Under and Over Payments Policy

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| Stakeholders engaged in development of Policy (internal and external)  | * Mid and South Essex Staff Engagement Group
* Trade Unions
 |
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 |

# Version History

| Version | Date | Author (Name and Title) | Summary of amendments made |
| --- | --- | --- | --- |
| 0.1 | November 2022  | Senior HR Business Partner  | First draft ICB Policy for approval by Remuneration Committee |
| 1.0 | March 2023 | Head of Governance and Risk | Final version following adoption by ICB Board.  |
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## Introduction

The Integrated Care Board (ICB) is required to ensure that individuals (including those who are engaged under a contract for service) are paid correctly. If an overpayment of salary, or any other payment of public funds, occurs for any reason, the ICB will recover the overpayment in full. Similarly, the ICB will take steps to correct any underpayment of salary or any other payment to which an individual is entitled.

Every effort is made to ensure pay is timely and accurate and action is taken to reduce errors. On occasion, as a result of administrative or management oversight or error, an under or overpayment of salary or expenses may occur. When an under or overpayment is discovered, unless it is an automatic correction between one month and the following, it will always be investigated by the HR team and/or the Payroll Service provider.

If an overpayment due to a mistake in fact has taken place the ICB has a duty to reclaim the monies paid. This duty however is balanced by the duty of care to individuals who may have difficulty in repaying the sum of money immediately or in one lump sum.

It is the intention of the ICB that recovery of overpayment will be the normal process followed and not the exception. It is the duty of an individual to inform the ICB as soon as they become aware of an overpayment, (see Responsibilities of Staff).

If an underpayment is discovered by the Payroll Service Provider or the individual, similar principles will apply. Investigation and payment of monies will take place.

Only in very extenuating circumstances will the ICB consider if an overpayment should be written off and this will need to be authorised by the Director of Finance – Operations and Delivery.

## Purpose / Policy Statement

The purpose of this policy is to ensure that there is a process for dealing with salary under or overpayments and that these are managed in a transparent manner.

It is the policy of the ICB to investigate and to reclaim any overpayments made to individuals. (Please refer the section of this policy regarding reclaiming overpayments)

This policy outlines the actions which will be taken when overpayment of salary, allowance or other monies paid or claimed is discovered by the ICB or brought to the attention of the ICB by an individual (or via any other route such as investigations or hearings).

This policy sets out the process for reclaiming:

1. **Automatic re calculations**: between one month and the following month.
2. **Small Overpayments**: one-off small overpayments or small overpayments of £200 made over a period of time (pro rata part time)
3. **Large Overpayments**: all other overpayments (over £200) made over a prolonged period of time or as a one-off payment
4. **Overpayments to those who are no longer employed/engaged**: will be investigated and reclaimed by the ICB in all cases.

It is the intention of the ICB that unless a case for hardship is made, or there are unusual or extenuating circumstances, overpayment will be reclaimed over a period of time not exceeding the length of time between the date overpayment began and the date it was brought to the attention of the individual, (see definition of Preferred Repayment Schedule).

## Scope

This policy applies to staff or workers employed by the ICB or falling under its remit as an employer, irrespective of hours worked, grade, role, length of service and whether employed permanently or temporarily in any capacity.

However, the principles and procedures set out in this policy, will also be applied to individuals engaged with the ICB through a contract for service and where they receive an under/overpayment in error.

For ease of reference, this policy uses the term ‘individuals’ throughout.

This policy does not apply to fraudulent claims or any illegal activities which are intended to defraud the ICB or its associates and partners. Such matters, if discovered, will be referred to the Local Counter Fraud Specialist and may result criminal action and/or disciplinary action being instigated.

