

**OVERPAYMENT AND UNDERPAYMENT OF SALARY/ERRORS
POLICY**

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The Trust will not tolerate unlawful discrimination on the grounds of the protected characteristics of: age, disability, race, nationality, ethnic or national origin, gender, pregnancy or maternity, marriage or civil partnership, religion, beliefs, sexual orientation and gender reassignment. The Trust will not tolerate unfair discrimination on the basis of spent criminal convictions, Trade Union membership or non-membership, HIV status, political affiliation, domestic circumstances and social and employment status. In addition, the Trust will have due regard to advancing equality of opportunity between people from different groups and foster good relations between people from different groups.

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Equality Impact	

Overpayment and Underpayment of Salary/Errors Policy

Assessment	
Linked procedural documents	Disciplinary Policy (Managing Conduct and Performance) Local Counter Fraud/HR Liaison Policy Secondment Policy Collective Grievance Policy Grievance Policy
Dissemination Requirements	All Trust employees by Intranet

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1. Policy Statement

- 1.1 This document outlines the Overpayment and Underpayment of Salary/Errors Policy for The East of England Ambulance Service NHS Trust (the Trust). The aim of this policy is to ensure that where salary errors occur, the action

taken in all cases is standard throughout the Trust, with an objective that the error is corrected within acceptable time limits. The Trust will manage its payroll process with the aim to pay all staff correctly and at agreed times. It is recognised by all parties that such a process can never be 100% accurate and that errors will sometimes occur.

- 1.2 The Trust is required to recover public money that has been paid out incorrectly regardless of the reason. The Trust is required from time to time to take action on cases of overpayment of salaries, wages, travelling, subsistence of other allowances, resulting from, for example errors in contracts of employment or payroll administration.
- 1.3 Whilst this procedure sets out how recovery will operate, it allows for some flexibility in terms of length of the recovery depending on the individual circumstances of the overpayment.
- 1.4 This policy also defines the process and standards to be followed in identifying and rectifying an underpayment to an employee.
- 1.5 An employee who retains an overpayment, when they know that they are not entitled to it may be committing a criminal offence.(Section 24a, Theft Act, 1968 / dishonestly retaining a lawful credit) by not taking steps to inform the Trust or return any overpayment promptly, they may have appropriated (i.e. stolen) the property which in fact still belongs to the Trust. Retaining property in this instance would be contrary to section 5(4) of the Theft Act 1968. The Trust may consider prosecution of an employee for offences under the Theft Act 1968.
- 1.6 Any occurrences where an employee has been overpaid by any amount which could reasonably be expected to be noticed by reference to their payslip, and they have not taken any steps to inform or repay the Trust within a reasonable timescale, will be reported to the Trust's Local Counter Fraud Specialist for investigation prior to any recovery attempts being made.
- 1.7 Any errors arising from assimilation on to Agenda for Change pay bands are covered by the protocol for Managing Pay Band Changes and Release of New Generic Profile & Consistency Checks.
- 1.8 This policy has been written in partnership by management and staff side.

2. Scope

- 2.1 This policy applies to anyone paid via the Trust payroll provider.

3. Access to the Procedure

- 3.1 All employees are entitled to access to this policy which is located in the HR Policies and Procedures Folders and/or on the Trust's Intranet. However, if you require this policy in any other format please seek guidance from the Human Resources Department, your line management or trade union representative.
- 3.2 Employees and Managers may also wish to consult related Trust policies such as Disciplinary Policy (Managing Conduct and Performance), Local

Counter Fraud/HR Liaison, Secondment, Collective Grievance and Grievance.

4. Roles and Responsibilities

4.1 The Human Resources Department (HR) is responsible for keeping the provisions within this policy in line with employment legislation, best practice people management principles and NHS guidelines.

4.2 Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this policy and procedure.

