



Neutral Citation Number: [2026] UKUT 254 (AAC)
Appeal No. UA-2022-000998-V

RULE 14 Order: By an Order dated 20 October 2022 the Upper Tribunal ordered that there be no publication of any matter which is likely to lead members of the public directly or indirectly to identify the Appellant, his stepson or stepdaughter, the mother of those children or her former partner. The Upper Tribunal further ordered that certain redacted information (identified in the DBS's letter dated 12 October 2022) be not disclosed to the Appellant or any third party. Breach of these Orders may constitute contempt of court and be punishable by a fine or imprisonment.

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

JB

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Ward, Ms Heggie and Ms Jacoby

Hearing date: 11 June 2026

Mode of hearing: In person, at Leeds Employment Tribunal

Representation:

Appellant: In person

Respondent: Tim Wilkinson, instructed by Legal Advisor, DBS

On appeal from:

Disclosure and Barring Service

DBS Case No: 00950590459

Decision Date: 28 March 2022

SUMMARY OF DECISION

Having received the appellant's oral evidence and reviewed the evidence as a whole, the Upper Tribunal concludes that the DBS did not make a material mistake of fact nor any mistake of law and the decision to include the appellant's name in the adults' barred list and the children's barred list is upheld.

65.1 Children's Barred List; 65.2 Adults' Barred List

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the panel follow.

DECISION

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

REASONS FOR DECISION

Introduction

1. By a decision dated 28 March 2022, the Disclosure and Barring Service (“DBS”) placed the appellant’s name on the Adults’ Barred List and the Children’s Barred List. It did so on the grounds of “relevant conduct”.
2. There is no dispute that the “regulated activity” test was met: the appellant worked as a paramedic.
3. The relevant conduct relied upon arises out of the alleged behaviour of the appellant, then aged 22, towards two young women with whom he had been in a relationship. Allegations had also been made in respect of his behaviour towards a third young woman, but the DBS found them not substantiated; nonetheless, she is relevant to this case for reasons below.
4. The terminology used by the DBS when redacting the case papers is less than neutral, given that the appellant disputes the allegations. Nonetheless we continue to use it for convenience, but without prejudging the issues with which we are concerned and thus refer to “Victim 1” and “Victim 3” as the two women alleged to be the subject of the relevant conduct (Victim 1 was 17, but it is not material to this case that she was in law a child), while the third young woman is “Victim 2”.
5. In the period culminating on 10 January 2018, the appellant had been in a relationship with Victim 2. For at least part of the same period, he was also in a relationship with Victim 1. The first finding by the DBS (Finding 1) is (in summary) that on 9 January 2018 he squeezed Victim 1’s thigh hard, subsequently bent her fingers back and later that evening hurt her, having rolled on top of her, by sucking and biting her neck and biting her nose.
6. In a period culminating on 11 December 2018, he had been in a relationship with Victim 3. Finding 2 is that on that date the appellant grabbed her by the neck and pushed her into a wall.
7. Finding 3 is that on an unknown date before then, the appellant had rolled on top of Victim 3, pushed her shoulder back, told her to shut up and headbutted her.
8. In respect of Finding 1, the appellant was charged with assault. Victim 1 and her landlady gave evidence. The appellant was acquitted. Subsequent to the barring decision, a short attendance note by counsel representing the appellant in those proceedings has been obtained.

9. In respect of Finding 3, the appellant was also charged with assault. Those proceedings were subsequently discontinued. It is the appellant's case that that was because Victim 3 had retracted her statement. Although considerable efforts have been made to establish if there is any corroboration of this, the Crown Prosecution Service's file has been destroyed due to the passage of time.
10. In the criminal proceedings in respect of Victim 1, the appellant submitted a number of text messages between himself and Victim 1. They have also been submitted in the present proceedings, along with texts to him from Victim 3. The DBS did not have them at the time of the barring decision but they are in evidence before us now.
11. The appellant's grounds of appeal in his Form UT10 were:
 - a. Victim 3 had been to the police and CPS and withdrawn her statement;
 - b. the text messages were not suggestive of an assault having taken place and had not been taken into account;
 - c. the decision letter had referred to the appellant having re-entered regulated activity but the evidence for this had not been shared;
 - d. he would be submitting additional evidence: the text messages and details of courses he completed and safeguarding actions he had taken.
12. By Safeguarding Vulnerable Groups Act, s.4:

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.

