

FOCUS

ISSUE NINE

Practical guidance on handling complaints, conduct matters, and death or serious injury matters within the Police Reform Act 2002

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Referrals

The referral of certain complaints, conduct matters or death or serious injury (DSI) matters to the IPCC is fundamental to ensuring public confidence. It is also one of the grounds which determine whether a subsequent appeal will be considered by the IPCC.

In January 2016, the IPCC published a report¹ after looking at whether police forces were applying the mandatory referral criteria appropriately, and correctly identifying cases for voluntary referral. We found that forces often misunderstand the referral criteria. This means that some matters that should be referred have not been. This issue of Focus clarifies the mandatory and voluntary referral criteria in the areas we found forces need most guidance.

Incidents that should always be sent to the PSD to be assessed for possible referral to the IPCC:

- incidents where someone is hurt as a result of direct or indirect police action – level of injury for referral to PSD to be decided locally
- the arrest of a police officer/member of police staff
- all domestic homicide reviews/serious case reviews that involve police action/inaction
- all dog bites, taser discharges and firearms incidents
- any police pursuit that results in a collision
- any near miss in custody
- off-duty conduct of police officers/police staff
- conduct matters where public interest may be high

¹ Referring complaints, conduct matters and death or serious injury matters to the IPCC – a review of current police force practice.

Making a referral

Before referring a matter to the IPCC

1. PSDs must record it as a complaint, recordable conduct matter or DSI matter.
2. Do not select 'called in' on the referral form unless it actually has been, in writing, by an IPCC commissioner.
3. Where supporting documents are readily available, these should always be sent with the referral form. The IPCC cannot make a reasonable assessment of the level of investigation required without all the facts. It is also important to review any evidence that is readily available that either undermines or supports the credibility of the allegation before making a referral.

For complaint and conduct referrals, the alleged breach of the Standards of Professional Behaviour must be clearly set out. This includes off-duty conduct that would bring the force into disrepute. It is the substance of the matter and not the wording of the allegation that dictates whether something should be referred to the IPCC.

When a police officer/staff member² has transferred forces since the alleged conduct took place, the force where the officer/staff member currently works is the appropriate authority and should make the referral. It is not the force where the officer/staff member was serving at the time of the alleged conduct.

Where an incident crosses force boundaries (for example, a police pursuit or an investigation into a missing person), each police force involved must assess their involvement. They should make a separate referral to the IPCC if they identify a complaint or conduct matter involving one of their officers/staff members.

Death or serious injury (DSI)

Death or serious injury cases are mandatory referrals of incidents where no one has complained, **and no recordable conduct matters have been identified**, but where the circumstances of the incident need to be looked into. This may be because someone has either died or been seriously injured, and it might have been as a result of police action or inaction. This does not include police officers or members of staff who have died or been seriously injured while on duty.

Serious injuries are those where there is a significant impairment, either temporary or permanent, to a person's functional abilities. This can either be physical, for example, broken arm, deep cut or laceration, ruptured spleen, or loss of consciousness; or mental, for example, personality change, memory loss or epilepsy, as a result of brain injury.

Deciding whether the incident might have been the result of police action or inaction can be a fine distinction. It can be difficult to identify whether or not there may be a causal link between police action or inaction and what happened.

Only when there is clearly no causal link between the death or serious injury and the action/inaction of the officers/police staff should forces not refer cases – if there is any possibility of a causal link, it should be referred.

² Police officer/staff member also includes contractors working for the police.

Case study one – death following contact

Scenario A

A PSD was notified of a death following police contact. A paramedic had asked for police assistance to deal with an agitated man who said that his drink had been spiked. Two police officers were deployed. The man calmed down and complied with the paramedics. The police officers stayed with the man while he was taken to hospital. He was kept in for observations and officers left the hospital. Thirty-one minutes later the man suffered a cardiac arrest and died.

