



BURNS

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Workforce Pay & Pensions
Eland House,
Bressenden Pl,
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SW1E 5DU

FAO Mr. A. Cornelius
Head of the Firefighters' Pension Team
Chair of the Firefighters' Pension Committee.

My Ref: PB00314.

Your Ref:

**The Notice
The Offence
The Consequence
Disagreement with Lancashire.**

**The Department & Firefighters' Pension Committee.
Department & Trusteeship.
Civil Law.
Criminal Law.
Publicity & The Media.**

Dear Mr.Cornelius,

Thank you for your email of the 9th inst., and your recent help with information and statistics. It is appreciated. What follows gives me no pleasure but I can see no alternative. But I sincerely hope that it may be resolved amicably and quickly at your level.

The Notice.

I now, hereby, bring to your notice as your official and personal responsibility, what some may see as a deeply distasteful exploitation of public servants who, having suffered in their line of duty in protecting the public, have been and are paying for it by illegal reductions in their pensions.

I suggest you have to rectify this or you become complicit in what, I regret to say, is criminal activity.

7, Kings Drive,
Preston. Lancashire.PR2 3HN.
ENGLAND.
Tel +44 (0) 1772 715963.
symbolseeker999@gmail.com

Tuesday 21st January, 2014.

The Offence.

The LFRS have been using the retirement imposed on me on the grounds of ill-health to save the pension fund money by wrongfully treating my retirement as one taken early by me, as a matter of personal choice. In result, I have been wrongly paid a pension limited to being 'a time served Rule B1 pension' in avoidance of an enhancement in compensation for loss of career, for which the 1992 S.I. No:129, Rule B3 ill-health pension, makes specific provision.

The Consequence.

I understand that to wilfully misconstrue the law merely exacerbates an offence to which to plead ignorance of the law is no defence, hereto criminal offences such as retaining money under false pretences etc., whether for the benefit of the Exchequer or anyone else makes no difference.

I now deal with it in greater detail but if anything is unclear, or I can otherwise help, please do not hesitate to call me.

The Disagreement with Lancashire.

The exquisitely simple fact, which should by now be clear to all concerned is that the LFRS have been paying me the *wrong type of pension* since the 1st February 1997 and I suspect, with evidential justification, hundreds of others in Lancashire.

Fully aware of the problem since March 2007, rather than deal fairly with me the LFRS has, in one way or another, tried to silence me and otherwise has been and continues to belligerently raise obstacles and/or stonewall on issues which will neither solve themselves, nor go away.

Much of the problem has been lack of transparency and deceit in seeking to mislead. Only recently, and as a result entirely of my own efforts, it has become clear that the fundamental problem has been the application of the wrong 'Guide' or "Commentary" to interpret the material legislation; whilst perhaps originally in error, latterly this has been most deliberately used, to the convenient and legally wrongful exclusion of the correct "1992 Commentary".

Had the Government prescribed 1992 Commentary been properly given effect, as it should and would have been, had I been treated with any semblance of exercise of due care, or fiduciary duty owed to me, let alone simple decency or honesty, it would have led to a correction and an apology. At the time, I would have looked for no more. I would have thought that there was no malevolence, merely an error. Subsequent misconduct denies such possibilities.

Since it is inconceivable that deceit, albeit maybe to cover an earlier error, should be adopted by you, even in the best causes of austerity, clearly the DCLG Secretary of State will have to intervene to require compliance by Lancashire with the 1992 Statutory Instrument No:129 (Firefighters Pension Fund) and the Home Office interpretation of that Contract with its servants set out in the "1992 Commentary", (the lay practitioner's bible) published for the purpose at the time, to resolve this disagreement.

The Department & Firefighters' Pension Committee.

I now set out what I understand to be the position, but if in error I would be very grateful for your legal authority for any alternative view.

The Firefighters' Pensions Committee, which you Chair on behalf of the government, is a consultative body, representative of stakeholders in the Fire and Rescue Service in England. It

concerns itself with issues relating to the Firefighters' Pension Schemes and Scheme Members like myself.

I brought forward this issue to your Committee and its Members in good faith specifically as *information*.

