



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2023-000397-V
[2024] UKUT 277 (AAC)**

The Upper Tribunal has made an order prohibiting the disclosure or publication of any matter that is likely to lead members of the public to identify HA, any of the service users, or members of staff at the centre where HA worked, identified in the Upper Tribunal bundle, or that centre

Between:

HA

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Citron, Mr Hutchinson and Mr Graham

Decided following an oral hearing at Manchester Civil Justice Centre on 25 June 2024

Representation:

Appellant: by himself

Respondent: by Bronia Hartley of counsel, instructed by DLA Piper

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the Respondent made on 16 February 2023 (DBS reference DBS6191 00982365420) to include HA in the adults' barred list is confirmed.

REASONS FOR DECISION

This appeal

1. This is an appeal against the decision ("**DBS's decision**") of the Respondent ("**DBS**") dated 16 February 2023 to include HA in the adults' barred list.

DBS's decision

2. The decision was made under paragraph 9 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the "**Act**"). This provides that DBS must include a person in the adults' barred list if
 - a. it is satisfied that the person has engaged in relevant conduct,
 - b. it has reason to believe that the person is, or has been, or might in the future be, engaged in regulated activity relating to vulnerable adults, and
 - c. it is satisfied that it is appropriate to include the person in the list.
3. Under paragraph 10, "relevant conduct" for the purposes of paragraph 3 includes, amongst other things, conduct of a sexual nature involving a vulnerable adult, if it appears to DBS that the conduct is inappropriate; and conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult; and a person's conduct "endangers" a vulnerable adult if he (amongst other things)
 - a. harms a vulnerable adult or
 - b. causes a vulnerable adult to be harmed
 - c. puts a vulnerable adult at risk of harm or
 - d. attempts to harm a vulnerable adult.
4. The letter ("**DBS's decision letter**") conveying DBS's decision:
 - i. stated that DBS was satisfied that
 - a. on unknown dates HA sexually touched a male resident, AR, by inserting his fingers into AR's anus and repeatedly attempting to have sex with him
 - b. on an unknown date, HA engaged in unprofessional conversation with AR, about his (HA's) personal life
 - c. over a period of time, HA failed to report inappropriate behaviour from AR, placing HA and colleagues at risk(we will refer to the above as DBS's "**core factual findings**");
 - d. HA had engaged in relevant conduct in relation to vulnerable adults because he had engaged in conduct which endangered a vulnerable adult or was likely to endanger a vulnerable adult
 - e. a barring decision was appropriate, since HA had repeatedly breached professional boundaries with a vulnerable adult in his care;

- ii. acknowledged that HA provided evidence of a breakdown in his relationship with some of his colleagues, in support of HA's account that allegations were been fabricated as part of a grudge; DBS however considered that the evidence given by the victim (AR) negates this and supports the credibility of the allegation. DBS also recognised that HA obtained various positive character references from staff who had worked alongside him; they do not, however, address HA's interactions with AR, specifically;
- iii. stated that DBS could not be assured that HA would refrain for repeating the behaviour in future.

Jurisdiction of the Upper Tribunal

- 5. Section 4(2) of the Act confers a right of appeal to the Upper Tribunal against a decision by DBS under paragraph 3 of Schedule 3 (amongst other provisions) only on grounds that DBS has made a mistake
 - a. on any point of law;
 - b. in any finding of fact on which the decision was based.
- 6. The Act says that "the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact" (section 4(3)).
- 7. Permission to appeal was given by the Upper Tribunal (Judge Citron) in a decision issued on 11 January 2024. The permission decision noted that
 - a. DBS's core factual findings were based on documentary evidence, including:
 - (i) an undated email from HA about his interaction with AR on 23 May 2022 (pages 57-59 of the Upper Tribunal bundle)
 - (ii) note of employer's "investigatory interview" with AR on 25 July 2022, with an handwritten note at the end stating that DC Vince attended on 1 August 2022 and read it to AR who verified it to be accurate (pages 141-143 of the Upper Tribunal bundle)
 - (iii) note of employer's "investigatory meeting" with HA on 1 June 2022 (pages 60-72 of the Upper Tribunal bundle).
 - b. HA had indicated that, if permission to appeal were given, the Upper Tribunal would hear oral evidence from
 - (i) HA, denying core factual finding a.; denying, and giving relevant context for, core factual finding b.; and denying core factual finding c.;

