



Agenda Item 3.3

<b>Meeting</b>	<b>People Committee</b>
<b>Date</b>	<b>28 February 2023</b>
<b>Location</b>	<b>Virtual Conference</b>
<b>Title of Paper</b>	<b>External Review – Employment Tribunal Judgement</b>
<b>Presented By</b>	<b>Alan Speirs, ACC Professionalism and Assurance</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>Yes Appendix A – Summary of Progress</b>

**PURPOSE**

The purpose of this paper is to provide the People Committee with an update on progress following the Police Service of Northern Ireland’s Independent Review of the Employment Tribunal Judgement.

Members are invited to discuss the contents of this paper and appendix.

## **1. BACKGROUND**

1.1 On the 4th October 2021 an Employment Tribunal (ET) found that the Claimant had been victimised under Section 27 of the Equality Act 2010 between 2018 and 2020.

The evidence presented to the court identified:

- a culture of sexism within the Armed Policing Unit;
- a failure by Police Scotland to follow Standard Operating Procedures; and
- breaches of standards of professional behaviour.

1.2 Police Scotland thereafter formally commissioned the Police Service of Northern Ireland to review the ET Judgement and make any recommendations on its content which would require action on the part of Police Scotland in relation to performance, conduct or culture.

1.3 The PSNI considered the ET Judgement and undertook an independent review to:

- analyse the conduct of named officers and members of police staff;
- determine whether the conduct of each was in accordance with Police Scotland's processes and procedures, and learnings from each of these; and
- identify themes and areas of learning arising from the judgement.

1.4 The final report on the findings was provided to Police Scotland in May 2022.

1.5 Police Scotland introduced an Operation Fustic Strategic Oversight Group to:

- co-ordinate and deliver a robust, effective and proportionate response to the findings of the Employment Tribunal Judgement
- identify the learning surrounding Employment Tribunals, specifically preparation, representation and support of officers and staff involved in same
- provide accountability and governance over the implementation of recommendations and learning
- ensure appropriate standards of investigation
- provide welfare support to those involved

## 2. PROGRESS TO DATE

- 2.1 We extracted the recommendations and wider learning from the PSNI report resulting in a comprehensive action plan with 17 points to address according to the following themes:
- Police Scotland's Approach to Employment Tribunals
  - Police Scotland's Approach to Grievances
  - Culture Change Activity Within Operational Support Division
  - Preventions Programme
- 2.2 A summary of progress is provided at Appendix A.
- 2.3 On a force-wide basis, we are identifying a range of measures and insights that will allow us to reflect on the themes identified in this review to determine the effectiveness of the action taken and make overall improvements.

## 3. FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications in this report. However, some of the actions has required associated investment for training purposes for example.

## 4. PERSONNEL IMPLICATIONS

- 4.1 There are no direct personnel implications in this report. However, some of the actions have required additional work for staff to participate in Short Life Working Groups and new emerging work streams.

## 5. LEGAL IMPLICATIONS

- 5.1 There are no legal implications in this report.

## 6. REPUTATIONAL IMPLICATIONS

- 6.1 There are no direct reputational implications in this report. However, our commitment to take action to improve the reputation of Police Scotland is demonstrated in our progress update.

## **7. SOCIAL IMPLICATIONS**

7.1 There are no social implications in this report.

## **8. COMMUNITY IMPACT**

8.1 There are no community implications in this report.

## **9. EQUALITIES IMPLICATIONS**

9.1 There are no direct equality implications in this report. However, by the very nature of the findings, the progress being reported will demonstrate our commitment to improving equality, diversity and inclusion within Police Scotland.

## **10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications in this report.

### **RECOMMENDATIONS**

Members are invited to discuss the contents of this paper and appendix.

**APPENDIX A – PROGRESS TO DATE**

**R1 - Employment Tribunal Process and Communication Pack**

**Complete**

It is recommended that measures are put in place to ensure witnesses are informed and supported throughout the process by the Employment Team.

In January 2020 we undertook an end to end review of Employment Tribunal (ET), Grievance and Non-Criminal Complaints processes through a Short Life Working Group.

