Neutral Citation Number: [2026] UKUT 322 (AAC)
Appeal no. UA-2025-001053-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

On appeal from a decision of the Disclosure and Barring Service

Between:

BFJ

Appellant

- v -

The Disclosure and Barring Service

Respondent

Before: Judge Sarah Johnston sitting as a Judge of the Upper Tribunal, Tribunal Member John Hutchinson, Tribunal Member Amit Jinabhai.

Decision date:	19 August 2026
Hearing date:	10 August 2026
Mode of hearing:	In person hearing - Rolls Building

Representation:

Appellant:	Represented herself
Respondent:	Aaron Moss instructed by DAC Beachcroft

On appeal from:
the decision of the DBS communicated
in a letter dated: 25 April 2025
DBS reference: 01038350817

ANONYMITY ORDER

On 29 April 2026, the Upper Tribunal made the following order:

1. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008[1], the Upper Tribunal prohibits the disclosure or publication of—

(a) the name of each of the following in relation to these proceedings—

(1) The appellant
(2) The wife
(3) The husband

(b) any matter likely to lead members of the public to identify any of the persons mentioned at subparagraph (a) above.

2. Any breach of the order at paragraph 2 above is liable to be treated as a contempt of court and punished accordingly (section 25 of the Tribunals, Courts and Enforcement Act 2007).

<u>SUMMARY</u>

The DBS made a mistake of fact in finding the allegation proved on the balance of probabilities.

Safeguarding Vulnerable Groups: 65.2 Adults' barred list, **65.9** Finding of fact.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the Upper Tribunal follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The DBS made a mistake of fact in finding the allegation against the appellant proved. The appellant must be removed from the adults' barred list.

REASONS FOR DECISION

A. Introduction

1. This is an appeal against the DBS decision to include the appellant in the adults' barred list. The appellant challenges the factual finding of the DBS which led to her being included in the list. Permission to appeal was granted on the basis that the appellant had a real prospect of being believed when giving oral evidence before the Upper Tribunal as to the facts. Permission was also granted on an arguable error of law, in that inclusion on the list was disproportionate.

B. Factual background

2. The DBS sent their final decision letter to the appellant on 25 April 2025. They included the appellant on the adults' barred list because they were satisfied that;

> "On 1 May 2024 whilst working as a Care Assistant for [the husband], you stole £20 from [the wife's] purse for your own financial gain."

3. They relied on the allegation of the wife and the husband who reported the money missing to the care company on 1 May 2024 after a care visit to their home from the appellant. The Upper Tribunal had the recording of the telephone conversation between the manager of the care company and the wife and the husband. They said there was no reason why the wife and husband would make up the allegation. During the telephone call, the wife and the husband confirmed that they were happy with the care provided by the appellant which afforded the allegation credibility.

4. In their final decision letter, the DBS say that the wife and husband became suspicious that money had previously gone missing and they intentionally placed a £10 and £20 note in the wife's purse. Immediately following the care visit, they checked the purse and they say that the £20 note was missing and they reported this to the care company.

5. Subsequently a disciplinary meeting was held by the care company. During this meeting, the appellant described in detail what she did during the care visit. Essentially, she had made lunch for the couple, cleaned up and then left. She said that the allegation was "*really upsetting because that's not what happened.*" She said she had not seen the handbag during the care call on 1 May 2024. She denied taking the missing £20 note. She was dismissed on 21 May 2024.

6. The appellant says she started working as a care assistant during March 2020. She worked at a care home from that date until July 2021. She studied physiotherapy at university and worked for another company as a care assistant. She then worked for an events company before returning to care work in December 2023 when she worked for one of her character referees. She says she has worked in care at times for the past 5 years with no other allegations.

7. The appellant denies taking the money and sent character statements from two people for whom she had worked looking after their family members, the second of whom she was employed by during the time the allegation was made by the husband and wife. The DBS say that these two statements only attest to the standard of care provided by the appellant and not financial abuse. The DBS confirmed that the husband and wife had also been happy with the appellant's work, but the concerns raised by the allegations are in relation to financial abuse.

8. The first statement compliments the standard of care given and says the appellant is "honest and trustworthy" (page 45 of the bundle). The second described that the appellant "was an absolute godsend. …I had complete trust in her, happily being able to leave this vulnerable man in her care." (page 46 of the bundle). She continued to provide support to the second of her character referees after the person for whom she was caring died.

