Power of attorney

Planning for the future

AgeUKIG21

Information written with you in mind.

This information guide has been produced with the help of older people, carers and expert peer reviewers.

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What this guide is about

There might come a time when you're no longer able to make your own decisions. Having a power of attorney set up can make things much easier if and when that time comes – so it's worth considering now.

Setting up a power of attorney gives someone you trust – your 'attorney' – the legal authority to make decisions on your behalf and in your best interests.

This guide explains how to appoint an attorney if, for whatever reason, you're no longer to make your own decisions or communicate what those decisions are. It takes you through the different types of power of attorney and explains when each may be helpful.

The guide also explains what happens if you lose the ability to make or communicate your own decisions and you haven't set up a power of attorney.

The information in this guide is applicable to England and Wales. For information about powers of attorney in Northern Ireland, contact Age NI.

"After I explained how important a power of attorney can be, my mum set one up. It feels like we have one less thing to worry about now."

Sandy, 67

Good to know

The Office of the Public Guardian are referenced throughout this guide. They can provide more information on a lot of the topics covered, so it's a good idea to keep their contact details handy.

Tel: **0300 456 0300**

Website: **www.gov.uk/government/organisations/office-of-the-public-guardian**

Mental capacity

The term ‘mental capacity’ appears throughout this guide. Having mental capacity means being able to make your own decisions and understand the consequences of those decisions.

Someone, such as a chosen attorney, can only make a decision on your behalf if it can be shown that you no longer have mental capacity to make that decision for yourself at the time the decision needs to be made.

You lack mental capacity for a particular decision if you’re unable to do one or more of the following:

- understand the information relating to the decision
- weigh up that information
- remember that information for long enough to make your decision
- communicate your decision (whether verbally, using sign language, or by other means).

However, whether someone has mental capacity can change depending on the decision – so someone might be able to make decisions about certain things but not others. Others might be able to make a decision at a certain time, but unable to make the same decision at another time. This is why anyone considering whether you have mental capacity needs to consider your ability to make and communicate a specific decision at the time it needs to be made.

Taking time to weigh up or communicate a decision shouldn't be mistaken for a lack of mental capacity. Nor should having a certain condition, such as dementia. For example, someone may still have capacity to make certain decisions for some time following a diagnosis.

You should be given as much help as possible to make and communicate a decision before anyone judges that you lack mental capacity. And if there comes a time when you lose mental capacity, any person making a decision for you must make sure they're acting in your best interests (see pages 16-17 for more information).

Good to know

Judging whether someone has mental capacity to make a certain decision at the time the decision needs to be made isn't always straightforward. A decision that's simple to one person may be complex to another. Circumstances that help one person make a decision may make it more difficult for another person. It all depends on the individual.

If you're unsure and want to find out more about mental capacity and what the law says about making decisions, visit **www.gov.uk/make-decisions-for-someone**.

Types of power of attorney

No one has the right to take control of your finances or your care without your authority to do so – not even your spouse or partner.

A power of attorney is a way of giving someone you trust the legal authority to make decisions for you if you can't make them yourself – or if you don't want to. There are 3 different types of power of attorney.

Lasting power of attorney (LPA)

You can set up different types of LPA: one for health and care decisions and one for financial decisions. The LPA for health and care decisions can only be used if you lose mental capacity. The LPA for financial decisions can also be used while you still have mental capacity if this is what you'd prefer, but you need to choose this option when setting it up. There's more information about LPAs on pages 9-12.

Enduring power of attorney (EPA)

An EPA is only for financial decisions, but you can no longer set one up – LPAs are now used instead. However, if you set up an EPA before October 2007, it's still valid. See page 13 for more information about EPAs.

Ordinary power of attorney (OPA)

This power of attorney is for financial decisions only, and it's only valid while you still have mental capacity. See page 14 for more information about OPAs.

Lasting power of attorney (LPA)

You can only set up an LPA if you have mental capacity and you haven't been put under any pressure to do so. There's an explanation of mental capacity on pages 6-7.

An LPA isn't necessarily permanent. You can cancel it at any time while you have mental capacity by writing to your attorney (or attorneys) and the Office of the Public Guardian, advising them of your decision.

