

**Report of the Housing Ombudsman's  
Independent Reviewer  
of Service Complaints**

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# Introduction

## Background

The Housing Ombudsman's dispute resolution principles are: be fair; put things right; and learn from outcomes. The Ombudsman applies these principles internally to complaints about the service we have provided to our customers as well as externally. The role of the Independent Reviewer of Service Complaints is intended to enhance our learning with an independent perspective and demonstrate our transparency through the publication of the Reviewer's reports.

## Service complaints during the period

This report covers service complaints closed during the period 1 April to 30 September 2021. Our approach to service complaints is to uphold these if there is any doubt over the service provided.

During this period:

- we investigated and closed 130 service complaints at stage 1 and 40 at stage 2
- we upheld or partially upheld 92 service complaints at stage 1 and 26 at stage 2
- the total of service complaints investigated and closed at stage 1 and stage 2 represents 1.6 per cent of the enquiries and complaints brought to us and closed.

The high proportion of complaints upheld relate to unprecedented increases in demand on our Service throughout the first half of the year – enquiries and complaints rose by 140% compared to the same period last year. From 1 July onwards, we enacted our protocol for dealing with temporary periods of excess demand as set out in the policy to help manage customer expectations.

## Sample selection

We selected nine cases for review. For this review, we skewed the sample towards those service complaints that are more challenging to deal with as they relate to:

- multiple cases meaning that a single point of contact had been appointed
- a request for reasonable adjustments
- an alert placed on the case due to unreasonable behaviour.

All but one of the complaints selected contained one or more of the above features and we wanted to learn what more we could do to improve our approach here.

# Reviewer's report

## Complaint themes

The selection of service complaints considered in this report all relate to issues raised by individuals who either have a record of submitting multiple complaints or have disabilities, including mental health issues, which require adjustment on the part of the Housing Ombudsman Service (HOS). In many instances, the cases involve complainants who exhibit both of these features.

While the number of such complainants make up a relatively small proportion of those who contact most Ombudsman schemes, they often consume a very significant proportion of staff time and dealing with them creates very real issues for those responsible for service complaints. It is not uncommon for many such complainants also to have had extensive contact with other agencies, including courts and other complaints mechanisms, and to exhibit behaviour which makes it difficult for organisations with established processes and limited resources to meet their needs. In some cases, the complainant's attachment to their own belief set is so profound that they may struggle to accept any response which falls short of a full acceptance of their position, and they may be inclined to form the view that the body to whom they are complaining is biased or, in a few cases, part of a wider pattern of co-ordinated injustice.

Such features mean that it can be easy to dismiss the issues raised by such complainants as unworthy of serious investigation or to form the view that any service complaints they make are without merit. The very fact that some of these complainants are challenging for organisations to deal with may mean that they do receive poorer treatment than their more compliant peers. Moreover, while their behaviour can be difficult to manage, in many cases it springs from mental health disabilities which do entitle them to reasonable adjustment under the Equalities Act.

The challenge for Ombudsman schemes is to balance the need to ensure that they provide such complainants with as good and fair a process as possible, making reasonable adjustments to meet their disabilities as required under the law, with the need to continue to run an efficient and streamlined business process. While such complainants have a right to a good service, any problems they may be facing and any disabilities they may have do not entitle them to any better service than any other complainant.

This is not an easy task but is one which, in my view, HOS is managing reasonably well. However, as one might expect, there are areas in some of the cases I have studied where the difficulty of managing such complainants has, in my view, exposed some issues which HOS may wish to consider. Nevertheless, while there may be, as I have indicated above, a temptation for staff to become irritated by the behaviours with which they are having to deal, I have seen absolutely no sign of any bias in the way these complaints have been handled, still less of any handling of the complainants themselves which is anything less than respectful and professional.

The organisation should be proud of the client-centred culture which these cases demonstrate exists in HOS.

In reviewing these cases, along with reading the documents on the file, I have reviewed the telephone calls featured where it has appeared necessary to do so, such as when the cases involve claims of rude or discriminatory behaviour. I note that the practice when such service complaints are made is that calls are always reviewed by a more senior HOS member of staff (indeed, in many cases, more than one review took place). This reassures me that there are proper processes in place in handling service complaints to ensure that the correct conclusions were reached.