As part of that review an 'end to end process map' has been developed and implemented setting out various steps to be followed upon receipt of an Employment Tribunal Claim and in particular aspects of communication. One of the steps within that end to end process is for the solicitor dealing with the claim to arrange an initial meeting/discussion with potential witnesses to explain the ET process and take a precognition/ statement. This discussion covers information in relation to initial witness consultation and taking of statements; provision of an aide memoire highlighting the key stages of the process and what to expect; regular updates; and pre-hearing witness consultation.

Some suggestions from the PSNI report in relation to preparation of witness statements for Tribunal hearings and discussion of evidence during the course of the hearing are not considered appropriate for incorporation in the process map due to different jurisdictional rules and practices in Scotland.

In relation to supporting witnesses throughout the process, an Investigative Wellbeing Toolkit and Aide Memoire has been produced, reviewed and approved in May 2022 which provides support in relation to the Employment Tribunal process. This is provided to witnesses at the initial meeting stage and explains the key stages of the process.

All People Partners maintain oversight of live ET cases, submitting monthly updates to closed Professionalism Management Board, by exception, where the case has progressed in the previous month and outlining action for the month to follow.

**Recommendation 2 - Continued Case Reviews**

**Ongoing**

It is recommended that processes for Continued Case Reviews and contact with parties is in place and / or reviewed to ensure witnesses are fully engaged.

The Continued Case Review Panel (CARP) has been piloted, reviewed and final approval to operationalise as business as usual was given by DCC Professionalism on 14 June 2022. The solicitor dealing with the claim assesses the claim at the stage of drafting the ET response and on a continuing basis thereafter in light of engagement with witnesses and any additional information that comes to light. Regular engagement with witnesses takes place and is built into the end to end process as described in detail at Recommendation 1 above. This includes updating witnesses if a case settles.

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It is proposed that the CARP Chair will submit annual report to People and Development Operational Delivery Meeting detailing trends, highlights, issues arising from cases, which could also include anything similar from ET cases during the same period. Learning and actions will be determined by the SMT and progressed/monitored thereafter via our People and Development governance processes. A report from CARP has now been considered through internal governance and been progressed for noting to the Legal and People Committees of the Scottish Police Authority.

### **Recommendation 3 - Grievance Standard Operating Procedures**

**Complete**

It is recommended that Grievance procedures are reviewed and updated taking account of the findings from the tribunal to ensure they are fit for purpose and up-to-date.

Our Standard Operating Procedure was reviewed and has received independent assurance that it follows best practice. To build on this and ensure we are doing everything we can to promote a positive work environment, we have established a "Creating a Positive Workplace" Short Life Working Group (SLWG).

The raising workplace issues and grievances survey was launched on 20 September 2022 for officers and staff who have been involved in a workplace issue or grievance. This survey is part of wider work being carried out by the Creating a Positive Workplace SLWG to understand officer and staff experiences of raising a workplace issue and of our grievance process.

The outcome of this work and survey will in all likelihood result in further amendments to our practices and Standard Operating Procedures which will be taken forward within Recommendations 4 and 5 below.

ACAS have offered support in terms of further advice/guidance on this piece of work. This work will report into our People and Development Service and shape longer term policy.

### **Recommendation 4 - Grievance SOP Governance Standards Monitoring**

**Ongoing**

It is recommended that robust monitoring procedures are introduced to ensure compliance with grievance processes and timescales.

The way in which we report and track on live grievances is being redesigned to support the Case Compliance Review process. The tracker will have Service Level Agreement type flags that identify when steps in the process have exceeded a reasonable timeline. RAG status will be applied and it will cover the end to end process including appeals and cases that move to ET as well as including any learning. A Case Compliance Review Panel is scheduled for end September and this tracker will be tested then. Once live, this will complete this recommendation.

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**Recommendation 5 - Training on the Grievance Process**

**Ongoing**

It is recommended that training in the grievance process is undertaken for all staff involved in the process.

It is further recommended that consideration be given to the need for annual refresher training and/or other competency assessments.

In addressing this recommendation, we are committed to promoting positive working environments for all and consequently have established a Creating a Positive Workplace SLWG. This group is tasked with reviewing current provisions and assessing future requirements.

