



# EQUALITY CODE

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1 King's Bench Walk  
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London  
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# 1 KING'S BENCH WALK

## EQUALITY CODE

### INTRODUCTION

This Code forms part of our Quality Assurance Manual and should be read in conjunction with Area 9 - "Equal Opportunities".

1 King's Bench Walk has long been committed to the removal of barriers to equality of opportunity in Chambers. More recently we have expanded our commitment into the effective management of diversity, recognising the need to go beyond compliance with existing primary and subordinate legislation that makes certain types of discrimination illegal. We deal with this later.

The members of Chambers, staff, clerks and administrators alike will do their utmost to ensure that no one is discriminated against on any basis to include:-

- race
- colour
- ethnic or national origin
- nationality
- citizenship
- gender
- age
- sexual orientation
- marital status
- disability
- religion or belief
- political persuasion

We will do all within our power to seek out and eliminate possible areas of discrimination and to ensure:-

- **Equality of Access** to all applicants (whether for pupillage, tenancy or employment);
- **Equality of Treatment** to all in Chambers; and
- **Equality of Service** to professional and lay clients alike.

This Code reflects our stated aim that everyone should be accorded equal dignity and respect and be judged on merit and ability alone, free from random judgment based on prejudice or assumptions of collective characteristics.

The Code complements the Chambers' Complaints Procedure, Chambers' policies on the Recruitment of Pupils and Tenants (as set out separately and in Appendix 2 of the Constitution) together with Areas 5 and 8 of the Quality Assurance Manual relating to selection procedures for employees and pupils.

By signing the declaration to be bound by the Chambers' Quality Assurance Manual, every member of Chambers (including the pupils) the clerks and the support staff have signified their agreement that:-

- they will be bound by the terms of this Code at all times; and
- they positively support its aims and intentions.

Any breach of this Code will be treated extremely seriously and may, in certain circumstances lead to the expulsion of a member of Chambers or the dismissal of an employee.

Chambers has appointed members of Chambers and staff to act as Officers and Members of its Equality Committee. Their duties and responsibilities are set out later. Their names are recorded in Appendix 1 to this Code.

### **DISCRIMINATION**

Those in Chambers (whether a member, pupil or employee) will not act in relation to anyone else in Chambers, to an applicant for such a position or to a lay or professional client in a manner which directly or indirectly is either discriminatory, amounts to harassment or victimises that person on grounds of race, colour, ethnic or national origin, nationality, citizenship, gender, age, sexual orientation, marital status, disability, religion or belief, or political persuasion.

### **SOME DEFINITIONS:**

#### **"DIRECT DISCRIMINATION"**

This means treating a person less favourably than others are, or would be, treated in the same or similar circumstances.

Some examples:-

- refusing to employ a male receptionist in Chambers because most other sets of Chambers tend to have female receptionists. This is discrimination on grounds of gender.
- refusing to offer a junior tenancy to a married female pupil on the basis that she is likely to leave Chambers shortly to start a family. This is discrimination on grounds of gender and marital status.
- refusing to agree to a case being returned to a barrister from an ethnic minority background. This is discrimination on the grounds of race, colour and ethnic origin.

#### **"INDIRECT DISCRIMINATION"**

This happens when 4 conditions are met:-

1. a requirement or condition is applied equally to all, but a considerably smaller proportion of the relevant group than the others to whom it applies can comply with it;
2. the individual in question cannot comply with it;
3. it results in detriment to that individual; and
4. it cannot be shown to be objectively justifiable.

Some examples:-

- rejecting applications from prospective pupils who gained their degrees at former Polytechnics.
- setting an upper age limit for pupillage applicants.
- advertising for a Chambers' telephonist who must be aged between 20 and 35 years of age.

### **"HARASSMENT"**

Harassment creates an intimidating or unpleasant working environment which may affect career advancement and thereby constitute discrimination. It means unwelcome conduct which is offensive to the recipient in that it affects their dignity, where such conduct would not have occurred but for the collective qualities or characteristics of the recipient. Such conduct will be considered to amount to harassment whatever the motives or intention of the perpetrator. It should never be assumed that because a similar remark or act did not appear to cause offence in the past that it is therefore of itself inoffensive. Harassment can be a one off incident or a prolonged course of action. It can be verbal or physical. Harassment is both a civil wrong and a criminal offence under the Protection from Harassment Act 1997.

