



HM Treasury

# Guidance on Public Sector Exits:

## Approval of Exits and Special Severance Payments

August 2022



# Guidance on Public Sector Exits: Approval of Exits and Special Severance Payments



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# Chapter 1

## Introduction

- 1.1 This guidance sets out the Government's position on the use of employee exits and special severance payments in 'Central Government' and/or bodies that do not have a specific right to make exit payments. Each year public sector exits cost the government hundreds of millions of pounds. Although they can be an important mechanism to allow employers to reform and react to new circumstances in the workplace, it is vital that they represent value for money and are fair to the taxpayers who fund them.
- 1.2 The purpose of this guidance is to:
- Set out the criteria employers should consider before deciding on the exit of an employee;
  - Set out the criteria for agreeing any special severance payments;
  - Explain the process for approval of large exits by responsible ministers and approval of special severance payments by HMT;
  - Set out the updated transparency requirements for exits and special severance payments.
- 1.3 Employers have a responsibility to ensure that employee exits are only agreed when there is a clear justification for doing so. They should be satisfied that agreeing or mandating the exit of an employee is a value for money solution, ensure that all relevant internal policies and procedures have been followed, and ensure that all alternative courses of action have been fully explored and documented.
- 1.4 Bodies in scope should consult this guidance before agreeing or mandating a staff exit and ensure that the relevant process is followed.
- 1.5 Special severance payments are referenced specifically in [Managing Public Money, Annex 4.13](#), and the guidance here on special severance payments is supplementary to this.
- 1.6 When it is established that a special severance payment must be paid, it is the responsibility of both individual employers and sponsoring departments to ensure their special severance payment arrangements are fair, proportionate, lawful and deliver value for money for the taxpayer.
- 1.7 Public sector bodies should consult this guidance before making a special severance payment and ensure the relevant processes outlined in this guidance are followed and documented.

- 1.8 Public sector bodies, including Departments, can provide additional guidance on the application of this guidance for their responsible bodies.
- 1.9 Additional guidance should comply and be read in conjunction with this guidance. We will review and update this guidance regularly.

# Chapter 2

## Exits and Payments

- 2.1 This guidance covers approvals for two types of exit:
- 1 High value exits, where the total exit payment to be made will exceed £95,000
  - 2 Exits where a special severance payment is proposed
- 2.2 For the purposes of this guidance, an employee exit is any scenario where any employee, officeholder, worker, or contractor leaves the employment of a body.
- 2.3 An exit payment is any payment made to an employee upon or in relation to their exit, which could arise from a statutory or contractual obligation, or from employer discretion.
- 2.4 Special severance payments are payments made to employees, officeholders, workers, contractors, and others outside of their normal statutory or contractual entitlements when leaving employment in public service whether they resign, are dismissed, or reach an agreed termination of contract.
- 2.5 The types of payments which constitute special severance payments will vary according to an employee's circumstances, and therefore the examples below are illustrative only. In the case of any doubt as to whether a payment constitutes a special severance payment, approval should be sought.
- 2.6 Any payment in respect of which the right is disputed by the employer, in whole or in part, should be treated as a special severance payment which requires approval.

### Types of Exit Payment

- 2.7 Unless they are specified below as out of scope of this guidance, all payments listed below should be included when calculating the value of an employee exit and deciding whether it has met the £95,000 threshold for approval by a responsible minister.
- 2.8 A special severance payment of any amount will need approval by HMT, unless a specific delegation is in place.
- 2.9 The following types of payment represent contractual or statutory exit payments
- a) Statutory redundancy payments;



- b) Contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise;
- c) Payment for untaken annual leave;

2.10 The following types of payments may constitute contractual or special severance payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- a) Pay in lieu of notice (PILON);
- b) Pension top up payments;
- c) Voluntary redundancy or mutually agreed resignations outside of scheme terms;
- d) Bonuses accrued but not yet paid.

2.11 The following types of payments are likely to constitute special severance payments:

- a) Payments reached under a settlement agreement in excess of contractual commitments;
- b) The value of any employee benefits or allowances which continue beyond the employee's agreed exit date;
- c) Write-offs of any outstanding loans;
- d) Any special leave, such as gardening leave;
- e) Any honorarium payments or gifts;
- f) Any hardship payments;
- g) Any payments to employees for retraining related to their termination of employment;
- h) Payments agreed as part of a judicial or non-judicial mediation.

