Neutral Citation Number: [2026] UKUT 252 (AAC)
Appeal No. UA-2024-001744-V

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

DCA

Appellant

- v -

Disclosure and Barring Service

Respondent

Before: Upper Tribunal Judge Tudur, (sitting in retirement), Tribunal Member S Jacoby and Tribunal Member R Smith.

Hearing date: **27 May 2026**
Mode of hearing: **CVP video hearing**

Representation:
Appellant: DCA represented himself
Respondent: Ms Bronia Hartley of counsel represented the Disclosure and Barring Service (DBS)

On appeal from:
DBS Decision dated: 23 August 2024
DBS Registration Number: P0008DOGK7E

DECISION

The decision of the Upper Tribunal is to dismiss the appeal and to confirm the decision of the Disclosure and Barring Service.

The Disclosure and Barring Service's decision of the 23 August 2024 did not involve a mistake of fact on which the barring decision was based, nor did it involve any material error of law.

Redactions and anonymity order

On 11 February 2025, the Upper Tribunal made an order directing the redactions to be applied by the Respondent to the appeal bundle, which order remains in force, pursuant to rule 14(1)(a) and (b) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

In addition, pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal made an order prohibiting the disclosure of any matter that is likely to lead the public to directly or indirectly identify any of the individuals listed within the order.

On the 1 July 2025, a further anonymity order was made directing that the name of the Appellant should not be made public and jigsaw identification prevented.

Any breach of the orders is liable to be treated as a contempt of court and punished accordingly (see section 25 of the Tribunals, Courts and Enforcement Act 2007). Punishment can be imprisonment for up to two years, or a fine, or both.

At the hearing of the appeal, the Respondent made a further application that the showing of the body-worn camera footage during the hearing should be conducted in private. The Appellant did not object to the application and the tribunal made a further order directing that the video footage should be viewed in a private session and that the cross examination of the appellant in respect of the footage should also be heard in private, pursuant to rule 37, in order to ensure the proper administration of justice and the protection of the patient, unidentified hospital staff and members of the public who were caught on camera.

REASONS FOR DECISION

Introduction

1. The appeal was received by the Upper Tribunal on the 27 November 2024, which was four days late. It was admitted by the Upper Tribunal in its directions dated 28 February 2025. Permission to appeal was granted following an oral consideration of the application in Birmingham on the 29 October 2025. The appeal hearing considered whether there were mistakes of fact or errors of law in the decision of the Disclosure and Barring Service (the DBS) issued on the 23 August 2024, under the Safeguarding Vulnerable Groups Act 2006 (the 2006 Act) to place the Appellant's name on the adults barred list and the children's barred list.

2. Permission to appeal was granted on two grounds:
   a) That it was arguable that the DBS made a mistake of fact in the interpretation of the bodycam evidence in concluding that the applicant had carried out an unprovoked attack on the patient;
   b) Whether it was proportionate to include the applicant's name on both the children and vulnerable adults' barred lists.

Factual background

The barring decision

3. The conduct that gave rise to the DBS decision to bar the appellant arose on the

evening of the 11 November 2023, when the appellant was employed as a security officer at the hospital. Security were called to assist on a ward where a patient (referred to in the hearing bundle as 'ST'), had assaulted both members of staff and members of the public. Following an incident, in which three security officers were dealing with the patient in a side room of the ward, the patient sustained an injury to his face. Following an internal investigation into the incident, the appellant was reported to the DBS. The matter was investigated by the police and the appellant was charged with assault by beating.

4. The criminal charge was considered at the magistrates' court and the appellant was acquitted of the charge of assault by beating on the 1 November 2024.

5. The appellant was a student nurse and was pursuing an MA course in nursing at the time of the incident. The DBS's decision letter stated that having considered that in his role as a security officer working at the hospital the appellant had physically abused a 17-year old male inpatient by striking him in the face with your hand causing injury. The DBS concluded that the appellant had engaged in relevant conduct in relation to a child and that the conduct, if repeated against or in relation to a vulnerable adult would endanger that vulnerable adult or would be likely to endanger him or her. The DBS concluded that it was appropriate to bar the appellant and to include his name in both the adult and children's barred lists to prevent future risk of harm.

