

Providing Employment Reference Policy

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Services	Applicable
Trustwide	x
Mental Health and LD	
Community Health Services	

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1. SCOPE OF POLICY

- 1.1. This policy applies to all staff who are currently or previously employed by East London NHS Foundation Trust (hereinafter referred to as “the Trust”) regardless of length of service or type of contract (that is, substantive, fixed term, bank).
- 1.2. Individuals engaged by independent contractors providing a contracted service to the Trust, who are approached to write a reference for an employee/ex-employee on behalf of the Trust must also adhere to the provisions outlined below.

2. AIMS

- 2.1. This policy aims to provide support and guidance to employees requesting and providing references. The policy also aims to ensure consistency within the Trust in dealing with employment references and ensuring that legal and NHS obligations are adhered to. References are defined as information relating to the employment history of a prospective or ex-employee. The policy outlines who is permitted to provide references, guidance on the content of references, legal considerations and template examples.

3. BENEFITS OF PROVIDING REFERENCE

- 3.1. Although the Trust has no statutory duty to provide an employee with a reference, it is good practice to do so. Providing references upon request establishes goodwill between the Trust and the individual requesting it. It also allows the prospective employer of the individual to make use of the information provided during their recruitment procedure. Refusal could have an adverse effect on the employee and may therefore be viewed as discriminatory. Similarly, omitting to provide the new employer with information which could cause them to suffer a loss, may lead to a negligence claim against the Trust. The Trust is therefore requested to provide factual references in accordance with the Trust’s Providing Employment Reference Policy and Procedure.

4. LEGAL ISSUES

4.1. Duty of Care to the employee who is the subject of the reference

- 4.1.1. The Trust owes a duty of care to the employee in preparing the reference. All references should be accurate, fair, and must not give a misleading overall impression of the employee. Information provided must always be factual.
- 4.1.2. The legal issues include:
 - There is a duty of care in negligence on the referee and the content should only include factually correct information. An employee/former employee may complain, if they consider the reference to be inaccurate. Subjective or ambiguous opinions should not be included.
 - There is an implied duty of mutual trust and confidence between the referee and the employee. Only information which has previously been brought to the attention of the employee, and in a formal manner, should be included in the reference (i.e. current disciplinary issues or shortcomings in the capability of the employee).

- A duty not to make defamatory or false comments.

4.2. Duty of Care of the referee to the recipient of reference

- 4.2.1. The Trust owes a duty of care under the principles of negligent misstatement to the new employer. This implies that failure to disclose relevant employee facts, (i.e. omitting the fact that the employee has been found to lack appropriate capability in carrying out his/her duties) which results in the new employer suffering a loss, could lead to a negligence claim against the Trust.

4.3. Inaccurate References

- 4.3.1. It is emphasised that reasonable care should be taken in the preparation of a reference. The Trust will not discriminate in the application of this policy and procedure in respect of but not restricted to; age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.

4.4. Data Protection

- 4.4.1. The General Data Protection Regulation (GDPR) guidance and Data Protection Act 2018 require that measures should be taken to keep all personal information held on an employee confidential. Employees have the right, upon request, to be supplied with a copy of information held on them.
- 4.4.2. In the interest of transparency, only references written by the HR Department on behalf of the Trust will be provided to employees or ex-employees if requested. Copies of Employment References will be retained for a period of six months before being confidentially disposed of.
- 4.4.3. Due to the legalities involved, references should not be provided to 3rd parties, such as banks, estate agencies etc. unless written authorisation has been received from the employee.

5. PROVIDING REFERENCES

5.1. Eligibility to provide employment references on behalf of the Trust

- 5.1.1. All reference requests should be sent to elft.references@nhs.net and should be provided by the HR Department. Where requests for a reference are sent to managers or received outside of this, they should be re-directed to the References email address. On rare occasions an employee may have agreed a reference as part of a formal legal process, in these instances advice must be sought from the HR Department. Only requested information should be provided.

5.2. Personal/Character References

- 5.2.1. Whilst this guidance covers, in the main, the provision of employment references, there are occasions when personal and character references are sought. Personal character references are personal opinions of a person's character and must not be written on behalf of the Trust. These references may under no circumstances be written on Trust headed paper, nor may any Trust address stamps be used.

