

## Welcome to the Summer edition of the OISCNews



In this newsletter you will find articles on Judicial Review Case Management; outlining the process for applying and the common difficulties that we have found with those applications already received. There are items on how we apply risk assessment to our regulation.. We have also worked with the Bar Standards Board and the Solicitors Regulation Authority to issue guidance on immigration and asylum issues; and delivered general guidance on the OISC and barristers. These too are outlined in this edition.

In the last few months we have seen the culmination of two major OISC investigations, one a registered organisation and the other a person seeking to avoid regulation. Both caused significant harm and hardship to a large number of people. These have resulted in the most severe sentences for OISC cases to be issued by both the criminal court and the Tribunal.

Finally, the **General Data Protection Regulation (GDPR)** which is the new legal framework concerning data in the EU, is also discussed in this issue. These regulations will apply to you (and us!) from May 2018 and the government has indicated that they will continue to apply in the UK post-Brexit.

Although the impact of Brexit is uncertain, it will undoubtedly provide opportunities for new approaches and initiatives. We therefore look forward to working with advisers to maintain a flexible yet robust regulatory regime which fully meets the needs of consumers. But in the immediate future, I hope you are able to enjoy a relaxing and refreshing summer break.

### **S**ince our spring newsletter:

- a General Election has taken place;
- a minority government has been established;
- the Rt Hon Brandon Lewis MP has become the Minister of State for Immigration; and
- Brexit negotiations have started in earnest.

What these changes mean in terms of the government's policy on immigration and asylum remains to be seen; but in the meantime the OISC has been forging ahead on many fronts.

Unfortunately, despite once again having pulled out all the stops to finalise our Annual Report and Accounts for last financial year by mid-July, the Home Office was unable to secure a slot for this document to be laid before Parliament before the summer recess, so it must remain unpublished until later in the year. We can only hope that the delay will be shorter than last time when, you may recall, the Annual Report and Accounts for 2015/16 did not appear until January 2017.

August 2017

*JRCM gives those approved greater opportunities and the chance to maintain responsibility for the conduct of a client's case at a crucial stage.*

**S**ince 1 June 2017 Following the implementation of the new **Guidance on Competence**; registered advisers have been able to apply to the OISC for permission to undertake Judicial Review Case Management (JRCM) work. This allows a Level 3 OISC adviser to use "Licensed Access" to instruct a barrister to make judicial review applications on behalf of their clients, where appropriate. Advisers will only be approved in JRCM in the category that they are currently authorised to advise in, that is in immigration or asylum unless already practising in both areas.

The work includes

- Advising on the merits of judicial review proceedings
- Drafting written instructions for counsel to represent a client in proceedings
- Drafting witness statements and skeleton arguments
- Preparing hearing bundles
- Gathering evidence

## Your Role

If you are undertaking this work you must explain your role to your client. You have responsibility for the case - you know it best and have an established relationship with your client. Doing JRCM work must not mean that you allow counsel to take over the running of and responsibility for the case. If you are undertaking this work you will now have an even greater responsibility to the court and client. You will have to note interactions with counsel and explain procedures to you client. JRCM gives those approved greater opportunities and the chance to maintain responsibility for the conduct of a client's case at a crucial stage. Under the Legal Services Act 2007, Judicial Review work is a strictly regulated area. OISC registered advisers are not allowed to become a "lawyer on record". In other words, you must NOT appear to be the litigator, this must be either the applicant or licensed counsel.

## The Application Process

You can apply for JRCM as part of your normal application for continued registration or make an application at any time by the organisation on behalf of an individual adviser. The process for applying to do JRCM work is similar to our usual application process. You will be asked to complete a Competence Statement outlining your experience and training in the subject area.

It is important to stress that only barristers that are allowed to conduct litigation are able to accept this work through Licensed Access. You should also note that the JRCM scheme only extends to England and Wales. When making an application to the OISC to carry out this work must provide the names and business addresses of counsel that you would be likely to instruct and who you have confirmed have permission to litigate and that can be instructed through Licensed Access.

