service the caring of the service and leadership.

18. The appellant gave oral evidence about whistleblowing to the CQC which resulted in the inspection. The CQC said this in their report at page 211 of the

bundle, “Whistle blowing concerns were raised with CQC about the management of Covid 19 in September 2020.” The findings of the CQC do not express concerns over infection control.

19. As set out above the DBS included the appellant on both barred lists.

20. The initial application for permission was refused by UTJ Wright on 31 January 2023. Permission was granted by UTJ Smith after an oral hearing by decision dated 9 January 2025. The appeal hearing was held on 16 March 2026 where the appellant and AG gave oral evidence.

F. The hearing

21. The appellant confirmed her witness statement (page 336 of the bundle). The appellant told us that she suffers from hearing loss and she lipreads and has hearing aids. She has been diagnosed with autism and struggles with social communication.

22. The appellant told us her reason for leaving the [the company] was because of safeguarding issues around Covid-19 and a lack of understanding or willingness to support her in work with her disabilities. Despite being told she would be on calls with another carer when she was working, she was put on calls by herself except when she visited IMS.

23. In dealing with the allegations by DG (Allegation (1) and (2)) the appellant told us she was caring for DG most mornings from Monday to Friday. Before the abuse described below the appellant had had a spot check when caring for DG and no problems were identified.

24. The appellant reported abuse from DG to the manager on 26 June 2020. This abuse was that DG told her hair “f..ing stinks” in a very nasty tone. She told us that DG had changed care companies as she was with a previous company who she did not get on with.

25. The appellant had asked to be taken off calls with DG, but she was not. She felt she had to carry on as nobody else would visit DG. DG was a heavy smoker and would not open the windows. She used foul language. The appellant told us that DG was slow as she had had a stroke but was mobile. DG had a walk-in shower with a chair. Carers had to stay in the bathroom when she was showering due to the risk of falls. Sometimes she would ask for her back to be washed. AG confirmed in her evidence that the carer needed to stay in the shower room with DG given the risk of her falling and she would sometimes ask for her back to be washed.

26. The appellant said that DG would have the shower curtain drawn for privacy. On one occasion a student nurse had come into the bathroom without knocking or warning when the appellant was putting incontinence pads on DG. The appellant complained to the community team about this as it was not respecting DG’s privacy. The appellant denied intentionally staring at her in the shower. In her statement she said she had become more aware of her problem with staring due to her autism but no service users at [the company] ever complained about this to her at the time.

27. The appellant denied saying to DG that she was "disgusting" when she soiled herself. The appellant told us DG never soiled herself and always made it to the toilet. It was suggested in cross-examination that the reason for the incontinence pads must have meant she may wet herself. When asked about this the appellant agreed she could see this, but that DG had not wet herself. She said she would never have made a comment about soiling – she now wears incontinence pads herself and would not have done this. AG confirmed in oral evidence that DG never soiled herself and would always reach the toilet on time.

28. The appellant denied ever talking about dementia with DG. In her representations to the DBS she said she knows the signs of dementia having worked with people with dementia in previous employment (page 143 of the bundle).

29. In answer to a question in cross examination, she said she had got on well with DG until the abuse about her hair. The record of the conversation between VS and DG at page 125 of the bundle records that VS spoke to DG about this comment. He told DG that he would explain to the appellant she had not meant the comment about her hair in a negative way. The note said: "Explained the situation to [the appellant], said that service user did not mean it in a negative way and certainly did not mean it as abuse. [The appellant] agreed to attend the calls as normal."

30. The appellant told us that she did not agree but that she had no choice. When asked in cross examination why DG would lie, she said the only thing she could think of is that she did not like people with autism. It was put to her that DG had worked with children with autism and she did not have a problem with them. The appellant said that just because she had worked with children with autism did not mean she liked them.

31. AG confirmed that DG was "nitpicking" on carers and particularly the appellant. AG confirmed in her evidence that DG had not complained about the appellant saying anything about dementia to her. The complaint was typed by the employer on 29 October 2020 some 3-4 months after the appellant had resigned.

32. As to the allegations made by IMS (Allegation (2) and (3) the appellant told us that she never delivered personal care to IMS. She only cared for him at the weekend. She said she always visited with the male manager of [the employer] who carried out his personal care. IMS did not like women and did not want women to visit. She would do his shopping or other things but was never in his bedroom and he was bed bound. She was not staring at him as she did not carry out his personal care.

33. In cross examination it was put to the appellant that DG and IMS both coincidentally said they were made to feel uncomfortable due to the appellant staring. The appellant repeated she did not do IMS personal care and was not in the bedroom and so could not have stared whilst he was receiving personal care.

34. As to the allegation that the appellant burnt his ironing board cover, she told us she was made aware of this on Friday, five days after her previous visit. She had not been in his house since the previous on the fifth day after her previous visit. She told us she was not aware of the damage to the ironing board cover

before this and many other carers had been to see him since her last visit. She accepted in cross examination it may have been possible that the cover was damaged but would not accept that she did this without seeing the CCTV. When it was put to her that the reality of her storming out of the house of IMS when he accused her of damaging the ironing board was because she had burnt it, she said this was not the case. As to leaving the house she said VS was still with IMS and she stormed out because of the accusation. She had told VS she would do this if she was accused. She apologised to VS as storming out was unprofessional. She said if IMS was willing to talk properly, she would have stayed. She also pointed out that IMS was not left alone.

