

## Ombudsman's Determination

Applicant	Mrs K
Scheme	NHS Pension Scheme (the <b>Scheme</b> )
Respondent	Brighton and Sussex University Hospitals NHS Trust ( <b>BSUH</b> )

## Outcome

1. Mrs K's complaint is upheld and to put matters right, BSUH should pay Mrs K £1,000 in respect of the significant distress and inconvenience it caused.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

1. Mrs K received an incorrect estimated retirement quotation in respect of her pension benefits on 12 October 2015. Based on this information Mrs K left her employer and claimed her pension benefits. Mrs K said the lower than expected pension benefits she now receives has left her in financial difficulty.

## Background information, including submissions from the parties

2. Shortly after her 60<sup>th</sup> birthday, Mrs K has said that she met with Mrs Y, the pensions administrator at BSUH on 12 October 2015. The pensions administrator provided an estimated quotation to Mrs K that detailed her expected benefits on retirement.
3. The quotation that was issued incorrectly stated Mrs K's "pay" as £64,878.41 when in fact her correct salary was approximately £20,000 per annum. The standard benefits quoted a pension of £7,018 per annum and a lump sum of £21,056.
4. Mrs K said that the estimate was higher than she had expected, however, she says she asked the pensions administrator if the details were correct and was reassured that they were. Mrs K has explained that she wanted to meet with someone rather than just request a quotation as she did not fully understand how her pension worked.
5. Mrs K has confirmed that based on this information she decided to stop working and claim her retirement benefits.

6. Shortly after receiving the paperwork from NHS Pensions, Mrs K has said that on 4 January 2016 she contacted Mrs Y, as it was she that had provided the original quotation paperwork in the meeting of 12 October 2015. The retirement details from NHS Pensions were more than 3 times less than the quotation she had received from Mrs Y. Initially, Mrs K was convinced that NHS Pensions had the incorrect information, and she wanted Mrs Y to confirm this. Mrs K has said that after 2 weeks she chased up the pensions administrator, and waited a further week until Mrs Y confirmed that in fact it was the quotation issued on 12 October 2015 which was incorrect.
7. Mrs K has said that Mrs Y provided details of NHS Pensions and had explained that as the incorrect “pay” details were taken from them, Mrs K needed to contact NHS Pensions. On contacting NHS Pensions Mrs K was told the error was with BSUH as it had provided incorrect salary information through issuing the quotation.
8. Over the next four months Mrs K contacted NHS Pensions and Mrs Y at BSUH, with both organisations referring Mrs K to the other party.
9. On 3 May 2016 Mrs K wrote to BSUH outlining what had gone wrong and asked for help. The letter specifically states that she had met with Mrs Y and received an incorrect quotation. Mrs K explained that she was trying to work as much as possible to make up her reduced income, and although she was applying for jobs she was struggling financially. Mrs K states:

“I am a bit bewildered by it all, I can hardly believe that this has happened. I am hoping that you can point me in the right direction as to my options”.
10. BSUH failed to respond to this letter.
11. With no response from BSUH Mrs K contacted The Pensions Advisory Service (**TPAS**) who advised her to make an official complaint to both NHS Pensions and her former employer, BSUH, specifically advising Mrs K to obtain complaint forms from BSUH. TPAS advised Mrs K to ensure that she used the word “complaint” in the correspondence, advising her this would ensure her complaint was dealt with appropriately.
12. Mrs K emailed the pensions administrator Mrs Y, without response on 22 July 2016:

“Morning Rachael, I am not sure if you remember me but I was given the wrong pension forecast, I have been back in touch with NHS Pensions who have said that they were given the wrong figures. I have also spoken with TPAS and they have said that I now need to get a complaint form from BSUH. Could you please tell me how and where I request these forms.”
13. Mrs K also emailed Mrs S of BSUH Human Resources on 25 July 2016, with the subject heading “regarding a complaints procedure”. The email specifically asked to be sent complaints paperwork, and confirmed that she was having difficulty getting any help from BSUH.

