



Neutral Citation Number: [2026] UKUT 131 (AAC)  
Appeal No. UA-2023-000683-V

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**JG**

**Appellant**

**- v -**

**Disclosure and Barring Service**

**Respondent**

**Pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:**

**No one shall publish or reveal:**

**the name or address of any of:**

- a. the Appellant in these proceedings, who is referred to by the cipher JG;**
- b. the individual referred to by the cipher ES, who supported JG at the two oral hearings;**
- c. residents in the care home where JG worked, who are referred to by the ciphers BB, LW, MC, WM and DT;**
- d. Staff members at the relevant care home, who are referred to by the ciphers JF, CW, JA and RA;**

**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 sanction 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.**

**Before:** Upper Tribunal Judge Butler, Tribunal Member Bainbridge  
and Tribunal Member Turner

**Hearing date(s):** 13 November 2025  
**Mode of hearing:** Cloud Video Platform

**Representation:**

**Appellant:** Represented self with support from ES  
**Respondent:** Mr Tim Wilkinson (Counsel)

*On appeal from:*

DBS registration number: 0094372540  
DBS Decision Date: 27 April 2023

**SUMMARY OF DECISION**

**Keywords: Finding of fact (65.9)**

*The DBS's Barring Decision did not involve mistakes of fact on which the Barring Decision was based. Nor did it involve material errors of law.*

*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 judge follow.*

**DECISION**

**The decision of the Upper Tribunal is to REFUSE the appeal and to confirm the DBS's decision.**

**The Disclosure and Barring Service's decision of 27 April 2023 did not involve a mistake of fact on which the decision was based or any material error of law.**

**REASONS FOR DECISION**

**Introduction**

1. This appeal deals with whether there were one or more mistakes of fact or errors of law in the decision of the Disclosure and Barring Service (the "**DBS**") on 27 April 2023 under the Safeguarding Vulnerable Groups Act 2006 ("the "**SVGA 2006**") to place the Appellant's name on the Adults' Barred List (the "**Barring Decision**").
2. We refer to the Appellant in the case reference by the initials "JG". We make a Rule 14 Order to protect her anonymity and privacy and confirm the Rule 14 Order previously made to protect her anonymity and the anonymity and privacy of others involved.

### A summary of the factual background

3. JG was employed as a care assistant and senior care assistant at a care home providing adult care to residents. JG was referred to DBS in relation to an incident that occurred with a care home resident “BB”, while she was working at the care home on 17 October 2022. The investigation into the incident identified other matters as well that were said to have happened in the months and weeks leading up to 17 October 2022. The other incidents were said to have involved care home residents MC, LG and WM.
4. Having carried out its investigation on 28 October 2022, JG’s employer (“TC”) decided to end her employment due to unsatisfactory performance in her role. TC wrote it was legally entitled to terminate JG’s employment without using the disciplinary process as she was within her first two years of service.
5. TC referred JG to the DBS on 03 November 2022. It provided the DBS with details of the investigation, including minutes of investigation meetings with other staff members at the home. These were staff members JA, CW and JF. The referral also described a fourth colleague, RA, having disclosed matters about JG, but did not provide any minutes or statement from her. In the referral to DBS, TC described JA, CW, JF and RA as whistle blowers about JG’s behaviours.
6. The DBS sent JG a minded to bar letter on 21 February 2023, with various attachments. The DBS did not receive any representations from JG.

### The Barring Decision

7. On 27 April 2023, the DBS found it proved on the balance of probabilities that:
  - (a) On 17 October 2022, JG was verbally and physical abusive to BB, pushing him by his shoulders and grabbing his arms shoving him in his chair and threatening to call the police on him;
  - (b) On a number of occasions including an instance in or around March / April 2022, JG was verbally abusive towards WM, including rough handling her, pushing her back into a chair, grabbing her face, telling her to “*shut the fuck up*” and “*You don’t pay my fucking wages [employer] does.*” or words to that effect;
  - (c) On an unspecified date, JG assaulted LW causing a fingernail mark to her right hand; and
  - (d) On unspecified dates, JG pushed MC back into her chair.
8. The DBS decided this amounted to “relevant conduct” in relation to vulnerable adults and that JG’s conduct would also amount to relevant conduct with a child, if repeated in relation to them. DBS decided it was appropriate and proportionate to place JG’s name on both the Adults’ Barred List and the Children’s Barred List.

