

INJURY ALLOWANCE PROCEDURE

DECEMBER 2016

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**1. Introduction**

1.1 PCS (AFC) 2013/1 informed NHS Boards of the new Injury Allowance provisions which were effective from 31 March 2013. This allowance replaced the previous Injury Benefits Scheme administered by the Scottish Public Pensions Agency (SPPA). However under transitional arrangements, injuries or illness which were wholly or mainly attributable to the duties of NHS employment, which occurred on or before 30 March 2013 will still be eligible to be claimed under the previous Injury Benefits Scheme administered by SPPA – see section 7 below.

1.2 Injury Allowance can be paid to an employee who, due to a work related injury, illness or other health conditions is on authorised sickness absence or a phased return to work with reduced or no pay. An employee who has an injury, disease or other health condition that is wholly or mainly attributable to their NHS employment which occurred on or after 31 March 2013 may be entitled to an Injury Allowance payment subject to certain conditions as detailed in this procedure. However, the injury, disease or other health condition must have been sustained or contracted in the discharge of the employee’s duties of employment or be an injury that is not sustained on duty but is connected with or arising from the employee’s employment.

1.3 The attribution of injury, illness or other health condition will be determined by NHS Greater Glasgow and Clyde based on the information provided by the employee and the appropriate medical advice. In taking this decision the civil burden of proof - “on the balance of probability” (ie more likely than not) – will be used to determine the outcome. Where the employee disagrees with the decision taken there will be a right of appeal as detailed in this procedure.

1.4 Payment of the Injury Allowance is not dependent on length of service.

**2. Eligibility**

2.1 The allowance is applicable to all staff remunerated on Agenda for Change, Medical and Dental and Senior Manager Terms and Conditions of Service.

2.2 However, the Injury Allowance will not be paid in the following circumstances:

* Injury whilst on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties;
* Sickness absence as a result of disputes relating to employment matters, conduct or job applications;
* Injury, disease or other health condition due to or seriously aggravated by the employee’s own negligence or misconduct.

**3. Scale of Injury Allowance**

3.1 Injury Allowance will be paid to an eligible employee as a top up to their sick pay or earnings or when on reduced pay as a result of a phased return to work. The calculation will include any contributory state benefits received by the employee to 85% of pay.

3.2 The Injury Allowance payment is subject to tax and national insurance contributions but is not subject to pension contribution deductions.

3.3 Contributory state benefits received for loss of earnings will be offset at the rate at which they are actually received by the employee. All other benefits or payments received should be ignored.

3.4 Employees are required to claim any contributory state benefits they may be entitled to and to declare receipt of such benefit(s) to NHS Greater Glasgow and Clyde. Timely notification will ensure that overpayments of Injury Allowance are not made. NHS Greater Glasgow and Clyde will require repayment when an overpayment is made in line with the Over/Under Payments of Salary procedure.

3.5 The Injury Allowance will be limited to the period of the employment contract and a maximum payment period of 12 months per relevant injury or disease, subject to the ’Board’s Attendance Management Policy.

**4. Application Process**

4.1 Where an employee considers that they may be eligible for an Injury Allowance payment, the [Application for Injury Allowance form](http://www.nhsggc.org.uk/working-with-us/hr-connect/policies-and-staff-governance/policies/injury-allowance-procedure-and-guidance/tools-and-templates/) should be completed providing details of the injury or illness, a copy of the DATIX report if relevant and any support received from Occupational Health as a result of the injury or illness. The form together with any supporting documentation should be submitted to the individual’s line manager for completion of Part 2. To avoid financial detriment, where an application is being considered, this should be made at the earliest opportunity in advance of the employee approaching half sick pay. Where it is known that an employee’s absence is due to a work-related injury, disease or health condition which is likely to result in reduced pay the line manager should refer the employee to the Board’s Injury Allowance Procedure at the earliest opportunity.

4.2 On receipt, an up to date report will be requested from Occupational Health and/or Health & Safety seeking their advice on the causation of the injury, illness or health condition prior to submission of the Injury Allowance application. This may require the employee to attend a further appointment with Occupational Health if this is considered necessary. In cases where the employee has not already been attending Occupational Health an appointment will be made for them to attend and a report requested prior to any decision being take on the Injury Allowance application. In both circumstances the Occupational Health reports will be shared with the employee. Where the employee refuses to attend an appointment at Occupational Health a decision will be taken on their Injury Allowance application in the absence of medical evidence. Once this report is received, the Manager should forward the form, together with any supporting documentation (Datix/Health & Safety Report Form, Occupational Health Reports, Job Description, Witness Statements etc) to the Depute Director of Human Resources for consideration.

4.3 Each application will be considered by an Injury Allowance panel consisting of a designated Head of People and Change, a designated General Manager (or equivalent level manager), representation from OHS and Health & Safety, and a nominated staff side representative. OHS will identify an appropriate OHS clinician to perform this role on a case by case basis. The Injury Allowance Panel will be scheduled to sit monthly (as required).