## Fit & Competent

If we approve an application, we will be authorising both the individual adviser and the organisation. Factors we take into account when considering an application are contained in our guidance and application form [application-for-judicial-review-case-management](#) . Most importantly, we need to have assurance that the person is "fit and competent" to carry out this work. The evidence may take the form of verifiable references from former employers, supervisors and/or instructed counsel; verifiable samples of work; or a combination of the two. We also will expect to see evidence of relevant training or continuous professional development that the applicant has undertaken.

Cont'd





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*An organisation that poses the least risk is one that ....there is .. reason to believe they are ...complying with the Code of Standards*



Frequently Asked Questions and Possible Fixes	
<b>Where is the application form?</b>	The application form is listed with our Changing Levels and Adding Competences forms on our website <a href="#">application-for-judicial-review-case-management</a>
<b>Is it a problem that I have little or no evidence of previous work and/or recent relevant training?</b>	You must provide as much evidence as possible to show competence, experience and training. We need to see evidence of the previous work that you have undertaken. You must provide a list of relevant cases worked on, including dates of instruction and details of outcomes where possible; also details of counsel instructed. Also will expect to see evidence of relevant training or continuous professional development.
<b>Why do you want to see evidence of the use of the client account for JRCM purposes?</b>	This is important to ensure that your client's funds are protected and counsel receives their fee. The OISC adviser remains liable for all fees that are outstanding.
<b>How should I charge for JRCM work?</b>	Consider how you currently charge. Charging by the hour may be preferable to a flat rate. If charging a flat rate you may have to explain how it was arrived at. Consider when the client be informed that the further work will be necessary and whether the amount charged will include VAT counsel's and the court's fee
<b>Where can I find appropriate barristers to take on this work?</b>	The barristers engaged must be from those counsel allowed to litigate and agreement that the barrister is willing to take instructions for JRCM. A current list of counsel able to take such instructions can be found here <a href="http://www.directaccessportal.co.uk/search/1/barrister">http://www.directaccessportal.co.uk/search/1/barrister</a>
<b>Why must I have Licensed Access?</b>	The scheme to allow Level 3 advisers to undertake only works through Licensed Access. This shows that you are able to instruct counsel. You must provide evidence that : 1) you already use Licensed Access; and 2) you have chambers/counsel willing to take instructions for JRCM from you

**T**he OISC regulates in a fair and proportionate manner.....what does that actually mean?  
It is all about risk. We are under a duty to ensure as far as practicable that those providing immigration advice and services are “fit and competent” to do so. This is not just for the protection of clients, but the sector as a whole. Under the Government’s Regulators’ Code [regulators-code.pdf](#) we are required to base our regulatory activities on risk. We are obliged to take an evidence based approach to determining the priority of risks and to allocate resources where they would be most effective in addressing the highest risks. For example, how frequently we audit an organisation.

We begin to evaluate risk when your organisation first applies for registration and we continue to monitor risk throughout your regulation by us. In assessing risk we look at a number of things:

- Files and Records** - Are we able to clearly and transparently view the work of the organisation and its advisers?
- Competence** - Does the work viewed suggest that the adviser and organisation are providing a competent service to clients?
- Client Ownership** - Is the client in control of their case?
- Behaviour** - Are the organisation and its advisers acting in a fit manner?

In making our assessment of risk, we also review your compliance record in respect of the Commissioner’s Code of Standards. This may be through audits or complaints.

We also take into account other matters such as previous criminal convictions, disciplinary action, bankruptcy and insurance claims.

An organisation that poses the least risk is one that requires only minimal assistance in producing policies and procedures which meet the Commissioner’s requirements. The organisation meets deadlines and is transparent in demonstrating its fitness and competence to the Commissioner. There would be no current or past substantiated complaints of any significant concern recorded against the organisation or its advisers and there is no reason to believe that they are not complying with the Codes of Standards. The organisation’s advisers are demonstrably clearly competent in the areas of work and Level for which they have been approved.

