

# **Volunteer Cornwall**

## **Policy and Procedure for Long Term Ill Health 2022**

### **1 General**

1.1 As an employer, if Volunteer Cornwall has to consider dismissing an employee on the grounds of ill health it is important to show fairness and reasonableness through following agreed procedure. Ill health dismissals are affected by the Disability Discrimination Act 1995 (DDA) and Equality Act 2010, as certain types of long term ill health may fall into the category of a disability for the purposes of the Act.

1.2 Where the senior manager has concerns as to an employee's health they should arrange to discuss this with the Chief Executive, HR Manager and employee to establish the facts. It may also prove helpful to arrange for a medical report to be produced, to determine the nature of the illness and the ability of the employee to do their job or other work in the foreseeable future, and to investigate what adjustments, if any, could be made to the work environment or work pattern.

1.3 The exact nature of the employee's job may be influential in considering the question of fairness in an ill health dismissal process. For example, posts that are funded to deliver specific outputs or outcomes and are project based may have contract conditions imposed by funders regarding sick pay conditions. Volunteer Cornwall will always consider the possibility of obtaining a temporary replacement/interim manager or offering a phased return to work to any employee on long term sick leave.

### **2 Sickness Records**

2.1 The Chief Executive is responsible for Volunteer Cornwall's sickness records.

2.2 The term sickness record in this document means a record which contains details of the illness or condition responsible for an employee's absence. Sickness records will include information about employee's physical or mental health. The holding of sickness records will therefore involve the processing of sensitive personal data which means that the conditions for processing sensitive data as detailed in Volunteer Cornwall's Data Security and Protection Policies must be satisfied.

2.3 Information from sickness records about a employee's illness or medical condition can only be disclosed where there is a legal obligation to do so, where it is necessary for legal proceedings or where the employee has given explicit consent to the disclosure.

2.4 Sickness records of individual employees are not to be made available to other employees, other than to provide managers with information about those who work for them in so far as this is necessary for them to carry out their managerial roles.

### **3 Statutory Sick Pay**

3.1 In accordance with the terms and conditions of service staff may, at the discretion of the Chief Executive and Senior Manager, receive eight weeks sickness leave on full pay in any consecutive 12 months. This means that staff receive Statutory Sick Pay plus an enhancement so that their overall payment equates to their full pay. Thereafter:

- Staff with less than 1 year's service receive Statutory Sick Pay (SSP) only;
- Staff with more than 1 year's service but less than 3 year's service receive an enhancement to SSP so that their overall payment equates to half pay until the end of their entitlement to SSP, i.e. 28 weeks;
- Staff with more than 3 year's service receive an enhancement to SSP so that their overall payment equates to full pay until the end of their entitlement to SSP, i.e. 28 weeks.

3.2 The above enhancements to SSP are subject to approval by the Board.

### **4 Medical Reports**

4.1 The first step in the process is to obtain a medical report, which should be carefully assessed to determine the nature and effect of the illness, and how much longer the absence will continue. Volunteer Cornwall cannot make a decision in relation to ill health dismissal without proper medical information. Volunteer Cornwall needs to understand the nature of the illness, how long it is likely to last and whether reasonable adjustments can be made to the working environment or working pattern.

4.2 In respect of medical reports, the first approach is to be made to the employee's own doctor. This request will normally be made after 3 months cumulative sickness absence. Before a request can be made the employee must give their approval. Examples of letters to the employee and doctor are at Annex A and Annex B respectively.

4.3 The Access to Medical Reports Act 1988 gives every individual the right of access to any medical reports relating to them which are to or have been supplied by their doctor for employment purposes. Volunteer Cornwall must request the employee's written consent to its obtaining a medical report and must inform the employee of their rights under the Act to:

- Withhold consent;
- Have access to the medical report before it is supplied to us or within six months after it has been supplied to us;
- Refuse to consent to disclose the report to us (after having seen it);
- Amend the report where you think any of the facts contained in it are incorrect or misleading.

4.4 The employee's doctor need not disclose the report if he or she considers it will be likely to cause harm to the employee's physical or mental health.

4.5 If the employee refuses access, or withholds consent and, further, refuses to be examined by an independent doctor, if required, Volunteer Cornwall will be unable to ascertain the medical position. In these circumstances Volunteer Cornwall will only be able to act on the information available, and the employee must be made aware therefore, that if they deny access to medical reports they may seriously prejudice their case.

## **5 Consultation**

5.1 Once medical reports have been obtained or the employee has been medically examined, the next step in the ill health capability investigation is to be consultation.

5.2 It is important for the employee to be consulted and given an opportunity to state his or her case. Therefore Volunteer Cornwall will take "sensible" steps to consult and discuss the matter with the employee to ensure fairness and reasonableness. If the employee is not consulted and not given an opportunity to state his or her case, there may be an element of unfairness to any subsequent dismissal. Warnings are not appropriate in relation to illness.

5.3 Volunteer Cornwall will consider all possibilities, including the nature of the illness, how long it is likely to last and whether reasonable adjustments can be made to the working environment or working pattern.

5.4 If at this stage no reasonable adjustments can be made, and Volunteer Cornwall is considering dismissing the employee on ill health grounds, Volunteer Cornwall will consider one last time whether reasonable adjustments can be made to the working environment or working pattern.

