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## **Policy on the Treatment of Salary Overpayments and Underpayments**

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**Please be aware that this printed version of the Policy may NOT be the latest version. Staff are reminded that they should always refer to the Intranet for the latest version.**

<b>Purpose of Agreement</b>	This policy explains the way that overpayments and underpayments of salary will be treated within the Trust.
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## **Review Log**

Include details of when the document was last reviewed.

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1	1 <sup>st</sup> June 2016	Associate Director Finance		Summary of Policy included, Titles changed

## Summary of Policy

This policy outlines the Trust requirements for calculating overpayments and period over which any recovery will be made.

It explains how underpayments are calculated and confirms when the Trust will authorise an off payroll payment

## **Policy for the Treatment of Overpayments and Underpayments**

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## POLICY FOR THE TREATMENT OF OVERPAYMENTS AND UNDERPAYMENTS

### 1. INTRODUCTION & PURPOSE

- 1.1 The Trust has a responsibility to ensure that employees are paid correctly, but on occasions overpayments and underpayments occur for a variety of reasons. When this happens the Trust will either recover the overpayment or make a payment in line with this policy.
- 1.2 Employees also have a responsibility to check their payslip for accuracy and advise their manager and payroll department when the payment is different to the expected contracted payment.
- 1.3 If an overpayment is considered to have been brought about fraudulently then the matter will be reported to the Trust's Local Counter Fraud Specialist for an investigation to be carried out under the Trust's Counter Fraud Policy.
- 1.4 This policy outlines the process that will be followed when a member of staff receives an incorrect salary or expense payment, including payment to third parties such as child care vouchers.
- 1.5 The purpose of the document is to ensure that:
  - a) overpayments and underpayments are identified and either recovered or paid in a timely manner; and
  - b) a transparent, fair and consistent approach is followed when an incorrect salary payment is made.

### 2. SCOPE & DEFINITIONS

- 2.1 This document applies to all staff employed within, or ex-employees of Solent NHS Trust and relates to payments made via the payroll.
- 2.2 For the purposes of this policy, a salary overpayment or underpayment covers any payment made through the payroll to an employee.
- 2.3 Section 14 of the Employment Rights Act outlines an employer's right to recover a salary overpayment without the prior written agreement of the individual, if it is to recover an overpayment of wages or expenses.
- 2.4 The Theft Act 1968 indicates that although an individual may not set out to obtain additional salary intentionally, by keeping it and treating it as their own (i.e. spending it) they may be guilty of theft.
- 2.5 The following definitions are used within the policy:
  - 2.5.1 **Error Types;** are the ways in which an employee can be incorrectly paid. They may include, but are not restricted to:
    - an overpayment of salary;
    - an underpayment of salary;
    - an incorrect travel or non-travel expense;
    - a duplication of payment; and
    - a deduction made in error.
  - 2.5.2 **Overpayments;** are where an employee, or ex-employee is paid an amount in excess of their contractual entitlement. The likely causes of an overpayment include, but are not restricted to:

- a termination notification not being completed, received or actioned on time;
  - late or lack of notification of sickness absence;
  - staff not returning from maternity leave;
  - an error being made;
  - a late change notification; and
  - incorrect salary banding.
- 2.5.3 **Salary/Wages Adjustment;** are amendments made to pay, to recover monies overpaid in the current or previous month only.
- 2.5.4 **Debt;** is an unrecovered overpayment made to an ex-employee.
- 2.5.5 **Underpayments;** are where an individual has received less pay than contractually due. The likely causes of an underpayment include, but are not restricted to:
- a variation to contract notification being submitted or actioned after the payroll cut off date;
  - a change of contract being notified late;
  - an incorrect salary banding; and
  - a late submission of expense claims, excess hours, enhancements, overtime, etc.
- 2.5.6 **ESR;** Electronic Staff Records system.
- 2.5.7 **Basic Pay;** is an individuals contractual pay before any additions are added, for example due to unsocial hours working, regular user additions, travel and subsistence, etc.
- 2.5.8 **Third party payments;** means a salary sacrifice or car parking deduction made to a third party provider, for example Portsmouth Hospitals Trust, Fideliti, etc.