Some examples:-

- taunting a male pupil at a Chambers' party as to whether he is or might be gay.
- persistently requesting a young female tenant for a date when it is plain that she is happily married and not at all interested.
- behaving unpleasantly and dismissively towards a young work experience placement from an ethnic minority background.

### **"VICTIMISATION"**

This means less favourable treatment of those who have brought proceedings or who have given evidence or information for the purpose of legal or disciplinary proceedings or who have made a complaint based upon an allegation of discrimination (direct or indirect) or as a result of alleged harassment.

Some examples:-

- the male pupil in the example above complains to the Head of Chambers and invokes Chambers' grievance procedures. The Chambers' Management Committee resolves that he is a trouble maker and will not merit any serious consideration for a tenancy.
- a member of Chambers complains to the Bar Council's Professional Conduct and Complaints Committee about the conduct of another member of Chambers. The Clerks resolve that from now on no unnamed work will be given to the complainant.
- a typist makes a complaint to the Head of Chambers of sexual harassment by a junior tenant. Although an excellent worker, the Management Committee resolve that she is not to be given a reference for her intended new position.

## **MANAGEMENT OF DIVERSITY**

It is not sufficient for Chambers merely to guarantee equality of opportunity and to identify and eliminate potentially discriminatory practices. Our aim is to recruit tenants, pupils and employees from a wide variety of backgrounds, cultures and life experiences. Chambers benefits and will continue to benefit from this diversity in the services that we are able to offer at all levels. A stated and open commitment to diversity is important from the perception of members of the public, our lay and professional clients and the regulatory body of the barristers' profession, the General Council of the Bar.

## **IMPLEMENTATION**

The responsibility for implementation of our equal opportunity and diversity policies rests with the Officers and members of the Equality Committee. The Equality Committee will:-

- meet no less frequently than once every 6 months;
- ensure that an agenda for the meeting is circulated to every member of the Committee in good time for the meeting; and
- ensure that accurate minutes are kept, made available to all and retained in Chambers.

The main responsibilities of the Equality Committee are:-

- to oversee the implementation of the Chambers' equal opportunity and diversity policies;
- to ensure that members of Chambers, clerks and staff are kept up to date on legislation concerning equality of opportunity and discriminatory practices;
- to provide training and refresher courses for all in Chambers on equal opportunities and the management of diversity, such courses to be arranged as necessary. Staff to be assessed annually to ascertain the need for further training.
- in conjunction with the Management Committee, to review the appraisals of Chambers' employees on a frequency of no less than once a year and thereafter to provide them with the opportunity to discuss work practices and improvements to services offered to members of Chambers, lay and professional clients;
- to oversee and monitor Chambers' procedures for selection of its pupillage candidates to ensure that the procedures remain free from discrimination of any description;
- to ensure that all vacancies for employees are advertised both internally and externally and that any advertisement carries with it a statement of Chambers' commitment to equality of opportunity and diversity management;
- in conjunction with the Management Committee, to undertake regular audits of employees' salary and terms and conditions of employment to ensure that they remain commensurate with the level of responsibility undertaken;
- to formulate plans for the retention of employees who may become disabled or suffer a degree of disability (whether temporary or permanent) during the course of their employment. Chambers is committed to retaining its employees in such circumstances provided it is reasonable and practicable to do so;
- to encourage its pupils to join and carry out work for the Free Representation Unit and other similar charitable bodies; and
- to monitor the distribution and allocation of briefs amongst the pupils in Chambers.

## **THE SELECTION OF PUPILS AND TENANTS**

The recruitment policy of Chambers in relation to pupils and tenants should be free from discrimination. Chambers undertakes that the policy should at all times be:

- transparent and set out in a policy document which is available to all upon request;
- not susceptible to change during selection procedures;
- based on objective and explicit criteria which relate to the demands of the work;
- applied equally to all applicants;
- free at every stage from assumptions based on views or expectations of the behaviour and characteristics of any particular group;
- free from the will or unexplained veto of one person alone, but instead reflect the views of a broad spectrum of people.