### **Multiple complaint management**

The first, and perhaps most difficult, issue raised by the sample is how to manage complainants who bring a high volume of cases simultaneously or repeatedly attempt to raise the same complaint, often by focussing on a new aspect of what is substantively the same issue. This is an issue with which Ombudsman schemes – and courts – have struggled for many years and to which there is no simple solution. In the main, the cases I have reviewed indicate that this is generally being done well at HOS. However, there are two nuances which I would suggest may be worth exploring.

First, there is the question of how complaints are classified. One of the essential stages in complaints handling is the definition of scope: determining what issues are and are not part of the complaint which is being raised. Set the scope too narrow and it risks excluding aspects of the poor service being complained of which have to be dealt with separately or subsequently; set the scope too wide and the complaint lacks focus and becomes difficult to manage.

Paying close attention to scope is vitally important in managing the challenge posed by complainants who bring multiple complaints, many of which are linked or about similar issues. In some of the cases I have reviewed, these have been treated as entirely separate complaints rather than another example of an issue which has previously been raised, meaning that there has been an ever-growing number of complaints awaiting acceptance and investigation. While I accept that, in some cases, the scope has to be set strictly in relation to whether or not an issue has been raised with the landlord, it is open to the Ombudsman to decide whether to treat a specific matter raised as a separate complaint in itself or as another specific example of a broader issue which has already been raised with the landlord; if it is the former, a new case should be opened, but if it is the latter, it can be dealt with as part of the existing case. HOS may wish to consider whether a more flexible approach to scope definition (consistent, of course, with the principle that the landlord must be given an adequate opportunity to respond) may be helpful in managing multiple, linked complaints.

Second, effective management of multiple complaints requires a firm but understanding approach to the handling of the complainants themselves. In some of the cases studied, the complainants had been dealt with by many different HOS staff; while this is perhaps inevitable at the early stages of the Ombudsman's

process and before the appointment of an Adjudicator, the multiple staff involved creates a risk not just of a range of different approaches being taken but that the staff concerned only had a partial understanding of the full range of issues. The cases which had been channelled through a single point of contact not merely helped to manage the complainant's behaviour more consistently but also, from a complainant point of view, allowed them to deal with an individual who had a grasp of all aspects of their circumstances. I endorse that practice.

Finally, having a clear vexatious complainant policy is vital, including limiting the number of cases which are accepted and investigated simultaneously. While, realistically, such practices do limit some individuals' potential access to redress, they serve to ensure that the needs of a single, demanding individual are balanced with the needs of a larger number of less demanding complainants whose right to redress is equally important. In my view, in an organisation which has limited resources, such practices are not merely ethical but vitally important.

The above represents not a departure from existing HOS processes but a more flexible approach on a case-by-case basis and does not therefore require a formal recommendation as part of my reporting process.

### **Equalities Act**

As I have said above, many of the complainants in the selection studied appeared to fall under the Equalities Act provisions, in most cases because they had, or claimed to have, disabilities (usually mental health issues) which impacted on their behaviour or gave rise to requirements for HOS to make adaptations to their normal processes. In reviewing the handling of the complaints, I struggled to see evidence that the nature of those disabilities had been clearly identified; while the files of many of these cases are headed "special circumstances" and although the case file structure is deliberately designed to allow information to be stored, none of the cases I reviewed contained a summary of the necessary information. Staff need to be encouraged – indeed, required – to use the full capability of the file system and record any disabilities a complainant has reported.

More important, and linked to the above, it has not been easy to discern from the files for these cases whether there had been an explicit process of considering what adaptation was required in response to the complainants' disabilities. HOS has a very clear and entirely appropriate Reasonable Adjustment Policy which provides detailed guidance to caseworkers. In the cases reviewed, it is not always easy to discern how staff have sought to implement this policy. There is in most cases an absence of any clear statement of the adaptations required for the complainants, which has the effect of putting pressure on individual caseworkers to respond to ad hoc requests for their normal processes to be waived. The files contain examples of requests to supply a line-by-line justification of decisions or for complaints to be taken down verbatim over the phone which, since they emanate from complainants who had hitherto appeared fully capable of dealing with complex written material, appear prima facie unreasonable. However, there were also cases where there was no clear evidence that the needs of individuals with anxiety issues or poor ability to control their behaviour were being fully taken into account by HOS staff. In both

instances, there is a risk that the absence of explicit consideration of reasonable adjustments could lead to unfairness. Nor, as described above, did any of the cases examined have clear records of the adaptations required in the relevant areas of the case file.

