



Northern Ireland

Public Services
Ombudsman

Investigation Report

Investigation of a complaint against the Northern Ireland Housing Executive

NIPSO Reference: 17510

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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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SUMMARY

I received a complaint about the way the Northern Ireland Housing Executive handled an application for a grant to buy a property.

The grant was refused, but the complainant believed it should have been given to her because she was forced out of her previous house by the anti-social behaviour of Housing Executive tenants.

My investigation looked at whether the Housing Executive followed its policies and procedures on grant allocations of this type. I also looked at how it dealt with the complaint.

I found a number of incidents of maladministration. These included:

- A failure by the Housing Executive to follow the processes laid out in its Grants Manual.
- A failure to maintain appropriate records to indicate the application was assessed against a number of 'exceptional circumstances'.
- A number of failures in providing the tenant with an explanation for the decision regarding her application.

As a result, I have asked the Housing Executive to look again at the grant application. However, the decision for the payment of any grant is still a discretionary decision for the NIHE to make.

To help reduce similar complaints in the future, I have also recommended that the Housing Executive make changes to its Grant Manual, and stressed the importance of good record keeping and of providing clear, unambiguous and accurate responses to applicants.

THE COMPLAINT

1. I received a complaint from a member of the public about the actions of the Northern Ireland Housing Executive (NIHE). The complainant had requested a grant from the NIHE in February 2017 for a property she had purchased. The NIHE refused the request. The woman complained her grant request should have been approved, as she believed NIHE was responsible for her having to sell her previous home due to anti-social behaviour from NIHE residents.
2. The complainant had resided in the property until she sold it in October 2016. She states she sold the property as she was no longer able to cope with the intimidation and anti-social behaviour.
3. She considered the NIHE were responsible for causing her to sell her house as the persons accused of this anti-social behaviour were NIHE tenants. She had raised the behaviour with the NIHE on several occasions, however the NIHE were unable to find any evidence to support her claims.

Issues of Complaint

4. The issues of complaint which were accepted for investigation are:

Issue 1 – Whether the NIHE followed its policies and procedures in respect of the grant request?

Issue 2 – Whether the NIHE followed its policies and procedures in respect of the accommodation request?

Issue 3 – Was the NIHE's handling of complaint adequate?

INVESTIGATION METHODOLOGY

5. The Investigating Officer obtained from the NIHE all relevant files together with its comments on the issues raised in the complaint. The documentation also included information relating to the NIHEs handling of the complaint. As part of my investigation, all information relating to the woman's anti-social behaviour complaints was requested, as it may have related to the consideration of her accommodation request. I have found nothing in the anti-social behaviour complaints file of relevance to my investigation.

Relevant Standards

6. 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.
7. The general standards relevant to this complaint are the Ombudsman Principles¹:
 - The Principles of Good Administration (Appendix 1)
 - The Principles of Good Complaint Handling (Appendix 2)
 - The Ombudsman Association Principles for Remedy
8. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the organisation and individuals whose actions are the subject of this complaint. The specific standards relevant to this complaint are:
 - The NIHE Home Improvement Grant Policy Guidance Manual, February 2017 (The Grant Manual)
 - The NIHE Housing Selection Scheme Guidance Manual, January 2017 (The Housing Selection Manual)
 - The NIHE Housing Selection Scheme Rules, January 2014 (The Housing Selection Rules)

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

- The NIHE Housing/Homelessness Information Pack, December 2015 (The Information Pack)
- The NIHE Complaints Procedure (The Complaints Procedure)

The NIHE policies in respect of housing, homeless and grants are based on the following legislation:

- (i) The Housing (Northern Ireland) Order 2003
- (ii) The Housing (Northern Ireland) Order 1992 and regulations
- (iii) The Housing (Northern Ireland) Order 1988

My role in investigating complaints of maladministration relates primarily to the examination of the administrative actions of the NIHE. I cannot question the merits of a discretionary decision where I have not first found evidence of maladministration.

