

11527



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/00ML/LIS/2015/0020**

**Property** : **11, 12, 14 & 16 Sherbourne Way,  
Hove, East Sussex, BN3 8BH**

**Applicants** : **(1) Mrs P Smith (No 12)  
(2) Mrs L Ede (No 11)  
(3) Mr & Mrs Mercer (No 14)  
(4) Mr & Mrs Endean (No 16)**

**Representative** : **In person**

**Respondent** : **Brighton & Hove City Council**

**Representative** : **Mr Allison of Counsel**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay service charges**

**Tribunal Members** : **Judge I Mohabir  
Mr R Wilkey FRICS**

**Date and venue of  
Hearing** : **24-25 November 2015  
City Gate House, Brighton**

**Date of Decision** : **10 February 2016**

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**DECISION**

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## ***Introduction***

1. This is an application made jointly by the Applicants for a determination under section 27A of the landlord and Tenant Act 1985 (as amended) (“the Act”) of reasonableness of service charges claimed by the Respondent for the year 2013.
2. The Applicants are all long leaseholders of their respective flats, which form part of a purpose built block comprised overall of 6 flats arranged in pairs of flats located on the ground and first floors and separated vertically. The leases held by them have been variously granted by the Respondent, as the freeholder, for a term of 125 years. Each pair of flats is defined as being “the building” in the leases.
3. It is common ground that service charges are calculated by reference to each building and then apportioned at 50% between each of the two leaseholders. It is, therefore, not necessary to set out the relevant lease terms that give rise to the Applicants’ contractual service charge liability.
4. The service charges in issue relate to the cost incurred in relation to major external repairs carried out to the entire block in 2012. The works were carried out by the contractor Mears Group Plc (“Mears”) under a qualifying long term agreement it entered into with the Respondent in August 2008 following the appropriate statutory consultation having been carried out.
5. A schedule of rates was agreed for the year 2010/11 in qualifying long-term agreement, which provided for contractual inflationary increases on an annual basis for work carried out by Mears under the agreement. These rates reflect the actual cost of carrying out each particular item of work. For the year 2012/13, the increase was 7.85%. In addition to this, an uplift of 14% was applied by Mears, which represented their profit element for the work carried out in this instance.

6. In February 2012, the Respondent carried out statutory consultation under section 20 of the Act with the lessees prior to the commencement of the works. The scope of the work envisaged was in relation to the fascias/soffits, roofing, elevations and miscellaneous items of work. Provision was also made for any works required to replace or re-fix tiles, roof battens, roof felt, roof timbers, wall ties, miscellaneous repairs and the Respondent's administration and management charges. The latter was applied at a rate of 4% of the overall cost incurred.
7. The apportioned items of work carried out and the service charge costs claimed for each of the buildings in which the subject flats are located are set out in the attached breakdowns prepared by the Respondent.
8. On completion of the external repairs, the Applicants variously expressed their dissatisfaction about the reasonableness of several elements of work, which included the need, scope, standard and cost of the work.
9. Eventually, the Applicants made this application to the Tribunal seeking a determination in these terms in relation to those items of work set out in the Scott Schedule and found at pages 190 to 207 of the hearing bundle. However, at the commencement of the hearing, the Tribunal ruled, with the agreement of the parties, that no items of cost falling below £100 would require determination, as to do so would be disproportionate given the extent of the number of individual items of service charge costs challenged by the Applicants. Each of the remaining items is considered in turn below.

### ***Relevant Law***

10. This is set out in the Appendix annexed hereto.

### ***Decision***

11. The hearing in this case took place on 24 and 25 November 2015 following an external inspection of the relevant areas of the block. The

Applicants appeared in person. The Respondent was represented by Mr Allinson of Counsel.

12. The Tribunal heard this case by the parties making arguments and/or submissions by reference to the disclosure and witness statements in the hearing bundle and also hearing oral witness evidence where appropriate.
13. It should be noted that the Tribunal's determination generally on the issues is based on the available evidence and the weight attached to that evidence. In relation to the external works, the Respondent relied on both internal and external professional expertise and the Tribunal attached greater weight to that evidence unless there was compelling evidence to the contrary from the Applicants. In contrast, they had adduced no expert evidence to support their case and none of them held themselves out as having relevant experience or knowledge or expertise. Whilst the Applicant expressed strong personal feelings about the reasonableness of the cost of these works, this had little or no evidential value in this case.
14. In addition, the Tribunal did not accept the general point taken by the Applicants that there had been a degree of false accounting by the Respondent by failing to use in each instance the correct code for each item of work. It was clear to the Tribunal that the long-term qualifying agreement was more generic in nature and could not be expected to provide such level of detail. The Tribunal accepted the Respondent's evidence that the nearest appropriate code had been used.