[As far as I recall I did not invite comment from the Committee because initially it was intended that this be dealt with by the Pension Ombudsman which is now held in abeyance, until once more (the LFRS has already ruled on it!) I yet again complete the full IDR procedure at Lancashire's rather poor spirited insistence of compliance to the precise letter. Meanwhile, their denial of my, and others rights, continues to be arbitrary and oppressive abuses of power.]

The Terms of Reference of your Committee, which you have supplied to me, include a Term which encourages the bringing forward of "*issues for discussion and consideration in relation to the firefighters' pension schemes.*"

I presume as a member of a Scheme, which you control, that this invitation extends to me. I had these thoughts very much in mind when I asked you to circulate this *information*.

I would have thought the substantial Counsel's Opinion I took, and have made freely available to you verbatim, would be helpful to you as the DCLG Head of the Firefighters Pension Team and your Committee in '*discussion and consideration*' if only in the sense of creating the legal context for your awareness of a problem which exists within Lancashire and, I speculate with evidential substance, may well extend beyond Lancashire.

By supplying this information to you as the Government's lead Fire Pensions Adviser/Policy Provider and ultimately for those to whom you delegate your powers I regarded my action as providing an early awareness opportunity for you to inform your Junior Minister and ultimately your Secretary of State of any potential legal (civil and criminal) and financial implications so that an early and apposite solution may avoid what may be a most unattractive if, of necessity, matters had to be canvassed in public.

I served for 35 years, a lifetime, and suffered injury in doing, so I am horrified to find my Service behaving in the way LFRS has chosen to. The last thing I wish for is to see the Service I have taken so much pride in serving being brought into grubby disrepute by administrative people saving money by avoiding paying the pensions the law provides for those injured during service. It is a rotten, shameful, and deeply underhand and deceitful way to conduct matters – is it not? What is so despicable is that I and my comrades are Firefighters, and it ought to go without saying that all of us should be able to rely on the administration to look after our interests, without question. There is something deeply wrong with any system in which a beneficiary can no longer rely on a trustee to exercise fiduciary care and be honest and above board. That has not been my experience and ultimately that is what lies at your door.

It was also a 'flag up' to UK Fire Service pension providers which ought to lead, at the very least, to interested discussion and examination of the current custom and practice to ensure that the 1992 Statutory Instrument No: 129 and its accompanying 1992 Home Office Commentary, has been and is being correctly applied, and if not then to take the necessary action to rectify the position - particularly in respect of Rule B3 ill health pensions and its direct compensatory link (Commentary B3-2), "*or what could have earned by compulsory retirement age.*". What guidance could be clearer? But to make sure it is repeated in B3-3, "*or what you could have earned by your compulsory retirement age.*"

Unfortunately you do not make clear whether or not you intend to circulate this *information*?

If you do not see any of this as your role, contrary to the Committee's Terms of Reference then perhaps you would be kind enough to provide me with the formal email addresses of your Committee members so that I may proceed to circulate them myself.

The Department & Trusteeship:

There is a simple questions which arises at this early point... Quis custodiet ipsos custodes?

1. Is the DCLG- Head of the Firefighters Pension Team and its associated Civil Servants trustees/managers for the 46 English Fire & Rescue Service Pension Schemes? Yes.
2. Does the DCLG- Head of the Firefighters Pension Team and its associated Civil Servants have Statutory unavoidable roles and responsibilities to discharge to the law both civil and criminal?; to the Government Exchequer?; to the taxpayers?; and to me as a Scheme member? Yes.

The first duty of government is compliance with Parliament and the Law.

As you know Mr. Copplestone-Bruce(Life Member-Inner Temple) was sufficiently alarmed with what appeared to him to be the running of a scheme illegally by pension practitioners in Lancashire unprepared to consider their own conduct; the effect this may have on beneficiaries entitlement to fiduciary care being withheld; and the effect this may have on the mind of the public, that he raised the question directly with the Home Secretary, as the Secretary of State responsible for the original Department under whose guidance, given in its "1992 Commentary", the Government required the terms and conditions of the Statutory Instrument to be construed.

He will, no doubt, pursue that as and when he sees fit but he has had a reply from your Mr Mooney, writing on behalf of your Department. You have informed me that Mr.Mooney is a 'pension policy advisor' but you do not define exactly what that means in practice?

