



PROCEDURE DOCUMENT

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Introduction

The purpose of references is to obtain information, in confidence, from a third party to provide a factual check on a candidate's employment history, qualifications, experience and/or an assessment of the candidate's suitability for the post in question.

The information sought usually includes length of employment, job title, brief details of responsibilities, reasons for leaving etc. References may also be used to check factual evidence such as time keeping, sick absence record, general performance and development.

References should not provide any subjective information as to the applicant's suitability for the job on offer only known facts, observations or experience can be commented on.

References must only be supplied for those volunteers or staff employed by, or previously employed by the BHS.

Note: Although references are written by an individual, legal claims are against 'the employer' and therefore each reference has to be written and checked by Barton Hill Settlement as 'the employer'.

Purpose & Scope

The purpose of this policy is to provide guidance to line managers on how to provide references on behalf of Barton Hill Settlement ensuring that legislative requirements are not compromised. This procedure applies to permanent staff, staff on fixed term contracts, temporary staff, volunteers, students, trainees, contractors and workers supplied by an agency.

This policy and procedure identifies staff who may provide references to current or former employees of BHS and provides guidelines on the submission of such references.

Duty of Care

BHS owes a duty of care under the principles of negligent mis-statement to the employee/former employee and the prospective employer in preparing a reference. This is to ensure that either the individual or prospective employer does not suffer a loss as a result of inaccuracies in a carelessly drafted reference. For this reason, it is therefore essential that all references are true, fair and accurate, made with reasonable care and are factual and not overall misleading in the impression.

Inaccurate References

As a consequence of an inaccurate reference, an employee or former employee could bring an action against their employer for libel or defamation of character, if they consider the reference to be inaccurate. It is essential therefore that all information provided can be substantiated with factual evidence, if challenged at a

later date. Referees must avoid using vague statements that could be misleading or open to interpretation.

If the reference is inaccurate, the new employer may have a negligence claim against BHS if he/she suffers damages as a result of the employee's conduct of which the BHS was aware.

If untrue malicious comments are made, then the employer may be liable.

If the employee fails to secure a new job because of a carelessly prepared reference then they will potentially be able to sue the employer who provided that reference.

If an unfair reference is supplied, the amount of compensation which the employer has to pay will vary depending on the claim the employee brings, the loss suffered by the employee and the facts of the case.

Staff Responsibilities

As a matter of professional courtesy, all employees of BHS are expected to inform their line manager if they are applying for any position, either internally or externally, which requires a reference from their employer.

Legal Obligation to Provide Employment Reference

In UK law there is no legal obligation on an employer to provide or receive a reference for an existing or former employee. However, refusal to provide a reference can be interpreted negatively by the prospective employer and may be perceived by the individual as victimisation amounting to direct or indirect discrimination. Refusal to supply a reference at all should only be exercised in limited circumstances where the individual is still in employment with BHS. This should be discussed with the HR and Admin Officer.

Where an employee is currently bringing a discrimination claim against BHS, the reference can confirm that there is an on-going dispute and that the provision of a reference may prejudice the employer's position in the proceedings.

Who Should Provide References

References should be provided by either the line manager or the HR and admin officer. Where there has been a change of line management and the individual's current line manager is not suitably familiar with their work, then the approved line manager must liaise with the previous line manager and incorporate their comments into the reference accordingly. Where the previous line manager is either no longer employed by BHS or unavailable at the time, then this must be passed to the HR and admin officer who will communicate with the person requesting the reference. Line managers involved in any interview panel and selection process which involves internal candidates are advised, wherever possible to avoid providing references for any candidate for that post or declare an interest. This will ensure impartiality of the interview and selection process, and will provide a defence should an allegation of unfair practice be made. All references will be forwarded to the HR and admin officer for approval before being sent and a copy will be kept for record keeping, Data Protection and monitoring.

Content of Reference

It is important to confirm, irrespective of where the request for a reference has originated from, the length of time the applicant is/was known to you and in what capacity. Dates of employment, job title and duties can all be provided, and when requested, leaving salary. There is an implied duty of mutual trust and confidence between the referee and the employee. Where a line manager supplies factual information that concerns a shortfall in the ability of the member/former member of staff, this must only be included if the shortcomings have previously been brought to the individual's attention such as performance, timekeeping or attendance for example. In these cases an appropriate discussion has taken place and a record of that discussion has been documented. Where there are issues that the employee has not formally been made aware of, these should not be included.

Where a reference is requested for an employee who has been dismissed for gross misconduct, or has been suspended or is subject to a current disciplinary investigation, the employer is legally obliged to disclose this information accurately to a new employer even if not asked the question directly and would need to make it clear whether it had been investigated or not. Guidance must be sought from the HR and admin officer on how to respond to this question.

Once a job offer has been made, employers can ask questions about matters such as sick days absence when taking up references. Information relating to sickness absence and in particular medical history is sensitive personal data under the Data Protection Act 1998. In accordance with the Information Commissioner's guidance, even stating the number of days and number of incidences of absence, is processing sensitive personal data and requires the employee's consent. In these circumstances it would be prudent to discuss the issue direct with the employee, to ensure that the response is accurate, factual and creates an overall fair impression. To respond to a question about sickness absence merely by giving the number of days absence, while being factual and correct, does not create a fair impression and could lead to an employer withdrawing an offer and the employee suffering loss. The employee may not give permission to state what was or is wrong with them, but the matter could be resolved by for example identifying the length of any period of absence due to hospitalisation and a comment to that effect.

Personal / Character References

Whilst this policy 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 BHS. These references should not be written on BHS headed paper. 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 personal/character reference should be honest, accurate and fair. Should there be any uncertainty over the provision of personal character references, the HR and admin officer should be contacted for advice.

References supplied under a Settlement Agreement

References are often included as part of the negotiated terms of a Settlement Agreement. This means that when reference requests are received in connection with an employee who left BHS under a Settlement Agreement, Advice from the HR and admin officer should be sort. It is possible that a reference has been arranged as part of the Settlement Agreement and only this agreed reference should be supplied. If a reference has been pre-agreed, any references supplied must not deviate from these sets of words.

Reference disclaimers

References should be marked 'private and confidential' and clearly for the attention of the addressee only. Disclaimers have only limited force, but references that are given in confidence cannot automatically be shown to the subject without the consent of the referee. It is important to record that you have not given permission for the reference to be shown to anyone other than the intended recipient.

Breach of Procedure

Breach of this procedure will be regarded as providing an unauthorised reference on behalf of BHS and will be deemed as misconduct and as such individuals will be subject to the appropriate disciplinary procedure.

Employers must give a reference if:

- a. there was a written agreement to do so;
- b. they're in a regulated industry, e.g. financial services.

Record Keeping of Employment References

All employment references will be forwarded to the HR and admin officer by the person writing the reference for approval before being sent and copies will be retained for a period of 1 year before being confidentially disposed of.