Legal framework

The lists and listing under the 2006 Act

6. The 2006 Act established an independent body, which is now the DBS. Section 2 of the 2006 Act provides that the DBS must establish and maintain both the children's barred list and the adults' barred list.

The right of appeal

7. Appeal rights against decisions made by the DBS are governed by section 4 of the 2006 Act. Section 4(1) specifies a right of appeal to the Upper Tribunal against a decision to include a person in a barred list or not to remove a person from a list. The provisions continue as follows:

> "*4(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".

8. A decision as to the appropriateness of inclusion of an individual in a barred list is not a question of law or fact. It does not, however, prevent an applicant succeeding on the basis of arguments concerning proportionality or rationality (see B v Independent Safeguarding Authority (Royal College of Nursing Intervening) [2012] EWCA Civ 977).

9. In PF v Disclosure and Barring Service [2020] UKUT 256 (AAC), the Upper Tribunal confirmed that when it is determining whether the DBS has made a mistake of fact, it will consider all the evidence before it, is not confined to the evidence which had been before the DBS decision maker, and will reach its own factual findings, without deferring to the DBS's decision on factual matters. The Upper Tribunal has a discretion to give permission to appeal if an applicant is able to show he/she has an arguable case or, exceptionally, for some other reason.

The law

10. Para 9 of Schedule 3 of the Safeguarding Vulnerable Groups Act 2006 provides that if a person has engaged in relevant conduct and is or has been or might in future be engaged in regulated activity relating to vulnerable adults and it is appropriate to include them – include in the child and adult barred list.

11. Relevant conduct is defined in paragraph 10(1) as follows:
"(a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;

(b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that vulnerable adult or would be likely to endanger him;

(2) A person's conduct endangers a vulnerable adult if he—

(a) harms a vulnerable adult,

(b) causes a vulnerable adult to be harmed,

(c) puts a vulnerable adult at risk of harm"

13. Accordingly, the DBS must include a person in the adults barred list or children's barred list if: (i) DBS is satisfied that the person engaged in relevant conduct; (ii) DBS has reason to believe that the person is, or might in the future be, engaged in regulated activity relating to vulnerable adults/children; and (iii) DBS is satisfied that it is appropriate to include the person on the list. The right of appeals lies in respect of any mistake of law or in any mistake of fact.

14. On appeal the Tribunal must identify an error of law or fact. It is well established in caselaw that an error of law or fact is not just a disagreement on the conclusion. It can be wrong because of an error or because new evidence has been presented in the appeal which was not before the DBS. Any mistake of fact

must be material to the decision.

15. When considering proportionality, the proper approach was summarised in KS v DBS [2025]UKUT 045. The decision must be made by reference to the circumstances prevailing at the time the issue falls to be decided – i.e. at the time the decision was made. On appeal, the Upper Tribunal must make the decision on proportionality itself.
It is a four stage test:
(1) Whether the objective of the measure is sufficiently important to justify the limitation of a protected right (hat objective is sufficiently important to justify interfering with the barred individual's exercise of their Article 8 Convention right)
(2) Whether the measure is rationally connected to the objective
(3) Whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective
(4) Whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

16. If on appeal the tribunal concludes that there was no mistake of fact or law, then it must confirm the DBS decision. If the UT finds a mistake, it may either direct the DBS to remove the person from the list or remit the matter to DBS for a fresh decision pursuant to s 4(6).

Evidence

17. The Tribunal had in evidence a document bundle running to 144 electronic pages, an addendum bundle of six pages and an authorities' bundle. The Tribunal also had in evidence six short clips from the hospital security officers' bodyworn video cameras which showed various parts of the sequence of events over a period of about 20 minutes from about 9.50pm to 10.10 pm on the 11 November 2023. One very short six second clip appeared to show the appellant physically engaging with the patient in a side room. Immediately after the incident, the patient was treated for a cut to the bridge of his nose. The allegation was that the appellant had caused the cut when he physically engaged with the patient in the side room.

