How to make a complaint against a PIP

ISI

Tackling problem debt, together

Insolvency Service of Ireland
How to make a complaint against a PIP

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1 How to complain about a PIP

Where an individual has a complaint about a personal insolvency practitioner ("PIP") there are two options available to the individual ("complainant"):

- The complainant may make a complaint directly to a PIP,
- Alternatively, if the complaint alleges improper conduct by a PIP (see point 2.2. below), the complainant may make a complaint about a PIP to the Insolvency Service of Ireland ("ISI").

2 Complaints of improper conduct by a PIP

2.1 What protections are provided by the Personal Insolvency Act 2012?

Complaints alleging improper conduct by a PIP are dealt with in Part 5, Chapter 4 of the Personal Insolvency Act 2012 (the "Act"). If the complaint is not about improper conduct of a PIP do not follow this procedure and instead try to resolve the issue with the PIP directly.

2.2 What is improper conduct?

Under section 159 of the Act (as amended), improper conduct means:

- the commission by a PIP of an act which renders the PIP no longer a fit and proper person to carry on practice as a PIP,
- the commission by a PIP of a material contravention of a provision of the Act or any regulations made under the Act. All regulations made under the Act can be found at this link: http://www.isi.gov.ie/en/ISI/Pages/Legislation, or
- failure by a PIP to perform their functions under the Act in accordance with the Act and any regulations made thereunder.

2.3 Who can complain?

Any person may make a complaint in writing to the ISI alleging that improper conduct by a PIP has occurred or is occurring.[1]

[1] See section 178(1) of the Personal Insolvency Act 2012

2.4 Is there a time limit for making a complaint?

There is no time limit for making a complaint. However, it is preferable that complaints be made soon after the alleged conduct took place in order for the matter to be investigated and resolved in a timely manner.

3 How to make a complaint

To make a complaint to the ISI alleging improper conduct by a PIP, write to the ISI at:

Regulation Complaints
Insolvency Service of Ireland
Block 2, Phoenix House
Conyngham Road
Dublin 8

Or

email: complaints@isi.gov.ie specifying ***Regulation Complaints*** in the subject line.

To assist the ISI in dealing with your complaint you should, where possible, include the following details:

- your name and address;
- your preferred contact details;
- the full details of the insolvency case, together with the case number (if applicable);
- copies of any relevant correspondence about the complaint and response (if any);
- full details of what has gone wrong or has not been handled properly;
- details of how you have already tried to resolve the issue (if applicable);
- an explanation of how you would like your complaint resolved (if applicable); and
- any other information you consider to be relevant.

4 What happens when the ISI receives a complaint?

When the ISI receives a complaint alleging improper conduct by a PIP, the ISI will:

- acknowledge receipt of the complaint to the complainant within 5 working days of receipt;
- notify the PIP in writing of the receipt of the complaint and provide the PIP with a copy of the complaint and any other documents provided to the ISI by the complainant;
- refer the PIP to any regulations made under sections 161 and 173 of the Act and to any guidelines and codes of practice issued under section 137 of the Act; and
- request the PIP to provide a response in relation to the complaint within a specified time frame.

5 What happens when the ISI receives a response from a PIP?

Where the ISI receives a response from a PIP the ISI will consider the response. If, upon considering the response, the ISI is satisfied that:

- the complaint is not made in good faith,
- the complaint is frivolous, vexatious or without substance or foundation, or
- the complaint is likely to be resolved by mediation or other informal means between the parties,

the ISI will determine the complaint accordingly. In these cases the ISI will give notice in writing to the complainant and the PIP to whom the complaint relates of the decision and the reasons for the decision.

6 What happens if the complainant is not satisfied with mediation?

If the complaint is not resolved by mediation or other informal means between the parties the complainant can, if they wish, make a fresh complaint about the subject of the initial complaint.

7 When does an investigation commence?

Where the ISI does not receive a response from the PIP or having received such a response, the ISI considers a complaint:

- is made in good faith,
- is not frivolous or vexatious or without substance or foundation,
- cannot reasonably be resolved by mediation or other informal means between the parties,

the ISI will commence an investigation and appoint an inspector. The ISI may also, of its own volition, cause such investigation as it deems appropriate to be carried out to identify any improper conduct by a PIP.

