

Guidance on Employment References



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This guidance is designed to assist managers in responding to and requesting employment references and should be read along with the Council's Recruitment and Selection Policy.

Guidelines for Writing References

General Principles

Although there is no obligation or legal duty to provide references, it is considered good practice within the Council to provide references for employees. A refusal could result in adverse consequences for the employee. Furthermore, case law has previously suggested that although there may be no legal obligation to provide a reference, there is a moral obligation to do so (Lord Slynn's judgement in *Spring v Guardian Assurance plc and others* [1994]).

References provided on behalf of Falkirk Council should be on headed paper marked private and confidential and signed off by a Manager at an appropriate level e.g. Team Manager. You may wish to check with your own manager that you are authorised to provide a reference.

References can be provided via email provided that they are being sent to a recognised business email address and they have been scanned after being prepared in writing and on letter headed paper. It is acceptable to give references using online systems such as Talentlink.

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If you are a member of a recruitment panel, you must not act as a referee for an applicant applying for the post. You can however, provide assistance to the employee to identify an alternative referee.

Open references, i.e. "To whom it may concern", should not be provided as this allows the individual flexibility to select how and when to submit the reference. It may be that specific environments are not considered suitable but the employee is free to use the reference for any position. There may however be specific circumstances where this arrangement may be appropriate. You should seek advice from your Service HR Business Partner before providing this type of reference.

If you are approached in a personal capacity outwith your employment, for a reference, you must not refer to the Council in any way, and you should not refer to your professional role within the Council as this can imply related authority or credibility to the reference. A personal reference must detail the home address of the referee and must never be written on Council headed paper or sent from a Falkirk Council email address.

If in doubt about providing a reference, it is advisable to provide only the basic facts, such as dates of employment and a brief description of duties and responsibilities. This kind of reference, however, is unlikely to be suitable for certain positions.

If you are uncertain about whether you should provide a reference, or would like advice on how to prepare a reference, please contact your Service HR Business Partner.

Be Factual and Accurate

Fairness of the contents of the reference reflect on the personal and professional reputation of the referee and the Council. There is a shared responsibility in ensuring that the right person is employed.

References must be true, accurate and fair, and must not give a misleading impression. Ensure the reference is factually correct – if you are unsure of any facts or wish to check employment information please contact Human Resources. If a reference, orally or in writing, contains inaccurate statements which are:

- knowingly untrue and given with malice intended
- positive although they have grounds for suspecting the competence or honesty of the employee

then the employee or recipient may be able to raise a civil action.

Some reference requests ask for specific information. If however they simply request a reference, you may wish to include some of the following areas:

- The nature of your working relationship with the individual and the length of time you have known the person
- Their length of service
- Duties – nature of current job, including scope of the job

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- Timekeeping and attendance, (including number of absences, or, number of days sickness, and the timescale)
- Current disciplinary record (if applicable)
- Performance
- Particular contribution to the organisation
- Particular personal strengths
- Identified areas for development
- Suitability for the post applied for.

If your impression of the employee is included in the reference, then back this up with factual evidence. Ensure that your opinions are clearly stated as opinions and that they are based on verifiable facts. If you are asked to express an opinion on areas where you have limited knowledge it might be necessary to use phrases such as,

- “I know of no reason to question xxxx’s honesty/integrity”
- “Although xxxxx has not undertaken xxxxxx role/responsibilities whilst working with me, based on my experience of I am confident they have the required experience and skills.”

If you use information from another source, such as another manager, you should make it clear where the information came from and ensure any comments and views can be demonstrated. The reference should only be based on the factual information held on file and you should explicitly state that the information has been included on a factual basis and that the individual is not known personally. For example, if the request requires information about an element of work that you are not familiar with, you might wish to use “having consulted xxxxx xxxxx who has most interaction with xxxxx on this area of work I can advise that...”

