



**The Upper Tribunal  
(Administrative Appeals Chamber)**

UT NCN: [2025] UKUT 129 (AAC)

**UT Case Number: UA-2024-000745-V**

**Summary: Safeguarding Vulnerable Groups (65.8 and 65.9)**

*Safeguarding Vulnerable Groups Act 2006 - section 4(2)(a) – the Upper Tribunal made its own assessment of the evidence as a whole – no mistake of fact identified in DBS’s findings – section 4(2)(b) – proportionality – the Upper Tribunal assessed for itself the proportionality of DBS’s decision – no mistake of law identified – DBS’s decision confirmed.*

**Before**

**UPPER TRIBUNAL JUDGE JACOBS  
TRIBUNAL MEMBERS JOSEPHINE HEGGIE AND JOHN HUTCHINSON**

**Between**

**SLS**

**Appellant**

**v**

**Disclosure and Barring Service**

**Respondent**

**THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:**

**No one shall publish or reveal the name or address of any of the following:**

- (a) SLS, who is the Appellant in these proceedings;**
- (b) any of the service users or members of staff mentioned in the documents or during the hearing;**

**or any information that would be likely to lead to the identification of any of them or any member of their families in connection with these proceedings.**

Any breach of this order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years' imprisonment or an unlimited fine.

Decided on following an oral hearing on 28 March 2025

### **Representatives**

Appellant	Not represented
Disclosure and Barring Service	Timothy Wilkinson of counsel, instructed by DLA Piper UK LLP

### **DECISION OF THE UPPER TRIBUNAL**

On appeal from the Disclosure and Barring Service (DBS from now on)

DBS reference: 01008904480

Decision letter: 30 April 2024

This decision is given under section 4 of the Safeguarding Vulnerable Groups Act 2006 (SVGA from now on):

DBS did not make mistakes in law or in the findings of fact on which its decision was based. DBS's decision is confirmed.

### **REASONS FOR DECISION**

1. We are grateful to DBS and DLA Piper for providing the bundles for the hearing, as SLS was not represented.

#### **A. Some abbreviations**

2. SLS is the appellant. In the evidence we have quoted, she was sometimes referred to by her name and sometimes by her initials. We have changed all the references to SLS.

3. SLS worked in the care sector for most of her life. From 2019 to 2023, she worked for EC. At first, she worked at Property X. She left that property in 2020 after whistle blowing about thefts from service users. She then moved to Property Y. DBS's findings relate to the time when she was at Property Y.
4. When EC management received complaints about her language and behaviour, she was suspended by the service manager. We refer to the manager as GD throughout and ignore her change of surname.
5. SLS resigned from EC and worked as a support worker with another provider until she was added to the barred lists. We have not named or used initials for that provider.

## B. Introduction

6. On 29 April 2024, DBS included SLS in the children's barred list and the adults' barred list on the following findings of relevant conduct:

- On multiple unspecified dates between 01 December 2019 and 18 January 2023 whilst working as a Support Worker for EC, you behaved in an inappropriate manner towards service users in your care when you:
  - shouted at them
  - told them to shut up, 'get out of my face', go away, piss off.
- On multiple unspecified dates between 01 December 2019 and 18 January 2023 whilst working as a Support Worker for EC, you restricted the choices of service users.
- On 18 December 2022 whilst working as a Support Worker for EC, you told a service user to fuck off.

7. Upper Tribunal Judge Jacobs gave SLS permission to appeal limited to these grounds after an oral hearing:

The first ground is that DBS may have made a mistake of fact in making its findings on the basis of the evidence given by SLS's co-workers and the service users. I will give a couple of examples that will benefit from hearing SLS's oral evidence. One is the effect on the evidence of her reputation as a whistle-blower. The other is the level of capacity of the service users, which may have affected their understanding of the questions they were asked.

