



Neutral Citation Number: [2026] UKUT 188 (AAC)
Appeal No. UA-2025-000392-V

**IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

Between:

COB

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 any of the following:

- (a) COB, who is the Appellant in these proceedings;**
- (b) any of the children mentioned in the documents or during the hearing;**

or any information that would be likely to lead to the identification of any of them or any member of their families 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.

**Before: Upper Tribunal Judge Jacobs
Tribunal Members Turner and Tynan**

Decided on 09 May 2026 following an oral hearing on 27 April 2026.

Representation:

Appellant: Ellen O'Neill of counsel, instructed by Caulker and Co Solicitors

DBS: Ashley Serr of counsel, instructed by DLA Piper UK LLP

DECISION OF THE UPPER TRIBUNAL

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

DBS reference: 01026093777

Decision letter: 10 January 2025

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.

SUMMARY

Safeguarding Vulnerable Groups Act 2006 - section 4(2)(a) – no mistake of fact.

Safeguarding Vulnerable Groups Act 2006 - section 4(2)(b) – proportionality – no mistake of law.

Keywords (keyword numbers): Safeguarding Vulnerable Groups (65.8 and 65.9)

[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.]

REASONS FOR DECISION

A. Introduction

1. On 10 January 2025, DBS included COB in the children's barred list and the adults' barred list on the following findings of relevant conduct:

Prior to 11 March 2022, whilst working as a registered child minder, you:

- Physically chastised your grandson ... and Child A by hitting them with an object similar to a wooden stick and/or spoon, as a form of discipline.
- Smacked Child A on the bottom and face as a form of discipline.

On 30 November 2004, whilst employed as a Care Assistant, you:

- Attempted to cut the nails of resident Mrs P against her wishes, causing severe bruising and swelling to the hand.
- Stated you would scratch Mrs P back in response to Mrs P saying she would scratch you.

2. Upper Tribunal Judge Jacobs gave permission to appeal limited to these grounds:

First, DBS may have made mistakes in the findings of fact about the incidents.

Second, the decision to include COB in both lists may be disproportionate.

3. Permission was given without an oral hearing. COB did not apply for an oral reconsideration of the limited grant of permission under rule 33(3)(b) and (4)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698). Nor did she apply for permission to amend the grounds (as explained in Section III of *KS v Disclosure and Barring Service* [2025] UKUT 45 (AAC)). 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].

4. This is the Upper Tribunal's decision on the appeal. It 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].

B. The 2004 incident

5. Mr Serr conceded that it would not be proportionate to include COB in either list on the basis of this incident alone. We have found no mistake of fact in DBS's findings on the 2022 incidents and found that barring for these alone was proportionate. In those circumstances, we decided that it was not necessary to consider whether there were mistakes of fact in relation to the 2004 incident, despite Ms O'Neill's submission that we should do so. We have not relied on any evidence from that incident in deciding this appeal.

C. The legislation

The barring provisions

6. The decision was made under paragraphs 3 and 9 of Schedule 3 SVGA. We set out paragraphs 3 and 4, which relate to children. Paragraphs 9 and 10 are the equivalents for vulnerable adults and are essentially the same.

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

7. 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.
- ...

D. The evidence

8. We had the documentary evidence that was before DBS when it made its decision. As COB was not represented at the time when Judge Jacobs gave permission, he did not direct her to provide a witness statement. Shortly before the hearing, COB provided a witness statement dated 22 April 2026. We admitted that as evidence. We also admitted some character references and some medical evidence about COB's health.

9. COB also submitted witness statements from her daughter and grandson. We refused to admit the evidence from her daughter. It had not been signed until 20 April 2026. Judge Jacobs gave a case management direction on 4 June 2025, requiring notice of other witnesses within 10 days. We took account of the fact that COB was not represented at that time, but she had instructed a solicitor by 3 November 2025, when the earlier hearing was postponed, over five months ago. We had skimmed the

statement and noted that it raised new issues. Finally, we doubted that it would help us on the issues that we had to decide.

10. We also refused to admit the statement from COB's grandson, who is now eight. In view of his age, there should have been a grounds rule hearing with directions to control how evidence would be received from him and how he would be questioned at the hearing. In the absence of those protections, we refused to admit the statement. We were also concerned by his presence in the court room, as it would be inappropriate for him to hear the evidence about COB. He and his mother withdrew from the room when their evidence was not admitted.