This does not need to be referred to the IPCC. The information indicates that the officers attended in a support role only. There is no suggestion that the police officers' actions may have caused or contributed to the death. The officers played a limited role in the incident, escorting the man to hospital, and no further disturbances were reported.

Scenario B

The attending officers restrained the man in order to get him in to the ambulance.

As it is not possible to rule out any causal link between the restraint and the subsequent cardiac arrest, the matter should be referred.

The IPCC does not set out a time period following release from police custody, during which any death or near miss must be referred to the IPCC. It is more important to assess whether there are any possible links between the police action and the subsequent incident. This might mean that someone who dies an hour after release from custody is not referred because there is no link, whereas a death three weeks later is referred because there is a clear link.

Case study two – loss of consciousness

A man in custody head butted his cell door repeatedly. Police officers and detention staff entered his cell and restrained him on the floor. An ambulance was called because he had a golf ball-sized lump on his forehead. He lost consciousness for about five seconds and was bleeding from his mouth. When paramedics arrived, they decided not to take him to hospital, but instructed police officers to make sure that he was woken up every 30 minutes. The loss of consciousness was momentary and the paramedics were not unduly concerned. The matter was not referred and the file was closed.

Regardless of the paramedics' assessment that the head injury did not require further medical intervention, this incident involved a serious head injury combined with a loss of consciousness. It should have been referred.

Case study three – suicide

A police officer was arrested on suspicion of stealing money recovered during a drugs raid. During his interview he revealed he had a number of financial worries that had escalated over time and his personal debt was becoming unmanageable. He was bailed while enquiries continued. His Federation representative drove the police officer back to the town centre. In the early hours of the next morning, his partner called the police to tell them that he had not come home that night. The police officer was found dead in a nearby park later that day. He had taken his own life.

This matter should be referred to the IPCC because a causal link cannot be ruled out – the officer's arrest and interview may have contributed to his decision to take his own life.

Recognising potential links

It is important to assess any police contact, or lack of police contact, leading up to an incident. This identifies any conduct issues and establishes whether policing decisions may have contributed to the incident. Examples include:

- the management of a known risk of someone self harming
- the way a missing person's report is graded and responded to
- failing to protect a vulnerable person who is at risk of harm

You should consider whether a different response, behaviour or intervention by the police might have led to a different outcome. It is the police action/lack of action and the impact that may have had upon the outcome rather than the time that passed between the (lack of) action and the incident that is important.

Case study four – not preventing an assault

A police vehicle drove past a 50-year-old man who was being assaulted by teenagers in the street. It slowed down to take a look, but did not stop. The man suffered a suspected fractured jaw.

The serious injury was not caused directly by the officers in the police vehicle. However, the lack of intervention by the officers may have been a contributing factor to the man sustaining a suspected fractured jaw.

Because of this, the case should be referred to the IPCC.

If officers/police staff are simply present at an incident and have no contact (direct or indirect) with the person involved, this does not necessitate a mandatory referral. In the same way, even if they have had contact, but it is clear that this cannot have contributed to the DSI, then it does not need to be referred. However, if an police staff/officer's acts or omissions **may** have contributed to the DSI, then the matter should be referred.

Case study five – welfare check

A neighbour called the police at 5pm, concerned that she had not seen her elderly neighbour that day. His milk delivery had been left outside his door since the morning. Police went to the house half an hour later. When there was no reply, they broke the door down. They found the man lying on the floor, bleeding from a head wound. It appeared to have been caused when he fell, hitting his head on the radiator. The man still had a faint pulse and he was taken to hospital, but later died.

There is no need to refer this case. There is no causal link between the police's attendance and the man's death. There is also nothing to suggest that his death would have been avoided if the police had arrived earlier.

However, if the officers had not forced entry and left after receiving no reply to their knocking, then this matter would be referable. In those circumstances it would not be possible to rule out a causal link between lack of police action and the man's death. There would be no way of knowing whether, had they broken the door down, they could have found him before it was too late.

