



Northern Ireland

Local Government

Commissioner for Standards

Northern Ireland Local Government Commissioner for Standards

Summary of Responses received to the Consultation on the Commissioner's Alternative Action Proposals

21 June 2016

Background

1. The Local Government Act (NI) 2014 (the 2014 Act) established, for the first time in Northern Ireland, a mandatory Code for Conduct for Councillors. The 2014 Act gives the Northern Ireland Public Services Ombudsman (NIPSO), in her role as Northern Ireland Local Government Commissioner for Standards¹ (the Commissioner), responsibility for investigating and adjudicating on complaints that a councillor has breached the Code. Under section 55(2) of the 2014 Act, the Commissioner may take action instead of, or in addition to, conducting an investigation in dealing with an alleged breach of the Code.

Introduction

2. The aim of the Commissioner's policy of Alternative Action is to bring about a satisfactory resolution of a complaint without the cost and resource implications of an investigation and/or an adjudication. The Alternative Action policy is also intended to encourage compliance with the Code of Conduct and to demonstrate the Commissioner's commitment to promoting ethical conduct as well as to deal with potential breaches of the Code in a proportionate and appropriate manner in all the circumstances of the case.

Purpose of Consultation

3. In order to ensure that the Alternative Action proposals identified a range of alternative actions and provided clear guidance on the circumstances in which they may be applied, the Commissioner engaged in a 10 week consultation exercise beginning 9 November 2015 and ending on 15 January 2016.
4. The consultation exercise was conducted by email, with links provided to the consultation page on the Commissioner's website. Emails were sent to all councils, local government representative bodies, and a range of public and statutory bodies. In addition, during the consultation period, the Commissioner and Deputy Commissioner participated in a number of Local Government Code of Conduct training and awareness events and all participants in those events were advised of the consultation.

Consultation Responses

¹ Prior to 1 April 2016, the Northern Ireland Ombudsman undertook this function in his role as the Northern Ireland Commissioner for Complaints

5. In total 5 responses were received: 2 were provided by councils, 2 by local government representative bodies and 1 was provided by another public body. A list of respondents is attached at Appendix 1. I am grateful to those bodies who participated in the consultation.

Key Areas of Concern raised by Respondents

6. The main areas of concern identified by respondents, together with an analysis of their comments are attached at Appendix 2.

Publication of the Commissioner's Alternative Action Policy

7. The Commissioner's [Alternative Action Policy](#) is now available on the Commissioner's website.

Copies in alternative formats will be available on request by telephoning:

FREEPHONE 0800 34 34 24

or from:

Freepost NILGCS OR Northern Ireland Local Government Commissioner
for Standards
Progressive House
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Marie Anderson
Northern Ireland Local Government Commissioner for Standards
21 June 2016

List of respondees

Councils

- **Derry City and Strabane District Council**
- **Fermanagh and Omagh District Council**

Representative Bodies

- **NILGA**
- **NAC (NI)**

Public/Statutory Bodies

- **Local Government Auditor**

Analysis of Response to Consultation on Alternative Actions

No.	Respondent's Submission	The Commissioner's Response
1	I note that it is envisaged mediation should be arranged by the Chief Executive of the relevant council. Additional wording should be included for the circumstances where the Chief Executive is involved in the complaint.	Accepted The Commissioner's Policy will reflect that where the Chief Executive of the Council is involved in complaint mediation will be arranged by 'a senior officer of the council'.
2	Consideration might be given to including an alternative action of a charitable donation (possibly as nominated by the affected person).	Not Accepted This suggestion is likely to prove difficult to implement. Issues are likely to arise around for instance: <ul style="list-style-type: none"> • How the amount of the donation would be determined: too little may be perceived to be derisory, too much could be seen as the Commissioner imposing a financial penalty without having the powers to do so. • How the charitable body would be selected: some organisations may not be perceived as enjoying widespread support or providing a service across all parts of the community.
3	As is the case for the wider Independent Review, finalisation of the Commissioner's Alternative Action policy and guidance should be expedited.	Accepted The Commissioner intends to publish the final Alternative Actions Policy in June 2016.
4	It remains the Respondent's view that minor breaches shouldn't involve the Commissioner to the degree expressed in this draft policy and should mainly be dealt with locally or internally	This is not a matter for the Commissioner. It is not provided for in the 2014 Act and is a policy issue for the Assembly, the Executive and the government department responsible which from May 2016 is the Department for Communities (DfC). Part 9 of the Local Government Act (NI) 2014 makes the Commissioner for Complaints solely

