



HM Courts &
Tribunals Service

UT10

Appealing to the Administrative Appeals Chamber of the Upper Tribunal

**Against decisions of the Disclosure
and Barring Service**

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Introduction

About this leaflet

This leaflet is to help individuals and their advisors wishing to appeal against a decision of the Disclosure and Barring Service (DBS) to bar them from working with children and/or vulnerable adults. It describes processes necessary to appeal to the Administrative Appeals Chamber of the Upper Tribunal. It explains, in outline, the stages in an appeal before it is decided by an Upper Tribunal judge and sets out the rights of appeal from a judge's decision. However, it is only a guide and does not have legal status. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules.

What is the Administrative Appeals Chamber of the Upper Tribunal?

- The Upper Tribunal is an appellate tribunal created by the Tribunals, Courts and Enforcement Act 2007. The Administrative Appeals Chamber is the part of the Upper Tribunal which hears and decides appeals on point of law or on certain errors of fact from decisions made by the DBS. The Upper Tribunal also considers appeals against decisions made by various tribunals including the Health, Education and Social Care Chamber of the First-tier Tribunal.
- The Administrative Appeals Chamber of the Upper Tribunal consists of High Court Judges, other judges and non-legal members with relevant expertise. An appeal is usually decided by a judge and two non-legal members. Applications for permission to appeal and interlocutory matters are usually decided by a judge.
- There is a small team of in-house lawyers called Registrars who assist the Upper Tribunal judges. They have been authorised by the Senior President of Tribunals to deal with procedural stages of cases. **A judge will always decide applications for permission to appeal and appeals.**
- **As the Upper Tribunal judges give judicial decisions neither they, nor their Registrars, nor any of the staff in the Upper Tribunal office, can give legal advice.** If you wish to receive advice, you could go to a Citizen's Advice Bureau or other similar organisation. You should find details in your local library or telephone directory.

Where are the offices of the Administrative Appeals Chamber of the Upper Tribunal?

All applications for permission to appeal against a decision of the DBS should be sent to the following address:

The Upper Tribunal (SVG)
5th floor
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Email: adminappeals@hmcts.gsi.gov.uk

Website: www.justice.gov.uk

Who can appeal to the Upper Tribunal?

Appeals by people who worked with children or vulnerable adults

- Individuals who worked with children or vulnerable adults, whether on a paid or voluntary basis, may appeal against a decision of the DBS to include them on the Children's Barred List or the Adults' Barred List. This includes decisions of the DBS not to remove an individual's name from either list when included in place of inclusion on the Protection of Children Act list, inclusion in the Protection of Vulnerable Adults list, inclusion on list 99 (prohibition from working as teachers or otherwise working with children in schools) and disqualified from working with children by the courts.

Particular issues which may arise on appeals

How much will it cost to appeal?

- There is no fee payable for applying for permission to appeal or for appealing to the Upper Tribunal against a decision of the DBS.
- The Upper Tribunal may order one party to pay another party's costs but only if the case has been conducted unreasonably.
- You may be able to obtain legal aid for your case, including representation, from a solicitor who has a legal aid franchise. There are financial limits and a legal merits test. Go online at www.gov.uk/legal-aid to find out if you are eligible for legal aid, and for advice on finding a solicitor. Your solicitor must send a copy of the funding notice to the Upper Tribunal office and to the other parties.

Representatives

- It is open to you to have a representative, whether legally qualified or not, to help you fill in the appeal form, deal with letters from the Upper Tribunal office, make and respond to submissions and appear in front of the judge for you if there is an oral hearing. If you have a representative the office will correspond only with that person and not with you although you will always be sent a copy of the judge's decision.
- If, for any reason your solicitor or other representative stops acting for you, you must notify the Upper Tribunal office otherwise the office are entitled to assume that you are still represented and will go on sending documents to the representative and not to you.

Before you can appeal

If you wish to challenge the decision of the DBS you must first ask for permission to appeal.

Reasons (grounds) for appealing

You can only seek permission to appeal against the decision of the DBS on the ground that it made a mistake:

- (i) on any point of law or
- (ii) in any finding of any fact which it has made and on which the decision was based.

Examples of where the DBS may be wrong in law include:

- The DBS did not apply the correct law or wrongly interpreted the law.
- The DBS made a procedural error.
- The DBS had no evidence, or not enough evidence, to support its decision.

