



**Name of meeting:** Licensing and Safety Committee

**Date:** Wednesday 1<sup>st</sup> February 2023

**Title of report:** Decision Making - Hackney Carriage and Private Hire

**Purpose of report:** For members to consider and resolve a decision-making process relating to the hackney carriage and private hire licensing service.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>Not Applicable</b>
<b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u></b>	<b>Key Decision - No</b> <b>Private Report/Private Appendix – No</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>Not Applicable</b>
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	<b>Colin Parr – 23.01.2023</b>
<b>Is it also signed off by the Service Director for Finance?</b>	<b>Eamonn Croston – 20.01.2023</b>
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	<b>Julie Muscoft – 17.01.2023</b>
<b>Cabinet member <a href="#">portfolio</a></b>	<b>Councillor Will Simpson</b>

**Electoral wards affected:** ALL

**Ward councillors consulted:** None

**Public or private:** Public

**Has GDPR been considered?** Yes, there is no personal data contained in this report.

## 1. Summary

1.1 This report is a result of the consultation for the Department for Transport's Statutory Standards, specifically relating to decision making for the hackney carriage and private hire service.

## 2. Information required to take a decision

2.1 Currently decision making for hackney carriage and private hire licensing is delegated to the Group Leader – Licensing.

2.2 The guidance issued by the Department for Transport recommends that decision making should be the responsibility of a panel of suitably trained elected members.

2.2 The results of the consultation showed that many respondents agreed that decision making should not be the sole responsibility of one person.

2.3 A number of the comments received back from the consultation also suggested that other persons should be a part of the decision-making process, such as:

- Trade Representatives
- Through consultation with the drivers and by calling a meeting
- A group of leaders
- DVLA
- The private hire operator the driver works for

However, to involve any of the above would not be an option due to the sensitive and personal information that disclosed and would be breach of GDPR. Ultimately, it is for the Licensing Authority to make the decision and officers currently take account of information taken from some if not all of these sources.

2.4 At the meeting of the Licensing and Safety Committee on Wednesday 6<sup>th</sup> July 2022 members instructed officers to investigate possible options relating to decision making and the implications for those options and present a more detailed report.

2.5 At the meeting of the Licensing and Safety Committee on Wednesday 5<sup>th</sup> October 2022 several options for decision making were presented to members. The options identified were:

- A Members Panel
- An Officer Panel
- Decisions to remain with the Group Leader for Licensing

2.6 Members resolved that decisions should remain with the Group Leader for Licensing and instructed officers to undertake further work to investigate

other possible options that could incorporate members into the decision making and bring a report back to a future meeting of the Licensing and Safety Committee.

2.7 Therefore, options identified for members to consider are:

- A members panel
- An officer panel
- Decisions to remain with the Group Leader for Licensing
- A hybrid panel with both officer and member involvement

2.6 **Appendix 1** provides more detail on how each option would work in practice and the risks and benefits of each option.

2.7 Governance have been consulted about the proposed options, due to the possibility of member involvement in decision making and have confirmed they will provide governance support to a committee where Members are decision makers.

### **3. Implications for the Council**

#### **3.1 Working with People**

One of the licensing services key priorities is to ensure the standards across the private hire and hackney carriage trade in Kirklees are high to protect the travelling public. We want people to be transported safely, to know they are protected from harm and that they experience a high quality, clean, sustainable and green environment, as well as a good customer experience.

#### **3.2 Working with Partners**

In developing its policies and delivering its service the licensing service works with several partners including (not exclusively) Kirklees Safeguarding Children's and Adults boards, West Yorkshire Police, Public Health, Environmental Health, Overview and Scrutiny committee, the Community Safety Partnership and the other West Yorkshire Licensing Authorities (Inc. York)

#### **3.3 Place Based Working**

There is no specific impact in the context of this report. However, reviewing policies and procedures enables the service to examine the way in which it interacts and engages with licence holders, residents, and communities.

#### **3.4 Climate Change and Air Quality**

There is no impact in relation to climate change and air quality in this report.

### **3.5 Improving outcomes for children**

The Council has a duty to protect the travelling public and specifically safeguard the vulnerable, which includes the safeguarding of children travelling in licensed vehicles and for the purposes of school transport.