4.3 All Managers and/or HR have the following responsibilities:

- to ensure that all starter, leaver and change of circumstances forms are forwarded to Payroll and/or HR promptly;
- to carry out a detailed monthly review of staff analysis reports and all salary costs on their budget reports and question any payments that were unexpected, e.g. staff who have left, staff who have gone from full to part-time but are still being paid at the full time rate;
- to contact payroll if there is any doubt that a leaver form may not be processed in time, for someone who is leaving the Trust's employment, to check that it has been processed prior to the final day of employment;
- to keep any available correspondence relating to overpayments/underpayments from payroll in the employee's personnel file.

4.4 Management and trade union representatives are responsible for bringing any mutually beneficial improvements to this policy to the attention of the Trust.

4.5 Employees have a responsibility to check their payslip to ensure as far as reasonably practicable it is correct. If a payslip is not received a copy must be requested from payroll.

4.6 All employees have a responsibility to advise their line manager, finance department, and/or payroll provider if they think they have been overpaid – a failure to do so may result in disciplinary action being taken where the Trust believes that the employee was aware of an overpayment but failed to report it. Where the Trust believes this to be the case in significant overpayments legal proceedings against the employee may be instigated.

5. Reasons and Action for Overpayment of Salary, Wage or Allowances

5.1 Overpayments can arise for a number of reasons, for example:

- clerical errors;
- inputting errors;
- incorrect claim and/or summary sheets;

- IT software and problem software;
- processing delays.

This is a non-exhaustive list.

Where an overpayment is made as a result of a mistake of fact (for example the wrong details have been inserted on to the administrative paperwork or the wrong figure or incorrect sum of money has been input into the payroll system) then the recovery of the overpayment will be made on the basis of a 'mistake of fact'.

5.2 Upon discovery of an overpayment, referral must be made by either the employee/employer to payroll for arrangements to be made to stop the overpayment and if appropriate return the employee to the correct rate with immediate effect. The following process will be adopted:

- The Trust finance department will be advised by the payroll provider of the details of the overpayment, including the amount, the period overpaid and the reason for the overpayment. The amount of the overpayment may not be immediately available and there may be a short delay before this information is received from the payroll provider;
- Once full details of the overpayment have been received, the payroll provider will write to the employee if they are still in employment. The letter will set out the reason for the overpayment and a calculation of the overpayment (see Appendix A and Appendix B). However, if the overpayment is at least 20% of the employees gross annual salary, they will first be notified of this by their line manager;
- The letter will also include the suggested terms in which the overpayment will be recovered and a declaration for the employee to sign and return to the payroll provider authorising the Trust to make the necessary deductions from their salary;

If no response has been received to this letter within 21 days then the Trust reserves the right to consider the proposed terms of recovery as agreed by the employee and the recovery will commence from the following period's pay, unless the employee can demonstrate that response within 21 days was unreasonable given personal circumstances. This process will be clearly stated in the letter;

- If the employee responds, negotiation can take place which could mean a higher repayment rate, or lower, depending on the particular circumstances of the case;
- If the employee is about to leave the Trust it would be expected that any overpayment still due is taken from the final salary, unless the employee has made an alternative agreement with Finance;
- If the employee has left Trust's employment (and these issues were not picked up during relevant leaving checks), the overpayment will be referred to finance to recoup. Should the ex-employee not respond,

or refuse to pay, the Trust will pass the debt onto a debt recovery agency or take legal action;

