

Policy – Providing Employment References

| | |
|-------------------------|-------------------|
| Approved by | Full Council |
| Date approved | 27/06/2022 |
| Date implemented | 27/06/2022 |
| Owner | MK/HM |
| Review date | 31/03/23 |

Policy – Providing Employment References

Version control

This document is subject to regular review due to legislative and policy changes. The latest versions of all our publications can be found on our website. Before contacting us about the content of this document, we recommend that you refer to the most recent version on the website and any relevant guidance.

| Version | Date approved | Approved by | Notes / changes |
|---------|---------------|---------------|-----------------|
| v1.0 | 12/04/2016 | Full council | New Policy |
| v2.0 | 04/09/18 | Andrea Malam | Reformatting |
| v2.1 | 27/06/22 | David Kennedy | Reformatting |

Policy – Providing Employment References

Contents

| | |
|--|----|
| Version control | 2 |
| Contents | 3 |
| ROLES AND RESPONSIBILITIES | 4 |
| Head of HR | 4 |
| Managers / Head Teacher / Chair of Governors | 4 |
| HR Direct | 4 |
| References | 4 |
| Responsibilities of Managers | 5 |
| Providing a reference | 5 |
| Unsolicited references | 6 |
| Telephone or verbal references | 6 |
| Confidentiality and disclosure of references | 6 |
| Personal references | 6 |
| Disclosure of convictions | 7 |
| Impact on ongoing proceedings | 7 |
| Providing information relating to absence | 7 |
| Settlement Agreements | 7 |
| Providing references for Agency Workers | 8 |
| Failure to provide a reference | 8 |
| Data Protection, safe handling and storage of references | 8 |
| Frequently asked questions | 8 |
| Should I check with the employee before I provide a reference? | 8 |
| Requests for information from a bank or building society. What must I do? | 9 |
| Equalities and discrimination | 9 |
| What should I be aware of when writing a reference? | 9 |
| Can I mention any issues that I have not discussed with an employee on a reference? | 9 |
| Can I mention that an employee resigned pending disciplinary action? | 10 |
| Are there any specific instances where I should not provide a reference? | 10 |
| I don't want to give a reference – what do I do? | 10 |
| If the employee performs poorly in the new job, could we be sued for the reference provided? | 10 |
| Can I be a personal referee? | 10 |
| What should I do if I receive a reference request for an ex-employee who is currently bringing a claim against the Council? | 11 |
| Can the new organisation bring a claim against me if I fail to reveal something which ultimately causes the new employer loss? | 11 |
| Can an individual ask to see a copy of the reference which has been provided to the new employer? | 11 |
| Do I have to mention a suspected event of gross misconduct when supplying a reference? | 12 |
| If 'poor' has been selected on the reference, should the manager discuss with the employee before sending? | 12 |
| Any questions? | 12 |

Policy – Providing Employment References

ROLES AND RESPONSIBILITIES

Head of HR

- Responsible for monitoring, use and application and reviewing the policy

Managers / Head Teacher / Chair of Governors

- Ensuring policy and procedure is followed and implemented
- Ensuring that references are completed in a timely manner
- Ensuring that references are accurate, factual, reliable and not discriminatory in any way
- Ensuring that completed references are sent to HR Direct in order for the relevant checks to be made via Trent

HR Direct

- Ensuring that references are sent to the prospective employer in a timely manner
- Responsible for ensuring that references are in line with any settlement agreements
- Responsible for placing a copy of the reference on the personnel file

References

Employment references are a means of obtaining information, from a third party, providing a factual check on a candidate's employment history, qualifications, experience and/or an assessment of the candidate's suitability for the post in question. References may also be used to check factual evidence e.g. time-keeping, general performance and development.

It is the intention of the authority to respond to all reference requests on current or former employees with a fair and reasonable reference which is accurate, objective and truthful.

The authority recognises its duty of care towards the recipient of the reference e.g. a prospective employer and the candidate therefore the reference provided will give a fair

Policy – Providing Employment References

representation of the person concerned. In no circumstances, will the authority provide a favourable reference in order to dispose a poor performing or problematic employee. Similarly, the authority will not provide a false or misleading reference in order to be malicious towards the candidate.

Responsibilities of Managers

Denbighshire County Council has a responsibility to respond appropriately to any employment reference requests. This will include:

- responding in a timely manner to any reference requests
- taking care when compiling or obtaining the information on which the reference is based
- ensuring that any information given in a reference is accurate, factual reliable and not discriminatory in any way.