The second ground is whether the decision was proportionate. There may be a less intrusive approach. Training is one example. I note the exchange of messages at page 97, which suggests that the employer may have been considering moving SLS to a different venue rather than dismissing her. The outcome on this ground may depend on the decision in *KS [v Disclosure and Barring Service]* [2025] UKUT 45 (AAC).

8. SLS did not apply for permission to amend these grounds (as explained in Section III of *KS*). Accordingly, we limited our consideration to the grounds on which permission was given, as required by *Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 at [97].
9. This is the Upper Tribunal's decision on the appeal. It is made with the benefit of the practical knowledge and experience that the specialist members bring to this

jurisdiction. We refer to what the Upper Tribunal said about their qualifications for appointment in *CM v Disclosure and Barring Service* [2015] UKUT 707 (AAC) at [59] to [64].

### **C. The reason for referring the case to DBS**

10. In her representations to DBS, SLS alleged that EC had only referred the case to DBS because she had left them short-staffed. There is no evidence to support that allegation. Whatever the reason for the referral, the case was referred and DBS had to consider whether to include SLS in either or both of the barred lists. Having decided that the statutory criteria were satisfied, it was under a duty to include her in the lists. SLS's appeal under section 4 SVGA can only challenge the decision to include her in the lists. It does not allow a review of whether her case was properly referred to DBS.

### **D. SVGA**

11. This is the relevant legislation.

#### *The barring provisions*

12. The decision was made under paragraphs 3 and 9 of Schedule 3 SVGA. We set out paragraphs 3 and 4, which relate to children. Paragraphs 9 and 10 are the equivalents for vulnerable adults and are essentially the same.

#### *Behaviour*

##### **Paragraph 3**

- (1) This paragraph applies to a person if—
  - (a) it appears to DBS that the person —
    - (i) has (at any time) engaged in relevant conduct, and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children, and
  - (b) DBS proposes to include him in the children's barred list.
- (2) DBS must give the person the opportunity to make representations as to why he should not be included in the children's barred list.
- (3) DBS must include the person in the children's barred list if—
  - (a) it is satisfied that the person has engaged in relevant conduct,
  - (aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
  - (b) it is satisfied that it is appropriate to include the person in the list.
- (4) This paragraph does not apply to a person if the relevant conduct consists only of an offence committed against a child before the commencement of section 2 and the court, having considered whether to make a disqualification order, decided not to.
- (5) In sub-paragraph (4)–

- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000;
- (b) a disqualification order is an order under section 28, 29 or 29A of that Act.

**Paragraph 4**

- (1) For the purposes of paragraph 3 relevant conduct is–
  - (a) conduct which endangers a child or is likely to endanger a child;
  - (b) conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him;
  - (c) conduct involving sexual material relating to children (including possession of such material);
  - (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;
  - (e) conduct of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate.
- (2) A person's conduct endangers a child if he–
  - (a) harms a child,
  - (b) causes a child to be harmed,
  - (c) puts a child at risk of harm,
  - (d) attempts to harm a child, or
  - (e) incites another to harm a child.
- (3) 'Sexual material relating to children' means–
  - (a) indecent images of children, or
  - (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.
- (4) 'Image' means an image produced by any means, whether of a real or imaginary subject.
- (5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (6) For the purposes of sub-paragraph (1)(d) and (e), DBS must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

*The appeal provisions*

13. Section 4 SVGA contains the Upper Tribunal's jurisdiction and powers.

**4 Appeals**

- (1) An individual who is included in a barred list may appeal to the Upper Tribunal against–

...

- (b) a decision under paragraph 2, 3, 5, 8, 9 or 11 of Schedule 3 to include him in the list;
- (c) a decision under paragraph 17, 18 or 18A of that Schedule not to remove him from the list.

(2) An appeal under subsection (1) may be made only on the grounds that DBS has made a mistake—

- (a) on any point of law;
- (b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.

(3) For the purposes of subsection (2), 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.