### **3 ROLES AND RESPONSIBILITIES**

- 3.1 **Employees** are expected to:
- accurately complete travel and claim forms in a timely manner;
  - ensure the current tax code issued by HM Revenue and Customs is being used for the calculation of their salary;
  - ensure they understand their salary entitlement;
  - check their payslip every pay period to ensure that it appears accurate; and matches the payment received within their bank/ building society account;
  - raise pay anomalies with their manager and payroll using the payroll escalation process set out in paragraph 4.9;
  - where pay anomaly enquiries do not receive an adequate response from the payroll team within 7 days, or the agreed timescale then the matter should be escalated to the individual's line manager; and
  - remain aware of their position and obligations under this policy for the resolution of overpayments of salary.
- 3.2 **Budget/ Line Manager's** have responsibility for ensuring this policy is fairly and consistently applied by those staff they manage. They are, furthermore responsible for ensuring:
- changes in employee contracts, including hours, bands, terminations and individual elements are forwarded to the Human Resource (HR) team in a timely manner;
  - timesheets and unsocial hours forms are checked for accuracy prior to forwarding to the payroll team before the relevant cut off date;
  - employees are notified in writing of the changes to their contractual terms;
  - the monthly budget statement is checked for accuracy and any pay errors are notified to the Financial Accountant, and the HR team; and

- where an employee has had an unauthorised or inaccurate payroll deduction, which has not received a timely response to their enquiry from the payroll team, the matter should be raised with the HR team.

**3.3 SBS Payroll will ensure:**

- that information received by the relevant cut off date is input into ESR in an accurate and timely manner within the agreed roles and responsibilities for the trust;
- that robust checking processes are in place to identify and reduce over and underpayments;
- any payment errors are identified and the employee advised in a timely manner;
- they follow this policy in resolving payment errors; and
- that any underpayment or overpayment trends are identified and escalated with the Trust Senior Pay and remuneration manager in a timely manner.

**3.4 The HR team will:**

- communicate payroll cut off dates to managers;
- ensure that changes received are input into the ESR system in a timely, accurate manner within agreed timescales;
- ensure employees expectations are managed when discussing payment in relation to contractual changes; and
- ensure that guidance on the completion of salary and travel forms are available to staff and line managers via the intranet.

**3.5 The Finance team are responsible for:**

- raising invoices under this policy;
- recording any overpayments in the Trust's ledger and setting up a recovery process where it is not possible to recover via an individual's salary;
- monitoring the recovery of all overpayments;
- escalating overpayments to other Agencies as appropriate;
- providing any information required by Debt Collection Agencies or Courts as appropriate in order that they may take relevant action; and
- advising the Trust Senior Pay and remuneration manager of any issues that need to be addressed via the payroll contract.

**The Senior Pay and Remuneration Manager is responsible for ensuring:**

- authorisation of payments chargeable to the Trust before they are made to individuals;
- where appropriate procedures are escalated to Operations Directors and amended by the Senior Pay and Remuneration manager; and
- Associate Director of HR and Financial Controller are informed of authorised payments outside of the normal payroll run on a monthly basis for audit reasons.

**3.6 Local Counter Fraud Service (LCFS) are responsible for:**

- investigating any significant overpayments or
- any instances where fraud or theft is suspected

## **4 PROCESS REQUIREMENTS**

**4.1 *Notification of overpayments and underpayments***

**4.1.1 Payment errors can be identified in several ways:**

- the employee upon receipt of their salary identifies that an error has occurred;
- a member of the HR team may identify that an error has occurred;

