



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

**UPPER TRIBUNAL CASE NO: UA-2023-000356-V  
[2024] UKUT 171 (AAC)**

**RR V DISCLOSURE AND BARRING SERVICE**

**THE UPPER TRIBUNAL ORDERS that:**

**No one shall, without the consent of the Upper Tribunal, publish or reveal the name or address of any of the following:**

- (a) RR, who is the Appellant in these proceedings;**
- (b) KK, who is the subject of DBS's findings of fact; and**
- (c) CM and WF, members of staff of the language course;**

**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.**

Decided following an oral hearing on 20 May 2024 with final submissions in writing.

**Representatives**

RR	Dominic van der Wal, a lawyer acting as friend of RR
Disclosure and Barring Service	Bronia Hartley 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: 00986867372  
Decision letter: 13 February 2023

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

As DBS made mistakes in the findings of fact on which its decision was based, the Upper Tribunal, pursuant to section 4(6)(b) and (7)(a) and (b) of SVGA:

makes findings of fact and remits the matter to DBS for a new decision; and  
directs that RR remain in the lists until DBS makes its new decision.

## **REASONS FOR DECISION**

### **A. DBS's decision and findings**

1. On 13 February 2023, DBS decided to include RR in the Children's Barred List in respect of the findings set out in its letter of that date:

On an unspecified date between 27 and 30 June 2022, whilst working as a teacher of English as a foreign language with Summer Boarding Courses, you caused emotional harm to 16 year old pupil KK by:

- After instructing the class to work in pairs, you singled out KK to work with, complimented her looks, asked if she was single and then asked her to be your girlfriend;
- When KK declined to be your girlfriend, you persistently asked her for her phone number until she gave it to you;
- You then asked KK to stay behind after class to check the phone number she gave you and upon realising it was fake, you pressured her into giving you her real number.

### **The appeal to the Upper Tribunal**

2. Upper Tribunal Judge Jacobs gave RR permission to appeal and directed a hearing of the appeal. The hearing took place on the morning of 20 May 2024. There was insufficient time for Ms Hartley's closing submissions or Mr van der Wal's reply, so we allowed these to be made in writing. Ms Hartley provided her submissions by email at 14:30 that afternoon. Mr van der Wal responded at 15:22, saying he had no further submission. We are grateful to both and to RR for his evidence.

### **Section 4 SVGA**

3. This section 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;

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- (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.

...

**RR's account**

4. RR is an Afghan National and a devout Muslim. He had taught English for 10 years in Afghanistan. He is married and came to the United Kingdom in November 2021.

5. In 2022, he was appointed to teach English as a foreign language to overseas students on a residential summer course. He was allocated to a class of students who were studying at the highest level, to whom he taught English and Drama. Teaching began at 8am and ended at 3pm. It was unusual to teach two different topics to the same class. KK was a member of the class; she was 16 years old and is Greek.

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6. The first day of RR's appointment was Monday 27 June 2022. He taught his class on 27 and 28 June. There were no classes on 29 June, as the students were on a trip to London. He taught again on 30 June. That evening KK made a complaint about him. This led to him being suspended and called for a disciplinary hearing on the morning of 1 July. After that meeting, he resigned.

7. This is RR's account of what happened.

8. He began the first class with what he called a misjudged attempt at humour by comparing the students with celebrities that they resembled. He likened KK to a Bollywood actress called Karina Kapoor. He also set up a session in which the students would interview each other. They worked in pairs with a script of questions. The students were arranged in a U-shape around the room, with RR's desk to one side. As there were an odd number of students, he asked KK to move places and paired with her to ensure that all the students had equal time to ask and answer questions. He sat facing KK in the midst of the other students, taking her through the interview while monitoring what the others were doing. At the end of the interview, she discovered that he was from Afghanistan. There is, he told us, often bad relations between Greeks and Afghans. Certainly, KK became hostile. Commenting on illegal migration and criminal activities by Afghan refugees in Greece.

9. In the course of the interview session, he had learned that KK wanted to come to the United Kingdom to study law. At the end of the session, he told her that she might want to apply for scholarships and offered to check them before she submitted them. He suggested that she send them by email. She said she did not use email, but she would send them by phone. He had a new phone and did not know the number by heart, so he asked for her number. He rang it to check he had the correct number and to give her a missed call to use when she wanted to send him something to check. He terminated the call as soon as it connected. Her phone did not ring and he did not enter her into his contact list. RR saw nothing wrong in this at the time, as students and teachers in Afghanistan communicate by WhatsApp.

