



**Appeal no. UA-2024-001586-V  
[2026] UKUT 29 (AAC)**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

On appeal from a decision of the Disclosure and Barring Service

**Between:** OJO Appellant  
and  
The Disclosure and Barring Service Respondent

**Before: Upper Tribunal Judge Johnston, Elizabeth Bainbridge and Roger Graham**

Decided on 16 December 2025 following an oral hearing, held by consent by video, on 18 November 2025

**Representation:**

Appellant: The appellant was assisted by a friend  
DBS: Mr Hanstock of counsel

**SUMMARY:**

*Safeguarding vulnerable groups: 65.5: Mistake on a point of law: The DBS erred in law by including the appellant on the barred lists when she did not have the opportunity to make representations.*

**ANONYMITY ORDERS**

On 18 November 2025, the Upper Tribunal made the following order, which remains in force:

"4. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008<sup>1</sup>, I prohibit the disclosure or publication of—

- (a) the applicant's name;
- (b) any matter likely to lead members of the public to identify her name.

5. Any breach of the order at paragraph 4 above is liable to be treated as a contempt of court and punished accordingly (see section 25 of the Tribunals, Courts and Enforcement Act 2007)."

<sup>1</sup> Statutory instrument number 2008/2698, as amended.

## DECISION

1. The appeal is allowed, following an oral hearing on 18 November 2025.
2. The hearing was by consent held by video. The appellant was represented by a friend who is not a legal representative. The DBS was represented by Mr Richard Hanstock of counsel. We are grateful to both for their submissions.

## REASONS FOR DECISION

### **A. Introduction**

3. The appellant appeals to the Upper Tribunal against the DBS's decision under reference 01039993672 communicated in a letter dated 30 September 2024 (pages 26-29 of the bundle) to include her in the adults' barred list and the children's barred list. Permission to appeal was given by Upper Tribunal Judge Perez on 18 January 2025.

### **B. Factual and procedural background**

4. On 22 January 2023 the appellant was cautioned for an offence of assault/ill treatment/neglect/abandon a child/young person to cause unnecessary suffering/injury under section 1(1) of the Children and Young Persons Act 1933 ("the offence").

5. In a letter dated 29 July 2024 the DBS wrote to the appellant notifying her of their intention to include her on the children's and adults' barred lists (the ITB letter). This was because she had accepted a caution for the offence.

6. The DBS sent what they said was proof of delivery of the ITB letter to the Upper Tribunal (page 25 of the bundle). The picture is of a front door, there is an illegible signature on the page, and the name on the page says it was signed by the appellant.

7. On notification of the application to appeal the DBS applied to the tribunal to strike out the application on the basis that the appellant was cautioned for the offence, that the regulated activity test was met, that the appellant was given the opportunity to make representations as to why she should not be included in the list and that no response had been received within 8 weeks.

8. Judge Perez made directions on 12 December 2024 asking the appellant whether the ITB letter was in fact delivered to her home. She also asked the appellant to clarify whether her job application was limited to working with adults or children. She said that if the appellant did not respond she would accept the evidence that the ITB letter was delivered and that the appellant's future employment was not limited to working with adults or children only.

9. The appellant replied in an email dated 19 December 2025 to say she had not received the ITB letter prior to this appeal although acknowledging that the picture did show her front door. She confirmed that her role could include working with children in the future and her current role was only working with vulnerable adults.

10. On 18 January 2025 Judge Perez granted permission to appeal to the Upper Tribunal on the grounds that it was arguable that the appellant did not have the

opportunity to make representations to the DBS as it was arguable that she had not received the ITB letter and therefore did not have the opportunity to make representations regarding the appropriateness of her inclusion in the lists. That in turn would if made out mean, according to the grant of permission, that the DBS had not been obliged to include in the lists pursuant to paragraphs 2(6) and 8(6) of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the SVGA).

