



Neutral Citation Number: [2026] UKUT 361 (AAC)
Appeal no. UA-2025-000980-V

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

JH

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 Dora Waitt.**

Decision date: 18 September 2026
Hearing date: 27 August 2026
Mode of hearing: CVP

Representation:

Appellant: Represented herself
Respondent: Joseph Thomas instructed by Natalie Mason, DBS

On appeal from:

the decision of the DBS communicated
in a letter dated: 22 May 2024
DBS reference: 01014486258

ANONYMITY ORDER

1. On 09 October 2025, the Upper Tribunal made the following order:

“6. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008¹, the Upper Tribunal prohibits the disclosure or publication of—

(a) the name of the following in relation to these proceedings- SR

¹ Statutory instrument number 2008/2698, as amended.

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

2. The Upper Tribunal pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008², also prohibits the disclosure or publication of the name of the appellant and any matter likely to lead members of the public to identify the appellant.
3. Any breach of either order is liable to be treated as a contempt of court and punished accordingly (section 25 of the Tribunals, Courts and Enforcement Act 2007).

SUMMARY

Safeguarding Vulnerable Groups: 65.2 Adults’ barred list 65.9 Finding of fact.

The DBS did not make a material mistake of fact in finding the allegation proved on the balance of probabilities.65.8 The DBS did not make a mistake of law in deciding it was proportionate to include the appellant on the adults’ barred list.

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

DECISION

The decision of the Upper Tribunal is to refuse the appeal. The DBS made no material mistake of fact or law.

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 him to be 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 22 May 2024. They included the appellant on the adults’ barred list because they were satisfied that;

“On exact dates unknown in April 2023, you abused your position of trust as a Support Worker and professional boundaries to manipulate a vulnerable adult into loaning you £300 and thus placed the vulnerable adult at risk of financial and emotional harm.”

3. There was no question and the appellant agreed that he had received the money from SR.

4. The final decision letter goes onto say;

“You accept you received the money and as of August 2023, no attempt has been made to pay back the money from April 2023 when the £300 was transferred. There is evidence you accepted that you were in a position of trust however you had no insight into the issue of having a personal relationship with vulnerable adult, especially involving money.”

5. The appellant had been a care worker since 2014. Apart from a two month break he worked at the care company until 2023. This is the only allegation that has been made against him during that time.

C. Legal framework

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

7. 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 he was a carer.

8. 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).

9. 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)).

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 appropriate 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 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.

...

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. 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

13. The appellant’s case is that he did not manipulate SR into giving him money. SR had his bank details as he had loaned him money when they were on holiday as his bank card was frozen. This is how he had the bank account details. He told the Upper Tribunal that SR must have overheard a telephone conversation he had where money had been moved out of his account and was overdrawn by £300.00. He had this conversation at the bottom of the garden when he went to visit SR, not in front of him. Staff were allowed to take personal calls if they went to the bottom of the garden. At the time he was not involved in

the project in which SR lived but was team leader for another project. He had stopped working at SR's project about 2 years before.

14. When the appellant realised the money had been deposited in his account he could not repay it immediately as he was overdrawn. He maintains that he told SR he would pay it back in 3 weeks. He has not done so as he was told not to contact the company or SR.

15. He told us he spoke to SR about giving him his money back in a text message. He was finding it hard to contact him as he was not working at the care company at the time. He was also told not to contact the company or SR and this is the reason that he did not pay back the money. He wanted to pay back the money and still does. He thought he could pay him back through the courts.

16. The appellant accepted that he did not call the manager of the care company to report the money had been deposited in his account. He told us that he did not do this as he was afraid of losing his job due to bullying of staff at the care company by the manager. An example of this is that he was "pulled into a meeting" for being late. He said this was the first time he was late in 5 years.

17. In answer to a question by Mr Thomas the appellant accepted the money was transferred on 14 April 2023. The statements of the staff who discovered the money had been given to the appellant by SR say that the conversation with SR happened on 14 June 2023, some 8 weeks following the deposit in the appellant's account.

18. When asked by Mr Thomas what he would have done in HF's position he said he would have done the same and called the manager. He denied the further allegation that he asked for more money. He also accepted he had not paid him back in the three weeks following that deposit when he said he would do this.

19. There are no actual statements to the police from the appellant or SR in the bundle. The summary said at page 64 of the bundle that when the appellant was interviewed by the police, he said that SR had offered to help him, he initially refused and then after SR insisted he agreed. Today the appellant said that if he had said this, he was confused. He did not do this. He did go for coffee but there was no conversation between him and SR about money.

20. The police also summarise SR's account. They say that the appellant messaged him asking for £300 for bills. He said that the appellant was still contacting SR asking for a further £100 to allow him to return the original £300. The messages had been deleted by SR and were not seen by the police. The appellant denies that this happened.

21. The police confirmed that there was no further action as there was no supporting evidence that a criminal offence had occurred. The summary ends stating that the appellant "was to pay back the money to the vulnerable male and this was to be arranged with [the care company]" (page 65 of the bundle).

22. The appellant confirmed that his email was the email that the energy company had on their records. He said that this was because SR did not like dealing with emails and so when an email arrived he would tell him. The appellant told us he did not have access to the bank account of SR but SR would go through what he had spent with receipts with him.