Case study six – hostage incident

Police were called to a hostage situation where a man was holding a knife to his wife's throat. Police surrounded the building. A hostage negotiator was also called and was making his way to the scene. Before he arrived, the man shot himself.

This matter should be referred to the IPCC. Although officers were not in the building and had no physical contact with the man before his death, their presence around the building and the indirect psychological impact of that may have contributed to the man's decision to take his own life.

Serious case reviews (SCRs) and domestic homicide reviews (DHRs)

SCRs happen in cases of known or suspected abuse or neglect when a child dies or is seriously harmed, and there are concerns about how organisations or professionals worked together to protect the child. SCR also take place when a vulnerable adult has come to harm – these are referred to as adult serious case reviews.

DHRs happen when the death of a person aged 16 or over has, or appears to have resulted from violence, abuse or neglect by someone who was either:

- related to them
- in, or had been in, an intimate relationship with them
- a member of the same household as them

Both types of reviews are multi-agency and can involve not just the police, but also social services, the NHS, voluntary agencies, and families and friends of both victim and perpetrator. They look at previous contact with the victim and perpetrator and identify whether there were any organisational failings and what lessons can be learned. It is important that any police involvement or contact should be reviewed, not only at the beginning of these cases, but also on an ongoing basis, to ascertain whether the case should be referred to the IPCC as a DSI.

Case study seven – SCR requiring mandatory referral to the IPCC

Mr A had dementia and was found dead the morning after being reported missing from his care home. The force was involved with Mr A on five occasions about missing person/welfare concerns. On the last occasion, the call was graded incorrectly. A review of police actions found that Mr A should have been graded as a high-risk missing person, not medium. Two incidents earlier in the same month had also not been classified correctly. This meant that he had not been referred to the vulnerable adult safeguarding team. The review highlighted that Mr A's death was likely to have been preventable.

This case should be referred to the IPCC under the DSI criteria as it is possible that police action/inaction may have had a causal link to his subsequent death. The police interaction with Mr A before his death should be examined to establish whether the contact may have caused or contributed to his death.

Case study eight – suicide of vulnerable girl

Ms A was living with foster carers after witnessing domestic abuse and going missing several times. She did not return home one evening and her foster carers reported her missing. The next day she was found hanged and it appeared to be suicide.

Over the previous two years, concerns for Ms A were raised on 22 occasions. The concerns included her using drugs, being sexually abused, going missing, and self harming. On one occasion when she went missing, her foster carers told the police that they were worried about her drug use. However, she was not referred to any drug services and this information was not passed on to any other agencies. Six months before she died Ms A was arrested by police for wasting police time – she had been reported missing five times and had been found at a man's address. The Probation Service criticised the police at the time for criminalising a victim.

The suicide of Ms A is not directly linked to the actions of the police. However, the force potentially missed opportunities to help a vulnerable young girl and the decision to arrest her may have exacerbated her vulnerability. The SCR will look at the actions of all of the agencies to determine if there are any lessons to be learned, but the police involvement must be referred to the IPCC as a DSI matter immediately.

Case study nine – failure to protect

A man called the police because he was concerned about his mother's welfare after her partner had made threats to kill her. A background check showed that the partner had made threats to kill in the past. The call was graded as high-risk and police spoke to the mother. She provided a statement describing a history of domestic abuse. This included physical injury, threats to kill and sending text messages and harassing her at work. She told police she lived in fear of her partner and felt like a prisoner in her own home – he was controlling her finances and preventing contact with family or friends. She also told police he had once kept her prisoner at home for three days and she was unable to contact her family. A Domestic Abuse, Stalking and Honour Based Violence (DASH) form was completed and graded as high-risk. He was arrested that day, interviewed and released on bail with conditions not to contact her either directly or indirectly.

