



Public – To be published on the Trust external website

Responsibility for providing employment references procedure

Ref HR-0016-v6

Status: Approved

Document type: Procedure

Overarching Policy: During Employment Policy (forthcoming)

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1 Purpose

Following this procedure will help the Trust to:-

- Provide information, in confidence to a third party that is factual based on information on the employment history, qualifications, experience and/or an assessment of the candidate's suitability for the post in question;
- Information being provided will include length of employment, job title, brief details of responsibilities, reason for leaving etc.

2 Related documents



This procedure describes what you need to do to implement the Responsibility for providing Employment References in line with the Trust's During Employment Policy.

3 Designated Referee (Line Manager)



Only a designated Staff Member can give employment references on behalf of the Trust. The Trust remains legally responsible for the content of the reference and has a duty of care to provide a factually correct reference.



There is an expectation that ex-employees contact their previous line manager to request that they provide a reference. The referee **must** also establish, when employment ends, if references can continue to be supplied by the Trust.

- Employees **can only** request references from their designated referee (usually the Line Manager). Where the current Line Manager would not be deemed the most appropriate person to provide the reference (i.e. The team manager is new in post and does not know the staff member/applicant well) a discussion must take place with the staff member /applicant to determine a suitable alternative designated referee/ nominated deputy.
- As designated referee, the manager or nominated deputy **must** ensure that the employee is happy for them to supply a reference when a request is submitted. Where managers have previously been approached by an employee to be a referee, it is taken that permission is granted.
- You **must** be honest, accurate and fair and you **must** provide information that can be evidenced.

3.1 Designated Referee Do's and Do not's

Do's	Do not's
<ul style="list-style-type: none"> ✓ Only provide factual information such as: <ul style="list-style-type: none"> • Employment Dates; • Job Title and Grade; • Number of days and episodes of sickness absence in the last two years; • Current warnings in place; • Whether the applicant is under investigation under any employment policy/procedure. • DBS information • Recent/outstanding allegations made against the applicant that relate to safeguarding issues/or referrals - including any referrals to the Disclosure and Barring Service. 	<ul style="list-style-type: none"> ✗ Provide subjective judgments or opinion of suitability for the post applied.
<ul style="list-style-type: none"> ✓ Check information provided is accurate e.g. employment dates, reason for leaving, sickness absence record, live disciplinary sanctions. 	<ul style="list-style-type: none"> ✗ Include subjective comments about capability or disciplinary issues if they have not been fully investigated. Documentation must be available to evidence and justify any comments.

✓ Make sure you are the correct person to provide the reference e.g. Service/Ward/Senior Manager.	✗ Provide 'personal' references on behalf of the Trust. <ul style="list-style-type: none"> Any personal references must not be on Trust letter-head and must be indicated on the letter it is a personal reference.
✓ Make sure the employee is happy for you to provide a reference.	✗ Include any unsubstantiated or false comments about performance, conduct or suitability.
✓ Produce the reference on letter-header paper if you are not required to complete a reference template.	✗ Include spent disciplinary sanctions.
✓ Include current disciplinary sanctions (you have a duty to include these).	
✓ Include whether an applicant is under disciplinary investigation. This information should also be provided for ex-employees who remain under investigation on their final date of employment.	
✓ Seek advice from Human Resources if you are unsure.	
✓ Send a reference request from any ex-staff member/applicants who have been dismissed to the Operational Human Resources or Medical Staffing Teams.	

4 Delegated Referee (Professional Manager)



An individual's Line Manager might not be of the same professional group as the individual and therefore better placed to comment on the person's professional skills, abilities and development. e.g.:

- An Occupational Therapist line managed by a Nurse;
- An individual working for someone other than their Line Manager i.e. a medical secretary.

- You **must** state that you are not the Line Manager for the individual and **cannot** comment on timekeeping, attendance, disciplinary records etc.
- You **must** be honest, accurate and fair and you **must** provide information that can be evidenced.

4.1 Delegated Referee Do's and Do not's

Do's	Do not's
<ul style="list-style-type: none"> ✓ Only provide factual information in relation to the staff member/ applicants professional skills, attributes and development. 	<ul style="list-style-type: none"> ✗ Provide information in relation to: <ul style="list-style-type: none"> • Sickness absence record; • Current warnings in place; • Whether the applicant is under investigation under any employment policy/procedure. • DBS information • Recent/outstanding allegations made against the applicant that relate to safeguarding issues/or referrals - including any referrals to the Disclosure and Barring Service.
<ul style="list-style-type: none"> ✓ Check information provided is accurate 	<ul style="list-style-type: none"> ✗ Provide subjective judgments or opinion of suitability for the post applied.
<ul style="list-style-type: none"> ✓ Make sure you are the correct person to provide the reference e.g. Professional Lead/Manager. 	<ul style="list-style-type: none"> ✗ Include subjective comments about capability or disciplinary issues if they have not been fully investigated. Documentation must be available to evidence and justify any comments.
<ul style="list-style-type: none"> ✓ Make sure the employee is happy for you to provide a reference. 	<ul style="list-style-type: none"> ✗ Provide 'personal' references on behalf of the Trust. <ul style="list-style-type: none"> • Any personal references must not be on Trust letter-head and must be indicated on the letter it is a personal reference.
<ul style="list-style-type: none"> ✓ Produce the reference on letter-header paper if you are not required to complete a reference template. 	<ul style="list-style-type: none"> ✗ Include any unsubstantiated or false comments about performance, conduct or suitability.
<ul style="list-style-type: none"> ✓ Seek advice from Human Resources if you are unsure. 	
<ul style="list-style-type: none"> ✓ Send a reference request from any ex-staff member/applicants who have been dismissed to the Operational Human Resources or Medical Staffing Teams. 	

