Overpayments/Underpayments Procedure
1. **INTRODUCTION**

The Trust recognises that it has a duty to ensure that all employees are paid correctly and to ensure that they receive the monies to which they are entitled. Unfortunately, on occasions, incorrect payments do occur, making it necessary to rectify the error and pay or recover all monies due.

Employees are responsible for checking their payslips each month to ensure that they are receiving the correct payment and any other allowances/benefits and should bring to the attention of their Manager and Payroll any errors/anomalies as soon as they notice them.

The principle aim of this procedure is to ensure equity and consistency in correcting overpayments and appropriately recovering them in a way that does not create undue hardship for the employee.

In the case of underpayment, it is important that the reimbursement is made to the employee as soon as possible within the limits of operational process.

2. **SCOPE**

The procedure applies to all employees of the Trust regardless of status, including agency, bank or locum.

3. **LEGAL BACKGROUND**

In accordance with the Employment Rights Act 1996 and the Agenda for Change main terms and conditions of employment, the Trust has the right to recover an overpayment made for which the employee may not be entitled either during their employment with the Trust or for leavers at the time of termination of employment.

Whilst the Trust does not require a written mandate from an employee to recover overpayment of wages/expenses, it recognises that it is good practice to inform staff when they have been overpaid and seek to obtain their consent, especially where the recovery is more than a small proportion of total wages due and will under normal circumstances seek to do so.

The Theft Act 1968 indicates that although an individual may not set out to obtain the additional salary intentionally, by keeping it and treating it as their own (i.e. spending it) they may be guilty of theft.

If an overpayment is considered to have been intentionally kept then the matter will be investigated by the Trusts Local Counter Fraud Specialist, and may result in criminal proceedings.

4. **DEFINITIONS**

There are a number of ways in which an employee can be incorrectly paid, including, but not restricted to:

- An overpayment of salary
- An underpayment of salary
- Payment of incorrect travel or non-travel expenses
• Duplication of payment
• Deduction made in error

4.1 Overpayment

The definition of an overpayment is where an 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 form (ESR 8) not being completed, received or actioned on time
• Late or no notification of sickness absence / unpaid leave
• Staff not returning from maternity leave
• Staff having exceeded their annual leave entitlement when leaving employment
• An error being made by the Payroll Team/ESR/Recruitment Team
• A late change notification (ESR 6)
• Incorrect salary banding
• Incorrect application of payment for enhancements
• Incorrect application of payment for allowances
• Incorrect application of payment for expenses
• Incorrect payment of overtime

4.1.1 Identification of payment errors

Payment errors can be identified in several ways:

• A member of the HR team identifies that an error has occurred
• A member of the payroll team identifies that an error has occurred
• The employee upon receipt of salary identifies that an error has occurred
• The budget manager identifies that an error has occurred

When an error in payment has been identified, action should be taken as quickly as possible to rectify the error, update ESR and recover the overpayment.

5. RESPONSIBILITIES

5.1 Payroll

It is the responsibility of the payroll service provider to:

• Ensure that information is input into ESR in an accurate and timely manner within agreed roles and responsibilities
• Ensure that robust checking processes are in place to identify and reduce over and under payments
• Ensure payment errors are promptly resolved following agreed payroll procedures
• Ensure any payment errors are identified and the manager/employee is advised in a timely manner
• Follow this procedure in resolving payment errors.

5.2 Human Resources

It is the responsibility of the Human Resources team to:

• Ensure information is input into ESR in an accurate and timely manner
5.3 **Line Manager**

It is the responsibility of Line Managers to ensure that:

- Changes in employee contracts, including terminations are actioned by completing the correct ESR forms in a timely manner. In the event of a late leaver the Manager must supply a forwarding address for the employee
- Where an employee has had an unauthorised or inaccurate payroll deduction and not received a timely response to the enquiry from payroll then the matter should be raised via the employee’s line manager with the Human Resources Department

5.4 **Individual Employee**

It is the responsibility of the individual employee to:

- Ensure that they understand their salary entitlement
- Check their payslips every month/pay period to ensure that it appears accurate
- Raise pay anomalies in the first instance with their line manager or if not able to do this contact payroll immediately
- To attend any meetings with management to discuss the issues and agree appropriate solutions
- To repay any monies overpaid to the Trust

5.5 **Counter Fraud Service**

5.5.1 All NHS Trusts are duty bound by the Public Accounts Committee to recover overpayments in full. Where appropriate the Local Counter Fraud Specialist will be asked to investigate the case as suspected fraud or theft.

5.5.2 The Theft Act 1968 indicates that although an individual may not set out to obtain the additional salary intentionally, by keeping it and treating it as their own (i.e. spending it) they may be guilty of theft. This is also referred to under Section 3 of the Fraud Act 2006 “Fraud by failing to disclose information”.