13. Permission to appeal was initially refused on the papers by Upper Tribunal Judge Wikeley but was subsequently given by Upper Tribunal Judge Brewer following an oral hearing. She identified as potential mistakes (a) that the DBS had been wrong to find there was no evidence that the appellant had been found not guilty in the Victim 1 proceedings nor of why the Victim 3 proceedings had been discontinued when there was: what the appellant himself had said in his representations; and (b) the findings made against the appellant given the content of the text messages, of which there had been no analysis and which potentially corroborated his version.

The appellant's case

14. As regards Victim 1, the appellant's case was that he had not squeezed her thigh hard as alleged, or at all, nor bent her fingers back. The bites to her neck were love bites, to which she had consented. The mark to her face had been an accident. Victim 1's testimony was unreliable. The contemporaneous evidence in the form of the text messages did not suggest an assault had taken place. When she had requested the appellant limit his love bites, he had agreed to do so. The statement to police had only been made on 12 January, by which time the appellant had found himself in trouble as regards Victim 2 (see below) and had shared with Victim 1 details of the trouble he had been in. On his case the information he shared with Victim 1 included the fact that he had been seeing both women at once, to which she had taken exception, providing the motivation for her to make a statement that was variously untrue or misleading. These factors had carried weight in the criminal proceedings, which led to his acquittal.
15. Victim 2 had found out on 10 January that the appellant had also been seeing Victim 1 and Victim 2 had broken off the relationship. She told the appellant that she would come round to his house with her sister and her sister's boyfriend and would smash his car if he did not come out. The appellant had informed her that if she did so, he would call the police to which she responded that if he did, she would make an allegation that he had raped her. They did attend his house, he did call 999 and matters escalated. The appellant was taken into police custody but upon Victim 2 indicating that she would not give a statement, the appellant was released and no further action was taken in respect of her allegations.
16. As regards Victim 3, the appellant's case is that the incident in Finding 3 did not occur. As regards the incident in Finding 2, there had been a verbal disagreement, but no more than that. He points in particular to the text messages sent by Victim 3 pleading for them to stay together.

The DBS's case

17. For the appellant to succeed, there must have been a mistake of law or fact. The Upper Tribunal is not hearing an appeal totally afresh ("de novo"). Thus, it is not enough that the Upper Tribunal would have made different findings. It is for an

appellant to demonstrate that a mistake has been made. The principles governing the correct approach in relation to factual mistakes was summarised in *PF v DBS* [2020] UKUT 256 (AAC) at [51]:

- “a) In those narrow but well-established circumstances in which an error of fact may give rise to an error of law, the tribunal has jurisdiction to interfere with a decision of the DBS under section 4(2)(a).
- b) In relation to factual mistakes, the tribunal may only interfere with the DBS decision if the decision was based on the mistaken finding of fact. This means that the mistake of fact must be material to the decision: it must have made a material contribution to the overall decision.
- c) In determining whether the DBS has made a mistake of fact, the tribunal will consider all the evidence before it and is not confined to the evidence before the decision-maker. The tribunal may hear oral evidence for this purpose.
- d) The tribunal has the power to consider all factual matters other than those relating only to whether or not it is appropriate for an individual to be included in a barred list, which is a matter for the DBS (section 4(3)).
- e) In reaching its own factual findings, the tribunal is able to make findings based directly on the evidence and to draw inferences from the evidence before it.
- f) The tribunal will not defer to the DBS in factual matters but will give appropriate weight to the DBS’s factual findings in matters that engage its expertise. Matters of specialist judgment relating to the risk to the public which an appellant may pose are likely to engage the DBS’s expertise and will therefore in general be accorded weight.
- g) The starting point for the tribunal’s consideration of factual matters is the DBS decision in the sense that an appellant must demonstrate a mistake of law or fact. However, given that the tribunal may consider factual matters for itself, the starting point may not determine the outcome of the appeal. The starting point is likely to make no practical difference in those cases in which the tribunal receives evidence that was not before the decision-maker.”