8 Appointment of an Inspector

Upon being appointed, the inspector will give notice in writing to the PIP involved, setting out particulars of the complaint and will give him or her copies of any documents relevant to the investigation and a copy of the relevant part of the Act. The inspector will also provide a copy of the notice to the complainant and will make reasonable efforts to ensure the complainant is kept informed of the progress of the investigation.

9 Investigation of a Complaint

The inspector, upon completing the investigation, will prepare a draft investigation report. A copy of this draft report will be sent to the relevant PIP, the complainant (if any) and the ISI all of whom will be invited to make submissions in writing within 30 days to the inspector. The 30 day period may be extended by the inspector by a further 30 days.

As soon as practicable after the closing date for the submissions and following consideration of any submissions received, the inspector will prepare the final investigation report. The final investigation report will then be submitted along with any submissions received, to the relevant PIP, the complainant, the ISI and a committee chosen from a panel of persons appointed by the Minister for Justice and Equality known as the Personal Insolvency Practitioners Complaints Committee (the "Complaints Committee").

10 What happens when the Complaints Committee receives an inspector's report?

Where the Complaints Committee receives an inspector's report it will invite the PIP concerned, the complainant and the ISI to make submissions in writing regarding the matters the subject of the inspector's report within 30 days or such further period as the Complaints Committee allows.

The Complaints Committee may then consider the matter on the basis of the report and any submissions received. If the Complaints Committee considers it appropriate, it may conduct an oral hearing.

When the Complaints Committee has completed its considerations it will make a determination as to whether the conduct investigated is improper conduct. If the Complaints Committee determines the conduct not to be improper it will dismiss the complaint. If the Complaints Committee determines that the conduct was improper it will determine whether the appropriate sanction is a minor sanction or a major sanction (each as defined in section 159 of the Act).

Where the Complaints Committee determines that the appropriate sanction is a minor sanction, it will determine which of the minor sanctions is appropriate and will impose that sanction. Minor sanctions include cautions and reprimands.

Where the Complaints Committee determines that a major sanction is appropriate it will determine which of the major sanctions is appropriate and will recommend this sanction when referring the matter to the High Court. Major sanctions include the revocation or suspension of the PIP's authorization.

The determination of the Complaints Committee will be furnished to the PIP involved, the complainant and the ISI.

11 What happens if a complaint is withdrawn after an inspector is appointed?

If a complaint is withdrawn before the investigation into the complaint has been completed, the ISI can continue with the investigation as if the complaint had not been withdrawn if satisfied there is good and sufficient reason for doing so.

12 Practitioners Complaints Committee

12.1 What is the Complaints Committee?

Section 177 of the Act makes provision for the Minister for Justice and Equality to establish a panel of persons to act on a committee to be known as the Personal Insolvency Practitioners Complaints Committee (the "Complaints Committee"). The purpose of the Complaints Committee is to determine whether a PIP has engaged in improper conduct and decide the appropriate sanction.

12.2 What is the role of the Complaints Committee?

The Complaints Committee can impose a minor or major sanction, each as defined at section 159 of the Act. If a minor sanction is proposed, the Complaints Committee shall determine which of the minor sanctions is the appropriate, having regard to the circumstances of the case, and shall impose that sanction.

Where the Complaints Committee determines that the appropriate sanction is a major sanction it shall determine which of the major sanctions is appropriate and will then refer the matter to the High Court and make a recommendation as to the appropriate sanction.

If the Committee finds that there was no improper conduct, the complaint will be dismissed.

12.3 Who are the members of the Complaints Committee?

- Mr Paul Brennan, Solicitor
- Mr Seamus Butler, Retired Public Servant
- Ms Marie Doyle, Self-employed Health & Safety Advisor
- Ms Lynn Fenelon, Barrister
- Mr Alec Gabbett, Solicitor
- Ms Elaine Greer, Barrister

- Mr Bill Holohan, Solicitor
- Mr Alan Howard, Self-employed Human Resources Consultant
- Mr Mark Kane, Self-employed Arbitrator and Chartered Builder
- Ms Imelda Kelly, Barrister
- Mr Martin Kelly, Accountant
- Mr JP McDowell, Solicitor
- Mr Frank Nyhan, Solicitor
- Ms Mary Nyhan, Accountant
- Ms Helen O'Brien, Solicitor
- Ms Vicky Pigot, Solicitor
- Mr Sean Quigley, Retired Public Servant
- Mr Brian Walker, Barrister

