

St Ambrose Barlow RC High School



# ***Safer Recruitment***

## ***November 2023***

Person Responsible: Faye Breen

Ratified by Governors:

Date of planned Review: November 2024



## LOVE

A place of love where **everyone is welcome and respected.**

A family of faith where **everybody matters;** where we are **unique together;** where we plant the seed that will one day **flourish.**

A **community with Christ** at the centre where the dignity of each person is celebrated so that they can **embrace excellence.**

**I AM RESPECTFUL**  
**I AM KIND**  
**I AM INSPIRING**



## LEARN

A place to learn that is **alive with inspiring experiences** and a curriculum rich in knowledge and wisdom.

A family of faith where together we **seek truth, celebrate endeavour and achievement.**

A community that **values curiosity and nurtures learning** into action in the service of others.

**I AM READY**  
**I AM CURIOUS**  
**I AM BRILLIANT**



## LEAD

A place to lead where young people grow to become men and women for others, **creative and courageous, ambitious** for the higher gifts.

A family of faith where we serve with **integrity, hope and determination.**

A community that values justice for the most vulnerable so that all may have **life to the full.**

**I AM CREATIVE**  
**I AM BRAVE**  
**I AM A PROBLEM SOLVER**

# **Safe Recruitment Working Practices Schools**

**August 2022**

## **Contents**

1. Safe Recruitment Working Practices Schools.
2. Contents.
3. Introduction.
4. Safe Recruitment in Salford
5. Safe Recruitment Steps
6. E-Recruitment / Application Process
7. Scrutinising and Short Listing
8. Conditional Offer of Employment
9. Pre-Employment Conditions/Clearances
10. Disclosure and Barring Service (DBS) Clearance
11. Re-checks
12. Portability
13. Identification and Verification of Right to Work.
14. Online checks
15. References
16. Childcare Disqualification Checks
17. Statutory Framework for the Early Years Foundation Stage
18. Employees from within Salford City Council or another Salford School
19. Withdrawing a Conditional Offer
20. Volunteers
21. Governors
22. Appendix 1 Risk Assessment
23. Appendix 2 Preventing Illegal Working in the UK
24. Appendix 3 Reference Verification Confirmation
25. Appendix 4 Guidance on References
26. Purpose of References
27. Requesting References
28. Obligation to Provide References
29. Evaluating References
30. Providing a Reference
31. Appendix5: Staff Disqualification Declaration

## **Introduction**

Organisations who work with or on behalf of children, young people and other vulnerable client groups need to be vigilant in their recruitment and selection of staff. Abusers may target these organisations and can be extremely skilled at presenting themselves as caring and trustworthy individuals. Some indicators of abusive behaviour can emerge through inappropriate attitudes or inconsistent reactions and a vigorous recruitment and selection process provides important opportunities to identify these and deter and prevent offenders from gaining access to children, young people and vulnerable adults through their work.

This document has been prepared to provide information and support to all recruiting managers within schools who recruit new employees and outlines the key requirements expected in relation to the safe recruitment and selection of people. It is expected that the same principles will also be applied when engaging volunteers, contractors or via agencies.

Safe recruitment is a key priority for Salford City Council and schools to ensure our staff, pupils, clients, customers and service users are not subject to any risk whether it is through their day to day duties and responsibilities or access to the services we are depended upon to provide. The guidance has been designed to help ensure safe and effective recruitment and selection decisions are made in line with best practice, regulatory and legal guidance and the Salford Safeguarding Children Board (SSCB) Safe Recruitment Policy and Good Practice Guide.

The purpose of the document and overall approach to recruitment is to encourage the continuous improvement of safer recruitment practices across the City Council and schools to help deter, identify and reject unsuitable individuals and to safeguard all who access council services. Safe recruitment is not solely for those individuals who work with vulnerable people i.e. adults, children and young people but ensures best practice in recruitment across the Council.

