

HR Policy and Procedures

Section: D04b

Title:	Employment References Policy
Purpose:	To implement a fair, consistent and transparent procedure for obtaining and providing employment references for all posts, as is required by statute, case law and recommended good practice.
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1.0 Purpose of the Policy

The purpose of this policy is for the School/Academy to implement a fair, consistent and transparent procedure for obtaining and providing employment references for all posts, as is required by statute, case law and recommended good practice.

The policy outlines how the School/Academy can use and interpret references which have been requested as part of the pre-employment check process, including guidance regarding safeguarding children and young people.

2.0 Scope of the Policy

This policy applies to all staff employed, both teaching and non-teaching, including the Headteacher.

This policy is supported by and should be read in conjunction with other schools policies including the Recruitment and Selection Policy.

3.0 Principles of the Policy

This policy is based on the following principles;

- It will support and develop a fair, consistent and transparent procedure in relation to obtaining and giving of references;
- It will comply with all obligations of the Data Protection Act;
- It will promote openness and honesty whilst providing factual and accurate information;
- It will raise awareness of responsibility in relation to references to both the management and employees of the School/Academy;
- It will support creating a confidential environment for dealing with reference requests;
- It is underpinned by Safer Recruitment principles;
- It will comply with the Equality Act 2010;
- The policy recognises that the School/Academy have the right to seek advice and support from YourHR.

3.1 The Purpose of Employment References

The purpose of references is to obtain objective and factual information to support sound appointment decisions. References usually contain information about a person's employment history, qualifications, experience and/or an assessment of the person's suitability for the post, including the suitability to work with children. Such information relating to a person's past behaviour is one way of predicting future behaviour.

3.2 Duty of Care

Although the School/Academy is not obliged in law to provide a reference for employees or ex-employees, it is the School/Academy policy to provide employment references. In providing references it is acknowledged that the School/Academy has a duty of care to both the prospective employer that requests the reference and the individual who is the subject of the reference.

To meet the duty of care in respect of the new employer, when providing a reference the School/Academy must ensure that what is written is accurate, factual and not misleading. A negligence claim could be made if the School/Academy fails to reveal something which could ultimately cause the new employer loss.

A duty of care also extends to the employee who is the subject of the reference. A reference may be considered unfair if it contains matter of which the employee was unaware, for example performance issues which had not been raised. A negligence claim could be made if the employee suffers loss as a result of the School/Academy failure to exercise reasonable care in the preparation of a reference.

The authorised officer providing the reference needs to consider the overall impression that the reference conveys. For example, by omitting certain facts, this could result in portraying a misleading overall impression of the employee.

4.0 The Legal Position

Throughout the application of this policy the School/Academy will comply with the legal framework of relevant employment legislation that affects all employees and includes:

- Equality Act 2010;
- The School Staffing (England) Regulations 2009 and associated guidance and updates;
- Education Act 2011 and associated guidance and updates;
- Data Protection Act 1998;
- Employment Rights Act 1996;
- Any other relevant employment legislation.

4.1 Associated Documents

Where applicable this policy should be read in conjunction with the following documents:

- 'Guidance for Safer Working Practice for Adults who Work with Children and Young People'

- Department for Education guidance on “Keeping Children Safe in Education”, July 2015
- Any other relevant documentation or guidance produced by the Department for Education
- Any updates to statutory guidance

This list is not exhaustive.

4.2 Access to References under the Data Protection Act

References and their contents are subject to the Data Protection Act. Job applicants have the right under the Data Protection Act to access information held by the School/Academy about them upon request. Such a request is known as a 'subject access request'. For a subject access request to be valid, it must be submitted in writing to the school.

Subject access requests by job applicants may relate to interview notes made about them, internal forms held on file, references or information obtained as a result of any other checks. In the event of a valid request, the School/Academy will comply by providing the job applicant with a copy of the requested information within 40 calendar days.

4.2.1 References Provided by the School/Academy

When an individual requests a copy of a confidential reference you have written about them, the School/Academy is not obliged to provide the employee with a copy of the reference due to an exemption in the Act.

However, it is good practice to be as open as possible with the employee and so the School/Academy may provide them with a copy if requested.

