

Supplementary Guidelines for University staff on providing student references

1 INTRODUCTION

Staff are frequently asked to provide references for students to enable them to gain employment or move on to further study. This supplementary guidance accompanies, and should be read alongside, the separate summary guidance for University staff on providing student references. It includes further detail on relevant considerations for staff when asked to provide a student reference, the format and content of academic references, circumstances where special considerations may apply and dealing with other types of reference requests.

At the end of this note, there is an outline of relevant policy considerations for Colleges. This is important as by having a policy and making decisions in line with the policy, Colleges will minimise the risk of inconsistent or arbitrary decisions being made which in turn may assist in showing that a decision taken regarding a reference and/or its content was not discriminatory.

2 TYPES OF REFERENCES

A student reference can be requested for a number of reasons or purposes including as:

- an academic reference, which is given by a staff member on the University's behalf;
- a personal or character reference; given by the referee (not on behalf of the University);
- a simple verification of qualifications attained.

As the majority of reference requests the University receives are for academic references this guidance largely concentrates on dealing with requests of this type.

3 LEGAL CONTEXT

3.1 General duties

The University has a duty to provide an academic reference for students who complete a course.

In providing a reference the University owes duties to the student and the prospective employer (or further study provider) to take reasonable care that the reference is **true, accurate and fair and does not give a misleading impression**. The University also owes a duty to the student that a reference is not defamatory.

Failing to take care and observe these duties when providing a reference can result in legal claims (for example, for negligence, breach of contract, malicious falsehood or defamation) with potentially significant financial and/or reputational consequences for the University. It may also impact on a student's prospects and employability.

3.2 Data protection

Providing a reference will generally involve processing personal data and so will fall within the scope of data protection legislation (including UK GDPR and the Data Protection Act 2018) and the data protection principles under that legislation.

Personal data should only be processed (which in this context means providing a reference to a third party) where there is a valid lawful basis to do so. The lawful basis for giving a reference will usually be consent. **This means, before providing a reference, the referee should ensure the student's express consent has been given. A reference must not be given in the absence of consent.** If in doubt the referee should consult the student before any reference is given.

3.3 Equalities legislation (Equality Act 2010) and discrimination

Equalities legislation is also relevant to references. Particular care should be taken to ensure any reference, or any refusal to give a reference, is not directly or indirectly discriminatory. In addition, a reference must not victimise the subject, for example, if they have previously complained of discrimination.

3.4 Confidentiality

All references are given in confidence and should be marked "*private and confidential - for the attention and benefit of the addressee/committee/panel only*". If staff intend the reference to be confidential to both the subject of the reference and the recipient, this must be specified.

4 POINTS TO CHECK BEFORE AGREEING TO PROVIDE AN ACADEMIC REFERENCE

4.1 Obtaining student consent and checking the legitimacy of the reference request:

The University has strict rules about the disclosure of personal information, these are underpinned by the University's obligations under the data protection legislation.

4.1.1 Existing students:

Before submitting job or further study applications, students are asked to obtain permission from the staff member they wish to use as their referee. If the College has designated a reference co-ordinator(s), students should be advised that, unless agreed otherwise, the co-ordinator(s) should be named as their referee.

If you are the appropriate person to give a reference and the student has already asked you to be their referee for a particular organisation, you can assume a reference request from that organisation is genuine without further consent from the student. However, if in any doubt about the legitimacy of the organisation, or the request, you should discuss with the student and seek their consent before any information is provided.

Similarly, if the reference request is vague (e.g., gives no detail on the reason for the request) you should discuss the request with the student and (if appropriate) the requester to ensure both the reason for the request is clear and the student consents to the reference being provided.

4.1.2 Former students:

The University also receives a significant number of reference requests relating to applications for a new role or promotion several years into a past student's professional career. As with any reference request you should ensure the former student's consent to this has been given. If, as referee, you lack recent knowledge of the former student, this should be made clear at the start of the reference. References of this type should largely concentrate on verifiable facts from the former student's records, although referees may, if they wish, ask the former student for an update on their activities since graduating.