## **Safe Recruitment in Salford**

Salford Council including schools, have a corporate social responsibility to account for the safety and protection of every individual it deals with as an employer, as a service provider and as a corporate parent. We therefore need to be confident that our recruitment practices embed this culture of safety and protection throughout the Council and schools.

For those individuals who will work and/or come into contact with children and young people, the recruitment practice requires managers to meet existing regulatory and legal requirements.

Whilst there are specific mandatory regulatory and legal requirements for children, young people and vulnerable adults, safe recruitment should not be considered to be exclusive to these service groups or staff. Implementing mandatory best practice across the Council and schools to engage safe recruitment practices and processes will encourage the continuous improvement in practice that will help to deter, identify and reject people who are unsuitable to work for Salford Council.

## Safe Recruitment Steps

### Application Process

We expect all candidates to use the Catholic Education Service application form. A curriculum vitae (CV) will only be accepted alongside a full application form. CVs on their own will not contain all the information required to support safer recruitment.

### Scrutinising and Short Listing

All application forms should be scrutinised to ensure that they are fully and properly completed, the information provided is consistent and does not contain any discrepancies.

The application form employment history should be checked for gaps and any subsequent identified gaps should be clarified during the selection process to enable the recruiting manager to make an informed decision to continue.

The detail of such gaps and explanation should be documented and recorded by the school. This must be complete prior to any initial offer letter being processed.

All candidates should be assessed equally by the members of the interview panel, against the criteria contained in the person specification/role profile without exception or variation.

### Conditional Offer of Employment

Following the verbal offer and acceptance of employment, employees must not commence working for the school until full clearances have been received and checked by the employer. All Community and Voluntary Controlled Schools must follow this safe recruitment practice and it is recommended to Voluntary Aided schools and Academies.

Pre employment checks include a DBS check, verification of entitlement to work in the UK in line with Asylum & Immigration Act requirements, receipt of satisfactory references, qualification check (where appropriate), childcare disqualification checks (where appropriate) and medical clearance. This also applies to internal appointments, in that staff should not transfer to a regulated activity post until such checks can be evidenced.

### Pre Employment Conditions/Clearances

The recruiting manager must complete the New Starter Form to evidence safe recruitment practice. The forms are to verify all school checks have been undertaken and the level of clearances required before employment can be confirmed. The recruiting manager must identify which conditions must be met for the post that they are recruiting to on the checklist otherwise the form will be returned for full completion.

Human Resources will then write to the applicant requesting the necessary clearances. Please note employment **must not** commence until all relevant conditions have been met and documentary evidence has been received and recorded on file by HR. The recruiting manager will be notified once all the relevant clearances have been received and a start date can then be confirmed.

Arrangements should not be made for a new employee to commence employment prior

to clearances being received and will be in breach of the safe recruitment requirements therefore the HR team will be unable to arrange for any payment to be made.

In exceptional circumstances, and only following a full assessment of risk and Governor's approval, it may be possible for a new employee to commence employment before all conditions have been met. These decisions

must be discussed with the HR team and be fully documented with the rationale recorded on the individual's personal file. A risk assessment form for this purpose can be found at **Appendix 1**.

If an existing employee is transferring employment or taking up secondary employment, Human Resources will undertake an audit of the clearances currently held on record.

## Disclosure and Barring Service (DBS) Clearance

All school-based positions require an enhanced check. This check must be in place prior to the individual commencing employment and documentary evidence to this effect on record. Whilst safe recruitment requirements are a key priority it is also recognised that there can be delays in clearance being received. However, these delays may be as a result of further checks being needed and could indicate an issue.

Where ONLY the DBS check is missing, a risk assessment could be considered and, on these occasions, the risk assessment form must be completed by the recruiting manager and approved by the Chair of Governors. For posts that have direct, unsupervised contact with children, young people or vulnerable adults, it is not advisable to proceed on the basis of a risk assessment. This will only be waived if it is agreed that as part of the induction process they are off site, out of direct contact, fully supervised or working on aspects of the job that don't require direct and/or unsupervised access to clients. Such decisions must be discussed with the HR team and be fully documented with the rationale recorded.

