

Human Resources  
Goireasan Daonna

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# Providing an Employee Reference

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# Introduction

This guidance provides managers with the protocols for providing an employee reference whilst ensuring that legislative requirements are not compromised.

Although there is no obligation or legal duty to provide references (with the exception of requests dealing with approved persons in regulated financial roles), the Highland Council considers it is good practice as it is an essential part of the recruitment process and provides us with an opportunity to verify an employee's work knowledge and skills within the context of their new role.

# Guidance

## Roles & Responsibilities

### Manager Responsibilities


A manager who provides a reference has a duty to take reasonable care to both the employee and prospective employer by ensuring that any detail included in a reference is factually accurate and truthful. The overall balance of the reference must not be misleading and must be a fair, impartial, non-discriminatory and true assessment about an employee, their job role or their performance.

A manager should be able to provide evidence to support or validate the detail provided if requested to do so.

Managers should be aware that the employer who receives the reference might share it with the employee.

Any reference is disclosable if tribunal or court proceedings were brought regarding the reference.

Where the employee has not provided a named contact to provide the reference, or where the named contact is no longer employed by the Highland Council, the



reference should be provided by an appropriate manager, offering only basic details, for example job title, start date, end date of employment and reason for leaving.

Managers must not disclose sensitive personal data (e.g. reveal the reason for sickness absences or details of disciplinary issues) unless they have communicated with the employee explaining what information will be included within the reference and to whom it will be provided. Explicit consent should be gained in writing prior to providing the reference.

If a manager is unsure whether they should be providing a reference, has doubts about the content to include or is concerned about what is being asked, they should seek advice from [HR](#).

A copy of the reference, along with any subsequent enquiries, should be retained securely and confidentially for a period of 6 months. Once 6 months has lapsed, it is the managers responsibility to dispose of the information securely either by confidential waste or shredding.

## Written references

Written references should be addressed to the named individual who requested it and marked "strictly private and confidential" and "to be opened by addressee only". There are risks associated with providing "to whom it may concern" references in that they may fall into the hands of third parties without the employee's consent.

## Discrimination

A manager must be mindful not to disadvantage an employee when providing or checking references. This means that an employee must not be put at a disadvantage because of any of the 'protected characteristics' (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex or sexual orientation). The manager providing the reference should not disclose any information that could be used in a discriminatory way - for example, a manager must not disclose someone's disability in a reference.

# Types of Reference Requests

## Verbal reference

It is not considered best practice to provide any form of verbal reference. Where a request has been made and it is necessary to provide a verbal reference, the guidance already outlined within this document should be followed. In addition, in the first instance, ask what information is required and arrange a time to call back – this will help you to verify the nature of the caller and will ensure that you have time to consider and prepare your response.

Consideration should also be given to the following:

- do not make statements that you would not be prepared to put in writing and back up with facts
- provide written confirmation of the verbal reference
- keep a note of what was discussed verbally.

## Detailed or Factual reference

A detailed or factual reference is sometimes called a work reference and can be basic or detailed.

A **basic work reference** is a brief summary of employment and may only confirm:

- the employee's job title
- the dates of employment.

A **detailed or factual work reference** can also include someone's sickness or absence record. However, an employer must follow current discrimination laws and guidance. The reference should not include any absences related to disability or parental rights – for example, maternity or paternity leave.

A detailed or factual work reference can also include:

- the employee's most recent job title and any posts the employee previously held within the organisation
- a brief description of the employer's key duties and level of responsibility

- whether the individual held responsibility for staff, money, equipment etc
- the dates of employment
- details about an individual's skills, ability and experience
- limited details of any current, relevant disciplinary records
- limited details of any current absence
- the reasons for leaving the job for example resignation or expiry of contract.

## **Personal or Character reference**

A character reference is usually requested from someone who knows the applicant well. It is sometimes called a personal reference.

On occasion, managers of the Highland Council may be asked to provide a personal or character reference. Where a reference is requested in a personal capacity, the manager must provide this from their own home address and make clear that it is provided in a personal capacity.

The Council's headed paper, postal and email addresses must not be used nor should any detail of the individual during their employment with the Council be referred to.

A character reference can include:

- how the person writing the reference knows the applicant
- how long they have known them
- details about the applicant's character and personal strengths (e.g. communication/leadership) and the applicant's suitability for the new role.

## **Other types of reference request**

Although managers are responsible for providing employment references to prospective employers, reference requests may also be received from banks and landlords in relation to mortgage lending or tenancy leases. The information requested within these references focusses on confirmation of employment, job title, salary and sickness entitlements. These types of references are provided by Business Support.

