

Cheshire West & Chester Council

Enforcement Policy

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Section

P 2	1.	Introduction
P 3	2.	Scope
P 5	3.	Standards
P 5	4.	Openness
P 5	5.	Helpfulness
P 5	6.	Proportionality
P 6	7.	Consistency
P 6	8.	Levels of enforcement action
P 7	9.	Statutory (legal) notices
P 7	10.	Written undertakings and enforcement orders
P 7	11.	Injunctions
P 9	12.	Fixed penalty notices
P 9	13.	Penalty charge notices
P 9	14.	Revocation, suspension and withdrawal of licences and permits
P 9	15.	Forfeiture
P 9	16.	Alternative sanctions
P 10	17.	Simple cautions
P 10	18.	Prosecutions
P 11	19.	Appeals, challenges and making representation about an enforcement decision
P 11	20.	Proceeds of crime
P 12	21.	Charges and costs
P 12	22.	Enforcement in Local Authority-run establishments
P 12	23.	Gathering of evidence
P 13	24.	Freedom of Information requests
P 13	25.	Equality and diversity
P 13	26.	Protection of human rights
P 14	27.	General principles of officer conduct
P 14	28.	Complaints, compliments and suggestions
P 14	29.	Review of Enforcement Policy

This policy was approved by Cheshire West and Chester Executive Committee on 16 July 2014, minute 23, and applies to all Council services that have a responsibility for enforcing legislation, including services commissioned or contracted on behalf of the Council



1. Introduction

- 1.1 Cheshire West and Chester Borough Council's Enforcement Policy provides an overarching framework that staff employed and contracted by the Council are required to follow. Whilst this policy seeks to explain key themes and general principles, members of the public and businesses are advised that detailed service-specific enforcement arrangements exist. Enforcement plans are available on the Council's website.
- 1.2 The purpose of this policy is to secure an efficient and effective approach to all council regulatory inspection and enforcement functions and improve compliance with legislation whilst minimising the burden on businesses, individuals, organisations, and Cheshire West and Chester Borough Council. This is in accordance with the Regulator's Code, published by the Better Regulation Delivery Office (BRDO).
- 1.3 In certain instances the Council may conclude that a specific requirement of the Code is either not relevant or is outweighed by another requirement. The Council will ensure that any decision to depart from the Code will be properly reasoned, documented and based on material evidence.
- 1.4 The policy explains the approach adopted when carrying out the Council's duty to enforce a wide range of legislation and is written in general terms to accommodate this.
- 1.5 The Council will endeavour to serve Cheshire West and Chester residents, businesses and consumers by working with the business community to ensure healthy, fair and safe trading, and a thriving economy. The Council will take particular care to help small compliance-focused businesses, individuals, voluntary and community organisations to meet their legal obligations at minimal or proportionate cost. The Council recognise that the public have a responsibility as guardians of their own community and locally decided remedies are encouraged to improve community cohesion.
- 1.6 When the Council takes enforcement action it will take account of national priorities alongside local priorities that exist at the time of any intervention, investigation or offence. Enforcement interventions are likely to be targeted in areas where a Council, Neighbourhood or Area priority is being compromised.



2. Scope

2.1 This policy relates to all Council services that operate a regulatory function within or on behalf of the Council.

Examples of service areas that enforce legislation and have a regulatory function include:

- Environmental Health (food safety, health and safety, environmental protection, public health and nuisance)
- Trading Standards (doorstep crime, fraud, counterfeiting, under age sales, weights and measures, food labelling)
- Planning and Building Control
- Private Sector Housing
- Licensing (liquor, hackney carriage and private hire, zoos, riding schools and caravan site licensing)
- Benefit fraud
- Waste management and street scene
- Anti social behaviour
- Parking Services
- Animal Health

Please note that this list is not exhaustive and refers to the 'traditional' name of the service area / function for simplicity.

2.2 This policy provides an overarching framework for Council employees and contractors to operate within but is also designed to provide those people who may be affected by regulatory decisions (members of the public, commercial businesses or voluntary organisations) with an overview of the Council's approach and general operating principles. Local task specific enforcement procedures, for example for Planning and Parking Enforcement exist underneath this policy to provide further detail to the public. A summary list of the enforcement arrangements that sit underneath this policy is available on Council's website and can be obtained in hard copy format by contacting the relevant service.