**Permission to appeal**

9. On 26 May 2023, the Upper Tribunal received JG's application for permission to appeal against DBS's decision. The DBS sent JG a copy of the bundle of papers and cover letter on 07 July 2023, but it was returned undelivered. The Upper Tribunal's correspondence with JG was also returned undelivered. In July 2024, the DBS was able to make contact with JG by email, and she provided an updated postal address.
10. JG is an inpatient receiving mental health care. The DBS and the Upper Tribunal held a different address for JG, namely her previous postal address. This explains why post sent to JG's postal address was returned undelivered.
11. On 22 April 2025, the Upper Tribunal held a video hearing of JG's application for permission to appeal. JG took part, supported by ES, who was identified to the Tribunal as there to provide JG with support.
12. On 25 April 2025, Upper Tribunal Judge Butler granted JG permission to appeal against the DBS's decision on the basis the following grounds were arguable:
  - (a) JG had indicated she disputed the allegations the DBS found proved against her and was willing to give evidence about them at a hearing. If JG gave evidence that the Upper Tribunal found credible, this might indicate the DBS made a mistake of mistakes of fact in deciding the allegations against JG were proved;
  - (b) The DBS had relied on what TC had described as evidence from RA, but that evidence had never been disclosed to the DBS. In relying on such evidence, the DBS might have made an error of law (for example by making factual findings for which there was insufficient evidence, giving weight to immaterial matters, or placing undue weight on evidence that could not be considered reliable);
  - (c) The DBS made a mistake of fact in finding JG showed no remorse in relation to the matters investigated by her employer TC;
  - (d) The DBS made a mistake of fact in finding that JG did not disclose her previous written warning when she had her job interview with TC on 25 May 2021;
  - (e) The DBS may have made a mistake of fact in finding JG posed a risk to adults or children; and
  - (f) The DBS may have made an error of law by making a disproportionate decision that restricted JG's future employment opportunities and the chance to support herself financially.
13. The appeal grounds listed at paragraph 12(c) to (f) above represented JG's appeal grounds that Judge Butler were considered arguable, although she

commented that it was not immediately clear they would establish a mistake of fact or error of law by the DBS.

14. Judge Butler decided not to grant permission to appeal in relation to two grounds JG had put forward, on the basis she did not consider them arguable with a realistic prospect of success, explaining her reasoning at paragraphs 36 to 37 of the decision dated 25 April 2025. The grounds where Judge Butler refused JG permission to appeal were:
  - (a) the police discontinued its investigation into JG after October 2022, and this meant she was found not guilty of the matters the DBS found proved; and
  - (b) the DBS decided to put JG on the Children's Barred List because JG received a final written warning for a specific incident with a 13-year-old student in her previous employment with children, but JG continued to work and support that student and they had a great relationship.
15. Because Judge Butler refused JG permission to appeal on the grounds summarised at paragraph 14 above, the Upper Tribunal did not need to consider those grounds as part of JG's appeal. We have therefore not considered them further.

### **The Upper Tribunal substantive oral hearing**

16. We held an oral hearing of JG's appeal by video (Cloud Video Platform) on 13 November 2025. JG represented herself. She was supported at the hearing, again, by ES, and we were told that ES is a registered psychologist involved in JG's care. The DBS was represented by Mr Tim Wilkinson, a barrister representing the DBS. We were grateful to all those taking part, including JG for talking with us.
17. At the start of the hearing, Judge Butler, and Ms Bainbridge, a specialist member of the Upper Tribunal with experience and expertise in mental health matters, asked JG and ES some questions. We asked these questions to make sure we were satisfied it was fair and just to proceed, in circumstances where JG was an inpatient receiving mental health care.
18. JG confirmed she remained an inpatient and that her consultant psychiatrist knew she was taking part in the appeal hearing and was happy for this to happen. Asked if she felt in a position where she was happy to go ahead, JG said yes, and confirmed her mental health state was good enough for this. Asked if her care team had a plan to support her after the tribunal hearing, JG said she thought so.
19. Asked the same question, ES confirmed that the hearing had been discussed in JG's multidisciplinary review and everyone, including her consultant psychiatrist, was aware. ES confirmed JG would be offered extra support after the tribunal.
20. In the circumstances, we decided it was fair and just to hold the hearing, although we explained we would keep this issue under review as the hearing went on.