(4) An appeal under subsection (1) may be made only with the permission of the Upper Tribunal.

(5) Unless the Upper Tribunal finds that DBS has made a mistake of law or fact, it must confirm the decision of DBS.

(6) If the Upper Tribunal finds that DBS has made such a mistake it must—

- (a) direct DBS to remove the person from the list, or
- (b) remit the matter to DBS for a new decision.

(7) If the Upper Tribunal remits a matter to DBS under subsection (6)(b)—

- (a) the Upper Tribunal may set out any findings of fact which it has made (on which DBS must base its new decision); and
- (b) the person must be removed from the list until DBS makes its new decision, unless the Upper Tribunal directs otherwise.

...

## **E. Mental Capacity Act 2005**

14. It is sufficient to quote section 1:

### **1 The principles**

(1) The following principles apply for the purposes of this Act.

(2) A person must be assumed to have capacity unless it is established that he lacks capacity.

- (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- (5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

## F. Our approach to the case

15. We heard evidence from SLS as we are entitled to do: *Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 at [95]. She had the chance to say anything she wished about the findings made by DBS. She also answered questions from the panel and from Mr Wilkinson. Having heard that evidence, we approached the case in accordance with the decision of the Court of Appeal in *RI v Disclosure and Barring Service* [2024] 1 WLR 4033. Bean LJ there approved at [29] the submission by counsel for RI at [28] that 'the Upper Tribunal is entitled to hear oral evidence from an appellant and to assess it against the documentary evidence on which the DBS based its decision.' Later at [31], Bean LJ said that 'where relevant oral evidence is adduced before the UT ... the Tribunal may view the oral and written evidence as a whole and make its own findings of primary fact.' And Males LJ said at [50] that the Upper Tribunal is 'entitled to evaluate that evidence, together with all the other evidence in the case ...'

16. In deciding whether DBS made a mistake of fact or law, we had to consider the circumstances as they were at the date of DBS's decision, which was 29 April 2024. See *SD v Disclosure v Barring Service* [2024] UKUT 249 (AAC). We are entitled to take account of evidence that was not before DBS, provided that it can be related back to that date.

17. For proportionality, we followed the approach set out in Section V of *KS*.

## G. Evidence

### *Service users*

18. Three service users made statements. The dates of the statements were not recorded.

19. ES made a statement:

(notes: ES was agitated today due to his car going in for its MOT)

- 1. Are you happy here? No, JW and AP can make me angry inside
- 2. Are staff kind to you? Yep, all staff are kind
- 3. What do you like about living here? I like my bedroom
- 4. What don't you like about living here? I want to go to Dunstall to see my girlfriend

5. Has anything worried you? No, but I want my car
6. Have you seen anything that makes you unhappy? SLS shouts at me telling me to go away
7. Is there anywhere in the house you can't go? I'm told to go to bed, sent to my room at night time

ES did not wish to carry on chatting or answering questions.

20. AP made a statement:

1. Are you happy here? Yes
2. Are staff kind to you? Yes, JW is horrible to me
3. What do you like about living here? I've got a nice bedroom
4. What don't you like about living here? ES doesn't give any of my DVD's back
5. Has anything worried you? SLS was doing the sleep, JW came down and was sent back upstairs because he was banging and woke up BC. SLS shouted at JW.
6. Have you seen anything that makes you unhappy? SLS shouts at JW
7. Is there anywhere in the house you can't go? Kitchen when SLS is cooking
8. Whats your normal routine? I do lots, I go to the shed, I choose when I go to bed.

21. JW made a statement:

1. Are you happy here? 'Don't know really, I want to cook on my own, staff won't let me, I want to live on my own away from staff.
2. Are staff kind to you? 'SLS swears at you, told me to fuck off by shouting' 'SLS can't do that can she, you can't talk to people like that' T moans at me and goes through my drawers.

JW was asked when he was sworn at, he states it was 18/12/22 at 12:20, I asked where this happened and he said it was in the kitchen.