Failure to observe these duties could result in legal action against the referee by either the requester or the person on whom the reference is being given.

Providing a reference

When writing references, referees have a duty to take reasonable care and provide information that is true, accurate and fair, and does not give a misleading impression otherwise the Council and/or the person giving the reference could be liable to an action for:

- Defamation – if any false statement damages the reputation of the subject. This may be subject to a charge of malicious falsehood in which the subject has to prove that the provider of the reference was activated by malice.
- Deceit – if the intention is that the person receiving the reference will act on it
- Negligence – if the provider of the references fails to take reasonable care in compiling the reference or in obtaining the information on which it is based.

Policy – Providing Employment References

The reference should be completed by the current or former line manager. Where this is not possible e.g. the former line manager is no longer employed by the Council, HR Direct will supply a factual reference.

The referee should complete the reference template provided by the organisation / person asking for the reference. Where the organisation asking for the reference has not provided a template to complete, the referee should complete the Corporate Reference Form

Once the reference has been completed by the manager, they must send the reference to HR Direct in order to check any settlement agreements which may have been agreed. HR Direct will also place a copy on the personnel file.

Unsolicited references

It is generally inadvisable to provide unsolicited references addressed 'to whom it may concern'. If in exceptional circumstances such references are provided, the information provided should be limited to factual statements such as dates of employment, capacity in which employed and reason for leaving, if known.

Telephone or verbal references

All requests for telephone or verbal references must be declined as it is impossible to satisfactorily verify the identity of the enquirer. In addition, any information given in this way may be misinterpreted and as there is no written record it will be impossible to defend the reference given should it become necessary at a later stage.

Confidentiality and disclosure of references

All references should be treated confidentially and only discussed with the officers stated in the procedure.

Personal references

Personal references must not be provided on the authority's headed paper or via the Email system. The authority cannot accept any liability for any references provided by its employees in a personal capacity.

Policy – Providing Employment References

Disclosure of convictions

Under the Rehabilitation of Offenders Act 1974 an applicant is not obliged to give information regarding any previous convictions ('spent' or otherwise). Similarly, a referee is not required to disclose a 'spent' conviction. If, therefore, it is known that the candidate has a conviction recorded against them and the reference request specifically asks whether the referee knows of any convictions concerning the candidate, before giving the reference the referee must satisfy themselves as to whether the conviction is spent or otherwise. An incorrect belief that a conviction is spent or not, could amount to a negligent misstatement.

Guidance on this issue can be sought from HR Direct.

Impact on ongoing proceedings

If a reference request is received for a candidate who is subject to internal proceedings or who is pursuing a claim externally, advice must be sought from HR Direct before responding.

Providing information relating to absence

Absences may relate to a protected characteristic and informing a prospective new employer could give rise to discrimination claims. Protected characteristics may involve maternity, disability leave or gender reassignment leave.

To avoid any potential claims, please do not provide any data or information on sickness absence when supplying a reference. Please state the following:

'In line with the Equality Act 2010, we are unable to provide any data or information in relation to absence'

Settlement Agreements

There may be instances where settlement agreements are in place with an individual. Managers must contact HR Direct where the reason for leaving on Trent is listed as

Policy – Providing Employment References

‘settlement agreement’ before any reference can be sent. This is to ensure that the terms agreed through the compromise agreement are met.

Providing references for Agency Workers

Managers are not to provide references for agency workers. The employing agency/Matrix will be required to provide references for agency workers.

Failure to provide a reference

There is no general legal obligation on an employer to provide a reference on behalf of an employee or former employee. However it may be discriminatory to refuse to give a reference and employers do have a ‘moral obligation’ to provide a reference.

If you do not want to give a reference, contact HR Direct for advice.

Data Protection, safe handling and storage of references

Data Protection legislation requires the information contained in references to be handled confidentially at all times.

References which are issued in respect of employees and former employees of the Council may be divulged to the employee who is the subject of the reference at their request. All such requests must be made in writing to either the named referee or HR Direct in the case of former employees whose line manager may no longer be in post.

These requests will be complied with as per Data Protection legislation.

Frequently asked questions

Should I check with the employee before I provide a reference?

You may like to check with the employee before you provide a reference. For employment references, the employee or ex-employee would have provided your details to the new organisation and they are therefore likely to be aware that you are being contacted for a reference. Should a request for a reference be made where the individual requesting such

Policy – Providing Employment References

a reference may not have provided the County Council as a referee, advice should be sought from HR Direct.