E. The parties' submissions

23. Mr Thomas submitted that the following facts were uncontested:

- a. JH was SR's carer and in a position of trust.
- b. JH had lent SR money on a previous occasion which in itself is highly improper.[64]
- c. JH either informed SR or was reckless to SR learning that he was in financial distress.
- d. JH received £300 in his bank account from SR.
- e. JH did not return the money.
- f. JH sought permission to retain the money [94]

24. He said either the appellant had requested the money or agreed to a loan or been reckless as to where he was overheard by SR. The appellant did not return the money and could have done so. He did not tell the manager of the care company about the deposit. This in itself is sufficient to retain the appellant on the list.

25. In terms of manipulation the DBS position is that he did manipulate SR. To support this he referred to the summary of the interview of the appellant by the police which sets out that the appellant agreed to the funds being transferred, that his personal email was on SR's energy bills which was inappropriate, that SR would regularly check his bank account with the appellant, the appellant's evidence that SR was not good with money, and that he had a conversation with SR saying he was retaining the money.

26. Mr Thomas in his written submissions said if the Upper Tribunal hold that the appellant did not manipulate SR into giving him money that would not amount to a mistake of fact material to the outcome. His sustained conduct of retaining the money and failure to return it despite their relationship of trust was unacceptable and "justifies the same unassailable assessment of risk that the DBS concluded."

27. The appellant said he did not manipulate anybody, SR put the money into his account without his knowledge. He accepted he should not have had the conversation in the garden which he says was overheard but that this is not enough to put someone on the barred list. He told us he understands that the DBS has to safeguard every person who is vulnerable and that he was taught from day one that he should raise the alarm. He said in this case because he was told not to contact SR or the company he could not pay him back.

F. Analysis

28. *Mistake of fact*

29. Having heard the appellant's evidence today we find that he did not manipulate SR into giving him money. We believe him that SR put the money in his account of his own volition.

30. However, the appellant accepts that he did not tell the management of the care company of the deposit. In his evidence he accepts that the witness told the manager once she discovered the money had been given to the appellant and that this was the right thing to do. He said if he had been in her situation he would have done the same. In contrast to this he did not tell the manager of the significant deposit from SR to his account. He explains that this was because he did not want to lose his job. That is an explanation but not an excuse. We find that he should have informed the care company as soon as he became aware of the money in his account.

31. We also note that although the appellant said he was going to pay the money back 3 weeks after it had been deposited when he had available funds, he did not do this. Three weeks after 14 April 2023 would have been around 5 May 2023. The deposit was not discovered until 14 June 2023 so over 8 weeks after the deposit. The money had not been returned in the interim. From his evidence he would have had funds 3 weeks after the deposit. There is no explanation as to why he did not return the money at that stage.

32. We find that the DBS did make a mistake of fact that the appellant manipulated SR into giving him money but the question that remains is that material to the overall decision. The facts that are clear are that the appellant did not pay back the money when he said he would and did not explain why. He had not paid SR back more than 8 weeks after the deposit was made. He also failed to tell the manager of the deposit despite agreeing that had he found someone else had accepted money he would have told the manager immediately. These facts constitute relevant conduct and did cause SR emotional and financial distress. We find that although the appellant did not manipulate SR into depositing the money this was not material to the overall decision. The money was not returned and the management not told.

33. In XY v The Independent Safeguarding Authority [2011] UKUT 289 (AAC), at paragraph 40 the Upper Tribunal explain the appellant's right of appeal lies against "a decision under paragraph 3 ... of that Schedule to include him in the list" (section 4(1)(b) of the 2006 Act). ... In short, we must focus on the substance, not the form, and the appeal is against the decision as a whole and not the decision letter, let alone one paragraph in that letter, taken in isolation. ..."

34. In focusing on the substance rather than the form of the decision and taking into account the appeal is against the decision as a whole rather than the form of the decision letter we find the DBS did not make a material mistake of fact.

35. *Mistake of law – was including the appellant on the list disproportionate?*

36. We find there was no mistake of law and the inclusion of the appellant on the adults' barred list is not disproportionate.

37. We applied the test in *Bank Mellat* [2013] UKSC 39 as explained in ***KS v DBS*** [2025] UKUT 045.

38. The objective of protecting vulnerable adults is sufficiently important to justify an interference in the rights of the appellant to private and family life. Placing the appellant on the barred list is rationally connected with that objective.

39. There are no less intrusive measures available. There are no conditions that can be imposed by the DBS on the appellant's work or limitation on the time that he remains on the list.

40. The inclusion on the list is not to punish the appellant but to protect vulnerable adults for whom he may care. He did not repay the money despite his stated intention to repay after 3 weeks, and he did not tell the management of the care company what had happened. Had he done these two things it would have been disproportionate to include him on the adults' barred list, but he did not, despite knowing that he should have done so. This led to a vulnerable adult losing £300 and suffering emotional distress.

G. Conclusion

41. As we find the DBS have not made a mistake of fact or law the appeal is dismissed.

Sarah Johnston
Sitting as a Judge of the Upper Tribunal
Tribunal Member John Hutchinson
Tribunal Member Dora Waitt
18 September 2026