



Diocese of Norwich
Education and
Academies Trust

Diocese of Norwich Education and Academies Trust (DNEAT)

Internal guidance for authorised persons and colleagues carrying out HR and recruitment functions

The Diocese of Norwich Education and Academies Trust (hereafter referred to as “the Trust”) is committed to safeguarding and promoting the welfare of children and young people and requires all volunteers to share this commitment

This document must be read alongside the Trust’s HR24 Reference Policy (providing and requesting).

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1. PURPOSE AND SCOPE

1.1 This guidance is to be read and implemented by Trust employees who are responsible for:

- providing references;
- requesting references;
- assessing whether the content of references is satisfactory to the Trust.

1.2 It is not intended to be an exhaustive guide to the law but sets out key legal obligations and Trust requirements, including those which act to safeguard children and young people. Any failure by a person in a position of responsibility to adhere to this guidance may be managed in accordance with the Trust's Disciplinary Policy and may result in dismissal. Advice regarding the application of this guidance can be obtained from the academy designated HR Officer or the HR Director for DoNESC, if in doubt seek advice.

2. THE PROVISION OF EMPLOYMENT REFERENCES BY AUTHORISED PERSONS

2.1 Only people authorised by the Trust may use their job title, the name of the Trust, the name of a Trust academy, an email account provided for work purposes and Trust or provision letterheads or logos, when communicating views regarding the suitability or otherwise of an individual.

Trust authorised persons are:

- CEO
- Deputy CEO
- Executive Headteachers
- Headteachers and Acting Headteachers
- HR Director

2.2 These are the only individuals authorised to sign an employment reference or to provide an oral reference on behalf of the Trust. The CEO may provide written authorisation for another Senior Leader to do so, and the Chair of the Board of Trustees will be responsible for providing a reference for the CEO.

2.3 No other staff members or volunteers are permitted to provide an employment reference on behalf of the Trust.

2.4 Employment references must always be marked 'Private and Confidential for the addressee only' and must be addressed to a named person at the organisation requesting the reference.

2.5 The Trust will only provide one reference in respect of an individual to a prospective employer; an authorised person may request that another of the Trust's employees provides appropriate information to include, however the authorised person will remain responsible for the provision and content of the reference.

2.6 Duty of care

2.6.1 When responding to a reference request from a prospective employer regarding any person who is or has been employed by the Trust, you have a duty of care to both parties and must be prepared to provide evidence to support the information you provide should any of the details be challenged.

2.6.2 The following requirements apply to both verbal and written references. A verbal reference has the same status as a written one and should be approached with the same level of care and attention.

2.6.3 You must:

- Take reasonable care to ensure that any reference provided is true, accurate and fair, and that it is not discriminatory, negligent, malicious, defamatory or dishonest in any way.
- Ensure that any comments regarding performance do not relate to a disability.
- Ensure that any comments on suitability for a new job are stated with care as they may be difficult to objectively justify. Where a job role is markedly different from the role/s undertaken in the Trust do not speculate regarding suitability, confine comments to offering an account of duties and performance in the Trust role/s.
- Be consistent in your approach. If you provide a verbal reference keep notes of what you said and place them on file.
- Seek advice from the HR Director or the academy designated HR Officer as to the information to include in a reference, if an employee has resigned whilst under investigation in relation to allegations of misconduct of any kind.

2.6.4 You must not:

- Give a misleading impression through omission or provide inaccurate information which could give rise to a claim for negligence. Whilst there is no duty on employers to be 'full and comprehensive' as this would impose too high a burden, care should still be taken. It's also the case that employers cannot break references down into individual sentences and state that each individual sentence was factually correct; references must be looked at as a whole.
- Provide a 'glowing' reference for an employee who is presenting cause for concern as a means of enabling them to obtain employment elsewhere.
- Avoid giving an honest reference where there is cause for concern, provided that the concerns have been discussed with the employee and they have had the opportunity to respond / appropriate action has been taken to address them.
- Expect information provided in a reference to be treated as confidential by a prospective employer.
- Supplement written references with verbal or email information which you do not intend to be part of the reference - it will form part of the reference regardless of your intent.

2.6.5 It should also be noted that the Trust may be held liable for the unlawful actions of a prospective employer on receipt of a reference, if it is 'evidentially foreseeable' that the employer would react in a certain way, as a direct and natural consequence of the supply of

information. So, if on the receipt of an inaccurate reference a job offer is withdrawn the Trust could be liable if this was the reason for the withdrawal of the offer.

2.7 Statutory obligations in respect of content

2.7.1 Whilst references must be true, accurate and fair and must not be dishonest or negligent, there is some information that must/must not be provided even when it is requested:

2.7.2 Allegations relating to Safeguarding

Part Four of Keeping Children Safe in Education 'Safeguarding concerns or allegations made about staff, including supply teachers, volunteers and contractors', draws an important distinction between allegations relevant for internal record keeping and allegations relevant for reference. It states:

2.7.3 References

419. Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. See paragraph 224 for further information on references. Substantiated safeguarding allegations that meet the harm threshold should be included in references, provided that the information is factual and does not include opinions.

