

## Issue 124 June 2018

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### Housing matters

*Housing matters* is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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### National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is funded by the Ministry for Housing, Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at [www.nhas.org.uk](http://www.nhas.org.uk)

**The NHAS provides the following to local authorities, local citizens advice and around 100 other advice agencies in England:**

- a national telephone housing advice consultancy service for local authorities, local citizens advice and around 100 other advice agencies in England. Call **0300 330 0517** from 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](http://www.nhas.org.uk)
- housing debt casework – specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- free basic housing advice training courses to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- written briefings, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- support in the implementation of new homeless prevention initiatives.

### Contact details

For more information about NHAS training, please email [JoanneK@shelter.org.uk](mailto:JoanneK@shelter.org.uk) or call **0344 515 1676**.

For general enquiries about the NHAS service, please email [nhas@shelter.org.uk](mailto:nhas@shelter.org.uk) or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at [www.nhas.org.uk](http://www.nhas.org.uk)



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# What's new?

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## Homeless 16 and 17-year olds

In April 2018, the [statutory guidance](#) 'Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation' was updated. The guidance, issued jointly by MHCLG and the Department for Education, concerns the duties of children's services and local housing authorities under the Children Act 1989 and Housing Act 1996 respectively, and how the authorities should work together.

The revised guidance covers homelessness prevention and relief duties introduced by the Homelessness Reduction Act 2017 and the creation of a personalised housing plan (PHP). It stresses that, where an authority is considering ending those duties because of a 'deliberate and unreasonable' failure to cooperate with steps in the PHP, the authority must take into account the age and maturity of the young person and the context in which s/he is making decisions.

## Local authority agreement on referrals

Voluntary guidelines set out in the [Procedures for referrals of homeless applicants to another local authority](#), often referred to as the Local Authority Agreement (LAA), have been updated to take account of the changes introduced by the Homelessness Reduction Act 2017, including the new power to refer at relief stage. The guidelines concern the referral of homeless applicants to different local authorities and the resolution of disputes between local authorities.

## Croatian workers' authorisation ending

The five-year accession period during which Croatian nationals are subject to restrictions in terms of their EU rights ends on 30 June 2018. After this date, Croatian nationals will:

- not need to be authorised as a worker
- have the same rights as other EEA nationals in terms of, for example, jobseeking and retaining worker status.

## Regulatory standards

In April 2018, the Regulator of Social Housing published a new version of [Regulating the Standards](#) (replacing the 2017 version). This explains in detail the Regulator's approach to regulation and how it enforces standards such as the Rent Standard and the Tenancy Standard.

## Windrush – right to rent

UK Visas and Immigration (UKVI) advises that migrants from Commonwealth Caribbean countries who settled in the UK before 1973 (often referred to as the 'Windrush generation'), have lived here permanently since and have not been away for long periods in the last 30 years, have the 'right to rent' private residential accommodation. UKVI has issued [guidance for landlords](#) wishing to rent to such Commonwealth citizens who do not have documents to demonstrate their status.

## Windrush – housing benefit

The Department for Work and Pensions (DWP) has issued [HB Urgent Bulletin U1/2018](#) advising local authorities to apply 'extreme caution' in dealing with housing benefit claimants who cannot evidence their immigration status but who are from the Windrush generation. Authorities are advised to refer the claimant to the Home Office dedicated taskforce team on **0800 678 1925**.

## Redress schemes – provider to withdraw

With effect from 6 August 2018, the Ombudsman Services: Property scheme will [cease to operate a redress scheme](#). It is a legal requirement for letting agents to belong to a redress scheme, so existing clients of the scheme will have to join either Property Ombudsman Services or the Property Redress Scheme before that date.

## Challenging a universal credit decision

A universal credit claimant can request a mandatory reconsideration of a decision by the DWP. A request can now be made on a form that can be downloaded from [Gov.uk](#). Notes accompanying the form explain how to fill it in and what will happen after it has been returned.

