



Cheshire Academies Trust

# Reference Policy

This is the Cheshire Academies Trust policy on providing references for employees. The scheme was written in August 2017 and approved by the Board in September 2017. It will be reviewed every three years or more frequently if required by updated guidance.

Next review date: December 2020

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## Introduction

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.

As a result, we have produced a policy which sets out what to do when presented with such a request.

Any reference given should be fair and accurate. Some employers may choose to only give a factual reference stating dates of employment, job title and salary, but its position and application of this policy must be consistent.

Employers must 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.

## Our position

Only the Principal [or for members of the finance and administration teams the Director of Operations] (described in this policy as Referees) are authorised to provide employment related references on behalf of Cheshire Academies Trust. All other employees and workers are prohibited from providing employment related references on behalf of the Trust. Reference requests for Principals or the Director of Operations should be referred to Chairs of Governors or the Chair of the Trust Board.

Requests for telephone or verbal references are infrequently received, but should be avoided to minimise the risk of misinterpretation. Any verbal requests for references should be referred to Trust Referees, all other employees and workers are prohibited from giving verbal references on behalf of the Academy or Trust.

If a Principal/Director of Operations, having considered the circumstances and taken advice concludes that a telephone/verbal reference must be given, a full, contemporaneous note of the conversation should be made. Any such reference should be made in line with this policy.

It is our policy to provide a reference in accordance with the requirements of Keeping Children Safe in Education rather than a reference that merely confirms details of employment.

## **Legal issues**

Referees should be aware that there are various legal issues involved with the writing of references. The provision of a reference will generally involve the processing of personal data and so be subject to the Data Protection Act 1998 (DPA 1998) and the Information Commissioner's Employment Practices Code. For example, whilst the DPA stipulates that Applicants are not entitled to view references written on their behalf where they make their request for disclosure to the author, the Applicant may still be entitled to request to see a copy of the reference from a new employer<sup>1</sup>. Those who give references owe a legal duty of care in their preparation to both the Applicant and the prospective employer.

What this means for Referees:

- 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 Cheshire Academies 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).

## **Obtaining Consent to Provide a Reference**

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 for the purposes of the Data Protection Act 1998.

Under the Act, all personal data must be processed fairly and lawfully and in order to ensure that, the Referee dealing with the reference request should ensure that the employee/former employee to whom the request for the reference relates has given their consent for a reference to be provided. If the Applicant has provided the Trust's details to a future employer, this would be considered sufficient consent.

If the person dealing with the request has any doubts about whether or not the individual has given their consent, they must contact the individual to check whether or not they authorise a reference to be provided.

## **Writing references**

Reference requests may be made in the form of providing the prospective employer with a letter or completion of a proforma. Both can be provided by the employer. Whenever a reference is being prepared, the following guidance should be observed:

- Before dealing with a reference request, a check of the Applicant's personnel file should always be made to establish:

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<sup>1</sup> This right only applies once they have been appointed to a new role – it would not apply to a prospective employer (who would need to get permission from the author)

- whether the Applicant and the Academy have agreed the wording of a reference (e.g. via a settlement agreement) and/or any other agreements about the manner in which a reference is given;
  - whether references have been given recently concerning this Applicant (to ensure consistency); and
  - whether there are any other circumstances which should be taken into account, such as safeguarding concerns (in accordance with the requirements of Keeping Children Safe in Education), ongoing disciplinary matters, or any other sensitivities. If so, further advice should be taken by the Trust's HR provider before responding.
- Accurate information on an Applicant's performance must be given; to do this the Referee should have recent and first-hand knowledge of an Applicant.
  - The content of the reference must be factual.
  - If requested a reference can include details as to the number of days' absence from work an Applicant has had during the past year. However, personal information about an Applicant's health is sensitive personal data and cannot be disclosed without consent from the Applicant. If a Referee is asked to provide information regarding the reasons for an Applicant's absence it should exercise caution and seek express consent from the employee before responding.
  - 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.
  - Information provided must be capable of being independently verified, e.g. through appraisals or attendance records.
  - 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.
  - 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.
  - Caution is required if there are outstanding issues, such as an ongoing disciplinary process at the time of the request, including how to respond to questions including "would you re-employ?" Advice should be sought from the Trust's HR provider before proceeding.
  - Mark the reference as "Private and Confidential for the addressee only" and a copy should be retained on the Applicant's personnel file.
  - 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.

### **Refusal to give a reference**

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 the Trust's HR provider.

Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another Academy, a maintained school, or a further education institution, the 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.

### **Personal references**

If a request is made to provide a personal reference for an Applicant by a colleague, this may be given but Academy headed paper, e.g. letterheads and compliments slips, must not be used, nor should the reference be sent from an Academy email address. The response must also clearly state that the reference is being given entirely in a personal capacity and not on behalf of the Academy/Trust and the content is not to be taken as a reflection of the employer's views.

### **Business networking websites**

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/Trust, 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 Principal. 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.

If these types of recommendations, endorsements or references are requested online by clients, customers, contractors, suppliers or other school-related business connections, they should, in the first instance be referred to the Principal before a response is given.

### **Requests from Authorised Officers of Jobcentre Plus**

Where a request is received from an Authorised Officer of Jobcentre Plus it is a legal requirement to respond in the form that has been requested, and within the time period stated. Legal advice should be sought before responding to any requests from an Authorised Officer of Job Centre Plus. Only Referees are authorised to respond to these requests.