

Livewell Southwest

**Salary & Expenses Overpayment
Recovery Policy**

Version No 1
Review: February 2018

Notice to staff using a paper copy of this guidance

The policies and procedures page of Intranet holds the most recent version of this guidance. Staff must ensure they are using the most recent guidance.

Author: Director of Finance

Asset Number: 882

Reader Information

Title	Salary & Expenses Overpayment Recovery Policy. V.1
Asset number	882
Rights of access	Public
Type of paper	Policy
Category	Non clinical
Document purpose/summary	The purpose of this policy is to ensure that all staff understands the process for dealing with salary under or overpayments in an efficient manner. It clarifies the legal right of Livewell Southwest to recover monies overpaid to staff and provides a procedure for actioning recovery.
Author	Finance Department
Ratification date and group	23 February 2015 – Director of Finance
Publication date	25 February 2015
Review date and frequency	Three years after publication, or earlier if there is a change in evidence.
Disposal date	The PRG will retain an e-signed copy for the archive in accordance with the Retention and Disposal Schedule. All copies must be destroyed when replaced by a new version or withdrawn from circulation.
Job title	Director of Finance
Target audience	All Livewell Southwest staff and former employees.
Circulation	Electronic: LSW intranet and website (if applicable) Written: Upon request to the PRG Secretary on ☎ 01752 435104. Please contact the author if you require this document in an alternative format.
Consultation process	HR Policy Group, Locality Managers & Deputies, Local Counter Fraud Specialist
Equality analysis checklist completed	N/A
References/sources of information	Employment Rights Act 1996, NHS Shared Business Services Overpayments User Guide and other model policies ratified by staff side and management within neighbouring organisations.
Associated documentation	None
Supersedes document	New policy
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Document review history

Version no.	Type of change	Date	Originator of change	Description of change
V1	Draft	February 2015	Finance	New policy.

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Salary & Expenses Overpayment Recovery Policy

1 Introduction

- 1.1 The purpose of this Policy is to ensure that employees of Livewell Southwest (LSW) understand the process for dealing with salary under or overpayments and these are managed in a transparent manner. This policy applies to all individuals who have received payment or who are reimbursed any type of expense within the context of duties carried out for LSW.

2 Purpose

- 2.1 The Company is required to ensure that employees are paid correctly at all times. If an overpayment of public funds occurs for any reason, LSW will recover the overpayment from the employee in full. Similarly LSW will take steps to correct any underpayment of salary or any other payment to which an employee is entitled.
- 2.2 All employees have a responsibility for checking each payslip they receive and should they believe their pay is incorrect, they must advise their Line Manager and Payroll in writing.

3 Definitions

- 3.1 The terms salary and expenses within this Policy refer to all remuneration, expense allowance or reimbursed expense received by individuals for duties carried out for LSW.
- 3.2 The term “Payroll” used throughout this Policy relates to “NHS Shared Business Services (SBS)”.

4 Duties & responsibilities

- 4.1 The **Chief Executive** is ultimately responsible for the content of all policies, implementation and review.
- 4.2 The **Director of Finance** is responsible for ensuring that appropriate systems exist which enables LSW to deal with all Payroll discrepancies in a fair and equitable manner. They will also ensure discrepancies are managed in accordance with current employment legislation and good practice, as these may be amended from time to time.
- 4.3 **Locality Managers/Budget Holders** are responsible for ensuring they review all salaries and wages charged to their cost centre, on a monthly basis to ensure they are correct, and query any unusual items or unexplained variances with Payroll and the management accountants promptly after being identified.

- 4.4 **All employees** are responsible for checking their own position and obligations under this policy, including checking their payslip each month. The employee needs to ensure that where they believe there are issues in relation to their pay, due to either under or over-payments, where advice is obtained, they should keep a written record of this, including details of the individuals they have spoken to.
- 4.5 **The Finance Department** are responsible for recording all salary overpayments and monitoring the collection of these amounts in line with the parameters as created in this policy. The Finance Department will ensure that all overpayments are allocated to the respective Directorate if the overpayment is not recovered.
- 4.6 **The Local Counter Fraud Specialist (LCFS)** is responsible for investigating all overpayments that may be considered fraudulent.