A similar consideration arises in relation to the case I examined where the issue of racism was raised. In this matter, the substance of the resident's complaint about the landlord had involved racism. The file indicates that the complaint itself had been dealt with appropriately by HOS and there are some indications that the dissatisfaction on the part of the resident was prompted more by what he regarded as a failure on the part of HOS to support him in the face of the issues he was experiencing than by any direct experience of racist actions or words on the part of the HOS staff. From the perspective of HOS staff, the absence of any evidence of direct racism on the part of the staff involved would render the speedy rejection of his claim of racism by the organisation reasonable.

However, looked at from the perspective of a complainant who may already have formed the view that similar, predominantly white organisations are reluctant to take issues of race seriously, the response may appear less reasonable. While I am sure that HOS is genuinely committed to combatting discrimination whenever it appears, it cannot merely require potentially alienated and highly-charged complainants to take that on trust. These days, nearly all organisations will assert that they abhor racism, but that does not mean that racial bias does not exist within them or that they understand and give due weight to issues of race and discrimination.

It is important to note that this case was still in the early stages of the HOS process and had not been accepted for investigation. However, I am struck by the absence of evidence of a formal response to the allegations made by the complainant and his request for an adaptation to the normal HOS process by asking that his case be handled by a black, female Caribbean investigator (a request which, since the case was not yet at the investigation stage, was in any event moot). In saying this, I am not saying that the conclusions the organisation came to are not reasonable. However, allegations of racism are serious, and I would have expected to see some evidence that they were properly looked at before being dismissed. Similarly, while it might be felt that it would have been inappropriate for the complaints being raised to have been assigned to the sort of individual he requested, I might have expected to see evidence that some thought had been given to the question of how to establish the trust of an individual for whom race was clearly an important issue. At the least, being able properly to report to this complainant that his allegations and requests had been taken seriously and dealt with formally may have helped allay some of his suspicions.

The absence of a clear process by which cases involving complainants who fall under the Equalities Act are dealt with does not merely raise risks of quality; the risk is also a legal one. In one of the cases involving disability I reviewed, the complainant had explicitly raised the requirement of the Equalities Act and had asked for a formal account of what the organisation had done to make adjustments for his needs. There was, however, no evidence that he received any formal written

response to this request nor any evidence on the file that there had been a formal process for considering the request. This puts the organisation at risk.

*I therefore recommend that where staff are dealing with individuals they know or believe fall under the Equalities Act, they are required to keep a formal record of any requests for adaptations to be made and their response to them. Such records should be easily available to other staff dealing with those individuals.*

### **Separation of role**

In the case discussed above, and in a number of other cases in this sample, the service complaint process was also used to issue warnings to the complainant about their behaviour. As with Reasonable Adjustments, HOS has a serviceable Unacceptable User Action policy; this lists actions which HOS may take in response to such unacceptable behaviour, which include both warnings and restrictions of contact. Leaving aside the question of whether it is appropriate or not to warn an individual who has raised issues of discrimination that this is not acceptable behaviour without any formal process to establish whether the allegation was malicious or even whether there is any evidence to support the allegations, I consider that the practice of using service complaint response letters to warn complainants about their behaviour is unwise.

This is for two reasons. First, the two processes – managing service complaints and managing complainant behaviour – are separate and are the responsibility of separate parts of the organisation. While there may be some cases where the behaviour in question may be directed towards service complaints handlers themselves, in all the cases reviewed it was staff outside the service complaints area who were on the receiving end of the behaviour which was deemed unacceptable. In my view, it is for the management of HOS casework teams to respond to the treatment of their own staff, rather than the service complaints handling function.

Far more important, however, is the risk that complainants may get the impression that the behavioural warning – and in one case restriction of service – was, in effect, a punishment for raising a service complaint rather than a response to their behaviour (indeed, the complainant making allegations of racism could have reasonably formed the view that the warning issued to him was precisely in response to the fact that he made a service complaint on the point). This practice risks making the organisation appear to be defensive and intolerant of criticism. In my view, the issuing of behavioural warnings should be kept apart from the service complaints process.

