



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In QB1M, Royal Courts of Justice
and remotely via Microsoft Teams
At 11.00 a.m. on Monday 3 July 2023

Present:

Sir Andrew McFarlane	President of the Family Division
Mr Justice Keehan	High Court Judge
Lord Justice Baker	Court of Appeal Judge
Mr Justice Peel	High Court Judge
Her Honour Judge Raeside	Circuit Judge
His Honour Judge Godwin	Circuit Judge - Judicial member for Wales
District Judge Foss	District Judge
District Judge Branston	District Judge
District Judge Birk	District Judge
Michael Seath	Justices' Clerk
Fiona James	Lay Magistrate
Poonam Bhari	Barrister
Melanie Carew	Cafcass
Robert Edwards	Cafcass Cymru
Graeme Fraser	Solicitor
Bill Turner	Lay Member

Invited Guest:

Mrs Justice Knowles	High Court Judge
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ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Rhys Taylor.
- 1.2 The Committee marked the final meeting for Melanie Carew, who has served as the Cafcass member on the Committee since 1 December 2015.

MINUTES OF THE LAST MEETING: JUNE 2023

- 2.1 The Committee raised one amendment to the attendance list.
- 2.3 The Committee approved the minutes from the June 2023 meeting.

ACTION POINT 1: Secretariat to arrange for the June 2023 minutes to be published on the FPRC webpages.

ACTIONS LOG

- 3.1 17 actions were recorded from the June 2023 meeting.

MATTERS ARISING

Web Inaccuracies

- 4.1 MoJ Policy reported that an amendment made by the Family Procedure (Amendment No.2) Rules 2022 to rule 11.12 FPR had not previously been reflected on the website. This has now been made.

Deed Poll name changes

- 4.2 MoJ Policy reported on the recent meeting which took place between MoJ Fees colleagues and the Acting Chair to discuss the difference between children and adult fees. MoJ Policy confirmed that High Court enrolled deed applications are not recorded in a way that separates adult and child name change applications but an estimated figure of around 900 non-contentious cases annually relate to children. Furthermore, around 161 name change cases are going through the Family Court. Work is continuing on trying to find a way to reduce a disparity between adult and child name change fees.

Service at Refuges

- 4.3 MoJ Policy advised that the Domestic Abuse Working Group has discussed this workstream several times over the previous few months and proposed that further information be sought from representatives of the refuge sector. A roundtable discussion with these representatives took place in the week commencing 19 June 2023 and a number of suggestions including form changes, tightened translation and increased training were put forward. MoJ Policy will update the Domestic Abuse Working Group on progress at its follow up meeting later in July.

H v Adoption Agency

- 4.4 MoJ Policy updated that the Working Group are yet to meet as drafting of the PD and practice guidance had not been completed. Liaison will continue on this with the Chair of the Working Group and the intention is to return with a more substantive update on this issue in the Autumn.

ACTION POINT 2: H v Adoption Agency to be added to the October 2023 agenda for a substantive update to be given.

Parental Responsibility and Child Arrangements following imprisonment for murder of the other parent

- 4.5 MoJ Policy informed the Committee that the Domestic Abuse Working Group meeting for June had been postponed and is rescheduled for July 2023, where this workstream will be discussed. MoJ Policy will consider recommendations from the Group and provide a verbal update the Committee at its October meeting.

ACTION POINT 3: Parental Responsibility and Child Arrangements following imprisonment for murder of the other parent to be added to the October 2023 agenda for an update to be given.

Fast Track Working Group

- 4.6 MoJ Policy reported that HMCTS had undertaken work to ascertain which regions might be most suitable for a fast-track pilot.
- 4.7 MoJ Policy informed the Committee that due to intense resourcing pressures on MoJ Policy and MoJ Legal the Fast Track Working Group has not yet reconvened to discuss HMCTS's findings. It was proposed that the Fast Track Working Group should meet again in the early Autumn.

ACTION POINT 4: Fast Track Working Group to be added to the October 2023 agenda for an update.

Permission to Appeal – consultation and policy options

- 4.8 MoJ Policy reported that the Permission to Appeal (PTA) Working Group last met on the 14 June where the discussion focused on which judges can dismiss PTA applications as being totally without merit and direct that the application may not be renewed at an oral hearing, and whether a lack of a PTA filter for appeals from decisions of lay justices in the family court is causing any issues. The PTA Working Group will next be meeting on the 18 July and so a further update will be provided in October.