9. I have not included all of the information obtained in the course of the investigation in this report. However, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

MY INVESTIGATION

Issue 1 – Whether the NIHE followed its own policies and procedures in respect of the grant request?

10. The woman complained that the NIHE ought to have awarded her a replacement grant for her new property. She believes the NIHE was responsible for her having to sell her house in October 2016 because it failed to take action regarding anti-social behaviour caused by NIHE tenants living near to her house. She had complained about the behaviour to the NIHE on several occasions. The NIHE were unable to find any evidence to support her claims of intimidation and anti-social behaviour.

11. I have reviewed the NIHE Grant Policy Manual (the Grant Manual) and note sections of relevance to the issues of complaint. In particular, section two of the Grant Manual outlines the general principles that relate to different types of grants. That section includes the roles and responsibilities of personnel within NIHE. I note that replacement grants are categorised as a 'discretionary' grant. I refer to section four of the Grant Manual which details the conditions that are specific to replacement grants. A decision whether or not to approve a replacement grant is a matter for the NIHE in the exercise of its discretion. That discretion however should be exercised in accordance with the relevant legislation (the 1992 Order) and NIHE policies.

12. I consider the following extracts from the Grant Manual to be relevant to this complaint:

(i) section 2.14 deals with the exceptional circumstances criteria that have applied to all NIHE discretionary grants since 2009. A discretionary grant application must meet one of these criteria before it can be considered under the relevant section of the Grant Manual. Section 2.14 states:

'Under this guidance all existing discretionary grant applications for Renovation, Replacement, Home Repair Assistance and Houses in Multiple Occupation grants would be reviewed by the Grants Office to determine whether the particular circumstances satisfied one of the following exceptions criteria –

- *Was there a need for a parallel discretionary grants to be processed to facilitate the completion of mandatory DFG² adaptations*
- *Were the repairs identified presenting any imminent and significant health and safety risk that would impact upon the occupants*
- *Was there any serious risk to the occupants under structural stability*
- *Were there any other circumstances associated with the application that would be considered to be exceptional'.*

² Mandatory DFG adaptations are those which are being carried out as a Disabled Facilities Grant for works which facilitate access to and within a dwelling.

- (ii) section 2.14.5 states that *'where the Grants Manager considers that there are no exceptional circumstances then the Grants office should issue a refusal of grant letter to the grant applicant detailing the reasons'*.
- (iii) section 4.2.2 states that *'all preliminary contacts require to be filtered by the contact officer using a first contact eligibility form ... before registering the case within the Private Sector Management System (PSMS)³. Following registration the appropriate acknowledgement letter (HO2) is sent within 3 working days of receipt.'*
- (iv) section 4.6 states that replacement grant consideration can be given in respect of both occupied and vacant dwellings under specific circumstances. Section.

13. As part of the investigation of this complaint, the Investigating Officer examined the grants file and prepared a chronology of events.
14. I have also examined all relevant NIHE documentation and I consider the following facts are relevant to the complaint.
15. In February 2017 the woman completed the purchase of her new property. On 17 February 2017 she wrote to a NIHE grants manager requesting a replacement grant based on exceptional circumstances.
16. On 20 February 2017 she followed her letter with a telephone call to a senior NIHE grants officer and they discussed her new property. She was advised of the existence of an exceptional circumstances grant and that a vacant property would not be considered for such a grant.
17. On 22 February 2017 a Senior Grants Manager wrote to her stating *'Regarding your enquiry for a replacement of the property at [...] unfortunately there are no Grants currently available to either renovate or replace vacant dwellings such as you have described'*. She then wrote to the Chief Executive, explaining her situation and requesting his assistance.