3. What do you like about living here? I like my bedroom and all my new furniture
4. What don't you like about living here? The doors slamming, Other people getting up early, not letting me have snacks in my bedroom, SLS put her hand in my face to tell me to be quiet
5. Has anything worried you? I feel punished and I have to do other peoples jobs
6. Have you seen anything that makes you unhappy? SLS sends RHL to bed when he falls asleep in his chair
7. Is there anywhere in the house you can't go? Kitchen, laundry, snack cupboard, staff toilet, cupboard under the stairs for my drinks



8. What's your normal routine? SLS sends me back up to my room if its before 7am, she won't let me have a drink. She wouldn't let me watch the world cup final in the lounge and told me to watch It in my room, SLS wouldn't help me find the right channel on my tv.

With no questions asked JW also raised the below

SLS has been through my pockets before and searches me for sweets and chocolate - JW did state this was a long time ago

SLS wont let me buy expensive trainers for my birthday or a football cup

SLS wont let me go to the café more than once a week and she wont let me buy expensive jeans or a suede jacket

*Members of staff*

22. There were also statements from four members of staff. They were all made in answer to these questions:

In your own words describe as accurately as possible:

- What happened? How did this happen? What were the events leading up to this?
- When did it happen? Date and time if possible
- Describe any injury or harm done to the person we support/employee
- Were you with anyone else? List the names of any other witnesses

23. CM was a team leader at EC. She made a statement, which was also recorded in this letter:

I can't remember exact dates and times. But the times I have worked with SLS this has happened.

I have only worked at Property Y for just over a month now.

SLS has on many occasions shouted at JW told him to shut up.

Told him to get out of her face.

Told him to leave the house.

She has told JW that he isn't allowed snacks at night time because he has had a cake or a treat at touch base.

SLS doesn't let anyone have a drink from the hours of 10pm-7am.

SLS doesn't let anyone come in the kitchen of a night time.

SLS won't let anyone have a drink before 7am and she doesn't let anyone have breakfast before 7am.

SLS always says that if HL asks for a drink after his evening meds, we are telling him no.

There is no reason why he can't have a drink after his medication.

SLS has shouted at JW because he's had more than two drinks at touch base. She says that he is getting overweight, and he needs to lose it. So, she then says that he can't have his evening drink.

She doesn't let anyone come and sit in the kitchen. If she hears AP coming down the stairs, she tells him to go away or to piss off

JW has reported that SLS doesn't let him watch the tele at nighttime and makes him go to bed.

SLS doesn't talk to anyone of the people we support with respect. She is very regimented and doesn't let them have their own choices. When they ask to do something, she always tells them no as it's not part of a 'routine'.

24. LA was a support worker at EC. He made a statement, which was also recorded in this letter:

After having the below discussion with LA he has Raised the following concerns:

1. JW was in the kitchen when he appeared anxious and told staff member SLS that he wanted to move homes. SLS replied 'good, move then' JW continued to discuss moving to Staff SLS. SLS then told JW 'shut up and get out of the kitchen.' JW left kitchen.
2. JW told staff that he does not want to attend touchbase (at times) this was handed over to SLS. SLS will tell JW he has to attend regardless of the handover. SLS has told LA that she had made JW go because she does not want him in the house all day.
3. SLS has made the decision to say to JW when he asks to go to the coffee shop 'NO', SLS will lie and tell JW he has no money. JW is told by Staff SLS when he is allowed to go for a coffee.
4. JW is restricted by SLS to how many coffees he is allowed throughout the day he is also restricted with times. JW is not allowed in the kitchen till 7am where he will have a coffee then he is told he has to wait till 0730am for breakfast and is only allowed a tea with this. JW prefers coffee to Tea. This rule was implemented by SLS.

