

# **NHS INJURY ALLOWANCE POLICY (H3)**

If you require a copy of this policy in an alternative format (for example large print, easy read) or would like any assistance in relation to the content of this policy, please contact the Equality and Diversity team on 01803 656680.

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### Amendment History

Issue	Status	Date	Reason for Change	Authorised
1.1	Approved	Nov 2015	Full review - new Trust logo and policy template. Deletion of reference to transition arrangements.	Deputy Director of Workforce & OD
1.2	Approved	Feb 2017	Changes following guidance issued by NHS Employers to include 7.2, 7.3 & 12.3.	JCNC
1.3	Approved	18 Jan 2019	General review and audit	HR Advisor

## Rapid Equality Impact Assessment

<b>Policy Title (and number)</b>		<b>NHS Injury Allowance Policy</b>			
<b>Policy Author</b>		HR Directorate			
<b>Version and Date (of EIA)</b>		Version 1.2 February 2017			
<b>Associated documents (if applicable)</b>					
<b>RELEVANCE: Does the aim/purpose of the policy relate to each of the aims of the Public Sector Equality Duty?</b>					
• Eliminate unlawful discrimination or other conduct prohibited by the Equality Act 2010					Yes <input type="checkbox"/> No <input type="checkbox"/>
• Advance equality of opportunity between people from different groups					Yes <input type="checkbox"/> No <input type="checkbox"/>
• Foster good relations between people from different groups					Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>SIGNIFICANCE AND IMPACT: Consider the nature and extent of the impact, not the number of people affected.</b>					
Does the policy affect service users, employees or the wider community? (if no, proceed to sign off)					Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the policy affect service delivery or business processes?					Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the policy relate to an area with known inequalities (deprivation/unemployed/homeless)?					Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>EQUALITY ANALYSIS: How well do people from protected groups fare in relation to the general population?</b>					
<i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>					
Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)					
<b>Age</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Disability</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Sexual Orientation</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Race</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Gender</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Religion/Belief (non)</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Gender Reassignment</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Pregnancy/ Maternity</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Marriage/ Civil Partnership</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers; travellers; homeless; convictions; social isolation; refugees)					Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide details for each protected group where you have indicated 'Yes'.					
What if any, is the potential for interference with individual human rights? (consider the FREDA principles of Fairness/ Respect/ Equality/ Dignity/ Autonomy)					
N/A					
<b>RESEARCH AND CONSULTATION</b>					
What is the reason for writing this policy? (What evidence/ legislation is there?)					
Outlines the provisions of NHS injury allowance					
Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?					
Trade Unions					
<b>ACTION PLAN: Please list all actions identified to address any impacts</b>					
<b>Action</b>				<b>Person responsible</b>	<b>Completion date</b>
<b>AUTHORISATION</b>					
<b>Name of person completing the form</b>	HR Manager				

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## **1 Policy Statement**

- 1.1 Torbay and South Devon NHS Foundation Trust (hereafter referred to as the Trust) recognises that it has a responsibility to support for staff who sustain an injury, disease or other health condition which is attributable to their employment.

## **2 Purpose**

- 2.1 The purpose of this policy is to outline the provisions of the NHS Injury Allowance, this came into effect on 31st March 2013.

## **3 Scope**

- 3.1 The Injury Allowance covers NHS employees, covered by the provisions contained within the NHS Terms and Conditions of Service or by reference within other national or local NHS employment contracts.

## **4 Equality and Diversity Statement**

- 4.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.
- 4.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis.

## **5 Roles and Responsibilities**

### **5.1 Managers are responsible for:**

- Ensuring that all the appropriate documentation is completed and supporting evidence provided in respect of any claim submitted by a member of their staff.
- Senior Managers for reviewing any applications for injury allowance and determining eligibility.

### **5.2 Employees are responsible for:**

- Completing the application form (appendix A) and submitting all relevant documentation in respect of their claim. An employee will also be responsible for re-paying any overpayment after it has been brought to their attention.

