



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against the Northern Ireland Housing Executive

NIPSO Reference: 16797

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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EXECUTIVE SUMMARY

1. I received a complaint regarding the actions of the Northern Ireland Housing Executive (the NIHE) relating to improvement works to a tenant's residence, how the NIHE communicated with him about these works and how it handled his complaint.

Issues of Complaint

2. I accepted the following issues of complaint for investigation:
 - Issue 1: Did the NIHE appropriately manage repairs and improvement works to the tenant's home?
 - Issue 2: Did the NIHE appropriately manage the planned area kitchen scheme in respect of the tenant's home?
 - Issue 3: Communications between the NIHE and the tenant
 - Issue 4: The NIHE's handling of the complaint

Findings and Conclusion

3. The investigation of the complaint identified maladministration in respect of the following matters:
 - Failure to keep records of inspection visits
 - Failure to act promptly and re-categorise bathroom repairs as urgent
 - Failure to act upon cancellation of job by contractor
 - Failure to act when alerted that repairs were outstanding
 - Failure to keep bathroom repairs under review
 - Delay in completing bathroom repairs
 - Failure to have regard for the complainant's human rights in terms of his disability
 - Failure to record reasons for decisions regarding whether Occupational Therapist (OT) input was required or was not required
 - Failure to act in accordance with obligations in Tenancy Agreement
 - Failure to adequately follow up on OT referral
 - Failure to keep records of telephone calls with the tenant

- Failure to adhere to the NIHE Equality Scheme and the Equality Commission for Northern Ireland's Code of Practice for Disability Discrimination Act 1995 in not honouring tenant's request for communication by email
- Failure to identify failings in service at local resolution
- Delay in response at the second stage of the Complaints Process.

4. I did not find maladministration in respect of:

Issue 1:

- Requirement for OT involvement
- OT recommendations ignored

Issue 2:

- Requirement for OT involvement

5. I am satisfied that the maladministration I identified caused the complainant to experience the injustice of uncertainty, frustration, upset, and time and trouble in bringing his complaint to this Office.

Recommendations

6. By way of remedy for the injustice I recommended the NIHE's Chief Executive provides the tenant with an apology for the failings which I have identified above.

7. In addition, I recommended that the NIHE make a payment of £750 by way of solatium for redress in respect of the injustice identified.

8. I considered there were a number of lessons to be learned which provide the NIHE with an opportunity to improve its service, and to this end I recommended that the NIHE:

- Make additions to record keeping arrangements for maintenance visits to include a record of the Maintenance Officer (MO's) additional comments and if repairs require re-categorisation
- Put in place a review process for jobs cancelled by a contractor
- Put in place a system of record keeping regarding why OT referrals are required

in a particular case

- Put in place timescales for follow up of OT assessments
- Make changes to computer generated correspondence to tenants so that the language is understandable
- Remind staff in the Ballymena Local Office of the requirement for record keeping, in particular in relation to telephone calls
- Provide training to relevant Ballymena Local Office staff regarding NIHE's Internal Complaints Procedure, in particular regarding the focus on early resolution
- Carry out an audit in relation to the operation of the Ballymena Local Office in relation to response maintenance over a period of three months and kitchen replacement schemes over five schemes

9. I recommended that the NIHE implement an action plan to incorporate these recommendations and should provide me with an update within three months of the date of the final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

10. I am pleased to note that the NIHE accepted my findings and recommendations. In response to my draft report, the NIHE gave a commitment to engage with the Trusts to re-establish quarterly meetings with OT's and ensure that outstanding requests are included on the agenda.

THE COMPLAINT

11. The complainant is a Northern Ireland Housing Executive (NIHE) tenant and is registered as a disabled person under section 1 of the Chronically Sick and Disabled Persons (NI) Act 1978. He contacted the NIHE on 9 July 2015 requesting repairs to the bathroom of his residence. He complained to this Office that there was an unreasonable delay in carrying out these repairs and that his residence was unreasonably removed from an area kitchen replacement scheme facilitated by the NIHE. He further complained about how the NIHE communicated with him regarding both of these issues and how it subsequently handled his complaint.

Issues of complaint

12. The issues of the complaint which I accepted for investigation were:

- Issue 1: Did the NIHE appropriately manage repairs and improvement works to the tenant's home?
- Issue 2: Did the NIHE appropriately manage the planned area kitchen scheme in respect of the tenant's home?
- Issue 3: Communications between the NIHE and the tenant
- Issue 4: The NIHE's handling of the complaint

INVESTIGATION METHODOLOGY

13. In order to investigate the complaint the Investigating Officer obtained from the NIHE all relevant documentation, together with the NIHE's comments on the issues raised by the complainant. This documentation included information relating to the NIHE's handling of the complaint.

Relevant Standards

14. In order to investigate complaints I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

15. The general standards are the Ombudsman's Principles:

- The Principles of Good Administration¹
- The Principles of Good Complaint Handling

These are set out in full in the Appendices to this report.

16. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of those organisations and individuals whose actions are the subject of this complaint. The specific legal requirements and standards relevant to this complaint are:

- Chronically Sick and Disabled Persons (Northern Ireland) Act 1978
- Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006)
- NIHE Adaptations Design Communications Toolkit
- NIHE Response Maintenance Manual
- NIHE Internal Complaints Procedure

I have included relevant extracts from these documents within the report.

17. I have not included all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings. The complainant and the NIHE were both given the opportunity to see and comment on a draft of this report before the final version was issued.

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

MY INVESTIGATION

Issue 1 - Did the NIHE appropriately manage repairs and improvement works to the tenant's home?

18. The tenant contacted the Customer Service Unit (CSU) of the NIHE by telephone on 9 July 2015 stating he required repair works to the bathroom of his residence. He reported that the tiles were coming off the bathroom wall, the shower grab rail required repair and that the shower seat was rusted. He stated he first noticed the requirement for repair 'at the start of 2015' and took the decision to report it 'after the seat started to come lose (sic.) and a screw had fallen out of it'. He stated that when the bathroom was first inspected by an NIHE officer, he told them that he believed the shower to be unsafe. He complained there was delay in the repairs being completed.
19. He also complained there was unnecessary involvement from an Occupational Therapist (OT) and when the OT's recommendations were received by the NIHE they were ignored. Specifically, he complained that the OT had recommended a replacement of a stud wall with a brick wall and that four grab rails be replaced.

NIHE Adaptations Design Communications Toolkit (the Toolkit)²

20. I note that section 2 of the Toolkit lists property adaptations that do not require an OT referral. Relevant to this complaint is listed '*Handrails/grab-rails in bathrooms, bedrooms etc.*'
21. I also note at page 8, the Toolkit states:
- 'Should the housing provider identify potential health and safety issues requiring professional assessment an OT recommendation may be sought at their discretion. However the provider must ensure that any such referrals are reasonable and justified so as not to create unnecessary delays for the client waiting for adaptations'*

² The Department of Health, Social Services and Public Safety (DHSSPS) and the Department of Social Development (DSD) have endorsed the Toolkit as best practice guidance for cross sector housing adaptations design benchmarking, interagency communication protocols and the provision of minor housing adaptations which do not require HSC Trust Occupational Therapy Assessment.