Requests for information from a bank or building society. What must I do?

The Council sometimes receives requests from banks, building societies or other financial organisations to verify an employee's salary in support of a mortgage or loan application. Please forward any such requests to the payroll department to respond.

Equalities and discrimination

The Council will not accept unlawful discrimination and has clear duties for staff which are outlined in the Equal Opportunities Policy. Any refusals to give a reference must not be for discriminatory reasons and information contained in a reference must not be discriminatory in any way.

You should also be aware that the giving of references is included in discrimination legislation and employees and/or ex-employees can go to an Employment Tribunal if they feel they have been discriminated against in any way.

What should I be aware of when writing a reference?

When providing references, you need to be aware that the employer owes a duty to the recipient (e.g. prospective employer) and to the employee. This duty is to take reasonable care and to provide information that is true, accurate and fair, and does not give a misleading impression. If an employee fails to secure a job because of an inaccurate reference, they may seek an appropriate remedy through the courts.

Can I mention any issues that I have not discussed with an employee on a reference?

References should not refer to performance or other issues that have not been previously discussed with the employee (e.g. poor performance). Managers should also be cautious about giving any subjective opinion about an individual's performance, conduct or suitability, which they cannot substantiate with factual evidence e.g. appraisal documentation, supervision notes, probationary forms etc.

Policy – Providing Employment References

Can I mention that an employee resigned pending disciplinary action?

Care must be taken when writing references for employees who have resigned pending disciplinary investigation. Please contact HR Direct for advice.

Overall, there is no obligation to provide a full and comprehensive reference, but care should be taken to ensure that if information is omitted, the reference, as a whole, is not misleading.

Are there any specific instances where I should not provide a reference?

If you have a close personal friendship or relationship with the individual, you are not permitted to act as a referee on behalf of the Council. To do so would be a conflict of interest and could result in disciplinary action. In these circumstances, the reference request should be passed to an alternative Senior Manager or HR Direct for completion.

I don't want to give a reference – what do I do?

A claim for direct discrimination or victimisation may arise if where the employer or ex-employer fails to provide a reference. In some cases an indirect discrimination claim may arise. The Equality Act 2010 make it clear that post employment discrimination can occur. Please contact HR Direct for advice.

If the employee performs poorly in the new job, could we be sued for the reference provided?

An ex-employer should not be liable for the poor performance of an ex-worker in a new job, so long as the reference given was a fair and accurate assessment of the level of the employee's performance throughout their period of employment.

Can I be a personal referee?

You can act as a personal referee for any individual whether they work at the Council or externally. However, you must ensure that you use your own notepaper and say that the reference is being made in a personal capacity. Personal references must not be written on a School's or the Council's letter headed paper, or in any way suggest that the School or

Policy – Providing Employment References

the Council endorses the reference. Any employee doing so could find themselves subject to disciplinary action.

Filing references

Copies of written references provided must be kept on the employees' personnel file.

What should I do if I receive a reference request for an ex-employee who is currently bringing a claim against the Council?

You will need to respond stating that a dispute is ongoing with the ex-employee and the provision of a reference may prejudice the Council's position in the proceedings. For further advice please contact HR Direct.

Can the new organisation bring a claim against me if I fail to reveal something which ultimately causes the new employer loss?

Yes, the new employer could make a negligence claim.

Can an individual ask to see a copy of the reference which has been provided to the new employer?

An individual has a basic right, on request, to be supplied with information constituting any personal data held by the ex-employer. Any personal data held must be accurate and up to date. However under the Data Protection Act 1998, there is an exemption which means that an employer does not have to supply references given in confidence which it has written relating to education, training or employment. It is therefore not obligatory for the ex-employer to provide a copy of the reference to the employee.

If the ex-employee asks the new organisation for a copy of that reference then they must supply this under Data Protection legislation. However they may not necessarily have information about other people which would include an ex-employers opinion provided in confidence.

Policy – Providing Employment References

Do I have to mention a suspected event of gross misconduct when supplying a reference?

A former employer will probably be exposed to a claim from a subsequent employer if there is a serious issue of gross misconduct which the former employer fails to mention. The reference must be true, accurate and fair and therefore must mention the negative issue.

If 'poor' has been selected on the reference, should the manager discuss with the employee before sending?

Yes, if the employee is still employed by Denbighshire County Council then the manager should discuss the reasons as to why 'poor' has been selected.

Any questions?

If you have any questions relating to references, please contact HR Direct.