The DBS did not give adequate reasons for its decision in the written statement of its reasons. These are only examples and the tribunal may consider the decision to be wrong in law for some other reason not mentioned here.

You should note that section 4(3) of the Safeguarding Vulnerable Groups Act 2006 provides that 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.

How to appeal

How to apply to a judge of the Upper Tribunal for permission to appeal

- You should send your application to the Upper Tribunal (SGV) so that it is received no later than three months after the date on the letter notifying you of the DBS's decision. You should use the form which the tribunal office will give you or, if you cannot get a copy, just write a letter setting out your reasons for appealing. You should enclose the necessary documents. These are listed on the forms. Forms are also available on the website.
- If you are late in applying for permission you must ask for an extension of time and explain why your application was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your application will not be admitted and you will not be able to appeal.
- You may withdraw your application for permission to appeal at any time before it is decided. You just need to write a letter to the Upper Tribunal (SVG) Office. If you wish to ask for your application to be reinstated you should write to the office within one month. If you are late you may ask for an extension of time.

What happens if the Upper Tribunal judge refuses you permission to appeal?

- The office will send you a copy of the judge's ruling refusing you permission to appeal, including the reasons.
- If the Upper Tribunal judge decides your application for permission without an oral hearing and refuses you permission or gives permission on limited grounds or subject to conditions, you may apply in writing within 14 days for the decision to be reconsidered at an oral hearing.
- A refusal of permission to appeal may be set aside by the Upper Tribunal judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings had gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing within one month.
- The only other right of challenge is by way of an application for judicial review in the Administrative Court which is part of the High Court. The time limit is very short.

How to appeal to the Upper Tribunal once you have been granted permission to appeal

- If the Upper Tribunal judge grants you permission to appeal you will not normally have to make a separate appeal. You will be told by the office if you have to.

What happens once permission has been granted?

How will the appeal proceed?

In general

- Once an Upper Tribunal judge has granted you permission to appeal, the office will copy the appeal papers to you and the DBS.
- The Upper Tribunal judge will give reasons for granting permission to appeal and you and DBS will be told how the appeal is to proceed.
- You should note that all comments or observations made by one party will be copied to all the other parties. The office will do this by sending out letters explaining what, if anything, needs to be done next.

Will there be an oral hearing of the appeal?

- You or your representative may request an oral hearing of your appeal. Hearings will usually be in London but may be in other hearing venues. Hearings may also be conducted by video-link.
- An Upper Tribunal judge can direct an oral hearing even though no one has asked for one.

What will happen if there is an oral hearing?

- Once the date for an oral hearing has been set, you or your representative will be sent a letter with details of the time and place, facilities available and a map to show you how to get there.
- The office will normally give at least 14 days notice of the date of a hearing but usually you will be given more notice.
- The Upper Tribunal judge will decide the procedure at any oral hearing bearing in mind that appeals to the Upper Tribunal are only on the ground of error of law or certain errors in the finding of any fact.
- The Upper Tribunal judge will not usually give a decision at the end of the hearing. It will be sent to you and all other parties after the hearing has taken place.
- Where a case raises a particularly important or difficult point of law, it may be heard by two judges and one non-legal member instead of one judge and two non legal members.

What you should do if you find you or your representative cannot attend an oral hearing

- If you or your representative want the hearing to be postponed you should give reasons and the judge or registrar will deal with your request.
- If the hearing is not postponed and you or your representative do not attend the hearing, the judge will decide whether to go ahead without you.

What you should do if you wish to withdraw your appeal

- If you have been granted permission to appeal, you need the agreement of a judge or registrar to withdraw, so you should give your reasons.

The decision of the Upper Tribunal on the appeal

The Upper Tribunal's decision

- The Upper Tribunal will always give its decision in writing.
- The Upper Tribunal must give reasons for the appeal being allowed or dismissed unless all the parties have agreed otherwise.
- The Upper Tribunal office will send you a copy of the decision. They also send a copy to your representative if you have one and to the DBS.

What to do if you are dissatisfied with the decision of the Upper Tribunal

In general

- You may apply to the Upper Tribunal for a decision on an appeal to be set aside on certain limited procedural grounds.
- You may appeal to the Court of Appeal against the decision of Upper Tribunal. You need permission first.
- The DBS has the same right to apply for a decision to be set aside or to appeal to the Court of Appeal as you do.