- Under exceptional circumstances, an application for hardship can be made. In order for this application to be considered by the Head of Financial Services and a Senior HR Manager, the Trust will require further forms to be completed
- 5.3 The Trust will always try to seek agreement. However, where agreement has not been reached, the Trust reserves the right in case of errors in payroll administration to make a deduction from pay in accordance with the Employment Rights Act 1996, Section 13(4).
- 5.4 The agreed recovery terms should be designed to minimize hardship and to ensure that the employee does not experience the burden of debt for an excessive period, nor should the Trust bear the burden of a creditor for an unreasonable time.
- 5.5 A single repayment will be expected for small amounts of less than £50 net. This will be taken pro rata for part time staff.
- 5.6 Recovery of larger amounts will normally be made over a period less than or equal to the period in which they occurred, however where the overpayment has occurred over a timespan greater than 2 years, the recovery period will be no longer than 2 years, at the rate of no lower than the rate of 10% of net salary (including unsocial hours, on-call, and recruitment & retention payments each month).
- 5.7 For salary overpayments that exceed 20% of the employees gross salary, a repayment plan will be negotiated on a case by case basis using the principles of 5.6.
- 5.8 If an employee has any basic salary arrears payment owing due to a change in circumstance, whilst at the same time having an overpayment, these and any associated differences in Unsocial Hours, Fringe payments etc will be used to reduce the level of overpayment.
- 5.9 In exceptional circumstances where it is plain that the individual is aware that an overpayment has taken place (e.g. where their total salary has been paid twice in one payment period) the Trust reserves the right to recovery in one payment on the next pay date, after notifying the employee.
- 5.10 If during the period of repayment the employee's contract terminates the final balance will be deducted where possible from their last pay. The Trust will require any further outstanding monies to be paid. It is expected that the employee would contact Finance to agree an alternative arrangement to collect the outstanding monies.
- 5.11 In exceptional circumstances the Trust, represented by the Director of Finance, has discretion to waive recovery of an overpayment according to the circumstances of the case.

6. Wilful Misrepresentation by the Employee

- 6.1 Where an employee wilfully misrepresents relevant data with the aim of obtaining a greater salary payment than they are entitled to, then all possible steps will be taken to effect recovery. Such instances will be referred to the Trusts Local Counter Fraud Specialist for investigation as to whether there has been an offence under the Theft 1968 or Fraud 2006 Acts. The Trusts Counter Fraud Specialist will liaise with the HR Department to discuss Triple Tracking options where disciplinary action may be required. Disciplinary action may also be appropriate and the Trust will take action to recover the overpayment by civil action.

7. Underpayments

- 7.1 Underpayments may arise for the same reasons as set out in paragraph 5.1.
- 7.2 Upon discovery of an underpayment, referral must be made by either the employee/employer to payroll for arrangements to be made to stop the underpayment and if appropriate return the employee to the correct rate with immediate effect.
- 7.3 If the underpayment was caused by an error, delay or misunderstanding by a party other than the employee then the employee may request to receive a salary advance if the underpayment is greater than £50 net. This will be adjusted pro rata for part time staff.
- 7.4 The salary advance will only be granted once authorised by an appropriate member of the HR Department.
- 7.5 The salary advance will be calculated at a net equivalent of 60% of the gross pay missing from or understated on the employee's payslip. This calculation is an approximation of the deductions that would have been made from a basic rate tax payer's gross pay. The calculation will be adjusted to reflect the rate of tax the individual pays.
- 7.6 In the case of salary advances where the employee has not received any pay or less than half of their normal net pay then the advance will be paid by the appropriate electronic same day transfer. In all other circumstances the employee will be paid the advance using the normal bank clearing system, which will take 3 working days.
- 7.7 The Finance department undertakes to process and pay qualifying salary advances within 24 hours, excluding weekends, of being notified of an underpayment.
- 7.8 If a salary advance is not arranged within the timescale detailed above, then the Trust will consider reimbursing an employee for bank charges and/or interest incurred directly, and presented to the Trust, as a result of the underpayment.

8. Prior Arrangements

- 8.1 The Trust is aware that prior to this policy, agreements were made with

employees and ex-employees to repay overpayments by personal cheque or standing order. These agreements will continue unless the employee or ex-employee fails to make a repayment in accordance with that agreement. In such a case, the existing arrangement may be considered null and void and recovery could be commenced as detailed in Section 5 above.