# ARE YOU READY FOR GDPR?

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*All OISC  
registered  
organisations  
that hold  
data must  
meet the  
requirements  
of the GDPR*

**The General Data Protection Regulation (GDPR) is the new legal framework concerning data protection in the EU.** The GDPR will apply in the UK from 25 May 2018. The government has confirmed that the UK's decision to leave the EU will not affect the commencement of the GDPR.



All OISC registered organisations that hold data must meet the requirements of the GDPR. With organisations often holding more data digitally it is paramount that you are aware of your responsibilities.

- Anyone holding personal data for non-domestic purposes is legally obliged to comply,
- "personal data" covers any data that can be used to identify a living individual.
- Individuals can be identified by various means including their name and address, telephone number or email address.
- These provisions apply to data which is held, or intended to be held, on computers ('equipment operating automatically in response to instructions given for that purpose'), or held in a 'relevant filing system'

## Who does the GDPR apply to?

The GDPR applies to 'controllers' **and** 'processors'. The controller says how and why personal data is processed and the processor acts on the controller's behalf. The GDPR places specific legal obligations on controllers and processors.

The GDPR's principles require that personal data shall be:

- processed lawfully, fairly and in a transparent manner in relation to individuals;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures

## What information does the GDPR apply to?

### Personal data

Personal data is defined as any "information relating to an identified or identifiable natural person". This means information, such as email addresses, or any data that uniquely identifies an individual. Consider your files and the data that you hold. – Do you comply with the GDPR principles?



# GDPR ENFORCEMENT

## Office of the Immigration Services Commissioner News

August 2017

*The supervisory authority will have wide investigative and corrective powers..... including the power to impose fines and other sanctions.*

### Sensitive personal data

The GDPR sets a higher bar to justify the processing of special categories of personal data. These are defined to include "data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation". – This can be especially difficult if you are dealing with asylum issues, citing a Convention reason or family relationships. The need for this information to be properly collected, held and retained is doubly important as the sanctions can be swingeing.

### **Rights for individuals**

GDPR creates some new rights for individuals and strengthens some of the rights that currently exist under the Data Protection Act 1998.

The GDPR provides the following rights for individuals:

- √ The right to be informed
- √ The right of access
- √ The right to rectification
- √ The right to erasure
- √ The right to restrict processing
- √ The right to data portability
- √ The right to object
- √ Rights in relation to automated decision making and profiling

### **Enforcement of GDPR**

Each EU Member State will be required to appoint an independent public authority to be responsible for monitoring the GDPR; this body will be known as the supervisory authority – in the UK this will probably be the Information Commissioner (although this has yet to be confirmed). The supervisory authority will have wide investigative and corrective powers including the power to undertake on-site data protection audits and the power to issue public warnings, reprimands and orders to carry out specific remediation activities. It will also have the power to impose fines and other sanctions.

The following sanctions can be imposed:

- a warning in writing in cases of first and non-intentional non-compliance
- a fine up to €10,000,000 (nearly £9,000,000) or up to 2% of the annual worldwide turnover of the preceding financial year in case of an enterprise, whichever is greater
- a fine up to €20,000,000 or up to 4% of the annual worldwide turnover of the preceding financial year in case of an enterprise, whichever is greater

### **More information on GDPR**

Further details about preparing for GDPR can be found on the Information Commissioner's website <https://ico.org.uk/> and they have specifically produced this leaflet on [preparing-for-the-gdpr-12-steps.pdf](#).



# BEFORE THE BAR

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*The BSB in  
collaboration  
with the OISC  
and the  
SRA has  
developed  
guidance for  
both public  
and non-  
adviser  
professionals.*

## The OISC and Barristers

After consulting with the Bar Standards Board we have issued guidance on barristers and the OISC scheme. The note is split into the following general areas:

- √ Barristers that do not require OISC regulation - Where a self-employed barrister holds a current practising certificate and is working in a set of chambers, or as a sole practitioner, the barrister is regulated by the BSB.
- √ Barristers that may require OISC regulation – including;
  - Employed barristers who work in an entity regulated by another approved regulator;
  - Employed barristers who work in a non-authorised entity;
  - Barristers who work in Legal Advice Centres on a voluntary or part-time basis;

With a specific note on employed barristers

This note can be found here <https://www.gov.uk/government/publications/oisc-regulation-and-barristers/the-oisc-and-barristers>

## Navigating the immigration and asylum system

Consumers of immigration and asylum legal services are often a particularly vulnerable group. They may have limited knowledge of their rights, the law and legal process, and can struggle to navigate a complex immigration and asylum system. These consumers can face significant barriers to accessing legal services.