3. Standards

- 3.1 All officers engaged in enforcement functions are appropriately trained and authorised to ensure the highest standards of service delivery.
- 3.2 The Council expects residents and businesses to act on its officers' advice when given. If a resident or business operator chooses not to act on this advice, an enforcement intervention should be expected.
- 3.3 Enforcement action relies upon sufficient evidence to prove or support action being taken. The Council cannot act formally in any case where there is no independent witness or without corroborating independent evidence. In such cases, details will be used for intelligence purposes only.

Where a resident complains about a neighbour but there is no independent supporting evidence to prove any noise nuisance, the Council will not take enforcement action, but will recommend that the resident takes their own private action or engages in mediation.

- 3.4 In cases where there is an imminent risk to health or the environment, enforcement action may be taken before the right of challenge can be heard.
- 3.5 Section 19 of this policy provides details on how to appeal or challenge an enforcement decision and Section 28 of this policy provides details of the Council's complaints procedure.

4. Openness

- 4.1 The Council will endeavour to provide information and advice in plain language and will seek to explain clearly how it undertakes its work. The Council will discuss general issues, individual compliance failures or problems with anyone experiencing difficulties, on request.
- 4.2 A business or individual, will be notified of intended enforcement action as soon as is feasible, unless this could hamper an investigation or pose a safety risk to those concerned, the environment or the general public.

5. Helpfulness

- 5.1 The Council believes prevention is better than cure and therefore encourages businesses and others to seek advice to assist with compliance.
- 5.2 In correspondence the Council will identify named contacts for service related queries or complaints. Written correspondence will contain a unique reference number that can be quoted when contacting the Council.
- 5.3 The Council makes businesses and customers aware of the enforcement policy and changes to the enforcement policy during site visits, through correspondence and consultation processes, and will provide a printed copy of this policy on request.

6. Proportionality

- 6.1 The Council will endeavour to ensure that any action it requires is proportionate to and balanced against the risks. As far as the law allows, the Council will take account of the individual circumstances of each case when considering action. This includes the seriousness of the offence, past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

7. Consistency

7.1 The Council will carry out its duties in a fair, equitable and consistent manner. Whilst officers are expected to exercise judgement in individual cases, the Council has arrangements in place to promote consistency, including effective liaison arrangements with other authorities and enforcement agencies which may have a shared enforcement role. All investigations are undertaken in accordance with legal requirements and relevant government guidance.

The Council maintains management systems to monitor the quality and nature of enforcement activity undertaken so as to ensure, as far as is practicable, uniformity, consistency in approach and a quality service in general.

7.2 The Council ensures that where supplementary decision-making policies and tools exist, for example, the HSE's Enforcement Policy and Enforcement Management Model (EMM), they are utilised;

- to provide a framework for making consistent enforcement decisions
- to monitor the fairness and consistency of inspectors' enforcement decisions in line with policy
- to assist offenders in their understanding of the principles inspectors follow when deciding on a particular course of action

The Enforcement Management Model (EMM) is a logical system that helps officers to make health and safety enforcement decisions. The principles of EMM are applied in all health and safety regulatory actions and formally recorded where there are significant breaches of health and safety.

8. Levels of enforcement action

8.1 Legislative compliance will be secured by one or a combination of the following methods;

Promotion: to raise awareness about legal standards and promote good practice. This is typically achieved by the issuing of press releases, website information, distributing leaflets and other forms of guidance available to the public and businesses, by face-to-face contact and schemes to enhance compliance and self-regulation. Advice will normally be given through access to written information unless a particular equality need exists.

Informal warnings: these will be used to reinforce promotional activities where, whilst the law may have been broken or standards not met, it was not thought appropriate to take more formal action. An informal warning can be oral or written. If it is believed by the recipient that such a warning is inappropriate or unjustified then they may request for the decision to be reviewed by a senior officer.

