



Reference Policy

Document provenance

This policy was approved by –	
E-ACT’s Executive Leadership Team	Date: September 2018
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ELT Owner: Director of Corporate Services	Author: National HR Officer

Summary of changes at last review:

- Significantly updated policy to clarify E-ACT’s previous reference policy
- Details included of consent to request references to comply with GDPR; who can provide a reference; agreed references; refusal to give a reference; references from business/networking websites

Related documents:

- Recruitment & Selection Policy

This policy will be interpreted and applied in accordance with the employer’s duty to respect the rights of employees under the Human Rights Act, particularly the rights to freedom of speech, privacy, freedom of religion and belief and the right to freedom of association.

Recognised trade unions have been consulted on this policy.

1. Introduction and purpose

- 1.1 The purpose of providing an employment reference is to provide a prospective employer with enough information (as part of the recruitment/selection process) to determine an individual's suitability for a particular post. As a result, line managers can expect to be asked to act as a referee for current or former employees (described in this policy as "Applicants") from time to time.
- 1.2 Any reference given should be fair and accurate. Employers are obliged to give a reference if there was a written agreement to do or if they are under some other obligation to do so, such as providing certain information under the terms of the Funding Agreement; or as part of their safeguarding obligations to pupils (see DfE statutory guidance *Keeping Children Safe in Education*).

2. Scope

- 2.1 This policy only relates to professional references which bear E-ACT's name (including any academy names and logos) and represent an official statement of E-ACT's assessment of an existing or a former employee. These are written on E-ACT's notepaper (including any notepaper that bears any E-ACT academy name or logo).
- 2.2 This policy applies to all employees who are recruited by E-ACT including contractors, agency workers and workers.
- 2.3 Employees will not be required to follow this procedure when writing personal references. Personal references will not be written on E-ACT's notepaper (including any notepaper with an E-ACT academy name or logo) nor refer to a person's professional performance or their relationship with E-ACT. Personal references simply record one person's experience of another. Any individual giving such a personal reference is personally responsible for anything said in that reference. Such references must state that they are personal references and do not represent the views of E-ACT. The reference must not be sent from an E-ACT or academy email address.

3. Legislation and regulation

- 3.1 The provision of a reference will generally involve the processing of personal data and so be subject to General Data Protection Regulations ((EU) 2016/679)] and the Information Commissioner's Employment Practices Code. Records will be kept in accordance with our Staff Privacy Notice. In accordance with the data Protection Act 2018, Applicants are not entitled to view references written or received in respect of them where such references are provided in confidence. Those who give references owe a legal duty of care in their preparation to both the Applicant and the prospective employer. Those who give references owe a legal duty of care in their preparation to both the Applicant and the prospective employer.
- 3.2 You must only provide content which is true, accurate, factual and fair to the best of your knowledge and belief and which does not give a misleading overall impression. If this does not happen, the Applicant may bring a claim against both the Academy Trust and the Referee alleging, for example, deceit, negligence, negligent misstatement, defamation, malicious falsehood or alleged discrimination, such as victimisation because of a protected characteristic. The prospective employer may also bring a claim for negligence if they suffer financial loss or damage as a result of an inaccurate or misleading reference (e.g. following the withdrawal of a job offer).
- 3.3 E-ACT will respond to reference requests in relation to the latest safer recruitment guidance.

4. Telephone references

- 4.1. References for ex-employees will not be given over the telephone. References given in writing will not be discussed further over the telephone.
- 4.2. All references for applicants will be made in writing and not taken over the telephone. If this is not possible, full notes of the conversation must be taken and made in line with this policy.

6. Obtaining consent

- 6.1 Personal data in an employment context is information held on record by an employer about an individual. Providing personal data to a prospective employer about an employee or former employee will amount to processing and sharing for the purposes of the Data Protection Legislation.
- 6.2 Before providing a reference request, the referee must obtain consent from the employee/former employee in order for a reference to be provided.

7. Agreed references

- 7.1 If an ex-employee has named E-ACT or the academy as a referee and a reference has been agreed as part of a settlement it is essential that the referee does not deviate from the agreed reference to avoid a claim that an agreement was breached. All agreed references should be saved and clearly marked on the personnel file.