5.5.3 There is a requirement under Trust Standing Orders and Standing Financial Instructions to ensure all losses are appropriately reported. The Trust's Local Counter Fraud Specialist may perform proactive examination of overpayment records to ensure that criminal action has been considered when appropriate.

6. **PROCESS**

6.1 **Overpayments**

6.1.1 If an employee becomes aware of an overpayment they have a responsibility to and must contact their line manager immediately. The line manager will then liaise with Payroll and the individual to resolve the matter.

6.1.2 In the event of an overpayment being discovered by Payroll, the Payroll Officer will inform the line manager who will contact the individual. The Trust utilises the National Integrated HR/Payroll system ESR which is designed for any future changes to be entered by managers or HR staff. Where a change is entered on the system which relates to a previous pay period ESR will automatically calculate the payment due, or the recovery of any adjustment in the period in which the change was entered. Therefore, as a general rule, recovery will be made automatically in full. If
The overpayment is to be recovered the following month no further communication is needed but it will be reported in line with the Service Level Agreement and Key Performance Indicator requirements. If a repayment plan is required, payroll will ask the manager to liaise with the employee.

The following factors will be taken into consideration when agreeing the rate of recovery:

a) If the overpayment is discovered soon after payment, within one week of pay day, then the repayment regardless of the amount should be requested back in full, on the basis that the employee knows of the overpayment and should not have spent it within that time.

b) If the overpayment is discovered after one week of pay day and is less than 25% of basis gross monthly pay, then the full gross amount will be recovered from the next available salary payment. Any refunds of Income Tax, National Insurance and Pension contributions will happen automatically.

c) If the overpayment is more than 25%, the overpayment will be calculated to a gross figure and repayment will be requested over no more than 3 months, either from salary deduction, or alternatively by cheque when a net amount will be calculated. Employees will be given the choice of these two options and the decision will be communicated between Payroll, Finance and the HR Business Partner.

6.1.3 Where a payment error has been made payroll will explain how the payment error has occurred and explain the repayment options. The normal process is to pay the underpayment or recover the overpayment in full at the next pay interval.

6.1.4 Where the employee is unable to repay an overpayment in full at the next pay interval, the manager, Finance and the HR Business Partner can agree a repayment period of up to three months. The HR Business Partner will inform payroll of the repayment plan and payroll will confirm to the employee in writing. (See appendix 1 for template example letter)

6.1.5 The overpayment for employees will be calculated as a gross value (leavers will be net); this is the amount the Trust has overpaid, rather than the net amount (after tax and national insurance) that the employee has received. Calculating the gross value ensures that the overpayment can be processed by payroll with the minimal delay. As the overpayment is recovered the payroll system will automatically reduce the employee’s tax and national insurance charge as appropriate.

6.1.6 Where agreement cannot be reached to make a repayment within three months then in exceptional circumstances this may be extended. This must be agreed by Finance and the HR Business Partner.

6.1.7 Where a significant salary overpayment occurs over more than one month and the employee has not advised their manager or payroll, the Local Counter Fraud Specialist may conduct a criminal investigation. The Trust will also take a view as to whether an investigation under HRP 1 Standards of Conduct and Disciplinary Policy needs to be conducted, which may result in disciplinary action being taken.

6.2 Leavers

6.2.1 Where an overpayment has occurred, and an employee terminates 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 an invoice will be raised for the balance and the recovery process identified in section 6.3 followed.

6.3 Ex-employees

6.3.1 When a payment error is identified for an employee who has already left the organisation, payroll will calculate the net amount of the over/under payment. Payroll will write to the ex-employee to explain the circumstances surrounding the error and either raise a cheque in payment or an invoice for the overpaid amount.

6.3.2 If a leaver has been overpaid for more than 2 pay periods after leaving Trust employment and has not informed either payroll or their manager then this will be viewed as evidence of fraud and will be investigated by the Local Counter Fraud Specialist (LCFS Overpayments/Underpayments Procedure). The LCFS investigation will progress independently of the payroll recovery process.

6.3.3 If the ex-employee is unable to repay an overpayment immediately, then Finance may agree a repayment plan by standing order only.

6.3.4 In the event that a repayment plan cannot be agreed or the ex-employee reneges on a repayment plan then recovery may be pursued through a debt collection agency and the Courts.

6.4 Underpayments

When an underpayment has occurred, arrangements will be made to correct the underpayment and to reimburse the employee in the next period. Managers should inform Payroll, the HR Business Partner and Finance if individual circumstances dictate that an earlier payment being made via cheque, or in exceptional circumstances CHAPS (Clearing House Automated Payment System) is justified. The HR Business Partner together with Finance will assess why the underpayment has occurred and decide whether payment can be made via a cheque or CHAPS.

