

Re a Teacher (Rule 14 Order) [2023] UKUT 39 (AAC)

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Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 affords the Upper Tribunal powers to make a variety of orders prohibiting the disclosure or publication of documents or information, including any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The First-tier Tribunal has similar powers under rule 14 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

In *Re a Teacher (Rule 14 Order)* the Upper Tribunal considered how far an order made by the Upper Tribunal under rule 14(1) of its Rules of Procedure extends. The Upper Tribunal has jurisdiction to deal with appeals against decisions by the Disclosure and Barring Service ('DBS') and the question was whether an order made under rule 14 for such purposes can 'bite' in relation to contexts other than those proceedings – in the present case, the operation of the teachers' professional regulation proceedings, conducted under wholly different statutory arrangements.

A panel had heard and allowed an appeal by a teacher against a decision by the DBS which had added her name to the adults' barred list and the children's barred list. The Upper Tribunal concluded that the decision contained mistakes of law and remitted the matter to the DBS. Of its own motion, it made an order under rule 14 that there

should be no disclosure or publication of any matter likely to lead members of the public to identify the appellant, her children or the pupil involved in the matters the subject of the present case without the permission of a judge of the Upper Tribunal. Its reasons were that the case involved a pupil who was a minor at the time of the events in question and because he and the teacher's children (two of whom were likewise minors at the time of the incidents) had a reasonable expectation of privacy.

At the time of the Upper Tribunal proceedings, proceedings were also pending before the Teaching Regulation Agency ('TRA'), whose Professional Conduct Panel ('PCP') concluded that the teacher was guilty of unacceptable professional conduct and conduct that may bring the teaching profession into disrepute; the Secretary of State considered the PCP's recommendation and decided to impose a Prohibition Order, with the possibility of a review after 5 years. There is a statutory requirement to publish such decisions. The TRA, in preparing to do so, was mindful of the Upper Tribunal's order and submitted what it was proposing to publish to the Upper Tribunal, seeking confirmation that this publication would not breach the rule 14 order. At around the same time, the Upper Tribunal received correspondence from the teacher, in which she expressed her concern that what the TRA was proposing to publish would risk harm to her daughters, unless it was anonymised or substantially redacted.

The Upper Tribunal noted that it is a body with limited jurisdiction conferred by statute: to a large degree by the Tribunals, Courts and Enforcement Act 2007, but by some other Acts also, including (relevantly for present purposes) the Safeguarding Vulnerable Groups Act 2006. No statute confers jurisdiction on it in relation to decisions by the Secretary of State, acting on recommendations of the PCP of the

TRA. Appeals against prohibition orders go to the High Court. Challenges to associated matters, including as to what is to be published following the making of a prohibition order will go to the High Court, whose jurisdiction is not limited to what statute may confer upon it, by way of an application for judicial review.

Having considered the authorities, the Upper Tribunal (Ward J) concluded, at [32], that the extent of the Upper Tribunal's order must necessarily be confined to its own proceedings and that the TRA, by issuing its decision in a form which contained nothing which would enable those who were referred to in the rule 14 order to be identified as being involved in the Upper Tribunal proceedings in which the order was made, would not be in breach of that order. At [33] Ward J considered that it was not necessary to decide in that case what the position would be if, contrary to a rule 14 order, performance of a statutory duty unavoidably required reference to be made in terms which enabled the parties involved in the Upper Tribunal proceedings to be identified.

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