Torbay and South Devon NHS
NHS Foundation Trust

Guidance for Managers

Providing Employment References

Date of Issue: 17/11/2016

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1. PURPOSE

The purpose of the guidance is to ensure there is a clear framework that can be followed upon the receipt of an employment reference request.

2. PRINCIPLES

The Trust supports the concept of providing references in order to assist with employment processes, to ensure good relations with other employers and with both current and former individuals who have carried out work for the Trust.

All references must be written by a person with line management responsibility for the individual in question (please see below), be honest, fair, accurate and written with reasonable care.

The Trust will provide employment references for individuals who have carried out work for the Trust when requested to do so in writing by a prospective employer. However, it is Trust policy that only written references will be provided - verbal references will not.

Only those individuals employed in the following capacity are authorised to write references on behalf of the Trust:

- Executive Directors
- Directorate Managers
- Directorate Senior Nurses
- Clinical / Service Directors
- Heads of Service
- Direct Line Managers

Employees not in one of the positions above must not provide personal references on behalf of the Trust. Any employee who provides a reference on behalf of the Trust and who is not authorised to do so may be subject to disciplinary action in accordance with the Trust's Disciplinary Policy.

3. SCOPE AND PURPOSE

There is no legal or statutory obligation for the Trust to provide references. However, the overarching principle of this guidance is that the Trust will provide a written reference upon request. This guidance is applicable to individuals who have carried out work for the Trust regardless of the nature of the contract i.e. this policy is applicable to those employed on fixed term/temporary/secondment contracts, agency workers, and those on volunteer placements.

Only employment reference requests received from prospective employers will be dealt with under this guidance. Financial reference requests received from third parties such as banks and prospective landlords will be dealt with by the Payroll Service. Academic, university, statutory,

registration and professional reference requests do not come under this policy.

4. DUTIES AND RESPONSIBILITIES

4.1 Directors and Divisional Managers

Directors and Divisional Managers are responsible for the implementation of this guidance and for ensuring that those writing references are aware of their responsibilities under it.

4.2 Human Resources Department

References will not be provided by the Human Resources Department, however they are responsible for ensuring the sound provision of advice to managers regarding the provision of references.

4.3 Line Managers

Line managers must ensure that the information provided in a reference is accurate, fair and reasonable and also that they disseminate the information in this guidance, to their team members so that individuals understand the process to follow when asking the Trust to provide a reference.

4.4 Recruitment Team

The Recruitment Team will maintain a central database of alert letters that have been issued. This will be monitored on a regular basis. Checks of records will be carried out against notification letters received from other authorities concerning individuals who may try to apply for a position within this Trust.

5.0 ELIGIBILITY

Individuals can request a reference to be provided by the Trust as long as they have asked the named referee in advance of the receipt of the request. Where prior consent has not been sought – a reference does not have to be provided. However, managers must not unreasonably refuse to provide a reference i.e. in circumstances where refusal may lead to an offer of employment being withdrawn.

This guidance supports the Trust in its commitment to equality of opportunity and therefore references will be provided for all individuals irrespective of the protected characteristics outlined in the Equality Act and also regardless of contract type.

6.0 PROCESS

Where the referee has been notified in advance and upon receipt of a written reference request, the applicable Manager (please see above) should provide a written response using only the Trust Reference template (available on the intranet). Only the Trust reference template should be used for the completion of references; not other organisations forms or questionnaires.

The applicable manager is required to review the individuals personnel file before completing the reference and should provide the written reference within 10 working days of receiving the request.

The reference provided must follow the guidelines below:

- Be fair and accurate
- State only information which can be verified / evidenced
- Should not be subjective or express personal opinion
- References should be marked 'private and confidential' and 'for the addressee only' and provided in a timely manner
- Before divulging any unfavourable information in a reference about active disciplinary or other sanctions e.g. managing performance on an employee's file please consult your relevant HR Advisor
- Before divulging any unfavourable information in a reference when employment has terminated during disciplinary or other proceedings please consult the relevant HR Advisor
- Ensure the information given in a reference is accurate and genuine and reasonably believed to be correct.
- Ensure the reference is provided on the Trust template and printed on Trust headed paper
- Place a copy of the references provided on the personal file

7. DUTY OF CARE

The Trust must ensure accurate and fair information is provided to prospective employers about employees and ex-employees taking sufficient duty of care towards both the individual and the future employer.

The reference must in substance be true, accurate and fair and must not give a misleading overall impression.

Furthermore, the Trust has a duty to the employee who is the subject of the reference. Again, that duty is to take reasonable care in the preparation of the reference.