5 What all referees should consider when completing an employment reference on behalf of the Trust



Personal character reference will not be given on behalf of the Trust.

Employees **must not** ask friends or colleagues to give a personal reference on behalf of the Trust.

Personal references **must not** be produced on Trust letterhead paper or email. They **must** indicate on the letter that it is a personal reference.



You **must** only give a verbal reference in exceptional circumstances (internally and externally).

Regardless of format, the reference must be honest, accurate, fair, made with care and include an assessment of job related competency and personal qualities.

Internal references will be requested through the Trust's TRAC system.

External references may use a different template however, the information provided should be the same as an internal reference.

6 Legal aspects of providing references



There is no common law duty on an employer to provide a reference – it is rare for an employer to refuse. However if refused, equality legislation may be breached, e.g. a refusal to provide a reference for an ex-employee because they have brought an Employment Tribunal Claim.

6.1 Data Protection Act 2018



A referee **must not** give any subjective opinion about an individual's performance, conduct or suitability, which they cannot substantiate with factual documentary evidence.

- Individuals have a right to a copy of information held about them.
- All requests for personal information should be made through the Trust's Subject Access Request process.
- Employers who refuse to supply an applicant with a copy of the written reference may be in breach of the act, even though it was supplied in confidence.
- All personal information will be stored and processed in line with GDPR regulations.

6.2 Defamation, Deceit and Negligence

Defamation	Deceit	Negligence
<ul style="list-style-type: none">• A reference that contains a false or unsubstantiated statement damaging the	<ul style="list-style-type: none">• The referee may have a legal liability to the	<ul style="list-style-type: none">• A reference may be negligent if on checking facts it was found to be

<p>reputation of an individual.</p> <ul style="list-style-type: none"> • Action for damages may be sought by the staff member/applicant. • The referee may not be liable for inaccurate statements if made in good faith and without malice. 	<p>prospective employer.</p> <ul style="list-style-type: none"> • If the referee gives a reference with falsely attributed qualities, or other 'material factors' known to be untrue an action of 'deceit' may occur. 	<p>groundless.</p> <ul style="list-style-type: none"> • It is essential to check information supplied in a reference prior to providing the reference. <p>Example 1: Stating that an employee was dismissed when they actually resigned.</p> <p>Example 2: Giving estimates of sickness rather than referring to absence records.</p>
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7 Reference request for anything other than Recruitment or Employment Purposes.



Contact the Operational Human Resource/Medical Staffing team for advice.

You **must** be honest, accurate and fair and you **must** provide information that can be evidenced.

8 Trust Liability



The Trust has a duty of care to provide factually correct references. The Trust remains vicariously liable for contents of references given on behalf of the Trust. It is expected managers provide a prompt and accurate response based on factual information.

You may be in breach of procedure and potentially be subject to disciplinary action, if you provide:

- An employer's reference and you are not the employee's manager or senior manager, or previous managerial relationship;
- A professional reference when you are not in a position to assess the individual's performance;
- A personal reference using Trust letter headed paper or an email, as this gives the impression of an employment/professional reference for whose content the Trust would be liable;
- A reference giving false information or not based on fact or capable of independent verification.

9 Definitions

Term	Definition
Vicarious Liability	<p>An employer is liable for the acts of its employee whilst they are acting in the course of the employer's employment, and for those of the employer's agents while acting within the scope of the employer's authority.</p> <p>If actions of one employee 'injure' another employee, the employer is deemed responsible under the doctrine of vicarious liability.</p>

10 How this procedure will be implemented

- This procedure will be published on the Trust's intranet and external website. Awareness of the new procedure will be included in the Trust internal bulletin
- Line managers will disseminate this procedure to all Trust employees through a line management briefing.