*I recommend that the service complaints process should not be used to issue warnings or action for complainants' behaviour.*

## **Service Complaints Case Summaries**

### **Case No 202105325**

Gathered under this case number are a significant collection of individual complaints submitted by a single complainant over a period of ten days. Although the complaints touched on a number of issues including gutter cleaning and waste bins, the complainant's concerns appear particularly to have centred on financial matters: ten of the complaints recorded related to finance, service charges in particular. The service complaint related to two issues: the way the cases had been recorded, in particular the use of overlapping case numbers, and HOS's failure to respond in line with its own time limits.

The service complaint response quite correctly identified errors in the way in which these cases were dealt with. There were instances where deadlines for responses were exceeded and promises of contact were not kept, which were acknowledged and proper apologies were given. To that extent, the service complaint was dealt with admirably.

The challenge in this case comes from the fact that this individual had, over a relatively short space of time, made a number of overlapping complaints which had reached different stages of the landlord's complaints process (indeed, there were references in the file to complaints being made over the period of a year, but I was unable to access those records). This plainly created problems for HOS (and, it seems, the landlord) in responding to the volume of issues and paperwork. In the case of HOS, the complaint response explicitly recognised that there had been errors in recording and communication of cases, with some of the cases being addressed under incorrect case numbers and some elements of duplication. The decision to put in place a single point of contact sounds sensible. However, the case raises questions about whether the process for dealing with multiple, linked complaints could be made more efficient.

### **Case No 202107001**

This is one of a number of service complaints raised by an individual complainant over a period of a year. Apart from an erroneous assumption on the part of the complainant that two of his cases had been closed and one matter of not being called back, this complaint largely related to the attitude of HOS staff ("ignorant, unhelpful and disinterested") and the general failure to take the matters seriously. The first stage service complaint reply went into the issues very thoroughly and gave a comprehensive reply. The second letter was at a much higher level – indeed, it is only the fact that the two letters are stored against the same file number that indicates that they are about the same matter. However, I am satisfied that the complainant's complaint overall was dealt with appropriately.



Having read the summary paperwork relating to the underlying complaints – including the significant number of service complaints raised – I am content that the handling of this complainant was reasonable overall. Indeed, HOS staff appeared to have been admirably thorough and calm in their approach. I have reviewed the telephone calls involved and consider the action entirely understandable. Second, while I have seen a statement from the complainant that the treatment he received from staff “triggered” his mental health condition, I have not been able to review the extent to which the organisation accounted for any mental health issues he had or adapted their processes accordingly.

### **Case No 202106117**

This complaint centres on the handling of a matter which the complainant alleges has been known to HOS for five years. In essence, the complainant is insisting that the organisation should therefore waive its usual timescales. He also is critical of the manner in which he has been dealt with in telephone calls, including one instance where the staff member concerned terminated the call. The response stated that although the matter had been raised with HOS two years previously, the complainant had not followed up and the case had been closed. It also disagreed with the complainant about the characterisation of the call, saying that a review of the recording had shown that the complainant had been shouting and the decision to terminate the call had been appropriate.

The response to the points raised by the complainant appears to have been entirely appropriate. However, unusually, the response went further, stating that the volume of communication from the complainant and his behaviour towards staff were in breach of HOS’s acceptable behaviour policy. Contact would therefore be restricted to an individual staff member who would reply once a fortnight by letter. In view of the volume of correspondence, which the file indicates continued even after the response was received, this appears to be reasonable; indeed, there is evidence from the file that the landlord had put in place similar measures to manage the complainant’s behaviour. However, as with the previous case, there are indications of mental (and in this case, physical) health issues at play and it is difficult to see what adaptations HOS had put in place in response. Nor, having reviewed the telephone call where the staff member terminated the call, did I see evidence that the complainant’s behaviour during that instance was sufficiently disruptive to require the restriction of contact for that reason alone.

### **Case No 202111961**

This service complaint revolves around the decision by a casework manager to impose a five-day restriction on the complainant in response to what was deemed to be unacceptable behaviour during a telephone call. Unfortunately, the decision had not been properly communicated to the complainant who, having been told that he was barred from telephoning again that day, only found out that the bar was for five days when he attempted to ring again the following day as he had told the

caseworker he would. This error, which was in my view a significant service failing in the context of the events, was properly acknowledged in the service complaint response and an apology was made.