Allegations which were found to be substantiated following proper investigation must be disclosed, even where any disciplinary sanction has expired.

2.7.4 Health and disability

Information in relation to sickness absence, health or disability is sensitive personal data under the General Data Protection Regulations (GDPR).

The Trust does not authorise the disclosure of information pertaining to absence records in references, with the exception of parental leave. Nor does the Trust authorise the disclosure of information pertaining to health or disability. Where such information is requested the response must be:

It is the policy of the Trust that information in respect of sickness absence, health or disability is not provided in response to reference requests, regardless of whether an offer of employment has already been made.

2.7.5 Capability

The following obligations must be met in accordance with the Trust's Master Funding Agreement:

2.8 Where a member of the teaching staff employed at an academy applies for a teaching post at another academy, maintained school or a further education institution, the academy trust must at the request of the board of governors or academy trust of that other education institution:

- a) advise in writing whether or not, in the previous two years, there has been any formal capability considerations or proceedings for that teacher at the academy or the predecessor school;
- b) give written details of the concerns which gave rise to any such considerations of that teacher's capability, the duration of the proceedings and their outcome.

2.7.6 Settlement Agreements

- Any reference proposed for inclusion in a settlement agreement must be scrutinised by the HR Director prior to inclusion.
- Keeping Children Safe in Education sets out the circumstances in which settlement agreements must not be used. Furthermore, you must never agree a reference as part of a settlement agreement which fails to disclose relevant information in relation to safeguarding as detailed above.
- Where a reference has been agreed as part of a settlement agreement, the terms of the agreement which relate to the provision of references must be adhered to in their entirety.

2.8 Declining to provide a reference

- 2.8.1 It is only in exceptional circumstances that the Trust would exercise its discretion to decline to provide a reference, other than to confirm role, salary and dates of employment. In the event that you wish to exercise this discretion, advice must be sought from the academy designated HR Officer before doing so.
- 2.8.2 Whilst there is no legal obligation to provide a reference, declining to provide one could give rise to a number of legal claims.

3. THE PROVISION OF REFERENCES IN RELATION TO FINANCIAL MATTERS

- 3.1 Before responding to any request from a third party for a reference relating to financial matters, you must obtain consent from the employee concerned, unless the Trust is required by statute to respond.
- 3.2 Often reference requests in relation to financial matters (loans, rental agreements etc) will ask the Trust to comment on an employee's honesty, integrity and whether the end of their employment for any reason is foreseen. Provided there are no such concerns, the reference can confirm this to be the case, but must state 'As at the date of this reference and to the best of my knowledge I have no reason to e.g.....doubt name's integrity..... foresee the end of name's employment.'
- 3.3 You must also include the following disclaimer in any financial reference provided.
- 3.4 The above information is given in confidence and good faith. No responsibility can be accepted by the Trust or any of its Directors, Officers or Employees for any errors, omissions or inaccuracies in the information, or for any loss or damage that may result from reliance being placed upon it.

4. THE PROVISION OF REFERENCES FOR VOLUNTEERS

- 4.1 If you exercise your discretion to provide references for volunteers you must do so on a fair and consistent basis, and make it clear in the reference that the person was a volunteer and not an employee of the Trust. You should take the same level of care as required in relation to providing references for people employed by the Trust, and ensure that any reference provided is true, accurate and fair, and that it is not discriminatory, negligent, malicious, defamatory or dishonest in any way.

5. RESPONDING TO REQUESTS FROM STATUTORY AGENCIES

- 5.1 A previous employer is under a legal obligation to provide information to a Jobcentre Plus Authorised Officer by the deadline specified. It is a criminal offence to delay, obstruct, refuse or neglect to comply with a requirement to allow access to electronic records or references or to neglect to answer any questions or to furnish any information or produce documentation when required to do so. Failure to do so could result in the maximum penalty figure being imposed with in addition a continuing penalty per day.
- 5.2 If any other statutory agencies (or organisations purporting to be) request information you must seek advice from the academy designated HR Officer or the HR Director before responding.

6. REQUESTING EMPLOYMENT REFERENCES

- 6.1 References must be obtained, scrutinised and managed in accordance with Keeping Children Safe in Education. To ensure that all relevant questions to safeguard children and young people are asked, only the reference pro forma provided by the Trust must be used for the purposes of obtaining employment references. The Trust will never accept an open reference addressed 'to whom it may concern'.
- 6.2 All offers of employment with the Trust are subject to the receipt of a minimum of two written references deemed to be satisfactory by the Trust. If this condition is not met, the associated offer of employment must be withdrawn. In assessing whether references are satisfactory you must have regard to this guidance, to Keeping Children Safe in Education (DfE 2023) and to any advice and guidance you receive from the academy designated HR Officer.