There are 2 types of LPA: one for making financial decisions and another for making health and care decisions.

a) LPA for financial decisions

If you set up this type of LPA, your attorney can make decisions about things such as:

- selling your home
- paying your mortgage and bills
- arranging repairs to your home.

Key facts:

- You decide when you want this type of LPA to start. This might be while you still have mental capacity, or it might be if and when you lose mental capacity.
- You choose whether your attorney can make all financial decisions on your behalf or only certain types of decisions.
- Your attorney usually has to keep your money separate from theirs and keep accounts to show this.
- You can ask for regular updates on how much money you have and how much has been spent. If you'd like, these updates can also be sent to your solicitor or a family member.

b) LPA for health and care decisions

If you set up this type of LPA, your attorney can make decisions about things such as:

- where you live
- your medical treatment
- the care and support you receive
- who you have contact with
- what kind of social activities you take part in.

Key facts:

- Unlike an LPA for financial decisions, your attorney can only use this LPA if you no longer have mental capacity.
- When registering your LPA, you can give your attorney permission to make decisions about life-saving treatment.
- If you lose mental capacity and don't have this type of LPA in place, any decisions about your health or care will be made by the professionals relevant to your situation, such as your doctor or your local council's social services department. If appropriate, they must consult your family (or anyone else with an interest in your welfare) when deciding what's in your best interests – but the final decision lies with them.

"I was worried about setting up a power of attorney as I don't really have any close friends or family. But I was able to appoint a solicitor instead."

Jean, 93

How do I set up a lasting power of attorney (LPA)?

1. First, get LPA forms and an information pack from the Office of the Public Guardian. You can download the forms or fill them in online at **www.gov.uk/lasting-power-of-attorney**. Or you can have them sent to you by calling **0300 456 0300**.

2. If you're happy to, you can fill out the forms yourself. It's important to be careful because mistakes might mean your LPA is rejected and you need to pay a fee later to reapply.

The Office of the Public Guardian have a step-by-step guide to completing the forms on their website, or you can call for assistance using the number above. You may want to consider asking a trusted family member or friend to help you. Alzheimer's Society (page 27) also provide a digital assistance service to help people fill out the LPA forms – if you don't feel comfortable completing the forms yourself or don't have access to the internet, for example.

3. While you don't need to use a solicitor to set up an LPA, it could prevent problems later on – especially if you're unsure of the process or your affairs are complex. It's more costly than filling out the forms yourself, but you might find that the reassurance of having professional advice is worth it. The costs for setting up an LPA can vary a lot from solicitor to solicitor, so it's a good idea to call several firms for quotes before choosing.

4. Once you've filled out the forms, you then need to have the LPA signed by a 'certificate provider' – someone who confirms that you understand what the LPA is and that you haven't been put under any pressure to sign it. This must be either someone you've known well for at least 2 years or a professional, such as a doctor, social worker or solicitor. Certain people aren't allowed to be your certificate provider – such as family members, including your partner.

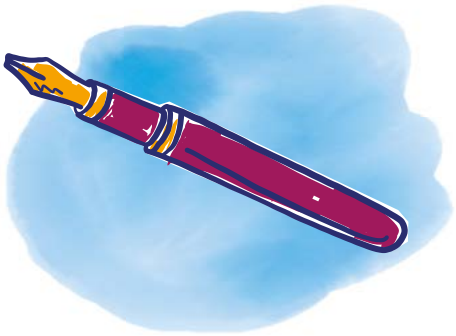
5. Lastly, you need to register the LPA with the Office of the Public Guardian. Your LPA cannot be used until registration is complete, which can take several weeks.

Registering an LPA costs £82. If you're registering LPAs for both financial decisions and health and care decisions at the same time then you need to pay £82 for each LPA, so £164 in total. However, if you're on a low income (under £12,000 a year) you might be eligible for a 50% discount, and if you're receiving certain benefits you won't have to pay anything at all.

You can then register your LPA, if you have the mental capacity to do so. If you sign an LPA while you still have mental capacity but lose capacity before registering it, your attorney can register it for you. Contact the Office of the Public Guardian for more information (page 28).

Next steps

To find out more about registering LPAs, see our factsheet **Arranging for someone to make decisions on your behalf**.



