



Neutral Citation Number: [2026] UKUT 149 (AAC)

Appeal No. UA-2025-000136-V

RULE 14 Order:

Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the Applicant in these proceedings.

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

XY

Applicant

- v -

DISCLOSURE AND BARRING SERVICE

Respondent

Decision on an application to strike out the proceedings (under rule 8(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008)

Before: Upper Tribunal Judge Brewer

Hearing date: 13 March 2026

Mode of hearing: Oral Hearing by video-link

Representation:

Appellant: Non-attendance
Respondent: Mr Andrew Deakin (Counsel)

Decision Date: 30 December 2024

SUMMARY OF DECISION

This application concerns whether the Upper Tribunal has jurisdiction to entertain XY's appeal. The Disclosure and Barring Service sought to strike it out under rule 8(2) of the 2008 Rules, contending that its decision of 30 December 2024 was merely a refusal of permission to conduct a review under paragraph 18(4) of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006, which carries no right of appeal. The Tribunal was therefore required to characterise the legal nature of that decision. Only a substantive review decision under paragraph 18(5), determining that the appellant should remain on the barred lists, engages the statutory right of appeal in section 4(1)(c).

Paragraph 18 establishes a two-stage scheme: a permission decision followed, if granted, by a substantive review. Only the latter is appealable. Further, a decision has legal effect only as notified to the individual; internal records cannot contradict what is communicated. The letter of 30 December 2024 was internally inconsistent. It stated that no review had been undertaken yet also asserted that removal from the barred lists was refused and notified a right of appeal. That communication conveyed an apparent paragraph 18(5) outcome. The inconsistency renders the decision defective, but not legally inoperative. The notified decision was one "not to remove", sufficient to engage section 4(1)(c). Jurisdiction therefore arises. Whether the DBS erred in law is a matter for the substantive appeal, if permission is granted.

The application to strike out is refused, applying the principles in *AM v Disclosure and Barring Service* [2021] UKUT 136 (AAC) and *R (Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36; [2004] 1 AC 604.

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

DECISION

The application to strike out the proceedings under rule 8(2) of the Tribunal Procedure Rules is refused.

REASONS FOR DECISION

Introduction

1. The issue raised by the Disclosure and Barring Service's ("DBS") application under rule 8(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 is a narrow one. It concerns the proper characterisation of the DBS's decision of 30 December 2024. The question is whether that decision was a refusal to undertake a review of XY's inclusion on the Children's and Adults' Barred Lists, or whether it was itself a review decision concluding that he should remain on both lists. Only the latter, a substantive review decision, engages the right of appeal under section 4(1)(c) of the Safeguarding Vulnerable Groups Act 2006.

2. As the Tribunal made clear in *AM v Disclosure and Barring Service, the Royal College of Nursing and the National Education Union* [2021] UKUT 136 (AAC) it has no jurisdiction to entertain an appeal against a refusal to conduct such a review. A refusal of that kind may be challenged only by proceedings for judicial review.
3. Jurisdiction is a threshold issue. If the Tribunal has jurisdiction, the appeal may proceed to be determined on its merits, subject to permission to appeal being granted. If it does not, the Tribunal has no power to entertain the appeal.

Factual and procedural background:

