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NUJ submission to the College of Policing consultation on police/media relations draft guidelines

The National Union of Journalists (NUJ) is the representative voice for journalists and media workers in the UK and Ireland. The union was founded in 1907 and has 30,000 members. We represent workers in broadcast media, newspapers, news agencies, magazines, books, public relations, communications, online media and photography.

Introduction

1. The NUJ agrees that a successful working relationship between the police service and the media is vital.
2. We acknowledge that the press can "give the public insight into what the police are doing and why they are doing it" and accept the police must "demonstrate their respect for the principles of openness, legitimacy and accountability to promote and maintain public confidence in the police".
3. The NUJ also agrees with the statement that the "police are accountable to the communities they serve. Being open, honest and transparent in communications enhances confidence in policing." This accord is a very good starting point for police/media relations.
4. As the consultation notes, the British policing model is based on consent. For this to work, the public needs to have confidence in its police. The media plays a vital role as a watchdog and in holding the police to account so the public can have this confidence. This is only possible when there is an open and collaborative relationship between the police and the media.
5. The NUJ therefore suggests a more positive statement covering police/media relations, such as: *"The media play a vital role in informing the public about important matters of national and local interest. The police service has a duty to*

inform the public about the exercise of its powers in the interests of keeping communities safe. Subject to operational or legal constraints, the police service should set out to help journalists through proper briefing and/or provision of materials that help to tell the story of police work. Officers should start by seeking to engage with the media, be it individually or with the assistance of Police Corporation Communications Departments (CCDs) [police press offices] in the interests of helping the public to understand our work better and build public trust."

6. The NUJ represents press officers (CCDs) who work for the police and provides them with advice and support; the union has a set of ethical guidelines for all PR and communications workers: [<https://www.nuj.org.uk/documents/should-i-say-that-pr-ethics-flyer/> <https://www.nuj.org.uk/work/employers/public-relations-and-communications/>].
7. The statement from the Authorised Professional Practice (APP), the official guidelines on professional policing practice, still gives the impression that the police's main concern is limiting reputational damage to the force rather than a genuine desire for openness and accountability. The inquiry into the Hillsborough tragedy is a case in point: Hayley Court, a media officer working for South Yorkshire police, told The Guardian in May 2016 she was instructed to emphasise allegations of fans' misbehaviour to the press. She said she was bullied into "spinning" the police line and said: "I tried to make this point in every formal way within the South Yorkshire police, but in response I faced criticism for my own performance and felt bullied. The police are upheld as models of behaviour in society; South Yorkshire police rely now on being a very different force from 1989, yet unfortunately there are still similarities. It is so important for public confidence in the police that South Yorkshire police finally recognise this and the need for reform." Hayley Court's intention had been to report the inquest's findings fairly. Her approach would have served South Yorkshire Police well. Mistakes were clearly made and South Yorkshire police would have earned more respect by showing contrition rather than continuing to lay blame on the victims. This merely confirms a general belief that the police cleave to a tribal loyalty and when things go wrong they try to cover up rather than explain.
8. The Leveson-effect – or perhaps more accurately the Murdoch-effect – has had a huge influence on police/media relations. The Leveson Inquiry showed relations between the Metropolitan Police and Murdoch's newspapers were too close, and in some cases inappropriate. A former Assistant Commissioner, John Yates, made a poor job of handling the initial phone hacking allegations and was further compromised by his relationship with members of News International (now News UK). It was also clearly inappropriate for Andy Hayman to agree to write a £10,000-a-year column for The Times on his retirement as Assistant Commissioner for Specialist Operations at the Met. However, both the recommendations of the Leveson Report and Elizabeth Filkin's 2012 report on the Met, (subsequently taken up by ACPO, now

The National Police Chiefs' Council), showed a clear lack of understanding of how journalists work. Dame Elizabeth's report was described as "patronising, bordering on offensive" (to reporters and police officers) by the The Daily Telegraph's then crime correspondent, Mark Hughes, a view shared by his colleagues.

