

## **PROVIDING REFERENCES – Guidance for Managers**

### **1. INTRODUCTION**

- 1.1 When asked to provide a reference for existing or former employees, managers need to be aware of their contractual and legal obligations and the risks of providing an unreliable reference. The following is guidance on various potential issues surrounding employee references.

### **2. ARE EMPLOYERS OBLIGATED TO PROVIDE REFERENCES?**

- 2.1 Whilst there is generally no legal obligation on an employer to provide a reference, employers may be under a general implied contractual duty to provide a reference where it is the normal recruitment practice of the company requesting the reference to require one from a former employer and the individual could not be expected to secure a job in that particular industry or profession without one. It follows that employers who fail to provide a reference, where a job offer to an existing or former employee is dependent on a reference being supplied may be subject to legal action.

### **3. DUTY OF CARE**

- 3.1 An employer has a **duty of care** to exercise reasonable skill and care in the preparation of a job reference and ensure that the reference is in substance true, accurate and fair. Whilst this does not mean that a reference must in every case be full and comprehensive, it must not give an unfair or misleading impression overall, even if its discrete components are factually correct. This duty of care is owed by employers to both current and former employees.
- 3.2 An employer which fails to take reasonable care when preparing a reference may be liable for any economic loss suffered by an individual as a result of a negligent mis-statement.
- 3.3 Employers must therefore check the accuracy of references sent out on their behalf to ensure that they are made honestly and without malice. This does not prevent an employer from giving a negative reference, but this must always be based on factual information. Personal opinion should be avoided and information should be based on facts. References should not include criticisms or matters of concern not previously discussed with the individual. This would clearly be unfair on the basis that the individual has not had the opportunity to answer these.
- 3.4 In the interests of open communication with team members, it is recommended that managers first discuss the contents of the reference with the individual concerned.

### **4. WHO IS AUTHORISED TO PROVIDE REFERENCES?**

- 4.1 Those giving references on behalf of the Council should be a line manager and also have supervisory experience of the employee.

- 4.2 This does not, of course, prevent individuals with a personal knowledge of the subject from providing a 'personal' reference, but in doing so, it is important that they make it clear to the recipient of the reference that the information is being provided on an **individual basis** and not on behalf of the employer.

The obligation to provide an honest and accurate reference remains.

## **5. CLAIMS OF NEGLIGENCE FROM ANOTHER EMPLOYER**

- 5.1 A referee could be sued for negligence by another employer in respect of a carelessly written reference. This is on the basis that the reference being provided is clearly intended to be relied upon and a duty of care could be established.
- 5.2 A reference should never inflate or exaggerate an individual's skills and abilities for the purpose of making them a more attractive proposition for a prospective employer. Apart from liability for negligence, this practice has a potentially damaging effect on the Council's integrity and reputation in the way in which it deals with other employers.