

NHS Injury Benefits Scheme - Application for Permanent Injury Benefits (AW13)

Notes for guidance for applications where the injury occurred or disease was contracted on or before 30 March 2013, and the applicant's last day of service or permanent change in employment was on or before 30 March 2018

Purpose of this guidance

NHS employers and Permanent Injury Benefits (PIB) applicants must read the guidance notes carefully before completing the application for Permanent Injury Benefit form (AW13). For ease of reference the numbered items in Section 5 of the guidance notes correspond to the numbered sections and questions on the application form.

These notes are not a full statement of the legislation that governs the NHS Injury Benefits Scheme and nothing in these guidance notes can override the provisions of the NHS Injury Benefits Regulations.

More information about the NHS Injury Benefits Scheme (England and Wales) can be found on NHS Injury Benefits website at: www.nhsbsa.nhs.uk/nhs-injury-benefits-scheme

This guide provides both general and detailed information and guidance for NHS employers and applicants submitting an application for PIB. It comprises five sections:

- Section 1** Provides general information that all users are advised to read
- Section 2** Explains the role of NHS Business Services Authority (NHSBSA)
- Section 3** Explains the role of the NHS employer
- Section 4** Explains the role of the applicant
- Section 5** Provides question by question guidance for all contributors in completing the application form.

Section 1 General information for all users

This application form is for claimants of NHS Injury Benefits whose last day of service or permanent change in employment is on or before 30 March 2018. For applications where a permanent change occurs on or after 31 March 2018 please refer to AW14 - Notes for Guidance.

The NHS Injury Benefits Scheme is closed for new applications but retrospective applications may be considered if the injury or onset of the disease occurred on or before 30 March 2013. The Scheme is not open to applicants such as GP practice staff, Direction employees or employees of an independent provider. General and Dental Practitioners are covered by the Scheme. If an applicant meets these conditions the employer must allow the application.

Please note the NHSBSA may reject the application if it has not been submitted within a timely manner. For information, this is considered to be within a period of 6 months from the date of the move to lower paid employment or the termination of employment. It is for the NHSBSA to determine whether the application has been submitted within the required period, not the employer. If you have any information to support the reason for a delay in submitting an application for Permanent Injury Benefits then please include this with the application.

NHS Injury Benefits are available to almost all NHS employees. There are a few exceptions such as GP Practice staff, GP Co-operative staff and a special group of employees called Direction Employees. If you are unsure, ask NHSBSA for advice.

Employers must do all they can to identify cases and submit an application where Permanent Injury Benefits may be appropriate.

Purpose and requirements of the Scheme

The NHS Injury Benefits Scheme is a 'no blame' income protection scheme intended to top up income of successful PIB applicants between 15% and up to a maximum of 85% of previous NHS earnings. The Scheme does not protect extra payments such as 'one-off' bonuses or overtime. Neither is it intended to provide direct compensation for illness or injury.

The Scheme requires that three criteria are satisfied:

Firstly, the applicant must be employed by the right type of NHS employing authority.

Secondly, the applicant must have suffered an injury or contracted a disease that is:

- a. Sustained in the course of their employment and which is wholly or mainly attributable to that employment, or
- b. Wholly or mainly attributable to the duties of that employment.

Thirdly, the applicant must have suffered a permanent loss of earning ability in excess of 10% by reason of the injury or disease. For this purpose 'permanent' means to age 65.

Not all applications will result in benefits being awarded.

More information is available on the website at www.nhsbsa.nhs.uk/nhs-injury-benefits-scheme

Section 2 Role of the NHSBSA

The NHSBSA, via its medical advisers, is responsible for administering the NHS Injury Benefits Scheme on behalf of the Secretary of State for Health under the provisions of the NHS Injury Benefits Regulations 1995 (as amended). The NHSBSA will determine whether an applicant is entitled to PIB and if so, the level of benefit they will receive.

Applicants who are dissatisfied with the outcome of their claim have a right of appeal, which will be fully explained at the time.

NHSBSA or its medical advisers will keep both the applicant and their employer informed of progress whilst processing the application. On completion they will issue a formal decision letter to both.

Where the application is unsuccessful the NHSBSA will provide the applicant with an explanation of how the decision was reached and details of appeal opportunities.

In considering each claim NHSBSA must consider all relevant evidence and weigh that evidence accordingly. The weight to be attached to each piece of evidence is for NHSBSA to decide. In addition to the information presented with the application, NHSBSA may obtain further information/evidence it deems necessary in order to have as full a picture as possible. This may include the applicant being examined by an independent medical expert or functional analyst.

Having decided that the applicant is employed by the right type of NHS employing authority, when NHSBSA is satisfied that it has as much relevant evidence/information as it needs in order to make a decision it will, in the first instance, decide whether the applicant meets the attribution test. i.e. whether they have suffered an injury or contracted a disease that is:

- (a) Sustained in the course of their employment and which is wholly or mainly attributable to that employment, or is

(b) Wholly or mainly attributable to the duties of that employment.