Formal enforcement: this includes but is not limited to the use of statutory (legal) notices, written undertakings and enforcement orders, the refusal to grant or revoke a licence or registration, cautions, fixed penalty notices, penalty charge notices, administration penalties, powers of seizure, prosecution and the use of injunctions. Enforcement action is taken following procedures laid down in legislation, codes of practice and professional guidance notes. Where members of the public need protecting from behaviour that is likely to cause harassment, alarm or distress, the Council may seek to use a range of anti social behaviour enforcement tools, independent action, or action in consultation with the police and or the Crown Prosecution Service following conviction.

8.2 There may be cases where the local authority cannot act due to the absence of independent evidence.



9. Statutory (legal) notices

9.1 Many Acts of Parliament enforced by the Council allow for, or require the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements within a specified time period. Where a formal notice is served, the method for appealing against the notice will be provided in writing at the same time. The notice will explain what legislation has been breached, how to comply with the notice and the consequences of not complying with a notice.

9.2 In general, failure of a person to comply with a properly written and served statutory notice makes the person or business named in the notice (the recipient of the notice) liable to prosecution.

In some cases the Council is able to, and will carry out works to comply with the notice and recover the cost to the Council from the recipient(s) of the notice.

In resolving a defective drain, the Council may undertake the repair work required by the notice and recover the cost after the works have been completed. The cost of the repair work, contract management, supervision and administration time will be charged and shared equally between the neighbours who use the drain.

9.3 In some circumstances both prosecution and carrying out works in default to comply with the notice may be appropriate.

10. Written undertakings and enforcement orders

10.1 Where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action. In such circumstances, and as a proportionate measure, the Council may decide that no further formal action will be taken unless the agreement is breached.

A person who has persistently caused noise nuisance could have a written undertaking incorporated into a caution (see Section 16 on Simple Cautions) to agree to stop the noise nuisance. Similarly, cases of anti social behaviour will seek a written undertaking to ensure the offender ceases their unruly behaviour and understands what is expected of them.

10.2 In cases where an individual or organisation has breached an undertaking or has refused to provide a written undertaking to cease an action, an application to a court may be made for an enforcement order, or for other formal action in accordance with the relevant legal provisions.

11. Injunctions

11.1 In certain circumstances the Council may consider it necessary or expedient to seek an injunction to restrain or compel behaviour or activity. Injunctions are orders of the court, breach of which are punishable as a contempt of court by imprisonment or a fine.

As an alternative to an injunction order the Council may accept an undertaking.



12. Fixed Penalty Notices

- 12.1** A Fixed Penalty Notice may be used as a means of dealing with an offence instead of prosecution. Certain 'low level' offences such as littering, dog fouling and smoking in prohibited places are subject to Fixed Penalty Notices and they enable the offender to avoid a criminal record.
- 12.2** The Council will comply with any relevant guidance on the use of Fixed Penalty Notices. **This includes:**
- There must be sufficient evidence to give a realistic prospect of conviction;
 - The offence is not too serious and is of a nature suitable for being dealt with by a Fixed Penalty Notice
 - Specific guidance on issuing Fixed Penalty Notices to juveniles
- 12.3** In particular, in accordance with guidance, a Fixed Penalty Notice issued to a juvenile aged 10-15 years must be issued in front of his or her parent or legal guardian. The procedure for issuing Fixed Penalty Notices to young people aged 16 and 17 is the same as for adults.
- 12.4** Where there is doubt as to whether an offender is aged 16 or 17, the procedure for issuing Juvenile Fixed Penalty Notices to 10 to 15 year olds will be followed.
- 12.5** A Fixed Penalty Notice will not be issued to a juvenile between 10 and 17 years of age for a first offence.
- 12.6** A Fixed Penalty Notice may only be issued to a juvenile for a second (or subsequent) offence and then only if it is considered an appropriate course of action after the case has been referred to the Youth Offending Team and considered for an alternative appropriate intervention.
- 12.7** Where an adult recipient (i.e. a person 18 years of age or above) does not pay the penalty offered, or is a repeat offender, there will be a presumption that prosecution will follow in relation to the actual offence.

