

Salary Overpayments Policy

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| Services | Applicable |
| Trustwide | X |
| Mental Health and LD | |
| Community Health Services | |



Version Control Summary

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| 1 | 1.2.2016 | Zenda Butler, LCFS | draft | This new policy incorporates the NELPC's Salary Overpayments Recovery Procedure. |
| 2 | 16.10.2019 | Zenda Butler | | Three yearly review |

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1 Introduction

- 1.1 The Trust and its contracted payroll provider, the North East London Pay Consortium (NELPC), has a duty to determine employees' pay correctly and not to misrepresent it. The Trust's intention will always be that errors are kept to an absolute minimum, and are notified to staff as soon as possible.
- 1.2 However, sometimes errors do occur resulting in the Trust making incorrect salary and allowance payments to employees in error. Whilst the Trust has processes in place to minimise these errors, when a salary overpayment does occur, the Trust, as a public body; is duty bound to pursue recovery and not in a position to waive its duty to reclaim overpayment of salary under any circumstances.
- 1.3 If a salary payment error occurs, the trust will seek to recover the overpayment or pay arrears in accordance with this policy.
- 1.4 There is a general right for the employer to recover money paid by mistake. Section 13 of the Employment Rights Act 1996 covers the right not to suffer unauthorised deductions. Deductions for overpaid wages is specifically excluded from protection by the Act and therefore, an employee cannot bring a claim in the Employment Tribunal for deduction of wages in these circumstances, as set out in section 14(1)(a) of the Act, as applicable in the contract of employment..
- 1.5 This policy applies to all staff (both employees and former employees), and sets out the principles and procedures by which the Trust will manage and handle the recovery of overpayments in salary and allowances made to staff.
- 1.6 This policy does not apply for the recovery of proceeds of fraud or theft. In such cases refer to the Counter Fraud and Bribery Policy.

2 Purpose

- 2.1 The aim of this policy is to ensure that where an overpayment of salary, allowances or expenses occurs; the employee and other relevant stakeholders are made aware as soon as possible so that the Trust can recover the overpayment within an acceptable time frame.
- 2.2 The policy also sets out how recovery will be made, and provides a repayment timescale framework to ensure that all employees are treated equitably.
- 2.3 The application of this procedure and associated procedures is not intended for normal routine payroll adjustments such as:
 - low value overpayments resulting from administrative error (e.g. overpayment of overtime pay in one month which is recovered in the following month);
 - continuing average sick pay payments made to employees after returning to work from sick leave where the return notification to NELPC is pending;
 - Routine changes to pay that have occurred after ESR has closed for the period and which are actioned in the following period requiring a retrospective

adjustment to pay (e.g. reduction from full time to part time hours effective from 25th of the month which is actioned and pay adjusted retrospectively in the following month).

- 2.4 In defining routine payroll adjustments, such cases must not:
- require more than one salary deduction in terms of recovery, and
 - Date beyond the previous pay period for which the adjustment relates.
- 2.5 If when actioning a routine payroll adjustment, recovery results in the employee receiving no pay, the employee will be advised in advance by NELPC.

3 Duties

- 3.1 It is each employee's responsibility and duty to check that their pay and other remuneration are correct. If there is any doubt, or there appear to be unusual increases (or decreases) in the amounts received, the employee should immediately contact Payroll to seek clarification. Failure to declare an error may result in disciplinary, civil and/or criminal action being taken.
- 3.2 It is also the employee's responsibility to provide the Trust (or its contracted Payroll Provider on its behalf), with full and correct information when querying their pay or other form of remuneration. Failure to do so will breach the employee's Contract or employment and may result in disciplinary, civil and/or criminal action.
- 3.3 Employees are required to declare changes in circumstances which may allow for early repayment of the overpayment to the Trust. This includes where an employee is due to retire.
- 3.4 Managers have no responsibility on behalf of the Trust to amend, waive or negotiate on any terms for an overpayment. This function can only be undertaken by NELPC or the Trust's Finance Department.
- 3.5 It is the manager's responsibility to ensure any alterations to the employee's terms and conditions are reported or documentation submitted to the appropriate department in a timely manner
- 3.6 It is the manager's responsibility to follow Trust systems and procedures and provide timely and accurate information to enable the correct payment(s) to be made. This is especially important when processing leaver details. Any manager who fails to follow the proper process in notifying any change(s) that may impact on salary payment(s), for example as a result of late or non-notification; or who fail to avoid salary overpayments, for example by making decisions or entering into commitments with employees outside of their authority, may be subject to disciplinary action. If an overpayment cannot be recovered due to a manager not following the policy or process, their budget will incur the full cost of the overpayment.
- 3.7 All overpayments in pay, allowances and pensions will be pursued. For current employees, after notifying the recipient, recovery through deduction from future salary payment(s) will be made. Authorisation from the employee for a salary