***Scaffolding (Item 1)***

15. The Tribunal accepted the Respondent's evidence that the cost of the scaffolding had been charged at the correct rate provided for in the long-term qualifying agreement it had with Mears. There was no need for the Respondent to re-consult in relation to those rates as it had already carried out the necessary statutory consultation before entering

into the agreement. The Tribunal was satisfied that the rate used had been reached by applying the contractual inflationary rate increase of 7.85% and then a profit element of 14% and was reasonable. The Tribunal also accepted the evidence set out at paragraph 7(1) of the witness statement of Mr Steve Willis<sup>1</sup>, the Project Manager for Mears, as to how these costs were incurred and that the full amount had not in fact been recharged to the Respondent.

16. The Tribunal did not accept the Applicants' argument that sub-contracting the scaffolding had increased the cost because Mears could not charge any amount greater than was provided for in the long-term qualifying agreement. As stated earlier, the Tribunal was satisfied that it had done so. There was no evidence to support the Applicants' anecdotal assertion that a local builder would have charged a sum of £1,200 to £1,600 to erect scaffolding around Flats 11 and 12.
17. Accordingly, the Tribunal found the scaffolding costs to be reasonable.

***Fascias, Soffits & Guttering (Item 13)***

18. The Applicants simply put the Respondent to proof that the sum of £4,104.65 had been incurred.
19. The Tribunal accepted the evidence set out at paragraph 7(13) of the witness statement of Mr Willis<sup>2</sup> that the actual cost incurred by Mears was in fact £5,910.40 whereas only £4,104.57 had been recharged to the Respondent. Therefore, the Tribunal found that this expenditure had been reasonably incurred and was reasonable in amount.

***Downpipes (item 14)***

20. This related to the replacement of the second downpipe for Flats 11 and 12, which was replaced as a whole.

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<sup>1</sup> see page 432 of the bundle

<sup>2</sup> see page 434 of the bundle

21. The Tribunal concluded that the replacement of the down pipe as a whole, as opposed to piecemeal replacement advocated by Mrs Smith, was reasonable and not practical for a project of this type and size. It would, as stated by Mr Willis, give everything the same lifespan. In any event, it seems that Mrs Smith was not charged for this item of work.
22. Accordingly, the Tribunal found this cost to be reasonable.

***Roof Tiles (Item 16)***

23. A reduction of £84 was accepted by the Applicants for this item of work and on this basis withdrew their challenge on the reasonableness of the cost.

***Renewal of Roof Felt (Item 17)***

24. The Tribunal did not accept Mrs Smith's assertion that this work had not been carried out because internal access had not been requested by Mears. The Tribunal accepted the evidence given by the Respondent that the felt was in fact outside the property and cannot be seen.
25. Accordingly, the Tribunal found this work had been carried out and that this cost was reasonable.

***Removal of Roof Moss (Item 18)***

26. No determination was required by the Tribunal on this issue because in the final account, the initial charge made to Mrs Smith was re-credited to her and none of the other Applicants had been charged for this item of work.

***Cost of Replacement Roof Tiles (Item 21)***

27. The Applicants argued that the cost of replacing the roof tiles was excessive and should be £2.16 per square metre instead of the £75.89 charged by the Respondent. This was based on their internet costings.

28. The Tribunal did not accept the Applicants comparison of cost to be valid one. The cost of this work has to be viewed in the context of it having been carried out under the qualifying long-term agreement and the rates prescribed by it. As the Tribunal has already found the rates applied under the agreement to be reasonable, it was bound to conclude that this expenditure is also reasonable.

***Renewal of Verge Tiles (Item 23)***

29. Both Mrs Smith and Mr Endean asserted that this work was not done, as there was no physical evidence it had been carried out.
30. The Tribunal accepted the evidence of Mr Willis set out in paragraph 7(23) of his witness statement<sup>3</sup> that this work had been carried out and the need for it.
31. Accordingly, the Tribunal found that this work had been carried out and the cost to be reasonable.

***Renewal of Collar/Strut (Item 24)***

32. The Applicants made two points here. Firstly, that the work had not been carried out. Secondly, and in the alternative, the description of the coding used does not in fact describe the work carried out.
33. The second point made by the Applicants is not accepted for the reasons set out in paragraph 14 above. As to the first point, the Tribunal accepted the evidence of Mr Willis at paragraph 7(24) of his witness statement that the work had been done from the exterior of the building and internal access was not required.
34. Accordingly, the Tribunal found that this work had been carried out and the cost to be reasonable.