### **5.3 The Payroll & Pensions Department is responsible for:**

- The accurate payment of the allowance and keeping accurate records of any payments.
- Notifying the employee of any overpayment as soon as possible and agreeing the programme of repayments.

- Assessing the earnings of the employee applying for NHS Injury Allowance and to write to them when the assessment is complete and advise of the amount of allowance payable, if applicable.

#### 5.4 **The Human Resources department is responsible for:**

- The provision of advice to managers and employees in relation to this policy. In addition they may assist in the reclaiming of overpayments where they have been found to have occurred.

#### 5.5 **Trade Union Representatives/Workplace Colleagues are responsible for;**

- Making themselves available for meetings, as far as is practicable.
- Providing support to the individual as far as is practicable.

### 6 **NHS Injury Allowance**

6.1 The NHS Injury Allowance is a top up payment and *tops up* sick pay, or reduced earnings when on a phased return to work, to 85% of pay.

6.2 The NHS 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.

6.3 For the purposes of this policy the definition of “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.*

6.4 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 an injury that is not sustained on duty but is connected with or arising from the employee's employment.

### 7 **Situations Where Injury Allowance May Be Considered**

- 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 or Hepatitis C following a needle stick injury;
- Injury sustained while travelling on official duty, for example, road traffic accident (RTA), while travelling in an official car (whether pool car, lease car or personal vehicle being used for Trust business) from one NHS premises or workplace (including patients/clients homes and care/nursing homes for example) to another;
- Injury sustained off duty, for example, while 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).

### 7.1 Injury allowance cannot be considered where a person:

- Is injured while on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties of employment;
- Is on sickness absence as a result of disputes relating to employment matters such as investigations or disciplinary action, or as a result of a failed application for promotion, secondment or transfer (but see 7.2 below);
- Sustains an injury or disease which is aggravated by the claimants own negligence or misconduct.

Neither is it payable:

- Where there is no reduction in pay below 85 per cent;
- Where the employment contract ends.

### 7.2 What kind of employment disputes would lead to the allowance not being paid?

This exemption is intended to prevent people from receiving injury allowance for conditions that are under dispute, for example stress related sickness absence whilst being investigated for misconduct or bullying. It is important however that the allowance should not automatically be withheld from a member of staff who is off sick as a result of being bullied and who has made a complaint that is being investigated, but payment will depend on the facts of the case itself. Neither should it be withheld from a member of staff who is in dispute with their employer over a matter completely unrelated to their sickness absence, e.g. someone who is challenging a wage error who concurrently has a work related slip or trip accident that leads to significant physical injury and a lengthy period of time off work.

### 7.3 When is an Injury Allowance Unlikely to be payable?

Injury Allowance is unlikely to meet the wholly and mainly attribution test in the following circumstances:

- Where the injury or disease is attributable to some other cause, for example the natural progression of a pre-existing condition, normal wear and tear or a non-work related injury, condition or disease;
- Where a person suffers from a pre-existing or non-work related condition (injury or disease) unless there is some new work related cause and effect over and above the original problem.

## 8 Deciding on Entitlement to Injury Allowance

- 8.1 The Trust is responsible for determining entitlement for Injury Allowance and will decide if the injury, disease or other health condition is wholly or mainly attributable to the employee's NHS duties of employment. Decisions on payment will take into account the individual's sick pay entitlements to enable the timely payment of the Injury Allowance.
- 8.2 The level of proof required to determine if a loss of earnings (ability) is attributable to an injury is "on balance of probability" which is defined as more likely than not and will be used to decide if the injury or disease is wholly or mainly attributable to the individual's NHS employment.

- 8.3 NHS Injury Allowance is a no-fault scheme, therefore payment of the Injury Allowance does not represent a legal admission of liability for the injury or disease nor does the individual need to prove that the Trust was negligent to get Injury Allowance.