### **3.6 Financial Implications of people living or working in Kirklees**

The decision-making process can result in a licence holder having their licence suspended or revoked. Although some licence holders reside outside the authority, most licence holders live and operate in Kirklees.

In addition, if members are minded to resolve that either a panel of officers or members will make decisions in relation to hackney carriage and private hire licensing matters will result in a fee review to cover the cost through the fees paid by the licence holders.

### **3.7 Other (eg Legal/Financial or Human Resources) Consultees and their opinions**

#### Legal

No significant concerns.

#### Human Resources

A change to the decision making to a panel of officers or members will place an additional administrative and human resource burden on the authority and this will be recovered through a review of the licensing fees.

#### Financial

It should be noted that any additional administration of either member or officers' panels will have some consequential costs for the authority. Potentially, room bookings, additional officer time etc. However, these costs can be recouped in changes to the Licensing Fees, there may be unforeseen additional administrative costs – these are not considered to be significant.

## **4. Next steps and timelines**

4.1 Members are asked to make a decision about the hackney carriage and private hire decision making responsibility.

4.2 Members are reminded, the standards recommend that decision making should be the responsibility of a panel of suitably trained Councillors.

4.3 Deviation from the standards is permitted so long as licensing authorities “have regard” to it when exercising their functions. These functions include developing, implementing, and reviewing taxi and private hire vehicle licensing regimes. Therefore, if members deviate from the statutory guidance, you are required to provide reasons why are not adopting the guidance.

4.4 Following the decision by members if it is decided that decision making will be the responsibility of a panel of suitably trained Councillors then there will need to be a formal change made to the Council's constitution. It is proposed that this will come into effect on 1<sup>st</sup> October 2023 to allow for processes, procedures and resources be put in place and to ensure elected members who sit on the Licensing and Safety committee have completed sufficient training to be able to make decisions and be consistent in their decision making as there may be a requirement for decision maker to attend court to defend their decision.

4.5 If members make the decision that the responsibility of decision making were to fall to a panel of officers there will be no requirement for a full change to the constitution. It is proposed that this will come into effect on 1<sup>st</sup> October 2023 as new processes, procedures and resources will be required to facilitate the changes.

4.6 If members decide that the responsibility of decision making is to remain with the Group Leader for licensing a full review of the process has been carried out which aligns with the principles of natural justice and can be seen at Appendix 1. The two universal principles of natural justice are:

- Hear both sides; and
- No person shall be a judge in their own case

4.7 If members resolve that the responsibility of decision making be a hybrid panel including members and officers, this will require a change to the Council's constitution. It is proposed that this will come into effect on 1<sup>st</sup> October 2023 to allow for processes, procedures and resources be put in place and to ensure all elected members who will be involved in decision making have completed sufficient training to be able to make decisions and be consistent in their decision making as there may be a requirement for the decision makers to attend court to defend their decision.

## **5. Officer recommendations and reasons**

5.1 Members are asked to consider the following four options and take a decision on how decision making in relation to private hire and hackney carriage licensing should be undertaken: -

1. A members panel – from October 2023
2. An officer panel – from October 2023
3. Remain with the Group Leader for licensing – to continue
4. A hybrid member and officer panel – from October 2023

5.2 If members resolve to agree option 4, a hybrid member and officer panel, they are then asked to consider the level of member involvement in the panel: -

1. The chair of the licensing and safety committee
2. One trained member of the licensing and safety committee
3. Another level of member involvement in the panel

5.3 If members resolve to agree option 4, a hybrid member and officer panel, they are then asked to consider who would chair the meetings: -

1. The Group Leader for Licensing
2. The Chair of the Licensing and Safety Committee or other member who is in attendance

5.4 If members are minded to deviate from the statutory guidance issued by the Department for Transport, it is recommended that members introduce an officer panel. An officer panel will provide a robust approach to decision making which will address some of the concerns being raised by the trade about one person being the sole decision maker.

## **6. Cabinet Portfolio Holder's recommendations**

Councillor Will Simpson has no additional comments.