³ Private Sector Management System (PSMS): The Private Sector Management System (PSMS) is a case management system utilised by the Northern Ireland Housing Executive for the management of private sector home improvement grants

18. On 27 February 2017 she telephoned the grants manager in response to his letter. During this conversation he confirmed that as the property was vacant it would not be eligible for a grant.
19. On 21 March 2017 the Chief Executive, Mr Clark Bailie, responded to the complainant's letters dated 25 February 2017 and 9 March 2017 in which he reiterated that the property was not suitable for a renovation or replacement grant. The Chief Executive stated:
'Exceptional circumstances criteria have not been met as you have confirmed that the property is a vacant property. As the cottage is unoccupied and as you are currently the tenant of Choice Housing Association at [...], a sheltered housing complex, consideration of imminent and significant health and safety risk to [...] does not arise.'
20. In his response to investigation enquiries the Chief Executive stated:
'I consider that the NIHE decision not to progress a discretionary grant enquiry from [...] in relation to an unimproved cottage at [...] is correct.'
21. In response to investigation enquiries relating to applicable NIHE guidelines when assessing applications against the exceptional circumstances criteria, the Chief Executive stated *'this criteria was included in the policy to cover any unforeseen circumstances that may arise that where not covered by the other criteria.'* He also stated that in the previous three years no grant applications had been considered which fell under the category of other circumstances that would be considered to be exceptional. Further, he stated that only one case could be recalled by him as having been considered for grant aid, under this category.
22. In response to investigation enquiries for a blank copy of the first contact eligibility form for grants the compliance manager stated:
'Please note that Grants do not have or utilise a form which you refer to as a "First Contact Eligibility form". The Initial contact with Grants is dependent of the type of grant being requested. Since funding reduction, the Replacement

Grant is only available in exceptional circumstances. In these circumstances the process is for the applicant to write to the Grants Manager with details of the grant requested and reasons for the grant.'

Analysis and Findings

23. I note that the complainant contacted the Grants office by letter on Friday 17 February 2017 and made a follow up phone call on Monday 20 February 2017. These contacts are classed as '*preliminary contact*' in the Grant Manual, which states that preliminary contacts should be filtered using a first contact eligibility form. I note that in this case a first contact eligibility form was not completed.
24. I further note that the NIHE response to enquiries about the first contact eligibility form stated that this form does not exist. This leads me to conclude that either the Grant Manual is inaccurate or that the manual is not being complied with by NIHE.

In response to my draft report the Chief Executive stated 'The Housing Executive accepts that the grant manual requires revisions to align with current procedures. The purpose of a contact eligibility form was to assist with the filtering of grant enquirers in the consideration on eligibility for grant aid. We would ask that you consider the information gleaned from the initial letter from [the woman] ... on 17th February 2017, and subsequent phone calls. This is evidence-based information which allowed this filtering process to take place. It was established from these contacts that [the woman's] case would not meet the exceptional circumstances criteria'

I accept Mr Baillie's agreement that the grant manual requires revisions to align with current procedures. I also accept his reasoning that the filtering process required was conducted through the use of the complainant's letter and subsequent phone calls, however the point remains that the first contact eligibility form as referred to in the section 4.2.2 of the grant manual was not appropriately followed.

25. I note that the woman's initial inquiry by letter of 17 February 2017 was not registered on PSMS. Having reviewed the categories within PSMS I am satisfied that this was not necessary as this system is for managing applications that are progressing through the grants process.
26. The first Principle of Good Administration, 'Getting it right', requires a public body to *'follow their own policy and procedural guidance, whether published or internal'*. The second Principle of Good Administration, 'Being customer focused', requires that a public bodies *'policies and procedures should be clear'*. The NIHE has not followed its procedures as outlined in the grant manual. This failure and the original misinformation provided on 20 February 2017 demonstrates a 'closed mind' to the provision of replacement grants. I consider these failings did not meet the requirements of the First and Second principles and constitute maladministration. **I therefore uphold this element of the complaint.**

In response to my draft report Mr Baillie stated *'The Housing Executive accepts that a specific form was not completed. The Housing executive does not accept that the procedure was not followed in its entirety. The triage of the contact still occurred through the initial letter from [the woman] and subsequent phone calls...'*

'...The Housing Executive strongly refutes that there was misinformation provided, and that we demonstrated a "closed mind" to [the woman's] request. [The Senior Grants Manager] did not communicate any misinformation, it is factually accurate that vacant properties would not be accepted under exceptional circumstances... The Housing Executive disagrees on the level of maladministration that is being implied due to the absence of an internal contact eligibility form. The triage process to assess [the woman's] eligibility under exceptional circumstances still took place...[she] was housed at the time of grant enquiry, there were no other circumstances associated with the application that would be considered exceptional.

