



**The Upper Tribunal
(Administrative Appeals Chamber)**

**UT NCN: [2026] UKUT 3 (AAC)
UT Case Number: UA-2024-001578-V**

Summary: Safeguarding Vulnerable Groups (65.8 - proportionality)

Safeguarding Vulnerable Groups Act 2006 - section 4(2)(a) – the appellant was included in the children’s barred list – poor parenting by appellant – his attitude and beliefs would affect his ability to recognise safeguarding issues when working as a teacher and his willingness to work collaboratively with other professionals – DBS’s decision not disproportionate.

Before

**UPPER TRIBUNAL JUDGE JACOBS
TRIBUNAL MEMBERS HUTCHINSON AND JACOBY**

Between

NNM

Appellant

v

Disclosure and Barring Service

Respondent

THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:

No one shall publish or reveal the name or address of NNM, who is the Appellant in these proceedings, or any information that would be likely to lead to the identification of him or any member of his family in connection with these proceedings.

Any breach of this order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years’ imprisonment or an unlimited fine.

Decided on 31 December 2025 following an oral hearing on 8 December 2025.

Representatives

Appellant: Spoke on his own behalf

DBS: Matt Lewin of counsel, instructed by DBS Legal Department

DECISION OF THE UPPER TRIBUNAL

On appeal from the Disclosure and Barring Service (DBS from now on)

DBS reference: 01017693809

Decision letter: 16 September 2024

This decision is given under section 4 of the Safeguarding Vulnerable Groups Act 2006 (SVGA from now on):

DBS did not make mistakes in law or in the findings of fact on which its decision was based. DBS's decision is confirmed.

REASONS FOR DECISION

A. DBS's decision and reasoning

1. On 16 September 2024, DBS included NNM in the children's barred list on the following findings of relevant conduct:

Between 2021 and 2023 you failed to provide appropriate care to your child including subjecting him to physical abuse and to witnessing domestic violence between his parents and failed to meet his emotional needs resulting in Social Services removing your son from your care.

2. In its decision letter, DBS dealt with the relevance of these findings to NNM's work as a teacher, which is regulated activity:

... you would struggle to work openly and effectively with social services or other professionals and ... this may also impact on your willingness to work with or report concerns to social services in your professional role as a teacher.

...

While the behaviour relates to your own child, the DBS has concerns that due to your personal views and beliefs you may fail to recognise safeguarding concerns in relation to other children in your care and that you may fail to report those concerns or work openly with social services or other professionals to address any risks identified.

3. It is right to recognise that DBS did not rely on NNM repeating the behaviour with his child in relation to pupils at his school. It relied on inability to recognise safeguarding issues when they arose and unwillingness to work collaboratively with other professionals in responding to those issues.

B. The grant of permission to appeal to the Upper Tribunal

4. Upper Tribunal Judge Jacobs gave NNM limited permission to appeal. This is how he explained his decision:

7. I consider that there is a realistic prospect that NNM might succeed on appeal by showing that the decision to include him in the children's barred list was disproportionate. As part of that analysis, there are some issues of fact on which DBS may have made mistakes. The Upper Tribunal will be able to make its own assessment of the evidence: see the decision of the Court of Appeal in *Disclosure and Barring Service v RI* [2024] 1 WLR 4033.

8. The argument for disproportionality is this. The events that led to DBS's decision relate to NNM's own child. He is a teacher with an unblemished record and references to support that. He impressed on me the importance of the AFRUCA report, as it was an assessment by someone familiar with his background and culture. The report brings out the clash between NNM and the social workers. NNM is conscious and proud of this professional training and status as a teacher. The social workers feel the same about their training and status. The report brings out that both sides see the attitude of the other as showing a lack of respect for their position. This has led to the clashes, distrust and misunderstandings. It is interesting that this has not happened when NNM is working within his profession. My point is that with AFRUCA's understanding the Upper Tribunal might decide that the personal issues in his family life are not ones that arise in regulated activity.

9. That is the basis on which I have given permission. The Upper Tribunal will not allow NNM 'to enlarge the scope of the appeal beyond the limits of the grant of permission' (*Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 Civ at [97]), unless it gives him permission to do so (*KS v Disclosure and Barring Service* [2025] UKUT 45 (AAC) at Section III).