LA feels he has not been able to talk to anyone about these issues until having a team leader as SLS is unpredictable with her behaviour and being a new member of team, he has felt uncomfortable with her actions. Staff members within Property Y don't implement the rules SLS has put in place when SLS is not on shift, and when she is on shift, she will do the above as listed in paragraph 4. LA has been told to arrive 0650 in the morning by SLS which is not when LA starts, SLS tells LA he needs to be in early for a handover (this handover never happens). SLS will talk bluntly and firmly towards LA and other staff which is unwarranted. LA has also been told by SLS that he needs to find childcare or arranged dates he needs off placed in his contract. This is not necessarily as LA agreed this in his interview. LA feels that SLS causes Disruption with other people's shift patters and will cause conflict within the team.

25. SD was a team leader at EC. He made a statement, which was also recorded in this letter:

I was going to speak to you face to face tomorrow but I think it would be better in writing.

I picked NR up from Touchbase this afternoon and JW from ... walked back with us.

JW did speak to me regarding a historical incident regarding staff SLS regarding putting her hand over his mouth to stop him from speaking. JW advised me that staff SLS swears at him daily and he often gets told to 'go away' in home. He did advise that he was being withheld from having drinks at home and can only have this at certain times (I do not know if he is SLT assessed for this or if it is agreed to have restrictions)? JW did say staff have taken his 'drinks for colds' (I presume something like Lem[s]ip) away from him. However, I did advise him that it would probably be best for staff to look after this as drinking too many in a period can make him unwell and staff can monitor the times for him. JW did seem ok with this once explained.

JW was quite distressed when speaking to me further and advised that he is very unhappy at home and would like to move because of this. JW did advise in his words, that they 'would have a fight'. I did question this as he was distressed when speaking, I could not make out if he has been threatened to be hit, if he was being threatening or if he was scared that they would have a falling out. I was trying to ask open questions so no false accusations were made or fabricated and due to him being so upset, it was hard to get the full picture.

I did offer reassurance that this will all be reported and from my understanding from JW, Touchbase have also been notified. I walked with him back home and he did seem ok as staff SLS was not going to be there.

26. JWa was a shift leader at EC. She made a statement, which was also recorded in this letter:

I worked a shift at ... on the 18-12-22 i was asked by SLS to take JW to the town to do some personal shopping i was told he was not allowed to go to the cafe as he had done so the previous day. JW was not happy about this complaining SLS always says his not allowed to do things. I calmed JW down saying he could have a latte when we got back to the house and that his dinner would be ready he seemed ok with that. When we returned to the house at around 12.30 his dinner was nearly ready SLS was serving it up. JW became impatient and came down to the kitchen shouting loudly asking for his dinner SLS began shouting back telling him to f off back to the front room and she would call him when it was ready. JW was very agitated with this as he did want his dinner first. I took his dinner up to him and the situation seemed to calm back down.

*SLS's statement to her employer*

27. SLS made a statement on 5 January 2023. It was recorded by GD, the Service Manager:

I spoke to SLS and made her aware of some of the allegations made against her that had been reported to myself today.

I mentioned some of the accusations i.e. Telling an individual to 'fuck off', telling them 'good, move then' when the individual said that he wanted to move house. SLS denied these allegations, although did state that there was a conversation relating to moving house, but the conversation was more around that if he kept turning all these houses down then the decision may be taken out of his hands and his sister may have to make the choice. SLS did say that there is a rule that

no one has a drink or access to the kitchen between 10pm and 7am as the sleep-in staff are right next to the kitchen.\*

SLS also denied stating that the individual is not told he does not have enough money for things but makes him aware he needs to be careful about what he spends.

SLS also denies restricting drinks but will encourage to have alternative drinks before coffee (such as juice/water).

SLS also stated that the individual has made allegations prior about other staff but is currently pinpointing herself.

SLS was told that due to the allegations made that we would need to suspend on full pay, SLS was made aware this is not part of the disciplinary procedure, but a way to protect not only the individuals but herself from any further accusations whilst they are investigated.