18. The appellant was interviewed by the police on the 6 February 2024. He described the events leading up to the incident to the police and explained that having been hit in the face several times by the patient, he and a colleague, ZM had managed to move the patient into a side room where the patient "..*kicked off completely*." His statement to the police continued [p108]:
"*Everything was upside down, computer, keyboards on the floors, everything was scattered. He was fighting, he just wanted to fight let's put it that way*."
The appellant could not recall any injuries to the patient before they went into that room. The police asked whether the appellant could remember hitting the victim.

His response was:
"*yes I do, I do recall hitting him. He charged towards me, bear in mind I've already got hit by him. It got me like, in this scenario you can never let your guard down when you're with an aggressive patient. My colleague wasn't very helpful in restraining. I felt like I was dealing with him by myself.*" and
"*Yes, I do recall hitting him back, in self in defence. Because when someone is charging at you even though security or Police which ever part of the law, you are not a punching bag. So for me personally I was trying to defence [stet] myself, I've tried to restrain you for 5-10 minutes. But he's refusing to be restrained. So yes, I do recall that incident."* Having been shown the six second video clip he commented *"I said shut that door because it's a hospital. People are passing by , I knew my BVW was recording."*

19. The six second video clip is taken from the appellant's body worn video camera. It shows the patient sitting on a chair flanked by the two other security officers and the appellant moving towards the patient, stating "*Shut that door*" and the witness ZM moving towards the appellant calling his name and then a scuffle. ZM can be heard to say on the recording "*No Man*".

20. The appellant's employer made a referral to the DBS [p36] following an internal investigation into the incident, on the basis that the appellant was believed to have harmed a child through his actions.

21. The referral mentioned that two security officers were involved in the incident and:
"…two security guards appear to attack the individual causing him facial injuries. It is reported that [the appellant] inflicted the injuries." [p36]. The referral also confirmed that both security guards' bank contracts had been terminated.

22. The employer obtained a statement from ZM, Security Officer, one of the three security officers involved in the events of the 11 November 2023. He was interviewed on the 13 November 2023, less than 2 days after the incident, and in his written statement said:
"*The patient kept struggling to get free from our holds. We managed to get him into one of the offices inside the ward. Just when we released our holds asking him to sit down, he suddenly punched my colleague [the appellant] in the face. [The Appellant] either punched or pushed him back in the face (I am not absolutely sure whether it was a push or punch as it happened very quickly). I immediately pushed [the appellant] away from the patient, as I thought he might be angry and possibly not able to control his emotions, having been shocked by the patient's punch.*
I stood between [the appellant] and the patient blocking [the appellant] from reaching the patient. The patient ultimately set down and I noticed that he was bleeding from the cut on the bridge of his nose. We called for a nurse to come and see the patient, a nurse came and wiped blood from the patient's nose."

23. By letter dated 16 November 2023, the appellant was dismissed as a bank

security officer following a review of an incident on the 11 November 2023. The letter stated:

"*The incident involved your management of a 17-year-old inpatient at 21.50 hrs while in the hospital at ward 35 (IDU). I have reviewed body worn footage of the incident and during this incident it captures you and two security colleagues take the patient into a side room where you are heard to state "shut the door" and the patient is sat down on a chair. At this time, the patient has no visible injuries to his face. You then almost immediately and without provocation, move towards the patient, and strike him in the face. A fellow security colleague stands between you and the patient, to protect him and move you away from him. As a consequence of you striking him, the patient's nose was injured and required medical attention.*

In my view your conduct fell far below the standards of behaviour I would expect of a security officer, caring for a patient at the Trust and our organisation's values. Based on my assessment of the information available to me, your actions did not form any part of a need to defend yourself or others, or a need to restrain or physically manage the patient. Your actions were an intentional act to harm the patient, who was not only 17 years old but also visibly vulnerable (because of a mental health episode). Your behaviour was completely unacceptable and will not be tolerated by the Trust" [p45]