The Bar Standards Board (BSB) in collaboration with the OISC and the Solicitors Regulation Authority (SRA) has developed guidance for both public and non-adviser professionals following extensive consultation with consumer organisations and consumers themselves.

Two documents have just been published, the first is aimed directly at consumers of immigration legal services and explains

- The different types of people and organisations that can assist with immigration and asylum issues;



- What to expect from providers once they are hired; and
- What to do if something goes wrong.

The second is for professionals working with people with immigration and asylum issues to help them better assist their clients to navigate the legal system.

It explains how professionals can appropriately direct immigration and asylum clients to the help they need. It includes information on:

- Who can help and how;
- The differences between providers;
- What a client should expect from their provider;
- Fees, legal aid and how clients can be charged;
- What a client should do if something goes wrong; and
- Where to signpost clients for information, advice and support. 6

A link to the BSB guidance is found [here](#)



# BEFORE THE BAR

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*Since July 2017 the BSB has synchronised an applicant's licence expiry date with their OISC certificate expiry date.*

## Important Information from the BSB for Immigration Advisers (Level 2 and Level 3)

**The Bar Standards Board (“BSB”) is reviewing the application process for barristers who are licensed to undertake immigration work as part of its ongoing quality assurance.** In the past, registrations and renewals of licenses for immigration advice organisations were issued by the BSB for 12 months from the application date regardless of the expiry date of the associated OISC registration or continued registration. Since July 2017 the BSB has synchronised an applicant's licence expiry date with their OISC certificate expiry date. For example, if an application is submitted in January and the OISC certificate expires in June, the BSB license will be issued until June.

### What does this mean for Immigration Advisers?

Where your organisation has a license issued by BSB under the Licensed Access Scheme but its OISC certificate has expired, you need to send the BSB a copy of your current certificate as soon as possible for your licence to remain valid. On receipt, your license will be amended to

reflect the new expiry date.

Where you have a current OISC certificate but your BSB license extends past its expiry date, the BSB will amend your license and synchronise it with your OISC expiry date.

The BSB will not amend any licenses without making reasonable attempts to contact immigration advisers. However it is important to note that, from now on, to be valid a BSB licence, it must be supported by a current OISC certificate.

The annual registration and renewal fee will stay the same. However the BSB recognises that the changes mean licenses may be issued for less than 12 months. To ensure there is no financial disadvantage to applicants, the fee will be pro-rated whilst the process is being regularised. Thereafter it will be the applicant's responsibility to apply annually in a timely manner.

Should you have any queries, please email the BSB at [Qualifications@BarStandardsBoard.org.uk](mailto:Qualifications@BarStandardsBoard.org.uk) or call 0207 0926801.

## Seminars and Workshops

**We are rolling out our programme of seminars and workshops for the autumn.** We are once again seeking to reach as many advisers as possible. The workshops are interactive and attendees must participate to get the most out of them. Those attending the Ethics seminar will be issued with a workbook prior to the event. This is to help you start to think not just about Ethics, but how they impact on you as an adviser.

We are changing things up a bit and holding some of the workshops away from our offices, though still in London. We are still working on the precise dates, but the first events will be on 4 September.

Invitations will be issued to organisations in good time for you to apply to attend. Please follow the instructions in the invitation to ensure get the best chance to attend. The workshops and seminars are usually heavily over-subscribed, so keep an eye out and act quickly if you want to come along.

