

Dealing with Discrimination at Work

How to use the grievance procedure

“ I was really stressed because I was being sexually harassed at work, and I worried that complaining would make things worse. But making a complaint using the grievance procedure was the best thing I could have done. My employers investigated and agreed with my complaint. My work apologised to me, re-located me at my request, and gave me some compensation. As for the bullies, the worst offender got the sack and the others got formal warnings. ”

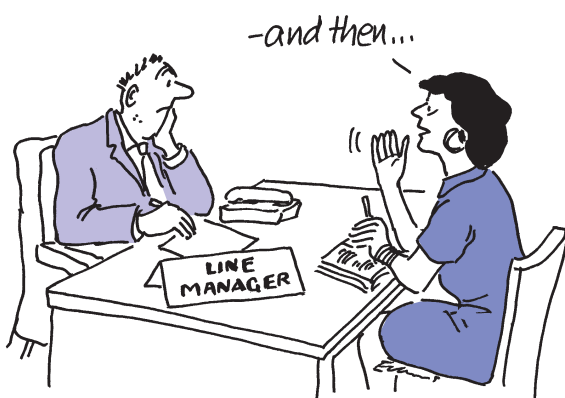
Lucy, Ipswich



This guide shows you how to use your work's grievance procedures to deal with problems at work because you are being discriminated against. It can also be used to help you to deal with other sorts of complaints.

Facing problems at work can be daunting and really stressful, especially when you think that the problem involves discrimination. People often don't complain

about it because they worry it will be seen as an over-reaction, or that complaining will only make things worse. But no one should have to suffer discrimination at work; that is why there are laws to ensure employers put a stop to it. If you are having problems that might be caused by discrimination, you should consider making a complaint. This is often called 'raising a grievance'.



**LET YOUR WORK KNOW
WHAT'S GOING ON...**

Contents

| | |
|---|----|
| How do you deal with problems at work? _____ | 2 |
| What is a good reason to complain about discrimination? _____ | 3 |
| Before you make a complaint _____ | 4 |
| How to make a complaint _____ | 7 |
| After the complaint _____ | 11 |
| Useful contacts _____ | 11 |
| Jargon buster _____ | 12 |

How do you deal with problems at work?

Every employer should have a procedure to deal with employees' problems and complaints. In many workplaces, it is called 'the grievance procedure'. This should be based on the ACAS Code of Practice on Disciplinary and Grievance Procedures.

If you have a problem at work, it's important to follow your work's grievance procedure from the beginning, if it is possible. If your problem is not dealt with properly, you might decide to take it to an employment tribunal. If you haven't followed your work's procedure, any compensation you are awarded by the tribunal might be reduced.

You can't use these procedures to complain about being made redundant, or about a fixed-term contract not being renewed. If you are in this position, you should speak to an adviser. See 'How to find an adviser' on p.11.



MAKE SURE TO FOLLOW THE WORK GRIEVANCE PROCEDURE.

What happens?

1

You have a problem or complaint in relation to your work.

This is often called a **grievance**.

2

Follow your work's procedure (usually called the grievance procedure)

Every employer should have a **procedure** for dealing with your problems and complaints. If your employer doesn't have one, follow the process outlined in this guide as far as you can.

3

If your work fails to sort out the problem, you might be able to take the issue to an employment tribunal

An **employment tribunal** is a less formal court which deals with disputes about employment. You must take a case to the tribunal within 3 months of the event you are complaining about. You can take an issue to the employment tribunal without using your work's procedure **but beware!** – any compensation you win might be reduced. If you weren't able to use your work's procedure because they don't have one, any compensation you win might be increased.

What is a good reason to complain about discrimination?

What is discrimination?

Discrimination is when you are treated worse than other people because of your:

- Sex
- Race or colour
- Disability
- Nationality
- Ethnic or national origin
- Religion or belief
- Sexual orientation
- Age
- Part-time status
- Fixed term contract

There are other reasons that can count as discrimination, but these are the most common types.

Do I have a good reason to make a complaint about discrimination?

Sometimes it's obvious when you have good reason to make a complaint about discrimination – for example, if someone makes offensive comments about your sexuality or your ethnicity. But it's not always as clear-cut as that. Maybe you are being given worse jobs than everyone else and you believe the real reason is one of the discrimination issues listed above.