	within each council, as is the case in Wales.	<p>responsible for the investigation and adjudication of a complaint of a failure to comply with the Code of Conduct. There is no statutory basis for any other body to consider such complaints. This differs from the legislation governing ethical standards in other jurisdictions such as Wales which allows for Standards Committees in each council to have a role in considering minor breaches.</p> <p>Any changes to the legislation governing this function can only be taken forward by DfC.</p>
5	Guidance defining what is minor should be drafted to reflect similar policy and practice to that in place in Wales. The relevant section of the Welsh Code of Conduct, outlining a two stage process and Local Resolution Process has been provided to the Commissioner.	<p>The Commissioner's Alternative Action proposals provide examples of the circumstances in which any action is likely to be appropriate. The Commissioner has not included a definition of what constitutes a 'minor' breach as this will be dependent on the circumstance of each case and the impact of a councillor's conduct on the complainant and on the wider public.</p> <p>The Commissioner has published on her website details of the 'Public Interest Considerations' which are taken into account by investigators in determining whether it is in the public interest to investigate a complaint or to refer a complaint to the Commissioner for an adjudication decision.</p> <p>The introduction of a Local Resolution process would require a change in the current legislation. The two-stage model employed in Wales was introduced on a statutory basis by the Local Government Act 2000. Legislation would be required in Northern Ireland to introduce such a model here and that is not a matter for the Commissioner but for the Assembly, the Executive and DfC.</p>
6	The Respondent will continue to press for a change to the law and policy governing conduct of councillors in Northern Ireland, to enable a similar system of local standards committees and monitoring officers to be put in place here.	<p>This is not a matter for the Commissioner but for the Assembly, the Executive and the DfC. The Commissioner is willing to participate in any future discussion on this issue.</p>
7	It can be inferred from the consultation document that the Commissioner will need to	<p>The mechanism by which the Commissioner is funded ensures that savings achieved, including those resulting from the outworking of the Alternative Actions policy, are passed</p>

	liaise closely with councils, and indeed in some cases, there are further resource implications for councils (in relation to training and mediation) over and above the existing council funding of the Commissioner's office. This is in the absence of an official council 'Monitoring Officer'.	on to councils. These savings would be available to Councils to offset any additional costs incurred by them in providing training and mediation services.
8	It is the Respondent's view that a monitoring officer role could be carried out in each council by an officer with an existing Compliance and Advisory role. Policy from the Commissioner, such as that now drafted in relation to alternative action, is likely to lead to the appointment of 'monitoring officers' in councils on an informal basis, and we would assert that it would be preferable to have this system formalised.	The appointment of Officers with a compliance/advisory role is a matter for councils. However, legislation does not provide for any council officer to undertake any function in respect of the investigation and adjudication of complaints. This remains the statutory responsibility of the Commissioner. Any change in legislation is not a matter for the Commissioner but for the Assembly, the Executive and DfC.
9	As a result of the implementation of this alternative action policy, any subsequent fall off in the investigative and adjudication work of the Commissioner should lead to a redeployment of resources from the Department to assist to service minor breaches.	The mechanism by which the Commissioner's work is funded ensures that any savings achieved, including those resulting from the implementation of the Alternative Actions policy, are passed on to councils. However, as stated above there is no statutory authority for any party, other than the Commissioner, to investigate and adjudicate on complaints of alleged breaches of the Code.