ACTION POINT 5: Permission to Appeal to be added to the October 2023 agenda to provide a further update.

Police Disclosure Orders

- 4.9 MoJ Policy referred to the consultation exercise from July 2022 which proposed Practice Direction amendments to set out a specific procedure for applications for Police Disclosure Orders in private law proceedings. The purpose of this was to provide clarity regarding to whom the disclosures should be made and make associated consequential amendments. This was discussed in November where the Committee raised some further issues for consideration.
- 4.10 MoJ Policy confirmed that an exercise to take a deeper dive into the consultation responses has been started but owing to conflicting pressures on both policy and legal resources has not reached a stage where sufficient proposals can be put before the Committee. The intention is to work on this exercise over the summer and to return in October with a paper for the Committee to consider.

ACTION POINT 6: Paper on Police Disclosure Orders to be submitted for consideration at the October 2023 meeting.

Case Management and Intimate Images

- 4.11 MoJ Policy referred to discussion at the October 2022 meeting where the point was raised that there appears to be limited guidance to the Court when managing intimate images submitted as evidence in private law proceedings where domestic abuse is alleged. This issue will now be considered further at the Domestic Abuse Working Group meeting on 20 July.

ACTION POINT 7: Case Management and Intimate Images to be added to the October 2023 agenda for a further update to be given to the Committee.

PRIORITIES TABLE AND PD UPDATES

- 5.1 MoJ Policy referred to the issue of Closed Material Proceedings (CMP) which was initially detailed for discussion at this meeting but, following cross-government engagement with officials, it was agreed to pause work until a further date to be determined.
- 5.2 The Committee asked for a note on current position of CMP.

ACTION POINT 8: Closed Material Proceedings to remain on the Priorities Table.

ACTION POINT 9: Written update on Closed Material Proceedings to be provided to the Committee in October 2023.

STANDING ITEMS

ONLINE PROCEDURE RULE COMMITTEE

- 6.1 MoJ Policy provided an update from the first meeting of the Online Procedure Rule Committee which included a talk from Professor Dame Hazel Genn on the complexities of navigating the interconnected nature of legal issues in the civil, family and tribunals jurisdictions; HMCTS reform; and development of the digital justice system.
- 6.2 The Online Procedure Rule Committee also began work on looking ahead at their next meeting; the sub-group structure; and to gain a greater understanding of the landscape including continuing liaison with the other Rule Committees.
- 6.3 The Committee raised an issue in relation to a recent advertisement in relation to a DFJ role for the South-East virtual court and whether this would fall under the auspices of the Online Procedure Rule Committee. MoJ Policy confirmed that this advertisement did not relate to the Online Procedure Rule Committee.

ACTION POINT 10: The Online Procedure Rule Committee update to be added to the October 2023 agenda for a further update to be provided.

