Neutral Citation Number: [2026] UKUT 179 (AAC)
Appeal No. UA-2025-000226-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

SK

Appellant

- v -

DISCLOSURE AND BARRING SERVICE

Respondent

THE UPPER TRIBUNAL ORDERS that, without the permission of the Tribunal:
No one shall publish or reveal the name or address of any of the following:
(a) SK, who is the Appellant in these proceedings,
(b) BM, who is the service user mentioned in the documents and during the hearing, and
(c) BS and MN, who were colleagues of the Appellant,
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.

Before:	**Upper Tribunal Judge Church and Tribunal Members Bainbridge and Jacoby**
Hearing date(s):	30 March 2026
Mode of hearing:	Face-to-face hearing at Field House, London

Representation:

Appellant:	Mr Jibreel Tramboo of counsel, instructed by MT UK Solicitors
Respondent:	Mr Andrew Webster of counsel, instructed by the Disclosure and Barring Service

*On appeal from the Disclosure and Barring Service (**"DBS"**):*

DBS reference: 01031513762
Final Decision Letter: 21 November 2024

SUMMARY: Safeguarding Vulnerable Groups (65)

Safeguarding Vulnerable Groups Act 2006 – section 4(2)(b) – allegation by a colleague that while working as a care assistant the appellant hit, swore at, and neglected a vulnerable adult service user in her care – DBS found allegations proved and decided it was appropriate and proportionate to place appellant's name on Adults' Barred List. The Upper Tribunal heard fresh evidence but was not persuaded that the DBS made any mistake on any point of law or in any finding of fact on which its decision was based.

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

This decision is given under section 4 of the Safeguarding Vulnerable Groups Act 2006 (the **"2006 Act"**).

The decision of the Upper Tribunal is to dismiss the appeal.

DBS did not make a mistake on any point of law or in any finding of fact on which its decision of 21 November 2024 to place SK's name on the Adults' Barred List was based.

REASONS FOR DECISION

Introduction

1. This appeal concerns SK, who at the time relevant to this appeal worked as a care assistant at a care home for vulnerable adults.

2. SK's colleague MN made a report to their employer about SK's conduct during a shift that they had worked together. That evening MN made a brief written note setting out her account of the events. I reproduce it in full. It reads:

> "[SK] called me in to help change [BM]. [BM] had messed through her pad and nets. [SK] lifted [bm]'s hands out the way and [BM] moved her hands and said no.[SK] grabbed [BM]'s hand pulled it towards her slapped her arm, you could hear that it stung. [BM] started screaming and [SK] said "Oh fuck off [BM] I do what I want" and said to me "you need to be rough with her sometimes or she wont let you change her. [BM] was screaming the rest of the time we were changing her pad. [BM] had bowl movement on her nighty and [SK] said to leave it because she had no clean ones in the room and that shes only going to poo again anyway so no point. Then [SK] walked out."

3. The employer carried out an investigation into these allegations and found them proved. It made a referral to the DBS.

4. On 21 November 2024 the DBS considered the evidence and decided:

    a. SK's work at the care home amounted to "regulated activity" (for the purposes of the 2006 Act); and

    b. the allegations made by MN that SK had, while working at the care home:

        i. hit BM, who was a vulnerable 93-year-old adult in her care;

        ii. sworn at BM; and

        iii. neglected BM by leaving her in a soiled nightdress

    (together the **"Allegations"**) were proved on the balance of probabilities.

5. Having found the Allegations proved, the DBS decided that SK's conduct amounted to "relevant conduct" in relation to vulnerable adults for the purposes of the 2006 Act. On 21 November 2024 the DBS decided that it was appropriate and proportionate to include SK's name on the Adults' Barred List (the **"Barring Decision"**).

The grounds of appeal

6. SK advanced four grounds of appeal.

Ground 1: Material mistake of fact

7. The heart of SK's case is that the DBS was mistaken in finding that she hit and swore at BM, and while SK accepts that she did leave BM in a soiled nightdress, the DBS was mistaken in finding that to be evidence of neglect on SK's part rather than the consequence of systemic failings of her employer.

Ground 2: Evaluation of the evidence

8. Ground 2 criticises the DBS's evaluation of the evidence, and in particular its reliance on SK's employer's investigation, which SK says was flawed, coercive and unfair.