7 DISPUTE PROCEDURE

In the event that an employee disputes the overpayment or indicates that recovery under this policy would give rise to hardship, the Trust would consider each case on its merits.

In these circumstances, the employee must write to their HR Business Partner outlining the reasons for the dispute or financial hardship. In considering each submission the HR Business Partner will take into account matters such as whether:

- The employee could have been aware of the overpayment.
- The employee had sought clarification from Payroll or their manager regarding the validity of the payment and been given the impression that payment was correct.
- Recovery of the overpayment in accordance with Trust procedure would cause the employee or former employee hardship.

The HR Business Partner together with the Finance Department will decide whether it is appropriate to vary the recovery period. A variation to the recovery period will normally be restricted to the financial year.

The employee/former employee will be notified of the decision by Payroll.
Appendix 1

OVERPAYMENTS
(Current employee following telephone contact with manager)

Dear

Re: Salary Overpayment

Following your telephone conversation with your manager on ……. this is to confirm that unfortunately an overpayment of salary/allowances/expenses has occurred which amounts to £…….

(Provide Gross breakdown)

This has occurred because …………………………………………………

As agreed, this amount will be deducted in full in the next pay period / we will be deducting £…… per month from your salary commencing ……….. over a period of ………….. months.

May I please remind you that if you leave the Trust before full repayment is made we will deduct any outstanding monies from your final salary.

Thank you for your cooperation in this matter which is greatly appreciated.

Please accept my sincere apologies for any inconvenience caused to you in this matter.

Yours sincerely

Payroll Manager/Officer

Cc  HR Business Partner
    Employee’s Manager
Appendix 2

OVERPAYMENTS
(Current employee – where no telephone contact has been possible)

Dear

Re: Salary Overpayment

I regret to inform you that an overpayment was made in your salary/allowances/expenses paid on ...................... This error has occurred because ..............................................

The total amount of the overpayment is £ ....................

(Provide Gross breakdown)

Whilst I apologise for this situation, I must make you aware that the Trust is duty bound by the Public Accounts Committee to recover these monies. It is the Trust’s procedure to action recovery of any overpayment in the next pay period.

Please be aware that this overpayment will be recovered from .......... (month) salary. In the event that recovery in the way proposed causes you significant financial difficulties you should contact me on the above telephone number and we can discuss further. Payroll ask if this is correct and will they have a procedure to follow

Thank you for your cooperation in this matter which is greatly appreciated. Please accept my sincere apologies for any inconvenience caused to you.

Yours sincerely

Payroll Manager/Officer

Cc  HR Business Partner
    Employee’s Manager
Appendix 3

OVERPAYMENTS
(Letter for ex-employees only – where payroll have been able to contact them by telephone)

Dear

Re: Salary and Wages Overpayment

Following our telephone conversation on .......... I am writing to confirm that you have been overpaid.

As discussed the error/overpayment (delete as appropriate) has occurred because ..........................................................

The total amount of the overpayment is £ ............... and whilst I apologise for the situation I am obliged to ask for repayment.

(Provide ‘Gross to Net’ breakdown)

The Trust is duty bound by the Public Accounts Committee to recover the overpayment in full immediately / but you have agreed to repay over a period of .................

Could you please, therefore, forward your cheque for the full amount, made payable to Wirral Community NHS Trust and send back to me at the above address.

Once again please accept my sincere apologies for this error/oversight and if you have any further queries regarding the overpayment or the level of recovery please do not hesitate to contact me on .........

Yours sincerely

Payroll Manager/Officer

Cc Finance Dept
    HR Business Partner
Appendix 4

OVERPAYMENTS
(Letter for ex-employees only – where payroll have been unable to contact them by telephone)

Dear

Re: Salary and Wages Overpayment

I regret to inform you that unfortunately you have been overpaid.

The error/overpayment (delete as appropriate) has occurred because ………………………………………………….

The total amount of the overpayment is £ ………… and whilst I apologise for the situation I am obliged to ask for repayment.

(Provide ‘Gross to Net’ breakdown)

The Trust is duty bound by the Public Accounts Committee to recover the overpayment in full immediately.

Could you please, therefore, forward your cheque for the full amount, made payable to Wirral Community NHS Trust to the above address.

Please accept my sincere apologies for this error/oversight and if you have any further queries regarding the overpayment or the level of recovery please do not hesitate to contact me directly on ………………….

Yours sincerely

Payroll Manager/Officer

Cc Finance Dept
HR Business Partner