

# Employment Reference Guidelines

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## 1. Introduction

These guidelines provide further details to support the University's Employment Reference Policy.

## 2. Providing references for existing and former University employees

In providing a reference, both the University and the referee accept certain responsibilities and liabilities. In addition to data protection subject access rights, documents may have to be disclosed in connection with litigation, and there are also specific legislative provisions relating to equality which are relevant.

### Content of references provided by the University

Key considerations when providing a reference:

#### *Defamation*

A reference must be factually correct and must not contain false or unsubstantiated statements.

The basic principle when giving a reference is that there is a duty to take reasonable care that a reference is as true, accurate and as fair as possible and must not give a misleading impression. An employer giving a reference owes a duty of care both to the subject of the reference, and to the prospective employer. Opinions expressed must be based on fact. There should be evidence on record to support the content of a reference. This is particularly important where critical comments are made, as such comments must be capable of being substantiated if challenged. It is important to ensure that the reference is a balanced assessment overall. If a reference is given which is inaccurate or has significant omissions and results in economic loss, there could be a liability to a claim for damages. Liability may arise not only in relation to what is said in a reference, but also to what is not said. For example a reference commenting on the excellent timekeeping of an otherwise thoroughly incompetent employee could be actionable as a reference containing misleading statements.

When writing the reference, the referee may provide information based on fact (e.g. to confirm accuracy of statements made in the applications) and opinion as to the individual's suitability based on an assessment of their performance in their current role. It is essential that it is possible for the recipient to differentiate between the two. The content must in all cases be accurate, true, reasonable and not misleading and should not contain any information that the referee would not be willing to share with the individual they are writing about.

Factual information provided in a reference regarding timekeeping, overall performance etc should be able to be substantiated if queried. Information on sickness absence should not be provided for a prospective employer. The following statement should be included to provide clarification: 'It is our policy not to provide details of absence records therefore you

should not view the lack of absence details as either a positive or negative statement regarding the individual'.

References for individuals who have transitioned from one gender to another must use the appropriate pronoun and make no reference to the person's former names or gender without the individual's express consent.

If asked to give an opinion on suitability, this should be objective and based on fact or personal knowledge of the individual. Opinions based on hearsay or the beliefs of others who have not directly worked with the employee must be avoided.

Subjective opinions about the suitability of an employee for a future role should also be avoided.

It is helpful to state the nature and extent of the acquaintance of the referee with the employee and to indicate the parameters within which the reference is given.

Where a reference is requested on a former employee and there is nobody who has direct knowledge of the individual concerned, it may only be possible to confirm factual information about dates of employment and roles undertaken.

Where references require more detail (such as an Academic reference for promotion or an appointment committee) the referee should still apply the principles above and ensure that the content is based on an evaluation of factual information obtained from experience, CVs and personal statements, and must clearly identify the difference between fact and opinion.

### **Oral references**

Oral references must also comply with the Employment Reference Policy and these guidelines and a file note should be produced and placed on the employee's personal file for future reference.

### **Provision of references**

References may be completed on headed notepaper or on a questionnaire provided, as long as the information given complies with the University policy.

Heads of Units or nominees are responsible for authorising references and must ensure that they comply with the Employment Reference Policy and these guidelines.

In line with the Anti-fraud Policies any references for individuals disciplined or prosecuted for fraud must be passed to the People Hub for completion.

If Heads of Units delegate responsibility for providing a reference to a nominee, they must ensure that the nominee is aware of the policy and guidelines and the legal considerations when producing a reference.

## **3. Obtaining references for prospective University employees**

### **Requesting references**

Some units may wish to take up references at the interview stage for academic, research or senior non-academic appointments. However, for all other appointments the University's policy is that references are only taken up for the successful candidate.

Managers should check the application form for the potential employee's preference before seeking any references.

Offers will be made subject to receipt of satisfactory references where a reference from the last employer has not been received (a telephone reference is acceptable but should be recorded in writing). Personal referees are often unable to address many aspects of the person specification and employment references should be sought if at all possible.

Under equality legislation, asking questions about a prospective employee's health or disability is not allowed before an offer (or provisional offer) is made. This includes questions about sickness absence.

Where a reference received refers to someone by a previous name because they have previously transitioned from one gender to another, this information should be treated as confidential by the recipient and must not be divulged to any other person without the individual's express consent.

### **Use of references in the selection process**

The evidence of suitability gained from references should form only one part of the selection process. References should be used as supporting evidence against the person specification, with validation of evidence being gained from interview and other selection methods. Receipt of a glowing reference in itself should not be used as major evidence for appointment.

### **Unacceptable references**

If a reference is received which suggests concerns about the prospective employee's suitability for the job, further advice should be sought from the Resourcing Hub before any decisions are made about withdrawing an offer of employment.

## **4. Rights of access to references**

Under a specific exemption to data protection legislation, an employee does not have the right to gain access to a confidential job reference from the organisation which has given it. However, once the reference is with the organisation to which it was sent, then no such specific exemption from the right of access exists. That organisation is entitled to take steps to protect the identity of third parties, such as the author of the reference. Information need not be provided to the individual requesting it if the release of this information would identify a third party, unless:

- the identity of the third party can be protected by anonymising the information;
- this third party has given their consent, or;
- it is reasonable in all the circumstances to release the information without consent.

### **When requesting a reference**

When requesting any reference from an external third party, it is recommended that the third party should be asked whether they would consent to disclosure of the reference to the individual in the event of a subject access request.

When faced with a request for access to a reference received in confidence from a third party, consideration must be given to whether there is a duty of confidentiality to the third party, what steps have been taken to try and obtain consent, and whether the third party has expressly refused to give their permission for the information to be made available.

Where disclosure of references received in confidence from third parties is refused, it is likely that reasons will have to be provided. In most cases the reason would be that the third party required confidentiality.

### **When providing a reference**

Referees should say that the reference is supplied in strict confidence but should not rely on this as it would be as well to assume that a reference could be disclosed (e.g. in the event of court proceedings or disclosure under data protection legislation). The third party external recipient of a reference could choose to override confidentiality and disclose it. Do not rely on any disclaimer such as “the reference is being supplied without legal liability on behalf of the University or the writer” as this may have limited or no legal standing.

It is recommended that when providing a reference, a statement should be included about whether the reference can be disclosed in the event of a subject access request.

### **5. Internal references**

The principles outlined above are generally also relevant when requesting or providing an internal reference for a member of staff applying for another role within the University. Please note the following:

- References written by University staff in the performance of their OU duties and that are sent and received internally are exempt from subject access requests where these references relate to education, training, or employment of the person or appointment of the person to any post. There is absolute discretion on the University to refuse to release such confidential references written on their behalf in these circumstances if requested to do so in a subject access request.

### **6. Failure to Comply with the Reference Policy and Guidelines**

Only Heads of Units or nominees can provide a corporate reference. Personal references made by any employee must not be completed on OU headed paper and the individual must make it clear that they are providing a personal reference and are not doing so on behalf of the OU. Anyone found to have acted in breach of this policy or found to have provided a fraudulent reference may be subject to disciplinary action.

### **7. Useful References**

Employment Reference Policy  
Anti-fraud Policies  
Effective Recruitment and Selection Guide