



BARGATE MURRAY - EMPLOYMENT LAW CASE REVIEW

Philip Henson, Partner in the City of London law firm **Bargate Murray** discusses the landmark case of [McKie v Swindon College](#).

Damages for [negligent](#) misstatement Communicating with former [employers](#) – [Mckie v Swindon College](#)

HR practitioners and lawyers will be familiar with the UK case of [Spring v Guardian Assurance \[1995\] 2 AC 296](#), that an employee may make such a claim following a reference negligently prepared by an employer.

Regular readers of my blog (www.employmentlawupdate.wordpress.com) will also be familiar with the case of [Bullimore v Potheary Witham Weld Solicitors](#). Now the High Court has passed down its decision in [McKie v Swindon College](#), which is authority for the proposition that an employer may be liable to a former employee in tort for damages for negligent misstatement when communicating with a future employer about him.

Background

Mr. McKie was an art historian at Swindon College (Swindon). In November 2002, he left the College for a job as “programme leader” at [Bath City College](#). On leaving Swindon and in connection with getting the job at Bath City College, he received an excellent reference from Swindon.

In 2007, Mr McKie left the [City of Bath College](#) and went to work at [Bristol City College](#). In May 2008 he was offered and accepted a post at the [University of Bath](#). He started work at the University of Bath on 20 May 2008.

On 5 June 2008, some two or three weeks therefore after he had started work at the University of Bath, an email was sent from Swindon College to the University. It is sent from Robert Rowe, [Human Resources Manager](#) at Swindon to his equivalent at the University of Bath. It reads as follows (the recipient being Mr Robert Eales):

“Further to our telephone conversation I can confirm to you that we would be unable to accept Rob McKie on our premises or delivering to our students. The reason for this is that we had very real safeguarding concerns for our students and there were serious staff relationship problems during his employment at this College. No formal action was taken against Mr McKie because he had left our employment before this was instigated. I understand that similar issues arose at the City of Bath College.”

Judge Denyer QC who heard the case was very critical of Swindon and found that “the procedure adopted at Swindon College giving rise to the sending of the email, can be described as slapdash, sloppy, failing to comply with any sort of minimum standards of fairness, certainly any such standards as would be recognised by any judicial body taking decisions and disseminating information about another individual, because Mr Rowe agreed he had no personal knowledge of things at all”.

Upon receipt of the email from Swindon Dr Faith Butt of Bath University wrote to Mr McKie on 5 June:

“The University has received the enclosed email from Swindon College in which they assert they do not want you on the premises or delivering to their students.

This is a serious impediment to your capacity to undertake your duties I would like to discuss this with you at the earliest opportunity. I would therefore be grateful if you would meet me and the Acting Director of [Human Resources](#) on Tuesday, 10th...

You are welcome to bring a colleague or union representative with you.”

A meeting then took place, and Denyer QC (para 34) noted concern that Ms Butt, referred to above, was also a governor of Swindon College! *“The idea that she should have been part of a disciplinary process as it transpired on 10 June whilst being on the governing body of Swindon College, I find staggering. It contradicts almost every rule, as it seems to me, about decision making in a quasi-judicial matter. There is a conflict of interest”.*

Denyer QC set out the view that the proceedings were not fair and the dismissal was not fair, and having considered the arguments of the [Claimant](#) in respect of negligent misstatement for reference held that “this is not a reference situation”.

A duty of care applied

The Court held that a duty of care applied, and found for the claimant on the question of liability. In making this decision Denyer QC was “mindful that there is no direct authority specifically in point, accepting that this is a slightly different factual situation from [Spring](#), an obviously different factual situation from [White](#), nevertheless I am satisfied damage was foreseeable, the relationship was sufficiently proximate, it is fair, just and reasonable and there is a causal connection between the negligence in and about the sending of the email and the damage whereof the claimant complains”.

We shall watch with interest if the decision is appealed.

(c) Philip Henson

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