2.12 The following do not constitute statutory, contractual, or special severance payments, or are otherwise out of scope of this guidance:

- a) Payments ordered by a court or tribunal;
- b) Payment made in respect of incapacity or death, or as a result of accident, injury or illness.

# Chapter 3

## Scope

- 3.1 When a decision is made for an employee to be exited from a public sector body, it is important that full consideration is given to the impacts this will have on the individual, the body in question, the wider public sector, and the taxpayer.
- 3.2 There are many instances when employee exits and their associated costs are important to meeting government priorities, however there should be a rigorous process for deciding whether they are necessary. The control process for high value exits is designed to ensure that exits are not used unless alternatives like redeployment have been fully considered.
- 3.3 Special severance payments when staff leave public service employment should be exceptional. They require HM Treasury approval because they are often novel, contentious, and potentially repercussive. Such payments can appear to reward failure and set a poor example for the public sector generally. Departments should always consult HM Treasury in advance when considering a special severance payment.

### Bodies in Scope of the Controls Process

- 3.4 This guidance applies to all bodies that are classified as 'Central Government' and/or bodies that do not have a specific right to make exit payments as set out in its Framework Document, Articles of Association, Board Terms of Reference or elsewhere. If there is any doubt regarding whether an exit payment requires approval, bodies should proactively check their existing delegations and the relevant HM Treasury Spending Team should be contacted to advise on scope of the guidance.
- 3.5 Some bodies may wish to have powers to approve exits delegated to them above the threshold, either in general or for a set number of exits. Bodies should raise this with HM Treasury via their sponsorship bodies. The Chief Secretary to the Treasury will need to agree such delegations.
- 3.6 As a specific requirement under Managing Public Money, approval of special severance payments must be given by HM Treasury, unless specific delegations are in place.
- 3.7 Even where delegations are in place, bodies/departments should notify HM Treasury of cases which:
  - Involve important questions of principle;
  - Raise doubts about the effectiveness of existing systems;

- Contain lessons which might be of wider interest;
- Might create a precedent for other departments; or
- Arise because of obscure or ambiguous instructions issued centrally.

# Chapter 4

## Process for Approval

- 4.1 There are two distinct processes for approval of exits:
- 1 Approval by Secretaries of State of a body's decision to exit an employee with exit payments higher than £95,000.
  - 2 Approval of any special severance amounts to be offered, by HMT.
- 4.2 In cases where an exit package totals £95,000 or over and has a special severance element included, both approvals will need to be sought.
- 4.3 Departments must ensure that all their sponsored bodies are aware of the criteria for assessment of cases.
- 4.4 Departments must routinely apply these criteria when assessing every exit and special severance case.

### Secretary of State Approval of Exits over £95,000

#### Process for Approval

- 4.5 It is the intention of this framework that the contractual and statutory rights of employees are fully respected, therefore approval will focus on whether there is a viable alternative to employee exit. If an exit is agreed, the employer must fulfil all contractual and statutory obligations.
- 4.6 The process required to seek approval for high value exits is as follows:
- The organisation/department/body decides upon an exit and gains approval of their Accounting Officer, and any other approvals that are presently needed.
  - The organisation/department/body will submit a business case for approval by their responsible Secretary of State, via departmental officials. As is current practice, bodies using the Civil Service Compensation Scheme will submit cases to the Cabinet Office for review by ministers there.
  - Departmental officials will communicate any decision back to the relevant body in writing.
  - The sponsoring department will submit a transparency return to HMT for any cases which are approved. HMT may then require additional approvals if these returns indicate cause for concern. A proforma return is at Annex B.
- 4.7 A body or department may need to undertake large organisational transformations, where a number of exits above the threshold are expected.

In such circumstance, bodies and their sponsoring departments may wish to engage HM Treasury, and with CST agreement may submit cases for bulk approval or receive a limited delegation to make exit decisions.