SUBSTANTIVE ITEMS

EARLY RESOLUTION: CONSULTATION OUTCOME AND NEXT STEPS

- 7.1** MoJ Policy provided the Committee with an update on the Committee's consultation on supporting the earlier resolution of private family law arrangements, further to the presentation provided at the June Committee meeting. The intention was to seek further steers from the Committee on outstanding issues, alongside their views on the draft changes proposed to the Rules and Practice Directions.
- 7.2** The Committee were asked for views on draft new r3.3(1A) and (1B) on the point of the court requiring a pro-forma document, where parties must set out their position in relation to Non-Court Dispute Resolution (NCDR). MoJ Policy confirmed that a new form will be required, rather than the information being added to an existing form. The draft rule wording has been modelled on that relating to the existing form H, and it is intended that the new form will not be required where there are allegations of Domestic Abuse. The Committee raised concerns regarding the form reaching the judge on time and whether it would be served on Cafcass. MoJ Officials and Legal agreed to further consider this point. A member asked if the rule could refer to providing a form within one "working" day. MoJ Legal noted that there is already provision in the FPR to mean that references to one day will automatically mean one working day, but it may be possible to expressly make this clear in PD3A.
- 7.3** The Committee approved the draft rule amendments on this point subject to confirmation on the additional issues raised.
- 7.4** MoJ Policy asked the Committee whether they were content with the revised draft amendments to Rule 3.4(1) and (1A) and the supporting draft provision in PD3A at paragraphs 10A, 10B and 10C in relation to adjournments in proceedings for FR cases.
- 7.5** The Committee approved this point subject to a drafting change to reflect amending 'may' to 'should' encourage the parties. The Committee also recommended further changes to r3.4(2) in relation to adjournments on proceedings for FR cases to reflect discussion on drafting changes.
- 7.6** However, the Committee declined a member's suggestion to add an express provision that the duty of the court is not to cause delay, as this is already evident from other provisions.
- 7.7** The Committee discussed and approved amendments to remove the MIAM exemptions which currently apply where prospective respondents are uncontactable or unwilling to attend a MIAM. It was noted that this decision would mean that there would no longer be any "mediator exemptions" and that there would be a need to identify consequential amendments to the FPR and PDs.
- 7.8** The Committee discussed and approved amendments to MIAMs exemptions to make provision for video or online MIAMs and to include a requirement to explain why one could not be attended. The Committee agreed with a proposal that the C100 form be amended for parties to insert their reasoning for not attending a virtual MIAM/joining via video link, and if necessary, the court can then ask for further details if there are concerns that the exemption has not been validly claimed.
- 7.9** The Committee discussed changes requiring the prospective applicant to contact five (previously three) mediators before claiming an exemption based on the lack of a local MIAM provider. The Committee were not content with this proposal and asked for MoJ Policy to return in October following further consideration of this issue, possibly engaging with the Early Resolution Working Group and undertaking further research on the FMC's 'Find a Mediator' function on their website.
- 7.10** The Committee discussed whether MoJ Policy and Legal expressed a hope to minimise the number of changes to rule 3.8(1) and noted that they considered each of the exemptions did

deal with a different set of circumstances, albeit some were closely related. MoJ Policy advised that guidance notes will be provided to make the process, especially for Litigants in Person, as easy to navigate as possible.

- 7.11 The Committee discussed and approved draft amendments to r3.9(2) in relation to conduct of MIAMs.
- 7.12 The Committee discussed the timing of when the court reviews MIAM exemption evidence. MoJ Policy advised that it is proposed that in private law cases this should take place at the allocation stage. Some concerns were raised due to problems with asking parties to submit written evidence at that stage, as this is automatically e-filed and the courts are working with a backlog such that there may be delay while that evidence is awaited and considered. MoJ Policy proposed to proceed with the draft amendments and to assess whether this proposal works in practice, with a view to amending it if it causes further delays.
- 7.13 The Committee approved the point regarding timing of when the court reviews MIAM exemption evidence subject to drafting changes.
- 7.14 The Committee approved the proposal to amend the title of PD3A.
- 7.15 The Committee discussed and approved a number of amendments to PD3A including adding a list of NCDR options, and to include private FDRs in the list. The Committee agreed to amendments to indicate that any failure to attend NCDR will not affect the substantive decision in the court proceedings. MoJ Policy advised that the current intention is not to introduce a mandatory requirement to attend NCDR through Rules, however this will be looked at through broader legislative changes following the Government consultation.
- 7.16 The Committee discussed and approved amendments to the DV evidence criteria to re-align this provision with the legal aid provision.
- 7.17 The Committee discussed and approved amendments to a new draft paragraph to PD3A relating to MIAMs exemptions. A query was raised about whether there is an exemption if parties have attended NCDR within the last 4-months prior to making a court application. MoJ Legal considered this was the case but agreed to confirm the position at the October meeting.
- 7.18 The Committee discussed and agreed the proposal to retain judicial discretion and not seek to define what might constitute “good reason” for a failure to attend NCDR.
- 7.19 The Committee discussed whether NCDR providers should supply the court with a document that confirms factual details regarding parties’ attendance at NCDR. MoJ Policy agreed to look at the draft PD wording to make it clear that it is the parties being required to provide the court with evidence, and that this does not fall to the NCDR provider. MoJ Policy to draft proposals and return in October.
- 7.20 MoJ Policy asked the Committee as to whether they were content with a document containing all the consultation responses. The Committee agreed consent.