Another type of discrimination is when there are rules which apply to everyone, but which are harder for you to follow, for example, because of your religion or sex etc.

You can make a complaint if any of these kinds of discrimination are happening at your work. It doesn't even have to be you that is suffering from the discrimination, you can make a complaint about discrimination happening to somebody else.

Unfortunately, it's a fact of life that we don't all get on with each other. You might not have a valid complaint if it's just a personality clash or you don't like a particular management style.

“Everyone hates taking out the rubbish – it's always been the job of the newest recruit. Now our manager has decided to use a rota so everyone has to do it. But I've been there longest; I shouldn't have to do that kind of thing. It's discrimination.”

Anji, Beckenham

This isn't a good complaint about discrimination. Anji may not like the changes, but this is not discrimination. It is a management decision which applies to everyone equally.

“As a practising Muslim, I asked my work to let me take my breaks to coincide with daily prayers. They say no one else gets to choose their breaks so why should they give me special treatment?”

Asar, Leeds

This would be a fair complaint about discrimination. Although Asar is being treated like everyone else, his work has a duty to allow for religious needs, unless there are real practical difficulties in doing so.

For more information about discrimination see www.isthatdiscrimination.org.uk

Before you make a complaint

Before you make a complaint, it is important to think clearly about whether it is really something that you want to do.

The pros and cons of making a complaint

Pros

- You might succeed in putting a stop to the discrimination. Things are unlikely to change if you don't make your feelings known.
- If you make your employer aware of discrimination, it's up to them to put a stop to it. If they don't do all they reasonably can to stop it, you could take them to an employment tribunal and possibly get compensation. Your work can't be held responsible if they don't know about it.
- If you don't use the grievance procedures, and instead take the problem straight to an employment tribunal, any compensation you get might be reduced by up to 25%.

Cons

- It can be stressful. You will probably have to attend meetings with senior management. It's important that you stick with the complaint once you've raised it.
- Making a complaint may damage work relationships. No one likes to hear criticisms about themselves, even if they're true.
- Think about the practicalities of your situation at work. Are things likely to change soon anyway? It might not be worth making a complaint if your problem is only temporary.

If you are unsure about whether to do anything, speak to an experienced adviser. If you are a member of a trade union, your representative should be able to help, or you could contact your local advice centre.



Don't do it for the wrong reasons

“A Turkish man came to me for advice. He was offered a 12-month contract after claiming in an interview that his written English was fluent. His boss quickly realised that his written skills weren't up to scratch, and at his 6-month review they told him he wasn't going to be kept on. He took it very badly and started attacking his boss, calling him racist and demanding his dismissal. But it wasn't racist. He wasn't being kept on because he simply couldn't do the job.”

*Andy
Adviser, Colchester*

You should only use the grievance procedures you have a good reason to. Don't do it in order to get back at someone because you are angry. If you feel that you have been unfairly criticised, there are much better ways of defending your position.

If you have been unhappy about the way your work has been treating you, don't store it up for a long time as ammunition. Anyone looking at your complaint will wonder why you never did anything about it before, and that could weaken your case.

What if I am treated badly because I made a complaint?

“It was shocking the way the Kosovans at work always got lumbered with the worst shifts. I complained about it, which didn’t go down too well. My boss started giving me the worst shifts too “since I like them so much ...”.

Ron, London

If you make a complaint about discrimination, it is against the law for your employer to treat you badly because of it. Lawyers call this victimisation. It doesn’t matter if you are complaining on your behalf or someone else’s. It is also against the law to be treated badly for supporting someone else’s complaint about discrimination.

If you are treated in this way, you should use your work’s grievance procedure to make a complaint. You can make a claim at a tribunal if your work doesn’t deal with the problem.

*Hello, you gorgeous
little insignificant
object - I'm
the manager*



“Management knows how sleazy he is with women, but they let him get away with it. Why is it up to me to make a complaint?”

Lynne, Croydon

It is against the law for your employer to turn a blind eye to discrimination. That could be grounds for a complaint in itself.

In the meantime, you may have to take matters into your own hands. By making a complaint you force your work into a position where they have to do something about it or they could be taken to an employment tribunal.