I note in an email between two NIHE officers dated 4 March 2017 it is stated the Senior Grants Manager advised the woman of the exceptional circumstances criteria and process that the NIHE would not consider vacant properties. I also note that the guidance on the exceptional circumstances criteria do not refer to vacant properties. I accept the points made by Mr Baillie in relation to this. I reconsider my view that the Senior Grants Manager showed a closed mind and provided misinformation. I am content however that the NIHE did not comply with the first principle of good administration in relation to following the procedure outlined in the Grant Manual and uphold this element of the complaint.

27. I note that for consideration of a discretionary NIHE grant (including a replacement grant) the applicant must satisfy **one** (my emphasis) of the exceptional circumstances criteria outlined in the Grant Manual.
28. I note that the woman's request was assessed and her application was found not to meet any of the four exceptional circumstances criteria. Her property was vacant and this was given as the main reason for the NIHE decision not to exercise its discretion to provide a replacement grant under the 'exceptional circumstances' criteria. The NIHE in a letter dated 21 March 2017 also indicated that the exceptional circumstances criteria had also not been met as she had indicated she was the tenant of Choice Housing Association and that therefore a '*...imminent significant health and safety risk to [the address] does not arise*'.
29. I consider the issue of whether a property is vacant or occupied is the determining factor for the first three criteria, as for any of these criterion to be met by a grant application the property would need to be occupied.
30. I note the NIHE guidance on the assessment - criteria four of section 2.14 of the Grant Manual (the Exceptional Circumstances Criteria, paragraph 12 refers). The guidance states:

'd) Any (SIC) there any other circumstances which the Grants Manager considers to be exceptional?

This is for the Grants manager to provide details of cases where he thinks exceptional circumstances exist outside those identified above. This is where we might consider the personal circumstances of an applicant, for example a blind, elderly person living alone; an elderly person with learning difficulties living alone, or the case where the applicant tragically died leaving the children to resolve the applicant's affairs'.

The investigation has not revealed any records to indicate that the woman's application was assessed against any of these exceptional circumstances. There is no evidence of the factors considered by NIHE when assessing her initial request against criterion four.

31. The third Principle of Good Administration requires public bodies to be 'Open and accountable'. This principle includes keeping proper and appropriate records, ensuring they are reliable and usable, and importantly giving reasons for a bodies decisions. The NIHE has failed to maintain accurate and contemporaneous records in this case. These records would have provided clarity in relation to the NIHE's actions and the reasons behind its decision taken to refuse the application. I accept that this was a discretionary decision. The woman was entitled to know how and why the NIHE decided that her circumstance was such that she did not meet the exceptional circumstances criterion outlined at section 2.14 of the Grant Manual. The Fourth Principle of Good Administration requires public bodies to ensure that decisions are proportionate, appropriate and fair. The giving of reasons for decisions is a key tenet of good administration. Procedural fairness requires that reasons are given for decisions so that the affected person understands why a decision maker has made his/her decision. This allows an individual to consider if the decision is fair and consistent and whether or not to challenge that decision. Providing records of decisions is a 'shield' to defend its actions, when challenged. I consider the failures by NIHE to constitute maladministration which is sufficient for me to question the merits of that

decision. **I therefore uphold this element the complaint.**

In his response to my draft report Mr Baillie accepted that the NIHE should review the draft refusal letter to '*...provide further detail to decisions or reasons relevant to each criterion of the exceptional circumstances criteria*' Mr Baillie further requested that I recognize this as a business improvement. I welcome Mr Baillie's approach in accepting that the NIHE should review the draft refusal letter and I also accept his request to consider this as a business improvement.