18. As regards Victim 1, her evidence was detailed and her subsequent conduct in leaving the area and return to her family home was indicative of the upset she felt. The text messages in the short window of the immediate aftermath of the incident should not be taken as indicative of their relationship. The criminal proceedings reflected the need for a case to be proved beyond reasonable doubt, not the balance of probabilities with which the DBS is concerned. The view of the District Judge who acquitted the appellant is one part of the evidence, but is in no way determinative. In any case, his reported remarks indicating that he “had some suspicions” are consistent with the matter having failed to reach the criminal burden of proof while still being able to reach the civil burden.
19. As regards Victim 3, her evidence had been measured, and she had not sought to over-state matters. Her description, largely corroborated by police enquiries, of how, in cold temperatures, she had gone to ASDA early in the morning barefoot and without a jacket, strongly suggested that considerably more had taken place than a mere verbal disagreement. The numerous text messages she had sent

were expressing second thoughts about having gone to the police and wanting them to stay together. That did not mean that the alleged abuse had not occurred.

The panel's evaluation – Finding 1

20. We did not consider we could safely rely on the appellant's oral evidence on all matters. There were central aspects where it was unconvincing, even allowing for the passage of time. On the aspect, important to his case, of whether he had told Victim 1 that he had simultaneously been seeing Victim 2, he claimed to have texted Victim 1. When pointed out that the series of texts covering the relevant time contained no such disclosure, his reply was that there had been phone calls as well, but the text exchanges did not support this. His evidence concerning when the marks to Victim 1 occurred was equivocal and evolved: at first they were said to have been made during consensual sexual intercourse, but subsequently he accepted that they might have been made afterwards, perhaps attempting to initiate a follow-up episode.

21. In her witness statement in the criminal proceedings, Victim 1 gave a description of the events of the evening concerned: the appellant's "off" manner while they were out for a pub meal, the assault by squeezing her thigh, the verbal abuse by saying that she looked 6 months pregnant and that he could go to one of several other girls if he wished, later (picking up the theme of the "6 months pregnant" comment) asking "how's the baby" and bending her fingers back when she reacted. She describes how, when they returned to her home at around 18:50:

"We started watching Netflix. As we were doing this, the appellant and I had sex. We put Netflix back on and ...were relaxing until about 20:15 hours when completely randomly and out of the blue, the appellant rolled from one side of the bed and onto me where I was lying on the other. He bit the left side of my cheek and sucked it. I was in a lot of pain from this and told him to stop. He relaxed for a moment, allowing me to turn away from him.

Next, the appellant went for me again, biting the right side of my neck on 2 occasions then sucking again as he did before, causing me pain. Once he stopped biting this side, he moved my hair away and bit/sucked the left side of my neck. I have been left with 3 bruises on my neck which are visible now when taking this statement.

Eventually the appellant listened to me when I told him to get off. I said "Why did you do that?" He replied saying "I was just marking my property". With this said, the appellant rolled back on top of me and kissed me. He moved from my lips and bit the front of my nose, again causing me pain. I have a small mark from where this happened.

I had enough of the appellant's actions and said he needed to leave ...I ended the relationship the following evening."

22. Victim 1 provided two victim statements, explaining that as a result of the incident she had lost confidence, only left the house for work, then left work and college

and moved away for several months to be supported by her family in another part of the country.

23. Other than his own evidence, the appellant relies significantly on the text exchanges, to which we now turn.

24. By 22:56 on 9 January, the appellant is home. Victim 1 writes:

“In future, please don’t make marks that people are gonna see. I have a good reputation at work and I don’t want people talking about the marks on my neck and face.” The appellant responds “That’s fine” and Victim 1 with “Thanks for understanding”.

25. However, at 23:44 on 10 January, Victim 1 texts the reasons why she has been unhappy with the appellant’s behaviour over the previous few days. These include:

“I’ve told you that I don’t want marks on me where people are gonna see and yet you still do it. You’ve left 4 marks on me from yesterday, I look like I’ve been beaten. I’m having to wear a thick scarf to cover the ones on my neck. And as for the one on my face, that one I can’t cover and I’ve had people ask about it.”

26. The appellant submits that the former text indicates there was no assault and is consistent with his claim that his actions had been consensual but that he was then being asked to limit what he did going forward, which by saying “That’s fine” he agreed to do. However, the latter text paints a different picture: that Victim 1 had previously indicated that she did not give consent to visible marks being made on her, but the appellant had persisted. Further support for there having been a previous request was the appellant’s initial acceptance in cross-examination that Victim 1’s concern expressed in the 9 January text had been prompted by people at work “taking the mick” about marks, before claiming confusion when it was pointed out by Mr Wilkinson that at the time of the text, the workmates could not have seen the marks inflicted on 9 January.