Four days later her son called the police. He reported that the partner's daughter had sent him a text message telling him to tell his mother to drop the charges. The call was graded as high-risk, but no action was taken and the incident was closed. Two days after that, his mother was stabbed by her ex-partner and died of her injuries. During the subsequent DHR, it came to light that the police had not referred the mother to a Multi Agency Risk Assessment Conference (MARAC) to arrange a support plan for her.

The lack of police action following the man's breached bail conditions, and the missed opportunity to safeguard the woman, mean that this matter must be referred to the IPCC as a DSI.

Serious corruption

Abuse of authority for sexual gain³

This describes situations where police officers/members of staff use their positions to legitimise unnecessary contact for sexual gain. This can include starting, or attempting to start, a relationship with a victim of the crime they are investigating, accessing personal/contact information held on police systems, or contacting victims of crime for a non-policing purpose.

Case study ten – pursuing a sexual relationship

An officer had been communicating privately with a victim of domestic violence, who he met in the course of his duties. He had been communicating with the woman for up to a year with the aim of establishing a relationship with her, using his personal email address to do so. Eventually, the woman reported his behaviour to the police.

This conduct matter should be referred to the IPCC on the grounds of serious corruption. The officer allegedly abused his position in an attempt to start a relationship with a vulnerable person who he had met while on duty.

Case study 11 – accessing databases

A grievance was raised by a colleague about a police officer and his highly sexualised behaviour towards women on his shift. During the course of the grievance investigation, an audit of the Police National Computer (PNC) showed that the officer accessed the details of rape cases and other serious sexual assaults regularly, and had printed off the forensic examination reports. There was no legitimate policing purpose for this.

This is a mandatory referral for serious corruption – this is conduct matter where the officer is alleged to have used his powers and access rights to obtain information for his personal gratification.

³ For further information on this subject please see [The abuse of police powers to perpetrate sexual violence](#) jointly published in September 2012 by IPCC and ACPO (now the National Police Chiefs' Council).

Abuse of authority to pervert the course of justice

If police officers fail to carry out a certain action or make incorrect policing decisions, this is not perverting the course of justice. Perverting the course of justice refers to someone taking deliberate action to alter the course of public justice. This may include:

- an officer lying in his statement about the behaviour and actions of the complainant in order to justify an unnecessary use of force by the officer
- accepting benefits or favours in return for preferential treatment
- disposing of evidence because they know the person under investigation

When considering whether to refer an allegation that the officer has perverted the course of justice, the first thing to assess is whether the substance of the complaint/conduct matter actually asserts that the officer took **deliberate action**.

An assertion that an officer has lied would not on its own be sufficient to meet the serious corruption referral criteria. There must be a clear demonstration that that lie was deliberate and knowingly untrue and has perverted, or would pervert, the course of public justice.

Case study 12 – lying in a statement

An officer reported his colleague when he felt he had used unnecessary force on a member of the public during an arrest. The officer's statement gave a false rationale both for the arrest and for the use of force, justifying them when there was no basis for either the arrest, or for the level of force used.

The potential for this deliberate act to have resulted in the member of the public being inappropriately charged and/or prosecuted makes this a mandatory referral.

Case study 13 – failure to investigate

A man reported his former business partner to the police for fraud. The police reviewed the dispute and decided that it was a civil matter, not fraud.

The man then complained that the officer who had reviewed the matter had made the wrong decision. He alleged that the officer was corrupt and that by not investigating the matter further, he was perverting the course of justice by allowing his former business partner to evade prosecution.

This is not referable – it is not perverting the course of justice. The basis for the complaint is that the officer made the wrong decision about the fraud case. There has been no deliberate action to alter the course of justice.

Serious assault

Serious assault is defined as any injury that amounts to actual bodily harm (ABH) or more serious. Crown Prosecution Service (CPS) guidance (which is not exhaustive) about what can be considered ABH states the following:

- significant medical intervention and/or permanent effects have resulted
- the need for a number of stitches (not the superficial application of steri-strips)
- a hospital procedure under anaesthetic
- psychological harm that involves more than emotions such as fear, distress or panic can also amount to ABH

In general, if the likely sentence would be more than six months imprisonment, the offence will be ABH, not common assault and should be referred.