## **7. Contact officer**

Fiona Goldsmith  
Public Protection Group Leader – Licensing

01484 221000(ext 79921) or [Fiona.goldsmith@kirklees.gov.uk](mailto:Fiona.goldsmith@kirklees.gov.uk)

## **8. Background Papers and History of Decisions**

[Agenda for Licensing and Safety Committee on Thursday 17th December 2020, 10.00 am | Kirklees Council](#)

[Agenda for Licensing and Safety Committee on Tuesday 20th July 2021, 10.00 am | Kirklees Council](#)

[Agenda for Licensing and Safety Committee on Wednesday 6th July 2022, 10.00 am | Kirklees Council](#)

## **9. Service Director responsible**

Katherine Armitage  
Service Director – Climate Change and Environment  
Tel: 01484 221000  
Email: [Katherine.armitage@kirklees.gov.uk](mailto:Katherine.armitage@kirklees.gov.uk)



**Decision Making Options**1. Members Panel

<b>Benefits</b>	<b>Risks</b>
Degree of Impartiality	Is likely to cause delays in decision making, this will negatively impact both the new applicants who will have to wait for a decision regarding their application and those existing licence holders who will have to wait for an outcome of an investigation.
Will address some of the concerns raised as part of the consultation on the DfT standards	Staffing resource implications, all panels will be required to have minutes taken by Governance officers and published, legal officer support, licensing officers and the requirement for a meeting room.
Will be compliant with the recommendation in the DfT standards	Increased costs which would be borne by the licence holder / applicant



	<p>Lobbying of members by licence holder and applicants, many applicants will be residents in Kirklees.</p>
	<p>To return to a member panel will take us out of step with other West Yorkshire Licensing Authorities whose decision making is the responsibility of officers not members.</p>
	<p>The decision was previously taken to change from members decisions to streamline, simplify and ensure consistency in decision making was achieved. The current policy was adopted for this purpose. A change back to a member panel will also require a change to the Council's constitution.</p>
	<p>Training ALL members to a suitable standard to comply with the requirements of the DfT standards.</p>
	<p>Consistency in decision making – if members only sit on panel once a year or the members of the panels change all the time there will likely be an inconsistent approach in the decision making and level of knowledge and training.</p>

## Process

Step	Process	Comments
1.	<p><u>Issue comes to light either with new applicant or existing licence holder</u></p> <ul style="list-style-type: none"> <li>• Does the issue fall within policy Y / N – if yes then move to step 2 if no then: -</li> <li>• If an existing licence holder, do they have a history that, along with the current issue calls into question their fitness and suitability to hold a licence Y / N – if yes then step 2, if no then: -</li> <li>• Investigate issue in isolation and take appropriate actions, i.e. warning letter, verbal warning or no further action.</li> </ul>	<p>Issues come to light via multiple sources:</p> <ul style="list-style-type: none"> <li>• DBS</li> <li>• Complaint</li> <li>• Self-Declaration</li> <li>• DVLA check</li> <li>• Enforcement Activity</li> <li>• Checks with other licensing authorities</li> <li>• Other</li> </ul>
2.	<p><u>Officer Investigates the Issue</u></p> <ul style="list-style-type: none"> <li>• Gathers evidence</li> <li>• Speaks to third parties, i.e. complainant, police, other agencies</li> <li>• Informs licence holder / applicant of the issue at hand</li> <li>• Prepares to interview licence holder</li> <li>• Invites licence holder / applicant for interview in writing</li> <li>• Holds interview and informs licence holder of next steps</li> <li>• Prepares report for Group Leader to sign off and agree recommendations</li> <li>• Report follows Governance sign off procedure (TBC)</li> </ul>	<ul style="list-style-type: none"> <li>• Recorded interview – not PACE</li> <li>• Option to have someone present - does not have to be legal</li> <li>• Present information on issue and evidence collated</li> <li>• Opportunity for licence holder to respond and offer their version of events</li> <li>• Question licence holder further</li> <li>• Summarise</li> <li>• Outline next steps</li> </ul>