NIHE Response Maintenance Manual (the Manual): Minor Adaptations for People with Disabilities

22. I note in the section entitled 'Procedure', the Manual states:

'When a referral to the local Health & Social Services Occupational Therapy Unit is necessary, the job should be keyed onto the Repairs System using the Adaptation work flow. This and any subsequent activity will generate correspondence to the Occupational Therapist (OT).'

23. The Manual further lists adaptation works that may be completed without requiring an OT referral. I note *'Automatic W.C. Pan & Cistern (Closomat)'* are listed as requiring an OT referral. I further note that *'Fit shower seat'* and *'grabrail fitted'* are listed as requiring an inspection only.

24. Documentation was provided by the NIHE in response to enquiries from my Investigating Officer. The documentation included screenshots from the NIHE's computer program, the Housing Management System (HMS), and correspondence between the tenant and the NIHE, including photographs sent to the NIHE by the tenant. The documentation was examined and a chronology of events relating to the bathroom repairs was prepared. In addition, the repair jobs issued can be summarised as follows:

Job number	Issued	Cancelled
2816960	9/7/15	12/8/15
3189717	23/2/15	1/6/16
3255328	2/4/15	20/5/16
3409775	18/7/16	Completed

25. As part of the investigation enquiries the NIHE confirmed that when the tenant contacted the CSU on 9 July 2015 an 'inspection' was raised on the HMS and job number 2816960 was allocated to it. The NIHE stated the repair categorisation was determined by a staff member in the CSU and was *'...guided by the information received from the tenant on the condition of the defect and any damage or any risk*

to the tenant and the property'. In this case the NIHE confirmed that this original request was considered as a 'repair' and was categorised as 'routine'. An inspection appointment was booked for a Maintenance Officer (MO) to inspect the property on 20 July 2015. The NIHE provided evidence of SOR (Schedule of Rates) codes³ which were entered onto the HMS following the inspection visit, and confirmed that with the introduction of mobile tablets in March 2015, the need for paper notes was eliminated.

26. I note from the records that following the inspection on 20 July 2015 the 'job' was issued to a contractor retained by the NIHE. I also note on 12 August 2015 the job was cancelled by the contractor. The NIHE state the contractor '*referred the issue back to the local office*', with a note stating '*cancelled – End of Job Comments: refer to MO. Can't replace shower seat as it is fitted to a stud wall refer to MO*'.

27. The Investigating Officer made further enquiries of the NIHE regarding the cancellation of the job by the contractor, and was referred to the contract which is in place between the NIHE and the contractor. I note the contract provides for cancellation of a job by the contractor for two reasons, namely:
*'- The contractor cannot gain access to the property on two visits, or
-The contractor cannot complete the job for the reasons of abortive call being applied'*⁴

28. The NIHE further clarified '*if there is any other reason the contractor feels he can not complete the job he should contact the Maintenance Officer directly to discuss the way forward, e.g. change the details of the job...or cancel the job*'

29. The NIHE confirmed in this case the MO accepted the cancellation '*on the grounds the works ordered could not be undertaken without further investigation, and therefore it was accepted that the 'abortive call' reason applied*'. The NIHE further stated that it would have expected the contractor to contact the MO before cancelling the job.

³ These codes outline what expenses are required to be raised as a result of the repair

⁴ This relates to when the job has already been completed or the tenant refuses entry to the contractor

30. The NIHE informed me that a weekly 'cancelled jobs' report is circulated to the Area Maintenance Manager (AMM) to allow cancelled jobs *'to be considered for further action'*, and that *'no action had been taken on this report'* when the tenant's property featured.
31. In response to further enquiries raised regarding this issue, the NIHE stated *'when the contractor referred this to the [MO], there is nothing on the file to suggest that the [MO] took any action to find a solution to this referral. I apologise for this oversight'*.
32. The NIHE also stated the tenant contacted it on 15 September 2015 enquiring as to progress and as a result the 'job' was reissued. I also note an NIHE official recorded on HMS that they had sent an email to *'MO, DMM [District Maintenance Manager] and LO [local office] to follow up'*.
33. The Investigating Officer requested copies of this correspondence and the NIHE stated that none could be provided. It further stated *'there is nothing in the file to indicate that any action was taken by [NIHE] after 15th September 2015 until the tenant contacted [NIHE] again on 26 January 16.'*
34. The NIHE explained that the tenant phoned CSU on 26 January 2016 to enquire about the progress of the bathroom repairs. The records show that he was informed the MO would look into it. It is recorded also that he contacted CSU again on 23 February 2016 to *'chase bathroom repairs'* and the HMS note stated *'Can you reissue [job] as the tenant rang today to enquire'*. I note this job was allocated job number 3189717.
35. The NIHE confirmed the OT advised she received a referral from the tenant's GP and carried out a home visit on 9 March 2016, which led to the OT advising the NIHE local office of same. The NIHE stated *'it seems it was the OT referring the matter to [NIHE] rather than the other way round'*. When the tenant contacted the NIHE again on 2 April 2016, the NIHE stated that *'the [CSU] explained to him about the stud wall fixing for the shower seat, and undertook to contact a maintenance officer to look into what could be done...a job was raised'*. I note this job was allocated job number 3255328.

36. The NIHE further stated an MO visited the tenant on 20 May 2016, who established ‘OT involvement was necessary’, and job number 3255328 (issued on 4 April 2016) was therefore cancelled. I note the following entry on HMS dated 24 May 2016:

‘This job is with the OT...as there are many issues involved...until recently [the tenant] insisted that there should be no OTs on the project, only recently has he allowed OT involvement. We have taken the view that without OT involvement NIHE cannot be involved’.

37. The NIHE stated this record indicates the reason an OT had been ‘brought in’ was because ‘the existing arrangement in the bathroom was not suitable for the tenant’s needs... the job notes seem to indicate that he had specifically asked that the OT not be involved prior to this, although there is no mention of this in previous job notes’.

38. I note the NIHE stated ‘The tenant was admitted to hospital about this time and, on his discharge, the OT has noted that a joint visit was arranged...it is not clear exactly what date this took place but must have been sometime between 24 May and 31 May 2016’.

39. Following this, I note the OT recommendations were received by the Local Office (LO) (Ballymena) of NIHE on 24 June 2016. I shall discuss the recommendations made by the OT at a later point in this report. I note following receipt of the recommendations the NIHE stated there was a visit to the property on 18 July 2016 by the MO and a new ‘job’ was entered (3409775) for the works on HMS as follows: ‘Request for replacement of grab rails, closomat WC and widening of bathroom door – removal of old rusted shower seat. It is not feasible to install a wall mounted shower seat in the ex-site situation as this would involve substantial plumbing works underground servicing as well as masonry works... a freestanding seat should be provided by the OT. The NIHE confirmed that these works ‘should have been categorised as adaptations because [the job] was raised through OT referral’.

