

Ealing Council

Giving and Obtaining Employment References Guidance

November 2010 v1

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Giving and Obtaining Employment References Guidance

1. AIM

This document sets out how and why the Council obtains and checks employment references. This document also provides advice to managers who are requested to provide written references in relation to existing or former employees of the Council. The aim of this document is to ensure all employees who are responsible for either obtaining, checking and/or writing references follow a consistent approach.

All prospective candidates for employment with the Council are subject to reference checking, which is one of a number of pre-employment checks that are undertaken to select the right candidates for the right jobs.

Prospective candidates who will be working with vulnerable clients are subject to additional checks referred to in section 5. Additional enhanced vetting checks are also made on applicants who are selected for appointment who will be working in certain departments (currently Corporate Resources, Customer Services, Housing Demand, financial posts within Children and Adults and Ealing Homes).

This policy and guidance can be read alongside other related documents including the Recruitment and Selection Guidelines and the Data Protection and HR Records Policy and Guidance and Enhanced Vetting Procedure by going to the Council's Intranet pages, Working in Ealing, Recruitment. For guidance about a specific reference query, please contact HR through the HR section of the Service Ealing Portal via the Council's Intranet, or by calling ext 9000, Option 1 (020 8825 9000).

2. SCOPE

This guidance applies to existing and former employees of the Council, except agency workers or teaching and support staff employed by Schools for whom local arrangements apply.

3. EMPLOYMENT REFERENCES AND TESTIMONIALS

3.1 It is important to note the difference between an employment reference and a testimonial.

An employment reference is provided by a person with management responsibility for the subject of the reference in their professional capacity on behalf of the Council. This is normally the existing or former employee's direct line manager or supervisor. If a line manager leaves, it is the successor to the line manager using evidence from written records.

Testimonials are usually given to a person in a personal capacity, also known as character references, and often worded 'to whom it may concern'.

Any reference supplied in a personal capacity must be provided from the referee's home address and the Council's postal and email addresses must not be used nor should the performance of the individual during their employment with the Council be referred to. While the referee may state the capacity in which s/he has knowledge of the subject of the reference, the reference must state that it is made in the referee's personal capacity. If responding to a personal character/testimonial request from a friend/colleague, employees and managers must clarify that it is their personal opinion, and that the reference is not an employment reference provided on behalf of the Council.

Inappropriate use of the Council's facilities (e.g. stationary, email or postal system) is a disciplinary offence and may lead to disciplinary action. The use of the word 'reference' throughout the remainder of this document is therefore in relation to employment references.

4. LEGAL AND CONTRACTUAL ISSUES

4.1 Giving references

Generally there is no legal obligation on employers to provide references. However, as part of the local terms and conditions of service, it is the Council's policy to provide employment references unless there are exceptional reasons not to do so. This is to enable existing or former employees of the Council obtain employment, and as an employer, the Council also seeks written references to inform the recruitment process before confirming an offer of employment.

The local terms and conditions of service state that references provided by the Council will be made available for inspection to employees and former employees of the Council.

When providing references, managers have a duty of care both towards the prospective employer and the employee. Managers who write and provide references should take all reasonable steps to ensure that any information given is truthful and accurate, and that any opinion expressed is fair. Managers should also bear in mind that omitting an important and relevant piece of information is potentially misleading. A misleading reference or one that gives an unfair impression of the employee could leave the Council, and/or the manager who wrote the reference open to legal action, either from the recipient of the reference, or the employee.

Where a manager feels that there are exceptional circumstances, and that a reference should not be provided, then advice should be obtained from HR before a final decision is made.

Managers should also recognise that prospective employers have no right to insist on a reference from the Council if the employee does not want the Council to provide one. If an employee informs the Council that they do not want the Council to answer a reference request, then usually it will not do so. However, if a manager feels that it is important that the prospective employer be given information about

the employee, so as to protect the vital interests of that employer, or a third party, then advice should be obtained from HR about whether it is legitimate to supply that information, despite the employee's objection.

If a reference request is received for an employee or former employee who is currently bringing a claim against the Council, managers should seek advice from HR to avoid any prejudice in relation to the Council's position in the proceedings.

4.2 Obtaining references

When obtaining references, the Council is required to obtain written authorisation from the person to whom the reference relates. This is requested through the Council's standard job application form. The Council also notifies all referees when requesting references that it operates an "open references" policy, and that the subject of the reference may view the reference if they are appointed as it is placed on the HR employee file.

However, where a reference is received by the Council, which states it is being given in confidence and the author of the reference does not consent to it being disclosed to the person to whom it refers, then it will be retained in a confidential envelope on the HR employee file with restricted access to it.

Access to references received by the Council may be viewed by an employee following the Council's policy and guidance on Data Protection and Access to HR Records (except for any references that are received in confidence).