Keeping Children Safe in Education reminds us that:

222. The purpose of seeking references is to allow employers to obtain factual information to support appointment decisions. Schools and colleges should obtain references before interview, where possible, this allows any concerns raised to be explored further with the referee and taken up with the candidate at interview.

223. Schools and colleges should:

- not accept open references e.g. to whom it may concern;
- not rely on applicants to obtain their reference;

- ensure any references are from the candidate's current employer and have been completed by a senior person with appropriate authority (if the referee is school or college based, the reference should be confirmed by the headteacher/principal as accurate in respect of any disciplinary investigations);
- obtain verification of the individual's most recent relevant period of employment where the applicant is not currently employed;
- secure a reference from the relevant employer from the last time the applicant worked with children (if not currently working with children), if the applicant has never worked with children, then ensure a reference from their current employer;
- always verify any information with the person who provided the reference;
- ensure electronic references originate from a legitimate source;
- contact referees to clarify content where information is vague or insufficient information is provided;
- compare the information on the application form with that in the reference and take up any discrepancies with the candidate;
- establish the reason for the candidate leaving their current or most recent post; and
- ensure any concerns are resolved satisfactorily before appointment is confirmed.

6.3 When assessing whether references are satisfactory you should consider the following:

6.3.1 Are both references from appropriate referees?

The Trust's Reference Policy and application form set out who the Trust will accept employment references from. In the first instance, it is the responsibility of the employing manager, to scrutinise the suitability of the referees named on the application form and to obtain alternative referees from the applicant where required.

It is common for applicants to name referees in their current or former school/s who are not the Headteacher, or for them to name two referees at the same employer/organisation. This is not acceptable. When seeking to obtain a reference from a school the request must be addressed to the Headteacher (or equivalent), and references from two separate employers/organisations must be sought unless the person has not worked for or volunteered with more than one organisation.

Where the two most recent periods of employment did not involve working with children, young people or where relevant vulnerable adults, but previous work or volunteering of this nature has been undertaken, a reference should be sought from the last time that the individual was engaged in such work or volunteering.

If due to a person's employment history (or lack of) you are unsure of where to obtain references from, advice can be sought from the academy designated HR Officer.

When references are received, as part of and in addition to considering the content in accordance with Keeping Children Safe in Education, you should ask yourself the following questions:

6.3.2 Are the references complete?

Where a reference is returned with information missing this must be followed up and a written response obtained. In particular, where the Trust's reference pro-forma is not returned and an alternative reference provided, the referee must be contacted again in writing with a request to respond to the elements of the reference relating directly to safeguarding.

6.3.3 Do the references highlight any apparent concerns?

If a reference indicates that there are safeguarding or performance concerns, or omits the information required to make an assessment in respect of this, you should discuss the reference with the academy designated HR Officer. Where concerns are highlighted, fair, open and appropriate discussions will need to take place with the person that has provided the reference and the subject of the reference, before a decision can be made as to whether the offer of employment should be withdrawn. Any offer of employment must not be withdrawn until advice has been sought from the the academy designated HR Officer.

6.3.4 Do any of the references appear to be an 'agreed' reference?

If the reference provided appears to have been agreed as part of a settlement agreement, the circumstances surrounding the end of the person's employment and the content of the reference should be subject to scrutiny as with any other reference. Please be aware that the receipt of an agreed reference does not automatically provide legitimate grounds for an offer of employment to be withdrawn.

6.3.5 Are the references signed?

References must be signed by the person providing them – electronic scans of signatures are acceptable, or original signed hard copies should be obtained. In the event that it has not been possible to obtain a signature, the email to which the reference was attached must be filed with the reference.

6.3.6 Verbal references

Verbal references will not normally be sought, but in the event that they are sought or received, you must never act on verbal references alone. If verbal references give rise to questions or concerns that are inconsistent with written references, or if the person providing a verbal reference is unwilling to state the same information in writing, advice should be sought from the academy designated HR Officer as to how to proceed.

7. OBTAINING REFERENCES FOR VOLUNTEERS

- 7.1 When considering whether references obtained for volunteers are appropriate and satisfactory the same thorough approach as that for considering employment references should be applied.

8. DATA PROTECTION AND ACCESS TO REFERENCES

8.1 Disclosure requests made to the Trust in respect of references provided

Whilst there is an exemption under schedule 2 to the Data Protection Act 2018 (which supplements the GDPR) that allows employers to refuse to disclose a confidential employment reference to an employee or former employee if he or she requests access to it; you should always be prepared to give an employee or former employee a copy of any reference you have provided about them.

8.2 Disclosure requests made to the receiving organisation

The subject of the reference can apply to the receiving organisation for a copy of the reference provided by the Trust, and even if the reference was marked 'Private and Confidential for the addressee only', the receiving organisation will need to consider what information they can reasonably disclose/withhold. The likelihood is that the reference will be disclosed.