We have created a Sub Group dedicated to supporting our people which will seek to provide a stand-alone development offering as well as integration through existing training programmes such as First Line Managers. A fundamental part of this offering will focus on achieving greater compliance with the Operating Procedures and improved oversight is also planned.

In the interim we are using the Line Manager Toolkit as a mechanism to promulgate specific advice and guidance on workplace resolution with follow up messaging on Grievance and complaints handling. This will signpost managers to the support available to them.

In respect of ongoing training to our HR professionals, our "Spotlight" CPD sessions will recommence in October 2022 providing an opportunity for learning and development on current topics. A CPD Programme for all HR professionals will be scheduled in advance for the forthcoming year. Updated mediation training was provided to the senior P&D team in June 2022 which helps inform the new 'Creating a Positive Workforce' agenda.

**Recommendation 6 - Education of Managers**

**Ongoing**

It is recommended that line managers are provided with updated advice and guidance in respect of procedures to be followed when welfare reasons are cited.

Making sure our guidance and procedures in respect of moves for welfare reasons has been incorporated within the remit of Creating a Positive Workplace SLWG. This will focus on moving away from grievance and instead signpost to early intervention, mediation and additional support/guidance. We will make clear to line managers where support is available and the appropriate team to contact - HR, Legal or Professional Standards Department.

Specifically within Armed Policing a meeting took place in August 2022 to review the learning around moves for welfare reasons. This meeting was supported by the OSD EDI Delivery Team and People Partner which has resulted in shared learning and incorporated within our EDI Communications Plan.

**Recommendation 7 - Training on Mediation Processes**

**Ongoing**

It is recommended that all mediators must be trained prior to deployment.

It is further recommended that those engaged in the grievance process have a good understanding of the use and benefits of mediation and there is clarity on the differences between the Grievance procedure and Mediation processes.

When welfare reasons are cited they must be supported / followed up with medical evidence.

It is further recommended that consideration be given to the need for annual refresher training and/or other competency assessments.

This is still in very much the researching and consultation stage. In responding to this recommendation, we are currently exploring alternative options to enhance our current provision around mediation. This may include outsourcing some or part of the mediation process. Early scoping of the Guardian Service has taken place along with benchmarking with NHS Highlands as the only other Scottish public service to have introduced the service. Internal consultation has taken place with Professional Standards Department and the Wellbeing Team who are both supportive of such a service. Engagement with Staff Associations (SPF/ASPS/TUs) is ongoing but they are not currently supportive.

Work is ongoing to explore the Culture Shift tool - Report & Support (a real-time reporting platform to identify and prevent harassment and bullying). An in-house demonstration was arranged with a wider demonstration with stakeholders planned - including P&D Engagement Manager, Digital Division and Information Security. A meeting is being arranged with the University of West of Scotland as current users of the tool to gain information on their experience. This online tool provides insight (anonymously and named) around negative and harmful behaviours within the organisation live time. This tool can be adapted to suit the organisational needs.

In respect of educating our line managers about the prospect of resolution by mediation, we have already collated the support provisions that we currently offer and this is documented within the FAQs associated with the SOP. There is a need to explore more connection specifically to grievance and dealing with disputes/early intervention.

Future activity will focus on training and awareness tools to support behaviours aimed at improving capability to positively engage and reach early resolution. Outputs will ensure that wellbeing and ongoing professional sustainable relationships are a key outcome of any revised products (i.e. how do we support rebuilding teams or relationships).

Temporary investment in the retraining of current internal mediators has been progressed in order to ensure that we have relevant provisions in place while exploring options.



**Recommendation 8 - Equality, Diversity and Inclusion Training**

**Complete**

It is recommended that Force-wide training in respect of Equality, Diversity and Inclusion (EDI) is undertaken.

It is further recommended that specific Equality, Diversity and Inclusion Training is delivered to specific groups associated with this Tribunal.

It is further recommended that consideration be given to the need for annual refresher training and/or other competency assessments.

The organisational wide EDI e-learning product is now finalised and was launched in November 2022.