## Definitions

* **Salary**: the sum of money outlined in contractual documentation and which is amended, for example, due to negotiated settlements, incremental progression, redeployment or demotion due to disciplinary action
* **Allowances and disbursements**: The sum of money paid to individuals e.g. the ‘Fringe Allowance’, On-Call and mileage and expenses claims.
* **Overpayment due to a mistake in fact**: Occur when an individual is paid an amount in excess of their contractual entitlement and the calculation has occurred due to an administrative or computer error. Overpayments which result from a mistake of fact can be reclaimed by the ICB. Examples of how errors occur include (this list is not exhaustive but given for example):
	+ - Change forms not being completed, received or actioned on time
		- Late or non-notification of sickness absence
		- Individuals not returning from maternity leave
		- Incorrect salary banding being entered onto the database
		- Failure to terminate an honorarium.
* **Overpayments due to a mistake in law**: Occur when the rules for pay calculations have been wrongly interpreted or misunderstood by the Payroll Service Provider or the ICB. This happens for example when legislation has not been interpreted and applied correctly i.e. a decision is made that a particular regulation applies to an individual, and this regulation deciphers whether or not a particular allowance then applies to the individual. It is decided that the allowance does apply and the relevant payment is made, and then at a later date it is decided that this was incorrect and the individual should not have received the money. Where overpayment results from a mistake in law, dependent upon who has made the error, it remains the responsibility of the Payroll Service Provider or the ICB. The ICB would expect co-operation from the individual in terms of the repayment of any overpayment made
* **Small Overpayments**: one-off small overpayments or small overpayments made over a period of time of up to £200, (pro rata for part time workers)
* **Large Overpayments**: all other overpayments (over £200) made over a prolonged period of time or as a one-off payment
* **Gross overpayment**: A gross overpayment has not had any adjustments for tax, national insurance or pension scheme adjustments and will be recovered and adjustments made for tax, NI or pension refunded as necessary.
* **Net Overpayment**: A net overpayment takes the gross overpayment and then refunds any Income tax, National Insurance or Pension Scheme payments generated against the payment. The net figure will be recovered as per any agreement with the individual. A net overpayment figure would in all cases be generated for anyone who is no longer employed or engaged by the ICB.
* **Repayment Terms**: A payment schedule arranged by the ICB to enable the individual to repay the money owed. The timescale will be agreed through discussion with the individual and, if applicable, their workplace representative.
* **Preferred Repayment Schedule**: a period of time not exceeding the length of time between the date overpayment began and the date it was brought to the attention of the individual.
* **Payroll Service Provider**: This refers to the Payroll Service provider engaged by the ICB.
* **Automatic recalculations (also known as Retro)**: When changes to hours or salary have missed the payroll deadline for the month the change has happened the Automatic (Retro) recalculation will automatically make a deduction from the following month salary. The Retro process is also how pay arrears are managed.
* **Expenses**: for further details about expenses, please refer to the Reimbursement of Staff Expenses Policy.

## Roles and Responsibilities

### Integrated Care Board

* + 1. The ICB Board is accountable and responsible for ensuring that the ICB has effective processes for the management of under and over payments in accordance with relevant legislation and best practice guidance.

### Chief Executive

* + 1. The Chief Executive is accountable for the policy and procedure being in place to ensure fair and equitable approach to under and over payments.

### Policy Authors

* + 1. Policy authors are responsible for ensuring that this document is updated when any changes are made to legislation or when updated best practice is issued.

### Executive Chief People Officer

* + 1. The Executive Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

### Line Managers

* + 1. It is the responsibility of managers to complete the required paperwork in a timely and accurate fashion when there are any changes affecting an individual’s pay, such as a change of hours or return from higher paid secondments etc. Late notification forms can result in errors of payment.
		2. Except in emergency situations and in order to avoid overpayment, managers should not agree changes to hours with immediate effect but allow enough time for documentation to be actioned by HR and processed via Payroll.
		3. Managers should inform the HR team if they are concerned or if any information is drawn to their attention concerning overpayments to individuals past or present.
		4. When necessary, speak to the HR team if professional advice is required on whether a mistake in law or a mistake of fact has occurred. Please refer to the Definitions in Section 4.

### All Staff

* + 1. It is the responsibility of the individual to check their electronic payslip on ESR and/or their bank statements, on a monthly basis, for errors or omissions and to contact either the HR team or the Payroll Service Provider and discuss any anomalies.
		2. If the error is discovered by an individual, it is their responsibility to bring it to the attention of the ICB and to seek correction.
		3. Individuals must refrain from spending any unusual sums of money or any that is continued to be paid, for example when a higher paid secondment concludes, and to return the money to the ICB.
		4. An individual who is aware of an overpayment and fails to notify the ICB or withholds information that could cause an overpayment of salary/earnings to be paid must be aware that their actions may be considered as fraud. This may lead to a criminal investigation and/or disciplinary action.
		5. If an individual does not agree to a repayment schedule (or does not agree that an overpayment has occurred) they must notify the ICB in writing setting out their rationale.

## Investigation

Once an under or overpayment, other than that which is automatically amended/deducted has been brought to the attention of the ICB, the situation will be informally investigated by HR and/or the Payroll Service Provider to review the circumstances of the error.

The individual and line manager will be notified of the outcome of the investigation. The findings of the investigation will be recorded and held on the individual’s file for future reference.

The ICB continually monitors the error rate of the Payroll Service Provider at regular contract meetings and will raise any areas of concern.

The investigation will confirm whether or not an under/overpayment has taken place. If an error has taken place, it will be ascertained whether it is a mistake of fact or a mistake of law.

If a mistake of fact has taken place the Payroll Service Provider will confirm the value of the under/overpayment and the length of time the under/overpayment has been made over. The Payroll Service Provider or the HR team will provide details outlining the actions which led to the under/overpayment and the confirmation of the sum of under/overpayment.