4. XY was included on the Children's Barred List and the Adults' Barred List on 27 January 2015 under the autobar provisions, following his convictions for rape and assault occasioning actual bodily harm committed against a former partner. His minimum barring period expired on 26 August 2024.
5. On 30 May 2024, XY wrote to the DBS requesting a review of the decision to include him on the Barred Lists. He explained that a review was appropriate because:
 - He felt remorse for the events that led to his conviction, which concerned a single incident within a two-year consensual relationship.
 - He had abided by the terms of his supervision and probation since his release in May 2019.
 - He was in a relationship and due to get married.
 - He had no issues in his workplace.
 - He had kidney cancer and a positive mental state was important to his recovery. A successful review would support that.
6. His request was accompanied by paperwork relating to his conviction, details of his licence, supporting testimonies, and evidence of his medical condition.
7. On 31 May 2024, the DBS acknowledged XY's request for a review of the 27 January 2015 decision. In that letter, the DBS explained that before he could make a formal application, they needed to assess his case and, if appropriate, send him copies of the relevant information they held. They also indicated that they might need to gather further material.
8. A factsheet about the review process was enclosed with the letter. It explained that the DBS may give permission for a review once the minimum barring period has passed, if they consider that a change in circumstances justifies doing so. This is known as a paragraph 18 review (under paragraph 18 of Schedule 3 to the 2006 Act). The factsheet also stated that if the DBS refused permission or carried out a review but decided not to remove the bar or bars, a further paragraph 18 review could not be requested for a further minimum period of 1, 5 or 10 years, depending on the applicant's age.
9. The factsheet also explained the position on a paragraph 18A review (under paragraph 18A of Schedule 3 to the 2006 Act). It stated that an individual may ask the DBS to

review their case at any time if they can provide evidence showing that a review is appropriate because:

- (i) information the DBS did not have at the time of the barred person's inclusion on the Barred Lists;
- (ii) a change in the barred person's circumstances; or
- (iii) because the DBS had made an error.

10. The factsheet also outlined the DBS review process. It explained that once the DBS received a review application with supporting evidence, it would decide whether to review XY's case. It stated that the DBS might need further information before making that decision. If so, any new information would be shared with XY and he would be given an opportunity to comment on it. The factsheet went on to say that if the DBS reviewed his case and decided that it was appropriate to remove his name from the Barred Lists, they would write to inform him. If they decided not to review his case or reviewed it but decided not to remove his name from the Barred Lists, they would write to explain the reasons for that decision. It also explained that a decision following a review to retain an individual on the Barred Lists gives rise to a right of appeal to the Upper Tribunal, whereas a decision not to review does not. A refusal to review can only be challenged by way of judicial review.

11. On 28 August 2024, the DBS wrote to XY. The letter, headed "Application for Review", set out the information he would need if he wished to ask for a review of the decision to include him on the Barred Lists. It confirmed that his minimum barring period had expired on 26 August 2024 and that he could therefore seek permission for a review under paragraph 18 of Schedule 3 to the 2006 Act. The letter explained that permission would be granted only if the evidence showed that a review was appropriate. The DBS enclosed a copy of the information it held about XY, together with a review application form which he was required to complete before his case could be considered further. The same factsheet about the review process was also enclosed.

12. The DBS have produced an internal record, titled, "PARAGRAPH 18 REVIEW SUBMISSION". This document sets out the background and procedural history leading up to the decision of 27 January 2015 to include XY on the Barred Lists. It summarises XY's grounds for seeking a review (see paragraph 5 above) and is followed by a section headed "Permission Consideration". The analysis begins as follows:

In order for a review to be granted under Paragraph 18 it is required that not only is the minimum barred period has passed but the circumstances of the person requesting the review demonstrate a change of circumstances and further that the change demonstrated supports permission being granted.

RJ's minimum barring period passed on 26 August 2024. As such one of the criteria has been met in regard to permission being granted.

The second criteria is to demonstrate a change of circumstance that would support the removal of the bars.

13. The analysis that follows largely mirrors the reasoning later set out in the decision of 30 December 2024 (see below). It records the following:

In this case [XY] has not demonstrated a change of circumstances that supports permission for a review being granted. The DBS cannot grant this solely based on the passage of time and limited unsupported claims. [XY] was barred based on his convictions which are findings of fact and the act of rape was additionally one of violence, supported by a conviction for assault occasioning ABH, against someone in their home.

Whilst accepting that there have been no significant concerns since his release from prison in the information he has provided, it is nonetheless still not viewed to demonstrate the considerable change and a significantly reduced future risk of harm posed by XY] to support permission for a review being granted.

Permission granted: No

.....