We have further CPD Empower Hours available for colleagues which are continuously promoted:

- 'How to be an Ally'
- Inclusion starts with I
- Unconscious Bias

We also have a number of self-directed learning resources available via HowTo and the CPD intranet page on a range of EDI topics to support staff awareness.

Our Probationer training programme and staff induction covers EDI (1 day probationer, 1 day staff) and our Tutor Constables 1 day online course includes EDI content.

**Recommendation 9 - Key Messages – Culture**

**Ongoing**

It is recommended that a definitive message should be issued by the Senior Executive team to the organisation reinforcing the organisation's views on equality and diversity in the workplace with no tolerance to any conduct to the contrary.

It is further recommended that a plan to address and combat existing issues is developed.

In May 2022, the Chief Constable outlined his position on racist, misogynist or discriminatory views in policing. Policing Together is the mechanism to drive this and is supported by Implementation and Communications Plans.

A number of other plans are in place to support progress in EDI matters. Each member of the Force Executive has been allocated the role of Champion covering all protected characteristics.

The current Diversity Booklet has been withdrawn and PPCW E&D are working on content for an online Knowledge Hub to replace the Diversity Booklet.

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People Partners have been assigned to each divisional area to support the development and roll out of supporting people plans. These will be led by Divisional Commanders who will have responsibility for capturing and reporting on this information and implementing cultural change and progression.

The EDI Secretariat have introduced Inclusion videos into Executive level EDI meetings including Policing Together SOB among others and this has been very well received. Work will be completed to explore Lunch and Learns and Inclusion Moments and circulate information to Senior Leaders. Paper being prepared for Policing Together SOB regarding SLWG being established to oversee Police Scotland taking ownership of Inclusion Moments.

### **Recommendation 10 - Seeking Professional Advice – HR and Legal**

**Ongoing**

It is recommended that the profile of HR and Legal is raised within the organisation so that staff understand their role and service provided. This will ensure professional advice and guidance can be sought at an early stage to potentially mitigate risk especially within the grievance process.

Our “Creating a Positive Workplace” agenda is seeking to ensure we move away from grievance and instead signpost to early intervention, mediation and additional support/guidance. We will make clear to line managers where support is available in both our Standard Operating Procedures and Line Managers Toolkits. We will outline the individual responsibilities of that support be it HR, Legal or Professional Standards Department so that colleagues are aware which support function to contact.

As part of the ET, Grievance and Non-Criminal Complaints review an ‘end to end process map’ was developed setting out various steps to be followed upon receipt of an Employment Tribunal Claim and in particular aspects of communication. This makes clear the individual lines of responsibility for Legal and People and Development.

In respect of our Operational Support Division, the Assistant Chief Constable issued a memo to all staff in December 2021 highlighting the need to seek early engagement and support from our People and Development colleagues and signposting to the relevant service - People Direct, People Partner and/or Operational Support Division EDI team. A one page reminder was issued to Line managers in June 2022 and will be regularly re-issued to include newly promoted managers and temporary ranks.

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**Recommendation 11 - Professional Advice - Escalation Criteria**

**Ongoing**

It is recommended that escalation criteria and processes be considered where it is clear that professional advice is not being followed.

It is proposed that core roles should be identified as having the holistic overview of ER cases/grievances. This should be an escalation route/conduit to People Partners and act as a source of professional advice and support. It would also have links into the CARP and give the Staff Associations a single point of contact to immediately arrange early resolution and also act as a key conduit for the DISA's and their role in supporting our people.

This role/team will be aware of the latest position of all high profile cases and will oversee these and link in with key parties on a regular basis. This role/team will facilitate arrangement of mediation, ensuring post grievance support is followed through. This team would also be the single points of contact for insights from any additional support tools/resources that are procured e.g. Culture Shift/Guardian Service. When in place this will complete this recommendation.

**Recommendation 12 - Ill Health Retiral**

**Ongoing**

It is recommended that processes and sources of assurance relating to Ill Health Retirals (IHR) are reviewed.

It is further recommended that consideration to what training / refresher training may be necessary for HR professionals on the process.

IHR will be one (of many) CPD Spotlight sessions planned to commence in October 2022 for the People Service's Advisors. A Senior IHR lead has been appointed and will be conducting quality assurance checking and customer service reviews on an on-going basis to ensure the process runs smoothly and is problem free.