adjustment is not required when the Trust makes deductions under Section 14 of the Employment Rights Act.

- 3.8 Where it is discovered that a debt is owed to the employee or former employee by the Trust, e.g. pay arrears or a back-dated change, the Trust will exercise its common law right to offset this against any outstanding sum(s) owed to the Trust. Written notice will be provided to the employee confirming the amount to be offset, and remaining balance owed to the Trust.
- 3.9 The Theft Act 1968 indicates that although an individual may not set out to obtain the additional money intentionally, by keeping it and treating it as their own (i.e. spending it) they may be guilty of theft, which could be treated as a criminal matter.
- 3.10 If an employee is aware that they have been overpaid in salary and they have not notified this to the Trust, or if they have been notified of a salary overpayment and has not engaged with the Trust, then this could constitute theft and be treated as a criminal matter.

4 Definitions

- 4.1 **Salary overpayment** – For the purpose of this policy, a salary overpayment is where an employee or worker has been paid more than they should have received under their contract of employment. This can include (but is not limited to) all aspects of pay, including travel and non-travel expenses, allowances and duplication of a payment made in error. It can also include monies owed to the Trust by the employee, where they have entered into a Trust-offered Salary Sacrifice scheme.
- 4.2 Salary overpayments and under deductions are defined as payments/ deductions administered in error either due to late notification of change in an employee's employment status/circumstances or, as a result of an inputting error by the processing department and which cannot be reasonably adjusted/recovered in the following pay period.
- 4.3 Late notification is defined as documentation arriving late into the processing department and which cannot be processed in the first applicable pay period or (in the case of notifications effective from the latter part of the month after ESR has closed down) the next available pay period.
- 4.4 Typical examples of overpayments and under deductions are:
- late notification of an employee leaving the organisation who continues to be paid after leaving;
 - late notification of a change in an employee's circumstances (e.g. reduction from full time to part time hours and continues to be paid full time);
 - late notification of an employee commencing sick, maternity or unpaid leave who continues to be paid at full pay instead of reduced pay, or where an

absence is closed prematurely in error;

- Administrative/inputting errors made by the processing department resulting in either an overpayment or under deduction (e.g. incorrect payment of allowance or under deduction of lease car deduction).

4.5 Salary adjustment – A salary adjustment is made to the employee's pay to recover the overpayment. The recovery is made automatically from salary and will be detailed on the employee's pay slip(s).

4.6 Lump Sum Overpayment Recovery – Lump Sum Overpayment recovery requires the full overpayment to be refunded to the Trust in a single payment. Lump Sum Overpayment recovery will generally only be implemented for overpayments made to former employees, however this does not preclude the Trust implementing Lump Sum Overpayment recovery with current employees. A current employee can request to repay an overpayment via Lump Sum Overpayment recovery.

4.7 Debt Recovery – Initiated when a current or former employee does not refund an overpayment to the Trust when requested. This can include referral to an external debt collection agency resulting in civil action initiated via HM Courts & Tribunals Service. The Trust will seek to cover its full costs in every claim lodged.

4.8 Payroll – The Trust contracts out its payroll administration to an external company. The current contractor is North East London Pay Consortium.