## Criteria for the Assessment of Cases for Exits Over £95,000

- 4.8 Departments should ensure that approval of an exit is dependent on the following being demonstrated through the business case:
- a) That there are clear and compelling reasons for an exit to be made as proposed, and that there will be a significant benefit to the business overall. Taxpayers should be able to expect that when an exit is agreed there should be a wider benefit to the public sector.
  - b) That alternatives to exit, such as continued employment, redeployment, and management action have been fully explored, and not unduly dismissed. There may be alternatives to an exit which are better for the individual or body concerned, or the wider public sector. Exits should not be used to avoid a full performance management process.
  - c) That there is a clear value for money argument to exiting an employee, relative to any viable alternatives identified. It is right that there is additional scrutiny of higher value exits.
  - d) That there are no undue risks attached to the exit being made, e.g., legal, or reputational risks.
- 4.9 When considering cases, departments will necessarily regard any contractual or statutory costs as a fixed cost attached to the exit. Contractual and statutory rights of employees must be respected, and contractual and statutory exit payments can generally only be avoided where there is a viable alternative to an exit.

## Approval of Special Severance Payments

### Process for Approval

- 4.10 The process required to seek approval of special severance payments is as follows:
- The organisation/department/body decides upon the payment of a special severance payment, and agrees this to at least Accounting Officer level, depending on what clearances are presently required.
  - The body or a relevant sponsoring department submits a business case (Annex A) to the relevant HMT spending team, who will review alongside the Workforce Pay and Pensions team, and Treasury Office of Accounts where appropriate
  - Where the value of a proposed special severance payment is £95,000 or above, or the individual in question receives a salary above £150,000, CST approval will be required. Advice will be submitted by the relevant spending team, in consultation with the Workforce Pay and Pensions team and Treasury Office of Accounts in HM Treasury.

- Notification of the outcome of the case will be made in writing to the sponsoring department.
- 4.11 For special severance payments, HM Treasury approval must be sought in advance and in good time to allow reasonable consideration of the case, and negotiation mandates to settle must be sought in advance.
- 4.12 Departments should allow for 20 working days for HM Treasury to assess and scrutinise individual cases, although HM Treasury will endeavour to process cases as quickly as possible.
- 4.13 HM Treasury approval must be confirmed in writing, even when initially given orally and cannot be implied.
- 4.14 Departments and their ALBs are also required to seek ministerial approval (including the approval of the Minister for the Cabinet Office) of confidentiality clauses in certain circumstances. Cabinet Office guidance on the use and approval of such agreements is also available.
- 4.15 Departments are responsible for ensuring that Special Severance Payments to senior staff are transparent and negotiated avoiding conflicts of interest.

### Criteria for the Assessment of Special Severance Payments

- 4.16 Departments should not treat special severance as a soft option, e.g. to avoid management action, disciplinary processes, unwelcome publicity or reputational damage.
- 4.17 For a special severance payment to be agreed, it will be important to demonstrate that an exit is necessary, or else that a settlement is required. Approval of a special severance payment will be reliant on demonstration that:
- a) There is a specific case for offering a special severance payment, e.g. to facilitate a necessary exit or mitigate a legal risk.
  - b) That all alternative options including management procedures and redeployment have been fully considered.
  - c) The payment amount represents value for money in the context of other potential costs, including efficiency savings from workplace reform.
  - d) The payment represents a one-off for a specific case, and does not create a wider precedent.
  - e) A thorough review of the circumstances of the case is conducted with a lessons learned exercise and measurable improvement plan (including dates) is implemented to prevent further exit payments in the organisation.
  - f) Appropriate arrangements for recovery of the exit payment have been put in place (further discussion of this is below).