<p><b>3.</b></p>	<p><u>Licence Holder invited to attend member panel</u></p> <ul style="list-style-type: none"> <li>• Letter sent to Licence holder / applicant detailing time/date/place and include order of proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• Advised to obtain own legal advice, advised can be accompanied by legal representation or friend, advise if person who accompanies them is a friend, then panel need to agree if they can speak on their behalf</li> <li>• Need to send order of proceedings with invite. Order of proceedings need to be confirmed.</li> </ul>
<p><b>4.</b></p>	<p><u>Member Panel Hearing</u></p> <ul style="list-style-type: none"> <li>• Licence holder / applicant attends</li> <li>• Chair opens hearing</li> <li>• Officer outlines case</li> <li>• Licence holder / applicant given opportunity to address panel</li> <li>• Licence holder / applicant offers any explanations required</li> <li>• Questions can be asked by panel to officers or licence holder / applicant</li> <li>• Members debate in private with legal and governance officer present and make the decision</li> <li>• Licence holder / applicant verbally advised of decision and right of appeal with summary of reasons and decision</li> <li>• Decision letter sent within 5 working days formally detailing the decisions and reasons for the decision and commencing the 21-day appeal timescale.</li> </ul>	<ul style="list-style-type: none"> <li>• Member panel can ask questions of both licensing officer and licence holder / applicant</li> <li>• Licence holder / applicant can provide any information to the officer panel to support their case</li> </ul>

## 2. Officer Panel

<b>Benefits</b>	<b>Risks</b>
Impartiality	Is likely to cause delays in decision making, this will negatively impact both the new applicants who will have to wait for a decision regarding their application and those existing licence holders who will have to wait for an outcome of an investigation.
Addresses some of the issues raised because of the consultation on the DfT statutory standards	Staffing resource implications, there will be a requirement for staff to source meeting rooms and take minutes. This will also be resource intensive for those officers who sit on the panel and legal.
Would not require a change to the Council's constitution	Increased costs which would be borne by the licence holder / applicant
	Does not comply with DfT standards, members will be required to give due regard to the standards and have reasons why we have departed from them.

## Process

Step	Process	Comments
1.	<p><u>Issue comes to light either with new applicant or existing licence holder</u></p> <ul style="list-style-type: none"> <li>• Does the issue fall within policy Y / N – if yes then move to step 2 if no then: -</li> <li>• If an existing licence holder, do they have a history that, along with the current issue calls into question their fitness and suitability to hold a licence Y / N – if yes then step 2, if no then: -</li> <li>• Investigate issue in isolation and take appropriate actions, i.e. warning letter, verbal warning or no further action.</li> </ul>	<p>Issues come to light via multiple sources:</p> <ul style="list-style-type: none"> <li>• DBS</li> <li>• Complaint</li> <li>• Self-Declaration</li> <li>• DVLA check</li> <li>• Enforcement Activity</li> <li>• Checks with other licensing authorities</li> <li>• Other</li> </ul>
2.	<p><u>Officer Investigates the Issue</u></p> <ul style="list-style-type: none"> <li>• Gathers evidence</li> <li>• Speaks to third parties, i.e. complainant, police, other agencies</li> <li>• Informs licence holder / applicant of the issue at hand</li> <li>• Prepares to interview licence holder</li> <li>• Invites licence holder / applicant for interview in writing</li> <li>• Holds interview and informs licence holder of next steps</li> <li>• Prepares report for Officer panel</li> </ul>	<ul style="list-style-type: none"> <li>• Recorded interview – not PACE</li> <li>• Option to have someone present - does not have to be legal</li> <li>• Present information on issue and evidence collated</li> <li>• Opportunity for licence holder to respond and offer their version of events</li> <li>• Question licence holder further</li> <li>• Summarise</li> <li>• Outline next steps</li> </ul>
3.	<p><u>Licence Holder invited to attend officer panel</u></p>	<ul style="list-style-type: none"> <li>• Advised to obtain own legal advice, advised can be accompanied by legal</li> </ul>