8. Providing a reference

- 8.1 The only employees empowered to authorise a professional reference will be the Headteacher, Regional Education Director, Regional Operations Director, a member of the Executive Leadership Team or the Chief Executive Officer. In certain circumstances¹ the Regional Directors can provide references for academy staff in place of the Headteacher.
- 8.2 Before dealing with a reference request, the Applicant's personnel file should be checked to establish:
 - whether there has been an agreed reference (see 7)
 - whether references have been given recently concerning the Applicant (to ensure consistency)
 - whether there are any safeguarding concerns, ongoing disciplinary matters or other sensitivities
- 8.3 Accurate information on an Applicant's performance must be given by someone who has recent and first-hand knowledge of an Applicant
- 8.4 Information provided must be capable of being independently verified, e.g. through appraisals or attendance records.
- 8.5 Information about an Applicant's health is sensitive personal data and cannot be disclosed without consent from the Applicant. Exercise should be cautioned and express consent should be sought

¹ For example where a complaint has been raised

from the employee before responding. If unsure, referees should contact E-ACT's procured HR Advisors.

8.6 Sensitive personal data of any type should not be included in a reference without express permission from the Applicant. Sensitive personal data includes, but is not limited to, the individual's racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health or condition or sexual life.

8.7 Details of sickness should not be provided unless an offer of a job has been made or with the direct consent of an individual.

8.8 Subjective opinion should be avoided. The reference must provide an overall balanced view of the Applicant, although it does not need to be full and comprehensive.

8.9 Comments on suitability for a new job must be given with caution as they are difficult to justify objectively. They should not be made where an Applicant is applying for a role different from the role they undertook.

8.10 Caution is required if there are outstanding issues, such as an ongoing disciplinary process at the time of the request. Advice should be sought from E-ACT's HR advisory service before proceeding.

8.11 Mark the reference as "Private and Confidential for the addressee only" and a copy should be retained on the Applicant's personnel file.

8.12 A disclaimer should be included in the reference making it clear that, while the information provided is, to the best of the organisation's knowledge, completely accurate, the organisation cannot accept any liability for decisions based on it.

8.13 Reference requests should be responded to within 5 working days of receipt of the request.

9. Refusal to give a reference

9.1 As an Academy, references are given as a matter of course, so if consideration is being given to refuse a request for a reference for any reason, advice must be sought from your line manager or E-ACT's HR provider.

9.2 Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another Trust, Academy or a maintained school, the Academy Trust must at the request of the board of governors or Academy Trust of that other educational institution:

- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
- b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

In these circumstances a refusal to give a reference would be a breach of the Academy's funding agreement.

10. Business networking websites

10.1 Where employees (or ex-employees) have set up personal profiles on business networking websites such as LinkedIn, these websites may include the facility for the user to request their contacts or other users to provide them with open recommendations, endorsements or references which are then published on their personal profile web pages for other contacts or connections, or prospective contacts or connections, to read. As these could potentially be construed as open references given on behalf of the Academy, all managers and employees are prohibited from providing these types of recommendations, endorsements or references online to or for the benefit of other employees or ex-employees, unless express permission is obtained from the Headteacher. All employment references to prospective employers should comply with this policy set out above and should not be given online in an open format via websites such as LinkedIn.

10.2 If these types of recommendations, endorsements or references are requested online by clients, customers, contractors, suppliers or other school-related business connections, managers should, in the first instance refer such requests to their line manager and seek the permission of the Headteacher before responding.

11. Responsibilities

The following responsibilities apply in relation to this policy:

11.1 National Directors/Regional Directors/ Headteachers will oversee the recruitment process and are responsible for ensuring references are obtained and followed up where necessary.

11.2 All staff who are responsible for providing references must ensure the reference they provide is fair and accurate. Where needed, advice should be sought from HR and E-ACT's procured HR Advisors.

12. Monitoring and compliance

12.1 E-ACT's internal audit team will carry out routine checks on personnel files to ensure two references have been obtained for new employees and will make a record of any refusals by E-ACT to provide a reference (see section 9).

13. Review

13.1 E-ACT will review this policy every three years' in consultation with recognised trade unions.