**NHS GREATER GLASGOW AND CLYDE**

**INJURY ALLOWANCE**

**A GUIDE FOR STAFF**

**Introduction**

1. NHS staff who are injured or become ill, and where the injury or illness is wholly or mainly attributable to their NHS employment, may be entitled to financial assistance if their pay is reduced as a result of their health problems. Arrangements for this financial support changed in March 2013. Injuries occurring prior to that date are covered by the former NHS Injury Benefit Scheme details of which are set out in Part B below.

2. This guidance should be read in conjunction with NHS Greater Glasgow and Clyde’s Attendance Management Policy.

***How will I know which payment I may be entitled to?***

3. Eligibility for the different types of financial support will be dependent on the date you injure yourself or become ill as a result of your employment. It is the date injury occurred or a disease is contracted that is important here – not the date you go off sick.

 If you injured yourself or contracted a disease at work on or after 31 March 2013 you may be eligible for Injury Allowance and should read Part A.

If you injured yourself or contracted a disease at work on or before 30 March 2013 you may be eligible for NHS Injury Benefits and should read Part B.

**Part A: Injury Allowance**

6. Injury Allowance is a payment made to eligible staff that tops up sick pay, or earnings when on a phased return to work, to 85 per cent of pay (as defined in the terms and conditions of service).

***Who is eligible for Injury Allowance?***

7. The allowance is applicable to all staff on Agenda for Change, Medical & Dental and Executive & Senior Management terms and conditions of service.

***When is Injury Allowance payable?***

8. Injury Allowance is payable when an employee is on authorised sickness absence, or on a phased return to work, with reduced pay or no pay due to an injury, disease or other health condition that is wholly or mainly attributable to their NHS employment.

***What does "wholly or mainly attributable to their NHS employment" mean?***

9. “Wholly" means "totally" and "mainly" means "for the most part". "Attributable” is defined in case law as *a contributory causal connection; it need not be the sole, dominant, direct or proximate cause and effect.*

The injury, disease or other health condition must have been sustained or contracted in the discharge of the employee’s duties of employment or is an injury that is not sustained on duty but is connected with or arising from the employee's employment.

***What kind of situations may lead to payment of Injury Allowance?***

11. The following are some examples of situations that may lead to entitlement to Injury Allowance:

• *physical or psychiatric injury sustained or disease contracted due to a specific incident or series of incidents*

*• injury sustained or disease contracted that does not manifest itself for several years, for example, asbestosis, Hepatitis C following a needlestick injury*

*• injury sustained whilst travelling on official duty, for example, road traffic accident (RTA), whilst travelling in an official car from one NHS premises to another*

*• injury sustained off duty, for example whilst providing professional treatment which required professional training or knowledge at the scene of a RTA*

*• injury inflicted off duty, the cause of which can be attributed to NHS employment (for example, being assaulted on the way home from work by ex-patient)*

*• injury, disease or other health condition contracted due to a series of incidents relating to NHS employment (for example, exposure to noxious substances causing injury, condition or disease over a period).*

***Are there any circumstances where Injury Allowance cannot be considered?***

12. Injury Allowance cannot be considered if:

*• you are injured whilst on a normal journey travelling to and from work, except where the journey is part of your NHS duties of employment*

*• you are on sickness absence as a result of employment related matters such as an investigation, capability proceedings or disciplinary action, or as a result of a failed application for promotion, secondment or transfer*

*• you sustain an injury or disease at work which is due to or aggravated by your own negligence or misconduct.*

*Neither is it payable:*

*• if your pay has not dropped below 85 per cent*

*• after your employment contract has ended.*

***What about “wear and tear” or degenerative change?***

13. It is unlikely that wear and tear or degenerative change alone would lead to payment of Injury Allowance as you must be able to prove that your condition is “wholly or mainly attributable” to your employment.