But what is clear from his letter is that he has, inadvertently or not, wrongfully sought to deflect an enquiry and/or to avoid responsibility by creating the impression that your Department, which is an arm of the executive, has - in effect - little or nothing to do with the Pension Schemes which your Department clearly control and administer as trustee/managers. His letter, however, simply makes the case for the complete opposite.

He knows or ought to know that the Department has since 1973, in controlling and administering the Fire Pension Schemes, been issuing "Dear Chief Fire Officers letters"; then Fire Service Circulars; then Guidance Notes; then Informal (i.e. non-statutory) Guidance; then Statutory (i.e. formal) Guidance. All amounting to Orders; Regulations; and Guidance.

On the 4th March 2008 because there seemed some confusion and doubt at FRS Scheme level concerning your authority in the control, management, and administration of these 46 pension schemes your Department issued Fire Service Circular FPSC 3/2008(Attached).

In law 'administer' means to take responsibility for organising and supervising.

In this circular your Department unambiguously reaffirmed its complete and unequivocal control of all these 46 schemes by providing absolute clarity under Item 4 "*Status of FPS circulars*".

The Department presented a paper to the Fire Authorities explaining the status of advice which the Department provided to the Fire and Rescue Services, and in particular to HR and pension administrators on Firefighters' pension arrangements.

This statement was accompanied by Annex 'C' which provided detailed clarity in the interpretation of your Department's role and advice(Attached).

This statement with its Annex made it entirely clear to all Fire Authorities who the ultimate Trustee/Schemes Manager were ,viz, the DCLG Fire Pension Section and what the delegated duties were that all Fire Authorities were required to follow and the detailed manner in which they were to follow them.

Lest there was the slightest doubt about the role of your Department the Fire Authorities were reminded in Annex 'C' that since 1992 the Home Secretary had underpinned all this in Statute Law thus:

“ An example of statutory guidance is that provided for in Rule LA10 of the Firefighters' Pension Scheme 1992 (Part 13, rule 10 of the 2006 Scheme) which requires a fire and rescue authority to have regard to guidance issued by the Secretary of State in regard to the Firefighters' Pension Fund. This is the only such provision in the 1992 and 2006 Schemes, although there are other requirements relating to the use of tables or factors prepared by the Government or Scheme Actuary.”

In plain English the Fire Authorities must comply with Statutory based instructions from the DCLG and do what they are told bearing in mind that even an 'informal' guidance ought to be treated with a certain deference. There could be no clearer message who the ultimate Trustee/Scheme(s) Manager was – the DCLG Fire Pension Section.

Policy is indivisible from trustee/managership in practice since the policy is not the legislation but the policy *on how to manage the Scheme*, or in this case the 46 English Schemes Parliament has prescribed for the DCLG Fire Pension Section to manage and administer. What these words mean is no more complex than looking up the terms in the Dictionary. Collins is good, or I believe the law tends to use the Oxford Shorter English Dictionary.

The facts are you hold the £666 million you spend annually on these Pension Schemes in trust for the nation's taxpayers and the Treasury and the beneficiaries of the pensions scheme provided for, in this case, by 1992 S.I. No: 192. You decide policy and communicate that policy, both upwards to the government and downwards to those you hold and provide 80% funding for; you hold a Statutory enforcement duty; your Department regularly steps in and changes or amends at will anything within your purview as a manager of all these Schemes; indeed, you draft the very laws of and amendments to the Schemes; and in addition you hold a fiduciary and common law duty of care to all the Scheme members of those 46 Schemes.

Thus, in plain language evidenced by a blizzard of paper over time, your Department holds property (taxpayers money) in trust for others, the beneficiaries, to whom you owe duties, with authority over all these Schemes and their managers in trust; you control the implementation of the law, its amendment and its drafting in trust; and finally you collectively are in a position of absolute trust to Scheme Members; their widows; and beneficiaries. You control the enterprise.

With this trust comes a fiduciary duty of care to me (and those others I have mentioned above) both Departmental and personal and a Statutory duty to intervene on behalf of the Secretary of State in circumstances such as those which I have brought to your attention and implicitly an obligation to ensure all stakeholders under your control comply with the civil and criminal law.

