

Injury Allowance Policy

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| Responsible Lead Executive Director: | Director of HR |
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| Governance or Assurance Committee | Staff Governance Committee |
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CONSULTATION AND DISTRIBUTION RECORD

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CHANGE RECORD

| Date | Author | Change | Version No. |
|--------------|----------------------------------|--|-------------|
| January 2017 | Jane Brookes | Following receipt of STAC guidance Inclusion of bank staff | 2 |
| May `18 | Deputy HRD | General Data Protection Regulations statement added into section 3 and updated name of Data Protection Act | 2 |
| March `19 | Head of HR Policy & Governance | Sections 4.4 & 4.6 amended to reflect new HR structure | 2 |
| April `19 | Head of HR – Policy & Governance | Change of review date | 2 |
| Feb `20 | HR Business Partner | Change of review date and updated stakeholders | 2 |
| Nov `22 | Head of HR Policy & Governance | Change of review date and JPF membership | 3 |

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1. INTRODUCTION

Employees of NHS Lanarkshire who suffer an injury or illness **on or after 31st March 2013**, which is assessed as wholly or mainly attributable to the duties of their NHS employment, will be able to make a claim for NHS Injury Allowance from NHS Lanarkshire. This is a new injury allowance and forms part of a NHS Lanarkshire employee's terms and conditions of employment and payment is subject to certain conditions.

NHS Lanarkshire is committed to providing a policy which is fair and non discriminatory.

N:B Those injuries or illness which were wholly or mainly attributable to the duties of NHS Lanarkshire employment which occurred on or **before 30th March 2013** can be claimed under the 1998 regulations by the NHS (Scotland) (Injury Benefits) Regulations 1998 scheme administered by the Scottish Public Pension Agency.

2. AIM, PURPOSE AND OUTCOMES

The purpose of this policy is to ensure that the action taken when dealing with such matters is consistent throughout NHS Lanarkshire, the procedure which must be followed by all when dealing with a claim for injury allowance

The policy's primary aim is to focus on consideration of the NHS Lanarkshire employee's application and eligibility for injury allowance. However, systems and processes should be reviewed and amended as appropriate to try and prevent a reoccurrence. Reference should be made to the Health and Safety Policy or other relevant policy where appropriate to ensure compliance and corrective action is taken where appropriate.

NHS Lanarkshire will take into account the fact that individual circumstances differ and that these will be considered when deciding on the eligibility for injury allowance.

A Guide for Staff and Employers is available within the Human Resources section on First Port.

3. SCOPE

3.1 **Who is the Policy intended to Benefit or Affect?**

This policy applies to all directly employed staff of NHS Lanarkshire and includes fixed term contracted staff members, NHS Bank Workers and those on secondment who believe their injury, disease or other health condition has been sustained or contracted in the discharge of their duties of employment or have an injury they believe has not been sustained on duty, but is connected with or arising from their employment with NHS Lanarkshire.

This policy applies irrespective of age, sex, ethnicity/race, marital or civil partnership status, sexual orientation, religion or belief, pregnancy or maternity or gender reassignment.

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NHS Lanarkshire takes care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at www.nhslanarkshire.scot.nhs.uk or ask a member of staff for a copy of our Data Protection Notice.

3.2 Who are the Stakeholders

- NHS Lanarkshire employee's
- Line Managers
- Human Resources
- Occupational Health
- Partnership Representatives
- Payroll

4. PRINCIPAL CONTENT

4.1 Key principles

- This policy will be the sole route for the management of claims for Injury Allowance.
- This policy will be readily accessible to employees of NHS Lanarkshire
- Injury allowance payment will be considered through the completion and submission of an Injury Allowance application form (Appendix A).
- An appropriate panel of Management and Partnership will determine if an Injury Allowance Payment will be made.
- The employee can be accompanied by an accredited partnership representative, work colleague or friend to the panel.
- The employee will be able to discuss the content of their application with the panel.
- Employee's consent is required to release information in the form of a specific Occupational Health report to the panel.
- The panel will need to review necessary data in relation to the application and this could include but is not limited to Datix, incident records, training records, Occupational Health and sick pay records and reports.
- The application will be assessed and the panel will provide a written outcome. If the application for Injury Allowance is unsuccessful then the staff member can appeal the decision.
- The agreed procedures must be followed at all times to ensure a fair, consistent and timely approach across NHS Lanarkshire.