***What about previous injuries?***

14. If you injure yourself at work and exacerbate a previous work related injury, you should be able to prove that your current condition is wholly or mainly attributable to your employment easily even if the injuries were under two different employers. If the previous injury was NOT work related, you would need to be able to show that your sickness absence is “wholly or mainly attributable” to the recent work-related injury.

**What if there is more than one cause of the injury, disease or other health condition?**

15. If both NHS related and non-NHS related factors are involved, it is necessary for the Board to assess their relative importance. In such cases Injury Allowance is only payable if, on the balance of probabilities, the injury, disease or other health condition is wholly or mainly attributable to your NHS duties. The Board may also wish to seek specific advice from the occupational health service.

***I have more than one NHS contract – how will Injury Allowance be determined?***

16. This can be a rather complex area of employment law and when determining entitlement to Injury Allowance the Board will need to consider carefully the detail held within your contracts locally.

***I have two contracts with the Board – will I receive Injury Allowance in both if I am injured at one of them but am off sick from both?***

17. Yes, if you satisfy the criteria for both. The Board will pay Injury Allowance for both contracts if you are off sick from both.

***I have a second non-NHS job – if I injure myself at this job will I be able to claim Injury Allowance at my NHS employment if I have to go off sick?***

18. No. You can only receive Injury Allowance if you injure yourself or become ill as a result of your NHS employment.

***What about bank work?***

19. Injury Allowance may be payable if you injure yourself or become ill doing NHS bank work.

 **What about agency work?**

20. Injury Allowance would not be payable if you injured yourself doing non-NHS agency work, even if you were undertaking work in an NHS service.

***Who makes the decision about entitlement to Injury Allowance?***

21. A local Injury Allowance Panel made up of designated representatives from HR, Operational Management, OHS, Health & Safety and Staff side will determine entitlement.

***How do I claim Injury Allowance?***

22. You must inform your manager at the earliest opportunity that your absence is work-related. You will also require to complete an Injury Allowance Application form and submit this for verification to your line manager along with any supporting documentation, including a copy of the Datix report, fit notes and any OHS advice or support that you have been receiving as a result of your injury or illness. The Injury Allowance Application Form is available for you to download from HRConnect. The Injury Allowance Panel will then need to establish whether your absence is “wholly or mainly attributable” to your duties and if so when to start paying Injury Allowance (remember it is only payable once your pay reduces below 85 per cent so it is important that the Panel can make a decision about entitlement before this happens so that timely payment of the allowance can be made).

***How will the decisions be made?***

23. The Injury Allowance Panel will make the decision based on all available relevant evidence and information, using the civil burden of proof. The civil burden of proof is based on the balance of probability which is defined as “more likely than not”.

The Panel may also want to seek further medical advice from the occupational health service and/or additional information from your line manager or yourself to ensure that an appropriate decision is made.

***What information may be required?***

24. As well as notifying your manager that you believe your absence to be work-related at the earliest opportunity, you must provide all relevant information, including medical evidence, that is in your possession or that can be reasonably obtained, to enable the Injury Allowance Panel to determine the claim.

You may also be asked to give permission for your occupational health or GP records to be accessed.

 You may also wish to provide additional supporting and corroborating evidence to help the Panel determine your eligibility, for example witness statements, DWP benefit statements, copies of any relevant letters and correspondence relating to any other medical advice received. Further information on corroborating evidence can be found in the Employers Guidance on Injury Allowance which can be accessed at www.msg.scot.nhs.uk or at www.stac.scot.nhs.uk.

***Is there any qualifying period for Injury Allowance?***

25. No. Payment of Injury Allowance is not dependent on length of service. This means that all staff are covered from their first day of employment.

***How is Injury Allowance calculated?***

26. Injury Allowance is a top-up payment. It tops up sick pay and/or earnings when on a phased return to work, and certain other income (as specified below) to 85 per cent of pay as defined in appropriate contractual documentation, that is, as noted above in section 14 of the NHS terms and conditions handbook, or as specified in their separate contractual sick pay arrangements.