9. There was an audio recording of the telephone call from the wife and the husband alleging the theft before the Upper Tribunal. The final decision letter records the following;

> "They became suspicious that money had gone missing previously when you had visited their home and this led them to intentionally place a £10 note and a £20 note in [the wife's] purse ahead of your care call on 1 May 2024. Immediately following your visit they checked the purse and found that the £20 note had gone and reported this to [the care company]."

10. The DBS found the husband and wife credible. They said in the final decision letter that there is no reason for the husband and wife to fabricate the allegation, and the appellant had provided no evidence which would cast doubt

on their credibility. They also said that appellant has shown no insight or remorse.

C. Legal framework

11. The relevant legislation is in the Safeguarding Vulnerable Groups Act 2006.

12. Section 2 of the Act requires the DBS to maintain the children's and vulnerable adults' barred lists. 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 of, and Schedule 4 to, the 2006 Act. The appellant was clearly engaged in regulated activity when she was a carer.

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

14. 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)).

15. 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).

16. 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 judgement relating to the risk to the public" engaging the DBS's expertise.
> …

> 34. 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.
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> …
>
> 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."

17. 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. The oral evidence

18. The appellant told the tribunal that she was very shocked to hear about the allegation that she stole £20.00. She denied taking the money. She was dismissed for gross misconduct and a year later received the Minded to Bar Letter from the DBS dated 21 Feb 2025 (page 22 of the bundle). She said that she was the second carer that had visited the husband and wife's home that day, as a different carer had been to their home in the morning to provide personal care to the husband. She also stated that other carers had visited the husband and wife's home the day before.

19. In answer to questions from Mr Moss, the appellant told us on the day it is alleged she took the money, she arrived before 11.55am and left at 1.03pm. Both the wife and the husband were at home. She said she was let in by the wife, and that the husband was upstairs but came down for lunch. She said that she could not recall seeing the handbag. She said that she would not have expected to be able to positively recall this as she would not have been paying attention to any handbag. She was unable to say whether she was near it at any

stage. The husband in the audio recording describes the location of the handbag was as being "on the side there".

20. She told us that she was busy that day as she could not get into the care visit application (PASS) on her mobile phone to record the visit and she spent some time trying to get a signal on her phone in order to access the application. She said this does not make it impossible that she had access to the handbag, but that "there was a lot of delay" as she was trying to get a signal. She also said that the wife and the husband obviously genuinely believed that she had stolen the money. She told us they must have been mistaken as she did not take any money. She pointed out that she was not seen taking the £20 note whilst she was at the husband and wife's home. She also confirmed that she was not searched, no money was retrieved and the DBS finding relied on "circumstantial evidence" and was an inference from the information given by the husband and the wife.

21. She said the DBS did not consider the character references she had supplied. The DBS in the final decision letter describe them as encompassing her work but she pointed out the first describes her as "honest and trustworthy" and the second said that she "had complete trust in her, happily being able to leave this vulnerable man in her care." She is still friends with this referee whose husband subsequently died.

22. She explained that she asked both referees to write these character references having explained the allegations to them. Both were willing to do this and did so. She noted that the DBS did not take into account that both referees referred to the trust they had in her which was relevant to her credibility, especially as she was working for the second referee during the time when this allegation was made. The DBS said in the final decision letter that the references only "attest to your caring nature and your wonderful support including personal care."

23. In answer to a question as to whether she would work in care again she said she wanted to have the option. She did not carry on in care after being dismissed as she was already in the process of moving back into event management, her current employment. She found care work very satisfying as she enjoyed creating relationships with lonely adults and ensuring they were well cared for. She said she was an advocate for those she cared for and never hesitated to raise issues where there were problems with the care provided by others.

E. The parties' submissions

24. Mr Moss submitted that the case was factually straightforward. The question to be determined was, on the balance of probabilities, did the appellant steal the money from the wife's purse on 1 May 2024. He told us if the tribunal find the DBS did make a mistake of fact on this, then including the appellant on the list would be unsustainable and therefore this is not a case where the Upper Tribunal would remit the case for a further decision.

25. He submitted that the DBS did not make a mistake of law, as if a carer stole even a small amount of money from a vulnerable adult for whom they were caring, it would always be proportionate to include that carer on the barred list.

26. As to the factual finding he submitted there is rarely other evidence to support a theft from a vulnerable person in their home other than that the money was missing. The audio recording illustrates that the wife was greatly distressed. It also shows their reticence to report the theft, specifically the wife's request that the allegation "goes no further", and that they made the report out of a sense of duty. This supports a finding that the allegation is credible.

27. He submitted that the representations of the appellant at page 33 of the bundle help very little as they do not address whether she had the opportunity to take the money. He also submitted the character references add very little as they do not address whether the appellant would have taken the money.