- (ii) three other persons who worked at the neurological rehabilitation centre where HA worked at the relevant time:
 - 1. JRL, a registered social worker, who had trained/mentored HA, and who could speak to core factual finding c. in particular;
 - 2. GLW (whose written evidence is at page 55 of the Upper Tribunal bundle); and
 - 3. RK (whose client was in the room next to AR's at the neurological rehabilitation centre, at the relevant time).
- 8. The permission decision concluded that it was realistically arguable that the oral evidence above, which was not available to DBS, could, if deemed credible, provide information sufficient to show that DBS made mistakes in the findings of fact on which its decision was based

Documentary evidence in the Upper Tribunal bundle

- 9. In addition to the decision letter, evidence in the bundle of 351 pages included:
 - a. an email of 25 June 2022 from KT, 'consultant' at HA's employer, to DBS stating that the police had been, had interviewed HA, had decided there was no case, and would not be taking the investigation further;
 - b. a DBS referral form from HA's employer dated 7 June 2022, showing KT as the referrer, and, amongst other things, describing HA's work as 'rehabilitation support worker for adults with neurological injuries';
 - c. a further DBS referral form from HA's employer, dated 7 August 2022, showing the referrer as CJ, HA's line manager, and which, amongst other things: stated that AR was born in 1944 and said that he had had a brain stem stroke with severe right sided paralysis; that he could be confused and was vulnerable medically, physically and emotionally;
 - d. a timeline from HA's employer, which included the following:
 - (i) circa 25 May 2022: "AR makes a comment that HA had used lip salve to penetrate his anus. AR further alleges that HA wanted to 'bum' him and wanted him. Alleged that GLW instructed MW not to raise concerns as AR was joking"
 - (ii) 30 May 2022: "MW reports the concern and police care informed along with safeguarding and CQC. The management were provided with a statement by a member of staff disclosing that AR had stated a member of staff 'wanted' him. Had used his lip balm to insert into his anus (please note that this information was misheard and the below will clarify events)"
 - (iii) 30 May 2022: "Police informed (DC Vine [regional] police incident [details]) along with safeguarding and CQC. The member of staff was called home and suspended. Views varied around capacity and as such we needed to speak with AR and assess what his capacity in relation to this

issue was complicated further by his being in hospital for part of the time of these events”

- (iv) 1 June 2022: “initial investigatory meeting with member of staff held”
- (v) 6 June 2022: “PIPOT (Person in a Position of Trust) referral and DBS referral made for the member of staff concerned. Investigation paused pending police advice”
- (vi) Up to 15 June 2022: “chased the police to actually attend the service without success. AR was deemed to have capacity and as such we could not disclose events to his family without his consent
- (vii) 28 June 2022: “ER was chatting generally with AR who then suddenly mentioned that a member of staff had ‘stuck something up my bum’. AR acknowledged the police had been involved during this conversation. AR sad he was worried as the staff member had not been in for a while and he was worried about him coming back. He also stated that the same member of staff was ‘heavy handed’, made him feel uncomfortable, had told him in the past that he was ‘in charge’ and that ‘knowing more than everyone else’. AR says that the member of staff told him to continue having bed baths and not showers as he is ‘too strong’ ”
- (viii) 14 July 2022: “CJ raised a formal complaint about the lack of attendance to the Police Commissioner’s office. Victims charter agreed to have been breached and weekly reporting to Police Commissioner for AR’s case by the police in place for oversight”
- (ix) 16 July 2022: “DC Vine attended the home to interview AR who denied anything had happened”
- (x) 18 July 2022: “Police closed the case which led to safeguarding closing the case”
- (xi) 22 July 2022: “Disciplinary hearing held for the member of staff in relation to non-police involved matters relating to AR”
- (xii) 25 July 2022: “CJ attended service to speak to staff involved in aspects of interest to police as they were no longer proceeding. Staff and AR spoken with. AR gave a fuller disclosure that there had been what he described as consensual sexual contact with the member of staff. Consent requested to re-inform the police (granted). Police, CQC and safeguarding informed of the new information”
- (xiii) 26 July 2022: “Contacted police again no response from DC Vine so a new referral was made. Declined as the same allegation, same perpetrator and same victim so police say DC Vine must deal with it but is on leave”