27. In the panel’s view, the significance of these texts has to be considered in the context of the relationship as a whole. On the morning after the alleged incident, Victim 1 had messaged the appellant at 07:10, receiving no reply. The appellant was at university that morning but an intermittent text conversation took place later in the day, remaining civil and unremarkable until around 16:00. At 16:21 the appellant gets annoyed following a conversation about prescription charges, accusing Victim 1 of “having a go at him” and “telling him off”. There is nothing in Victim 1’s texts which provides any justification for the appellant’s annoyance. At 19:14 the appellant asks rhetorically “is it possible” [sc. you could piss me off more] and shortly afterwards closes down the conversation with “Goodnight”.

28. At 23:26 Victim 1 asks to talk and the appellant agrees. Victim 1 enumerates things she is not happy about: the appellant’s “constant comments” about other girlfriends; being stuck on his phone and not talking; his rudeness about the ‘pregnancy’ comments and its impact on her self-esteem; his marking of her in

visible places though she has previously told him not to; and that he has “started talking to someone close to her” and denied that she (Victim 1) even exists. The appellant is defensive “you want to cause an argument?” (23:54) and (without justification) critical “were a bit of an ass to me” and stonewalls her attempts to talk about their relationship. At 00:03 (now 11 January) Victim 1 indicates “I’m done”- this may have been an attempt to break off the relationship. At 00:08 shortly after Victim 1 has asked “How come you still introduce yourself as being single and that you’ve given up on girls?” the appellant breaks off answering texts.

29. On the morning of 11 January, at 08:41 Victim 1 sends the appellant a brief text and follows up with “please reply” at 10:25. At 13:32 the appellant, who has been in police custody overnight, but now released from custody tells Victim 1 of this. At 14:19 he explains that “his ex” (i.e. Victim 2 though her identity is not stated in the texts) had come round at midnight to smash up his car yet it was he who got arrested. From 14:20 the appellant rebuffs Victim 1’s attempts at support indicating that he doesn’t want another argument with her. She says she would have been there for him if he had shared the problems with the ex with her, but he harks back to the face marks, claiming that she was “having a go at him”. By 14:30, Victim 1 is tired of arguing and asks the appellant not to contact her again.
30. Victim 1 gave her statement to the police the evening of the following day (January 12th.)
31. We do not consider that there is any inconsistency between the evidence that Victim 1 had previously asked the appellant not to mark her in visible places and her text at 22:56 on 9 January. Whereas on the evening of 9 January, she was prepared to respond to the appellant’s actions in having done what she had asked him not to by restating boundaries going forward, having reflected on their relationship, leading to the text of 23:26 on 10 January, reluctantly accepting the marks delivered on 9 January while the relationship was still going was not something she needed to do when it was falling apart. If, as we find, Victim 1 had previously asked the appellant not to mark her in visible places, yet he still deliberately did so, that is an assault, even if briefly condoned.
32. We reject the appellant’s explanation that Victim 1’s actions in giving a statement in the terms she did were motivated by learning that the appellant had been two-timing with Victim 2, said by the appellant to be a friend of hers. We have already commented adversely on the appellant’s evidence as to how he claims Victim 1 came to find out that this was the case. We add that nowhere in the exchanges on 11 January concerning the incident with the “ex” is there any indication that Victim 1 was aware of Victim 2’s identity. Nor is there any indication there that the relationship with Victim 2 in particular was going on concurrently, although it would be consistent with the appellant’s remarks in the pub, if true, that he was seeing at least one woman other than Victim 1. Nor does it appear to us remotely likely that Victim 1 would have been there for the appellant if he had shared his problems with the ex with her, if she had known the identify of Victim 2 and was as upset by it as the appellant claims. Further, we do not read the reference in Victim 1’s text to the appellant “having started talking to someone close to her” as indicating that the “someone” was Victim 2, nor even that the conversation between the appellant and the “someone” included details of the goings-on

between the appellant and Victim 2: the problem for Victim 1, rather, was that the appellant had been introducing himself as single at a time when he was in a relationship with her. We note, and agree with, Mr Wilkinson's observation that the evidence we heard casts doubt upon the DBS's previous acceptance of Victim 1's motivation i.e. knowledge of the appellant's infidelity.