21. We emphasised to JG that it was important she took a break when she needed one. We asked ES to let us know if they thought JG needed any form of break or if we should adapt or change questions in any way. We gave JG a break of five minutes after Mr Wilkinson had cross-examined her because she said she would like a break and she and ES felt five minutes was enough time. We gave a longer than usual lunch break as well, with the morning part of the hearing ending at 12.37 and the afternoon starting at 2pm.
22. JG confirmed she had a copy of the DBS bundle available and used it during the hearing when required. When granting JG permission to appeal, Judge Butler had directed the DBS to obtain further documents from JG's former employer, including any records made about the alleged incidents, any statement or investigation meeting minutes about RA, and any other documents that were produced in the investigation process. The investigation meeting minutes referred to allegations that the investigating manager knew about before those meetings took place. This suggested there were, potentially, other documents available. Judge Butler directed the DBS to obtain and provide copies of these if they existed.
23. The bundle available at the point of granting JG permission to appeal ran to page 173. We received additional documents disclosed by JG's former employer to the DBS. These included:
  - (a) A signed handwritten statement dated 18 October 2022 from RA, the copy of which was cut off in places, but which could still be read and understood;
  - (b) Printed off handheld phone device ("phone") entries for assistance JG provided to care home residents on four separate occasions. Some of these had dates. Two of them referred to the resident by their first name and therefore related to LW and WM;
  - (c) A signed handwritten statement dated 18 October 2022 from JA;
  - (d) A signed handwritten statement from JF dated 28 October 2022;
  - (e) A signed handwritten letter from CW dated 18 October 2022; and
  - (f) A suspension letter dated 19 October 2022 from JG's former employer TC, confirming she was suspended on the basis of being physically and verbally aggressive towards residents.
24. Given that JG is an inpatient and has a team providing her with care, we asked if she would be willing for us to contact her care team before sending her a copy of our Decision. We explained this was to make sure that our decision is shared with JG in an effective way. JG gave her consent orally to this, and it was witnessed by ES. Before issuing this Decision to the parties, the Upper Tribunal will therefore contact JG's care team in accordance with the consent she gave us.

## The legal framework for Barring Decisions

25. The SVGA 2006 is an Act of Parliament. It provides two Barred Lists, one for vulnerable adults and the other for children. Schedule 3 to the SVGA 2006 sets out the provisions about behaviours in respect of adults and children. It sets out a number of ways in which the DBS may decide to include a person's name on a Barred List. In the present case the DBS relied upon the 'relevant conduct' gateway. This required the DBS to be 'satisfied' of three matters, namely:
- (a) that JG was at the relevant time, had in the past been, or might in future be, 'engaged' in, 'regulated activity' in relation to vulnerable adults or children (paragraphs 3(3)(aa) and 9(3)(aa) of Schedule 3 to the SVGA 2006);
  - (b) that JG had 'engaged' in "relevant conduct" (paragraphs 3(3) and 9(3)(a) and paragraph 10 of Schedule 3); and
  - (c) that it was 'appropriate' to include JG on the Adults' Barred List (paragraphs 3(3)(b) and 9(3)(b) of Schedule 3).
26. Where the DBS was satisfied of all three matters at paragraph 25 above, paragraph 9(3) of Schedule 3 to the SVGA 2006 required it to place a person's name on the Adults' Barred List.
27. JG did not dispute that she had worked in adult care by working at the care home or that she had worked with children in her previous employment. JG therefore satisfied paragraph 25(a) above.
28. In terms of paragraph 25(b) above, the DBS's position was that JG had engaged in relevant conduct in relation to vulnerable adults, namely conduct which endangered or was likely to endanger a vulnerable adult. This related to the allegations summarised at paragraph 7 above, about how JG's behaviours towards BB, LW, MC and WM. The DBS decided this also constituted relevant conduct in relation to children, because if JG's conduct towards the care home residents was repeated in relation to a vulnerable adult it would (or was likely to) endanger them.
29. JG's case is that she did not engage in the conduct alleged and the DBS's decision that she did, involved it making several mistakes of fact.
30. In terms of paragraph 25(c) above, "appropriateness" is not a matter for the Upper Tribunal, unless the decision-making around the issue of appropriateness is irrational. The Upper Tribunal can, however, consider whether a Barring Decision is proportionate (see *KS v DBS* [2025] UKUT 045 (AAC)).
31. Section 4 of the SVGA 2006 sets out the circumstances in which an individual may appeal against the inclusion of their name in a Barred List. A person can only appeal a Barring Decision with the Upper Tribunal's permission (see section 4(4)).