- (xiv) 27 July 2022: “Contacted police again DC Vine spoken with not attending until after his leave”
 - (xv) 27 July 2022: “DC Vine spoken with and is cancelling some leave to attend the service. He has described the challenge is that AR is saying he consented so it may not fall under criminality. Person in a position of trust crimes refer to children, not vulnerable adults. CJ expressed a view that it seems there is a risk consent was groomed due to vulnerability rather than just consented. DC Vine has indicated he is still looking at what laws might apply.”
- e. a hand-written statement of MW, saying that on Monday 23 May she was in AR’s room, with GLW, giving AR personal care; when she mentioned that HA was going to be on shift, AR said that HA “wants to have his way with him [AR]”, that HA “sticks [AR]’s lipstick up his bottom, and that HA “also ‘shoves his dick up his bum and cums on him’ “. MW’s statement said this really upset her and that AR was not known to usually speak like that;
 - f. a hand-written statement of GLW, dated 31 May 2022, as follows: “a couple of weeks ago while supporting personal carers, AR was talking with me and MW (support worker). I mentioned that HA was on shift as they get along and AR was laughing and said HA wants me and he carried on laughing. I asked why does he think this AR said because he is gay and wants to bum me and laughed again. During supporting this was not mentioned. A couple of weeks ago AR claimed there was a camera in his room (care noted). In my experience AR is becoming quite confused. While supporting AR says delirious stuff like there are cameras watching me. From what I have noticed while working with HA, HA has a good relationship with AR”;
 - g. 31 May 2022 suspension letter from HA’s employer, signed by KT;
 - h. 3-page typed “statement in regards to AR” from HA’s email timed at 11:13 am (undated); this said that on 23 May 2022 went into AR’s room for a wellbeing check; AR seemed to be in low mood; HA made him laugh by calling him “chicken”; AR showed signs of confusion; they had a conversation about a friend AR had in his youth who was “like” HA (and this seemed to mean, that he was gay); HA asked about the “stuff” they did together (and said it the note that it was “stupid” for him to have asked this); AR gave HA “some explicit details” but he had a wife and he let that friend “go” and never saw him again; the note then says that HA said “no well things were different then and things are different now [AR], look how much you adore me and I cherish you and I know you appreciate me being funny with you, and I said that after I separated from my ex husband I haven’t meet many people to date seriously but that don’t mean have to tell everybody about my dull life while laughing and making quote gestures or who have I met and kissed. That’s personal life, but listen I’m here for you and offered [AR] a hug and he took the gestures sweetly he gave me pat on my back ...”; HA then checked AR’s pad; the note says that AR was “still saying a lot of things continuously but most of them were out of context and

didn't make much sense, even during our conversation I had to pay good attention and had to understand his words slowly and asked him to repeat after deep breath ...”;

- i. Note of “HA investigatory meeting” of 1 June 2022, chaired by KT. In this, HA was asked why the incident in HA’s 3-page statement (immediately above) was relevant the sexual allegations AR had made against him. HA’s response is recorded as follows: “It was relevant because the thing is I don’t understand where that would come from by talking and then he start talking about somebody that he used to know, somebody who was like me. I feel like, because I have discussed the whole thing with him, he’s telling me things that are in his nature. I think that somehow it binds it together, me asking him details. I did say to him if I had a gentleman as good as you are, as adorable as you are and if you were younger at this stage, you would be the perfect husband because you are so nice and he was laughing hysterically making himself cough at that”;
- j. 45 page transcript of a meeting on 21 July 2022 with CJ, HA and a union representative;
- k. 1-page typed note headed “28 June 2022” and signed by ER, assistant psychologist/rehabilitation support worker; this said that when ER was on shift on 26 June, sitting outside in the garden with AR, AR brought up that a staff member had made a comment to him about “sticking something up my bum”; the note said that AR had communication difficulties and could be difficult to understand; the note reported that AR said that someone had been to see him about this, and had told him that the police were involved; the note said that AR said that the same staff member had made him very uncomfortable as he was “heavy handed” and had made comments to AR in the past about being “in charge” and “knowing more than everyone else”; the note said that AR had told ER on previous occasions that the staff member had told him to have bed baths rather than showers, and that he is “too strong”. The note said that the conversation suggested to ER that AR was able to recall retrospective conversations with accuracy – he did get some days confused. The note said that AR “appeared to be able to recall events accurately and demonstrate accuracy and awareness around them”
- l. notes of an investigatory interview with AR on 25 July 2022, chaired by CJ, with an handwritten note at the end stating that DC Vince attended on 1 August 2022 and read it to AR who verified it to be accurate;
- m. letter to HA dated 30 July 2022 signed by CJ as “nominated individual”, dismissing him for gross misconduct;
- n. another letter to HA of 30 July 2022 signed by CJ, concerning HA’s allegations that three staff members, including MW, had behaved in an unprofessional manner to him and had conspired against him;
- o. character references for HA by six colleagues who had worked with him at the centre, including GLW;