Other types of power of attorney

If you're looking to set up a power of attorney in case there comes a time when you lose mental capacity, then you'll need to set up a lasting power of attorney (LPA). However, there are 2 more types of power of attorney.

Enduring power of attorney (EPA)

LPAs have replaced EPAs. However, any EPA you have should still be valid and can still be registered if it was set up before October 2007.

If you have mental capacity, your EPA doesn't need to be registered before your attorney uses it. If you lose mental capacity, your attorney needs to register the EPA with the Office of the Public Guardian before they can make any decisions on your behalf.

Next steps

For more information about EPAs, contact the Office of the Public Guardian (page 28).

Ordinary power of attorney (OPA)

An OPA is only valid while you have mental capacity. It's for financial decisions only – so it can't be used for anything else, such as decisions about your health and care.

An OPA can be useful if you need someone to look after your finances temporarily – for example, because you're going into hospital or away on holiday. Or it might be that you find it difficult to get to the bank or post office, and having someone to act on your behalf would make things easier for you.

You can limit the power you give to your attorney – for example, you could allow them to deal with your bank account but not your property.

If you want to set up an OPA, contact your local Citizens Advice (page 27) or get advice from a solicitor – there's no standard form to complete, but rather particular wording that must be used. To find a solicitor, contact the Law Society or Solicitors for the Elderly (page 28).

Good to know

While you may find an OPA useful in certain situations, it's usually best to set up an LPA instead as your attorney can then continue to act for you if you ever lose mental capacity.

Choosing your attorney

Your attorney will have a lot of power over your affairs, so make sure you choose someone you trust completely.

Who should I choose?

You could choose someone you're close to, such as a family member or a friend, or you could choose a professional, such as a solicitor. It's important to be sure that whoever you choose will make decisions in your best interests (see pages 16-17). Give the person you ask to be your attorney time to think properly about whether they're prepared to take on the responsibility.

Whoever you choose, they need to be 18 or over, and they can't be a professional care worker apart from in exceptional circumstances – for example, if they're your only relative.

Choosing more than one attorney

It can be a good idea to appoint more than one attorney – but you need to decide whether they'll make decisions jointly or not. You can also appoint replacement attorneys in case someone you've chosen becomes unable to act on your behalf, for example if they die or lose mental capacity.

For more information on who can be an attorney and choosing more than one attorney, see our factsheet **Arranging for someone to make decisions on your behalf**.

Good to know

A non-professional attorney can only claim expenses in their role (like travel costs), but a professional attorney can also charge for their time – so consider the costs carefully before you choose.

How must my attorney make decisions?

All attorneys need to understand and follow certain principles, which are set out in the Mental Capacity Act 2005 and its code of practice.

They must:

- **Assume you have mental capacity**. Your attorney must only make decisions on your behalf if it can be shown you don't have mental capacity (see pages 6-7).
- **Help you make a decision.** You must be given as much practical help as possible to make your own decision before anyone decides you're unable to. For example, if you're better able to understand things at a particular time of day, you should be helped to make a decision then. Or if you're better able to understand or communicate using pictures or sign language, then that should be supported.
- **Avoid making assumptions based on 'unwise decisions'.** No one should decide that you lack mental capacity just because you make a decision others might consider unwise or eccentric.
- **Make the least restrictive decision.** Your attorney should consider all options and choose the one that restricts your rights and freedoms the least.
- **Act in your best interests**. Your attorney must consider a range of factors and reach a balanced conclusion about what decision is the right one for you. For a more detailed explanation of this, see the next page.

Your best interests

Your attorney must always make the decision that's in your 'best interests'. This means that they have to:

- do everything possible to enable you to express your preferences
- consider your past and present feelings – especially any wishes you put in an advance statement (see page 21)
- consider any of your beliefs and values that may influence the decision
- talk to other people – such as family, friends or carers – who know about your feelings, beliefs and values, and who might be able to suggest what would be in your best interests
- respect your right to privacy at all times, recognising that it might not always be appropriate to share information about you with people
- take into account any advance decision to refuse medical treatment that you've made. Your attorney may not be able to make a decision about the treatment covered in the advance decision – see pages 20-21 for more information about this.

Your attorney must weigh up these factors in order to reach a balanced decision about what is in your best interests.

