



Guidance as to an Occupational Health report to management

A report should be concise, focused, relevant and which assists the manager to progress the case.

General comments on OH communication with workforce

1. Occupational Health (OH) should give information to the workforce in general about their role, their duty of confidence, their legal basis for processing personal data, their keeping of records and how long they will be kept, how to obtain subject access, how to make a complaint etc to comply with the GDPR and the Data Protection Act 2018.
2. A statement should be included that, exceptionally, a report may be made without consent, e.g. in the public interest or where there is a legal obligation.
3. This information should be made available to all employees in a leaflet or on the Intranet so that they know about the role of OH from the beginning of their employment even if they are never in fact referred to OH.

Management referral process

4. If an employee is referred by a manager to OH, best practice is for the manager to explain the reason for the referral and obtain written consent to the referral to OH.

The OH consultation

5. Whether on the phone or in person, consultation should begin by OH explaining who they are and the reason for the referral; telling the employee what they intend to do, including writing a report. State that medical confidentiality applies to both the discussions and OH records and that the employer needs to have advice about fitness for work. If the employee is happy to continue the interview can proceed.
6. At the end of it the OH professional should tell the employee orally what they intend to write and to whom the report will be addressed. At that stage the employee may be willing to consent, but the OH professional should offer to send them a written copy of the report before it is sent to the manager.
 - a. If the employee says that it is unnecessary the OH professional should obtain written consent to send a report to the manager in the terms already explained, prepare the report and send it.
 - b. If the employee asks for a copy of the written report before it is sent to the manager, the OH professional should:
 - i. obtain an address, email or postal, to which the report should be sent and inform the employee that if they do not object to the report within a stated time period (days not weeks) the report will go to the manager. This should be put into writing.
 - c. It is very important that the employee is clearly advised
 - d. that they must reply within the specified time otherwise the report will be sent. The form can state that errors of fact will be corrected, but that your opinion will not be changed unless based on an error of fact. Written consent should then be obtained to this procedure.

Content of the report

Whether OH service in-house or externally provided, each OH report should be a professional document that can be read in isolation:

- A statement of the name and qualifications of the OH professional (this may be at the end of the report), include GMC number or PIN
- State the name, job title and two identifiers (date of birth, address) of the employee. State if employee has any other roles or carer responsibilities
- State the date, place (and duration) of the consultation interview; whether by phone or in person. State if anyone else attended the appointment
- State that the report is made with the consent of the employee (or if not the reason why not e.g. that the employee is unfit to drive).
- Summarise the details of the management referral: reasons and name of referring manager, whether absent from work and, if so, for how long.
- State to whom the report is being sent – normally to the referring manager and a copy to the employee +/- copy to human resources +/- copy to the GP
- Remind the manager that the employer also owes a duty of confidence and should not share confidential information with other managers except with consent or on a 'need to know' basis. State if employee consents for future managers to see the report. As regards consent some people are asking for a second consent after the worker has been sent the report, rather than telling them that if they do not come back within a stated period the report will be sent to management. This is not legally necessary but may be advised in cases identified as especially difficult.
- You do not have to give a diagnosis or any clinical information, but you may do so with the employee's consent if it would be helpful

Provision of further information

1. State if you have evidence from a treating clinician, e.g. GP or consultant, which has informed the report and how it was obtained. This may have been provided by the employee, sought by another OH professional or sometimes provided with the management referral.
2. State if the referring manager has provided further information e.g. job description, duties, attendance record, accident or incident record.
3. State if in your opinion it is that a report from a clinician should be sought under the Access to Medical Reports Act 1988. This normally incurs a fee. State whether a case conference is required. A request under the Access to Medical Reports Act 1988 is a request for a report and that it is in some cases a criminal offence to ask for the full medical record from a GP or consultant physician (but not when the worker is applying for a pension) (section 184 Data Protection Act 2018)?

Questions posed in the referral

4. If the referral has asked specific questions you should answer them clearly. This can be as a statement or question-and-answer format.
 - a. For example, *Is the employee currently fit for work? If not, are they receiving treatment? Can you give a date of a likely return to work?*
5. If you cannot give an answer to any specific question(s) then say so.

Recommendations supporting return to work/stay at work

6. Could the employee be assisted to RTW/SAW by the employer adjusting the workplace or working practices

- a. *hours or place of work? Phased return? Change of duties or hours of work? Working from home? Equipment? Parking space? Support of a mentor or buddy? Etc*
- 7. Involving Access to Work; free advice for the individual and some limited funding for adjustments may be available: the employee makes the contact and the information is provided directly to them. Access to work also has a no cost Mental Health Support Service.
- 8. You may recommend a specific risk assessment for the duties the worker undertakes; this RA is the duty of the manager, with help as required
- 9. State that it is for the employer to decide whether any suggested adjustment can be accommodated by the business

Working relationship issues

- 10. If you have only been told during the consultation about relationship problems with managers or co-workers state that the employee has told you of his/her concerns; you are not able to verify them because you have only heard his/her view of the matter but suggest that it might be helpful to discuss it with him/her.
- 11. If the relationship problem described is primarily with the referring manager, it may be more helpful to suggest any discussion is with a third party e.g. HR or more senior manager

Equality Act disability considerations

- 12. State whether it is likely that the employee has a disability as defined in the Equality Act¹? State where a specified condition is automatically included e.g. cancer
- 13. Ensure that you consider all the components of the definition, and where it is complicated or unclear, you may wish to refer to the published Equality Act Guidance ('Guidance on matters to be taken into account in determining questions relating to the definition of disability').
 - Does he/she have a physical or mental impairment? Consider the underlying impairment, without control by medication/prosthesis.
 - Has it lasted or is likely to last more than twelve months? Is it a progressive or recurrent condition?
 - Does it affect normal day to day activities? Include: use of computer, time keeping, able to follow instructions, lifting and carrying, driving (not work activities). Normal day to day activities may be work activities e.g. Paterson v Metropolitan Police held that sitting an exam for promotion to Superintendent is a normal day to day activity.

Conclusion

- 14. State whether you need to see the employee again (e.g. to review progress/short-term restrictions and adjustments) and within what time frame. State if case is closed
- 15. You may wish to specify how the recipient can contact you for any clarification of the report and presented in a format which may not be altered. Clarify re GDPR and record storage statement.

*Original draft Diana Kloss October 2019 V1
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¹ *The armed services are not bound by the disability provisions in the Equality Act.*