Ground 3: Assessment of future risk not properly grounded in evidence

9. Ground 3 challenges the DBS's assessment that SK posed an unacceptable future risk of harm, which was built upon the disputed incident and inferences drawn from the notes of the employer's investigation and which failed to give appropriate weight to counter-indicators such as SK having worked for 20 months without concerns being raised in relation to physical abuse.

Ground 4: Disproportionate interference with SK's Article 8 rights

10. Ground 4 criticises the DBS's "formulaic" reasoning on the balancing of SK's Article 8 rights with the need to protect vulnerable adults from harm. It argues that even if Grounds 1-3 are dismissed, the DBS failed properly to weigh material matters in SK's favour (her having worked at the care home for 20 months without any concern being raised about physical safeguarding concerns, the assessment of risk being based on a single disputed incident, and given the context of systemic failings of her employer in providing clean clothing and adequate staff).

The grant of permission

11. Following an oral permission hearing I decided that Ground 1 was realistically arguable in the sense that, were the Upper Tribunal to hear live evidence from SK and were that evidence to be tested under cross-examination, SK might persuade the Upper Tribunal that the DBS was mistaken in finding the Allegations proved. I decided that a grant of permission was warranted. While I saw Grounds 2 to 4 adding very little to Ground 1, I agreed to extend the grant of permission to each of the grounds advanced by Mr Tramboo.

Legal framework

The statutory scheme

12. There are multiple gateways under Schedule 3 to the 2006 Act to a person's name being included on a barred list. The Barring Decision (which is the subject of this appeal) relied on the "relevant conduct" gateway, which is explained further below.

The 'relevant conduct' gateway

13. The provisions relating to the "relevant conduct" gateway under the 2006 Act require the DBS to be 'satisfied' of three things:

    a. SK was at the relevant time, had in the past been, or might in future be "engaged" in "regulated activity" in relation to vulnerable adults (see paragraph 9(3)(aa) of Schedule 3 to the 2006 Act);

    b. SK had "engaged" in (see paragraph 9(3)(a) of Schedule 3 to the 2006 Act) "relevant conduct" (defined in paragraph 10 of Schedule 3 to the 2006 Act); and

    c. it was "appropriate" (and proportionate) to place SK's name on the adults' barred list (see paragraph 9(3)(b) of Schedule 3 to the 2006 Act).

14. If the DBS was satisfied of all three matters above, it was required to place SK's name on the adults' barred list.

15. SK does not dispute that the "regulated activity" requirement is met in this case by reason of her work as a care assistant, so item a. in paragraph 13 above was not in issue in this appeal.

The Upper Tribunal's jurisdiction under the 2006 Act

16. Section 4 of the 2006 Act sets out the circumstances in which an individual may appeal against the inclusion of their name in the barred lists or either of them. An appeal may be made only on grounds that the DBS has made a mistake on any point of law or in any finding of fact which it has made and on which the barring decision was made (see section 4(1) and (2) of the 2006 Act).

17. An appeal under section 4 of the 2006 Act may only be made with the permission of the Upper Tribunal (see section 4(4) of the 2006 Act).

18. Unless the Upper Tribunal finds that the DBS has made a mistake of law or fact it *must* confirm the decision of the DBS (see section 4(5) of the 2006 Act). If the Upper Tribunal finds that the DBS has made such a mistake it must either direct the DBS to remove the person from the list or remit the matter to DBS for a new decision.

19. If the Upper Tribunal remits a matter to DBS under section 4(6)(b) of the 2006 Act the Upper Tribunal may set out any findings of fact which it has made (and on which the DBS must base its new decision) and the person must be removed from the list until the DBS makes its new decision, unless the Upper Tribunal directs otherwise.

20. Section 4(3) of the 2006 Act provides that, for the purposes of section 4(2) of the 2006 Act, whether or not it is "appropriate" for an individual to be included in a barred list is "not a question of law or fact".

The relevant authorities

21. An appeal under section 4 of the 2006 Act is not a full merits appeal permitting the Upper Tribunal to substitute its own judgment on the question of appropriateness. An appeal can succeed only if the appellant can demonstrate an error in a material finding of fact or in the approach taken by the DBS as a matter of law.