- 8.2 This policy may be applied to under or over payments which pre-date the existence of this policy.

9. Prevention of Overpayments

- 9.1 Once the error has been identified the facts should be obtained to establish how the error arose, these will be reported to the appropriate Trust payroll group who will instigate appropriate action to try and prevent a recurrence. This may include:

- Advice to employees and/or managers;
- Review of Trust policy;
- Review of payroll process;
- Issuing of Trust wide advice.

10. Policy Review

- 10.1 This policy will be reviewed on a three yearly basis or amended in the light of new employment legislation and/or relevant case law.

C/O Finance Dept
Queen Elizabeth Hospital
Gayton Road
Kings Lynn
Norfolk
PE30 4ET

Tel: 01553 613110
Fax: 01553 613898

Appendix A – Letter to staff member in receipt of overpayment

PERSONAL

Mr S Brown
59 Help Street
Norwich
NR99 9AP

Dear Mr Brown

[Assignment number] - Overpayment of Salary

I am writing to draw your attention to an overpayment of salary that you received from [insert month] to [insert month]. This error happened because [explain circumstances that caused the overpayment to be made].

The Trust's Overpayment and Underpayment of Salary/Errors Policy explains how overpayments are to be repaid. In this situation the following applies – [If the amount of the overpayment is less than £50 (pro rata for part-time employee) this will be taken then one single deduction from your next pay will be required.]

[Recovery of larger amounts will normally be made over a period less than or equal to the period in which they occurred, however where the overpayment has occurred over a timespan greater than 2 years, the recovery period will be no longer than 2 years, at the rate of no lower than the rate of 10% of net salary (including unsocial hours, on-call, and recruitment & retention payments each month)]

[In this case the deduction will be £xxx gross (£xxx net) and means that the overpayment will be repaid in X months. If you would prefer to clear the debt quickly, then you can request that the repayment be made in one single deduction or a shorter period.]

[The overpayment was clearly a known overpayment and exceptionally as per section 5 of the Trust policy, this will be recovered in full from your next month's pay.]

If your particular circumstances make it difficult for you to agree to the suggested

Overpayment and Underpayment of Salary/Errors Policy

repayment plan then please contact me and we will arrange to meet a suitable term for repayment. I should be grateful if you would complete the attached authorisation and return it to me at the above address. If you have any questions concerning the overpayment then please contact me to discuss them.

If no response is received within 21 days from the date of this letter then, in accordance with the Trust's policy, you will be considered as having agreed to the suggested repayment plan and deductions will commence from your next pay.

Yours sincerely

[name and title]

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Regarding my salary overpayment of £xxx gross - £xxx net, I authorise East of England Ambulance Service NHS Trust to deduct from my salary the following:

Delete as
necessary


- The full amount from my next available salary
- The balance above, to be deducted at the rate of £xxx net (£xxx gross) per month. At this rate my overpayment will be repaid within X months
- A higher amount than stated above of £xxx net (£xxx gross). At this rate my overpayment will be repaid within X months

Signed _____

Name: _____

Assignment no: _____

Date: _____

East of England Ambulance Service 

NHS Trust

C/O Finance Dept
Queen Elizabeth Hospital
Gayton Road
Kings Lynn
Norfolk
PE30 4ET

Tel: 01553 613110

Fax: 01553 613898

Appendix B – Letter to staff member after having informed payroll of overpayment

PERSONAL

Mr S Brown
59 Help Street
Norwich
NR99 9AP

Dear Mr Brown

[Assignment number] - Overpayment of Salary

Thank you for your telephone call on xx/xx/xx.

This is to confirm that as per our discussion, you were overpaid for **[explain circumstances that caused the overpayment to be made]** and this amounts to £xxx gross and £xxx net. You authorised us to deduct this amount from your next pay in X [month].

If you have any further queries, don't hesitate to contact me.

Yours sincerely

[name and title]