40. In response to the Investigating Officer’s enquiries, the NIHE provided a list of works which were passed to the contractor on 19 July 2016. I have examined the list of

works as part of this investigation. The NIHE confirmed that this list was noted as completed following an inspection by the NIHE on 14 November 2016.

41. In response to the complaint about the delay in carrying out repairs, the NIHE stated *'overall the delay resulted in lengthily (sic.) nature of OT waiting lists, it can take some time to receive recommendations. The OT explained the reason for the delay was due to the time involved in obtaining a quote for an automated door entry system'*. The NIHE later stated *'it is not acceptable that the tenant was left with no repair work undertaken in his bathroom from his original request in July 2015 until the more permanent solution was completed in August 2016. I have asked that procedures be looked at to take a more pro-active approach to considering temporary repair work in such a situation and in line with our normal response times, even where staff identify that OT involvement is necessary'*.
42. The Investigating Officer made enquiries of the NIHE regarding the procedure around OT referrals. The NIHE confirmed *'if a request is received by NIHE for provision of adaptations, a job is created on the HMS which has a specific build-in (sic.) workflow for this type of work. This workflow creates an OT request which is printed out and forwarded to the relevant Occupational Therapist at the local Health Board'*. The NIHE provided the Investigating Officer with an internally circulated 'Quick Reference Guide' for staff use when entering 'jobs' on HMS. This document includes screenshots of the HMS showing how a letter is populated to the OT. The NIHE further stated that it *'does not have policy for follow-ups for minor adaptations or work carried out under Response Maintenance, but the practise (sic.) at Local Office level would be for the Maintenance Officer to review jobs on his work list and to follow-up outstanding jobs with a reminder to the Occupational Therapist before closing the job.'*
43. In response to an enquiry raised by the Investigating Officer regarding completion timescales, the NIHE referred again to the contract in place between the NIHE and the contractor. Section 7.7 provides for response times and states that the time to completion from receipt of job request is three weeks for routine works. I note the timeframe for urgent repairs is 4 days.

44. In response to further enquiries made regarding bathroom repairs, the NIHE accepted *'there is nothing on file to suggest that the minor repairs requested in July 2015 could not have been swiftly dealt with in terms of, at least, repairing the tiling and securing the grab rails...the rusted seat could have been removed/or temporarily repaired and the shower enclosure cleaned up, at the same time asking the [MO] to arrange for the OT to look at alternative temporary provision of a loose/freestanding seat in the shower'*.
45. The Investigating Officer asked for the NIHE's comments on the length of time taken to complete the bathroom repairs. The NIHE responded that *'the original request in July 2015 should have resulted in some of the work being completed within 3 weeks'*. It further commented *'there was nothing on the file to suggest that the bathroom repairs originally requested by the tenant should be subject to OT referral...the other repairs – grab rails; seat and tiling...should have been carried out regardless, with only the fixing of the seat being a technical matter that could have been solved...or accepting that a free standing seat would suffice. There is nothing indicating that these two options were discussed in around July 2015.'*
46. The Investigating Officer asked the NIHE to outline how it had regard to the tenant's human rights in the processing of the bathroom repairs. The NIHE responded that it gave regard to his rights *'by investigating a repair order on notice by him that repairs were required'*. The NIHE also outlined that the OT referral *'indicated that more extensive works were required than he had originally requested'* and *'his GP requested the OT referral to look at [his] needs, including using the bathroom, which resulted in more substantial works to adapt the bathroom arrangement for his specific needs'*.

OT Recommendations on proposed Housing Adaptations dated 22 June 2016

47. This document has been completed and signed by the OT allocated to the tenant's case. It contains a list of adaptation recommendations as follows:
- 'Provision of showering and toilet facilities within existing shower room. Client requesting that major extension not carried out.*
- Please investigate showering from w.c. pan. ie shower controlled from w.c. seat*
- Replacement of rusting rails.*

Removal of existing rusted shower seat and replacement of similar if no other option.

Provision of closomat w.c. Seal height 21'.

Provision of wider bathroom door.

Please liaise with COT re proposed changes. As per visit with [MO]

Thanks.

[OT]'

48. The Investigating Officer made enquiries of the OT involved in this case. The OT stated *'a referral was not received from the NIHE in relation to the tenant's bathroom repair. Recommendations were made by me following a visit with the tenant after his discharge from hospital'*. The OT also stated that he contacted their department on 15 March 2016 raising maintenance issues with *'rails, tiles and dampness'*. The OT further stated *'on 19.05.16 a joint visit was carried out with the client and [an NIHE official] to look at bathroom repairs'*.

49. The tenant accepted the standard NIHE terms and conditions of tenancy on 4 April 1997. I note the Tenancy agreement relating to his property and in particular the following extract:

'4. The Housing Executive grants and the above named tenant accepts, on the terms and conditions set out in the Executive's general conditions of tenancy (1989 edition), the tenancy of the above mentioned dwelling.'

50. The NIHE stated the Tenancy conditions have been in place since 1989. In particular I note the following relevant extracts:

'Part II Landlord's Obligations

The Housing Executive Promises As Follows:

Landlord's Repairs

(1) To keep in repair the structure and exterior of the dwelling

(2) To maintain any item in the dwelling which is a Housing Executive responsibility

...

(e) The Housing Executive is not under any duty to carry out any work by virtue of its obligations to repair or maintain until a reasonable period has elapsed'

51. I note Schedule 4 of the standard Tenancy conditions outlines the NIHE responsibilities and tenant responsibilities and within the heading 'plumbing repairs' is listed '*baths and sinks (except where cracked through fair wear and tear or faulty installation).*'

Analysis and Findings

52. As part of the investigation of the complaint the NIHE was asked to produce any notes or records relating to the MO's inspection of the tenant's home on 20 July 2015. The NIHE provided information submitted to the HMS at the inspection visit (paragraph 24 refers). There is no clear evidence of the condition of the property at the MO visit. There is no evidence of the extent of the bathroom repairs required and why OT involvement was not considered necessary at this time. It would have been appropriate to record in detail the inspection and the MO's findings. Recording of such considerations is a key tenet of good administration, and a 'shield' for a public body to defend its actions when challenged.

Finding: I consider the failure to do so is contrary to the third Principle of Good Administration, which requires public bodies to be 'open and accountable' by 'keeping proper and appropriate records' and this failure constitutes maladministration.

53. I accept that no OT referral was made following the inspection visit on 20 July 2015. I have viewed photographs taken by the tenant in June 2016, almost one year after the repairs were first inspected. The tenant complained to the Investigating Officer that '*the shower was in that state when [he] first complained*'. I consider it reasonable to assume that there may have been a health and safety risk when the property was first inspected, and the MO ought to have given consideration to an OT referral at that stage. Such actions would comply with the Toolkit which allows for discretion in relation to OT referrals. I consider that given the tenant's disability it may have been even more difficult for him to manage without a working shower seat. I therefore consider the NIHE ought to have identified a requirement to act promptly in relation to these repairs. I am satisfied based on the evidence that the MO could have re-categorised the repairs to 'urgent' after the inspection on 20 July 2015. I

consider this ought to have been done. I note a quicker response time was available for urgent repairs.

