

**Repayment Clauses  
Guidance: a guide to  
dealing with repayment  
clauses**

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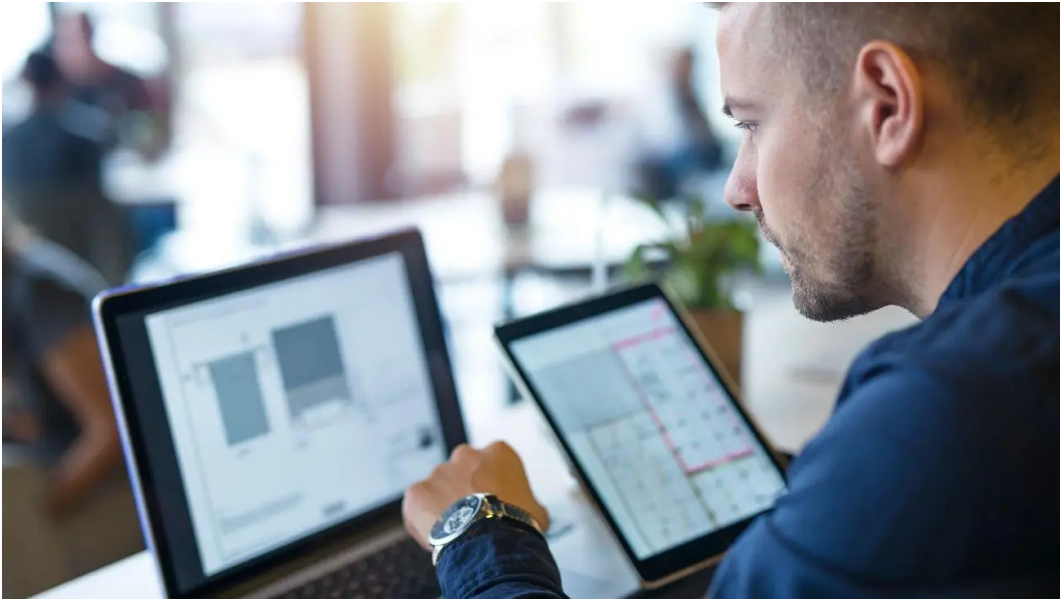
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# Introduction

## 1.1 The role of international recruitment

1.1.1 The NHS has always recognised the important role that international health and care workers play in health and care service delivery in the UK, while remaining committed to ensuring that we recruit them in an ethically responsible manner. International recruitment continues to feature as an important part of the workforce supply strategy of NHS organisations, in line with the [NHS People Plan](#).

## 1.2 Which healthcare professionals are covered by this guidance?

1.2.1 This guidance covers all health and care workers recruited from overseas, who qualify for a skilled worker visa. This includes those under the subcategory of the Health and Care Visa.

## 1.3 Purpose and implementation of this guidance

1.3.1 This guidance was created by NHS Employers to help NHS trusts structure their approach to repayment clauses if they choose to use them. There are legitimate reasons for trusts not to use repayment clauses, and there is no expectation that trusts should use them.

1. Including a repayment clause allows employers to recover some of the costs incurred (such as travel fees) if they do not gain the anticipated benefit, due to the short tenure of the employee.

2. Employees may be reluctant to accept a job offer when they see a repayment clause is included, because they see the benefits accruing only to the employer and not to themselves. However, having a maximum amount to be reclaimed back, will alleviate some of these concerns.

1.3.2 This guidance has been designed to go beyond the basic principles on the use of repayment clauses, as outlined in the Code of Practice for the international recruitment of health and social care in England (CoP), and sets out how NHS trusts can look to implement these principles in practice. As such, some of the additional elements of the guidance are based on employer and other stakeholder feedback and best practice.

# The principles

## 2.0.1 As identified in the government's CoP

1. Transparency - the full scale of the repayment clause and how this will be repaid should be set out clearly to the individual recruited from overseas before the job is formally accepted.
2. Proportionate costs - only costs that the candidate could reasonably have expected to pay themselves should be reclaimed.
3. Timing - the cost should taper down over time, recognising that the candidate is repaying the employer with their service.
4. Flexibility- employers should look to waive repayment clauses in certain circumstances.

2.0.2 In all cases, the employer must identify all potential costs that may be reclaimed, how much this will total, and the timescales for repayment within any offer letters and statements of terms and conditions (sometimes referred to as an employee's contract of employment) as a minimum. As part of this guidance, NHS Employers recommends that a statement of adherence is adopted by the trust and included in any appropriate communications/on the website.

2.0.3 Costs that may be reclaimed must be outlined at the time of issuing a job offer and prior to the candidate accepting and travelling to the UK. NHS Employers recommends that claims for repayment should not exceed a total of £3,000 for all costs and be supported by an itemised list provided on the first day of employment.

2.0.4 The responsibility to inform the individual at the time of an offer of employment may be devolved to a recruitment organisation, agency, or collaboration that is on the Ethical Recruiters List. However, the employing organisation that is responsible for applying for the skilled worker certificate of sponsorship, must assure itself that this information has been shared before the individual has accepted a role.