## Re-checks

From January 2015, in line with Council policy, there is no requirement for DBS re-checks. As DBS checks do not have an expiry date, the most recent check for each employee will therefore remain their current check. Schools will however reserve the right to carry out additional checks by exception where there are concerns in relation to an individual engaged in regulated activity.

It is recommended that schools request employees are asked to undertake a self-declaration annually to confirm they have had no new convictions, cautions or warnings.

## Portability

However, from September 2012, employees who are already in receipt of an enhanced DBS check from their existing employer may use that disclosure as proof of a DBS in the following circumstances (all of the below **must** apply):

- The employee's original DBS/CRB certificate can be produced.
- The DBS is clear of any positive disclosures.
- The employee has no break in service between leaving employment with their previous employer and commencing work at a school (with the exception of normal school holidays).
- The name and address of the employee are the same as other identification.

NB. This only applies where the DBS check has been undertaken by a Local Authority or academy. Where a DBS check has been undertaken by a privately commissioned HR service, this will not be acceptable to Salford City Council. Local Authorities adhere to a standard that cannot be guaranteed by a privately commissioned service.

The recruiting manager will need to verify the identity of the individual in line with existing guidelines, and satisfy themselves that the DBS certificate produced is both genuine and relates to the individual concerned.

Where an employee cannot produce an original DBS certificate, where there has been a break in service or where there are positive disclosures on the DBS check, a new DBS check will need to be undertaken in line with the Council's safer recruitment guidelines.

The above guidance does not preclude schools from complying with all other safer recruitment practices (i.e. satisfactory references, identity checks, registration with statutory bodies).

## Identification and Verification of Right to Work

All candidates must provide documentary evidence of their identity and right to work, in line with the Immigration, Asylum and Nationality Act 2006 ('the Act') came into force on

29 February 2008 (**Appendix 2**) A UK passport should always be seen where available. Additionally, a document such as a utility bill must be provided that verifies the candidates name and address. Where relevant, change of name documentation must be produced.

If the recruiting manager is checking identification, the original documents **must** be seen and a copy taken. The copy must then be signed and dated to say the original document has been seen and sent through to Human Resources.

## Online checks

Keeping children safe in Education 2022 now requires that school carry out online checks on all shortlisted candidates. The purpose of this is to help identify any incidents or issues that could either harm the reputation of the school or make the candidate unsuitable to work with children. School should only look for information that is available to anyone through the usual search engines and do not delve into any private social media accounts. Online searches should only be on shortlisted candidate. If anything is found online that is a concern then this should be discussed at the interview.

## References

Two written references are required for every new employee, one **must** be the individual's current/previous employer.

References will be requested by the recruiting manager using the standard reference request forms. References should be requested for all shortlisted candidates prior to interview to enable the recruiting manager to follow up any issues or gaps during the interview process.

The recruiting manager must complete a reference verification form (**Appendix3**) to confirm the information provided has been carefully checked against the application form for any discrepancies or anomalies and reflects the candidate's experience.

Further guidance on references can be found at **Appendix 4** Childcare Disqualification Checks

The Childcare (Disqualification) Regulations 2009 prohibit anyone who is disqualified themselves under the regulations or who lives in the same household as a disqualified person, from working in a relevant setting, including schools.

These regulations cover the following categories of staff in nursery and primary schools

staff who work in early years provision (including teachers and support staff working in school nursery and reception classes);

staff working in later years provision for children who have not attained the age of 8 including before school settings, such as breakfast clubs, and after school provision;

staff who are directly concerned in the management of such early or later years provision.