Conclusion

Having carefully reviewed all of the information held by DBS under Paragraph 18, Schedule 3 of the SVGA [RJ] should be retained in the Children’s Barred List and the Adults’ Barred List.

Information from PNC confirms there is currently no information that would adversely affect DBS decision.

The DBS decision as notified to the applicant:

14. A decision headed “Review outcome” was issued on 30 December 2024. The letter confirmed that XY had applied for a paragraph 18 review.

15. Under the section titled “Our decision”, it stated:

We have reviewed your case under Paragraph 18 and decided that it is not appropriate to remove your name from Children’s Barred List and the Adults Barred List.

16. This was followed by a section titled “How we reached this decision”, which said:

We are satisfied that you meet the criteria for regulated activity. This is because you applied for the role of Flexible Care Worker which meets the criteria for both barred lists.

We have carefully considered all the information we hold about you, including the reasons you gave us when asking us to review your case, and have decided that it is appropriate for your name to remain included in the Barred Lists(s).

This is because whilst you have exceeded the prescribed minimum barring period you have not, in our view, demonstrated the change of circumstances required to support a removal at this time.

You claim that you feel remorse for your historical actions but outside of your word have not provided evidence of this. At the time of your conviction you claimed that finding of fact was 'unsafe' and a 'miscarriage of justice'.

You stated you have abided by the terms of your probation but again outside of your own word have not provided evidence. Additionally, there is concern that this is challenged as you were cautioned in 2021 for not abiding with notification requirements which likely relates to a breach of that probation.

We have taken into account the testimonies you provided. However, we still hold concern that they are largely from family and friends and whilst your wife-to-be says you have acted appropriately around her children this is with the caveat that she supervised that contact. This level of scrutiny is unlikely to be repeated in the workplace, and this is a concern going forward.

Whilst you stated that you have had no issues in the workplace concern remains that you have again provided no evidence of this outside of your word.

We recognise that you have been diagnosed with kidney cancer and your assertion that not being barred would be beneficial to your mental well-being.

Ultimately, the DBS is of the view that your grounds of review are not sufficient at this time to demonstrate the considerable change of circumstances that supports granting a review.

17. After this section, the letter set out "What this means for you", confirming that XY's name remains on both the Children's Barred List and the Adults' Barred List. It then included a section headed "Your right to appeal our decision", which stated:

You have the right to apply for permission to appeal our decision from the Upper Tribunal.

Grounds of appeal to the Upper Tribunal:

18. XY appealed the 30 December 2024 decision. He advanced five grounds of appeal.

Ground 1:

He submitted that the DBS failed to have proper regard to the sentencing remarks of the judge. He relied on the judge's statements that:

I do not judge him to be a dangerous offender, he has reached 56 without conviction and I regard this offence as having been committed consequent on the particular dynamic of his relationship with the victim, with little prospect of

him doing anything similar in the future.....I do not think for a moment that he went there that night intent on committing any offence or even pressuring her into agreeing to have sex.

Ground 2:

He argued that the DBS failed to take account of the absence of any adverse probation report. He denied breaching the conditions of his supervision. He explained that he had been late to a probation meeting in 2021 because of a hospital appointment connected to his cancer, and that this explanation had been accepted by his probation officer.

Ground 3:

He submitted that remorse is an emotion for which it is inherently difficult to provide supporting evidence beyond stating it.

Ground 4:

He noted that he has been unemployed since his inclusion on the Barred Lists and is therefore unable to provide evidence of his conduct in employment.

Ground 5:

He contended that the DBS failed to place sufficient weight on the character evidence he provided.

DBS application to strike out:

19. The DBS applied to strike out the proceedings by letter to the Upper Tribunal dated 10 April 2025. In that letter, it stated as follows:

After considering the information provided by the Applicant, DBS did not consider that there have been a change in the Applicant's circumstances such that permission should be granted for a review under paragraph 18. DBS also conducted a Live PNC request which returned that the Applicant had received a caution for failing to comply with his notification requirements, contrary to the information he provided. RJ's name remains included in the Children's Barred List and the Adults' Barred List.

