

Regulators' Guidance on Providing References February 2009

1. The Council for Healthcare Regulatory Excellence is an independent body accountable to Parliament. Our primary purpose is to promote the health, safety and well-being of patients and other members of the public. We scrutinise and oversee the health professions regulators¹, work with them to identify and promote good practice in regulation, carry out research, develop policy and give advice.

Summary

2. In response to the recommendations of the Ayling, Neale and Kerr/Haslam inquiries, the Government invited CHRE to ensure that guidance was available on the ethical responsibility of health professionals to provide objective and transparent references. This paper is CHRE's response to this invitation.
3. Different regulatory bodies take different approaches to the provision of specific guidance on references, with dedicated guidance on writing references developed only by the General Medical Council. Guidance on other aspects relating to the provision and use of references during recruitment is also available for registrants and employers, from NHS organisations, some professional groups, and from bodies such as the Information Commissioner.
4. The Neale Inquiry recommended that the interests of patients are paramount and no reference should ever negate this view. CHRE is satisfied that the regulators' codes of ethics are robust in this respect, as evidenced by the joint Common Values statement by the regulators. We do not believe that there is currently sufficient evidence to demand changes in the approaches currently taken by the regulators. We will, however, remain alert to changes in this pattern and should it become necessary, guidance could be developed in the future.

Background

5. In the Government's response to the recommendations of the Shipman Inquiry's fifth report and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries, *Safeguarding Patients*, the Government stated that it would invite CHRE to ensure that there is guidance on the ethical

¹ General Chiropractic Council, General Dental Council, General Medical Council, General Optical Council, General Osteopathic Council, Health Professions Council, Nursing and Midwifery Council, Pharmaceutical Society of Northern Ireland, Royal Pharmaceutical Society of Great Britain

responsibility on health professionals to provide objective and transparent references:

Neale Inquiry recommendation 12: The Panel Chairman should be responsible for ensuring that referees are contacted by telephone and content of the references should be confirmed at or around the time of appointment.

Recommendation 14: Employing authorities/medical colleagues should not give a reference which is capable of being misleading by omission.

Kerr/Haslam Inquiry p24: One of the referees in any job application should be the consultant who conducts the applicant's appraisal, their Clinical Director, or their Medical Director.

p25: When appointments to the NHS are considered, references should be obtained from the three most recent employers and those references should be properly checked.

3.10 Existing GMC and NHS guidance already covers the ethical responsibility on health professionals to provide, and interviewing panels to look for, objective and transparent references; the Government will invite the Council for Healthcare Regulatory Excellence (CHRE) to ensure that there is similar guidance for the other healthcare professions. The Government agrees that panel chairmen should always be alert to the possibility of misleading references, including references from a much earlier part of the candidate's career, and will ask NHS Employers to consider how this principle could be reflected in updated guidance.²

The value of references

6. According to the Chartered Institute of Personnel and Development:

'the purpose of references is to obtain information about a candidate's employment history, qualifications, experience and/or an assessment of the candidate's suitability for the post in question. Prospective employers may seek information on matters including length of employment, job title, brief details of responsibilities, abilities, overall performance, time-keeping and reason for leaving'³

7. Within the NHS, guidance notes for employers identify the use of references in a similar way, as described in the *PIN safer pre and post employment checks: policy for NHSScotland*:

'You are looking for factual information to confirm the accuracy of the details provided by the candidate on their application form and to provide verification by the referee as to the suitability for the post on offer in terms of:

² Department of Health (2007) Safeguarding patients: the Government's response to the recommendations of the Shipman Inquiry's fifth report and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries.

³ Chartered Institute of Personnel and Development (2008) References.
<http://www.cipd.co.uk/subjects/recruitment/selectn/references.htm?lsSrchRes=1> (accessed 6 Jan 2009)

- performance
- skills
- ability

‘... Referees should be asked to comment on work and professional competence and personal qualities with a focus on suitability for the post being applied for. It should be borne in mind however that comments on “personal qualities” can be highly subjective.’⁴

8. More specifically for this paper, the GMC’s guidance note on writing references states:

‘Prospective employers use references to obtain information about a candidate’s qualifications, employment history and assist in the assessment of their suitability for the post in question. They also provide both employers and candidates with an opportunity to verify the information supplied in an application.’⁵

Guidance from the regulatory bodies

9. In surveying the current guidance provided by the health professions regulators to referees, it is clear that a range of approaches are taken, reflecting the different needs and requirements of each profession, and the different patterns of employment.

