28 February 2025

PRESS SUMMARY

Important note for press and public: this summary forms no part of the court's decision. It is provided so as to assist the press and the public to understand what the court decided. The full judgment of the court is the only authoritative document. Judgments are public documents and are available at www.judiciary.uk and https://caselaw.nationalarchives.gov.uk.

XYZ (Appellant) v DISCLOSURE AND BARRING SERVICE (Respondent) [2025] EWCA Civ 191

CA-2024-001214

Lord/Lady Justices: Lady Justice Andrews, Lady Justice Elisabeth Laing, Lord Justice Jeremy Baker

BACKGROUND TO THIS APPEAL

NOTE: there is an anonymity order in force (9 September 2024) which precludes the reporting of any matter which may lead to the identification of the teacher or pupil involved in this case.

The Appellant, XYZ, was a teacher who was alleged to have developed an inappropriate relationship with a pupil, aged 16, by sending her messages on Snapchat, giving her lifts in his car and kissing her on four occasions. The allegations were investigated by the police, but he was neither arrested nor charged with any offence. They were also investigated by the school concerned. The head teacher dismissed XYZ and referred the allegations to the Disclosure and Barring Service ("DBS") and the professional regulator, the Teachers Regulation Authority ("TRA").

The DBS, after following its prescribed statutory procedures, found that despite XYZ's denials, it was satisfied on the evidence before it that all the allegations were true, and that XYZ's behaviour was sexually motivated. It decided to enter his name on the Children's Barred List, which precludes him (among other things) from being a teacher. That decision was taken on the papers. XYZ appealed to the Upper Tribunal (AAC) on the basis that the DBS decision was based on material mistakes of fact.

Meanwhile, a TRA disciplinary panel, after a hearing at which XYZ gave oral evidence but the pupil did not, found that by his own admission XYZ had acted inappropriately by giving her lifts in his car on two occasions (both of which occurred after she had ceased to be a pupil at the school) but that this behaviour was not sexually motivated. They exonerated him of communicating with her on Snapchat and of kissing and cuddling her. They held that although his behaviour displayed poor judgement, he was not guilty of professional misconduct or bringing the profession into disrepute.

XYZ submitted to the Upper Tribunal that these findings of fact demonstrated that the DBS was mistaken in reaching the conclusions that it did.

The Upper Tribunal held that neither it nor the DBS were bound by the fact-findings of the TRA panel and, after evaluating the evidence before it (including oral evidence given by XYZ) dismissed his appeal on the basis that the DBS was not mistaken. XYZ appealed to the Court of Appeal.

THE ISSUES

The principal issue which the Court of Appeal had to decide was whether, either as a matter of construction of the relevant statutory provisions, or by application of the principles of cause of action estoppel or abuse of process, the fact-findings by the TRA panel were binding on the Upper Tribunal in the absence of fresh evidence or some other material change of circumstance. The secondary issue was whether, if the Upper Tribunal was free to make its own fact-findings, it erred by failing to give "great weight" to the findings of the TRA Panel.

JUDGMENT

The Court of Appeal unanimously dismissed the appeal on all grounds.

REASONS FOR THE JUDGMENT

The Court held that the Upper Tribunal was right to reject the submission that it was bound by the TRA fact-findings for the reasons that it gave. In the Safeguarding Vulnerable Groups Act 2006, Parliament had specifically addressed the situation where the facts found by a "competent body" (including the TRA) might potentially conflict with those found by the DBS. If the disciplinary body made its decision first, the individual concerned could not challenge its fact-findings in representations to the DBS as to why it should not make a barring decision, but the DBS itself was not bound by those findings (paragraph 16 of Schedule 3). However if a barring decision were appealed to the Upper Tribunal, the individual could challenge that decision on the grounds that it was based on material mistakes of fact, and, in so doing, could rely on evidence that was not before the DBS, including subsequent findings by a disciplinary body or by the High Court on appeal from that body. There was nothing in the 2006 Act which expressly or by necessary implication bound the Upper Tribunal to adopt the fact-findings of the disciplinary body. On the contrary, Parliament had deliberately left it open to the disciplinary body and the DBS (or the Upper Tribunal on appeal) to reach different factual conclusions even if the evidence and the factual issues were identical.

The DBS, in defending the appeal and in seeking to persuade the Upper Tribunal to depart from the findings of the TRA Panel, was not mounting a collateral attack on the decision of the TRA Panel. The principles in *Hunter v Chief Constable of the West Midlands* [1982] AC 529 were not engaged. There was no misuse of the procedure to re-litigate a final decision, and the DBS was not acting in a manner which would bring the administration of justice into disrepute. Nor was there any cause of action estoppel; the DBS was not a party to the TRA proceedings and could not be treated as a privy to them. Neither procedure was designed to determine the existence of a legal right. The functions of the DBS and the TRA are different, and the criteria

which have to be established before the different statutory rights or powers conferred on them must or can be exercised are different. Although the public interests they serve to protect are similar, they are not identical. The TRA is concerned with upholding professional standards, the DBS with minimising risks to children. The TRA proceedings could never be determinative of whether the statutory right to make a barring decision existed, or even of the question whether the DBS was entitled to exercise its power to make such an order on the facts.

The Court also rejected the contention that if the Upper Tribunal was not bound by the fact-findings of the TRA panel, it nevertheless erred by failing to give "great weight" to those findings. Parliament had not mandated it to give any particular weight to fact-findings by a competent body. The weight to be accorded to any of the evidence before it was a matter for the Tribunal, subject only to challenge on grounds of irrationality, which was not suggested in this case. Although XYZ might feel aggrieved by the fact that his professional regulator had exonerated him and yet the DBS had reached diametrically opposite fact-findings, there was no basis for impugning the Upper Tribunal's decision that the DBS was not mistaken.