



EMPLOYMENT REFERENCES

MANAGERS' GUIDE



Human Resources
June 2023

WEST LoTHIAN COUNCIL

DEALING WITH EMPLOYMENT REFERENCES

MANAGERS' GUIDE

1. PURPOSE

- 1.1 The council's Recruitment and Selection Policy states that references **must** be obtained **before** a formal offer of employment can be made. The purpose of a reference is to obtain information, from a third party providing a factual check on an applicant's employment history, qualifications and experience to date.
- 1.2 The purpose of this guide is to explain how to deal with both incoming and outgoing requests for employment references and set out the council's standards for processing all reference requests.

2. LEGAL POSITION

- 2.1 The council has a duty of care, both to the individual concerned and to the prospective employer and is obliged to ensure that any references provided are true, accurate and fair. The reference must not give an unfair or misleading impression overall, even if its discrete components are factually correct.
- 2.2 Failure to disclose relevant information to a prospective employer could render the council and the referee liable in damages, assuming that the prospective employer had suffered a financial loss having relied on inaccurate or incomplete information.
- 2.3 What information is relevant to the reference will depend on the circumstances and context of each case. Where there is any doubt, advice should be sought immediately through Human Resources.

3. GENERAL GUIDANCE

Confidentiality

- 3.1 References should normally be given in confidence to the person or organisation requesting the reference.
- 3.2 Although reference subjects have no automatic right to see what is being written about them, they may gain access to the reference through the courts by taking legal action.
- 3.3 If you issue a reference, you cannot therefore rely on the reference remaining confidential. This reinforces the point of sticking to factual and verifiable information in all cases.
- 3.4 In accordance with the council's policy on Access to Personal files, a candidate may request to view any references obtained by the council about them.

Equalities and discrimination

- 3.5 The council is committed to Equality of Opportunity in Employment, central to which is the prevention of discrimination, harassment and victimisation. Our commitment in this regard extends to the giving of references both for current and ex-employees.

Telephone References

- 3.6 Telephone references are generally discouraged. However, the same principles apply and any information sought or issued by the council should deal only with the confirmation of factual information concerning employment details of the individual concerned.
- 3.7 When taking telephone references:
- Ensure the reference is taken from the appropriate person in the organisation
 - Make it clear to the referee that notes will be taken and that under the Data Protection Act 1998 a copy of the notes may be provided to the person if they request it and that the referee's name will be disclosed
 - Base the conversation on the employment reference pro forma or pro forma for character references as appropriate
 - Ask factual questions only
 - Immediately record detailed notes which should be signed, dated and put in the employee's personal file
 - Follow up by written confirmation

4. GIVING REFERENCES

What should I be aware of when writing a reference?

When providing references, you need to be aware that the employer owes a duty to the recipient (e.g. prospective employer) and to the employee. **This duty is to take reasonable care and to provide information that is true, accurate and fair, and does not give a misleading impression.** If an employee fails to secure a job because of an inaccurate reference, they may seek an appropriate remedy through the courts.

Overall, there is no obligation to provide a full and comprehensive reference, but care should be taken to ensure that if information is omitted, the reference, as a whole, is not misleading.

What should a reference contain?

A reference should contain only factual information that can be verified and substantiated if necessary. When responding to reference requests from prospective employers, no information should be given which is subjective or which speculates on the applicant's suitability or otherwise for the job in question.

The golden rule is: 'Avoid all value judgements and stick to the facts'.

While factual information on live disciplinary warnings may be included in a reference, care must be taken when writing references for employees who have

resigned pending disciplinary investigation/action. Please contact Human Resources for advice.

References should not refer to performance or other issues that have not been previously discussed with the employee. Referees should also avoid making reference to any claims or grievances relating to discrimination.

Who should respond to a reference request?

Referees should have first hand, recent knowledge of the subject of the reference.

It is important to remember that whoever responds to an incoming reference request to the council, is acting in their capacity as an employee of the council*. Both the individual concerned and the council are potentially liable for any inaccurate, incomplete or misleading information given.

In all cases, Depute Chief Executives must ensure that clear authority exists within each service as to who can reply to a reference request

*Note: Any reference request addressed to an employee of the council in respect of an individual who is known to that employee but who was never employed by the council can only be responded to on a personal basis by the employee concerned. Council headed paper must not be used.

Can I include a disclaimer clause?

Including such a clause stating that the reference is given 'without legal responsibility' can be useful. This makes clear to the prospective employer that the council does not accept any legal liability for either the contents of the reference or the conclusions that the prospective employer might draw and act upon from the contents of the reference.

A disclaimer will be no defence if the reference maliciously defames the subject, or if it fails to comply with the duty of care or if the intention is to deceive the recipient.

What if I am asked whether or not I am aware of any convictions that a person might have?

The Rehabilitation of Offenders Act 1974 makes it an offence to mention any conviction that is regarded as 'spent' in terms of the Act. In addition, there are circumstances where a candidate may not be required to disclose certain conviction(s) which cannot be regarded as 'spent' under the Act.

Therefore, any information on criminal convictions should not be shared in a reference and employers who request such information should seek this information from the candidate or Disclosure Scotland.

What if I feel that I cannot give a person a favourable reference?

Remember that it is council policy to avoid subjective and speculative views and to stick to confirming only factual information. If you do this, you are unlikely to be put in the position of giving what could be regarded as an unfavourable or adverse response.