35. At page 134 of the bundle there is a note of a telephone conversation with IMS and an unknown person but presumably one of the managers, either VS or BS. It records that IMS raised a complaint on 20 June 2020 saying that the appellant had burnt his ironing board cover by leaving the iron on the ironing board switched on and then tried to hide it. There is also an undated text message at page 135 which appears to be an answer from IMS to the manager of [the company]. It reads: Hi [BS] Are we talking about the same person who … wants to bring her smelly dogs to my call, thinks nothing about putting me at THE RISK OF FIRE, then tries to conceal the evidence! … (good job I had C.C.T.V fitted!) Seems to "delight" in my personal care but will not assist! (Perving … why do you think that I ALWAYS sent her out shopping!) …" As there is no date we do not know when this message was sent. It was forwarded at 840 but appears to be sent at 2.18 to BS.

36. [The company] confirmed that it never held a copy of the footage to those representing the DBS. Those representing sent this information to the Upper Tribunal in a letter dated 24 April 2025 at page 383 of the bundle:

> "[The company] also explained its understanding is that the (very vulnerable) service user who was alleged to have made the CCTV footage recording also did not hold a copy of the CCTV footage on the basis that, he deleted the footage as he went along, and that the footage would overwrite itself as he had limited file storage, and that the footage relates to a matter some five years ago. In light of this, [the company] is of the view that the CCTV footage no longer exists. [The company] also noted that in any event, due to the severity of the complex health conditions of the service user in question, it would not be possible to request copies of the CCTV footage from him (in the very unlikely event that it still exists). Noone has seen the C.C.T.V."

37. As to the allegation that she caused a small bruise on VB's arm (Allegation 4) she explained how she lifted VB. She would put her hand under VB's arm and she thinks the bruise was on the front of the arm and so could not have been caused by her. VB mentioned her arm was hurting on 26 June 2020 and the appellant had not seen her since 24 June 2020. The carer who was attending on 24 June 2020 noticed a 10p sized bruise just below the shoulder on the outside of the arm. VB thought the appellant may have caused the bruise. There are no other reports of bruises caused by the appellant to VB or any other client. VB had had other carers visit on 25 and 26th June 2020. In answer to questions in cross examination the appellant said that she could possibly have caused the bruise as she was supporting VB a bit more, but she did hold her in a way that could have caused the bruise and her hands would not have been at the place on her arm

where the bruise was seen. She said VB did not lie but did make up stories. AG confirmed that VB could be very divisive. She confirmed that whoever her routines were changed she got upset. As to the bruise AG said that it could have been any of the carers who were working with VB.

38. AG's statement explained that VB's son was her main support. He contracted Covid-19 and VB told the appellant. The appellant said that she would have to let the manager know and VB was very unhappy as she thought the manager would stop her son visiting. At page 144 of the bundle AG says this: "Not long after this I noticed a small bruise on [VB]'s arm and I enquired about what had happened she said she thought [the appellant] had done it, being too heavy handed. I reported this to the office. Things got worse as [VB] became more hostile toward [the appellant] and one day, she told me a story about [the appellant] that was so malicious I rang BS (company manager) with my concerns worried for [the appellant] and knowing the story to be a complete fabrication (as it was about previous employment). I was concerned that she may do something else to get [the appellant] in to trouble. AG said that VB had been very divisive with other staff members causing conflict and gossiping. She said "certain staff members engaged in this gossip, but she always explained to [VB] that she did not want to be involved in any gossip but was happy to raise any genuine concerns that she had to management, [BR] was aware about all of this and had mentioned contacting [VB]'s son as her behaviour was becoming concerning.

39. AG confirmed in her evidence that once the appellant had told the manager about VB's son having covid the relationship started to deteriorate. There is a text message from AG to BS on 28 June 2020 at pages 184 and 185 of the bundle. It reads:

> "Hi [BS), had VB mentioned to you about the appellant hurting her arm whilst supporting her on Wednesday? It's really strange because she discussed it with me today in front of [S] and appeared to be in a lot of pain and yet when I was with [VB] on Thursday and Friday there was no mention of it and she was extremely happy? It's very puzzling wondering if this is because her routine is about to change with me going away and have possibly not wanting [the appellant] go in? Otherwise why wouldn't she have been in pain Thursday and Friday if this incident happened on Wednesday?"

40. The response from [BS] says this:

> "I know AG, [S] discussed the same thing with me on Friday, she said [VB] had complained about her arm hurting and [S] mentioned a bruise. I know that skin can be very sensitive as you age and I have discussed it with [the appellant]. I think you may be right that she is making more of a big deal about it because she doesn't want carers to change."

41. As to the allegation that the appellant ignored the policies of the employer (Allegation 5) in caring for SH she said in her statement at page 338 of the bundle that there were no Covid policies in place. There is a text message dated 11 August 2020 after the appellant had resigned from [the company] which reads: "I have completed our pandemic plan and this is being distributed to you all by [VS]…" In answer to a direction from UTJ Perez those representing those representing the DBS said in a letter dated 24 April 2025:

> "… Unfortunately, the Respondent was informed by [the company] that it does not hold copies of the policies and procedures that were in effect during the Appellant's employment at [the company] as it frequently updates its policies and procedures (via a third party company) and so does not have access to earlier versions. …".