13. Penalty Charge Notices

- 13.1** Penalty Charge Notices are issued in relation to breaches of parking restrictions.
- 13.2** The method and circumstances for issuing Penalty Charge Notices is prescribed by specific legislation and is used as a method of enforcement whereby an individual pays an amount of money as a consequence of breaching a parking restriction. Failure to pay a Penalty Charge Notice may ultimately result in the relevant individual being pursued by the Traffic Enforcement Centre, Northampton County Court for non-payment of the debt.
- 13.3** A Penalty Charge Notice does not result in the creation of a criminal record and it is common practice for a Penalty Charge Notice to be issued without first issuing a warning.

14. Revocation, suspension and withdrawal of licences and permits

- 14.1** Where the council has issued a permit, approval, licence or other form of permission, removal of that permission, in line with the relevant guidance or legislation will be considered as an enforcement remedy.

15. Forfeiture

- 15.1** In certain cases the Council may seek an order of the court for forfeiture of goods it has seized either as part of a criminal investigation or in the exercise of its enforcement functions.

16. Alternative sanctions

- 16.1** In certain circumstances alternative sanctions may be offered. Alternative sanctions include paying to attend a training or awareness-raising event linked to the offence as an alternative to prosecution or any other enforcement measure.

Members of the public who are captured on CCTV urinating in the streets of Chester may be given the option to pay to attend an awareness course designed to educate them about the consequences of their behaviour, as an alternative to prosecution. This method has proven to be very effective in preventing repeat offending.



17. Simple cautions

- 17.1** As an alternative to prosecution, in appropriate circumstances a simple caution may be considered in accordance with the guidelines relevant to the cautioning of adult offenders.
- 17.2** A simple caution is not a criminal conviction but will form part of an offender's criminal record and may be referred to in any subsequent proceedings.
- 17.3** For a simple caution to be issued the following are required:
- a) sufficient evidence to provide a realistic prospect of conviction and in the public interest to caution
 - b) a reliable admission by the offender
 - c) the offender must be over 18 years of age
- 17.4** The refusal of an offender to accept a simple caution will not prevent the matter from being prosecuted.

18. Prosecutions

- 18.1** The Council will use discretion in deciding whether to initiate a prosecution. Where the circumstances justify it, prosecution without prior warning may take place.
- 18.2** The Council will consider prosecution when:
- a) It is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution, or where;
 - b) Through the conviction of offenders, others may be deterred from offending; or
 - c) There is the potential for considerable harm arising from the breach; or
 - d) The gravity of the offence, taken together with the general record and approach of the offender justifies it
- 18.3** The decision to prosecute will always take account of the criteria set down in the Code for Crown Prosecutors.
- 18.4** Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction taking account of any defence that may be available, and it must be in the public interest.

18.5 The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

- The prevalence of the type of offence
- The need for a suitable deterrent
- The risk of danger or injury to the public
- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward
- Significant financial loss, potential or actual, to a third party
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes

18.6 Where possible an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow.

18.7 All prosecutions will be brought without unnecessary delay.

18.8 The Council will aim to maximise its effectiveness by working with other authorities and other agencies, sharing intelligence where it is lawful to do so and mounting joint operations where that would bring benefits.

Outside agencies include:

- Police
- Environment Agency
- Health and Safety Executive
- Food Standards Agency
- Fire Service
- HM Revenue and Customs
- DEFRA / Animal Health and Veterinary Laboratories Agency
- Office of Fair Trading
- Assets Recovery Agency
- Department for Work and Pensions
- Registered Social Landlords
- The enforcement arms of trade protection organisations such as the Federation against Copyright Theft

18.9 Where there has been a work-related death, or there is a strong likelihood of work-related death, the Council will liaise and work jointly with the Police, Coroner and the Crown Prosecution Service in accordance with the joint Work Related Death Protocol. <http://www.hse.gov.uk/pubns/wrdp1.pdf>

19. Appeals, challenges and making representation about an enforcement decision

19.1 Appeals, challenges and making representation about an enforcement decision should not be confused with complaints about an officer or the service.

19.2 Where statutory appeal processes exist, guidance on how to appeal will be provided at the time of enforcement action.