10. When asked about providing references, many regulators identified aspects in their own core guidance rather than supplying specific guidance for registrants on this matter. For example the Health Professions Council told us they would refer to standards 1, 3, and 13 in the *Standards of Conduct, Performance and Ethics*:

- You must act in the best interests of service users.
- You must keep high standards of personal conduct.
- You must behave with honesty and integrity and make sure that your behaviour does not damage the public’s confidence in you or your profession.

A similar situation exists with The Pharmaceutical Society of Northern Ireland, The General Dental Council and the General Optical Council. Similarly the Nursing and Midwifery Council and the General Chiropractic Council do not provide specific guidance to chiropractors. The General Osteopathic Council stated it ‘does not provide guidance or information for registrants on providing or seeking out references as this is related to their business activity.’

⁴ Partnership Information Network (2007) Safer pre and post employment checks: Policy for NHSScotland <http://www.show.scot.nhs.uk/publications/j9227/j9227.pdf> (accessed 7 Jan 2009)

⁵ General Medical Council (2007) Writing references. http://www.gmc-uk.org/guidance/current/library/writing_references.asp (accessed 6 Jan 2009)

11. As *Safeguarding Patients* noted, specific guidance on writing references is already provided by the GMC. This arises out of their core guidance document, *Good Medical Practice*:

‘You must only provide honest, justifiable and accurate comments when giving references for, or writing reports about, colleagues. When providing references you must do so promptly and include all information that is relevant to your colleague’s competence, performance or conduct.

‘...You must do your best to make sure that any document you write or sign are not false or misleading. This means that you must take reasonable steps to verify the information in the documents and that you must not deliberately leave out relevant information.’⁶

The GMC’s supplementary guidance aims to provide more detail about how to comply with these principles. The full text of the supplementary guidance on writing references is copied in Annex 1

12. The role of health professional as an employer has prompted one regulator to develop mandatory standards for those registrants working in positions of authority – as employers. The Royal Pharmaceutical Society of Great Britain provides specific guidance for pharmacists and pharmacy technicians about seeking references. Section 5 of the *Professional Standards and Guidance for Pharmacists and Pharmacy Technicians in Positions of Authority*, states, amongst other matters, that you must be satisfied that:

‘Appropriate checks are carried out before employment commences and that adverse findings do not make employing or engaging the individual untenable. Depending on the remit and responsibilities of the role this may include inquiries about previous criminal convictions, verification of professional registration status and checks on any conditions or limitations on practice.

‘Reliable references are sought and provided.’⁷

Guidance from other organisations

13. Guidance, especially for health care professions acting as employers, is available from other sources, such as the NHS Employers and NHSScotland policy mentioned above. Predominantly these offer guidance to employers rather than ethical guidance for an individual. However, one that does offer ethical guidance is the *Code of Conduct for NHS Managers*. Published in 2002 this sets out the core standards of conduct expected of NHS managers and with respect to references, it includes the following:

‘I will seek to ensure that:

⁶ General Medical Council (2006) *Good Medical Practice* http://www.gmc-uk.org/guidance/good_medical_practice/index.asp (accessed 12 Jan 2009)

⁷ <http://www.rpsgb.org.uk/pdfs/coepsposauth.pdf> (accessed 7 Jan 2009)

... Judgements about colleagues (including appraisals and references) are consistent, fair and unbiased and are properly founded...⁸

14. Some professional bodies, but not all, also provide guidance. For example, the Association for Perioperative Practice in their *Standards and Recommendations for safe perioperative practice* write:

‘References

3.3.9 It is illegal for an employer or employee to write an untrue reference. A reference should offer an accurate view of the candidate and his or her ability to do the job in question. Opinions expressed in a reference should be supported by facts. Negative comments should be justified so that the reader can make an informed decision.

