



GUIDANCE ON PROVIDING STUDENT REFERENCES

1. INTRODUCTION

- 1.1 There is a reasonable expectation that senior staff will provide a reference for students whose careers they are in a position to influence, and they have a moral obligation – both to students, and their future employers or institutions – as well as legal duty to get it right.
- 1.2 Giving a reference involves disclosure of personal data in the form of facts and opinions about the data subject. As such, it must be consistent with data protection law, namely: **fair, accurate and adequate** in how those facts and opinions are recorded. Both the School and the individual author of a reference may be liable in damages, if it is deemed that they have been negligent in writing the reference and either the recipient or the subject of the reference suffers loss as a result. Referees therefore have a responsibility to take care about what they say in references to ensure that they are factually accurate, fair and reasonable, and that they do not give a misleading impression overall.
- 1.3 The referee needs to ensure where possible, that the individual to whom the request for the reference relates has given his or her consent to the reference being provided. Do not disclose any information if asked to give an unsolicited reference (both written and verbal) e.g. for a person who has not, to your knowledge, cited your name as a referee. Disclosure in the form of a reference should only be made following either confirmation of the identity of both the data subject and the requester, or on specific request of the data subject.
- 1.4 Whilst data protection law – meaning both the GDPR and the Data Protection Act 2018 – gives data subjects a general right of access to their personal data, it also provides for various exemptions from such rights. One of these is in relation to confidential references. However, this exemption cannot always be relied on, and is far more easily challenged when the receiving party seeks to rely on it. It is therefore always proper practice to write references on the basis that, if the subject were to see it, they could not have cause for reasonable complaint.

2. AUTHORSHIP

- 2.1 Student references may be given by any member of academic staff who has academic contact with the student and whose reference is concerned solely with that contact. Programme Directors or Personal Tutors may be able to comment on a student's overall performance whereas project supervisors may only be able to comment on performance on the project. The reference should always state in what capacity the student is known to the author.
- 2.2 Requests of a factual nature, concerning dates of attendance, confirmation of status, marks and awards received, typically received from banks, letting agents and council tax offices, should be directed to Registry/DL Office.

3. CONTENT

- 3.1 When writing a reference, bear in mind that the subject of the reference may have a right to see it on request – either because it cannot be shown that it was written in confidence, or because the receiving party cannot rely on the exemption.
- 3.2 When giving references, the referee should only include information that is known to them or which they have verified. All factual information should be able to be substantiated if queried. The author should not include any facts of which they are unsure - if in doubt, leave them out. Where opinions about a person's suitability are disclosed, every referee should be prepared to stand by any comments made and defend or justify them on reasonable grounds. Statements should not be made which the writer is not qualified to make, or which are based on hearsay.
- 3.3 As a general rule, only comments on a student's performance or ability that have already been the subject of discussion with him/her should be included. Careful distinction should be made between statements of fact and statements of opinion (for example predictions of future career progress). Where an opinion is offered, the reasoning for such a view should be made clear. If challenged, the author would need to provide evidence to support their view.



- 3.4 If asked to express an opinion on an issue about which the writer has limited knowledge, an appropriate response might be, for example, "I know of nothing that would lead me to question X's honesty".
- 3.5 Where reference forms request sensitive information (or special category data, in the legal definition) – e.g. sickness, mental health problems, criminal records, philosophical or religious beliefs or sexuality – staff should not provide such data unless specifically requested to do so (in writing) by the data subject. If no such request has been made, "I am not in a position to comment regarding X's health/sickness record..." would be a suitable response.
- 3.6 When a request is made by a potential employer or institution, but the writer is unable or unwilling to give a reference, such a refusal should be communicated with caution so as not to imply a negative reference (which itself could be held to be a denigration of character or unwarranted disclosure of personal data).
- 3.7 Do not submit a minimal reference inviting the recipient to telephone you for additional information. If possible, telephone or oral references should be avoided as the information provided may be amended or distorted. If, exceptionally, an oral reference is given, careful notes should be kept of the conversation and these notes should be treated in the same way as a copy of a written reference. The referee should not make any statements that they would not be willing to make in writing.
- 3.8 Keep copies of any outgoing references provided for a period of up to one year in case of possible litigation from unsuccessful applicants. If you consider there may be reasons to keep the reference for longer, for example because of some serious allegation in the content, then please consult the School's Data Protection Officer.

4. DISCLAIMER

- 4.1 All references should conclude with a disclaimer to protect both the School and the author from potential liability. The following wording is recommended:

"In accordance with LSHTM's normal practice this reference is given in good faith and in confidence, without legal liability on behalf of the author or LSHTM. This reference is provided for the benefit of the addressee only and all reasonable efforts have been made to ensure the truth and accuracy of its contents. The contents are confidential and may not be disclosed to anyone else without the express permission of the referee."

- 4.2 There is no guarantee that this or any other disclaimer will not be challenged. Whilst it is prudent to include it, it cannot be relied upon and therefore the other guidelines contained within this document should be complied with.

5. RIGHT TO VIEW REFERENCE

- 5.1 Under the Data Protection Act 1998, it is no longer possible to guarantee that a reference will remain confidential. Individuals now have the right to make a subject access request under the act to see references written about them and those writing references should take this into account. Although the School has no obligation to disclose a reference written about a student, an individual may have the right to request the reference from the recipient organisation.
- 5.2 The recipient organisation must show the reference to the individual about whom it is written if it appears to them to be proper to do so, after having balanced the rights of the writer of the reference, any other person mentioned in the reference, and the individual about whom the reference is written. Considerations include any duty of confidentiality to the writer of the reference, any steps taken to obtain the writer's consent, and whether there has been an express refusal of consent. In the end, it is the decision of the recipient organisation, and not the person who wrote the reference, whether it is made available to the subject.



6. COMPLAINTS

- 6.1 Should allegations be made that a reference is negligent or defamatory, the matter should be immediately referred to the Head of Registry. Any act that might prejudice a defence to a claim, such as an admission of liability, may invalidate the School's insurance cover.