9. Part Two of the Leveson Inquiry was intended to investigate the relationship between News International, and other news organisations, and the police and to discover how police investigated allegations or evidence of unlawful conduct by people at or connected with News International. The NUJ's believes this part of the inquiry must go ahead.
10. Our evidence to Module 2 of the Leveson Inquiry said: "The vast majority of working journalists and photographers are not in collusion with police officers; far from it." The union gave examples of how the police had hampered journalists and photographers from doing their jobs, using production orders and terrorism legislation to search them and take journalistic materials. In many cases, when the action was challenged, the NUJ's case was upheld. Examples included Stephen Clarke who was arrested on suspicion of taking pictures of sewer-gratings in Manchester. Although the police could not find any photos of sewer-gratings on his phone, he was held on suspicion of planning an act of terror and imprisoned for two days while the police searched his home, his phone and his computer. In November 2008, BBC photographer Jeff Overs was stopped and searched while he took sunset photographs of St Paul's Cathedral. [<https://www.nuj.org.uk/documents/nuj-leveson-submission-module-2/>].
11. There are laws which say it is wrong to bribe an officer and there are laws, such as contempt of court, which govern how reporters and police must behave and there are stiff penalties if these laws are broken. It is also proper that the College of Policing provides guidelines and protocols to show how the media and police can liaise, but what must not be forgotten is the public interest. A democracy cannot function unless its police force is accountable and it has the trust of the people it serves. Journalists play a vital role in ensuring this accountability. They should have the right to challenge the police, the behaviour of police and how they conduct their operations. It can be argued that the recommendations by Leveson have suited police forces by allowing them to discourage direct contact with the press and given them greater control of the information they provide.
12. For the most part, particularly on local newspapers, the crime reporter will have a good relationship with his/her local force. This relationship will be based on trust. It is in the interest of both sides to share information. One NUJ police press officer said: "I strongly encourage the community policing teams to engage directly with local reporters to keep them informed of local crime trends as well as details of criminals brought to justice."
13. The NUJ pursues a constructive relationship with the police, for example by liaising when there are demonstrations and events where our members will be working. The

union has produced a video to explain to police officers undergoing public order training the importance of adhering to the official guidelines in dealing with news gatherers.

14. However, there is also a long history of mistrust between the police and journalists. The NUJ is taking legal action on behalf of six of its members who discovered their lawful journalistic and union activities were being monitored and recorded by the Metropolitan Police. Police have misused powers under the Regulation of Investigatory Powers Act to gain access to communications and bypass judicial scrutiny of requests for journalists' material. A report from the Interception of Communications Commissioner in 2015 revealed that police had secretly obtained the phone records of 82 journalists, including the Sun's political editor, Tom Newton Dunn, in the previous three years. (Press Gazette report <http://www.pressgazette.co.uk/met-press-office-provided-journalists-mobile-numbers-so-police-could-view-call-records-and-find/>). The NUJ is campaigning to ensure that the Investigatory Powers Bill protects journalistic information.
15. Journalists must be allowed to cover events without their safety being compromised by the police demanding footage and journalistic materials. They must not be used as evidence-gatherers for the police. They must be allowed to be seen as neutral during demonstrations or incidents of civil disorder, otherwise they will be put in a very dangerous position if they are seen as instruments of the state. A sacrosanct tenet of the NUJ's code of conduct is that members always protect the identity of sources and keep materials gathered in the course of their work in confidence. (NUJ code of conduct <https://www.nuj.org.uk/about/nuj-code/>)
16. The union has had to challenge a number of production orders, for instance when the BBC, UTV and ITN were forced to hand over all unbroadcast television footage relating to disturbances during the Derry Apprentice Boys parade of 2010. Michelle Stanistreet, NUJ general secretary, said: "Journalists should be free to do their job and democratic duty in covering such events. They already put themselves at risk when working at these events. This ruling not only undermines their independence by making them instruments of the state, but makes them potentially targets of the demonstrators."
17. To coincide with Sir Christopher Pitchford's Undercover Police Inquiry, the College has released its draft guidance on police undercover work and that is to be commended. The public's confidence in the police has been severely dented by covert operations which betrayed and destroyed the lives of women and their families, which targeted people and organisations pursuing perfectly legal protests, infiltrated unions and spent police resources spying on Stephen Lawrence's friends and family. That is why the NUJ is joining many others, including the Lawrence family, in calling for the inquiry to be as open as possible.
18. The APP guidelines must also take into account a recent ruling by the Independent Police Complaints Commission (IPCC) on the case of reporter Gareth Davies and

Trinity Mirror, publisher of the Croydon Advertiser. Davies was issued a Police Information Notice (PIN) for door-stepping and emailing a convicted fraudster. The Met has now rescinded this. Sarah Green, deputy chair of the IPCC said: "I understand the College of Policing is in the process of reviewing the national guidance on these notices and ask that you consider including a section on journalism in the guidance and in your Practice Advice on Investigating Stalking and Harassment." Davies told Hold the Front Page: "It is down to the College of Policing to issue guidance that means criminals will not be able to take advantage of PINs to block legitimate, public interest journalism."

