

## **RECOVERY OF OVERPAYMENTS**

### **1 INTRODUCTION**

- 1.1 Barnet Council recognises that overpayments of salary will occasionally occur. This document outlines the Council's procedure for dealing with overpayments of salaries and allowances and the recovery process to minimise the need for legal action.
- 1.2 The Council has a duty to its residents and service users, to protect its financial position. Any approach to recovery of overpayments will recognise that public money is involved. Overpayments come out of the service area budgets and any failure to recover is likely to have implications for service delivery.
- 1.3 The Council is committed to protecting the dignity and rights of its employees and this procedure sets out a fair and consistent method of ensuring this when dealing with overpayments. Each incident of overpayment of salary will be handled quickly and sensitively.
- 1.4 On the rare occasions that legal action is unavoidable and in the interests of its residents and its own financial position, the Council reserves the right to pursue debts owing to it by using the appropriate legal remedies.

### **2 BACKGROUND**

- 2.1 Overpayments result from either a misinterpretation of law or factual error, or an administrative error, or failure by employee to provide accurate information either in error or deliberately (the latter being a fraud matter).
- 2.2 An overpayment following a mistake of law occurs when an employer, was not aware of the relevant law, or knowing all the relevant facts misinterprets the legal position, (e.g. the requirements of an Act of Parliament, a statutory regulation, Income Tax or National Insurance regulations). Overpayments resulting from misinterpretation are always recoverable as a legal deduction and usually require an agreement to repay from the employee.
- 2.3 An overpayment following a factual error occurs when an employer makes a payment that is factually inconsistent. e.g. procedural, arithmetical, computer input or other clerical errors and oversights. Most overpayments of wages / salary will fall into this category.

### **3 RIGHTS OF RECOVERY**

- 3.1 Deductions cannot normally be made from an employee's pay without their consent. Every effort will be made by the Council to reach a fair and amicable arrangement with regard to recovery of overpayments. If an employee does not act reasonably or fairly the Council may initiate deductions from the employee's pay

without consent. In these circumstances the employee may be considered to be in breach of their Duty of Trust and Confidence.

- 3.2 Usually, if an employee queries an overpayment and is informed in writing that the pay is correct the employer forfeits an entitlement to recover the overpayment. For local authorities, however, as public money is involved, overpayment can be recovered in these circumstances.
- 3.3 If the employee is able to provide written evidence of any assurances given, it is at the discretion of the Payroll Manager, in consultation with the Head of HR Shared Services, as to whether recovery action is appropriate. Unless, however, there is written evidence from senior management that an overpayment has been waived, which includes the rationale for that decision, overpayments will always be recovered.

#### **4 DUTY OF TRUST**

- 4.1 The Council expects a duty of trust and confidence from all employees who should act in good faith when overpayments occur.
- 4.2 A lack of good faith will be implied if an employee who was aware of an overpayment:-
  - suppressed a material fact that affected the amount payable;
  - deliberately or carelessly failed to ensure that relevant information affecting the amount payable was received by the Council;
  - knowingly failed to bring an overpayment to anyone's attention;
  - failed to make enquires or check employment particulars with HR or Payroll when they could reasonably have done so;
  - failed to notify the Council of an obvious error.
- 4.3 Failure to act in good faith is a serious matter that could lead to disciplinary action and criminal proceedings for fraud or theft.

#### **5 DISCOVERY AND NOTIFICATION**

- 5.1 When an overpayment is discovered it is important that the employee is advised in writing within 5 working days and their pay quickly corrected.
- 5.2 The relevant Payroll Team Leader must be advised, and given full details of the reasons for the overpayment. If the discovery is made by Payroll, all the details will be passed to the Payroll Team Leader. If the employee, HR or the relevant Service area make the discovery, HR will notify the employee that an overpayment has been made and that Payroll will contact them regarding recovery arrangements and note the overpayment on the SAP system.
- 5.3 The Payroll Team Leader will contact the employee direct with details of the overpayment and set out the recovery terms and if relevant, provide details of the imminent reduction in pay. The Payroll Team Leader will ensure that the reason

for the overpayment is corrected immediately and there is no potential for re-occurrence.

