

Freedom of Information Request

Request:

If a staff member receives Injury Benefit payments, but later receives compensation for a personal injury claim, the regulations state that the NHS "may" recover the amount where Injury Benefit has already been paid out.

My question is this: the use of the word "may" indicates there is an element of discretion involved in the decision. Therefore, please can you tell me the criteria that are used in making a decision whether to recover Injury Benefit? I have searched through all the regulations and guidance and cannot find the criteria being disclosed anywhere. It is important for staff who make personal injury claims to know in what circumstances their previous payments could be recovered.

Status: Complete**Response Date:** 12 October 2010

I am afraid your understanding that the Scheme's regulations state that the NHS 'may' recover the amount of personal injuries, which suggests there may be some discretion in the amount to be offset is misconceived. In actual fact, Regulation 17(1) of the NHS Injury Benefits Scheme's Regulation 1995 (amended) states, "*The Secretary of State shall [my emphasis] take into account against the benefits provided in these Regulations any [meaning all] damages or compensation recovered by any person in respect of the injury or disease or in respect of the death of a person to whom these Regulations apply, and such benefits may be withheld or reduced accordingly...*"

You will see from this that the Regulation is prescriptive rather than permissive and means that the Secretary of State must offset from the injury benefits any damages or compensation received for the same injury.

However, in keeping with the income protection nature of the Scheme and as the result of an agreement between the then Head of Division and unions many years ago, where there is a clearly identifiable and delineated Loss of Earnings (LOE) element within the settlement, the offset will be limited to that amount. I should add that LOE means any loss of earnings, whether NHS or private and includes loss of pension. It is also important to understand that where there is no identifiable LOE element within the settlement, the whole amount of the damages or compensation settlement net of Compensation Recovery Unit

(CRU) recovery offset and tax must be taken into account. There is no discretion within the Regulations for any other alteration to the offset.