Finding: I consider the failure to identify the need for prompt action and the failure to recategorise the repairs are failures contrary to the second Principle of Good Administration, 'Being customer focused', which requires public bodies to deal with people '*helpfully, promptly and sensitively, bearing in mind their individual circumstances*'. I consider these failures to constitute maladministration.

54. The NIHE confirmed that the contractor cancelled the job because the works could not be undertaken. It is not a matter for me to comment on whether it was appropriate for the contractor to have cancelled the job. However, I can comment on the actions taken by the NIHE in relation to the cancellation.
55. The NIHE accept that it had been made aware that the job had been cancelled through the weekly 'cancelled jobs' report, however no action had been taken following receipt of the information. I am critical of the NIHE for not taking any follow up action, particularly considering staff were aware that the bathroom was in poor repair following the inspection on 20 July 2015, and that the tenant had reported that he thought the shower was dangerous to use. I consider that the failure to act on the notification of cancellation was a missed opportunity to improve the tenant's living standards, is contrary to its stated repairing obligations, and is contrary to the first Principle of Good Administration, 'Getting it Right'. This principle requires public bodies to '*provide effective services*'. I consider the standard has not been met in this instance.
56. I note that following the tenant contacting the NIHE on 15 September 2015 he was informed the job was reissued. The investigation has not uncovered any evidence of the job being reissued at this time. I note he was also informed by the NIHE that officials were contacted to follow up the job. However, the investigation did not uncover any evidence of such contact being made. I therefore conclude when the tenant contacted the NIHE on 15 September 2015 alerting staff to outstanding repairs, no action was taken. This is supported by the NIHE's comments in relation to this issue. I consider this a further missed opportunity to improve the tenant's use

and enjoyment of his home, and contrary to the second principle of Good Administration, 'Being Customer Focused' which requires a public body to deal '*with people helpfully, promptly and sensitively, bearing in mind their individual circumstances*'.

Finding: I consider this failure to constitute maladministration.

57. I note when the MO attended the tenant's property on 18 July 2016 a note was made regarding why the wall mounted shower seat could not be replaced. It is clear to me that this information was already known to the NIHE following the contractor's cancellation of the job in August 2015. The investigation has not found evidence as to why some of the repairs could not have been carried out whilst the shower seat replacement was being considered, hence negating some of the delay. I am pleased to note the NIHE acknowledge that more could have been done to assist the tenant in the interim period.

58. I also note there was a delay of some six months between the contractor cancelling the job and the NIHE taking any further action in relation to the bathroom repairs (from August 2015 until February 2016). I note that no action was taken by the NIHE during this time, despite staff being aware that repairs were outstanding and that the tenant was a vulnerable individual. I am critical of the NIHE for not keeping the tenant's bathroom repairs under review and for incurring the significant delay.

Finding: I consider both of these failures are contrary to the second Principle of Good Administration, 'Being Customer Focused' which requires a public body to 'keep to its commitments', and constitutes maladministration. I therefore uphold this element of the complaint.

59. The first Principle of Good Administration is 'Getting it Right' which requires public bodies to act in accordance with the law and with regard to the rights of those concerned. With this in mind, the investigation of this complaint has caused me to consider how the NIHE had regard to the tenant's human rights. NIHE stated in response to investigation enquiries that it gave regard to the tenant's rights by investigating the repair obligation pursuant to the Tenancy Agreement. The investigation has not, however, uncovered evidence that in assessing the repairs the NIHE took account of the tenant's specific requirements due to his disability: that he

needed the use of a safe shower seat and bathroom facilities as he had no alternative. The failure to assess his circumstances demonstrates the NIHE did not have regard for the tenant's human rights in terms of his disability.

60. I note the NIHE originally stated the delay in carrying out bathroom repairs was due to a delay in receiving the OT recommendations. I also note in contradiction, the NIHE stated it did not make an OT referral in relation to bathroom repairs. I accept that the OT only became aware of the issues with the tenant's bathroom when his GP made a referral in March 2016. I am critical of the NIHE for citing OT waiting lists as a reason why repairs were not carried out expeditiously, when in fact the OT had not been consulted

61. I further note on 20 May 2016, the NIHE identified that OT input was necessary. The requirement for OT input had already been identified by the tenant's GP in March 2016, and the process was underway. The investigation has not found evidence of the reasons behind the NIHE decision that OT input was considered necessary at that point. I also note that the tenant's circumstances had not changed in the period between his reporting the required repairs, and this date. Due to the absence of records on the issue of whether or not OT input was required, I am unable to conclude on how the decision to have OT involvement was made.

Finding: I consider this failing is contrary to the third Principle of Good Administration, 'Being Open and Accountable' which requires public bodies to keep '*proper and appropriate records*'. I consider this failing constitutes maladministration.

62. Both the NIHE and the OT confirmed a joint visit took place at the tenant's property. The NIHE were unable to confirm the date of the visit. I am critical of the NIHE for the absence of a record of this meeting. I note both the NIHE and the OT stated the recommendations were received on 24 June 2016. I am pleased to note a short time thereafter (18 July 2016), the NIHE carried out a further visit to the property to progress repairs.

63. The tenant complained that the involvement of the OT was unnecessary and he believes this caused delay. I note this assertion is also recorded in a HMS entry

provided by the NIHE. However there is no detail of this. There is no NIHE record of the date that the tenant expressed concern regarding OT involvement. I consider the NIHE ought to have communicated to him why an OT assessment was necessary. I have had regard to the detail in the Manual. It is clear that OT input was required as the list of works that can be completed without OT input does not include replacement of a shower seat. Notwithstanding that some works could have been completed without OT input, on the basis of the Manual, I consider the OT's assessment would have been required from the original inspection on 20 July 2015. I note that the tenant complained that because of his disability, the repairs took longer. The investigation has found that the involvement of the OT did cause delay between March and June 2016 because previously the OT was unaware of the issues. I am satisfied that an OT assessment was required in this case and the delay was due to the failure of the NIHE to address this issue at an earlier stage.

64. I note the repair request raised by the tenant resulted in four different 'jobs' being raised by NIHE staff on the HMS. I note that three jobs were subsequently cancelled. I consider this had the potential to prolong the repairs process. This had an effect on the tenant's understanding, which I will return to later in this report.

65. The tenant complained that the NIHE ignored the recommendations of the OT when it received them on 22 June 2016. I have considered the recommendations made by the OT and also a list of works which were marked as completed by the NIHE. I note that they are similar. However the NIHE list is understandably more detailed because it properly contains work specifications. The investigation has not uncovered evidence that the OT recommended replacement of the stud wall with a brick wall, as suggested by the tenant. Further there is no evidence that the OT recommendations were ignored.

Finding: I do not uphold this issue of the complaint.