19. The guidelines make very little mention of social media. Social media has transformed the way journalists (and everyone else) receives information. When incidents occur, people are quick to tweet their comments, observations and what they have witnessed, with varying degrees of reliability. Once information is "out there" it makes it more important that journalists are able to find out quickly whether this is accurate.
20. One police insider told the NUJ that there was a drive among some forces to concentrate on social media as a means to bypass the press with the view that "social media allows police to control the inputs and content" and is preferred for "getting the police message out". This would appear to conflict with any notion of accountability.

Key principles (2)

As a simple rule, police officers and staff should ask: "Am I the person responsible for communicating about this issue and is there a policing purpose for doing so?" If the answer to both parts of this question is "yes", they should talk to the media. Officers and staff of all ranks and roles are encouraged to provide factual information to the media about operations or investigations for which they are personally responsibility.

21. Officers and staff should give the media factual information; however who provides the information may depend on the context. In a murder inquiry, for example, it may be appropriate for the CCD to supply the information but, in other less high-profile incidents, if an officer has information about the incident, even if they are not responsible for the case, they should not be prevented from passing on information. Perhaps a more helpful wording would be: "Do I know about the issue being asked about and what can I tell the journalists to assist accurate reporting which better informs the public?"
22. The draft guidelines ask: "Is there a policing purpose for communicating with the media?" But they must also ask whether there is a public-interest purpose which may, at times, override the "policing purpose".

Defining speaking terms (3.1)

23. Ending the off-the-record (non-reportable) conversation was recommended in the Leveson report. This ignored the usefulness of this device to journalists and police. It would be perfectly legitimate in the case of a missing teenager, say, for the officer to have an off-the-record chat to a reporter if there were child protection issues and it would be better if the teenager's name was not reported. Background information is often useful if a reporter needs it to understand a situation and report it accurately and ethically. Any rule insisting any officer who speaks to a journalist has to produce a note of the subject is just creating a bureaucratic nightmare.
24. Information is a two-way street. Jeff Edwards, former crime correspondent and now an associate lecturer at the National Police Leadership College, told the BBC on the publication of the Filkin report: "I can think of at least five major criminal investigations where, as a tabloid reporter, I came across information and passed it on to a senior police officer. One was an enormous criminal conspiracy and I met an officer and, yes we shared a beer, but he acted and headed off a very serious criminal conspiracy...I resent the implied suggestion that all unauthorised contact between police and media is automatically unethical, elicited, shady or corrupt."
25. An NUJ member and CCD told the NUJ: "I will only go off the record with experienced journalists with whom I have built a relationship of trust over a number of years. However, I am 100 per cent certain that there are circumstances where it is in the interests of all parties and, crucially, of justice, that non-reportable guidance can be given, so this channel should be protected, even though I have known it to be abused by CCDs."
26. One award-winning local newspaper crime correspondent and NUJ member said: "Off the record chats are rare now, but do still happen and I believe are still important. I see no reason why a reporter shouldn't be able to go to the police with something they have heard and have the police give them a nod that it is correct on the understanding that nothing will be attributed to the police when reporting it. Historically, in these situations, we would report it as, 'The newspaper understands that...'. Defining things as 'reportable' and 'not reportable' can help if it is a case of giving the reporter some 'non-reportable' background to help them understand a story and/or stop them barking up the wrong tree. But this all comes down to trust. There should be room for negotiation. If a reporter is told something is 'non-reportable' they may want to work with police to find a way to report it."

Grounds for referral to CCDs (3.2)

27. The "non-exhaustive" list appears to include just about every occasion a journalist would speak to a police officer, except asking for directions. Even if it was a sensible procedure – which it isn't – to refer every such the matter to the CCD is unworkable. First there is the issue of staffing. Police cuts mean there are fewer CCDs to do this. The referral would also delay a timely response, which could severely hinder a journalist working on a tight deadline. As one CCD member admitted: "The practical

effect is that CCD-authorized briefings of journalists are often significantly delayed and information will not reach reporters until after deadline."