42. SH's wife made a statement (at page 137-138 of the bundle) on 30 October 2020, four months after the appellant had resigned which was presumably typed by the employer and signed by SH's wife. The appellant told us that she was asked by SH's wife to help out as she had broken her wrist and could not do as much. The appellant said she was not aware she was breaching any policies. When questioned in cross examination she accepted that there should have been boundaries, but the managers did not have information around boundaries. There were no pandemic policies, and she referred to the text message at page 166 of the bundle dated 11 August 2020 after she had resigned. It reads:

> "I have completed out pandemic plan and this is being distrusted to you all by [VS]. …Have a good read through the plan, it's our way of reducing the spread of infection, please follow the guidelines"

43. The appellant told us that she did not kiss SH, but he used to kiss her and when she left, he wanted to give her a hug and a kiss on the cheek. He said to her that she was like his granddaughter. She took this literally. When she was delivering care to him in the hoist, he was quite close. She did not have a problem when he kissed her once or twice, but she did when it got out of hand. She later said he kissed her a few times, but she did not kiss him. She wore a covid apron and gloves but no mask because of her hearing aids. Had she known of the complaints at the time she could have adapted her behaviour and changed her approach, but she did not know.

44. AG confirmed in her evidence that VS and BS would have known about SH kissing the appellant. They wanted [the company] to run like a little family company and did not enforce any boundaries.

45. In cross examination the appellant said that she did not accept that she turned up out of hours without phoning SH's wife. She did extra work for them with the permission of VS. She said she did take her dogs one time because the dog needed medication, but they were in a travel carrier. She then corrected that and said it was only twice. AG called on SH's wife at times when she was not caring for SH. She said carers did call on clients outside of hours and this was supported by management.

46. The appellant accepted she rang the hospital and found out about SH's positive Covid test. She said this was because VS did not tell staff the last time SH had a positive test. She said VS did not believe in Covid. She did tell management and carers especially the people who were working with him about the positive test. She was texted by test and trace, and she shared this with SH and other carers.

47. The appellant said that [the employer] made up references for her before the CQC visited. There are statements from both referees in the bundle. RL at page 18 confirmed she never wrote the reference and JB, the appellants aunt,

confirmed she had never given a reference. The purported references are at pages 39 and 40 of the bundle.

48. In cross examination it was put to the appellant that she was suggesting [the company] manipulated the clients to make complaints. She said that she believes that management had something to do with this and many of the complaints were not raised while she was working for [the company]. In fact, she was made carer of the month in April 2020.

49. As to her future plans, she had completed 1 ½ years of nursing training but has been unable to continue since inclusion on the barred lists. She does not plan to return but would like to do mentoring or advocating. Having completed some nursing training, she would not repeat letting SH kiss her and would put in place firm boundaries. If it happened again, she would report it. She would not storm out as she did with IMS.

50. AG gave evidence and confirmed the character reference for the appellant and her witness statement. She confirmed that the text messages on page 346-356 were hers. They addressed DG complaining that the appellant had not emptied her small bins and explained it was not her fault as DG said to the OT someone else is doing the cleaning; reporting that VB said the appellant had hurt her arm but that this was some days after the appellant had visited and her suspicion that this was about a fear that her routine was changing as AG was on holiday; a response to this from [BS] who said she was making more of a "big deal" about it because she does not want her carers to change; reporting that VB threw a bottle at another carer; that VB was making up stores about the appellant and the manager VS.

51. AG resigned shortly after the appellant. She was mainly not happy with the covid management but also how they had treated the appellant.

52. When SH was in hospital, she was passing SH's house and went to his home to see how his wife was and ask after SH. SH's wife asked for help to send the NHS test and trace messages to those who had contact with SH. She helped because the carers who were going in to care for SH were caring for other vulnerable clients. VS called her and told her that SH could not have covid as he had already had it. Both BS and VS called her about contacting staff. She thought that they did not want staff to know so they could carry on working which she believed was their main concern.

53. In cross examination AG said that she knew the appellant was close to SH's family. She took SH's wife to appointments which she did not have to do and she worked above and beyond what she needed to do. SH's wife would ask AG to go around for a drink and a chat.

54. The way [the company] was run was that it was like a little family care company. BS and VS knew that the appellant was close to SH and his wife. The appellant would take SH's wife to hair appointments, and carers including AG and the appellant would buy food for them. VS and BS would have known about the relationship between the appellant and SH and his wife, but they supported this. There were a lot of things that happened in [the employer] that were not within

boundaries. SH and his wife never complained to AG about the appellant at the time.

55. The appellant had sat with one lady for 6 hours waiting for the ambulance and she was encouraged by [the managers of the company] to keep in contact with the hospital. AG felt that as the appellant had done this and been encouraged to contact the hospital, she would not have known she should not do this for SH. DG never said to her that the appellant said that soiling herself was disgusting or that she teased her about dementia.

G. Oral submissions from the parties

56. Counsel took us to the DBS structured judgment process and in the bundle, specifically page 221. It says this

> "[LB] states that she was forced into returning to care for [DG] by her employer. This is not supported by the employer's paperwork (Flag 11) which indicates that [LB] agreed to return after the employer spoke to [DG] and established the comment regarding [LB]'s hair needing washing were not meant to be abusive. As such, [LB]'s assertion she was forced to return is not considered credible."

