CES Guidance
Employment References
Frequently Asked Questions

Introduction

The purpose of this guidance is to explain CES recommended procedure for references provided (in respect of education, training and/or employment in particular) by employers such as schools and by parish priests for applicants to Catholic schools.

The information particularly sets out answers to frequently asked questions communicated to the CES.

Throughout this document the term 'school(s)' will mean all Catholic schools and colleges, including schools in the trusteeship of a religious order. This includes maintained schools, academies, independent schools, sixth form colleges and non-maintained special schools.

Duty of care in providing a reference

Although an employer is under no general duty to provide a character reference, there is a duty to take reasonable care to ensure the reference is true, accurate and fair and that it is not misleading. This is a duty that is owed to both the applicant and to the potential new employer.

The CES model application forms therefore provide that a referee who is a current or former employer should have full access to the applicant's personnel records.

If the applicant thinks they have been provided with an unfair or misleading reference, they may be able to claim damages in a court.

Statutory Guidance on requesting references

Schools have an obligation to have regard to statutory guidance. Statutory Guidance on "Keeping Children Safe in Education" dated July 2015 (the Statutory Guidance) sets out at paragraphs 69 to 72 the following:

Employment history and references
69. Employers should always ask for written information about previous employment history and check that information is not contradictory or incomplete. References should be sought on all short-listed candidates, including internal ones, before interview, so that any issues of concern they raise can be explored further with the referee, and taken up with the candidate at interview.

70. The purpose of seeking references is to obtain objective and factual information to support appointment decisions. References should always be obtained, scrutinised and any concerns resolved satisfactorily, before the appointment is confirmed. They should always

be requested directly from the referee and employers should not rely on open references, for example in the form of 'to whom it may concern' testimonials. If a candidate for a teaching post is not currently employed as a teacher, it is also advisable to check with the school, college or local authority at which they were most recently employed, to confirm details of their employment and their reasons for leaving.

71. On receipt, references should be checked to ensure that all specific questions have been answered satisfactorily. The referee should be contacted to provide further clarification as appropriate: for example if the answers are vague. They should also be compared for consistency with the information provided by the candidate on their application form. Any discrepancies should be taken up with the candidate.

72. Any information about past disciplinary action or allegations should be considered carefully when assessing the applicant's suitability for the post (including information obtained from the Employer Access Online checks referred to previously).

Any offer of employment should always be provided subject to satisfactory references (as set out in the CES recommended model document entitled "CES Application Forms and Supplementary Forms – Notes to Applicants" (*CES - Notes to Applicants*))

Number of references required
The *CES - Notes to Applicants* states that *"[a]ll applicants are required to provide details of* ***at least two, and up to three, referees****"*. This will include references from parish priests, if applicable.

Obtaining consent from referees (including parish priests)
It is, of course, always the responsibility of the applicant to obtain consent from referees prior to naming them on any application to schools.

The following CES model documentation: *CES -Notes to Applicants; Lay Chaplain Application Form; Senior Leadership Application Form; Support Staff Application Form and the Teacher Application Form* all make it clear that:

"It is the responsibility of the Applicant to ensure that all named referees, including Parish Priests, where applicable, have consented to providing a reference"

Current employers can be contacted without permission
The *CES - Notes to Applicants* document continues on page 6:

Notes (i) – Applicants must advise the school/college if they do not want them to contact any of their referees and provide reasons. For example, where applicants are currently employed, they may not wish the school/college to contact their employer until such time that they have given notice to terminate their employment.

This makes it very clear that the applicant must provide reasons if they do not want their existing employer to be contacted. The default position therefore is that a school may contact referees unless it is stated otherwise by the applicant.

Do you have to give a copy of a reference you have written?
The Information Commissioner's Office has issued a 'Data Protection Good Practice Note: Subject access and employment references' dated 16th November 2005 which states:

If someone asks for a copy of a confidential reference you have written about them relating to training, employment or providing a service, you do not have to provide it because of an exemption in the Act.

However it would seem reasonable and good practice to provide a copy if a reference is wholly or largely factual in nature, or if the individual is aware of an appraisal of their work or ability.

Does a copy of a reference that has been received need to be disclosed?

The Information Commissioner's Office further advises:
References received from another person or organisation are not treated in the same way. If [an employer] hold[s] the reference in a way that means it is covered by the Act, you must consider a request for a copy under the normal rules of access.
An individual can have access to information which is about them, but may not necessarily have access to information about other people, including their opinion, provided in confidence.

Can information be withheld just because it is marked as confidential?
References that have been received and marked, for example, 'in confidence' or "confidential", may not actually include confidential information. Information therefore cannot be sensibly withheld which is already known to the individual about whom the reference is being written. Factual information such as employment dates and absence records will be known to an individual and should be provided. Information relating to performance may well have been discussed with the employee as part of an appraisal system. Where it is not clear whether information, including the referee's opinions, is known to the individual, you should contact the referee and ask whether they object to this being provided and why.

As there is no guarantee that the contents of a reference will remain confidential (even if it is made clear that the referee does not want their comments to be known or released) the referee should understand that there is a possibility that the information in the reference could be released.

In these cases it is advised by the Information Commissioner's Office to "*weigh the referee's interest in having their comments treated confidentially against the individual's interest in seeing what has been said about them"*. The Information Commissioner's Office do provide a list of factors you should consider.

Recommended good practice as advised by the Information Commissioner's Office:
In most circumstances, you should provide the information in a reference, or at least a substantial part of it, to the person it is about if they ask for it. Even if the referee refuses consent, this will not necessarily justify withholding the information, particularly where this has had a significant impact on the individual, such as preventing them from taking up a provisional job offer.

However, there may be circumstances where it would not be appropriate for you to release a reference, such as where there is a realistic threat of violence or intimidation by the individual towards the referee.

You should consider whether it is possible to conceal the identity of the referee, although often an individual will have a good idea who has written the reference. If it is not reasonable in all of the circumstances to provide the information without the referee's consent, you should consider whether you can respond helpfully anyway (for example, by providing a summary of the content of the reference). This may protect the identity of the referee, while providing the individual with an overview of what the reference says about them.

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