4.2.2 References Received by the School/Academy

There may be occasions when an applicant or employee requests a copy of a reference provided to the School/Academy by a previous employer. If the School/Academy holds the reference in a way which means it is covered by the Act then this should be considered under the normal rules of access. An individual can have access to information which is about them, but may not necessarily have access to information about other people, including their opinion, provided in confidence.

If the reference provided is marked “in confidence” then consideration will need to be given to whether the information is actually confidential. Where, the School/Academy uses TalentLink to request references the referee is asked at the

point of providing the reference if they consent to the reference being shared with the applicant.

The School/Academy cannot sensibly withhold information which is already known to the individual. Factual information such as employment dates and absence records will be known to an individual and should be provided. Where it is not clear whether information, including the referee's opinions is known to the individual the School/Academy should contact the referee and ask whether they object to this being provided and why.

Even if a referee says that they do not want the School/Academy to release their comments the School/Academy would need to provide the reference if it is reasonable in all the circumstances to comply with the request without their consent.

If it is not reasonable in all of the circumstances to provide the information without the referee's consent the School/Academy should consider whether they can respond helpfully anyway (for example, by providing a summary of the content of the reference). This may protect the identity of the referee, while providing the individual with an overview of what the reference says about them.

Further guidance can be sought from the Information Commissioners Office.

5.0 Providing References

When the School/Academy receives a reference request it should always be passed to the Headteacher in the first instance. The Headteacher will either respond to the request or delegate the responsibility to respond, as detailed below in section 5.1.

5.1 *Authorised Officer*

In order to ensure that references provided for all staff are fair, accurate and consistent with this policy, the following officers are authorised to provide formal references on behalf of the School/Academy, others may offer personal testimonials where requested in which case this should be clearly stated that it is not on behalf of the School/Academy;

The Headteacher (or Chair of Governors in the case of the Headteacher);

All staff in the School/Academy should be made aware of who is authorised to provide references.

5.2 Method of Providing References

The School/Academy will provide a written response to all requests for references. Verbal references will not be given as routine, however, it is recognised that there may be times due to timescales when this is necessary. The content of a verbal reference will always be confirmed in writing.

A copy of the reference that has been provided should be retained by the School/Academy as this may be called upon in the future.

There may be occasions when further clarification is required by a prospective employer regarding the reference given by the School/Academy and it is often a faster and more reliable way of clarifying information over the telephone. The School/Academy will ensure that in doing so they are speaking to an appropriate person in that organisation and confirm any discussion in writing.

5.3 What information will be included in a Reference given by the School/Academy

Authorised officers of the School/Academy, in providing references will ensure that all references are factual, consistent and accurate. References for this purpose will not include any personal views or opinions about the employee's performance or conduct that cannot be supported by evidence. Statements made as "confidential" should not be made as the reference should be open, fair and honest. The School/Academy recognises that such opinions can be open to bias, whether deliberate or inadvertent.

The reference should be provided in writing, either in the form of a letter or by the use of a standard form. There are occasions where the standard form may include questions that may not be appropriate. Where this is the case the referee should simply state that the question is not appropriate and not respond. Advice can be sought from YourHR on appropriate questions.

If the School/Academy has not been provided with a standard form to complete, the reference should be provided on School/Academy headed paper and will include:

- The dates on which the individual's employment with the School/Academy began and if relevant ended, including continuous service dates;
- How long they have known the individual and in what capacity;
- The employee's job title;

- A short description of the employee's key job duties and level of responsibility, including a current job description;
- Any jobs that the employee held within the organisation prior to the job that he or she held at the date of resignation/termination (or the current job), and for how long he or she performed these jobs;
- If any formal disciplinary warnings have been issued to the individual which are still live on the employees file;
- A statement about the employee's suitability to work with children. This will include:
 - Anything that might raise concern in relation to the employee's suitability to work with children, see section 5.4;
 - Whether the employee has been the subject of any allegations about their behaviour towards children and if so, a summary of how the investigation was followed up, resolved and a note of any action taken and decisions reached should be included;
- Where the individual has left the employment of the School/Academy, the reason for them leaving;
- For teaching staff only – Where requested by the referee if capability proceedings have been started in the preceding two years details should be provided in line with section 5.4.