32. I note that the Grant Manual states that '*where the Grants Manager considers that there are no exceptional circumstances then the Grants office should issue a refusal of grant letter to the grant applicant **detailing the reasons** [my emphasis]*' (paragraph 12). The letter sent to the woman simply states '*Regarding your enquiry for a replacement of the property at [...] unfortunately there are no Grants currently available to either renovate or replace vacant dwellings such as you have described*'. The refusal letter sent ought to have provided reasons why, in respect of each of the exceptional circumstances criteria, she was not eligible for a Replacement Grant under the exceptional circumstances criteria. This would have provided clarity to her on the reasoning for the decision. I consider the Grant Manager's statement to be misleading and inaccurate. The Grant Manual details specific circumstances when replacement grants may be considered for vacant properties and the NIHE failed to address the woman's case appropriately using the NIHE guidance.
33. I further note that in his telephone discussion on 27 February 2017, the NIHE Grant Manger reiterated that as the property was vacant it would not be considered for a grant. The woman in that conversation indicated that the property had tenants who had just moved out. It was her view therefore, that it was habitable and not vacant. I accept the woman's view that the NIHE did not adequately assess her application using the Grant Manual, which relates to the classification of a property as vacant or occupied, when considering a replacement grant. The telephone conversation was an opportunity to explain

to her the criteria specified in section four of the Grant Manual, in relation to obtaining a grant for a vacant property. There is no evidence that she was provided with this information and an explanation for the NIHE's refusal.

In his response to my draft report Mr Baillie stated: *'I would comment that whether a property is habitable or not, it is not relevant to the exceptional circumstances assessment of this case. The property at [...] was vacant and [the woman] was housed. The exceptional circumstances decision is assessed on whether the property is occupied...'* My investigating officer further established from NIHE staff following my draft report that: *'When Mr Baillie states that the occupation of a property is a requirement of the exceptional circumstances criteria, it means that the property must be occupied for Exceptional Circumstances Criteria to be met...To summarise, a property being occupied is a significant consideration of an application under the Exceptional Circumstances Criteria. If this criteria is met only then would we examine the criteria under the applicable grant aid'*.

While I accept the explanation from the NIHE that a property must be occupied to meet the exceptional circumstances criteria, the details of the phone call do not outline that this information was provided to the woman, rather: *'as the property was vacant, that we would not be considering it'*. The Grants Manager did not explain that occupation was a requirement under the exceptional circumstances criteria. I maintain my finding above that this was an opportunity to explain to her the criteria specified in sections two (exceptional circumstances criteria) and four (replacement grants) of the Grant Manual, in relation to obtaining a grant. I further recommend that the Grant Manual is amended to include the requirement that a property must be occupied to meet the exceptional circumstances criteria. At present this is an implied requirement in the policy which has potential to cause confusion.

34. The third Principle of Good Administration requires public bodies to be 'Open and accountable' which requires bodies to state their criteria for decision making and give reasons for their decision. On the basis of the available evidence, the NIHE failed to provide clear reasons for its decision under the

exceptional circumstances criteria in this case. The reasons given for a decision need to be formulated with care, to be clearly expressed, to be the real reasons and to be sufficient in the particular circumstances. The absence of reasons:

- means that applicants cannot be told why they are not selected;
- can give the impression that decisions are made arbitrarily;
- make it difficult for officers to advise applicants;
- means that unsuccessful applicants will be unable to make informed judgements on whether or not to challenge the decision.

I consider that the failure to give reasons had an impact on the woman's ability to understand the NIHE decision. As stated previously, merits of the decision in this case are called into question because of the maladministration I have identified. I consider this failure to constitute maladministration. **I therefore uphold this element of the complaint.**

35. I note that the NIHE stated that in the last three years no grant application has been considered under the 'other' criteria of the exceptional circumstances. Further, the NIHE confirmed that since the implementation of this criteria in 2009 only one case could be recalled as having been considered for grant aid, under this criterion. However, I am satisfied that the extent of the maladministration in this case is such that I can consider the merits of the NIHE decision. Having upheld this issue of complaint, I will deal with the injustice caused to the complainant by these failings by way of a recommendation for remedy at the conclusion of this report..