5. NNM did not apply for permission to amend his grounds. Accordingly, we limited our consideration to the grounds on which permission was given, as required by *Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 at [97].

C. Some background

6. NNM is a proud man, with reason to be proud of his background and his talents. He is from a prominent family in his home country and has been involved there with a Non-governmental Organisation run by the family, as part of which he taught children, albeit (we understand) without any formal training. He has played professional football in Europe successfully. He is a talented linguist and has qualified as a teacher in this country. No one has criticised his teaching or accused him of directly harming any of the pupils in his care. This case is about his attitudes and parenting style and the effect these may have on the way he identifies safeguarding issues and interacts with other professionals.

D. The legislation

The barring provisions

7. These are the provisions of Schedule 3 SVGA that apply to the children's barred list.

*Behaviour***Paragraph 3**

- (1) This paragraph applies to a person if—
 - (a) it appears to DBS that the person —
 - (i) has (at any time) engaged in relevant conduct, and
 - (ii) is or has been, or might in future be, engaged in regulated activity relating to children, and
 - (b) DBS proposes to include him in the children’s barred list.
- (2) DBS must give the person the opportunity to make representations as to why he should not be included in the children’s barred list.
- (3) DBS must include the person in the children’s barred list if—
 - (a) it is satisfied that the person has engaged in relevant conduct,
 - (aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
 - (b) it is satisfied that it is appropriate to include the person in the list.
- (4) This paragraph does not apply to a person if the relevant conduct consists only of an offence committed against a child before the commencement of section 2 and the court, having considered whether to make a disqualification order, decided not to.
- (5) In sub-paragraph (4)—
 - (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000;
 - (b) a disqualification order is an order under section 28, 29 or 29A of that Act.

Paragraph 4

- (1) For the purposes of paragraph 3 relevant conduct is—
 - (a) conduct which endangers a child or is likely to endanger a child;
 - (b) conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him;
 - (c) conduct involving sexual material relating to children (including possession of such material);
 - (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;
 - (e) conduct of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate.
- (2) A person’s conduct endangers a child if he—
 - (a) harms a child,
 - (b) causes a child to be harmed,

- (c) puts a child at risk of harm,
- (d) attempts to harm a child, or
- (e) incites another to harm a child.
- (3) ‘Sexual material relating to children’ means–
 - (a) indecent images of children, or
 - (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.
- (4) ‘Image’ means an image produced by any means, whether of a real or imaginary subject.
- (5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (6) For the purposes of sub-paragraph (1)(d) and (e), DBS must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

The appeal provisions

8. Section 4 SVGA contains the Upper Tribunal’s jurisdiction and powers.

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.

...

E. Our approach to the case

9. The burden of showing a mistake rests on NNM. See the Presidential Panel in *PF v Disclosure and Barring Service* [2020] UKUT 256 (AAC) at [8].

10. We considered all the evidence in the case bundle. In addition, DBS sent us copies of two video clips mentioned in the papers. We have watched those clips, but have not found anything in them that helps us to decide the issues raised on this appeal.

11. We also heard oral evidence from NNM as we are entitled to do: *Disclosure and Barring Service v JHB* [2023] EWCA Civ 982 at [95].

12. As NNM was not represented, he was not required to provide a witness statement. Instead, he gave evidence in answer to questions from the panel and on cross-examination by Mr Lewin.

13. Having heard that evidence, we approached the case in accordance with the decision of the Court of Appeal in *RI v Disclosure and Barring Service* [2024] 1 WLR 4033. Bean LJ there approved at [29] the submission by counsel for RI at [28] that:

the Upper Tribunal is entitled to hear oral evidence from an appellant and to assess it against the documentary evidence on which the DBS based its decision.

Later at [31], Bean LJ said that:

where relevant oral evidence is adduced before the UT ... the Tribunal may view the oral and written evidence as a whole and make its own findings of primary fact.

And Males LJ said at [50] that the Upper Tribunal is:

entitled to evaluate that evidence, together with all the other evidence in the case

...

14. Our assessment of the evidence is made with the benefit of the practical knowledge and experience that the specialist members bring to this jurisdiction. We

refer to what the Upper Tribunal said about their qualifications for appointment in *CM v Disclosure and Barring Service* [2015] UKUT 707 (AAC) at [59] to [64].