4.1.3 Checking the identity of the student:

Whether for a current or former student ensure that you have checked the identity of the student if there is any doubt e.g. they have requested a reference using a personal email address that is not held on University records, or there are two or more students with similar names. If you need to verify the identity of student it would be appropriate to contact them and ask for confirmation of, for example, their date of birth, an address held on SITS, information on modules they studied.

4.2 How the request is made

4.2.1 Written requests:

Requests for references should be made **in writing on the requesting organisation's headed paper**. Do not disclose information in response to an unsolicited reference request in any format. A

reference should only be provided where the student's consent has been given, you can verify the requesting organisation's identity, and the reason for the request, corresponds with the consent the student has given.

4.2.2 Email requests:

Should only be treated as genuine if the request is on the requesting organisation's headed paper as an attachment and the email address can be verified to the requesting organisation. Request resubmission of the request if not received in this format.

4.2.3 Telephone or verbal requests:

Avoid responding to telephone requests or following up a written reference by telephone. This is unless the student needs a reference at short notice, there is no practical alternative, and the additional steps discussed below are taken.

The reasons for avoiding telephone requests or responding by telephone are that telephone references have the same legal effect as written references but:

- are at greater risk of being misinterpreted;
- it is harder to prove what was said;
- for incoming calls, it can be difficult to verify the legitimacy of the request and/or the requester's identity.

If there is no alternative to providing a telephone reference you should take particular care and follow the steps below:

- check the requester's telephone number. Ensure it corresponds with the relevant organisation's address and matches the consent which the student has given;
- do not provide a reference on an incoming call. Ensure you call the requester back;
- clearly state the reference is given "*without legal responsibility*" and you reserve the right not to answer certain questions;
- follow up the call in writing immediately; and
- make clear to the recipient that the written reference, not the telephone reference, should be treated as the University's formal reference.

4.3 Refusal to provide a reference

In most cases the University should not refuse a legitimate request for an academic reference where the student's consent has been given. In exceptional cases, where a refusal is being considered, particular care is required to ensure any refusal is not discriminatory and, in communicating the refusal, no personal data is provided, and no negative inferences can be drawn. If in doubt you should seek advice from the Information Governance or Legal Services team.

4.4 Responding promptly

Insofar as possible, responses to legitimate reference requests should be given with minimum delay. Delays can reflect badly on the University's reputation and may jeopardise the student's chances of employment or onward study. If a delay is inevitable, the request should be acknowledged and a timescale for response given.

5 REFERENCE FORMAT AND CONTEXT

5.1 In writing

Other than in exceptional cases (as discussed above in the context of telephone requests), always provide a reference in writing – not verbally or over the phone.

5.2 Using the University letterhead or stamp

In some cases, the requesting organisation will ask that we complete their reference form. This is acceptable - the University's official stamp can be used to authenticate the response.

In all other cases the reference should be provided on the University's headed paper.

You should **only use the University's stamp or headed paper if you are providing a reference on the University's behalf**. You must not use these when providing a reference in a **personal capacity**. Any reference given in a personal capacity must make clear that this is **NOT** a University reference.

5.3 Context

Explain the context in which the reference is given and your relationship with the student, for example, course leader or placement supervisor etc. If you have limited knowledge of the student or a particular issue and it is still appropriate for you to give the reference e.g., because the student completed their course a number of years ago, then you should include the statement "*to the best of my knowledge and belief.*"

6 REFERENCE CONTENT

A reference should be **true, accurate and fair and present a balanced overview of the student. It should not give a misleading or false impression or unfairly present a poor image of the student.**

Take care to distinguish between:

- **statements of fact** (e.g., relating to past performance); and
- **expressions of opinion** (e.g., relating to future performance).