19.3 Where no statutory appeal process exists, for example in the case of a Penalty Charge Notice issued for a parking offence, guidance on how to challenge or make a representation is provided at the time of issue and on the Councils website.

20. Proceeds of crime

20.1 In appropriate cases, an application will be made under the provisions of the Proceeds of Crime Act for confiscation of assets to recover the financial benefit an offender has obtained during the course of their criminal conduct. Advice should be sought from the Accredited Financial Investigator at an early stage of a criminal investigation so that the Financial Investigation can be progressed without delay.

20.2 Notice of the application to proceed to confiscation must be made after a conviction has been secured but prior to sentencing.

21. Charges and costs

21.1 Certain enforcement activities incur a charge. Any charges made are to recover costs, not to make a profit. Some charges are set by statute, others are determined by the Council. When setting fees and charges the authority must be able to demonstrate they are fair, reasonable, transparent, and consistent. In certain exceptional cases the Council has discretion to take into account the personal circumstances of the recipient of the charge for enforcement action. Fees and charges are set annually and can be viewed on the Council website

21.2 Where possible the fee must be paid before receipt of the service.

For Housing Act notices, a demand for payment will be made when the notice is served. This enables the recipient to appeal against the content of the notice and / or the charge, and minimises the delay in the notice becoming operative. Once the notice becomes operative, when the appeal period is over, the Council can issue an invoice (if payment has not been received) and register it as a Local Land Charge on the property until the debt is recovered.

21.3 Where appropriate, the Council will seek to recover from the offender or perpetrator the reasonable cost it incurs in pursuing a particular enforcement route including prosecution, injunctive action or appeal.

22. Enforcement within local authority-run establishments

22.1 Where the Council is the Enforcing Authority for its own premises, steps are taken to ensure that enforcement decisions are free from any conflict of interest.

22.2 Serious breaches of law are brought to the attention of the relevant Head of Service and Chief Executive without undue delay.

23. Gathering evidence

23.1 Regulatory bodies are empowered to gather evidence by various means, this can include overt methods i.e. where the subject is aware or where appropriate, covert methods, where the subject is unaware. Remote CCTV and other recording devices may be utilised for gathering evidence.

The Council may covertly obtain communications data such as telephone subscriber details and service use. In such cases of directed surveillance or obtaining communication data, appropriate authorisation is sought in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Protection of Freedoms Act 2012.

Authorisation may be sought for directed surveillance if the offence in question could result in a sentence of six months or more imprisonment, there are however exemptions to this criteria including the sale of alcohol and tobacco to children.

23.2 Enforcement officers apart from parking enforcement officers, may not always conduct their duties in Council issue uniform. For example, in areas of concern where high levels of littering and dog fouling have been reported, it may be necessary for plain clothed enforcement officers to undertake intelligence led targeted patrols. This will only occur when residents in the area have been made aware of in advance by one or more of the following methods; Letter / leaflet; community notice board; local newspaper; on street signage or other locally agreed method.

23.3 During an investigation, the type of evidence or intelligence gathered may include one or any combination of the following:

- Paper records
- Computer records
- Photographs
- CCTV
- Body cameras
- Samples (food, water, environmental, faecal, pests)
- Counterfeit goods
- Witness statements
- Test purchases
- Invoices
- Dangerous equipment
- Noise monitoring equipment / records
- Plans / sketches
- Information available on social networking websites
- Communications data
- Information from other agencies such as the police or Health and Safety Executive

This list is not exhaustive.

23.4 Depending on the circumstances, evidence may be detained indefinitely. In certain circumstances, where there is a potential risk to health, the Council may seek to destroy equipment that has been seized. This would include, for example, the destruction of tattooing and body piercing equipment used by an unlawful operator, to prevent the spread of blood borne disease.

Officers ensure that unfit food which has been seized or voluntarily surrendered is destroyed or disfigured to prevent any possibility of it being returned to the food chain.

23.5 Failure to assist an investigation and / or obstruct an officer is an offence under many pieces of legislation. The Council expect co-operation and will take action in the event of non co-operation. If an individual fails to give their personal details during an investigation, this may be considered an additional offence.

