

Student and Volunteer Reference Policy

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General policy

1. It is ELATT policy to provide references, where practicable, in respect of its current or past students.
2. It is the responsibility of Heads of Departments to ensure that staff in their department who may respond to requests for references in respect of past or present students are aware of and abide by these guidelines.

The legal position

4. The author of a reference owes a 'duty of care' to the person about whom it is written, which means the author must use reasonable skill and care in preparing the reference to ensure it is true and accurate, and does not give an unfair overall impression.
5. An inaccurate reference may give rise to an action for negligence (on the basis the author has negligently failed to fulfil her/his duty of care to the reference subject). That individual would not have to prove 'actual loss' of employment but only that he/she has lost a 'reasonable chance' of employment and thereby sustained loss.
6. Similarly, any untrue statement that disparages the reputation of the individual could give rise to an action for libel (sometimes referred to as a defamation action). In either a negligence or libel action, the individual may seek to claim against ELATT and/or the individual author.
7. Authors should also take care to ensure that a reference does not discriminate against the individual in any way. For example, particular care should be taken when making any comment about performance, attendance or sickness where there is a risk that such comments may be discriminatory on grounds of disability.
8. A duty of care is also owed to the recipient of the reference, who may be entitled to bring an action for negligence against the individual author and/or ELATT if the information contained in the reference is inaccurate or misleading, and where it has been relied upon and causes some loss or damage.
9. There will usually be no legal obligation to provide a reference for a student. If a member of staff (including a Head of Department) has any concerns about writing a reference for a current or past student, he/she should contact the Registrar at srs@ELATT.ac.uk.

Aims of the reference

10. There are two principal aims of a reference:
 - To confirm the accuracy of statements made in an application by the student (which means, of course, ascertaining what those statements are)

- To give the referee's opinion as to the student's suitability for the post/programme in question and her/his potential for the future.

The substance of the reference

- Members of staff who provide a reference in respect of a present or past student should make clear in what capacity they are providing the reference. If the reference is provided in relation to the student as a student (or former student) of ELATT and on behalf of ELATT, the reference should be given on ELATT-headed paper. If the reference is provided in a private, personal or non-ELATT capacity, ELATT-headed paper should not be used, and the relationship of the referee to the student concerned and the fact that the reference is given in a personal capacity should be made clear.
- In writing a reference the author should always indicate for how long he/she has known or knew the student and in what capacity, and should ensure that the facts stated about the student are correct. The author should not include any facts of which he/she is unsure; if in doubt, leave it out.
- In a reference the facts about a student's career and any opinion of her/his ability should be differentiated. If an opinion is offered regarding a student's abilities or potential, the referee must be qualified to give such an opinion and the reasoning for such a view should be made clear. If challenged, the author would need to provide evidence to support her/his view:
 - Fact and opinion should not be confused: "On her performance to date I would be surprised if X did not get a first-class degree" is clearly an opinion;
 - "She will get a first-class degree" suggests that the method of classification for Honours is such that the issue is beyond doubt.
 - Opinions stated should be based on facts known to the referee and referees should not make statements they are not qualified to make: for example, "I consider X to be well suited to the post for which he/she has applied, and am happy to support her/his application" is better than "X will be a success in the post of . . .".
 - Particular care should be taken where a reference is provided about someone who is not known to the person providing the reference (for example, if the student's tutor or supervisor is absent or has left ELATT). Opinions should not be given which are not those of the author of the reference.
 - There may be issues on which an opinion is invited or requested about which the referee has limited knowledge, e.g. the honesty and integrity of the student. In these circumstances it may be necessary to say, for example, "I know nothing which would lead me to question X's honesty".
- In the event of being challenged over a reference, the referee must never admit liability as this may invalidate ELATT's insurance policy. The matter should be referred to the Registrar.
- References should be marked "Confidential" to the addressee.
- A copy of any reference provided on behalf of ELATT should be kept on the relevant departmental file.

Liability and Disclaimers

17. A reference should contain the following disclaimer in its final paragraph:

"This reference is strictly confidential and is provided to you only in connection with [NAME] and should only be used for that purpose. The above information is given in confidence and in good faith. No responsibility however, can be accepted for any errors, omissions or inaccuracies in the information or for any loss or damage that may result from reliance being placed upon it."