ACTION POINT 11: MoJ Legal to consider a PD amendment to expressly state that a requirement to file a form one day before a hearing means one working day.

ACTION POINT 12: MoJ Policy to discuss the view of the Committee with the Early Resolution Working Group in relation to the proposal for the prospective applicant to contact five mediators, rather than three.

ACTION POINT 13: MoJ Legal to confirm if a MIAM exemption applies if parties have attended NCDR within the last 4-months prior to making a court application.

ACTION POINT 14: MoJ Policy to look at the draft provision relating to parties supplying the court with evidence from the NCDR provider that confirms factual details regarding parties' attendance at NCDR.

ACTION POINT 15: MoJ to come to the October meeting of the Committee with the updated drafts of Part 3 FPR, Practice Direction 3A and Part 28 FPR, to reflect the discussion at this meeting.

DOMESTIC ABUSE ACT IMPLEMENTATION

Domestic Abuse Act Protection Orders (DAPO) consultation

- 8.1** MoJ Policy updated the Committee on the progress of its DAPO consultation, which closed on 8 June. The Committee were informed that there was a good level of interest, with 23 responses received, across judicial and legal practitioner organisations and the domestic abuse sector. The DAPO Cross-Jurisdictional Working Group met on 26 June to consider the first tranche of responses and is scheduled to meet again on 17 July. A substantive update on the consultation and a revised version of the Practice Direction will be provided at the October FPRC meeting.

ACTION POINT 16: MoJ to provide a substantive update and revised draft PD regarding Domestic Abuse Protection Orders to the October 2023 meeting.

Update and discussion on Qualified Legal Representatives

- 8.2** MoJ Policy introduced the new team working on the Qualified Legal Representatives (QLR) scheme and offered to meet with Committee members outside of the meeting to gain a greater understanding about the scheme itself, QLR appointments and QLR training.
- 8.3** The Committee discussed issues previously raised regarding professional insurance and the potential for complaints. The Committee confirmed that these issues had been addressed following a recent meeting with the Chair of the Family Law Bar Association.
- 8.4** MoJ Policy explained that the intention is to provide a written update at the October meeting including plans for addressing QLR appointment and training issues. The update will also cover the Committee's concerns as to what is happening on the ground if a QLR is unavailable.

ACTION POINT 17: MoJ to provide a substantive update in relation to Qualified Legal Representatives to the October 2023 meeting.

RESOLVING CONFLICTS BETWEEN FPR AND "HIGH LEVEL" JUDICIAL GUIDANCE

- 9.1** MoJ Policy referred to the June meeting, where the Committee considered a paper that outlined the issue of conflict between the Family Procedure Rules 2010 (FPR), supporting Practice Directions (PDs) and Judicial Guidance. The Committee discussed the options put forward to it and it was agreed that the Committee members should consider these further over the summer.
- 9.2** The Committee ruled out the option to undertake a review of all judicial guidance to identify any contradictions with FPR/PD Provision and then amend the FPR/PD or guidance to

remove conflicts. The President of the Family Division noted that he was not particularly in favour of the proposed option that he formally indicate to the judiciary that no guidance should be issued which conflicts with, or seeks to override, FPR/PD provision.

- 9.3** The Committee noted that some of the particular concerns raised in the paper put to its June meeting related to differing PD and Guidance provision on bundles, and that these should be addressed by the separate workstream to modernise PD27A. The Committee highlighted the point that Judges who notice problems with the Rules should bring these to the attention of this Committee rather than seeking to deal with these in Guidance.

ACTION POINT 18: The options for resolving conflicts between FPR and Judicial guidance to be considered further at the October 2023 meeting.

