

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Guidance for Providing and Requesting Employment References

Guidance for Providing and Requesting Employment References

<u>Contents</u>	<u>Page</u>
Purpose	2
Requesting a Reference <ul style="list-style-type: none">• Employment references• Format of references• Personal references• Open references	3 - 4
Safeguarding guidelines for working with children and vulnerable adults	4
Providing references <ul style="list-style-type: none">• Personal/character references	4 - 5
Retaining a copy of the reference	5
Legal obligations <ul style="list-style-type: none">• References provided for teachers	6
Data Protection <ul style="list-style-type: none">• Obligations to give a copy of a reference you have written• Obligations	6 - 8

Appendix 1 - Frequently Asked Questions	9 – 10
Appendix 2 - Reference request form(posts requiring a DBS)	11 – 13
Appendix 3 – Reference request form (post NOT requiring a DBS)	14 - 16

Purpose of the Guidance

The purpose of the guidance is to ensure a consistent approach is adopted by Line Managers/Head teachers when dealing with employment references. This guidance sets out the key considerations in requesting and providing references on behalf of SMBC/the employer.

When providing a reference in respect of a current or former employee, the Council/School has a legal duty to take reasonable care to ensure that it is true, accurate, fair and not misleading.

Employment references are used to seek or provide factual information, in confidence, on a candidate, employee or ex-employee's employment history, qualifications, experience and/or an assessment of a candidate's suitability for the post.

This guidance does not apply where salary/payroll reference requests are received from Banks, Building Societies or other potential lenders. These requests should be directed to HR/ your payroll provider for a response.

The Line Manager/Head teacher is responsible for responding to reference requests. It is advisable that they ensure that the employee performance and personal records are maintained accurately and up to date for reference. If required Line Managers/ Head teacher or the Governing Body can seek guidance and support from Human Resources.

Human Resources are responsible for ensuring that any references obtained are retained in a confidential manner or disposed of securely in accordance with the retention schedule.

Requesting References

Employment references

Prior to making a formal offer of appointment, two separate employment references must be taken up. In order to save time this may be done verbally in the first instance (following the standard reference pro-forma to establish the information) but written confirmation will be required. One of the referees should be the applicant's current or last employer. Where an applicant has previously worked in a school, one of these referee's should be the school's Head teacher. However, unless references are received for all candidates before the interview, they cannot be taken into account when making a decision as to who to appoint.

A reference should not be obtained without the applicant's consent. Applicants are given the option on the application form as to whether they wish to be consulted before the referee is approached.

Before making a job offer, the references for the successful candidate must be obtained and if deemed necessary verified by contacting the referees.

References are used to confirm the accuracy of data provided by the candidate such as dates of employment, position held etc. They should also provide additional data regarding the candidate such as time-keeping, disciplinary history, quality of work etc.

Although some of this data is factual, some is based on opinion and as such should be approached with caution and used only to confirm information already gathered through the assessment process.

Format of references

References should be requested using the Council's reference pro-forma (see Appendices 2 and 3). If the referee has not completed the pro-forma, it is advisable the line manager/head teacher have the relevant information which has been provided and further clarification sought where necessary.

Personal references

Personal references will only be accepted where the candidate has not had any work experience.

Open references

Pre-prepared or open references (e.g. stating 'to whom it may concern') will not be accepted under any circumstances as there is no way of checking authenticity and accuracy.

Safeguarding guidelines for working with children and vulnerable adults

In roles that relate to working with children and vulnerable adults references must be obtained prior to the interview. The Council is committed to keeping children, young people and vulnerable adults safe.

It should be noted, however, that unless references are received for all candidates before the interview they cannot be taken into account when making the decision who to appoint.

Providing references

Whilst there is no legal obligation to provide a reference, it is advisable that references for former or current employees are provided when a request is made. This should only be given by the line manager/ head teacher in writing. Advice can be sought from Human Resources where no school records exist. The author of the reference has a legal duty of care to ensure that the information provided is factual, accurate, fair and not misleading. The information should include:

- dates of the employee's employment with the organisation
- the employee's job title
- a short description of the employee's key job duties and level of responsibility
- whether the individual held responsibility for staff, money, equipment.
- any jobs that the employee held within the organisation prior to the job held at the date of termination (or the current job), and for how long he/she performed these jobs.
- whether any live disciplinary warnings exist or, if the reference is for a former employee, in the 12 months prior to his/her leaving the organisation.
- where the employee has left the organisation, the reason for termination of employment, for example resignation, redundancy, or the expiry of a fixed-term contract.
- Whether any allegations have been received (regardless of whether they were substantiated) of a safeguarding nature in the previous 10 years. Details of any allegations, investigations and outcomes should be provided.
- In the case of teaching staff please refer to the section below detailing what information should be divulged concerning capability procedures.