Candidates will be asked to undertake a self-declaration as part of the pre-employment checks to affirm that they are not disqualified. The Staff Disqualification Declaration form can be found at **Appendix 5**

Further information on these regulations can be found in the Childcare Disqualification Regulations – Guidance for Schools (March 2015)

## Statutory Framework for the Early Years Foundation Stage

A new version of the Statutory Framework for the Early Years Foundation stage took effect from 1<sup>st</sup> September 2014. There are some changes within this framework relating to out of hours provision in the document entitled, 'Keeping Children Safe in Out of Hours Provision

Under this framework, schools must ensure that people looking after children are suitable to fulfil the requirements of their roles. In addition to the checks carried out under this document, Early Years providers must ensure that individuals are not under the influence of alcohol or any other substance which may affect their ability to care for children. This includes medication which may affect an individual's ability to care for children.

In the event that individuals declare information which calls in to question an individual's ability to care for children, please contact the Schools HR Team for further advice. Further medical information may be required.

Employees from within Salford City Council or another Salford School

For internal candidates i.e. those already employed by the Council or from another Salford School, a streamlined approach will be followed. It is therefore important that you indicate this on the new starter form. This will enable HR to check and confirm any employment clearances which are already on file (i.e. a DBS check) and will speed up the recruitment process.

It is however important that you obtain at least one satisfactory reference verifying the candidate's suitability for the new post and providing details of current performance.

### Withdrawing a Conditional Offer

As long as it is made clear to a prospective employee that an employment offer is conditional, the offer can be withdrawn if a condition is not satisfied.

A contract of employment is only made where there has been an unconditional offer and an unconditional acceptance, supported by the intention to create a legal relationship.

## Volunteers

A volunteer is a person who performs an activity which involves spending time, unpaid, doing something which aims to benefit someone (individuals or groups).

The new definition of regulated activity relating to children and young people does not apply to the work of supervised volunteers however there is statutory guidance to consider when the work of a volunteer would be regulated activity if not supervised.



The three main points to consider are:

- There must be supervision by a person who is in regulated activity.
- The supervision must be regular and day to day.
- The supervision must be reasonable in all the circumstances to ensure the protection of children.

This provides managers with the flexibility to determine what is reasonable following a full risk assessment of the circumstances. The specific level of supervision required should be based on the following factors:

- ages of the children, including whether their ages differ widely.
- number of children that the individual is working with.
- whether or not other workers are helping to look after the children.
- the nature of the individual's work (or, in a specified place such as a school, the individual's opportunity for contact with children).
- how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity).
- how many workers would be supervised by each supervising worker.

Any risk assessment undertaken must be clearly documented and held by the school.

Where it is identified through a risk assessment that a volunteer is not supervised under the above definition, a full enhanced DBS check should be carried out. It must be identified whether the post is a true volunteer as follows:

- How often will the volunteer be working?
- What activities will the volunteer undertake?
- Will this potentially lead to paid employment?

Volunteers who are directly concerned with the management of childcare provision, or who work on a regular basis whether supervised or not, in regular childcare are within the scope of the Childcare Disqualification Regulations and therefore should complete the declaration form.

## **Governors**

There is no statutory requirement for school governors to have an automatic DBS check however From September 2015, All brand new governors are DBS checked on appointment (unless they already have that is acceptable under the portability criteria). All governors to annually sign an eligibility & suitability form. This form contains the suitability aspects from the staff annual a suitability declaration that apply to governors, combined with the eligibility form they already have to complete that refers directly to their eligibility to be a governor. If they declare anything on this form we are recommending a DBS check be completed. The rules for the portability of DBS checks for employees will also apply to school governors.

## Appendix 1 - Risk Assessment

### Consideration of commencement of employment prior to pre-employment checks

Question	Answer
Name of prospective employee	
Post title	
School name	
Name of Headteacher	
Date of risk assessment	
Reasons for considering commencement of employment prior to receiving clearance:	
Consequences, to service delivery, of waiting for clearance:	
Level of access during 'waiting period'	
Supervision arrangements during 'waiting period' and any other control measures:	

### Pre-employment checklist:

Question	Answer
Has the employee left employment?	
Medical clearance received?	
UKBA clearance check completed?	
Qualifications verified?	
References?	
Satisfied with general background and employment history checks?	
Current DBS check back	
List 99 check (where no DBS)	

### Previous DBS clearance: (see section on 'Portability' within Policy)

Question	Answer
Is a previous disclosure available?	
Has it been seen by you?	

