

ACAS guidance on employment references

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Coinciding with the Employment Tribunal's recent decision in the case of [Francis-McGann v West Atlantic UK Limited](#), where an employee faked a reference using the name of a Star Wars villain (read our article [The Employment Tribunal Strikes Back](#)), ACAS has released new guidance on employment references.

The guidance covers most queries, including:

Does an employer need to provide a reference?

An employer has the choice of providing a reference and about the amount of information they provide within the reference. There may be special circumstances that mean an employer is obliged to provide a reference, such as when an agreed reference has been part of the terms of a settlement agreement, or employers that are regulated by the [Financial Conduct Authority](#) or the [Prudential Regulation Authority](#).

What must a reference include?

The reference can include basic facts such as job descriptions, answers to questions that the potential employer has asked, and any details about the applicant's skills and abilities or strengths and weaknesses in relation to the suitability of an applicant for the new role that they have applied for.

Can a bad reference be given?

The reference must be 'accurate' and 'fair' and must not contain any 'misleading' or 'inaccurate' information.

What issues can arise with giving references?

An applicant can request a copy of the reference sent to the new employer if they wish.

It is usually best practice and safest for employers to have a set policy in place about what references will cover, so that employees know what to expect and it is generally safest to limit references to factual issues, such as the job applicant's employment dates and job description. If an employer does provide a reference for some individuals but not others, it could face allegations of discrimination, victimisation, or breach of trust and confidence, in some instances. Employers also need to be mindful that there is no obligation within a contract with the employee to provide a reference.

We recommend employers to keep a record on an individual's file as to whether or not the employee wishes for a reference to be provided.

If there is ever any doubt over whether or not an individual has given consent for a reference to be given, the employer should contact him or her to check the reference should be provided.

If a reference was to include any information relating to an individual's health, the individual's explicit consent would be needed before disclosing that information to another person or organisation.

For further advice on references or any other employment issue, speak to solicitor [Christine Slevin](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.