Date: February 2016

Seirbhís Dócmhainneachta na hÉireann
Insolvency Service of Ireland
Back on Track
Tackling problem debt, together

Conas gearán a dhéanamh in aghaidh cleachtóir dócmhainneachta pearsanta

Seirbhís Dócmhainneachta na hÉireann
Insolvency Service of Ireland

ISI

Dul i ngleic le fiachas le chéile

Seirbhís Dócmhainneachta na hÉireann
Conas gearán a dhéanamh in aghaidh cleachtóir dócmhainneachta pearsanta

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1 Conas gearán a dhéanamh faoi chleachtóir dócmhainneachta pearsanta

I gcás gur mhaith le duine aonair gearán a dhéanamh faoi chleachtóir dócmhainneachta pearsanta, tá dhá rogha ar fáil don duine aonair sin ("gearánach"):

- Féadfaidh an gearánach gearán a dhéanamh go díreach chuig cleachtóir dócmhainneachta pearsanta,
- Mar mhalairt air sin, féadfaidh an gearánach gearán faoi chleachtóir dócmhainneachta pearsanta a dhéanamh chuig Seirbhís Dócmhainneachta na hÉireann ("an ISI") i gcás go bhfuiltear ag líomhain sa ghearán go raibh cleachtóir dócmhainneachta pearsanta ag gabháil d'iompar míchuí (féach pointe 2.2 thíos).

2 Gearáin maidir le hiompar míchuí ag cleachtóir dócmhainneachta pearsanta

2.1 Cé na cosaintí a thugtar leis an Acht um Dhócmhainneacht Phearsanta 2012?

Is i gCuid 5, Caibidil 4, den Acht um Dhócmhainneacht Phearsanta 2012 (an "tAcht") a phléitear le gearáin á líomhain go raibh cleachtóir dócmhainneachta pearsanta ag gabháil d'iompar míchuí. Mura mbaineann an gearán le hiompar míchuí ag cleachtóir dócmhainneachta pearsanta, ná lean an nós imeachta seo. Ina ionad sin, déan iarracht an tsaincheist a réiteach go díreach leis an gcleachtóir dócmhainneachta pearsanta lena mbaineann.

2.2 Cad is iompar míchuí ann?

Faoi alt 159 den Acht (arna leasú), ciallaíonn iompar míchuí:

- an cleachtóir dócmhainneachta pearsanta do dhéanamh gnímh a fhágann nach duine oiriúnach cuí an cleachtóir dócmhainneachta pearsanta a thuilleadh chun cleachtas a sheoladh mar chleachtóir dócmhainneachta pearsanta,
- an cleachtóir dócmhainneachta pearsanta do dhéanamh sárú ábhartha ar fhoráil de rialacháin arna ndéanamh faoin Acht. Is féidir gach rialachán arna ndéanamh faoin Acht a fháil ag an nasc seo a leanas: http://www.isi.gov.ie/en/ISI/Pages/Legislation, nó
- mainneachtain cleachtóra dócmhainneachta pearsanta a fheidhmeanna faoin Acht a chomhlíonadh de réir an Achta agus aon rialachán arna ndéanamh faoi.

2.3 Cé a fhéadann gearán a dhéanamh?

Féadfaidh aon duine gearán a dhéanamh i scríbhinn chuig an ISI á líomhain go raibh nó go bhfuil cleachtóir dócmhainneachta pearsanta ag gabháil d'iompar míchuí.[2]

2.4 An bhfuil teorainn ama ann le gearán a dhéanamh?

Níl aon teorainn ama ann le gearán a dhéanamh. Mar sin féin, is fearr go ndéanfar gearáin a luaithe is féidir tar éis an t-iompar líomhnaithe a dhéanamh d'fhonn go mbeifear in ann an ní a imscrúdú agus a réiteach ar bhealach tráthúil.