66. I note the conditions of the tenancy which related to the property contain an obligation on the NIHE to carry out repairs and maintain items for which it is responsible. I am satisfied on the basis of available evidence that the NIHE was responsible for the repairs to the tenant's bathroom. I further note the repairs took a total of fourteen months to complete. I consider the repairs were not carried out

within a reasonable time. Therefore I find the NIHE did not act in accordance with its contractual obligations specified by the Tenancy agreement. I further consider this failing is contrary to the first Principle of Good Administration, 'Getting it Right' which requires public bodies to act *'in accordance with the law and with regards for the rights of those concerned'*.

Finding: I consider this failing constitutes maladministration and therefore uphold this issue of the tenant's complaint.

67. I am satisfied that as a result of the maladministration I have identified above the tenant suffered the injustice of frustration and uncertainty in relation the completion of repairs to his bathroom. He also suffered the injustice of uncertainty and frustration regarding the NIHE's repair processes. I have made recommendations to remedy this injustice in the conclusion of this report.

68. In addition, the first principle of Good Administration 'Getting it Right' – acting in accordance with the law and with regard for the rights of those concerned – requires public bodies to have 'regard for rights' and that a failure to do so will attract my criticism. In particular, I take account of the photographs of the tenant's showering facilities. The investigation did not uncover evidence regarding how the NIHE took his human rights into account when dealing with his request for repair work. I trust they will take learning from this experience.

Issue 2- Did the NIHE appropriately manage the planned area kitchen scheme in respect of the tenant's home?

69. The residence was originally included in the NIHE Ahoghill / Broughshane & Rurals Kitchen Replacement Scheme operated by the NIHE. On 2 June 2016, the property was removed from the scheme. The tenant complained about this and the fact that there was a referral made to an OT without his consent. He further complained that as a result there was delay in his kitchen being replaced.

Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (the 1978 Act)

70. I note section 3 of the 1978 Act provides that:

'The Northern Ireland Housing Executive when considering the needs of any district with respect to the provision of further housing accommodation shall have regard to the special needs of chronically sick and disabled persons, and any proposals for the provision of new housing shall distinguish any houses which the Executive proposes to provide which make special provision for the needs of those persons'

Adaptations Design Communications Toolkit (the Toolkit)

71. I note the following extract at page 4 of the Toolkit:

'Assessment of needs in relation to housing adaptations in Northern Ireland is led by HSC Community Occupational Therapists as the HSC nominated officers to deliver this statutory duty'.

NIHE Response Maintenance Manual (the Manual): Minor Adaptations for People with Disabilities

72. As previously stated (paragraph 22 refers), the Manual provides a list of adaptations that can be carried out without the need for OT input. I note that the redesign of a kitchen and provision of automated door opening is not included within this list. I also note that *'widen door opening(s)'* is listed as requiring a pre-inspection with appointment by the NIHE.

73. As part of the investigation of the complaint documentation was provided by the NIHE. The documentation included screenshots from the HMS. The documentation was examined by the Investigating Officer and a chronology of events relating to the kitchen replacement scheme was prepared.

Response to enquiries

74. The NIHE stated the property was originally included in a kitchen replacement scheme which commenced in March 2016 and was due to complete in August 2016. It confirmed that the property was removed from the scheme on 2 June 2016 and stated *'in the absence of OT input kitchen works could not proceed'*. The NIHE also stated *'NIHE would attempt to incorporate any additional needs into an improvement scheme where this is possible. If this is not possible then the additional need would be addressed separately through the adaptations programme'* and *'a referral was made to the OT department and a decision taken that on conclusion of OT*

recommendations regarding the kitchen, the improvement would proceed as a separate adaptation scheme or be included in the next kitchen scheme in the area depending on the required works.'

75. The NIHE clarified that when a consultation visit was carried out by the contractor on 18 January 2016, the need for OT input was first identified. In particular, the contractor identified that there were issues with the turning bay in the kitchen.

Emails exchanged

76. Following this there was an exchange of emails between the contractor, the surveyor and the NIHE regarding the OT referral. There is evidence that a member of the contractor's staff emailed the surveyor, who in turn (on 19 January 2016) informed the NIHE of the issues relating to the kitchen. The email sought NIHE input. I note an exchange between NIHE staff on 10 February 2016 when an officer was asked to request an OT 'report' and the NIHE informed the surveyor '*the tenant is in the process of getting an OT visit arranged*'. In response to enquiries made by the Investigating Officer, the NIHE stated '*there is no information that indicates any action taken between 19 January 2016 and 10 February 2016 in relation to the tenant's kitchen replacement*'.

77. I note on 12 February 2016, an OT referral form was completed by NIHE staff. There is a record on the form of a question as to whether the client consents to the referral and 'yes' is ticked.

78. I note the next email sent was from the contractor to the surveyor on 18 March 2016 seeking an update. The NIHE stated that '*the consultant didn't pursue this with Housing Executive staff until 9 May 2016*'. On this date, I note an email sent from the contractor to the surveyor seeking an update. I also note the surveyor forwarded this email to the NIHE. I further note on 10 May 2016, an NIHE official emailed the contractor stating:

'I have spoken to the tenant regarding the possibility of OT recommendations for his kitchen but he is adamant that he did not want me to refer him to the OT Dept. '

79. It was following this email that I note a decision was taken by the NIHE to have a preference for OT input and it stated the referral was sent again *'to expedite the original request and to ensure it was received'*. I note the contents of a copy of a referral form within the file dated 20 May 2016. This document also poses the question as to whether the client consents to the referral and 'yes' is ticked.
80. The NIHE stated *'on 1 June 2016 [an NIHE officer] undertook to contact the tenant again. Following this visit, she identified that the property may need a kitchen extension. She followed up with the OT and found that the OT had not had the opportunity to look at the referral due to long waiting lists'*
81. The NIHE further stated that it checked on the progress of the OT referral by contacting the relevant department on 29 December 2016. It stated *'the OT explained the reason for the delay was due to time involved in obtaining a quote for an automated door entry system'*. Further, an email from the OT to the NIHE dated 16 January 2017 apologising for the delay and stated *'there were other on going complex issues with the tenant and the kitchen adaptations were not the priority at that time...his ability to manage the bathroom facilities were more of a concern. The delay in making recommendations were unfortunately also related to arranging assessment for automated door entry into the kitchen area and subsequent correspondence within our service'*.
82. In a later response to enquiries made by the Investigating Officer, the NIHE stated *'there is nothing on the file to show that the Housing Executive sent reminders to the OT during this delay. I have asked my staff to review their processes to address this'*. It further stated *'it appears more could have been done to follow up the need for an OT report after it was suggested by the contractor in January 2016...the delay between the survey in January 2016 and a new kitchen fitted by February 2017 was not acceptable, particularly given that the other properties in the scheme were all completed by October 2016'*. It finally stated *'our processes should be reviewed taking the customer focus as a core matter and our obligations to ensure we treat people equally...I would like to express my apologies to the tenant for any upset or unnecessary stress caused'*.

83. In response to enquiries made regarding the current status of the replacement of the tenant's kitchen, the NIHE stated that on 6 March 2017 works have been completed and the tenant is very happy with the end result.