5 Discrepancies on the payroll, overpayment of salary or any other payment discrepancies

- 5.1 If an employee identifies a salary overpayment, they must inform their Line Manager and Payroll in writing without delay at the earliest opportunity. Failure to do so may result in disciplinary action and referral to the LCFS. The LCFS will decide whether to carry out an investigation that may culminate in criminal proceedings and/or disciplinary action being commenced/taken against an employee in the event of a failure to disclose an overpayment. It should be noted that under Section 5 (4) of the Theft Act (1968), where property (money) is paid through an error (overpayment), an intention not to make such restoration is regarded under this Act as theft. Payroll will then confirm the overpayment by communication to the relevant employee in line with the responsibilities outlined above.
- 5.2 After an overpayment of salary or any other payment has occurred, the employee will be provided with written confirmation of the overpayment, the amount, a brief description of the reason for the salary overpayment, how payment can be made and the planned recovery. (Please refer to copy letters at Appendices B, C, D and E). The employee's address used will be the last known home address held on the Electronic Staff Record System (ESR) and it is the employee's responsibility to ensure that their Line Manager has been notified of any changes of address.
- 5.3 All overpayments are to be advised to the Financial Accountant who will check that overpayments in respect of employees who have left LSW have been raised in LSW's general ledger. For employees who are still employed by LSW, the Financial Accountant will keep track of the payments made by using central accounts which form part of the LSW balance sheet. The Financial Accountant will ensure that the overpayments are allocated to the Locality/Directorate if not fully recovered.

- 5.4 Once the letter has been sent to the employee advising them of the overpayment (copied to HR Manager and Line Manager), they have 21 days from the date of the letter to dispute any aspect including the reason for the overpayment, the amount of the overpayment or the recovery terms. An employee can also request a meeting to discuss the overpayment. If any aspect is challenged or a meeting requested this must be done in writing.
- 5.5 Where an overpayment amount has been agreed and it is possible for Payroll to make full recovery from the next available salary payment, with the agreement of the employee, this should be actioned immediately by Payroll.
- 5.6 Where this is not possible, but the value of the salary overpayment is not disputed, the following process should be followed:
- (i) Payroll will negotiate repayment terms (within limits of NHS SBS authority) with the employee.
 - (ii) Payroll will be responsible for inputting recovery into ESR using the correct element, and will escalate and follow up cases queried to the database.
 - (iii) In the event that the employee will not agree a plan of less than nine months, Payroll determine what they are prepared to repay and e-mail the Director of Finance with their offer. It is then for LSW to accept the offer or to take over the negotiations.

5.7 Recovery of Salary Overpayments

- 5.7.1 If following receipt of the letter and breakdown detailed above the employee contacts Payroll within 21 days the options available are as follows:

Option 1 (preferred option)	Where a payment error has been made, payroll will explain how the payment error has occurred and explain the repayment options. The normal process is to pay the underpayment or reclaim the overpayment in full at the next pay interval.
Option 2	Where the overpayment exceeds 50% of the gross monthly payments, the overpayments team will set up a repayment normally between one to three months.
Option 3	Where agreement cannot be reached to make a repayment within three pay periods, repayment terms up to nine months can be agreed.
Option 4	Where Options 1 – 3 would cause undue financial hardship the employee can seek advice from either their Line Manager or an HR Manager (see Appendix A for further guidance). The Line Manager or HR Manager must notify Payroll that financial hardship is applicable in this case and a different repayment plan can be agreed. To protect confidentiality Payroll and the Finance Department do not need to know the circumstances of the financial hardship. Important Note: For Option 4 to be available the following conditions must

	<p>apply:</p> <ul style="list-style-type: none"> • The overpayment must not have arisen or continued through fault of the staff member. • The staff member must have been unaware of the overpayment. If the staff member was aware of the overpayment they must have taken all reasonable steps to notify LSW. • That financial hardship would result must be agreed by either a Line Manager or HR Manager.
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Note that in applying Options 2, 3 or 4 an employee's potential retirement date or leaving date will need to be taken into account. The recovery period available will not be allowed to be greater than expected remaining employment.