Individuals who still have concerns after being notified of the result of the investigation or, for example, a repayment plan, are able to raise these concerns with their line manager.

Where investigation identifies that an error was caused by either line managers (or HR team member error), the individual will be provided with feedback. Recommendations may be made regarding training, or any further support required to ensure that errors are minimised in the future.

Where appropriate recommendations will be made to the Payroll Service Provider on how such errors can be avoided in the future and whether any remedial action needs to be taken. Any recommendations for training or remedial actions will be made separately and remain confidential to the Payroll Service Provider.

## Management of Overpayments

### Automatic Deductions

* + 1. Some errors will be dealt with automatically. If someone is overpaid one month and the error is rectified on the electronic payroll system within the next payroll cycle the system will automatically deduct overpayments from the following month’s pay and the individual will be informed.
		2. Examples of this include:
	+ a change form reducing an individual’s hours but returned after the payroll deadline of the 5th of the month, will then be actioned in time for the following month’s pay.
	+ an error occurs and a mileage or expenses claim is paid twice, the overpayment will be reclaimed the following month.
	+ advance payments will be automatically reclaimed the following month
	+ under or overpayment of salary from absence notified late in the pay cycle will be adjusted in the following pay cycle

Please note these are examples and not a definitive list.

* + 1. In these and other situations the payroll system automatically calculates the overpayment and makes deductions from the next pay. No investigation will take place in these circumstances.

### Reclaiming Small Overpayments

* + 1. A small overpayment is considered to be £200 or less (pro rata for part-time hours).
		2. Unless this is more than ten percent of net monthly pay, and providing the individual is still working for the ICB, the amount will be deducted from the following salary payment.
		3. Overpayments made over a period of time but up to the same value will also be collected from the salary payment. The payslip will note whether the deduction is due to gross overpayment or net overpayment.
		4. Individuals will be informed of the overpayment and the amount that will be deducted and should contact the HR team if they wish to make a case for hardship or feel there are unusual/extenuating circumstances and these will be reviewed on a case by case basis.

### Reclaiming Larger Overpayments

* + 1. Larger amounts, over £200, will not be deducted automatically via the Payroll system until the individual has been contacted by HR and discussions have been held.
		2. HR / Payroll will outline the reasons for the overpayment and discuss and agree a repayment schedule. Following discussions, the Payroll Service Provider or HR will write to the individual and confirm:
* Overpayment due to error of fact has taken place.
* How the error has occurred.
* The calculation and include a spreadsheet outlining the total amount of overpayment made and the net amount to be repaid once deductions for tax and NI contributions are taken into account the repayment schedule which has been agreed.
	+ 1. A copy of the letter will be held on the individual’s HR record.
		2. Once the overpayment repayment schedule has been agreed the Payroll Service Provider will action and repayment will commence the month following the letter.
		3. The repayment schedule is set for the period of time over which the overpayment occurred eg if an overpayment was made over a period of 6 months, then the repayment schedule will be set as 6 months.
		4. If an individual does not agree to the repayment schedule, they should request, in writing, within one week, an alternative schedule. Only in cases of extreme hardship will the repayment schedule be extended.
		5. An individual may request to make the repayment over a shorter period of time.

### Individuals who are no longer employed or engaged with the ICB

* + 1. Overpayments made to individuals who have subsequently left the ICB will be reclaimed via documentation initiated by the Finance Team.

### Legality of Claiming Overpayments

* + 1. The ICB is guided by both employment law and the responsibility for public finances and it is the ICB’s responsibility to take action when overpayment occurs.
		2. It is not always clear to individuals whether overpayments can be reclaimed and whether individuals have a duty to advise their employer about any overpayment and the following clarifies this. Overpayment due to an error of fact or law can be reclaimed but only within five years of the overpayment being made and the individual has a duty to advise the employer if they are not entitled to the payment under the terms of their employment.
		3. Information is provided in the employee’s Contract of Employment relating to the recovery of overpayments.

## Management of Underpayments

### Principles and Procedure

* + 1. The main principle is that, after an underpayment of salary is identified, that the position will be corrected in full in the next available salary payment
		2. Examples of where an underpayment may occur are:
* Return from maternity leave which has not been accurately notified to Payroll.
* Return from sickness absence which has not been accurately notified to Payroll.
* Non-payment of an allowance such as ‘fringe’ or ‘acting up’.
* Non-payment of overtime or unsocial hours worked.
	+ 1. If an individual has received 100% of basic pay then the underpayment will generally be corrected in the following month’s payment. For example, if an individual receives all their basic pay; however, if any additional hours such as overtime/excess hours, enhancements, or expenses etc. have been submitted after the stated deadline, the addition monies underpaid will be made in the following month.
		2. Where the individual will suffer hardship as a consequence of the underpayment, an urgent/faster payment can be made upon request.
		3. The urgent/faster payment will only be granted if authorised by an

appropriate member of the Finance Department or an authorised signatory in the HR team.