Change Control Form dated 6 June 2016

84. I note this document reflects the action of omitting the tenant's property from the kitchen scheme. It states '*property requires adaptations to both kitchen and bathroom*' and is signed by two NIHE officers.
85. The Kitchen Replacement Scheme Consultation/Order Sheet was completed and signed by a member of staff from NIHE's contractor's office. It has also been signed by the tenant, and the form is dated 18 January 2016. I note in the 'other comments' section of this form, a note stating '*need kitchen designed – query O/T input*'
86. The OT recommendations on proposed housing adaptations dated 21 December 2016 was completed and signed by the OT assigned to the tenant's case. I note the copy provided to the Investigating Officer bears a receipt date stamp of 29 December 2016. I note the adaptation recommendations are listed as follows:
'Provision of kitchen adaptations. Recent Scheme now over.
Provision of improved circulation space in kitchen and access to door with removal of existing wall/store and relocation of bench storage.
Provision of additional wall storage
Provision of pull out drawer or larder storage to allow easy access for wheelchair user.
Clearance below existing sink increased by 100mm.
Automated door opening to be considered and changes to door hardware may be required'
87. Following enquiries made by the Investigating Officer, the OT confirmed that the referral for the kitchen adaptations were received by them on 15 February 2016 by post. The OT stated the tenant '*indicated that he felt an OT was not required for adaptations in the kitchen that he only wanted a standard kitchen*'. The OT also confirmed that a second referral was received on 20 May 2016 for kitchen adaptations, and that a meeting took place with a MO on 9 January 2017 to agree

the plans for the kitchen.

88. The OT confirmed they did not have a record of being contacted by the NIHE in June 2016.

Analysis and Findings

89. In relation to the issue of the NIHE identifying a requirement for an OT assessment, I note the NIHE was first notified of the requirement for OT input on 19 January 2016. I note the next action taken by the NIHE is on 10 February 2016 when a member of staff was asked to complete the OT referral form. There is no evidence of the reason for the delay incurred in making the referral. I note the NIHE have confirmed that no action was taken during this time.
90. In relation to progressing the OT referral I note the NIHE confirmed initially that no follow-ups were carried out in relation to the OT referral. However the NIHE now state that the OT was contacted around June 2016. The investigation did not uncover evidence of a record of the June 2016 contact. I also note the OT's observation on this issue. In the absence of a record I cannot conclude on whether there was a follow-up in June 2016.
91. The NIHE have clarified the OT was contacted on 29 December 2016, which is the same date that the OT recommendations were received in relation to the bathroom. I accept that the NIHE did contact the OT on 29 December 2016. However I have been unable to establish why the NIHE left it until this point to follow up on the OT referral made on 12 February 2016, even if the June 2016 follow up did take place. There is no evidence that the kitchen replacement was categorised as an urgent matter. I accept that OT prioritisation and waiting lists are outside the control of the NIHE. However, good administrative practice would have required the NIHE to have checked as to the progress of the referral in the period February to December 2016 (and June to December 2016). I find the failure to do so does not meet the requirements of the second Principle of Good Administration, 'Being Customer Focused', which specifically refers to an expectation on public bodies to *'treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the*

circumstances of the case. Where appropriate, they should deal with customers in a co-ordinated way with other providers to ensure their needs are met; and, if they are unable to help, refer them to any other sources of help'. I do not consider that this standard was met in this case.

Finding: I consider the NIHE failures in this regard to constitute maladministration. I therefore uphold this element of the complaint.

92. Further, I note the private companies involved in the kitchen replacement scheme were following up on information provided to them. However the NIHE did not undertake a progress check. I consider that as the NIHE was co-ordinating the kitchen scheme there was a responsibility upon it to ensure that the scheme was running smoothly and that there were no unnecessary delays. This is particularly the case in respect of the tenant's property because the NIHE was aware of the issues having been promptly informed by the contractors.
93. I note in relation to this element of complaint that the tenant again complained that he doesn't believe that OT input was necessary and that a referral was made without his consent. There is reference to this assertion in email correspondence provided by the NIHE. However, I also note the NIHE records state that the tenant is arranging an OT visit which would appear to be in conflict with his assertion that the referral would not have taken place without his consent. I further note there is no record of telephone calls between the NIHE and the tenant. The Third Principle of Good Administration, 'Being Open and Accountable' requires the NIHE to have noted when the tenant had expressed his concern regarding OT involvement and his reasons why.
94. I have considered the relevant extracts from the NIHE Toolkit and the Manual. I have also considered the referral forms completed by the NIHE which indicate that the tenant consented to the referral. The referral documentation indicates he did consent. When his OT assessment was arranged he allowed the OT into his premises, did not object to the assessment taking place and co-operated with the assessment. Therefore on the balance of probabilities I conclude that he consented to the referral. I appreciate that he may have wanted the same kitchen as his neighbours and feels aggrieved by this perceived unfairness. However I also

recognise that the NIHE have a duty to provide housing which takes account of his particular needs. I take the views of the OT on board and conclude that the standard kitchen design would not have met the tenant's needs.

Finding: I therefore have not found maladministration in relation to this issue and do not uphold this element of the complaint. I am pleased to note that the tenant has now had his kitchen replaced to his satisfaction.

95. I am satisfied that as a result of the maladministration I have identified above in relation to the failure to follow up on the OT referral (paragraph 91 refers), the tenant suffered the injustice of uncertainty and frustration in the replacement of his kitchen, and uncertainty and frustration regarding the processes undertaken by the NIHE.

Issue 3 – NIHE communications with the tenant

96. The tenant complained that the NIHE did not adequately communicate with him regarding both the bathroom repairs and the kitchen replacement. He complained that he had to make follow up calls to the NIHE and that when he did contact the NIHE, officials did not answer his questions. He complained that he did not receive all of the letters that the NIHE claimed to have sent him. He further complained that he did not receive adequate information regarding his removal from the area kitchen scheme. In particular, he stated that *'in a quick phone call'* he was told that *'he was not getting [his] kitchen'*. He complained that he had asked the NIHE to use e-mail rather than phone to contact him as he finds it difficult to use a phone, and the NIHE did not honour his request.

97. Equality Scheme for the NIHE (undated) (the Equality Scheme)⁵

I note Chapter 6 is entitled 'our arrangements for ensuring and assessing public access to information and services we provide' and section 6.3 states:

'To ensure equality of opportunity in accessing information, we will continue to provide information in alternative formats on request, where reasonably practicable. Where the exact request cannot be met we will ensure a reasonable alternative is provided.'

⁵ This document was drawn up in accordance with Section 75 and Schedule 9 of the Northern Ireland Act 1998

Equality Commission for Northern Ireland Code of Practice on Disability
Discrimination Act 1995 (the Code of Practice) (July 2003)

98. I note part 2 of the Code of Practice states:

'The Act makes it unlawful for a service provider to discriminate against a disabled person:

-by refusing to provide (or deliberately not providing) any service which it provides (or is prepared to provide) to members of the public; or

- in the standard of service which it provides to the disabled person or the manner in which it provides it; or

- in the terms on which it provides a service to the disabled person'

99. I also note part 9 of the Code of Practice states:

'It is also unlawful for a person managing any premises to discriminate against a disabled person occupying those premises:

*- in the way they permit the disabled person to make use of any benefits or facilities;
or*

- by refusing (or deliberately omitting) to permit the disabled person to make use of any benefits or facilities; or

- by evicting the disabled person or subjecting the disabled person to any other detriment'

100. The NIHE provided the Investigating Officer with all of the documentation available relating to its communications with the tenant. The information provided contained screen shots from the HMS and copies of letters sent to him.