Do not include:

- any sensitive data that relates to an individual's physical or mental health, ethnic or racial origin, religious beliefs, sexual life, trade union membership
- Matters that have been dealt with under informal procedures (e.g. disciplinary)

The reference must be marked "private and confidential" and "for the addressee only". It should be sent by post to the prospective employer, rather than by email, to maintain confidentiality.

Details relating to dates, , salary levels can be accessed through Oracle or directly with a member of the HR Team. Under the Equality Act detail relating to absence should not be used prior to making the offer of employment.

Personal/character references

Personal references from colleagues or friends of the job applicant should not be provided or accepted unless specifically given as a character reference (and in addition to employment references as outlined in this policy). Personal character references must not be written on behalf of the Council/School, and should not be produced on headed paper. Any such reference must not refer to the employment of the person. If responding to personal reference requests from colleagues, managers must make clear that it is their own opinion and it is not an employment reference on behalf of the Council or School.

Retaining a copy of the reference

The HR department will retain a copy of the reference on an employee's personal file.

For unsuccessful candidates references should be kept for six months and, then disposed of securely.

Legal obligations

Providing a false, inaccurate or misleading reference/information that cannot be substantiated can result in legal proceedings. If a lawsuit is successful, the author of the reference could be liable for substantial damages (there is currently no upper limit to the damages available in a High Court).

Whilst liability could be limited (by inserting a disclaimer such as 'without prejudice' or 'without legal responsibility') into a reference to exclude responsibility for inaccuracies, **there is no guarantee that a disclaimer will mitigate the risks outlined above.**

Any performance or conduct related information relayed must be capable of being supported by factual documentation and records in the event of a challenge (e.g. appraisal records, live disciplinary or capability warnings).

References provided for Teachers

The School Staffing (England) Regulations (Amendment) 2009 "**Provision of information about staff capability** . 8A(1) This regulation applies where a member of the teaching staff at a school (School A) applies for a teaching post at another school (School B), where School B is a maintained school or an Academy school.

(2) The governing body of School A must, at the request of the governing body or proprietor (as the case may be) of School B - (a) advise in writing whether or not that member of staff has, in the preceding two years, been the subject of the procedures established by the governing body in accordance with regulation 8 and, if so, (b) provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome."

Data Protection Act 1998

Obligations to give a copy of a reference you have written

If someone asks for a copy of a confidential reference you have written about them relating to training, employment or providing a service, you do not have to provide it because of an exemption in the Data Protection Act. However, you may choose to provide the information as it is good practice to provide a copy as reference should be wholly or largely factual in nature and the individual should be aware of an appraisal of their work or ability.

Obligation to give a copy of a reference you have received from someone else

References received from another person or organisation are not treated in the same way as outlined above. If you hold the reference in a way that means it is covered by the Data Protection Act, you must consider a request for a copy 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.

The reference 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 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. As mentioned earlier information related to absence should not be provided prior to the job offer being made.

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.

BEST PRACTICE

- In most circumstances, you should provide the information in a reference, or at least a substantial part of it, to the person it is about if they ask for it. Even if the referee refuses consent, this will not necessarily justify withholding the information, particularly where this has had a significant impact on the individual, such as preventing them from taking up a provisional job offer. However, there may be circumstances where it would not be appropriate for you to release a reference, such as where there is a realistic threat of violence or intimidation by the individual towards the referee.

- You should consider whether it is possible to conceal the identity of the referee, although often an individual will have a good idea who has written the reference. If it is not reasonable in all of the circumstances to provide the information without the referee's consent, you should consider whether you 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.

For further advice, please contact the Information Governance Team 0121 704 6251.

Frequently Asked Questions

When giving a reference there is a legal obligation to use due care. It is important the contents of references must be true, accurate and fair. The reference should not include any personal views or opinions about the employee's performance or conduct that cannot be backed up by fact.

Q1 Am I obliged to respond to a reference request?

A1 Although there is no legal requirement for an employer to provide a reference for a current or past employee, it is the Council's policy that references will be provided on request.

Q2 Who should provide the references?

A2 The Line manager or Head teacher is responsible for completing a reference request. In exception circumstances if the individual is no longer in post please seek advice from Human Resources.

Q3 How are references given?

A3 All references should be given in writing. Some prospective employers may make enquiries by telephone for clarification. In this case, notes should be made on the points that have been raised (which should be consistent with those questions on the written reference) and respond to them in writing.

Q4 Do I have to answer all the questions on the reference request?

A4 No, it is acceptable to provide a basic reference (e.g. name of employee, job title, service date, absence and attendance). Wherever possible if you are able to answer a question (and would be able to support the answer with written information if challenged), you should do so. If, however, you need to speculate, guess or give an unsubstantiated opinion to answer the question, you should not respond.