28. A good CCD can provide invaluable guidance, leading to better-quality communication between police and the NUJ. Reporters are used to working with press officers, but it would be ridiculous to prevent an officer giving journalists information directly. This, in the union's opinion, would do little to aid "open, honest and transparent communications which enhance confidence in policing". There is little to be gained by restricting communication between the police and media. If an officer is uncertain what to say, or lacks the necessary experience, a CCD can help, but it is no use if the information arrives too late.
29. The crime correspondent quoted above, added: "Press officers are too much of a barrier between police and the press. They should be there to answer quick queries and to help arrange meetings between press and police officers, but not to provide quotes and comments. All too often it's impossible to speak to a press officer and get a proper interview in plain English. Otherwise press offices simply become propaganda machines. As for recording meetings with the press; while I think this is highly unnecessary, I have no problem with it since I have nothing to hide. However, if these records were used to reprimand officers for giving off-the-record information, then it would be a problem."
30. Iain McBride, a former print, radio and TV journalist who was head of media for Kent Police, said he believes there has been a fundamental shift in the way police media teams are structured and how they handle external relations with journalists. "Years ago, police press offices were staffed by officers, then they were 'professionalised' and journalists were brought in. They understood how the real media world worked and that led, in my view, to fruitful working relationships where both sides understood the unwritten ground rules. Now police press officers seem to come increasingly from a PR/marketing background and their sole interest is positive promotion, rather than constructively handling the negative stories/critical incidents. On a personal note, the chief constable who recruited me, Mike Fuller, once said, 'I don't like what you are saying to me but I understand why you are saying it.' My view was that I was not employed to tell senior officers what they wanted to hear but how the media would react if they acted in a certain way. The police also have to have a more realistic view of the media. When 'public confidence' – a nebulous concept at the best of times – was the sole measurement they were much more prepared to engage with local media to boost their profile. Now there seems to be a bunker mentality where every journalistic enquiry is treated as hostile and they increasingly want to control the agenda rather than participate in it."
31. One CCD member said: "A clear example where involving CCDs can be constructive, rather than controlling, is with high-risk missing teenage girls. In my force area, there are dozens of 12 to 16-year-old girls, usually in foster or other state care, who regularly go missing for several days. These girls are at high risk of child sexual

exploitation by adult males, sometimes criminal gangs. After Rotherham, police culture is finally beginning to change, with an emphasis on safeguarding the children rather than treating them as 'streetwise sluts'. However, in terms of police media briefings when a teenage girl goes missing, the case has to be very carefully considered in terms of the best interests of the child and of protecting them from harm. I have seen inexperienced officers use social media to publish the only image they have of a missing child which turns out to be a highly sexualised photo, leading to Facebook denunciations of the child by the public as, yes, 'a streetwise slut'. When the child is found, their distrust of authority and adults is even greater, and their risk-taking behaviour escalates. There are fine judgements to be made and a good CCD can sometimes provide invaluable guidance, leading to better-quality communication between police, press and local communities, and a better outcome for a vulnerable young person."

Media briefings (3.7)

Media briefings are an important part of engaging police, media and the public. Officers and staff should liaise with CCDs about arranging briefings. The rationale for the briefing must be recorded and consideration should be given as to whether an embargo agreement is required. If one is needed, the media representatives should sign it and it be retained for audit purposes.

32. Journalists deal with embargoes daily and understand how they operate. If they break them without good reason, they know police have the option of withholding further briefings. The NUJ disagrees that it is necessary for journalists to sign an embargo agreement. Is there evidence that the media frequently ignore an embargo? The NUJ believes there is no operational case to bring in this extra level of bureaucracy.

All pre-trial and pre-verdict media briefings, including interviews with officers, must be impartial and must not comment or speculate on whether a defendant is guilty. The media should sign an indemnity agreement before the briefing and the communications officer should record the content of the briefing.

