

Guidance for providing employment references

This guidance is intended to be a reminder of the legal rights and duties and practical do's and don'ts when providing references. This guidance also applies to students who had periods of employment with the University.

Legal rights and duties

Most employers (including the University of Westminster) do provide brief, factual references via their HR/People functions as it is good practice and helps maintain an amicable relationship with the colleague. At the University, any offers of employment are subject to satisfactory references, and these are sought once an offer of appointment has been made to the successful applicant. To request a brief, factual reference, please contact HR-Services@westminster.ac.uk.

If a reference is given, the employer owes **two** duties:

1. Reasonable care must be taken to ensure that the information in the reference about the person, their role and performance is true, accurate and fair – this is a duty owed to both the colleague and their potential employer.

A reference should therefore not be misleading, inaccurate or discriminatory. Overly negative or positive references are inaccurate and could be found to be negligent if a prospective employer relies on them when deciding whether to offer a job.

Given these risks, many employers opt to provide brief, factual references, which is what we do within the University for colleagues. Such references simply set out the colleague's dates of employment and job title. However, as factual references don't provide future employers with much of a sense of the colleague's ability, performance or their character, a future employer may sometimes contact the colleague's line manager for further details about the colleague. Line managers should be wary that any additional verbal information they give will still be subject to the reasonable care duty.

Information given in a verbal reference carries the same risks and responsibilities as that given in written references, but can be open to misinterpretation and misreporting. Remember you have no control over what information has been recorded, or how this is passed to the Interview Panel or Recruiting Manager, and so the giving of verbal references should be avoided if at all possible. Most importantly, do not be tempted to make incautious or off-the-record statements verbally, which you would not be prepared to put in

writing, and keep a written record of what you have said. Also, remember that email exchanges should be treated with the same care and caution as hard copy references, as they are also disclosable.

2. Duty not to make defamatory statements – this is a duty owed to the colleague.

If an employer makes a defamatory statement in a reference, the colleague could potentially sue the employer for libel under defamation law. However, to mitigate this risk, the reference should be given in good faith and without malice, it should be accurate and factual and marked “Strictly Personal and Confidential” and “for the addressee only”.

Do’s and don’ts

Please see below a brief reminder of the do’s and don’ts when providing a reference:

Do:

- Do provide brief, factual employment references via your HR/People functions as it is good practice and helps maintain an amicable relationship with the colleague, which is what we do at the University of Westminster. At the University, any offers of employment are subject to satisfactory references, and these are sought once an offer of appointment has been made to the successful applicant. To request a brief, factual reference, please contact HR-Services@westminster.ac.uk.
- Make it clear that it is your policy to only provide brief, factual references. This ensures that your approach is consistent and allegations about inaccurate, negligent or deliberately misleading references are avoided. Please note that this is our policy within the University of Westminster.
- Mark the reference “Strictly Personal and Confidential” and “for the addressee only.”
- Include a disclaimer of liability in respect of negligent misstatement, errors and omissions.
- Bear in mind that the colleague may see the reference. Provided it is clear the reference was intended to be given in confidence, an exemption under the Data Protection Act 2018 will be available both to you (in giving the reference) and the new employer who receives it, in the event that the colleague makes a subject access request under UK GDPR. However, whether the new employer decides to apply the exemption may be out of your hands. Moreover, if the colleague brings a claim to which the reference is relevant, the court will order that it is disclosed.

Don't:

- Include inaccurate statements in the reference.
- Include irrelevant information. For example:

- Subjective opinions, for example the colleague's suitability for a new job.

Remember that where you give an opinion, evidence should be provided to support it and a balanced overview of the colleague should be presented.

- Irrelevant personal information, like mentioning a colleague's race, religion, sex, age or other protected characteristics, because this is potentially discriminatory.

- Information about a colleague's performance or sickness absence record, if your policy is to give factual references only. The colleague will wonder why you've been inconsistent with the policy and may potentially bring a discrimination or victimisation claim or claim a breach of the implied term of trust and confidence.

For queries relating to more complex or sensitive reference requests, managers are welcome to contact their People Business Partner or People Adviser in the People, Culture and Wellbeing team.

People, Culture and Wellbeing Department

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