15. In deciding whether DBS made a mistake of fact or law, we had to consider the circumstances as they were at the date of DBS's decision, which was 10 January 2024. See *SD v Disclosure v Barring Service* [2024] UKUT 249 (AAC). We are entitled to take account of evidence that was not before DBS, provided that it can be related back to that date. At the end of the hearing before us, NNM referred to the local authority's refusal to review the care arrangements for his son. That evidence relates to events after the date of DBS's decision and could not be taken into account.

F. The school's decision and the Teaching Regulation Agency

16. NNM's school dismissed him following a disciplinary hearing, which was confirmed following an appeal hearing. It did so on the basis that there was a substantial risk of harm that was transferable to the school.

17. NNM was referred to the Teaching Regulation Agency. It decided to take no action against him:

I have concluded that there is not sufficient evidence to support the allegations against NNM upon which a reasonable Professional Conduct Panel could, on the balance of probabilities, make a finding of: (i) of unacceptable conduct and (ii) of conduct that may bring the teaching profession into disrepute. Therefore, there is no case to answer and the case is closed.

18. The Agency had considered two allegations. The first concerned the allegation by NNM's son that his father had hit him with a belt and both hands. The Agency commented:

... this was later retracted which led to the Police closing the case due to insufficient evidence and direct witnesses.

The second allegation concerned remarks attributed to NNM that would have been construed as a threat to harm British children. The Agency commented:

... whilst the comment made was inappropriate, there is no evidence that similar comments have been made by NNM in the past.

19. The Court of Appeal has decided that DBS is not bound to follow a decision of the Agency, even one that is favourable to the teacher: *XYZ v Disclosure and Barring Service* [2025] EWCA Civ 191, [2025] 1 WLR 4531. It follows that we are not bound to do so. We accept Mr Lewin's argument that there are good reasons to disagree with the Agency's reasoning. First, the allegation by NNM's son was not the only one on which DBS relied. Although it is correct that the police took no action in respect of that allegation, both the local authority and the family court did take action. Second, DBS did not rely on the second allegation. To that extent, DBS's analysis is not inconsistent with the Agency's.

G. The scope of this appeal

20. Judge Jacobs gave permission to appeal on the ground that the decision might be disproportionate. If it was, that would be a mistake of law under section 4(2)(a). See *R (Royal College of Nursing) v Secretary of State for the Home Department* [2010] EWHC 2761 (Admin), [2011] PTSR 1193 at [104] and *B v Independent Safeguarding*

Authority (Royal College of Nursing intervening)[2012] EWCA Civ 977, [2013] 1 WLR 308 at [14]. He explained his concern as being whether NNM's behaviour towards his child would affect him in his work as a teacher. Proportionality cannot be separated from the facts, which is why the judge went on to mention 'some issues of fact'. Specifically, that refers to the matters relied on by DBS, which we set out in paragraph 2 and summarised in paragraph 3. As a shorthand, we refer to this as a lack of insight.

H. Our factual assessment of NNM's insight

21. NNM's son initially said that his father had hit him, but then retracted his statement. We are satisfied that NNM did hit his son. We are also satisfied that he had not co-operated with children's services. We make those findings on the basis of the following.

22. First, we rely on the findings of the family court, made after a three day fact-finding hearing. We have the approved note of the judgment. The order of the family court allowing reference to be made to the court's documents says that this is 'dated 26 January 2024.' It is not clear if that is the date of the judgment or of the note. In particular, we note these passages:

Despite being a teacher himself it was plain to see that he was and remains very mistrustful of educational professionals.

There were a lot of inconsistencies in what [NNM] said, there was no explanation about why he changed his approach when he qualified as a teacher – he seemed to think even after he qualified it is acceptable to threaten. ...

I am troubled that the father had deflected and placed blame on the professionals involved. It seems to me that the father was lacking empathy and understanding and that extended to contact sessions when things did not go his way.

... [NNM]'s style of parenting went over and above that which is culturally acceptable making allowance for the differences – when he told [his son] to shut up on 12th January 2023, I find the father was being rigid and authoritarian.

I find what [NNM's son] told the school on 12th January was true – I do not find he was embellishing. I find he had been beaten and he had been beaten by a belt most recently in the USA. I find it happened on more than one occasion – I am unable to make any more particular finding about that but do accept it took place and [the son] expected to be beaten again.