## Settlement Agreements

- 4.18 Any payment proposed as part of a settlement agreement in excess of contractual, statutory, and other entitlements is a special severance payment and authorisation must be given in writing by HM Treasury before such a settlement is agreed.
- 4.19 Where there is a dispute between the employer and employee or ex-employee, employers should consider, at an early stage, the likelihood of an employment tribunal or other claim and seek legal advice on potential costs involved. Employers must first consider non-financial avenues to resolve disputes in collaboration with the parties involved.
- 4.20 Proposals for special severance settlements, should consider the following:
- a) Evidence of attempt to resolve a grievance before it escalates to an employment tribunal claim;
  - b) Precedents from other parts of the public sector may not always be a reliable guide in any given case;
  - c) Legal advice that a severance payment appears to offer good value for the employer may not be conclusive since such advice may not take account of the wider public interest;
  - d) Even if the cost of defeating an apparently frivolous or vexatious appeal will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceeding as:
    - o Winning such cases will discourage frivolous or vexatious claims and demonstrate that the government does not reward such claims.
    - o Where claims are genuine, this will ensure that prompt action is taken to ensure further grievances do not arise.
- 4.21 The Government's default approach is not to settle, and HM Treasury will closely scrutinise any such cases to ensure special severance payments are only made in exceptional circumstances and represent value for money for the Government as a whole. Special severance payments in settlement agreements will only be considered if:
- Attempts to settle dispute(s) without special severance payments have been made; and either;
  - Legal advice has been sought and clearly recommends settling the claim; or
  - Where legal advice is finely balanced, there is a clearly evidenced value for money case not to adopt the Government's default approach and settling is clearly the best course of action.
- 4.22 HM Treasury will consider the merits of any special severance payment for the Exchequer as a whole, rather than simply for the body concerned.
- 4.23 For additional guidance on the use of confidentiality clauses in settlement agreements please refer to [Cabinet Office Guidance on Settlement](#)

## Special Severance Payment Recovery

- 4.24 Departments/bodies should proactively seek to ensure that special severance payments are recoverable in some cases where the individual is re-employed after a given period. Good reasons to deploy such a provision include;
- a) The payment is particularly large, and as such there are fairness and value for money reasons for reclaiming part of it if the individual concerned quickly finds new employment;
  - b) The payment is controversial, and there is a fine judgement about whether it initially should be offered.
- 4.25 Conversely, it may be inappropriate to introduce a recovery arrangement when:
- a) It might prevent settlement of a claim;
  - b) The exit payment is prompted by some failure by the exiting body;
  - c) The payment amount is small, and the burden attached to agreeing and implementing a recovery clause is therefore disproportionate.
- 4.26 It will be for the exiting department/body to determine the precise appropriate terms for special severance payment recovery, agree those with the individual, and demonstrate to HM Treasury that the terms are fair and proportionate.

## Principles for Repayment Terms

- 4.27 When agreeing a repayment obligation with an employee, bodies should have regard to the following principles:
- a) Repayment obligations should be applied to those parts of the exit payment which are discretionary (i.e. special severance payments), in accordance with the criteria at 4.25 and 4.26. It may be necessary to treat different parts of an overall exit package separately.
  - b) Repayment obligations should cover an appropriate scope of new employment, with clear justifications given. This might cover return to the same employer or overall central government sector or compensation scheme operator (e.g. the Civil Service, the NHS), or extend more broadly across central government.
  - c) A repayment obligation should cover returns after exit over a reasonable period of time, which is neither overly restrictive on return to the public sector, nor unduly lax. A period of 12 months may be an appropriate starting point for consideration.
  - d) A repayment obligation should take account of the length of time between exit and return, and the notional lost earnings during this period



- e) A repayment obligation should take account of the terms of re-employment, in particular any reduction in salary upon re-employment.
- f) A repayment obligation must include clear provisions for repayment to be made between the individual and the exited body. This should include an obligation for the individual to disclose their prospective new employment to their old employer or scheme administrator, and agree a plan for repayment, before a new contract is entered into.
- g) In general, repayment of the qualifying amount should be within 6 months of new employment being undertaken.

## Example Repayment Terms

4.28 Bodies should seek to agree the terms of a repayment obligation based on the application of the principles set out above, and their own legal advice. They may wish to set out their own best practice terms for use in multiple cases. For reference, the below are example terms likely to be consistent with the principles set out above.

- i. The relevant employee must repay part of their qualifying special severance payment (net of any tax) if they are re-employed within the same part of central government (to be specified) within 12 months.
- ii. The repayment amount is to be calculated as  $A - (A*B)/365$  where A is the qualifying special severance payment net of any tax, B is the number of days between the individual leaving and re-commencing employment.
- iii. Where the individual is re-joining on a lower net annual salary, the repayment amount should then be multiplied by  $D/C$ , where D is the new net annual salary, and C is the previous net annual salary.
- iv. The individual leaving employment must inform their old employer if they trigger their repayment obligation. The old employer must undertake to contact the employee after 12 months to establish whether the obligation has been triggered.

