



Cheryl's dilemma is how honest to be in writing a reference for a long-serving but lazy colleague she's frankly glad to see departing. BOB SOUSTER examines the ethical issues.

“The prospects of a successful legal action are increased if the information in a reference is subjective and cannot be substantiated.”

The dangers of telling the truth

Jaime, the head of the Lending Administration Department of RTS Bank plc, attends a meeting to discuss a staffing matter with Maria and Renee, two section heads in his department, and Cheryl, the Human Resources Manager.

He has received a surprise resignation from Eamon, a long-serving clerk in the Deeds section, who's been with the company for 23 years. No-one is unhappy

at this news: Eamon has always been a poor, unpopular worker and unco-operative when asked to do anything unconnected with his precise duties.

Jaime reports that Eamon has taken the maximum days of sick leave permitted without being obliged to see the company doctor in four of the previous six years. Although there were never any grounds to dismiss Eamon, his retention was mainly because he'd never been asked to

undertake any challenging work. Most of his time was spent photocopying title deeds and other legal documents and corresponding with solicitors on purely routine matters.

Eamon's prospective employer has written to Cheryl requesting a reference and she admits it would be difficult to compose anything meaningful without giving entirely negative information, based on their experience of Eamon.

Maria suggests Cheryl should give a positive reference to ensure Eamon would not be rejected by the employer. She feels that every effort should be made to avoid any possibility of the employer withdrawing its offer.

Renee says the company should give a brief statement of facts relating to Eamon's time with the company, including his period of service and the positions held with the bank. However, she concedes that a very concise reference would be taken by the new employer to infer that it should not employ Eamon.

Jaime acknowledges these difficulties, but feels the bank has a duty of trust to other companies to tell the truth. Therefore, the bank should tell the new employer exactly what it thinks about Eamon, he says, including all his deficiencies.

continued on page 48 >>



<< from page 47

What should Cheryl do now?

Giving references to prospective employers poses many threats to the issuer. The Data Protection Act 1998 enables data subjects to gain access to hard or soft copy data relating to them, so copies of references cannot be withheld if demanded by the data subject.

If a reference contains any potentially defamatory information, the data subject may take legal action in tort (delict). The prospects of a successful legal action are increased if the information contained in the reference is subjective and cannot be substantiated.

Under case law in England and Wales, a referee may also owe a duty of care to a third party if that party relies on the reference and suffers damage or loss as a consequence.

It's against this legal background that Cheryl's dilemma must be assessed. Maria's view is ethically wrong. The bank not only has an ethical duty to be truthful in its relations with third parties, it may also be open to legal action; the new employer could quickly discover that none

of its glowing attributes were true, and it would then be able to take action against RTS Bank.

So, whether the ethical principles are considered either as duties owed or consequences, Maria's suggestion would be wrong. Those who consider ethics in

“The bank not only has an ethical duty to be truthful in its relations with third parties, it may also be open to legal action”

terms of duties often argue that we should 'never do to others what we wouldn't like done to ourselves'. But, if all employers considered their duties with references so glibly, nobody would ask for one because they'd become meaningless.

Renee's view is ethically more sound, but raises difficulties. A letter stating simply: 'This is to confirm that Eamon has been employed as a clerk in the

Deeds section of the Mortgage Administration Department from _____ to _____. Yours faithfully', virtually screams at the recipient not to employ the individual.

Jaime's approach is honourable, but not without dangers. He's right that the bank should be truthful, but he's naive if he believes there would be no consequence of being forthright about Eamon's deficiencies. The risk would be to deny Eamon the opportunity to work elsewhere, on an assumption that if he's a difficult employee at RTS Bank, he'll be difficult anywhere else.

The bank is obliged to tell the truth, but should confine its statements to facts and any opinions that can be backed soundly and objectively.