Month	AM Workshop	PM Workshop
4 September	Ethics for Immigration Advisers	Audits and Compliance
Date to be confirmed October	Ethics for Immigration Advisers	Handling Complaints
Date to be confirmed November	Audits and Compliance	Handling Complaints



August 2017

*“They and their families are highly vulnerable and often desperate. Charlatans like you take advantage of their difficulty and desperation.”*



Two recent cases, before the Crown Court and the First-tier (Tribunal) have brought into sharp relief the OISC’s duty to, as far as practicable, ensure that those that provide immigration advice and services are *fit and competent to do so*. These major OISC investigations were into individuals causing considerable hurt in both the regulated and unregulated community. These have resulted in the most severe sentences for OISC cases to be issued by both the criminal court and the Tribunal.

### Former barrister convicted for giving illegal immigration advice



Mr Michael Wainwright of Ruislip, west London pleaded guilty at Southwark Crown Court on Tuesday 2 May 2017, to 8 offences of providing unregulated immigration advice between May 2013 and June 2016.

The offences committed over

a 3 year period commenced when Mr Wainwright was a practising barrister. His entitlement to practice did not include accepting instructions from clients. He was suspended by the Bar Standards Board on the 5 August 2014 and then disbarred from practicing as a barrister on 3 December 2014.

Following his disbarment Mr Wainwright formed a legal services company Crested Associates Ltd, which he used to commit further offences, targeting vulnerable persons seeking immigration advice. The OISC began its investigation in April 2015 when we received a complaint from a detainee at the Yarl’s Wood Immigration Removal Centre. Mr Wainwright repeatedly called the detainee on the mobile phone issued to detainees by the Centre essentially touting for business under cover of trying to contact a previous holder of the phone. When that particular detainee was seen, further victims were identified.

In committing these offences he:

- conducted cases when not entitled to do so
- contacted detainees facing deportation at Immigration Removal Centres and promising to lodge Judicial Reviews or make bail

- applications on their behalf
- failed to make applications to the Home Office or the Immigration Tribunals for which he had been instructed and paid by the applicants
- lodged Judicial Reviews and applications before the Upper Tribunal and at the High Court
- made applications before Tribunals as the “applicant in person” and sought fee remissions
- appeared in person as a representative before Immigration Tribunals when no longer qualified to do so made false claims as to his status before the Immigration Tribunals or claimed to act as a McKenzie Friend

On 28 June 2017 at Southwark Crown Court His Honour Judge Hehir found there was a substantial risk of further offences and indeed Mr Wainwright continued to offend whilst on bail. Judge Hehir sentenced Mr Wainwright to a total of 22 months imprisonment was also ordered to pay compensation to the victims totalling £2,858.

When sentencing the Judge said:

*Your conduct represents a flagrant disregard for not only the standards of profession you used to be a part of, but also the Bar Standards Board and also the criminal courts and their orders too.*

*The facts of the eight offences have been very fully opened to me. They reveal that you persistently and in a sophisticated fashion, held yourself out to vulnerable and often desperate people. The prohibition is there for good reason. Whether or not those who seek help for immigration advice or services have a good case, or are entitled to be in the UK is neither here nor there. They and their families are highly vulnerable and often desperate. Charlatans like you take advantage take of their difficulty and desperation and by doing so you can only harm their interests. You were deliberately taking advantage of these people.*



Judge Hehir



August 2017

*In each case  
Patel charged  
between £3,300  
and £13,000, .....  
demanding  
payment in cash.  
There was no  
legitimate  
recruiting  
company. There  
were no real jobs.*



## ADVISER BANNED INDEFINITELY

**In April the First-tier Tribunal (Immigration Services) found sixty charges brought by the OISC proven.** Mr Alpesh Patel of Aaryas Careers Ltd (pictured) had been registered by the OISC to provide immigration advice and services from 16 September 2011 until 2 June 2016 when his registration was cancelled.

Over the course of 2015 Mr Patel, operating out of offices in Hayes and Brentford located in West London, made Tier 2 visa applications for at least 16 complainants using a fake Certificate of Sponsorship. Mr Patel acted as an immigration adviser and recruitment consultant, introducing the complainants to companies that he claimed could provide them with employment and a Certificate of Sponsorship to allow them to remain in the UK.