Question	Answer
What is the date?	
Disclosure number	
Level of check	

**Assessment of risk following control measures: High/Medium/Low**

**Options: 1)** Following risk assessment I have determined that the above named may commence employment with the identified control measures. I undertake to personally review this situation at intervals of no less than every two weeks.

**Signed:**

**Date:**

**Review date:**

**To be completed by the Headteacher and Chair of Governors if ONLY the DBS check is not in place.**

**To be completed by the Headteacher and authorised by the Strategic Director of Children's Services if any other safe recruitment checks are not in place.**

## Appendix 2 Preventing Illegal Working in the UK

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (known as the 2006 Act) which came into force on 29 February 2008. These rules replaced the previous ones under section 8 of the Asylum and Immigration Act 1996 (known as the 1996 Act).

The law is in place to:

- make it harder for people with no right to work in the UK to unlawfully gain or keep employment ;
- make it easier for you to ensure that you only employ people who are legally allowed to work for you; and
- strengthen the Government's controls on tackling illegal working by making it easier for us to take action against employers who use illegal workers.

Employing someone who is not allowed to work in the UK is illegal. As an employer you have a duty under the 2006 Act to carry out document checks on people to make sure they have the right to work in the UK **before** you employ them.

The documents that are acceptable for proving someone has the right to work in the UK are split into two lists. These lists are called List A and List B. You should always refer to these lists to make sure that you ask for the right documents.

List A Documents which show an ongoing right to work

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A Residence Permit, Registration Certificate or document certifying or indicating permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the Home Office, to the family member of a national of a European Economic Area country or Switzerland.
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
7. A current Immigration Status Document issued by the Home Office, to the holder endorsed to indicate that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom **together with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
8. A **full** birth or adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, or adoptive parents, **together with** an official document issued by a previous employer or Government agency giving the person's permanent National Insurance number and their name
9. A birth or full adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **together with** an official document issued by a previous employer or Government agency giving the person's National Insurance number and their name.

10. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document issued by a previous employer or Government agency giving the person's National Insurance number and their name.
11. A letter issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom together with an official document issued by a previous employer or Government agency giving the person's National Insurance Number and their name.

## List B

### Acceptable documents to establish a statutory right to work for a limited period of time

#### Group 1 – Documents where a time-limited statutory excuse lasts until the expiry date of leave:

1. A **current** passport endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question.
2. A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the United Kingdom and is allowed to do the type of work in question.
3. A current Residence Card (including an Accession Residence Card or a Derivative residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national European Economic Area country or Switzerland or who has a derivative right of residence.
4. A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the person named in it may stay in the United Kingdom and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

#### Group 2 – Documents where a time-limited statutory excuse lasts for 6 months:

1. A Certificate of Application issued by the Home Office under regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006 to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is **less than 6 months** old **together with a Positive Verification Notice** (see note below) from the Home Office Employer Checking Service. *(A Positive Verification Notice is official correspondence from the Home Office Employer Checking Service which confirms that the named person has permission to undertake the work in question.)*
2. An Application Registration Card (ARC) issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
3. A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer which indicates that the named person may stay in the United Kingdom and is permitted to do the work in question.

**Appendix 3 Reference Verification Confirmation**

<b>Question</b>	<b>Answer</b>
Name of prospective employee:	
Post title	
Referee 1 name:	
Address:	
Contact number:	
I confirm reference 1 has been verified and the information contained in the reference reflects the candidates experience stated in the application form and that the information provided in the reference has been confirmed as an accurate record from the referee detailed above	
Referee name 2:	
Address:	
Contact number:	
I confirm reference 2 has been verified and the information contained in the reference reflects the candidates experience stated in the application form and that the information provided in the reference has been confirmed as an accurate record from the referee detailed above	

## Appendix 4 Guidance on References

### Purpose of References

The purpose of seeking references is to obtain objective and factual information to support appointment decisions. References should not be used as part of the shortlisting process. If conducted properly, the process of seeking references can provide important information about a candidate.