Before you take the plunge

1

Take a step back from the situation

Take a few deep breaths. Think objectively about what or who you are unhappy with, and why. It may help to talk things through with someone you trust to get things in perspective.

2

What do you want to achieve?

Think about the outcome you want. What would you do if you were the employer? If you can suggest a way forward when you make your complaint, you show willingness, and you are more likely to get what you want.

3

Be prepared

If the problem you are complaining about is still happening, keep a diary of what is happening as a record. Keep safe any other evidence, like emails. Familiarise yourself with how your work's grievance procedure works and make sure you have read any bits of your contract which may be relevant.



TALK THINGS THROUGH WITH SOMEONE YOU TRUST...

Discipline and discrimination

"I was fed up with all the jokes about me being a lesbian. I thought that at least it couldn't get any worse. Then he gave me a formal warning about 'poor performance'."

Esme, Newcastle

If your boss has taken disciplinary action against you and you think the real reason is that they are discriminating against you, you should make a complaint using your work's disciplinary procedure. Your work should consider putting the disciplinary action on hold and hearing your complaint first. Or they might decide to hold the disciplinary hearing and consider your complaint at the same time.

If the disciplinary procedure has already been completed and you have been disciplined, you should appeal. If you are over the time limit for appeals, you should still appeal but ask for an extension of the time limit.

If there is no appeal procedure, you should make a complaint using the grievance procedure. Your complaint should be about the discrimination and that you were not given a right to appeal.

If you are nearing the three-month time limit for taking a claim to an employment tribunal, you could consider making an application to the tribunal now.

How to make a complaint

Your work has a duty to tell you what their procedure is. It is usually called the grievance procedure. You should be able to find it by looking in your contract, staff handbook or work Intranet. The procedure should tell you how you raise a grievance, who you should raise it with, and how your complaint will be dealt with. If you can't find it, ask your line manager or someone from Human resources or Personnel.

TRY THE INFORMAL APPROACH FIRST -



- BUT MAKE SURE YOU SPEAK TO SOMEONE SENIOR -



- AND MAKE A NOTE OF WHAT WAS SAID, AND THE DATE

Once you've decided to make a complaint, stick with it...

When people raise grievances, they often start to doubt they are doing the right thing. If you are unlucky, your employer might say things like; "Are you really going to make a fuss about this?"

Prepare to be blocked and discouraged at each stage of the process. If you give up, your situation won't get any better and it could weaken any complaints you raise in future.

The informal approach

It is usually best to start by trying to solve the problem informally.

- Try talking to your line manager, or another manager, or someone from Human Resources or Personnel who you feel comfortable with.
- Make sure you speak to someone senior, who is in a position to deal with the situation.
- Don't confront the person involved in the discrimination directly. If you do, it is in danger of becoming a personal dispute, rather than a problem for your employer to deal with.
- Immediately after the conversation, make a brief note of what was said by both of you, and the time and date you spoke.

The benefit of the informal approach is that it is quicker and less daunting than making a formal complaint, and is less likely to damage your working relationships. It might be all that's needed to sort things out. But remember, even though it's informal, you still need to find out what they are going to do to deal with the problem and follow it up to make sure something is done. If they fob you off, you may have to take a more formal approach.

The informal route may not be suitable for you. You might decide things have gone too far to sort it out informally, or perhaps the only person you could speak to is involved in the discrimination. If so, you are better off starting with a formal grievance.

"I've got cerebral palsy and find climbing stairs hard. My office is on the first floor and there is no lift. I told my supervisor that I had a problem. She was really uptight about it and told me to put it all in writing and inform our Managing Partner. I didn't really want to cause a fuss, but she said that it was company policy."

Matt, Nottingham

You might find that once you touch on anything which could be seen as discrimination, alarm bells start ringing with your boss. Employers are often wary of dealing with discrimination because it is such a serious issue and if they don't address it properly, they could get in a lot of trouble. Sometimes it is company policy to deal with potential discrimination in a formal way from the outset.

The formal approach

You should only make things more formal if you have had no joy with trying to sort it out casually. If you decide to make a formal complaint, you should follow your employer's procedure. It should be similar to the procedure outlined below.

1

Tell them about the problem in writing

The first step is to write a letter that clearly sets out the problem.