5.7.2 Although there are no exceptions to this Policy, LSW recognises that in certain circumstances due care will need to be taken in applying this Policy, this will include consideration where staff are on long term leave including sickness or maternity leave.

5.7.3 If Payroll has not been contacted by the employee within 21 days of the overpayment letter being generated, LSW will move to a recovery activated by the organisation as described below.

5.8 Recovery Activated by LSW by Payroll Deduction

5.8.1 LSW's preference will always be to activate recovery by mutual agreement with employees. Where this has not been possible, LSW will invoke its statutory right under the Employment Rights Act 1996 and its contractual right under LSW's Contract of Employment to recover overpaid salary by payroll deduction.

5.8.2 Where LSW invokes these rights it will always seek to act reasonably and due written notice will be given.

5.8.3 In situations as described above where:

- An employee does not contact the Payroll department within 21 days to arrange a repayment option following receipt of the letter and invoice formally notifying a salary overpayment:

LSW will invoke its right to make a payroll deduction without express consent from the staff member.

5.8.4 In this situation the profile of the repayment by salary deduction will be agreed between the Finance Department and HR and due notice will be given to the employee.

5.8.5 If an employee is dissatisfied with how this Policy has been applied, a grievance may be raised against the organisation through their Line Manager via LSW's Grievance Policy.

6 Amounts Outstanding on Leaving LSW

6.1 Where an employee leaves before having fully repaid a salary overpayment debt the outstanding amount will be recovered from the final salary. Where the amount outstanding exceeds final salary a sales invoice for the outstanding amount will be sent to the employee. The recovery procedure for former employees will then apply (see below).

7 Former Employees

7.1 Where an employee has left LSW, LSW will send a sales invoice for any amounts owing with a covering letter, for the former employee. LSW's normal debt recovery processes will apply. The former employee will be offered an opportunity to agree flexible terms with the Finance Department. Terms offered will be in line with the terms offered under this Policy to existing employees.

7.2 Where repayment is not forthcoming from the former employee, LSW will refer the case to LSW's debt collection contractor. It is LSW's policy to pursue repayment using all legal means available and to seek court judgements where necessary.

8 Debt Write Offs

8.1 Debt write offs are not permitted for existing employees of LSW.

8.2 In respect of former employees and where LSW has exhausted all legal means of debt recovery, the Finance Department may apply to the Audit Committee for permission to write off a salary overpayment debt. Examples of circumstances where the Audit Committee may agree to a write off are as follows:

- A court has ruled that although LSW's case is valid the debtor has no assets from which to settle the debt;
- LSW's debt collection agency is unable to trace the debtor;
- Where the amount outstanding is small the costs of pursuing a case may outweigh any possible recovery.

9 Underpayment of salary or any other payments

9.1 The principle after an underpayment of salary is that the position will be corrected in full, in the next available salary payment. The employee can request that Payroll consider an interim payment which will not be unreasonably refused.

10 Wilful misrepresentation by the employee

- 10.1 If an overpayment of salary is caused because the employee has wilfully misrepresented factors or relevant data, the LCFS will decide whether to carry out an investigation. This may culminate in criminal proceedings and/or disciplinary action being commenced/taken against an employee in the event of a failure to disclose an overpayment.