Applicants may sometimes claim for more than one injury or disease so it is important that we have all the relevant information.

The NHSBSA takes advice on medical matters from a panel of professionally qualified and experienced occupational health physicians, who also have access to specialist input/advice where necessary.

When NHSBSA is satisfied that the applicant meets the requirements of the attribution test it will begin to assess the degree of Permanent Loss of Earning Ability (PLOEA), which, in turn, will contribute to determining the level of benefits payable, if any.

Section 3 Role of the employer

It is the employer's responsibility to ensure that they have a proper and open system in place to identify situations where a claim for Injury Benefits might be appropriate and to initiate the claims process.

Those involved in the employer role eg. managers, supervisors, pay, pension and human resources personnel must do all they reasonably can to identify possible cases and make staff aware of their rights to claim Injury Benefits.

You must issue a PIB application form (AW13) and complete Part A.

Further guidance and information for employers and employees is available on the NHS Injury Benefits website at www.nhsbsa.nhs.uk/nhs-injury-benefits-scheme

Failure to provide any of the information required will result in a delayed decision.

We need as much information as possible about three specific areas:

- The injuries sustained or the disease contracted by the applicant, its treatment and prognosis.
- How that is connected to their NHS duties (i.e. what caused it)
- How or whether the injury or disease has caused a permanent reduction in earning ability

In all cases you must include with the application, copies of:

- All accident reports.
- All Occupational Health Department notes and records.
- Reports of any internal investigation connected with the claim.
- A full job description.
- Sick leave records
- Employers must provide a statement that provides information that they feel is relevant to the application, this is required whether or not the employer wishes to support the application. If the employer does not support the application the statement should set out their reasons for not supporting the application. Regulation 18A of the NHS Injury Benefits Regulations requires that Employing Authorities provide whatever information NHSBSA needs to process a claim. Section 5 of this guidance provides more information to help you complete your part of the application form.

Section 4 Role of the applicant

In order to deal with your claim properly and quickly it is vital that we have as much information as possible about your injury or disease, its onset, cause, effect on you and your ability to work, and the prognosis.

The application form (AW13) contains two parts. Your employer must complete Part A and you must complete Part B.

We would strongly recommend that you provide us with a statement explaining in your own words what has happened (describe the incident(s) or accident(s)), how that has injured you (what injury or disease are you suffering from as a result) and what effect that has on your ability to work and carry out your daily activities.

Also please check the information provided by your employer at Part A and any other accompanying documentation they have provided. You cannot alter anything your employer has provided, but if you disagree with any of the information they have given us, tell us what you disagree with and why.

Lastly, please let us have copies of any documents or reports that you think support your claim. Do not send originals if you can avoid it. If you do not have certain documents or reports that you would like us to see, but you have the contact details of where we can get them, please give us the details and we will do our best to obtain them.

The following are suggestions for useful information you may wish to let us have, which will allow us to consider your claim.

Please do not feel overwhelmed by the following list. Not all of course, will apply to you. Part of the process may include seeking your consent for medical evidence, which we will obtain from your GP, specialists and occupational physician if we do not already have it from yourself or employer and a medical adviser looking at your claim considers this is appropriate. If you can help with supplying additional evidence where it does apply to you it will be very useful.

For applicants who have had an accident at work:

- Injury or onset of disease must have occurred on or before 30 March 2013, and
- your last day of NHS service or permanent change in employment because of claimed injury or disease is on or before 30 March 2018.
- Applications must be submitted in a timely manner, if there has been a delay in submitting your application i.e. it has been more than six months since you left NHS employment or moved to lower paid employment then your application may be rejected. Therefore please provide reasons for the delay in submitting an application if applicable.
- If you had more than one injury include documentation about each if you have it.
- if you have a physical or psychological injury, or both, as a result of an incident or series of incidents at work, which was recorded in the accident book, please include a copy of that form if your employer has not already done so. Your employer should be able to help you obtain a copy.
- If you sought an accident declaration by the Department for Work and Pensions (DWP) or its predecessors include a copy of that. The DWP can help you obtain a copy of the declaration, and if you have claimed Disablement Benefit, you may also ask them for copies of the medical assessment papers.
- If you had an accident at work, and did not have it entered in the accident book, but a colleague witnessed it, include a signed statement from that witness if you can.
- If you cannot remember the exact date of an accident or incident at work and it was not recorded or witnessed but you attended your GP, they may be able to confirm that attendance and the date from their notes.
- If you attended A&E, they may have sent your GP a discharge summary.
- If you attended Occupational Health following the injury, they may also be able to help with dates and details.