Issue 2 – Whether the NIHE followed its policies and procedures in respect of the woman's accommodation request?

36. The investigation into this complaint has prompted me to consider the further issue of how the complainant's application for housing assistance and her homelessness assessment were handled by the NIHE. Her acceptance and occupancy of accommodation supplied by NIHE contributed to the assessment that the property she had bought was vacant and therefore not

suitable for a replacement grant.

37. I have reviewed Chapter 10 of the Housing Manual, which outlines NIHE procedures for the administration of the Housing Selection Scheme. The Housing Selection Rules document the scheme criteria that applies to the allocation of social housing in Northern Ireland. Schedule four of those Rules outline the NIHE approach to the allocation of points to housing applicants based on their personal circumstances.

38. The NIHE Information pack is given to homeless applicants when they are applying for assistance. This information pack details the homeless criteria as follows:

'You are homeless if you have nowhere to live in the United Kingdom or elsewhere because:

- *You are afraid to go home because someone living there has been violent to you, and had made a threat of violence which they are likely to carry out*
- *You do not have permission to live where you are staying, for example if you are living with friends or relatives and they have told you to leave*
- *You have nowhere you can live together with all the people who normally live with you or wish to live with you*
- *You have a home but you cannot gain access to it, for example because you have been illegally evicted*
- *Your landlord has taken you to court and the date by which the court said you had to leave has passed*
- *Your home is a caravan or a boat and you have nowhere that you can legally park it or moor it'*

39. The information pack also explains the criteria for a person threatened with homelessness:

'You are entitled to help if you are likely to become homeless within the next 28 days because for example:

- *You have been taken to court by your landlord and the court has said you must leave*
- *You have been living with friends or relatives who have told you to leave*

Someone else's actions made you lose your home and you did not know about or agree with what they did'

40. The information pack further explains that: *'if you disagree with a decision taken by the Housing Executive in relation to your eligibility for homelessness assistance, or in relation to what duty (if any) is owed to you as someone who is homeless (or threatened with homelessness) or as to the suitability of accommodation offered in discharge of the executive's duty, then you have the right to request a review'*. I have not seen any evidence on the file provided to suggest the woman applied for a review of her decision.
41. As part of the investigation of this complaint, a chronology of events was prepared from an investigation of the NIHE homeless file.
42. I have also considered the NIHE housing information relevant to the complaint. I have found the following facts.
43. On 7 October 2016 the woman completed a Housing/Transfer Application as she had sold her property. She anticipated the sale would complete within four weeks and she required alternative accommodation.
44. On 19 October 2016 she met with a housing officer and completed a housing/homeless assessment and input form. On this form it is noted that the woman is *'believed homeless'*.
45. On 20 October 2016 she received a letter from the NIHE area manager, in response to her housing/transfer application. The letter informed her that she had been allocated 10 points under the Housing Selection Scheme for each of the areas in which she had expressed an interest.
46. On 7 November the woman received an offer of accommodation from Choice Housing. She accepted this offer.
47. On 21 November 2016 the NIHE completed its decision page on the woman's

homeless application, finding that she was not homeless as she had been rehoused.

48. In his response to investigation enquiries the Chief Executive stated:
'[The woman] made an application for accommodation on 7 October 2016 ... and was made an offer ... based on 10 Analogous points. These points are based on incidences of harassment reported by [her] as she insisted that she had a grievance, but there has never been any confirmation from any source to uphold these claims. A homelessness assessment was made on the application but [she] was rehoused before a negative homelessness decision⁴ could be made. Allocations in sheltered accommodation ... can often be made to low point cases'
49. In response to an investigation enquiry relating to time scales for a homelessness decision on this case the NIHE compliance manager stated:
'At the time of the homeless assessment ... in October 2016, the Housing Executive worked to an internal Key Performance Indicator of 33 days.'