10	<p>Additionally, there should be the opportunity for a Peer Review process, materially involving</p> <ul style="list-style-type: none"> (i) NILGA and/or (ii) Members from another council and/or (iii) More than one Council's councillors, similar to what the Adjudication Panel for Wales and the Welsh Ombudsman outlined when their practices were considered by the DoE. 	<p>Legislation governing the investigation and adjudication of complaints makes no provision for a 'peer review process'. Any change in legislation is a matter for the Assembly, the Executive and DfC.</p>
11	<p>Complaints should be able to be referred to the Ombudsman should a local resolution not be reached.</p>	<p>Legislation governing the investigation and adjudication of complaints makes no provision for resolution of complaints by any person other than the Commissioner. Any change in legislation is a matter for the Assembly, the Executive and DfC and not for the Commissioner.</p>
12	<p>One of the Deputy Commissioner's criteria for a complaint to be valid is that 'the complaint has been through the body's complaints system.</p> <p>The findings of an internal investigation could result in recommendations that actions, such as a reminder of the obligations under the code, or refresher training on the code, were required in a particular case. Such Alternative Actions should therefore only be utilised by the Deputy Commissioner where they have not already undertaken by the Council.</p>	<p>The Commissioner wrote to the Respondent to correct the impression that complaints about a Councillor's conduct have to be made to the Council in the first instance. The Commissioner explained that this requirement applies only to complaints of maladministration made to the Commissioner in her role as Northern Ireland Public Services Ombudsman.</p> <p>Legislation governing the investigation and adjudication of complaints makes no provision for resolution of complaints by any person other than the Commissioner. Any change in legislation is a matter for the Assembly, the Executive and the DfC and not for the Commissioner.</p>
13	<p>In relation to mediation, the Respondent welcomes this approach as such procedures can be less confrontational or adversarial than court</p>	<p>The Respondent's welcome of the Alternative Actions proposals is noted.</p> <p>The Alternative Action proposals provide for the Commissioner to recommend that the</p>

	<p>proceedings. Not only can this reduce stress, it can also be an important consideration when the parties know they want to have, or must have, an ongoing relationship. The Respondent recommends that, once commenced, the mediation process should be concluded within one calendar month, unless in exceptional circumstances.</p>	<p>Council appoint an independent, professional mediation service provider. Given this, while the Commissioner accepts the desirability of concluding the process in a timely fashion, she does not consider it appropriate to prescribe the terms under which the Council engages its contractors. Nor does the Commissioner consider that would it be helpful for her to seek to pre-empt the professional judgment of the mediator in determining the appropriate duration of the process.</p> <p>Information on mediation and other alternatives means of resolving disputes is available in “Alternatives to Court” published by the Northern Ireland Ombudsman, Law Centre (NI) and Queen’s University Belfast, copies are available on request here.</p>
14	<p>The Respondent would also recommend that indicative timeframes for the consideration of cases under the Alternative Action framework should be included in the document.</p>	<p>Alternative Action may be taken ‘instead of’ or in ‘addition to’ an investigation. The Commissioner may decide that an Alternative Action is appropriate before an investigation is launched. Or it may become apparent that this is the appropriate outcome only during the course of an investigation and in light of the emerging evidence. It is difficult to be definitive about timeframes in these circumstances particularly at the outset of this new process.</p> <p>The Commissioner is also aware that a number of the actions outlined, for example ‘Disclosure to another body’ will by their nature place the timeframe for resolving the complaint outside the Commissioner’s control.</p> <p>The Commissioner has established a Key Performance Indicators (KPIs) which requires that</p> <ul style="list-style-type: none"> (i) A decision on whether or not to investigate should be taken within 4 weeks of the receipt of a valid complaint and; (ii) investigations should be completed within 48 weeks of a decision to investigate. <p>These KPIs will remain in effect even where Alternatives Actions are ongoing.</p> <p>The Commissioner intends to review the implementation of the Alternative Action Policy in 2018 and will seek, at that stage, to consider whether indicative timeframes are appropriate in light of her experience in operating the policy.</p>
15	<p>No specific comments were put forward as part of the consultation. The Respondent provided a</p>	<p>The Commissioner welcomes the opportunity to give fuller consideration to the matters raised by the Respondent and intends to use the questions provided to prepare a FAQs</p>