\* At the hearing SLS told us that this paragraph was not the whole of the conversation with the service user and that a service user was allowed to have a drink if they came down for one.

#### *SLS's resignation*

28. On 18 January 2023, SLS sent an email to GD, saying:

With regret as from today 18.01.2023 I will terminate my contract with EC.

GD replied an hour later, saying:

Thank you for your email. Would you like to arrange a time to meet up and discuss your resignation?

SLS replied within minutes, saying:

Thank you for getting back to me, personally I don't think there is anything to discuss.

I don't think I could work in Property Y again with the service user that has made allegations about me. Also, I don't want to move to another house.

At the hearing, SLS told us that she suspected she might be moved to another property, as she had known this to happen to a member of staff at Property X, where SLS had been a whistle blower.

29. GD accepted SLS's resignation on 23 January 2023, saying:

... It is with regret that I confirm acceptance of your resignation dated 18<sup>th</sup> January 2023 with immediate effect, giving no notice.

...

Finally, I understand you must have given this matter a great deal of thought. I would like to take this opportunity to wish you every success in the future.

*SLS's representations to DBS*

30. SLS made her representations on 2 April 2024. They are consistent with what she told the investigation meeting at EC on 10 January 2023 and are essentially what she told us at the hearing. This is, in summary, what she said in the representations:

She had worked in the care sector most of her adult life. She had never been referred to DBS before. The reference was made 3 months after she had left EC 'and in my opinion they had only submitted the allegation because I had left them short staffed and they weren't going to end my contract just work at another service ...'

She started work with EC on 1 December 2019 as a support worker at Property X. She became a whistle blower when she saw a member of staff stealing from a service user. CM and JWa were friends of the member of staff. They worked at the property and made her life difficult when they discovered who had reported the thefts. SLS then moved to Property Y where she was working when she resigned.

At that property, JW was one of the service users. He took an instant dislike to her. 'As for me swearing at JW this had never been a case. I have never and would never swear at another service user. Regarding JW's choices his GP had given staff guidelines to reduce JW's intake of caffeine and diet so staff encouraged JW to drink less coffee and offer other alternatives ie: water, juice, tea and also his snacks trying to offer other things rather than chocolate ie: fruit, crisps, cereal bars but this was all staff and it was documented in his daily notes.'

ES and AP 'have very high levels of learning difficulties and in my opinion seems they have been prompted to say such things.'

CM came to work at Property Y. SLS's first shift with her was very awkward. CM said she would never forget what SLS had done. She had become SLS's team leader. She then left and other staff said that she had informed management 'about various things and other staff members.' What she said about SLS was not true. Service users could use the kitchen during the night, but only if they did not disturb the staff who were sleeping in the next room. JW was always very loud.

When LA came to work at Property Y, SLS became frustrated at his attitude. Despite being new, he came across as knowing everything about the service and the service users.

Referring to SD's statement, SLS said that JW had changed his story six or seven times when speaking to different members of staff. Management realised and took no action. She had never worked with SD on a shift but he was always coming for office supplies. He had made 'a statement against me to support SP as they are now in a relationship.'

Since leaving EC, she had met JW in the street and they spoke. He was still unhappy living at Property Y and wanted his own flat. Staff would not let him do things he wanted to do.

*References for SLS*

31. After leaving EC, SLS was employed by another care provider until DBS's decision to include her in the barred lists. She sent to the Upper Tribunal seven references relating to her time there, four from staff and three from service users.

**H. Our assessment of the evidence**

32. SLS told us that: (a) there was a conspiracy among the staff to cause trouble for her as a result of her being a whistle blower at Property X; (b) the service users had been influenced to say what they did; and (c) she did not limit the service users' choices, but tried to encourage them to act sensibly.