As with any other potential referral, the available evidence, such as the custody record or the incident log, should be reviewed before you make a decision about whether to refer. In some cases, you will need to verify the details before making a referral. For example, it is reasonable to ask for supporting medical evidence before making a referral if an allegation of a broken arm has been made six months after an incident, there is no documentation to indicate

that force was used during the arrest, and no complaint was made while the person was in police custody. However, if there is evidence that a person was taken to hospital while in police custody and they walk into a police station with their arm in a cast the following day reporting that the police broke their arm the night before, there is no need to seek further evidence. A referral should be made immediately.

Case study 14 – ABH

A complainant was arrested for public order offences. While being booked into custody, he alleges that during his arrest he was thrown to the ground and that an officer stamped on his head and hand. He complains that he was not aggressive and that the officers used excessive force, which resulted in him sustaining a broken rib and bleeding eye. He is examined by medical staff. They confirm that he has a broken rib.

There is no initial evidence to suggest that the complainant had not sustained the injuries alleged. Therefore, based on the information available, the injuries are serious enough to amount to ABH. The matter should be referred to the IPCC.

Case study 15 – dog bite

Mr A complained that he was bitten by a police dog. After arguing with and being pushed by the officer, the dog nipped him on the leg. He feels that the use of force was unnecessary and the officer should have listened to him rather than setting the dog on him. He was subsequently arrested for public order offences. The custody record confirms Mr A had sustained injuries to his leg after a dog bite. He received medical treatment while in custody for a small puncture wound. He did not require hospital treatment.

The force does not need to refer the complaint to the IPCC as the level of injury sustained does not meet the definition of serious assault.

Discrimination⁴

When assessing the gravity of a discrimination complaint and whether it should be referred to the IPCC, it is important to separate the two elements of the complaint. This establishes whether the alleged behaviour (without the discrimination element) would, if proven, lead to criminal or misconduct proceedings, **and** whether the alleged discrimination is an aggravating factor. Both conditions must be met for the matter to meet the mandatory referral criteria. On its own, an allegation of discrimination does not need to be referred to the IPCC. Where someone makes an allegation of serious discrimination, but there is no underlying criminal offence or behaviour liable to lead to misconduct proceedings, forces may consider referring the matter on a voluntary basis. This may be because of the gravity of the matter or public interest concerns.

Case study 16 – sexual predator

A member of police staff made a number of allegations against his colleagues. These included:

- male officers showing pictures of naked women and other pornographic material at work
- a male officer using the police helicopter camera to look for women going about their business
- during a protest, using the camera to look at naked women in the shower/toilet area

These allegations are extremely serious and meet the threshold for a mandatory referral. This is because some of the allegations involve conduct that would be liable to lead to criminal or misconduct proceedings and are aggravated by sex discrimination.

Case study 17 – racial targeting

A man said that he was the subject of racial targeting by a police dog handler. He claimed that the officer influenced the police dog to give an indication that he was carrying drugs and that he did this in order to justify a stop and search. He also said that the dog handler and other police officers present used intimidation and threats of unlawful arrest so he would co-operate. The man said he was then strip searched in the back of a police van with the doors left open meaning people passing could see.

The behaviour complained about – engineering grounds for a stop and search and then conducting a full strip search in the van, with the doors open – would, if upheld, lead to criminal or misconduct proceedings. The man also says that this conduct was motivated by racial targeting. Therefore, this complaint meets the referral criteria.

The allegation also invokes Article 3 of the ECHR (the right to freedom from torture and inhuman and degrading treatment or punishment). This increases the severity of the allegations and adds to the reasons for this case to be referred. If the complaint did not allege that the officers' actions were motivated by racism, we would expect the force to consider voluntary referral (see page 10).