Before leaving these points of law, with which you will be much more familiar with than I, I thought I ought to suggest to you that it may cross your mind to clarify for Mr Mooney - namely that delegation does not break the line of causality or liability.

The question as to whether or not you personally and your Department is a trustee, or if you prefer manager, of these 46 FRS Schemes is, surely, entirely beyond any shade of doubt.

The Civil Law.

I am not a lawyer but as all know, it is no answer to the commission of any illegality on your Department's behalf or for your delegated administrator of a local scheme like Lancashire to simply say 'I am not a lawyer'. In this, which we all know from childhood, is to deny knowledge of the law is no defence in law.

One cannot have anything to do with administering any pension, surely, without knowing full well that Mr. Warren (LFRS), and your Department have a duty to know the law, and discharge what must have also been clear from the outset are fiduciary duties and the duties of care a trustee owes in law to the beneficiary – in this case me. This is all simply common knowledge.

What is wrong, and is plainly wrong, on any basis, let alone on the face of the legislation, is that where the law makes provision specifically to compensate any Fire-fighter whose career is cut short by ill-health, to avoid calculation and payment is illegal.

It also requires not even rudimentary appreciation of the law to know that to use the injury of a Fire-fighter to save a pension fund money is much more than simply morally wrong. For the LFRS to have then enshrined this unlawful practice as a procedural 'policy', or to use it as a 'weapon' of oppression is in fact a policy of institutionalised fraud. It is certainly wrong to seek to cover it up, would you not agree?

This 'local' fraud, which may well have substantial financial implications for the government of the day, is a fraud which could well have been replicated across the UK Service. Clearly your Department cannot simply turn its back on these uncertainties but it must investigate, and should it not do so and correct in full measure, then those employed in the DCLG concerned with this matter become as criminally accountable as those to whom your Department originally delegated the administration of your functions; policies; and instructions - in this case Lancashire. If anyone seeks to suggest that there is not a master servant responsibility on the Department for those who carry out its work then no doubt you would be so kind as to have them provide me with the legal authority for such a position, for I (though a layman) could find none.

In sum, whilst it is not, I believe, criminal to stand by and watch a crime committed, it is most certainly criminal to watch the your Department's servants or agents carry out its policy if, collectively, it is known to be criminal. The fact that the conduct enriches a fund and not an individual is irrelevant as I am sure you are aware.

I suggest, with respect, that the proper course of action for your Department to take is to suspend the delegation of your powers to Lancashire; correct the 'error'; and since the LFRS misconduct falls within the Theft Act 1968 (as amended), refer those responsible in the LFRS to the DPP.

Criminal Law.

In continuum I would suggest that it would not be in the Department's interests to ignore the criminal law either, because I know of no law which enables a trustee/manager to delegate away their responsibility and so liability, a point I have already raised with your Mr. Mooney.

Equally there rests a duty to intervene if your Department's servants or its agents, the 46X FRS, or just one of them Lancashire, is choosing not to obey the law.

Bearing in mind that the first rule of Government is to obey Parliament and uphold the law for Civil Servants in control to commit or condone any offence in this case the defrauding of a Scheme Member(s) makes them criminally and civilly personally liable for the offence of theft contrary to the Theft Act 1968(as amended), for which ignorance of the law is no defence.

Put baldly the servant's crime, the LFRS in this case, is your Department's crime.

In general, my personal feelings in this matter are best summarised in comment I have expressed in my re-visited IDRPs Stage I Application. No doubt you will have access to it so I will not repeat it here. But I do suggest to you that the insistence of the LFRS in a matter already fully canvassed is so simply time wasting, that it can hardly be thought to be consistent with upholding the traditions of public service in any laudable way. Indeed, it is deplorable in the light of the history and correspondence in this matter for any pretence to be made that – in fact – the process has not already been exhausted.

To avoid all possibility of error I restate for you – what is now happening is that the LFRS, having deliberately failed to note that a Scheme member of theirs has been and continues to be denied his lawful pension which is not a civil matter alone but is fraudulent, is simply prevaricating – perhaps in the hope that I may, as many have, die waiting. In any half decent approach there should be an eagerness to sort this thing out – would you not agree?

