

Neutral Citation Number: [2026] UKUT 388 (AAC)
Appeal No. UA-2025-000879-V

THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

FA

Appellant

- v -

The Disclosure and Barring Service

Respondent

Before: Judge Sarah Johnston sitting as a Judge of the Upper Tribunal, Tribunal Member Matthew Turner, Tribunal Member Helen Stammers.

Decision date: 09 October 2026
Hearing date: 03 September 2026
Mode of hearing: In person at the Rolls

Representation:
Appellant: Zayed Al Busmait, instructed by the appellant
Respondent: Ashley Serr, instructed by the DBS

On appeal from:
the decision of the DBS communicated
in a letter dated: 26 February 2025
DBS reference: 00982741113

ANONYMITY ORDER

1. On 21 August 2025, the Upper Tribunal made the following order:

"5. 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 the following in relation to these proceedings—

- **AA**
- **LM**
- **LG**
- **DD**
- **JV**

[1] Statutory instrument number 2008/2698, as amended.

- **LD**
- **SA**
- **JZ**

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

Breach

6. Any breach of the order at paragraph 5 above is liable to be treated as a contempt of court and punished accordingly (see section 25 of the Tribunals, Courts and Enforcement Act 2007). Punishment can be imprisonment for up to two years, or a fine, or both.

Prohibition: other information

7. An order is also made under the provisions of the rules, prohibiting the disclosure of the Company named in the documents contained within the case papers.

8. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008[2], the Upper Tribunal prohibits the disclosure or publication of the below Company relating to these proceedings:

- **The company**"

2. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008[3], the Upper Tribunal prohibits the disclosure or publication of the name of the following in relation to these proceedings.

Breach

3. Any breach of the order at paragraph 5 above is liable to be treated as a contempt of court and punished accordingly (see section 25 of the Tribunals, Courts and Enforcement Act 2007). Punishment can be imprisonment for up to two years, or a fine, or both.

SUMMARY:

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

The DBS did not make a 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.

[2] Statutory instrument number 2008/2698, as amended.
[3] Statutory instrument number 2008/2698, as amended.

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 the DBS did not consider the effect of the witnesses not attending court on the veracity of their statements and inclusion on the list was disproportionate.

2. The five grounds on which permission was granted were:

> (1) Ground 1: The DBS arguably made a mistake of fact in finding that the appellant used his position to dishonestly authorise removing £238.08 from funds belonging to service users by falsifying signatures of other staff members on the cash withdrawal paperwork.
>
> (2) Ground 2: The DBS arguably made a mistake of fact in finding that the shop where the appellant said he bought the goods was closed at the relevant time.
>
> (3) Ground 3: The DBS arguably made a mistake of law by failing to consider the effect of the witnesses not attending court on the veracity of their statements.
>
> (4) Ground 4: The DBS arguably made a mistake of law by considering the inclusion of the appellant on the adults' barred list was proportionate.
>
> (5) Ground 5: The DBS arguably made a mistake of law by arguably reversing the burden of proof to place it on the appellant.

B. Factual background

3. The DBS sent their final decision letter to the appellant on 26 February 2025. They included the appellant on the adults' barred list because they were satisfied that;

> "Between 7 May and 11 June 2021, while working as Acting Care Team Leader, you failed to follow your employer's financial policies and procedures. You used your position in order to dishonestly authorise your removal of £238.08 from funds belonging to service users under your care, falsifying signatures of other staff members on the cash withdrawal paperwork."

4. There was no question and the appellant had spent the money in four separate transactions. The amounts were as follows:

i. May 2021 £63.00
05 June 2021 £65.08

11 June 2021 £35.00
11 June 2021 £75.00

5. The appellant told us he had been a care worker for over 20 years before 2021. He had worked in various organisations before he joined the company. He was the acting care team leader at the company before May 2021 until a permanent team leader was recruited. At the time of the allegations, he was a shift leader as the permanent team leader had been recruited. He told us these were the only allegations that had been made against him during his career as a care worker. After resigning from the company, he was employed as the manager in a different company and no issues had arisen.

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 <u>appropriate</u> for an individual to be included in a barred list is not a question of law or fact (our emphasis).