## **EQUALITY OF OPPORTUNITY IN CHAMBERS**

Distribution of work to all members of Chambers and working pupils will be carried out in a manner that is fair to all and without discrimination. The recommendation of Counsel by the Clerks to solicitors for un-named Briefs or Instructions will be on the basis of skills and experience required for the particular case. Different policies apply in relation to the allocation of work amongst pupils during the practising part of the pupillage and these are set out elsewhere.

In particular no pupil applicant for a tenancy shall suffer discrimination:

- in the arrangements which are made for the purpose of determining to whom such tenancy (or tenancies) will be offered;
- in respect of any terms on which it is offered or by a refusal, or deliberate omission, to offer such tenancy to him or to her.

No pupil or tenant shall be subject to any form of discrimination:

- in respect of any terms applicable to him/her as a pupil or tenant;
- in the opportunities for training, or gaining experience, which are afforded or denied to him/her;
- in the volume or type of work which is offered or denied to him/her;
- by termination of his/her pupillage or by subjecting him/her to any pressure to leave Chambers or other detriment.

## **MATERNITY LEAVE FOR TENANTS**

On 15 May 2004 the Bar Council approved a new policy document as part of the Equality Code for the Bar. On 5 December 2005 the Civil Partnership Act 2004 came into force. On 30 December 2005 the Adoption and Children Act 2002 came into force. Our existing document ("Maternity Leave for Tenants"), required revision and is now superseded by this "Maternity, Paternity and Other Leave Policy".

- **LEAVE**

In respect of each pregnancy, a barrister's seat in Chambers will remain open for a minimum period of one year (or such other period as may be agreed by the Chambers' Management Committee) while on maternity leave.

- **RENT AND EXPENSES**

For a period of one year from commencing maternity leave the barrister will not be required to pay rent to Chambers. The Management Committee may, in its absolute discretion, extend the period of one year upon such terms and conditions as it thinks fit.

During all or any part of the period, the barrister's accommodation in Chambers may be sub-let by the Management Committee.

For the avoidance of doubt, in the event that the barrister returns to Chambers prior to one year from commencing maternity leave, she will be entitled to occupy her accommodation free of rent for the balance of the period.

Likewise for the avoidance of doubt, given that Chambers charges expenses based on a percentage of turnover (as opposed, by way of example, to a fixed contribution) the barrister will be required to pay expenses to Chambers on all fees received during the period of maternity leave.

- **RETURNING TO PRACTISE**

While on maternity leave a barrister will be encouraged to maintain contact with Chambers and, if requested, offered opportunities to undertake work. The clerks and the Chambers' Director will make every effort to assist in re-establishing the barrister's practice upon her return from maternity leave.

- **ADOPTION AND SPECIAL GUARDIANSHIP**

A female barrister who has a child placed with her for adoption, or who provides a home to a child with the intention of applying to the court to become its special guardian, shall be entitled to the like benefits set out in paragraphs 2 to 4 inclusive as if she were taking maternity leave. Such leave may be taken upon placement (or providing a home, as the case may be) or at any point thereafter up to and including the making of an adoption order or a special guardianship order.

- **PATERNITY AND OTHER LEAVE FOR TENANTS**

A barrister:-

(a) whose partner gives birth to a child;

(b) who has a child placed with him and/or his partner for adoption;

(c) who (whether alone or with his partner) provides a home to a child with the intention of applying to the court to become its special guardian;

- shall be entitled to a period of one calendar month's leave free of rent. Such period may be taken as of right following the birth of the child, upon placement for adoption or at any stage thereafter up to and including the making of the adoption order, or upon providing a home to the child or at any stage thereafter up to and including the making of a special guardianship order.

The Management Committee may, in its absolute discretion, extend the period of one calendar month upon such terms and conditions as it thinks fit.

"Partner" in this section means a civil partner under the Civil Partnership Act 2004 as well as a partner of the same or opposite sex living together in an enduring

family relationship within the meaning of Section 144 of the Adoption and Children Act 2002.

- **PRACTISING CERTIFICATES**

It is the responsibility of every member of Chambers on leave to ensure that they have a current practising certificate in the event of deciding to undertake work during the period of absence from Chambers.