In order to comply with the Equality Act 2010 information about the person's absence/attendance record should **not be requested or provided** until the conditional offer of employment has been made to the individual concerned. If there is any doubt that the reference request is being made prior to the conditional offer the referee should simply provide a statement as follows:

“Absence/attendance information cannot be provided in line with the Equality Act 2010 until after the conditional offer has been made.”

When providing absence information as part of the reference only the number of days of absence and the number of occasions absent should be provided e.g. 2 occasions of absence totally 10 days, not the reasons for the absence. If by not providing further detail this may cause a detriment to the candidate, written consent should be sought from the candidate to provide further information for example disability / pregnancy related.

5.4 Disclosing Negative Information

In order for references to be true, accurate and fair in substance, it may be necessary to mention negative issues. If this applies, the authorised officer should proceed as follows:

References for teachers who have been the subject of formal capability proceedings within the past two years

If requested by a maintained school, or an academy school, the authorised officer must provide written confirmation that a teacher has been the subject of a formal capability procedure. Details must also be provided of the concerns which led to the formal capability procedure, how long the teacher was the subject of the procedure, and the outcome. This requirement relates only to capability issues arising from lack of skill or ability, not to those arising from ill-health.

References for employees who have been dismissed

The School/Academy has a responsibility to inform the prospective employer if an employee has been dismissed as a result of misconduct or capability (including ill health and performance). The reference should be factual and should not contain any subjective opinions.

References for employees with current disciplinary sanctions

The authorised officer should include details of any formal disciplinary procedures the applicant has been subject to, in which the disciplinary sanction is still live on the employee's file. The authorised officer should advise the employee of this in advance.

References for support employees with significant performance issues

As a general rule only comments on an individual's performance or ability that have already been the subject of discussion with him/her should be included in a reference. The authorised officer may wish to reach an agreement with the employee on the wording of the reference.

Negative references for employees working with children

In addition, the authorised officer must ensure that they include in the reference any concerns or allegations that have been substantiated about the applicant's ability to work with children, including what the concerns were and how they were dealt with. The authorised officer should also refer to any disciplinary warnings that have expired in relation to the safety and welfare of children.

Keeping Children Safe in Education states that cases in which allegations were proven to be false, unsubstantiated or malicious should NOT be included in references. A history of repeated concerns or allegations which have all found to be false, unsubstantiated or malicious should also NOT be included in any reference. The definitions of substantiated, false, unsubstantiated and malicious are as follows:

Substantiated: there is sufficient evidence to prove the allegation

Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive

False: there is sufficient evidence to disprove the allegation

Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

5.5 Settlement Agreements

Where the School/Academy receives a reference request in regards to a previous employee the individuals personnel file should be checked to ensure that a reference has not been agreed as part of a settlement agreement. Where this is the case this is the only reference that should be provided.

6.0 School/Academy needs to Obtain References

The Governing Body of the School/Academy is responsible for ensuring that references are requested, received and checked for every new employee of the School/Academy, including supply/casual workers, prior to their commencement in role. This responsibility will be delegated to the Headteacher, except where the appointment is to the post of Headteacher, where it will be the responsibility of the Chair of the appointment committee.

6.1 Why use References?

References can be very useful, because factual information about a job applicant's past experiences and performance is usually a good way of predicting his or her future performance and behavior in a similar role.

6.2 What References are required?

The School/Academy requires at least 2 satisfactory employment references and at least one of the referees should be from the applicant's current, or if not in employment, previous employer. References should cover a full period of 3 years prior to the date of application.

A reference must be sought from the most recent employer where the applicant worked with children, even if this means obtaining more than 2 references and references outside of the 3 year period as stated above.

The School/Academy recognise that there may be an occasion that a prospective applicant is unable to offer any work related referees. In the main it is anticipated that this will be limited to students. Therefore students should be asked to provide referees from teachers, senior

tutors, studies supervisors or placement supervising officers from their school, college or university.