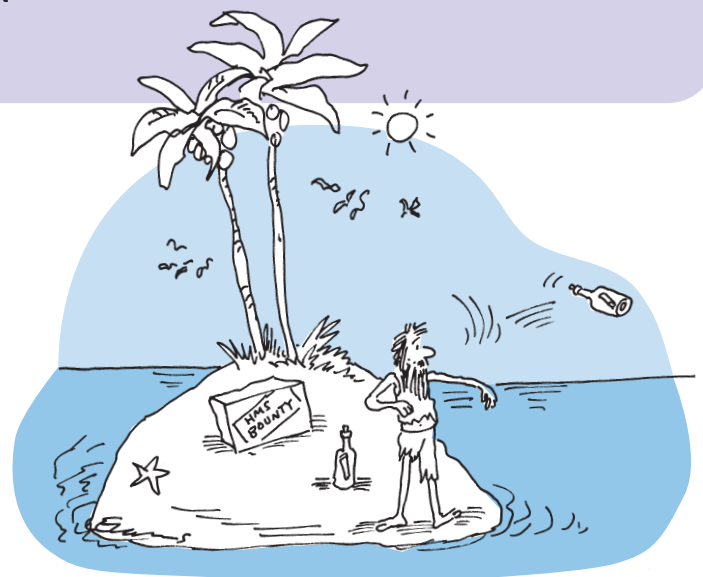
Your work's grievance procedure should tell you who to send it to. If it is the same person that you are complaining about, ask Human resources or Personnel if there is someone else you could send it to.

Don't put off writing the letter. It is important that you do it as soon as you can because, if they don't deal with your complaint properly, you might want to take the issue to an employment tribunal. You must make a complaint to an employment tribunal in 3 months less one day of the event you are complaining about taking place.

Tips

- If you tried to resolve the problem informally first, mention that in the letter and explain what the outcome was.
- Try to include as much detail as possible about the complaint. The more details your employer has about the problem, the more efficiently they will be able to deal with it.
- You may be wary about accusing people of discrimination in your letter, but it is very important that you do, and that you spell out the type of discrimination you have suffered (for example, racial harassment, or different treatment on the grounds of race). Failure to do so may scupper any later claim you make to the tribunal. If you believe you have been the victim of more than one type of discrimination, you must mention both types in your letter.
- Try to maintain a professional tone in your letter. It's ok to say how certain behaviour made you feel but don't attack other staff, or use offensive language, as it will undermine what you're saying.
- If you can, say how you would like your work to resolve the problem.
- If you have more than one complaint, set them out in sub-headings, giving examples. Start with the most serious.
- Date the letter and keep a copy.

If you don't feel confident about putting your complaint in writing, you can get help from your union or local advice agency.



**PUT YOUR GRIEVANCE IN WRITING - WITH
DETAILS - AND KEEP A COPY!**

2

Have a meeting to discuss it

When they receive your letter, they should invite you to a meeting to discuss your complaint. The meeting should be held fairly soon, at a reasonably convenient time and place for you. It will often be within 5 working days, but maybe sooner if the problem is urgent, or later if they have to find out more about what you have said.

If you are nearing the time limit for taking a claim to an employment tribunal, you could consider making the application now. You don't have to wait for your employer to respond to your complaint first, but it is good practice to do so.

You should make every effort to attend the meeting. Your employer should give you the opportunity to discuss your complaint and to say how you want them to sort it out. When they have heard what you have to say, they might need to adjourn the meeting to give them time to investigate your complaint.

Your work should allow you to bring a colleague, trade union representative, or a trade union official with you to the meeting. If you would prefer to take a friend or family member, they should allow you to (particularly if you have a disability), but you should ask if it is ok. It's a good idea to take someone with you do this as it will help give you confidence and a witness to what is said.

If you have made a complaint about a colleague, your employer could consider talking to them before holding the meeting with you.



Tips

- Try not to panic or feel intimidated – you have a right to have your complaint heard.
- If English is not your first language and you sometimes have difficulty understanding everything, ask your employer to arrange for an interpreter.
- If you, or the person accompanying you, will need any help because of a disability, ask your employer to arrange it for you.
- It is also a good idea to ask for a note taker to be present. This is very helpful as it means you will have a proper record of the meeting.
- You might also want to ask your employer if any other member of staff has made a similar complaint.
- Before you go to the meeting, think about what you want to say and how they might respond. Make a list of the issues you want to cover.
- During the meeting, if you, or your employer, say something that you think is important, ask the note taker (if there is one) to record that point.
- At the end of the meeting ask if you can read through the notes. If there is something that you don't think has been recorded correctly, you can try and sort it out there and then. If you aren't able to see the notes until later, tell your employer about anything you disagree with in writing as soon as possible (you could use email), and keep a copy.
- If you bring someone with you, ask them to take notes, or make your own notes immediately after the meeting.

