

Report for: Staffing & Remuneration Committee, 6 February 2020

Item number:

Title: Employment References Policy

Report authorised by: Richard Grice – Director of Customers, Transformation and Resources

Lead Officer: Ian Morgan, Reward Strategy Manager

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:**

1 Describe the issue under consideration

1.1 Policies are not statutes or straightjackets for the reaching of judgments. Rather, the purpose of policy is to enable employers to exercise discretion fairly and lawfully and to provide employees with a degree of certainty as to how that discretion will be exercised.

1.2 The purpose of this report is to provide the committee with recommendations for adopting the Employee References Policy (Appendix 1) and Employee References Practice Notes (Appendix 2). The proposed policy sets out who can give corporate references, how requests for references should be handled and the types information that can be provided.

2 Cabinet Member Introduction

2.1 Not applicable.

3 Recommendations

3.1 That the Committee approve the new Employee References Policy and Practice Notes ready for implementation with effect from February 2020. These changes will be communicated to staff in February 2020.

3.2 That the Director of Customers, Transformation and Resources and the Chair of Staffing and Remuneration Committee will be delegated the power to make minor changes to the policy and practice notes without the need to refer to committee.

4 Reason for Decision

- 4.1 The council does not currently have a formal employment references policy. Currently, the council does not have any guidance or standardised format for giving employment references, leaving this to managers to decide upon the format of employment references on an ad hoc basis. In order to ensure that the council provides fair and accurate references it must have a policy and guidance.

5 Alternative options considered

- 5.1 To not have a policy on employment references, and risk negligent, inaccurate or misleading references being provided due to a lack of guidance.

6 Background information

- 6.1 The policy and practice notes cover all council employees, except those based in Schools who have their own process. This policy also covers agency workers and interims.
- 6.2 The practice note does not cover pre-employment checks which are covered by our recruitment policy.
- 6.3 Key aspects of the policy
- a. The council will provide 'limited' references, the reference will be limited to:
 - The capacity in which they were employed, i.e. job title
 - Dates of employment
 - A summary of absence if specifically requested
 - b. Human Resources will provide 'limited' references on behalf of the organisation.
 - c. Staff who work with children, young people or vulnerable adults may be subject to additional referencing to ensure that the council meets its duty of care when giving a reference for a job which involves working with, or caring for, children, young people or vulnerable adults.
 - d. If an employee leaves with serious questions hanging over their performance or conduct, or if these concerns arise after the employee has left, the council will disclose the issues accurately to any prospective new employer. The council will make it clear whether any allegations have, or have not, been investigated.
 - e. Personal references must clearly state that these are given in a personal capacity and are not provided on behalf of the council.

7 Contribution to strategic outcomes

Not applicable.

8 Statutory Officers' comments

8.1 Chief Finance Officer

There are no direct financial implications arising from this report.

8.2 Assistant Director of Corporate Governance

- 8.2.1 Generally, all information given in a reference must be based on fact or capable of verification. An employer is under a duty of care to give a true fair and accurate reference. This duty of care is owed to the employee/former employee who is the subject matter of the reference and also to the third party/prospective employer who requested the reference.
- 8.2.2 In addition, an employer is under a duty to ensure that the reference is not misleading, and to take reasonable care not to give misleading information either as a result of unfair selection of the information provided, and or by including facts and opinions in such a way which could give rise to false or mistaken inference in the mind of a reasonable recipient.
- 8.2.3 An employer may be found liable, to employees/former employees, but also to a prospective employer and can be sued for defamation of character (Libel) and / or negligence if the employer has written an inaccurate reference.
- 8.2.4 Where disciplinary action is pending it is in order to state this without providing the details of the case. However, to omit this information could be deemed to be in breach of the duty to the prospective employer.
- 8.2.5 In relation to allegations of improper conduct, in order to discharge the duty to give a true fair and accurate reference, an employer would need to be able to show that it had made a reasonable enquiry into the factual basis of each of the statements in the reference and it is fair. Case law has held that where an employer has honestly but a careless belief that the allegations of improper conduct are true, but these were never properly investigated, this belief would be a breach of the duty to give a true fair and accurate reference. Therefore, where an employer wishes to give an unfavourable reference about an employee/former employee they should confine their unfavourable statements

to matters into which they have made reasonable investigations and have reasonable grounds for believing to be true.

8.2.6 Although an employer needs to be careful about the information it discloses in a reference to ensure there is no breach of the duty to give a true fair and accurate reference case law has confirmed that the duty to disclose safeguarding concerns will be paramount in certain circumstances and may override other duties an employer may have to an employee. To address these competing duties the proposed employee reference policy sets out how the council will handle a reference where there are safeguarding concerns.

9 Use of Appendices

Appendix 1 – Employment References Policy

Appendix 2 - Employment References Practice Notes

10 Local government (Access to Information) Act 1985

Not applicable.

Appendix 1 – Employment References Policy

January 2020

Contents

1. Purpose	6
2. Scope	6
3. General principles	6
3.1 Safeguarding of Children, Young People and Vulnerable Adults	6
3.2 Gross Misconduct	7
3.3 Agreed References	7
3.4 Personal References	7
4. Confidentiality	8

1. Purpose

This policy is designed to give clear guidance for staff who receive a reference request for a former or current employee.

2. Scope

This policy applies to all council employees, except those based in Schools who have their own process. This policy also covers agency workers and interims.

The policy does not cover pre-employment checks which are covered by our recruitment policy.