32. There are limited grounds on which a person can appeal a Barring Decision. These are that either the DBS has made a mistake on any point of law, or it has made a mistake in any finding of fact which it has made on which the Barring Decision was based (see section 4(1) and (2)). Section 4(3) provides that, for the purposes of section 4(2), whether or not it is ‘appropriate’ for an individual to be included in a barred list is “not a question of law or fact” and, to that extent at least, is non-appealable.
33. Section 4(5) of the SVGA 2006 provides that unless the Upper Tribunal finds that the DBS has made a mistake of law or fact, it must confirm the DBS’s Barring Decision.
34. If the Upper Tribunal decides the DBS has made a material mistake of law or a mistake of fact on which the Barring Decision was based, the Upper Tribunal can either: (a) direct the DBS to remove the person from the barred list(s) or (b) remit the matter to the DBS to make a new decision. In these circumstances, the usual order will be for the Upper Tribunal to remit (send back) a matter back to the DBS unless no decision other than removal is possible on the facts (See **DBS v AB** [2021] EWCA Civ 1575). If the Upper Tribunal remits a matter to the DBS under section 4(6)(b), it may set out any findings of fact it has made on which the DBS must base its new decision. Furthermore, the person must be removed from the list until the DBS makes its new decision, unless the Upper Tribunal directs otherwise.
35. The Court of Appeal has made several recent decisions about the relevant principles to apply when considering how the Upper Tribunal can deal with the question of a mistake of fact in a DBS decision. See **DBS v JHB** [2023] EWCA Civ 982; **Kihembo v DBS** [2023] EWCA Civ 1547; and **DBS v RI** [2024] EWCA Civ 95 (“**DBS v RI**”). These Court of Appeal decisions are binding on the Upper Tribunal, and it must apply the relevant principles set out in them.
36. In dealing with an appeal, the Upper Tribunal is entitled to hear oral evidence from an appellant and assess it against the documentary evidence on which the DBS based its decision (see paragraph 29 of **DBS v RI**). The Court of Appeal confirmed the Upper Tribunal is entitled to assess whether an appellant’s evidence is credible and if so, to decide whether it indicates the DBS made one or more mistakes of fact on which the Barring Decision is based.
37. The decision of the presidential panel of the Upper Tribunal in **PF v DBS** [2020] UKUT 256 (AAC) (“**PF v DBS**”) is also relevant to the mistake of fact jurisdiction of the Upper Tribunal. In **PF v DBS**, the Upper Tribunal explained that a mistake of fact may be in a primary fact, or in an inference, and it may consist of an incorrect finding, an incomplete one or an omission. The Upper Tribunal explained that one way to show a mistake of fact is to call further evidence to show that a different finding should have been made. The Upper Tribunal confirmed the mistake does not have to have been one on the evidence before the DBS and it is sufficient if the mistake appears in the light of further evidence or consideration.

38. In deciding whether the DBS made a mistake of fact or law, the Upper Tribunal has to consider the circumstances as they were at the date of DBS's Barring Decision. In JG's case, this was 27 April 2023.

### Incident 1 (involving BB)

39. This incident took place on 17 October 2022. The documentary evidence about this comprised: minutes of an investigatory meeting on 24 October 2022 with JG, minutes of an investigatory meeting on 21 October 2022 with JF, the handwritten statement from JF dated 28 October 2022, and the care plan for BB, updated to 17 October 2022.
40. JF had stated she was on a shift with JG and JG spent most of the morning talking about BB and an incident that had happened over the weekend with another resident. JF reported JG said: *"I hate him, me"*, and said she would have called police had she been the other resident's daughter. JF stated that on 17 October 2022, BB lashed out at another resident (DT). JG went over to BB and told him not to shout but BB hit out at JG. JF said she saw JG push BB back in the chair by his shoulders, their arms were interlocked, his chair was twirling around, and it was like a tug of war between them. JG then said: *"Do you want me to call the police on you because I will?"*. JF said JG said she would put this down as an incident in the phone.
41. The care plan for BB described that he may be short tempered, use a harsh tone and make rude comments. His daughters had told staff at the care home that at times BB did not like females telling him what to do or helping him, especially if they were young. They suggested speaking assertively and not appearing intimidated by BB. The care plan recorded that on 14 October 2022, LW was found in BB's room standing over him while he was in bed, pulling BB's duvet off him. BB was hitting LW with a remote control. BB had no injuries, but LW had a swollen eye and a bloody lip (page 74 of DBS bundle). There is no reference in the care plan to the incident involving JG on 17 October 2022. Nor do we have a phone entry relating to the incident.
42. In her oral evidence JG confirmed there was an incident with BB on 17 October 2022, and he was in in a wheelchair with the brakes not applied. JG went into the dining room. She saw BB attempt to hit DT, JG went over to redirect him and BB grabbed at JG. JG said she grabbed both of BB's wrists and pushed into him for BB to let go, but he would not do so. JG said the wheelchair was spinning around. JG said she asked BB to stop, and she and BB did not really say anything to each other after that. JG said she did not say anything to BB once he let her go. When asked by Mr Wilkinson later on, JG confirmed she had been talking to JF about BB that morning and she threatened to call the police. She thought BB was nasty for what he was doing, but never said she hated him. JG said JF was right about some things, but not that.
43. In the investigation meeting on 21 October 2022, JG was recorded saying she did not push BB into the chair by his shoulders because he had hold of her arms. She said she supposed it was like a tug of war, because she was trying to pull away but BB would not let go. JG said the other staff member present did not

help. JG said there was no force, but she was shouting at BB to let go. Asked if she threatened BB with the police, JG said she probably did, but said she knew she shouldn't have. In the investigation meeting JG also said that JF told her to have a break after the incident with BB.