24. The incident was referred to the police and they investigated the allegations. They took a witness statement from the security officer identified in the papers as "Witness 1" on the 27 January 2024. The witness statement refers to the incident taking place on the 13 November 2023, but proceeds to describe the incident with the appellant and the young patient which took place on the 11 November 2023. stated that the patient spoke no English or couldn't communicate with anyone at the time. He confirmed that the patient had no injuries at the time when he was taken into the Ward side room. He described in his statement as follows:

"*As we tried to sit the male down on the chair I can recall that the male threw a punch at [the appellant] and this had hit him on the face, [the appellant] was only a foot away from the male at the time of the assault. The male was still standing at this point near to a chair, [the appellant] responded by either pushing or punching the male, it happened so fast it was difficult for me to see but I could interpret it as aggressive in my opinion. I cannot recall anything being said. However, I could now see that the male had a cut to the bridge of his nose, due to this we have requested a Nurse to come in and see the male to treat him for his injuries.".*

25. By the time of the police investigation they were unable to obtain a victim statement because the patient had by then been transferred to a mental health unit and was deemed not to have capacity.

26. The DBS considered the evidence presented by the employer and concluded that the evidence supported the conclusion that the appellant had pushed or hit the patient to his face, causing injury and that his conduct was relevant conduct which, if repeated against a vulnerable adult could cause them harm.

27. The appellant was sent a minded to bar letter on the 3 June 2024 with a request that he should respond by the 31 July 2025. The letter set out the reasons for the referral and stated that:

"*Based on the enclosed information, it appears, on the balance of probabilities, that: In your role as Security Officer working at [the hospital] you physically abused a 17 year old male inpatient ST by striking him in the face with your hand causing injury. (Flags 1-5)" and "These initial findings are considered to be relevant conduct in relation to children as it appears that you have engaged in relevant conduct in relation to children, specifically conduct which endangered a child or was likely to endanger a child.*

It also appears that you have engaged in relevant conduct in relation to vulnerable adults, specifically conduct which, if repeated against or in relation to a vulnerable adult, would endanger that vulnerable adult or would be likely to endanger him or her.

We have concerns about the risk you may pose to children and vulnerable adults in the future. Specifically, from the information provided it appears that in your role as a Security Officer working at Leicester Royal Infirmary you physically abused a 17 year old male inpatient ST, by striking him in the face with your hand causing injury. It is acknowledged that as a consequence of your actions ST had a cut to the bridge of his nose which required medical attention. Whilst it appears that due to ST's mental health concerns he did not remember the incident, if your behaviour was to be repeated the potential for long lasting physical and emotional harm is significant. appears from the body worn camera footage which has been provided to the DBS you have acted in a physically aggressive manner towards ST who was a 17 year old inpatient of the hospital. It is recognised that prior to the incident of concern ST had been in a heightened state where he had shown previous signs of aggression towards members of the public and as a matter of his own safety you and your colleagues were requested to assist, where you move him to a side office. However it is unclear why you felt it necessary to act in such a violent manner towards ST. It appears from the footage that ST is showing no signs of aggression and is seated at the time however you immediately move towards him striking him in the face and your colleagues have to intervene to protect ST. It is acknowledged that just prior to you striking ST you tell one of your colleagues to 'shut the door' which appears to suggest that you are about to do something that should not be seen by others, you then strike ST. It therefore appears more likely than not that you knew what you were going to do and it was intentional rather than it being a reactive response.

Whilst it is acknowledged that your behaviour occurred outside regulated activity it is of concern that faced with similar non challenging situations when working with children and vulnerable adults you will resort to behaving in an equally aggressive way, where significant physical and emotional harm may be caused.

It is acknowledged that the incident is currently being investigated by the Police.

