



## **References - NEU guidance for members in England & Wales**

This factsheet provides answers to the most commonly asked questions about job references.

The right to access a reference

### **Do I have a right to a reference from my employer?**

There is usually no obligation on your employer to provide a reference. However, references play a central role in the vetting of teachers and other school staff. The employers of school and sixth form college staff are required by statutory guidance to seek references as part of their pre-employment checks. It could be argued, therefore, that references are essential to getting a job in a school or college. Without references, it is virtually impossible to do so.

Consequently, an employer who exercises a 'no references' policy is likely to be acting in breach of their implied duty of trust and confidence (refer to the NEU Employment Contracts factsheet). It is accepted practice in most schools and colleges that references will be provided if requested, since refusal to do so could result in adverse consequences for the employee. Contact the Adviceline if your employer refuses to provide you with references (details below).

### **Do I have a right to see my reference?**

You do not have an automatic right to see references provided in confidence, although some employers work on the basis that it is good practice to share the content of references with employees before sending them. After all, nothing within the reference should be unexpected. If you make a request for a reference from the supplying employer or the recipient, they can refuse because there is an exemption under data protection legislation in relation to job references. If your employer will not provide you with a copy of the reference, you may request a copy from the organisation to which the reference was sent.

### **How may I request a copy of my reference from the recipient?**

You must make your request in writing and provide enough information to allow the recipient to identify you. A request by email is acceptable. Your request should receive a reply within 20 working days.

### **What if the recipient refuses to let me see my reference?**

If you have asked for a copy of the reference from both your employer and prospective employer and you have been denied access, contact the Adviceline.

### **What if my employer lets me see the reference but it is factually inaccurate?**

Provided you bring the matter to their attention, your employer must rectify the error before submitting the reference.

If the reference has been submitted already but the error is trivial, eg your name is misspelt, you can inform the recipient yourself.

If the reference has been submitted already and the error is likely to cause prejudice, for example, you are said to have had more sick days than you did in reality, your head teacher or the referee (if they are different) should write to notify the recipient of the true position.

Your employer owes a duty of care to the prospective employer, and to you, as the subject of the reference. A reference must be true, accurate and fair. It must not contain an unfair or misleading impression overall, even if any discrete components are factually correct. An inaccurate or unfair reference may be challenged by you or your prospective employer.

### **What can I do if the reference is less than flattering?**

In most cases, there is very little you can do other than consider using another referee. It must be accepted that a reference is not always going to be a glowing testimonial. It is, after all, the opinion of the referee, but it should be reasonably objective.

Contact the Adviceline if you believe the author has given you a bad reference out of spite. You will need to prove that what has been said about you is both false and motivated by malice. It must be obvious to someone who knows neither of you that the author wrote the reference maliciously.

### **Is a bland reference a bad reference?**

A bland reference is not necessarily a poor reference, but it may require the prospective employer to do some investigating. They may ask for specific details or for a reference from another referee. Many employers provide a purely factual reference confirming job title, name and date of employment, thus avoiding the possibility of any action being taken against them.

## Principles and requirements of references

### **At what stage will a prospective employer ask for references?**

A prospective employer may seek a reference when you are shortlisted for interview, so that they may raise any concerns at the first interview. You may object to your current employer being contacted at this stage, but it is likely the prospective employer will prefer to see a reference before conducting interviews. If the prospective employer agrees not to ask for references until your appointment, you will be offered a conditional offer of employment, ie conditional on receipt of a satisfactory reference.

### **Who will write my reference?**

Your reference will normally be written by your line manager or head teacher as they have the most direct experience of your abilities, skills and work. The referee may also be someone other than your most immediate manager if the prospective employer is requesting confirmation of an area of specialisation. If you are a leadership teacher in a local authority controlled school, it may be necessary for the local authority to provide a reference as well.

### **I am trying to obtain my first teaching post. Who will be my referees?**

You will usually have to provide two referees. One referee should be able to comment on your teacher training experience and the other should be able to comment on your academic ability and your teaching performance. Some colleges and departments specify which tutor or other person should be named as a referee.

You may also wish to name a head teacher, teacher or head of faculty from one of your placement schools. You should ask potential referees for their permission before providing their details and inform them each time you are applying for a post, so that they do not unexpectedly receive requests for references.

### **What will a prospective employer ask for in a reference?**

The referee will usually have to state:

- the nature of their relationship with you
- your job title and salary
- current job description
- length of service in current post, the local authority and/or school
- reason for leaving
- whether you have the ability and suitability for the prospective post
- whether you meet the person specification
- whether you are suitable to work with children
- they must provide specific details of their concerns (if any)
- the number of days absent from work through ill health – reasons for absence or a description of ill health or disability issues are categorised as ‘special category data’ under the General Data Protection Regulation (GDPR) and cannot be disclosed without your express consent.