Q5 When should references be obtained?

A5 References should be sought before the interview for role requiring a CRB clearance (now known as DBS), however, many candidates ask the referee (the current employer) not to be contacted until an offer is made, and this should be respected.

Q6 Can people start working for the Council prior to receiving a reference?

A6 Staff should not commence employment with the Council before the references have been checked and verified.

Q7 Are there any specific instances where I should not provide a reference?

A7 If you have close personal friendship/relationship with the individual, you are not permitted to act as a referee on behalf of the Council. In these circumstances, the reference request should be passed on to an alternative senior Manager for completion.

- Q8 Should I respond to any questions about an employee's health?**
A8 There are limited circumstances in which it is lawful (under the Equality Act) to ask questions about an employees Health. If you have such a request you should seek advice from your HR Advisor. Similarly when requesting references, you should not be asking a "blanket" question about sickness absence. Any health related enquiries should be validated under the limited criteria in the Equality Act, allowing such enquiries to be made.
- Q9 If I have received a reference request for a current employee, should I inform them before I respond?**
A9 You may like to check with the employee before you provide a reference. 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.
- Q10 If I have received a reference request for an employee, should I provide them with a copy?**
Q10 Yes – it is good practice to share a copy with the individual concerned.
- Q11 What happens if I am concerned about the content of a reference I receive for a potential employee?**
Q11 If you are not happy with the reference, please contact HR to discuss whether to continue with the recruitment process.
- Q12 I do not want to provide a reference – what should I do?**
Q12 If you feel unable to provide a reference, please discuss with your HR Adviser who can advise you of the implications of withholding a reference.

Appendix 2

**Reference Request
(for posts requiring a DBS
check)**



Name of applicant:		
Application for the post of:		
Applicant's job title and brief outline of main duties/responsibilities:		
Salary:		
Dates Employed:		
Reason for Leaving:		
Relationship to Applicant:		
Do you have any concerns or issues regarding this person's reliability or timekeeping? If 'yes' please give details below.		YES/NO
Has this person ever been involved in disciplinary/performance issues/proceedings? If 'yes' please give details below.		YES/NO
Has the applicant been subject to any disciplinary procedures involving the safety and welfare of children, young people or vulnerable adults (including any sanctions which have expired)? If 'yes' please give details below including outcome.		YES/NO

<p>Has the applicant been the subject of any allegations or concerns raised regarding the safety and welfare of children, young people or vulnerable adults? If 'yes' please give details below including outcome.</p>	<p>YES/NO</p>
<p>Do you consider that there are any reasons why this person would not be suitable for this position? If 'yes' please give details below.</p>	<p>YES/NO</p>
<p>Using the attached job description, please comment on the person's abilities and personal qualities to carry out the duties and responsibilities.</p>	
<p>How does the applicant interact with colleagues, clients, customers, children, young people, vulnerable adults and members of the public?</p>	
<p>Do you consider this person to be honest and to act with integrity at all times? If 'no' please give details.</p>	<p>YES/NO</p>

--

If a suitable vacancy arose, would you re-employ this person? If 'no' please comment.	YES/NO
--	--------

--

Signed:		Date:	
---------	--	-------	--

Name :	
--------	--

Organisation:	
---------------	--

Contact Phone No:	
-------------------	--

Thank you for your assistance in completing this reference.

Appendix 3

**Reference Request
(for posts NOT requiring a
DBS check)**



Name of applicant:	
--------------------	--

Application for the post of:	
------------------------------	--

Applicant's Job title and brief outline of main duties/responsibilities:	
--	--

Salary:	
---------	--

Dates Employed:	
-----------------	--

Reason for Leaving:	
---------------------	--

Relationship to Applicant:	
----------------------------	--

Do you have any concerns or issues regarding this person's reliability or timekeeping? If 'yes' please give details below.	YES/NO
--	--------

--	--

Has this person ever been involved in disciplinary/performance issues/proceedings? If 'yes' please give details below.	YES/NO
--	--------

--	--

Using the attached job description, please comment on the person's abilities and personal qualities which would enable them to successfully carry out the duties and responsibilities.
--

--

Are you aware of any reason why this person would not be suitable for this position? If 'yes' please give details below.	YES/NO
How does the applicant interact with colleagues, clients, customers and members of the public?	
Do you consider this person to be honest and to act with integrity at all times? If 'no' please give details.	YES/NO
If a suitable vacancy arose, would you re-employ this person? If 'no' please comment.	YES/NO

Please include any additional comments that you think may be helpful (e.g. significant achievements, general performance etc.)

--

Signed:		Date:	
Name:			
Position & Organisation:			
Contact phone number:			

Thank you for your assistance in completing this reference.