E. Ground 1 – mistake of fact (section 4(2)(b) SVGA)

Our approach to the evidence

11. 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 2025. See *SD v Disclosure v Barrington Service* [2024] UKUT 249 (AAC). We were entitled to take account of evidence that was not before DBS, provided that it could be related back to that date.

12. We heard evidence from COB as we are entitled to do: *Disclosure and Barrington Service v JHB* [2023] EWCA Civ 982 at [95]. COB relied on her witness statement of 22 April 2026, which she confirmed and qualified slightly. She was cross-examined by Mr Serr, questioned by the panel, and re-examined by Ms O'Neill.

13. Having heard that evidence, we approached the case in accordance with the decision of the Court of Appeal in *RI v Disclosure and Barrington 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. We assessed the evidence as a whole, but in doing so we were conscious of the danger of totalising. This was described by Lord Hewart CJ in *The King v Bailey* [1924] 2 KB 300 at 305.

The risk, the danger, the logical fallacy is indeed quite manifest to those who are in the habit of thinking about such matters. It is so easy to derive from a series of unsatisfactory accusations, if there are enough of them, an accusation which at least appears satisfactory. It is so easy to collect from a mass of ingredients, not one of which is sufficient, a totality which will appear to contain what is missing. That of course is only another way of saying that when a person is dealing with a considerable mass of facts, in particular if those facts are of such a nature as to invite reprobation, nothing is easier than confusion of mind; and, therefore, if such

charges are to be brought in a mass, it becomes essential that the method upon which guilt is to be ascertained should be stated with punctilious exactness.

It is, though, possible that separate allegations may corroborate each other. As MacDonald J explained in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27.

272. The totalising approach must be avoided if the court is to steer safely clear of capitulating to suspicion and the beguiling adage that there is ‘no smoke without fire’. Within this context and with, I hope, punctilious exactitude, I make clear that I have in this case evaluated each child’s allegations of sexual abuse separately against the applicable standard of proof on the available relevant and admissible evidence, but without prejudice to the possibility that the evidence in respect of one child will serve to corroborate credible evidence in respect of another child ...

The evidence - COB

15. COB trained as a mental health nurse and worked in that capacity from 2009 to 2018. She set up as a childminder in 2017, working from her home. Essentially, COB provided care for the children before school, took them to school, collected them at the end of the day, and then provided after school care.

16. The Ofsted registration allowed COB to care for six children, but she only cared for four. She began by looking after her grandson. He was joined by a second child and then, in 2021, by two siblings (a brother and his older sister). The siblings were called Child A and Child B in the papers. It was not easy to decide which of the children was called A and which B. In the end, we decided to ignore the labels and concentrate of whether the evidence related to the brother or the sister. We refer to them in that way from now on.

17. COB was subject to an inspection by Ofsted in 2021. The report identified that she ‘requires improvement’ in all four areas covered by the inspection: quality of education; behaviour and attitudes; personal development; and leadership and management. The Report does not contain anything directly relevant to the incidents that occurred in 2022, although it identified that she could improve the service she provided by giving the ‘children high levels of support to help them self regulate their behaviour’. It is right to note, as COB pointed out, that neither the children nor their parents criticised or complained about the way she carried out her business. The Report recorded: ‘Parents speak positively about the childminder and the service that she provides. They comment that their children enjoy the activities and time in her care.’

18. At the time of the incidents, COB was working night shifts as a bank nurse. This was usually three or four nights a week. She would take the children to school, then sleep before picking them up. At one point she said she did not always work when minding the next day, but later her evidence was equivocal on that.

The evidence - the brother and sister

19. It is convenient to begin with the evidence relating to the siblings, as it includes evidence about COB’s grandson.

20. The brother referred to COB as his ‘auntie’. He was waiting to be picked up after school, when he said to other children: ‘I hope my auntie doesn’t pick me up, I hate my

auntie.’ He added that she slapped him on his bottom and on his face. These remarks were overheard by a teaching assistant. The brother told her that he wanted a new childminder.

21. The teaching assistant reported what the brother said and the school’s Designated Safeguarding Lead [DSL] spoke to him. The DSL began by referring to ‘good behaviour points’. COB denied using these points, but the child’s answers shows that he understood. This was the conversation:

DSL: What did you get them [the points] for?