33. While we note the outcome of the criminal proceedings, the best available objective evidence of the basis of acquittal is provided by the short attendance note compiled by the appellant's counsel in those proceedings. The abbreviated note of reasons reads:

"3. First, the texts. I must agree with the defence. There is no mention about the assault. She says – thank you for your understanding. I do find that puzzling.

4. Second the witnesses. I am concerned V may have formed a distorted view some time after the event. I have doubts about reliability.

5. Good character. Volunteer for the Red cross. I give myself a good character direction.

6. I am not sure of P's case. I have some suspicions but that is not enough."

34. We have addressed para 3 of the note above. As to para 4, Victim 1's view was formed the following day, so we respectfully do not share the District Judge's concerns. As to para.6, we note that the judge had "some suspicions but that is not enough". Those were criminal proceedings, where the case had to be proved beyond reasonable doubt, so it is understandable that the judge's suspicions were "not enough" (but it is nonetheless noteworthy that he had some). In the present proceedings, the relevant test is the balance of probabilities. We do not agree with the appellant's view expressed in his skeleton argument that the judge's observations should be read as going to the heart of whether the alleged conduct occurred at all. Nor is the appellant's case strengthened by his reliance of para 4 of *R (Wright) v Secretary of State for Health* [2009] UKHL 3, which is not authority for the proposition for which he cites it. In *Re B (Children)* [2008] UKHL 35, also relied upon by the appellant, their Lordships reiterated the principle that:

"the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies."

The DBS was correct to apply a similar approach, as do we in evaluating whether they made a mistake.

35. We agree with Mr Wilkinson that Victim 1's evidence contains a detailed account of the conduct, build-up and circumstances which is not suggestive of fabrication. Evidence such as of the appellant's comment that "I was just marking my

property” are most unlikely to have been made up. While we are of the view that the thigh squeeze carried less weight for the appellant at the time, that does not mean that it did not happen, or that Victim 1 was embellishing it in her evidence.

36. The DBS in finding that the incident in respect of Victim 1 occurred noted that “she was made aware of the appellant’s infidelity the day after the alleged incident occurred” and “acknowledged that it is likely that she was aware of the allegations made against the appellant by Victim 2.” For the reasons given above, we do not attribute to Victim 1 such a wide level of knowledge of the appellant’s relationship with Victim 2. However, the DBS found Victim 1’s evidence credible despite that and the effect of our consideration of the evidence, including the texts which we have now but which were not before the DBS, is to make Victim 1’s evidence more, not less, credible. Accordingly, if DBS made a mistake about the extent of Victim 1’s knowledge, it was not a material mistake.
37. The appellant, when asked what the Upper Tribunal should conclude in the light of all the evidence, including his oral evidence, had some difficulty in formulating it. It was put to him (and he accepted) that as regards Victim 1 his case was in essence: (a) there had been no squeeze to the thigh; (b) marks to the neck and cheek had been consensual; (c) he did not bite Victim 1’s nose; and, to the extent that the DBS considered otherwise, it made a mistake of fact. For that he relied in particular on his own evidence, the notes from the District Judge’s findings and the content of the text messages.
38. We have considered all the above and, for the reasons we have given, conclude that the DBS did not make a material mistake of fact in any of those respects.

Victim 3 – Finding 2

39. Put briefly, the alleged circumstances were that around 06:00 on 11 December 2018, Victim 3 had been moving around the bedroom, first rummaging looking for tablets and shortly afterwards getting up again to use the toilet, using her phone as a torch on the floor. The appellant was irritated by having been woken and when Victim 3 finished getting dressed knocked the phone out of her hand, saying “just go to the toilet”. As Victim 3 stood up, the appellant put a hand on her collarbone area and pushed her backwards. As she went backwards, she stumbled over a join in the carpet and hit her head against the wall in the hallway. The appellant had closed the bedroom door. Victim 3 sat down and cried, then went to the bathroom, before returning to the bedroom. The appellant asked if she was in a comfortable position because he wanted to get 40 minutes of sleep, which was better than nothing. Victim 3 said she was not and after a while decided to leave. She took the appellant’s phone as she could not find hers and it would allow her to get help. She told the appellant she was going to the bathroom, turned on the light in the bathroom and sneaked out of the front door. She phoned her mother, according to whom Victim 3 was a blubbery mess, who told her to phone the police. On hearing that Victim 3 was in bare feet and with no jacket, her mother told her to go to ASDA when it opened. While she was waiting outside crying, a staff member approached her and took her inside, offering her a drink and finding socks and a jacket for her off the shelf. While waiting for police, Victim 3 received 41 missed calls from the appellant. She answered three calls from

him, in which she declined his request for her to return so that they could swap phones back, or to give the appellant the hug he requested.

