

Report To: Policy and Resources Committee **Date:** 17 May 2016

Report By: Head of Organisational Development, Human Resources and Communications **Report No:** HR/11/16/SM

Contact Officer: Steven McNab **Contact No:** 2015

Subject: The Recovery of the Overpayment of Wages Policy

1.0 PURPOSE

- 1.1 The purpose of this report is to seek the approval of the Policy and Resources Committee on the revised policy for the recovery of the overpayment of wages.

2.0 SUMMARY

- 2.1 The Council's current policy and procedure on the recovery of the overpayment of wages was agreed and introduced in 2004. This policy has recently been reviewed to take into account updates to individual contracts of employment and the revised policy is attached.
- 2.2 Although all steps are taken to ensure that overpayments of wages do not occur there are occasions when this happens and it is necessary to recover the overpayments from employees. While the current arrangements and policy for recovery have operated reasonably well, the current wording does not now correlate with individual contracts of employment which have been revised and updated over the past few years. It is considered appropriate to have in place formal arrangements thereby ensuring transparency in the process and consistency in application.
- 2.3 The agreement of this revised Council wide policy and procedure for the recovery of overpayment of wages reduces the prospect of not recovering the amounts due to the Council.
- 2.4 The revised wording is minor and is contained within sections four and five of the policy attached. The specific wording updates have been highlighted in **Bold** for ease of reference and the committee is asked to approve the updated Policy.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Committee agree the recovery of the overpayment of wages policy as outlined in Appendix 1.

Steven McNab
Head of Organisational Development,
Human Resources and Communications

4.0 BACKGROUND

- 4.1 The Council's current policy and procedure on the recovery of the overpayment of wages were agreed and introduced in 2004. This policy has recently been reviewed to take into account updates to individual contracts of employment and the revised policy is attached at Appendix 1.
- 4.2 Although all steps are taken to ensure that overpayments of wages do not occur there are occasions when this happens and it is necessary to recover the overpayments from employees. While the current arrangements and policy for recovery have operated reasonably well, the current wording does not now correlate with individual contracts of employment which have been revised and updated over the past few years. It is considered appropriate to have in place formal arrangements thereby ensuring transparency in the process and consistency in application.
- 4.3 The agreement of the revised Council wide policy and procedure for the recovery of overpayment of wages reduces the prospect of not recovering the amounts due to the Council.
- 4.4 The revised wording is minor and is contained within sections four and five of the policy attached. The specific wording updates have been highlighted in **Bold** for ease of reference and the Committee is asked to approve the updated Policy.

5.0 PROPOSALS

- 5.1 It is proposed that the Committee agree the updated policy and that officers implement effective immediately.

6.0 IMPLICATIONS

Finance

- 6.1 There are no financial implications.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments
N/A					

Legal

- 6.2 Legal services have been consulted on the revised policy.

Human Resources

- 6.3 As outlined in the report and appendix.

Equalities

6.4 Has an Equality Impact Assessment been carried out?

YES (see attached appendix)

NO - This report does not introduce a new policy, function or strategy or recommend a significant change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required.

Repopulation

6.5 N/A

7.0 CONSULTATIONS

7.1 The trade unions have been consulted on the revised policy details.

8.0 LIST OF BACKGROUND PAPERS

8.1 Appendix 1 – The recovery of the overpayment of wages Policy

Human Resources

POLICY AND PROCEDURE ON THE RECOVERY OF THE OVERPAYMENT OF WAGES.

Produced by:

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**THIS POLICY BOOKLET IS AVAILABLE ON REQUEST, IN LARGE PRINT, BRAILLE, ON
AUDIOTAPE, OR CD.**

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DOCUMENT CONTROL

Document Responsibility		
Name	Title	Service
		OD & HR and Communications

Change History		
Version	Date	Comments
1	January 2004	
2	April 2016	Minor changes in wording to reflect updated individual contracts of employment

Distribution	
	Comments
Corporate Directors, Heads of Service, Trade Unions, ICON	

Distribution may be made to others on request

Policy Review	
Responsible Team	Service
OD & HR	OD, HR & Communications

1. Purpose of Policy and Procedure

- 1.1 The purpose of this Policy and Procedure on the recovery of the overpayment of wages is to outline for all employees the steps which the Council will take to recover the overpayment of wages when they occur.