PILOT PROPOSAL FOR READINESS AND EXPERT ASSESSMENT CHECKLISTS

- 10.1** MoJ Policy referred to the issue, previously presented as a verbal update at the June meeting. The proposals are to make temporary modifications to Part 12 FPR and PD12A to enable a pilot to implement two new checklists to be completed at the advocates' meetings. The Cafcass practitioner and the local authority social worker will be asked to agree and sign off the checklists jointly, so the judge has a joint view from the professionals involved in the case ahead of the hearing.
- 10.2** The readiness checklist has been designed to improve the preparation for hearings and encourage closer engagement between professionals throughout a case. It is hoped this will have the benefit of reducing the number of hearings that need to be adjourned, bringing down delays, and reducing the amount of time children and families are required to spend in court.
- 10.3** The expert assessment checklist aims to ensure agreement and adequate consideration of the need for additional experts by professionals in a standardised way and at the earliest stage. MoJ Policy advised that the checklists will be uploaded by the local authority to the existing online portal along with other case documents.
- 10.4** MoJ Policy noted that it had been drawn to their attention that in cases with an international element, there is no requirement to file kinship assessments within a specified time, such that it was proposed to amend the draft Practice Direction 36ZF to remove reference to assessments being filed on time. However, the Committee queried this assertion and noted that if a court orders a kinship assessment, then it will set a time limit within which it must be filed. It was suggested that the checklist could ask "are the time requirements set in the court order expected to be met".
- 10.5** The Committee proposed that further consideration be given as to the point of time in the proceedings at which the checklists should be filed and noted that if they have to be filed before the Case Management Hearing, then it may be that no assessments have even been ordered at that point. It was suggested that perhaps the checklists could be filed after the CMH or before the Issues Resolution Hearing or before any Further CMH.
- 10.6** The Committee considered that some questions on the readiness checklist should be re-ordered or re-cast. For example, the question around capacity to litigate should come first, and should cover vulnerability as well as legal capacity.
- 10.7** The Committee suggested that MoJ Policy should seek assistance from an LA Solicitor or Junior Barrister.

- 10.8** MoJ Policy indicated that the intention is to return to the Committee in October for final approval of the pilot Practice Direction with the hope to start the pilot once the PD has been formally agreed to and signed by the PFD (and approved by the Minister). This will mean that the pilot will commence in October and run for 12 months. Interim evaluation will be conducted at the 6-month point, and a full evaluation once the pilot has completed.

ACTION POINT 19: An updated paper and draft pilot PD to be brought to the October 2023 meeting on the proposal for a pilot scheme for Readiness and Expert Checklists.

PRIVATE LAW ONLINE: DRAFT PD AMENDMENTS TO REFLECT EXTENSION OF ONLINE SYSTEM TO APPLY TO ADDITIONAL TYPES OF PROCEEDINGS

- 11.1** HMCTS updated the Committee on the process of the end-to-end digital service for section 8 Children Act 1989 applications and Part 4 Family Law Act 1996 applications which has been tested in the Swansea Designated Family Court area since 17th May 2023, underpinned by pilot PD36ZD. The Committee were informed that an extension of PD36ZD and PD36G is sought from 31st October 2023 to 31st March 2024.
- 11.2** The Committee approved amendments to PFD36ZD to allow other applications to be made and progressed within the digital service. These applications are listed in the draft PD amendments and include various private law applications in relation to children, FGM protection orders and forced marriage protection orders. It is planned to begin piloting these additional types of application on the digital service from 31st July 2023. HMCTS confirmed that any roll out to new court locations will only take place with the agreement of the President of the Family Division.
- 11.3** The Committee also approved the extension of PD36G until 31st March 2024 to allow unrepresented applicants and legal representatives who are not submitting an application to a court to make a digital application by generating a C100 online and then submitting it by email.
- 11.4** HMCTS and MoJ Legal advised that the necessary PD amendments will be put to the President and then the Minister in a PD Update. The Committee will be given an update at the October meeting.

ACTION POINT 20: MoJ to provide an update at the October meeting on the making of the PD amendments to underpin the extension of the online system to apply to additional types of proceedings.

VOICE OF THE CHILD

- 12.1** The Committee was advised that a group including the Family Justice Young People's Board (FJYPB) is working on films made by young people to help explain court processes. Cafcass are currently working on separate but similar material, and it is intended that discussion be held to see whether there is an opportunity to combine both products.
- 12.2** The PD36Z Pathfinder courts are working on matters such as seeing the child earlier in proceedings and MoJ are looking at what might be taken forward more widely in this area especially bearing in mind that there are substantial pressures on Cafcass and Cafcass Cymru.

ACTION POINT 21: A further update on work relating to the Voice of the Child to be provided at the October 2023 meeting.