3.3.10 The Data Protection Act allows all employees to access their personal file including references. It is recommended that there is a policy that supports showing an employee a copy of any references.

3.3.11 References should be obtained before interview, to avoid having to make an offer of a job subject to references.⁹

15. Other non-health specific guidance is available from the Information Commissioner’s Office which provides a good practice note on sharing references provided in employment situations, addressing issues around data protection and subject access requests.¹⁰ There is also case law in this area, notably *Spring vs Guardian Assurance*, outlining the legal situation around employers’ liability to provide references and negligence issues. CIPD note that case law

‘has resulted in a cautious approach from people giving references. Generally all data given in a reference should be based on fact or capable of independent verification. As a guide, reference should be fair, accurate and not give a misleading overall impression of the employee.

‘Referees should be very cautious about giving any subjective opinion about an individual’s performance, conduct or suitability, which they cannot substantiate with factual evidence’¹¹

Analysis

16. There are two perspectives that are addressed by guidance on references – guidance for those providing references (referees) and guidance for those seeking references (usually employers). Our concern here is with the former.

⁸ Department of Health (2002) Code of Conduct for NHS Managers.
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4005410?IdcService=GET_FILE&dID=1687&Rendition=Web (accessed 7 Jan 2009)

⁹ Association for Perioperative Practice (2007) *Standards and Recommendations for safe perioperative practice* Harrogate AfPP

¹⁰ Information Commissioners Office (2005) *Data Protection Good Practice Note: Subject access and employment references*

¹¹ Chartered Institute of Personnel Development (2008) *References*.
<http://www.cipd.co.uk/subjects/recruitmen/selectn/references.htm?lsSrchRes=1> (accessed 6 Jan 2009)

17. In practice the provision of references may be a more immediate and frequent concern for some health professions than for others. The pattern and nature of employment will to a large degree influence the demand for references from colleagues (we are assuming that guidance for references provided by employers stand outside the remit we have been asked to consider). Consequently, different regulators take different approaches to the provision of specific guidance.
18. The Neale Inquiry drew attention to the issue of guidance for those medical professionals acting as employers:

8. Contents of References

In 1995 very little guidance was available for medical staff as to what should be included in a reference. In 1995 there was no guidance from the Department of Health. The GMC issue advice and guidelines to doctors and in the October 1995 version of the GMC publication 'Good Medical Practice' the section giving guidance on providing a reference stated ". When providing references for colleagues, your comments must be honest and you must be able to back them up" By 2001 the guidance was more precise and the version of the above GMC publication stated "You must provide only honest and justifiable comments when giving references for, or writing reports about colleagues. When providing references you must include all relevant information which has any bearing on your colleagues competence, performance and conduct."

The Inquiry recommend that all requests for references by employing authorities must specify the areas they require to be addressed by the referee and that as the interest of patients is paramount no agreement should ever be entered into to give a reference, which in any way negates this view.¹²

19. The final aspect of this recommendation is to ensure the primacy of patients' interests above all other considerations. This is a common value shared across all health professions throughout their work, as seen in the Common Values Statement drawn up by the Chief Executives Group of the Health Care Regulators:

Values of Health Care Professionals

All health care professionals are personally accountable for their actions and must be able to explain and justify their decisions. Health care professionals work in many different types of practice. **They all have a duty to protect and promote the needs of their patients and clients** (*CHRE emphasis*). To do this they must:

1. Be open with patients and clients and show respect for their dignity, individuality and privacy:
 - Listen to patients and clients;
 - Keep information about patients and clients confidential;

¹² Committee of inquiry to investigate how the NHS handled allegations about the performance and conduct of Richard Neale (2004)
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4088995?IdcService=GET_FILE&dID=25175&Rendition=Web page 216