57. Counsel submitted that the conversation log dated 26 June 2020 (page 127 of the bundle) supports the evidence of the appellant that she did not want to go back to care for DG. It says "[the appellant] said that she did not want to go back to the call again and that she was angry about what had been said to her…" She then wrote a note to the managers telling them she was struggling with her mental health at page 121 of the bundle. This precipitated a supervision discussion at page 122 of the bundle. The note says as follows: "…we have agreed with [the appellant] to keep her on the double up calls that she is doing alongside [VS] …"

58. Counsel submits that there was already and agreement before the 5 July as above and that the DBS made an incorrect factual analysis which led them to conclude that the appellant was not credible when the documentary evidence supports what she said. She had clearly asked to come off calls with DG, she escalated it with the note and then came the supervision on 2 July 2020.

59. Counsel also submits that the CQC inspected [the company] on 24 September and 14 October 2020. The statements in the bundle from DG is dated 29 October, VB on 31 October, LH on 30 October and these contain the most severe allegations. This timeline could suggest that the statements were written in response to the appellant being the whistle-blower. This is particularly so when [the employer] appear to have fabricated the references from RL and JB.

60. Counsel submitted in relation to Allegation 1 by DG soiling herself two people, the appellant and AG say she never did this. There would be no reason to say that she was disgusting if in fact this never happened. This key piece of evidence from two people undermines the credibility of DG.

61. Additionally, there are text messages before us that also undermine DG's credibility. They point to the appellant being unfairly treated by DG and AG and

the manager agreeing. The evidence does not support a finding that DG's evidence can be relied upon when applying the balance of probabilities test.

62. As to the second allegation that the appellant would stare at DG on the toilet and the shower it is clear from the evidence that the appellant needs to read lips given her hearing impairment. The evidence from the appellant and AG are clear in that they were not able to leave DG in the shower alone due to the risk of falls. This supports the credibility of the appellant. Even if the appellant was staring, the DBS should have taken into account her diagnosis of autism and hearing and that she did not intend any deliberate harm to DG. As to staring at IMS this is not credible as she was not in the room when his personal care was delivered.

63. As to allegation 3 and the alleged burning of the ironing board the DBS rely on CCTV having existed. They say in their evidence evaluation at pp 224 of the bundle: "From the statements made by [IMS], it appears that this was captured on CCTV. The employer does not contradict the existence of the CCTV and while it has not been provided to the DBS it is considered from the available information to have existed and to have shown the events [IMS] reported."

64. The CCTV no longer exists and neither the employer or the DBS saw it. The only evidence it existed comes from an undated text at page 135 in response to a previous communication from BS. We do not know when this was sent and it is obviously in response to another communication. Counsel says the other evidence before us is that before being accused on the Friday of that week she had last been at IMS's house the Sunday before. Many carers had been in the house since then and this provides sufficient doubt that the appellant caused the damage in light of her oral evidence today.

65. As to allegation 4. The DBS again accept that the appellant caused the bruise. They say that while she denied this "she has denied other behaviour which contrary physical evidence existed." Neither the appellant nor AG can say that the appellant caused a small bruise. The last time the appellant saw VB was on Wednesday, AG saw her Thursday and Friday and it was only on Friday that this bruise was mentioned and seen. There is just as much chance that the bruise could have been caused by someone else. The DBS rely on the absence credibility of the appellant for this allegation and refer to other physical evidence by which it appears they mean the CCTV to support their view that the appellant lacks credibility. We have no evidence apart from an undated text message from IMS that the CCTV existed and so do not agree that this could lead to a finding that the appellant lacks credibility We also have no evidence that the bruise was caused by the appellant's as it could have been caused by another carer.

66. As to Allegation 5 that the appellant ignored the policies of her employer we are told that no policies can be provided. It is clear from the evidence that covid policies were only completed after the appellant had resigned. In terms of allowing SH to kiss her on the cheek she admits that she did this. She denies that she kissed him. In terms of visits to SH that were not scheduled we heard from AG that visiting clients at different times than the scheduled visit was supported by [the company]. As to calling the hospital to ascertain a result of the covert test the appellant had been given authority to call with respect to another client on a previous occasion. Both AG and the appellant were concerned at how [the

company] was managing a covid pandemic and that they were not supporting staff. At least one of the managers VS did not believe covid existed. Whilst it may have been inappropriate it was not ignoring any employer policy because no such policy existed.

67. Lastly even if the appellant did cause the bruise on VB and stared at DG or IMS the DBS accept this was not deliberate. It is clearly related to her hearing difficulties and autism. DBS rely on callousness and a lack of empathy in coming to the proportionality decision. The appellant submits that this is not sustainable.

68. The appellant submits that they maintain that the DBS is required to act fairly and this is supported by SM v DBS [2025] UKUT 86 (AAC). They did not take into account the statement of AG as it was not signed and did not give her the opportunity to submit a signed statement. The appellant submits that this is an error of law.