- If you have already been awarded Temporary Injury Allowance (TIA) and have any relevant documents about it, it would be useful to let us have these too. Please note that being awarded TIA does not automatically mean that your claim for PIB will be accepted.
- If you have sought compensation or damages and have evidence, such as expert medical reports, or details of judgements and outcomes, which may be helpful relating to this, please include them.
- If you have contracted a notifiable infectious disease such as hepatitis or tuberculosis you are likely to have documentation from your Occupational Health and/or Public Health Departments confirming this.
- If you have contracted an occupational disease, which is also a prescribed disease under the DWP Industrial Injuries Scheme Benefits, such as occupational asthma or dermatitis, and it has been accepted and assessed as such it will be useful to let us have copies of the DWP documents of acceptance, assessments and awards if you have them. If you do not already have them you may be able to request them from the DWP.
- If you believe you have suffered a psychological injury because of your work, it is important to include any documents that can give the views or perspectives of other people who perhaps witnessed or were involved in the situation. For instance you may have:
 - A colleague who can give you an account from their perspective.
 - Copies of letters and/or emails in which you have expressed your concerns about an adverse situation. For instance, to your manager or HR or Union rep, perhaps about overwork, poor relationships, lack of support or resources or equipment, the pace and degree of change affecting your role and duties, delay in handling your concerns, or perhaps about the effects of the adverse situation on your health.
 - Documents relating to a complaint or grievance you may have raised, and how this was investigated or resolved. A Union rep is often involved, and that person may be able to help you gather this documentation.
- If you have a work-related condition, such as work-related upper limb disorder (WRULD), which has been assessed by Occupational Health by way of workplace assessment, with various adjustments to your pattern of work and the provision of additional equipment, you may have documents that confirm such activity.
- N.B. It is not necessary to prove that your employer was at fault to get Injury Benefit; it is a 'no-blame' scheme. Section 5 of this guidance provides more information to help you complete your part of the application form AW13.

Section 5 Completing the application form (AW13)

- The applicant's employer will complete **Section A**.
- The applicant will complete **Section B**.

Please complete the form using black ink

Section A – To the employer

Part 1

Q's 1 – 6. Insert the applicant's personal details. If you already have an Injury Benefits reference number for this applicant, in relation to a Temporary Injury Allowance claim please show it at the top of the front page.

Q7. Tell us the applicant's number on your payroll.

- Q8. We need to know if the applicant is a member of the NHS Pension Scheme
- Q9. We may already have obtained information in connection with an ill health retirement pension application that would be useful in considering this application, so please tell us whether an application has been accepted.
- Q10. Different regulations and criteria apply to this application depending on what has happened as a result of the work related injury or disease. Please tell us whether the applicant has terminated employment with you, moved to lower paid employment (this includes moving to part time), or has died, and the dates. Please tell us what the applicant claims happened as the result of a claimed injury or disease. If the applicant did not cease employment or move to lower paid employment on ill health grounds please also let us know the reason for cessation of employment or move to lower paid employment.

Please note that by completing application form you are not suggesting that you agree the termination or move to lower paid employment was due to a work related injury or disease.

Part 2 *Complete Part 2 **only** if the employment has ended or the applicant has moved to lower paid employment.*

- Q1. Tell us what the applicant's job was before the termination or change.
- Q2. We need the full name and address of the place of employment, including the name of the Employing Authority, Local Health Board, NHS Trust, NHS Foundation Trust, NHS Commissioning Board or Clinical Commissioning Group (CCG).
- Q3. Please tell us if the employment was part-time and if so the part time and standard whole time hours.
- Q4. It is important that we have as much information as possible about the applicant's working life. Please tell us what you know about any other NHS employers they previously worked for and when, including details of any pre 1974 Local Government employment with Scotland, Northern Ireland or the Isle of Man.
- Q5. We need as much information as possible about **all** sick leave relating to this application so that we can map the onset and any progression of the condition claimed for.
- Q6. It is very important that we have accurate pay information. The figures to be shown are the same as 'pensionable pay'.
- Q7. It is very important that we know if Temporary Injury Allowance has been awarded.

*Complete the next question **only** if the applicant has changed to lower paid employment.*

- Q8.(a)-(f) It is important to let us know whether the applicant has remained in the same job, but reduced their hours or if they have changed jobs completely.
- Q9. The Scheme's Regulations require that any damages or compensation in respect of the same injury or disease shall be deducted from any Permanent Injury Benefit that becomes payable, if the application is successful we will contact you for the details of the defending legal advisers.

Part 3 *Complete Part 3 **only** if the applicant has died as a result of the injury/disease being claimed for.*

- Qs 1- 6 A lump sum and/or allowance may be payable if the deceased applicant left a 'legal' spouse, civil partner, dependent children or a relative who was financially dependent on them when they died. This can include parents, parents-in-law, siblings, children, stepchildren or grandchildren. If you are unsure whether the relative may qualify, tell us about them and we will investigate.