5 Procedure For Current Staff

5.1 On discovery of an overpayment in respect of a current employee still on the payroll, a letter will be sent directly to the employee by NELPC (copied to the HR Directorate contact as appropriate for information) providing the following information:

- the element(s) of pay that have been overpaid/under deducted, and which have been corrected to prevent further overpayment/ under deduction;
- the period(s) in which the overpayment/under deduction occurred;
- a financial breakdown of the overpayment/under deduction;
- a proposed recovery plan (i.e. recovery period, recovery start date and value of instalments) via the payroll;
- a statement advising that employees who accept a salary overpayment to which they are not entitled and who fail to take prompt action to repay the employer in full will be referred to the Counter Fraud Team.

5.2 Subject to the national minimum wage requirements, a maximum time limit will apply to the period in which repayments are made, restricted to the period in which the

overpayment was originally made (e.g. an overpayment made over a 3 month period must be recovered within a 3 month period). Exceptionally, there may be occasions where this is not possible (e.g. if a substantial overpayment is made in one month which exceeds the normal monthly take home pay); in these cases the overpayment will be recovered over the shortest number of instalments possible, subject to the national minimum wage requirements. No overpayment recovery period will exceed 12 months, regardless of the period in which the overpayment was made, subject to the national minimum wage requirements.

- 5.3 Where the overpayment is a small amount accrued over an extended period, the Trust may recover the overpayment over a shorter period than it was accrued. The overpayment will be recovered over the shortest number of instalments possible, subject to the national minimum wage requirements.
- 5.4 Based on the proposed recovery plan notified to the employee, deductions via instalments will automatically be applied via the payroll from the recovery start date unless the employee disputes the overpayment (in which case recovery action will be stalled for one month while the dispute is settled).
- 5.5 An employee may choose to repay the overpaid sum in fewer instalments than was originally proposed, and may also repay the (net) overpayment by cheque as a single repayment rather than via salary deduction (lump sum overpayment recovery).
- 5.6 In cases where an employee disputes the overpayment (because the information provided related to the overpayment is considered by the employee to be incorrect), NELPC will refer the matter within 7 days of receipt of the dispute to the HR Directorate for consideration/action as appropriate. The HR Directorate will return the case with accompanying/revised documentation as appropriate to NELPC within 14 days of receipt, together with instructions for further payroll action as necessary. Recovery action will be reinstated one month (falling within the next pay cycle) after the originally notified recovery start date in the absence of further communication from the HR Directorate/employee.
- 5.7 In proposing terms of repayment to the employee, NELPC will take account of the following factors in determining the repayment plan:
 - the period over which the overpayment/under deduction occurred;
 - the value of the overpayment;
 - Repayment levels and the maximum time limit in which overpayments must be repaid via instalments (subject to the national minimum wage requirements).
- 5.8 If the employee wishes to agree a repayment plan beyond 12 months, then they must submit a written request to Accounts Receivable using **Appendix C**. The request must include details of the monthly household Net income (i.e. all those all make regular contributions including any regular payments such as salary, benefit and maintenance payments), and all essential expenditure. Full and up to date supporting documentation including bank statements, council tax bills, utility bills, mortgage or rent agreement and child care costs must be submitted with the written request.
- 5.9 A decision will be made on whether to extend the repayment period beyond the maximum 12 months. Accounts Receivable will only be able to add up to a maximum of an additional 6 months to the repayment plan (in addition to the 12 months). If the

extension is agreed by Accounts Receivable, they will send **Appendix C** to NELPC with a covering email instructing Payroll to extend the recovery period.