Being so good.

DSL: Do you get good behaviour points at home?

Yes.

DSL: What happens if you don’t get good behaviour points?

I get a smack.

DSL: Can you tell me who smacks you?

My aunty.

DLS: Can you tell me where you get smacked?

On my bottom and on my face ([he] pointed to his bottom and demonstrated the action of slapping himself around his face).

DSL: Can you tell me how this happened?

With her hand and she hit me on the bottom with a stick.

DSL: Can you tell me when this happened?

The child ‘shrugged’ and ‘then started telling me about two dinosaurs colliding and then wiping out all the other dinosaurs.’

22. The DSL spoke to the brother’s mother. She referred to a comment made by the sister ‘that the childminder (COB) has a spoon which [s]he hits her own grandchild with but she said that neither herself or her brother had been hit with the spoon.’ The mother ‘also referred to comment made by children’s father some time ago regarding [the brother] saying that he sometimes gets hit on the bottom by COB. Mum took this to be a game or due to her strained relationship with Dad, that Dad was possibly stirring things.’

23. The brother and sister were also interviewed separately, with the DSL in attendance.

24. This is the record of the interview with the brother:

The brother was asked about what he had told his teacher and he said he had told her about his toys and spent most of the time when asked questions talking about toys and dinosaurs. He refers to the child minder as Aunty and Grandma although they are not related. When asked what happens when he is naughty and he said he is not naughty. He did say that when COB’s grandson is naughty Grandma hit him on his neck with a shiny wooden stick. He also said sometimes she hurts me. The brother did not give any further details as to how he is hurt by the child minder and was talking about dinosaurs and his toys

25. This is the record of the interview with the sister:

The sister initially said everything is fine at Aunty's and she is happy to go back there. She said when children are naughty at Aunty's they stand in the time out corner and nothing else happens, she has no worries when going to Aunties. When asked about what she has told her mum she said that Aunty has a stick that is wooden and flat and it doesn't look like a stick. She drew this implement on a little white board which I took a picture of. She showed me how big it was and this was about 40 cm. She stated that when COB's grandson is naughty or arguing with her Aunty hits him with it on his head and back, this has happened many times and she does the same to her brother sometimes.

26. This is the record of the interview with the children's mother:

I spoke to the children's mum and she said her children have no marks or injuries, they're not showing signs of trauma. She is happy they are now away from the child minder and are safe. She said she had a good relationship with the child minder and hopes the suspension and police interview would have scared her into behaving more professionally as a childminder. I explained the VRI [video recorded interview] process to mum which we need to look to prosecute the child minder and mum said she does not want to take the matter any further and she does not want her children to do a VRI as she does not want to put them through it, as they are not showing signs of trauma

The evidence - COB's grandson

27. Around the same time, the nursery that the grandson attended became concerned by a change in his behaviour, as he was exhibiting 'aggressive and challenging behaviour towards others in the nursery'. This coincided with him staying with COB during the week, while his mother was attending university. The nursery made a referral to the CSC [Children's Social Care]. He was allocated a social worker, who recorded 'concerns over his changed violent behaviour in nursery'.

28. A police officer reported a visit to the grandson:

Currently COB is still under investigation and the crime report is still open. Myself and the social worker visited her grandson who was at mum's flat. He was smiling and did not look injured. He was running around the flat punching and strangling his peppa pig soft toy. He would not sit down and would not answer any questions. He may have ADHD or maybe due to his young age however social worker said it was not usual behaviour. He has not made any disclosures or allegations of crime. He was due to have a Child Protection medical and I have not received the outcome of this.

29. The LADO [Local Authority Designated Officer] records show that the grandson 'has made a disclosure of physical chastisement'. This led to an investigation under section 47 of the Children Act 1989 and a child protection conference. This led to the grandson being subject to a child protection plan on the basis of a risk of emotional abuse. One of the recommendations was that COB should not care for her grandson.

COB's response to evidence relating to the children

30. COB denied ever hitting the brother or the sister. She said that the brother did not make up stories, but that the sister had taken money from her, which her mother had brought back. She also denied ever hitting her grandson and told us she did not believe he had ever made an allegation against her. She said the school kept asking

him whether he had been hit. Although she regarded that as suspicious and as putting pressure on him, she also said that this might be checking for possible causes of his change of behaviour. COB reported herself to LADO on her own initiative and on the advice of the police.

