

Reporting to:	Trust Board, 26 March 2015
Title	HR Policy Papers
Sponsoring Director	Victoria Maher, Workforce Director
Author(s)	Victoria Maher, Workforce Director
Previously considered by	TNCC
Executive Summary	<p>This policy has been to the TNCC meeting in November 2014.</p> <p>HR21 Injury Allowance This revised policy outlines the arrangements in place to support staff unable to work having sustained an injury, disease or other health condition that is mainly or wholly attributable to their employment, where injury allowance is payable and sets out a procedure to apply for injury allowance. This policy should be read in conjunction with the HR31 Managing Attendance and Wellbeing Policy. It has been updated to reflect revised Agenda for Change Terms and Conditions.</p> <p>This policy has been agreed by Staff Side representatives.</p>
Strategic Priorities	
1. Quality and Safety	<input type="checkbox"/> Reduce harm, deliver best clinical outcomes and improve patient experience through our Quality Improvement Strategy
2a) Healthcare Standards: Operational Performance Standards	<input type="checkbox"/> To develop a transition plan, with supporting mitigation actions and contingency plans, that ensures the safety and short term sustainability of challenged clinical services. 2014/15 <input type="checkbox"/> To address the existing capacity shortfall and process issues to consistently deliver national healthcare standards. 2014/15 <input type="checkbox"/> To undertake a review of all current services at specialty level to inform future service and business decisions. 2015/16
2b) Healthcare Standards: Service Reconfiguration	<input type="checkbox"/> Complete and embed the successful reconfiguration of Women and Children's services
3. People and Innovation	<input type="checkbox"/> Develop a sustainable long term clinical services strategy for the Trust to deliver our vision of future healthcare services through our Future Fit Programme <input type="checkbox"/> Develop our leaders and promote staff engagement to make our organisation a great place to work through our People Strategy <input type="checkbox"/> Develop a robust Investment Strategy to modernise our equipment and estate to support service transformation and increase productivity through the use of technology)
4 Community and Partnership	<input type="checkbox"/> Embed a customer focussed approach and improve relationships with our GPs through our Stakeholder Engagement Strategy
5 Financial Strength: Sustainable Future	<input type="checkbox"/> Develop a transition plan that ensures financial sustainability and addresses liquidity issues pending the outcome of the Future Fit Programme

Board Assurance Framework (BAF) Risks	<input type="checkbox"/> If we do not deliver safe care then patients may suffer avoidable harm and poor clinical outcomes and experience <input type="checkbox"/> If we do not implement our falls prevention strategy then patients may suffer serious injury <input type="checkbox"/> Risk to sustainability of clinical services due to potential shortages of key clinical staff <input type="checkbox"/> If we do not achieve safe and efficient patient flow and improve our processes and capacity and demand planning then we will fail the national quality and performance standards <input type="checkbox"/> If we do not have a clear clinical service vision then we may not deliver the best services to patients <input type="checkbox"/> If we do not get good levels of staff engagement to get a culture of continuous improvement then staff morale and patient outcomes may not improve <input type="checkbox"/> If we are unable to resolve our (historic) shortfall in liquidity and the structural imbalance in the Trust's Income & Expenditure position then we will not be able to fulfil our financial duties and address the modernisation of our ageing estate and equipment
Care Quality Commission (CQC) Domains	<input type="checkbox"/> Safe <input type="checkbox"/> Effective <input type="checkbox"/> Caring <input type="checkbox"/> Responsive <input type="checkbox"/> Well led
<input type="checkbox"/> Receive <input type="checkbox"/> Review <input type="checkbox"/> Note <input type="checkbox"/> Approve	Recommendation The Board to APPROVE the implementation of this policy from the date of the Trust Board.

Human Resources Policy No. HR21

NHS Injury Allowance

Additionally refers to:

- HR31 Managing Sickness Absence**
- HR19 Retirement**
- HR21 Ill Health Retirement**
- HR23 Policy for Recovery of Overpayments and Payment of Underpayments**
- Trust Accident and Incident Guidance Policy**
- Terms and Conditions of Service Handbook**
- NHS Employers Injury Allowance – a guide for staff**
- NHS Employers Injury Allowance – a guide for employers**

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Document Lead	Human Resources Business Partner
Lead Director	Workforce Director
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Target audience:	All Staff, Managers



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Dissemination	HR Intranet pages

Version history

Version	Date	Author	Status	Comment
V1	May 2005	Head of Human Resources	Final	Agreed by Trust Board
V2.1	March 2014	Laura Kavanagh	Draft	Updated version in line with National Review and updated NHS Terms and Conditions of employment
V2.2	July 2014	Laura Kavanagh	Draft	Updated to include comments from review of draft
V2.3	September 2014	Laura Kavanagh	Draft	Updated to include further comments from review of draft
V2.4	March 2015	Laura Kavanagh	Final	Updated to include staff side comments from review of draft. Ratified by PAG.