It is not fair to refer to an issue of concern in a reference that has not been discussed with the employee. You should not therefore include anything that you are not prepared to discuss with, or show to, the member of staff. As part of your normal performance management you should be giving continuous feedback, so any member of staff should know what to expect in any reference. If, however you have concerns about conduct or performance but have never raised it with the member of staff, you should not include it in the reference.

It is worthwhile meeting with the employee and discuss the contents of the reference, alternatively a copy can be provided to the employee. The content of a reference may be discussed during an exit interview, which would cover the information that you would include in any references that may be requested in the future.

Absence Information

When providing information about an individual’s sickness absence record, it is essential to provide only verifiable facts about attendance history, and not to include subjective statements.

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Even seemingly positive statements [“maintained good attendance despite disability”] could be seen as discriminatory. It is not appropriate to provide background information about medical conditions or disability.

Providing Verbal References

Although the same guidelines apply to references given verbally, it is not considered best practice to provide verbal references. Where it is necessary to give a verbal reference it is useful to do the following:

- Ask what information is required and arrange a time to call back – this will help you to verify the nature of the caller and will ensure that you have time to consider and prepare your response.
- Do not make statements that you would not be prepared to put in writing and back up with facts.
- Provide written confirmation of the verbal reference.
- Keep a note of what was discussed verbally.

Guidelines for Requesting and Following Up References

References will only be taken up in the following circumstances:

- External candidates
- Where the post requires SSSC registration (internal and external)
- Where an internal candidate applies for a driving post

Requesting and properly following up references is one of the most vital safer recruitment tools available. As well as providing a valuable source of information on applicants including, their history and performance in previous roles, they can also give an indication of personal qualities and characteristics. The purpose of seeking references is to obtain objective and factual information about an applicant's suitability for a post and should inform and support appointment decisions.

References should always be requested and obtained directly from the referee. References or testimonials provided by the applicant, or on open reference, such as "To Whom It May Concern" should not be relied upon. There have been instances of applicants forging references, also open references/testimonials may be the result of a "settlement agreement" and are unlikely to include any adverse comments.

The most appropriate referee is likely to be the current employer. You should always try to get at least one reference from the current employer from an appropriately senior representative of the relevant organisation, for example not a former peer. If you do not receive a reference from the most recent employer this may be a cause for concern and should be discussed with your HR Business Partner.

If someone other than an employer is put forward as a referee you should query this with the applicant. However, if the applicant has not been employed, personal

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referees may be the only ones available. Information from personal referees may, however, be of less value.

If the candidate has applied for a post which requires additional BPSS checks, you may wish to request additional references that cover a period of 3 years employment history. This is not mandatory but could be considered good practice in terms of the relevant checks being undertaken.

All references should be requested using Talentlink. You should check the address of the reference as a business address. Guidance on this is available on Inside Falkirk.

Standard reference requests will be issued as per the guidance. You have the option to edit the template document. For example if the post does not require driving you can remove the questions about driving. If you need a template letter instead you can get this from Recruitment Business Support.

You should set a timescale for response, the system defaults to one week. If a response has not been received within a week you should issue a reminder via Talentlink. The process for this is explained in the guidance.

If you do not receive a response from the referee within a reasonable timeframe you can ask the candidate to provide an alternative referee. However, if this is for the current/most recent employer you should ask the candidate to follow up on the reference and if they are unable to obtain this, you should ask them for details of an alternative referee from the current/most recent employer. This referee should be at a suitable level in the organisation to give an appropriate reference as detailed above.

If you are unable to obtain references for your candidate you should contact your HR Business Partner to discuss this further.

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, or appears inadequate or incomplete, or is unsigned or signed by someone other than the referee, the referee should be telephoned and asked to provide written answers or further explanation as appropriate.

The information given should also be compared with the application form to ensure that the information provided about the applicant and their previous employment, by the referee, is consistent with the information provided by the applicant on the form. You should also check the documentation to ensure the reference is authentic and check details of referees given, such as name, address or telephone number. Any discrepancy in the information should be taken up with the applicant. Any information about past disciplinary action or allegations should be considered in the circumstances of the individual case.