5. OBTAINING REFERENCES FOR RECRUITMENT

5.1 Obtaining references

References are obtained, in writing, before a conditional offer of employment is confirmed or the prospective employee is allowed to start work. References are obtained from a person in a position of responsibility relative to the prospective employee, such as from a person having management responsibility (using Appendices A and B, or C in relation to Safeguarding jobs).

If a prospective employee is or has been employed, references are obtained from the two most recent employers. If a prospective employee has only worked as a volunteer, references are obtained from the most recent body where they have volunteered. If a prospective employee is a school, college or university leaver, references are obtained from the educational establishment they have attended. One reference may be accepted in relation to internal appointments, supplemented by any relevant information on the HR file. In exceptional circumstances, if a prospective employee has not worked for some time, one reference from their last employer may be accepted.

Where a possible referee is a member of an interview panel, the prospective employee must provide details of an alternative referee, for example, the Head of the Service or a key stakeholder.

5.2 Checking references

The appointing manager is responsible for checking and reviewing references and all other pre-employment checks before a formal contract of employment is issued. The manager should check facts such as the prospective employee's previous job history and qualifications. Explanations should be sought from the prospective employee in relation to any gaps in employment. The appointing manager should discuss any concerns about the appropriateness of the referees or the content of references received with HR, and if deemed appropriate, discuss them with the referee and/or prospective employee before a conditional offer of employment is confirmed and a contract of employment is issued.

If it is necessary to contact a referee to clarify any information received in a reference, this should be sought in writing wherever possible. The person taking the reference should make a file note of any verbal discussions.

5.2.1 Disciplinary information

The appointing manager should consider carefully any information received in relation to a job applicant and previous disciplinary action or allegations, and in the light of the available information and circumstances of the case.

Cases in which an issue was satisfactorily resolved some time ago, or an allegation was determined to be unfounded, or did not require formal disciplinary sanctions and in which no further issues have been raised, should not be considered. However, more serious or recent live warnings/concerns and/or a history of repeated concerns or allegations are more likely to be a cause for concern.

The appointing manager should seek HR advice in these instances and before a conditional offer of employment is confirmed and a contract of employment is issued.

5.2.2 Sickness absence information

The appointing manager should consider carefully any information received in a reference that shows a high level of sickness absence above any trigger point in the Council's Managing Sickness Absence Guidance. Managers are advised to contact the referee to clarify the high level of sickness absence and to seek any medical advice from the Council's Occupational Health Unit. Particular care should be taken not to discriminate against a prospective employee who has a medical condition covered under the Disability Discrimination Act 1995, and medical advice should be sought on reasonable adjustments that should be made to assist the prospective employee in undertaking the duties of the job.

5.2.3 Fraudulent applications

Serious, deliberate fraud or deception in connection with an application for employment may amount to a serious criminal offence. In such cases the Council will, in addition to any planned disciplinary action, consider prosecution and/or

reporting the matter to the police. The Council will also report the case to any relevant professional body, such as the Independent Safeguarding Authority, Financial Services Authority. The Council will also consider whether there are any other parties that should be informed, such as past employers or prospective employers, and any other agency that has been involved in the recruitment process.

6. REQUESTING REFERENCES FOR SAFEGUARDING JOBS

This section highlights the issues recommended in the safer recruitment publication developed by the Children's Workforce Development Council (CWDC), which are also referenced in the Council's Recruitment and Selection guidelines. The guidance is applicable to everyone responsible for, or involved in the recruitment of people working with, or providing services to children and young people under the age of 18 on behalf of the Council. The Council has also adopted this guidance for the purposes of recruiting people to work with vulnerable adults.

The appointing manager should:

- **Before interviewing**

- Aim to ensure all written reference checks for all shortlisted job applicants are undertaken directly from the referees
- Check all references are addressed directly to the appointing manager or HR; references supplied by job applicants themselves, or addressed in any other way (i.e. 'to whom it may concern') should not be accepted
- Scrutinise all references, check all specific questions have been answered satisfactorily, particularly those obtained after an interview and resolve any concerns
- Check the details of employment and reasons for leaving and compare with the application form
- Contact the referee if all questions have not been answered satisfactorily or if the reference is vague or unspecific
- Ensure any issues of concern are explored directly with the referee, including a telephone call to confirm authenticity
- Obtain satisfactory explanations for any gaps in a job applicant's career, education or training and personal history
- Document the information given and compare with the application form to ensure consistency

NB: Where an applicant states that they do not want their referees being contacted before an interview and they have been shortlisted, managers are advised to contact the job applicant and to advise them that in accordance with good practice in relation to people working with children and young people, it is the Council's aim to take up references for all shortlisted candidates before an interview can take place.