- 5.10 If an extension beyond 12 months is not agreed, salary adjustments will automatically be made in line with the original repayment proposal sent by NELPC.
- 5.11 Employee's circumstances can change over time. Employees are advised that if their circumstances change, they are encouraged to repay the overpayment quicker if possible. If the Trust identifies a change in an employee's circumstances, Accounts Receivable will be notified and will liaise with the employee to review their repayment arrangements.
- 5.12 In the event that an employee leaves employment whilst part way through a recovery plan via the payroll, allowing for the usual overpayment instalment being deducted from the final salary NELPC (assuming the leaver details have been notified to NELPC) will:
- recover the maximum number of equal instalments from the final salary (subject to the national minimum wage requirements);
 - convert the remaining gross overpaid sum into a net sum;
 - Request from the Finance Directorate that an invoice is raised and sent to the former employee.
- 5.13 In certain circumstances (in conjunction with the finance department) it may be necessary in regards to current employees still on the payroll for the overpayment to be raised via an invoice rather than via salary deduction, as outlined in the following examples:
- the overpayment relates to late notification of unpaid leave and the employee remains on continuing long term unpaid leave at the time the overpayment is identified, preventing any recovery via salary in the immediate term;
 - the overpayment relates to late notification of maternity leave and the period of reduced/unpaid maternity pay prevents any recovery in the immediate term or over the maximum 12 month recovery period;

6 Procedure for Leavers

- 6.1 On discovery of an overpayment in respect of a former employee, following receipt by NELPC of the associated paperwork from the HR Directorate (where appropriate), a letter will be sent directly to the employee by NELPC providing the following information:
- the element(s) of pay that have been overpaid/under deducted;
 - the period(s) in which the overpayment/under deduction occurred;
 - a financial breakdown of the overpayment/under deduction;
 - a request for the sum to be paid in full immediately;
 - advising that an invoice will follow from the employing organisation;
 - a statement advising that employees who accept a salary overpayment to which they are not entitled and who fail to take prompt action to repay the

employer in full will be referred to the Counter Fraud Team.

- 6.2 NELPC request for an invoice to be raised electronically via the Trust's finance system and the Trust's Financial Controller authorises the invoice.
- 6.3 In cases where a former employee disputes the overpayment (because the information provided related to the overpayment is considered by the employee to be incorrect), NELPC will refer the matter within 7 days of receipt of the dispute to the HR Directorate for consideration/action as appropriate. The HR Directorate will return the case with accompanying/revised documentation as appropriate to NELPC within 14 days of receipt, together with instructions for further payroll/finance action as necessary.
- 6.4 Where appropriate, a repayment plan of up to 12 months will be created. No overpayment term will extend beyond double the original overpayment, e.g. if an overpayment was made over 3 months, a repayment plan could be proposed to recover the overpayment over 3 months, or up to a maximum of 6 months.
- 6.5 In cases where the former employee wishes to agree a repayment plan up to 12 months, this must be agreed with Accounts Receivable. Once agreed, if the former employee hasn't made the first payment within one month of the agreement, Accounts Receivable will contact the former employee and if no payment is received within one week, the case will be referred to an external Debt Recovery company and any additional costs incurred by the Trust will be the responsibility of the former employee.
- 6.6 If the former employee wishes to extend the repayment plan beyond 12 months, then they must submit a written request to Accounts Receivable using Appendix C. The request must include details of the monthly household Net income (i.e. all those all make regular contributions including any regular payments such as salary, benefit and maintenance payments), and all essential expenditure. Full and up to date supporting documentation including bank statements, council tax bills, utility bills, mortgage or rent agreement and child care costs must be submitted with the written request.
- 6.7 A decision will be made on whether to extend the repayment period beyond the maximum 12 months. Accounts Receivable will only be able to add up to a maximum of an additional 6 months to the repayment plan (in addition to the 12 months).
- 6.8 If an extended repayment period is agreed and the former employee hasn't made the first payment within one month of the agreement, Accounts Receivable will contact the former employee and if no payment is received within one week, the case will be referred to an external Debt Recovery company and any additional costs incurred by the Trust will be the responsibility of the former employee.
- 6.9 If an extended repayment period is not agreed and the former employee fails to make payments or fails to make satisfactory repayments in line with 6.5, then the case will be referred to an external Debt Recovery company and any additional costs incurred by the Trust will be the responsibility of the former employee.
- 6.10 Where a repayment plan has been offered by the Trust but not adhered to by the former employee, Accounts Receivable will write to the former employee advising them that unless repayments commence within one month, the case will be referred to an external Debt Recovery company and any additional costs incurred by the Trust will be the responsibility of the former employee.

