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# EmployNet update

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## High Court case sends warning to employers about negligent references on ex-employees



**In the recent case of McKie v Swindon College, the High Court handed down judgment which could have serious implications for employers.**

Most employers know that there is no general legal requirement to provide a reference for an ex-employee. And that if they do give one, it cannot be misleading or incorrect. However, the High Court has recently taken this one step further. It has held that an ex-employer was liable to a former employee for damaging information about the former employee which was not given in a reference at all.

Mr McKie brought a case against former employer, Swindon College after an email was sent from the College to his then employer, Bath University, six years after he had stopped working for the College. The email suggested (wrongly) that there had been serious concerns about his behaviour as an employee. He was dismissed as a result of the email.

While he was employed by Swindon College, he had been promoted and received bonus awards. When he left, he received a glowing reference.

The High Court found that Swindon College owed a duty of care to Mr McKie as a former employee, and that it was "guilty" of having breached that duty. The fact that the breach was not in a formal reference was of no consequence.

The court was dealing with liability and will assess the amount of compensation due on a future date if the parties involved cannot agree a figure.

This case reminds employers of the need for care when communicating about current or former employees, regardless of whether they are writing formal references or not.

For more information on how to safeguard your business and develop and monitor appropriate communication channels with current and former employees, contact a specialist solicitor.

## Meet the team

Welcome to EmployNet Update. Circulated regularly this newsletter will keep you up to date with changes in employment law.

Fidler & Pepper have a dedicated team of employment specialists available to help you. Please contact us for assistance or advice.



**Russell Jones LL.B, Partner**  
E: [rjones@fidler.co.uk](mailto:rjones@fidler.co.uk)  
T: 01623 44 83 04

Over 20 years experience in litigation covering commercial disputes and employment law amongst other matters. Russell is also an accredited mediator specifically trained in settling conflict and disputes.



**Joanne Godson, HR Consultant/People & Operations Manager**  
E: [jgodson@fidler.co.uk](mailto:jgodson@fidler.co.uk)  
T: 01623 45 11 11

Joanne has 6 years experience as a HR Consultant. Jo has particular interest in the law relating to unfair dismissal, redundancy, disciplinary & grievance matters and compiling employment documents such as contracts and employee handbooks.



**Nicola Harthill, HR Consultant**  
E: [nharthill@fidler.co.uk](mailto:nharthill@fidler.co.uk)  
T: 01623 45 11 11

Nicola has over 7 years experience working as HR Advisor for an international chemical manufacturer. Nicola is a graduate member of the Chartered Institute of Personnel and Development.



1 Low Street, Sutton-in-Ashfield,  
Nottinghamshire, NG17 1DH  
Tel: 01623 451111  
Website: [www.fidler.co.uk](http://www.fidler.co.uk)

## The Bribery Act comes into force on 1st July 2011

On 1st July 2011 the Bribery Act came into force. The Act introduced a corporate offence of failure by commercial organisations to prevent bribery by people working on behalf of the business.

An organisation will be able to defend themselves against this offence if it can show that it had in place "adequate procedures" designed to prevent bribery by or of persons associated with the organisation.

Under the Act, the maximum penalty for individuals found guilty of bribery will rise from seven to 10 years' imprisonment, and/or an unlimited fine.

## Businesses tell of strike's cash impact

While the full effects of the teacher and civil servant strikes on SMEs are not yet known, it is clear that many employees were unable to source last minute childcare as large numbers of schools across the country closed.

Nicky Goringe Larkin, chairwoman of the Reading branch of the Federation of Small Businesses (FSB) said smaller firms will have been hardest hit.

"One of my own staff had to swap days to cover childcare and for certain businesses this will just not have been possible and will have incurred extra expenses which small businesses cannot afford."

## Flexible benefits may boost business performance

Allowing employees to work from home as part of a flexible benefits package can be financially advantageous to businesses, experts claim.

Firms in both the public and private sector may find their staff more engaged when home-working, according to the Telework Association.

The organisation's research has shown that workers are "significantly more productive" outside of a "noisy, open-plan office".

## Consultation on modern workplaces

The Department for Business, Innovation and Skills launched a consultation document on modern workplaces in May of this year proposing the following:

- Working Time Regulations - amending the WTR to include recent ECJ case law stating that employees can carry over untaken holiday into subsequent years if they have lost the chance to take paid holiday because of sickness or maternity/parental leave (limited to four weeks).
- Extending the right to request flexible working to all employees.
- Flexible parental leave - retaining 18 weeks' maternity leave for mothers, then re-classifying the remaining leave as 'parental leave' and allowing it to be taken by either mother, or father, or both.

Concerns have been raised - by among others the British Chambers of Commerce (BCC) and the Federation of Small Businesses (FSB) - that in practice there will be enormous administrative costs involved, not least in policing any new system to ensure that it is not abused.

The Consultation closes on 8th August, but for a greater understanding of the proposals and how these could impact on your business, go to [www.bis.gov.uk](http://www.bis.gov.uk).

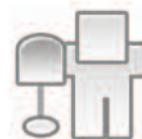
## Many companies are failing to enforce regulations for social media

The majority of UK employees have not been provided with clear guidance on using social media sites at work, according to a new study from Protiviti Inc.

Of those employees with access in the workplace, almost 39% indicated that there is no policy in place regarding social media use. A further 24% are unaware of any such policies. Social media usage in the workplace has grown enormously in recent years with 51% of workers surveyed now claiming to engage with a social networking site at work. 30% of workers use sites such as Twitter, Facebook and LinkedIn on a daily basis, while more than 5% do so several times an hour.

There are a growing number of cases where companies have vague or out-of-date social media policies that are unenforceable if inappropriate activity takes place. And importantly, companies without adequate social media policies are placing themselves at risk of security breaches and reputational damage, amongst other things.

For advice on how to create clear policies targeted at issues specific to social networking, such as guidelines regarding the sharing on Facebook of photographs from corporate events, contact a specialist solicitor.



## Monster launches new facebook app BeKnown

Monster has launched a Facebook app that will let its 700 million users build a professional network separate and apart from the one their friends see.

BeKnown borrows much from LinkedIn and BranchOut, but offers more versatility and flair and focuses on younger workers who are just beginning to build their business contacts.

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