The School/Academy will not accept open references, references from relatives or references from people writing solely in the capacity of a friend, otherwise known as character testimonials. These types of referees will not give the School/Academy sufficient information to determine the applicant's suitability for a post.

6.3 *When will References be obtained?*

References will be sought prior to interview for all short-listed applicants. At this stage, in order to comply with Equality Act 2010 no questions can be asked about health or attendance related issues.

The purpose of requesting references at this stage is to enable the recruiting panel to review the references before the interview so that if concerns are highlighted these can be taken into account and where necessary explored before or at the interview. If the referee provides information about health or attendance at this stage then this information should not be considered.

If a request is received from an applicant to delay seeking references until it is known whether he or she is to be offered the post then careful consideration will be given. The School/Academy will contact the applicant and explain their duty to seek references in line with safer recruitment practices. If the applicant refuses to give consent and provides justification, it will be for the Headteacher to determine whether the justification is acceptable. If the Headteacher does not feel that the reason given is justifiable then the application may be withdrawn from the process and the applicant notified of this decision in writing.

Failure, on the applicant's behalf to provide suitable referees may result in an application not being progressed further.

The School/Academy will notify prospective applicants of this requirement on the job application form, advertisement or other recruitment information.

Where references have not been received prior to interview the request should be followed up before an offer of employment is made.

6.4 *Safer Recruitment Requirements*

The School/Academy is committed to safeguarding and promoting the welfare of children, young people and vulnerable adults and expects all staff, volunteers and prospective applicants to share in this

commitment. This policy complies with all principles and guidance set out by Staffing Guidance and Safer Recruitment practices.

Reference requests should contain details of the post on offer and should be structured to ask a referee to comment on specific areas relating to the post.

6.5 *What information the School/Academy will seek from a Referee*

When requesting references the School/Academy will always enclose a copy of the job description and person specification so that the referee is aware of the post and duties which the applicant has applied for.

All requests for references will seek objective verifiable information and every references request will ask:

- Confirmation of the applicant's current post, including job title and salary;
- Confirmation of the dates on which the applicant's employment with the School/organisation began and if relevant ended;
- Any jobs that the applicant held within the School/organisation prior to the job that he or she held at the date of resignation/termination (or the current job), and for how long he/she performed these jobs;
- Specific comments about the applicant's suitability for the post and how the referee believes that the applicant has demonstrated that they meet the person specification;
- What the referee's relationship is with the applicant? If this is/was a working relationship; if so what; how long the referee has known the applicant and in what capacity;
- A short description of the applicant's key job duties and level of responsibilities undertaken with the employer;
- Whether the referee is satisfied that the person has the ability and is suitable to undertake the job being applied for;
- Specific verifiable comments about the applicant's performance history and conduct;
- Details of any disciplinary procedures the applicant has been subject to in which the disciplinary sanction is current;
- Details of any disciplinary procedures the applicant has been subject to involving issues related to the safety and welfare of children or young people, including any in which the disciplinary sanction has expired, and the outcome of those;
- Details of any allegations and/or concerns that have been raised about the applicant that relate to the safety and welfare of children and young people or behaviour towards children or young people, and the outcome of those concerns e.g. whether the allegations or concerns were investigated, the conclusion reached and how the matter was resolved except where these concerns are false, unsubstantiated or malicious.

- Where the applicant has left the employment of the organisation, the reason for the termination;
- For teaching staff only – Details of whether capability proceedings have been started in the preceding two years. If so a request for written details of the concerns which gave rise to this, the duration of the proceedings and the outcome.

Templates reference request forms are available via YourHR.

In order to comply with the Equality Act 2010, questions related to health or attendance **cannot** be asked prior to the applicant being made a conditional offer of employment. Once this has been done a further request for information should be sent to the referee to ask the following question.

Information about the person's attendance record, e.g. the number of days' absence over the last 2 years of employment and the number of occasions and details of the candidate's timekeeping.

6.6 Method of Requesting References

The School/Academy will always seek, in the first instance, a written reference rather than relying on verbal statements. However, there may be occasions when due to time restrictions verbal references will be sought in the first instance and subsequently confirmed in writing.

References can be sought via the TalentLink Recruitment System.