- 6.11 In cases where overpayments have not been repaid and are referred to debt recovery company to seek recovery, in justifiable circumstances employee national insurance numbers may be provided to debt collection agencies to facilitate this process.
- 6.12 As an individual's circumstances can change over time, repayment arrangements will be reviewed regularly by Accounts Receivable, not more frequently than every three months but no less than every six months.
- 6.13 Should an ex-employee return to work for the Trust, either substantive or on the Bank - In the event any salary is overpaid to them in error, including sums owed from previous employments with the Trust, East London Foundation Trust reserves the right to make deductions without authorisation or obtaining further written permission, as per the contract of employment or bank agreement.

7 Procedures For Bank Staff

- 7.1 On discovery of an overpayment in respect of a current bank employee still on the payroll, a letter will be sent directly to the employee by NELPC (copied to the HR Directorate contact as appropriate for information) providing the following information:
- the element(s) of pay that have been overpaid/under deducted, and which have been corrected to prevent further overpayment/under deduction;
 - the period(s) in which the overpayment/under deduction occurred;
 - a financial breakdown of the overpayment/under deduction;
 - a proposed recovery plan (i.e. recovery period, recovery start date and procedure and value of instalments) via the payroll either from the bank earnings (acknowledging that the recovery may be irregular/extended due to the bank working pattern), or where the employee also has a substantive post from the substantive earnings (subject to the national minimum wage requirements), ensuring like for like instalments are recovered e.g. pensionable vs non pensionable earnings;
 - a statement advising that employees who accept a salary overpayment to which they are not entitled and who fail to take prompt action to repay the employer in full will be referred to the Counter Fraud Team.
- 7.2 Subject to the national minimum wage requirements, a maximum time limit will apply to the period in which repayments are made, restricted to the period in which the overpayment was originally made (e.g. overpayment made over a 5 week period must be recovered within a 5 week period). No overpayment recovery period will exceed 12 months, regardless of the period in which the overpayment was made, subject to the national minimum wage requirements.
- 7.3 Based on the proposed recovery plan notified to the employee, deductions via instalments will automatically be applied via the payroll from the recovery start date unless the employee disputes the overpayment (in which case recovery action will be stalled for one month).

- 7.4 In cases where an employee disputes the overpayment (because the information provided related to the overpayment is considered by the employee to be incorrect), NELPC will refer the matter within 7 days of receipt of the dispute to the HR Directorate for consideration/action as appropriate. The HR Directorate will return the case with accompanying/revised documentation as appropriate to NELPC within 14 days of receipt, together with instructions for further payroll action as necessary. Recovery action will be reinstated one month after the originally notified recovery start date, in the absence of further communication from the HR Directorate/employee.
- 7.5 There will be a maximum 'waiting period' of three months in terms of recovering the full overpaid sum from the bank/substantive earnings. Where no or only limited recovery has been possible within the three month 'waiting period', the procedure followed will be the same as that for leavers where a letter is sent directly to the employee by NELPC providing the following information:
- a request for the sum to be repaid immediately;
 - Advising that an invoice will follow from the employing organisation.
- 7.6 NELPC will forward a copy of the correspondence to the Finance Directorate and request that an invoice is raised and sent to the bank employee (for some client organisations the invoice request is raised electronically by NELPC via the client organisations' finance system).
- 7.7 The procedure for former bank employees will be as outlined in paragraph 6 above.

8 Offsetting Overpayments Against Sums Owed To Employees

- 8.1 There may be occasions when current or former employees are paid lump sums who have previously been overpaid and the overpayment has either been only partly recovered, or has only recently been identified. Examples of these lump sum payments include:
- retrospective arrears payments
 - final salary which includes payment in lieu of notice and/or redundancy pay
 - payment as part of a legal settlement including compromise agreements
- 8.2 In the case of payments which are not part of a legal settlement (e.g. retrospective arrears payments, final salaries which include payments in lieu of notice and redundancy), the following actions will be taken:
- the overpayment will be recovered by offsetting it against the sum due (the sum due will be netted to zero if the overpayment is equal to or greater than the sum due);

- if an outstanding overpayment balance still remains after offsetting the overpayment against the sum due, this will be treated in accordance with the procedure above (i.e. overpayment recovery via salary or invoice);
- A letter will be sent directly to the employee by NELPC confirming the offsetting overpayment action that has been taken (copied to the HR Directorate contact as appropriate for information).