A Service Delivery escalation process is currently being finalised which details the route / process for when and how to escalate service delivery failings that are often reported as a result of the IHR / Occupational Health service.

The Senior IHR lead has been appointed to oversee the IHR process. As such, a sit rep will be provided to the Head of People Services on a regular basis capturing the wider picture in terms of risks, gaps, finance (in terms of budget provision), and feedback on the process/service from Occupational Health. This will allow early review and mitigation/escalation of any issues that arise.

Once these processes are finalised this will complete this recommendation.

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**Recommendation 13 - Culture Survey – wider staff survey**

**Ongoing**

It is recommended that a staff survey is undertaken in respect of culture as it specifically relates to the issues arising from the Tribunal. This will provide insight to understand the perceptions of not only those within those departments, but others out with the departments, of the culture of these departments.

YVM is the organisation's cultural survey programme. With oversight from the Survey Steering Group (chaired by ACC Local Policing North & C3) all local implementation plans have been created. Delivery against these is a collective effort from across the organisation. All survey work is scrutinised on a bi-monthly basis by DCC Professionalism Management Board and by SPA People Committee. Police Scotland has committed to one further survey with the existing provider but a date has yet to be determined. Can be marked complete when date is known.

In addition to this we are progressing a number of actions in support of improved culture.

Our Your Leadership Matters programme is helping our leaders translate our values into action. Phase 1 of this programme is complete and Phase 2 is being progressed which will see significant delivery over the next 2 years and is a key enabler for our Policing Together Strategy. This will see training rolled out to a further 5500 leaders.

As part of a service-wide drive to raise awareness of the organisation's values of integrity, fairness and respect, and a commitment to upholding human rights, we are delivering a significant focus on maintaining our standards of professional behaviour. The Programme is now moving into its fourth month and has covered Authority, Respect & Courtesy; Fitness for Duty and Discreditable Conduct. Future strands include Equality and Diversity and Challenging and Reporting Improper Conduct.

All leaders in the organisation have a responsibility to listen to all their staff, these could include 'Talk Truth to Power' sessions and/or reverse mentoring. There have been a number of Talk Truth to Power sessions that have been held and action plans are in place across all Diversity Associations. This is enabling opportunities to hear about aspects impacting on the culture of the organisation and for action to be taken accordingly.

We have launched our Sex Equality and Tackling Misogyny survey which is described in more detail at Recommendation 14 below.

We are preparing to participate in the HMICS Thematic Inspection on Organisational Culture and have well established mechanisms in place to address findings from this work once published.

**Recommendation 14 - Culture Survey – Department Specific**

**Complete**

It is recommended that in conjunction with any cultural survey the views of officers and staff in relation to sexual misconduct in the workplace should also be canvassed.

The Sex Equality and Tackling Misogyny Working Group, led by DCC Crime and Operations, is taking an evidence-led approach to tackling sexism and misogyny. A short online survey is open to everyone in Police Scotland, women and men, and all contributions are completely anonymous.

Hosted on Police Scotland's internal online engagement hub, the survey gives people a chance to share their experiences of sexism and misogyny. This initial survey will remain open for eight weeks. It will be carried out annually to help measure progress towards creating an organisation that is fully inclusive.

Colleagues have been encouraged to submit ideas about how we can all shape positive change in a constructive, proactive and meaningful way through Police Scotland's ideas platform.

Focus groups and in-depth interviews will take place over the next few months to discuss ideas for taking this work forward.

**Recommendation 15 - Historic Case Review – Assurance**

**Complete**

It is recommended that consideration should be given to the need to review historic cases in which allegations of sexual misconduct were advanced, to ensure they were appropriately addressed.

Reviews spanning the years 2017 to 2021 were completed as part of a separate review following the Wayne Couzen's conviction and was subject to a separate Terms of Reference directed by ACC Professionalism and Assurance.

A comprehensive review of sexual misconduct matters for 2022 has been undertaken in two parts each covering six month periods. .

A structured approach is now in place for ongoing review and assurance which allows this action to be brought to a close.