11. The DBS argues that the evidence shows she did receive this letter and she made no representations and even if she did not receive the letter she has said nothing in her appeal which would have meant it was not appropriate for her to be included in the barred lists. Appropriateness would have been required to be considered by the DBS had the appellant made representations within the prescribed time: paragraph 2(7) and (8)(c) of Schedule 3 to the SVGA and paragraph 8(7) and (8)(c) of that Schedule 3.

### **C. The hearing**

12. At the hearing on the 18 November 2025 the appellant gave evidence to the tribunal. She was assisted by the family friend mentioned above. She maintained that she had not received the ITB letter. She accepted the photograph of the front door in the Royal Mail proof of delivery page was hers. She told us she lives at the address with her partner and two children.

13. She told us she only discovered the ITB letter had been delivered to her house after being included in the lists. At this stage she visited her family friend who advised her that there should have been two letters and so she went home and asked her family whether they had received a letter. She told us that she had checked with her partner whether he had received the letter, and he said he had not. He had checked in his bag where he kept post, and it was not there. She then said when questioned by the tribunal that her son “might” have received the letter but not passed it to her and it was never found. This is the first time she had said the letter had been received by anyone in the house. She said she did not recognise the signature on the proof of delivery for the ITB letter but the final letter including her on the list was signed for using her name by her son on 2 October 2024. She said that she recognised it was her son’s hands, feet and footwear in the picture.

14. She later qualified this under cross examination by saying that one son said he “might” have received it but did not understand the significance of it. He was 17 years old at the time.

15. She accepted when she appealed, that she did not include in her grounds that she had not received the ITB letter and was therefore unable to make representations to the DBS. The first time this was raised was following the directions of Judge Perez asking her to clarify whether she had actually received this letter. She said she did not include that as she did not think it would make a difference.

### **D. The Law**

16. The appellant was included in the barred lists for children and vulnerable adults by the DBS purportedly pursuant to the provisions of paragraph 2 and 8 of Schedule 3 to the SVGA.

17. These are the relevant provisions for automatic barring, subject to the right to make representations for the children's barred list (and were the relevant provisions as at the date of the DBS's decision)-.

"2(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

(2) Sub-paragraph (4) applies if it appears to DBS that—

(a) this paragraph applies to a person, and

(b) the person is or has been, or might in future be, engaged in regulated activity relating to children.

(4) DBS must give the person the opportunity to make representations as to why the person should not be included in the children's barred list.

(5) Sub-paragraph (6) applies if—

(a) the person does not make representations before the end of any time prescribed for the purpose, or

(b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

(6) If DBS —

(a) is satisfied that this paragraph applies to the person, and

(b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, it must include the person in the list.

(7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

(8) If DBS —

(a) is satisfied that this paragraph applies to the person,

(b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and

(c) is satisfied that it is appropriate to include the person in the children's barred list, it must include the person in the list."

18. These are the relevant provisions for automatic barring, subject to the right to make representations for the adults barred list (and were the relevant provisions as at the date of the DBS's decision). They correspond with the previous provisions above-

"8 (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

(2) Sub-paragraph (4) applies if it appears to DBS that—

(a) this paragraph applies to a person, and

(b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.

(4) DBS must give the person the opportunity to make representations as to why the person should not be included in the adults' barred list.

(5) Sub-paragraph (6) applies if—

(a) the person does not make representations before the end of any time prescribed for the purpose, or

(b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

(6) If DBS — (a) is satisfied that this paragraph applies to the person, and (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, it must include the person in the list.

(7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

(8) If DBS —

(a) is satisfied that this paragraph applies to the person,

(b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and

(c) is satisfied that it is appropriate to include the person in the adults' barred list,

it must include the person in the list.”

19. As said above the appellant accepted a caution for the offence. “The offence” satisfies the criteria prescribed for the purposes of paragraph 2(1) of schedule 3 to the SVGA, the automatic barring provisions for children, by virtue of regulation 4 of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (S.I.2009/37 “the 2009 regulations”) which provide:

“4.—(1) The criteria prescribed for the purposes of paragraph 2(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (6).

