

APPENDIX D

MANAGERS GUIDANCE WRITING REFERENCES

1. Introduction

References provide objective and factual information to support recruitment decisions.

This guidance has been produced to assist managers in determining whether to provide a reference and what should be included. Additional advice and support can be obtained via the HR Business Partner for the relevant service area.

Open or 'to whom it may concern' references must never be accepted or given.

It is the policy of the council that references given in respect of current or former employees may only be written by managers who have (or have had) - line management responsibility for that person. In certain cases, for example if there is a Leavers Reference Report on the employee's file, it may be appropriate for a member of the HR Support team to provide a reference. No other person in the council may give written or verbal references.

A copy of completed references must be sent to HR Support for filing onto the employee's file.

2. Providing references to other external organisations

Any reference given must be in writing and marked 'private and confidential for the addressee only'.

Those authorised to provide references must not state their personal opinions about the employee's performance or conduct but must provide clear, factual, evidenced based information. If there is a [Leavers Reference Report](#) on the employee's file, then this can be used to complete the reference.

All references should contain the factual information listed below:

- confirmation that the person was employed by the Council, and the dates of their employment;
- the person's job title, and a brief description of their key duties (as stated in the job description);
- whether the person resigned from the council, or was dismissed
- whether they have been subject to any disciplinary or other HR process related to safeguarding or any proven and current disciplinary or other HR process.

For posts working with children, young people and or vulnerable adults

The reference should include allegations that have been proven/substantiated, using the factual information from the case file.

When providing any reference, care should be taken to comply with current data protection legislation, and any guidance provided by the Information Commissioner when providing personal data and sensitive personal data for example:

- details of an employee's medical records should not be provided within a reference without the express consent of that employee;
- details of any disciplinary action taken
- Unless the employee agrees, spent convictions should not be included in a reference unless the job is covered by the Exceptions Order to the Rehabilitation of Offenders Act 1974.

In providing the information specified above, managers should ensure that:

- The reference is true, accurate and fair and does not give a misleading impression of the employee;
- The employee is aware of any complaints or performance concerns that are referred to in the reference;
- Any information about absence does not reveal any special category data such as reasons for absence, and complies with the relevant data protection legislation.
- Any comments about performance or absence are not related to a disability or pregnancy.

- Comments on suitability for a new job are given with care because they may be less easy to objectively justify.

3. Sharing references written by the council, or by another organisation and issued to the council

An employee or ex-employee may gain access to references written about them by making a subject access request under the General Data Protection Regulation (2016/679 EU) (GDPR), either to the employer that provided the reference or to the employer that received it, or both. However, the Data Protection Act 2018, which supplements the GDPR, provides an exemption from disclosure of confidential employment references, therefore both employers could refuse the employee's request.

Any manager who needs advice and guidance regarding this very difficult, complex issue should discuss initially with their HR Business Partner before taking any action. Further guidance is also available from the Information Commissioner:

https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf

4. Legal implications

It is possible for a former employee to bring a claim of unlawful discrimination to an employment tribunal in circumstances where his or her ex-employer has refused to provide a reference, or provided an adverse reference.

This situation could arise if the reason for the employer's action (or inaction) is linked to one of the 'prohibited grounds', namely sex, transgender status, being married or a civil partner, pregnancy or maternity, race, disability, religion or belief, sexual orientation or age.

It is also important to ensure consistency and fairness in giving references to former employees. If the employer does not, an ex-employee may be able to make a claim that he or she was less favourably treated than another, for example on the grounds of age or disability.

Governance References - Managers Guidance on giving a reference

References:

ACAS Providing a job reference

Date initially agreed at Employment Committee:	
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Document Control Sheet

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Dissemination:	All new and updated policies and procedures are notified to entire workforce via insite and a variation letter. This policy is also submitted to City College, EPM and Serco. All documents are also posted onto the Employee Information pages of Insite.
What other documents should this be read in conjunction with:	Guidance documents listed in policy
Who will review the document (job title):	Senior Reward Advisor
Why is this document being reviewed?	New document

Revisions

Version No.	Page/ Paragraph No.	Description of amendment	Date approved
1	All	New document	