GUIDANCE ON RECEIVING AND PROVIDING EMPLOYMENT REFERENCES

The University wishes to ensure that employees, both current and former, are treated in a fair and consistent manner with regard to the provision of employment references. The following guidance is intended to assist staff when ‘receiving’ and ‘providing’ references.

To access some brief information, please use the Quick Guides below:
A Quick Guide to the Dos and Don’ts when receiving an employment reference.
A Quick Guide to the Dos and Don’ts when providing an employment reference

What is an employment reference?
Employment references are used to obtain information from a third party to check on a candidate’s employment history, experience and his/her suitability for the post in question. Any offer of employment is subject to the receipt of references satisfactory to the University. All offers of employment, whether verbal or written, should be made subject to satisfactory references. A contract of employment will only be issued once a Line Manager has agreed that a candidate’s references are acceptable.

Reference requests from Banks, Building Societies or other potential lenders should be directed to Human Resources for response.

Data Protection Act 1998
Under the Data Protection Act 1998 (the DPA), references are within the definition of personal data. The DPA provides individuals (known as “data subjects”) with a general right of access (known as “subject access requests”) to personal information held about them by the University. This guide contains practical advice for staff, which, if followed accurately, will enable staff to be confident that they are protecting the interests of both the University, as a data controller, and the employee, or ex employee, as a data subject.

Requesting references during recruitment:

Who requests references for a potential employee?
The Recruitment Team will formally approach a candidate’s referees. Once references have been received, these will be sent to the Line Manager for approval. Referees will only be approached once a candidate has given his/her consent.

Who is asked to provide a reference?
Candidates are asked to provide details of two referees in their job application. References are sought from the applicant’s current and former employers. Where the candidate is not currently employed, the Recruitment Team, together with the Line Manager, may decide that a personal reference is acceptable.

When are references requested?
For the majority of posts, references are taken up for the successful candidate only, and after the interview process has been carried out.

However, for Academic posts the Recruitment Team will automatically take up references beforehand for those candidates invited for interview.
For Research or Senior Support posts (within Grades 7-11), the Recruitment Team will be happy to request references before an interview if there is sufficient time. The recruiting manager should inform the Recruitment Team as early as possible if they wish this to happen as obtaining written references can take a couple of weeks, especially around holiday periods.

**How should references be used in the recruitment process?**
Post interview, they can help to confirm the decision of the interview panel.

If available at interview, references may identify areas to probe and assist in making a selection decision.

Information contained within a reference is highly confidential and must not be disclosed to any person not involved in the recruitment process.

**What should a line manager consider when looking at a reference?**
- If the most recent employer is not given as a referee, as the application form requests, this should be queried with the candidate;
- How valid is the reference? (is it from a line manager, colleague, friend?);
- Is the information given objective? (dates of employment, sick record) or is it subjective? (opinions about capability). Subjective opinions can be poor indicators, misleading and discriminatory.

It is now common for many organisations to only provide a factual reference (detailing dates of employment and number of days absent within a period). If this is the case, this should not be held against a potential candidate.

**What can be done if the references received are unsatisfactory?**
If it is felt that an applicant's references are unsatisfactory the University does have the right to withdraw the offer from the successful candidate. Before this is done, the Line Manager should contact the Recruitment Team to discuss the reference, and the Recruitment Team will formally notify the applicant.

When deciding upon whether or not to withdraw an offer of employment, it should be remembered that most new employees are subject to a probationary period. This should be used to closely monitor performance in the role.

**Provisioning References for current staff:**
Whilst there is no legal obligation to provide a reference, in general the University would recommend that references are provided when a request is made. Refusal to provide a reference is often taken by employers to indicate a problem with the member of staff about whom the reference is requested and may damage the individual's opportunity of gaining employment.

Before returning a completed reference to an employer it is advisable to send it to the link HR Manager so that the content can be checked.

**What should a reference contain?**
A reference must be true, accurate and fair, compiled with reasonable care and must not give a misleading impression. An inaccurate employment reference can be the subject of an action for negligence against the University and/or the individual referee, and therefore the author of a reference owes a 'duty of care' to the person about whom it is written.
The referee should ensure that:

- the facts provided in the reference are accurate. If unsure about any information, including dates of employment, please contact Human Resources.
- any opinions given should be honest, based on fact and should fall within the referee’s professional judgement;
- statements should be direct and simple, avoiding the use of ambiguous language;
- only information requested is provided;
- any sensitive data in a reference (that which relates to an individual’s physical or mental health, ethnic or racial origin, religious beliefs, sexual life, trade union membership) is excluded.
- If there are concerns about conduct or performance, but these issues have never been raised with the employee, these should not be included in the reference.

