

## **Employer liable for inaccurate statement about a former employee**

### **Background**

Mr McKie was an art historian and worked for Swindon College for 7 years before leaving for a role with another college in 2002 and he subsequently moved to a post at the University of Bath in 2008. On his departure from Swindon College, Mr McKie received an excellent reference which recommended him without reservation. At the hearing, Mr McKie's Head of Department at that time confirmed that she had not received any negative feedback about the Claimant and repeated her positive remarks about his work at Swindon College.

As part of Mr McKie's new role with the University, he was required to liaise with and visit local colleges, including his former employer. In June 2008, Swindon College's HR Manager (who had no personal knowledge of Mr McKie's work) sent an email stating that the College would be unable to allow Mr McKie onto their premises due to 'real safeguarding concerns' and 'serious staff relationship problems.' As a result, Mr McKie was unable to carry out part of the duties in his new role and was subsequently dismissed.

### **Employer's Duty of Care**

The comments were based on comments made by an employee who gave evidence for the College at the hearing. However, this employee said that he only told the HR Manager that there had been staff relationship problems (not safeguarding concerns) and he accepted that there had been no formal complaints against Mr McKie. The High Court did not accept the employee's allegations and held that they did not justify the email. The College also argued that a chartered psychologist had produced a report that referred to Mr McKie but the College was unable to produce a copy of the report and no one other than the psychologist seemed to have been aware of it. Again, the High Court found the claim that there was a formal report on Mr McKie to be completely unproven.

In light of this, and Mr McKie's clean personnel file, the Court described the procedure which gave rise to the sending of the email "*as slapdash, sloppy [and] failing to comply with any sort of minimum standards of fairness.*" It was obvious that the email would affect Mr McKie's future employment; he could no longer carry out part of his role and any employer would be obliged to investigate any allegation of safeguarding concerns. It was reasonably foreseeable that Mr McKie would suffer loss as a result of the email and the College were therefore liable, despite the length of time that had passed since the end of his employment.

## **Criticism of the Disciplinary Procedures**

Interestingly for employers who might receive allegations about staff, the Court criticised the disciplinary process undertaken by the University of Bath. The letter inviting Mr McKie to a meeting did not state that this was a disciplinary meeting that could lead to dismissal. One of the University employees involved in the disciplinary process was also a Board member of Swindon College and this was a clear conflict of interest. In addition, the University did not attempt to investigate the email or the basis upon which it was sent. The judge noted that Mr McKie had less than a year's service and was not protected from unfair dismissal. However, he felt that the University should have made further inquiries before making a decision to dismiss.

## **Tips for Employers**

Employers should ensure that all communications about ex-employees are fair, accurate and not misleading and must be able to support such statements with evidence. Good training and internal guidance for managers is particularly important as negligent comments made about an employee many years after they have left can still give rise to claims and liability for damages.

For further information, please contact:

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