11 Monitoring compliance

- 11.1 Monitoring of the Policy and procedure will be undertaken by the Director of Finance. This Policy will be reviewed regularly by the Finance and HR Departments, management and staff side through the JCCN and LNC mechanisms.
- 11.2 The standards and key performance indicators identified with the implementation of this Policy are the NHSLA and Standards as determined by the Care Quality Commission.
- 11.3 LSW will undertake a regular review of this Policy. It should be noted that the responsibilities in this Policy are legally enforceable and that managers (and employees where applicable) failing to uphold their responsibilities may find themselves in breach of internal disciplinary policies and legislation.
- 11.4 Information for equality monitoring will be recorded as required to ensure equality regulations are met in respect of any formal process commenced under this Policy.

All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Finance

Date: 23 February 2015

Financial Hardship

Option 4 is available where an employee feels that the application of Options 1, 2 or 3 would cause them undue financial hardship. The relevant Line Manager or HR Manager must agree that financial hardship would result and must notify the Payroll and Finance Departments to that effect.

The Policy requires that a reasonable confidential discussion is had to establish the effect Options 1, 2 or 3 would have on a member of staff's financial position. LSW does not have the right to be intrusive into a member of staff's affairs but will need to be reasonably satisfied that hardship would be caused. A simple assertion that repayment cannot be afforded will not be sufficient evidence of financial hardship under this policy.

A member of staff may wish to seek advice from their Trade Union representative or HR in these circumstances.

Sample Letter from Payroll Alerting the employee to the overpayment

Private and Confidential

Mr. Joe Bloggs
Anywhere

Employment Services

Waterside House
Town Quay
Southampton
SO14 2NH
t: (023) 80
e: SBS-S.overpayments@nhs.net

10 November 2014
Ref ID: OP-0000-????

Dear Mr. Bloggs

Assignment Number: 00000000

Re: OVERPAYMENT OF SALARY – £1798.12

I regret to inform you that you have been overpaid between 01 December 2013 and 31 March 2014. The overpayment has occurred because we received late notification of your contracted hours reduction.

Whilst I apologise for the situation I must make you aware that your employer has an obligation to recover the overpayment in full and in the shortest possible time in line with the Overpayment Policy.

Your repayment plan will be for 3 instalments commencing November 2014 for the amount of £244.00 and a final deduction of £239.26.

If you have any queries regarding the calculation or repayment terms please do not hesitate to contact us on the above telephone number or email address. Please ensure that you specify your overpayment reference ID (as above) along with your assignment number in all communication.

Please be advised that should you leave the employment of the organisation prior to the full recovery of the overpayment; it is the policy of your employer to recover the outstanding balance in full from your final salary. Any balance thereafter would be invoiced via the Trust's nominated debtors route for collection.

Please note that the recovery will automatically commence in accordance with the Recovery Plan if we do not hear from you.

Thank you for your co-operation in this matter.

Yours sincerely



Mandy Allen
Overpayments Manager

Enc:

Standard Disclaimer: It is our responsibility to advise you that without prejudice your employer may escalate this overpayment matter to the NHS Local Counter Fraud Service or to its nominated Debt Collection or Credit Control Service. This does not affect any other action, including proceedings in a criminal court which may be taken in this case.

Sample Letter to ex-employee

Private and Confidential

Mr. Joe Bloggs
Anywhere

Employment Services

Waterside House
Town Quay
Southampton
SO14 2NH
t: (023) 80
e: SBS-S.overpayments@nhs.net

10 November 2014
Ref ID: OP-0000-????

Dear Mr. Bloggs

Assignment Number: 00000000

Re: OVERPAYMENT OF SALARY – £4784.33

I regret to inform you that you have ben overpaid between 17 April 2014 and 30 September 2014. The overpayment has occurred because we received late notification of your leaving the organisation.

I would like to apologise on behalf of your employer that we were unable to make the required adjustments before your final salary payment was made.

I must, however, make you aware that your employer has an obligation to recover the overpayment in full. I have therefore included an invoice and a breakdown of the overpayment for your reference.