69. Counsel for the DBS submitted that the DBS did not make a mistake of law by not asking the appellant to submit a signed statement from AG and disregarding the evidence. She said the respondent made an evaluative judgment as to the weight they gave the evidence. The respondent is not required by paragraph 3 and 9 of Schedule 3 to the Act to give the appellant tips on their evidence. This would result in the appellant having a second bite of the cherry and then if there were shortcomings in the evidence that followed, a third and fourth bite. In this case the evidence of AG is limited in taking the appeal forward.

70. She submitted that the DBS relying on unseen CCTV footage was not irrational. Irrationality is a high bar which is that no reasonable decision maker would make that decision. On the evidence before the DBS set out at paragraph 20 of her skeleton the DBS could plainly make findings without the footage. She submitted that the question was whether the evidence was enough to make the findings.

71. As to the findings that the appellant acted against the policies of the employer the respondent says the allegations are plainly outside the boundaries of common sense irrespective of written policies and making findings without seeing policies not come close to irrationality.

72. She reminded us that in showing a mistake of fact the burden is on the appellant to establish material mistakes of fact. There were four mutually supportive complaints from four different service users who did not know each other.

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

Ground 1: the DBS arguably made a mistake of fact in finding that 1 2 4 and 5 were proved.

(a) Allegation 1.

> Some time prior to 8 August 2020, while employed as a Care Worker, you caused emotional harm to [DG] by:

- teasing DG about having dementia, when she did not

- stating “that's disgusting” when DG soiled herself having been unable to reach the toilet in time due to mobility issues

- asking “why don't you hurry up and go to the toilet” when DG was struggling to reach the toilet due to mobility issues

73. The evidence of the deteriorating relationship between the appellant and DG begins on 26 June 2020 at page 127 of the bundle. This was a note of a call between VS and the appellant. VS presumably wrote the note. The note records that the appellant had told VS that she had been abused by the service user as she told her that her hair smells. The appellant did not want to go back to see DG again. VS called DG and asked her what had happened. DG confirms she said her hair smelt. DG said “every time she comes near me the smell is making me sick. I had to say something”. The note then says that VS would talk to the appellant and tell her that it wasn’t abuse and that DG had just made a comment that she didn’t mean it in a negative way.

74. VS then talked to the appellant, and it is said in the note that the appellant agreed to attend the calls. The appellant denies agreeing but was told she had to continue as there was no-one else to go. On 5 July 2023 there is another note of a conversation between DG and VS. DG had called and said that the appellant “was quite lost some days and that she makes her feel uncomfortable at times.” DG apparently said this is because the appellant does not talk to her and is very quiet throughout the calls. The note says that the rota was amended to ensure no calls would be made by the appellant to DG.

75. The appellant told us in oral evidence that she reported abuse from DG to VS on 26 June 2020 as per the above note. However, the words used by DG according to the appellant was that her hair “f..g stinks”. That is quite different language from the note of VS. AG confirmed that DG uses foul language.

76. The appellant denies the allegation that she teased DG about having dementia, that she said that is disgusting when she soiled herself and that she told her to hurry to the toilet. The statement of DG about these allegations was made on 29 October 2020 some 3-4 months after the appellant left [the employer]. DG said she had not wanted to complain earlier as she was happy with the care overall. On 5 July 2020 DG apparently said she felt uncomfortable, but this was because the appellant does not talk to her and is very quiet throughout the calls. The complaint that she did not talk to her adds further support to the appellant's evidence that she did not say what she is alleged to have said.

77. The statement was signed by DG but written by [the manager of the company]. We find from the evidence that [the company] did make up the references for the appellant. We accept the evidence of both referees that they did not give references. This does affect the credibility of both managers VS and BS who provided and typed the statements from the clients concerned. The

appellant said that DG never wet or soiled herself. AG supported this in her evidence. There would seem to be no reason why the appellant would say these things given this evidence. The DBS found the statements that DG never wet or soiled herself were not credible and the appellant did not provide evidence about why DG would lie. However, we find that both the appellant and AG were credible witnesses. AG had no reason to make false statements – she would gain nothing from this. She told us that DG used foul language, and her house was full of smoke with windows unopened. That is why most carers, particularly the carer she liked SF, would not go to deliver care.

78. Given the statements were made a significant time after the appellant had resigned and after she whistle blew, that these complaints had not been made by DG until October 2020, the evidence of the two witnesses today that she never soiled herself, the text messages that confirm the appellant was being treated unfairly by DG and BS agreeing that this was the case we accept the appellants evidence that she did not make comments about DG soiling herself, telling DG to hurry up or teasing DG about having dementia. There is significant evidence that undermines the credibility of BS, VS and DG and we found AG and the appellant to be credible today.

79. The DBS also find that the appellant provided no evidence to show that DG did not tell the truth. This is not right. The evidence provided by the appellant was the evidence of AG which confirmed the appellants evidence that DG did not wet or soil herself, that DG had complained about bins not being emptied and AG had text messaged BS to report the complaint and said “Poor [appellant], always seems to be in trouble”. BS responded to that message and said that it is not the appellant’s fault as DG said her friend cleans her house which she does not and therefore there is no time to clean and the considerable doubt around the credibility of VS and BS who typed the statement.