- **During the interview**

- Check the identity of every candidate

- Explore any issues of concern received in the reference or discrepancies with the job applicant
- **Following the interview**
 - Complete all other appropriate pre employment checks before a conditional offer of employment is confirmed, for example, enhanced Criminal Records Bureau disclosure, Independent Safeguarding Authority check, medical clearance, checking of original certificates of qualifications and relevant professional registrations, identity and right to work in the UK

The full safer recruitment guidance can be requested from the CWDC or downloaded from www.cwdcouncil.org.uk/safeguarding/safer-recruitment

7. GUIDANCE ON PROVIDING REFERENCES

7.1 Employment references

The following guidelines apply to all references managers are asked to provide in their professional capacity on behalf of the Council.

The responses should be factually accurate and give an honest assessment of the employee or former employee.

Where no reference form is provided, Appendix D provides an outline of standard headings that can be used to structure a reference response letter, including the position(s) held by the existing/former employee, salary, commencement and leaving dates, key responsibilities, overall assessment of the employee's performance and reasons for leaving.

Before writing the reference, the manager should check the HR employee file to establish whether a form of reference has already been agreed in respect of the employee (e.g. due to a compromise agreement see section 6.4), or else whether there is any record that the employee has stated that s/he does not want the Council to give references in relation to them.

Where the reference request appears to be genuine (from a reputable organisation with a recognised return address), and there is no reason to think otherwise, it is legitimate to assume that the person requesting the reference is doing so with the employee's consent. However, if there is any doubt about whether or not the employee actually does want the reference to be provided, then the employee's written permission should be obtained: either by contacting the employee directly, or asking the person seeking the reference to supply it.

The key points below should be followed when preparing the reference:

- The reference should be factual, informative, prompt, consistent, transparent and legible.

- Expressing opinions that cannot be supported by evidence must be avoided.
- Where there is only limited personal knowledge of the individual this should be stated.
- It should be assumed that the individual may apply to see the contents of their HR employee file and therefore the reference may be disclosed to them. However, ensure the content is not potentially misleading to the recipient in relation to any relevant and important issues.
- Where an employee has been dismissed for discipline (conduct), work performance or capability (ill health) issues, or has resigned whilst formal action is pending, advice should be sought from HR on the wording of the reference. Any formal issues that are mentioned in a reference, especially those of a negative nature, must be issues that the individual knew about during their employment and the manager is fully satisfied as to the reliability of that information. For example, it would be wrong to refer to complaints having been received if the individual had not had the chance to comment on the complaints. It may be necessary or appropriate to mention there is an ongoing investigation depending on the particular circumstances of a case (*i.e. formal action to investigate a complaint of XXXX was ongoing and the Council is unable to provide a reference at this time*). In this instance, it would be essential to make it clear that no concluded findings of the allegations had been made at that stage.
- Personal circumstances including disabilities, health or family circumstances should not be disclosed, without the explicit written consent of the person to whom the reference relates.
- Be careful with disclosing sensitive personal data where a reference asks for information about sickness absence. Details of how many working days' sickness absence the individual has had during the last 2 years (or the period of employment with you if less than 2 year can be stated. However, the nature of health problems should not be given, as this needs the express consent of the individual.
- Nothing discriminatory should be included, whether in relation to age, disability, ethnicity, gender, race, religion, sexual orientation or otherwise.
- Take care with the question "Would you re-employ?" The answer should be factual, for example, "It would depend on whether the applicant met the criteria for the post".
- If necessary, discuss the content of the reference response with the current or former employee to ensure that it creates an overall fair impression and to avoid any later dispute. However, bear in mind that you are the author of the reference and are responsible for its contents. Make sure that you fulfil your duty to the recipient of the reference, as well as the employee.

- Send the reference as swiftly as possible so as not to prejudice the individual's chances.
- If requested, share a copy of the reference with the person to whom it relates.
- Copies of reference requests and the references should be placed on the existing/former employee's HR file held within the HR Shared Service Centre.

If managers are in any doubt about the information they are providing they should seek advice from HR.

7.2 Handling requests for telephone references

Verbal references should not be given. Where a telephone reference request is received, managers should:

- Verify the identity and designation of the person requesting the reference
- Explain that the Council only provides responses to references in writing
- Seek a written request from the caller to be certain that the person making the request has the appropriate permission from the subject of the request
- Record the information provided in line with the above guidelines
- Respond to the reference request when received in writing

If managers are in any doubt about how to handle a telephone reference request, seek HR advice before proceeding further.

7.3 Agreed references 'compromise agreements'

From time to time an agreed work reference may be written for a particular employee, usually at the time when they leave the Council (e.g. where a compromise agreement has been reached). The point to remember is that where the precise wording of a work reference has been agreed this must be the reference provided by the Council to avoid any future litigation and amendments must not be made. If in any doubt in these instances, managers should seek advice from HR.

8. MONITORING AND REVIEW

This document will be reviewed every 3 years or earlier in light of changes to legislation, experience or good practice in consultation with the recognised Trades Unions.

LIST OF APPENDICES

- A Letter asking for a reference
- B Reference request form
- C Safeguarding reference request and proforma letter
- D Sample reference response