

Employers: Derogatory statements about former employees may prove costly!

A recent High Court decision in the case of McKie –v- Swindon College (2011) EWHC 469 (QB) serves as a stark warning to employers that make a derogatory statement about former employees.

In the facts of this particular case, Mr McKie, an ex-employee of Swindon College, who left with a positive reference, commenced employment with Bath University. As part of his new role, Mr McKie had contact with Swindon College. In the course of emails between Mr McKie and the College, a derogatory e-mail concerning Mr McKie was sent to Bath University by the new HR Director. This e-mail resulted in Mr McKie losing his position at the University. Following consideration of the facts of the case, the Court held that a duty of care existed between the College and Mr McKie, and found the College liable for breach of this duty.

Although this was not a case dealing with an employer's obligations in the provision of a reference, it illustrates that a duty of care can arise in a non-reference situation. This particular case deals with written comments made by an employer. It is unclear what the position would have been if verbal comments had been raised. However, given the precedent which has now been set, employers are advised to train their Senior Management staff to avoid a situation of this nature arising.

Interestingly, the Court also expressed the view that Bath University had acted unfairly by dismissing Mr McKie, in that they should have made further enquiries. However, this was simply an observation as Mr McKie did not have the requisite 1 year period of service to pursue a claim for unfair dismissal at an Employment Tribunal. Crucially, this case does serve as a warning that any employer should at all times comply with a fair process in a dismissal situation.