Analysis and Findings

50. I note that on page 19 of the housing/homeless assessment and input form the woman is assessed as *'believed homeless'*. I further note that on 7 November she accepted an offer of accommodation from Choice Housing.
51. I note that the final decision on her homeless application was completed on 21 November 2016. This section records that the complainant is not considered homeless as she has been rehoused. This decision was made within the NIHE's 33 day internal key performance indicator.
52. The housing application (completed on 7 October 2016) and the homeless application are two separate processes. The former assesses an applicant for placement and position on the Housing Selection Scheme. The latter

⁴ If an applicant is deemed as 'Not Homeless' this is a negative homelessness decision

assesses whether an applicant is homeless or threatened with homelessness. Although the processes are separate, the outcomes are inter-linked.

53. In this case the two processes were running concurrently. For instance, if an offer of housing under the Housing Selection Scheme is accepted, an applicant can no longer be assessed as homeless. Where an applicant is assessed as homeless before being offered accommodation this may cause him/her to receive additional points. In turn, the additional homeless points affect the position on the Housing Selection Scheme.
54. I find that the complainant's acceptance of accommodation meant she could no longer be considered as homeless. This is a complex matter and there is no evidence that the linked nature of these decisions was explained to her. However, I consider it reasonable to expect that she would have understood this, given the definition of homelessness in NIHE Information pack she was provided with. I have not identified maladministration in the NIHEs processing of the complainant's accommodation request. **Therefore, I do not uphold this element of the complaint.**
55. I find that the NIHE's record keeping in this case in relation to the housing/homeless assessment and input form was inadequate. I note that on pages eight, nine and twelve answers have been marked out and written-over. There is no indication of who made these changes and whether they were accepted by the woman. This editing practice is of concern to me and I find it unacceptable. The third Principle of Good Administration, 'being open and accountable', requires public bodies to '*create and maintain reliable and usable records*'. Records should not be altered. When changes or alterations are required on official handwritten records, unilaterally it is good administrative practice to place a line through the relevant text (ensuring it is still legible); make the necessary changes; and initial and date each one. I consider this failure to constitute maladministration. **I uphold this element of the complaint.**

Issue 3 – Was the NIHE’s handling of the complaint adequate?

56. The woman did not complain to my Office about how her complaint was handled by the NIHE. However, the investigation into her other complaints prompted me to consider this issue.
57. I have reviewed the NIHE How to Make a Complaint leaflet which states that the NIHE are committed to seven points in relation to complaints, one of which is *‘explaining our decision’*.
58. I have also reviewed the Grant Manual and the following sections apply to this complaint:
- (i) paragraph 4.1.1 states *‘Article 73 of Part II of the Housing (NI) Order enables the Housing Executive to make available Replacement Grants to unfit dwellings located in a rural area’*,
 - (ii) Paragraph 4.1.4 provides the caveat that *‘Replacement Grants may further be available outside rural areas (urban scenario) on an exceptions basis’*.
59. As part of the investigation of this complaint, the NIHE file was examined and a chronology of events was prepared.
60. I have also considered the NIHE file and the following information is relevant to the complaint.
61. On 22 February 2017 the NIHE grant manager sent a letter to the woman explaining that there were currently no grants available to renovate/replace vacant properties. She subsequently wrote to the Chief Executive explaining the situation and requesting his assistance.
62. The NIHE treated her letter of 25 February as a Stage 2 complaint. On 21 March 2017 the Chief Executive responded to the letter stating that: *‘Exceptional circumstances criteria have not been met as you have confirmed that the property is a vacant property. As the cottage is unoccupied and as*

you are currently the tenant of Choice housing Association at ... a sheltered housing complex, consideration of imminent and significant health and safety risk to [named address] does not arise.'

63. The Chief Executive went on to state that:

'The Housing Executive may only consider the option of a Replacement Grant to assist the owner of an unfit property ... if the property is located in a rural area. As the cottage you have purchased is not in a rural area, the option of a Replacement Grant could not be considered at this location, even if the cottage was occupied, the exceptional circumstances met, and demolition considered the best value for money option for this property.'

64. In his response to investigation enquiries relating to learning from the complaint the Chief Executive stated:

'The organization has not identified any learning or service improvements as a result of [the] complaint.'