22. In relation to whether it is "appropriate" to include a person in a barred list, the tribunal has only limited powers to intervene. This is clear from section 4(3) of the 2006 Act and relevant case law. In particular, the judgment as to appropriateness (described by Wyn Williams J in ***R (RCN) v SSHD & ISA*** [2010] EWHC 2761 (Admin) as "the ultimate question") may only be challenged on the grounds that it is irrational, disproportionate or otherwise unlawful (see §104 and see also ***DBS v AB*** [2021] EWCA Civ 1575 (***"AB"***). The DBS is well-equipped to make safeguarding decisions of this kind (see ***AB*** at §§43-44, 55 and 66-75)).

23. When it comes to mistakes of fact, the "starting point" for the tribunal's consideration will be the DBS decision: ***PF v DBS*** [2020] UKUT 256 (***"PF"),*** §51(g). Notwithstanding that, the tribunal will not defer to the DBS on factual matters, but the amount of weight given to the DBS's findings of fact will depend on all the circumstances: ***PF*** at §§49 and 51(f). The evaluation of evidence is not a mistake of fact and therefore, if an appellant does not produce evidence on appeal which was not available to the DBS, then the tribunal may only find that there has been a mistake of fact if it concludes that there is no evidence to support that finding of fact or that it was irrational: ***DBS v JHB*** [2023] EWCA Civ 982 (***"JHB"***) at §§93-95.

24. If the tribunal hears evidence which was not before the DBS, it may be entitled to reach the view that, having heard that evidence, a factual finding of the DBS was wrong: ***JHB***, §95; ***DBS v RI*** [2024] EWHC Civ 95 (***"RI"***), §§28-29. Any mistake of fact must be material in the sense of making a material contribution to the overall decision, to warrant the setting aside of a barring decision: ***PF***, §51(b).

25. Where it is submitted that a decision to include a person on the Adults' Barred List or Children's Barred List amounts to a disproportionate interference with that person's rights under the European Convention on Human Rights (**"ECHR"**), the tribunal must accord "appropriate" weight to the conclusions reached by the DBS on this matter, noting its particular expertise in these matters: ***B v ISA*** [2013] 1 WLR 308. If the tribunal finds that the DBS has exercised its power rationally and in accordance with the purpose of the 2006 Act, "it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights": ***Belfast City Council v Miss Behavin' Ltd*** [2007] 1 WLR 1420.

26. The Upper Tribunal must decide proportionality "for itself", as explained in ***KS v DBS*** [2025] UKUT 45 at §§48-54. However, the Upper Tribunal must do so on the basis of the material that was available at the time or which might have been available (as it existed). See ***KB v DBS*** [2021] UKUT 325 at §§132-135 and ***SD v DBS*** [2024] UKUT 249 at §50.

27. The appeal is against the decision made by the DBS, not simply the contents of the decision letter: see ***XY v ISA*** [2011] UKUT 289 (AAC) (***"XY v ISA"***) at §40. The DBS's decision must "be read fairly and as a whole": ***AB***, §46.

28. At §55 of ***AB***, the Court cautioned: "[The Upper Tribunal] will need to distinguish carefully a finding of fact from value judgments or evaluations of the relevance or weight to be given to the fact in assessing appropriateness. The Upper Tribunal may do the former but not the latter…". At §[43], the Court stated: "…unless the decision of the DBS is legally or factually flawed, the assessment of the risk presented by the person concerned, and the appropriateness of including him in a list barring him from regulated activity…, is a matter for the DBS".

29. In the subsequent Upper Tribunal case, ***AB v DBS*** [2022] UKUT 134 (AAC), the Upper Tribunal decided (albeit in the context of a case that was based on the "risk of harm" rather than the "relevant conduct" gateway) that ***AB*** meant that the Upper Tribunal could consider, on appeal under the 2006 Act, a finding of fact by DBS that an individual poses "a risk" of harm but not a DBS assessment of the "level of the risk posed" (see §§49-52 and 64).

30. In ***MOO v DBS*** [2025] UKUT 321 at §77 the Upper Tribunal explained the limits of its role when it comes to assessment of risk:

> "…[I]t is not within our jurisdiction, when considering whether there have been mistakes of fact, to make our own evaluative judgments as to risk (for example, whether there would be a risk of repetition or future harm). The proper evaluative judgements which should be made based upon the primary facts found are a matter for the DBS as the expert risk assessor. We would not interfere with risk assessments made by the DBS unless such judgements are based on mistakes of primary fact or are irrational (contain a mistake of law)."

