



Providing and Obtaining Employment References Policy & Procedure

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1.1 Introduction

- 1.2 This policy is intended to be used in conjunction with the Recruitment and Selection Policy. The Trust Board have adopted this policy as the statement of their commitment, and their processes, regarding obtaining and providing references.
- 1.3 The purpose of this policy is to:
- a. To ensure the information provided in references by the school is fair, accurate, true, and complies with legislation.
 - b. To ensure comprehensive reference information is obtained on all applicants, and that this is used appropriately within the selection process.
 - c. To ensure the principles of safer recruitment are applied when the school provides or obtains reference information.
 - d. To ensure a consistent approach in the provision of references for all staff.
- 1.4 This policy and procedure recognises the employer's responsibilities in respect of legislation and statutory guidance;
- a. Safeguarding of Vulnerable Groups Act 2006
 - b. Data Protection Act 2018 and (Amendment) Regulations 2003
 - c. Equality Act 2010
 - d. Keeping Children Safe in Education
 - e. The School Staffing Regulations

2.1 Scope

- 2.2 This policy applies to all employment references provided or obtained by the school.
- 2.3 School leaders are responsible for obtaining and providing references in line with this policy, in a confidential manner. School leaders are responsible for ensuring that references are provided in a timely manner.
- 2.4 Copies of reference requests, and references provided, will be held confidentially on the employees personal file in line with GDPR and in accordance with any Data Protection Policies in existence.

3.1 Procedure - Providing Employment References

- 3.2 It is recommended that when an employee leaves a job, a reference is completed by the manager and placed on the personal file to provide the information for future reference requests. It is recommended that the reference template, which is issued alongside this policy is used regardless of the reference questions, format or detail requested. It is also recommended that the details of the reference are shared with the employee as part of the exit process.
- 3.3 Managers have a responsibility to provide references, if requested, for current and former employees. A refusal could be detrimental to the person under consideration for a job. All references provided should be in writing, in line with this policy, and labelled "strictly confidential – employment reference" and sent through secure means.

- 3.4 Employment reference requests must be responded to by a school leader with appropriate authority. As a general rule, this is the line manager who has responsibility for that employee, and who would have direct knowledge of any disciplinary, capability or attendance management action in relation to the employee. Where the line manager is not the Headteacher, the reference should be confirmed as accurate in respect of any matters of discipline, safeguarding and/or capability by the Headteacher or where the reference relates to the Headteacher, the CEO should draft the reference.
- 3.5 References should not include any information relating to absence due to disability, adoption, maternity, paternity or shared parental leave.
- 3.6 In line with the Equality Act 2010, it is unlawful for employers to ask any job applicant about their health, disability or absence information prior to an offer of employment, other than;
- to determine if reasonable adjustments are required in the selection process
 - to determine if an applicant can carry out a function essential to the role
 - for diversity monitoring purposes

On that basis, information relating to absence due to illness should not be provided in a reference unless confirmation has been received that a job offer has been made. When providing sickness absence details, it is important to state the number of occasions of absence as well as the number of days. The reasons for absences should never be disclosed at any stage of a recruitment process.

- 3.7 References must be fair, accurate and true in substance, based upon verifiable facts, and given without malice. There should be nothing included in the reference which the employee is not already aware of. Managers must not conceal or omit any serious matter relating to the employee's conduct or capability. Failure to provide information to a new employer could lead to a negligence claim.
- 3.8 Under the Amendment to the School Staffing Regulations 2012, schools must provide on request, whether or not a teacher has been the subject of capability in the preceding two years, and provide details of the concerns, duration, procedure and outcome. Where schools have adopted the NYES HR model Developing Performance and the Capability Policy, this statutory responsibility applies where an individual has been subject to the Capability Policy only.
- 3.9 Information relating to disciplinary sanctions should only be included where such sanctions remain 'live'. Information should be limited to the date and type of sanction only, unless there are safeguarding considerations (see below).
- 3.10 There may be occasions where an employee resigns from their position prior to conclusion of an internal process involving allegations against the employee. In this case, the school will write to the employee confirming their position in the event that a reference is requested and will confirm the information which will be shared. This information will be limited to that necessary to ensure a fair and accurate reference is provided, for example, that an investigation is live at the time of their exit from the organisation, that there was a pending disciplinary matter, or any safeguarding considerations.