(5) The criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 2 of the Schedule.”

20. Paragraph 2 of the Schedule to the 2009 regulations provide:

2. The offences specified in this paragraph are— ...

(f) any offence contrary to a provision specified in Part 2 of that table;

21. Part 2 of the table includes any offence under the Children and Young Persons Act 1933, section 1.

22. “The offence” satisfies the criteria prescribed for the purposes of paragraph 8(1) of schedule 3 to the SVGA, the automatic barring provisions for vulnerable adults, by virtue of regulation 6(b) of the 2009 regulations which provide:

6. The criteria prescribed for the purposes of paragraph 8(1) of Schedule 3 to the Act are—

that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 4 of the Schedule.

23. Paragraph 4 of the Schedule to the 2009 regulations provide:

4. The offences specified in this paragraph are—

...  
(f) any offence contrary to a provision specified in Part 2 of that table;

24. Part 2 of the table includes any offence under the Children and Young Persons Act 1933, section 1.

25. Regulation 2 of the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008 (the 2008 regulations) provides how the DBS must give the person the opportunity to make the representations. For IBB read DBS. It provides:

2.—(1) This paragraph applies to any person to whom IBB must, in accordance with any provision of Schedule 3 to the Act, give the opportunity to make representations as to his removal from, or inclusion in, a barred list.

(2) IBB must give any person falling within paragraph (1) notice in writing that he may make such representations.

(3) IBB shall give any notice under paragraph (2) to the person in question by sending it to him by post.

(4) Any notice sent in accordance with paragraph (3) shall be treated as having been received by the person in question 48 hours after the date on which it was sent unless the contrary is proved.

(5) A person to whom notice is given in accordance with paragraph (3) may make representations as to his removal from, or inclusion in, a barred list within the period of 8 weeks starting on the day on which he is treated as having received the notice.

## **E. The Analysis**

26. In view of the appellant's evidence at paragraph 9 above we find that the test for regulated activity for both children and vulnerable adults is met; that is to say, the DBS had reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children and relating to vulnerable adults (paragraphs 2(6)(b) and 8(6)(b) of Schedule 3 to the SVGA).

27. There are two issues in this case to be determined. The first is whether the appellant had the opportunity to make representations to the DBS before she was included in the barred lists and what the effect was if she did not have that opportunity. The second question is if she had made representations would that have made a difference to the DBS decision to include her in the lists given the information in the grounds of appeal.

28. We accept the DBS submission that they had the address of the appellant and did send the ITB letter dated 29 July 2024 to that address. She confirmed in evidence that the door in the proof of delivery picture from the Royal Mail at page 25 of the bundle was her door. She also confirmed that her son "might" have received the letter but it was not his signature on the proof of delivery. In any event she told us that she never received the letter.

29. The DBS did send the letter by post to the appellant as required by the 2008 regulations and relied on this being effective service as they were entitled to under

regulation 2(4). We accept that this creates a rebuttable presumption that she did in fact receive the letter.

30. However, we find that the appellant is credible, and she was able to rebut the presumption. She told us that her son might have received the letter, but she did not receive it and did not find this out until she had received the inclusion in the barred lists letter (IBL letter). She did not seek assistance from anyone or respond to the ITB letter. This contrasts with her response to the IBL letter and her interaction with the Upper Tribunal in lodging the appeal within time and responding to directions. Shortly after receiving the IBL letter, she sought the assistance of the family friend who was with her at the hearing.

31. It was clear that the appellant had trouble reading and understanding the bundle and the questions. Despite this she took the letter from the DBS to her family friend to ask for assistance. She did not do this with the ITB letter which supports her oral evidence that she did not receive it.

32. Therefore, we find that she did not receive the ITB letter and, as a consequence of this, she did not have the opportunity to make representations to the DBS as to why she should not be included in the vulnerable adults or children's barred lists. This means that the DBS was not obliged to include her on the barred lists and, given that we can see no power to do so (and the DBS did not suggest there was a power separate from the duty), it was an error of law to include her in the lists.