### **MATERNITY LEAVE FOR STAFF**

Chambers' maternity leave policy will follow the law on maternity leave in force at any current time. Any additional benefits granted will be at the discretion of the Head of Chambers.

### **SABBATICAL LEAVE / PART-TIME WORK FOR TENANTS**

Variation of working patterns is covered by our policy on Flexible Working which can be found in the Chambers Quality Manual.

### **AGE DISCRIMINATION**

As from 1 October 2006 it will be unlawful for barristers in independent practice and barristers' clerks to discriminate on the grounds of a person's age. The law states that they cannot discriminate against a pupil or tenant in their chambers, an applicant for pupillage or tenancy, or an employee of chambers, on the grounds of that person's age, unless the action can be justified.

This law is set out in the Employment Equality (Age) Regulations 2006. Regulation 15 specifically covers the actions of barristers in independent practice and their clerks.

- “(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person –
  - (a) in the arrangements which are made for the purpose of determining to whom the pupillage or tenancy should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately not offering, it to him.
  
- (2) It is unlawful for a barrister or a barrister's clerk, in relation to a pupil or a tenant in the set of chambers in question, to discriminate against him –
  - (a) in respect of any terms applicable to him as a pupil or a tenant;
  - (b) in the opportunities or training, or gaining experience, which are afforded him or denied him;
  - (c) in the benefits which are afforded or denied to him; or
  - (d) by terminating his pupillage, or subjecting him to any pressure to leave the chambers or other detriment.
  
- (3) It is unlawful for a barrister or barrister's clerk, in relation to a pupillage or tenancy in the set of chambers in question, to subject to harassment a person who is, or has applied to be, a pupil or tenant.

- (4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment."

Discrimination can occur in two different ways - directly and indirectly. Whether the discrimination is direct or indirect it will be capable of being objectively justified.

- **Justification**

An act of direct or indirect age discrimination can be justified (and so will not be unlawful) if the decision-maker (whether barristers or clerks) can prove that the action taken, or the provision, criterion, or practice used, is a "proportionate means of achieving a legitimate aim." This means the barrister and/or clerks ("the decision-makers") would need to be able to show that there is a legitimate reason not tainted by age discrimination for the decision taken, and that the decision-makers' legitimate aim could not be achieved by treatment or a policy that has a smaller discriminatory effect. The decision-makers must balance the discriminatory effects of the treatment or policy and the importance of the aim pursued by them, and if the

disadvantage to the pupil or tenant subject to discrimination is not outweighed by the aims of the decision-makers, the decision will not be justified.

It is difficult to give guidance on examples of where discrimination might be justified (as authoritative guidance will only come from the employment tribunals and courts). However as an example:

The Clerk decides not to put a barrister forward for a brief because that barrister lacks sufficient experience. The legitimate aim of seeking to ensure that the barrister's practice develops in accordance with his or her abilities will probably justify the disadvantage at which the "experience" criteria places the younger members of chambers (subject to whether it is proportionate to treat them in this way in relation to that aim in the particular case).

- **Direct discrimination**

Direct discrimination occurs simply where the decision-maker treats person A less favourably than he or she treats, or would treat, person B, on the grounds of A's age. Where A shows that he or she has been treated less favourably than B, and there is reasonable evidence that this may be on the grounds of age, the alleged discriminator will be found to have committed an act of unlawful discrimination unless the decision-maker can show that age played **no part at all** in the treatment afforded to A (or if he or she can justify the part that age played in the treatment). A person's age includes their perceived age.

Examples of direct age discrimination include:

- The clerks deciding not to give a brief to a young member of chambers because he or she looks too young etc, lacks gravitas etc.
- refusing to interview or consider for pupillage a person over the age of 55. This is direct discrimination on the grounds of the applicant's age. This is a decision that may be difficult to justify.

The DTI consultation suggested that the need for a reasonable period of service before retirement may be a legitimate aim, but it will also have to be shown to be proportionate.