This is another case where the complainant appears to have had mental health issues, which he had disclosed to HOS staff during his initial contact with them. While the handling of this case – the communication error apart – may have been reasonable, it is difficult for me to be entirely satisfied on that point without greater detail about how much was known by HOS about the exact nature of the complainant's mental health position.

### **Case No 202108782**

Again, this case involves a complainant with mental health issues who was deemed to have breached the organisation's acceptable behaviour policy. The complainant was asking for the organisation to adjust its normal way of working by returning her calls within 24 hours and providing her with a direct line to a dedicated caseworker. She had also repeatedly asked for HOS staff to play a more direct role in monitoring the landlord's delivery of required actions and compliance with HOS's complaints handling code. In return, the response explained why the adjustment was not possible and argued that HOS was "not an advice service, nor is it an advocacy service" so greater intervention was beyond the organisation's remit.

To that extent, the response was reasonable. However, what concerns me is that there is no clear evidence in the file that any explicit consideration was given to the complainant's mental health condition, despite her having framed her request squarely in the context of her diagnosis and the impact on her. Indeed, even when the complainant subsequently made a formal request that the matter be considered under the terms of the Equalities Act, the file does not contain any material showing that this request was answered on paper; the only evidence comes from a telephone call where, again, there is no evidence that the legal duty on the organisation to assess whether any reasonable adjustment was possible was taken forward. While it may have been the case that this took place and that the answer given in the second stage response was defensible, there is nothing to show that the complainant had been assured that the organisation had discharged its duty under the Act.

### **Case No 202102260**

This case involves a complainant who had previously had a complaint investigated and decided by HOS in 2018 and, unsatisfied with the result, had made an FOI request and a service complaint. The current case, although it also involved an allegation that his landlord was complicit in issues of racial harassment and stalking, also centred on an apparent attempt to have the previous case reopened on the basis that HOS had given insufficient weight to his disability. Having been told that the previous matter would not be reopened, he alleged that the HOS staff involved were racist and asked for all his various issues be dealt with by a black, female

Caribbean investigator as only such an individual would understand the importance of race. The response refused to allow this (perhaps unsurprisingly given that the matter was not going to be accepted for investigation), stated that the allegations of racism on the part of HOS staff were unfounded and warned the complainant at length that such allegations were considered to be unreasonable under the organisation's unacceptable user action policy. The complainant was therefore warned that any repetition would result in his contact being restricted.

There is undoubtedly evidence from the file that this complainant was considered to be a challenging individual for the organisation to deal with. While I have not had access to the full documents in relation to his complaints in 2018, I note that the files were then headed "Alert: Complainant – Vexatious". I am confident from what I have seen in the files that the allegations of racism on the part of HOS staff were almost certainly without foundation. However, there is no sign that any thought was given at any stage as to whether there was any evidence to support them. I note, for example, that in one of the contemporaneous notes of a telephone call with the complainant, where such an allegation was raised, the response was immediately that this was spurious. I would normally have expected to see some evidence of process when such serious allegations are made and it may have helped the credibility of the organisation with this complainant had HOS been able to point to a proper process.

### **Case No 202112669**

This complaint, again from an individual with mental health issues, centres on alleged failures on the part of the allocated caseworker to respond to telephone calls and the use of an email address which the complainant said was wrong. The evidence, set out clearly in the response, was that the email address which had been used was the one which had previously been used by the complainant, and there was no record that he had told HOS that the address had been changed. The communication failure arose because although the complainant had twice rung to ask to speak to the caseworker, this was before the matter had been allocated and the caseworker's initial email had gone to the previous address. The determination had then been issued (to the previous email address) without any further contact. The subsequent telephone call had been difficult, with the evidence indicating that the complainant had made allegations of corruption and cover-up. This had already produced a formal warning as to his subsequent conduct.

Both the formal warning and the complaint response were well written and factually sound. However, this case echoes one of the issues I raised in my last report, with a determination being issued without warning for the complainant or any real opportunity for him to feed into the outcome. In this case, the caseworker picking up the case already knew that the complainant had twice sought to discuss the matter with him. The complaint response suggests that "a telephone call would have been helpful", which in my view understates the position. While the issue with the email was unfortunate, I believe that the absence of proper engagement with a complainant who has sought a discussion in advance of the issuing of a

determination is poor service, particularly when dealing with a complainant with known mental health issues.