4.2 Application process for injury allowance

An application for Injury Allowance is made by completing the Injury Allowance application form (**Appendix A**) and by following the application process flow chart (**Appendix B**).

The line manager should obtain the relevant Information to support the Injury Allowance application. Typically this would include ...

- The details of the injury
- When the injury occurred

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- DATIX report
- The incident report.
- Information will be requested from Occupational Health as a result of the injury. Management will formally request for Occupational Health to contact the staff member to request for information to be released, this could include historic or current Occupational health reports.
- Sickness and sick pay records (for staff members who hold two contracts with NHS Lanarkshire, please include records for both).
- Written confirmation from the Department of Work and pension (DWP) of any payments made to the Staff member in respect of the alleged injury or condition.
- Any other relevant documentation to support the application.

Upon completion, the Injury Allowance application form should be returned to the line manager who will verify the information and complete Part 2 of the form, based on the information available and their knowledge of the incident.

The line manager should send the completed and signed Injury Allowance application form and associated documentation to the Human Resource Department who will acknowledge receipt of the application within two weeks of receipt.

4.3 Eligibility criteria

There is no NHS Lanarkshire minimum length of service required to apply for Injury Allowance. Eligibility for Injury Allowance payment will be considered for staff who injure themselves or become ill doing NHS work. The allowance will only be paid to NHS Lanarkshire employees/bank workers who are assessed by the panel as having sustained a work related injury, illness or other health condition and are on or have been on a period of authorised sickness absence or phased return to work with reduced or no pay. The Injury Allowance will only be paid to those employees assessed as eligible by the panel.

4.4 Assessment for Injury allowance payment

Each application will be considered by a panel consisting of a Head of HR or a HR Business Partner and a Partnership Representative and a General Manager/Director of Hospital Services or equivalent. Arrangements will be made for the applicant to attend the panel. The purpose of the meeting will be to allow the staff member to discuss the content of their application and for the panel to ensure that they have all the information they require to make an informed decision.

Any information to be considered by the panel should be submitted to the appropriate Head of HR or HR Business Partner no later than five working days prior to the meeting to allow the information to be circulated to the panel.

The applicant can be accompanied at this meeting by their partnership representative, work colleague or friend.

The panel will assess based on the information available and balance of probability, if the injury, illness or other health condition was attributed to the discharge of their duties or sustained in connection with or arising from their employment with NHS Lanarkshire. They

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will also make a determination if the injury or disease was wholly or mainly due to or seriously aggravated by a claimant's own culpable negligence or misconduct.

4.5 Medical evidence

Prior to any decisions being taken, an up to date Occupational Health report will be requested seeking advice on the causation of the injury, illness or other health condition. Management must specifically and formally request information for the Injury Allowance claim via the Occupational Health Referral Form. Only on receipt of this will the Occupational Health professional contact the staff member and ask the employee for consent to release information in the form of a report to the panel.

Where an individual has already been attending a management referral appointment at Occupational Health, only with the specific written permission from the staff member will Occupational Health reports will be made available to the panel. Occupational Health reports will be shared with the employee.

Occupational Health may require additional GP or consultant reports to support the application.

Where the employee refuses to attend an appointment at Occupational Health or does not give consent for a report to be released, a decision will be taken by the panel on their Injury Allowance application in the absence of this medical evidence.

4.6 Communication of Outcome

Following the panel meeting the decision of the panel will be confirmed in writing within ten days to the employee, with a copy to their line manager.

Payroll will be advised by the Head of HR or HR Business Partner only if a payment is to be made, and will include details of the payment to be made together with the relevant dates.

4.7 Injury Allowance payments.

Injury Allowance may be paid for any period of certified sickness absence where an employee's income falls below the level of 85% of their average pay. Therefore, the Injury Allowance is a **top up** to sick pay or earnings and includes when an employee is on a phased return to work on reduced pay.