## **9 Applying for Injury Allowance**

- 9.1 Individuals who feel they may be eligible for payment should complete Part A of the Application for Injury Allowance (appendix A) and pass to their line manager.
- 9.2 In addition individuals should provide all relevant information in support of their claim. This includes medical evidence, that is in their possession or that can be reasonably obtained, to enable the Trust to determine the claim.
- 9.3 The line manager should complete Part B of the application (appendix A) and forward all relevant documentation to their senior manager.
- 9.4 All applications for Injury Allowance will be reviewed and will require the authorisation of a Director/Business Unit/Zone Manager with advice from Human Resources. Appendix C provides guidance for managers to determine eligibility as part of the decision making process.
- 9.5 Staff who are dissatisfied with the Trust's decision may write to the Director of Workforce and Organisational Development to ask for a review of the case. This request must be made within 14 calendar days of being advised of the decision.
- 9.6 The review will be undertaken by a manager not previously involved in the case.

## **10 Calculation of the Allowance**

- 10.1 Injury Allowance is a top-up payment. It tops up sick pay 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 i.e. as noted above, paragraph 14.4 of the *NHS terms and conditions of service handbook*, or as specified in their separate contractual sick pay arrangements.
- 10.2 Specified income:
- 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.

## **11 Duration of Injury Allowance**

- 11.1 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 half 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. Illustrative examples are set out in appendix B.

- 11.2 Where an injury, disease or other health condition is exacerbated by a further injury, disease or other health condition that is wholly or mainly attributable to their NHS employment (which may not on its own have led to a period of sickness absence) then a new episode may commence.

## **12 Application of the Allowance**

- 12.1 If it is agreed that the individual is entitled to Injury Allowance the line manager will need to review the situation regularly and the continuation of the payment of the Injury Allowance.
- 12.2 When a final review of absence is held Injury Allowance may stop depending on the decisions made at this final review; that is, return to substantive employment or redeployment or termination of contract.
- 12.3 The Allowance ceases to be paid when one of the following conditions is satisfied:
- 12 month maximum payment period is reached;
  - Pay is no longer reduced below 85 per cent;
  - Employee returns to substantive employment;
  - Employee is redeployed. Where they have to change jobs permanently to a position on lower pay due to a work related injury, disease and/or other health condition, they will receive a period of protected pay that is the same as any local provision for pay protection during organisational change;
  - Contract of employment is terminated, possibly resulting in access to ill health retirement benefits if they are a member of the NHS Pension Scheme.

## **13 State Benefits**

- 13.1 Employees are required to claim any contributory state benefits they may be entitled to and must inform their line manager immediately on receipt of such benefits. Where timely notification is not provided any overpayment of Injury Allowance that arises as a result must be recovered from the employee.

## **14 Income Tax and National Insurance**

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

## **15 Overpayments**

- 15.1 The Trust will require repayment when an overpayment is made.
- 15.2 Where an accidental overpayment has been made, the statutory position is that the employer can recover this by deducting the overpayment from future wages or salary. This is covered by section 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.

15.3 The Trust will take into account the period of time the over payment was made when agreeing the programme of repayments.

## **16 Training and Awareness**

16.1 Advice and support will be provided by the HR department to support employees and managers in their understanding and application of this policy.

16.2 The HR Department will raise awareness of this policy through the publication of information on the Trust website and to advise staff of changes to the policy through the staff bulletin and ratification processes.

## **17 References**

11.1 The details of the Injury Allowance provisions are set out in section 22 of the NHS Terms and Conditions of Service handbook.

11.2 Full details of the schemes are available on the NHS Pensions website, which may be found at [www.nhsbsa.gov.uk](http://www.nhsbsa.gov.uk). The guidance also gives information on the related State benefit.

## **18 Contact Details**

18.1 Any queries regarding this policy should be directed to the HR team of the Directorate of Workforce and Organisational Development.

- HR Helpline – 01803 655754 (ext. 55754)
- HR department – 01803 654506

## **19 Monitoring, Audit and Review Procedures**

19.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of Workforce and Organisational Development unless legislative changes determine otherwise.

