



Public – To be published on the Trust external website

Responsibility for providing employment references procedure

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Document type: Procedure

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1 Introduction

This document sets out the Trust procedure for when an employment reference is received. Giving clear guidance for the referee on the completion of a reference request

This procedure is critical to the delivery of OJTC and our ambition to co-create safe and personalised care that improves the lives of people with mental health needs, a learning disability or autism. It helps us deliver on our strategic goals.

This procedure supports the trust to co-create a great experience for all patients, carers and families from its diverse population by providing an assurance we are committed to providing high standards of care and in doing so we will:

- Ensure that all staff are treated in a fair and equitable way in accordance with employment legislation and that all staff treat each other in accordance with the Trust Values.
- Ensure that when requested, factual and accurate and fair references are provided.

2 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.

3 Who this procedure applies to

- All staff employed by the Trust who are named as a referee.

4 Related documents

- Leavers procedure

- Trusts Recruitment and Retention Procedure

5 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.

5.2 Designated Referee Do's and Do not's

Do's	Do not's
<p>✓ Only provide factual information such as:</p> <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 - 	<p>✗ Provide subjective judgments or opinion of suitability for the post applied.</p>

<p>including any referrals to the Disclosure and Barring Service.</p> <ul style="list-style-type: none"> Reason for leaving 	
<p>✓ Check information provided is accurate e.g., employment dates, reason for leaving, sickness absence record, live disciplinary sanctions.</p>	<p>✗ 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.</p>
<p>✓ Make sure you are the correct person to provide the reference e.g., Service/Ward/Senior Manager.</p>	<p>✗ Provide 'personal' references on behalf of the Trust.</p> <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.
<p>✓ Make sure the employee is happy for you to provide a reference.</p>	<p>✗ Include any unsubstantiated or false comments about performance, conduct or suitability.</p>
<p>✓ Produce the reference on letter-header paper if you are not required to complete a reference template.</p>	<p>✗ Include spent disciplinary sanctions.</p>
<p>✓ Include current disciplinary sanctions (you have a duty to include these).</p>	
<p>✓ 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.</p>	
<p>✓ Seek advice from Human Resources if you are unsure.</p>	
<p>✓ Send a reference request from any ex-staff member/applicants who have been dismissed to the Operational Human Resources or Medical Staffing Teams.</p>	

6 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.

6.1 Delegated Referee Do's and Do not's

Do's	Do not's
✓ Only provide factual information in relation to the staff member/ applicants professional skills, attributes and development.	✗ 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.
✓ Check information provided is accurate	✗ Provide subjective judgments or opinion of suitability for the post applied.
✓ Make sure you are the correct person to provide the reference e.g., Professional Lead/Manager.	✗ 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 the employee is happy for you to provide a reference.	✗ 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.
✓ Produce the reference on letter-header paper if you are not required to complete a reference template.	✗ Include any unsubstantiated or false comments about performance, conduct or suitability.
✓ 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.	

7 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.

8 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.

8.1 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.

8.2 Defamation, Deceit and Negligence

Defamation	Deceit	Negligence
<ul style="list-style-type: none"> A reference that contains a false or unsubstantiated statement damaging the reputation of an individual. 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. 	<ul style="list-style-type: none"> The referee may have a legal liability to the prospective employer. If the referee gives a reference with falsely attributed qualities, or other 'material factors' known to be untrue an action of 'deceit' may occur. 	<ul style="list-style-type: none"> A reference may be negligent if on checking facts it was found to be groundless. 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>

9 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.

10 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.

11 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>

12 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.