4.4 At the next scheduled date the panel will then assess the application, the Occupational Health report and any other supporting documentation, including Health & Safety advice if appropriate, and take a decision as to whether, in line with the [Employer’s Guidance](http://www.stac.scot.nhs.uk/wp-content/uploads/Guide-for-Employers-June-2015.pdf), an Injury Allowance should be paid. In cases of hardship, the panel can convene within the meeting schedule.

4.5 The panel, in considering an application, may also require to seek further information from OHS, Health & Safety, the line manager or applicant to ensure the appropriate decision is taken.

4.6 The decision of the panel will be confirmed in writing to the employee with a copy to their line manager.

4.7 Where approved, the Depute Director of Human Resources will notify the Payroll Department of any payment to be made together with the relevant dates.

**5. Appeals Process**

5.1 Where an employee is unhappy with the decision taken not to pay an Injury Allowance, they will have a right of appeal against this decision. This appeal should be made in writing 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 Appeal Panel will comprise of the Director of Human Resources and Organisational Development, the Employee Director and either the Board’s Director of Nursing or Medical Director.

5.2 Within 4 working weeks of receipt, the panel will consider the appeal taking into account the original application and supporting evidence, the decision taken by the panel and the letter of appeal.

5.3 Should further Occupational Health/Health & Safety advice be required this will be requested from the relevant OHS Clinician. Any report provided as part of the appeal process will also be shared with the employee.

5.4 The employee will be notified of the outcome of their appeal and if appropriate the Director of Human Resources and Organisational Development will notify payroll to arrange payment of the Injury Allowance. This will be the second and final stage of the process and there will be no further right of appeal.

**6. Pay Protection**

6.1 Employees eligible for Injury Allowance payment and who then subsequently have to change jobs permanently to a position on lower pay, or have to reduce their hours/change their work pattern due to a work related injury, illness or other health condition, will receive the same pay protection as that applicable to organisational change.

**7. NHS Injury Benefits Scheme – Transitional Arrangements**

7.1 Under what is referred to as the ‘Sunset Clause’ and the ‘Exception Clause’ of the amended National Health Service (Injury Benefit) Regulations Sunset Clause and Exception Clause the previous NHS Injury Benefit provisions will continue to protect eligible employees who suffer a relevant injury or disease **on or before 30 March 2013** as follows:

* **Sunset Clause**: For a period of 5 years (31 March 2013 to 30 March 2018). Eligible employees will continue to be able to claim under the Injury Benefits Scheme as previously provided where an injury is sustained or a disease is contracted before 31 March 2013.
* **Exception Clause**: For an additional period of 20 years (31 March 2018 to 30 March 2038). Claims associated with delayed onset of symptoms resulting from injuries sustained and diseases contracted before 31 March 2013 may still be claimed under the Injury Benefit Scheme. In such case, the burden of proof will rest with the individual to prove causation and that the injury occurred on or before 30th March 2013.

Together these measures provide a period of 25 years transitional protection for those who sustain a work related injury or contract a work related disease before 31 March 2013.

7.2 The NHS Injury Benefits Scheme can provide three forms of financial support for employees affected by injury or disease that is wholly or mainly attributable to their work on or before 30 March 2013 and this includes Temporary Injury Benefit, Permanent Injury Benefit or Death/Dependent Benefits which remain available for people who die as a result of sustaining an injury or contracting a disease before 31st March 2013.

7.3 The application process for this scheme remains unchanged and will be administered by the Scottish Public Pensions Agency. Further details on making such an application can be found on the SPPA website – [www.sppa.gov.uk](http://www.sppa.gov.uk)

7.4 Employees already in receipt of a Temporary or Permanent Injury Benefit on or before 30 March 2013 will not be affected by the introduction of the new arrangements for Injury Allowance.

7.5 A Flow Chart showing whether a claim should be made under the Injury Allowance or Injury Benefit Scheme is attached at Appendix A.

**8. Review**

8.1 This process will be subject to ongoing monitoring and review.

**Appendix A**

**INJURY BENEFIT / ALLOWANCE**

**FLOWCHART**

|  |
| --- |
| Is the injury / disease / other health condition wholly or mainly attributable to NHS Greater Glasgow and Clyde job?  BUT NOT ● injury whilst on a normal journey to / from work  ● sickness absence as a result of dispute relating to employment, conduct or job application.  ● injury, disease or other health condition due to or seriously aggravated by employees own negligence / misconduct |

Yes

↓

Refer to chart below for what applies

No

↓

No entitlement

|  |  |  |  |
| --- | --- | --- | --- |
| Date of Injury / Disease and onset | Current Date | | |
| Pre 31.03.18 | Post 31.03.18  But Pre 31.03.38 | Post 31.03.38 |
| Injury / disease occurred on or pre 30.03.13 and  (a) on set pre 31.03.18  (b) on set post 31.03.18  Injury / disease occurred on or post 31.03.13 | INJ BENEFIT  N / A  INJ ALLOWANCE | INJ BENEFIT  INJ BENEFIT  INJ ALLOWANCE | N / A  INJ BENEFIT  INJ ALLOWANCE |

INJURY BENEFIT Claims are made to SPPA via Board

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