	copy of a number of questions posed by members at the Commissioner’s presentation to the Respondent on 9 November for the Commissioner to take into account. None of these questions refer to the Alternative Action proposals.	section for her website for publication in Summer 2016.
16	The Respondent in general welcomes the proposals as they provide simpler and speedier ways of resolving complaints under the Code of Conduct.	The Commissioner welcomes this response.
17	It appears to us that there are still certain types of complaint that could be dealt with in a similarly speedy manner and do not justify the full investigative process. For example, vexatious or mischievous complaints that appear to be made solely in a disputatious manner, and do not materially affect someone’s work as a councillor, could also be resolved at an early stage by the Deputy Commissioner ruling that the councillor’s work or reputation are not being seriously challenged.	<p>The Commissioner has not received to date a vexatious or mischievous complaint. In any event, all complaints received by the Commissioner undergo a rigorous assessment process to determine if it is a complaint that can and should be investigated. As part of that process investigators assess the evidence provided by complainants to support their allegation. The requirement to provide evidence to support an allegation of a breach of the Code is a fundamental part of the Commissioner’s complaints process. This requirement ensures that vexatious, malicious or frivolous complaints will not be accepted for investigation.</p> <p>In addition, the assessment process includes consideration of the Public Interest in conducting an investigation or adjudication. Public Interest considerations include:</p> <ul style="list-style-type: none"> • the seriousness of the alleged breach; • whether an investigation is proportionate i.e. is the cost excessive when weighed against any likely sanction. <p>More information about Public Interest considerations is available on the Commissioner’s website at: www.nipso.org.uk</p> <p>The Commissioner is aware that due process must be respected during the investigation and adjudication of complaints: councillors complained of must be treated fairly and lawfully. This can take time; however, the Commissioner is conscious of the need to avoid unnecessarily lengthy investigations. As a result, the Commissioner is committed to delivering against her Key Performance Targets (KPIs) for local government ethical</p>

		standards. These require 85% assessments to be completed within 4 weeks of receipt of a valid complaint and 85% investigations to be completed within 48 weeks of a decision to investigate. These targets were achieved in both 2014-15 and 2015-16 and the targets themselves are periodically reviewed.
18	Some complaints arising from private or semi-private events attended by a councillor could also be discarded on the basis that the councillor is not expected to be “on duty” or acting as a councillor in the normal way as these are not official council activities and the councillor is entitled to a less strictly supervised private life.	Councillors are entitled to a private life, and as a result many of the rules contained in the Code apply only when acting in the role of councillor or as a representative of the Council. However, because private behaviour can affect the reputation of a council, the Code of Conduct, as consulted on and passed by the Assembly, is clear that some rules apply “at all times”.
19	We would like to see an emphasis on Methods 1 and 5 – Reminder of Obligations and Training – wherever possible as opposed to initiating the full investigative process, especially as full details of investigations and judgments are not available and councillors may genuinely be uncertain as to what does and does not amount to a breach of the Code of Conduct.	<p>The Respondent’s views are noted and welcomed.</p> <p>The Alternative Action proposals allow for the Commissioner to determine the appropriate action dependant on the circumstances of the case.</p> <p>In regard to the availability of investigations and judgments, the legislation which sets out how the Commissioner’s investigations must be undertaken requires that all such investigations are conducted ‘in private’. This is to protect the integrity of the investigation and the reputations of those who have been accused of breaching the Code.</p> <p>The 2014 Act limits the circulation of any investigation report. Where the investigation finds ‘no breach’ or determines that ‘no action’ should be taken, a copy of the investigation report can only be provided to the councillor concerned and the Chief Executive of his or her council. However, the Commissioner may publicise a summary of an investigation report. The Commissioner intends to publish, in Summer 2016, the criteria which will be used to determine when a summary investigation report will be published.</p> <p>Legislation provides for publication of all adjudication decisions. These will be available on the Commissioner’s website six weeks from the date of the public hearing into the complaint</p>

		<p>and will provide details of the finding (breach or no breach) and any sanction imposed.</p> <p>The Commissioner appreciates the importance of disseminating the lessons arising from her investigations. In addition, she intends in future to publish anonymised Case Digests on her website and to review and update her Guidance (first published in March 2015) with local case study examples. The Commissioner publishes (as part of the Ombudsman’s Annual Report) an annual review of her work in investigating and adjudicating on complaints which includes a statistical analysis of case work.</p> <p>The Commissioner and her staff have consistently engaged with Councils and with local government representative bodies in explaining the role of the office, the Code requirements and the Commissioner’s guidance. The Commissioner intends to continue to engage with the stakeholder community in order to develop a full understanding of Code requirements and to promote ethical standards by reflecting lessons arising from case work.</p>
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**Northern Ireland Local Government Code
of Conduct for Councillors:
Alternative Action Policy**

