

The Nene Education Trust
Policy on Providing Employment References
HR16

Key Manager	HR Director
Ratified:	Autumn 2018
Review Dates:	Autumn 2021
Location of Policy:	Trust wide
Access to Policy:	Open
Policy Context:	This Policy applies to all staff of the Trust and to those others offered access to such resources.

Revision History

Revision Date	Description	Sections Affected	Revised By	Approved By
07/11/2018	Annual review	All sections	H R Director	HR Committee 07/11/2018
Autumn 2021				

It is the Nene Education Trust's normal policy to provide references regarding the employment of current or past staff when requested by another employer, training/education provider or potential lender.

It is not NET policy to provide 'open' references or 'open testimonials' addressed 'To whom it may concern'.

This policy applies to all members of staff and must be adhered to at all times when a request for a reference is received.

1. Introduction

There is no legal obligation for an employer to provide a reference for either an existing or a former employee. However, it is custom and practice that schools and academies provide references for staff. As such, a refusal to provide a reference may give rise to the following issues:

Discrimination, a failure to provide a reference because one of the protected characteristics will entitle an employee/ex-employee to bring a claim for discrimination.

A claim for breach of contract, for example, where it is custom and practice to provide a reference, it may become an implied contractual term that one will be provided for employees.

A breach of the implied term of trust and confidence if an employer refuses to provide a reference for an employee.

Victimisation, where the employee/ex-employee has previously brought discrimination proceedings against the employer, given evidence or information in connection with such proceedings, made an allegation of unlawful discrimination or done anything else under or by reference to the discrimination legislation.

2. Authorised Providers of References

Any reference provided using the referee's job title or on the employer's headed notepaper is likely to be seen as an employer's reference.

Only the Principal or CEO may provide employment references in relation to job applications for current or former staff.

An appropriate senior/line manager may provide references from a training/education provider for entry onto a professional course. In these instances, the Principal must authorise the content before it is issued.

If any staff member without delegated for issuing a reference, provides a reference, it will be given in a personal capacity and not on behalf of the school or academy.

3. Consent

In accordance with the Data Protection Act 2018 and the General Data Protection Regulations (GDPR), it is best practice to have consent from a data subject before providing a reference about them. There are a number of ways to gain consent:

For ex-employees, we will gain consent on cessation of their employment using the exit questionnaire or at an exit interview.

As prospective employers, we gain consent on our application forms, which can then be shared with the previous/current employer if requested.

For current employees we can approach them directly to confirm their consent to issue a reference or ask the prospective employer to confirm they have consent.

4. Content

Where a reference is provided, the employer has a duty of care, both to the subject and the recipient, to ensure that the reference is compiled accurately and honestly and is not discriminatory, negligent, malicious, defamatory or dishonest in any way. If an employer fails to comply with the duty of care, the subject or the recipient may have recourse to legal action against the employer.

There is a duty on employers to ensure that references are true, accurate and fair in substance. There is no duty on employers to be 'full and comprehensive'. This is imposing too high a burden. However, employers must not give a misleading impression through omission.

A copy of any reference provided must be retained by the academy on the individual's personal file.

Tips for providing references:

- check that all the information given is factually correct or is based on best knowledge. Be prepared to provide evidence to support the information should any of the details be challenged.
- include factual information relating to the employee's employment history.
- make sure that any comments about performance or absence are not related to a disability.
- ensure that comments on suitability for a new job are given with care because they will be more difficult to justify objectively.
- ensure that all references are marked "Strictly Private and Confidential". The following disclaimer that can be included in all references:

'In accordance with the Nene Education Trust's normal practice, all reasonable efforts have been made to ensure the truth and accuracy of this reference and the Nene Education Trust cannot accept any liability for errors or omissions or any decisions based on it.'

Do not:

- include the employee's sickness absence record as this is discriminatory under the Equality Act 2010 unless the job is already offered.
- provide a "glowing" reference for an employee who is presenting cause for concern as a means of enabling them to leave the organisation. This may be considered to be dishonest and unethical. It is not good management practice and may give rise to legal action by the recipient or subject.