Analysis and Findings

65. I note that in response to the complaint the Chief Executive stated the woman was not eligible for a grant.

66. I note he informed her that replacement grants are only available in rural areas. Therefore as her property is not in a rural area the option of a replacement grant was not available to her. I consider this statement is misleading and inaccurate. The Grant Manual clearly states that on an exceptions basis, replacement grants may be available outside rural areas.

67. The third Principle of Good Complaint Handling, 'being open and accountable' requires public bodies to *'give clear, evidence-based explanations, and reasons for their decisions'*. I find the NIHE's response to the complaint fails to do this. The response reiterates previous information already given to her regarding the exceptional circumstances criteria and adds further inaccurate information (the rural area requirement – as outlined in paragraph 66) creating

further confusion. It does not provide any clarity on how or why the decision was made. I consider this failure to constitute maladministration. **I uphold this issue of the complaint.**

68. I am satisfied that as a result of the maladministration I have identified the complainant suffered the injustice of frustration, confusion, upset and time and trouble in submitting a complaint to this office. I have made recommendations to address these failings in the conclusion of this report.

69. The complainant did not make any written representation in respect of my draft report. I note however she did phone my investigating officer to comment on the contents of the report. I have been informed (by my investigating officer) that she was happy with the draft report and its findings. She had inferred however that the draft report was stating that she was entitled to the payment of a grant by the NIHE. My investigating officer explained to her that this was not the outcome of the report. Rather the report was stating the NIHE should allow her to reapply for her grant due to the level of maladministration identified in the handling of her case, however the decision for the payment of any grant was a discretionary decision for the NIHE to make.

CONCLUSION

70. I received a complaint about the handling of a grant request by the NIHE.

71. I have found the following instances of maladministration which resulted in injustice to the complainant:

- Failure to follow processes in accordance with the Grant Manual
- Failure to maintain appropriate records in relation to the factors considered when the decision about the grant application was made
- Failure to provide the complainant with a full explanation and reasons as to why she did not meet each of the Exceptional Circumstances criteria for a replacement grant
- Failure to provide the complainant with an explanation about the NIHE

criteria for obtaining grants for a vacant property

- Failure to provide the complainant with an explanation of the NIHE criteria for classifying a dwelling as occupied
- Failure to provide the complainant with a full explanation and reasons for the decision regarding her grant application, as part of the response to her complaint.

72. In addition I found instances of maladministration which did not result in injustice:

- Failure to adequately notate alterations to written records.

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

- The processing of the complainant's accommodation request and homelessness application.

74. I am satisfied that the maladministration identified caused the complainant to experience the injustice of frustration, confusion, upset and the time and trouble in bringing her complaint to my office.

75. Given the extent of the maladministration in the processing of the grant application I recommend the NIHE reconsider the application for a replacement grant within **two** months of this report. I should point out that the decision on a replacement grant lies entirely with the NIHE and it is not my role to recommend that a grant be provided in this instance. NIHE should also provide an apology for the failings which I have identified, within **one** month of the date of my final report and that it makes a payment of £500 by way of solatium for redress in respect of the injustices identified.

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

- The NIHE review the Grant Manual and guidance with a view to providing greater clarity in cases where exceptional circumstances can arise and the requirement that to meet the exceptional circumstances criteria a property

must be occupied.

- The NIHE review its record keeping procedures to ensure that the factors considered during decision making, and the reason for its decisions, are adequately recorded. This should also be reflected in refusal letters issued to applicants which should give full details to applicants on the reasons for refusal.
- The NIHE ensure all relevant staff within the Grants Office understand the importance of providing clear and accurate advice to applicants and potential applicants.
- The NIHE ensure all relevant staff understand the importance of correctly annotating changes that are made to NIHE records.

I recommend 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. The 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).



MARIE ANDERSON
Ombudsman

October 2018

APPENDIX ONE

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 TWO

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, 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 learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on 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.

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 co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

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.

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 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.

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.

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 the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.