Next steps

The Office of the Public Guardian provide guidance on their website about being an attorney: **www.gov.uk/government/publications/how-to-be-an-attorney**.

If you're concerned about an attorney

If you're concerned that your attorney isn't acting in your best interests – or that someone else's attorney isn't acting in their best interests – contact the Office of the Public Guardian.

The Office of the Public Guardian are responsible for maintaining a register of attorneys. They can investigate allegations of mistreatment or fraud and, if necessary, report concerns to the police or social services.

The same applies if you have concerns about a deputy. For more information about deputies, see page 23.

If you have concerns about an appointee for benefits, contact the Department for Work and Pensions (DWP). For more information about appointees, see page 22.

If you have any concerns that abuse or neglect is taking place, or that someone is at risk of abuse or neglect, contact the local council's safeguarding team. If you want to talk to someone confidentially about abuse or neglect, call the Hourglass helpline (page 27) on **0808 808 8141**.

If you're worried that you or someone else is in immediate danger, contact the police on **999**.

Next steps

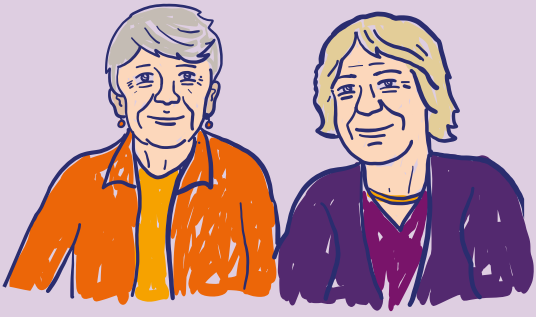
For more information, see our factsheet **Safeguarding older people from abuse and neglect**. Age Cymru has its own version of this factsheet.

Jenny and Irene's story

Setting up a lasting power of attorney enabled Jenny and Irene to prepare for the future.

Jenny, 72, and her partner Irene have been together for 37 years. When Jenny was diagnosed with vascular dementia, Irene became her full-time carer. While she still had mental capacity, Jenny set up a lasting power of attorney so that Irene could make financial decisions for her.

Irene says: 'I had so much on my plate when Jenny was first diagnosed, and practicalities weren't top of the list. But my friends encouraged us to get things in order.



'A friend helped us fill in the forms to set up a lasting power of attorney for financial decisions. We had money that we wanted to invest so it could be used to pay for Jenny's care if she ever needed it, so I also went to a financial adviser.

'I got a copy of the lasting power of attorney and gave it to the company that invested our money for us. This means that I can deal with Jenny's share on her behalf.

'I've been in charge of making financial decisions for 2 years. I wouldn't do anything without discussing it with Jenny first – but she trusts me to make the best decisions for her. Having a lasting power of attorney has meant we can prepare properly for the future.'

Communicating your wishes

While you have mental capacity, you can make decisions in advance about your future care, such as the types of medical treatment you want – or don't want.

There are 2 ways you can make decisions now about your future care: an advance decision (sometimes called a 'living will') and an advance statement.

Advance decisions

You can make an advance decision to refuse certain medical treatments. It's a good idea to put your advance decision in writing, but you don't have to – you can set up a valid advance decision simply by telling your doctor which treatments you don't want and in what circumstances you don't want them.

However, if your advance decision is to refuse life-sustaining treatment, then it must be in writing and signed both by you and a witness. Life-sustaining treatment includes things like being put on a ventilator. In England and Wales, an advance decision is legally binding, so health professionals must follow it – as long as it meets certain requirements. To find out more about these requirements, see our factsheet **Advance decisions, advance statements and living wills**. Let your family and any medical professionals know that you have an advance decision and review it frequently to check it still reflects your wishes.

Before making an advance decision, you might find it helpful to talk to your doctor about treatments you might be offered in the future, and what refusing them might mean. The NHS website (page 28) has more information about making advance decisions.

Advance decision vs lasting power of attorney (LPA)

If you make an advance decision **after** setting up an LPA for health and care decisions, your attorney can't agree to any treatment you've refused in the advance decision.

If you make an advance decision **before** setting up an LPA for health and care decisions, the LPA will make your advance decision invalid – but only if you've given your attorney the authority to make treatment decisions that are the same as those covered by the advance decision.