44. We do not fully accept JG's oral evidence. We realise she was trying to remember matters from three years earlier. We consider it more likely that she did shout at BB, repeatedly, because he wouldn't let go of her and it would be unusual to experience this silently without saying something to him. We also consider it was more likely that JG did threaten to report him to the police. That was reported relatively contemporaneously by JF, and JG accepted three days later that she probably did say it. We did not place particular reliance on JG's oral evidence that she did not say anything about calling the police. JG accepted in cross-examination that she had made the comment about the police, but said she only said it once, not continuously. This seemed to us more likely than not saying it at all.
45. We make clear, however, that we do not consider it inappropriate for JG to tell BB that she would call the police. The context was one where JG effectively described being assaulted by BB because he had hold of her and would not let go. Furthermore, saying it to BB might have stopped the incident more quickly because it would encourage him to let go.
46. Both JG and JF described the incident with BB going on for a few minutes, although we realise it is difficult to accurately keep time about how long things take. JF described being shocked by the incident as an explanation of why she did not raise the alarm while it was taking place. JG told her manager on 24 October 2022 that JF told her to take a break after the incident occurred. This suggests it was a significant one (or that JF viewed it that way). JG confirmed she had worked with JF regularly for a few months by October 2022 and got on with her ok. When asked by Mr Wilkinson, JG confirmed she had no particular reason for why JF might make things up. It appears the incident with BB on 17 October 2022 was the catalyst for staff members coming forward to report other matters involving JG, because a number of them wrote statements the following day on 18 October 2022.
47. We accepted JG's evidence that for at least some of the incident, she was pushing at BB by having hold of his wrists. This seemed to us the most likely mechanism for the "tug of war" JG and JF both described, because if JG was standing over BB while he was sitting in a wheelchair and pushing him by the shoulders, he would find it difficult to push back. JG also said she used breakaway techniques for getting BB to let go. She demonstrated that technique to us. Relying on the expertise of the panel, we considered the technique JG demonstrated was one commonly used and using it would be consistent with her grabbing BB's wrists. We are therefore satisfied that for at least part of the incident, JG had hold of BB's wrists, not his shoulders. However, JF consistently described JG having hold of BB's shoulders for at least some of the incident as well. This might be mistaken, but according to JG, JF was standing close enough to see what was happening. JG explained JF was close enough to expect her to help but did not do so.

48. We consider it more likely than not that JG did shout BB's name several times and told him she would call the police. We have considered whether the way JG was speaking to BB might simply reflect the general handling advice from BB's daughters to act assertively. However, JG told her manager after the incident she knew she shouldn't have done it, and JF told JG to take a break after it happened. This suggests that viewed overall, JG's actions went beyond simply acting assertively to overcome BB's behaviours towards young female carers.
49. We are satisfied that for at least some of the incident, JG was holding BB by the wrists, and not by his shoulders. However, we are not satisfied on the balance of probabilities that the DBS made a mistake of fact by deciding that she (separately) pushed his shoulders, grabbed his arms, and shoved BB around during the incident. Nor was there a mistake of fact in finding that JG shouted at BB and threatened to report him to the police.

### Incident 2 (involving WM)

50. This allegation involved undated incidents in around March or April 2022. The allegation was that JG was verbally abusive towards WM, handled her roughly, pushed her back into a chair, grabbed her face, and swore at her.
51. The written evidence about this comes from CW in minutes of an investigation meeting dated 25 October 2022 and CW's handwritten statement dated 18 October 2022. It also came from JA in minutes of an investigation meeting dated 22 October 2022 and her handwritten statement dated 18 October 2022. The written evidence also comes from JG's investigatory interview minutes dated 24 October 2022. It also comes from the handwritten statement of RA dated 18 October 2022.
52. CW's handwritten statement stated WM was complaining JG was being rough with her when getting her undressed and showering her and WM then said: "*Go steady, water is cold!*". CW stated JG said: "*Fuck off [WM]*" and pushed her on the chair and grabbed WM's face, at which point CW said: "*Look [JG] don't do that*". In the investigatory meeting, CW's manager asked if JG was being quick with WM rather than rough. In reply, CW said there was a way to be with WM and JG was not rushing, she was rough. CW also said that had it been anyone else (than JG) they would have warmed the water up, but JG was: "*getting annoyed, you know when she is getting that way*". CW described intervening by saying: "*Bloody hell [JG] that's enough, relax and calm down a bit*".
53. In the investigatory meeting on 25 October 2022, JG said she was not rough with WM when showering her, but you have to be fast because WM would want things done straight away and WM would grab at her. JG remembered an incident where WM told her to go steady, and that she told JG the water was cold. Asked in the meeting whether she had grabbed WM's face, pushed her back on the shower chair and swore, JG said she never grabbed WM's face. JG said she might have pushed her onto the shower chair when WM was standing up. JG accepted this was not the proper way to do it but stated "*you panic*" when you know they could fall. JG denied swearing at WM. She said the other carer did not respond to what happened.