## Grenfell – inspecting cladding direction

The Housing Minister, James Brokenshire, has issued a [direction to local authorities](#) requiring them to have regard to government advice on the safety of Aluminium Composite Material (ACM) cladding when reviewing housing in their areas, and to:

- notify MHCLG of high-rise residential buildings in their area
- carry out a review of fire safety hazards arising from unsafe ACM cladding.

# Support for mortgage interest: benefit to loan

**In this article, Lisa Smith looks at claiming a Support for Mortgage Interest (SMI) loan, and explores the impact of the change from SMI benefit to SMI loan.**

**Lisa Smith is Operations Manager for Shelter's Housing Debt Casework Team.**

From 6 April 2018 Support for Mortgage Interest (SMI) no longer exists as a benefit. This is the biggest shake up of SMI since its inception in 1948. SMI is now only available as a secured loan.

However, SMI can continue to be paid as a benefit up to 5 November 2018 (or later in limited circumstances) to claimants who were in receipt of SMI before 6 April 2018 where the Department for Work and Pensions (DWP) believes the claimant lacks capacity and the claimant has not accepted or refused the loan.

## What has happened so far?

According to government forecasts, an estimated 124,000 people were claiming SMI as a benefit in July 2017.<sup>1</sup> Existing claimants were not automatically transferred to the loan. If they wanted to accept an SMI loan, they had to sign a loan agreement and agree to a charge being put on their home.

Serco, as appointed 'Information Providers', were tasked with writing to existing claimants to advise them of the change, and to arrange a follow up information call. Worryingly, as of 16 May 2018, only 76,000 claimants had both received their letter and been successfully contacted by phone to discuss the change.<sup>2</sup>

Further, Serco (and lenders) are only allowed to give limited factual information about the change, and not financial or housing advice, so they are likely to be directing claimants to the advice sector.

## What if a claimant changes their mind?

The DWP has indicated that if a person who qualified for SMI as a benefit before 6 April 2018 changes her/his mind about accepting SMI as a loan, s/he will be able to take up the loan with no waiting period so long as they have continued to be eligible for SMI. S/he can also ask for their loan payments to be backdated to 6 April 2018.<sup>3</sup>

## How does it work?

The claimant and any partner – or both claimants if it is a joint claim – must sign the SMI loan agreement and agree for a charge to be registered against her/his property.<sup>4</sup>

This is in the form of a charge by way of legal mortgage against the property where there is a sole legal owner, or where all the legal owners are included in the claim. Where one or more legal owners are not included in the claim (for example, in cases of relationship breakdown where one owner has left the home) the claimant must consent to an equitable charge being registered in respect of her/his beneficial interest<sup>5</sup> in the property.<sup>6</sup>

Where a mortgage company is unwilling to negotiate because of a credit rating or negative equity, an SMI loan could be an option because credit and equity checks are not made. However, a claimant should keep this under review if equity begins to increase or her/his circumstances change.

## Who is eligible for an SMI loan?

A homeowner<sup>7</sup> (or her/his partner) who is entitled to one of the following qualifying benefits is eligible to apply for SMI:

- income support
- income-based jobseeker's allowance
- income-related employment and support allowance
- pension credit
- universal credit (UC).

A claimant of one of the first four benefits listed won't normally be entitled to SMI if they took on a mortgage or secured loan whilst they were on benefits.

## What the loan can cover

A claimant can only get SMI to help with interest payments on loans up to:

- £100,000, if on pension credit, or if the claimant has been claiming another qualifying benefit since 4 January 2009
- £200,000, in all other cases

In addition, unless an SMI claimant is receiving universal credit, help will only be given towards certain secured loans.<sup>8</sup>

SMI payments under an Alternative Finance Arrangement (also known as an 'Islamic mortgage') are eligible for help under the new loan system, but only for a claimant receiving universal credit or pension credit.<sup>9</sup>

## What happens if the loan is agreed?

SMI loan payments for claimants will be made by the DWP, usually direct to the 'qualifying lender'.<sup>10</sup>

There is no waiting period for new pension credit claimants. However, for claimants of other benefits, payments will not be made until after the claimant has received:

- 9 consecutive monthly UC payments
- any other qualifying benefit for 39 consecutive weeks.