- p. DBS's "barring decision summary" document: this recorded that two allegations were not proven (whilst finding that the allegations comprising DBS's core factual findings were proven); it acknowledged that at the point of the disciplinary hearing HA was not being investigated in relation to the sexual abuse, due to the fact that AR had declined to support a police investigation – when had been spoken to, AR denied that any of this had happened; police then closed the case with no further action. The document also recorded that "as the behaviour involves abuse of position of trust to facilitate sexual contact with a vulnerable adult, the case will be progressed straight to minded to bar in line with current guidance"
- q. a 38-page document from HA submitted to the Upper Tribunal and dated 28 August 2023 with submissions on various matters (including on DBS's core factual findings), character references (including from JRL, RK and GLW), and copies of texts;
- (i) GLW's document, dated 28 March 2023, gave an account of what happened on 23 May 2022 when she and MW were in AR's room: GLW wrote that AR "jokingly" (as he "always had done" during her years working at the centre) said that HA liked him "and I think he wants to bum me"; that AR then "laughed hysterically" "to get people's reaction"; that GLW told AR that was inappropriate to say and he shouldn't say things like that; AR then said "I'm sorry, I was just joking and laughed again"; GLW said that AR often said things to "get reaction"; that AR always said things that made no sense and appeared confused "on multiple times"
 - (ii) one of the character references was from JC, a deputy manager at the centre; she had left the centre by the time the incidents involving HA and AR in DBS's core factual findings a. and b. had occurred; JC did, however, question how, in the investigatory interview with AR on 25 July 2022, chaired by CJ, AR had been able to speak so articulately: JC said that AR had "profound dysphasia and dysphagia" – he could answer "closed questions" but "never quite managed long sentences as his inability to swallow left him breathless and choking."

The Upper Tribunal hearing

10. HA attended the hearing, as did Ms Hartley representing DBS. We are grateful to them both, for presenting their respective arguments clearly.
11. HA, representing himself, also gave evidence at the hearing, including via cross examination and answering questions from the panel. Two of HA's witnesses, as referred to in the permission decision, also attended, gave evidence, made themselves available for cross examination, and answered questions from the panel: JRL and GLW. HA told us at the start of the hearing that RK, the third such witness, was unable to attend in person. The panel decided that RK could give evidence by video link, if she was able to at the point in the hearing when it made sense to hear her evidence; but fairness and justice would not support adjourning, or otherwise disrupting the natural flow and order of, the hearing, to

enable RK to provide evidence; this was because the case management directions prior to the hearing had given HA a fair and just opportunity to arrange for his witnesses to provide evidence at the hearing, in an orderly way. In the event, RK was unavailable, or unable, to join the hearing by video link at the point at which her evidence would otherwise have been heard; and so we did not, in the end, hear oral evidence from RK.

12. At the start of the hearing, the panel were provided with a 7-page undated document entitled 'HA's witness statement'; although HA said that he had attempted to send this to the Upper Tribunal prior to the hearing, it appeared not to have been received (this may have been connected to HA's hospitalisation shortly before the hearing – see the next paragraph); at the hearing, we accepted that this document could be submitted (there was no objection by DBS, who appeared to have already received it); there was a short adjournment at the start of the hearing to allow the panel to read it.
13. At the hearing, HA explained that, unfortunately, he had had a mild asthma attack (of which he had a history) and had to be hospitalised over the weekend preceding the hearing (which was on a Tuesday); he had been discharged from hospital on Monday morning i.e. 24 hours prior to the hearing. On behalf of the panel, Judge Citron explained to HA that, if there was any significant risk of the hearing aggravating his condition, or of the condition meaning that he could not fairly and justly present his case, the panel would consider whether to the adjourn the hearing. In response, HA assured the panel that carrying on with the hearing would not adversely affect his health in any material way, and that he was able to present his case and his evidence satisfactorily (and indeed was keen to proceed with the hearing). In all the circumstances, we decided it was fair and just to proceed with the hearing.