33. The second question is, had the appellant received the letter would this have made any difference to the outcome? We clarified the submission with counsel for the DBS. The first time this was raised was in his skeleton to the Upper Tribunal. He said, whilst accepting the DBS would have to consider whether inclusion in the lists was appropriate subsequent to any representations from the appellant, she did now have the ITB and there was nothing in her grounds of appeal or any information from her before the Upper Tribunal that would have made a difference to their decision to include her in the barring lists. We accept that this is the case, but she was not making representations to the DBS about why she should not be included in the lists. The DBS say in their IBL letter, "We gave you the opportunity to explain why you should not be included in the Children's and the Adults' Barred Lists. We did not receive a response. We have not reviewed the facts of your caution as we consider cautions and convictions proven on the balance of probabilities".

34. We did not take evidence from the appellant about what she would have said in her representations or evidence about the caution or what she has done since receiving that. Nor did the DBS question her on this point. This argument had only been raised in the skeleton 7 days before the hearing. It would not have been fair to the appellant to give evidence on what she would have said had she received the ITB in the hearing today, particularly considering the obvious difficulty she was having navigating the process, reading and understanding the documents in the bundle and understanding the hearing today. We also note that the DBS has not reviewed the facts of the caution. In the barring letter at page 26 of the bundle they make that clear:

"We have not reviewed the facts of your caution as we consider cautions and convictions proven on the balance of probabilities."



35. In any event, knowing now what the representations might have been would not alter the fact, which we have found, that no representations were made and that the appellant did not have the opportunity to make them. So the facts obtaining as at the date of the decision would not change, and those are the facts we have to look at.

36. Although we cannot consider the appropriateness of the barring decision to include the appellant's name in the barred lists (under s.4(3) SVGA), the DBS cannot make that decision without knowing what her representations will be. The importance of the opportunity to make representations cannot be minimised. It is a part of the statutory scheme. Additionally, it is relevant to procedural fairness.

37. In *R (on the application of Bourgass and another) v Secretary of State for Justice* [2015] UKSC 54 Lord Reed says this when considering a prisoner's right to make representations over a decision to segregate him from other prisoners. At paragraph 98 he says:

"98. Whatever the position may have been in the past, the approach described in *Doody and Osborn* requires that a prisoner should normally have a reasonable opportunity to make representations before a decision is taken by the Secretary of State under rule 45(2). That follows from the seriousness of the consequences for the prisoner of a decision authorising his segregation for a further 14 days; the fact that authority is sought on the basis of information concerning him, and in particular concerning his conduct or the conduct of others towards him; the fact that he may be able to answer allegations made, or to provide relevant information; and, in those circumstances, from the common law's insistence that administrative power should be exercised in a manner which is fair."

38. The relevant parts of Section 4 of the SVGA say as follows:

(1) An individual who is included in a barred list may appeal to the Upper Tribunal against—

- (a) .....
- (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.

...

(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.

39. As we have identified a mistake of law, we must apply section 4(6) of the SGVA to direct the DBS to either remove the person from the list or remit the matter to the DBS for a new decision. Section 4(6) of the SVGA has been interpreted by the Court of Appeal in *Disclosure and Barring Service v AB* [2021] EWCA Civ 1575. At paragraph 73 of this judgement Lord Justice Lewis says this:

“For those reasons, I would interpret section 4(6) of the Act as permitting the Upper Tribunal to direct removal of the name of a person from a barred list where that is the only decision that the DBS could lawfully reach in the light of the law and the facts as found by the Upper Tribunal.”

40. As the appellant did not have the opportunity to make representations the DBS was not obliged to include her on the barred lists. Not to include her was the only decision the DBS could make on the facts obtaining at the date of the decision and in light of the law.

## **F. Conclusion**

41. We therefore direct the DBS to remove the appellant from the lists.

**Upper Tribunal Judge Sarah Johnston  
Elizabeth Bainbridge  
Roger Graham**

**16 December 2025**