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14. On 1 August 2016 Mr L, of BSUH confirmed that he was dealing with the email sent to Mrs S and was forwarding the details to Mrs Y, the pensions administrator.
15. On 10 August 2016 Mrs Y wrote to Mrs K in a letter of two sentences. Mrs Y said that the information “sent” by NHS Pensions was incorrect and that she would need to follow it up with them. This letter did not answer any aspect of Mrs K’s complaint and no complaint forms were sent to Mrs K as requested in her two separate emails to Mrs Y and Mrs S.
16. NHS Pensions had responded to the earlier complaint sent to them in May 2016 under their Internal Disputes Resolution Procedure (**IDRP**), writing to Mrs K in June 2016 and again in October 2016 rejecting the complaint. The complaint was brought to The Pensions Ombudsman. NHS Pensions provided further details and evidence that the quotation was initiated by Mrs Y, the pensions administrator at BSUH, and that the quote had been initiated by BSUH on 12 October 2015. Mrs K accepted their explanation and asked that the complaint against NHS Pensions be considered as resolved.
17. After going through the complaints procedure with NHS Pensions and accepting the outcome, Mrs K once again made a complaint to BSUH, emailing both Mr L and Mrs S, with a subject matter heading “complaint about my pension forecast”.
18. The complaint was not treated as a complaint and once again the individual to whom the complaint was about, Mrs Y, was asked to respond to Mrs K’s “query”. Mrs Y responded in an email on 29 March 2017 and said that the quotation was “generated by NHS Pensions and was on their letter headed paper”.
19. Despite no complaint response to Mrs K from BSUH, Mrs K’s complaint was considered within this organisation’s jurisdiction and accepted for investigation, on the grounds that Mrs K had made a specific complaint to BSUH which had never been fully responded to.
20. NHS Pensions confirmed that when an estimate quotation is requested from the system, the “pay” details are highlighted and the employer must press a button on the page to proceed with the quotation. NHS Pensions have confirmed that when meeting with an employee, they would expect the employer to have checked that these details are correct before continuing. The NHS Pensions Online Guide sent as evidence by BSUH confirms that employers are asked to do this.
21. In response to several emails and conversations concerning Mrs K’s complaint, BSUH issued its formal response dated 30 June 2017.
22. In summary it said:
  - The pensions administrator is not required to check that any of the details provided in a quotation are correct. BSUH have said that if the information provided by NHS Pensions was incorrect it was solely the responsibility of Mrs K to have spotted the error.

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- Mrs Y “would not necessarily know the circumstances of the individual employee unless there was a proper meeting and discussion about the quote”.
- BSUH cannot be certain that the pensions administrator, Mrs Y, met with Mrs K.
- BSUH have followed the correct complaints procedure for this complaint because it was a complaint against the Pensions Agency and not BSUH.

### **Adjudicator’s Opinion**

23. Mrs K’s complaint was considered by one of our Adjudicators who concluded that further action was required by BSUH. The Adjudicator’s findings are summarised briefly below:

- Mrs K understood the quotation was an estimate and accepted that she could not be compensated for a financial loss. However, it is clear that she has suffered significant distress as a result of the original error.
- BSUH have not been able to confirm if the 12 October 2015 meeting took place, but the evidence from NHS Pensions suggests Mrs Y uploaded a pension quotation at 10.01am on 12 October 2015. Two minutes after submitting the estimate request for Mrs K.
- The incorrect quotation provided to Mrs K, and incorrect reassurance provided to her by the pensions administrator has caused Mrs K significant distress and inconvenience.
- In Mrs K’s email to Mrs Y dated 22 July 2016 it was very clear that the complaint was against BSUH. Mrs K specifically asked to be sent BSUH complaint forms on the advice of TPAS. This request was ignored and as such resulted in the complaint failing to be recorded and investigated properly.
- In its formal response BSUH argued that a complaint is not necessarily a complaint. This argument is fundamentally flawed. Any correspondence marked as a “complaint” should be treated as such, and cannot be simply handed over to the individual being complained against and dealt with as a “query”.
- Without any investigation by BSUH, it insisted the error was made by NHS Pensions despite Mrs K clearly wanting to complain about BSUH. The approach taken by BSUH has been highly unprofessional and indicates a complete lack of care when dealing with a former member of staff. Mrs K attempted to complain not once but twice. The second time she was specifically complaining after receiving evidence from NHS Pensions that had convinced her fault lay with BSUH.
- The manner in which BSUH handled the complaint has caused significant distress to Mrs K. Because of the error in issuing the incorrect quotation and the failure of BSUH to investigate Mrs K’s complaint on two separate occasions. BSUH should pay to Mrs K