8.3 In the case of payments which are part of a legal settlement (e.g. compromise agreements) the following actions will be taken:

- a query will be raised by NELPC with the HR Directorate in terms of whether (in the legal context) it is possible to recover the overpayment by offsetting it against the sum due (emphasising the legal timescales required for payment and that in the absence of a response the overpayment will be recovered);
- if an outstanding overpayment balance still remains after offsetting the overpayment against the sum due, this will be treated in accordance with the procedure above (i.e. overpayment recovery via salary or invoice) subject to legal opinion;
- A letter will be sent directly to the employee by NELPC confirming the offsetting overpayment action that has been taken (copied to the HR Directorate contact as appropriate for information).

9 Procedure for Death in Service Cases

9.1 In cases where there is a pre-existing overpayment and the employee later dies in service, or where an overpayment is newly identified at the time of death in service, NELPC will refer such cases to the Director of Human Resources requesting instruction on whether to initiate overpayment recovery procedures.

10 Standard Employee Letter Templates

10.1 A standard set of letter templates used for communicating overpayment cases to current and former employees (including bank staff) will be agreed as part of this procedure.

11 Reporting Of Overpayments

11.1 Regular reporting of overpayments is undertaken by NELPC via the following methods:

- A monthly report is provided to Finance and HR Directors showing all overpayments. This is cascaded to Borough Directors.