*Conspiracy*

33. We accept that SLS was a whistle blower when she worked at Property X. The person she reported for theft was moved to another property, avoided coming to any disciplinary hearings, and eventually resigned. We accept that this is why SLS thought she might be offered the chance to move when she sent her resignation to GD.

34. We accept that other members of staff can make life difficult, even unpleasant or unbearable, for a person who is identified as a whistle blower. This is especially so when the person reported is a friend of other members of staff. We therefore accept that there was animosity between CM and SLS. We have to consider the possibility that this may have influenced what CM said about SLS's behaviour.

35. We do not accept that there was a conspiracy between the staff whose evidence we have seen. This is implausible. It would require CM to have persuaded three other members of staff to support her. Of the three, JWa was a friend of CM and both had worked at Property X. She was also reluctant to engage with SLS when CM was around. However, by SLS's own account at the hearing, JWa was pleasant to her when CM was not around. This does not sound like someone who has a personal animosity towards SLS or any reason to invent allegations about her. As to SD, we know of no reason why he might have been willing to join a conspiracy against SLS. She has criticised the evidence he gave, but only because JW was not reliable. That is not a reason for conspiring to cause trouble for her. As to LA, he was a new member of staff who professed himself reluctant to talk to others about what he witnessed. As an outsider, LA would be less susceptible than others to influence and less likely to have any personal animosity against SLS. He is the closest we have to an independent observer of events and reporter of the conversation with JW.

36. Having rejected the conspiracy, there is no reason to doubt what CM has said, because it is consistent with the evidence of JWa, SD and LA.

*Influencing the service users*

37. Without a conspiracy, SLS's argument that the service users were influenced is much weaker. What they said was consistent with what the staff said. They were also consistent with each other. SLS is right that we do not know what the context was in which the interviews took place. We do not know what conversations took place with each of them. We do, though, know what questions were asked, as well as information volunteered without specific questions. The questions were open ones and the answers sound realistic. There is nothing in the questions or answers, individually or

collective, to suggest, let alone show, that the service users' answers were not honest, unprompted and freely given. Finally, all the service users had full capacity to make decisions. SLS told us, after being asked several times, that there was no assessment of capacity for any of them.

### *Limiting choices*

38. SLS told us that there were no assessments of capacity for any of the service users. Applying section 1 of the Mental Capacity Act 2005, that means they are assumed to have full capacity. And full capacity means capacity to make sensible decisions as well as ones that are unwise.

39. At the hearing, the evidence and discussion concentrated on JW's diet. DBS's finding relates to choices generally, including when and where to eat, what to watch on TV and where to watch. We will deal with the diet, but our analysis stands for all the other matters mentioned in the evidence.

40. SLS told us that the GP had given the staff guidance on JW's diet. She did not treat that as an instruction, just advice. She spoke of trying to encourage JW to eat and drink sensibly. That is what she should have been doing, but we do not accept that she was maintaining the distinction between encouragement and control. The evidence given by JW and the members of staff is not consistent with her doing so. It was an easy line to cross, especially when SLS was under pressure and dealing with someone who was not easy to persuade. It was, though, a distinction that the law required her to maintain. We find that there were times when she did not maintain it.

### *Conclusion*

41. So, taken as a whole, we find that the evidence given by the staff and the service users provides a consistent account of what they saw SLS do and what they heard her say. We do not accept SLS's denials, because the weight of the evidence from all the other witnesses is against her.

42. We accept that the seven references she has provided give honest accounts of the authors' experiences of SLS. At the end of the hearing, she told us that DBS's findings were 'not the person I am.' We accept that. There is more to her than those findings. They do, though, matter under DBS's role, which is to protect children and vulnerable adults.

43. As our findings are the same as those made by DBS, we have found no mistake of fact in its decision.

## **I. Proportionality**

44. The background to proportionality is SLS's Article 8 Convention right as set out in Schedule 1 to the Human Rights Act 1998:

### *Article 8*

#### *Right to respect for private and family life*

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.

- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

45. DBS's decision was in accordance with the law, as it was authorised by SVGA. The issue for us is whether it was necessary in a democratic society in the interests of protecting the health of children and vulnerable adults and protecting their rights and freedoms, including their Article 8 rights.

46. We assessed the proportionality of DBS's decision for ourselves as required by *KS v Disclosure and Barring Service* [2025] UKUT 45 (AAC). We did so on the facts as found by DBS. The four elements of the assessment were set out by Lord Reed in *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700 at [74]:

*(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right*

47. The measure is the barring scheme under SVGA and DBS's decision to include SLS in both barred lists. Its objective is to protect children and vulnerable adults from harm by those entrusted with their care in regulated activity. That objective is sufficiently important to justify interfering with SLS's exercise of her Article 8 Convention right.

*(2) whether the measure is rationally connected to the objective*

48. DBS's decision under the barring scheme prohibits SLS from engaging in regulated activity. That is rationally connected to the objective of the scheme.

*(3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective*

49. In the second ground for permission, Judge Jacobs referred to the email exchange when SLS resigned from EC. He suggested that the offer of a discussion may have meant that some alternative short of resignation might have been possible. Training was one possibility. If so, that could be a less intrusive measure. Mr Wilkinson argued that this could not be considered, as DBS had no power to order it. We accept that DBS has no power to order training. We do not, though, accept that a less intrusive measure has to be one that DBS can provide. DBS has only two options: to include or not to include a person in a barred list. Given its limited powers, it would never be able to provide a less intrusive measure. That measure must always be provided by someone else, possibly from another regulator.

50. We do, though, accept Mr Wilkinson's argument that GD was not considering moving SLS to another property. SLS had been suspended. She told us that she suspected GD would offer her that option, as that had happened at Property X. We do not know what GD had in mind when she offered a discussion. The offer is not evidence of any possible less intrusive measure. Training, even if it would be effective, is not something available on the evidence.



*(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*

51. This requires a balance. On one side is the severity of the effect of including SLS in the barred lists. She has worked in the care sector for most of her life. Inclusion in the barred lists prevents her working in regulated activity. We do not know what other jobs she has had and assume that she has no other specific qualifications relevant to other employment. That still leaves opportunities in retail, hospitality, catering, office work, cleaning and no doubt others. She will still be able to earn a living, probably comparable in income to her work in the care sector.

52. On the other side of the balance is the harm that might occur to children or vulnerable adults if SLS were allowed to work in regulated activity. There is no suggestion that she might cause physical, financial or sexual harm to anyone. Her language and attitude, though, shows a lack of respect for them as individuals and of consideration for their feelings. Their integrity is also important. They have full mental capacity for decision-making, but SLS overrode not just their wishes but also their legal right to make decisions even if they were unwise. She had a responsibility both to respect their wishes and to help them understand why they might not be good ones to have.

53. We have taken account of DBS's assessment of proportionality. We note that the assessment takes account of 'some personal stigma for you'. We consider that that stigma would be limited, as there is no public access to the barred lists maintained by DBS. The assessment also refers to 'impact on your mental health and wellbeing'. We note that SLS told DBS in her representations that the referral was 'very stressfull for me as this has been ongoing for over a year now.' We accept that the uncertainty of the DBS process would be likely to cause SLS stress. We do not, though, have any evidence of the effect of barring on her mental health for the future.

54. It remains for us to decide how the balance should be struck. Our conclusion is that it should be struck in favour of DBS's decision to include SLS in both barred lists. Given the potential impact of her conduct on children and vulnerable adults, the restriction on her employment is the minimum necessary to protect them.

## **J. Conclusion**

55. We have found no mistake of fact in DBS's findings and have assessed its decision as proportionate. That is why we have confirmed the decision.

**Authorised for issue  
on 14 April 2025**

**Edward Jacobs  
Upper Tribunal Judge  
Josephine Heggie  
John Hutchinson  
Members**