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<sup>3</sup> see page 437 of the bundle

### ***Renewal of Cladding (Item 26)***

35. This item of cost was agreed by Mr Mercer as being reasonable and payable.

### ***Renewal of Wall Ties (Item 36)***

36. The Applicants argued, firstly, that this work was not necessary. Secondly, and in the alternative, they argued that the cost of the wall ties was excessive because their internet costing revealed that the cost per wall tie should have been 50 to 70 pence and that a visual inspection showed that the quantity of wall ties claimed to have been used was also excessive.
37. As to the unit cost of the wall ties, the Tribunal did not accept this argument for the reasons set out at paragraph 28 above. In addition, the Tribunal accepted the evidence of Mr Willis that the cost comparison did not appear to include a 25 year guarantee, say what type of wall tie was being supplied and include the cost of a pull test, making good and access.
38. As to the need to carry out this work, the Tribunal accepted the evidence given by Mr Willis at paragraph 7(36) of his witness statement<sup>4</sup> that a survey had in fact been carried out by a specialist contractor, which recommended the need to install the wall ties and the quantities required. He also went on to state that the lack of visibility of each and every wall tie was indicative of a job well done.
39. Mr Willis's evidence was corroborated by that of Mr Diplock, a Contract Monitoring Manager employed by the Respondent who was also the Clerk of Works. He confirmed that the need to install the wall ties was because the external wall of the building was found not to be bonded with the internal walls. He confirmed that wall ties were only installed in the South and South West elevations. The Tribunal also accepted this evidence.

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<sup>4</sup> see page 439 of the bundle



40. Accordingly, the Tribunal found that the expenditure had been reasonably incurred and was reasonable in amount.

***Asbestos Removal (Item 37)***

41. This item of expenditure related to the additional cost of removing asbestos from the canopy of Flat 13 and 14 as part of the overall replacement of the roof and canopy soffits and lintel replacement to the building. The Applicants accepted that, save for the asbestos removal, the remaining costs were reasonable and payable. They simply asserted that the asbestos removal work was not carried out.
42. Again, the Tribunal accepted the evidence given by Mr Willis at paragraph 7(37) of his witness statement<sup>5</sup> that this work had in fact been carried out.
43. Accordingly, the Tribunal found that this work had been carried out and the cost to be reasonable.

***Gate Door Renewal (Item 41)***

44. This item of expenditure only applied to Mr and Mrs Endean. He initially complained that the door furniture of his fence gate was not of good quality as it was rusting only 2 years after being installed. However, he accepted the Respondent's offer to renew the door furniture on the gate door and withdrew this challenge and agreed the cost as being reasonable.

***Fence Renewal (Item 43)***

45. Again, this expenditure only applied to Mr and Mrs Endean. They complained that the wood fence and post had already splintered and the nails had rusted. They submitted that the cost was excessive and relied on an anecdotal replacement quote of £300.

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<sup>5</sup> see page 439 of the bundle

46. Having inspected the fencing complained of by Mr and Mrs Endean, the Tribunal was satisfied that the cracks evidenced were merely the consequence of weathering and not bad workmanship and/or materials used by the Respondent. As to the cost of this work, there was no evidence from Mr and Mrs Endean to support their estimate of £300.
47. Accordingly, the Tribunal found that this expenditure was reasonable.

***Respondent's Administration Charge (Item 46)***

48. The Applicants complained about the unreasonableness of the inflationary uplift rate of 7.85% and the 14% profit element applied by Mears to the cost of the external works. The Tribunal has already found these rates to be reasonable for the reasons set out above.
49. The Applicants also submitted that the 4% administration fee charged by the Respondent should fall within the management fee they paid in their annual service charge demands.
50. The Tribunal did not accept the submission made by the Applicants as correct. In each of the leases there is a covenant on the part of the Respondent to repair and maintain the external parts of the building. Even though the specimen lease provided to the Tribunal appears to contain no express clause relating to the recovery of administration charges incurred by the Respondent, nevertheless, it accepted the submission made that those costs incurred are to be construed as being recoverable under the repairing obligation<sup>6</sup>. Therefore, the Tribunal found that the Respondent is contractually entitled to separately recover the administration charge for supervising the works.
51. As to the rate of 4% applied, the Tribunal had little difficulty in finding this to be eminently reasonable, especially when judged against usual private sector rates of 10% or higher.

