5. Employee Rights and Consents

Employees have certain rights under the Access to Medical Reports Act 1988 and the Data Protection Act 1998 which are explained below.

This section explains these rights and the consents required by us to obtain and process health related data from an employee or a GP/Consultant.

Data Protection Act 1998 and Access to Information

The general information we ask about employees is known as “personal data”. Information about health, medical history and any treatment received is known as “sensitive personal data” and due to the sensitive nature of this data a number of procedures need to be adopted:

1. Informed consent is required in writing to obtain and process any health related information. Before personal and sensitive information can be processed a Consent Form must be completed. A summary of the employee’s rights is provided on the Consent Form (HM40).

2. An employee can ask for a copy of their medical reports, and this may include a copy of the independent medical assessment report, if one has taken place.

3. If an employee wants access to their medical records, the request must be made in writing to Health Management. A security check will be made to verify the identity of the employee seeking the information and a charge may be made for the release of information.

4. If an employee believes their medical records are inaccurate or misleading they can request that the record is corrected or that an amendment is attached to the record.

Access to Medical Reports Act 1988

These are the employee’s rights, which should be carefully explained to the employee before they are referred to us and give their written consent to a report being provided to us by their GP/Consultant.

An employee can withhold their consent to us having access to any medical report. However, it is in the employee’s best interest to provide consent otherwise a medical opinion may have to be formed on limited information.

The employee can see the report before it is sent to us and during the six months after completion of the report, if they wish. If they want to see the report before it is sent to us, we will tell the doctor in writing when the request for the report is made and will notify the employee directly of the date of the request. This may delay the Management Referral report we issue to you.

We will tell the GP/Consultant that:

- The report must not be released in under 21 days unless the employee has written that he does not want to see it; or
- The employee has seen the report, consented to its being supplied (and, if relevant, has attached a statement to it).
If 21 days have passed since the date of the request and the employee wants to see the report before it is sent to us, it is the employee’s responsibility to liaise directly with their GP/Consultant.

The GP/Consultant can make a charge if a copy of the report is required. If the employee changes their mind and wants to see the report after it has been provided to us, the employee has the right to seek access to it from the GP/Specialist at any time up to six months after it was supplied.

**Exemptions in the Access to Medical Reports Act 1988**

The GP/Consultant is not obliged to show the employee any part of the medical report if that disclosure would, in the GP/Consultant’s opinion, be likely to cause serious harm to their physical or mental health. Similarly, if a report reveals information about a person other than the employee, that part of the report will not be disclosed.

Where the exemptions apply, the GP/Consultant must inform the employee in writing that access is being denied but that access is still allowed to any part of the report not covered by the exemptions.

**Difference between the types of information**

The reason why different access rules apply between a GP/Consultant’s report and our report is because the GP/Consultant’s report relates to medical reports created by those directly responsible for treatment and care.

Independent doctors who examine the employee to form an opinion and record it in a report to us are not responsible for treatment and care. However, you should be aware that the information forms part of an occupational health record and the employee has a right to see this under Data protection legislation.

**Independent Medical Assessment Consent**

If an employee is asked to attend an independent medical assessment by an occupational physician who is not directly responsible for their care, the purpose of the examination must be explained to the employee.

The employee will be asked to sign an IMA Consent Form at the time of the appointment:

- To agree to the examination being carried out.
- To authorise the examining occupational physician to directly release medical information from the assessment to the OHS and for the OHS to interpret the information to be released to the Manager at the organisation.
- To authorise the OHS to release medical information from the assessment to their GP/Consultant and other medical specialists, if necessary.

**The GMC guidelines introduced in 2009**

Although not law, the guidelines introduced by the General Medical Council (GMC), have been adopted by Health Management as they ensure we always work within best practice protocols.
These guidelines now allow employees the option to see their advice report before it is released to the Client (or third party) however it does not give them any rights to request or demand changes to the advice report. Health Management’s protocols allow employees to state their preference to see the report before their employer, at the same time as their employer or not to see it.