101. The Investigating Officer enquired if the NIHE had a record of how the tenant preferred to be contacted. The NIHE responded that the complaint email to CSU from the tenant on 2 April 2016 (referred to in more detail at paragraph 117) contained information from the tenant stating *'Prefer E-Mail. Can't really talk on phone'*. The NIHE stated *'this is the first record found in which the tenant noted this as his preference'*. The NIHE also referred to entries on the HMS which reflect that *'all repair requests logged have been reported via telephone'*.

102. The NIHE was asked how it gave regard to the tenant's rights in its communications with him. The NIHE responded '*when he requested that communications with him were to be via email, this was noted on the system and acted on. Letters generated by the system on cancellation of the bathroom repairs order were posted to the tenant*'.

Bathroom repairs

103. The tenant contacted the NIHE on a number of occasions regarding the bathroom repairs. On the second occasion when he contacted the NIHE (26 January 2016), the NIHE stated '*he was told that his query would be raised with [a MO], and that [the MO] would contact him the next day to discuss. Our investigation could not find any evidence that [the MO] had made contact with the tenant*'.

104. The NIHE records show that he was sent three letters regarding the cancellation of bathroom repairs; 12 August 2015, 23 May 2016 and 1 June 2016. The NIHE stated the '*letters are automatically generated and printed from the [HMS] when a job is cancelled. These letters are posted on the same day as printing in every case, except where the property is void*'. I have examined the letters provided and note in each letter, the job number, description of repair and reason for cancellation is listed. The NIHE clarified in each case '*the reason is the same as is noted in our HMS*' and it can understand '*how this is not particularly helpful as an explanation for a tenant, nor does it explain to the tenant how [NIHE] planned to manage the repair request made*'.

Kitchen Scheme

105. The NIHE stated that an officer spoke to the tenant on 16 February 2016, sometime before 10 May 2016 and again around 2 June 2016 regarding the OT referral for the kitchen replacement. The NIHE confirmed there are no records of the discussions that took place on these occasions. The NIHE stated during the phone call on 2 June 2016 it was explained to the tenant that his property had been removed from the kitchen replacement scheme.

Analysis and Findings

106. I note the NIHE stated it sent a letter to the tenant on each occasion when a 'job' was cancelled in relation to his bathroom repairs. I have examined copies of the NIHE letters and find them to be confusing in content. They (in my view) inappropriately use technical jargon in an effort to explain what job has been cancelled and why. The tenant was unaware of a 'job' being issued for bathroom repairs to his house. I note however that he received these letters with three different job numbers quoted and a poor explanation of the reason for the cancellation. I note his assertion that he did not receive all of these letters, but I am unable to conclude on this issue. However, I am satisfied that the content of the letters is confusing.
107. I note within the documents provided various references to telephone calls with the tenant, namely 18 January 2016, 10 February 2016, 10 May 2016 and 2 June 2016. My investigation did not uncover evidence of records of telephone calls between the NIHE and the tenant, apart from brief notes entered on the HMS and in email content. I am critical of the NIHE for not keeping a record of all telephone calls. I note the NIHE's position that he was spoken to on 2 June 2016 about the kitchen replacement scheme and the fact his property would be excluded. I note there is no record of this discussion. In the absence of a record, I cannot be satisfied that it was fully explained to the tenant that his residence was being removed from the area kitchen scheme and the reasons for this. I am also unable to address whether he raised queries in these telephone calls, and whether these queries were dealt with.
108. **Finding: I find that the absence of records of these telephone calls fails to meet the standard of the third Principle of Good Administration, 'Being Open and Accountable' which requires public bodies to keep '*proper and appropriate records*'. I consider this failing constitutes maladministration.**
109. I note there is no evidence of emails to the tenant, despite his request to be communicated with in this way. I note the NIHE's response that he did not notify it of this request until 2 April 2016. However, the NIHE continued to communicate with him by telephone call following this date. I have considered his disability and his

request for an adjustment to the way in which the NIHE communicated with him. I have also considered the Equality Scheme and the Code of Practice requirements. I consider the NIHE failed to adhere to its commitments in the Equality Scheme and failed to follow the standards as set out in the Code of Practice. I am also critical of the NIHE for raising an expectation with the tenant that a member of staff would contact him regarding his bathroom repairs, and this was not actioned.

Finding: I consider the NIHE failed to have regard to his vulnerable and specific needs and these failings constitute maladministration.

110. I am satisfied that as a result of the maladministration I have identified above the tenant suffered the injustice of uncertainty, upset and frustration regarding the actions of the NIHE in relation to his requests.

Issue 4 – The NIHE’s handling of the complaint

111. The tenant submitted an online complaint to the NIHE on 2 April 2016. He complained that he did not receive a reply to this and was required to send a follow up email on 12 May 2016. He stated that his complaint was not dealt with appropriately by the NIHE.

112. The NIHE Internal Complaints Procedure (the Complaints Procedure) defines a complaint as *‘any expression of dissatisfaction about the standard of service provided by or on behalf of the NIHE or about an action, delay or lack of action which requires it to be reviewed by the appropriate management unit’*.

113. I note the complaints procedure outlines three stages of complaint handling; area review (informal), first stage (management review) and second stage (Chief Executive review). In respect of all three stages, the Complaints Procedure states *‘all cases must be acknowledged within three working days and responded to within 15 working days. If this is not possible, a holding reply must be issued’*.

114. I note also the complaints procedure refers to the need for records - *‘it is important to keep notes of conversations (telephone and otherwise), home visits and site meetings’*.

115. Finally, I note the complaints procedure does not specify the means by which complaints are to be made i.e. in writing, by email or by telephone.

116. As part of the investigation of the tenant's complaint the Investigating Officer examined the NIHE complaints file and a chronology of events relating it was prepared.

117. I note within the file there is evidence of the tenant's submission to the NIHE dated 2 April 2016. The first line of this correspondence states '*this is a complaint*' and then he outlines the detail of his complaint in relation to the issue of bathroom repairs. I also note evidence of the second correspondence dated 12 May 2016. In this correspondence the tenant refers to his first complaint (2 April 2016). I further note that he telephoned the NIHE on 23 May 2016 and there is a detailed record of the discussion which took place. I note the NIHE recorded that he was informed that his complaint '*never reached the Complaints Team*' and he '*decided he would like to lodge a 1st stage complaint*' and was sent an acknowledgement by post on the same date.

118. The record reflects that at this point the issue was investigated by a complaints officer, who noted the email had been responded to by an officer within CSU and who '*had also forwarded the email on to Ballymena LO and the tenant's MO requesting that they contact and update the tenant*'. I note the content of a sent email from CSU on the same date within the documentation provided.