Payment details are included in the invoice together with the payment terms. Our Debt Management Team can be contacted on 0303 123 1155 if you have any concerns with the invoice.

In the event of queries relating to the overpayment calculation, please contact the Overpayments Team on (023) 8071 1040.

Yours sincerely



Mandy Allen
Overpayments Manager

Enc:

Standard Disclaimer: It is our responsibility to advise you that without prejudice your employer may escalate this overpayment matter to the NHS Local Counter Fraud Service or to its nominated Debt Collection or Credit Control Service. This does not affect any other action, including proceedings in a criminal court which may be taken in this case.

Sample of Breakdown

OVERPAYMENT					
Overpayments Total					
Gross Value	Tax Value	NI	Pen Ees	Other	Net
£ 5,270.36	£200.40	£0	£0	£0	£0

Final Tax Code 1000L C

Salary Received	April-2014	May-2014	June-2014	July-2014	August-2014	September-2014	October-2014	November-2014	December-2014	January-2015	February-2015	March-2015	Total Paid
Basic Pay	952.93	952.93	952.93	966.06	976.87	976.87							5778.59
Sunday Enh	48.25	24.12											72.37
Saturday Enh	72.37												72.37
Add Basic													0
Night Enh	38.60	19.30											57.90
WTD	19.90	5.43											25.33
Business Miles TAS													0
AFC Absence		0.40											0.40
													0
													0
Total Gross	1132.05	1002.18	952.93	966.06	976.87	976.87	0	0	0	0	0	0	6006.96
Pension	0	0	0	0	0	0							0
NI	56.29	40.7	34.79	36.37	37.66	37.66							243.47
PAYE	59.4	33.8	23.6	26.4	28.6	28.6							200.40
Local Pension EE NT	9.06	8.02	7.62	7.73	7.81	7.81							48.05
Student Loan													0
													0
Net Amount	-1007.3	-919.66	-886.92	-895.56	-902.8	-902.8							-5515.04

Salary Received	April-2014	May-2014	June-2014	July-2014	August-2014	September-2014	October-2014	November-2014	December-2014	January-2015	February-2015	March-2015	Total Paid
Basic Pay	508.23	0											508.23
Sunday Enh	48.25	24.12											72.37
Saturday Enh	72.37	0											72.37
Add Basic													0
Night Enh	38.60	19.30											57.90
WTD	19.90	5.43											25.33
Business Miles TAS													0
AFC Absence	0	0.40											0.40
													0
													0
Total Gross	687.35	49.25	0	0	0	0	0	0	0	0	0	0	736.60
Pension	0	0											0
NI	0	0											0
PAYE	0	0											0
Local Pension EE NT	5.50	0.39											5.89
Student Loan													0
													0
Net Amount	-681.85	-48.86	0	0	0	0	0	0	0	0	0	0	-730.71

Sample of Invoice Request

Invoice Request Form

Invoice Number	
SBS Contact details – name	
Telephone No	

Contact Information

VPD	832
Employee	Mr Bloggs
NI Number	
Email address	
Contact Phone Number	
Mobile Number	
Assignment Number	
Address	