Advance statements

An advance statement covers your preferences and values when it comes to any future care. For example, it might cover your religious beliefs, what you like to eat, or whether you prefer baths or showers. It isn't legally binding – but it's a helpful record of your wishes for anyone involved in looking after you.

"I set up an advance statement to let those close to me know what kind of care I want."

Andrew, 79

Good to know

If you've made an advance decision and you now want to set up a lasting power of attorney (LPA) for health and care decisions, you'll need to send a copy of your advance decision with your LPA application form.

If you lose mental capacity

If you lose mental capacity and you have a lasting power of attorney (LPA) or an enduring power of attorney (EPA) set up, then your attorney will be able to make decisions in your best interests. However, if you don't, anyone who wants to act on your behalf will need to consider other options.

LPAs and EPAs need to be registered before an attorney can make decisions for someone lacking mental capacity. For more information, see pages 12-13.

What if I haven't set up a power of attorney?

If there comes a time when you can't make a particular decision because you've lost mental capacity, and you haven't set up a valid LPA or EPA, someone wishing to act on your behalf may need to apply to the Court of Protection to be appointed as your 'deputy' (for more information on deputies, see the page opposite). The Court will consider whether the person applying is suitable for the role. This can all be a lengthy and costly process, and you can't choose who your deputy is, because in this situation you'd have lost mental capacity to choose who acts for you.

Good to know

If you receive benefits and you lose mental capacity, someone can apply to the Department for Work and Pensions (DWP) to become your 'appointee'. An appointee has the authority to manage and spend your benefits, including your State Pension. For more information, see the DWP website (page 27).

What is a deputy?

A deputy has similar responsibilities to an attorney. They can only act within the authority set out by the Court, and they have a duty to act in good faith. They must follow the same principles as attorneys (see pages 16-17), doing everything possible to help you make your own decisions and ensuring that any decisions they make on your behalf are in your best interests.

Like lasting powers of attorney, there's one deputyship for property and financial affairs and another for personal welfare. Personal welfare deputies are usually only appointed in rare circumstances though – for example, when there's doubt about whether decisions will be made in someone's best interests because their family disagree about their care.

Being a deputy involves a lot of responsibility, so anyone asked to take on the role should consider carefully whether it's something they're comfortable doing – or whether there may be someone more appropriate.

Your deputy must act in your best interests. If you're concerned that your deputy isn't acting in your best interests – or that someone else's deputy isn't acting in their best interests – contact the Office of the Public Guardian (page 28).

Next steps

Contact the Office of the Public Guardian (page 28) for more information about becoming a deputy. You might also find it helpful to read the **GOV.UK** online guide **How to be a property and affairs deputy**, or our factsheet **Arranging for someone to make decisions on your behalf**.

What if no one can speak for me?

If you're ever unable to make certain important decisions and there's no one able to speak on your behalf beyond health and care staff, such as a family member or a friend, an independent mental capacity advocate (IMCA) must be appointed to support and represent you.

The decisions your IMCA might be involved in could relate to things such as serious medical treatment, a long-term hospital or care home stay, or a care review. The NHS organisation or local council providing your care are responsible for appointing an IMCA.

Next steps

To find out more about the role of IMCAs, see our factsheet **Arranging for someone to make decisions on your behalf**.

Protecting your rights in a care home or hospital

If you lack mental capacity, there may be times when your freedom or independence is restricted to keep you safe. For example, if you have dementia, you may not be able to leave a care home or hospital by yourself, or you may be closely supervised at all times.

The Deprivation of Liberty Safeguards, which form part of the Mental Capacity Act 2005, exist to protect people in care homes or hospitals who lack mental capacity. The aim is to make sure that your freedom or independence is only restricted when necessary and in your best interests, taking into account the harm you may experience if restrictions on your freedom aren't put in place.

Next steps

See our factsheet **Deprivation of Liberty Safeguards** for more information.

Useful organisations

Age UK

We provide information and advice for people in later life through our Age UK Advice Line, publications and website.