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POLICY STATEMENT

This policy outlines the arrangements in place to support staff unable to work having sustained an injury, disease or other health condition that is mainly or wholly attributable to their employment, where injury allowance is payable and sets out a procedure to apply for injury allowance. This policy should be read in conjunction with the HR31 Managing Attendance and Wellbeing Policy.

1. PURPOSE

- 1.1 The aim of this policy is to outline the provisions of the NHS Injury Allowance which came into effect on 31st March 2013. Full details can be found in Agenda for Change Terms and Conditions Handbook section 22. Staff employed on Medical and Dental Contracts should also refer to section 22 of the Agenda for Change Terms and Conditions handbook.

2. SCOPE

- 2.1 This policy applies to all staff who are directly employed by the Trust, whether full time or part-time, permanent or temporary including those working via the Temporary Staffing Department. Cover is provided from the first day of employment and continues throughout employment.
- 2.2 Injury allowance is available for employees who have injuries, diseases or other health conditions that are wholly or mainly attributable to their NHS employment and are on certified sick leave and in receipt of reduced or no pay.
- 2.3 The provisions in the NHS Terms and Conditions of employment Handbook are applicable to injuries or diseases occurring on or after 31st March 2013. Separate guidance is available on the transitional arrangements that have been put in place for staff who sustained the work related injury or disease prior to 30 March 2013. See NHS Employers - Transitional Protection Arrangements.
- 2.4 Where it is found that an employee has fraudulently claimed injury allowance this may be treated as gross misconduct under the Trust Policy HR36 Disciplinary Procedure. The Trust Counter Fraud Officer will also be notified, which could result in criminal prosecution.

3. DEFINITIONS

- 3.1 Injury allowance is defined in Section 22 for the Agenda for Change handbook as a top up payment and tops up sick pay to 85% of average pay after taking into account salary and certain Social Security Benefits when a member of staff is on authorised sickness absence or, if applicable a phased return to work with reduced pay or no pay.
- 3.2 Injury allowance is payable when absence is due to an injury, disease or other health condition that is wholly or mainly attributable to their NHS employment.

3.3 NHS Injury Allowance is a no-fault scheme. Payment of the Injury Allowance does not represent a legal admission of liability for the injury, nor does the individual need to prove that the Trust was negligent to get Injury Allowance. NHS Employers advise "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.*

3.5 The level of proof required to determine eligibility for injury allowance 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.

4. ELIGIBILITY

4.1 As stated in 3.1 and 3.2, 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.

4.2 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, for example:

- Physical or psychiatric injury sustained or diseases contracted due to a specific incident or series of incidents;
- Injuries sustained or disease contracted that does not manifest itself for several years, for example, asbestosis or Hepatitis C following a needle stick injury;
- Injuries sustained while travelling on official duty, for example, road traffic collision (RTC), while travelling in an official car from one NHS premises to another;
- Injuries sustained off duty, for example, while providing professional treatment which required professional training or knowledge at the scene of a RTA;
- Injuries 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);
- Injuries, 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).

4.3 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;
- Sustains an injury or disease which is due to or seriously aggravated by the employees own negligence or misconduct.

4.4 Neither is it payable:

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

4.5 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. 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.

5. RESPONSIBILITIES

5.1 Care Group Directors/Assistant COO are responsible for ensuring that applications for the payment of Injury Allowance and accompanying information are considered. The Workforce Director is required to approve payment of Injury Allowance. This can be delegated to Deputy Workforce Director if appropriate.

5.2 Line Managers must ensure that all injuries at work are recorded in accordance with relevant Trust policy.

5.3 Both line managers and employees have a duty to ensure that the working environment is safe and appropriate action is taken to minimise the risk of work related injury/disease.

5.4 On receipt of an application for Injury Allowance, managers must arrange to meet the employee as soon as possible to discuss the application. Additionally, they must gather relevant information as detailed in section 6.5 to ensure an informed decision can be made.

5.5 When a decision is made, managers must inform the individual of the outcome of their application and if applicable advise Pay Services of pay arrangements to be made.

5.6 The HR Advisory Team will provide support and guidance to the process to ensure a fair and consistent process is followed.

5.7 Employees are required to notify their managers as soon as possible if their absence or injury is work related.

5.8 Employees are required to submit a written application for Injury Allowance using the form at Appendix A. Employees should provide as much detail as possible about the incident.