2. The Policy

- 2.1 The Council will seek to recover all overpayments of wages in accordance with legal requirements.
- 2.2 All Contracts of Employment issued by the Council will contain reference to the Policy on the recovery of overpayment of salaries or wages.

3. The Legal Position

- 3.1 In order to recover overpayment of wages, the Council must conform with legal requirements.
- 3.2 Employment legislation provides specific protection for individuals against having unauthorised deductions made from their wages (including complete non-payment of wages).

Circumstances in which Deductions are Lawful

One of three conditions has to be met for an employer lawfully to make deductions from a worker's wages or to receive payments from a worker. These are that the deduction or payment is:

- required or authorised by legislation (for example income tax or national insurance contributions); or
- required or authorised by the worker's contract - provided that the worker has been given a written copy of the relevant terms or a written explanation of them before it is made; or
- agreed to in writing by the worker before it is made.

Circumstances in which the Protection does not apply

The conditions set out above do not have to be met where a deduction is made or a payment received:

-
- to recover an earlier overpayment of wages or expenses by the employer to the worker; or
 - as a result of disciplinary proceedings provided for in legislation (for example, police disciplinary proceedings);
 - a consequence of the worker taking part in a strike or other industrial action; or
 - to satisfy a court order or a tribunal decision - provided in the case of a deduction that the worker has given his or her prior written agreement to it.

In addition, where a deduction is made under an arrangement agreed to by the worker in writing for the employer to pay to a third party amounts notified by that third party, the deduction is always lawful under the legislation on unlawful deductions if the employer deducts the amount that has been notified.

- 3.3 Where a deduction is made because of a statutory requirement on the employer to deduct and pay over specified amounts to a statutory authority (for example, PAYE income tax payments to the Inland Revenue), the deduction is lawful under the legislation on unlawful deductions - provided that the Council deducts the amount specified by the authority. Any questions as to whether or not the authority has correctly calculated the amount due should be followed up with the authority itself

4. Contractual Provisions

- 4.1 **The Written Statement of Terms and Conditions of Employment for Inverclyde Council employees allow for overpayment of wages to be deducted from employee's salaries on a contractual basis. The procedure for recovery of overpayment of wages is detailed in paragraph 5 below.**
- 4.2 **Deductions made by Inverclyde Council enforcing this contractual entitlement do not constitute an unlawful deduction from wages.**

5. Procedure for Recovery of Overpayments

- 5.1 **Where an overpayment of wages has been made, the following arrangements will apply:-**

- (a) the employee will be advised in writing of the overpayment and that the amount will be recovered in the following way:-

i. Where the overpayment has been made in one pay and discovered before the next salary or wage payment, the overpayment of any salary, wage or allowance made in error to an employee will be deducted in full from the next available salary or wage payment

ii. Where the overpayment has been paid over more than one payment period, then the overpayment will be repaid over the same period of time by equal instalments commencing with the next available salary or wage payment.

iii. It is the employee's responsibility to notify their supervisor or Payroll Services immediately if they suspect that an overpayment or underpayment has occurred.

iv. In the event of any overpayments, advances or loans made to you being due to the Council on the termination of your employment, the whole sum owed will be deducted from your final pay. If your final salary payment is insufficient to allow for the whole of any such deduction, you will be required to repay the outstanding amount due to the Council within one month of the date of the termination of your employment.

(b) where having been notified of the proposed repayment arrangements the employee submits that they may cause them hardship then a meeting will be arranged at which the matter can be discussed and options explored. The employee may be represented at this meeting which will be attended by Personnel and Officers from Finance.

5.2 Where agreement cannot be reached under the arrangements detailed in para 5.1 (b) above then the employee may submit a grievance under the Council's Grievance Procedure or, in appropriate circumstances, lodge a claim with the Employment Tribunal.