Failure to comply with this policy may leave individuals subject to disciplinary action.

3. General principles

The council will only provide “limited” references unless it is for certain financial services jobs regulated by the Financial Conduct Authority or Prudential Regulation Authority, or in those circumstances covered by 3.1, 3.2 and 3.3.

The reference will be limited to:

- The capacity in which they were employed, i.e. job title
- Dates of employment
- A summary of absence if specifically requested

The council will not use the provision of a “limited” reference to conceal serious matters. See 3.3 below.

3.1 Safeguarding of Children, Young People and Vulnerable Adults

3.1.1 The duty of care placed on an employer when giving a reference for a job which involves working with, or caring for, children, young people or vulnerable adults, is greater than for jobs which have no such involvement.

In such cases, HR will confirm whether the former or current employee has been the subject of any disciplinary sanctions and whether they have had any allegations made against them or concerns raised which relate to either the safety or welfare of children, young people or vulnerable adults or about the applicant's behaviour towards children, young people or vulnerable adults.

Details about the outcome of any concerns or allegations may be provided if these are sought within the reference.

3.1.2 Safeguarding Details

For all references provided for safeguarding roles, the council will carefully consider the following statements

- Has the candidate been subject to a disciplinary procedure relating to the safety and welfare of children or young people or vulnerable adults?
- Has the candidate been subject to any allegations or concerns in relation to the health and welfare of children or young people or behaviour towards children or young people or vulnerable adults?
- Is there any reason why you are not completely satisfied that the candidate is suitable to work with children or vulnerable adults?

3.2 Gross Misconduct

The council may be exposed to claims from a subsequent employer if there is a serious issue of gross misconduct that the council fails to mention in a reference.

If an employee leaves with serious questions hanging over their performance or conduct, the council will disclose the issues accurately to any prospective new employer. Concerns that have not been put to the employee will not be included. The council will make it clear whether any allegations have, or have not, been investigated.

The reference must be true, accurate and fair in substance and must make mention of any negative issue, appropriately and objectively.

3.3 Agreed References

A reference may be previously agreed if it is provided as part of a settlement agreement. If the wording and content of the reference is agreed this must be used for all future requests for an employment reference.

Safeguarding responsibilities will trump agreed references where there are safeguarding concerns. The council reserves the right in any settlement agreement to disclose information that they may be obligated to disclose under any statutory duty.

3.4 Personal References

If you are asked to provide a reference in a personal capacity, (e.g. friend or colleague), the reference must clearly state this. The council's email system, headed paper or any other form of council logo, must not be used. To do so may give the impression that the council endorses the reference. The council will not be responsible if you decide to give a personal reference.

4. Confidentiality

All references are confidential documents and only those that are necessary and relevant will be involved in providing references. They must not disclose the content of a reference to anyone who is not a party to the process. However, the council may be required to disclose a reference in certain circumstances as required by law.

Appendix 2 – Employment References Practice Notes

January 2020

Contents

1. Introduction	10
2. Scope	10
3. Reference Requests	10
3.1 Receiving a request for a reference	10
3.2 Providing the information requested	10
3.3 Personal Files	11
3.4 Telephone Request	11
4. Further references	11
Appendix 1 – Standard Reference Template	12

1. Introduction

When providing references regarding the employment history of employees and ex-employees, the council has a duty to take reasonable care and provide information that is true, accurate, fair and does not give a misleading impression.

This practice note sets out the process to be adopted for providing employment history references for employees and ex-employees.

2. Scope

This practice note applies to all council employees, except those based in Schools who have their own process. This policy also covers agency workers and interims.

The practice note does not cover pre-employment checks which are covered by our recruitment policy.

3. Reference Requests

3.1 Receiving a request for a reference

It is the organisation's policy that references for a former or current employee may be given only by HR department. No other person in the organisation is permitted to provide a written or verbal reference about current or former employees.

Any requests for a reference should be passed to the HR department by emailing the HR mailbox at humanresources@haringey.gov.uk

3.2 Providing the information requested

HR will respond to all requests for references after satisfying themselves that the request is genuine, from a bona fide organisation and with a recognised return address. If they have any doubt over the validity of the request, they will seek the written permission of the employee before responding.

The reference should explain that it is the organisation's policy to respond to requests for information in a standard format. The only factual information that may be provided is:

- The capacity in which they were employed, i.e. job title
- Dates of employment

- A summary of absence if specifically requested

3.3 Personal Files

HR will refer to the employee's personal file before responding to the request to check for issues relating to a settlement agreement, disciplinary or safeguarding matter.

The reference will be provided in writing and a copy kept on the individual's personal file.

3.4 Telephone Request

Reference requests must be received in writing.

No telephone references will be supplied.

4. Further references

Further information can be found on [ACAS's website](#).

Any queries can be sent to the HR department at humanresources@haringey.gov.uk

Appendix 1 – Standard Reference Template

This template is for HR use only.

Strictly private and confidential

Dear []

[Name of employee] [was/has been] employed by [name of organisation] [from [date] to [date]/since [date]] as [job title].

[Name of employee] left the organisation [insert reason for termination of employment e.g. resignation, redundancy, or the expiry of a fixed-term contract].

Please note that it is our policy to only provide this basic information for employment reference purposes.

While the information provided is, to the best of [name of organisation]'s knowledge, true, accurate fair and in confidence [name of organisation] cannot accept any liability for decisions based on it.

Yours sincerely

[Director of Customers, Transformation & Resources]