HA's evidence and arguments – summary

14. HA's 'witness statement' document stated that DBS's core factual findings were wrong:
 - a. regarding core factual finding a., HA contended that AR's "statement" was "a complete fabrication", and that it contained inconsistencies and contradictions that undermined its credibility;
 - (i) HA emphasised that AR's "initial response" when questioned about any inappropriate behaviour was "a denial"
 - (ii) HA stated that AR's mental state and capacity at the time of the alleged incidents was "highly questionable"; HA stated that many of the residents at the centre had cognitive and mental impairments, and these could impact their perception, memory and ability to distinguish reality from fantasy
 - (iii) HA submitted that there was no evidence to corroborate that of AR; HA was critical of DBS's evaluation of the evidence;
 - b. regarding core factual finding b., HA contended that the conversation with AR was harmless and well-intentioned; it was a genuine attempt to

connect with AR and provide him with a sense of comfort and understanding;

- c. regarding core factual finding c., HA submitted that this finding ignored the nuances of working with individuals with complex neurological conditions; the incidents cited, such as AR running his hand along HA's back or thigh, were not malicious or threatening acts but rather manifestations of AR's condition and cognitive impairments; HA's approach was to redirect AR's behaviour and remind of appropriate boundaries; to label AR's behaviour as "inappropriate", and expect immediate reporting, was overly simplistic and insensitive.
15. HA also asserted that he had been unfairly targeted and subjected to bullying within the workplace; those who made accusations against him had probably done so out of malice or a desire to retaliate against HA. In support of these assertions, HA alluded to his having "reported", in April 2022, wrongdoing that led to a patient's death; and to his having given evidence, in March 2023, against his ex-employer in a coroner's court (HA said that the centre was found guilty of gross negligence in those proceedings).
 16. HA made representations about the effect of his being included in the adults' barred list: it made it exceedingly difficult to secure employment; and there were the emotional and psychological effects of being found to have done the things set out in DBS's core factual findings.
 17. In his oral evidence, HA made the following points:
 - a. AR was a large fellow; he had various tubes in his body; three people were required to turn him; hence, according to HA, the allegations of sexual activity were far-fetched;
 - b. AR's room was open to the nursing station; this again, according to HA, made the allegations of sexual activity far-fetched.
 18. In cross examination, HA gave his view that AR had never given an account of sexual intimacy between them; HA asserted that the account attributed to AR, had been fabricated; HA's view was that AR did not have the capacity to say the things that were attributed to him. HA said that the reason he had been able to have the conversation with HA about the "friend" of his youth, was that HA, through care and sensitivity, was able to communicate with AR at this level.
 19. JRL spoke highly of HA's abilities as a care worker, in his oral evidence. He had worked with AR and said that he had a disease which affected his speech. JRL left the centre in 2021.

DBS's submissions on evidence

20. Ms Hartley argued that it was extremely implausible that AR's account of sexual intimacy between him and HA (as recorded in the 'investigatory interview' with AR on 25 July 2022) had been fabricated by HA's employer; it was much more likely that AR had given the account attributed to him. Ms Hartley submitted that the account is not suggestive of someone who was "out of touch" with reality: CJ at one point repeats AR's evidence back to him, and AR corrected certain details; ER's evidence also suggested that AR was able to recall things accurately; and HA's own evidence was that he had had a conversation with AR about AR's experience as a young man.