This is in-keeping with the terms of the CoP, that health and social care personnel will be provided with all the relevant information needed at an early stage of the recruitment process and prior to accepting a job offer.

2.0.5 Candidates should be informed of repayment clauses in a clear and transparent way. This can include, for example, documented discussions during recruitment, electronic guidelines, paper documentation/handbook, or pre-arrival webinars.

Information must be issued before the individual accepts a job offer. As part of induction stage, this could be followed up with additional information sent out once they arrive in country, for example in the statement of terms and conditions (sometimes referred to as a contract of employment).

## 2.1 Transparency

2.1.1 The employing organisation must adhere to the following principles of transparency identified in the CoP

- The repayment clause(s) should be included in recruitment information provided to individuals.

- The repayment clause(s) must be set out in the job offer letter or statement of terms and conditions of employment and explained in full to the candidate before the job is accepted and before they travel from their country of residency. If the repayment clause information is not given to the recruit before accepting the job, then the recruit will not be liable for any kind of repayment.
- The repayment clause(s) must be set out in the statement of terms and conditions of employment and signed by a representative of the employing organisation and by the individual when they arrive in the UK. The clause(s) must be written in plain English and should avoid legal jargon.
- If an overseas recruit decides to voluntarily leave the organisation (see extenuating circumstances), an itemised list of costs to be reclaimed should be provided to show how the amount has been determined.
- Only evidenced and auditable expenses incurred can be reclaimed.
- It must be made clear in the statement of terms and conditions of employment and again at the time of leaving, how the costs will be recouped using an auditable method such as bank transfer or salary sacrifice, if appropriate. Payment in cash is not acceptable.
- Confirmation must be sought that health and social care personnel did not contribute towards the costs/expenses being reclaimed prior to their arrival in the UK.

## 2.2 Proportionate Costs

2.2.1 The employing organisation must adhere to the following principles of proportionate costs identified in the CoP. For a more detailed breakdown, please refer to p17 of NHS Employers International Recruitment Toolkit.



- The cost must include only those expenses met by the employer on behalf of an overseas recruit.
- Expenses costs must not incur any interest on the amount reclaimed.
- Employers should give the recruit the option to repay the costs/expenses through a monthly repayment plan.
- Employers may not know the exact costings of some of the below at the time of issuing an offer letter (such as flight expenses).
- It is acceptable in repayment clauses for employers to state the type of expenses to be expected to be paid, and not the exact amount, and that the total amount of repayable expenses will not exceed £3,000 in total.

## 2.3 Timing

2.3.1 NHS Employers recommends a maximum amount of £3,000 over a maximum of three years. A trust may choose to reduce these or to waive any repayment amounts.

NHS Employers suggests a repayment schedule that follows a structure like the one below (Table 1). A repayment schedule should be for a maximum period of three years.

**Table 1: Example repayment schedule**

Time period of leaving	Example amount which can be chargeable
Within 0 – 12 months	100% of the total itemised expenses, to a maximum of £3,000
13 – 24 months	50% of the total itemised expenses, to a maximum of £3,000 (eg, £1,500 maximum)
25– 36 months	25% of the total itemised expenses, to a maximum of £3,000 (eg, £750 maximum)

For further information, please refer to page 17 of [NHS Employers International Recruitment Toolkit](#).

## 2.4 Flexibility

2.4.1 The employing organisation must adhere to the following principles of flexibility identified in the CoP.

Employers should be flexible about when they levy the repayment clause and consider waiving them in certain circumstances. Each decision should be made on a case-by-case basis. Examples of when a repayment clause should be waived could include:

- Where the health and wellbeing of a health and social care recruit is being adversely impacted by remaining in the trust/UK
- Where the health or social care recruit leaves due to bullying, discrimination, or poor working conditions (which may be confirmed following an independent investigation)
- If a health or social care recruit's circumstances have changed beyond their control, either in the UK or in their home country, such as a death of a partner, close relative, carer which means they must take on other responsibilities
- A trust should not reclaim any monies from an internationally recruited member of staff if they leave their recruiting trust to go to another NHS trust for career promotion and progression because the same opportunities have not been available within the recruiting trust.

2.4.2 Integrated Care Systems (ICS) may decide to have a local agreement to not reclaim any monies, for example where an overseas

recruit applies for a similar role at any organisation within their locality. As the skills are being retained within that community the ICS may choose to decide not to reclaim any monies.

2.4.3 It is proportionate for employers to request evidence to enable them to make an informed decision on whether to recharge or not.

## Retaining and recording information

3.1. Employers should keep evidence of how and when they have informed overseas recruits of the repayment clauses, including if some of these tasks have been delegated to any recruitment organisations, agencies, collaborations on the ethical recruiters list.

3.2. Where there is no evidence of individuals being informed of the terms and conditions of repayment clauses as set out in this guidance then a breach of the code of practice has occurred and no repayment should be claimed.

## Contact information

4.1 If employers have questions about the content of this guidance or what to include as part of their repayment clauses, please contact [internationalrecruitment@nhsconfed.org](mailto:internationalrecruitment@nhsconfed.org).