6.1 Factual accuracy

A good reference is an **accurate, factual account which can be substantiated** (preferably by written evidence). References which are limited to accurate, factual information are generally difficult to challenge. Do not provide information if there is any doubt of its accuracy. Any uncertainty should be checked with the Academic Registry, local records or the student themselves.

If the reference could be viewed as unfavourable or poor, it is advisable to ask a colleague with knowledge of the student to review and check this. Any negative statement must be objectively fair and true. If there could be disagreement on the contents of a reference, the student should be informed, given the opportunity to use an alternative referee and/or to explain before the reference is provided.

The organisation seeking the reference should not be misled about the academic history of a student if material to the student's future employment or study. However, this needs to be balanced with ensuring that the reference does not include trivial or irrelevant detail as doing may result in a complaint. Determining what is, or is not, of relevance must be considered on a case-by-case basis.

6.2 Assessing competency:

If a student has been assessed on a number of competencies, these can be stated (as verified by marks sheets or placement reports) as an illustration of their strengths and weaknesses in the competencies assessed. The following is an example of how this might be expressed, as a factual statement of a student's performance against a number of competencies: "*based on their placement performance, a student displayed above average competence in team-work and/or subject knowledge but performed less well in communication skills, although they still achieved the minimum required standard in all competencies.*"

6.3 Providing an opinion

If providing an opinion, the reasons for the opinion should be given. These should be taken from the student's file and a contemporaneous note filed with the reference giving the evidence for the opinions expressed. Opinions should be based on the referee's honest belief and should not be malicious or perverse. The referee must be qualified to give the opinion and should only do so if it is within their professional competence and expertise. If you have limited knowledge of an issue, for example, a student's honesty and integrity, and it is appropriate for you to comment on this, you could say, "*I know of nothing that would lead me to question X's honesty.*" (assuming that is your honest belief).

6.3.1 Opinions which are outside your knowledge or expertise:

Avoid giving an opinion on areas beyond your knowledge or expertise. If a student is applying for an unusual job, unconnected with their degree discipline or past experience and about which little is known, you should avoid giving any opinion about their suitability for the role.

6.3.2 Future performance:

If asked to comment on a student's likely future performance, base any statements insofar as possible on fact, e.g., '*on the basis of past performance and projecting this to the final year I am optimistic that Joe Bloggs could obtain*'. Be clear this is just opinion, not fact.

6.3.3 Do not undermine or contradict the award(s) the University has given the student.

For example, it is not appropriate to say that a student is unsuitable to be a nurse if he/she has just successfully completed a University nursing qualification. If the individual's character is important to the role then care is needed. For example, describing a nursing student as "harsh and abrasive" led one University to seek legal advice following a student complaint. Similarly, it is also unreasonable to refuse to provide a reference if the course has been completed successfully. It is permissible to assess the strengths/weaknesses of a candidate, if this can be supported with evidence (as discussed above), but if a student is wholly unsuitable for their chosen profession, his/her future should be addressed through the assessment regulations/course requirements.

6.4 Including a disclaimer

It may be possible to limit potential legal liability when providing a reference if it is made clear to the subject of the reference that a reference will only be given if he/she accepts that there will be a disclaimer of liability to him/her and to the recipient of the reference. However, a disclaimer will only be effective if fair and reasonable, and whilst this may cover expressions of opinion it is unlikely to provide protection relating to statements of facts. There is no guarantee that a disclaimer will not be challenged in court, and the validity of a disclaimer may not be upheld. Whilst staff still advised to include a disclaimer in any reference (a suitable disclaimer is given below) this should not be viewed as providing the University or the referee with absolute protection. This underlines the need for care in responding to any reference request.

"It is standard practice of this University to provide references on the understanding that legal liability is not accepted."

7 CIRCUMSTANCES WHERE PARTICULAR CARE IS NEEDED AND/OR SPECIAL CONSIDERATIONS UNDER DATA PROTECTION LEGISLATION AND/OR EQUALITIES LEGISLATION APPLY

7.1 Discrimination - impact of equalities legislation (Equality Act 2010)

Care needs to be taken to ensure that a reference is not directly or indirectly discriminatory under the equalities legislation because of any protected characteristics (which include: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation).