... I find the child was in fear of his father and had valid reason to be.

... I specifically reject father's assertion was culturally appropriate.

23. Second, we rely on the psychologist's report. It is dated 17 July 2023 and contains a transcript of NNM's first interview, beginning at line 916. In particular, we note these passages from the report:

The father presents as highly defensive and thus over-psychologically defended, seeing himself as undeservedly and unfairly attacked by the Local Authority and other professionals, e.g. the school. The father does not believe that his behaviours and responses have been accurately perceived and interpreted by professionals. From this, there is a raised suspicion in the father that professionals are not working for his or [his son's] best interests and have a

predetermined and inaccurate view of his relationship with [his son] and his intentions and capacity for childcare. The father admits to hitting [his son] but not, what he sees as an aggressive, violent or over-chastisement context. [Lines 795-803]

The father does not accept that the allegations by the mother of domestic abuse are fair or accurate. The father does admit that he hit [his son] as an approach to managing [his] behaviour. The specialist course which I recommend should be able to adjust this perception in the father. The father sees 'hitting' as an acceptable and culturally appropriate way of managing a child's discipline. The father will need to review and alter this perspective in the context of the impact he has now experienced of this and how it is culturally perceived in the UK and also in the context of [his son's] autism. [Lines 846-853]

As the father self-reports, he sees the use of physical chastisement as a culturally acceptable approach to managing a child's discipline. Note however the semantic issues involved in the terminology used by both the father and [his son] with 'beating', which can be mis/reinterpreted in many different ways, depending on an individual's use and interpretation of the English language. The father's semantic association is one of beating equating to 'smacking' and not the more severe form of physical chastisement that may be viewed by a UK professional's use of the term 'beating'. [Lines 870-876]

24. Third, we rely on an assessment by AFRUCA. NNM emphasised the importance of understanding his culture. He insisted that he could only be properly assessed by someone with that understanding. This is why he asked to be assessed by AFRUCA. This is described in its report as 'a platform for advocating and promoting the wellbeing and protection of Black and Ethnic children in the UK.' The report is dated 30 October 2023. In particular, we note these passages:

3: 1.2 While discussing the concerns around the physical and emotional impact of physical chastisement on [a child] NNM denies the use of physical chastisement and stated that since becoming a teacher, he no longer uses chastisement as a form of discipline. NNM also shared some of the strategies he utilises in disciplining [his son]. It is however interesting to note that NNM admitted to the use of threatening language as a means of improving [his son's] behaviour. NNM went on to discuss his cultural values as it relates to discipline, while expressing the view that other's people's culture should be respected. NNM is also of the view that he was not treated with respect or his cultural values taken into consideration.

3: 1.5 I am therefore of the view that it would be beneficial if NNM accesses AFRUCA's one to one positive parenting course. The intervention would be culturally appropriate and tailored towards addressing the areas of concern highlighted by Children's Services including supporting NNM to understand for example, what constitutes physical and emotional abuse. NNM will be supported to understand that shouting, verbally threatening and physically chastising a child whether through the use of an implement or other forms of chastisement is unacceptable. This means that any hitting, beating, shouting, use of implements or making threats are all negatively received by children as it causes them to be fearful in their own home and puts up barriers between the child and parent.

25. Those three sources are relevant for showing the views that NNM had expressed and for the professional's assessment of NNM's insight, as we are calling it. The passages we have quoted support the conclusions reached by DBS. We accept that all three sources accurately record what NNM said. That is part of their training and their roles. We also accept the conclusions reached. All three sources are expert in their field. The judge had the advantage of a hearing over three days. The reports themselves speak to the thoroughness of the authors and the cogency of their reasoning. In particular, NNM chose AFRUCA as being able to understand his culture and accepted the assessor who provided the report. The author could not have made clearer the range that abuse may take and the harm that all forms can do to a child.

26. We accept that we have quoted only a few short passages from a hearing bundle that contained not far short of 700 pages. But those passages are most relevant to the issues we have to decide. The documents from which we have quoted are lengthy and support the passages cited. The note of the family court's judgment is at pages 385 to 397. The Psychologist's report (excluding the transcript) is at pages 405 to 462, with two Addendum reports at pages 530 to 552 and 557 to 573. The AFRUCA report is at pages 575 to 644.