31. When considering appeals of this nature, the tribunal "must focus on the substance, not the form, and the appeal is against the decision as a whole and not the decision letter, let alone one paragraph…taken in isolation": ***XY v ISA*** at §40).

32. When considering a barring decision, the tribunal may need to consider both the Final Decision Letter and the document headed 'Barring Decision Summary' that is generated by DBS in the course of its decision-making process. The two together, in effect, set out the overall substantive decision and reasons (see ***AB v DBS*** [2016] UKUT 386 (AAC) at [35] and ***Khakh v ISA*** [2013] EWCA Civ 1341 at §§6, 20 and 22).

33. The statement of law in ***R (Iran) v Secretary of State for the Home Department*** [2005] EWCA Civ 982 indicates that materiality and procedural fairness are essential features of an error of law and there is nothing in the 2006 Act which provides a basis for departing from that general principle (see ***CD v DBS*** [2020] UKUT 219 (AAC)).

34. The DBS is not a court of law. Reasons need only be sufficient/adequate. The DBS does not need to engage with every potential issue raised. There are limits, too, as to how far the DBS needs to go in terms of any duty to "investigate" matters or to gather further information for itself, but it must carry out its role in a way that is procedurally fair.

35. If the Upper Tribunal finds that the DBS made a material mistake of fact or law under section 4(2) of the 2006 Act, it is required under section 4(6) either (i) to direct that DBS removes the person from the relevant list(s) or (ii) to remit the matter to DBS for a new decision. Following ***AB***, the usual order will be remission back to DBS unless no decision other than removal is possible on the facts.

The Appellant's evidence at the hearing

36. Since no witness statement was submitted on SK's behalf, Mr Tramboo took SK to the various accounts she had given of the events of 22 February 2024 as they appeared in the appeal bundle.

37. SK told the panel that the written note of her interview with BS on 22 February 2024 at 7:40pm (at pp. 39-42 of the appeal bundle) was accurate as far as it went, but it was incomplete and "doesn't make sense". When asked to identify what was missing or what doesn't make sense, SK identified the passage beginning at the top of p. 40 of the appeal bundle, which reads as follows:

> BS Did you swear at her and say "fuck off BM, I can do what I want"
> SK No, I don't remember doing that.
> BS So are you saying you did not swear at her?
> SK I can't remember
> BS I would like to think that if I had sworn or hit a resident I would remember
> SK I did not hit her, but I don't remember if I swore, I wouldn't of sworn on purpose
> BS Do you think you may have hit or sworn out of frustration? We are all human and react in different ways, It is human nature to react in defence if BM had reached out or tried to hit you. Do you think you may have brushed her away using your hand to prevent her from putting more poo on you.
> SK I don't think I did, I am not sure if I swore, I swear a lot, so I won't swear anymore
> BS What do you mean you swear a lot, do you swear at other residents?
> SK No I mean I will stop swearing now, I don't swear in the home, I might do if I get scared by something or in the staff room

38. SK said that the penultimate of her recorded responses quoted above ("…I swear a lot, so I won't swear anymore") doesn't make sense and suggested that there must be some words missing. SK confirmed that she considered the note of the interview to be otherwise accurate.

39. SK was taken by Mr Tramboo to the email at p. 44 of the appeal bundle, which is recorded as having been sent by SK to BS on 22 February 2024 (the date to which the Allegations relate) shortly before midnight. SK confirmed that she had sent that email. SK was asked what she meant by the penultimate sentence of that email:

"I want to make it clear that I didn't try to hit BM and if she felt like that, I am sorry but there was no reason and no intention from me"

40. SK explained that she had sought advice from AJ, who worked at the agency that had sent her to the care home, what to do about the Allegations, and AJ had advised her to write down what happened and told her "just say sorry because you weren't bad". SK told the panel that what was said in the email was accurate and true.
41. SK was then taken to the note of her second interview with BS (which occurred on the day after the alleged incident) at pp. 45-53 of the appeal bundle. SK said this was an accurate record of that meeting, save for two inaccuracies:
    a. at p. 48 SK is recorded to have laughed when BS was discussing the allegations against her, and BS is recorded as saying "This is not a laughing matter, this is very serious. There's no point laughing and shrugging it off. It is a massive concern". SK says that she did not laugh.
    b. at p. 50 BS is recorded to have referred to SK saying in her statement that she asked her colleague "could you grab me a new pad". SK says that she didn't ask her colleague for a new pad.
42. Under cross-examination, SK was taken by Mr Webster to an exchange between SK and BS in her first interview (at p.39 of the appeal bundle):