In each case Mr Patel charged between £3,300 and £13,000, usually demanding payment in cash. There was no legitimate recruiting company. There were no real jobs. There were no genuine Certificates of Sponsorship. On each occasion, the complainant's Tier 2 application was refused by the Home Office, because the Certificate of Sponsorship was a fake. Each complainant lost thousands of pounds.

The Tribunal found the conduct of Mr Patel to be “*reprehensible*” and found that he had played a major role in this deception. The Tribunal noted that Mr Patel “*has sought, serially, to deceive the Commissioner, and the immigration authorities, and to abuse the material Immigration procedures, and has deceived all of those clients whose immigration affairs are the subject of these proceedings and in respect of whom the aforesaid sixty charges have been upheld, and dishonestly deprived each of them of a substantial amount of money*”.

Mr Patel was directed to repay a total of **£172,600** to the complainants and **£7,460** by way of a penalty to the OISC. **The Tribunal also directed that Mr Patel/Aaryas Careers Ltd be prohibited from providing immigration advice and/or services indefinitely.**

The South Asian community both here and abroad has showed a great deal of interest in this appalling scam!

<http://ukasian.com/breathtaking-scam-involving-indian-students-that-may-have-netted-fraudsters-500000.html>

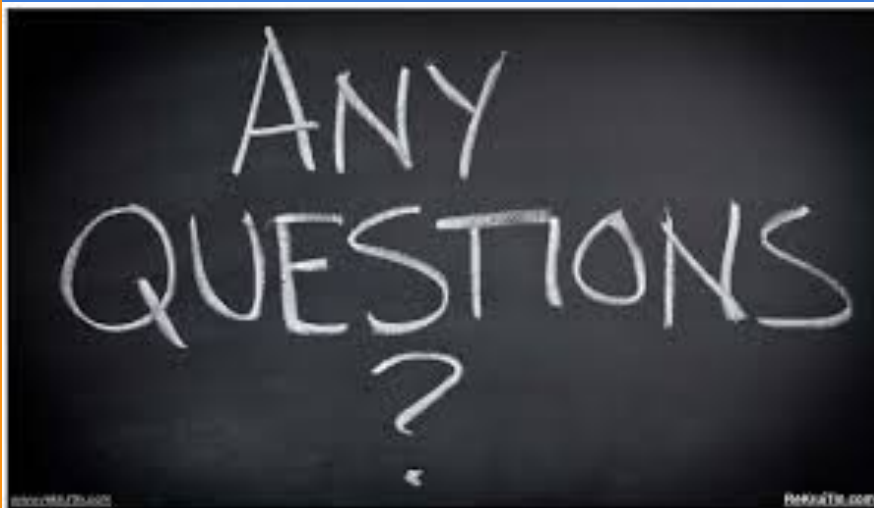
<https://asianlite.com/news/uk-news/indian-students-duped-by-fraud-immigration-advisor/>



# REQUEST AN OISC SPEAKER FOR YOUR EVENT

Immigration advice organisations are invited to contact the OISC if they have an interest in receiving input or representation from the OISC at one of their future events.

Advisers organisations should email [sharon.harris@oisc.gov.uk](mailto:sharon.harris@oisc.gov.uk) in the first instance to register an interest. Advisers will subsequently be contacted to discuss possible options.



The third important element is to address concerns that you have raised that we believe all advisers should be made aware of. Most recently articles about “Client Accounts”; “Phishing” and “Licensed Access” have all arisen from advisers’ concerns. A while ago we published a **Your questions answered.....** section in our newsletter. We are hoping to revive this with your help. If you have any questions that you want answered, subjects you would like more information about, or have something relevant that you would like to share with other immigration advisers, please drop an email to your caseworker or [info@oisc.gov.uk](mailto:info@oisc.gov.uk).

**T**he purpose of the **OISCNews** is to give you, the registered sector, an update on what is happening in and around the OISC regulatory scheme. We also want to keep you informed about issues that our caseworkers and investigators encounter in their everyday dealings, that we believe will help organisations in carrying out their business.



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*....to address concerns that you have raised that we believe all advisers should be made aware of.*

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