

Information Note



References

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This Information Note has been developed to assist those with responsibility for obtaining or providing pre-employment references. It outlines the employer's obligations, good practice thinking on what to include, along with an overview of the current legal position in the UK. Whilst the latter does not apply to all locations in which INGOs employ staff it offers a useful benchmark. We recommend that you check local labour requirements in the locations in which you operate as this may vary.

The purpose of a reference

References are the most commonly used method for employers to verify the credentials of a prospective employee. Sadly not all applicants are as transparent about themselves as one might wish. References are therefore aimed at checking facts about a candidate's history rather than an assessment of personal suitability, ability or aptitude for the job on offer which is more subjective. This should be explored via other recruitment and selection methods. Many organisations insist that the HR department is responsible for responding to reference requests, or works with managers to ensure that references are fit for purpose.

Are references a good idea?

Whilst being the most commonly used means of verification, references do not come without their difficulties. Yet, they have an enduring appeal with recruiters who are reassured in their candidate choice by a good reference. They are used as a matter of course in the INGO sector. It should be remembered however, that, given a free choice, candidates will not deliberately nominate referees who are likely to give a poor reference. Many organisations therefore insist on nominating at least one referee, typically the most recent employer.

Making an employment offer

It is preferable to obtain references prior to making any sort of employment offer than to have to back

track if a poor reference is received. However, this can be difficult in the fast moving environment of a Humanitarian scale-up in which case obtaining references as part of pre-screening and maintaining a roster can be useful (See people in Aid information Note: Emergency Response Rosters). Alternatively some organisations take up references prior to interview (with the candidate's consent) so they are available to consult once a preferred candidate has been selected.

Where a provisional offer of employment is made employers should be careful to say that this is "subject to references satisfactory to <name of the organisation requesting>". However, recruiters and line managers should be aware that allowing a candidate to start working prior to receipt of satisfactory references can invalidate this requirement making it difficult to withdraw the offer if information comes to light later. An over hasty start to satisfy programme need could result in longer term problems further down the road.

Are employers obliged to give references?

Whilst there is no legal obligation in the UK for an employer to provide a reference for previous employees other than in certain sectors eg financial services, most employees would expect their employer to agree to supply a reference and most employers would expect to do so. In some cases refusal to supply a reference could leave you open to a potential claim for direct discrimination or victimisation. Furthermore a prominent UK judge indicated in an employment case that employers have a moral obligation to give a reference when asked. Withholding a reference should therefore only be done after due consideration and in specific circumstances e.g. if an employee and employer are in legal dispute and it may prejudice the outcome.

What should a reference contain?

As a general rule of thumb references should be fair, accurate and not give a misleading overall impression of an individual. They should only contain information that is factual and that could, if required, be independently verified. This often includes some or all of the following:

- Dates of employment
- Job(s)
- Duties
- Specific skills eg management, engineering, IT, accountancy
- Performance management history
- Time keeping
- Attendance – (NB some reference requests refer to sickness absence. Data relating to an employee's medical condition is classified as sensitive personal data under the UK Data Protection Act and employers therefore need to take care to obtain an individual's consent when dealing with such requests.)

When preparing a reference be sure to avoid subjective opinion about an individual's performance, conduct, or suitability. If you receive a reference which appears inadequate or incomplete it is a good idea to check, preferably by telephone, to probe further.

Validity and reliability can be improved by using a structured approach. References tend to be more reliable if:

- the old and new job are 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 for the referee
- the opportunities the referee has had to directly observe the employee are identified.

Telephone references are used extensively in the INGO sector as they can be quicker to obtain than written ones. Some managers also believe that they can get a "truer" response via a conversation that is not strictly recorded. However, the same rules apply to verbal references and those obtaining them should be clear what factual information they are seeking and use appropriate interview techniques to frame questions and probe where appropriate. A written record should be kept of the content of verbal references.

Duty of care

An employer could be liable to a claim of negligence if they fail to exercise reasonable care in the preparation of a reference. The author of a reference owes a duty of care both:

- to the person about whom it is written, and
- to the recipient of the reference if the reference was carelessly favourable.

One might also argue that in the INGO world a duty of care is also owed to the new employing organisation's beneficiaries though this has not been tested at law. The reference must not give an unfair or misleading impression overall, even if its discrete components are factually correct.

The duty to employees can be summed up as follows:

1. An employer must exercise reasonable care in the preparation of a reference
2. References should not focus only on areas of concern, but be balanced and fair.
3. They should not include reference to poor performance, complaints or misdemeanours of which the employee has not been made aware.
4. A reference should not include defamatory comments, or those which amount to malicious falsehood.

If it transpires that an inaccurate reference is given, attempts should be made to correct the error by sending an accurate reference and a covering letter as soon as possible

The duty to the employee must be balanced against the duty to the prospective new employer to ensure due care in preparation of the reference and not to create a misleading impression one way or the other. This can cause some interesting dilemmas particularly in cases where staff have been dismissed for gross misconduct or where a potential dismissal is pending. In such cases the provider of the reference could be exposed to a legal claim from the new employer if there is a serious issue of gross misconduct which they choose not to mention.

Key points to remember are that in preparing a reference there is:

- A duty to ensure it is true, accurate and fair in substance;
- there is no duty on employers to be full and comprehensive;
- References must be looked at in the whole rather than breaking them down into individual sentences and stating that each individual sentence was factually correct.

Given the potential pitfalls it is not surprising that many organisations (particularly in the UK and America) choose to take a cautious approach and issue what are known as “bare minimum” references which confirm just basic employment facts. However this should not be used as a method of concealing a serious conduct issue. The onus is therefore on the employing organisation to ask pertinent questions during selection and illicit as much relevant information as possible on which to judge the suitability of the candidate then to probe appropriately to explore and verify via the reference anything that “doesn’t quite add up”.

Based on and adapted for People in Aid from CIPD Factsheet, *References*, March 2007 and supporting legal notes, and Oxfam GB *Guidelines for Giving References*.

Additional detail and advice on many of the areas covered in this information note can be found in the People in Aid Policy Guide, *Employment References Guidelines for the Sector*, April 2007, available to download from People in Aid resources, <http://www.peopleinaid.org/resources/publications.aspx>

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