# What can be Included in a Reference

## Should a reference include sickness absence details?

If you are asked to comment on an employee's sickness absence record within your reference, you should ensure that the information you provide has, in the first instance, been discussed with the employee.

When providing details about an employee's sickness absence record, the information provided can be limited to the number of days and occasions of absence providing there is general consent from the employee to provide this information. Further details can be provided if the explicit written consent of the employee has been obtained e.g. identifying a length of any period of absence due to hospitalisation. In this situation the detail and content of the reference must be shared with the employee and consent obtained prior to submission.

## Should a reference include details of disciplinary?

The following **should** be referred to in a reference, as failure to include such detail is likely to give a false impression:

- where an employee has a live disciplinary warning
- where an employee has been dismissed following disciplinary warnings
- when an employee has been dismissed for gross misconduct
- when an employee is undergoing a disciplinary investigation at the time of the reference request. In these circumstances, you must ensure the information states that:
  - the reference makes clear that the investigation is not concluded
  - an opinion as to the validation of the allegations has not been reached
  - the reference is without prejudice.

Where an employee resigns prior to the outcome of any disciplinary investigation or hearing, you should make clear within the reference that the allegations made against the employee were not fully investigated and that no outcome/decision was reached.

## What should not be Included in a Reference

References **must not** be misleading or include irrelevant personal information.

The employee should know what to expect in any reference and there should not be anything contained within a reference which you have not already discussed with the employee. If you have concerns about conduct and performance which you have not raised with the employee previously, then this must **not** be included in the reference.

References should **not** include details of any reasonable adjustments in relation to a disability or return to work following a period of absence. Nor should it include information about adoption, maternity or paternity leave, disciplinary records or any investigations – unless they are recent and relevant and where appropriate the employee has provided written consent.

## Examples of Statements for a Reference

Below are some samples of safe and risky statements.

Safe statements are **evidence-based facts**, whereas risky statements are perception or **opinion** based and generally contain vague statements:

Examples of safe responses	Examples of risky statements
Sophie was given a first written warning regarding timekeeping on (enter date).  <b>(ensure the warning is still live)</b>	<b>Role</b> Sophie frequently turned up to work late in the mornings.
John's attention to detail and the quality of work he produces requires development. In his most recent performance review he scored 3 on a scale of 1-5 (where 1 is the lowest and 5 is the highest).	John's work was considered unsatisfactory.
Richard was dismissed for gross misconduct from the Highland Council on (enter date) for theft and deliberate falsification of records.	Richard's conduct at work left a lot to be desired!



Kate supervises 10 members of staff. She has excellent leadership skills and her management of others is exceptional. This is recorded in her most recent Performance Development Review.

Kate supervises 10 members of staff and we think she is pretty good at managing people.

## Consent

When an employee has named a manager as a referee it is good practice that they obtain the manager's consent first. However, in the event that a discussion has not taken place, the manager providing the reference should liaise with the employee to whom the request for the reference relates, to obtain their general consent for a reference to be provided. If there are any doubts about whether or not the employee has given consent, then it is recommended practice that contact be made with them to check whether or not they want the reference to be provided.

## Confidentiality

Information relating to references should be recorded, maintained and processed confidentially and securely by the relevant Service.

## Discrimination

The Equality Act 2010 legally protects individuals from discrimination in the workplace and in wider society. It governs fair and equal treatment for individuals who have a protected characteristic. Managers must ensure that any information provided within a reference is not discriminatory.

## Data Protection Regulations

Information processed may include manual or electronic records and should be undertaken in line with the General Data Protection Regulations i.e. retention of relevant information.

When providing a reference, all personal data must be handled in accordance with employment legislation and data protection legislation. Under the General Data Protection Regulation 2018 (GDPR) and the Data Protection Act 2018 employees are entitled to gain access to information that the employer holds on them. The right to obtain such information is known as a subject access request (SAR). There is an exemption under Schedule 2 to the Data Protection Act 2018, whereby individuals are not entitled access to a confidential employment reference written about them from the author of the reference nor from the new employer providing the reference clearly states that it is confidential and intended for the recipient only.

## Quick Links

The Hyperlinks listed here will redirect you to the related guidance, letters, information, and relevant organisations mentioned in this policy.

<b>HR Microsite</b>	<a href="#">Click Here</a>
<b>Equal Opportunities</b>	<a href="#">Click Here</a>
	<a href="#">Click Here</a>
	<a href="#">Click Here</a>
	<a href="#">Click Here</a>
	<a href="#">Click Here</a>