It appears from the camera footage evidence you have acted in a violent manner towards a child, striking him in the face. It is evident that your actions caused physical harm to ST with the potential to cause significant emotional harm also. From the information currently available it is not possible to establish your understanding or concern for the harm you caused. There has been no explanation for your behaviour and therefore it is unknown why you chose to act in such a manner. In light of this the DBS cannot be certain that you will not repeat this behaviour in regulated activity in the

future. Due to the risk of repetition it is therefore appropriate to consider including your name in both the Children's and Adults' Barred Lists.
It is recognised that barring you from working with children and vulnerable adults would have a significant impact on your life and as such interfere with your rights under Article 8 of the European Convention on Human Rights by restricting your future employment opportunities.
As such, your inclusion in both lists would prevent you from pursuing a career in nursing as detailed in your enhanced disclosure check. It would remove you entirely from both the adult's and children's work force, limiting your employment and volunteering opportunities, which would likely have financial implications. In addition, it is recognised your inclusion may cause some personal stigma, which could impact on your wellbeing. Therefore, the DBS recognises that your inclusion in the Children's and Adults' Barred Lists would likely have a significant impact on your Article 8 rights."

28. The appellant provided the DBS with his written submissions[p46]. In them, he stated that he wished to present a case as to why he should not be included on the lists and that his argument was grounded on: *"…my clean criminal record, strong moral character, extensive professional experience, unwavering commitment to safeguarding and the profound negative impacts that an unjust inclusion would have on my personal and professional life."*

29. His submissions further stated:
"*A critical consideration in this case is the lack of any substantive evidence. The hospital failed to mention that it was confirmed by a staff nurse the patient had capacity at the time of the incident, hence posing a threat to staff and members of the public. Moreover, it was suggested and confirmed by the nurse the patience had capacity on my arrival to the ward and was caught on body worn camera. It was also confirmed by the nurse, stating the patient had violently attacked two nursing staff and few members of the public before my arrival. Immediately I kindly asked to call the police due to patience's level of violent and aggression at the time. This absence of such crucial evidence highlights the unjust nature of any potential inclusion on the barred list. Decisions to include individuals on such lists should be based on clear, concrete evidence of risk or past harmful behaviour, none of which applies in my case. In conclusion, the evidence presented in this personal statement clearly demonstrates that I should not be included in the Children and Adults Barred List. My clean criminal record, strong moral character, extensive professional experience, and unwavering commitment to safeguarding are all indicative of my suitability for roles involving vulnerable populations. Furthermore, the profound negative impacts of an unjust inclusion, both professionally and personally, underscore the importance of careful, evidence-based decision-making in this process.*
I have consistently demonstrated transparency, accountability, and a proactive approach to safeguarding, all of which are critical in ensuring the safety and well-being of children and vulnerable adults. My contributions to the community, both professionally and as a volunteer, further highlight my dedication to supporting and protecting those in need."

30. The submission did not provide detail about the incident itself, dealing only with

the impact of a barring on the appellant. He had been employed as a health care assistant, was a student nurse and had worked with at risk youth and vulnerable adults. He emphasised the negative impact on his personal and professional life, ending his career in nursing and education and doing reputational damage to him.

Oral evidence at the hearing

31. The Appellant gave oral evidence at the hearing and explained that he did not recall the exact position or placement of his hand during the incident recorded in the six second body camera clip. He stated that he had kept as much distance as possible between him and the patient and that the patient had already charged him and kicked him in the groin. He stated that he had been attacked by the patient before the six second clip of video had started running. He stated that his intention in approaching the patient was to ask him why he was behaving in an aggressive manner. The appellant believed that his body language was not aggressive and expressed his wish to try to understand what was going on. He stated that there was no aggression from himself but that he wanted to know what was driving the patient's aggression. He conceded that the video clip did not show blood on the patient's face prior to his engagement with him. He also conceded that in another clip, his colleague had drawn the appellant's attention to the fact that his bodyworn camera was on. He maintained that this had been done because the security officers were not supposed to video within the hospital unless an incident was ongoing, to maintain patient privacy.

32. The appellant denied that he had hit the patient at all and claimed that he had never seen the police investigation report previously nor had any recollection of the interview by the police. He maintained that he had not hit or punched the patient and that he had acted in self defence. His explanation for approaching the patient was that he wanted to know the reason for his aggression and that his training as a nurse and as a security officer was to de-escalate situations and not inflame them. He was critical of the effectiveness of his fellow security officers in their restraint of the patient and felt that they were not assisting him in getting the situation under control. He focussed on the fact that he had made enquiries from the outset about the patient's capacity and had it confirmed by the nursing staff that the patient had capacity.