54. The written evidence from JA was that she witnessed JG saying to WM: “*You don’t pay my fucking wages, [TC] does*”. JA said WM was sitting at the table, shouting, and asking if it was her turn to go to bed. JG swore at her and then said she hadn’t had this at the previous care home where she worked and wouldn’t have it from WM. In her handwritten statement, JA said JG told her she doesn’t like WM, JA told her not to speak to residents that way and that if she needed a breather, she should go outside. In the investigatory meeting, JA said something similar, although she said she told JG to go for a breather (and JG was quite irate at the time).
55. JG told us she did remember an occasion when WM told her to go steady, although, when asked, explained she was not sure what made it stick in her mind. JG confirmed she did push WM back into her chair, and this was not the correct approach. Asked if she was frustrated, JG said yes, but that she did not grab WM’s face or swear at her. JG said she did not swear. At another point during the hearing, JG confirmed she would use swear words but said she did not swear at work.
56. The handwritten statement from RA described witnessing WM saying JG had pushed her and grabbed her wrist. RA wrote that JG said: “*Stop lying, I never touched you*”. RA found WM was really upset. RA also described an incident when she found JG standing over WM and asked what she was doing. RA wrote that JG said: “*I was just telling her to stop shouting*”. RA stated she told JG not to speak to WM in that manner and JG did not speak to RA for the rest of their shift.
57. JG told us she recalled an incident when WM tried to stand up as she was changing her, and that JG got hold of her hands (the palm) and sat her back down. JG told us that WM said she had grabbed her wrist and JG replied that she didn’t grab her wrist, she took WM’s hand because she was going to fall. JG confirmed she remembered an incident when WM was in bed, JG went to her room and said: “*Can you please stop shouting, what’s the matter?*”. JG said that she then left WM’s room and WM carried on shouting.
58. JG told us that CW and JA were in a relationship and living together. She said that she was having an affair with CW behind JA’s back. The affair went on for a couple of months. JG said she thought JA reported the alleged incidents maliciously because she found out about the affair about a month before JG was suspended. JG said JA shouted at her and CW when she found out. Mr Wilkinson asked JG if CW was reporting her maliciously, and JG replied: “*No, I don’t know*”.
59. Asked about RA, JG said she was a senior (care assistant), she had worked with her since a bit after she started at the home, and RA’s daughter was living with JG in late 2022. JG told us she had a good relationship with RA. We have taken this into account.
60. We agreed with Mr Wilkinson that it would be unusual for JG to remember a routine action of showering WM unless something happened when she did so. Three different staff members described concerns about JG’s behaviours with WM on separate occasions. We recognise JG provided a reason (the affair) for why JA (and, to an extent, CW) might not have been truthful about what had

happened. However, we identified no reason for RA not to be truthful when reporting WM was really upset and JG grabbed her, and reporting the time when JG was in WM's bedroom.

61. According to RA, what happened in WM's bedroom concerned her enough to tell JG that she should not speak to WM in that way. RA said JG wouldn't speak to her for the rest of the shift. CW's handwritten statement described a similar behaviour, in the context of LW. We consider this lends credibility to both CW and RA's accounts on this point. In that context, even in given JG's evidence about an affair with CW, we do not consider JA's evidence, which is broadly consistent about WM in a different factual context, to be unreliable.
62. We have taken into account that JG told us she did not swear, and that she clarified she meant she did not swear at work. We have also taken into account that JA described a change in JG after a family member became unwell, saying "*there was a change to her, there was nothing like physical but verbally*". The minutes of the investigation meeting with JF included her describing that JG seeming really professional when they first started working together but it felt like things had slipped. JF said JG would swear under her breath when doing things. In her later handwritten statement, JF said she had heard JG speak to residents in an unacceptable and unprofessional manner and just unacceptable general swearing. JF's description of JG's behaviour generally is consistent with the allegations that CW and JA made about her swearing. The overall indication we have taken from this evidence is that JG's behaviours at work changed over time and she was expressing frustration with the residents, consistently with what was described about WM.
63. On the balance of probabilities, we are not satisfied the DBS made a mistake of fact in relation to the allegations involving WM.