- a member of the payroll team may identify that an error has occurred; and
  - the budget manager identifies that an error has occurred.
- 4.1.2 If an individual fails to report an overpayment which they should have been aware of through for example, a check of their payslip, disciplinary action and referral to the LCFS may be taken. The LCFS will decide whether to carry out an investigation, which could result in criminal proceedings being taken against the individual.
- 4.1.3 When an error in payment has been identified action should be taken as quickly as possible to rectify the error and ESR updated accordingly.
- 4.1.4 Discrepancies in pay relating to the underpayment or overpayment of expenses or unsocial hours must be logged with the Payroll Service desk either through email ([sbs.payrollhelpdesk@nhs.net](mailto:sbs.payrollhelpdesk@nhs.net)) or telephone (030 3123 1114). A reference number will be allocated to each case which is logged. This reference number should be kept in case there is a need to make further contact with the payroll team or needs to be escalated if there is no response.
- 4.1.5 Any queries relating to salary payments not mentioned in paragraph 4.1.4 should be logged with the HR team.
- 4.1.6 Where an employee has received no pay or less than 100% of their basic pay (basic pay excludes enhancements or other additions), the query will be given a high priority 1 status and payroll will respond within one working day. Calls relating to overpayments will also receive priority 1 status and will be responded to within one working day.
- 4.1.7 All other calls will be given a priority 2 status and responded to within three working days.
- 4.2 *Process for resolving overpayment errors (not third party payments)***
- 4.2.1 Once any relevant changes has been input onto the ESR system, a retrospective report is generated, which identifies the reason for the overpayment. SBS pay assistant will calculate the amount of the payment error. Once the error has been verified as correct the pay adjustment process or overpayment process will begin.
- 4.2.2 If the error has occurred over a one or two month period, the circumstances of which the individual should have been aware of, the adjustment will be made automatically the following month.
- 4.2.3 Where the amount of recovery exceeds 50% of the gross monthly pay, SBS must ensure that the Senior Pay and Remuneration Manager is aware of the recovery and informs the Deputy Director of Finance and Associate Director of HR. Where the deduction will cause financial hardship, SBS are authorised to negotiate an extended period of recovery in accordance with paragraph 4.2.6
- 4.2.4 If the employee could not reasonably have known about the overpayment or the overpayment occurred over more than two months, the overpayment will be calculated as a gross value – this is the amount the Trust has overpaid, rather than the net amount (after tax, national insurance and pension) the employee has received. Calculating the gross value ensures that the overpayment can be processed by the payroll team with minimal delay. As the overpayment is recovered the ESR system will automatically reduce the employee's tax, national insurance and pension charge as appropriate.
- 4.2.5 Where a payment error has been made, the Payroll team will write to the individual advising how the error has occurred and outline the repayment options. In all cases recovery will be sought as required by the Public Accounts Committee.

- 4.2.6 Where an employee is unable to repay the full amount at the next pay interval, the overpayments team can agree a repayment for a period of up to nine months.
- 4.2.7 If an individual requests a repayment period longer than nine months, the matter will be referred to the Senior Pay and Remuneration manager and the Financial Controller.
- 4.2.8 The individual will be expected to complete a statement of means (appendix B) to support a request for extended repayment terms before any decision is made. On receipt of this form an interview may be arranged between a member of the HR team and the individual to discuss the overpayment and why the repayment cannot be made. The individual has the right to be accompanied by a Staff Side representative or workplace colleague.
- 4.2.9 Failure to attend this meeting without good cause will mean that a decision will be made on the basis of the information available at the time. In these circumstances and decision will be notified in writing within 5 working days.
- 4.2.10 If it is agreed to extend the period of the overpayment recovery beyond 9 months, any agreement will be in the form of a loan. The individual will be asked to sign the form shown at appendix C.
- 4.2.11 If the individual requests a recovery period in excess of twelve months or a period equivalent to that throughout which the overpayment accrued, whichever is soonest, the matter will be referred to the Deputy Director of Finance and Associate Director of HR. If the overpayment has occurred over a period of 24 months, discussion with the Senior Pay and Remuneration manager and the Associate Director of HR and Deputy Director of HR will take place to decide on the appropriate period of recovery.
- 4.2.12 Where a significant salary overpayment occurs over more than one month and the employee has not advised the Payroll or HR Department, consideration will be given as to whether it is appropriate to alert the Local Counter Fraud Specialist (LCFS) in order to conduct a criminal investigation.
- 4.2.13 This would not automatically result in a person being charged with a criminal offence and if, during the course of an investigation, evidence indicates that the case would not be suitable for criminal charges, the investigation would be closed and the overpayment recovery process continued.
- 4.2.14 A “without prejudice clause” will be included in all overpayment letters which states, “This does not affect any other action, including proceedings in a criminal court which may be taken in this case”. This clause is to ensure that criminal action is not precluded and may be considered at any stage of the investigation.
- 4.2.15 Any overpayment which is more than £5,000 once calculated will in accordance with the HM Revenue and Customs (HMRC) be treated as a beneficial interest free loan. This means that if the amount outstanding for the whole year is more than £5,000 (between 6<sup>th</sup> April and 5<sup>th</sup> April ) then the amount will be recorded on the P11D which is sent to HMRC at the end of the tax year and the official interest rate specified by HMRC may need to be charged.