119. The Investigating Officer has been provided with a copy of the first stage response letter sent on 9 June 2016. I note it contains an apology that '*the correspondence had not been passed on to the appropriate department. I have been informed that the staff involved have reviewed their processes and action has been taken to ensure that this does not happen again*'. I also note the initial job number (3189717) is referenced which states the job was cancelled '*as this was the responsibility of the Occupational Therapy Department*'. The letter continues '*[MO] has assured me that he will personally keep you updated with any progress once formal instructions have been received from the Occupational Therapy Department*'.

120. I note the tenant then forwarded a second stage complaint (undated) which the NIHE state was received on 15 June 2016. I also note the tenant attached photographs of his bathroom to this correspondence (referred to previously). I further note he was issued with a second stage response from the Chief Executive of the NIHE on 2 August 2016, wherein an apology is issued for delay in forwarding the response, stating *'as my complaints officer explained, this was a complex issue that required input from several different departments to ensure we addressed all your concerns'*. This correspondence further stated *'you submitted your complaint online on 2 April and 16 April, but did not receive a reply. My staff have investigated the issues thoroughly, and this investigation showed that some complaints, including yours, were not being passed to the correct department'*.

Analysis and Findings

121. The tenant first registered his dissatisfaction with the service he received from the NIHE on 2 April 2016. I consider this correspondence to be unambiguous in intent. I note the Complaints Procedure does not stipulate the method by which complaints are to be lodged. I also note the Complaints Procedure was not activated on 2 April 2016 but the NIHE did respond to the tenant's concerns. I am critical of the NIHE for not activating its Complaints Procedure when he first complained. I appreciate the NIHE have apologised for the errors incurred around the second complaint (12 May 2016) and welcome the NIHE's commitment to improving standards for online complaints in this regard.

122. I consider the first stage response dated 9 June 2016 to be inappropriate in terms of the language used. The NIHE continue to use technical language, with references to job numbers and quoting cancellation reasons from the HMS. I find the response to be inaccurate in that it refers to a 'job' being the responsibility of the OT department. I consider this a missed opportunity for the NIHE to identify that it had a role to play in the process of OT referrals, which has now been accepted.

I note in the second stage response that the NIHE failed to identify that more could have been done in respect of expediting bathroom repairs and the kitchen

replacement. I also note it was only when my investigation of the complaint commenced that the NIHE identified previous failings. I consider this a further missed opportunity to learn from the complaint and these failings are contrary to the fifth Principle of Good Complaint Handling, 'Being Open and Accountable' which requires public bodies to *'be open and honest when accounting for their decisions and actions. They should give clear, evidence-based explanations, and reasons for their decisions. When things have gone wrong, public bodies should explain fully and say what they will do to put matters right as quickly as possible.'* **I consider these failings amount to maladministration.**

123. I note the NIHE took six weeks to respond to the second stage. The complaint investigation has not uncovered any evidence of the tenant having been contacted during this period to explain the delay or apologise for it. I note this is contrary to the timeframe outlined in the Complaint's Procedure. I do not consider the delay to have been reasonable, in the context of my comments regarding the content of the response. I consider this failing contrary to the second Principle of Good Complaint Handling, 'Being Customer Focused' which requires public bodies to *'deal with complaints promptly, avoiding unnecessary delay' and 'keep the complainant regularly informed about progress and the reasons for any delays'.*

Finding: I consider this failing amounts to maladministration and therefore uphold this element of the complaint.

124. I am satisfied that as a result of the maladministration I have identified above the tenant suffered the injustice of uncertainty and frustration in his dealing with the NIHE and time and trouble in bringing his complaint to this office.

CONCLUSION

125. The tenant submitted a complaint to me about the actions of the NIHE in relation to bathroom repairs and a kitchen replacement scheme. I have investigated the complaint and have found maladministration in relation to the following matters:

- Failure to keep records of inspection visits
- Failure to act promptly and re-categorise bathroom repairs as urgent
- Failure to act upon cancellation of job by contractor
- Failure to act when alerted that repairs were outstanding
- Failure to keep bathroom repairs under review
- Delay in completing bathroom repairs
- Failure to have regard for the tenant' human rights in terms of his disability
- Failure to record reasons for decisions regarding whether OT input was required or was not required
- Failure to act in accordance with obligations in Tenancy Agreement
- Failure to adequately follow up on OT referral
- Failure to keep records of telephone calls with tenant
- Failure to adhere to the NIHE Equality Scheme and the Equality Commission for Northern Ireland's Code of Practice for Disability Discrimination Act 1995 in not honouring tenant's request for communication by email
- Failure to identify failings in service at local resolution
- Delay in second stage response

126. I am satisfied that the maladministration identified caused the tenant to experience the injustice of uncertainty, frustration, upset and time and trouble in bringing his complaint to this Office.

127. I have not found maladministration in relation to the following matters:

Issue 1:

- Requirement for OT involvement
- OT recommendations ignored

Issue 2:

- Requirement for OT involvement

Recommendations for Remedy

128. I recommend that the NIHE issue the tenant with an apology for the failings which I have identified above, within one month of the date of my final report.

129. In addition, I recommend that the NIHE make a payment of £750 by way of solatium for redress in respect of the injustice of frustration, uncertainty, upset and time and trouble identified above, within three months of the date of my final report.

130. I consider there are a number of lessons to be learned which provide the NIHE with an opportunity to improve its service, and to this end I recommend that the NIHE:

- Make additions to record keeping arrangements for maintenance visits to include a record of the MO's additional comments and if repairs require re-categorisation
- Put in place a review process for jobs cancelled by a contractor
- Put in place a system of record keeping regarding why OT referrals are required in a particular case
- Put in place timescales for follow up of OT assessments
- Make changes to computer generated correspondence to tenants so that the language is understandable
- Remind staff in the Ballymena Local Office of the requirement for record keeping, in particular in relation to telephone calls
- Provide training to relevant Ballymena Local Office staff regarding NIHE's Internal Complaints Procedure, in particular regarding the focus on early resolution
- Carry out an audit in relation to the operation of the Ballymena Local Office in relation to response maintenance over a period of three months and kitchen replacement schemes over five schemes

131. In this case, I have found the delay in which the NIHE presented responses to enquiries to this office, resulted in the investigation taking longer than was necessary. I recommend that the NIHE review its procedures to ensure that responses to this office are provided in the form of direct comment, with supporting

evidence where relevant and within the requested timeframe.

132. I recommend that the NIHE implement an action plan to incorporate these recommendations and should provide me with an update within three months of the date of the final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

133. I am pleased to note that since the issue of my draft report the NIHE gave a commitment to engage with the Trusts to re-establish quarterly meetings with OT's and ensure that outstanding requests are included on the agenda. I further note the NIHE is committed to implementing the recommendations made.

Marie Anderson

MARIE ANDERSON
Ombudsman

April 2018

APPENDIX 1

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

APPENDIX 2

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

2. Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.

- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.