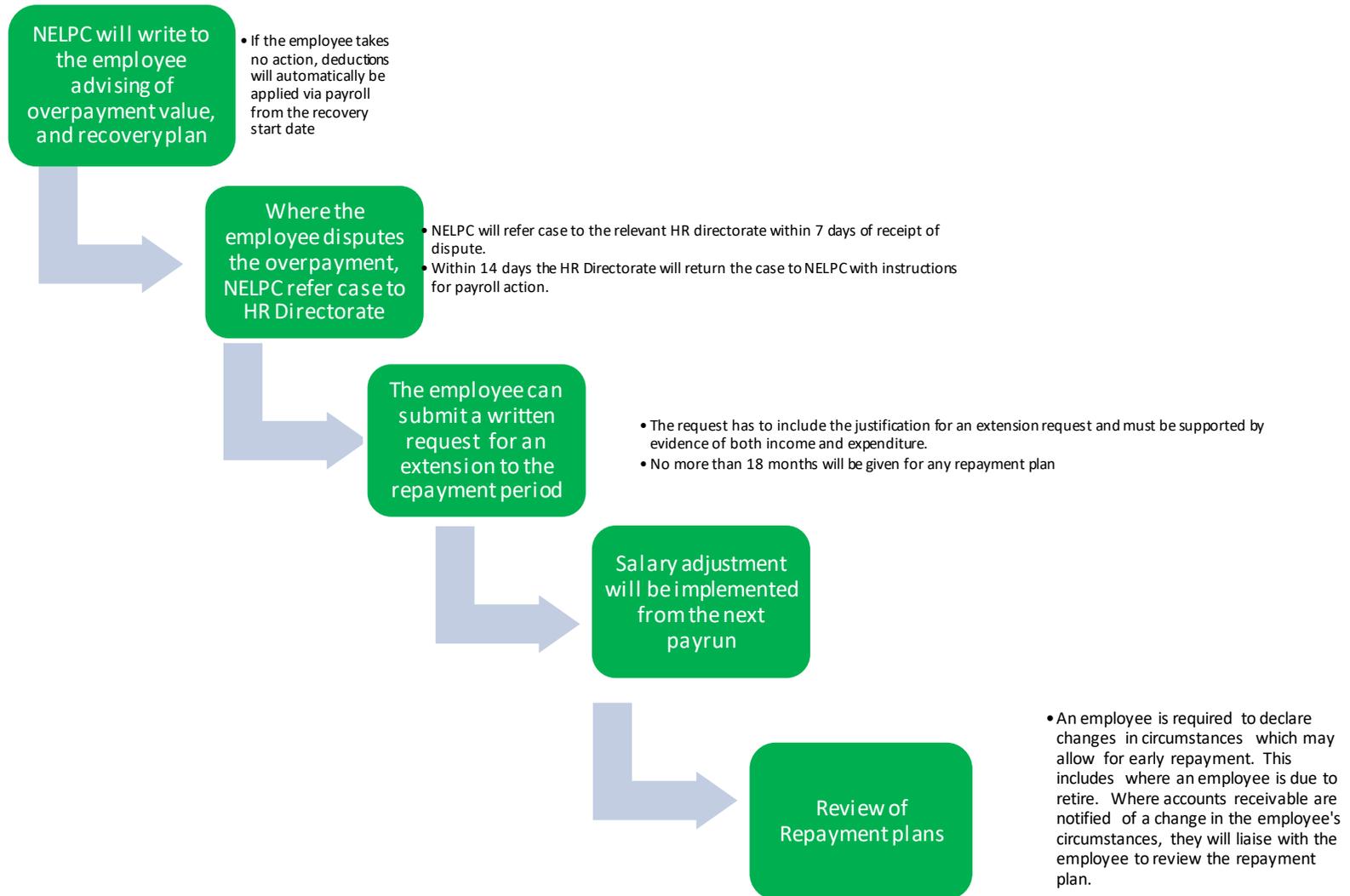
12 Non-compliance

- 12.1 Non-compliance with this policy will be referred to Human Resources and, where appropriate the Trust's Local Counter Fraud Specialist for investigation which may result in criminal, civil and / or disciplinary action being taken against the employee.