28. He submitted that the allegation is credible because; the couple were reluctant to make allegation; they realised the gravity and significance or reporting the theft; they reported it immediately; although they had suspected money had gone missing before, they waited until they were sure before reporting back to the care company; they did not want criminal sanctions but they wanted to protect themselves and others from further theft; they had had a significant number of previous carers and had not raised concerns about anybody else.

29. He submitted there were only 3 ways by which the husband and the wife could have been mistaken:

a) they were wrong about the amount of money in the purse;
b) one of them could have removed the money and then forgotten that they had done so; or
c) they were wrong about how much was left after the appellant had left.

30. As they had both checked the amount of money, given their suspicions, and they checked after the appellant had left their home, they could not have been wrong in being sure that the money was taken.

31. The appellant agreed with Mr Moss that if a carer stole money from a vulnerable person that they were caring for then they should be included on the barred list for that theft. However, in her case the facts that the DBS were relying upon were not facts, the finding relied on "circumstantial evidence" and was an inference made by the DBS from the evidence of the husband and wife.

32. The appellant submitted that no-one saw her take money; she was not searched for the money; there was little time during the visit for her to take money (due to the trouble she experienced accessing the PASS application on her phone); there was little investigation of the incident by the care company, and just because the husband and wife believed that she had taken the money was not proof that she had done so. In response to the DBS's point that the husband and wife had had 68 carers since 2017, the appellant submitted that this may have meant the reason the husband and wife thought she had stolen the money was because she was new to them.

33. The appellant also reminded the tribunal that she has, from the outset, always maintained that she did not take the money and that she did not see the handbag. She submitted that her evidence has been consistent since the care company notified her of the allegation. The appellant confirmed that she has never suggested the husband and wife had fabricated the allegation. She submitted that she took pride in care work and would always be the first to report neglectful carers. She had good reports of working with people and had received personal requests to be the regular carer.

34. The DBS have decided that the wife and the husband had no reason to fabricate the allegation and therefore they were credible, but an honest belief can still be a genuine mistake. The DBS did not afford the appellant any credibility from her consistent denial or her positive character references.

F. Analysis

35. *Mistake of fact*

36. We agree with Mr Moss that this case is factually straightforward. There is one allegation of theft on one day. The Upper Tribunal in addressing the question as to whether the DBS made a mistake of fact, need to decide having read the evidence, listened to the audio recording and heard the oral evidence of the appellant today whether, on the balance of probabilities, the appellant did take the money, or whether she did not, and the DBS made a mistake of fact.

37. We find the DBS did make a mistake of fact, that the appellant stole the money on the balance of probabilities. Although the wife and husband said that they had checked the amount of money in the purse and had made sure it was accessible, there had been a different carer in the home in the morning and carers the day before, who may also have had access to the purse. The appellant was not seen taking the money and no further attempts were made by the care company to search for that money or to ascertain more detail about the allegation, such as where the purse was placed and when the wife and husband had checked that the money was in the purse. We do know that the husband and wife checked the handbag after the appellant had left but we do not know when they placed the money in the handbag or where the handbag was located. Although the recording of the report to the care company by the wife and husband was compelling and they honestly believed that the appellant had taken the money, the allegation and subsequent investigation lacked the details above.

38. We heard cogent oral evidence from the appellant who was also compelling. We were unable to hear from the wife or the husband, or the care company as they were not called by the respondent. The appellant's credibility was supported by two character referees who said she was honest and trustworthy, and the DBS did not take this into account. There was little investigation by the care company of the allegation, the details described above were not obtained, no search was made for the money, and no money was retrieved from the appellant. There is no other evidence of complaints made about her. We accept the submission that the wife and husband may have suspected her because she was new to them. The appellant agreed with the submission of Mr Moss that if someone stole from a person for whom they were

caring, they should be included in the barred list, which also added to her credibility. Her account was consistent and compelling. We accept the evidence of the appellant, on the balance of probabilities, that she did not steal the money as alleged. Following RI, as cited above, we therefore “overturn the decision” and find that the DBS made a mistake of fact.

G. Conclusion

39. As we find the DBS have made a mistake of fact the appeal is allowed. We did not therefore go on to consider whether the DBS made a mistake of law. Given our finding, we direct that the appellant must be removed from the adults’ barred list.

Sarah Johnston
Sitting as a Judge of the Upper Tribunal
Tribunal Member John Hutchinson
Tribunal Member Amit Jinabhai
19 August 2026