33. The whole point of a pre-verdict briefing is to allow the media to get a quote/broadcast clip in the bag, subject to a guilty verdict. Reporters will be expected to file backgrounders at the same time as the verdict. As one experienced member said: "If they don't give us an embargoed quote about a defendant's guilt, we'd never get any trial verdict stories out." Again, journalists understand the deal and would obviously use the quotes only with a guilty verdict. Where is the evidence the existing system doesn't work?

Reporting from a scene (3.9)

There are no powers prohibiting reporting or filming at the scene of an incident, provided it is conducted from a public place. Police have no power or moral responsibility to stop the filming or photographing of incidents or police personnel. It is for the media to determine what is published or broadcast, not the police. Once an image has been recorded, the police have no power to seize equipment, or delete or confiscate images or footage without a court order.

34. This is critical advice and must be made clear to police officers. There have been numerous occasions when photographer members have had their access blocked in these conditions. The NUJ welcomes this clarity and recommends that this advice is given emphasis.

Exclusives (3.10)

35. The NUJ welcomes the APP statement: "Where a media organisation generates an exclusive, their right to share information in confidence with the police should be respected." This is important: if a journalist is working on an exclusive story, the police should not tip off other media.
36. The NUJ agrees there are occasions for targeting a particular media organisation – such as a story or campaign based on geography, a particular audience or community the force wishes to reach, or a media organisation's particular interest in a certain issue. However, as a rule, police forces should not give preferential treatment to certain news organisations because they think they will be able to influence the outcome of the story. The police should not be able to pick and choose to whom they give information once it is available.

Naming on arrest (4.1)

The guidance says police should not name individuals on arrest. If a name or names are put to the police with a request for confirmation of an arrest, the response should be: "We neither confirm nor deny". Those charged with an offence should be named unless there is an exceptional and legitimate policing purpose for not doing so, or reporting restrictions apply.

37. One NUJ member said: "Traditionally, the police have never told us the name of someone they have arrested, but they have given us off the record guidance if we go to them with a name. It is then up to us and our editors whether we publish that name. I think it would be very worrying if this did not continue as this guidance is important to stop incorrect information being published, and is part of the two-way relationship between press and police. In today's world of social media, where the general public can name an arrested person to thousands of people on Twitter/Facebook, it remains particularly important that the press remains a trusted

source of accurate information and the police help us to do so through a trusting relationship."

38. The NUJ believes there are sometimes cases when the name should be given, for example so that other people can come forward.
39. Journalists may need to name someone arrested in order to quash rumours that someone else was arrested or to ensure they avoid tainting a future trial by running material about someone who has been arrested without us being informed, despite seeking the information. It is important to the public interest and justice that people charged with offences are named in order to keep the public informed, protect those who may be incorrectly identified and in order to reassure the public of the process of justice.
40. In May 2013, the Daily Mail published a survey which showed that a third of forces – 14 of 43 – refused to name suspects even after they had been charged. The disclosure followed the case of Warwickshire police force which refused to name a former officer accused of stealing from its headquarters. It claimed the decision was a result of the Leveson Inquiry but later, following widespread criticism, backed down.

Freedom of Information (6)

41. In the NUJ's experience, the police do not have a good record on fulfilling FOI requests. When the NUJ asked forces to supply it with the number of production orders they had issued to journalists, very few replied on time and even fewer gave an answer. It took the implementation of the Interception of Communications code of practice before police forces provided information to the Press Gazette on their use of the Regulation of Investigatory Powers Act (2000) to get secret access to journalists' telephone records. The answer given was 82, but the newspaper said it believed this figure to be the tip of the iceberg.
42. Investigative journalist David Hencke said: "The police are good in providing FOI answers to general questions like number of offences, arrests, staffing etc. They are not so good if you ask for specific documents about cases."

Press cards

43. The NUJ suggests the guidance should include guidance on respecting press cards. One member said that while he was covering a recent English Defence League march in Nottingham, he was stopped by a police officer and when he produced his press card was told his credentials might be forged. A few minutes later he received the same response from another officer. He took up the issue with the force's media services manager and was satisfied with her response, however it may be useful to include advice to officers to respect press cards; they are supposed to be helpful in these situations. The member suggested that information on press cards should be included as part of pre-operation briefings.