### **Case No 202104655**

This case involves a complainant who had been frustrated by the failure of HOS staff to call her back as promised. This failure was acknowledged and an appropriate apology was given. However, the response went on to address the fact that the complainant had repeatedly, and despite warnings, made comments about the fact that some of the staff with whom she was dealing had foreign sounding names but did not have foreign accents. When she was warned at the first service complaint stage that this was unacceptable, she challenged this warning, which resulted in the warning being repeated at the second stage.

Having read the material, I am content that the response was reasonable and the warning appropriate. However, I note that the complainant believed that the behavioural warning was being used to distract from the communication failure. This reinforces my view articulated above that it is not helpful to use service complaints process letters to give warnings in this way.

### **Case No 202005412**

This complainant's file is headed "Alert: Complainant – Vexatious" and it is certainly true that the file contains a huge amount of correspondence, much of which appears to go over the same ground repeatedly and in ever-more exhaustive detail. There is also evidence of extensive telephone contact, rendered difficult by the complainant having different phone numbers which did not always accept incoming calls. The complainant also had disabilities which he maintained required adjustments, including having material taken down verbatim by HOS staff or detailed explanations given for the reasons for a determination.

Having read the material in the file, I am content that the treatment of this individual was appropriate; indeed, I am struck by the hard work and patience with which staff approached the case, something which is evidenced by the tone of the emails between staff which the file contains. While this case raises some more general points about the management of vexatious complainants and the approach towards determining what constitutes a reasonable adjustment which I have discussed above, this case seems to have been managed in an exemplary fashion.

## Management responses

Recommendation	Management response
<p>I recommend that where staff are dealing with individuals they know or believe fall under the Equalities Act, they are required to keep a formal record of any requests for adaptations to be made and their response to them. Such records should be easily available to other staff dealing with those individuals.</p>	<p>Accepted.</p> <p>We will review our guidance and update as required to ensure full records are kept for all requests/allegations under the Equalities Act, a full assessment is made against these and these are available to all staff. We will then train all relevant staff on these revised procedures by 31 March 2022.</p> <p>Owner: Quality Manager</p>
<p>I recommend that the service complaints process should not be used to issue warnings or action for complainants' behaviour.</p>	<p>Accepted.</p> <p>Service complaints managers have been advised to cease this practice immediately.</p>

## Progress against previous actions

Recommendation	Management response
<p>I recommend that HOS develops a policy to respond to temporary periods of excess demand or reduced resources affecting service levels, in order proactively to inform complainants and respondents of the actual response times they are likely to experience.</p>	<p>We had already amended our pre-recorded phone line message to acknowledge that we are currently facing high demand and may not be able to respond within our usual timescales and manage customer expectations. We are also building up a bank of different messages to use for different circumstances.</p> <p>We will develop a policy to cover dealing with periods of excess demand or reduced resources that will affect service delivery by 30 June 2021.</p> <p>Owner: Director of Dispute Support and Resolution.</p> <p><b>Update:</b> Complete - a policy was developed and put in place by the deadline.</p>
<p>I recommend that consideration be given to introducing a policy of routine sharing of draft decisions in advance; or, in the alternative, a policy of routinely offering the sharing of such drafts.</p>	<p>We recognise that residents and landlords need to be able to challenge our decisions and our Scheme provides for a review process following determination to enables this. We also share our draft decisions in advance where this is requested.</p> <p>We are happy to consider a switch to sharing drafts in advance of decision, but this will need to be informed by a full understanding of the implications including the impact on internal resources and determination time scales.</p>

Recommendation	Management response
	<p data-bbox="810 320 1358 510">We will undertake research into the resource and time impacts of sharing decisions in advance by 31 December 2021 and recommend whether a new policy should be adopted.</p> <p data-bbox="810 600 1374 674">Owner: Director of Dispute Support and Resolution.</p> <p data-bbox="810 763 1378 1149"><b>Update:</b> A review has taken place and concluded that we will continue with our approach of accepting a wide range of cases for review where residents can challenge our decision. We will also ensure a more consistent approach to resident contact throughout the investigation and share drafts decisions in circumstances where we consider this would be beneficial.</p>