3 Conas gearán a dhéanamh

Chun gearán a dhéanamh chuig an ISI á líomhain go raibh cleachtóir dócmhainneachta pearsanta ag gabháil d'iompar míchuí, scríobh chuig an ISI ag an seoladh seo a leanas:

Gearáin maidir le Rialáil
Seirbhís Dócmhainneachta na hÉireann
Bloc 2, Teach an Fhionnuisce
Bóthar Conyngham
Baile Átha Cliath 8

Nó

seol ríomhphost chuig complaints@isi.gov.ie , agus ***Gearáin maidir le Rialáil*** scríofa i líne an ábhair.

D'fhonn cabhrú leis an ISI déileáil le do ghearán, ba chóir duit, nuair is féidir, na sonraí seo a leanas a thabhairt:

- d'ainm agus do sheoladh;
- na sonraí teagmhála is fearr leat;
- sonraí iomlána an cháis dócmhainneachta, mar aon leis an gcás-uimhir (má bhaineann);
- cóipeanna d'aon chomhfhreagras iomchuí maidir leis an ngearán agus den fhreagra (más ann dóibh);
- sonraí iomlána faoin ní a chuaigh amú nó faoin ní nár déileáladh leis i gceart;
- sonraí faoin iarracht atá déanta agat cheana féin chun an tsaincheist a réiteach (má bhaineann);

[2] Féach alt 178(1) den Acht um Dhócmhainneacht Phearsanta 2012

- míniú ar an réiteach atá á lorg agat (má bhaineann); agus
- aon fhaisnéis eile a mheasann tú a bheith iomchuí.

4 Cad a tharlóidh i gcás go bhfaighidh an ISI gearán?

I gcás go bhfaighidh an ISI gearán á líomhain go raibh cleachtóir dócmhainneachta pearsanta ag gabháil d'iompar míchuí, déanfaidh an ISI na nithe seo a leanas:

- admháil go bhfuarthas an gearán a eisiúint don ghearánach laistigh de 5 lá oibre ón ngearán a fháil;
- fógra a thabhairt i scríbhinn don chleachtóir dócmhainneachta pearsanta lena mbaineann á rá go bhfuarthas an gearán agus cóip den ghearán agus cóip d'aon doiciméid a thug an gearánach don ISI a sholáthar don chleachtóir dócmhainneachta pearsanta;
- aird an chleachtóra dócmhainneachta pearsanta a tharraingt ar aon rialacháin arna ndéanamh faoi ailt 161 agus 173 den Acht agus ar aon treoirlínte agus aon chóid chleachtais arna n-eisiúint faoi alt 137 den Acht; agus
- a iarraidh ar an gcleachtóir dócmhainneachta pearsanta freagra a thabhairt i ndáil leis an ngearán laistigh de thréimhse shonraithe ama.

5 Cad a tharlóidh i gcás go bhfaighidh an ISI freagra ó chleachtóir dócmhainneachta pearsanta?

I gcás go bhfaighidh an ISI freagra ó chleachtóir dócmhainneachta pearsanta, breithneoidh an ISI an freagra sin. Más rud é, tar éis di an freagra a bhreithniú, gur deimhin leis an ISI:

- nach de mheon macánta a rinneadh an gearán,
- go bhfuil an gearán suaibhreosach nó cráiteach nó gan substaint ná foras, nó
- gur dóigh go réiteofar an gearán trí idirghabháil nó ar mhodh neamhfhoirmiúil eile idir na páirtithe lena mbaineann,

tabharfaidh an ISI breith ar an ngearán dá réir sin. Sna cásanna sin, tabharfaidh an ISI fógra i scríbhinn don ghearánach agus don chleachtóir dócmhainneachta pearsanta lena mbaineann an gearán i dtaobh na breithe agus na gcúiseanna atá leis an mbreith.

6 Cad a tharlóidh i gcás nach mbeidh an gearánach sásta le hidirghabháil?

I gcás nach réiteofar an gearán trí idirghabháil ná ar mhodh neamhfhoirmiúil eile idir na páirtithe lena mbaineann, féadfaidh an gearánach, dá rogha féin, gearán úr a dhéanamh i leith an ní is ábhar don ghearán tosaigh.