    BS So you did not hit her, when she smeared poo on you?
    SK I did not hit her, I don't know, I can't remember what happened?
    BS Are you saying you are not sure if you hit her?
    SK I did not hit her, I moved my arm and said no [BM] and washed my arm"

43. When it was put to SK that there was some uncertainty in her response, and she didn't appear to remember what had happened, SK said that in saying "I did not hit her" she was being clear.
44. Mr Webster said the "I don't know, I can't remember what happened" comment could not relate to the smearing of poo on her arm, because she had already confirmed what happened in that respect. SK said she didn't know why BS had written down that response. When Mr Webster reminded SK that she had confirmed the accuracy of the record of the interviews with BS, she said that she had missed that page of the interview. SK insisted that she had not said "I don't know, I can't remember what happened" and clearly denied hitting BM.
45. Mr Webster took SK to the following passage in her first interview with BS:

    BS Did you leave BM in a soiled nightie and suggest that she will mess herself again soon, so it won't matter.
    SK No I didn't
    BS So if I go upstairs now, BM won't have a soiled night dress on
    SK No she does
    BS So you did leave her in a soiled nightdress then?
    SK We had no other clothing in the bedroom
    BS So you left her in a soiled nightdress
    SK Yes I am sorry

46. SK said that there were two carers in the room (her and MN), and they had equal responsibility, so whatever she did to BM, MN did it too. SK said that if she had seen someone hit a resident she would call one of the seniors into the room and say "this person did this to this resident". She said she wouldn't go away and write a statement about it first.

47. SK said BM's nightdress was only "a tiny bit stained" and asked why no photograph was taken of the stain. When asked whether she had been caught out when BS asked her what she would find if she were to go upstairs to check BM, SK said that she wasn't given an opportunity to explain herself. She reiterated that she and MN were equally culpable in relation to leaving BM in a soiled nightdress, and she said that there were no clean nightdresses available. She said MN was free after attending to BM while SK had to serve drinks at 7:15.
48. SK said that during her interviews with BS she was put under pressure, and was confused and "brain washed". She said that BS kept asking her things again and again trying to confuse her and to get the answer she wanted. She said she had been clear that she did not hit BM, and said that if she had there would have been a red spot because BM had fragile skin. When Mr Webster asked SK why she hadn't put any of this in her statement she said that she had just been told to say what had happened, and not to explain.
49. Mr Webster asked SK whether she could think of any reason why MN might target her with false allegations. SK said that she could not, and said that MN was a new starter, and this was the first time they had worked together. When Mr Webster pointed SK to the part of the interview where MN joined and said that she had worked several shifts with SK and there was a good relationship between them, SK said that she had worked with MN before, but not on a "double" (two carers attending to a single resident), only on "singles". SK suggested that MN might have been encouraged by management to make allegations against her. She said that BS might have had a grudge against her because in January she had made allegations against BS's mother, who works for the same employer, alleging favouritism in allocating overtime. SK suggested that BS might have put MN up to making the complaint against her. When asked why SK did not say anything about this in her statement or in the representations that her solicitor sent, she said that the solicitors were just responding to the allegations and did not ask her why MN would say things against her.

Submissions

50. Mr Tramboo, for SK, said his client had made clear denials of the allegation that she hit BM "at every stage possible". He pointed out that, while MN had alleged in her written statement (at p. 44 of the appeal bundle) that SK had said of BM "you have to be rough with her", she made no mention of this in her account of events when she joined the second interview with BS.
51. Mr Tramboo said BS's questioning of SK was oppressive and SK had "crumbled under pressure" when BS wouldn't accept her answers, causing her to accept "If she feels that I have swore, maybe I did". He said SK had been "ambushed", and while SK accepted she had left BM in a soiled nightdress, this was due to systemic failings at the employer (there being no clean nightdresses available) and not to any failing by SK. He pointed out that there was no photographic evidence of the extent of the stain.
52. Mr Tramboo highlighted that while SK's evidence was tested under cross-examination, MN's evidence remains untested, and there was no corroborative evidence from any witness in the building to say that they heard BM screaming. He said SK's evidence, as the only evidence that had been tested, must be given greater weight. He invited the Upper Tribunal to find SK to be a credible and reliable witness, to prefer her account over that of MN, and to find that the DBS was mistaken in finding the allegations against her to be proved.