33. In cross examination, the appellant confirmed that his response to the patient's attack of him had been "fight or flight" and that he had pushed the patient away to prevent the patient from hurting him. He could not recall whether his hands were open or closed. He remembered trying to defend himself and to get the patient away as far as possible. His recollection was that he did his best to keep his distance from the patient. He did not recall hitting the patient but had put his hand out to stop him from charging him. He denied that he had hit the patient and relied on the video to show that he was defending himself. He described it as using proportionate force to de-escalate the situation. He maintained that the video did

not show evidence of the appellant hitting anyone. The appellant acknowledged that his two fellow security officers had put out their hands to stop him from approaching the patient, but he didn't know why they did that. He denied that he had moved towards the patient to retaliate against him for his attacks on the appellant. He could not explain how or when the patient sustained the injury to the bridge of his nose. He described how his intention had been to ask the patient why he was acting so aggressively and to de-escalate the situation.

34. Ms Hartley on behalf of the DBS submitted that the appellant had not been able to establish a mistake of fact because of the implausibility of the explanation he provided of the events of the 11 November 2023.

35. She further submitted that the appellant could not establish a mistake of fact, which meant that the appellant had assaulted a 17-year old child who was in a hospital, bewildered and unable to speak English and seemingly attacking people at random, including clinicians. The appellant attacked him after the threat of random violence had passed. If the appellant had reflected on this being a momentary loss of control in challenging circumstances, by the time of the decision, if he had reflected along those lines and endeavoured to do or undo behaviours to ensure that he would not lose his temper again, there might have been a conversation to be had about the proportionality of the barring decision. Instead, the appellant has not accepted any loss of temper or failure on his own part and doesn't accept that he assaulted a patient in retaliation and provided implausible explanations. These were the opposite of reflection on the incident. Against that background, the DBS could not be satisfied that faced with similar challenging behaviours from children or vulnerable adults, that he wouldn't respond in the same way. The assessment of risk against that background is a matter for the DBS, and they were not satisfied, absent any reflection or refresher training, that that type of behaviour wouldn't be repeated. Plainly, the effect of the behaviour does not outweigh the purpose of preventing the appellant from working with children and vulnerable adults who may be displaying that behaviour the 17 year old patient did that day.

Analysis

36. The Tribunal had in evidence a document bundle running to 144 electronic pages. In oral evidence, the appellant denied that he had hit the patient at all and claimed that he had never seen the police investigation report previously nor had any recollection of the interview by the police. He maintained that he had not hit or punched the patient and that he had acted in self defence. His explanation for approaching the patient was that he wanted to know the reason for his aggression and that his training as a nurse and as a security officer was to de-escalate situations and not inflame them. He was critical of the effectiveness of his fellow security officers in their restraint of the patient and felt that they were not assisting him in getting the situation under control.

37. We noted that the evidence of the security officer ZM, both on the 13 November 2023, when he was first interviewed by the employer and the second interview by the police on the 27 January 2024, confirmed that the appellant had hit the patient in the face causing him injury. We also noted that the appellant in his interview with the police on the 24 February 2024 had confirmed that he recalled hitting or pushing the patient in the face. That confirmation was given not once, but twice in the course of the police interview. We did not accept the appellant's oral evidence at the hearing that he had no recollection of the police interview nor that he had not seen the police report prior to the hearing. He did not challenge the contents of the interview in any of the written submissions, the representations to the DBS nor in the hearing, until he was asked about his responses in the police interview.

38. This was the biggest discrepancy in the appellant's evidence. Having confirmed in his statement to the police in February 2024, that he recalled hitting the patient in November 2023, at the hearing, he denied any recollection of hitting him. We concluded that the evidence of the contemporaneous statement taken, carried greater weight than the appellant's oral evidence more than two years later. We found the appellant's evidence about his motivation for approaching the patient when he was already sitting down between two other security guards, when the patient was either unable to understand English or unable to communicate, weak. There were also inconsistencies in the appellant's oral evidence: on the one hand he had initially claimed that the patient was charging at him and had kicked him in the groin immediately before the video footage and that consequently, he was keeping his distance from the patient, whilst on the other hand he stated that he decided to approach the patient to try and ask him why he was aggressive. He proposed to identify his trigger or motivation for attacking other people with the intention of de-escalating the situation. These two statements contradict each other and made his oral evidence less credible.