10. After the first session, KK and two of the other students were unco-operative and disruptive, making critical comments about RR and his accent, spending time on their phones, and distracting the other students. The disruption was worst in the Drama class, with KK more or less taking control and leaving RR on the side-lines. She asked for a new tutor and RR told her that she needed to go to the office and ask, as she was entitled to a different teacher for each topic.

**KK's allegation**

11. On the evening of 30 June 2022, KK told the Centre Manager (CM) that RR was making her uncomfortable. CM reported this to a Designated Safeguarding Lead (WF). This is the statement that KK made that evening (page 131):

Monday 27/06

At 11am KK was approached by RR who asked her about college and if she wanted to be a lawyer and how her skills mean she could be very successful.

He then said she looked more beautiful than Karina Kapoor a Bollywood actress and showed her photos.

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In class they are an odd number so he asked her to swap places so she was the odd number and asked her to be his partner and he used that to ask her if she was free in the evenings and if she had a boyfriend and that he could be her boyfriend.

On the break, 11am, he asked her to stay back, she tried to leave and he insisted. He asked her for her number and she gave him a fake number but he tried to call and insisted on her actual number. She gave it.

She then tried to leave and he asked her if she'd liked to be in a relationship.

She was extremely uncomfortable.

Then she received a messenger from a 'John Winkle' based in the 'Kabul embassy' to a 'Karina' which is what he repeatedly mis-calls her.

There followed a messenger screenshot showing contact from John Winkle.

### **Disciplinary action**

12. WF contacted RR. He told him not to attend at the college on 1 July, but to be available for a Zoom meeting at 9.15am. He suspended RR on full pay.

13. There was a disciplinary hearing held by Zoom on 1 July 2022. It lasted 15 minutes. RR was present, as were CD and WF. According to the notes of the meeting (page 143), it lasted from 9.30am to 9.45am. According to the record:

WF began the meeting by thanking RR for attending and asking whether he knew what the allegations against him were regarding.

RR stated that he was not sure what the allegations were about.

WF outlined that there was an allegation about his conduct toward a student, and asked to confirm if he knew what that might be in relation to.

RR again stated that he was not sure.

WF outlined that there had been an allegation made in regard to his conduct and requesting a phone number from a student

RR stated that he had not done this, and was confused and that he had not contacted a student.

WF asked if RR had exchanged contact details with a student

RR talked about not exchanging details with a student, but seemed to contradict himself. When WF asked directly if he has exchanged numbers with a student he said that he had. He then proceeded to defend his actions, and said it was OK because he had not contacted her.

WF summarised that RR had confirmed that he had obtained a phone number from a student but that he had not contacted that student.

WF then asked to explain how the student had come to have his contact number.

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RR denied that he had given his number. However, after then describing the event further he did say that he had given the number a missed call so that she also had his number. He denied making any further contact.

WF re-confirmed that RR had obtained the students number and called it so that she then had his number.

RR confirmed that this had been the case.

WF asked RR if he had any questions or if there was anything else useful for us to know.

RR asked what would happen next.

WF thanked RR for his answers and outlined the next steps of the investigation and that we would be in contact.

14. After the hearing, RR resigned by email (page 140):

I know I have breached the safeguarding policy for which I am accountable. I apologize for getting a student's phone number which I have not saved on my mobile and never contacted her. I have never called, texted or talked to any of my students over the phone. I have never messaged or called any of my students through social media applications. I do not have the contact details of any students with me and I am not interested in having them. I have never had any bad intentions towards my students. Please consider this email as my resignation or dismiss my contract, and I will never be offended. Even if I am innocent, I will not be comfortable working with the same team again as I will always be a criminal in their eyes.

### **The LADO report**

15. We have a little more information about the hearing from Section D of the LADO record (pages 70-72), which was written by CM. It contains some comments on the hearing. CM and WF

asked RR to outline his version of the events. The details were similar but inconsistent. He found it very hard to explain how the student had his number, although he did confirm that they had exchanged numbers. We did not ask him about the 'John Winkle' messages as he stated repeatedly he had never used the number or contacted the student apart from one missed-call initially when they were alone in class. There were many vague and slightly incongruous details in this aspect of his account. He did admit, however, several times to asking the student for outside of classroom contact.