13 Training needs analysis

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

14 How the implementation of this procedure will be monitored

Number	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
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15 References

- Data Protection Act 2018

16 Document control (external)

To be recorded on the policy register by Policy Coordinator

Required information type	Information
Date of approval	12 March 2024
Next review date	12 March 2027
This document replaces	HR-0016-v6 Responsibility for providing employment references
This document was approved by	Policy Working Group
This document was approved	28 February 2024
This document was ratified by	Joint Consultative Committee
This document was ratified	12 March 2024
An equality analysis was completed on this policy on	28 March 2024
Document type	Public
FOI Clause (Private documents only)	n/a

Change record

Version	Date	Amendment details	Status
v7	12 Mar 2024	Format changed into new template - note no changes to the content	approved

Appendix 1 - Equality Impact Assessment Screening Form

Please note: The [Equality Impact Assessment Policy](#) and [Equality Impact Assessment Guidance](#) can be found on the policy pages of the intranet

Section 1	Scope
Name of service area/directorate/department	Directorate of Human Resources and Organisational Development
Title	Responsibility for providing employment references procedure
Type	Procedure/guidance
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	28 March 2024
End date of Equality Analysis Screening	28 March 2024

Section 2	Impacts
<p>Who does the Policy, Procedure, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?</p>	<p>The procedure aims to provide guidance to managers when providing a reference regarding a current or ex staff member.</p>
<p>Will the Policy, Procedure, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups? Are there any Human Rights implications?</p>	<ul style="list-style-type: none"> • Race (including Gypsy and Traveller) NO • Disability (includes physical, learning, mental health, sensory and medical disabilities) NO • Sex (Men and women) NO • Gender reassignment (Transgender and gender identity) NO • Sexual Orientation (Lesbian, Gay, Bisexual, Heterosexual, Pansexual and Asexual etc.) NO • Age (includes, young people, older people – people of all ages) NO • Religion or Belief (includes faith groups, atheism and philosophical beliefs) NO • Pregnancy and Maternity (includes pregnancy, women / people who are breastfeeding, women / people accessing perinatal services, women / people on maternity leave) NO • Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners) NO • Armed Forces (includes serving armed forces personnel, reservists, veterans and their families) NO • Human Rights Implications NO (Human Rights - easy read)
<p>Describe any negative impacts / Human Rights Implications</p>	

Describe any positive impacts / Human Rights Implications

The aim of the procedure is to ensure fair, accurate and objective references about staff/ex staff are provided.

Section 3	Research and involvement
What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)	See references and related documents section
Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the protected groups?	yes
If you answered Yes above, describe the engagement and involvement that has taken place	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.
If you answered No above, describe future plans that you may have to engage and involve people from different groups	

Section 4	Training needs
As part of this equality impact assessment have any training needs/service needs been identified?	No
Describe any training needs for Trust staff	Training NA – Awareness required
Describe any training needs for patients	n/a
Describe any training needs for contractors or other outside agencies	n/a

Check the information you have provided and ensure additional evidence can be provided if asked.

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?	Y	
Is it clear whether the document is a guideline, policy, protocol or standard?	Y	
2. Rationale		
Are reasons for development of the document stated?	y	
3. Development Process		
Are people involved in the development identified?	Y	
Has relevant expertise has been sought/used?	Y	PWG and JCC
Is there evidence of consultation with stakeholders and users?	Y	PWG and JCC
Have any related documents or documents that are impacted by this change been identified and updated?	n/a	
4. Content		
Is the objective of the document clear?	Y	
Is the target population clear and unambiguous?	Y	
Are the intended outcomes described?	Y	
Are the statements clear and unambiguous?	Y	
5. Evidence Base		
Is the type of evidence to support the document identified explicitly?	Y	

Are key references cited?	Y	
Are supporting documents referenced?	Y	See references and related document sections
6. Training		
Have training needs been considered?	Y	
Are training needs included in the document?	n/a	Awareness only required
7. Implementation and monitoring		
Does the document identify how it will be implemented and monitored?	Y	
8. Equality analysis		
Has an equality analysis been completed for the document?	Y	
Have Equality and Diversity reviewed and approved the equality analysis?	y	28 March 2024, SD
9. Approval		
Does the document identify which committee/group will approve it?	y	Pwg and jcc
10. Publication		
Has the policy been reviewed for harm?	y	No harm
Does the document identify whether it is private or public?	y	public
If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	n/a	
11. Accessibility (See intranet accessibility page for more information)		
Have you run the Microsoft Word Accessibility Checker? (Under the review tab, 'check accessibility'. You must remove all errors)	Y	
Do all pictures and tables have meaningful alternative text?	Y	

Do all hyperlinks have a meaningful description? (do not use something generic like 'click here')	y	
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