References should always be sought and obtained directly from the referee. References or testimonials provided by the candidate or those which are addressed 'To whom it may concern' should not be accepted as their authenticity cannot be verified. Such references may not be reliable or they may be the result of a compromise agreement and would therefore be unlikely to include any adverse comments.

References direct from employers also have their limitations perhaps because:

- employers are sometimes hesitant to provide an unfavourable reference for a former employee
- glowing references can sometimes be provided by employers as a way to get rid of an unwanted staff member
- applicants usually select people who will give them a glowing reference □ referees are sometimes friends
- a reference is sometimes negotiated as part of a compromise agreement

Nevertheless, despite these limitations, references must be sought on all candidates and with a systematic and structured approach can positively contribute to a vigorous and transparent selection process.

### Requesting References

It is recognised that it is common practice in the private sector for references only to be requested following a conditional offer of appointment being made. However, DfES guidance<sup>1</sup> states that ideally references should be sought on all short listed candidates, including internal ones, and be obtained before interview, so that any issues of concern they raise can be explored further with the referee, and taken up with the candidate at interview.

References must always be sought for both internal and external candidates and offers of employment always made subject to receipt of satisfactory references, where these have not been obtained prior to interview. However, this should occur only in exceptional circumstances where for example, because of delay on the part of the referee, or because a candidate has requested that their current employer is not contacted prior to interview. It is up to the chair of the interview panel, advised by HR consultants/providers, as to whether to respect this request. It should be acknowledged that there sometimes may be personal difficulties between individuals and their employers which may explain why an applicant may not want a past employer to be contacted. There should be an opportunity for candidates to explain these circumstances at interview and an expectation by the interview panel that they will do so.

In any case, where a reference has not been obtained on the preferred candidate before interview, the prospective employer must ensure that a reference is sought, received and scrutinised, and any concerns are resolved satisfactorily, before the person's appointment is confirmed.

Where all references have not been received prior to the interview, care should be taken to ensure that candidates are not disadvantaged. Should a recruitment complaint be received, it would not be

possible to justify making an appointment purely because two satisfactory references had been received on one candidate but not the other.

Request for reference letters should be sent out at the same time as the invitation to interview letters and should include a copy of the relevant Job/Role Description, Person Specification/Role Profile and a pre-paid envelope for the response. It is wise not to solely rely upon check boxes as references are intended to elicit information from the referee and therefore the request should include a list of specific open questions such as those provided in Appendix x

It is normal practice that one of the references is the applicant's current or most recent employer. There are circumstances when this is not always applicable, for example:-

- If the candidate has not previously been employed, a reference would normally be requested from their last establishment.
- If the candidate has recently been unemployed or self-employed, then consideration should be given to asking for another suitable referee with knowledge of the candidate such as a doctor, solicitor, police officer or other professional.
- If it is not possible to obtain a reference from any of the above, the panel will consider asking for another suitable reference

Normally two references should be sufficient, providing one is the current or most recent employer. However, if the candidate is not currently working with children, but has done so in the past, an additional reference should be sought from the employer by whom the candidate was most recently employed to work with children.

Relatives and friends should be precluded from providing references as they are unlikely to be objective and there is no way of verifying the accuracy of the information they have provided. Applicants should always being reminded that the prospective employer reserves the right to make contact with any of the employers listed on the application form.

### Obligation to Provide References

It is rare for an employer to refuse as it is established practice to provide a reference and a refusal could result in adverse consequences for the employee.

In the event that a referee does refuse to provide a reference, find out why and seek an alternative referee.