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

> "31. It seems to me plain that the Presidential Panel in PF were saying that where relevant oral evidence is adduced before the UT in an appeal under s 4(2)(b) of the 2006 Act the Tribunal may view the oral and written evidence as a whole and make its own findings of primary fact. I would add that whether or not A stole money from B cannot be considered a matter of "specialist 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. The test that the Upper Tribunal applies when deciding whether inclusion on the barred lists is proportionate is set out in KS v Disclosure and Baring Service [2025] UKUT 45 (AAC). It adopted the formulation of Lord Reed in Bank Mellat v Her Majesty's Treasury (No 2) [2014] AC. Lord Reed said at paragraph 74 of that decision:

> "74. … it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter. … I have formulated the fourth criterion in greater detail than Lord Sumption, but there is no difference of substance. In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure."

13. If the DBS has made an error of law or fact, the Upper Tribunal determines whether to remit or direct removal of the person's name from the list

(section 4(6) of the Act). In Disclosure and Barring Service v AB [2021] EWCA Civ 1575, at paragraph 73 Lewis LJ says as follows:

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

D. The oral and written evidence

14. The appellant's case is that he did not take the money but used it to buy the goods set out above. He said that if a resident requested any goods staff would purchase the goods and bring back the receipt. If there was no receipt, then a petty cash voucher was used. The way that it was proved that the item/s were purchased was that the petty cash voucher would be seen and countersigned by another staff member.

15. The DBS alleged that the appellant wrote the signatures of other staff himself. He denied this. He said his solicitor had asked the police about getting a handwriting expert, but no expert was instructed.

16. When asked by Mr Serr why he did not have the receipts he said they were torn by the client who regularly did this. They were shredded and so he could not stick them together. He left them on the table as he was responding to urgent incidents. He said that many staff do not bring receipts and have the petty case voucher countersigned.

17. The witness statements from the staff members who countersigned the petty case voucher for the purchases denied signing them or seeing the goods purchased.

18. Those witnesses withdrew their statements and did not attend court. One withdrew as they did not want to attend court, was not comfortable seeing the appellant and did not want to attend court against him. Another withdrew the statement due to the lapse of time and not remembering the details. Another because they did not wish to go to court and did not support any police action as it was too late and they did not want the appellant punished.

19. The appellant when asked why the witnesses would not tell the truth said that decisions he made when in an acting lead role may have led to this. One of the witnesses had said she would make him suffer. He maintained that they colluded but that when they were asked to give evidence in court they declined. In the disciplinary evidence he said that this was because staff were "scared" of the team leader who pressured or influenced them to alter their statements.

20. He told us he bought the items from the corner shop near to the company. He was told by the police that the shop had been closed on 1 June 2021. He denied this and said the shop was still open. He said: "I know it was open – why would I say I bought from them?" Before the Upper Tribunal is a witness statement from a "certified enforcement agent" who repossessed the shop on 1 June 2021 at 23.30. The enforcement agent says as follows (page 351 of the bundle):

> On 1st June 2021 at 23.30 we called the police to create CAD[…]. My company, …carried out a peaceful re-entry of [the corner shop] using a locksmith. We then changed the locks at the front and back of the shop and left a notice on the door stating that the lease had been forfeited for non-payment of rent under the terms of the lease.

21. Mr Serr asked the appellant why he bought items from this shop as it would have been more expensive. The appellant responded that the bulk buy was from the supermarket, but staff bought extra things from the shop. One of the residents gets shopping done when he wants it. If staff do not do this it is a trigger point for him.

22. When asked about the disciplinary notes the appellant said he did not sign these notes and that they were not given to him. The company could have emailed him but did not do so.

E. The parties' submissions

23. Mr Al Busmait relied on his skeleton argument. He submitted that the appeal is decided by reference to three principal questions:

> (1) Whether the evidence establishes dishonest appropriation of £238.08 and falsification of signatures, as opposed to failures in financial procedure or record keeping;
>
> (2) What weight can properly be attached to the witness and documentary evidence relied upon in support of those allegations against the Appellant; and
>
> (3) On the factual findings ultimately made by the Tribunal whether inclusion in the ABL was proportionate.