Discussion

21. To decide whether DBS had made a mistake in making core factual finding a., we had to weigh conflicting evidence.
22. On the one hand, there was HA's evidence, that there had been no sexual intimacy between him and AR.
23. On the other hand, there was a detailed account of sexual intimacy between them, in the document recording the 'investigatory interview' with AR on 25 July 2022. For shorthand, we shall refer to this as "**AR's account**" of what happened.
24. On the face of it, AR's account is credible and reliable: it is detailed; it was documented not long after the events in question occurred; and aspects of it were corroborated by HA's own evidence (such as, the fact that AR's mood was low at the time that he had a conversation with HA; and AR's good relationship with HA).
25. HA presented multi-layered arguments as to why AR's account is not to be believed. The first layer of argument is that the account is itself fabricated i.e. AR himself never gave the account of sexual intimacy with HA that he is recorded as having made on 25 July 2022. In our view, it is improbable that AR's account was fabricated in this way:
 - a. we have corroborating evidence, including from GLW, a friend of HA's and one of his witnesses, that AR was talking about his having had sexual intimacy with HA, around May 2022. We acknowledge that GLW's written account, from May 2022, was less detailed than AR's account of 25 July 2022; and that GLW herself believed AR to be joking, or otherwise not to be taken seriously; but her evidence does corroborate that of MW, as regards HA's speaking of sexual intimacy with HA, around this time;
 - b. the fact that AR did not, initially, wish to provide details to the police, does not in our view support the contention that AR's account, made after he changed his mind, was fabricated; in our view, the likely reason for AR's initial refusal to give details to the police (and to claim that "nothing had happened") was that (i) the intimacy had been consensual (this is clear from AR's account); and (ii) AR and HA were on good terms and therefore AR was hesitant about doing something (like informing the police) that could get HA "into trouble";
 - c. it seems to us likely, in the circumstances, that, as the 'investigatory interview' document suggests, AR's account was confirmed in the presence of a police officer, DC Vine, on 1 August 2022; a reason we consider this credible is the detailed evidence of DC Vines' involvement in the case in July and August 2022, including his initially interviewing AR, his then being on leave just after AR's account was given on 25 July, and his cancelling leave to attend the centre;
 - d. the evidence indicates to us that, although AR's speech could be difficult to understand due to his physical impairments, he was capable of having a detailed and nuanced conversation with someone who made efforts to understand what he was saying; the evidence to which

we refer includes that of HA himself, as regards the conversation he had with AR around this time about the “friend” of his youth; and the evidence of ER, an assistant psychologist, at about this time about her conversation with AR. It seems to us that AR’s account as recounted in the document by CJ, is consistent with this assessment of AR’s ability at the time to have a detailed and nuanced conversation; we do not therefore consider that the very detail, and nuance, of AR’s account supports the contention that that account was fabricated.

26. In our view, therefore, it is distinctly improbable that AR’s account was fabricated; on the balance of probabilities, AR’s account was given by AR himself, and not fabricated by HA’s employer.
27. HA’s second layer of argument against AR’s account is that, even if it was genuinely AR’s own account, AR’s mental state was such that his account was not reliable: there is evidence, particularly that of GLW, that AR was something of a fantasist, and that he would make things up as a way of attracting attention to himself; HA’s arguments suggested that this could be connected to the neurological condition for which AR was in the centre. We find it improbable that AR’s account was “made up” by AR in this way: the detail of the account supports its veracity; AR’s initial unwillingness to give the account, also supports its truthfulness, in that AR was taking matters “seriously”, and hesitating before deciding to give his account – it does not support the idea that AR was “joking” in giving this account, or frivolously trying to attract attention to himself.
28. Nor are we persuaded by HA’s arguments that the sexual intimacy, as described in AR’s account, was unlikely due to physical constraints or the accessibility of AR’s room: AR’s account deals with the latter point by noting that HA closed the door at relevant times; and it seems likely that HA would have been able to carry out the intimate acts described in AR’s account, on his own.
29. It follows that we consider AR’s account to be strong evidence; and, consequently, that we find HA’s denial of sexual intimacy with AR to be less believable.
30. We have not therefore found DBS to have made a mistake in making core factual finding a.; and given the self-evident seriousness of that finding, from a safeguarding perspective, the other two core factual findings are not, in our view, “material”, in the sense that DBS’s decision would have been the same even if those findings had not been made. For completeness, however, we record our view that it was not a mistake for DBS to have found that the HA’s conversation with AR, relating to the “friend” of AR’s youth, AR’s sexuality, and HA’s sexuality, was “unprofessional”; but it was a mistake for DBS to have found that HA “failed” to report inappropriate behaviour from AR, in that we accept HA’s evidence that the “touching” behaviour from AR was well-known to staff at the centre and there was a general practice, which was tolerated by the management of the centre, of not making written reports of these incidents, but, rather, of mentioning them orally to the nursing staff; and that HA had conformed with this general practice.

31. We also record, for completeness, our view that DBS's decision made no mistake on a point of law; in particular, given core factual finding a., it was not disproportionate to include HA in the adults' barred list.

Conclusion

32. DBS's decision involved no mistake either in a factual finding on which it was based, or on a point of law. DBS's decision is accordingly confirmed.

**Zachary Citron
Judge of the Upper Tribunal**

**John Hutchinson
Roger Graham
Members of the Upper Tribunal**

Approved for release on 11 September 2024