20. In the same letter, the DBS explained that the use of an incorrect template had resulted in some standard wording being included in error. It stated that the correct wording under the heading "Our decision" should have been as follows:

We have decided not to grant permission for a review of your inclusion in the Children's and the Adults' Barred Lists."

21. The DBS further stated that the letter should also have made clear the following:

you cannot apply to the Upper Tribunal to appeal against our decision not to review your case. However, you may be able to challenge our decision through judicial review...

The relevant statutory and procedural framework

22. Section 4(1)(c) of the 2006 Act provides:

“4 Appeals

(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.”

23. Paragraph 18 of Schedule 3 to the 2006 Act provides:

“Review

18(1) A person who is included in a barred list may apply to DBS for a review of his inclusion.

(2) An application for a review may be made only with the permission of DBS.

(3) A person may apply for permission only if—

(a) the application is made after the end of the minimum barred period, and

(b) in the prescribed period ending with the time when he applies for permission, he has made no other such application.

(4) DBS must not grant permission unless it thinks—

(a) that the person's circumstances have changed since he was included in the list or since he last applied for permission (as the case may be), and

(b) that the change is such that permission should be granted.

(5) On a review of a person's inclusion, if DBS is satisfied that it is no longer appropriate for him to be included in the list it must remove him from it; otherwise it must dismiss the application.

(6) The minimum barred period is the prescribed period beginning with such of the following as may be prescribed—

(a) the date on which the person was first included in the list;

(b) the date on which any criterion prescribed for the purposes of paragraph 1, 2, 7 or 8 is first satisfied;

(c) where the person is included in the list on the grounds that he has been convicted of an offence in respect of which a custodial sentence (within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act

2000 (c. 6) or section 222 of the Sentencing Code) was imposed, the date of his release;

(d) the date on which the person made any representations as to why he should not be included in the list.

24. Paragraph 18A(1) of Schedule 3 to the 2006 Act provides:

18A. (1) Sub-paragraph (2) applies if a person's inclusion in a barred list is not subject to—

- (a) a review under paragraph 18, or
- (b) an application under that paragraph,

which has not yet been determined.

(2) DBS may, at any time, review the person's inclusion in the list.

(3) On any such review, DBS may remove the person from the list if, and only if, it is satisfied that, in the light of—

- (a) information which it did not have at the time of the person's inclusion in the list,
- (b) any change of circumstances relating to the person concerned, or
- (c) any error by DBS,

it is not appropriate for the person to be included in the list.

25. Rule 8(2) of the Rules provides that:

“Striking out a party's case

(2) The Upper Tribunal must strike out the whole or a part of the proceedings if the Upper Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.”

DBS submissions on strike out

26. The DBS accepts that errors were made in the drafting of its decision letter, and that those errors created confusion in this case. However, it maintains that the substance of the decision, taken together with the internal documentary record, shows that the DBS declined to carry out a review and therefore made no appealable decision. The DBS advances five submissions in support of that position.

27. First, where the DBS conducts a review under paragraph 18 of the 2006 Act and decides not to remove an individual from a barred list, an appeal lies to the Upper Tribunal. A

decision not to carry out a review under paragraph 18 does not give rise to a right of appeal.

28. Second, the DBS acknowledges in its written submissions that the statements in the decision letter identified at paragraphs 15 and 17 above suggest that a review was conducted and that the DBS decided not to remove XY from the Barred Lists. The DBS's written submissions dated 12 February 2026 accept that "if that were correct, [XY] would have a right of appeal."
29. Third, the DBS contends that, although it had "reviewed" the material provided, it decided not to carry out a paragraph 18 review. It relies on three main points:
- (i) the decision letter concludes: "Ultimately, the DBS is of the view that your grounds of review are not sufficient at this time to demonstrate the considerable change of circumstances that supports granting a review";
 - (ii) in the DBS's view, the statutory threshold for granting permission to review, namely, a "considerable change in circumstances" under paragraph 18(4) of Schedule 3 to the 2006 Act, was not met; and
 - (iii) the Decision Minute dated 20 December 2025, consistent with sub-paragraph (ii) above, recorded that permission for a review was refused on the basis that there had not been a change in XY's circumstances.
30. Fourth, the DBS submits that, because it declined to conduct a review, the Upper Tribunal has no jurisdiction to consider the appeal.
31. Fifth, the DBS argues that there is no basis for transferring XY's appeal to another court or tribunal and that, accordingly, the proceedings must be struck out in accordance with Rule 8(2) of the Rules.