# Chapter 5

## Reporting and Transparency

- 5.1 Employers should continue to follow existing relevant guidance on reporting exit payments and special severance payments. Employers are required to disclose in their annual accounts information about all exit payments paid during the financial year. This disclosure includes details about the number of exit payments paid in bands from £0-£25,000, £25,001-£50,000, £50,001-£100,000, £100,001-£150,000 and £150,000+.
- 5.2 Departments are now also responsible for ensuring that the transparency report (Annex B) is completed for all exits packages which exceed £95,000 and is submitted to HM Treasury within 30 days of the payment being made. This report covers the detail of the exit payment made and the justification for making the exit.
- 5.3 Additionally, public sector authorities should publish the details of all special severance payments in their annual accounts. At the end of the financial year, the responsible authority should publish a breakdown of:
- The number of special severance payments made by the responsible authority in the previous financial year,
  - The total amount paid out, and
  - The maximum (highest), minimum (lowest) and median value of all payments made.
- 5.4 Departments, their ALBs and non-departmental public bodies are also required to provide data on all exits and special severance payments annually, as part of the Workforce and Pay Remit (WPR) application in OSCAR.
- 5.5 Evidence to support all exits should be collected and stored, so it is easily accessible and clear to understand. Records of the cases submitted for approval, and subsequent decisions made by Departments and HM Treasury should also be retained. Departments are expected to assure themselves that their arm's length bodies (ALBs), and non-departmental public bodies (NDPBs) are properly recording and holding information relating to special severance payments.

# Chapter 6

## Compliance and Breaches

- 6.1 Accounting Officers are responsible for ensuring their relevant policies and procedures are updated in line with this guidance.
- 6.2 The Accounting Officer is responsible for ensuring any staff exit or special severance payment represents value for money and has the necessary approvals in place. Any exit or payment that is not compliant with the process set out within this guidance is to be considered a breach of the controls, which may result in sanctions on the organisation or, if appropriate, on the sponsoring department, by HM Treasury.
- 6.3 Any breach of the control process may result in a deduction from the departmental budget or an increase in spending controls. Breaches include the following, but this list is not exhaustive:
- Agreeing to an employee exit with associated costs above the relevant threshold without HM Treasury approval
  - Agreeing with an individual or entering any other potentially legally binding arrangement to pay a special severance payment without HM Treasury approval,
  - Paying an amount that exceeds the amount approved,
  - Not complying with any aspect of this guidance.
- 6.4 Financial sanctions for breaching this process are at the discretion of the Chief Secretary of the Treasury (CST). The maximum penalty is the highest out of five times the relevant exit payment or £10,000.
- 6.5 When considering the severity of potential sanctions, the CST may consider mitigating circumstances, the value of the special severance payment and previous compliance with controls.
- 6.6 Departments are responsible for ensuring their sponsored organisations follow the correct process and departments may be sanctioned for the non-compliance of sponsored organisations.
- 6.7 Departments can expect the severity of the sanction to increase incrementally if continuous breaches occur.
- 6.8 Sponsoring departments must inform HM Treasury, within 20 working days, of any potential breaches that they become aware of.

- 6.9 In circumstances where approval has not been sought in advance of making or offering a payment, bodies are required to seek retrospective approval as soon as they become aware of the requirement to do so.
- 6.10 Cases where exits have already been agreed before the publication of this guidance will not require retrospective approval.

# Annex A

## Special Severance Business Case Pro-Forma

- A.1 This business case is to be submitted to the relevant HMT spending team in cases where a body wishes to make a special severance payments.
- A.2 Please read [Approval of Exits and Special Severance Payments](#) before completing the proforma. You should be aware that we cannot approve special severance payments that reward, or will be seen to reward failure, dishonesty, or inappropriate behavior.
- A.3 This template is to be used for all cases to be submitted to HM Treasury for approval. We will only be able to give approval if all aspects are answered. Completed forms should be submitted to the relevant department's normal HM Treasury Spending Team contact.

