

## **Bourne Education Trust Policy on Providing Employment References for Employees/Former Employees**

Any reference to Bourne Education Trust, BET or the Trust within this policy incorporates all its constituent schools.

### **Purpose**

This document sets out the Trust's policy on dealing with requests for references for current or former employees in relation to job applications. This policy applies to all members of staff and must be adhered to at all times when a request for a reference is received.

### **Scope**

There is no legal obligation for the Trust to provide references for employees or former employees. However, a refusal to provide a reference may be unhelpful to other employers and is likely to be misinterpreted as an indication that there was a difficulty with the individual, which might then disadvantage them. Therefore, it is the Trust's normal policy to provide references on request unless there is a good reason not to do so. Guidance on the information that should and should not be included when providing an employment reference is included in Appendix A.

### **Authorised Providers of References**

It is the Trust's policy that any references in relation to job applications for current or former employees may only be provided by one of the following;

- the Trust's CEO or HR lead
- the head of the school
- the employee's current line manager (or in their absence, a more senior manager, or in some cases where more appropriate, a previous line manager)
- the local HR lead
- an academic peer after consultation with, and the agreement of, the head of the school.

In all cases the head of the relevant school should be consulted. No other person in the Trust is authorised to provide an employment reference on behalf of the Trust, whether verbal or written, about current or former employees. Should anyone be in doubt as to whether they are authorised to provide a reference, then they should consult with the local HR lead or the Trust's HR lead to obtain the correct advice before taking any further action.

### **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 2018. Under the Act, all personal data must be processed fairly and lawfully and the Head of the School or HR lead dealing with the reference request should ensure that the employee or former employee to whom the request for the reference relates has given their consent for a reference to be provided.

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.

### **The Duties of Providers of References**

When providing references there is a legal obligation to exercise a duty of care to both the person seeking the reference and to the person about whom the reference is provided. If an employer gives a careless reference, for example failing to mention the fact that the employee was incompetent at his or her duties, the person receiving the reference may sue the employer if he or she has relied on the reference and suffered financial loss as a result. If a job applicant either is refused an offer of employment or has an offer withdrawn as a result of inaccurate information or opinion contained in a reference, the applicant may have a claim against the provider of the reference in respect of any loss that he or she has suffered as a result. These duties of care mean that although there is no requirement for a reference to be full and comprehensive any information provided in a reference must be:

- accurate and factual
- reasonable care must be taken not to give misleading information
- the reference must be fair to the individual in an overall sense and not misleading on account of the selective provision of information or as a result of the inclusion of facts and opinions stated in a manner that may give rise to a false or mistaken conclusion in the mind of the recipient.

It is therefore the policy of the Trust only to provide the information in Appendix A in order that all references are accurate and factual and all employees are treated equitably.

References should normally be in writing to avoid any subsequent confusion. They should always be marked 'Private and Confidential – Addressee Only' and particular care should be taken if sending by e-mail that they are directed to the correct person.

Under the Equality Act 2010 it is not permissible to ask for details about an applicant's attendance before a job offer has been made. Therefore line managers should establish whether a job offer has been made before providing this information. Once this has been confirmed, factual information can be provided about the number and length of absences in the last twelve months.

Details of the reasons for absence should not be given without the employee's express consent. However, managers should recognise that employees may wish to give their consent, as this may help to explain high levels of absence and could be taken into account by the new employer. It is advisable to discuss this with the employee prior to their leaving the Trust.

### **Disclaimer**

The following disclaimer should be included in the reference making it clear that, while the information provided is accurate to the best of the Trust's knowledge, the Trust cannot accept any liability for errors or omissions in the content of the reference or any decisions based upon it.

“While all reasonable efforts have been made to ensure the truth and accuracy of the statements made in this reference, neither the person providing the reference nor the Trust is responsible for any errors, omissions or misstatements contained in this reference.”

### **Character References**

If members of staff wish to provide character references for colleagues or former employees, they must make it clear that they are doing so purely as a personal acquaintance or friend and not in their capacity as an employee of the Trust. A reference should not be provided in such circumstances until the referee and prospective recipient have acknowledged that the reference is given in a personal capacity and that the Trust will not accept any responsibility for it. Under no circumstances must Trust headed paper or a Trust telephone or email address be used.

### **Access to References**

Under the Data Protection Act 2018, job applicants and employees have the right, upon written request, to gain access to any record held about them. Although certain exemptions apply in relation to references, reference providers should work on the basis that any reference provided by the Trust could potentially be seen by the individual in the future.

The author of the reference may allow the employee to see the draft reference before it is provided to the prospective employer, but this is not obligatory.

### **Retention of copies of references**

Where a reference has been provided on behalf of the Trust, the Line Manager must send a copy to their school’s HR department to retain on behalf of the Trust for a period of 1 year, after which it will be securely destroyed as per our Retention and Disposal of Data Policy.

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## Appendix A

Guidance has been set out below on information to be included in references and a template reference has been provided at Appendix B. Line managers and HR leads should ensure that references contain factual information only.

Information to be provided to include:

- the dates on which the individual's employment with the Trust began and ended;
- the employee's job title;
- a short description of the employee's main duties and level of responsibility;
- factual information such as the employee's salary and attendance record if requested (however see notes below on attendance record);
- any non-expired disciplinary warnings;
- the reason for termination of employment, i.e. whether the employee resigned or whether the termination was the result of dismissal, redundancy, retirement or the expiry of a fixed-term contract;
- details of employee's attendance record must not be provided until the referee is clear that a job offer has been made.

### Disclaimer

A disclaimer should be included in the reference making it clear that, while the information provided is accurate to the best of the Trust's knowledge, the Trust cannot accept any liability for errors or omissions in the content of the reference or any decisions based upon it.

## Appendix B - Template Employment Reference Letter

<DATE>

<ADDRESS>

Dear <NAME>

I refer to your reference request of <DATE> concerning our former/current employee <NAME>. I am pleased to be able to confirm the following information, however it is our policy to give only this information and we are keen that no negative inference should be drawn from this.

<NAME> was employed by ourselves in the capacity of <JOB TITLE> from <DATE TO DATE> (*note: do not put end date unless employment has ended*). Her/his duties included the following responsibilities:

<BRIEF JOB DESCRIPTION>

His/her current salary is <SALARY>

At no time was there any concern whatsoever about her/his suitability to work with children. There are no disciplinary matters on file/outstanding disciplinary matters on file (*assuming this is the case*).

The above information is given in the strictest confidence and in good faith. We make every effort to ensure that the information presented has been researched correctly. However, no responsibility can be accepted for errors, omissions or inaccuracies in the information, or for any loss or damage that may result from reliance being placed on it.

Yours sincerely