39. We accepted the evidence set out in the two witness statements of Witness 1/ZM on the 13 November 2023 and 27 January 2024, which was not at any time challenged by the appellant nor any reason put forward why the evidence might not be accurate. There were discrepancies in the two interviews, but both were clear that the appellant had struck the patient in his face.

40. We noted that there were two security officers (including the appellant) who were involved in the incident and who had been dismissed as a result of it, but the appellant did not at any time suggest that anyone else was responsible for the injury to the patient nor that the evidence presented against him in the employer's investigation and the subsequent police investigation were in fact biased against him in any way.

41. We also watched the six second clip of the incident in the side office several times, both at full speed and in slow motion. We were satisfied that when the appellant

moved towards the patient, the patient was seated. The appellant did not direct any question or comment to the patient, other than to say "Shut that door" and at the point where he started moving, the patient was seated and was not approaching the appellant. Whilst we accept that the video evidence alone does not show the appellant's hand making contact with the patient, it does not corroborate the appellant's own evidence that he was keeping as far as possible away from the patient, that he was approaching him to question the reasons for his aggressive behaviour and seeking to de-escalate the situation. We conclude that we cannot accept the appellant's oral evidence about the incident and do not accept that he was seeking to defend himself from the patient when there was contact between them. The response of the other two security officers strongly suggest that the appellant was acting in anger or frustration and this was confirmed by the statement of ZM on the 13 November 2023, when he stated that the appellant might be angry or unable to control his emotions [p42]. We find on a balance of probability that the appellant did act in anger and did cause harm to the patient through his actions and that there was no mistake of fact in the conclusions of the DBS regarding the conduct of the appellant.

42. We noted that the appellant had mentioned in his submission his clean criminal record and good moral character. In the course of the investigation, the appellant's criminal record check disclosed one caution for taking a vehicle without consent and three subsequent convictions, all on the same date in 2008, for various motoring offences. The appellant's evidence is shown to be inaccurate and he did not have a clean record as claimed. Although the offences were old, they were nevertheless criminal convictions on his record.

43. We concluded as a fact from the evidence of the security officer and the appellant's own evidence to the police on the 24 February 2024 that the appellant hit the patient in the face with his hand. We decided that those two pieces of evidence were more likely to be accurate, being closer in time to the incident, than the appellant's later versions of events. His subsequent failure to acknowledge his action or take any action to address or remedy the circumstances that led to his harming the patient, indicates a lack of insight and lack of understanding of the repercussions of such action towards a child.

44. We, therefore, concluded that since he had not demonstrated any insight into his behaviour on the 11 November 2023, the DBS were entitled to assess the risk of recurrence as significant and we conclude that the issue of proportionality is not a valid ground of appeal in this case. There was no error of law in the consideration of proportionality by the DBS.

45. The appellant submitted to the DBS a number of positive character references and supportive reports of his behaviour and conduct in other contexts. Unfortunately, those do not outweigh the impact of his behaviour towards the patient on the 11 November 2023. He provided no plausible explanation for

approaching the patient when he was sitting down in the side office between two security colleagues and since his evidence at the hearing was that he dealt with similar incidents three or four times a week during the time he was employed at the hospital, his approach to the patient was even more difficult to understand other than as a fit of temper, where he was angry about his own injury and pain.

Conclusion

46. We have found as a fact that the appellant caused harm to a child and that such conduct if repeated to a vulnerable adult would be likely to cause harm. We have therefore decided that 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 2006 Act, we therefore confirm the DBS's decision and refuse the appeal.

Meleri Tudur
Judge of the Upper Tribunal
(sitting in retirement)

Suzanna Jacoby
Specialist Member of the Upper Tribunal

Rachael Smith
Specialist Member of the Upper Tribunal

Authorised by the Judge for issue on 15 June 2026