The following payments will be included when calculating 85 per cent:

• contributory state benefits received for loss of earnings, for example, Job Seekers Allowance, Employment and Support Allowance, at the rate they are actually received by the employee

• sick pay (including Statutory Sick Pay (SSP))

• any earnings when on a phased return to work on reduced pay.

 Any other benefits or payments received should be ignored.

Payment for bank staff is calculated taking an average of the last year’s pay.

***Do I have to claim DWP benefits if this Injury Allowance will top up my pay anyway?***

27. Yes. Staff are required to claim any contributory state benefits they may be entitled to and must inform employers immediately on receipt of such benefits. Where timely notification is not provided any overpayment of Injury Allowance that arises as a result will be recoverable.

***What if the Board makes an over-payment?***

28. The Board will require repayment when an overpayment is made. Where the Board has made an accidental overpayment the statutory position is that they can recover this by deducting the overpayment from future wages or salary. This is covered by s.14 of the Employment Rights Act 1996, which provides that protection from deductions from wages does not apply to an overpayment of wages or employment-related expenses. The Board will take into account the period of time the over payment was made when agreeing the programme of repayments.

***What about tax and National Insurance contributions?***

29. Injury Allowance is subject to income tax and National Insurance contributions but is not subject to NHS Pension Scheme contribution deductions.

***What about staff on a phased return to work?***

30. Eligible employees who agree a phased return to work programme with their manager may receive the Injury Allowance as a pay top-up if their pay is reduced during this approved period of rehabilitation.

***How long is Injury Allowance payable for?***

31. Injury Allowance is payable for a period of up to 12 months per episode, subject to NHS Greater Glasgow and Clyde’s Attendance Management Policy and Procedures.

The intention is for the Injury Allowance to be a flexible payment that supports staff when they are off sick and on return to work. As such it can be paid for a maximum of 12 months per episode, for example, during sickness absence on reduced or no pay and during any agreed phased return to work after pay has been reduced, with an episode remaining linked to the original injury.

 Where an injury is exacerbated by a further injury or incident at work (which may not on its own have led to a period of sickness absence) then a new episode may commence.

***What about pay protection?***

32. If you have to change jobs permanently to a position on lower pay, or have to reduce your hours due to a work-related injury, disease or other health condition, you are entitled to receive the same pay protection as that applicable to organisational change.

***I disagree with the decision the Injury Allowance Panel has made about Injury Allowance – what can I do?***

33. If you are unhappy with the decision taken by the Injury Allowance Panel not to award Injury Allowance then you have a right to appeal against this decision. This appeal should be made **within 4 working weeks** of receiving the decision of the Panel and should be addressed to the Director of Human Resources and Organisational Development clearly detailing the reasons for the appeal.  The Director of Human Resources and Organisational Development in conjunction with the Board’s Employee Director and Nurse Director/Medical Director will consider the original application and supporting evidence and the decision taken by the Panel along with the letter of appeal. Should further Occupational Health advice be required this will be requested from an Occupational Health clinician not involved to date in the case.  Any report provided as part of the appeal process will also be shared with you. The Director of Human Resources and Organisational Development will write to you to advise you of the outcome of your appeal. This will be the final stage of the process and there will be no further right of appeal.

***Part B: Continuing access to NHS Injury Benefit Scheme***

34. Access to the NHS Injury Benefit Scheme will continue to be available under transitional arrangements until 30 March 2038 for people who suffer a relevant work related injury or disease on or before 30 March 2013. NHS Injury Benefits can provide three forms of financial support for NHS staff affected by injury or disease that is wholly or mainly attributable to their NHS employment: Temporary Injury Allowance; Permanent Injury Benefit; death benefits. Full details of the scheme and supporting guidance is available at: [www.sppa.gov.uk](file:///C%3A%5CUsers%5Chowatbr507%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5C3R5SQOWT%5Cwww.sppa.gov.uk)..