How to apply for the decision of the Upper Tribunal to be set aside

A decision of the Upper Tribunal may be set aside by the Upper Tribunal judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings has gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing with reasons within one month.

How to appeal to the Court of Appeal against an Upper Tribunal decision

- There is a right of appeal to the Court of Appeal against the decision of an Upper Tribunal judge if it is wrong in law. You must have permission from the Upper Tribunal, or if the Upper Tribunal refuses, from the Court.
- The time limit for applying to the Upper Tribunal for permission to appeal to the Court of Appeal is within one month of the latest of:
 - the decision being sent to you, or
 - your being notified of amended reasons for, or a correction of, the decision following review (see below), or
 - your being notified that an application to set aside has not been successful.

The time limit may be extended by the Upper Tribunal judge.

- You must make your application in writing identifying the alleged error or errors of law and stating the result you ask for.

How the Upper Tribunal considers your application for permission to appeal against its decision

- On an application for permission to appeal, the Upper Tribunal may review the decision and may set it aside, amend the reasons for it or correct it if:
 - when making the decision the Tribunal overlooked a legislative provision or binding authority which could have had a material effect on the decision, or
 - since the decision a higher court has made another decision binding on the Upper Tribunal which, if made before the decision, could have had a material effect on it.
- The Upper Tribunal must notify the parties in writing of the outcome of any review (unless it takes no action following the review).
- If the Upper Tribunal takes any action on review without first giving every party an opportunity to make representations it must allow that party to apply for the action to be set aside the decision to be reviewed again.
- If the Upper Tribunal does not review, or on review decides not to alter the decision, it must decide whether to grant permission to appeal to the Court of Appeal. It must record the decision in writing and give reasons for refusing permission, either completely or in respect of any of the grounds of appeal.
- If you are refused permission to appeal by the Upper Tribunal you may renew your application in the Court of Appeal.
- If the Upper Tribunal grants you permission you will need to appeal to the Court of Appeal.
- The Court of Appeal time limits are short so if you wish to renew your application or to appeal you should contact the Civil Appeals Office as soon as possible.

The address for the Court of Appeal is:

The Civil Appeals Office
Room E307
The Royal Courts of Justice
Strand
London
WC2A 2LL.

Email: civilappeals.registry@hmcts.gsi.gov.uk

If you wish to appeal to the Court of Appeal, you are advised to take legal advice, as you may become liable for costs.

The meaning of words

The following words are either used in this leaflet or may be used in documents you receive from the office of the Administrative Appeals Chamber of the Upper Tribunal.

- An **applicant** is a person who is applying for permission to appeal to the Upper Tribunal.
- An **appeal** is made by a person who has been given permission to appeal. A person who is appealing is called an appellant.
- The **Court of Appeal** in London is a higher court to which you may be able to appeal against an Upper Tribunal decision.
- A **Direction** is a written instruction by the Upper Tribunal judge, or a registrar, on the procedure that must be followed. The judge will make a Direction at the beginning of an appeal as to the order in which the parties are to make their submissions and the time limits for doing so.
- **Observations** are made by a **respondent** in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. Observations are also called **submissions**.
- **Permission to appeal** is the first essential step in the appeal process. If you do not have permission you will not be able to appeal.
- **A point of law, error of law and wrong in law**: examples are given in the section titled '**Reasons for appealing**'. You must bear in mind that there may be other points of law and if you are uncertain you may like to seek advice as described in that section.
- **A procedural error** is something that has gone wrong with the procedure in an appeal. The procedural rules in relation to appeals to the Upper Tribunal are set out in the Tribunal Procedure (Upper Tribunal Rules) 2008. However, only certain limited errors give you the right to have a decision **set aside**. These are set out in rule 43.
- **A Registrar** is a barrister or solicitor who works in the Upper Tribunal and who is authorised to deal with certain procedural matters. A **judge** will always decide an **application for permission** to appeal or an **appeal**.
- **A respondent** is a person who has a right to take part in or oppose an appeal that has been made to the Upper Tribunal (in SVG cases, the respondent is always the Disclosure and Barring Service).

General Note

The law governing the procedure on applications to the Upper Tribunal for permission to appeal and appeals is set out in section 4 of the Safeguarding Vulnerable Groups Act 2006, as amended by SI 2008 No 2833 and the Tribunal Procedure (Upper Tribunal) Rules 2008, SI 2008 2698, as amended from April 2009 by the Tribunals Procedure (Amendment) Rules 2009.