

## **Guidance on Providing References for Ex-Employees and Freelancers**

### **1. Purpose of this Guidance**

This document supports businesses in the British screen industry to:

- Provide fair, lawful and constructive references
- Understand what they can and cannot say in a reference
- Reduce legal risk including discrimination, defamation, and negligent misstatement
- Offboard staff and freelancers professionally
- Carry out due diligence when **receiving** references
- Maintain strong industry relationships

This guidance reflects best practice and legal principles drawn from ACAS.

### **2. Why Good Offboarding and References Matter**

The screen industry is small, interconnected, and reputation-driven. How a business handles someone at the end of their engagement can shape:

- Their employability in future productions
- Whether they want to work with you again
- Word-of-mouth reputation across production teams
- Professionalism and trust in your business

### **3. Are Businesses Required to Give References?**

**There is no legal obligation** to provide a reference for an employee or freelancer unless:

- there is an express or implied term to provide a reference in the contract,
- It is required in a settlement agreement,
- It forms part of a policy, or the business is in the habit of providing references
- The information is requested by a Job Seekers Plus Authorised Officer
- The business operates in a regulated sector.

If a business chooses to provide a reference, the type of information provided in the reference should be consistent, and it must be:

- Accurate
- Fair
- Non-misleading
- Non-discriminatory
- Non-defamatory
- Non-malicious
- Based on fact and evidence

Reasonable care must be taken to make sure the reference complies with the above. If not, the business could be subject to a claim for negligent misstatement.

A refusal to provide a reference because of one of the protected characteristics (for example, disability) will entitle an employee to bring a claim for discrimination, since the refusal could be a discriminatory act, even though it takes place after the employment has ended.

Any refusal which is motivated by an earlier allegation of discrimination may be the basis of a claim for victimisation.

#### **4. What a Business Can Say in a Reference**

Businesses may include factual and performance-related information such as:

- Dates of employment/engagement
- Job title(s) and roles performed
- Key responsibilities
- Skills demonstrated
- Conduct and professionalism
- Performance information backed by evidence
- Whether deadlines were met
- Teamworking and collaboration
- Whether you would work with them again

If you choose to give detailed references, ensure consistency across all staff and freelancers.

## **Employees vs Freelancers: Key ACAS-Aligned Distinctions**

### **Employees:**

You may reference:

- Performance
- Conduct
- Attendance (carefully worded)
- Responsibilities
- Training or achievements

But you must avoid:

- Medical causes for absence
- Disability-related absence
- Unsubstantiated performance concerns

### **Freelancers:**

You may reference:

- Quality of project delivery
- Responsiveness
- Meeting briefs and deadlines
- Teamworking with HODs, cast, crew
- Professionalism on set and during production
- Creative or technical strengths

## **5. What a Business *Must Not* Say in a Reference**

A reference must **not** include:

- Discriminatory content (race, disability, sex, age, religion, pregnancy, etc.)
- Medical details or reasons for absence
- Disability-related information
- Personal opinions without evidence

- Unproven allegations
- Comments on grievances or ongoing disputes
- Speculation on things the business cannot verify
- Irrelevant personal data

Including sickness absence data is strongly discouraged unless *essential* and should be phrased neutrally (never disclose causes of absence).

## **6.Data Protection and References (ICO-Aligned)**

### **Data Protection and References**

When giving or receiving references, businesses must comply with data protection law, including the UK GDPR and Data Protection Act 2018. The Information Commissioner's Office (ICO) provides guidance for employers on handling employment information.

The previous **ICO Employment Practices Code** has been withdrawn (2023).

It is being replaced by a series of updated web-based guidance pages, including:

- **ICO Employment Information Hub** (current main resource)
- **Draft guidance: Employment practices and data protection – Recruitment and Selection**  
*(This draft includes sections on references and pre-employment vetting. Public consultation closed in March 2024 and final guidance is awaited.)*

### **Key principles for businesses giving references**

- **Only include information the individual would reasonably expect you to hold** in the context of their engagement.
- **Avoid unnecessary personal data**, especially sensitive data such as health information, disability-related absence, or protected characteristics.
- **Use factual, evidenced information** and avoid opinions about matters not directly related to the role.
- **Keep references secure.**  
References should be stored safely and only accessed by staff who need them.
- **Follow your business's retention policy.**  
Once a reference is no longer needed, it should be securely deleted or destroyed unless statutory requirements require longer retention.

- **Do not share references more widely than necessary.**  
Provide them only to the requesting employer or recruitment contact.
- **Ensure transparency.**  
Individuals should know that a reference is being requested or provided.

### **Receiving references - data protection considerations**

- Use references **only for the purpose of assessing suitability for the role.**
- Do not seek or keep excessive or irrelevant information.
- Store any received reference securely and destroy it once your retention period ends.

## **7. Accuracy, Fairness and Legal Risk**

A business may be liable if a reference is:

### **Negligent or Misleading**

If a reference provides an unfair or misleading picture, whether *too negative* or *too positive*, the business could face claims for **negligent misstatement**.

### **Discriminatory**

If a reference includes protected characteristics or comments that disadvantage someone because of disability-related absences, pregnancy-related leave, or other protected reasons, the business risks a **discrimination claim**.

### **Defamatory**

If the reference damages the person's reputation and contains false or unsubstantiated allegations, the business may face a defamation risk.

## **8. Practical Offboarding Good Practice**

### **1. Exit conversation**

Thank them, gather feedback, and explain the business's standard approach to **references** (for example, whether the business provides factual references only, or factual plus performance references where appropriate). If the business has more than one type of reference it may give, you can confirm which type will apply based on the business's reference policy, rather than the individual's preference.

## **2. Clarify the structure**

Explain the business's standard reference format so the individual knows what to expect. If helpful, you may ask whether there are particular aspects of their work they would like you to highlight, but avoid asking about their future job applications, as this can feel intrusive.

### **3. Ensure accuracy**

Use HR/production records to verify dates and job titles.

### **4. Keep a reference log**

Maintain a record of references issued for consistency.

### **5. Be timely**

Leavers often need references quickly to secure their next job or contract.

### **6. Keep data protection in mind**

Only include information the individual would reasonably expect you to hold.

### **7. Close positively**

Reinforce professional goodwill for future collaboration.

## **9. Due Diligence When Receiving References**

Businesses in the screen sector should verify that incoming references are *reliable, fair and consistent*.

### **9.1 Verify the Source**

- Check the email domain and the referee's job title.
- Ensure the referee had direct oversight of the individual.

### **9.2 Ensure Consent**

Any potential new recruit should know that references are being sought.

### **9.3 Check Consistency**

- Align dates, titles and project information with CV or production records.
- Small discrepancies may not necessarily be fraudulent, but care should be taken.

### **9.4 Follow Up if Needed**

You may contact the referee to clarify factual elements. Do not ask about medical history, grievances or personal matters.

### **9.5 Look Out for Ambiguous Language**

Examples ACAS highlights as “red flags”:

- "Eventually completed the work"
- "Attendance was variable"
- "We wish them well" (with no details)

Clarify if necessary, especially for critical roles.

### **9.6 Avoid Discriminatory Decision-Making**

Never reject someone based solely on:

- Sickness absence
- Pregnancy-related leave
- Vague concerns without evidence

### **9.7 Keep Records**

Maintain reference requests, copies and notes to demonstrate a fair process.

## **10. Recommendations**

- Create a **written reference policy** to ensure consistency.
- Train staff on what they can and cannot include in references.
- Use references as part of a **positive offboarding strategy**.
- Focus on contribution and professionalism, not personal characteristics.
- Remember: a reference reflects on your **business's credibility**.