It is interesting to note that though enabled to test the matter independently pursuant to Annex 4-2 of the 1992 Home Office Commentary on the duties of the 'Government Actuary's Responsibilities', a facility which I have made known to Lancashire, has been avoided.

Publicity & the Media.

I would prefer not to make a public issue of this but I am concerned for my comrades, many of whom know something is wrong but are too frail or unwell to pursue things themselves without help, so I have set up the means to interact with the 35K fellow Scheme Members. It is my hope that you will 'stay' any necessity for me to take this issue further. You may care to have a look at the 'Morning Bugler' www.themorningbugler.com Pastoral Care?

Should you be minded to think that my case is just an aberration then I suggest that you extend me the courtesy of considering how others have been treated by Lancashire in its regular use of its oppressive pensions 'weapon'. There are more 'experiences' to follow...

I am sure your Department will not wish to stand back uninvolved and later have to justify why you did so when the flood gates open and disabled Fire Service Veterans across the Nation discover that they have been and are being duped and defrauded by this or that Fire Authority which has been left unsupervised by your Department to act as it so pleases in flagrant breach of the pension law you enforce.

It is hardly a General Election vote winner if it emerges later that this government and its Department responsible failed lamentably to investigate and to correct a situation brought to your attention in which it appears disabled Fire Service Veterans, their Widows, and beneficiaries have been the victim of institutionalised fraud by their own Fire & Rescue Services for some considerable time. That pensions have not been enhanced as the law requires on injury, but that injury has been used to avoid payment, and when challenged the 'weapon of pension penury' is used against the complainant– what could be more unsavoury than that?

I cannot help but reflect that it is simply a monstrous act of betrayal by any Fire Authority which both I and my comrades loyally served, who know the risks we daily ran on the streets, to save money by denying those injured in safeguarding the population by deliberately defrauding them of their just dues by paying smaller pensions to those the Service compulsorily retired instead of the correct and just compensation Parliament required and directed them to have.

It is clear to me from the most skilled legal advice I can obtain that those directly and legally under you and your Department's Statutory authority and trustee/managership control namely the Lancashire Fire & Rescue Service are quite simply defrauding me, and they know it – now that you do I, and others, would be most grateful for your intervention into what must otherwise become a national scandal.

Indeed, the way Mr Warren and his locally Elected Committee have handled this is so far, I would venture to suggest many may think, has already been scandalous. What he should have done directly he was made aware of any earlier error was to correct it, not try and justify what on further malfeasant payment became fraudulent – which current conduct he is merely compounding.

I await you response with interest.

Yours Sincerely,



Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Oklahoma Medal of Honor
& Honorary Citizen.



Soviet Union
Order of Excellent Fire-fighter.



Firefighters' Pension Scheme Circular

Circular Number:	FPSC 3/2008	Date Issued:	13/03/2008
Action:	To Note		
Title:	<i>FPS/NFPS: GUIDANCE ON TRANSFER VALUES AND PENSION SHARING</i>		
Issued by:	Martin Hill Local Government and Firefighters' Pensions Division		

Summary:	<p>The attached documents provide:</p> <ul style="list-style-type: none"> (i) guidance on Transfer Values (TVs) and Pension Sharing in the NFPS (Note: this guidance supersedes the previous guidance that was published on 13th February 2007 under cover of circular <i>FPSC 1/2007</i>) – <i>statutory guidance</i>, (ii) guidance on the calculation of CETVs in the FPS – <i>statutory guidance</i>, (iii) the dates to be used in the calculation of the pension credit on pension sharing on divorce in the FPS – <i>statutory guidance</i>, (iv) notice of our change of office address, and (v) note explaining the status of FPSC circulars
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Addressed to:	Please Forward to:
The Clerk to the Fire and Rescue Authority	Pension and human resources managers
The Chief Fire Officer	

Enquiries:

Pensions Team Leader:

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New Firefighters' Pension Scheme

Martin Hill

Firefighters' Pension Scheme Order 1992 and Compensation Scheme

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General Enquiries: firepensions@communities.gsi.gov.uk

Change of address:

**Firefighters' Pension Team
 Workforce, Pay and Pensions Division
 Zone 5/F6
 Eland House
 Bressenden Place
 LONDON SW1E 5DU**

