The UK case of *Spring v Guardian Assurance* plc [1994] 3 All ER 129, is the leading case on the duty of care when employers provide employment references for former employees. Spring was a sales director and office manager who was dismissed when Guardian Assurance took over the company he worked for.

When a potential employer asked Guardian Assurance for a reference for Spring, the company alleged that he was selfish, lacked team spirit, lacked honesty, was in debt to the company and was incompetent. As a result of this damaging reference, Spring did not get the job.

The Court found that the reference was inaccurate and it was held that an employer who supplies an inaccurate reference can be liable in negligence to the person for whom it was supplied.

An employer must not provide a reference that is *misleading*. There are two ways a reference can mislead:

- **Portraying the employee to be better than they actually are.** For example, the employee may be someone who did not perform their job to your satisfaction or misbehaved and was fired. You may still genuinely wish for them to be given another chance at another role, and that while they were not a good fit for your organisation, they may be great elsewhere. As a result, when you are asked to give a reference for them it might be tempting to describe them as a star performer and reject any suggestion that you had any problems with their performance or conduct. If your statements are untrue and the new employer finds out, it is possible you could be sued for having misled that employer.

- **Suggesting the employee is worse than they actually are**. You may be so annoyed because the employee was less than well behaved, abused your trust, or sought to damage your business in some way that you feel it is only fair to explain this to a potential new employer. This is your opportunity to get revenge! But the employee may have the last laugh, if they miss out on the role and discover you were the cause. Again, you could be sued, this time by the employee, for having misrepresented them.