They should let you know what they have decided to do about your grievance fairly soon. They shouldn't tell you at the end of the meeting, as they should take time to think it over. When they tell you what they have decided, they should also tell you that you have a right to appeal if you are still unhappy. You are responsible for making sure that you are within time limits for taking the issue to a tribunal, so you need to follow things up.

“On the morning of the meeting I was so nervous I just couldn’t face it, so I took the day off sick”

Marc, London

People often stall because it is stressful, but postponing things can be even worse. You must make every effort to attend meetings. If you appear uncooperative, and the case ends up at tribunal, your employer could argue that you delayed and any award you get could be reduced.

3 Appeal

If you are not satisfied with the way your work has dealt with your problem, you can appeal against their decision. If you decide to do this, you should tell your work in writing as soon as possible. Your work may set a deadline of when you need to tell them by – try to keep within their deadline, but don’t be put off if you miss it.

Don’t just repeat what you put in your original letter, you need to respond to the decision they have made. Highlight what you think the decision-maker overlooked or didn’t understand about your complaint. Make sure you keep a copy of your letter.

Your work should then arrange another meeting to discuss your appeal, with someone more senior if possible. In a small workplace, this could be the owner or a management committee member. The same rules apply as for the first meeting.

After the appeal meeting, your work should give you their decision in writing. Your work may or may not give you further rights of appeal after this.

It’s advisable to take your complaint as far as you can with your employer – but, if you think you might want to take it to an employment tribunal, keep an eye on your deadline!

Time limits

- If you intend to take a case to an employment tribunal, it is important to know that there are strict time limits. You only have 3 months less one day from the date the problem you are complaining about happened to lodge your claim at the tribunal.
- In most cases, you should try to give your written complaint to your work as soon as possible, so that they have a chance to deal with it before you lodge your complaint at the Tribunal.
- Time limits can be complicated and do change depending on the complaint. You should always get advice from an experienced adviser about what time limits apply to **your** case.
- Make a note of deadlines in your diary, and don’t leave things until the last minute – you could lose your right to make a claim if you are late.

*I know he's never pinched **YOUR** bottom, chief - but it's still **YOUR** responsibility to do something about it!*



After the complaint

If your problem isn't solved satisfactorily by using your work's grievance procedures, you may want to take the issue to a tribunal. Not every complaint can be taken to an employment tribunal. If your complaint is about discrimination, you will be able to. If not, look at the employment tribunal website for the full list (see Useful contacts).

Taking your case to an employment tribunal should be a last resort. It can be a stressful and time-consuming process. In practical terms, it will probably destroy your chances of working for your employer again. However, your work shouldn't be able to get away with discriminating against you and, depending on your case, you may be able to get financial compensation. You should speak to someone with experience of advising on discrimination claims – contact your union, local advice agency or law centre.

If you want to have one last chance to resolve things outside the tribunal, you could consider asking an ACAS officer to try to help you reach a solution with your employer. ACAS is an independent, organisation with authority to assist with employment disputes (see Useful contacts for more). But you still need to make sure you don't go over your tribunal time limit!

Useful contacts

- **Acas (Advisory, Conciliation and Arbitration Service) – www.acas.org.uk**
Helpline – 08457 47 47 47
For general information about discrimination at work and assistance with employment disputes and complaints. Acas can also help you and your employer by talking with you each separately and seeing if they can help you come to an agreement. The helpline will be able to tell you if your case is suitable for this kind of help.
- **Advicenow – www.advicenow.org.uk**
For information about your employment rights and all types of discrimination.
- **Equality and Human Rights Commission – www.equalityhumanrights.com**
Helpline – England 0845 604 6610, Wales 0845 604 8810
For more information and guidance on what to do about all kinds of discrimination.
- **Department for Business Innovation and Skills (BIS)**
www.berr.gov.uk/whatwedo/employment/Resolving_disputes
For more detail about the rules for dealing with complaints at work.
- **Employment Tribunals – www.employmenttribunals.gov.uk**
For more information about employment tribunals.
To find out if your complaint is one that you could take to an employment tribunal, phone the helpline on **08457 959 775**.
- **Trade Union Congress – www.tuc.org.uk**
Know your rights line: 0870 600 4 882
For information about trade unions, and how to find the right trade union for you.