#### **4.3      *Bank or Locum Workers***

4.3.1 Due to the nature of the contract under which bank and locum workers are employed, work cannot be guaranteed. Consequently if an overpayment occurs it will not normally be possible to set up an overpayment recovery via the payroll. In these circumstances the pay assistant will calculate the net overpayment. They will write to the individual to explain the circumstance of the error and if no response is received within 14 days the matter will be referred to the finance team so that an invoice can be raised and the debt recovery process begins.

#### **4.4      *Leavers***

4.4.1 Where an employee has been overpaid and they terminate their employment before the completion of the agreed recovery, the balance of the overpayment will be taken from the final salary. If the overpayment is greater than the final salary payment, immediate payment will become due prior to leaving the Trust. If no payment is made before leaving the Trust and no contact is made within 14 days of leaving, the matter will be referred to the Finance team so that an invoice can be raised for the balance, and the debt recovery process can begin.

#### **4.5      *Ex-employees***

4.5.1 When a payment error is identified for an employee who has already left the organisation, the pay assistant will calculate the net amount of the overpayment. Payroll will write to the ex-employee to explain the circumstance of the error and refer the matter to the finance team so that an invoice can be raised and debt recovery commenced.

4.5.2 If an ex-employee has been overpaid for more than two pay periods after leaving the Trust employment and has not alerted either Payroll or the HR team to the overpayment then this will be treated *prima facie* evidence of fraud and will be referred to the Local Counter Fraud Specialist (LCFS) for investigation. The LCFS investigation will progress independently of the payroll recovery process.

4.5.3 If the ex-employee is unable to repay an overpayment immediately then the debtor team may agree a repayment period of up to six months by standing order only. Repayments over a period of more than six months must be agreed with the Director of Finance or nominated deputy and a statement of means (appendix 2) will need to be completed to support a request for extended payment terms.

4.5.4 In the event that a repayment plan cannot be agreed or the debtor reneges on a repayment plan, recovery may be pursued through a debt collection agency and the Courts.

#### **4.6      *Process for resolving third party payment errors***

4.6.1 When a deduction due to a third party, for example in respect of child care vouchers, lease car, fees direct payments, the bicycle scheme, or car parking, has not been made, or has been deducted at an incorrect rate, either the HR or Payroll team will contact the individual in the first instance to arrange for the additional amount to be deducted in the next pay period. If it is not possible to reach agreement the matter will be referred to the Finance team with a request for an invoice to be raised.

4.6.2 Individuals should be aware that when an invoice has been raised, statements will continue to be issued each month until the debt is cleared, even if a recovery plan has been agreed and is being met.

#### **4.7      *Incorrect payments of Tax and National Insurance Contributions***

4.7.1 The HMRC notifies the trust of any underpayments of tax and national insurance contributions automatically via the Government Gateway. When the notification is received it is input into ESR by automatic data transfer and the adjustment is made in the next pay interval. The Trust has no discretion on these recoveries. Any queries must be addressed to HMRC directly.

#### 4.8 ***Underpayments***

- 4.8.1 Individuals should report underpayments of salary in the same way as stated in paragraphs 4.1.3 and 4.1.4, so that the relevant team can take any appropriate action.
- 4.8.2 If the employee has received less than 100% of their basic pay, see definition given in paragraph 2.2.10, a financial hardship payment may be made. Where appropriate authorisation will be sought from Senior Pay and Remuneration manager before the payment is made. The Senior Pay and Remuneration Manager is responsible for advising on a monthly basis all underpayments known to from the Deputy Director of Finance and/or Associate Director of HR . At the end of the next payment interval the arrears will be made and the financial hardship payment will be recovered.
- 4.8.3 If the underpayment is due to some other reason then the payment will be made at the end of the next payment period. Hardship payments will not be considered for non payment of expenses or unsocial hours payments.