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£1,000 in respect of the significant distress and inconvenience it caused as a result of the maladministration identified.

24. BSUH did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. BSUH provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by BSUH for completeness.
25. BSUH made the following comments, summarised below:
  - The Trust directed Mrs K to NHS Pensions as the error in the quotation was caused by incorrect data provided by NHS Pensions.
  - The delays Mrs K experienced are as a result of NHS Pensions refusal to acknowledge that the error was with them.
  - If a meeting was held between Mrs K and Mrs Y, it would be inconceivable that the salary details would not have been checked and a full discussion would have taken place. Mrs Y is a very experienced employee and would have investigated any discrepancy.
  - BSUH has apologised to Mrs K for the inconvenience and stress suffered, and will be making numerous changes to its policy and procedures. Although it acknowledged it failed in its responsibility to check data, it disagreed with the Adjudicator's opinion to pay any compensation.
  - BSUH will enhance existing procedures to ensure that the responsibilities of the employee, BSUH and NHS Pensions are absolutely clear when providing pension quotes. BSUH will be introducing a secondary check on the salary details on each quotation, asking the employee to check and confirm that the details are correct.
  - BSUH assessment of the complaint is that the errors were made by NHS Pensions, therefore Mrs K was referred to NHS Pensions on each occasion that she made a complaint.

## **Ombudsman's decision**

26. BSUH has recognised that it had a responsibility to check the data and that it failed to do so. However, in earlier communications it had said there was no responsibility on BSUH to ensure the quotation was correct. It is heartening that BSUH are now introducing changes to prevent the same problem arising again. . Nevertheless, I consider it appropriate to compensate Mrs K for the distress and inconvenience that she personally has suffered.
27. Turning to how much compensation is appropriate. BSUH failed to investigate Mrs K's complaint and continue to maintain that it dealt appropriately with the matter raised by her. . I disagree. Mrs K made a specific complaint to BSUH on more than one occasion and her communication was never recorded as a complaint, nor was it

investigated until after Mrs K referred her case to my organisation. I agree that Mrs Y needed to put forward her understanding of what had happened and how the system was supposed to work as between BSUH and NHS Pensions. I also note BSUH's limited staff capacity, but it is fundamental that Mrs Y cannot properly make a decision about a complaint that she personally has failed to administer BSUH's responsibilities properly. Somebody independent needed to consider what had happened and notify Mrs K of their decision about whether her complaint was well founded. I might be sympathetic to BSUH's position if it had indicated a willingness to cooperate with and be bound by the outcome of an investigation carried out by NHS Pensions, but it did not. Therefore Mrs Y was left with no route to redress if she considered that BSUH had made a mistake. She had to persist in obtaining NHS Pensions' investigation and account of the issue and bring her complaint to my office to get the remedy that BSUH could have offered her much earlier if they had had a robust complaints procedure in place.

28. BSUH have now accepted that it had a responsibility to ensure that the key data, which includes "pay" should be checked by them and it has confirmed it will ensure this is done in the future. It has confirmed that it failed Mrs K in this responsibility and accepts this has caused Mrs K inconvenience and stress.
29. I find that in redirecting her to NHS Pensions BSUH failed to treat her complaint as a "complaint" which caused her significant additional distress and inconvenience which was completely avoidable.
30. Therefore, I uphold Mrs K's complaint.

### **Directions**

31. BSUH should pay Mrs K £1,000 within the next 21 days for the significant distress and inconvenience it has caused.
32. BSUH should also write to Mrs K making a formal apology in terms of how it handled her complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
19 October 2017