Under the Data Protection Act 1998 it is no longer possible to guarantee that a reference will remain confidential. The author of a reference may stipulate that it is confidential, and need not show it to the employee. However, employees can ask their new employer for a copy of the reference which may be disclosable if it is proper to do so, having balanced the rights of the author, any other person mentioned in the reference and the employee.

### Evaluating References

Evaluating references is not a simple task as referees may make certain assumptions and/or have prejudices of their own. It is often difficult to distinguish fact from opinion or to judge whether the referee is fully aware of the job content. Similarly there may be well meaning referees who are anxious to promote their candidate, non-committal referees who don't provide sufficient response or ill-motivated referees who are keen to move unsatisfactory work colleagues elsewhere.

It is, therefore, important to evaluate the information with care.

An example Reference Request letter and pro forma are included in this pack, and should help to ensure that objective verifiable information and not subjective opinion are provided.



A copy of the job/role description and person specification/role profile for the post for which the person is applying should be included with all requests.

On receipt, references should be checked to ensure that all specific questions have been answered satisfactorily. If all questions have not been answered or the reference is vague or unspecific, the referee should be telephoned and asked to provide written answers or amplification as appropriate. This makes it easier to clarify and/or expand upon certain aspect of the reference where necessary.

The information given should also be compared with the application form to ensure that the information provided about the candidate and his/her previous employment by the referee is consistent with the information provided by the applicant on the form. Any discrepancy in the information should be taken up with the applicant.

References should be treated as confidential. Difficulties arise, however, where a reference raises a serious concern about the preferred candidate's suitability for the post. The referee's consent to the disclosure of the contents of the reference should be obtained prior to discussing the concerns directly with the candidate. As a result of receipt of an adverse reference, the panel may:-

- Seek clarification on the area of concern with the candidate during the interview. If this proves satisfactory, the panel may appoint.
- Refuse the appointment on the grounds of an unsatisfactory reference. Where this is the case the panel must ensure that the decision is fair and reasonable and based on justifiable grounds.
- Where the reference is unclear or hints at problems, it is advisable to telephone the referee in order to clarify the information. Notes of the conversation must be documented, dated, signed and placed on file.

### Providing a Reference

An employer has a duty of care to exercise reasonable skill and care in the preparation of a reference. If this is not done adequately, the employee could bring a claim under one of the following:-

- Negligence – where reasonable care is not taken. An employer may be found to be liable if loss results from the employer's failure to exercise reasonable care in the preparation of a reference
- Defamation – where a reference contains a false or unsubstantiated statement that damages the reputation of a former employee. The employee may be able to claim damages
- Deceit – where a false statement is knowingly made.

The employer may be able to defend inaccuracies only where it can be shown it was given in good faith. Likewise, a disclaimer of responsibility could be included:-

"Whilst pleased to provide this reference, it is given on the understanding that this is done without legal responsibility and with the exclusion of legal liability on the part of and in respect of the organisation providing the reference and the author of it and without legal liability to the subject of it and the recipient of it".

However attractive this disclaimer may appear, it would be unlikely to protect where the supplier of the reference fails to comply with the duty of care, maliciously defames or intends to deceive, however, it can be used to assist in preventing the success of claims.

It should be noted that the author of a reference also owes a duty of care to the recipient of the reference if the reference was carelessly favourable or contained omissions.

Care should be taken to ensure that references are:

- Provided only by those members of staff in organisation who are authorised to do so.
- honest and the facts are correct. Even if the discrete components are factually correct care should be taken to ensure that the reference does not give a misleading overall impression of the individual.
- carefully considered. Be cautious about giving subjective opinion about an individual's performance, conduct or suitability which cannot be substantiated with factual evidence
- written for a specific job vacancy. They should not be written as an "open reference", to be used on an ad-hoc basis.
- provided on headed notepaper on behalf of the organisation in response to specific requests from the prospective employer

Open references are often sought at times of dismissal, redundancy, conduct or capability. Managers sometimes provide these references with the best of intentions, in the hope that the employee will secure alternative employment.