Of particular relevance for references will be any comment on performance, attendance or sickness absence where there is a risk that these may give rise to disability discrimination. These issues, and their inclusion in any reference, also need to be considered in the context of the data protection legislation as discussed in the paragraphs below.

7.2 Requests involving student health information

Where reference requests ask for sensitive data (also referred to as special category data under the data protection legislation) for example, on physical or mental health, or sickness absences this **should not be provided unless explicit written consent has been given by the student** for the disclosure of the sensitive information requested. This **consent should be obtained on each separate occasion a reference of this type is given**. In the absence of consent the information should not be given, and the following response could be provided: *"I am not in a position to comment regarding X's health/sickness"*

7.2.1 Health course students:

For some students there are requirements to report on sickness etc. as part of the wider duty of care to the reference requester. In these cases, students should be informed that reporting on sickness absence is a routine part of providing references for them and that they are agreeing to this when their consent to provide a reference is given.

7.3 Attendance records:

Care should be taken if dealing with a request involving a student's attendance records. If attendance is not a requirement of the course (i.e., this does not influence whether the student passes or fails) then, in most instances, it would not be appropriate to include this information in a reference.

If attendance is a requirement of the course, this should be written into the course/assessment regulations. Students should be made aware that poor attendance may be referred to in their reference and, it is on this basis, that they consent to a reference being given.

It is also important to distinguish between attendance/absence records and absence records due to sickness. The former, which gives no reason for the non-attendance, will not include special category data whereas sickness absence records will. The inclusion of sickness absence records in a reference should be dealt with in the same way as for other health related information as discussed above.

7.4 Action under Disciplinary, Fitness to Practise or Academic Misconduct Regulations:

Actions by the University against a student should not be mentioned in a reference unless it is directly relevant to the duty of care that you owe to the reference recipient (i.e., it is relevant to the job, course, etc. the student has applied for). If the job or course assumes a high level of responsibility, such as caring for vulnerable adults or children and/or a high level of personal integrity, then it may be appropriate to refer to the student's poor standing. Where a student has been disciplined and has been told that a record of the disciplinary action will stay on his/her file for a certain number of months, this should only be mentioned, where relevant, during the period it remains on file. Disciplinary proceedings in which the allegations were dismissed should not be mentioned.

Where any such actions are relevant, the student should be made aware that the University's reference will refer to these.

7.5 Criminal records

The University's standard policy on student references is not to respond to queries about any possible criminal convictions, cautions or bindings-over. The University obtains this information

from the student at the application stage through a self-declaration process and through the Disclosure and Barring Service (DBS) for students in Health, Wellbeing and Life Sciences.

There are special rules under data protection legislation for processing criminal offence data and this information cannot be provided without a student's explicit and written consent. The University is also bound by the DBS Code of Practice and cannot, by law, pass on DBS Disclosure information.

The University therefore expects potential employers or course providers to conduct their own self-declaration and DBS checks where these are required and not to request these from the University.

8 OTHER TYPES OF REFERENCES

8.1 References for criminal justice or civil court proceedings

The University can be asked by a solicitor to provide a reference for one of their clients (who is also a student). This may be for an academic reference in connection with a personal injury claim (e.g., how an accident has affected academic attendance / performance) or a character reference for a student accused of criminal activity. In most cases, the University's policy is to decline to provide witness evidence (including references) for civil actions. Where staff are willing to consider such a request, they should restrict the reference to verifiable facts and:

- be clear whether the reference is given in a personal capacity (i.e., a character reference) or on behalf of the University (as an academic reference);
- ensure the student's consent has been given; and
- for a character reference, you should ensure you have sufficient knowledge of the student in order to give an opinion on their character.