- Refusing to give certain levels of work carried out in certain courts or tribunals to tenants over a certain age. This is direct discrimination if based on age (as opposed to experience). It is difficult to see why it is justifiable to give work to certain people based only on age, and such a policy is therefore unlikely to be justifiable.
- A chambers has a range of rental rates applied to its barristers. Those aged 22-30 pay a certain rent; and those older pay a higher rate.. Such a decision would be difficult to justify because the two rates could more fairly be applied on the basis of period of qualification. Therefore, while there might be a legitimate aim for this policy, the means used to achieve it are more discriminatory than necessary and the policy would be unlikely to be regarded as proportionate.

Chambers may have, within its constitution, a provision that allows for the immediate termination of a person's tenancy once they reach a certain age. This is a term on which tenancy is offered. It may well be directly discriminatory (because although there are exceptions in the 2006 Regulations where retirement ages are concerned these exceptions do not at present cover barristers). Although chambers may seek to justify such a constitutional provision on the basis that chambers wishes to use its space and resources to build up and encourage the practices of younger barristers, such direct discrimination is unlikely to be regarded as proportionate.

- **Indirect discrimination**

Indirect discrimination occurs where the decision-maker applies to person A a "provision, criterion or practice" which he would or does apply equally to people of a different age group to A, but which has the consequence of placing those in the same age group as A at a particular disadvantage, and A is personally disadvantaged because of it.

Examples of indirect age discrimination include:

- A clerk refusing to allow certain criminal cases to be dealt with by those of less than 10 years' experience. This will place younger members of chambers at a particular disadvantage. However, if the reason for the decision genuinely relates to the need for senior juniors because of their experience, it is highly likely that this would be justified.
- A chambers has a range of rental rates applied to its barristers. Those who are between 1 and 7 years call pay a certain rent; and those above 7 years' call pay a higher rate of rent. Such a policy is likely to have an indirectly discriminatory effect on age grounds because it will place older people at a particular disadvantage. However, such a decision is likely to be justified if the policy is in place to allow those who generally earn less (or rather those have had less time to build a reputation) to pay less rent.

- **Harassment**

The 2006 Regulations prohibit barristers and clerks from harassing a person on the ground of their age. Age-based harassment is unlawful if it has the *purpose or effect* of violating the complainant's dignity; or if it creates an intimidating, hostile, degrading, humiliating or offensive environment for the complainant ("the Effect.")

The test applied in deciding whether or not such harassment has taken place is, having regard to all the circumstances (including in particular the perception of the alleged complainant) *could the action of the alleged discriminator reasonably be considered to have had the Effect?*

Examples of harassment on the grounds of age would include making jokes about a person's age, by reference to appearance, or using age-related expressions such as "granny" or "baby". It will also cover targeting a person in a bullying fashion because of prejudices the discriminator may have about the ailments of older people.

- **Victimisation**

The 2006 Regulations also prohibit victimisation. Unlawful victimisation on the grounds of age occurs when person A discriminates against person B by treating B less favourably than he treats or would treat others in the same circumstances, and does so by reason that:

- B has made a complaint or brought legal proceedings in the past about age discrimination; or
- B has given evidence or information in any age discrimination related legal proceedings; or
- B has otherwise done anything under or by reference to the Regulations – for example, pursued an internal grievance relating to age; or
- B has alleged that A or another person has committed an act which does or would amount to unlawful age discrimination; or
- A knows that B intends to do any of the above or suspects A may have done any of these things.

The victimisation provisions apply even where the allegations made by B are false provided that they are not false and made in bad faith.

Unlawful victimisation, as defined above, cannot, unlike other forms of age discrimination, be justified.

- **Other matters**

Of note is that the 2006 Regulations also prevent a solicitor discriminating against a pupil or tenant on the grounds of his or her age, where the solicitor is involved in giving or withholding instructions to the pupil or barrister.

Further, it is not just the front line decision-maker who can unlawfully discriminate on the grounds of age – a barrister or clerk will also be guilty if they instruct someone else to treat a pupil or tenant less favourably on the grounds of his or her age.

- **Employees**

The definitions of direct and indirect age discrimination, harassment and victimisation given above, apply equally in relation to chambers' relationships with its employees, the clerks and other administrative and secretarial staff. Any direct or indirect age discrimination can be done by an individual barrister or any group of barristers who make decisions or mete out treatment which affects staff. Such discrimination may be capable of being justified by proving that decisions or action taken, or the policy implemented pursues a legitimate aim and is proportionate.