- 3.11 In line with Keeping Children Safe in Education, there is a statutory responsibility for employers to disclose any information on an employee relating to the safeguarding of children and vulnerable adults, if the job falls into this category. Information should confirm whether the school is satisfied with the employee's suitability to work with children and provide the facts (not opinions) of any **substantiated** safeguarding allegations. Cases in which an allegation was categorised as false, unsubstantiated, unfounded or malicious should not be included in a reference. Low-level concerns should not be included in references unless they related to issues which would normally be included in a reference, for example, misconduct or poor performance.
- 3.12 References should be provided in writing only using the school's template reference. It is recommended that pro-formas or templates received from the requesting organisation should not be completed.
- 3.13 References must be sent only to the employer making the reference request, for the job specified, to ensure a consistent approach for all external reference requests, regardless of the varying formats from external employers. References should be marked 'for the attention of the addressee only'.
- 3.14 Open employment references addressed "to whom it may concern" must not be provided.
- 3.15 Where a settlement agreement is used on ending an individual's employment, the details to be included in any employment reference will in most cases have been agreed at the time, using advice from the Trusts HR and Legal Services. **In this event, only the reference included as part of the settlement agreement must be sent when responding to a reference request and no additional information, even verbally, will be shared in line with the terms of the agreement. Reference requests may take the form of a proforma produced by the prospective employer, and it is vital in this case that where the reference is agreed as part of a settlement agreement, the prepared / agreed reference must be sent.** Where a reference has not been included as part of a settlement agreement, the school's template should be used and the provisions of this policy applied, and no mention must be made to the existence of any settlement agreement.
- 3.16 If a work colleague is asked to provide a reference for an individual, it must be stated on any letter that the reference is personal and not an employment reference. Therefore, the reference must be clear that it is not based on school records, provided on school letterhead, that it is not provided from the personal referee in their capacity of being a school employee, or in any way on behalf of the school.

4.1 Procedure - Obtaining Employment References

- 4.2 In line with safer recruitment practice, references should be obtained for shortlisted candidates before interview to allow any concerns raised to be explored further with the referee and taken up with the candidate at interview. Where this has not been

possible, it is recommended that all clearances including references are to be obtained as soon as possible after the conditional offer is made to the applicant.

- 4.3 Where reference(s) are outstanding, the candidate should be made aware of this at interview/offer stage by the school. If the school is unable to obtain the required references and other associated clearances and there have not been suitable updates supplied by the applicant, then consideration of withdrawing the offer of employment should be made. The applicant must be informed of this potential outcome before a decision is made and a risk assessed approach should be taken, depending upon the clearances received.
- 4.4 References must be requested only when permission to do so is given by the candidate.
- 4.5 The purpose of seeking references is to allow employers to obtain factual information to support and verify appointment decisions. They should not be used to evaluate candidates as part of the assessment process but are used as a check of suitability and verification of applicant information.
- 4.6 Schools should use the reference pro forma template to request references direct from the employer, to ensure information is obtained in line with safeguarding requirements. Employers should compare the information in the application form with that in the reference and investigate any discrepancies with the candidate.
- 4.7 In line with the amendment to the School Staffing Regulations 2012, the school will seek details of any capability procedures instigated in relation to teaching applicants in the previous two years.
- 4.8 As outlined above, in line with the Equality Act 2010, it is unlawful for employers to ask any job applicant about their health, disability or absence information prior to an offer of employment, other than;
 - to determine if reasonable adjustments are required in the selection process
 - to determine if an applicant can carry out a function essential to the role
 - for diversity monitoring purposes
- 4.9 To comply with legislation, references should be requested in two parts with the health / absence related information only requested once an offer of employment has been made.
- 4.10 At least two references are required for external candidates, one of which must be from the most recent employer. The number of references relates to the applicant's employment history and the type of work to be undertaken, meaning additional references may be required.
- 4.11 A reference must be obtained from the relevant employer from the last time the applicant worked with children (if not currently working with children), in addition to a reference from the last employer. If the applicant is not currently employed, verification must be obtained from the individual's most recent period of employment.