The Appellant's submissions on strike out

32. The appellant's written submissions emphasise the difficulties created by the inconsistent language used in the DBS's notification. He points to the passages in the decision letter stating that the DBS had reviewed his case and decided not to remove his name from the Barred Lists. He explains that those statements led him to bring the appeal, and that he relied on them in understanding that a right of appeal existed. In later submissions, he invoked the principle of legitimate expectation, arguing that the language used by the DBS engaged the Tribunal's jurisdiction.

Discussion

33. The starting point is that tribunals are creatures of statute and exercise only those powers Parliament has conferred. Whether jurisdiction exists is not a matter for the

parties but for the Tribunal, to be determined by reference to the statutory framework that defines its authority.

34. The decision letter, however, points in two directions. In stating that the applicant “will not be removed” from the Barred Lists, it appears to record a substantive outcome following a review, which would fall within the Tribunal’s jurisdiction. Yet it also states that permission to conduct such a review is refused, which would take the matter outside that jurisdiction. Two issues therefore arise:

- (i) whether it is possible to determine which of these characterisations reflects the decision the DBS in fact made; and
- (ii) if it is not, what legal effect attaches to a decision that on its face both confers and withholds jurisdiction.

Paragraph 18(4) and 18(5) of Schedule 3 to the 2006 Act

35. In the present proceedings, the central question is whether the decision taken by the DBS under paragraph 18 of Schedule 3 to the 2006 Act was a decision on the appropriateness of XY’s continued inclusion on the Barred Lists. If the DBS was determining that question, whether it was, or was not, appropriate to remove him, then section 4(1)(c) of the Act confers a right of appeal to the Upper Tribunal. If, however, the decision was confined to refusing permission to conduct a review and did not reach the question of appropriateness at all, no such right arises.

36. Determining the true character of the decision requires starting with the statutory scheme. Paragraph 18 draws a functional and conceptual separation between the gateway assessment under paragraph 18(4) and the substantive appropriateness decision under paragraph 18(5). The DBS submits that, notwithstanding the confused drafting, the decision remained confined to the permission stage and could not constitute a decision under paragraph 18(5). Whether that is so can only be resolved by keeping the statutory division of tasks clearly in view and asking whether the DBS assessed only the threshold question or went on, in substance, to determine appropriateness.

AM v Disclosure and Barring Service, the Royal College of Nursing and the National Education Union [2021] UKUT 136 (AAC)

37. In *AM*, the Upper Tribunal accepted the DBS’s core submission that paragraph 18 draws a clear and deliberate distinction between two different decisions. The first is the substantive decision, taken following a review, as to whether it remains appropriate for an individual to be included on a barred list. The second is the logically prior “gateway” decision as to whether permission should be granted to undertake such a review at all. Only the former engages the right of appeal under section 4(1)(c).

38. The Tribunal accepted that construction of the statutory scheme for reasons grounded both in the internal structure of paragraph 18 and in its wider legislative context. In *AM*, that analysis proceeded as follows. Paragraph 18 establishes a staged process, in which

the permission decision precedes, and is conceptually distinct from, the substantive determination of appropriateness. It is only where that latter stage is reached, and a decision is taken not to remove the individual from the Barred Lists, that the statutory right of appeal arises.