24. As to Ground 1 He submitted that the alleged falsification of the signatures was central to the DBS's conclusion that the appellant's conduct was premeditated and he attempted to conceal it. The appellant gave consistent evidence that he did not and that he showed those colleagues the things he had bought. He submitted that the disputed signatures were at least capable of objective forensic investigation, but they were not. The DBS found that the appellant had deliberately falsified the paperwork. and the additional statement of the appellant. The fact that an individual said they did not sign the petty cash vouchers does not automatically establish that the appellant did sign them. He submitted that the tribunal distinguishes between:

> a) Whether a relevant purchase occurred;
> b) Whether a relevant colleague saw the goods;
> c) Whether that colleague personally signed the record;
> d) Whether a disputed signature was genuine and;
> e) If it was not genuine, whether the evidence establishes that the Appellant was its author.

25. Mr Al Busmait also submitted that departing from the financial procedures was not proof that the appellant dishonestly appropriated the money or deliberately falsified the signatures.

26. As to Ground 2 which concerns the evidence in relation to the closing of the corner shop, he invited the tribunal to assess that evidence together with the appellant's oral evidence and the relevance to the last three transactions. He submitted that the appellant's evidence of purchasing items from the shop was distinct from whether he appropriated money and falsified the signatures.

27. He also submitted that the police sought cooperation from the shop owners in relation to CCTV but they did not comply with the request. The failure of the shop owners cannot be converted into an adverse inference against him. Potentially relevant evidence was not obtained.

28. As to Ground 3 he submits that the fact that the witnesses withdrew their statements does not amount to the witnesses recanting their statement but that the withdrawal is relevant to the weight and reliability of historical statements not tested before the criminal court and upon which the DBS placed significant reliance. This is especially important to the disputed signatures which the tribunal is being asked to infer that the appellant personally falsified.

29. As to Ground 4 Mr Al Busmait submitted that if the tribunal does not uphold the findings of dishonest appropriation and deliberate falsification or finds less serious conduct then whether it is proportionate to bar the appellant should be weighed against his history of work from 2006 with no other substantiated allegations. After working at the company, he obtained another job as Lead team leader, Acting Deputy Manager and then Manager which included financial oversight. The DBS recognised his previous good conduct. If the tribunal do not accept dishonesty or falsification of the signatures, then continued denial cannot itself be treated as evidence of lack of insight.

30. As to Ground 5 Mr Al Busmait submits that it is for the appellant to demonstrate that the DBS made a material mistake of fact or law. The DBS relied on the absence of an explanation from the appellant for matters which were not within his knowledge such as why the four colleagues would deny signing the documents. This is not proof that the allegation against the appellant is true.

31. Mr Serr relied on the DBS response to the appeal of 7 May 2026 (page 137-155 of the bundle). His oral submissions addressed the new evidence submitted of the polices of the company and the witness statements of staff.

32. As to the DBS response to the appeal (at page 137 of the bundle) Mr Serr relies on the statements of the four staff members who denied countersigning the petty cash vouchers and said they had not seen the items the appellant claimed he bought. One of the staff members was not on duty on the day she was meant to have signed the voucher.

33. The appellant was acquitted due to a lack of evidence as none of the co-workers appeared or gave evidence at court.

34. Mr Serr highlights two paragraphs within the final decision letter which in summary say that the appellant could not have made purchases from the shop as it had ceased trading. The DBS go onto say that the appellant gave no credible explanation as to how he bought these items when the shop was

closed. They say the appellant "went so far as to describe how you would park at work and walk to the store, indicating that you were certain of the sequence of events."

35. The factors which Mr Serr sets out to support the conclusion of the DBS that the appellant did take the money from service users should be considered cumulatively and individually (page154 of the bundle). They are in summary:

(1) The co-workers evidence is uniform in that they did not sign the vouchers, did not see the items said to have been purchased and there was no obvious reason to fabricate given the appellant had resigned.

(2) There is evidence that the shop was closed. (This evidence is now strengthened by the witness statement of the bailiff who entered the shop and closed it down on 1 June 2021.)

(3) The appellant admitted to the police that he issued the money to himself, gave inconsistent descriptions of items purchased and could not explain the amounts spent relative to the goods described.

(4) He resigned before the disciplinary process and did not challenge the fairness of it at an employment tribunal.

(5) The employer found the matters proved and the prosecution test was satisfied.