If asked to express an opinion on an issue about which the referee cannot make an unequivocal statement, for example, regarding an individual's honesty and integrity, it is appropriate to use a phrase such as ‘I know of nothing that would lead me to question X's honesty.’

If in doubt about providing a reference, it is advisable to provide only the basic facts, (i.e. dates of employment and a brief description of duties and responsibilities).

**Should the reference include a confidentiality clause?**

References should be marked ‘confidential’ to the addressee only and should contain the following disclaimer in its final paragraph:

‘In accordance with the University of Essex’s normal practice, this reference is given in good faith and in confidence, without legal liability on behalf of the author or the University of Essex’.

**Should a reference detail any disciplinary sanctions against an individual?** If the University has taken a disciplinary sanction against the subject of the reference, or if his/her performance is under formal review, advice should always be sought from the link HR Manager as to how this should be covered in a reference letter.

**Providing a personal reference**

A member of staff who is asked to provide a reference for a peer or colleague for whom they do not have management responsibility should make clear that he/she is providing the reference in a personal capacity. The reference should not be completed on headed paper or with a University stamp and the relationship of the referee to the individual concerned should be made clear.

**Telephone References (oral references)**

Although requests for telephone or verbal references are frequently received, such requests should be declined other than in exceptional circumstances, since information given in this way may be misinterpreted in its transmission to the interview panel. If in an exceptional circumstance a telephone reference is given, then caution must be exercised as this reference will have the same validity as the written reference. When giving a verbal reference the identity of the caller should be confirmed to ensure that the request is legitimate. A referee should not make a statement that he/she is not prepared to put in writing and back up with facts. Where possible, telephone references should be confirmed in writing.
Email references
The above guidelines apply equally to references provided by email. It is useful to remember that emails should not be used as an informal method of communication.

Should a copy of the reference be kept?
Having provided a reference for an employee, a copy should be forwarded to Human Resources where it will be held on the individual’s personal file.

Is the referee under any obligation to disclose a reference to an employee?
The Data Protection Act 1998 does allow for confidential references “given by the data controller” to be exempt from subject access requests. However, once a reference has been passed to a potential employer, its status is changed. It is now considered to be a “reference received” and may not necessarily be exempt from disclosure to the data subject. Although there are provisions to prevent its disclosure at this stage, the Act is ambiguous in parts and the most sensible interpretation of the legislation currently is to assume that a reference could be disclosed to the subject if he/she pursues it vigorously.

It is good practice, therefore, to assume that a reference will be available to the subject at a future date. If the opportunity exists, you may wish to discuss the reference with the individual so that s/he is aware of its content.

What should the referee do if they are challenged over a reference?
In the event that a member of staff is challenged over the content of a reference, he/she should not be drawn into a discussion of the issue of liability, but should refer the matter immediately to the link HR Manager.

Requesting a reference? A quick Summary of Dos and Don’ts

- The Recruitment team will request employment references for a potential employee.
- In most cases, references will only be taken up for the successful candidate, after interview.
- Information contained within a reference is highly confidential and should not be disclosed to any person not involved in the recruitment process.
- Consider how valid the reference is. Who is it from? (line manager, work colleague, friend?) How long ago was it since the individual worked at the organisation?
- Do not assume that a factual reference is a bad reference. It is now common for companies to only provide this type of reference.
- If it is felt that an individual’s references are unsatisfactory, speak with your link Recruitment Manager. Do not withdraw an offer of employment without speaking to the Recruitment Team first. It is important to remember that the employee will have a probationary period which should be used to closely monitor performance in a role.
Providing a Reference? A Quick Summary of Dos and Don’ts

- When writing a reference, you should assume that the subject will be able to access it at a later date.

- When writing a personal character reference, rather than an employment reference, make the context of the reference clear. State how you are acquainted with the individual in the opening paragraph. Do not use University letter headed paper.

- Do not give an oral reference unless specifically requested to do so by the individual. When giving a verbal reference the identity of the caller should be confirmed to ensure that the request is legitimate. Where possible the telephone reference should be confirmed in writing.

- If you have to refuse to supply a reference, issue a carefully worded refusal. Do not imply a negative reference.

- Do not include factual detail or opinion on the following:
  - racial or ethnic origin,
  - political opinions,
  - religious beliefs,
  - Trade Union activities,
  - physical or mental health,
  - sexual life,
  - details of criminal offences.

- If asked to provide details of sickness absence then consult your link HR Manager

- Having provided a reference for an individual, a copy should be forwarded to Human Resources where it will be held on his/her personal file.

Human Resources
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