23.6 In gathering evidence, the Council routinely undertake recorded investigative interviews under caution in accordance with the Police and Criminal Evidence Act and associated Codes of Practice. The aim of the interview is to obtain an honest and accurate account about the matter under investigation and allows the individual or business the opportunity to convey their version of events as part of an investigation. Attendance in person at an interview under caution is expected on the grounds of gathering best evidence and efficiency of the investigation process. This process assists the individual or business in the 'right to a fair trial' in accordance with the Human Rights Act 1998.

23.7 Information on the conduct of the interview and rights of an individual or business will be explained before the interview in accordance with the Codes of Practice referred to above and the Council's own Quality Procedures.

24. Freedom of information requests and sharing information

24.1 The Council routinely respond to requests for information made under the Freedom of Information Act 2000 and Environmental Information Regulations 2004. This can include formal letters and / or enforcement notices sent to businesses.

Where the release of information into the public domain could adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of the Council to conduct an inquiry of a criminal or disciplinary nature, the Council may refuse to disclose information. Full details are available in the Council's Freedom of Information Policy and Freedom of Information Charging Policy.

24.2 In certain cases, enforcement services will share information that the Council holds with other agencies for example, the Food Standards Agency, the Health and Safety Executive, HM Revenue and Customs, Police, Fire Authority and the Environment Agency.

24.3 The Council stores all personal data in accordance with the requirements of the Data Protection Act 1998, in particular, the principles set out in Schedule 1 of that Act.

25. Equality and diversity

25.1 Procedures developed under this policy and the policy itself are subject to an Equality Analysis to ensure that all aspects of Equality and Diversity are considered in its production.

25.2 All Equality Analyses are subject to regular review to ensure a continuing commitment to be inclusive, and are available on the Council's Website.

25.3 This policy and service standard documents can be provided in other formats such as audio, large print, on CD or can be translated on request.

25.4 Officers will visit customers with an access need where this is necessary.

25.5 Translation services are available to support investigations and, pictures and taped interviews can be used as an alternative to written exchange where a need is identified.

26. Protection of human rights

26.1 This policy and all associated enforcement decisions take into account the provisions of the Human Rights Act 1998. In particular:

- The right to a fair trial (article 6)
- The right to respect for private and family life, home and correspondence (article 8)



27. General principles of officer conduct

- 27.1** In addition to the principles set out in this policy, officers will always endeavour to present themselves professionally and courteously.
- 27.2** Officers will, as the circumstances allow, announce who they are and in what capacity they are acting. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of the investigation.
- 27.3** Officers will carry, and show their identity card or authorisation as appropriate.
- 27.4** Officers will engage with individuals and groups effectively without discrimination.

28. Complaints, compliments and suggestions

- 28.1** Complaints, compliments or suggestions on any aspect of the services the Council provides, should, in the first instance, be directed to the Service Manager of the relevant service area.
- 28.2** If the Council's response to a complaint about the service fails to resolve the matter, you may lodge a formal complaint using the information below. The issue will then be investigated through the Council's corporate complaint procedure.

Details of the Council's corporate complaints procedure is available as follows:

On the web at:

www.cheshirewestandchester.gov.uk

Via email on:

solutionsteam@cheshirewestandchester.gov.uk

By telephone on: **0300 123 8 123**

Or, by writing to:

The Solutions Team

Cheshire West and Chester Council

HQ Building, 58 Nicholas Street, Chester CH1 2NP

- 28.3** Where a complaint is received about the conduct of an officer, an investigation will be conducted in parallel to the enforcement action and will not delay the enforcement process.

29. Review of this enforcement policy

- 29.1** This policy will be reviewed every five years or more frequently in response to a significant service change or changing regulation.
- 29.2** If you have any queries regarding the content of this policy, please contact **0300 123 7038**

Accessing Cheshire West and Chester Council information and services

Council information is also available in Audio, Braille, Large Print or other formats. If you would like a copy in a different format, in another language or require a BSL interpreter, please email us at **equalities@cheshirewestandchester.gov.uk**

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