53. Mr Tramboo asked the Upper Tribunal to set aside the Barring Decision and direct the DBS to remove SK's name from the Adults' Barred List. Failing that, the Upper Tribunal should set aside the Barring Decision and remit the matter back to the DBS for reconsideration.
54. Mr Webster, for the DBS, challenged Mr Tramboo's assertion that SK had clearly denied hitting BM at every stage possible, pointing to the equivocal nature of some of her responses ("I did not hit her, I don't know, I can't remember what happened"). He pointed out that when SK was asked in her first interview with BS about hitting at the bottom of p.40 of the appeal bundle ("So you did not in the moment, hit BM or shove away when she put faeces on her arm.") her answer related not to hitting but to swearing ("I can't remember, [BS], I did not swear intentionally. If she has put this in the statement, then I may have swore, but not intentionally"). In the same interview at the top of p.42 of the appeal bundle, BS asked about both hitting and swearing ("I want you to confirm if you did or did not hit and swear at BM") but SK's response related only to the less serious allegation of swearing ("I don't know, if she feel that I have swore, maybe I did"). Mr Webster argued that this demonstrates evasiveness on the issue of hitting, when, had SK not hit BM, she would have been direct, clear and consistent in her denials. He contrasted this with MN's account which was clear and consistent, even when challenged by SK when MN joined the interview at SK's request. Mr Webster acknowledged that MN's account was briefer, and she was asked fewer questions, but said that it was inevitable that more questions flowed from SK's equivocal answers than from MN's clear ones.
55. Mr Webster said it was unfair to characterise the interviews with BS as oppressive. BS was merely seeking to gain a clear understanding of what happened and offered SK potential explanations that tended to cast events in a light more favourable to SK (such as "Do you think you may have brushed her away using your hand to prevent her from putting more poo on you").
56. Mr Webster said that it was not disputed that BM's nightie was soiled (at p.40 of the appeal bundle, in her first interview, SK is recorded as having said "BM had poo on her nightie"). In the second interview SK sought to minimise her neglect by saying that the stain was only tiny.
57. Mr Webster said that the DBS had found that SK had subjected BM to two instances of abuse (hitting and swearing) and one of neglect (leaving her in a stained nightie), and had not been mistaken in those findings. He said that given these findings the Barring Decision was clearly proportionate

Analysis

58. We do not accept Mr Tramboo's criticisms of the employer's investigation. MN reported the incident very promptly (at 7:15pm, within a few minutes of the incident) and gave a brief yet clear written account on the evening of the incident. SK was interviewed at 7:40pm, within an hour of the incident, when the events would have been fresh in her mind.
59. Although we did not hear evidence from BS or the note taker at the interviews between SK and BS, SK confirmed that the note of the interviews was (with minor exceptions) accurate.
60. Neither was MN's evidence tested in court, which is regrettable. However, there was some degree of testing of MN's evidence in the course of SK and BS's first interview, when MN joined the meeting at SK's request. MN gave an account of

events that was consistent with her written account, and when this was challenged by SK, MN maintained her version of events:

BS MN are you happy to talk through the incident you witnessed this evening
MN Yes, SK asked me to help her with BM, she had soiled her pad. I was assisting SK to help wash and re dress into night clothes, BM was shouting a lot and SK pulled up her night dress to the tummy area and she had soiled everywhere, BM kept trying to place her hands down in the pad and had poo on her hands, SK then puled her arm away from the pad and slapped her arm, said oh fuck off BM.
BS Did she hit her or did she push her arm away?
MN She pulled her arm out and Hit her on the arm and you could hear the slap noise and said Oh fuck off [BM], I can do what I want
SK No I did not do that, why do you say this
MN SK you did do that, You pulled her arm, hit her and said fuck off to her
SK No, BM got poo on my arm and I pulled away and said no BM, I walked to the bathroom to wash it off and then came back, she was shouting so I told her no BM please do not touch me
MN That was after that you said please don‘t touch me, you hit her on the arm before you went to the bathroom, BM was then screaming
SK No I did not do that
BS SK did you tell BM to fuck off or swear at her
SK I don’t know, if she say I did then I did not intentionally, I don’t remember
BS But you did not hit her
SK No I did not, I don’t know, I don’t know why you say this
MN Because you did it, I have no reason to write a statement or tell on you, but this upset me
[MN becomes very tearful and requires a minute]
SK I honestly don’t remember swearing at her, I don’t hit resident. I have looked after BM for a long time now, why would I do this, I don’t do this, IS hits me, TP grabs me, I don’t do this.