40. The appellant gave a short statement denying having pushed Victim 3 over and indicating that he had recently tried ending his relationship with her as she was jealous and possessive. He answered “No comment” to police questions.
41. Body worn video records police attending at ASDA, Victim 3 in tears and evidence from her reflected in para 39 above. There were no injuries.

Finding 2 - the appellant's case

42. About a week later he had got a text from Victim 3 saying she had lied, had told the police she had done so, and withdrawn her statement. He received a letter from the Crown Prosecution Service stating that the case against him had been discontinued for lack of evidence. The relationship with Victim 3 had subsequently been rekindled 3-4 weeks later and had lasted around a further 18 months before being broken off when the appellant returned home from university. The DBS had not explored why the case was discontinued. There had been a verbal argument, nothing physical and to the extent that the DBS found otherwise, that was a mistake of fact. He could not remember what the argument was about, who had started it or why Victim 3 had left. He could not explain why she had left without items of clothing if (as he claimed) she had not been sneaking out. Contrary to references in the texts, he had not been getting help for anger management issues. When she said “I know you didn't mean it” she could have been referring to something said in the course of the verbal argument. He could not produce the text in which he claimed she had said she had lied: he believed it had not been saved- he had produced the texts that he had.

Finding 2 – the DBS's case

43. Victim 3's evidence contains a high level of detail. It displays a level of candour – acknowledging that the appellant did not mean it and was trying to get help. There is no text in evidence saying that she had lied to the police and withdrawn her statement: rather, Victim 3's position in the texts is that she had not made anything up but the appellant had not meant it. The appellant's evidence that it was just a verbal argument and that he had offered to drive her home was inconsistent with Victim 3 leaving without shoes, socks and jacket at 6am in December: those factors supported that she had sneaked out. Even allowing for the passage of time, it was remarkable that the appellant could remember no detail at all about the alleged purely verbal argument. His inability to do so was selective, in that he claimed to be able to remember Victim 3 saying she was sorry. The evidence contains numerous references to him apologising and to him getting help.

Finding 2 – panel's consideration

44. The case against the appellant was discontinued on 2 January 2019. Only limited evidence from the investigation and proceedings was available to the DBS or is available to us. What we do have is the appellant's oral evidence and the texts.

45. Victim 3 sent the appellant a lengthy text at 13:35 on 11 December 2018. In it she apologises “for everything that has happened”. She loved and wanted the appellant and did not want their relationship to end. She knew he was getting help and shouldn’t have called anyone. She had overreacted. She was making a statement “because they said otherwise they’ll assume you strangled me”. However “I didn’t make anything up and just want you to be okay.” In florid language she expressed how much the appellant meant to her and that she could not live without him.
46. We find that there is no material mistake of fact in the DBS’s findings regarding this incident. We accept Mr Wilkinson’s submission that the level of detail and candour – for instance, by indicating that what was involved was a one-handed push to the throat rather than the appellant putting both hands around it - give credibility to Victim 3’s evidence. There is corroboration of how she was when at ASDA from the summary of the police Body Worn Video evidence. There is no detail in support of the appellant’s alternative version and his inability to remember more is surprising. Victim 3’s actions in returning to the bedroom before concluding that she had to leave, covering her tracks by making it appear she had gone to the bathroom and leaving without shoes, socks and jacket early in the morning in December suggest that she had reason to be genuinely frightened by what had happened.
47. The DBS was under no obligation to make enquiries as to why the prosecution was discontinued. It was up to the appellant to produce such evidence as he saw fit to support his claim that the finding involved a mistake of fact. Although he claims to have received a text from Victim 3 and a letter from the Crown Prosecution Service, he has produced neither. Although the Upper Tribunal did seek to facilitate the obtaining of evidence on that issue it was no longer available and we have to consider the case on the evidence that is before us.
48. It does appear likely that the prosecution was discontinued because of a lack of evidence in that Victim 3 had withdrawn her statement. There is however nothing to corroborate the appellant’s assertion that Victim 3 had done so because she had lied. Given the content of her texts summarised above and the subsequent resumption of the relationship for a significant period, it is more likely that she simply withdrew her statement or that, if she did say she had lied, it was in order to facilitate the subsequent rekindling of the relationship. Her near-contemporaneous evidence was that she had made nothing up.