18. As there is no guarantee that a disclaimer will not be successfully challenged in court, due care must be exercised when preparing a reference. ELATT has insurance that covers members of staff (and ex-members of staff) who have written references in the course of their employment, if these guidelines have been followed. ELATT insurance does not cover references by a member of staff in her/his private capacity. In the event that a member of staff is challenged over the content of a reference, he/she should not be drawn into a discussion of the issue of liability, but should refer the matter immediately to the Registrar.

Confidentiality and data protection legislation

19. The provision of references involves the use and disclosure of personal data, which is governed by current data protection legislation. This section sets out some of the key points to consider from a data protection compliance perspective when providing references.

Legal basis for processing

20. Under current data protection legislation, ELATT is required to establish a 'legal basis' for processing personal data. When providing references, ELATT's legal basis for processing will generally be the legitimate interests of the third party recipient of the reference, e.g. a prospective employer. Provided that you do not include sensitive details (i.e. special category personal data or criminal convictions data) about the student in the reference, this means that you can provide the reference without seeking the consent of the student concerned.

Special category personal data

21. Special category personal data is information about an individual's race; ethnic origin; politics; religion; trade union membership; genetics; biometrics (where used for ID purposes); health; sex life; or sexual orientation.
22. Special category personal data is subject to higher levels of protection under current data protection laws.
23. Where special category personal data is included in a reference, you will need an additional legal basis for processing the data (over and above legitimate interests). In all cases, the additional legal basis for processing the special category personal data will be the student's explicit consent.
24. Due to the increased burden placed on ELATT by data protection laws where special category personal data is processed, you should avoid including special category personal data in references where possible. However, in some

circumstances it may be necessary to include special category personal data, e.g. if a student's low examination grades may be explained by a period of absence caused by an illness. If you wish to include special category personal data in a reference then you will need to obtain the explicit consent of the student concerned prior to giving the reference to the third party recipient.

Criminal convictions data

25. It is extremely difficult to justify the use of criminal convictions data under current data protection laws. References should not include information about a student's criminal convictions and offences (spent or otherwise), even where the intended third party recipient has asked us to comment on a student's criminal history.

Subject access requests

26. Data protection legislation gives students the right to access their personal data held by ELATT. A student exercises this right by making a *subject access request* to ELATT. If you receive a subject access request, please contact the ELATT data protection team at dataprotection@ELATT.ac.uk which is responsible for responding to these requests on behalf of ELATT.
27. For references given in confidence, there is an exemption under current data protection legislation which means that a student reference does not have to be disclosed as part of ELATT's response to a student's subject access request where it has been given for any of the following purposes:
- The education, training or employment of the student
 - The placement of the student as a volunteer
 - The appointment of the student to any office
 - The provision by the student of any service
28. This exemption applies to confidential references already given as well as references that have been drafted but not actually given at the time the subject access request is received. It also covers each of the above purposes prospectively, e.g. where the reference is given in connection with a prospective job or intended training.
29. The exemption applies to both confidential references created by ELATT and those created by third parties and provided to ELATT.
30. All references are considered to be given in confidence unless there is evidence to the contrary. Nevertheless, ELATT may be required to disclose a reference under certain circumstances, such as a request for disclosure by an Employment Tribunal or a Court dealing with a negligence or defamation case. In such circumstances, staff should not disclose any documents but instead seek advice from Legal Services on how to proceed.

Telephone or verbal references

31. Although requests for telephone or oral references are frequently received, such requests should be declined other than in exceptional circumstances, since information given in this way may be misinterpreted in its transmission to the interview panel. If, exceptionally, an oral reference is given, steps should be taken first to verify the identity of the enquirer and notes should be kept of the conversation. Where an oral reference is given on behalf of ELATT the person

giving the reference should not make any statements he/she would not be willing to make in writing.

Unsolicited references

32. It is generally inadvisable to provide unsolicited references addressed 'To whom it may concern'. If, exceptionally, such references are provided, they should be limited to factual statements such as dates of the student's registration, programme of study, and, if relevant, date and title of award.

Criminal convictions and disciplinary or other such sanctions

33. Care should be taken not to mention in references criminal convictions (spent or otherwise). Any query on this should be referred to the Registrar.
34. Disciplinary, Academic Misconduct or Research Misconduct matters should not be mentioned unless (a) they have been substantiated and upheld, and (b) the reference-writer believes them to be directly relevant to the duty of care owed to the recipient of the reference, i.e. relevant to the job or programme that the student has applied for. If the referee is in doubt, they should contact the Registrar for advice.