- 5.4 If the employee leaves the Council before all the overpayment has been recovered, the full amount of any outstanding balance will immediately become due and payable in accordance with the employment contract. Repayment of the balance will be a priority deduction from final pay, even if this results in the employee being left with no net pay. Any balance outstanding after the deduction from the final pay will be the subject of a separate recovery.

## 6 RECOVERY

- 6.1 To ensure that there is a fair and consistent approach to the recovery of overpayments following principles will be applied:-
- there must be one pay period at “normal” pay between discovery and correction of the overpayment. This will give the employee an indication of his/her correct pay entitlement and enable Payroll to ensure that the correct adjustments have been made;
  - where there is a singular overpayment of a large amount where it is obvious and reasonable to expect that the employee was aware of the overpayment, recovery will normally be in full after one pay period at “normal pay”;
  - for overpayments that have arisen over a period of months or years, the following repayment schedule will be applied, unless its application would lead to financial hardship.

Overpayment amount as a % of gross monthly salary	Repayment period (following the one “normal” pay period)
0 to 20%	1 month
20 to 30%	2 months
30 to 40%	3 months
40 to 50%	4 months
50 to 60%	5 months
60 to 70%	6 months
70 to 80%	7 months
80 to 90%	8 months
90 to 100%	9 months
Over 100%	10 months up to a maximum of 2 years

In addition:-

- the employee may wish to repay earlier they should be encouraged to do so;
- quicker repayment may also be achieved by using the annual pay rise and/or the award of a pay increment to increase the repayment amount in certain months;

- to ensure there is a less complex method of payroll adjustment and that budget holders are only re-credited with amounts erroneously charged to their budgets as they are recovered, recovery will always be made gross.

## **7 RECOVERY - LEAVERS**

- 7.1 Where an overpayment is discovered as an employee is about to leave, the relevant procedures set out in section 6 will be followed, in addition to which:-
- the net value of any balance outstanding, after the maximum amount possible has been deducted (to leave no final pay), will be notified to the employee by the Payroll Manager within one month of leaving. The letter will inform the former employee that the Council expects the balance to be repaid and enclose an invoice for the relevant amount.
  - the employee's pay record will be altered to reflect the adjustment of gross pay deductions.
- 7.2 Where an employee has already left the Council, irrespective of the reason for leaving, the relevant principles set out in section 6 apply.

## **8 FINANCIAL YEAR**

- 8.1 Revenue and Customs accept that for current employees, overpayments that occurred in the previous tax year can be dealt with as if they arose in the current tax year, provided any payments are in accordance with current tax and National Insurance legislation. There could be losses or gains for employees or the Inland Revenue depending on any changes in income tax, National Insurance, pension regimes or the employee's tax code from year to year. The value of these losses or gains is however, unlikely to be significant.
- 8.2 Overpayments that have taken place wholly or partly in a previous financial year or years will be treated as if they occurred in the current year.

## **9 EXCEPTIONAL CIRCUMSTANCES**

- 9.1 The Council is committed to fairness and will consider claims by employees that their circumstances are such that to repay an overpayment in accordance with the relevant procedures set out above would create genuine financial hardship. The recovery period for the debt, where genuine hardship is proven will be extended.
- 9.2 Any decision to extend the recovery period will be made by the Executive Director for Resources or nominated deputy and will be based on the merits of each case and the available evidence. This decision will consider:
- Whether genuine financial hardship, as opposed to inconvenience, will be caused to the employee or his/her family if the debt has to be repaid within the normal time-scale.

- Whether the employee acted in good faith at all times.
- What evidence is available to support the employee's case

A Payroll Team Leader will notify the employee or former in writing of the decision.