

Policies, Procedures, Guidelines and Protocols

Document Details		
Title	Providing Employment References Policy	
Trust Ref No	711-36861	
Local Ref (optional)	Version 2.1	
Main points the document covers	This policy sets out the procedure for the provision of employment references on behalf of the Trust	
Who is the document aimed at?	All staff	
Owner	Human Resources	
Approval process		
Who has been consulted in the development of this policy?	Managers, Human Resources. JNP, HR and Workforce Group	
Approved by (Committee/Director)	Human Resources and Workforce Group	
Approval Date	7 th July 2022	
Initial Equality Impact Screening	Yes	
Full Equality Impact Assessment	No	
Lead Director	Director of Nursing and Allied Health Professionals Director for Infection Prevention	
Category	HR and Workforce	
Sub Category	Workforce	
Review date	31 st January 2025	
Distribution		
Who the policy will be distributed to	All staff	
Method	Publication on the Trust intranet	
Keywords	Reference, Reference Request, Leavers	
Document Links		
Required by CQC	No	
Other	None	
Amendments History		
No	Date	Amendment
1	March 2013	Replaces previous PCT policies. Numbering of paragraphs for ease of reference.
2	June 2017	Review for accuracy of process and change in legislation. 2.3 – Lists of authorised people who can give references is held within departments and checked quarterly by Directors. Central record is not held in HR, reference to this has been removed. 2.4 – New paragraph on factual reference requests through ESR added.
3	June 2022 Version 2.1	Reviewed and updated in line with the General Data Protection Regulation (GDPR). Formatted using Frequently Asked Questions.

Contents

1. Introduction.....	3
2. Frequently Asked Questions.....	3
2.1 Providing References	3
2.2 Tick Box Reference Requests	4
2.3 Verbal References.....	4
2.4 General Data Protection Regulation.....	4
2.5 Disclosure of Convictions	5
2.6 Disclosure of Formal Action.....	5
2.7 Personal Character Reference	6
2.8 Other Considerations	6

1. Introduction

This policy aims to provide managers with the Trust requirements on providing references for former/existing Trust staff who are making applications for alternative employment.

If a reference is not provided it can be seen as an act of discrimination or victimisation (depending on the facts of any given case). NHS guidance advises that NHS employers are obliged to provide references. The law states that a reference must be fair and honest, and not misleading.

2. Frequently Asked Questions

2.1 Providing References

Q. I have been asked to provide an employment reference. Do I have to provide a reference?

A. Whilst there is no legal obligation to provide a reference it is customary and good practice to provide a reference. There is a potential of a discrimination claim if a reference is not provided without good reason. Additionally, there is NHS guidance that NHS employers are obliged to provide references. Finally, where employees are subject to special rules (such as finance) and cannot get a job without a reference, the courts have said that there is an implied term in the contract that employers will provide one.

Q. Who has the authority to provide a reference?

A. Reference requests for employees and former employees should be dealt with and signed by either the line manager, service manager or an agreed delegated individual of each department or service.

Factual reference requests received from other NHS Trusts through the Electronic Staff Record System (ESR) are checked for accuracy by the Workforce Information team and submitted to the requesting Trust. If the information provided by the requesting Trust is accurate and does not raise any issues, no reference will be made to the line manager before a response is given.

Q. What should I consider when providing a reference?

A. When you provide a written reference for an employee or an ex-employee you must ensure that it is not only factually accurate but also fair, and not misleading in the overall impression given to the recipient. Individuals may be able to challenge a reference they think is unfair or misleading.

We may be liable in negligence to our employees or former employees following the provision of an inaccurate reference. You must exercise "reasonable care and skill" and ensure the accuracy of facts communicated to recipients of the reference.

Misleading or inaccurate information provided to other organisations may result in claims from those organisations of fraudulent or negligent misstatement. These claims occur if you either intentionally (fraudulently) or unwittingly (negligently) provide a

reference for an employee (or former employee) and the prospective employer, in reliance on your specialist knowledge of the employee, employs the individual and suffers loss as a result of the fraudulent or negligent information.

You should add the following disclaimer to the end of the reference (above the signature).

“In accordance with our usual practice in giving references, the above information is given in good faith, to the best of our knowledge and in confidence and without any responsibility on the part of either the Trust or the undersigned. It should be noted the Trust does not provide oral references and therefore any purported oral reference would constitute the personal opinion of the person making the comment and should not be taken as a reference authorised to be given by or on behalf of the Trust.”

2.2 Tick Box Reference Requests

Q. I have received a ‘tick box’ reference form to complete. Can I complete this?

- A. Because of the importance of ensuring this guidance is followed it is not our policy to complete ‘tick box’ reference forms. If you are authorised to provide a reference, you can base the reference on the questions asked in the ‘tick box’ form, but must respond in the form of a letter ensuring the disclaimer is added.

To ensure adherence to equality and diversity, this applies equally to internal candidates (i.e. existing employees applying for a post within the Trust) as well as employees who apply for a post outside the Trust.