6. PROCEDURE TO CLAIM INJURY ALLOWANCE

- 6.1 Managers must ensure that all injuries at work are recorded in accordance with relevant Trust policy. A DATIX form must be completed as soon as possible following the event. Where a physical injury at work results in absence lasting seven days or more (whether immediately or some time after the event), or where it is linked to an occupational disease, the incident must be reported to the Health and Safety Executive under RIDDOR regulations (please see Trust policy HS03: Staff Accident and Incident Reporting Policy). Further advice is available from the Health & Safety team.
- 6.2 Employees must inform their manager that their absence is work related; usually this is in the form of a fit note from their G.P. Line Managers will refer the individual to the application process in this policy. This includes cases where the Manager has doubts as to eligibility.
- 6.3 Employees must complete the application form in Appendix A together with a statement giving details of the injury sustained, disease or health condition, how it is connected to NHS employment and submit this to their line manager.
- 6.4 The Trust is responsible for determining whether injury allowance is appropriate, i.e. whether the injury, disease or health condition qualifies for the allowance. In considering this, the Trust will ask for details of the injury/disease or health condition contracted by the applicant, its treatment and prognosis and how it is connected to their NHS duties. Additionally the manager will be required to obtain:
- all accident reports,
 - permission to access occupational health or GP records (via occupational health),
 - reports from any internal investigation connected with the claim (if one took place),
 - a full job description,
 - sickness absence records,
 - A full statement of events explaining what injury/disease/health condition the applicant is claiming for and the circumstances leading to the claim.
 - any witness statements if relevant.
- 6.5 All applications and supporting documents will be collated and reviewed by the Line Manager. They will complete section 2 of the application form in appendix A.
- 6.6 Authorisation for payment will be given by the Care Group Director/Head of Service in conjunction with the Workforce Director once they have reviewed the application, together with supporting documentation.
- 6.7 All applications must be submitted and processed in a timely manner so that payment of the allowance can be made once the employee's pay reduces to below 85%.
- 6.8 It is the responsibility of the Care Group Director/Head of Service to communicate the outcome of the application to the employee's line manager. They must also inform the Payroll department and the payroll department are then responsible for the accurate payment of the allowance and keeping accurate records of any payments.

6.9 Employees have a right of appeal against an Injury Benefit decision in accordance with the Trusts Grievances and Disputes policy HR16.

7. CALCULATION OF INJURY ALLOWANCE

7.1 Injury Allowance will be calculated based on 85% of full pay and certain other income (specified below) as defined in appropriate contractual documentation i.e. NHS Terms and conditions of service handbook or a specified in separate contractual sick pay arrangements.

7.2 Specified income included:

- 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.

7.3 The calculation will include any contributory state benefits received by the employee as loss of earnings which will be offset so as not to exceed full pay.

7.4 Specific reference should also be made to paragraph 14.4 and 14.5 of the NHS terms and conditions of service handbook when calculating sick pay or earnings so as to ensure that the correct calculation is complete.

7.5 Eligible employees are required to claim any contributory state benefits they may be entitled to and to declare receipt of such benefits to the Trust to ensure that overpayments of Injury allowance is not made.

7.6 The Trust will recover any overpayments if these are made in line with Trust policy for recovery of overpayments and payment of underpayments (HR23). Where the Trust has made an accidental overpayment, they can recover this by deducting the overpayment from future wages or salary. This is as set out in s.14 of the Employment Rights Act 1996.

7.7 Payroll has a responsibility to notify the employee of any overpayment as soon as possible and agreeing the programme of repayments. The Trust will take into account the period of time the overpayment was made when agreeing with individuals the programme of repayments.

7.8 Injury Allowance is subject to income tax and national insurance contributions but is not subject to NHS Pension Scheme contribution deductions. Members of the NHS Pension Scheme are advised to contact the Trusts Pension Manager for further information if they have any queries regards this.

8. DURATION OF INJURY ALLOWANCE

- 8.1 Injury Allowance is payable for up to 12 months per episode subject to local sickness absence management.
- 8.2 The intention is for 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 when the individual is in receipt of half or no pay and during an agreed period of phased return to work after pay has been reduced. Illustrative examples provided in the Agenda for Change Terms and Conditions Handbook section 22.
- 8.3 According to local policy and annex Z of the NHS terms and conditions of service handbook, all absence should be reviewed regularly and will include a final review. Injury allowance will be included in the review and payment may cease depending on decisions made e.g return to substantive employment, redeployment or termination of contract.
- 8.4 Injury Allowance will stop 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. Eligible employees who have to change jobs permanently to a position on lower pay specifically due to a work related injury, disease and/or other health condition, 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 including ill health retirement benefits if eligible.
 - Employee is granted an employment break via the Trust employment breaks scheme