Special Severance Business Case	
Contact in Sponsor Department	
Name of Requesting Organisation	
Date case is submitted	
Date decision is needed and why	
Accounting Officer who approved case	
Circumstances of the Case	
Overview of the Case and Organisation	
<i>Please provide a brief case history, with key dates, summarising how the situation has come about. Specify organisations key deliverables, size and previous use of severance payments</i>	
Terms of employment	
<i>What are individual's terms of employment (length of service, current salary, contractual notice period, type of contract (e.g. fixed term, part time)?</i>	

<b>Breakdown of proposed exit payment</b>
<i>Please list each type of payment separately e.g. Statutory redundancy, pay in lieu of notice, Special Severance Payment</i>
<b>Proposed ways of proceeding</b>
<i>What is the individual's contractual entitlement, and why do you propose to make a Special Severance Payment? What is the scope for reference to tribunal (incl. summary of the legal assessment of the chances of winning or losing the case, potential consequences)? Other options considered?</i>
<b>Financial Considerations</b>
<b>The value for money consideration underlying the proposed payment</b>
<i>Set out break-down of costs, including legal costs; potential tribunal awards. Highlight efficiency savings from workplace reform and/or any associated repercussive risks e.g. conduct issues to the delivery of the organisation's objectives. Provide rationale for proposed level of settlement (with pay comparison i.e. x months' pay / y% of salary); costs of alternative options, and why a proposed settlement offers best (include best value for money) solution. When considering vfm, non-financial costs (i.e. effect on staff morale, achievement of business objectives) can also be considered.</i>
<b>Non- Financial Considerations</b>
<b>Performance management</b>
<i>Specify if performance has been an issue for the individual. Provide details of performance management procedures followed if applicable.</i>
<b>Management procedures</b>
<i>Specify measures taken to prevent the exit, including efforts to perform reasonable adjustments, resolve grievances or redeploy.</i>
<b>Repercussive Risk</b>
<b>Lessons learnt from this case</b>
<i>Explain what lessons have been learned and how management systems have been/will be improved to avoid future occurrences of similar cases.</i>
<b>Wider impact and potential precedents</b>
<i>Explain whether this case might have an impact on or set a precedent for other existing or future cases, both within own organisation, and for other public sector bodies.</i>

<b>Exit Payment Recovery</b>
Use of recovery clause(s)
<i>Please see section xxx of relevant guidance. Do you propose to attach a recovery clause to the special severance amount? Please set out the rationale for the approach taken. Recovery clauses should be used whenever it is appropriate to do so.</i>
Terms of Recovery Clause(s)
<i>If a recovery clause is to be used, please indicate the relevant terms such as the payments covered, the period and nature of any repayment obligation.</i>
<b>Any Other Useful Information</b>

# Annex B

## Transparency Report

- B.1 This transparency report should be completed for any approved exit which totals more than £95,000
- B.2 Please read [Approval of Exits and Special Severance Payments](#) before completing the report.
- B.3 Completed reports should be submitted through sponsoring departments to their HM Treasury Spending Team contacts.

Transparency Report for Exits over £95,000	
Sponsor Department	
Organisation	
Accounting Officer Name and Approval	
Employee Information	
Length of Service	
Age	
Salary at Time of Exit	
Rationale for Exit	
Type of Exit (please choose from: Compulsory Redundancy, Voluntary Redundancy, Voluntary Exit, MAR, Ill Health Retirement, Retirement, Dismissal or Other)	
If Other; please provide more details	
Reason for Exit	
Was this exit part of a large exit scheme? (Where more than 5 employees were exited at the same time)	
Actions taken to avoid exit (e.g. changes to recruitment or re-deployment explored)	
Details of Exit Payment	
Total Exit Payment Made	



<p>Amounts paid for Statutory or Contractual Entitlements (please list each separately, i.e. Contractual Redundancy Payment, Notice Pay etc)</p>	
<p>Please state which compensation or exit scheme rules were applied to this exit (e.g. Civil Service Compensation Scheme, individual contract terms)</p>	
<p><b>Any other useful information</b></p>	
<p><i>Please add any contextual information which is not covered above but may be relevant to the decision to exit the employee.</i></p>	

## HM Treasury contacts

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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