39. First, paragraph 18(3) imposes two conditions that must be satisfied before an application for permission may validly be made: the minimum barred period must have expired, and the application must not be a repeat application made within the prescribed period.
40. Second, paragraph 18(4) identifies the threshold to be applied at the permission stage. The decision turns on whether there has been a material change in the applicant's circumstances sufficient to justify a substantive review. As the Tribunal observed in *AM* at paragraph 48, the evaluative exercise at the permission stage stops short of considering whether it remains appropriate for the individual to be included on the Barred Lists. That evaluation arises only at the substantive review stage, which is reached if, and only if, permission is granted.
41. Third, if the statutory threshold for a substantive review is met and a review proceeds, the decision which follows is binary. Paragraph 18(5) requires the DBS to remove the person from the Barred Lists if it is satisfied that continued inclusion is no longer appropriate; otherwise, it must dismiss the application. It is this substantive decision, whether to remove, that engages the right of appeal under section 4(1)(c).
42. The Tribunal further held that this construction of the statutory scheme is consistent with Article 6 of the European Convention on Human Rights. At paragraph 52 of *AM*, it concluded that judicial review provides an adequate remedy for challenging a refusal of permission to conduct a substantive review, having regard to the nature of the decision, the expertise required of the DBS, and the general duties of fairness, reasonableness and proportionality which govern its decision-making.

The Permission Threshold

43. Against that background, paragraph 18(4) cannot be read in isolation from paragraph 18(5) and section 4(1)(c). Paragraph 18 sets out a sequential scheme, each stage operating as a precondition to the next. Only paragraph 18(5) is directed to the statutory question whether continued inclusion on a barred list remains appropriate. The earlier stages do not determine that question; they regulate access to its determination. The distinction drawn between paragraph 18(4) and paragraph 18(5) is therefore a functional and conceptual one. They perform different tasks, but both form part of a single, integrated statutory process and neither operates independently of the other. The decision under paragraph 18(4) is a gateway assessment, directed to whether the appropriateness question should be reopened, while paragraph 18(5) provides the sole mechanism by which that question is substantively resolved.

44. On that footing, the requirement in paragraph 18(4)(a)–(b) of a “material change” is directed to the threshold question whether the appropriateness assessment under paragraph 18(5) should be revisited. It is not an inquiry into appropriateness itself. Paragraph 18(4)(b) does not require the DBS to conclude, at the gateway stage, that continued inclusion is no longer appropriate. To impose that requirement would pre-empt the determination entrusted to paragraph 18(5).
45. It follows that at the permission stage; the DBS’s role is confined to assessing whether the asserted change could justify reopening the statutory question. Read in that way, paragraph 18(4) is not a detached procedural hurdle; its requirement of materiality is tied directly to the statutory outcome for which paragraph 18(5) provides the only determination mechanism. The threshold thus performs a coherent and limited function. It excludes changes of circumstance which, even if accepted, could not affect the conclusion under paragraph 18(5). Where the asserted change is capable of influencing that assessment, permission should be granted and the merits addressed at the substantive review.
46. The permission threshold therefore filters out applications where the change relied upon is peripheral to the appropriateness inquiry, changes which could not, even on a generous reading, affect whether continued inclusion remains justified. In such cases, permission may properly be refused for want of a material change within the meaning of paragraph 18(4). Conversely, where the change is non-trivial and capable of rationally affecting the appropriateness assessment, the statutory scheme requires that the application proceed to a substantive determination under paragraph 18(5).
47. This approach aligns with the Upper Tribunal’s analysis in *AM*. A refusal of permission is a gateway decision, involving evaluative judgement within the expertise of the DBS, reviewable in judicial review proceedings but not by way of a merits appeal. On the interpretation set out above, the permission stage remains a distinct administrative judgement of that kind, concerned only with whether there is a materially arguable basis for reopening the appropriateness question. The decision under paragraph 18(5), whether the individual should remain on the barred list, continues to mark the point at which the right of appeal under section 4(1)(c) is engaged.

