

COURT REFERENCES – INFORMATION SHEET

The purpose of obtaining references, where a person is being sentenced for a criminal or traffic offence, is to provide the court with some evidence about the person's character, their status in the community and their attitude to the offence, including how committing and pleading guilty to the offence has impacted upon them. This evidence assists the court in determining the appropriate penalty.

A court reference is not a general reference, such as (for e.g.) an employment reference, which people may have in their CV. For a court reference, it is not sufficient to just write "To whom it may concern, X is a person of good character."

Rather, a court reference should be addressed to "The presiding Magistrate" at the Magistrates Court where the person is appearing and it needs to state exactly why the referee thinks the person is of good character and precisely how the referee is qualified to make that assessment. Court references must be specific and detailed.

It follows that a referee should generally have known the person for a long enough period, or in such circumstances, as to qualify the referee to comment on the person's character. It helps if referees are themselves people of good character – a reference from a minister, doctor or teacher will obviously carry more weight than one from a notorious criminal! However, referees do not need to have a title and letters after their name – some of the best references are from "ordinary" people, including family members. There is no magic formula for court references. They are best written "from the heart" and, although typing is preferable, neat handwritten references are perfectly acceptable. References should be succinct and as brief as possible – generally no more than one to two A4 pages.

It is absolutely essential that the referee be made fully aware of the offence to which the person has pleaded guilty and discusses the offence and its implications with the person. This in itself may be difficult and embarrassing for the person, but it is part of the process of demonstrating an acceptance of guilt and contrition for the offence. The willingness of a person to admit and discuss the offence with family, friends and colleagues is one of the things that the court will take into account when considering references.

It is generally unhelpful for referees to include in a reference anything they do not know for sure. For example, the statement "X does not normally drink drive" is of little value if X's record includes previous drink driving charges. Referees should ensure that they check their facts with the person on who's behalf they are writing, or otherwise confine their comments to first hand knowledge.

With those issues in mind, references should generally include the following details:

- The referee's full name (including any titles or qualifications if applicable);
- The referee's full home or business address;
- A brief explanation of how long the referee has known the person and in what circumstances (eg: relative, friend, neighbour, employer, work colleague, sporting team member, parishioner, student, patient, etc);
- The fact that the referee is aware of the offence and has discussed it with the person (including any explanation or expression of remorse the person has given);
- The referee's opinion, based on the past relationship, of the person's character;
- The referee's opinion, based on discussion and observation, of the impact the offence and its implications have had upon the person (including, for e.g. how the person's attitude and behaviour may have changed since the offence);

- Any issues specific to the referee (e.g. an employer may comment on the effect that a conviction and/or any loss of licence will have upon the person's continuing employment status);
- An opinion, based on the referees knowledge of the person and their discussions with them, as to the likelihood of the person re-offending;
- Anything else the referee considers appropriate.

Referees are not generally required to attend court in person, but may do so if they wish.

Referees will not normally receive any response to, nor enquiries about, their reference.

Court references are only read by the person's lawyer, the police prosecutor and the sentencing judge or magistrate. Once handed to the court, the reference becomes a public document and remains with the court file. There is nothing wrong with a person reading a reference that has been written about them, but if a referee wishes a reference to remain confidential it should be handed to the defendant in a sealed envelope or forwarded directly to this office.