Age UK Advice: 0800 169 65 65
Lines are open seven days a week from 8am to 7pm.
www.ageuk.org.uk

In Wales, contact Age Cymru Advice: **0300 303 44 98**
www.agecymru.org.uk

In Northern Ireland, contact Age NI: **0808 808 7575**
www.ageni.org

In Scotland, contact Age Scotland: **0800 124 4222**
www.agescotland.org.uk

Alzheimer's Society

Offer a digital assistance service to help people with the LPA application process. To sign up, call their support line.
Tel: **0333 150 3456**
www.alzheimers.org.uk

Citizens Advice

National network of centres offering free, confidential and independent advice.
In England, call Adviceline: **0800 144 8848**
In Wales, call Advicelink: **0800 702 2020**
www.citizensadvice.org.uk

Court of Protection

Court responsible for appointing deputies and for making decisions on financial or welfare matters if someone lacks mental capacity and doesn't have an LPA or EPA in place.
Tel: **0300 456 4600**
www.gov.uk/courts-tribunals/court-of-protection

Department for Work and Pensions (DWP)

Government department responsible for welfare and pensions. Provides information about being an appointee for benefits.
www.gov.uk/government/organisations/department-for-work-pensions

GOV.UK

Official government website providing information on public services, benefits, jobs, the environment, pensions and health services.
www.gov.uk

Hourglass

National organisation providing a free helpline for anyone with concerns about the abuse or neglect of an older person.
Tel: **0808 808 8141**
www.wearehourglass.org

Law Society
Representative body for solicitors in England and Wales. Contact them to find a local solicitor.
Tel: **020 7320 5650**
www.lawsociety.org.uk

NHS
National Health Service, a network of healthcare systems across the UK. Website provides information on advance decisions and advance statements.
www.nhs.uk/conditions/end-of-life-care/planning-ahead

Office of the Public Guardian
Government organisation to help people in England and Wales stay in control of their health and financial decisions. Provides information about making an LPA or applying to the Court of Protection. Investigates concerns about attorneys and deputies.
Tel: **0300 456 0300**
www.gov.uk/government/organisations/office-of-the-public-guardian

Solicitors for the Elderly
Independent national organisation of solicitors who specialise in a wide range of legal issues affecting older people. Contact them for help in finding a solicitor.
Tel: **0844 567 6173**
www.sfe.legal/public

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If you're able to, please complete the donation form below to make your gift and return to: **Freepost Age UK REPLY**. Alternatively, you can phone **0800 077 8751** or visit **www.ageuk.org.uk/donate**. If you prefer, you can donate directly to one of our national or local partners. Thank you.

Your details

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We will never sell your data and we promise to keep your details safe and secure.

☐ **I do not** wish to receive communications by post.

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Card number Expiry date

Age UK provides a range of services and your gift will go wherever the need is the greatest.

Help us be there for someone else

We hope you found this guide helpful. When times are tough, it's so important to get some support. Did you know you could help us reach someone else who needs a little help? Here's how:

Give your views on guides like this

Our Readers' Panel helps make sure the information we produce is right for older people and their families. We'd love you to join. Go to **www.ageuk.org.uk/readers-panel**.

Donate to us

Every donation we receive helps us be there for someone when they need us. To make a donation, call us on **0800 169 8787** or go to **www.ageuk.org/donate**.

Volunteer with us

Our volunteers make an incredible difference to people's lives. Get involved by contacting your local Age UK or at **www.ageuk.org.uk/volunteer**.

Campaign with us

We campaign to make life better for older people, and rely on the help of our strong network of campaigners. Add your voice to our latest campaigns at **www.ageuk.org.uk/campaigns**.

Remember us in your will

A gift to Age UK in your will is a very special way of helping older people get expert support in the years to come. Find out more by calling **020 3033 1421** or visit **www.ageuk.org.uk/legacy**.

What should I do now?

You may want to read some of our relevant information guides and factsheets, such as:

- **Thinking about end of life**
- **Wills and estate planning**
- **Living with dementia**

You can order any of our guides or factsheets by giving our Advice Line a ring for free on **0800 169 65 65** (8am-7pm, 365 days a year).

Our friendly advisers are there to help answer any questions.

All of our publications are available in large print and audio formats.

There's plenty of really useful information on our website, too. Visit **www.ageuk.org.uk/planningahead** to get started.

If contact details for your local Age UK are not in the below box, call Age UK Advice free on **0800 169 65 65.**

0800 169 65 65
www.ageuk.org.uk

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