#### 4.9 ***Escalation Process***

- 4.9.1 If an employee does not receive a response from the payroll team within the timescales specified in paragraphs 4.1.6 and 4.1.7 the employee should in the first instance approach their manager, who will in turn make contact with the HR team. They will try to resolve the issue, but if this is not possible they will escalate the matter to the Senior Pay and Remuneration Manager for review and escalation at the monthly contract management meetings if appropriate.

#### 4.10 ***Complaints***

- 4.10.1 Any questions or complaints regarding the application of this policy should be sent to the Financial Controller at Trust Headquarters 1<sup>st</sup> Floor, Highpoint, Bursledon Road, Southampton, SO19 8RB.

### 5 TRAINING

- 5.1 Specific training for this policy is not required. However, line managers will ensure that all staff are made aware of this policy by the usual dissemination routes; also that all their respective staff members are conversant with the format and contents of payslips. Those managers with budgetary responsibility must ensure they are familiar with the Trust's Standing Financial Instructions.

### 6 EQUALITY IMPACT ASSESSMENT

- 6.1 Solent NHS Trust is committed to treating people fairly and equitably regardless of their age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation. An equality impact assessment has been carried out for this policy, which is attached at appendix A, and no significant issues have been identified.

6.2 This policy has also been assessed and meets the requirements of the Mental Capacity Act 2005.

## **7 SUCCESS CRITERIA / MONITORING EFFECTIVENESS**

7.1 The effectiveness of this policy will be assessed through

- Monthly analysis of payroll overpayments;
- Budget managers monthly monitoring of salaries charged to their budgets
- Internal and external audit review

7.2 The volume and cost of overpayments will be reported to Associate Directors on a quarterly basis by the Financial Accounting team. If any trends are identified where managers or individuals are regularly failing to take appropriate action, disciplinary action may need to be considered against those responsible.

## **8 REVIEW**

8.1 The policy may be reviewed at any time at the request of either staff side or management, but will automatically be reviewed every three years unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

## **9 REFERENCE LINKS TO OTHER DOCUMENTS**

9.1 The following apply to this policy:

- Employment Rights Act 1996
- Theft Act 1968
- Standing Financial Instructions
- Reservation of Powers to the Board of Directors and Delegation of Powers
- Counter Fraud Policy
- Disciplinary Policy

## EQUALITY IMPACT ASSESSMENT

## APPENDIX A

<b>Step 1 – Scoping; identify the policies aims</b>	<b>Answer</b>
1. What are the main aims and objectives of the document?	To advise employees and managers on their responsibilities in relation to overpayments and underpayments. Confirming the process that will be followed
2. Who will be affected by it?	All employees of the Trust
3. What are the existing performance indicators/measures for this? What are the outcomes you want to achieve?	A reduction in the number of overpayments and debt owed to the Trust
4. What information do you already have on the equality impact of this document?	All staff are affected so there will be no detriment to any specific group
5. Are there demographic changes or trends locally to be considered?	No
6. What other information do you need?	None

<b>Step 2 - Assessing the Impact; consider the data and research</b>	<b>Yes</b>	<b>No</b>	<b>Answer (Evidence)</b>
1. Could the document be used unlawfully against any group?		x	This policy applies to all staff
2. Can any group benefit or be excluded?		x	No all staff are covered by this policy
3. Can any group be denied fair & equal access to or treatment as a result of this document?		x	Not appropriate
4. Can this actively promote good relations with and between different groups?		x	Not appropriate
5. Have you carried out any consultation internally/externally with relevant individual groups?	x		Yes DDNC, JCC, Finance, Payroll, Counter Fraud
6. Have you used a variety of different methods of consultation/involvement	x		Email, face to face, telephone
Mental Capacity Act implications		x	There are none
7. Will this document require a decision to be made by or about a service user? (Refer to the Mental Capacity Act document for further information)		x	NA

If there is no negative impact – end the Impact Assessment here.

<b>Step 3 - Recommendations and Action Plans</b>	<b>Answer</b>
1. Is the impact low, medium or high?	
2. What action/modification needs to be taken to minimise or eliminate the negative impact?	
3. Are there likely to be different outcomes with any modifications? Explain these?	