**20 Appendix 1 – Application for Injury Allowance**

<b>PART A – TO BE COMPLETED BY INDIVIDUAL</b>	
Name	
Payroll Number ( <i>top left hand side on payslip</i> )	
Home Address	
Department	
Email Address	
Telephone Number	
Date of Incident/Injury	
Sick Leave Commenced	
Date Returned to Work (if applicable)	
<p>The incident/injury has been recorded and a copy of the incident report form is attached.                      YES/NO* <i>*If no please supply explanation.</i></p>	
<p>Details of illness/injury sustained:</p>	
<p>Impact of illness/injury on ability to work and carry out daily activities  <i>Please supply all relevant medical evidence, including any Occupational Health or Medical reports.</i></p>	
Employee's Signature:	Date:
<b>Forward form to line manager for completion of Part B</b>	

**Please refer to NHS Injury Allowance Policy H3 prior to completing this form**

<b>PART B – TO BE COMPLETED BY LINE MANAGER</b>	
Name	
Department	
Email Address	
Telephone Number	
Date of Incident/Injury	
Sick Leave Commenced	
Details of sick pay entitlement	
Was an internal investigation into the injury/illness carried out? If 'yes' please attach copies of reports.	
Has the individual been referred to Occupational Health? If 'yes' please attach copies of reports. If no please make referral to Occupational Health after seeking HR Advice	Yes / No
I confirm that the above named employee is currently on sick leave and that sickness is attributable to an industrial injury/illness.	Yes / No
I confirm that the injury/illness was not attributable wholly or in part to negligence or misconduct by the employee.	Yes / No
I confirm that the injury/illness was sustained/contracted during the course of or due to the NHS employment.	Yes /No
I am unsure whether or not the injury or illness was attributable to the NHS employment. If 'yes' please provide details.	Yes / No
Line Manager's Name & Signature	
Date	
<b>Forward form to Senior Manager for completion of Part C</b>	

**Please seek advice from Human Resources**

<b>PART C – TO BE COMPLETED BY DIRECTOR OR BUSINESS UNIT/ZONE MANAGER</b>	
All relevant information has been received and reviewed as part of the application. If no obtain information prior to making a decision.	Yes / No
Injury allowance has been authorised for the above named employee.	Yes / No
Basis upon which application has been approved:	
Rationale for not supporting claim for Injury Allowance:	
Director/Divisional General/Zone Manager's Signature	
Date	
<p><b><i>Outcome letter should be sent to employee advising of decision</i></b></p> <p><b><i>Forward completed form to Payroll Manager for action</i></b></p>	

## 21 Appendix 2 – Illustrative examples

Each example below assumes the employee has met the eligibility criteria. There is no right to exhaust the full 12 month allowance. It is there to provide support to staff alongside the Trust's absence management policies and procedures.

- a) Paul has full sick pay entitlements, with six months full pay and six months half pay. *Paul triggers the Injury Allowance payment when his pay reduces below 85 per cent. This is at the point he moves from full pay to half pay.*
- b) Peta has recently had a period of long term absence which has reduced her sick pay entitlement to zero. Given the immediate move into a no pay situation the employer will need to determine eligibility for Injury Allowance promptly. On confirmation of Peta's eligibility then her income is topped up to 85 per cent as defined, from the first day of absence (applied retrospectively as necessary).
- c) Toni's sick pay entitlement provides for four months full pay and four months half pay. On confirmation of Toni's eligibility her income is topped up to 85 per cent as defined, at the end of the 4 month period of full pay. This continues for a period of three months at which point her employer, further to discussion with occupational health services, places her on a period of phased return to work on full pay as per local agreed absence management policies. In this scenario Toni's manager, in discussion with occupational health services, agree to a longer period of phased return and if her pay drops below 85 per cent at any point during this time then the Injury Allowance will provide a top-up to that level.