It is recommended that this type of reference only be provided where agreement has been reached between employer, employee, TU representative and HR, for an agreed reference to be produced as part of a compromise agreement.

However, 'compromise agreements' by which an individual agrees to resign and the agency/organisation agrees not to pursue disciplinary action should never be used in situations which follow a substantiated allegation of illegal or inappropriate behaviour against a child.

Question	Answer
Name:	
Post title:	
Name of Headteacher/manager:	

Please answer the questions and sign the declaration below to demonstrate that you are safe to work with children. If there are any aspects of the declaration that you are not able to meet, you should disclose this immediately to the Headteacher/Manager.

**Please answer yes or no against each question:**

<b>Section 1 – Orders or other restrictions</b>	
Have any orders or other determinations related to childcare been made in respect of you?	
Have any orders or other determinations related to childcare been made in respect of a child in your care?	
Have any orders or other determinations been made which prevents you from being registered in relation to child care, children's homes or fostering?	
Are there any other relevant orders, restrictions or prohibitions in respect of you as set out in Schedule 1 of the Regulations? The Regulations are available from the school office or at the link below: <a href="#">The Childcare (Disqualification) Regulations 2009</a>	
Are you barred from working with Children (Disclosure and Barring (DBS))?	
Are you prohibited from Teaching?	

<b>Section 2 – Specified and Statutory Offences</b>	
Have you been cautioned (including a reprimand or warning) since 6 April 2007 or have you been convicted of:	
- Any offence against or involving a child? (A child is a person under the age of 18)?	
- Any violent* or sexual offence against an adult? * A violent offence in this context is murder, manslaughter, kidnapping, false imprisonment, ABH, GBH.	
- Any offence under the Sexual Offences Act?	
- Any other relevant offence? - Available from the link below for Schedule 2 and 3 of the Regulations: <a href="#">The Childcare (Disqualification) Regulations 2009</a>	
Have you ever been cautioned, reprimanded, given a warning for or convicted of any similar offence in another country?	

<b>Section 3 – Disqualification by association?</b>	
<p>To the best of your knowledge, is anyone in your household* disqualified from working with children under the Regulations?</p> <p>*Household – includes family, lodgers, house-sharers, household employees</p> <p>This means does anyone in your household have an Order or Restriction against them as set out in Section 1 or have they been cautioned, reprimanded, given a warning or convicted of any offence in Section 2 which is not 'spent' in line with the Rehabilitation of Offenders Act.</p>	

<b>Section 4 – Provision of information</b>	
<p>If you have answered YES to any of the questions above you should provide the details below in respect of yourself, or where relevant the member of your household. You may supply this information separately, if you so wish, but you must do so without delay.</p>	
Date of the order, restriction, conviction, caution etc.	
The date(s) of these	
The relevant court(s) or bod(ies)	
<p>You should also provide a copy of the relevant order, caution, conviction etc. In relation to cautions/convictions a DBS Certificate may be provided.</p>	

<b>Section 5 – Declaration</b>	
<p>In signing this form, I confirm that the information provided is true to the best of my knowledge and that:</p>	
<ul style="list-style-type: none"> <li>- I understand my responsibilities to safeguard children;</li> <li>- I understand that I must notify my headteacher immediately of anything that affects my suitability including any pending court appearance, cautions, warnings, convictions, orders or other determinations made in respect of me or a member of my household that may render me disqualified from working with children. Failure to notify will be a serious matter considered as gross misconduct under the Schools Disciplinary process and could result in summary dismissal.</li> </ul>	
Signed:	
Print name:	
Date:	

To be completed by the Headteacher

Please record follow-on action taken, where relevant



L	O	V	E	I AM RESPECTFUL
	E	A	R	I AM KIND
L	E	A	R	I AM INSPIRING
	R	N		I AM READY
				I AM CURIOUS
				I AM BRILLIANT
				I AM CREATIVE
				I AM BRAVE
				I AM A PROBLEM SOLVER

#IAMONBOARD