- 4.12 Detailed information must be requested from the referee on any issues or concerns that have been raised about the applicant regarding the safeguarding of children or vulnerable adults.
- 4.13 References must be obtained from the organisation's business address directly and should be sought from a senior person with appropriate authority (if the referee is school or college based, in most cases this will be the Headteacher but, where it is not, the reference should be confirmed by the Headteacher as accurate in respect of disciplinary investigations, capability and safeguarding issues).
- 4.14 Open references or testimonials should not be accepted. School will not accept employment references from the applicant's relatives or people writing solely in the capacity of a friend.
- 4.15 The applicant could seek access to the reference information under the Data Protection Act, as a Subject Access Request. However, the Data Protection Act 2018 states that personal data can be withheld where it consists of a reference given (or to be given) in confidence for the purposes of;
- Education, training or employment, or prospective education, training or employment of the individual (the data subject);
 - Placement, or prospective placement, of the individual as a volunteer;
 - Appointment, or prospective appointment, of the individual to any office;
 - Provision, or prospective provision, by the individual of any service.
- Further information can be sought from the appropriate Data Protection Officer for the school or via Browne Jacobson.

4.16 Action Required on the Receipt of References

- 4.17 The Headteacher/School Leader must ensure the reference received is an official employment reference, for instance is on headed paper and has been received via an appropriate source (company email address, franked mail etc). The school leader should ensure that the referee who completed the request should be a senior person with appropriate authority.
- 4.18 The reference must be scrutinised and compared with the application form to identify inconsistencies and areas for concern, for example, discrepancies regarding employment dates, reasons for leaving, gaps in employment, or undisclosed performance or disciplinary issues. Information will be verified with the person who provided the reference and additional clarity requested where information is provided which is vague or inconsistent. Any discrepancies will be discussed with the candidate and considered as part of a risk assessed approach.
- 4.19 Particular attention will be given to information about past disciplinary action or safeguarding allegations, and advice should be sought from the Trusts HR or Legal provider..

4.20 Unsatisfactory References

- 4.21 Receipt of references that are considered unsatisfactory will normally result in a withdrawal of the conditional offer. The manager may decide, with the applicant's permission, to seek further references to consider the applicant's suitability further

as part of a risk assessed approach, however this will only be in exceptional circumstances. It remains essential that a suitable reference is provided from the last employer, that there are no concerns about an individuals' suitability to work with children, and that the referee must be an appropriate referee.

4.22 In the event that there are concerns about an applicant's suitability due to the level of absence, before withdrawing a conditional offer, the manager must consider whether further advice from the Trusts HR or legal advisor and where appropriate, Occupational Health should be sought.

4.23 Where withdrawal of a conditional offer is considered, the applicant will generally be made aware of the concerns and why the school deems the clearance not satisfactory, with a right of response given, before any final decision to withdraw a conditional offer of employment is made. It is important to also confirm the offer of employment was confirmed as conditional and subject to the receipt of satisfactory clearances, in writing to the applicant.

4.24 Action When there is Difficulty in Obtaining Employment References

4.25 Managers are required to demonstrate that all reasonable steps have been taken to secure all relevant references. Where it has not been possible to obtain references, the school will take a risk assessed approach to considering suitability of employment. In some cases, it may be necessary for a conditional offer of employment to be withdrawn.

4.26 Use of Personal (Character) References

4.27 In some circumstances it may not be possible to obtain employment references, for example, when an applicant has not worked for several years or has never worked. In such exceptional situations, personal references must be obtained. The school must carefully assess the risk involved and ensure that appropriate alternative safeguarding measures are undertaken and/or put in place if the person is appointed. These details must be recorded on employee's file. References from friends or family members of the applicant are not acceptable for this purpose and personal references should ideally be sought from someone who has supported the individual from a professional capacity (e.g. Teacher, Lawyer, Doctor).

4.28 Releasing Reference Information

4.29 If a new employee asks to see a reference provided to the school the Headteacher should seek advice from their Data Protection Officer or Trust Solicitors

5.1 Other references

5.2 On occasions, employees may request that the school provides a reference for purposes other than employment. The school will respond to references received for other purposes in a manner consistent with their responses to employment references as set out in this policy. Before sharing any personal data with other organisations, the school will ensure that permission has been sought from the employee (for example for provision of a reference for private tenancy agreements).

Information provided will be limited to that which it is essential to provide for the purpose requested, will be provided in a timely and secure manner.