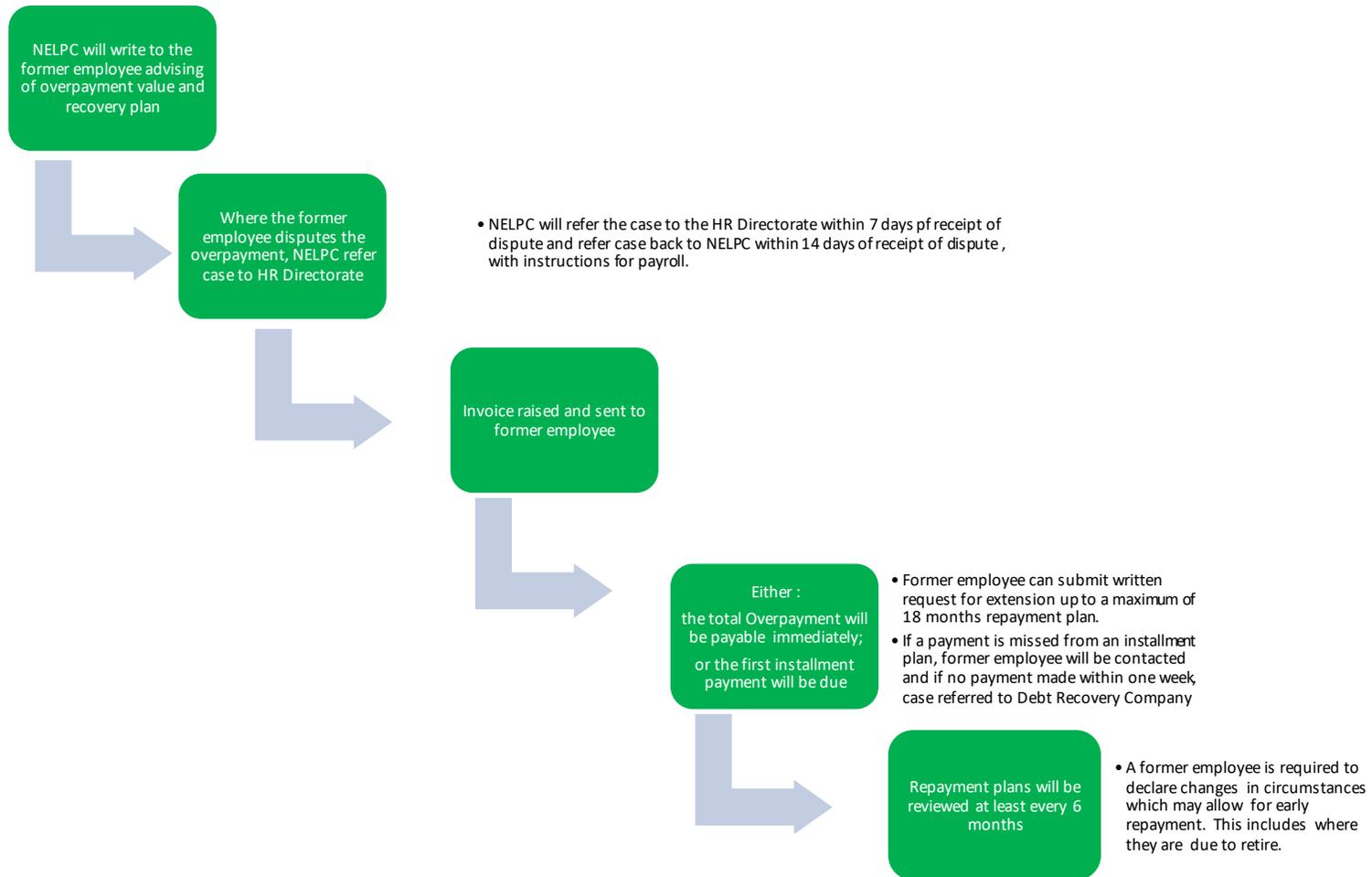
13 References

- 13.1 North East London Pay Consortium Management Board Salary Overpayments Recovery Procedure 6 October 2014.

Appendix A: Process Flowchart for current employees



Appendix B: Process Flowchart for Former employees



Appendix C

Request for extension to repayment period beyond 12 months

You must submit your completed Request and any supporting documentation to
elft.accountsreceivable@nhs.net

| PERSONAL DETAILS | |
|------------------|--|
| Full name | |
| Job Title | |
| Email | |
| Telephone number | |
| Home Address | |

| Details of Overpayment | (Details can be found in the notification letter sent to you) |
|--|---|
| Total overpayment | £ |
| Repayment term requested (maximum 18 months) | (please state months) |
| <p>Please provide your explanation of why you request an extension in the repayment term beyond 12 months</p> <p>Please see the Salary Overpayment Policy for further information.</p> <p>You MUST include details of: <u>All</u> monthly household net income (salary, benefits, maintenance) and all essential expenditure, including, child care costs, mortgage/rent payments, utility bills, food, council tax, debts including credit cards and loans being repaid.</p> <p>Documentary evidence of income and expenditure MUST be provided along with bank statements.</p> <p>Please advise of all supporting documentation you are submitting -</p> | |

Please note that the Trust can only add on up to an additional 6 months to the repayment plan; in addition to the maximum 12 months

Employee's/Former Employee's Declaration – please tick / cross each box to agree

This section must be completed in FULL

I confirm that I have read and understood the Trust's Salary Overpayments Policy and am submitting this request in accordance with its content.

I declare that the information given on this form and in any supporting documentation provided is complete and accurate. I understand and accept that if I provide false or misleading information, I may be liable to disciplinary, prosecution and/or civil proceedings and debt collection.

I understand that the Trust may share information on this form with NHS Counter Fraud Authority and/or other organisations for the purpose of the prevention, detection, investigation and prosecution of fraud or any other unlawful activity affecting the NHS.

I consent to East London NHS Foundation Trust contacting any person or business to request information required to verify details I have provided on this form and in any attached supporting documentation. I also consent to any person or business requested to provide information, to disclose details of my personal information to East London NHS Foundation Trust

Signature _____

Date _____

| <u>FOR OFFICE USE ONLY</u> | |
|--|--|
| Extension Approved? | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| Repayment term offered: | months |
| Repayment term accepted by employee/former employee | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| Details provided to SBS | / / 20 |

Once a decision is made on whether the request has been approved, this form will be emailed to the employee/former employee