### **Allegation 3 (involving LW)**

64. This allegation was that on an unspecified date JG assaulted LW causing a fingernail mark to her right hand.
65. The written evidence about this came from CW's handwritten statement dated 18 October 2022 and the minutes of the investigatory meeting on 25 October 2022. The written evidence about this also came from the minutes of the investigatory meeting with JG on 24 October 2022. We heard evidence from JG about this.
66. CW described hearing a commotion (handwritten statement) and LW making a high-pitched noise and shouting (investigatory meeting). CW said this was the sound LW made when she was not happy and not her singing sound. CW described going in to see LW and noticed a nail mark on her right hand, which was bleeding but not much. CW described asking JG about it and JG replying that she didn't know about it (investigatory meeting – page 119). CW's handwritten statement described seeing a mark on LW's hand that was bleeding. CW asked JG what happened and JG shouted at LW: "*You should be good [LW]*" and walked away and did not speak to CW for the rest of the shift (page 203 of DBS bundle).

67. In the investigatory meeting, JG said she did not recall LW having a mark on her hand that was bleeding and that she had never been asked about this. Asked if she had ever shouted at LW and told her to be good, JG said: "*I probably have shouted at her in the moment as she is very handsy and difficult*". Asked about a commotion in LW's bathroom, JG said she couldn't do LW on her own and LW would have been done in twos (two carers working together).
68. Mr Wilkinson asked JG about the allegation involving LW and if she remembered CW asking what happened to LW's hand. JG said she remembered CW asking her about this. Asked if she looked at the mark, JG said yes and that she did not know how LW had done it. She described it as a little line.
69. When Mr Wilkinson suggested the mark came from JG, she replied: "*I don't recall making the mark but if that's what you're going to say*". We did not consider this an admission by JG but more of an indication that Mr Wilkinson was putting accounts to her; she did not necessarily agree, but she acknowledged that this was what he was saying.
70. The handwritten statement from CW provides context for the question JG was asked about shouting at LW and telling her to be good, which JG agreed in the investigation meeting that she had probably done. We have also taken into account that the handwritten statement from CW describes the same behaviour that RA reported. This was that when asked to stop behaving in a specific way, JG would not speak to the other staff member for the rest of the shift. In our view, this adds credibility to what was in CW's handwritten statement.
71. JG agreed with her employer that she probably had shouted at LW in the moment. This statement makes sense when tied to what CW described. It is consistent with something happening with LW which JG considered represented her not being good. JG said it in response to CW asking where the mark on LW's hand had come from. We therefore assessed the two statements were connected. Overall, we consider this evidence supports the allegation the DBS found proved.
72. On the balance of probabilities, we are therefore not satisfied that allegation 3 involved the DBS making a mistake of fact.

#### **Allegation 4 (involving MC)**

73. This allegation was that on unspecified dates JG had pushed MC back into her chair.
74. The written evidence about this came from CW's handwritten statement and the minutes of the investigatory meeting with her on 25 October 2022. In the minutes, CW said JG would push MC by her shoulders into the chair rather than hold her hands and do it properly to assist MC to sit down. Asked if JG might be panicking about MC falling, CW said there was no way (page 121). CW's handwritten statement described walking into the lounge many times and seeing JG push MC down on her chair (page 203).

75. Asked about this in the investigatory meeting, JG said she hadn't pushed MC into her chair and that MC would always try to stand up so JG would go to her, ask her to sit down and help her sit back in her chair.
76. Mr Wilkinson suggested that JG accepted she had pushed a different resident (WM) into her shower chair using the wrong technique. He suggested to JG that given this and CW's statement, the way in which JG got MC to sit back down on numerous occasions was not the proper technique and involved pushing MC into the chair. JG replied: "*Maybe, yeah*". Again, our assessment was that JG was acknowledging the question Mr Wilkinson asked rather than making an admission that this is what she did.
77. Having considered the handwritten statement from CW and reading the investigatory meeting minutes in that context, we do not consider CW was reporting JG panicking and using the wrong technique to get MC to sit down. While we do not consider JG made any admission about this, having weighed up the evidence overall, we consider CW's explanation that JG pushed MC into her chair more than once, to be more convincing.
78. On the balance of probabilities, we are therefore not satisfied allegation 4 involved the DBS making a mistake of fact.