A reference may also include detailed information such as: your knowledge of the national curriculum; staff management and development; use of ICT and new resources; classroom management; your involvement and interaction with colleagues, pupils, governors and parents; your initiative, how you deal with change, your decision-making and communication skills; and your educational vision.

A referee may indicate whether they believe you need development in a particular area, as long as you are aware of this need. Issues relating to development needs, performance or conduct should have been raised and recorded beforehand.

A referee is not obliged to comment on areas upon which they cannot, or do not wish to, comment.

### **Is my employer permitted to disclose an allegation against me in references?**

Not if the allegation was proved to be false, unsubstantiated, unfounded or malicious.

You should note that false, unsubstantiated, unfounded and even malicious allegations may be disclosed in the ‘Other relevant information’ section of an enhanced Disclosure and Barring Service (DBS) certificate if the allegation forms part of local police records and the chief constable reasonably believes that the allegation is relevant to the DBS application and ought to be disclosed.

For more information about how to challenge the disclosure of allegations on your DBS certificate, refer to the NEU guidance documents Disclosure of Police Information to Employers and DBS Checks.

### **What if I resign before my employer can reach a determination about the allegation(s) against me?**

Your employer is obliged by statutory guidance to continue with the process of investigation and reach a decision about whether an allegation can be substantiated on the evidence available, even if you resign before all the evidence can be gathered

and/or a disciplinary hearing can be arranged. You should note that an adverse finding by your employer may have a continuing impact on your employment prospects even if you subsequently seek employment outside the education sector (ie substantiated allegations may be referred to in references).

It may be in your interests, therefore, to co-operate with any arrangements adopted by your employer to try to resolve the allegation(s) against you. Statutory guidance provides that, wherever possible, you “should be given a full opportunity to answer the allegation and make representations about it”. Contact the Adviceline if this does not happen in your case.

### **Will capability procedures be mentioned in any future reference?**

If you work in a maintained school (eg a community school) in England and apply at some future date to work at a different maintained school or in an academy, your school will be under a legal obligation – if asked to do so – to tell your prospective employer if you have been the subject of capability proceedings in the past two years. Your school will also be required to provide written details of:

- the concerns which gave rise to the capability proceedings
- the duration of the proceedings
- the outcome.

Even if you currently work in a non-maintained school (eg an academy, free school or sixth form college), your school may disclose matters relating to your capability in references, although they must be careful not to breach confidentiality or data protection principles when doing so.

### **What if I leave my former employer via a settlement agreement that includes an agreed reference, but this is not provided to the prospective employer?**

Both parties (employer and employee) are bound by the terms of the settlement agreement and this includes the wording of an agreed reference. If you have evidence that the employer has provided a reference at odds with the one agreed, contact the Adviceline for guidance.

### **I am worried I will receive a bad reference. What should I do?**

A selection decision will not rest entirely on the content of a reference. References are obtained once the application process has got underway, so there may be more than one interview and other opportunities to explain the content of the reference.

If you are concerned about receiving a bad reference, speak to the person you intend to use as a referee and ask them to provide you with a copy of the reference before it is sent to the recipient.

### **Will the prospective employer contact the referee?**

The prospective employer may contact the referee for more detailed answers or clarification. It is best practice for questions and answers to be written, as verbal communication increases the risk of misunderstanding or misinterpretation. What might have been a positive reference may be tarnished with comments that are made verbally and ‘off the record’. The reference will be compared against your application form and, if there are discrepancies, these may be taken up with you.

### **What happens if the prospective employer is not happy with my reference?**

A prospective employer may make a conditional offer of employment subject to satisfactory references. Therefore, the offer of employment can be withdrawn if the reference indicates you are highly unsuitable for the post. If you started the new post before your new employer received any references, the requirement to obtain

satisfactory references may no longer be a condition of your employment, so that you may have a right to remain in post.

### **What is an open reference?**

Usually starting with the phrase 'To whom it may concern', open references are often the product of a settlement agreement and are unlikely to include any adverse comments.

It is preferable that references derived from settlement agreements do not contain wording such as "to whom it may concern" or "agreed reference" as some employers do not like receiving such references.

### **What is a personal reference?**

A personal reference is often written from a friend's perspective rather than an employer's. It should not be written on a department or school's headed notepaper. Usually complimentary, they are not always effective in a selection process.

### **What should I do next?**

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000.

Further contact details may be found at: [neu.org.uk/contact-us](http://neu.org.uk/contact-us)

### **Further information**

NEU guidance – Employment Contracts

Information Commissioner's Office (ICO) guidance – The employment practices code, available at: [ico.org.uk/media/for-organisations/documents/1064/the\\_employment\\_practices\\_code.pdf](http://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf)

Government advice – References: workers' rights, available at: [gov.uk/work-reference](http://gov.uk/work-reference)

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