

6 June 2007

Crème



Career clinic

I've just been offered a new job and handed in my notice. My employer didn't take my resignation too well and I'm worried that he will give my new employer a bad reference. Is he legally allowed to give a bad reference and would I have any recourse?

David Morel, of Tiger Recruitment (London and Bristol), replies: An employer is not legally obliged to provide a reference at all, unless previously agreed in the contract of employment.

If an employer has to provide a reference, he or she owes a duty of care to the employee and the recipient of the reference. So he must be extremely careful about making any negative comments. Any

statements made by the employer should be factual rather than merely an opinion or information received second-hand.

It is not unlawful to give a "bad" reference if the information provided is accurate, truthful, not misleading and given in good faith without malice.

If an employee considers that the reference does not meet these requirements, he or she can take action in the civil courts. If the court finds the statement untrue, the employee may claim damages for any potential financial loss, such as losing the job or failure to obtain a mortgage. If an employer maliciously provides a bad reference, knowing that the information given is incorrect, an employee can also bring a claim against the employer for defamation and seek damages. If you are concerned that an employer has given a bad reference about you, the Data Protection Act 1998 has provided employees with the right to request sight of that information. E-mail questions to creme@thetimes.co.uk