<b>Step 4- Implementation, Monitoring and Review</b>	<b>Answer</b>
1. What are the implementation and monitoring arrangements, including timescales?	
2. Who within the Department/Team will be responsible for monitoring and regular review of the document?	

<b>Step 5 - Publishing the Results</b>	<b>Answer</b>
How will the results of this assessment be published and where? (It is essential that there is documented evidence of	

## EQUALITY IMPACT ASSESSMENT

## APPENDIX A

why decisions were made).

**\*\*Retain a copy and also include as an appendix to the document\*\***

**OVERPAYMENT LOAN AGREEMENT FORM****APPENDIX C**

**TO BE COMPLETED BY STAFF WISHING TO REPAY THEIR OVERPAYMENT OVER A PERIOD LONGER THAN NINE MONTHS**

SURNAME:		FIRST NAME:	
ASSIGNMENT NUMBER:			
COST CENTRE:			
CONTACT EMAIL:			
LINE MANAGER:			

INCOME	£
Net pay (take home pay):	
Any other income:	
<b>Total Income:</b>	<b>£</b>
OUTGOINGS	£
<b>Accommodation, loans and utility bills per month</b>	
Rent, mortgage or lodgings:	
Court orders and other fines:	
Loan repayments:	
Credit card repayments:	
Council tax:	
Food:	
Utility bills (gas, water, electricity, etc)	
Telephone (inc. mobile)	
Other	
Travel expenses:	
Vehicle fuel:	
Vehicle insurance and tax:	
Vehicle loan:	
Catalogues:	
Television subscription (licence, satellite, etc.):	
Other (specify) :	
Travel and regular bills	
Clothing:	
Insurance:	
Child maintenance:	
Nursery fees (excluding those included in any salary sacrifice):	
<b>Total outgoings:</b>	<b>£</b>

I confirm that the information I have given above is true and complete. I understand that if I give false information, disciplinary or other action may be taken against me.

# OVERPAYMENT LOAN AGREEMENT FORM

# APPENDIX C

**Signed:** ..... **Dated:** .....

*This form should be completed and returned with a completed Overpayment Loan form (Appendix C) to:  
HR team, Highpoint, Trust Headquarters, Bursledon Road, Southampton S19 1BR*

**This form is to be completed in the exceptional circumstances an overpayment loan form is proposed or granted**

<b>Surname:</b>	
<b>First name:</b>	
<b>Assignment number:</b>	
<b>Department shown on payslip:</b>	
<b>Telephone number:</b>	
<b>Email address:</b>	
<b>Period of overpayment:</b>	
<b>Amount of overpayment:</b>	
<b>Gross/Net</b>	
<b>Maximum number of instalments:</b>	
<b>Number of instalments:</b>	
<b>Instalment amount:</b>	
<b>Date of first instalment:</b>	
<b>Agreed amount to be loaned:</b>	<b>£</b>
<b>Relevant Rate of interest to be charged:</b>	

## Individual declaration

I agree to repay the amount loaned of £..... by .....(number) monthly deductions from my salary of £.....commencing on ..... The final deduction will be made on ....., and I agree that any balance will be recovered in full from my final pay (or any arrears subsequently due to me) should I leave the Trust's employment for any reason before the full repayment has been made. Should my final salary payment (or the amount of any arrears subsequently due) not be sufficient to cover any balance outstanding, I agree to repay the balance to the Trust within 14 days of departure.

I understand that if the amount loaned is more than the HM Revenue and Customs annual limit for the whole tax year, I may be liable to pay interest as specified by the HM Revenue and Customs requirements (paragraph 4.2.8 of the policy on the treatment of Overpayments & Underpayments).

**Signed:** .....

**Dated:** .....

**Please note: In disputed cases the Overpayment Loan form does not have to be signed by the employee.**

*This form should be completed and returned with a completed Overpayment Loan form (Appendix C) to:  
HR team, Highpoint, Trust Headquarters, Bursledon Road, Southampton S19 1BR*

**Authorised:** ..... **Dated:** ..... (*Trust nominated representative*)