8.2 Requests for qualification checks

In some cases, a prospective employer or future course provider does not require a full reference but simply needs confirmation that the student applicant has the University qualification stated in their application form. The University subscribes to an online service to provide this information to such enquiries: The Higher Education Degree Datacheck (HEDD) service available at <https://www.hedd.ac.uk/>. Subject to having the student's consent to confirm their qualifications, you can check and verify awards gained through Sheffield Hallam University, Sheffield Polytechnic or Sheffield City Polytechnic using this service.

9 SECURE DELIVERY

As references contain personal data (potentially special category personal data) it is important that they are provided to the requester securely.

DTS provide [guidance](#) on how to encrypt and protect sensitive, confidential or personal data.

10 RETENTION OF REFERENCES

Copies of any references must be retained, for a minimum period of 1 year after the date of the reference (in case of possible litigation from the student due to an unsuccessful application to a prospective employer or course provider).

11 DISCLOSURE OF REFERENCES

A student may make a request for access to a reference given by the University as a subject access request. However, the data protection legislation specifically exempts "confidential references" given to or received by a data controller from the provisions on the data subject's:

- the right to be informed;
- the right of access; and
- all the principles, but only so far as they relate to the right to be informed and the right of access.

This means a reference will, in many cases, be exempt from disclosure regardless of whether it is held by the organisation that has given or received it.

Nevertheless, there may be circumstances where the data protection legislation still permits a confidential reference to be disclosed. For example, in relation to any potential claim or litigation where the reference is of direct relevance to a claim relating, for example, to the inability of a student to pursue a particular role or career.

There may also be other circumstances where, despite being given in confidence, a reference may still need to be disclosed where this is required by law, a Court or enforcement order.

Referees should therefore not assume that a reference will remain confidential and not seen by the student. In any event, as discussed above, references should be true, accurate and fair and should not contain information which cannot be substantiated. A referee should never put anything in writing that they would not be prepared to defend in Court.

Where a request for disclosure of a reference is received, whether from a student or a third party, you should refer this to the Information Governance and Legal Services teams.

12 COMPLAINTS OR CLAIMS

Should a complaint or claim concerning a reference be made you should NEVER admit liability, as this may invalidate the University's insurance for the claim. **Refer the matter immediately to Legal Services.**

13 COLLEGE POLICY

Each College is advised to adopt a consistent policy on the provision of references for students and to make staff and students aware of this. By having a policy and making decisions in line with the policy, Colleges will minimise the risk of inconsistent or arbitrary decisions being made which in turn may assist in showing that a decision taken regarding a reference and/or its content was fair and not discriminatory.

13.1 Identifying a reference co-ordinator:

A student reference may require input from several staff members to give a complete picture of the student. Colleges' should identify an appropriate person to co-ordinate student references (normally the relevant course leader, unit leader or placement supervisor) who the student can name where a reference is required. If the student names an undesignated referee the request can still be satisfied by the College's designated referee if the College policy has been explained to both the recipient of the reference and the student.

13.2 Reference template:

Colleges may wish to develop a standard reference template as this again brings consistency to references and can reduce the time taken in dealing with multiple requests. A standard template can be populated with 'core' factual information for a student which can be checked easily for accuracy and updated as necessary for multiple requests. A summarising section is helpful and could be checked with colleagues (and possibly the student). Standard headings for the template could include time management, motivation, academic ability and "other" (special incidents/events). The latter places the onus on the referee to check the file and not rely on personal memory. It also allows difficult matters, such as whether to refer to disciplinary action, to be considered at a more senior level.

In cases where an employer requests information via their own standard proforma (with pre-set questions) it may not be appropriate to provide the reference in the College's template reference format and the requesting organisation's proforma can be used.

14 FURTHER GUIDANCE

Further guidance on data protection issues is available on the Information Governance sharepoint page: [GDPR / Data protection - staff guidance and help](#) or contact: dpo@shu.ac.uk

To contact Legal Services email: SHULegal@shu.ac.uk or go to the sharepoint page: [Legal Services](#).

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