2.3 Verbal References

Q. I have been asked to provide a verbal reference. Am I allowed to provide this?

- A. You should not provide a verbal reference as there is a risk that inappropriate comments may inadvertently be made, or the content of the discussion could subsequently be disputed or misinterpreted. If a telephone reference is requested you should advise that it is not Trust policy to provide a verbal reference, and that instead you can provide a written reference.

2.4 General Data Protection Regulation

Q. If an employee or former employee requests to see a copy of an employment reference I provided to a prospective employer, do I have to disclose it?

- A. Generally, employees have the right under the UK General Data Protection Regulation to access information that organisations hold about them. However, there is an exemption under schedule 2 to the Data Protection Act 2018 that allows employers to refuse to disclose a confidential employment reference to an employee or former employee if they request access to it. Consequently, an employee or formal employee may not demand of you sight of a reference that that you have provided to a potential employer. They can however, ask the potential employer for a copy of the reference they have received.

Q. I received a reference for an individual, and based on unsatisfactory pre-employment checks I have withdrawn the job offer. The individual has requested to see the reference(s). Do I have to disclose them?

A. As you have been asked to disclose a reference provided by another employer, you should contact that other employer to obtain their consent first. If consent is refused, you must consider whether the reference should be disclosed in any event, whether anonymised, extracted or in full. In such circumstances please refer the matter to a member of Human Resources or Information Governance.

Q. I have been asked to provide details in relation to the individual's sickness absence and their disability. What information can I share?

A. Requests for information as to the number of day's sickness absence an employee has had should normally be complied with. However, the reason for the sickness absence should not be given. If you feel the reason for the absence is important in making the reference fair to the employee, the employee's express consent should be sought to include the reason.

It is absolutely vital to note that absence relating to disability might be treated differently to other absences, for example, an adjustment may be made to an employer's processes to ignore disability related absence. This might be true of a prospective employer and therefore it might be important for them to know whether absences are because of disability. However, you may not divulge that an employee is disabled, or the proportion of absences that are due to disability, without the express consent of the employee concerned.

Rather than be silent on the issue, you should seek the employee's consent, making it clear that if the disability (or potential disability) is not referred to, the reference will simply give the number of day's absence in a given period.

2.5 Disclosure of Convictions

Q. Can I share information about an individual's previous conviction?

A. No - it is for the employee to disclose convictions, and the prospective employer to undertake a DBS check if appropriate. You should not disclose knowledge of convictions other than in the context of disciplinary proceedings undertaken by the Trust. If in doubt about whether to disclose information, you should contact the Human Resources Team immediately.

2.6 Disclosure of Formal Action

Q. I have been asked to provide details in relation to the individual's disciplinary record. What information can I share?

A. You should only disclose any live disciplinary warnings which exist on the employee's personal file and simply state the sanction applied and the reason e.g. 'written warning for persistent lateness'.

Where an employee has left whilst disciplinary proceedings were not concluded, this should be stated without reference to the nature of the alleged misconduct e.g. 'Investigations were being conducted in accordance with the Trust's Disciplinary Policy' or 'the individual was subject to formal action under the Trust's Disciplinary Policy though this process had not been concluded at the time the individual left the Trust.'

2.7 Personal Character Reference

Q. I have been asked to provide a personal character reference for an individual and would like to do this. Is there anything I need to be aware of?

A. A personal character reference is your personal opinion of a person's character and must not be written on behalf of the Trust. If you wish to provide a personal reference in support of a colleague then you should state your relationship to the individual (colleague etc.). The reference should be honest, accurate and fair and the information provided must be able to be evidenced. You should not use Trust headed paper for this reference and it should not be sent from a Trust e-mail address.

2.8 Other Considerations

Q. Do you have any other advice that I need to be mindful of when completing a reference?

A. Below are a few tips for providing references:

- Ensure the reference states your management relationship to the employee who is the subject of the reference.
- If you have little knowledge of the individual employee (maybe the person left before you were manager), question if you are the appropriate person to be providing a reference. However, you can delegate or ask the supervisor for a view and put this in the reference, noting that it is the supervisor who has a greater knowledge of the employee.
- Alternatively, if information in a reference is provided by a third person, ensure that the reference is seen by that third person before it is sent to any other organisation to ensure its accuracy.
- Consider the aim and scope of the reference - is it to confirm the employee's details or is it to assess their work or character?
- Do not provide information in a reference about the reasons for an employee's sickness absence unless you have received the employee's explicit consent to disclose this information.
- Check the reference provides an accurate factual description of the employee and that any opinions are based on true and accurate facts, which can be supported, preferably by documentary evidence. You may want to consider providing a copy of the reference to the employee.

- Ensure that the reference is not misleading or unfair to the employee or to the potential employer. The duty of care is owed to both.
- Remember the impact of the Data Protection Act and mark all references 'confidential' or 'given in confidence' and don't forget to add the disclaimer sentence.
- Never refuse to supply a reference for an employee, especially for an employee who has brought a discrimination action under the Equality Act 2010. This position may be different if a claim is ongoing as at the date of the reference, in which case Managers must seek HR advice.