- avoid giving an honest reference in respect of an employee who is presenting cause for concern. However, the matter to be referred to in the reference should have previously been discussed with the employee and evidence of the concerns provided.
- expect information provided within a reference to be treated as confidential by a prospective employer.
- provide "to whom it may concern" references.
- provide information about an employee/ex-employee by email or verbally on the basis of additional information, which is not intended to be a reference. A High Court case found employers may be liable for negligent misstatements about ex-employees, even if those statements are not contained in a reference.

An employer may be held liable for the unlawful actions of a prospective employer on receipt of a reference, if it is 'evidentially foreseeable' that the prospective employer will react to the reference in a certain way, as a direct and natural consequence of the supply of the information. For example, if on receipt of an inaccurate reference a job offer is withdrawn then the employer will be liable if the content of the reference is the reason for the withdrawal of the offer.

5. Absence:

If a request for information relating to sickness absence, health or disability is received, you should not respond unless you have written evidence that employment has already been offered to the employee and you have the express consent of the employee before disclosing the information. This is because information relating to sickness absence, health or disability is sensitive personal data under the Data Protection Regulations.

The Trust's default policy is **not** to provide information related to sickness absence.

If following an offer of employment, an employer is asked to provide information regarding the reasons for the employee's absence it should exercise caution and seek consent from the employee. You are advised to show the employee the reference for the employee and ask him/her to verify the accuracy of the record and consent to its disclosure.

6. Teachers subject to capability proceedings:

In accordance with the School Staffing (England) (Amendment) Regulations 2012 (as amended), all maintained schools must, at the request of a governing body or academy proprietor who is seeking a reference in respect of a teacher taking up a teaching post, advise in writing whether or not that employee has, in the preceding two years,

been the subject of the school's capability procedures and, if so, provide written details of:

- the concerns which gave rise to this
- the duration of the proceedings
- their outcome

These provisions do not apply to academies established before April 2013. However, funding agreements from April 2013 will include the requirement for academies to also share this information. You should refer to your own funding agreement for confirmation.

7. Oral References

Oral references should only be provided in exceptional circumstances. What is said about an employee orally (i.e. face-to face or over the telephone), has the same status as what is said about them in a written reference and should, therefore, be treated with the same care and attention to detail.

Ensure that any oral reference provided is honest, factual and does not include any information about areas of concern that have not previously been discussed with the employee.

If an oral reference is given because an urgent response is required, the reference should be confirmed in writing and should accurately reflect the oral statement. Wherever possible, supply a pdf email attachment as an urgent response and follow-up with a hard copy. In providing an oral reference, information that is "off-the record" should not be given. Everything said should be confirmed in the written response.

If you are seeking an oral reference on a job applicant then the above points apply in reverse. You should always ensure that written confirmation of the oral reference is received before the appointment is confirmed.

8. Access to references

Data protection and access to references Employees have extensive rights of access to personal information held by their employer. This could include references received from former employers or other referees, provided they amount to "personal data".

The Information Commissioner suggests that where it is unclear whether information contained in a reference is either known to the individual or confidential, the employer should contact the referee and enquire as to whether they object to the reference being disclosed to the employee. Even if a referee says that they do not want their comments disclosed, an employer may be obliged to disclose the reference if it is reasonable in all the circumstances to comply with the employee's request.

Employees can apply to the receiving organisation for a copy of their reference, but the receiving organisation is entitled to take steps to protect the identity of any individuals referred to in the reference, including the author of the reference, for example by redacting their names.

9. Character References

If staff wish to provide character references for colleagues or former staff, they **must** make it clear that they are doing so purely as a personal acquaintance or friend and not in their capacity as a member of the Nene Education Trust. Under **no circumstances must** NET headed paper, academy telephone, email address or job title be used. The NET will not accept any responsibility for the provision of character references.

For further information and advice, please consult the HR Director.