80. It is convenient now to deal with the part of Allegation 2 that concerns DG, that is that the appellant stared at DG in the shower/on the toilet. DG said in the statement provided by the employers VS and BS that she asked the appellant to wait outside. The appellant told us that DG could not be left alone in the shower due to the risk of falls. This was corroborated by the evidence of AG. Both said that DG sometimes wanted her back washed. The appellant said she may have stared at DG but this was a feature of her autism which she has now addressed during her nursing training. The appellant understood that DG deserved privacy as evidenced by the complaint she made against a nurse to the community team. However, the appellant could not leave the bathroom even if DG had asked given the risk of falls. This again was corroborated by AG. We find the appellant did stare at DG due to her autism and hearing disability. As we are remitting this case to the DBS it will be up to them to assess whether it is appropriate to bar the appellant for staring.

(b) Allegation 2. Some time prior to 8 August 2020, while employed as a Care Worker, you caused emotional harm to [DG] and [IMS] by staring at them while they showered, used the toilet or watching them while they received personal care.

81. We have already addressed the staring allegation during personal care with DG above. We also find the DBS made a mistake of fact when deciding that the

appellant stared at IMS when he was receiving personal care. She was not in the room when this care was delivered by VS and therefore could not have stared at him. VS gave all personal care to IMS. The referral to the DBS says this at page 103 of the bundle. VS reported as follows: "Service user has expressed to me that he did not want [the appellant] observing his personal care and this is why [the appellant] is not in the room when I'm providing personal care." In her representations the appellant said that she was the only female carer that he allowed to go into his flat that she did the cleaning, laundry, ironing, shopping and errands but was never in the room with IMS when he was having his personal care carried out.

82. Two sources of evidence show that the appellant was not in the room. In his text message which is undated IMS says as follows: "seems to 'delight' at observing with personal care but will not assist! ('Perving'….Why do you think that I ALWAYS sent her out shopping!)." This text message is undated. There is no signed statement from IMS and no information about when this text was sent.

(c) Allegation 3. Prior to 20 June 2020, while employed as a Care Worker, you caused emotional and financial harm to [IMS] by burning an ironing board cover with a steam iron and attempting to conceal this damage.

83. The DBS assert that IMS gave a credible account of damage to the ironing board. The evidence from IMS is in his text message. It begins "Hi [BS], Are we talking about the same person who… Thinks nothing about putting me at THE RISK OF FIRE, then tries to conceal the evidence! Will blatantly LIE CONSISTENTLY, UNTIL CONFRONTED WITH THE TRUTH!!!… (Good job I had C.C.T.V fitted!)."

84. The DBS in their barring decision process at page 224 of the bundle said this: "From the statements made by IMS (Flag 16), it appears that this was captured on CCTV. The employer does not contradict the existence of the CCTV, and while it has not been provided to the DBS it is considered from the available information to have existed and have shown the events IMS reported." The employer has confirmed through the DBS that they never held the CCTV. It is said that it no longer exists as it has not been saved. As the DBS relied on the existence of the CCTV because the employer did not contradict the existence of it the only evidence of its existence is in the somewhat intemperate text from IMS. Given that he also alleges in that text that the appellant was "perving" at him and we have found that to be a mistake of fact we find that the evidence of the CCTV does not support that the appellant burnt the ironing board. In addition to this the appellant had not been doing any ironing since the Sunday before the Friday the burnt ironing board was reported. Many carers had been into care for IMS since that time and could have been responsible. The appellant by saying if she did burn it, she would pay does not equate to an admission. She said she did not burn it but if the CCTV showed she did she was happy to pay for the damage.

85. We heard from the appellant today and we find her credible. We find that it is not possible for the DBS to find on the balance of probabilities that she did burn the ironing board.

(d) Allegation 4 Some time prior to 26 June 2020, while employed as a care worker, you caused a bruise on the arm of [VB].

86. The first evidence about the bruise on VB's arm is at page 129 of the bundle which records a call on 26 June 2020 from SF that she had noticed a bruise on VB's left arm. It was the size of a 10p coin. The note continues:

> "We do not know how it got there, however the service users skin is sensitive so have informed all carers attending service user's calls to be mindful of this, careful in trying to support her. Service user had mentioned carer [the appellant] may have caused a bruise. Service user remembers that [the appellant] had held her arm when supporting her and may have held a little too tight. … [The appellant] had said that she is always careful when supporting any service user and that she has not held service users arm tightly in any way. There are no other records of [the appellant causing any kind of bruises to anyone or reports of her having been rough with anyone."

87. At page 130 of the bundle is a text message from this service user's son although it appears that it came from the phone of someone called LB, who is not the service user's son, dated 31 October 2020. The relevant part of the text said, "On one particular occasion [the appellant] who could be quite rough with mom grabbed her arm in a way that left a long lasting bruise".

88. The DBS in their evaluation of evidence at page 226 of the bundle assess the appellant's credibility of her denial they say "[The appellant]'s credibility has previously been assessed, and while it is noted that she denies causing the bruise, it is also considered that she has denied other behaviour for which contrary physical evidence existed….". This is the CCTV evidence that does not at least now exist and was not seen by the employer or the DBS.

89. We accept the evidence from the appellant and AG that the last time the appellant saw VB was on 24 June 2020 two days before VB mentioned any pain and before the small bruise was seen. There had been other carers visiting VB after the appellant and before the bruise was noticed and before VB reported pain. The note from VS says the VB's skin was sensitive. There are no other reports of bruises or rough handling by the appellant.