* + 1. The charges for processing an urgent/faster payment will be met by the appropriate cost centre e.g.
* If the error originated from the line manager, the change will be made to the department cost centre.
* If the error originated from the Payroll Provider, then the cost will be borne by the Payroll Provider.
	+ 1. If the underpayment was caused by an error, delay or misunderstanding by a party other than the individual then the individual, if in financial hardship, may request to receive a salary advance if the underpayment is greater than £200 net. This will be adjusted pro rata for part time staff.
		2. The salary advance will be calculated at a net equivalent of 60% of the gross pay missing from or understated on the payslip. This calculation is an approximation of the deductions that would have been made from a basic rate taxpayer’s gross pay. The calculation will be adjusted to reflect the rate of tax the individual pays.
		3. If an underpayment causes financial concerns for an individual such as for bank charges and/or interest incurred directly as a cause of the underpayment, the individual should present documentation showing the charges to the ICB. The ICB will reimburse these charges via Payroll and in the next available pay.

## Monitoring Compliance

The HR team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published and reported as appropriate.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

* + Training for line managers.
	+ A risk assessment.

It is also anticipated that any issues in respect of the implementation of the policy may be identified as a result of staff exercising their right to raise a Grievance.

## Staff Training

No essential (including mandatory) learning and development requirements have been identified for any staff groups, in order to fulfil the requirements stated within this policy.

Guidance can be sought from the HR team or the Payroll Department.

## Arrangements For Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance And Documents

* Employees should refer to their Contract of Employment regarding overpayments.

#### [Associated Policies](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies)

* Reimbursement of Staff Expenses Policy.
* Grievance Policy.

## References

* None.

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy: Under & Over Payments** **Version number (if relevant):** 0.1 | **Directorate/Service**: People Services  |
| **Assessor’s Name and Job Title:** Carolyn Druce | **Date:** 9th November 2022 |

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| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff*  |
| The purpose of this policy is to ensure that there is a process for dealing with salary under or overpayments and that these are managed in a transparent manner. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?*  |
| Relevant Trade Unions have been consulted on the policy and any comments will be taken into consideration when the policy is published. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| ProtectedGroup | Positiveoutcome | Negativeoutcome | Neutraloutcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | x |  |
| Disability(Physical and Mental/Learning) |  |  | x |  |
| Religion or belief |  |  | x |  |
| Sex (Gender) | x |  |  | Women are most likely to work in part time roles due to their caring responsibilities. This policy pro-rata’s the amount of £200 for part time workers.  |
| Sexual Orientation |  |  | x |  |
| Transgender / Gender Reassignment |  |  | x |  |
| Race and ethnicity |  |  | x |  |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | x |  |
| Marriage or Civil Partnership |  |  | x |  |

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| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the implementation of the policy will be identified as a result of staff exercising their right of appeal or via the ICB’sGrievance Procedure.  |

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| **REVIEW** |
| *How often will you review this policy / service?*  |
| Every 2 years as a minimum and earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

## Appendix B – Frequently Asked Questions

**1. What is the maximum time I can repay over?**

You will be able to repay the sum over a maximum period equivalent to the time period over which the error occurred. Wherever possible we would encourage prompt repayment over the shortest period possible (depending on circumstances).

**2. Is there a maximum or minimum amount to be repaid each month?**

The sum you owe will be divided by the number of months you will repay over. This amount will be the minimum amount you will pay in each month. If you wish to repay over a shorter period you can agree to have larger amounts deducted.

**3. If it is the ICB’s mistake why do I have to repay the money?**

You are only entitled to receive the sum of money you are contracted to receive. If the ICB is able to show the error arose due to a genuine mistake, and you were not entitled to the money, the ICB will reclaim the overpayment from you.

**4. My circumstances have changed since you made the overpayment to me. If you reclaim the money from me you will cause me hardship.**

The ICB will take into account any genuine circumstances of hardship and work with you to resolve the situation positively.

**5. Can I complain to anyone before you take any money from me?**

If you disagree with the decision that has been made and have evidence or information you feel we have not taken into account, you should write to the Director of HR.

**6. What if I am overpaid due to a tax coding error?**

If there has been a Tax Code change the Payroll Service Provider will receive notification from HM Revenues and Customs and are legally required to act on this notification. Payroll are not able to query this as the HMRC will not discuss the situation with anyone than the employee. Therefore, you will need to contact the HMRC for further information.