The calculation will include any contributory state benefits received up to 85% of average contractual pay. Contributory state benefits received for loss of earning will be off set at the rate at which they are actually received and all other benefits or payments received should be ignored. The applicant is required to claim any contributory state benefits they may be entitled to and to declare receipt of such benefits to NHS Lanarkshire. Timely notification to NHS Lanarkshire will ensure that overpayments of Injury Allowance are not made.

In the event of over payment of Injury Allowance being made it will be recovered using the NHS Lanarkshire Reclaiming of Overpayments/ Money owed Policy.

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The Injury Allowance will be subject to National Insurance contributions and income tax but is not subject to pension contribution deductions and the level of pay will be determined by the use of a 17 week reference period. The reference period will be from the 17 weeks directly before the accident or the last period of certified sickness that relates to the injury, illness or health condition.

If an injury allowance is awarded it is strictly limited to the period of employment contract and up to a maximum payment period of 12 months for each relevant injury or disease.

Following successful assessment for an Injury Allowance payment, should there be a permanent job change to a position on lower pay due to the work related injury, illness or other health condition, then a period of pay protection will be applied. The period of pay protection will be the same as the provision within NHS Lanarkshire's Organisational Change Policy.

Injury Allowance will be affected in the event of an award of damages or compensation for the injury, illness or health condition and there will be a requirement to repay some or all of any Injury Allowance paid. The employee will be responsible for notifying NHS Lanarkshire if they have received or receive a damages or compensation payment in respect of the same injury.

4.8 Non Payment of Injury Allowance.

There are some circumstances where Injury Allowance will not be paid:

- If the applicant is not an employee of NHS Lanarkshire.
- 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.
- 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 – unless there is some new work related cause and effect over and above the original problem.
- If a claim is made without genuine substance and/or relevant information is withheld from the panel at any stage.
- If an employee fails to engage at any stage with the process without good reason.
- Where the Injury Allowance panel have determined that a payment is not due.

This list is not fully inclusive of all instances where non payment of Injury Allowance would apply.

NHS Lanarkshire remains committed to dealing fairly and thoroughly with legitimate claims. In the event of an alleged malicious claim or falsification of data then the matter would be managed through NHS Scotland Conduct Procedure .

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4.9 Appeal Process.

Where an employee is unhappy with the decision, not to pay Injury Allowance they will be entitled to have one review.

The employee will need to write to the Director of HR within twenty one days of the date of the letter confirming the outcome of the Injury Allowance panel. Any letter of appeal should clearly state the wish to appeal the decision and also detail the reason for the appeal.

An appeal panel meeting will be arranged with the Director of HR and Employee Director who may seek further appropriate advice from Occupational Health as required. The decision of this panel will also be confirmed in writing within ten days of the Injury Allowance panel date to the employee with a copy to their line manager.

Payroll will be advised by the Director of HR only if a payment is to be made, and will include details of the payment to be made together with the relevant dates

There is no further right of appeal beyond this stage or any further recourse to raise a Grievance.

5. ROLES AND RESPONSIBILITIES

The application for Injury allowance requires all parties to be fully aware of their respective responsibilities as follows;

5.1 Employees will:

- Understand the policy and their responsibilities
- Inform their Line Manager at the first available opportunity of a work related injury, illness or health condition they perceive to be sustained or contracted in the discharge of their duties within NHS Lanarkshire employment.
- Complete any application form for Injury Allowance.
- Read, understand and sign the Injury Allowance application form declaration or the application may not be considered.
- Co-operate with management and occupational health as required to establish eligibility for injury allowance.
- Participate as required in consultations or meetings in relation to their application and assessment for injury allowance.
- Comply with any advice or recommendations provided as a result of a work related injury, illness or health condition.
- Be responsible for notifying NHS Lanarkshire if they have received or receive a damages or compensation payment in respect of the same injury.
- To operate and comply within all of NHS Lanarkshire's policy and procedures and not act in a negligent manner to exacerbate or aggravated a work related injury, illness or health condition.