8. LEGAL ISSUES

There is no legislation specifically designed to deal with the provision of references. However, the Data Protection Act 1998 may apply to the

processing of information in the provision of a reference and discrimination legislation can potentially affect the provision of references, primarily the provisions of the Equality Act 2010.

9. DISCIPLINARY / PERFORMANCE INFORMATION

The Trust may be liable to a claim from other employers where they fail to mention serious issues of conduct or performance. However, the Manager writing the reference may only release information about current / live warnings and detail information which the employee is already aware of that can be verified by evidence- based documents such as formal warning letters. As such, the reference must be true, accurate and fair in substance.

10. SICKNESS ABSENCE INFORMATION

Disclosing information relating solely to the number of days of absence will not amount to the processing of "sensitive personal data" as defined in Section 2 of the Data Protection Act 1998. However, more detailed information which is held about an individual's physical or mental health will amount to the processing of sensitive personal data. Therefore, references can include information about the number of day's sickness absence in the previous 2 years; however, the dates and reasons for sickness absence can only be released with the individuals' consent. Once consent is received, this should be documented & a file note kept.

11. SAFETY OF PATIENTS / STAFF FITNESS TO PRACTICE INFORMATION

If there is a judgement that the fitness to practice of a health professional has been called into question, the Trust must inform the appropriate regulatory body and give notice in writing to the person who is subject of the referral of the decision to refer.

If the Trust has serious concerns about the risk of harm to patients, staff or the public posed by an individual currently or previously employed, who is thought to be seeking employment elsewhere in the NHS, then consideration must be given whether to initiate an alert request in accordance with the Healthcare Professionals Alert Notices Directions 2006 in line with the Trust's process for raising alert letters.

The assessment of the degree of risk must be based on the circumstances of each case and taking account of advice of the relevant head of profession within the Trust. Advice for doctors can be obtained from the National Clinical Assessment Service (NCAS) via the Trust's Medical Human Resources Manager, however it is very unlikely that this will be done at the point a reference is being requested. In all cases careful consideration should be given as to what other measures could be taken to protect the public and the case must be referred to the relevant statutory regulatory body.

12. DATA PROTECTION / RIGHT TO REQUEST TO SEE REFERENCE

Data Protection legislation requires the information contained in job references to be handled confidentially at all times. Managers must not reveal information that would identify an individual as having or being part of a particular protected characteristic under the Equality Act 2010.

Although there is an exemption within the Data Protection Act which means that the Trust does not have to supply a copy of the reference it has given in confidence which it has written relating to employment, a copy of the reference may be divulged to the individual who is the subject of the reference - at their request. All such requests must be made in writing to the named referee or if no longer working for the Trust the departmental manager via the Trusts Data Subject Access Request procedure.

13. IMPLEMENTATION

The guidance will be implemented through dissemination to managers within the Trust. Communication to all staff will be through the All Staff Bulletin.

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APPENDIX 1 – Standard Employment Reference Template

Candidate's Name	
Job Title	
Job Reference	
National Insurance Number / Date of Birth	
Please confirm the candidate's current / most recent job and grade	
Dates of employment	
Please confirm your relationship to the candidate	

How many days sickness has the candidate had over the past 2 years, and in how many episodes?	**DAYS** ☐ **OCCASIONS** ☐

Are there any current warnings on the candidate's record?	**YES** ☐ **NO** ☐
If yes please give details:	
Is the candidate currently under investigation for any matter (inc conduct, capability or performance) under any of your employment policies or left employment before investigations were concluded?	**YES** ☐ **NO** ☐
If yes please give details:	

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Please provide details of when you last completed a CRB / DBS check (if applicable)	
↙ Date when CRB/ DBS was last completed	Date:
↙ Please indicate the level of CRB/DBS check undertaken (Standard/Enhanced/Enhanced with Barred List Check)	Level:
↙ If Enhanced with Barred List Check was undertaken please indicate which barred list this applies to	Adults ☐ Children ☐ Both ☐
↙ Did the check return any information that requires further investigation?	☐ YES ☐ NO
Are you aware of any recent / outstanding allegations that were made against the candidate that relate to any safeguarding issues / referrals (including any referrals to the Disclosure and Barring Service or Independent Safeguarding Authority)?	YES ☐ NO ☐

Referee Name:		Signature:	
Job Title:		Date:	
E:Mail Address:		Contact Number	

Data Protection

This form contains personal data as defined by the Data Protection Act. This data has been requested by the Recruitment Department, Human Resources who will protect any information disclosed within this form and ensure that it is not passed on to anyone who is not authorised to have this information. However please note that the candidate has the right under the Data Protection Act 1998 to request from the Trust a copy of your reference.