### **Our assessment of the evidence**

#### *KK's allegation*

16. We have tried to get as close as we can to KK's allegation.
17. The best we have is the statement taken on 30 June. It was either taken by CD or WF. The report in the LADO record fixes the date of the statement, but leaves unclear who took it down. It is said to be 'the student's own account'.

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18. KK did not sign that statement. She did not make a first-person statement. She was not questioned during RR's disciplinary proceedings. We rely on the statement as the closest we have to KK's actual words.

19. The account in the LADO record is largely consistent with the statement as taken on 30 June. It is not, though, cut and pasted from the statement. Two of the differences are worth mentioning. First, the report says that RR 'engineered class pair work to have KK alone and he had worked with her.' KK's statement did not contain the word 'engineered'; instead, it referred to swapping places. We take no account of the connotations that 'engineered' could carry. Moreover, the statement did not say that RR worked with KK alone. It says that RR asked her to be his partner. We take that to mean that he paired with her for the interviews. We do not read 'partner' to mean 'boyfriend', which is used later. Finally by RR's account, they were not alone for the interview. Second, the report of the allegation ends: 'The student was distressed by a lack of certainty in her own actions.' That does not appear in the statement. It could refer to KK saying she felt uncomfortable, but that appears at the start of the LADO record. We do not understand what this means and have to ignore it.

*The disciplinary hearing*

20. RR had very little warning of the hearing and was given no notice of what it was about. We note that the hearing began with WF asking RR twice if he knew what had been alleged about him. We do not know exactly what RR was eventually told, as the record is not verbatim. It seems that the meeting focused on the telephone numbers, so it may not have mentioned the other matters in KK's statement and DBS's findings. We do know that RR had realised in advance that the meeting might be about telephone numbers and had researched this online. But we only know this because he told Ms Hartley in cross-examination.

21. According to the LADO record CM and WF found that RR's answers were inconsistent, vague and incongruous. Those criticisms were not particularised. We take a more charitable view of what RR was saying. We have the benefit of hearing his account when he was aware of the precise details of KK's allegation and was able to present it without the pressure of the disciplinary hearing. What he told us is consistent with his answers on 1 July. Any vagueness or incongruity came from having to respond at very short notice to precise allegations. What he was trying to say was this:

KK asked for my mobile number so that she could send her applications to me. As I did not know my new number, I could not give it to her. That is why she told me her number. I rang it briefly, so that she could pick it up later as a missed call. I never put her into my contacts and she did not pick up my call.

22. Having heard RR's evidence, the obvious question is: why did he not tell CM and WF that he gave KK his number because she asked for it? That is easy to ask in hindsight. But it is important to take account of the context. The whole meeting lasted for 15 minutes. RR had no advance warning of what the meeting was about, although he worked out that it had something to do with telephone numbers. The meeting began with a cat and mouse game in which WF tried to get RR to tell him what he thought the meeting was about. That start was not conducive to a clear mind during

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the questioning. There followed an exchange in which RR and WF appear not to have fully understood what the other was saying. With the benefit of RR's account, it is possible to understand the significance that RR attached to lack of contact. WF on the other hand was only interested in whether RR gave KK his number. RR's attempt to explain was interpreted as contradiction and an attempt to defend his action. The meeting concluded with an explanation of what would happen next. All within 15 minutes.

23. It is worth comparing the hearing notes with RR's resignation email. It was sent an hour after the hearing ended and puts his point coherently. It is still not the full account that he gave to us. But the contrast between the clarity when he has time to collect his thoughts and his responses to questions under pressure is significant.

*The John Winkle message*

24. We do not attach any significance to the John Winkle message. The only information about it is the screenshot. The only link to RR is the coincidence of timing and the spelling of KK's name. No one checked either RR's phone or KK's. No one traced RR's social media history. No one tried to identify the underlying account from which the message was sent. We do not know whether RR was told about the message at the disciplinary hearing. If he was, he was not asked about it. KK did not say how long after talking to RR the message had arrived, so we cannot judge whether RR would have had time to send the message.