1. Introduction

- 1.1 Part 9 of the Local Government Act (Northern Ireland) 2014 (the 2014 Act) introduced a new ethical standards framework for local government in Northern Ireland. The 2014 Act requires councillors to observe the Northern Ireland Local Government Code of Conduct for Councillors (the Code). The Code was approved by the Assembly on 27 May 2014. The 2014 Act provides for the Northern Ireland Local Government Commissioner for Standards (the Commissioner), to investigate and adjudicate on complaints of alleged breaches of the Code.
- 1.2 Under section 55(2) of the 2014 Act, the Commissioner may take action instead of, or in addition to, conducting an investigation in dealing with a written allegation that there has or may have been a breach of the Code. Such action is referred to in this policy as “Alternative Action”².

2. The Purpose of the Alternative Action Policy

- 2.1 The purpose of the Alternative Action policy is to seek a satisfactory resolution of a complaint without the cost and resource implications of an investigation and/or an adjudication. The Alternative Actions outlined in this document are also intended to encourage compliance with the Code of Conduct and to deal with potential breaches of the Code in a proportionate and appropriate manner. For instance, Alternative Action may be appropriate where a complaint has arisen as a result of a breakdown in working relationships between a councillor and a senior office in the Council and such action may assist in restoring working relationships.

3. When Alternative Action may be appropriate

- 3.1 Alternative Action may be appropriate in the following circumstances:
- a) it is the most efficient, effective and proportionate means of resolving a complaint;
 - b) a councillor is likely to be found in breach of the Code, but it is not likely that this would result in a *significant* sanction being provided by the Commissioner i.e. suspension for more than one month or disqualification for any period;
 - c) the complaint has met the evidential test at assessment stage, but does not fully meet the criteria contained within the Commissioner’s [Public Interest Considerations](#) guidance (which relate to the seriousness of the alleged breach and the cost of an investigation and any adjudication when weighed against the likely sanction). A copy of the Public Interest Considerations guidance is available on the Commissioner’s website at www.nipso/nilqcs;

² The Commissioner may delegate her functions in relation to investigations and the taking of Alternative Action to the Deputy Commissioner.

d) The complaint relates to issues of respect and consideration for others and the complainant is also an elected official; and

3.2 The above is not an exhaustive list and the decision as to whether Alternative Action should be taken instead of or in addition to an investigation will be taken by the Commissioner having regard to the facts and circumstances of every case.

3.3 The types of Alternative Action which may be taken by the Commissioner and the circumstances in which they may be applied are set out at Appendix A. The action to be taken in any particular case will be a matter for the discretion of the Commissioner, in all the circumstances of the case and, where appropriate, having sought the views of the complainant and/or councillor where their agreement or participation is required.

4. Review of the Alternative Actions Policy

4.1 The Alternative Actions Policy will be reviewed every two years. The first review will take place in May 2018.

Marie Anderson

NILGSC

21 June 2016

Action	When this action is likely to be appropriate	Roles and procedures
1. Reminder of Obligations under the Code	<p>This action is likely to be taken where the complaint has not been recommended for investigation, but there remains a concern that, should the conduct complained of persist or escalate, it may give rise to a future breach of the Code. A reminder will be appropriate where the Commissioner considers that it would be likely to reduce the risk of such conduct occurring in the future.</p>	<p>a) The Commissioner will write to the Councillor concerned reminding him/her of the Code’s requirements in relation to the matter complained of and providing any additional advice or guidance considered appropriate.</p>
2. Apology to the Complainant or the Public at large	<p>This action is likely to be taken where the councillor accepts there has been a breach of the Code, or where it is clear that the councillor acted or communicated in the manner indicated in the complaint, but the nature of the breach and/or the particular circumstances of the case is such that it is unlikely to result in a significant sanction (i.e. suspension for more than one month or disqualification for any period).</p>	<p>The apology should reflect the Ombudsman’s guidance on issuing apologies for public service providers which is available at: https://nipso.org.uk/nipso/publications/services-we-offer/</p> <p>a) Following appropriate consultation with the relevant parties, the form and content of the apology will to be approved by the Commissioner.</p> <p>b) Where the Commissioner has approved the form of the apology, the complaint will not be reopened on the basis that the complainant is not content with the apology.</p> <p>c) The manner and forum in which the apology is delivered i.e. whether in private, in the Council Chamber, in the media etc. will depend on the circumstances of the actions/communications giving rise to the complaint and will be determined by the Commissioner.</p> <p>d) Failure to provide a suitable apology or a refusal to provide that apology in</p>