Cases in which an issue was satisfactorily resolved some time ago, or an allegation unfounded, are less likely to cause concern than more serious or recent concerns. Unresolved issues or a history of repeated concerns or allegations over

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a period of time may be more likely to give cause for concern.

Additional reference information may be requested in instances where:

- the applicant has had difficulties with a former manager
- the applicant gives an unusual or inconsistent reason for leaving a job
- the applicant has no recent work record
- an earlier job is particularly relevant to the current application
- one referee is unavailable or refuses to provide a reference
- you receive two conflicting references in respect of one applicant.

It should be borne in mind that references can offer a great deal of scope for both direct and indirect bias. References tend to be more reliable if:

- The old and new job are very similar in content
- Questions are based on job analysis
- Facts, rather than opinions and evaluations, are requested
- Relevant information about the job vacancy was provided to the referee
- The opportunities the referee has had to directly observe the employee are identified
- Where any personality traits are to be measured, they are defined and specific examples requested

Where references are considered suitable and all other pre-employment checks have been successfully completed, an offer of employment can be made.

References should be retained in the employee's personnel file on MyView.

Inappropriate references or concerns should be discussed with your HR Business Partner for additional advice.

Confidentiality of references given under the Data Protection Legislation

There is a specific exemption for references which means that, in responding to a subject access request, you don't have to disclose a reference given by you, or received by you, **in confidence** for the purposes of the individual's:

- Education, training or employment
- Placement as a volunteer
- Appointment to an office
- Provision of a service

The exemption applies to references given or received 'in confidence'. However, if you are the provider of the reference, you don't have to take advantage of this exemption, and can disclose a reference if you wish. It is good data protection practice to be as open as possible about the data you hold on employees. In particular, employees should be able to challenge information if they consider that it is inaccurate or misleading, particularly if (as in the case of a reference) it could have an adverse impact on them.

It is good practice that, if you are giving a reference, the reference should be shared

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with the employee and accessible to them via their electronic personal file (MyView). You should discuss the content of the reference with the employee and save this to their record on MyView.

If you have received a reference, you can also opt not to take advantage of the exemption, and to disclose the reference. However, bear in mind that if a reference is given 'in confidence' then you will owe the referee a duty of confidentiality - breaching this could lead to a claim from the referee.

If you disclose a reference in response to a subject access request, consider how to manage the personal information of others (such as the author of the reference) and consider in particular how to balance the following:

- the likely impact of the reference on the individual making the request;
- the requestor's interest in checking that the reference is truthful and accurate; and
- any risk that disclosure may pose to the referee.

Our standard references note that the relevant factual content of this reference may be discussed with the applicant. If the referee's consent is refused the recipient can refuse access. Consideration should however be given as to whether the information is actually confidential. You cannot for example, sensibly withhold information that is already known to the individual. Factual information such as employment dates and absence records will be known to an individual and should be provided. Information relating to performance may well have been discussed with the employee as part of an appraisal system. Where it is not clear whether information, including the referee's opinion, is known to the individual, you should contact the referee and ask whether they object to this being provided and why.

In most circumstances, you should provide the information in a reference, or at least a substantial part of it, to the person it is about, if they ask for it. Even if the referee refuses consent, this will not necessarily justify withholding the information, particularly where this has had a significant impact on the individual for example job offer. However, there may be circumstances where it would not be appropriate for you to release a reference, such as where there is a realistic threat of violence or intimidation by the individual towards the referee.

If it is not reasonable in all of the circumstances to provide the information without the referee's consent, you should consider whether you could respond helpfully anyway (for example, by providing a summary of the content of the reference). This may protect the identity of the referee, while providing the individual with an overview of what the reference says about them.

A decision to refuse disclosure can be overturned by the Information Commissioner. It is therefore best to assume that when you are providing a reference, the member of staff (or former employee) will have access to references.

Advice on this guidance can be obtained from your HR Business Partner.