### **Recurring absences**

- a) Should Peta, Paul or Toni suffer recurring absences following a return to work, which remains "wholly and attributable" to the original injury, any remaining/unused allowance (to a total of 12 months) may be used to top their pay up to 85 per cent.
- b) If Paul were to return to work after 8 months absence but subsequently had a recurrence of symptoms of the original injury resulting in a period of absence then sick pay entitlement would be determined in light of 14.6 of the terms and conditions of service handbook. This states that no account will be taken of *Injuries, diseases or other health conditions sustained or contracted in the discharge of the employee's duties of employment, as defined in Section 22.*
- c) In this scenario Paul would be entitled to return to full sick pay entitlement and further payment of IA would only occur when sick pay reduced below 85 per cent.
- d) If Peta were to return to work after eight months absence but subsequently had a recurrence of symptoms of the original injury resulting in a period of absence, then sick pay entitlement would be determined in light of 14.6 as above. As Peta has already had a period of long term absence prior to the injury at work this is likely to impact on her level of entitlement as this is *calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day* (section 14.6).
- e) In this scenario Peta is likely to have a shorter period of full sick pay thereby triggering access to the remaining Injury Allowance of four months (12 minus the eight months allowance already accessed, which leaves a remaining four months maximum allowance).

- f) As above, the employer will need to review the situation regularly and a decision on ongoing entitlement to the Injury Allowance will be made as part of their local absence management policies and procedures.

## 22 Appendix 3 – Guidance for Managers

1. Managers will want to make robust decisions based on all available evidence and this may include:
  - details of the injury sustained or the disease contracted (that is, the condition) by the employee
  - how it is connected to their NHS employment (that is, what caused it).
  
2. To support their decision making managers may find it useful to obtain copies of the following:
  - Accident report(s)
  - Occupational health department notes and records
  - Job description, including details of the location of work, duties of employment and training records, etc.
  - Sick leave record
  - A full statement of events from the employee explaining what injury/disease they are claiming for and the circumstances leading to the claim
  - Appropriate medical advice, for example, from occupational health service.
  
3. Managers may also find it helpful to obtain additional supporting and corroborating evidence, for example witness statements, DWP benefit statements, copies of any relevant letters and correspondence relating to any other medical advice received.

It is important to obtain appropriate and supportive corroborative evidence before making a decision about Injury Allowance. Corroborative evidence can take many forms – see examples below.

### Injury at work:

- An injury, physical, psychological or both, as a result of an incident at work, should be recorded in the accident book or by some method of workplace recording, and countersigned by a manager. If the incident has been deemed to be serious enough there may also be a form completed for the Health and Safety Executive (HSE) under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) requirements which may also be available.
- Information related to DWP benefit claims.
- If there was an accident at work, but it was not entered in the appropriate accident reporting mechanism, e.g. Datix or Safeguard, but was witnessed by a colleague, a statement from that witness could be helpful by way of corroboration.
- If there is doubt about the date of an accident at work and it was not recorded or witnessed but the person attended their GP, the GP may be able to confirm that attendance and the date from the notes.
- If the person attended A&E, the GP may have been sent a discharge summary. The person may be able to get a copy, or, with consent, may be able to request the A&E records or GP records.
- If the person attended occupational health following the injury, they may be able to help with dates and details.
- If the person has sought compensation through a lawyer and has evidence, such as expert medical reports, or details of judgements and outcomes, which may be helpful relating to this, then it will be useful to have these.

- If the person has already been awarded Injury Allowance for a previous episode of absence and has any relevant documents about it, it may be useful to submit these.

The following examples show different ways to corroborate that the person may have contracted a disease or condition through work.

- If the person has contracted a notifiable infectious disease such as hepatitis or tuberculosis, there will be documentation from GP, occupational health and/or public health departments confirming this, copies of which the employee may be able to submit, or give consent to obtain.
  - If the person has contracted an occupational disease, which is on the list for reporting to the HSE under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), the occupational health department will be able to give documentation confirming this, or the applicant give consent for these to be accessed.
4. If both employment and external factors are involved it is necessary to consider 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 their NHS duties of employment. Managers may also wish to seek specific advice from the occupational health department.