90. In cross examination the appellant said that it was possible that she caused the bruise. We find that it just as possible that another carer caused the bruise given the time lapse between her visit and the bruise being seen. We accept AG's evidence in the text messages that VB had not mentioned the bruise to her on the two days after the appellant visited and appeared happy. We accept the evidence of AG that that VB was upset because her routine was going to change. We also accept the evidence that VB was annoyed at the appellant for reporting that her son had covid to the managers. This is understandable given he was her support. In these circumstances we find that the DBS made a mistake of fact in finding that the bruise on VB's arm was caused by the appellant.

(e) Allegation 5. Prior to 11 August 2020, while employed as a care worker, you ignored the policies of her employer by:

- engaging in an unprofessional relationship with [SH], kissing him on the cheek in spite of Covid-19 regulations

- visiting [H]'s home when not scheduled to provide care, contacting the family outside of work hours to arrange such visits
- obtaining sensitive medical information on [H] from hospital staff which you then shared with the other care staff

91. The allegation is made in the context of the employer's policies. There are no such policies before us and the DBS confirmed in letter dated 24 April 2025 that [the company] do not hold copies of the policies or procedures that were in effect during the appellants employment. They say the reason for this is that it frequently updates policies and procedures via a third party. They do not confirm they had policies around the alleged breaches at the time.

92. The evidence before us does confirm that there were no employer Covid-19 policies in place at the time. This is clear from the text message at dated 11 August 2020 which says: "I have completed our pandemic plan and this is being distributed to you all by VS."

93. We have no policies that would confirm the visiting policy or getting information from the hospital and sharing it. This was in the pandemic of Covid-19 and the information about a positive test should have been distributed from test and trace in any event.

94. The appellant in her oral evidence said that she was not aware she was breaching any policies. She said that there was no information about boundaries. Whilst she accepts that SH did hug and kiss her on the cheek when she left and did on occasions when he was in the hoist, she said she did not kiss him.

95. AG confirmed in her evidence that VS and BS would have known about the kissing. They wanted [the company] to be run as a family and did not enforce any boundaries. AG said she did call on SH's wife once she knew about the covid test and helped her forward the test and trace message. She said carers did call on clients outside of working hours and this was supported my management.

96. The fact that [the company] supported visits by carers outside working hours was clearly unwise. But having heard from both the appellant and AG this was the position with the employer.

97. The appellant did call the hospital for information on SH's Covid-19 test and then did tell others about the test. This was because the last time SH tested positive for Covid-19 the manager did not tell staff about the positive test according to the evidence of the appellant. We also accept that she had done this before for another client with the support of VS and BS. This comes from the oral evidence of AG.

98. We do find on the evidence above that the appellant at least let SH kiss her on the cheek. We also find and the appellant admits that she did visit SH outside of working hours. We also find that she did call the hospital for the results of the covid test. We also find that in this context the appellant did kiss SH on the cheek. None of these acts are in breach of the employers policies as no policies exist and visiting outside of hours was encouraged by [the company]. The appellant

had got information from the hospital about another client supported by [the company]. She did not know she should not have done this at the time.

99. In the context of the pandemic; [the company] supporting contact outside working hours; [the company] not having boundaries for carers with clients; [the company] knowing the appellant had called the hospital and asking her to give them their telephone number; the managers not having told carers about the last time SH had a positive test and the concern for other carers and clients this kind of conduct was inevitable. However, the appellant acknowledges she overstepped the boundaries and would change her behaviour if this happened again.

100. The DBS will need to consider these facts on remittal an consider whether it is appropriate to bar the appellant on the new facts found.

101. **Mistake of law**

(a) The DBS' process in disregarding the statement of AG was unfair and/or procedurally irregular in not giving the appellant the opportunity to lodge a signed statement and disregarding the unsigned statement;

102. In the final decision letter including the appellant on the adult's barred list the DBS say this of AG's evidence:

> "In reviewing your representations, the statements you have provided from other individuals have also been considered. The DBS considers that the statement from [AG] and [RL] are unsigned, have no contact details, are of a similar style and format and use similar language, and as such there is no evidence that the statements are independent and are not considered to be credible accounts of the parties."

103. The DBS submit that the evidence of AG does not add to the findings in any event. We have found that the evidence did assist in corroborating much of the appellant's evidence and is therefore material. UTJ Smith found AG's statement to be capable of belief at the permission hearing and to have the potential to call into question the credibility of the written evidence of the service users and staff.

104. The question is should the DBS have given the appellant the opportunity to lodge a signed statement with contact details? Counsel for the respondent submit that the DBS only need to give the opportunity to make representations as required by paragraphs 3(2) and 9(2) of Schedule 3 to the 2006 Act. However, it is settled law that this opportunity needs to be effective. In AMEC Capital Projects Ltd v Whitefriars City Estates LD [2005] 1 All ER 723 Dyson LJ said this at paragraph 14 of the pillars of natural justice: "The common law rules of natural or procedural fairness are twofold. First, the person affected has the right to prior notice and an effective opportunity to make representations before a decision is made. …".

105. The DBS must give the appellant an <u>effective</u> opportunity. The appellant was unrepresented, did provide evidence but not with a signature or contact details. Had they asked the appellant to have the witnesses sign their statements and give contact details they may have taken a different view of

credibility. They did not consider the fact that it appears the references provided by [the employer] by two people were not completed by them and therefore must have been made up by the managers which would significantly affect their credibility. By ignoring the evidence of AG and indeed RL as it was unsigned and had no contact details this led them to the finding that those witnesses were not independent and not considered credible.