- 5.2.2. Should employees wish to provide a personal reference in support of a colleague, then the referee should state that they are not the line manager for the individual and should not therefore comment on timekeeping, attendance, competency, abilities, disciplinary records etc. As with the employment reference, a professional reference should be honest, accurate and fair and the information provided must be able to be evidenced.
- 5.2.3. Should there be any uncertainty over the provision of personal character references, the HR Department should be contacted for advice.
- 5.2.4. When providing references, it should be made clear that any reference supplied should have wording such as:
- It is Trust policy to provide only factual information and not any personal views or opinions relating to employees performance or conduct.

Please do not infer that our policy not to provide subjective information is in any way a reflection on the person's character.
 - This reference is given in confidence, to the addressee only, and only for the purposes for which it was requested. The reference is given in good faith, based on the information available to the Trust at the date on which it is given. Neither the Trust, nor the author of the reference, accept any responsibility or liability for any loss or damage caused to the addressee or any other third party as a result of reliance being placed on it.

5.3. Telephone Reference Requests

- 5.3.1. The provision of telephonic references is strictly prohibited by the Trust. No information about Trust staff (current or ex-employees) may be given telephonically. Any requests for verbal reference should be responded to with an offer of a written reference in accordance with the guidelines of the Trust's Reference Policy and Procedure. The referee should ensure that such a request is obtained in writing before providing the reference.

6. OBTAINING REFERENCES

- 6.1. When requesting references during the recruitment process, it should be made clear that any reference supplied will be shared on request with the individual the reference relates to. All requests should have wording such as:
- The Trust has an open disclosure policy and under the GDPR guidance and Data Protection Act 2018, any reference you supply may be shared with the individual the reference relates to.
- 6.2. Please refer to the Recruitment and Selection Policy, section 10.8 for further details on requesting references for prospective employees.

7. BREACH OF POLICY

- 7.1. All reference requests should be provided by the HR Department. Trust employees or line managers to employees requesting references, are under no circumstances, permitted to provide references on behalf of the Trust. Personal character references should not be written on behalf of the Trust. The Trust should take reasonable care in preparing references, and ensure that all

information provided in references should be fair, accurate and not give a misleading overall impression of the employee. The Trust should ensure that they formulate the reference in line with the requirements/job description of the new role the employee has applied for. The Trust may need to ask for the job description from the prospective employers if it has not been provided when reference is requested.

- 7.2. Any uncertainty regarding the provision of references should be clarified with the HR department.
- 7.3. Breach of this procedure will be regarded as providing an unauthorised reference on behalf of the Trust and will be deemed as misconduct and as such individuals will be subject to the appropriate disciplinary procedure.

8. REFERENCE TEMPLATES

- 8.1. It is the Trust's policy that the reference templates as provided in Appendices A, B and C are used by the HR Department in the provision of all references.

8.2. Content of Reference

- 8.2.1. Reference templates are included within the Appendices in this policy. Should a reference request come in the form of a questionnaire, the questionnaire should be disregarded and the reference must be given using one of the templates in the Appendices.
- 8.2.2. A standard reference provides limited, factual information about the employee. This is likely to be limited to the person's job title, their dates of employment and the reason for leaving (if they are no longer employed). Where a former employee left the Trust more than 5 years ago, The Trust will complete a standard reference. This will be based on the information held on the Trust's ESR system.

8.3. Sickness Record

- 8.3.1. When a reference request asks for information on an employee's sickness absence, it is recommended that the days of absence are stated as the number of instances of absence and the total number of days absent over the past 2 years. It should be noted that the reasons for the sickness absence may not be divulged as it can amount to the processing of sensitive personal data under the Data Protection Act 2018. However, in instances of high sickness absence the Trust may wish to agree the wording around the reasons for sickness absence with the employee prior to sending the reference to the new employer. This is to ensure that information is not only accurate, but that a fair overall impression is projected.

8.4. Disciplinary and Capability Record

- 8.4.1. In instances where references are requested for employees or ex-employees where there are/were issues regarding disciplinary, capability (capability must previously have been discussed with the employee and documented) or safeguarding, only live warnings which exist/existed on the employee's personal file should be disclosed and should simply state the sanction applied and the reason e.g. 'written warning for persistent lateness'.

- 8.4.2. Where an employee has left whilst disciplinary or capability proceedings were not concluded, this should be stated without reference to the nature of the alleged misconduct e.g. 'Investigations were being conducted in accordance with the Trust's Disciplinary Policy, or the person was subject to formal action under Trust's Capability Policy though this process had not been concluded at the time the individual left the Trust.'