6.7 Obtaining Consent

The School/Academy will notify prospective applicants of the requirement to take up references during the recruitment process.

The School/Academy will always obtain a job applicant's consent before seeking to conduct any checks involving the release of information from a third party. This is done by seeking consent on the school application form. This is in line with the general principles of openness and transparency that underpin the Data Protection Act.

6.8 Checking References

References should be thoroughly checked to ensure that all specific questions have been answered satisfactorily. Where a reference appears to be vague or incomplete, the authorised officer should contact the referee to seek further information.

Any concerns should be resolved satisfactorily before the person's appointment is confirmed.

The information provided in the reference should be compared with the application form to ensure the information provided about the applicant by the referee, is consistent with the information provided by the applicant on their application form.

Where any pre-employment checks carried out on a job applicant produce inconsistencies or discrepancies, the employer should not assume automatically that the applicant has given incorrect or deliberately misleading information and seek to clarify with the applicant.

6.9 References containing Negative Information

If a reference contains any negative comments about an applicant, the recruiting manager may seek further information by contacting the referee. This can be done by telephoning the referee who provided the reference. A written record of the telephone discussion will always be made and stored on the employees personnel file, a request should also be made that the referee follows up the conversation in writing.

The School/Academy will remain open-minded when reviewing references and will not be too quick to pass judgment on a job applicant about whom negative information has been provided. The School/Academy will explore such issues and concerns further with the applicant and take a reasoned decision as to what the truth is and the degree to which it is relevant. A written record of any discussion with the applicant should be made and recorded on file.

The Headteacher may also wish to request further references.

Where the reference refers to past disciplinary action or allegations, or capability proceedings this should be considered in the circumstance of the individual case.

The following cases are less likely to give cause for concern:

- An unexpired disciplinary warning which was resolved some time ago
- An allegation which was determined to be unfounded or did not require a formal disciplinary sanction
- Capability proceedings which concluded satisfactorily

The following cases will give greater cause for concern:

- More serious or recent disciplinary issues
- Disciplinary cases resulting in dismissal
- Issues that were not resolved satisfactorily
- A history or repeated concerns or allegations
- Current capability proceedings which have not reached a satisfactory conclusion

Where the referee has provided negative comments, the School/Academy may contact YourHR for advice.

6.10 Unsatisfactory References

The School/Academy will adopt the following principles if a reference on a potential recruit appears unsatisfactory in some way:

- If the reference contains factual information that is adverse to the potential recruit, the recruiting manager will consider whether or not this information is relevant, and if so whether it is sufficient to render the individual unsuitable for the employment in question.
- The recruiting manager will bear in mind that the fact that someone may have had a problem in his or her previous employment does not necessarily mean that he or she will be unsuitable for a new or different post with the School/Academy.
- The recruiting manager reviewing the reference will consider if the job duties and responsibilities of the potential recruit's previous post are sufficiently similar to those of the post on offer, and if not, refrain from automatically judging the individual in a negative light on account of adverse comments in the reference.
- If a reference contains negative or adverse comments about a prospective recruit that are based on opinion rather than fact, the recruiting manager will not automatically assume that this information is accurate. The information may have been given as a result of bias or personal dislike, or may be based on a misunderstanding or something outside the individual's control – clarification will always be sought.
- If a reference is ambiguous or otherwise unclear, the recruiting manager will not draw negative conclusions about the job applicant. Instead he or she will take steps to make sure what the referee meant, by pursuing further contact to ask for clarification.

Where the references obtained do not provide sufficient or satisfactory information, the recruiting manager will consider seeking further information, for example by requesting additional references from alternative sources. The individual's consent to do this will be sought.

The School/Academy needs to be mindful when considering any health or attendance related issues to ensure they do not discriminate against the applicant due to a protected characteristic. Any absences related to disability should be disregarded when considering the reference.

6.11 Conditional Offer

In making a job offer the School/Academy will inform the applicant that the offer is subject to written references being received from previous employers. The School/Academy will also make it clear that any offer of employment will be conditional on those references being satisfactory to the School/Academy.

If upon receipt of a reference the School/Academy believes it not to be suitable then the offer of employment will be withdrawn from the applicant.