9. EMPLOYEES WITH MORE THAN ONE CONTRACT OF EMPLOYMENT

- 9.1 Employees with more than one NHS contract will need to ensure that their line manager for both posts are aware of any work related injury, disease or health condition. It is recognised that an employee who suffers a work related injury in one contract of employment may result in absence in another.
- 9.2 Managers are advised to contact the HR Advisory Team when they become aware of an absent employee who has more than one post as they will need to carefully consider the interactions between the various contracts when managing the case. Managers should also refer to HR31 Managing Absence and Employee Wellbeing for additional guidance for managing staff with more than one post within the organisation.

10. INDUSTRIAL INJURIES DISABLEMENT BENEFIT

- 10.1 This is a government benefit and applies to the whole population, not just NHS employees and is therefore independent of the benefits outlined in this policy. Benefits are paid by the Department for Work and Pensions (DWP) if an employee has sustained either an injury or disease which has caused disability. Employees are advised to contact the DWP for more information about this benefit.

11. TRAINING

- 11.1 Training required to fulfil this policy will be provided in accordance with the Trust's Training Needs Analysis. Management and monitoring of training will be in accordance with the Trust's Development and Training Support Policy (HR59). This information can be accessed via the Learning Zone pages on the Trust intranet.

12. REVIEW PROCESS

- 12.1 The Human Resources Department is responsible for the monitoring of compliance with this policy and will raise any significant issues arising with the TNCC and LNC.
- 12.2 The Trust will review this policy every 3 years, unless there are significant changes at either national policy level, or locally.

13. EQUALITY IMPACT ASSESSMENT (EQIA)

This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

14. PROCESS FOR MONITORING COMPLIANCE

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
Number of requests declined	At policy review number of applications and outcomes to be included in review	HR Team	On policy review	TNCC Policies Sub Committee
Ensuring due payment and risk of overpayment is limited	Review with pay services at in first 12 months of implementation to ensure compliance.	HR Team	12 months in first instance. At policy review thereafter	TNCC Policies Sub Committee

15. REFERENCES

Agenda for Change Terms and Conditions handbook. Available from:
http://intranet/hr/Non_Medical_Staff_Terms_and_Conditions.asp

Injury Allowance – A Guide for Employers. Available from:
<http://www.nhsemployers.org/Aboutus/Publications/Documents/injury-allowance-employers-guide.pdf>

Injury Allowance – A Guide for Staff. Available from:
<http://www.nhsemployers.org/Aboutus/Publications/Documents/injury-allowance-staff-guide.pdf>

16. ASSOCIATED DOCUMENTATION

Transitional protection arrangements – guidance on the application of the sunset and exception clauses NHS Injury Benefits Scheme – changes from 31 March 2013. Available from:

<http://www.nhsemployers.org/Aboutus/Publications/Documents/injury-allowance-transitional-protection.pdf>

Appendix A - Application Form for Injury Allowance

PART A – TO BE COMPLETED BY INDIVIDUAL

This form should be submitted together with a statement of events written by the employee.

Name	
Payroll Number (<i>top left hand side on payslip</i>)	
Home Address	
Department	
Email Address	
Telephone Number	
Date of Incident/Injury	
Date Sick Leave Commenced	
Date Returned to Work (if applicable)	
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>	
Details of illness/injury sustained Impact of illness/injury on ability to work and carry out daily activities <i>Please supply all relevant medical evidence</i>	
Employee's Signature	
Date	
<i>Forward form to line manager for completion of Part B</i>	

PART B – TO BE COMPLETED BY LINE MANAGER

Line Manager's Name	
Line Manager's Department	
Line Manager's Email Address	
Line Manager's Telephone Number	
Confirmation that Date of Incident/Injury, Sick Leave commencement and sick pay entitlement as stated in Part A.	
Was an internal investigation into the injury/illness carried out? If 'yes' please attach copies of reports. Has the line manager received a copy of the statement of events written by the employee.	
Has the individual been referred to Occupational Health? If 'yes' please attach copies of reports.	
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 Signature	
Date	
Forward form to Care Group Director/Head of Service for completion of Part C	

PART C – TO BE COMPLETED BY Care Group Director/Head of Service & Deputy Workforce Director/Workforce Director

Injury allowance has been authorised for the above named employee. Yes / No	
We are unable to support this claim for Injury Allowance for the following reasons:	
Care Group Director/Head of Service	Signature Date
Deputy Workforce Director/Workforce Director	Signature Date

Care Group Director to forward completed form to Payroll Manager for action