Part 4

- (a) Applies to death cases only
- (b) **In all cases** please send us **copies** of the following. Do not send originals if you can help it.
- All accident/incident reports, IB 76.
 - All Occupational Health department reports and notes.
 - A full job description for the job the employee was doing before the accident/ incident.
 - Any internal investigation or disciplinary reports connected with this claim.

In cases involving mental health conditions:

- A statement explaining what injury or disease the applicant is claiming for and the circumstances leading to the claim. i.e. how it is connected to their NHS work.

Declaration and signature

The application cannot be processed unless it is authorised by a signatory for the employer such as the Payroll Manager or Human Resources Manager, or is not stamped.

Please show your contact details clearly so that we can get in touch with you quickly if we need to.

You have now completed your action on this application form. **Please pass it quickly to the applicant** for them to complete Part B. Don't forget to include all appropriate documents.

Section B – To the applicant

Part 5

- Q1. It is in your best interests to check what your employer has told us at Section A and any enclosures they have included. If there is anything you do not agree with, tell us what it is and why you do not agree. We can then investigate further if we think we need to.
- Q2. If the NHSBSA accepts that you have suffered an injury or contracted a disease that is:
- (a) Sustained in the course of your employment and which is wholly or mainly attributable to that employment, or is
 - (b) Wholly or mainly attributable to the duties of that employment

We will then assess your Permanent Loss of Earning Ability (PLOEA) by identifying what other alternative job in the general field of employment you might be capable of undertaking before retirement. Knowing what qualifications you have will help us to do this.

N.B. It is important to understand that we will assess what job you might most likely be able to do before you reach retirement age; NOT what you can do now.

- Q3. For the same reason, it is also important that you tell us if you have started working again, and what work you are doing since you left your NHS job.
- Q4. Applicants often have other health conditions not related to their work that they are not claiming PIB for or that we cannot take into account when considering their claim. It is important that you tell us exactly which injury or disease you are claiming for that is wholly or mainly attributable to your NHS employment and has caused a PLOEA.

- Q5. Tell us, in your own words, as much as possible about what you think caused your injury or disease, why you think it is related to your NHS job, what has changed since the accident/incident and how it has affected your working/personal life. Continue on a separate sheet if necessary. Please note we can only consider injuries or the onset of a disease that occurred on or before 30 March 2013. Please give relevant dates of any injuries.
- Q6. We sometimes need to request more, or more up to date, information from your treating doctors. So it is important that you tell us the names and hospital addresses of all the doctors you have consulted about the injury or disease you are claiming for and your GP.
- Q7. So that we are sure we have received everything you intended to send us, please list all the additional documents, such as medical, investigation or accident reports that you have sent us in support of your claim. Continue on a separate sheet if you need to.
- Q8. **Declaration and Consent**
Please make sure that you sign the declarations and consents on page 9 and 11 and the 'consent' on page 13 of the application form (AW13). We may not process your application without it.

You have now completed your action on this application form. Please check it and then you can either ask your employer to send everything to us, or you can send it to us yourself.

Please note the following should your application be accepted:

Damages/Compensation/CICA

You cannot be compensated twice for the same injury and therefore Regulation 17 requires that the Scheme takes into account any damages or compensation (this includes Criminal Injuries Compensation Authority (CICA)) awarded in respect of the same injury or disease for which Permanent Injury Benefits (PIB) is awarded.

We will not wait for the damages/compensation claim to be settled before dealing with your application.

If your application meets the entitlement criteria then in keeping with the income protection nature of the NHS Injury Benefits Scheme we may pay any benefits due 'on account'. This allows applicants to receive money when they are likely to need it most. Important: If benefits are paid prior to the settlement this may result in the applicant having to pay back some or all of the PIB they have received, depending on how much damages/compensation they are awarded. We may also stop or reduce any future PIB allowance due.

DWP benefits

The NHS Injury Benefit Scheme Regulations provide that we must take the following DWP benefits listed below into account when calculating your award:

- Contribution Based Employment and Support Allowance (ESA)
- Incapacity Benefit
- Industrial Injuries Disablement Benefit (IIDB)
- Reduced Earnings Allowance (REA)
- Retirement Allowance (RA)

For this purpose, we will need to contact the DWP to ask for the rates of benefits that you may be receiving or have been in receipt of since the payable date of your Injury Benefit claim. We will provide more information regarding this if your application is accepted.

NHS Pension/Private Pension or top up arrangements

We also have to take into account any payment received from a relevant Personal or Private Pension, as well as the NHS Pension Scheme when calculating what you can receive from the NHS Injury Benefits Scheme. We will provide more information regarding this if your application is accepted.