Change of Circumstances and Paragraph 18(5)

48. The statutory scheme treats “change of circumstances” as a concept that carries through to the substantive review under paragraph 18(5). Although paragraph 18(4) deploys it as a gateway requirement, its relevance does not end there. A change sufficient to justify permission is, by the structure of paragraph 18, the same change that will inform the appropriateness assessment if a review proceeds.
49. Paragraph 18(4) requires the DBS to be satisfied both that circumstances have changed and that the change is such that permission should be granted. That necessarily assumes that the review contemplated by paragraph 18(5) will be undertaken in the light

of that change. When the matter moves to paragraph 18(5), the DBS must decide whether continued inclusion is “no longer appropriate”. The material bearing on that judgement will include, and may be shaped by, the change that justified permission in the first place.

50. In this way, the change of circumstances is not confined to the procedural threshold. It becomes one of the substantive considerations at the merits stage. The permission inquiry asks only whether the change is capable of affecting the appropriateness assessment; if it is, it will be part of the material that must be evaluated under paragraph 18(5).
51. Paragraph 18A reflects the same statutory logic, but without a permission stage. Under paragraph 18A(3), a person may be removed if, in the light of new information, any change of circumstances, or an error, it is no longer appropriate for them to remain on the list. There, change of circumstances is expressly identified as a substantive factor bearing on appropriateness. It is not a procedural filter but a reason why the appropriateness judgement may differ from that made at the time of the original listing.
52. The parallel between the provisions is clear. Both recognise that a relevant change may alter the appropriateness assessment. Paragraph 18 does so through a two-stage structure, permission followed by merits, while paragraph 18A incorporates the change directly into the merits test. In each route, the significance of the change lies in its potential to affect the appropriateness decision.
53. It follows that a change sufficient to pass the paragraph 18(4) threshold is the same kind of change contemplated in paragraph 18A(3)(b): a change that, when fully considered, may justify the conclusion that continued inclusion is no longer appropriate.

The DBS decision:

54. The DBS accept that the section headed “Our Decision” adopts the language ordinarily used in a paragraph 18(5) determination: a review is said to have been undertaken and a decision reached that the applicant should remain on the Barred Lists. That framing is carried through into the body of the reasons.
55. The decision goes on to state that the DBS has “carefully considered all the information we hold about you... and have decided that it is appropriate for your name to remain included in the Barred List(s).” Read in isolation, that is the language of a substantive appropriateness judgement. The following sentence, “you have not... demonstrated the change of circumstances required to support a removal at this time”, must be understood in that context.
56. Counsel for the DBS submitted that the latter statement reflects only the paragraph 18(4) threshold, but that overlooks the role that “change of circumstances” plays across the statutory scheme. As explained above, a relevant change is not confined to the gateway stage; if a review proceeds, it becomes one of the matters informing the paragraph 18(5)

appropriateness assessment. The phrase “required to support a removal” in the context of the preceding paragraph is therefore not the language of a permission refusal but of a merits conclusion that continued inclusion remains appropriate.

57. The final paragraph of the letter states that the applicant has not demonstrated “the considerable change of circumstances that supports granting a review.” That formulation is consistent with a paragraph 18(4) decision. But its presence does not neutralise the earlier language, which speaks in the terms reserved to a substantive determination under paragraph 18(5). The decision letter, as notified to the applicant, therefore contains formulations pointing in both directions. The language used in the core reasoning is plainly consistent with a decision that a review was conducted and that removal was refused.

Conclusion on jurisdiction:

58. In my view, this Tribunal has jurisdiction. That conclusion follows from the decision as it was notified to XY, from the constitutional importance of notification as explained in *R(Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36, [2004] 1 AC 604, and from the proper relationship between internal records and the legally effective decision.