7 Cén uair a chuirfear tús le himscrúdú?

I gcás nach bhfaighidh an ISI freagra ó chleachtóir dócmhainneachta pearsanta, nó i gcás go measfaidh an ISI, tar éis di freagra den sórt sin a fháil:

- gur de mheon macánta a rinneadh an gearán,
- nach bhfuil an gearán suaibhreosach nó cráiteach nó gan substaint ná foras, nó
- nach dóigh go réiteofar an gearán trí idirghabháil nó ar mhodh neamhfhoirmiúil eile idir na páirtithe lena mbaineann,

cuirfidh an ISI tús le himscrúdú agus ceapfaidh sí cigire. Féadfaidh an ISI, dá deoin féin, a chur faoi deara cibé imscrúdú is cuí léi a dhéanamh chun aon iompar míchuí ag cleachtóir dócmhainneachta pearsanta a aithint freisin.

8 Cigire a Cheapadh

Ar a cheapadh, tabharfaidh an cigire fógra i scríbhinn don chleachtóir dócmhainneachta pearsanta lena mbaineann ina leagfar amach sonraí an ghearáin, agus tabharfaidh an cigire dó nó di cóipeanna d'aon doiciméid is iomchuí maidir leis an imscrúdú, agus cóip den chuid iomchuí den Acht. Soláthróidh an cigire cóip den fhógra don ghearánach freisin agus déanfaidh sé iarrachtaí réasúnacha chun a chinntiú go gcoimeádtar an gearánach ar an eolas maidir le dul chun cinn i ndáil leis an imscrúdú.

9 Gearán a Imscrúdú

Ar chríochnú an imscrúdaithe dó, déanfaidh an cigire dréacht den tuarascáil ar imscrúdú a ullmhú. Seolfar cóip den dréacht sin den tuarascáil chuig an gcleachtóir dócmhainneachta pearsanta lena mbaineann, chuig an ngearánach (más ann dó) agus chuig an ISI agus iarrfar orthu go léir

aighneachtaí i scríbhinn a dhéanamh chuig an gcigire laistigh de 30 lá. Féadfaidh an cigire an tréimhse 30 lá a fhadú faoi 30 lá eile.

A luaithe is indéanta tar éis an dáta deiridh le haghaidh aighneachtaí, agus tar éis dó aon aighneachtaí a fuarthas a bhreithniú, ullmhóidh an cigire an tuarascáil chríochnaitheach ar an imscrúdú. Fara aon aighneachtaí a fuarthas, cuirfear an tuarascáil chríochnaitheach ar an imscrúdú faoi bhráid an chleachtóra dócmhainneachta pearsanta lena mbaineann, an ghearánaigh, an ISI agus coiste ar a dtabharfar an Coiste um Ghearáin ar Chleachtóirí Dócmhainneachta Pearsanta (an "Coiste um Ghearáin") arna roghnú ó phainéal daoine arna gceapadh ag an Aire Dlí agus Cirt agus Comhionannais.

10 Cad a tharlóidh i gcás go bhfaighidh an Coiste um Ghearáin tuarascáil cigire?

I gcás go bhfaighidh an Coiste um Ghearáin tuarascáil cigire, iarrfaidh sé ar an gcleachtóir dócmhainneachta pearsanta lena mbaineann, ar an ngearánach agus ar an ISI aighneachtaí i scríbhinn a dhéanamh chuige maidir leis na nithe is ábhar do thuarascáil an chigire laistigh de 30 lá nó cibé tréimhse is faide ná sin a cheadóidh an Coiste um Ghearáin.

Féadfaidh an Coiste um Ghearáin an ní a bhreithniú ansin ar bhonn na tuarascála agus aon aighneachtaí a fuarthas. I gcás gurb é tuairim an Choiste um Ghearáin gur cuí déanamh amhlaidh, féadfaidh sé éisteacht ó bhéal a stiúradh.

Nuair a bheidh a bhreithniú ar an ábhar críochnaithe aige, déanfaidh an Coiste um Ghearáin cinneadh i dtaobh an iompar míchuí é an t-iompar is ábhar don imscrúdú. I gcás go gcinnfidh an Coiste um Ghearáin nach iompar míchuí é an t-iompar, díbhfidh sé an gearán. I gcás go gcinnfidh an Coiste um Ghearáin gur iompar míchuí é an t-iompar, cinnfidh sé an mion-smachtbhanna nó an mór-smachtbhanna (mar atá sainithe in alt 159 den Acht) é an smachtbhanna cuí.