27. The judgment was delivered and the reports were written before DBS made its decision on 16 September 2024. We have to decide this appeal on the circumstances as they were on that date. NNM's oral evidence was important in allowing us to identify any change that had taken place. Having heard that evidence, we found no indication of any change. What we heard was consistent with the views we have quoted.

28. NNM adopted three approaches when being questioned. Each was an attempt to divert attention from the point of the question, but only succeeded in drawing attention to his resistance to answering a clear, direct question. Together they show that he still lacks the insight that would be necessary to render DBS's decision disproportionate.

29. First, NNM hid behind words and definitions. When asked whether he had hit his son, he said that he had not. He then qualified this by explaining that he had corrected his son, or given a verbal warning, or smacked him, but never to the point of committing an assault. He never caused physical pain. When he said he would 'beat his arse', that was just a way of speaking, and not to be taken literally. This was how he talked within his own culture.

30. Second, when it was put to him that the psychologist had recorded him as saying he had hit his son, he demanded the evidence that he had used those words. The interview had been recorded, he told us, so why was DBS not relying on the recording? The answer is that DBS does not have a copy of the recording and there is no reason to doubt the accuracy of the words that were not only recorded by a professional on a number of occasions but the subject of discussion and analysis in the report. We do not accept that it is likely, let alone probable, that the psychologist made a mistake. We noted that NNM did not take the chance he had when giving evidence to actually deny using those words.

31. Third, difficult questions produced a flood of background and contextual matters, from which no answer ever emerged.

32. We find no change in NNM's insight at the time of our hearing. That was despite the courses he told us about. These were courses on Understanding Children's Behaviour and Understanding Autism. He also underwent psychological therapy. It is

to his credit that he took those steps. He told us that he did not undertake the AFRUCA course, because the local authority would not fund it. We accept that, but we note that he has therefore missed out on the benefits the course might bring. Despite the steps he took, we could discern no change in his attitudes and beliefs.

33. As we have said, it is for NNM to satisfy the burden of showing that DBS made a mistake. He has not provided us with material on which we could find that he has discharged that burden. His attitudes and beliefs remained unchanged, even at the date of the hearing. And it was those attitudes and beliefs that led him to distrust other professionals and to fail to work collaboratively with them in the interests of his son.

34. That brings us to proportionality. We have to assess this as at the date of DBS's decision.

I. Proportionality (section 4(2)(a) SVGA)

35. We approached this ground in accordance with Section V of the decision of the Presidential Panel in *KS v Disclosure and Barring Service* [2025] UKUT 45 (AAC). In order to do so, we considered the four elements of the assessment were set out by Lord Reed in *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700 at [74]:

(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right

36. The measure is the barring scheme under SVGA and DBS's decision to include NNM in the children's barred list. Its objective is to protect children and vulnerable adults from harm by those entrusted with their care in regulated activity. That objective is sufficiently important to justify interfering with NNM's exercise of his Article 8 Convention right.

(2) whether the measure is rationally connected to the objective

37. DBS's decision under the barring scheme prohibits NNM from engaging in regulated activity with children. That is rationally connected to the objective of the scheme.

(3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective

38. There is no alternative measure that we can think of. The mandatory nature of the duties imposed on DBS by SVGA does not permit one. The only relevant regulator is the Teaching Regulation Agency. It has taken no action against NNM, but we have explained why we do not accept its conclusion.

(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

39. This requires a balance. On one side is the severity of the effect of including NNM in the barred list. He has worked as a teacher, but only began his training in 2020. He should still be able to use his language skills to his advantage. Those aside, there are opportunities in retail, hospitality, catering, office work, cleaning and no doubt others.

40. On the other side of the balance is the harm that might occur to children if NNM were allowed to work in regulated activity. DBS identified its concerns and we have found that they were valid on the evidence available of the time of the decision and on the evidence available to us. On our own assessment, we have come to the same conclusion as DBS: the protection of children outweighs the interference with NNM's Article 8 rights.

41. That is why we have confirmed DBS's decision.

**Authorised for issue
on 31 December 2025**

**Edward Jacobs
Upper Tribunal Judge
John Hutchinson
Suzanna Jacoby
Members**