36. Mr Serr submits that the new evidence materially strengthens the evidential basis for the DBS findings.

37. He submits that the policies establish:

> (1) That all transactions were required to be supported by a receipt (page 170)
>
> (5) Where a receipt was unavailable or lost a petty cash voucher could only be used exceptionally and required the signature of two members of staff and this was not limited to petty cash vouchers (170, 208 and 212)
>
> (6) The polices repeatedly require dual-signature controls. (169 204, 211, 222)
>
> (7) Those signing were required to inspect the documentation and satisfy themselves that the expenditure was justified (169 and 222)

38. Mr Serr submits that the policies undermine the submission that the issues identified amounted to little more than missing paperwork and administrative irregularity. They demonstrate that receipts, countersignatures and supporting documentation formed part of the principal safeguards designed to prevent misuse of service-users funds. These records needed to be maintained contemporaneously, and cash removed for shopping trips was required to be formally recorded (171, 175 and 210). Staff were not allowed to

use personal funds and subsequently seek reimbursement (210). That provision is of relevance as elements of the appellant's account involve purchases made before the commencement of this shift with reimbursement at a later stage.

39. The witnesses confirm they neither witnessed the purchases nor signed the documentation which establishes the circumvention of financial safeguard designed to protect vulnerable service users.

40. In terms of the police evidence, Mr Serr submits that it confirms that the transactions were not supported by a receipt, all the counter signatories denied witnessing or signing the petty cash vouchers, the shop was closed by the bailiff on 1 June 2021 and the bailiff in his statement said he had photos, although they were not in the evidence before us. The appellant continued to maintain he bought the items from that shop and could not explain how he did that when the shop was closed.

41. As to the witness statement of the appellant he advances a number of submissions not available to the DBS when the response to the appeal was prepared. The DBS did not rely on inference as the policies show. The missing receipts and disputed signatures is no longer solely dependent on witness evidence but is supported by the policies of the company.

42. Mr Serr submits that the new evidence "demonstrates that the respondent's case rests instead upon a combination of factors including:" four unsupported transactions; the absence of receipts; independent denials of the alleged countersignatures; objective documentary evidence concerning the importance of those safeguards; evidence that [the shop] had ceased trading before several of the alleged purchases; and the appellant's inability to explain that inconsistency when challenged during interview.

F. Analysis

43. *Mistake of fact*

44. *Ground 1: The DBS arguably made a mistake of fact in finding that the appellant used his position to dishonestly authorise removing £238.08 from funds belonging to service users by falsifying signatures of other staff members on the cash withdrawal paperwork.*

45. On the evidence we have heard and read we find that the DBS did not make a mistake of fact in finding that the appellant falsified the signatures on the cash withdrawal paperwork (petty cash vouchers). It is up to the appellant to persuade us that the DBS made a mistake of fact. He has been unable to do this.

46. It is true that a handwriting expert could have been instructed by the police or the appellant given his denial that he falsified the signatures. This would have been useful but does not significantly undermine the statements of those four witnesses who said they did not sign them. One of these staff members maintains they were not on duty at the time when they were meant to have signed. Although we have considered the consistent evidence of the appellant, and the withdrawal of the statements to the police by the four

witnesses, we accept the submission of Mr Serr that we need to view the facts in this case cumulatively. The fact that the appellant maintains that he bought the items from a shop that was closed before three of the transactions undermines his credibility on this ground as well as Ground 2. Additionally, we find that although the witnesses withdrew their statements, they did not deny the facts as set out in their statements and Mr Al Busmait accepted this on the appellant's behalf.

47. As to the submissions of the appellant on this ground that if we found that the petty cash vouchers were not signed by the four witnesses does not mean the appellant did so, we are unable to accept this submission. The only person to receive money was the appellant and he needed to have the petty cash vouchers counter signed before he could do this. There is no evidence that anyone else countersigned the vouchers in different names and there is no plausible reason that anyone apart from the appellant would do this.

48. *Ground 2: The DBS arguably made a mistake of fact in finding that the shop where the appellant said he bought the goods was closed at the relevant time.*

49. We do not find that the DBS made a mistake of fact on this ground. We have clear evidence from the certified enforcement officer at page 351 of the bundle that he "carried out a peaceful re-entry of [the shop] using a locksmith. We changed the locks at the front and back of the shop and left a notice on the door stating the lease had been forfeited for non-payment of rent under the terms of the lease." The shop owners did not respond to the requests from the police about when the shop was closed.