Victim 3 – Finding 3

49. This has its origin in victim 3’s evidence to the police when they were called in relation to the matters which are the subject of Finding 2. She told the officer that the events of Finding 2 were not the first time. When asked about it, she told the officer that about 1 ½ to 2 months previously (i.e. in around October 2018) she had said something about another girl. The appellant denied this but in Victim 3’s words “I kept bringing it up because it was on my mind and I wanted to clear my chest”. Her evidence was that the appellant then rolled over on top of her, pushed her shoulder back, said shut up and head-butted her. It had stung but there was not long-lasting pain. Victim 3 told herself to calm down and, in the belief that the

appellant was getting help with his anger issues (which he denies) was “like I’ll give it another go.”

The appellant’s case

50. The appellant’s case is that the alleged headbutt did not occur “so far as he is aware”.

Finding 3 – panel’s consideration

51. We find the appellant’s denial unconvincing. One knows whether one has head-butted someone or not and his qualified response appears likely to be an attempt to blur the edges of something which did in fact occur. More generally, having reached the conclusion that as regards Finding 2, Victim 3’s evidence is credible while that of the appellant, such as there is, is not, we apply the same approach to Finding 3. There is no reason for us to conclude that the DBS made a material mistake of fact.

Proportionality

52. Although this did not figure in the grounds of appeal in Form UT10 the appellant did raise it at various points in the proceedings. Before us, he conceded that if our conclusion were to be that there had been no material mistake of fact in the DBS’s decision, the barring decision would not have been disproportionate.

Appropriateness

53. By section 4(3) of the 2016 Act, whether it is appropriate to bar is not a question of law or fact and the Upper Tribunal has no jurisdiction to consider it. Factors such as the weight to be attached to the matters which are the subject of Findings 1, 2 and 3 or to the appellant’s positive documented actions in relation to safeguarding when employed in our view go to appropriateness and we say no more about them.

Other matters

54. One of the grounds in Form UT10 was that the DBS had concluded that the appellant had returned to regulated activity without having shared with him the basis for that view. If an error at all, it was not a material one. These were not proceedings about working when barred. Rather, the DBS was making a point in the appellant’s favour – that he had returned to regulated activity without there having been fresh concerns.
55. Upper Tribunal Judge Brewer’s grant of permission to appeal was not limited. She raised the possibility that the appellant might be able to show material errors in one of the allegations and that if he could, because the DBS decision relied to a degree on the similarity of allegations, it might infect another of the allegations. As we do not find there to have been a mistake of fact in relation to any of the allegations this point falls away. The judge pointed out that there had been no analysis of the text messages. They had not been before the DBS when its

decision was taken and so, while we agree with Judge Brewer that they might potentially have corroborated the appellant's account, having analysed them, we conclude they do not do so. Finally, the judge suggested that the DBS had been wrong to say that they had no evidence of why the appellant was found not guilty in Victim 1's case and why proceedings in relation to Victim 3 were discontinued, when they had evidence in the form of the appellant's representations. On inspection of the Barring Decision Process document, the DBS do not say that they had no evidence why proceedings in relation to Victim 1 were discontinued. They record the appellant's representations in that regard but draw attention to the lack of corroborative evidence (correctly, as there was such a lack). As regards Victim 3, the Barring Decision Process document acknowledges that the appellant's claim as to the reason why proceedings were discontinued, while noting that the appellant had provided no copy of the discontinuance notice, but accepting that the proceedings had been discontinued. That was an accurate summary of the material before the DBS as it then stood. With the benefit of a full hearing we respectfully do not consider that Judge Brewer's concerns are made out.

56. The papers contain details of another alleged domestic incident, in 2020. The DBS did not take it into account and nor do we.

Conclusion

57. For the reasons we have given, the DBS's decision contains no material mistake of fact (nor, for completeness and for the avoidance of doubt, any mistake of law) and the appeal is dismissed.

Christopher Ward
Judge of the Upper Tribunal

Josephine Heggie
Member of the Upper Tribunal

Suzanna Jacoby
Member of the Upper Tribunal

Authorised by the Judge for issue on 2 July 2026