Note that a universal credit claimant who does any paid work during the waiting period will have to wait until another nine monthly UC payments have been received.<sup>11</sup>

## Calculating SMI payments to the lender

The interest rate used to calculate SMI loan payments to the lender is 2.61%, based on an average mortgage rate published by the Bank of England. Where the average mortgage rate changes by more than 0.5%, the interest rate will change to the new figure after six weeks.

This rate is applied regardless of the actual interest rate payable by a claimant. As such, it is unlikely to cover the full interest payments for some mortgages, for example, for older mortgages when interest rates were higher. A claimant may have a shortfall to make up.

## Repaying the loan to the DWP

Repayments can be made at any time, so long as each repayment is a minimum of £100 (or the outstanding balance if less).

The full amount of the loan – plus any interest that has accrued – will become due when:<sup>12</sup>

- the property is sold
- ownership is otherwise transferred
- the claimant dies.

The current interest rate for calculating repayments on the SMI loan is 1.5%.<sup>13</sup>

The interest charged is 'compound interest', ie, a claimant will pay interest on the interest as well as on the loan. So even if the interest rate remains constant, the equity available in the property may reduce.<sup>14</sup> If the interest rate goes up, equity will be further reduced. However, if there isn't enough equity to cover the amount owed when it becomes due, the remainder will be written off and DWP will consider the loan to be settled. Any existing charges or mortgages will take priority over the DWP charge.<sup>15</sup>

## Alternatives to an SMI loan

If a claimant doesn't sign up for an SMI loan but wants to remain in her/his home, alternative arrangements will need to be made to meet the mortgage payments. Options could include:

- contacting the lender to explore extending the term of the mortgage, switching to a cheaper mortgage product or arranging a payment holiday whilst further financial advice is taken
- using savings to make payments towards the mortgage or loan, or asking for help from family and/or friends
- accessing an unsecured loan, although interest rates and credit checks will need to be taken into account.

## Other options

If an owner does not wish to remain in the home or it is unaffordable even with SMI loan payments, s/he could:<sup>16</sup>

- sell the home and rent privately
- request [Assisted Voluntary Sale \(AVS\)](#)
- apply to the council as homeless
- apply to the council's allocations scheme.

## Get advice early

If a claimant's mortgage account falls into arrears, the lender can pursue payment. This could ultimately lead to repossession of the home. A claimant needs to seek advice as soon as possible in this case. A housing debt adviser can:

- draw up a financial statement to assess affordability
- calculate a repayment plan
- advise on maximising income
- negotiate with the lender for a term extension if this is a viable and realistic option, and make a complaint where this is refused unfairly, e.g. where refusal is based entirely on the borrower's age
- discuss options for exiting homeownership
- signpost to independent financial advice for advice on other financial products.

A claimant should also seek independent money advice to look at whether taking up the loan is the right decision, and whether other financial products are more appropriate. The [Money Advice Service](#) provides a free, impartial money advice service on **0800 138 7777**.

## Advisernet

11.1.45.10

[You've had a letter about your SMI benefit](#)

## Shelter Legal

[Support for mortgage interest](#)

## Footnotes

<sup>1</sup> Paragraph 7.5, [Explanatory Memorandum](#) to Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>2</sup> Tables: [Conversion of SMI from a benefit into a loan: claimant communication and loan take up](#), DWP, May 2018.

<sup>3</sup> [Conversion of support for mortgage interest from a benefit into a loan: claimant communication and intention to take up a loan](#), DWP, 23 March 2018.

<sup>4</sup> reg 4 Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>5</sup> A person with a beneficial interest has a right to a share of the proceeds on sale.