***Section 20C & Fees***

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<sup>6</sup> see *Brent LBC v Hamilton* LRX/51/2005 and *Norwich CC v Marshall* LRX/51/2005

52. In relation to the Applicants' section 20C application under the Act, the Tribunal did not consider it just or equitable to make an order preventing the Respondent from being entitled to recover any costs it had incurred in these proceedings for the following main reasons:

- (a) that the Applicants had not succeeded on any of the issues that came before the Tribunal.
- (b) that, save for Mr Mercer, none of the Applicants had objected to the external works when they had been proposed or engaged in the statutory consultation carried out by the Respondent.
- (c) that they only challenged the scope and cost of the works when the Respondent served the service charge demands.
- (d) the Tribunal was satisfied that the Respondent had constructively engaged with the Applicants in an attempt to informally resolve the disputed items of cost including the involvement of the Housing Ombudsman.
- (e) that the Applicants had taken every conceivable point and at no stage until the hearing did they make any reasonable concessions on any of the issues thereby requiring the Respondent to incur greater costs.

53. For the same reasons set out above, the Tribunal also makes no order requiring the Respondent to reimburse the Applicants any fees they may have paid to the Tribunal to have the application issued and heard.

Judge I Mohabir  
10 February 2016

**Appendix of relevant legislation**

## **Landlord and Tenant Act 1985**

### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### **Section 27A**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or

- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

**Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).



**Brighton & Hove  
City Council**

Housing

External Repairs and Decorations

15 & 16 Sherbourne Way

<b>Description</b>	<b>Cost</b>	
Scaffolding/Access equipment	£	1,943.21
Remove and replace fascias, soffits, guttering,	£	1,913.00
Roof tiles, moss removal and chimney repairs	£	-
Re-pointing and associated		
brickwork/masonry repairs	£	61.12
Painting & associated preparation	£	170.64
Asbestos removal from roof and canopy soffits	£	511.82
Lintel Replacement	£	-
Miscellaneous Repairs (store door		
replacement, UPVC soffit to canopy, gulley		
clearance, satellite dish reposition, BT line		
reposition etc)	£	339.18
Replace or refix tiles, roof battens, roof felt,		
roof timbers	£	1,520.56
Wall ties	£	826.37
Canopy Replacement	£	-
Brick Strengthening	£	-
	£	-
<b>Total Cost of Works</b>	<b>£</b>	<b>7,285.89</b>
<b>BHCC Administration</b>	<b>£</b>	<b>291.44</b>
<b>Total Cost to Building</b>	<b>£</b>	<b>7,577.33</b>

If you would like further financial information, such as copies or extracts from the final account or other documents relevant to your service charge costs arising from this contract, please put your request in writing before 31 March 2014 to:  
Leasehold Team, Housing Centre, Unit 1, Fairway Trading Estate, Eastergate  
Road, Brighton BN2 4QL.





**Brighton & Hove  
City Council**

Housing

External Repairs and Decorations

13 & 14 Sherbourne Way

<b>Description</b>	<b>Cost</b>
Scaffolding/Access equipment	£ 1,211.35
Remove and replace fascias, soffits, guttering,	£ 1,293.44
Roof tiles, moss removal and chimney repairs	£ -
Re-pointing and associated brickwork/masonry repairs	£ 82.75
Painting & associated preparation	£ 362.40
Asbestos removal from roof and canopy soffits	£ 235.86
Lintel Replacement	£ -
Miscellaneous Repairs (store door replacement, UPVC soffit to canopy, gulley clearance, satellite dish reposition, BT line reposition etc)	£ 509.66
Replace or refix tiles, roof battens, roof felt, roof timbers	£ 1,069.61
Wall ties	£ 826.37
Canopy Replacement	£ -
Brick Strengthening	£ -
	£ -
<b>Total Cost of Works</b>	<b>£ 5,591.44</b>
<b>BHCC Administration</b>	<b>£ 223.66</b>
<b>Total Cost to Building</b>	<b>£ 5,815.10</b>

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**Brighton & Hove  
City Council**

Housing

External Repairs and Decorations

11 & 12 Sherbourne Way

Description	Cost	
Scaffolding/Access equipment	£	2,170.34
Remove and replace fascias, soffits, guttering,	£	2,368.15
Roof tiles, moss removal and chimney repairs	£	-
Re-pointing and associated		
brickwork/masonry repairs	£	90.90 *
Painting & associated preparation	£	140.15
Asbestos removal from roof and canopy soffits	£	493.42
Lintel Replacement	£	-
Miscellaneous Repairs (store door replacement, UPVC soffit to canopy, gulley clearance, satellite dish reposition, BT line reposition etc)	£	331.60
Replace or refix tiles, roof battens, roof felt, roof timbers	£	2,254.34
Wall ties	£	1,757.45
Canopy Replacement	£	-
Brick Strengthening	£	-
	£	-
<b>Total Cost of Works</b>	£	<b>9,606.36</b>
<b>BHCC Administration</b>	£	<b>384.25</b>
<b>Total Cost to Building</b>	£	<b>9,990.61</b>

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