106. Counsel said that if the DBS needed to ask the appellant for signed statements with contact details this would result in the appellant having a second bite of the cherry and if there were shortcomings a third and fourth bite. We disagree. The DBS discounted evidence because it was not signed or dated and had no contact details. That was easily remedied by asking the appellant to submit signed and dated statements with contact details. Many of the DBS findings rely on the appellant not being credible because these supporting statements were not signed or included the contact details. An effective opportunity to provide evidence in support of her representations could have been easily remedied. They could have told the appellant to provide signed, dated statements with contact details if they were to take them into account. This was procedurally unfair and therefore an error of law.

107. Counsel also says that the decision not to consider these statements as credible is an evaluative judgement. On this point it seems from the evidence before us that the DBS do not seem to have questioned the credibility of the employer despite having evidence, albeit unsigned that they fabricated documents – the two references of RL and JB. They accept the evidence of IMS as credible even though it was sent without a signature at 2.18 am it seems in response to a request from the employer and is not signed. There is no signed statement from IMS. They accept the evidence of DG and LH which are signed but the statements are typed by the employer who fabricated documents and dated three months after the appellant left their employment. They accept a text message from someone called LB who they then say is AB again not signed and sent on 31 October 2020. The DBS found this evidence credible but not the evidence of AG or RL. The different weight they gave to evidence of the employer to that of AG and RL is perverse given that much of evidence from the employer had the same issues as the evidence from AG and RL.

(b) The DBS was irrational in relying on unseen CCTV evidence existing and showing the events described with respect to allegation.

108. Counsel for the DBS said that the bar for irrationality is high and not met here. The DBS had not seen the CCTV. The DBS accepted it existed without having seen it or confirmed with the employer that they had seen it. They say "From the statements made by IMS, it appears that this was captured on CCTV. [The company] does not contradict the existence of the CCTV, and while it has not been provided to the DBS it is considered from the available information to have existed and to have shown the events that IMS reported."

109. IMS reported the damage to the ironing board 5 days after the appellant had last visited on 20 June 2020. This is noted at page 134 of the bundle where there is a typed note headed "Statement" although it is a note of a complaint rather than a statement, presumably written by the employer. There is no

mention of CCTV in this note. The CCTV was raised in the text message sent three months later. We have found that this complaint was a mistake of fact above. The DBS accepted that the CCTV existed despite not seeing it, as the employer did not refute its existence despite evidence that they made up references, and relied on it to make a finding on the appellant's credibility. They say that the appellant's denials "in the face of physical evidence are considered to significantly damage the credibility of [the appellant]." This is irrational and an error of law They did not see the evidence; they did not ask the employer if they had seen it and they relied on it to make findings as to credibility.

(c) The DBS's decision that the appellant breached the employer's policy was irrational in the absence of the policies

110. We find that this was not irrational or a mistake of law because of the explanation given by the DBS later in the final decision letter dated 27 October 2020. They say at page 195 of the bundle 'it remains of particular concern that during the Covid–19 pandemic, in spite of national guidelines as well as those generally in place regarding professional boundaries, visited the service user and his family when you had no professional need to do so, engaged and kissing him on the face and appear to have engaged in this relationship we own emotional benefit." The explanation is given on the basis of the Covid-19 national guidelines and visiting outside of professional hours. Although we accept the evidence of AG that this was encouraged, the fact of the pandemic means that a finding that the visiting was against national guidelines must be right. No employer policies were in place at the time but there was publicly available information that visits during covid should not take place outside of those that were necessary. The DBS relied on national guidelines and therefore this finding is not irrational.

(d) The DBS decision to include the appellant on the barred lists was disproportionate if impacted by any mistakes of fact or law found on the appeal.
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111. We are remitting the matter to the DBS to determine whether it is appropriate to include the appellant on the adults and children's barred lists on the facts we have found. To ensure this is clear the facts we have found are:

- The appellant dd not make comments to DG about soiling herself, hurrying up or having dementia.
- The appellant may have stared at DG. This was probably due to her hearing and disabilities, and she has addressed this behaviour in her nursing training.
- The appellant could not leave DG alone in the shower due to risk of falls.
- The appellant complained to the community nursing team when a nurse came into the bathroom without notice to DG.
- The appellant did not stare at IMS when he was receiving his personal care.
- There is no reliable evidence that the appellant burnt the ironing board.

- There were no employer policies in place about covid or visiting outside hours when the appellant was employed.

- [The company] encouraged visiting outside of working hours

- [The company] supported the appellant when she contacted the hospital for information for a previous client.

- The appellant did contact the hospital for Covid-19 test results for SH and did share them.

- The appellant did let SH kiss her on the cheek.

112. Whether the inclusion is proportionate will depend on the DBS decision on whether inclusion in the lists on the basis of these facts is appropriate. Therefore, we make no finding on this ground.

H. Conclusion

113. 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 of mistake of fact and law.

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

Upper Tribunal Judge Sarah Johnston
Josephine Heggie
John Hutchinson
11 May 2026

Corrected on 11 June 2026 to remove company name