<sup>6</sup> reg 5 Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>7</sup> Under Part 1 Sch 2 Loans for Mortgage Interest Regulations 2017 SI 2017/725, DWP may treat another person as liable to make homeowner payments.

<sup>8</sup> Sch 1, Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>9</sup> Paragraph 2(1)(b) and paragraph 5, Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>10</sup> reg 17 Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>11</sup> reg 3(4) Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>12</sup> reg 16(1) Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>13</sup> See [Gov.uk](#) for latest figure.

<sup>14</sup> See Adviser 183 (Jan 2018).

<sup>15</sup> reg 16 Loans for Mortgage Interest Regulations 2017 SI 2017/725.

<sup>16</sup> See also [Information for homeowners](#) on the NHAS website.

# Decisions, decisions

**In this article Clare Wall considers some questions about when decisions on homelessness applications can be made.**

**This article applies only to homelessness applications made on or after 3 April 2018, when the Homelessness Reduction Act 2017 came into force.**

**Clare Wall is a senior adviser on the NHAS Consultancy Line**

For over two decades, housing authorities and advisers have been focused on the 'section 184' decision letter. This letter could change the life of an applicant, potentially leading to a lifetime tenancy.

Section 184(3) Housing Act 1996 requires a local authority, on completing its inquiries, to notify the applicant of its decision.

Since the Homelessness Reduction Act 2017 (HRA) came into force on 3 April 2018, the number of decisions that a housing authority is required to make in dealing with a homelessness application has increased substantially. Consequently, it is no longer particularly useful to refer to a homelessness decision as a 'section 184 decision' as decisions made under section 184 can be on several issues.<sup>1</sup>

Agencies have contacted the NHAS consultancy line about post-HRA decisions. Here, we look at a few of the questions raised.

## **Can a priority need decision be made at prevention duty stage?**

The duty to prevent homelessness arises regardless of priority need. A housing authority should not delay issuing a decision that the prevention duty is owed because of inquiries into priority need.

Once the prevention duty has been triggered, an authority may make inquiries into priority need but must not allow such inquiries to stall its prevention work.

It may be appropriate for a housing authority to decide on priority need at prevention stage because it is relevant to the suitability of accommodation offered to prevent homelessness.<sup>2</sup>

## **Can a main housing duty decision be made at prevention duty stage?**

A decision at prevention stage that an applicant is not owed the main housing duty because s/he is not in priority need would be of no effect. The main housing duty only arises where the housing authority is satisfied that an applicant is homeless,<sup>3</sup> whilst the prevention duty is only owed while the applicant is threatened with homelessness.

However, an authority might advise a client who becomes homeless that s/he is unlikely

to be owed the main duty because of a lack of priority need, or because s/he may be found to be intentionally homeless.

Where an authority had previously accepted than an applicant was owed the prevention duty, it would need to notify the applicant that the relief duty had arisen before making a main housing duty decision.

If the applicant's circumstances have changed since the previous decision around priority need, the decision as to main housing duty may require further inquiries into the applicant's priority need status.

## **Can inquiries into main housing duty be made during relief stage?**

The relief duty is triggered when an authority decides that an applicant is homeless and eligible and requires the authority to attempt to relieve homelessness for 56 days unless the duty can be ended early. The decision on main housing duty is a separate one which involves looking also at priority need and intentional homelessness.