LADO

31. LADO records state that COB:

showed a lack of willingness to work with Ofsted and others. She stated if she is told she is not allowed to mind, and she wants to she will continue to do it. She stated that if she does not get a positive response from the investigation, she will not be positive and do things 'no one can imagine'.

32. The LADO outcome was classified as 'Substantiated'. The conclusion about the allegations made by the children was affected by the lack of VRIs with the children. the record states:

... whilst I don't think we can substantiated [sic] the allegations made by the minded children for the reasons previously noted – the children did make some disclosures to their school and that along with the concerns that resulted in the [child protection conference and child protection] plan for the c/minder's grandchild would reasonably lead us to think that on balance there could well be some substances to what the minded children said.

The character references and medical evidence

33. We accept that the references were honestly given on the basis of the writers' experience, but they cannot override the direct evidence we have of COB's actual behaviour. We also accept the medical evidence, but COB did not rely on it in order to explain her behaviour; her case was based on denial.

Our assessment of the evidence

34. We have found no mistake of fact in DBS's findings on the 2022 incidents.

35. We accept that COB has not been prosecuted, but that is because the parents of the three children would not allow them to be involved. We draw no conclusions from that.

36. There is general consistency in the accounts given by the children about COB's method of chastisement. The difference in the specifics makes the accounts more plausible than less. There is no indication that the children collaborated to concoct their accounts. The allegations were measured in their extent. Some of the accounts were repeated to adults. Some were elicited by professionals trained in questioning children in a way that would not affect what they said. Finally, in the case of COB's grandson, there is some corroboration from the observed change in his behaviour. We find that DBS's findings were correctly made on the balance of probabilities.

37. We do not accept COB's evidence that the school made up the allegation or put pressure on her grandson to complain about his treatment. The most likely explanation of the questions he was asked is, as COB herself suggested, that it was in response to concerns about his change in behaviour.

38. For the record, we have not relied on Mr Serr's submission that the children's young age makes fabrication improbable. That is not our experience. We have taken

their age into account generally, but the evidence as a whole satisfies the balance of probabilities for the reasons we have explained.

F. Ground 2 – proportionality (section 4(2)(a) SVGA)

39. 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 as 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

40. The measure is the barring scheme under SVGA and DBS's decision to include COB in both barred lists. 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 COB's exercise of her Article 8 Convention right.

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

41. DBS's decision under the barring scheme prohibits COB from engaging in regulated activity. 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

42. We know of no measure that would be less intrusive but nonetheless provide the necessary protection for children and vulnerable adults. The removal from the Ofsted register provides some protection, but only for children. Moreover, although the 2022 incidents occurred in the context of child care, they raise concerns that are not limited to that context.

(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

43. This requires a balance. On one side is the severity of the effect of including COB in the barred lists. She has worked in mental health nursing from 2009 and in child care from 2017. Inclusion in the barred lists prevents her working not only in those fields, but in any form of regulated activity. We do not know what other jobs she has had and assume that she has no other specific qualifications relevant to other employment. That still leaves opportunities in retail, hospitality, catering, office work, cleaning and no doubt others. She will still be able to earn a living, possibly close to or equivalent to her income as a childminder and bank nurse. On the other side of the balance is the harm that might occur to children or vulnerable adults if COB were allowed to work in regulated activity.

44. We have taken account of DBS's assessment of proportionality for what it is worth, although it is rather sketchy.

45. It remains for us to decide how the balance should be struck. Our conclusion is that it should be struck in favour of barring. We accept that there is no evidence of the children suffering physical injury. They have, though, experienced temporary pain and there is an emotional impact to physical chastisement. There is no evidence that the

chastisement was an isolated occurrence or made in any extenuating circumstances. COB has denied the allegations and accused the school of making up the allegations or putting pressure on her grandson. She was uncooperative and told LADO that she would continue to look after children if she wanted to. Taking DBS's findings and those features into account, we consider that the balance should be struck in favour of limiting COB's Article 8 Convention right. DBS's decision was proportionate and did not involve a mistake of law.

G. Conclusion

46. For those reasons, we have confirmed DBS's decision to include COB in both barred lists.

**Authorised for issue
on 09 May 2026**

**Edward Jacobs
Upper Tribunal Judge**

**Matthew Turner
Michele Tynan
Members**