11 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
All staff	Training NA – Awareness required		

10 How the implementation of this procedure will be monitored

Auditable Standard/Key Performance Indicators		Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	No Specific KPI's identified	Ongoing monitoring of procedure, based on feedback from managers/staff	NA
2			

3			
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12 References

Data Protection Act 2018

Trust's Recruitment and Retention Procedure

13 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval:	PWG 13 th November 2020 JCC 8 th April 2021	
Next review date:	8 th April 2024	
This document replaces:	Ref HR-0016-v5	
This document was approved by:	Name of committee/group	Date
	HR PWG	13 th November 2020
This document was ratified by:	Name of committee/group	Date
	JCC	8 th April 2021
An equality analysis was completed on this document on:	9 th November 2020 (approved by E&D November 2020)	
Document type	Public	
FOI Clause (Private documents only)	n/a	

Change record

Version	Date	Amendment details	Status
V6	8 April 2021	Format changed Addition of clarity on difference between a Designated and Delegated Referee and guidance on Do's and Don'ts for each.	Approved
V6	28 June 2021	Minor correction to Document Control 'this document replaces:' version number was v6 corrected to v5.	Published

Appendix 1 - Equality Analysis Screening Form

Please note; The Equality Analysis Policy and Equality Analysis Guidance can be found on InTouch on the policies page

Name of Service area, Directorate/Department i.e. substance misuse, corporate, finance etc.	Directorate of Human Resources and Organisational Development			
Name of working party, to include any other individuals, agencies or groups involved in this analysis	Policy Working Group			
Policy (document/service) name	Responsibility for providing employment references procedure			
Is the area being assessed a...	Policy/Strategy	<input type="checkbox"/>	Service/Business plan	<input type="checkbox"/>
	Procedure/Guidance	<input checked="" type="checkbox"/>	Code of practice	<input type="checkbox"/>
	Other – Please state			
Geographical area covered	Trust wide			
Aims and objectives	To provide guidance to managers when providing references about current and ex staff.			
Start date of Equality Analysis Screening (This is the date you are asked to write or review the document/service etc.)	9 th November 2020			
End date of Equality Analysis Screening (This is when you have completed the equality analysis and it is ready to go to EMT to be approved)	9 th November 2020			

You must contact the EDHR team if you identify a negative impact. Please ring Sarah Jay or Ian Mhlanga on 0191 3336267/3046

1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?					
The procedure aims to provide guidance to managers when providing a reference regarding a current or ex staff member.					
2. Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups below?					
Race (including Gypsy and Traveller)	No	Disability (includes physical, learning, mental health, sensory and medical disabilities)	No	Sex (Men, women and gender neutral etc.)	No
Gender reassignment (Transgender and gender identity)	No	Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.)	No	Age (includes, young people, older people – people of all ages)	No
Religion or Belief (includes faith groups, atheism and philosophical belief's)	No	Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave)	No	Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners)	No
<p>Yes – Please describe anticipated negative impact/s</p> <p>No – Please describe any positive impacts/s</p> <p>The aim of the procedure is to ensure fair, accurate and objective references about staff/ex staff are provided.</p>					

<p>3. Have you considered other sources of information such as; legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.? If 'No', why not?</p>	<p>Yes</p>	<p>x</p>	<p>No</p>	
<p>Sources of Information may include:</p> <ul style="list-style-type: none"> • Feedback from equality bodies, Care Quality Commission, Equality and Human Rights Commission, etc. • Investigation findings • Trust Strategic Direction • Data collection/analysis • National Guidance/Reports 	<ul style="list-style-type: none"> • Staff grievances • Media • Community Consultation/Consultation Groups • Internal Consultation • Research • Other (Please state below) 			
<p>4. Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the following protected groups?: Race, Disability, Sex, Gender reassignment (Trans), Sexual Orientation (LGB), Religion or Belief, Age, Pregnancy and Maternity or Marriage and Civil Partnership</p>				
<p>Yes – Please describe the engagement and involvement that has taken place</p>				
<p>The policy working group includes a select group of staff who are drawn from management and staff side representatives. The Joint Staff Consultative Committee is a formal committee who are responsible for signing off the agreement.</p>				
<p>No – Please describe future plans that you may have to engage and involve people from different groups</p>				

5. As part of this equality analysis have any training needs/service needs been identified?					
Yes	Please describe the identified training needs/service needs below				
A training need has been identified for;					
Trust staff	Yes/No	Service users	Yes/No	Contractors or other outside agencies	Yes/No
Make sure that you have checked the information and that you are comfortable that additional evidence can provided if you are required to do so					
If you need further advice or information on equality analysis, the EDHR team host surgeries to support you in this process, to book on and find out more please call: 0191 3336267/3046					

Appendix 2 – Approval checklist

To be completed by lead and attached to any document which guides practice when submitted to the appropriate committee/group for consideration and approval.

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
1.	Title		
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	Rationale		
	Are reasons for development of the document stated?	Yes	Review of existing procedure
3.	Development Process		
	Are people involved in the development identified?	Yes	
	Has relevant expertise has been sought/used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	
	Have any related documents or documents that are impacted by this change been identified and updated?	NA	
4.	Content		
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Yes	
	Are key references cited?	Yes	
	Are supporting documents referenced?	Yes	
6.	Training		
	Have training needs been considered?	Yes	

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
	Are training needs included in the document?	NA	
7.	Implementation and monitoring		
	Does the document identify how it will be implemented and monitored?	Yes	
8.	Equality analysis		
	Has an equality analysis been completed for the document?	Yes	
	Have Equality and Diversity reviewed and approved the equality analysis?	Yes	
9.	Approval		
	Does the document identify which committee/group will approve it?	Yes	
10.	Publication		
	Has the document been reviewed for harm?	Yes	
	Does the document identify whether it is private or public?	Yes	public
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	NA	