Sales Order Information

Order Items	1
Narrative	Late Leaver

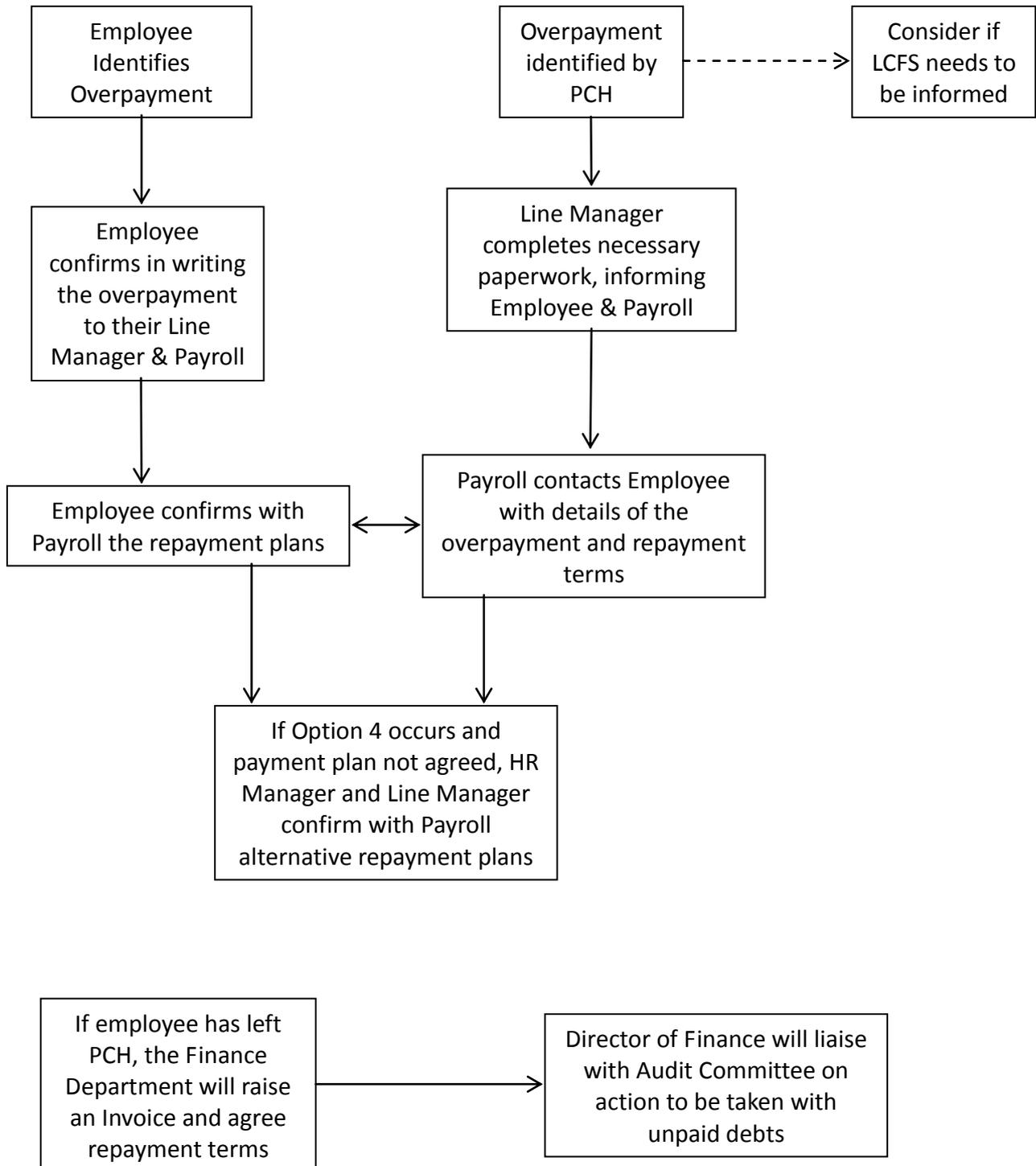
Dates from & to	17 April 2014 to 30 September 2014
Amount	£4,784.33
Quantity	1
Unit of Measure	1
Unit selling price	£4,784.33
Invoice Tax Code	
Department	
Order Total	£4,784.33

G.L. CODE

Sales Order Number (on completion of sales order)

Customer Number

OVERPAYMENT RECOVERY FLOWCHART



USEFUL CONTACTS

SBS Helpline – 0303 123 1144 – open from 8am to 5pm Monday to Friday.

Alternatively, you can find useful information and Frequently Asked Questions on their Website at: <https://www.sbs.nhs.uk/employment-services/employment-services-desk>