25. It is not clear to us that DBS made a finding that RR sent this message and that it based its decision on it. If it did, it made a mistake of fact. The evidence relating to the message is insufficient on its own to allow us to attribute it to RR on the balance of probabilities. Taking it in the context of the evidence as a whole barely raises the probability above a suspicion. RR suggested that it had been a prank among the students, as they were always on their mobiles and texting each other. We do not accept that. It is merely speculation.

*CM's partiality*

26. RR suggested that CM was not well disposed towards him. We do not accept that. The most RR could tell us in support was that CM had been hostile towards him when he went into her office on the morning of the first day to ask for some paper for the students. Otherwise, it was a vague suggestion that somehow and for some reason, CM had been able to control or influence the course of the disciplinary proceedings.

**Our conclusions**

27. We have had the advantage of hearing RR give his evidence, especially in response to Ms Hartley's cross-examination. We consider that the balance of probabilities favours RR. We have come to that conclusion after considering the evidence as a whole. The following are the more significant points that we have taken into account.

28. RR has a clean record of complaints during his career. His account of his time at the summer school was given in his own words and in part under cross-examination. It is coherent and contains admissions that are against him. His account



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is more plausible than KK's account of a crude, bullying approach after a short acquaintance. His version of offering to help would be more likely to succeed than hers if he had wanted to establish a romantic attachment.

29. Moreover, it is impossible to understand KK's account on its own. We need to know about the interview session in order to understand the significance of swapping places in class. It also provides a context for what would otherwise be disjointed sequence of statements by KK.

30. We do not have KK's account in her own words or even any confirmation from her that the statement of 30 June is accurate. She was not questioned during the disciplinary hearing or as part of that process or, for all we know, at all. It is surprising that CM did not ask KK to clarify what had happened on the Monday. Nor did KK explain why she waited until 30 June to complain. She says she was uncomfortable, but did not complain sooner and does not say that she tried to change classes. We note that, even by her account, there was no repetition of RR's behaviour and he did not make use of her telephone number. [We have explained why we place no reliance on the John Winkle message.]

31. We have made our assessment against the background of lack of investigations that could have provided more and better evidence. In particular, examining the telephones of the participants could have clarified the origin of the John Winkle message one way or another. If KK had been given a chance to expand on her statement, she might have resolved some of the uncertainties that we have considered. It is possible that she could have misconstrued the conversation about scholarships. She might have interpreted RR's eagerness to help his student for inappropriate pestering. Her delay in complaining might have been out of embarrassment at giving out her phone number. She could also have answered concerns about the motive she might have to make up her complaint. RR's account of strained relations between Greeks and Afghans might account for it. KK says nothing about that and the disciplinary process did not provide the chance for her to respond to what RR says.

### **Our findings**

32. We have made our own findings in accordance with *Disclosure and Barring Service v RI* [2024] EWCA Civ 95.

33. RR criticised DBS for finding that the events took place on 'an unspecified date between 27 and 30 June 2022'. He pointed out that the date was 27 June. We accept that. KK said it had happened on that date. We have no reason to doubt that and no one has suggested any other date. We consider this to be a lack of precision rather than a mistake of fact. It is, though, significant for this reason: it means that KK did not complain to CM until three days later. During that time, she remained in RR's class. By his account, she remained in his Drama class despite having a right to a different teacher.

34. RR accepted that he had singled out KK to work with. He needed to work with one of the students during the interview session, because of the odd number. But he had been free to choose which one that should be. From his gestures during evidence to us, he indicated that he had asked KK to change place. He did not say why he did that.

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35. Asking KK if she would be his girlfriend would not have been part of the scripted interview. It would have been an inappropriate question for the students to ask each other and, given the proximity of the other students around them, it would have been risky to introduce it. The same reasoning applies to asking her if she was single during the scripted interview.

36. RR did compare KK with the Bollywood actress. In that sense, he was complimenting her looks. But this took place as part of an introductory session involving the whole class and was not specifically targeting KK.

37. KK mentioned her wish to study law during the interview session. That was why RR asked KK to stay at the end of the class in order to offer support in applying for scholarships. He gave her a missed call so that she could send draft applications to him. It was her suggestion to use the telephone for that purpose. She was not under pressure.

38. Those findings in part differ from, and in part provide a context for, those made by DBS. In those circumstances, it is necessary to remit the matter to DBS for a new decision.

**Authorised for issue  
on 12 June 2024**

**Edward Jacobs  
Upper Tribunal Judge  
Suzanna Jacoby  
Michele Tynan  
Members**