5.2 Managers:

- Understand the policy and complete their responsibilities in accordance with the policy.

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- Managers have a key role in ensuring that the policy is communicated to their staff and in supporting them to access and implement the policy at local level.
- File any correspondence in relation to the claim in the employee's personal file in line with Data Protection legislation.
- Managers must specifically and formally request information for the Injury Allowance claim via the Occupational Health Referral Form.

5.3 Human Resources staff will:

- Advise managers on the correct implementation of the policy
- Provide advice in relation to implementation and monitoring of the policy
- Support employee and managers by providing advice on policy and process.

5.4 Occupational Health will:

- Provide timeous expert and impartial advice to all parties on relevant issues.
- Complete and make available relevant Occupational Reports as requested by management and determined by employee consent.
- Occupational health is an advisory service and will provide the panel with information regarding the nature of the injury and medical condition and provide an opinion on whether the injury/ medical condition is consistent with the history of the alleged incident.

5.5 Partnership representatives will:

- Understand the Policy and their responsibilities
- Make sure their members are aware of their rights and responsibilities
- Advise their members on the relevant policies.

5.6 Payroll will:

- Understand the policy and their responsibilities
- Action Injury Allowance payments timeously as detailed by the Deputy Director of HR and /or Director of HR.

6. RESOURCE IMPLICATIONS

Financial

If an application for Injury Allowance is successful financial resources are sought from the relevant department budget.

7. COMMUNICATION PLAN

This policy will be available on the NHS Lanarkshire public website.

8. QUALITY IMPROVEMENT – Monitoring and Review

This policy will be reviewed in line with any changes to legislation, or Terms and Conditions of employment which change the scope or process within NHS Lanarkshire.

HR/Partnership Representatives will observe and pass back any issues that they see or are asked about, particularly when users have issues or concerns about the policy.

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9. EQUALITY AND DIVERSITY IMPACT ASSESSMENT

This policy meets NHS Lanarkshire's EDIA



(tick box)

10. SUMMARY

This policy describes eligibility criteria and the application process for staff to apply for this benefit. Appendix B summarises the application process.

11. REFERENCES

- NHS Scotland – NHS Injury Allowance Scheme 2013
- General Data Protection Regulations 2018

12. APPENDICES

- Appendix A – Injury Allowance Application Form
- Appendix B – Injury Allowance Application Process

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GUIDANCE NOTES AND APPLICATION FORM FOR INJURY ALLOWANCE

Section 1 – Personal details (to be completed in all cases)

Complete all fields with the information requested.

Section 2 – Further information

- Provide a statement in your own words, which should contain details regarding the place of the injury, the type of injury, a description of the incident and where possible any witness names or treatment received at the time of your injury.

- Certain Department of Work and Pensions (DWP) benefits are taken into consideration should your application be successful. You should provide copies of any DWP awarding letters which are relevant to the period or injury you are claiming. Any changes in these benefits should also be notified to NHS Lanarkshire in the form of a copy of your DWP revised award letter. By signing the declaration at Section 3 this allows NHS Lanarkshire to carry out the relevant checks with the DWP to your benefit entitlement. Please note that failure to disclose DWP benefits may result in an overpayment of Injury Allowance which would be recovered from you. You are responsible for informing NHS Lanarkshire of any changes in your benefits or circumstances.

Section 3 – Damages or compensation claims

Your application cannot be considered unless you complete this section. In the event of the pursuit of a claim of compensation, this gives authorisation for NHS Lanarkshire to approach your legal representative. Payment of an Injury Allowance can be affected by an award of compensation in respect of the same injury.

Section 4 – Declaration

Declaration – Your application cannot be considered unless you complete this declaration which allows NHS Lanarkshire to approach other named bodies including the DWP, in order to obtain information relating to your injury or any benefits you may be receiving.

You are responsible for ensuring that the application form is completed correctly. Please check that you have completed the application in full and that all the required information is provided. Once complete return your application to your Line Manager.

Appendix A

Injury Allowance Application Form

This form should only be completed for an injury, health condition or disease occurring on or after 31st March 2013.