50. However, in light of the evidence from the certified enforcement officer of the fact that the shop was closed on 1 June 2021 meant that no adverse inference needed to be made. The enforcement officer has no interest in these proceedings and there is no evidence that his statement to the police taken on 07/12/21 was not true. It was therefore impossible for the appellant to have bought the items from the shop as he maintains. The shop was closed for three of the purchases the appellant says he made at that shop.

51. *Mistake of law*

52. *Ground 3: The DBS arguably made a mistake of law by failing to consider the effect of the witnesses not attending court on the veracity of their statements.*

53. The additional evidence in the bundle includes the witness statements of three staff who said they did not countersign the petty cash vouchers and their reasons for withdrawing the allegations against the appellant. The reasons for withdrawing the statements do not say that their statements were incorrect. The reasons include the lapse of time from the statement to the court date which would affect their memory, not wanting the appellant punished or not wanting to appear in court against him.

54. The DBS in their Barring Decision Summary at page 110 and specifically at page 112, details the DBS consideration of credibility. They considered that the information in the employer's investigation did not diverge from that of the

police when the witnesses were interviewed. We take that to mean that the witness statements were consistent in both the disciplinary investigation and the witness statements.

55. The DBS did consider the failure of the witnesses to attend court but did not accept that this "speaks to their lack of credibility" (page 113). They said: "It is specifically noted that [the appellant] was arrested in June 2021, but that his trial did not occur until 23 March 2023 – a period of 19 months later. It is also noted that the witnesses are likely to be shift workers within the care industry, and that no information is available regarding their personal circumstances Failure to attend court as a witness in not considered to be evidence of dishonesty."

56. Mr Al Busmait on behalf of the appellant accepts that the withdrawal of the statements does not amount to a recantation or that non-attendance at court proves the original accounts were false. He submits that it is relevant to the weight and reliability of historical statements which were not tested before a criminal court and upon which the DBS placed significant reliance.

57. We do not find the DBS made a mistake of law. They did consider credibility and decided that the length of time between the statements and the court proceedings may have meant the witnesses could not have attended. They also consider that not attending court does not make them dishonest. Given this, the DBS did consider the weight to be applied to the statements. They specifically considered this when considering credibility as set out above.

58. *Ground 4: The DBS arguably made a mistake of law by considering the inclusion of the appellant on the adults' barred list was proportionate.*

59. Mr Al Busmait submits that if we did find a mistake of fact or materially less serious conduct it would not be proportionate to include the appellant on the adults' barred list. Given we have found the DBS did not make a mistake of fact we find that the decision was proportionate.

60. Following the test in Bank Mellat, we considered whether the objective of the measure is sufficiently important to justify the limitation of the protected right. The barring scheme is to protect vulnerable adults like those who were under the care of the appellant from harm, which includes financial harm. As we have found no mistake of fact the DBS decision that, on the balance of probabilities, the appellant took money from vulnerable service users across three days on four occasions the objective to protect vulnerable service users is sufficiently important to justify limiting the rights of the appellant. The DBS took into account that the appellant had no prior record. But a person who is prepared to take money in this way is clearly a risk to those who are unable to protect themselves.

61. Prohibiting the appellant from engaging in regulated activity is rationally connected to the protection of vulnerable adults. There is no less intrusive measure open to the DBS. They either include the appellant in the barred list or not. Although the effect on the appellant is severe the importance of protecting vulnerable adults is the objective of the scheme. The behaviour of the appellant is clearly transferable to other vulnerable adults.

62. *Ground 5: The DBS arguably made a mistake of law by arguably reversing the burden of proof to place it on the appellant.*

63. Counsel for the appellant submits that the DBS relied materially on the absence of an explanation of matters which were not necessarily within his knowledge. We accept this is the case and if that was the only evidence relied on by the DBS it may have some force.

64. However, as we have said above the cumulative evidence in this case is significant. Four colleagues said they did not countersign the petty cash vouchers or see the items bought; the shop where the appellant said he bought the goods was closed and this is verified by independent evidence from the enforcement officer who had no interest in this case; receipts were missing for all four transactions; and the actions of the appellant did not comply with the policies of the company. If the only matter relied upon by the DBS was that the appellant could not explain why the colleagues witness statements were made that would be a different matter, but the cumulative evidence demonstrates the this is not the case.

G. Conclusion

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

Sarah Johnston
Sitting as a Judge of the Upper Tribunal
Tribunal Member Matthew Turner
Tribunal Member Helen Stammers
09 October 2026