Evidence from investigative journalist David Hencke

44. David is a senior investigative reporter at Exaro and Westminster correspondent for the Tribune. He was the Guardian's Westminster correspondent from 1986 to 2009, having joined the paper in 1976. In an article in response to the draft guidelines, he wrote: "What the National Police Chiefs' Council fail to appreciate is that investigative journalists work like detectives. They gather information through painstaking enquiries, trace contacts from witnesses to victims and often find out the same information as the police do about suspects. Sometimes they are ahead, sometimes it is the police. To decide not to announce the names of arrested suspects will, in these cases, be a spectacular own goal for the police. What we need is co-operation and dialogue not a wall of silence."

In response to the consultation questions he said:

"It is vital for journalists to have an off the record conversations with the police handling a particular case if the journalist is already gathering information from the victim of the crime. Exaro needed to do this throughout all child sex abuse inquiries simply because the information gathered by the journalist about the cases they were investigating could prejudice a future trial and liaison is needed 'off the record' on the case.

"Yes, I agree that the press office should log all contacts with the press. However the press office is not in a position to be the only contact a journalist can have with the police. Their knowledge of a case, unless they are going to get detailed briefings on every twist and turn of an investigation, will often be less than the journalist who is investigating it.

"Refusing to give a name of someone arrested could actually prejudice a future trial. Reporting after a person is arrested is always very restricted. But if the journalist does not know the person has been arrested there is no reason for restricting any coverage. And if the police don't give the information, what if the person arrested does – if only to safeguard him or herself from further coverage.

"I wrote a blog about this issue: <https://davidhencke.com/2013/04/09/why-a-dangerous-police-chief-ban-on-announcing-arrests-will-be-an-own-goal-for-justice/>

"At Exaro we have not had any obstacles put in our way by the police, beyond sensible requests not to divulge information that could hamper their enquiries. Sometimes we have provided information to the police, with our informant's permission, to help them in their inquiries. That is why liaison with individual police officers is essential.

Case Study: treating journalists as informants

45. Sports journalist Andrew Simpson received an anonymous tip off from a member of the public to say they had complained to police after a reading anti-Muslim (and racist) tweets made by a footballer from local club Witton Albion FC. They were made in the hours after Lee Rigby's murder in London (22 May 2013).

He contacted Cheshire Constabulary's press office, but after being told they had had received no such complaint it was suggested he try Merseyside (where the player lived). He sent Merseyside police a screenshot of the player's tweets (which were later deleted). A few days later, he was contacted by a police officer, who attempted to persuade him he should act as complainant in the matter as, he claimed, Andrew was the first to bring it to their attention. After taking advice from his newspaper and union representative, he declined.

The case went to court, the player pleaded guilty, and was handed a custodial sentence. However, during the sentencing hearing, the Crown Prosecution Service's representative told those present (and subsequently repeated it later) that the complainant had been a sports journalist from the local newspaper. Although he was not named, his newspaper is the only publication covering Witton Albion and he was easily identified.

Later the same day, the footballer's older brother sent a tweet directly to our member claiming he was a police informant. This, obviously, caused him a considerable amount of stress and anguish and (if only briefly) concern for his personal safety.

He said: "Not only that, there was a considerable risk posed to my professional integrity by an allegation that I had co-operated with the police as a complainant in a case that involved a footballer who plays for a club I report on."

With help from the union, Andrew made formal complaints against Merseyside Police and the Crown Prosecution Service. It took until December 2013 to reach a conclusion. The CPS refused to accept responsibility, saying its solicitor had repeated information supplied to him on an MG5 form as part of his bundle for that particular case. Merseyside Police also refused to accept responsibility, or to apologise, at first. The union pushed hard for disclosure of the MG5 form, which clearly identified our member as the complainant.

In a letter sent in December 2013, an investigating officer from Merseyside Police declared our appeal had been upheld and apologised. He also said that the officer dealing with the footballer's case should never have included our member's name in the CPS bundle.

Andrew Simpson said: "While, on the sports desk, I do not often deal with police forces in my day-to-day duties, this has affected considerably how I feel about my

relationship with police officers. Even now, in July 2016, I'd say the damage done is irreparable. In short, I do not feel able to trust any officer I deal with. It would be my sincere hope this is an isolated incident. Of course, I've no way of knowing if it is (or was). My concern would be for a less experienced colleague to find themselves in a similar position, and whether they would be able to handle the considerable strain it had on both professional and personal relationships that I had to endure."