**Guidance for Bangor University staff providing references**

The following is intended as a guide for staff who are asked to provide references for d colleagues and former staff. Heads of Schools and Departments should ensure that any member of their staff who responds to a reference request is aware of this guidance.

**1. Introduction**

This guidance applies to references which the University provides in respect of former, existing and prospective staff.

References are normally provided for employment purposes, intended to provide factual information and an objective assessment of the performance/abilities of an individual. However, references may also be provided for purposes other than employment, such as in support of further study and promotion, to support the award of prizes and grants, financial information for mortgage purposes or when renting accommodation.

**2. Legal obligations**

There is no legal or University requirement to provide a reference for staff

Referees owe a duty of care in the preparation of a reference, both to the subject and to the recipient of the reference. This duty involves providing a fair and accurate reference in respect of the individual and to the recipient. Any breach of this duty could give rise to a claim for damages for negligence and/or misrepresentation.

Both the University 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.

If referees feel that they cannot discharge the duty to both the subject and the recipient, they should politely decline to give a reference.

**3. Data protection**

Data Protection legislation provides an exemption for any reference that is provided in confidence for specified purposes, including education, employment or training ([Schedule 2, Part 4, Paragraph 24](http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted)). This means that if the University receives a Subject Access Request, confidential references about the individual making the request, whether created by the University or received from a third party, will be exempt from disclosure. The reference needs to be marked as ‘**Strictly Confidential**’ in order for it to be exempt. References sought by the University from external sources should ask the referee to state whether or not they intend the reference to be confidential.

However, it is expected that the exemption will not apply in the majority of instances as referees should be prepared to allow the subject of the reference to view what they have written and will need to defend any fact or opinion provided.

Referees should also note that, whilst the subject's consent to the disclosing of personal information about them can usually be inferred from the request for a reference, **this must not extend to sensitive information** (or [Special Category Data](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/) as defined by the General Data Protection Regulation) such as information about the subject's racial or ethnic origin, physical or mental health or disability, sexual orientation, religious beliefs, trade union membership or activity, political opinions or criminal record. Referees should not include any such information in a reference without first obtaining the subject's express consent in writing. This means that the subject should be made aware of the sensitive information which is being disclosed, the purposes of the disclosure and the recipient of the information. If consent is not obtained the referee should refuse to provide the reference if that information is material.

**"To whom it may concern" references** should be avoided as the University does not in these circumstances know the identity of the person to whom it owes a duty of care. In addition, there may be an inadvertent disclosure of information to a third party in breach of data protection legislation.

**Any reference supplied in a personal capacity** must be provided from the referee's home address, the University's postal and e-mail addresses must not be used. The reference must state that it is made in the referee's personal capacity.

For references where poor performance, disciplinary matters or conduct issues are being commented on, referees must discuss and seek advice from their Human Resource Officer **prior** to providing such information and any disclosure around these issues will need due consideration in advance.

The referee has a duty of care to disclose only that information which is relevant to the post for which the existing or former member of staff has applied and statements in references should not refer to complaints or difficulties that have not been raised with the employee concerned.

**4. Practical Points to Consider When Drafting a Reference**

Sometimes when a referee receives a request for a reference it will be accompanied by a form to complete. **Referees are under no obligation to provide all the information requested in the form.**

When giving references, the following points should be borne in mind to help minimise the risk of a legal liability on the part of the person providing the reference and/or the University:

4.1. Written references - The principal aims of providing a written reference are: (a) to confirm *facts* and (b) to provide *relevant opinion*.

Therefore:

* **Ensure that the reference is factually accurate and complete**. Referees should also ensure that the reference does not give a misleading impression overall, even if the statements in it are factually correct.
* **Clearly differentiate statements of fact and opinion**. Referees should confine themselves to facts if it is possible to give a fair account of the subject by doing so.
* **Only express opinions that are relevant, and that you are competent to give**. Opinions may be given on the subject (which is frequently the principal object of the exercise) but those opinions given must clearly fall within the referee's professional competence, e.g. academic judgement.
* **Try to be fair**, bearing in mind the duty of care owed to both the individual and the recipient of the reference.
* **Avoid ambiguous or coded language**.

**5**. **Phone references**

If possible, requests for references taken over the phone should be declined other than in exceptional circumstances since information given in this way could easily be misheard, mis-transcribed or misinterpreted. Where absolutely unavoidable, you may provide a statement which is limited to the facts, which should be followed up immediately in writing e.g. email.

**6. Additional Advice**

For further advice on providing references for staff please contact your designated HR Officer.

For references relating to mortgages, rental agreements, please forward to HR using email hr@bangor.ac.uk