61. While mindful that MN’s evidence was not tested before the tribunal, we found her evidence to be credible. We considered whether MN could have been motivated to give a false account in order to get SK into trouble. SK’s solicitor argued in the representations against barring that the whole incident had been fabricated because the employer was “fundamentally targeting to get rid of our client”, and in the hearing before the Upper Tribunal SK said that in January 2024 she had complained about BS’s mother (also an employee at the care home) and favouritism in allocating overtime. We found the suggestion that MN would give an entirely false account to get SK into very serious trouble to be most unlikely given that SK acknowledged that MN was a relatively new employee and that she and MN got on well. MN did not stand to gain by making false allegations, and the making of false allegations could have got MN into a great deal of trouble.
62. SK was interviewed a second time the day after the incident and, contrary to her assertions in her evidence that she was not given a chance to explain, it is clear from the long narrative answers she was recorded as having given that she was given a fair opportunity to respond to BS’s questions fully.
63. We found that the interviews were conducted in a fair and proper manner. SK was not put under undue pressure. BS challenged both SK and MN on their

accounts, and suggested explanations that tended to be exculpatory of SK. The interviews were not oppressive.

64. We found SK's evidence to be equivocal. The record of the two interviews with BS show her to be evasive when asked about the allegations of hitting, choosing to respond to questions about hitting with answers about swearing. At other points of the interview she responded to questions about hitting and swearing with statements to the effect that she didn't know. She also said she "didn't mean to hit" BM, and said she "wouldn't intentionally swear or hurt a resident" (bottom of p. 40 of the appeal bundle).
65. SK's unwillingness to give direct answers to questions about hitting undermine her credibility. Had SK not hit BM she would have said so unequivocally.
66. Ultimately, we found SK's account unconvincing. Nothing in the new evidence that we heard has caused us to conclude that the DBS based its Barring Decision on any mistake in a finding of fact. Ground 1 is therefore dismissed.
67. Having concluded that the DBS was not mistaken in its findings of fact, we are satisfied that SK subjected BM, a 93-year-old vulnerable adult service user in SK's care, to physical abuse (hitting her on the arm), psychological/emotional abuse (swearing at her) and neglect (leaving her in a soiled nightie), all of which conduct clearly amounts to "relevant conduct" in respect of vulnerable adults for the purposes of the 2006 Act.
68. Ground 2 is really subsidiary to Ground 1. Having considered all the evidence (including the fresh evidence at the hearing) and having carried out our own evaluation of that evidence (including the way that the investigation was conducted), we have concluded that the DBS's findings of fact were not mistaken. We are therefore bound to dismiss Ground 2 as well.
69. The DBS was entitled to find, based on its factual findings, that it was appropriate to place SK's name on the Adults' Barred List.
70. Ground 3 was largely predicated on SK's dispute with the findings of fact which we have explained were not mistaken. Given the seriousness of the proven Allegations, SK's continued denials and SK's lack of insight, the DBS was entitled to make the risk assessment that it did. That assessment was not irrational or unreasonable. The DBS was not required to find the risks to be outweighed by SK's 20-month history of working without concerns being raised in terms of physical safeguarding (especially since concerns had been raised about her temperament). Ground 3 is therefore also dismissed.
71. Having considered the issue of proportionality for ourselves, we conclude that, given the seriousness of the findings of three categories of abuse, the Barring Decision was a proportionate response to the risks presented by SK. Ground 4 is therefore also dismissed.

Conclusion

72. The Barring Decision involved no mistake of fact or law. The appeal is dismissed and the Barring Decision is confirmed.

Thomas Church
Judge of the Upper Tribunal

Authorised by the Judge for issue on 5 May 2026