- Make sure their beliefs and values do not prejudice their patients' or clients' care.
2. Respect patients' and clients' right to be involved in decisions about their treatment and health care:
 - Provide information about patients' and clients' conditions and treatment options in a way they can understand;
 - Obtain appropriate consent before investigating conditions and providing treatment;
 - Ensure that patients have easy access to their health records.
 3. Justify public trust and confidence by being honest and trustworthy:
 - Act with integrity and never abuse their professional standing;
 - Never ask for, nor accept any inducement, gift, hospitality or referral which may affect, or be seen to affect, their judgement;
 - Recommend the use of particular products or services only on the basis of clinical judgement and not commercial gain;
 - Declare any personal interests to those who may be affected.
 4. Provide a good standard of practice and care:
 - Recognise and work within the limits of their knowledge, skills and experience;
 - Maintain and improve their professional knowledge, skills and performance;
 - Make records promptly and include all relevant information in a clear and legible form.
 5. Act quickly to protect patients, clients and colleagues from risk of harm:
 - If either their own, or another health care worker's conduct, health or performance may place patients, clients or colleagues at risk;
 - If there are risks of infection or other dangers in the environment.
 6. Co-operate with colleagues from their own and other professions:
 - Respect and encourage the skills and contributions which others bring to the care of patients and clients;
 - Within their work environment, support professional colleagues in developing professional knowledge, skills and performance;
 - Not require colleagues to take on responsibilities that are beyond their level of knowledge, skills and experience.

Within this broad outline of shared values, it is clear that aspects relating to the provision of references are integral, not least acting with honesty and integrity, justifying public trust, protecting patients, and helping colleagues to work within their level of knowledge, skills and experience. As seen above,

individual regulators' core standards of conduct and ethics articulate similar principles.

20. The issues discussed by the Neale Inquiry and the Kerr/Haslam Inquiry relate to specific professions and employers. Discussions with other regulatory bodies has not reveal any systemic problem or need for additional guidance explaining in greater detail how the values of honesty, integrity, acting in the best interests of patients and service users and not threatening public confidence in the profession should be demonstrated when providing references. For example, the NMC told us that they were infrequently approached directly by registrants on this issue. In their recent review of standards, the HPC told us that the issue of providing references was not raised. A search of our fitness to practise database did not reveal any individual cases that feature ethical failings in the provision of references. Therefore, we have difficulty seeing where additional problems may arise that are not adequately addressed by current approaches.

Conclusions

21. The Government's response to the Neale Inquiry was to recommend that each regulator introduces additional and specific guidance on the issue of writing references. This was not a recommendation of the Inquiry itself.

22. Providing a reference should maintain the overriding interests of public protection and patient safety. The actions of providing a reference are covered by the core standards of conduct, performance and ethics that apply across all health professions, and within each regulator. There is an absence of evidence that this issue – providing references – is a problem that needs particular and dedicated attention by the other regulatory bodies. As things stand, we question whether this is a proportionate and targeted approach given the absence of concerns about this area of activity and the current extent of guidance around conduct.

23. However it is important to note that while the referee has a duty to provide an honest and accurate reference it is for the employer to assure themselves of the qualification and competence of those they propose to employ.

24. CHRE will continue to monitor this issue through our scrutiny and quality work. Should problems arise in the future further action could be taken and regulators should be able to respond appropriately with guidance materials should it become necessary. If at some point in the future such guidance were found to be necessary it should include the following:

The individual should

- act with honesty and integrity
- include all information relevant to professional competence
- provide comments which can be substantiated
- provide comments which are objective, fair, and unambiguous

- provide information about conduct including matters which might affect trust in a candidate or the profession as a whole, including matters that could put patients at risk

The individual should not

- base comments on personal views about the individual which have no bearing on suitability for the role

Annex 1 – General Medical Council guidance on writing references.

http://www.gmc-uk.org/guidance/current/library/writing_references.asp

Writing References

8 August 2007

1. In our core guidance for doctors, *Good Medical Practice* we advise that:

You must provide only honest, justifiable and accurate comments when giving references for, or writing reports about, colleagues. When providing references you must do so promptly and include all information that is relevant to your colleague's competence, performance or conduct. (Paragraph 19)
You must do your best to make sure that any documents you write or sign are not false or misleading. This means that you must take reasonable steps to verify the information in the documents and that you must not deliberately leave out relevant information. (Paragraph 65)

In *Management for Doctors* we also say that:

You must be honest and objective when appraising or assessing colleagues' performance and when providing references. The safety of patients and the public could be at risk if you make false, exaggerated or incomplete comments about another professional's competence or experience. (Paragraph 39)

2. This supplementary guidance is intended to provide more detail about how to comply with these principles. It also explains to candidates what they can expect to be included in any references written about them.