I gcás go gcinnfidh an Coiste um Ghearáin gur mion-smachtbhanna an smachtbhanna cuí, cinnfidh sé cén smachtbhanna de na mion-smachtbhannaí is cuí agus forchuirfidh sé an smachtbhanna sin. Áirítear le mion-smachtbhannaí rabhaidh agus iomarduithe.

I gcás go gcinnfidh an Coiste um Ghearáin gur mór-smachtbhanna an smachtbhanna cuí, cinnfidh sé cén smachtbhanna de na mór-smachtbhannaí is cuí agus molfaidh sé an smachtbhanna sin agus an ní á tharchur aige chuig an Ard-Chúirt. Áirítear le mór-smachtbhannaí údarú an chleachtóra dócmhainneachta pearsanta a chúlghairm agus an t-údarú sin a fhionraí.

Tabharfaidh an Coiste um Ghearáin cóip den chinneadh don chleachtóir dócmhainneachta pearsanta lena mbaineann, don ghearánach agus don ISI.

11 Cad a tharlóidh i gcás go dtarraingeofar gearán siar tar éis cigire a cheapadh?

I gcás go dtarraingeofar gearán siar sula mbeidh an t-imscrúdú ar an ngearán críochnaithe, féadfaidh an ISI leanúint ar aghaidh leis an imscrúdú amhail is nár tarraingíodh siar an gearán más deimhin léi go bhfuil cúis mhaith dhóthanach ann déanamh amhlaidh.

12 An Coiste um Ghearáin ar Chleachtóirí

12.1 Cad atá sa Choiste um Ghearáin?

Déantar foráil le halt 177 den Acht go mbunóidh an tAire Dlí agus Cirt agus Comhionannais painéal daoine chun gníomhú ar choiste ar a dtabharfar an Coiste um Ghearáin ar Chleachtóirí Dócmhainneachta Pearsanta (an "Coiste um Ghearáin"). Is é cuspóir an Choiste um Ghearáin a chinneadh an raibh cleachtóir dócmhainneachta pearsanta ag gabháil d'iompar míchuí agus an smachtbhanna cuí a chinneadh.

12.2 Cad é an ról atá ag an gCoiste um Ghearáin?

Féadfaidh an Coiste um Ghearáin mion-smachtbhanna nó mór-smachtbhanna, mar atá sainithe in alt 159 den Acht, a fhorchur. I gcás go molfar mion-smachtbhanna, cinnfidh an Coiste um Ghearáin cén smachtbhanna de na mion-smachtbhannaí is cuí, ag féachaint d'imthosca an cháis, agus forchuirfidh sé an smachtbhanna sin.

I gcás go gcinnfidh an Coiste um Ghearáin gur mór-smachtbhanna an smachtbhanna cuí, cinnfidh sé cén smachtbhanna de na mór-smachtbhannaí is cuí agus tarchuirfidh sé an ní don Ard-Chúirt agus déanfaidh sé moladh maidir leis an smachtbhanna is cuí.

I gcás go bhfaighidh an Coiste amach nach raibh aon iompar míchuí ann, díbhfear an gearán.

12.3 Cé hiad na comhaltaí den Choiste um Ghearáin?

- An tUas. Paul Brennan, Aturnae
- An tUas. Séamus Butler, Seirbhíseach Poiblí ar Scor
- Marie Doyle Uas., Comhairleoir Féinfhostaithe maidir le Sláinte agus Sábháilteacht
- Lynn Fenelon Uas., Abhcóide
- An tUas. Alec Gabbett, Aturnae
- Elaine Greer Uas., Abhcóide
- An tUas. Bill Holohan, Aturnae
- An tUas. Alan Howard, Comhairleoir Féinfhostaithe maidir le hAcmhainní Daonna
- An tUas. Mark Kane, Eadránaí Féinfhostaithe agus Tógálaí Cairte
- Imelda Kelly Uas., Abhcóide
- An tUas. Martin Kelly, Cuntasóir
- An tUas. JP McDowell, Aturnae
- An tUas. Frank Nyhan, Aturnae
- Mary Nyhan Uas., Cuntasóir
- Helen O'Brien Uas., Aturnae
- Vicky Pigot Uas., Aturnae
- An tUas. Seán Quigley, Seirbhíseach Poiblí ar Scor
- An tUas. Brian Walker, Abhcóide

Dáta: Feabhra 2016

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