How to find an adviser

You can find an experienced adviser at your nearest advice centre or law centre. If you cannot find an adviser near you, you may be able to get advice over the phone. Use Community Legal Advice's directory:

www.communitylegaladvice.org.uk

0845 345 4345

Jargon buster

| The jargon | What it means |
|----------------------------|--|
| The Code | The ACAS Code of Practice on Disciplinary and Grievance Procedures. This sets out how employers should deal with complaints made by their staff. It is voluntary, so your employer doesn't have to deal with your problems in this way, but if they don't they may have to pay you more compensation if you did follow the Code. |
| Employment tribunal | The court where employment disputes are decided. Tribunals are more informal than other kinds of court. |
| Grievance | A concern, problem or complaint you have in relation to your work. |
| Harassment | A form of discrimination. It involves unwelcome physical, verbal or non-verbal behaviour relating to one of the types of discrimination listed at the beginning of this guide. |
| Victimisation | When you are treated badly at work because you have raised a grievance about discrimination or because you helped someone else to do so. |
| Written statement | If you have been in a job for longer than 2 months, you are entitled to a written statement which sets out the main terms and conditions of your employment. This will include things like your salary, hours, sick leave, and will also set out the grievance procedure, or tell you where you can find it. |

Questions and Answers

Q

My employment tribunal deadline is coming up and I am still waiting to hear the outcome of my appeal, what should I do?

A

The most important thing to do is to make sure you lodge your claim at the Tribunal in 3 months less 1 day from the date the problem first happened.

You should make every effort to go through the procedure, but if it's going to run over your time limit, you can't afford to wait before making an application to a tribunal. If you are in this position, you should talk to an experienced adviser at your union or local advice agency.

Q

What if I can't attend meetings?

A

If something happens which means either you or your employer can't attend the meetings, your employer should arrange an alternative date. You should make every attempt to attend the meetings. Employment tribunals won't look very kindly on attempts to avoid the procedure – your reason for not attending meetings should be very good and backed up with strong evidence.

Q

Can I raise a grievance after I have left?

A

Yes you can. If you are thinking of resigning, you should make a complaint before you hand in your notice. If you don't, any compensation you win might be reduced.

Q

My work has access to legal advice, do I need a solicitor?

A

You might feel disadvantaged if your work has a legal adviser. You can get advice from your union, local advice agency or law centre – but you are not entitled to bring a legal adviser with you to meetings.

Q

Do I need to go through the procedure before bringing a claim at an employment tribunal?

A

You don't need to go through the procedure, but you might lose some of compensation you win if you don't. If you couldn't go through the grievance procedure because of your employer, any compensation you win might be increased.

This information is produced by Advicenow. Other guides include:

- Parents apart
- Trouble at school
- LivingTogether
- Family Mediation
- Divorce – a Survival Toolkit
- Working parents
- Young workers
- Unfair dismissal
- Is that discrimination?
- Homeless and young?
Get your foot in the door ...
- How to get good asylum advice
- Support for asylum seekers in the UK
- How to handle an interview under caution
- Turned down for DLA/AA? Think you're not getting enough?
- Claiming compensation
- 10 steps to sorting out your debts
- Dealing with bailiffs
- Identity theft
- What's a contract?
- Do I need a lawyer?
- Seven steps to solving a problem

You can read or download all these guides and more at www.advicenow.org.uk

“Advicenow is the liveliest, least stuffy, most accessible and understandable website on legal matters that I’ve ever come across.”

Marcel Berlins, The Guardian

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Plain English Web Award 2004

The information in this guide applies to England and Wales only.

The law is complicated and every case is different. Get advice.

With material from Jane Bowers, Brenda Smith and Beverley Reid.

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If you have any comments on this guide, please email us at feedback@advicenow.org.uk



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