Please note that an Injury Allowance will not be payable if the accident or illness was wholly or mainly due to, or seriously aggravated by, your own culpable negligence or misconduct.

PART 1 – TO BE COMPLETED BY THE APPLICANT

SECTION 1 – PERSONAL DETAILS (to be completed in all cases)

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| Payroll Number | | | | | | | | | |
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| National Insurance Number | | | | | | | | | |
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Surname

Contact address

Forenames

Post Code

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Title

Dr Mr Mrs Miss Ms

Date of birth (e.g. 18/07/1954)

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Other title (please specify)

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Telephone/mobile number

Email address

What is your place of employment in NHS Lanarkshire? (Please provide department and site)

What was your job title at the time of your injury?

Date the injury occurred? (on or after 31/03/2013)

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At what time, on the date above did your injury occur? (use 24 hour clock e.g 02:10)

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SECTION 3 – DAMAGES OR COMPENSATION CLAIMS

SPPA reference - your superannuation number

(if member of the NHS Superannuation Scheme (Scotland))

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Please tick the appropriate box.

1. I am currently pursuing a claim for compensation in connection with my work related injury/disease. (Please tick)

Yes (Please provide details)

No (If no go to section 4)

2. Please detail the period/s of sick leave to which your claim applies

3. I authorise NHS Lanarkshire to approach my legal representative who can be contacted at the address below

Legal Representative name:

Address

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| |

My Reference number is:

Post code

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SECTION 4 – DECLARATION/CONSENT (please read before signing)

- I am not pursuing a compensation claim at this time. I will notify NHS Lanarkshire if I decide to pursue such a claim in the future
- I understand that my Injury allowance can be affected by an award of compensation and I may be required to repay some or all of any Injury Allowance paid to me. I will notify NHS Lanarkshire if I have received or receive a damages or compensation payment in respect of the same injury.
- I hereby apply for Injury Allowance due to an injury/disease which I consider to be wholly or mainly attributable to the duties of my employment with NHS Lanarkshire.

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- I understand that certain DWP benefits paid in relation to my injury are taken into account with Injury Allowance awards.
- I will notify NHS Lanarkshire if I have claimed or intend to claim any DWP benefits or if my DWP benefits change in amount or cease to be paid.
- I understand responsibility lies with me to keep NHS Lanarkshire informed of any changes in benefits.
- I agree to provide NHS Lanarkshire with copies of any awarding documents for DWP benefits and any subsequent changes to benefit awards (other than those relating to the cost of living increase applied in April of each year).
- I authorise NHS Lanarkshire to obtain medical evidence connected to my Injury Allowance application and/or monetary details of my DWP benefits, and any subsequent changes from the DWP from Salus/GP/Consultant and or other sources as appropriate to my application.
- I give consent for NHS Lanarkshire to approach the Occupational Health Department or any other relevant sources for information if required.
- I am willing to undergo a medical examination if asked to do so.
- I understand that any payments of Injury Allowance are subject to tax and national insurance deductions, but not pension contribution deductions.
- I understand that any overpayment of my injury benefits will be recovered and must be repaid by me.
- I declare the details I have given this form are correct to the best of my knowledge.

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| Signature | | | | | | | | | | | |
| Print Name | | | | | | | | | | | |
| Date | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px; text-align: center;">/</td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px; text-align: center;">/</td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table> | | | / | | | / | | | | |
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PART 2 – TO BE COMPLETED BY LINE MANAGER

This form should only be completed for an injury or condition occurring **on or after 31 March 2013**.

1. Do you agree with the statement/information provided by the employee? If no, please provide more details below. Yes No

2. In your opinion was the injury or disease wholly or mainly due to, or seriously aggravated by the claimant's own culpable negligence or misconduct? If the answer is yes, please provide all relevant details in box below. Yes No

3. On date and at the time of the incident the staff member was working and undertaking NHSL duties of employment Yes No (provide details below)

4. In order to avoid delay in processing, the following information should, where possible accompany this application form. Tick the boxes to indicate which papers are being enclosed.

Datix Report
 Job Description

OH Reports
 Other papers (e.g. witness statements)

Injury Allowance Application Process