To complement the recently published Investigative Wellbeing Guidance, a welfare checklist for subject officers, complainers and witnesses involved in sexual misconduct enquiries has been compiled and is currently being reviewed prior to circulation.

**Recommendation 16 – Firearms Unit - Review**

**Complete**

It is recommended that the structures, recruitment and selection processes pertaining to the Firearms Unit are reviewed, to ensure that they are fully compatible with equality legislation and that any barriers to selection are addressed.

It is further recommended that the unit should, if not already done, train the whole team on acceptable conduct and reiterate sanctions if not found to be met.

A reminder should be issued about all the ways in which to report inappropriate behaviour.

The Assistant Chief Constable, Operational Support Division, issued a memo to all staff in December 2021 highlighting the need to seek early engagement and support from our People and Development colleagues and signposting to the relevant service - People Direct, People Partner and/or Operational Support Division EDI team. A one page reminder was issued to Line managers in June 2022 and has been regularly re-issued to include newly promoted managers and temporary ranks.

An EDI Communications Plan for OSD has been developed and is supported by a dedicated team. The EDI Team have made themselves known and have been visible across OSD through effective communication. As a result a number of officers and staff are engaging directly with the team to share their experience and provide feedback or to seek assistance and advice if they have concerns.

A SLWG has been developed to specifically look at recruitment to Armed Policing which will include gender balance considerations. These actions form part of the activities for year 2 within the OSD EDI Plan and will not be concluded until then. Ongoing monitoring of Divisional EDI Plans takes place separately and provides robust governance for this work.

With the support of the People Partner, the OSD People Board have championed the completion of Exit Interviews and the uptake has significantly improved - 37% completion in OSD compared to a force average of 12%.

As well as the Exit Interview processes, internal movements are also closely monitored i.e. officers / staff moving to another division but remaining with force. An Exit Discussion / Workforce Experience Framework has been developed in consultation with the People Partner, OSD EDI team, P&D EDI team and SCD to establish a consistent approach and further develop SCD pilot approach. The proposal is to be presented to the next OSD EDI Governance Board for approval.

An EDI handbook has been developed in consultation with EDI and People & Development to sign-post Line Managers to guidance in relation to a variety of matters, including disability, absence, maternity etc. This has been circulated to all Line Managers and staff within OSD and a process is in place to ensure any new Line Managers transferring into OSD or being promoted within OSD are sent the handbook. A key theme of this guidance is highlighting to

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line managers that communication and engagement is essential and the importance of seeking advice and assistance.

Empower hours are being rolled out across OSD to Line Managers to enhance learning and knowledge and better equip Line Managers to manage issues and concerns within their team resulting in resolutions and de-escalation.

Work has now commenced to consider how best to roll out Inclusion Moments across OSD. Inclusion Moments are group discussions aimed at promoting discussion around a variety of issues, such as protected characteristics, and helping people self-reflect.

The OSD EDI team are part of the Short Life Working Group developing the organisation wide EDI e-learning module. Discussions have commenced within OSD involving P&D, EDI and Legal in relation to the potential roll out of disability training for line managers, with a focus on ensuring everyone is aware of their responsibilities as line managers.

### **Recommendation 17 – Misconduct Assessments**

**Complete**

It is recommended that consideration should now be given to the Misconduct Assessments provided.

Consideration has been given and action has been taken and recorded as necessary. This action is complete in so far as the Misconduct Assessments have taken place. Some outcomes from this exercise are still ongoing.

Employee A – matters remain with CAAP-D for consideration and any conduct proceedings will only be considered upon conclusion of this. COMPLETE

Employee B – conduct assessment conducted which resulted in PSD directed improvement action (delivered on 05 May 2022). Matter now concluded. COMPLETE

Employee C - left the organisation. Had they remained an assessment under the Performance Regulations would have been carried out as recommend by PSNI. File notes prepared and linked to Centurion Feb 2022. COMPLETE

Employee D - left the organisation. Had they remained an assessment under the Performance Regulations would have been carried out as recommend by PSNI. File notes prepared and linked to Centurion Feb 2022. COMPLETE

Employee E - Criminal investigation carried out and subsequently found to be non-criminal. Discipline/performance assessment currently underway. COMPLETE

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