The notified decision

59. The starting point is the notified decision, for it is that decision which governs the legal relationship between the State and the individual. The letter sent to XY purports to do two things. First, it states that the DBS has reviewed his case and decided that he will remain on the Barred Lists. That language appears both in the “Our Decision” section and in the reasons. Secondly, it states that he has a right of appeal. Read together, these statements indicate that a review has taken place, that removal has been refused, and that Parliament has afforded a statutory route of challenge.
60. It is correct that the letter also contains wording that no review was undertaken. The result is contradiction. But the contradiction is not of a kind that makes the outcome unintelligible. Rather, the letter appears to contain two incompatible decisions: a refusal to review, and a review resulting in a refusal to remove. Each is capable of bearing legal effect on its face.

Notification and legal effect

61. In *Anufrijeva*, the House of Lords held that notification is an essential component of a lawful decision. Without it, the individual cannot know their position or take the steps open to them in law. That principle has particular force where Parliament has created a statutory right of appeal that is triggered by “a decision”. In such a scheme, the decision that matters is the decision communicated to the individual. It is that decision which the person must either accept or challenge.

62. The respondent's argument cuts across that principle. It invites the Tribunal to disregard sections of the decision as notified and instead to adopt the account contained in an internal minute. On that basis, the appeal-conferring elements of the letter, namely, the language of review and the express appeal right, are said to be erroneous and therefore legally irrelevant. The consequence would be that the DBS could rely on its internal paperwork to displace the rights apparently conferred by its notified act. That approach sits uneasily with the principle in *Anufrijeva*, which treats notification as the moment when the decision acquires legal reality for the individual concerned.

The nature of the defect

63. The defect here is not that no decision was made. It is that two mutually inconsistent descriptions of the decision appear in the same letter. One possible view is that the inconsistency renders the letter incapable of constituting a decision at all. That cannot be accepted. The letter states plainly that a review has taken place, that removal has been refused and explains why, and that a right of appeal exists. Those statements are clear, intelligible and correspond to the statutory form of a paragraph 18(5) determination.

64. The alternative view, advanced by the respondent, is to treat the "no review" wording, supported by the internal minute, as decisive, and to treat the review-and-retain language and the appeal right as mere error. That approach is flawed in two respects. First, it reverses the proper order of analysis. For jurisdictional purposes, the focus must be on the decision communicated to the appellant, not on the internal document that may explain how that communication came to be produced. Secondly, it would allow the authority to diminish the procedural protection apparent on the face of its own communication by reliance on a private record. That is not a course the law should readily endorse.

65. The better view is that the contradiction renders the decision flawed, not void. The letter gives notification of an appealable decision not to remove. That suffices to bring the matter within section 4(1)(c). Whether the inconsistency, including the admitted template error, also amounts to an error of law is a matter for the substantive appeal, if permission to appeal is granted.

Jurisdiction and merits

66. Section 4 distinguishes between jurisdiction and merits. Jurisdiction depends on the existence of a decision of the defined kind, in this context, a decision on review not to remove. The merits jurisdiction then allows the Tribunal to identify errors of law or fact in that decision and, if appropriate, to direct removal or remit the matter. The statutory scheme proceeds on the basis that decisions may be imperfect or expressed in inept terms. What it does not permit is the collapse of the jurisdictional question into the merits by treating apparently appealable features in a notified decision as nullities simply because the authority later says they should not have been included.

67. Once it is accepted that the letter notified a review-and-retain decision and an attached right of appeal, the Tribunal has jurisdiction. Whether the decision was lawfully reached,

and whether its internal contradiction amounts to an error of law, are matters for determination at the merits stage, if permission to appeal is granted.

Conclusion

68. The inconsistency in the decision letter does not deprive the decision of legal force, nor does it negate the appeal right that it purports to confer. The letter tells the applicant that a review has been carried out, that removal has been refused, and that he may appeal. Those are the hallmarks of a decision within section 4(1)(c). They cannot be displaced by reference to an internal minute or by later explanation. The Tribunal therefore has jurisdiction, and any question as to the lawfulness of the decision must be addressed in the substantive appeal, if permission to appeal is granted.

Michelle Brewer
Judge of the Upper Tribunal

(Authorised for issue) 14 April 2026