3. Serious or persistent failures to follow this guidance will put your registration at risk.

4. Prospective employers use references to obtain information about a candidate's qualifications, employment history and assist in the assessment of their suitability for the post in questionⁱ. They also provide both employers and candidates with an opportunity to verify the information supplied in an application. References should, therefore, be written in a way that is fair to both the candidateⁱⁱ and the prospective employer.

5. Employers need to be confident that they can rely on the information in references, particularly when they are employing healthcare professionals. Candidates also need to be confident that references written about them are accurate and reliable. A reference that presents an inaccurate picture of a prospective employee, could lead either to the appointment of an unsuitable candidate or the most suitable not being appointed. In some cases this will put patients at risk of serious harm and it may undermine trust in the profession.

6. You should usually provide a reference if you are the person best placed to do so. When providing a reference you should state the basis upon which you

are making your assessment of the candidate, such as how long you have known the candidate and in what capacity.

7. When assessing whether information is relevant you should consider whether its inclusion, or omission, could mislead an employerⁱⁱⁱ about either a specific issue, or the overall suitability of a candidate. If you agree to provide a reference you must:

Only provide comments which you are able to substantiate.

Provide comments which are objective, fair and unambiguous.

Not base comments on your personal views^{iv} about a candidate which have no bearing on the candidate's suitability.

8. You should include all information you are aware of that is relevant to a candidate's professional competence and be prepared to provide evidence to support this, where appropriate.

9. You should provide information about a candidate's conduct, including matters that might affect patient trust in the individual candidate or the public's trust in the profession as a whole.

10. You should draw attention to any other issues that could put patients at risk. This may include information relating to unresolved, outstanding or past complaints, where you judge that this is relevant to the candidate's suitability. You should take reasonable steps to verify the information you provide. Where this is not practical, or the information is incomplete, you should make this clear.

11. Personal information about a candidate, for example in relation to their health, should not usually be included in a reference. However a situation may arise where you are aware of confidential information about a candidate, which will have a direct bearing on their suitability for the particular post in question. In such circumstances you should seek consent to disclose the information. If this is impractical or consent is withheld, you should consider whether the benefits, to individual patients or the public, of disclosing would outweigh the possible harm to the individual candidate. For example, including health information may be justified where that is necessary to protect patients from risk of serious harm. Further guidance on disclosures in the public interest can be found in 22-27 of *Confidentiality: Protecting and Providing Information*.^v

12. If a candidate asks for a copy of the reference, you should usually provide them with one, though you are not required to do so.^{vi}

13. If you are unsure about whether to include information in a reference you should consider seeking advice from your medical defence body or a professional association such as the British Medical Association.

References

- ⁱ .If you have general concerns about a candidate's fitness to practise, whether in relation to their conduct, performance or health, you should follow the advice at paragraphs 43-45 of *Good Medical Practice*.
- ⁱⁱ Spring v Guardian Assurance plc and others [1994]
- ⁱⁱⁱ Kidd v Axa Equity & Law Life Assurance Society plc, Allied Dunbar Assurance plc [2000]
- ^{iv} This includes your views about a colleague's age, colour, culture, disability, ethnic or national origin, gender, lifestyle, marital or parental status, race, religion or beliefs, sex, sexual orientation or social or economic status.
- ^v You should also consider the impact of the Data Protection Act 1998 on the disclosure of sensitive personal data. Further advice can be sought from the Information Commissioner
- ^{vi} See *Data Protection Good Practice Note: Subject access and employment references*, Information Commissioners Office, 2005