## **6 Recommended Procedure**

6.1 A list of recommended actions to be taken in respect of long term ill health absence is as follows:

- The senior manager is to maintain a record of all actions taken and details of all contact with the employee;
- The senior manager and/or the Chief Executive are to maintain regular reasonable contact with the employee. All contact is to be documented and copied to the Chief Executive;
- At all stages the employee must be kept fully informed if his or her employment is at risk;
- After two months continued absence or frequent disrupted absence the matter is to be brought to the attention of the Board. The Board will discuss the payment of Statutory Sick Pay and any recommend further action required;
- If necessary, the senior manager is to write to the employee requesting their consent to obtaining a medical report and informing them of their rights;

- Once consent is received, the senior manager is to write to the employee's doctor requesting a medical report. The doctor is to be asked specifically when a return to work is expected and what type of work the employee will be capable of;
- On receipt of the report, the senior manager and Chief Executive will arrange a face to face meeting with the employee at a mutually agreed venue. If a venue cannot be agreed, other options will be sought, such as a telephone discussion. The meeting will review the situation, consult with and obtain the employee's views and discuss the options. A letter will be sent to the employee confirming any action plan agreed at this meeting, within 10 working days;
- A report by the Chief Executive is to be submitted to the Board with full details of the case for their decision concerning further action to be taken;
- If no reasonable adjustments can be made to working patterns or environment, and no alternative work is available, and the job can no longer be reasonably kept open, the employee should be informed of the likelihood of dismissal;
- If considered necessary an independent medical examination can be arranged, especially where there is reasonable doubt about the nature of the illness or injury. The employee should be asked if he or she will agree to another medical examination;
- If the employee refuses another examination Volunteer Cornwall will make a decision based on the information available, and the employee must be made aware therefore, that this may seriously prejudice their case;
- A report by the Chief Executive is to be submitted to the Board with full details of the case for their final decision concerning action to be taken.

## **7 Appeals Procedure**

7.1 Any employee wishing to appeal against the outcome of this procedure should do so using the organisation's Grievance Procedure.

Signed:

Date:

Ian Jones  
 Chief Executive  
 On behalf of Volunteer Cornwall

Review Date: 04/25

**Example Letter to Employee  
Consent to Medical Report**

Annex A

Dear .....,

**Absence due to Sickness**

Thank you for your doctor's certificate extending your absence until .....

In order that we can understand the nature of your illness and how long it is likely to last I would like to arrange a meeting with you so that we can review the situation, gain your views and discuss options

So that we are fully aware of your situation, it would be helpful if beforehand a medical report could be produced by your doctor determining the nature of your illness and your ability to do your job in the foreseeable future. This would be used to inform the discussions at the meeting.

In order for us to proceed we need your written consent before we can approach your doctor for a medical report. Your rights under the Access to Medical Reports Act 1988 are that you can:

- Withhold consent;
- Have access to the medical report before it is supplied to us or within six months after it has been supplied to us;
- Refuse to consent to disclose the report to us (after having seen it);
- Amend the report where you think any of the facts contained in it are incorrect or misleading.

You should also be aware that your doctor need not disclose the report if he or she considers it will be likely to cause harm to your physical or mental health.

We want to work with you, so your co-operation would be very much appreciated so that we can be in full possession of the facts. Should you refuse access, or withhold consent and, further, refuse to be examined by an independent doctor, if required, we will be unable to ascertain the medical position. Therefore in these circumstances we will only be able to act on the information, which we must inform you may seriously prejudice your case and may result in your dismissal.

Please confirm on the enclosed letter that you consent to our obtaining a medical report from your doctor. Once this report is received I will arrange a meeting so that we can consider and discuss all possibilities.

I look forward to hearing from you.

Yours sincerely  
Chief Executive

**From:** .....  
.....  
.....  
.....

**To:** .....  
Volunteer Cornwall

**Re: Absence due to Sickness – Consent to a Medical Report**

I agree that you may obtain a medical report about my incapacity for work from my doctor whose name and address is as follows:

.....  
.....  
.....  
.....

In addition to requesting a medical report outlining my illness, I also agree to you asking how long my illness is likely to last, when I might be expected to return to work and any comments about my ability to do my job in the future.

**Signed:** .....

**Name:** .....

**Date:** .....

**Example Letter to Doctor – Medical Report**

Annex B

Dear Dr .....,

**Employee.....**

..... has been employed by Volunteer Cornwall as a .....  
since ..... he/she has been continually absent from work due to ill  
health since .....

We are obviously concerned at ..... continued absence and would like to  
do all we can to help him/her return to work. In order to help ..... we need a  
clearer understanding of his/her medical problem and how long the illness might last.

My reason for writing to you therefore is to request a medical report outlining  
..... illness. It would be helpful if you could indicate in the report how long  
the illness is likely to last and when you might expect ..... to return to work. I  
would also be grateful if you would comment on ..... ability to do his/her job  
in the future and how we might help him/her return to work.

I have written to ..... explaining my reasons for requesting a medical report  
and he/she has given his/her permission on the attached note.

Thank you for your assistance.

Yours sincerely

Chief Executive