It is up to a prospective employer to decide whether or not they regard the reference as confirming what they need to know or wish to hear.

Do I have to provide a reference?

While there is no legal obligation to provide a reference, the council aims to provide references for its employees and ex-employees, wherever possible.

Failure to provide a reference, where an employee or ex-employee has previously made a claim for discrimination could give rise to a claim for victimisation.

Should I check with the employee before I provide a reference?

You may like to check with the employee before you provide a reference, however, the employee or ex-employee would have provided your details to the new organisation and they are therefore likely to be aware that you are being contacted for a reference.

Are there any specific instances where I should not provide a reference?

If you have a close personal friendship or relationship with the individual, it would be a conflict of interest to act as a referee on behalf of the council. In these circumstances, the reference request should be passed to an alternative Senior Manager for completion.

Should I share a copy of the reference with the employee or ex- employee?

It is good practice to share a copy of the reference with the individual concerned.

Can I be a personal referee?

You can act as a personal referee for any individual whether they work for the council or externally. However, you must ensure that you use your own notepaper and say that the reference is being made in a personal capacity. On no account should a personal reference be written on council headed paper, or in any way suggest that the council endorses the reference.

Should references that the council provides be retained?

Copies of written references and notes of telephone references must be kept on the employees' personal file.

5. REQUESTING REFERENCES

When should references be sought?

References must only be taken up following a conditional offer of employment being made to the preferred candidate. This reinforces the point that references are intended to provide factual checks on employment history, experience and qualifications to date and should not play an influential part in the initial short-listing and interviewing processes.

The employment reference proforma requests referees to provide information on the candidate's sickness record. It is therefore important that references are not requested prior to a conditional offer of employment being made as it is against the law to ask questions with regard to a candidate's health before making an offer of employment.

From whom should references be sought?

References are sought from those referees identified on the candidate's application form, one of which should always be the current or last employer. The candidate's current employer should not be contacted for a reference without the candidate's permission.

Two satisfactory references must be obtained for an external candidate before an offer of employment is made. Where the preferred candidate is a current West Lothian Council employee, one reference must be obtained which should be from the current line manager.

Where a referee does not provide a reference, the preferred candidate must supply a third referee and the process continued.

What information should be requested from a referee?

By taking up a reference, the council is seeking to obtain information on an applicant's employment history, qualifications and experience to date in order to confirm the facts presented by the applicant. In addition, information on sickness absence and disciplinary action will be requested.

Human Resources will issue a standard reference request proforma (see Appendix) to referees as part of the recruitment and selection process.

Who decides whether or not the reference is satisfactory?

The chair of the recruitment panel is responsible for deciding if a reference is satisfactory or not.

References should be considered in good faith and in relation to the genuine requirements of the job concerned.

Advice should be taken from Human Resources if there is any doubt as to the content of a reference.

Can someone start working for us without a reference?

No. New employees should not start working for the council before receipt of two satisfactory references. If an employee starts before receipt of their references, the requirement to obtain satisfactory references is no longer a condition of employment and the employee may acquire contractual rights as a result.

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REFERENCE REQUEST

Please note the council's policy in respect of references is to seek only factual information that can be verified and substantiated if necessary. West Lothian Council will treat any reference provided in the strictest confidence and in accordance with the Data Protection Act. Should any reference however result in the withdrawal of a conditional offer of employment, we will discuss the reasons for the withdrawal with the applicant in accordance with the council's Recruitment and Selection Policy.

If there is insufficient space in any part of this form please use and attach an additional sheet of paper, ensuring that it is signed and dated.

Past or present employers should complete **Sections A and C**

All other referees should complete **Sections B and C** (e.g. Character/Education References)

Please return the completed form to: recruitment@westlothian.gov.uk

SECTION A – Past or Present Employers

Applicant Name:		
Please confirm dates of employment:	From:	To:
Please confirm the applicant's current or most recent job title and salary:		
How long have you known the applicant and in what capacity?		
Please give a brief summary of the applicants current or previous responsibilities commenting on the applicant's competence, specifically in relation to any documented review of their performance:		
Please comment on how the applicant has demonstrated skills, knowledge and experience relevant to the post applied for:		
How many days and occasions of sickness absence has the applicant had during the last 2 years of employment? Please also provide reasons for absences:		

Are there any current disciplinary warnings on the applicant's record?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
Is the applicant currently being investigated under any of your employment policies?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
If the applicant is no longer employed by you was he/she the subject of: any disciplinary action during his/her employment with your organization; or any pending disciplinary action at the time he/she left your employment?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
Are you aware of any allegations against the applicant that relate to any safeguarding issues/referrals (including any referrals to the Disclosure & Barring Service, SSSC or GTCS)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		

Please complete the following questions only where the applicant has applied for a post involving driving duties as indicated in the job description.

While in your employment, has the applicant been involved in any driving incidents at work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
Does the applicant have any medical conditions that may affect their ability to drive?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		

SECTION A – Non-Employer Reference

Applicant Name:	
How long have you known the applicant and in what capacity?	
<p>Please provide examples of how the applicant has demonstrated skills, knowledge and experience relevant to the post applied for:</p>	
<p>Any additional relevant information:</p>	

SECTION C – To be completed by all referees

<p>The answers given above have been given in good faith and are correct to the best of my knowledge and belief:</p>	
Referee Name (please print):	
Signature:	
Email Address:	
Telephone Number:	
Date:	