This guidance does not deal with the employment provisions. However as employers chambers may make use of the exceptions set out in the Regulations in respect of their staff. The exceptions include those relating to differentials in benefits. For example a difference in a bonus based on length of service may or may not need justification. If the length of service of the member of staff claiming parity is less than 5 years, no justification is necessary. Where his or her length of service is over 5 years Chambers will have to justify the bonus differential by reference to its reasonable belief that the way in which length of service is used promotes a business objective.

There is an exception for retirement of employees. Provided the procedure set out in the Regulations is followed, there will be no need to justify the use of a mandatory retirement age for Chambers employees. There are several other exceptions contained in the Regulations.

Finally Chambers does not have to justify refusing to recruit an employee who is over 65 years of age.

- **Practical Advice**

Advice relating to best practice in relation to age discrimination as it affects barristers is similar to that provided for sex, race, religion, sexual orientation and disability discrimination. It is important for chambers to monitor the numbers of applicants for pupillage and tenancy, and this should now be done on the basis of age or age-groups. Chambers should look at its criteria for pupillage and tenancy selection to see whether those criteria discriminate unlawfully on age grounds. Chambers should also train members of its pupillage and tenancy selection committees about the need to avoid unlawful age discrimination.

The law does not prevent chambers asking an applicant's age, but chambers may need to have to justify why it did so if a complaint is raised. We recommend that chambers do not ask for age or date of birth on application forms but obtain this information on separate monitoring forms. Chambers who ask for age/date of birth on the application form are running the risk that they could be taken to an employment tribunal and required to justify why they have a real need to know the age of every applicant for pupillage or tenancy. Where a person is rejected for a pupillage or tenancy, and they are in an older age bracket it would be wise to keep good notes of the reasons for the rejection. And if one of the reasons for the rejection is age, then it is essential to note the reason why reliance on age is considered to be justified. If age is used as a criteria consideration should be given to why it is justifiable to use it. Chambers should keep documentary evidence that it has considered the way in which age is used by it so that it can demonstrate that consideration was given to whether it was proportionate to use it in pursuit of a particular legitimate aim. It is sensible to consider the use that is made of age in advance of any particular case arising. Why is it necessary to use age as a factor in the decision that is to be made? When a

particular case arises the discriminatory impact of the use of age in the particular case can then be considered in the light of a clear understanding of the legitimate aim that is being pursued.

Where the clerks, secretaries, receptionists and administrative staff are concerned it may be necessary for chambers to take advice on contracts of employment (as well as any chamber's policies which apply to the staff) to ensure that there is no unlawful age discrimination since the age discrimination legislation relating to employment is different in some respects to that affecting barristers, and this guidance does not deal with employment provisions in any detail.

## **MONITORING**

In seeking to identify and eliminate sources of discrimination, the Equality Committee will monitor both the recruitment of applicants at all stages and the allocation of work between pupils. The results of such monitoring will be examined carefully to detect whether any individual or groups of individuals might be at risk of suffering discrimination of any sort. In no circumstances will Chambers engage in any form of positive discrimination at any level. The recruitment of staff will be monitored via the Chambers Application Form (see Appendix II). A member of the Equality Committee will review the process of each individual recruitment upon its completion.

## **GRIEVANCE PROCEDURE**

Chambers recognises that this is a particularly sensitive area where embarrassment and fear of adverse judgment may prevent a complaint being made in the first place. Chambers' has a separate Grievance Procedure which attempts to take account of such matters.

## APPENDIX I

### OFFICERS OF THE EQUALITY COMMITTEE

Pamela Scriven QC (Chairman)  
Anthony Kirk QC (Equal Opportunities Officer)  
Caroline Gibson (Secretary of the sub-committee)

### MEMBERS OF THE EQUALITY COMMITTEE

Pamela Scriven QC	(Chair)
Anthony Kirk QC	(EO Officer)
Caroline Gibson	(Secretary to the Sub-Committee)
Richard Anelay QC	
Sara Staite	
Philip Marshall	
Richard Harrison	
Stephen Shay	
Deepak Nagpal	
David Dear	
Sue Gray	

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