	<ul style="list-style-type: none"> <li>• Letter sent to licence holder / applicant detailing time/date/place and include order of proceedings</li> </ul>	<p>representation or friend, advise if person who accompanies them is a friend, then panel need to agree if they can speak on their behalf</p> <ul style="list-style-type: none"> <li>• Need to send order of proceedings with invite. Order of proceedings need to be confirmed.</li> </ul>
4.	<p><u>Officer Panel Hearing</u></p> <ul style="list-style-type: none"> <li>• Licence holder / applicant attends</li> <li>• Chair opens hearing</li> <li>• Officer outlines case</li> <li>• Licence holder / applicant given opportunity to address panel</li> <li>• Licence holder / applicant offers any explanations required</li> <li>• Questions can be asked by panel to officers or applicant/licence holder</li> <li>• Panel debates in private</li> <li>• Licence holder / applicant verbally advised of decision and right of appeal with summary of reasons and decision</li> <li>• Decision letter sent within 5 working days formally detailing the decisions and reasons for the decision and commencing the 21-day appeal timescale.</li> </ul>	<ul style="list-style-type: none"> <li>• Officer panel can ask questions of both licensing officer and licence holder / applicant</li> <li>• Licence holder / applicant can provide any information to the officer panel to support their case</li> </ul>

3. Decisions stay at Group Leader Level

<b>Benefits</b>	<b>Risks</b>
Impartiality of the decision maker	There is a perception from the licensed trade that there isn't impartiality
Decisions made in a timely manner	Does not address the concerns raised following the consultation on the DfT standards
Reduction in cost to the trade	Does not comply with DfT standards, members will be required to give due regard to the standards and have reasons why we have departed from them.
Is in line with the other West Yorkshire Licensing Authorities	
Consistency in decision making	

**Process**

<b>Step</b>	<b>Process</b>	<b>Comments</b>

<p>1.</p>	<p><u>Issue comes to light either with new applicant or existing licence holder</u></p> <ul style="list-style-type: none"> <li>• Does the issue fall within policy Y / N – if yes then move to step 2 if no then: -</li> <li>• If an existing licence holder, do they have a history that, along with the current issue calls into question their fitness and suitability to hold a licence Y / N – if yes then step 2, if no then: -</li> <li>• Investigate issue in isolation and take appropriate actions, i.e. warning letter, verbal warning or no further action.</li> </ul>	<p>Issues come to light via multiple sources:</p> <ul style="list-style-type: none"> <li>• DBS</li> <li>• Complaint</li> <li>• Self-Declaration</li> <li>• DVLA check</li> <li>• Enforcement Activity</li> <li>• Checks with other licensing authorities</li> <li>• Other</li> </ul>
<p>2.</p>	<p><u>Officer Investigates the Issue</u></p> <ul style="list-style-type: none"> <li>• Gathers evidence</li> <li>• Speaks to third parties, i.e. complainant, police, other agencies</li> <li>• Informs licence holder / applicant of the issue at hand</li> <li>• Prepares to interview licence holder</li> <li>• Invites licence holder / applicant for interview in writing</li> <li>• Holds interview and informs licence holder of next steps</li> <li>• Prepares report for group leader</li> </ul>	<ul style="list-style-type: none"> <li>• Recorded interview – not PACE</li> <li>• Option to have someone present - does not have to be legal</li> <li>• Present information on issue and evidence collated</li> <li>• Opportunity for licence holder to respond and offer their version of events</li> <li>• Question licence holder further</li> <li>• Summarise</li> <li>• Outline next steps</li> </ul>
<p>3.</p>	<p><u>Licence Holder invited to attend a meeting with the group leader</u></p> <ul style="list-style-type: none"> <li>• Letter sent to applicant/licence holder detailing time/date/place</li> </ul>	<ul style="list-style-type: none"> <li>• Advised to obtain own legal advice, advised can be accompanied by legal representation or friend, advise if person who accompanies them is a friend, then panel need to agree if they can speak on their behalf</li> </ul>



		<ul style="list-style-type: none"> <li>• Advised they will be permitted 10 minutes to address the group leader</li> </ul>
4.	<p><u>Meeting with Group Leader</u></p> <ul style="list-style-type: none"> <li>• Licence holder / applicant attends</li> <li>• Licensing Officer outlines case</li> <li>• Licence holder / applicant given opportunity to address group leader for 10 minutes</li> <li>• Licence holder / applicant offers any explanations required</li> <li>• Questions can be asked by group leader to applicant/licence holder</li> <li>• Decision not given on the day</li> <li>• Decision letter sent within 5 working days formally detailing the decisions and reasons for the decision and commencing the 21-day appeal timescale.</li> </ul>	<ul style="list-style-type: none"> <li>• Group leader can ask questions of both licensing officer and licence holder / applicant</li> <li>• Licence holder / applicant can provide any information to the group leader to support their case</li> </ul>