**ELECTRONIC DISCLOSURE – [P-h-L (Children) (Mobile Phone Extraction) (Rev1) [2023]
EWCA Civ 206 (February 2023)]**<https://www.bailii.org/ew/cases/EWCA/Civ/2023/206.html>

- 13.1** The Committee discussed a Court of Appeal decision which noted that the FPR do not have any bespoke provisions governing the disclosure and examination of mobile phone and other electronic records.
- 13.2** MoJ noted that there is provision on this matter in the Civil Procedure Rules 1998, which the Court of Appeal noted can be used to fill any gap in the FPR on this issue, such that the Committee may consider this matter could be given relatively low priority given existing Committee priorities and MoJ resources.
- 13.3** The Committee asked that MoJ provide a short paper to the October meeting setting out the best mechanism for making provision on this point in the FPR, which would enable the Committee to consider the scale of this work and the relative priority to give to it.

ACTION POINT 22: Electronic Disclosure – mobile phone extraction: MoJ to provide a scoping paper for consideration at the October 2023 meeting.

**DELEGATED POWERS – THE EXERCISE OF THE POWERS OF THE HIGH COURT – CPR
54.1A**

- 14.1** The office of the President of the Family Division had requested that the Committee consider including in the FPR provision similar to rule 54.1A Civil Procedure Rules 1998 to enable specified members of High Court staff to undertake judicial functions of the High Court, in prescribed circumstances. The Committee asked that MoJ provide a paper for the October 2023 Committee meeting setting out what would be involved in order to make the necessary changes to the FPR, for possible inclusion in the next FPR amending SI, towards the end of the year.
- 14.2** The Committee noted that the issue had been raised as pressing but recognised the point referred to previously on considering new subjects alongside existing priorities and that there may be a need to lose a subject to make way for another.

ACTION POINT 23: Delegated Powers – the exercise of powers of the High Court: paper setting out what would be involved for necessary rule changes to be presented to the October 2023 meeting.

FORWARD PLANNING AND UPCOMING MEETINGS

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE
LINK**

- 15.1** MoJ Policy informed the Committee that meetings have taken place with Secretariats from other Procedure Rule Committees.
- 15.2** The Committee were informed that the joint family and civil working group regarding Cape v Dring took place on the 19 June and are next due to meet on the 24 July.
- 15.3** The Committee were also informed that the Criminal Procedure Rule Committee is developing a standard form of request to be used by parties to Family Court proceedings to request access to criminal court video recordings of the cross-examination and re-examination of a witness under section 28, Youth Justice and Criminal Evidence Act 1999.

The form was considered and endorsed by the Family and Crime Interface judicial group. This is now with the Lord Chief Justice and it is pending his approval. It is proposed that this issue is brought back to the Committee with a further update when more is known.

ACTION POINT 24: The issue of the form of request to be used by parties to Family Court proceedings to request access to criminal court video recordings of the cross-examination and re-examination of a witness to be brought back to the Committee following consideration by the Lord Chief Justice

FORMS WORKING GROUP UPDATE

- 16.1** MoJ Policy reported that there is a table which provides an update on current outstanding tasks in relation to the form C100. This has been put on hold until after the outcome of the consultation on MIAM exemptions is known to ensure that amendments to the C100 form in particular will not need to be undertaken twice in quick succession.

FPRC WORKING GROUPS

- 17.1** MoJ Policy advised that the Working Group lists have been updated to ensure that the Fast Track and PD27A Working Groups are accurate.

DRAFT OCTOBER 2023 AGENDA

- 18.1** The Committee were informed that the October 2023 agenda will be updated following this meeting.

ANY OTHER BUSINESS

Retained EU Law (Revocation and Reform) Bill

- 19.1** The Committee were informed that the issue regarding provisions in the Retained EU Law (Revocation and Reform) Act, and which will impact on cross-jurisdictional court procedure will return in the autumn.

Law for Life/AdviceNow

- 19.2** The Committee agreed that a funding issue affecting Law for Life/AdviceNow fell outside of the Committee's remit.

DATE OF NEXT MEETING

- 20.1** The next meeting will be held on Monday 9 October 2023 and will take place in person at QB1M, Royal Courts of Justice, and remotely via MS Teams.

Simon Qasim – Secretariat
July 2023
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