The [Homelessness Code of Guidance](#) advises that an authority can make inquiries into whether a main housing duty will be owed during the relief duty stage, but should concentrate on relieving homelessness during this time.<sup>4</sup>

## **When should an applicant be notified of the decision as to the main duty?**

The previous target of 33 working days for decisions on the main housing duty has been removed. Instead, the Code suggests that an authority may issue a section 184 notification to an applicant during relief duty stage if an applicant is found to be in priority need but intentionally homeless.<sup>5</sup>

If an applicant is not in priority need, notification will bring any interim accommodation duty to an end.<sup>6</sup>

However, the Code recommends that authorities should not issue section 184 notifications accepting the main housing duty during the relief duty stage as this might detract from relief activity.<sup>7</sup>

Where a decision accepting the main housing duty is being considered:



- and the local authority has the necessary information to decide that whether the main duty is owed, it should be able to notify the applicant on or around the date when the relief duty ends
- where significant further inquiries are needed, the applicant should be notified not more than 15 working days after 56 calendar days from acceptance of relief duty.<sup>8</sup>

Putting this together, the main principle suggested by the Code is that a positive decision is delayed until the end of the relief duty stage, whereas a negative decision can be made within it.

The logic behind this is that where a person will not be owed any further duty, they should be notified to ensure that are aware of this as soon as possible.

### When does the relief duty commence?

A relief duty will start when a local authority is first satisfied that the applicant is homeless and eligible for assistance.<sup>9</sup> Being satisfied is a higher threshold than having a reason to believe. Thus, normally, the duty should be carried out for 56 days from the date that the authority notifies the applicant of this decision in writing.<sup>10</sup>

Where a referral (eg on local connection grounds) is made by Authority 1 at relief stage, the situation is slightly different.

Once a decision has been made on whether the conditions for referral are met, the applicant must be notified. If it is agreed that the conditions are met, s/he is then treated as having made an application to Authority 2 on the date s/he was notified of the decision to refer.<sup>11</sup>

Despite the potential for challenge later, Authority 2 will initially be bound by Authority 1's decision on homelessness and eligibility, so relief duties will start from the date of notification.

Where the conditions for referral at relief stage are not met, the relief duty will revert to Authority 1 when that decision is notified to the applicant. This will mean 'resetting' the start of the relief duty.<sup>12</sup>

### Can decisions be combined?

Section 184 simply states that an authority must notify an applicant of the duty owed to them under part 7.

The Code states that there will be circumstances in which more than one notification decision will be required at the same time and it will be practicable to combine the necessary information within one notification letter.<sup>13</sup>

As such, a decision accepting or terminating the relief duty could be combined with a non-priority need or an intentionality decision. This notification can only be made where the authority has made sufficient inquiries to enable them to make their decision lawfully.

The Code states that housing authorities will need to take particular care that the information provided to the applicant is clear and comprehensive, and that they are made aware of review rights in respect of each of the decisions about which they are being notified.<sup>14</sup>

### Implications for review requests

An applicant must request a review within 21 days of being notified of a decision. Careful attention is needed to identify what decisions have been made and the relevant review deadlines. The deadline for the authority's review decision will depend on what matter is being reviewed.

### Case study

It is possible to imagine a situation where an applicant could miss the deadline:

Sadia makes a homeless application with her 5-year-old daughter. She is placed in interim accommodation.

The authority notifies Sadia that the relief duty is owed and at the same time notifies her that she is in priority need but intentionally homeless. She is informed of her right to review the adverse decision, but is not evicted from interim accommodation at this point, as she has a right to remain there until the relief duty ends in 56 days' time.

On the 56th day, the authority sends Sadia notification under section 189B that the relief duty is ending and she is to be evicted at the end of a reasonable period of time. Sadia seeks advice about this. However, at this stage, the 21-day window for a review of the intentionality decision has passed. Sadia's options may be limited to requesting the authority to use their discretion to accept an out of time review.

## Shelter Legal

### Notification of duties owed

#### Footnotes

<sup>1</sup> eg, the prevention duty (s.195), relief duty (s.189B), and any accommodation duties after inquiries have been completed.

<sup>2</sup> under art 3(2)(c) Homelessness (Suitability of Accommodation) Order 2012 SI 2012/2601 as amended by s.12 Homelessness Reduction Act 2017 (HRA), a private rented sector offer must meet enhanced suitability requirements if an applicant is in priority need; para 17.12 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>3</sup> s.193(1)(a)(i) Housing Act 1996 as amended by s.5(7) HRA 2017.