#### 4. Hybrid Panel – Including Officers and Members

<b>Benefits</b>	<b>Risks</b>
Impartiality	Is likely to cause delays in decision making, this will negatively impact both the new applicants who will have to wait for a decision regarding their application and those existing licence holders who will have to wait for an outcome of an investigation.
Addresses some of the issues raised because of the consultation on the DfT statutory standards	Staffing resource implications, all panels will be required to have minutes taken by Governance officers and published, legal officer support, licensing officers and the requirement for a meeting room.
Will be partially compliant with the recommendation in the DfT standards	Increased costs which would be borne by the licence holder / applicant
	It will take us out of step with other West Yorkshire Licensing Authorities whose decision making is the responsibility of officers not members.

	Member involvement would require a change to the Council's constitution.
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## Process

Step	Process	Comments
1.	<p><u>Issue comes to light either with new applicant or existing licence holder</u></p> <ul style="list-style-type: none"> <li>• Does the issue fall within policy Y / N – if yes then move to step 2 if no then: -</li> <li>• If an existing licence holder, do they have a history that, along with the current issue calls into question their fitness and suitability to hold a licence Y / N – if yes then step 2, if no then: -</li> <li>• Investigate issue in isolation and take appropriate actions, i.e. warning letter, verbal warning or no further action.</li> </ul>	<p>Issues come to light via multiple sources:</p> <ul style="list-style-type: none"> <li>• DBS</li> <li>• Complaint</li> <li>• Self-Declaration</li> <li>• DVLA check</li> <li>• Enforcement Activity</li> <li>• Checks with other licensing authorities</li> <li>• Other</li> </ul>

<p>2.</p>	<p><u>Officer Investigates the Issue</u></p> <ul style="list-style-type: none"> <li>• Gathers evidence</li> <li>• Speaks to third parties, i.e. complainant, police, other agencies</li> <li>• Informs licence holder / applicant of the issue at hand</li> <li>• Prepares to interview licence holder</li> <li>• Invites licence holder / applicant for interview in writing</li> <li>• Holds interview and informs licence holder of next steps</li> <li>• Prepares report for group leader</li> </ul>	<ul style="list-style-type: none"> <li>• Recorded interview – not PACE</li> <li>• Option to have someone present - does not have to be legal</li> <li>• Present information on issue and evidence collated</li> <li>• Opportunity for licence holder to respond and offer their version of events</li> <li>• Question licence holder further</li> <li>• Summarise</li> <li>• Outline next steps</li> </ul>
<p>3.</p>	<p><u>Licence Holder invited to attend a meeting with the hybrid panel</u></p> <ul style="list-style-type: none"> <li>• Letter sent to applicant/licence holder detailing time/date/place</li> </ul>	<ul style="list-style-type: none"> <li>• Advised to obtain own legal advice, advised can be accompanied by legal representation or friend, advise if person who accompanies them is a friend, then panel need to agree if they can speak on their behalf</li> <li>• Advised they will be permitted 10 minutes to address the panel</li> </ul>
<p>4.</p>	<p><u>Hybrid Panel Hearing</u></p> <ul style="list-style-type: none"> <li>• Licence holder / applicant attends</li> <li>• Chair (TBC) opens hearing</li> <li>• Officer outlines case</li> <li>• Licence holder / applicant given opportunity to address panel</li> <li>• Licence holder / applicant offers any explanations required</li> <li>• Questions can be asked by panel to officers or applicant/licence holder</li> </ul>	<ul style="list-style-type: none"> <li>• Panel can ask questions of both licensing officer and licence holder / applicant</li> <li>• Licence holder / applicant can provide any information to the panel to support their case</li> </ul>

	<ul style="list-style-type: none"><li>• Panel debates in private</li><li>• Licence holder / applicant verbally advised of decision and right of appeal with summary of reasons and decision</li><li>• Decision letter sent within 5 working days formally detailing the decisions and reasons for the decision and commencing the 21-day appeal timescale</li></ul>	
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