1. Transfer Values and Pension Sharing in the NFPS

- 1.1 On the 13th February 2007, under cover of circular FPSC 1/2007, CLG issued the factors and guidance on transfer calculations in the NFPS, which had been provided by the Scheme Actuary. As part of the circular FRAs were informed that the Scheme Actuary expected to provide an extended version of this guidance in due course. GAD has now completed the work and the updated guidance is attached at Annex A.
- 1.2 The extended guidance sets out the general method for assessing:
- (i) Public Sector Transfer Club transfer values,
 - (ii) statutory CETV (i.e. non-Club) transfer values,
 - (iii) service credits on transfer in (Club or statutory CETV),
 - (iv) cash equivalents on divorce, and
 - (v) pension debits and pension credits on divorce
- 1.3 FRAs should note that this guidance has been published on the firepension's section of the CLG website and can be accessed via www.communities.gov.uk/firepensions. In the event that GAD considers it necessary to update the guidance further, any later version will be published on the website. Notice of further updates will not be given to FRAs and the website should, therefore, be checked periodically.

2. CETVs and Pension Sharing on Divorce in the FPS

- 2.1 As part of the same work, GAD have also provided additional guidance in regard to the FPS, which is attached at Annex B. This supplementary guidance draws attention to the fact that section 2.2.4 of the extended guidance, referred to in paragraph 1.2, also applies to the FPS, and provides clarification on the dates to be used in the calculation of a pension credit on pension sharing on divorce.
- 2.2 FRAs should note that this additional guidance can also be accessed on the firepension's section of the CLG website.

3. Change of Address

- 3.1 Please note that the Firefighters' Pension Team has moved. This should be brought to the attention of those members of staff who handle medical appeals. Telephone numbers and email addresses are as before.

Our new address is:

**Firefighters' Pension Team
Workforce, Pay and Pensions Division
Zone 5/F6
Eland House**

**Bressenden Place
LONDON
SW1E 5DU**

4. Status of FPS circulars

- 4.1 At the second meeting of the FPS III-Health Review Group on 4th March 2008, CLG presented a paper explaining the status of advice which the Department provides to the Fire and Rescue Service, and in particular to HR and pension administrators on firefighters' pension arrangements. It was agreed that we would circulate the paper to the Service and, in future, would state on the front cover of FPS circulars whether the guidance they contained was statutory (formal) or informal (non-statutory).

Attached at Annex C is relevant paper IHRG(08)6.

Martin Hill

FIREFIGHTERS PENSION SCHEME

ILL HEALTH REVIEW GROUP

GUIDANCE ISSUED BY THE SECRETARY OF STATE

At the previous meeting, Group members asked for an explanation of the difference between informal and formal (non-statutory and statutory) guidance. With the assistance of the Department's legal advisers the following has been prepared. Stakeholders are free, of course, to take their own advice on these matters.

Informal (i.e. non-statutory) guidance is just that, non-binding advice which is intended to assist decision-taking authorities in the exercise of their statutory duties. It suggests steps which might be taken; factors which could be taken into account and procedures which could be followed to deliver specified steps of administration, or policy delivery.

Statutory (i.e. formal) guidance, sets out specific, mandatory requirements on a local authority and/or other parties or may give factors to which the recipient should have regard in the exercise of their statutory powers. This guidance would be made in exercise of powers conferred on the Secretary of State by primary legislation and in secondary legislation. In many cases the statutory guidance would normally be subject to consultation with interested parties when in draft form.

Its advantage over a statutory instrument, for example, lies in its ease of amendment and the shorter time needed to make any changes.

An example of statutory guidance is that provided for in Rule LA10 of the Firefighters' Pension Scheme 1992 (Part 13, rule 10 of the 2006 Scheme) which requires a fire and rescue authority to have regard to guidance issued by the Secretary of State in regard to the Firefighters' Pension Fund. This is the only such provision in the 1992 and 2006, although there are other requirements relating to the use of tables or factors prepared by the Government or Scheme Actuary.

The Courts alone can provide an authoritative interpretation of legislation and so any view on legislation expressed in any guidance, whether formal or informal, issued by the Secretary of State is subject to this.