<sup>4</sup> para 13.9 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>5</sup> para 13.11 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>6</sup> S.188(1ZA)(b) Housing Act 1996 as amended by s.5(4) HRA 2017.

<sup>7</sup> para 13.10 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>8</sup> para 14.16 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>9</sup> ss.189B(1) Housing Act 1996 as amended by s.5(2).

<sup>10</sup> ss.189B(7) and 184(3) Housing Act 1996 as amended by s5(2) HRA 2017.

<sup>11</sup> S199A(5)(a) Housing Act 1996 as amended by s.5(9) HRA 2017.

<sup>12</sup> S199A(4)(b) Housing Act 1996 as amended by s.5(9) HRA 2017.

<sup>13</sup> paras 18.31 and 14.20 Homelessness Code of Guidance, MHCLG, Feb 2018

<sup>14</sup> para 18.31 Homelessness Code of Guidance, MHCLG, Feb 2018.

# Applying as homeless

**This factsheet looks at how you apply as homeless and the legal definition of homelessness.**

If you are homeless, you can apply for help to the council. How much help you will get depends on your circumstances. If you don't meet immigration and residence conditions, the council only has to provide general advice and information.

## How to apply

It's usually best to contact the council by phone first. They may make you an appointment or arrange a home visit. But go to the council office in person if you have nowhere to stay tonight. You don't need an appointment. Get there as early as you can.

You can apply to any council. Any help you are offered will usually be in an area where you live or have a connection, unless you will be at risk of violence there.

If the council office is closed there should be an emergency number to ring. See the factsheet [Out-of-hours emergencies](#).

## When you can apply

You can make an application if you:

- are homeless
- will be homeless within eight weeks
- have received a 'section 21 notice' asking you to leave your home within eight weeks.

Get advice if the council turns you away before giving you the chance to explain your situation fully.

## Who can be treated as homeless

Legally, you will be homeless if you are:

- about to be evicted
- at risk of violence in your home
- in 'crisis accommodation' such as a nightshelter or women's refuge
- living somewhere where you have no legal right to stay (eg a squat)
- forced to live apart from your family
- unable to park your mobile home or moor your houseboat
- sleeping rough.

You *may* be legally homeless if you are sofa-surfing, living in very poor or overcrowded conditions or cannot afford your accommodation. In these circumstances, it's not enough for it to be difficult for you – the council will want to check that it is unreasonable for you to stay.

## Documents to take with you

It will help if you take proof of your and your family's identity and situation, such as:

- birth certificate(s) or passport(s)
- proof of pregnancy
- tenancy agreement
- court possession papers
- a letter or notice from anyone who has asked you to move out (eg your parents or landlord)
- letters from a doctor about your health
- proof of income (including benefits).

## What the council must do

The council must assess your housing and support needs after it gets your application.

It must then draw up a personal housing plan. This plan sets out the steps that you and the council should take to:

- prevent you from becoming homeless, or
- try to find housing if you've already lost your home.

## Emergency accommodation

The council must provide emergency accommodation immediately if it's likely that you are homeless, meet immigration and residence conditions and are in priority need. See [other factsheets](#) in the series 'Applying as homeless' for details of these conditions.

The council will continue to make inquiries while you are in emergency accommodation.

## Challenging the decision

If the council decides you are not homeless, it should give you a written decision. You have the right to ask the council to review its decision within 21 days. If you are offered accommodation that you don't think is suitable, you may be able to challenge this. You may qualify for [legal aid](#) if you are on a low income.

## Further advice

You can get further advice from Shelter's free\* housing advice helpline (0808 800 4444), a local Shelter advice service or local Citizens Advice office, or by visiting [england.shelter.org.uk/housing\\_advice](http://england.shelter.org.uk/housing_advice)

\*Calls are free from UK landlines and main mobile networks.



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