

GUIDANCE ON GIVING AND OBTAINING EMPLOYMENT REFERENCES

Purpose of this Guidance Note

To give guidance on providing references for current or ex-employees and on obtaining references. It is intended primarily for HR personnel and line managers.

Personal References

If you are asked to provide a reference in a personal capacity (e.g. as a friend) you must make this clear and official headed paper must not be used.

Providing Employment References

If your establishment is using the RCUK SSC Ltd any reference requests should be referred to the RCUK SSC Ltd who will provide a basic reference using an agreed format. However, if an extended reference is requested then the following guidance should be followed.

Do we have to provide a reference?

Although there is no legal requirement for an employer to provide a reference for a current or past employee it is our policy that references will be provided on request.

Do we have to answer every question asked?

No. It is acceptable to provide a bare minimum reference (i.e. name of employee, job title, service dates, absence and attendance rates) but if this approach is adopted it should:-

- be communicated to all employees at the outset of the relationship;
- be applied uniformly to all employees;
- not be used as a means of concealing something serious.

Issues to Consider

When preparing a reference observe the following guidance:-

- As we will be liable for what is written all references should include the following disclaimer: "This reference is given in strict confidence and without guarantee or legal responsibility on the part of (name of employing organisation). It may not be disclosed to the individual without permission."
- When giving a reference there is a legal obligation to use due care. The reference must be true, accurate and fair. It does not have to be full and comprehensive but it must not give a misleading impression. It is therefore essential that the reference is based on facts, which can be backed up with evidence if challenged. Opinions and subjective personal views, which cannot be substantiated, should not be included. Statements made should be consistent with those made elsewhere about the employee (e.g. comments about standard of performance in annual performance reviews).
- A reference should not be refused on the grounds that an employee has an outstanding grievance or has previously raised a grievance.
- If you receive a request for a reference for an employee who has been dismissed, advice should be sought from HR & Corporate Services Group BBSRC Office. Extra caution needs to be exercised in such cases although the principles outlined above still apply. If

the employee challenges the reasons for dismissal in an Employment Tribunal the employer could find itself in difficulty if the reference is inconsistent with the reasons for dismissal (e.g. capability).

- No mention should be made of complaints relating to the individual unless these have been disclosed to the employee. To do so is considered unfair and unreasonable.
- Avoid giving verbal references by telephone. If a reference is urgently required and the person requesting it is not known to you, take the telephone number of their place of work and call them back to confirm their position and that they are authorized to obtain a reference. Do not be rushed into giving a reference on the spot; take time to plan your response. You can refuse to answer specific questions and should always make a written note of the questions asked and answers given, and follow it up in writing.
- A copy of all references given should be copied to your local HR department/sent to RCUK SSC Ltd to go on the employee's file.

Remember that if a misleading, careless or false reference is provided and the recipient acts on it and as a result suffers a loss, the person who wrote the reference may be sued for providing a fraudulent or negligent misstatement. In addition the individual may be entitled to compensation for damages caused by a negligent reference.

Checklist for providing an employment reference

The general principles below should be considered alongside your local institute policy on handling references – please contact your HR Department for more details.

- Upon receipt of a request for a reference, gather information only from appropriate persons, e.g. the individual's line manager.
- If information requested is of a sensitive nature (e.g. details of absence rather than just the number of days sickness taken), it will be necessary to get express consent from the employee before disclosing details (required by the Data Protection Act 1998).
- If asked to give an opinion on the individual's suitability for a particular role, request a copy of the job description and person specification if you have not got one.
- Be clear in comments made and stick to the facts, which can be backed up with examples or evidence.
- Ensure that the reference is not only factually accurate but also fair in the overall impression it gives to the recipient.
- Avoid sending references by e-mail, if possible, as they can be intercepted or might go astray.

Obtaining References

Whom to ask for a reference?

References should be sought from current and former employers. Where the candidate is not currently employed, we may take up personal references instead, but we should always try to obtain one from their most recent employer.

When to ask for a reference?

References are normally taken up after interview. However, in some cases they may be available to the panel at the interview in order to help identify areas to probe and assist in

making a selection decision. Post-interview references can help to confirm the decision of the panel and check factual evidence about the successful candidate/s.

In reality, many candidates ask that referees (often the current employer) are not contacted until an offer is made, and this should be respected.

Checklist when obtaining a reference:

- Obtain the candidate's permission to approach referees.
- Include a copy of the job description and person specification for the post so the referee can relate their comments to the specific job.

Ask about factors which are relevant to the job, for example:

- Dates of joining and leaving, and length of service.
- Title of job held and the main duties and responsibilities.
- Employee record, e.g. timekeeping, absence record and disciplinary record.
- Avoid asking for subjective views, such as the referee's opinion on the ability of the candidate to do the job, but opinion of overall performance can be helpful.
- Ask if the organisation would re-employ the candidate and, if not, why not?
- Avoid asking for references by telephone. If you decide to use a telephone reference, confirm the identity of the referee over the phone and always make full notes of your call, date it, sign it and send it to your HR Department/RCUK SSC Ltd for the individual's file.

Disclosure of References

Although it is not a legal requirement it is preferable to operate an open recruitment and selection procedure, with any references you write being copied to the subject.

References received from another person or organisation are likely to be covered by the Data Protection Act 1998. 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.

The references you have received may be marked 'in confidence'. If so, you will need to consider whether the information is actually confidential. You 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. Information relating to performance may well have been discussed with the employee as part of an appraisal system. Where it is not clear whether information, including the referee's opinions, is known to the individual, you 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 you to release their comments, you will need to provide the reference if it is reasonable in all the circumstances to comply with the request without their consent. You should weigh the referee's interest in having their comments treated confidentially against the individual's interest in seeing what has been said about them.

When considering whether it is reasonable in all the circumstances to comply with a request, you should take account of factors such as:

- any express assurance of confidentiality given to the referee;

- any relevant reasons the referee gives for withholding consent;
- the potential or actual effect of the reference on the individual;
- the fact that a reference must be truthful and accurate and that without access to it the individual is not in a position to challenge its accuracy;
- that good employment practice suggests that an employee should have already been advised of any weaknesses; and
- any risk to the referee.

You should consider whether it is possible to keep the identity of the referee secret.

An applicant can apply for a 'disclosure order' through the courts to see their references in cases where they believe that unsatisfactory references led to dismissal or a job offer being withdrawn

Offers 'subject to satisfactory references'

Any offer of employment must be subject to receipt of satisfactory references. The last employer should always be one of these – be concerned if they are not nominated!

If references are not subsequently received, without good reason, or unacceptable references arrive, we have the right to withdraw a conditional offer of employment or to dismiss the new employee (even if they have already started work). Further advice on this can be obtained from your local HR department or Human Resources & Corporate Services Group, BBSRC Office.

Sources of Further Information

Your local HR Manager, HR & Corporate Services Group, BBSRC Office, RCUK SSC Ltd.

Linked Documentation

BBSRC Employment Code: Recruitment and Selection Policy (Section A1)
'Effective Recruitment and Selection Guide [at section A3](#) of the Employment Code.