#### **Overall assessment on the four allegations and the evidence about them**

79. We have concluded the DBS's findings of fact about the four allegations did not involve mistakes of fact. This does not mean that we considered what JG told us to be false, or that we rejected all her evidence. That was not the position. A person can recall matters clearly, but incorrectly. In any event, more than 3 years had passed since the allegations made about JG.
80. As explained above, we did not consider JG made significant admissions about the allegations during the appeal hearing. Our assessment was that JG was responding to what was being put to her by Mr Wilkinson in terms of "maybe"s and "possibly"s, rather than specifically admitting to the behaviours Mr Wilkinson was alleging. These answers seemed to respond to what Mr Wilkinson suggested, sometimes by him asking the same question in a range of ways – that *maybe* it was this way, or *possibly* it happened in that way. What Mr Wilkinson described to us as JG's admissions were made towards the end of the hearing, after she had been giving evidence for some time. We note that JG asked for a break after cross-examination. We have no doubt she found the overall process of giving evidence to be stressful and tiring, especially being asked detailed questions about matters that were now several years old.
81. The evidence we found to be most reliable in understanding what had happened was the documentary evidence. This included the investigatory meeting minutes for JA, JF, and CW, as well as the minutes for the meeting with JG on 25 October 2022. We found some of what JG described in that meeting to be helpful for understanding what had happened.

82. We found the handwritten statements from JA, JF, CW and RA to be helpful evidence. They were contemporaneous and written in the own words of the care staff members involved. We found the handwritten statements from JF and RA, in particular, to be important because JG confirmed she had no problems at work with either of those colleagues.
83. We found that when the evidence was read together as a whole, including with JF and RA's handwritten statements, it was generally consistent with a series of events that happened over time, which showed JG finding it more difficult being at work. In finding this, we have taken into account that the care plans describe some very challenging behaviours from the care home residents, including against each other, but also towards the care assistants. This is confirmed in all the statements. We have considered the allegations in that context.
84. We have also considered the allegations in the context of JG's own health. We recognise she had been experiencing a difficult time after returning to work from long-term sickness. The difficulties included her personal circumstances (health of family members) and her own health challenges. The type of work to which she returned was stressful. Several of the other care assistants described a noticeable change in how JG was coping with the work, compared with how she had managed it before.
85. Although we have explained our analysis of the individual allegations above, we have explained our general evaluation of the evidence, so that JG can know what we have taken into account.

### Other appeal grounds

86. One of JG's arguments was that the DBS was wrong to find she had not declared her final written warning at her initial job interview with TC. Having considered this, however, we are not satisfied that the DBS made any finding on that issue as part of its Barring Decision. The DBS took the final written warning into account in its initial assessment, recording it in the Barring Decision Summary as JG referring to having been reported for not using the correct technique. The DBS also took it into account as: "Other relevant information". It did so, however, by reference to what JG said in interview about having received a final written warning for not using correct techniques in a previous employment. The DBS did not rely on it as showing JG failed to disclose that fact to TC in her interview (see pages 143 to 144 of the DBS bundle). We are therefore not satisfied the DBS made any mistake of fact on this issue.
87. We have not identified any material mistakes of fact in the DBS finding the four allegations proved against JG. Given this, we are not satisfied that the other grounds on which she was given permission to appeal show a mistake of fact or a material mistake of law by the DBS. Having applied the analysis in **KS v DBS** [2025] UKUT 045 (AAC), and given the behaviours the DBS found proved, we do not consider the DBS's Barring Decision was disproportionate. Nor do we consider its assessment of JG's insight and remorse to contain mistakes of fact, given the allegations it found proved against her.

88. Having now seen the statement from RA, we do not consider the DBS made an error of law in the limited way in which it took account of what she had reportedly said. The DBS did not find that JG had admitted to RA that she pushed BB. The DBS acknowledged it did not have direct evidence on that point. We do not have direct evidence from RA on it either - it is not in her handwritten statement. This does not, however, matter since the DBS did not make a finding about it. We therefore found no error of law in relation to that appeal ground.

### **Conclusion**

89. We have decided the DBS did not make any mistake of fact on which the Barring Decision was based. We have decided the DBS did not make any material error of law in the Barring Decision. Applying section 4(5) of the SVGA 2006, we therefore confirm the DBS's decision and refuse JG's appeal.

**Judith Butler**  
**Judge of the Upper Tribunal**

**Elizabeth Bainbrige**  
**Specialist Member of the Upper Tribunal**

**Matthew Turner**  
**Specialist Member of the Upper Tribunal**

Authorised by the Judge for issue on 19 March 2026