		<p>the form, manner or form required by the Commissioner will lead to the complaint reverting to the Commissioner for a decision on the next steps to be taken in relation to the complaint, including for example, a decision to begin or resume an investigation.</p>
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Action	When this action is likely to be appropriate	Roles and procedures
3. Rectification	<p>This action is likely to be taken where the Councillor accepts he or she has failed to comply with the Code, but the failure is minor in nature and no adverse consequences for the Council or any other person have resulted from the breach, for example where there has been a minor and/or inadvertent failure to register an interest.</p>	<ul style="list-style-type: none"> a) The Councillor is required to comply with the Code. For example, by registering an interest which had not been previously registered. b) Rectification may be combined with another alternative action, such as a requirement to issue an apology (as at point 2 above).
4. Disclosure to another body	<p>The Commissioner is likely to refer the complaint to another body for action where the other body has greater or equivalent powers to investigate the complaint and/or it has specialist skills or expertise on the issues raised by the complaint.</p> <p>Such referrals will be made in accordance with the Commissioner’s powers under Sections 49 and 51 of and Schedule 7 to the Public Services Ombudsman Act (NI) 2016 (the 2016 Act). For example, under Section 49 of the 2016 Act the Commissioner may make a disclosure to the Information Commissioner where it appears there has been an offence under relevant provisions of the Data Protection Act 1998 or the Freedom of Information Act 2000.</p>	<ul style="list-style-type: none"> a) The Commissioner will make a referral to another body in order for that body to take appropriate action. b) The Commissioner is likely to suspend any investigation while the matter is considered by the body to which the referral has been made. c) When the body to which the matter has been disclosed has evaluated the information and taken the action it considers appropriate, the complaint will revert to the Commissioner for a decision on the way forward.

Action	When this action is likely to be appropriate	Roles and procedures
5. Training on the Code	This action is likely to be taken where it appears to the Commissioner that the breach has arisen due to a reasonable misinterpretation of the Code or a failure to understand the requirements of the Code.	<ul style="list-style-type: none"> a) The nature of the training required will be determined by the Commissioner based on all the circumstances of the case including whether the councillor has received similar training in the past. b) The training will be arranged by the Council with the agreement of the Chief Executive. Any costs incurred in providing training will be met by the Council. The Commissioner must agree that the training proposed addresses the specific issue which she has identified. c) Failure to attend training will mean that the complaint reverts to the Commissioner for a decision on the way forward.
6. Mediation	This action is likely to be taken where the complaint has resulted from a breakdown in working relationships. On occasion, it may be taken in relation to disputes between councillors and members of the public.	<ul style="list-style-type: none"> a) Mediation will be conducted by a confidential, independent, professional mediation service, to be arranged by the Chief Executive of the relevant Council and agreed by the Commissioner. Costs incurred in providing mediation will be met by the Council. Should the Chief Executive be a party to the complaint and/or the mediation process the arrangements will be made by a senior officer of the Council. b) Both parties must first provide written confirmation to the Commissioner that they agree to participate fully in the mediation process and abide by the outcome of it. c) Should the mediation fail the complaint will revert to the Commissioner for a decision as to how to proceed. The Commissioner has discretion in

Action	When this action is likely to be appropriate	Roles and procedures
<p>6. Mediation continued</p>		<p>this regard and may decide to take no further action in relation to a complaint where the Commissioner considers that the Councillor complained of had not contributed to the failure of the mediation process.</p> <p>d) parties cannot rely on any information disclosed during the mediation process in any subsequent investigation or adjudication proceeding from the complaint.</p> <p>e) Where the Commissioner recommends mediation but the Councillor declines to participate in the mediation, the Commissioner will consider whether or not to continue the investigation. If the case proceeds to adjudication, the Commissioner may take this refusal into account in determining the level of sanction, if any, applied where there is a finding of a failure to comply with the Code.</p> <p>d) At the conclusion of the mediation the Commissioner will determine what if any further action is required in relation to the complaint.</p>