CONFIRMATION OF EMPLOYMENT (BASIC) REQUEST	
Name of applicant	
National Insurance Number or DOB	
Employment dates	From: To:
Applicant's current/most recent job title and grade	
Applicant's reason for leaving (if known)	
Salary	
Referee name (please print):	Signature:
	Date:
Telephone number:	Email address:
<p>It is Trust policy to provide only factual information and not any personal views or opinions relating to employees performance or conduct.</p> <p>Please do not infer that our policy not to provide subjective information is in any way a reflection on the person's character.</p> <p>This reference is given in confidence, to the addressee only, and only for the purposes for which it was requested. The reference is given in good faith, based on the information available to the Trust at the date on which it is given. Neither the Trust, nor the author of the reference, accept any responsibility or liability for any loss or damage caused to the addressee or any other third party as a result of reliance being placed on it.</p>	

CONFIRMATION OF EMPLOYMENT (WITH SICKNESS ABSENCE) REQUEST		
Name of applicant		
National Insurance Number or DOB		
Employment dates	From: To:	
Applicant's current/most recent job title and grade		
Applicant's reason for leaving (if known)		
Salary		
1. Sickness		
No. of days of sickness applicant had over the past two years		
No. of episodes of sickness applicant had over the past two years		
2. Warnings		
Are/were there any current warnings on applicant's record?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
3. Investigation		
Is/was the applicant currently under investigation for any matter (incl. conduct, capability or performance)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
4. Disclosure and Barring Service (DBS)		
Date when DBS check was last completed	Date:	
Level of DBS check undertaken (Standard/ Enhanced without barred list/or enhanced with barred list)	Level:	
If enhanced with barred list check was undertaken, please indicate which barred list this applies to	Adults <input type="checkbox"/> Children <input type="checkbox"/> Both <input type="checkbox"/>	

Did the check return any information that required further investigation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5. Allegations		
Are you aware of any recent/outstanding allegations that were made against the applicant that relate to any safeguarding issues/referrals (including any referrals to the DBS or Professional Body)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
Referee name (please print):	Signature:	
	Date:	
Telephone number:	Email address:	
<p>It is Trust policy to provide only factual information and not any personal views or opinions relating to employees performance or conduct.</p> <p>Please do not infer that our policy not to provide subjective information is in any way a reflection on the person's character.</p> <p>This reference is given in confidence, to the addressee only, and only for the purposes for which it was requested. The reference is given in good faith, based on the information available to the Trust at the date on which it is given. Neither the Trust, nor the author of the reference, accept any responsibility or liability for any loss or damage caused to the addressee or any other third party as a result of reliance being placed on it.</p>		

CONFIRMATION OF EMPLOYMENT (WITHOUT SICKNESS ABSENCE) REQUEST		
Name of applicant		
National Insurance Number or DOB		
Employment dates	From:	
	To:	
Applicant's current/most recent job title and grade		
Applicant's reason for leaving (if known)		
Salary		
1. Warnings		
Are/were there any current warnings on applicant's record?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
2. Investigation		
Is/was the applicant currently under investigation for any matter (incl. conduct, capability or performance)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give details:		
3. Disclosure and Barring Service (DBS)		
Date when DBS check was last completed	Date:	
Level of DBS check undertaken (Standard/ Enhanced without barred list/or enhanced with barred list)	Level:	
If enhanced with barred list check was undertaken, please indicate which barred list this applies to	Adults <input type="checkbox"/>	Children <input type="checkbox"/>
	Both <input type="checkbox"/>	
Did the check return any information that required further investigation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4. Allegations		
Are you aware of any recent/outstanding allegations that were made against the applicant that relate to any	Yes <input type="checkbox"/>	No <input type="checkbox"/>

safeguarding issues/referrals (including any referrals to the DBS or Professional Body)			
If yes, please give details:			
Referee name (please print):		Signature:	
		Date:	
Telephone number:		Email address:	
<p>It is Trust policy to provide only factual information and not any personal views or opinions relating to employees performance or conduct.</p> <p>Please do not infer that our policy not to provide subjective information is in any way a reflection on the person's character.</p> <p>This reference is given in confidence, to the addressee only, and only for the purposes for which it was requested. The reference is given in good faith, based on the information available to the Trust at the date on which it is given. Neither the Trust, nor the author of the reference, accept any responsibility or liability for any loss or damage caused to the addressee or any other third party as a result of reliance being placed on it.</p>			