⁴ For further information, please see the IPCC's [Discrimination Guidelines](#).

Relevant offence

A relevant offence refers to any offence for which a person aged 18 years or over (not previously convicted) may be sentenced to imprisonment for seven years or more. You will need to refer to the sentencing framework for the offence in question in order to apply the definition ([see CPS website for guidance](#)).

When making this assessment, you cannot consider what the likely sentence would be – to do that would be to take over the role of the judge. The person making the assessment can only consider whether the offence has the possibility within statute to be given a sentence of seven years or more. For example, theft carries a maximum sentence of seven years imprisonment. Therefore, any allegation that a police officer or staff member has committed theft must be referred to the IPCC.

Voluntary referrals

Complaints or conduct matters will be raised that do not meet the mandatory referral criteria. However, in some of these cases, the circumstances of the case, for example – the gravity of the subject matter or the public interest - may warrant a voluntary referral. Examples include:

- near misses in custody suites
- missed opportunities to prevent harm to a vulnerable person
- significant public interest

When making a voluntary referral, you should include clear reasons for doing so.

Case study 18 – voluntary discrimination referral

Mr A reported to the police that he had been subjected to constant abuse from a number of people in his local area because he was a Goth. He stated that this included verbal abuse, harassment, threats of violence, and damage to his property. He was visited by two neighbourhood police officers who advised him to consider dressing differently. More incidents were reported to the police as the abuse became more serious, including threats of violence to his wife and children. However, nothing was done. Mr A made a complaint to the police that his reports were not taken seriously and that the police had failed to investigate his reports because he was a Goth. He stated that the officers' attitude in advising him to dress differently was ignorant and unfair, and that his community had a distinct lack of confidence in the police. He added that because of this, the Goth community would stop reporting incidents to the police and instead retaliate against the people involved unless the police took action.

The failure to investigate repeated reports of a hate crime may lead to misconduct proceedings. However, the alleged discrimination relates to a group that is not specifically protected under the Equality Act. Therefore, the two elements required for mandatory referral are not met. However, on the basis that the confidence of the Goth community has been damaged, the force may wish to consider voluntary referral. Independent oversight of the complaint may be necessary to gain the co-operation of the complainant and his community.

Article 3

Article 3 of the European Convention of Human Rights (ECHR) provides an absolute right that no one shall be subjected to torture or to inhumane or degrading treatment or punishment. Where there is a credible claim that Article 3 is engaged, the state has a duty to provide adequate ways to achieve an independent and effective enquiry. Torture is a higher threshold than inhumane or degrading treatment. The use of handcuffs or reasonable force during arrest would not normally breach Article 3.

The seriousness of the alleged conduct and its effect, as well as any justification for what happened, should be reviewed. The vulnerability of the member of the public involved in the incident should also form part of the assessment. Article 3 is more likely to be engaged where the person is disabled, very elderly / young, or otherwise vulnerable.

Case study 19 – complaint following the arrest of a vulnerable young person

A 15 year old's parents made a complaint on her behalf after her arrest for a public order offence. It was alleged that excessive force was used causing bruising to her body, arms and head. The complaint further alleged that no appropriate adult was present while she was interviewed, despite her being under 18 and suffering from mental health issues.

This complaint would be suitable for a voluntary referral because the allegations and the vulnerability of the person involved raise concerns about whether her rights under Article 3 of the ECHR had been breached.

Case study 20 – lack of medical treatment

Police were called to a domestic incident involving a mother and her daughter. During the incident, a violent exchange took place between the two family members and the mother was thrown over the sofa by her daughter. Both women were arrested. The mother complained during arrest that she had injured her hip and was in pain while being transported to custody. When she arrived at the police station, she also told the custody sergeant that she was in pain. However, her complaints were ignored and she was dismissed as being drunk. The woman was left in custody for six hours with no medical intervention, despite her cries that she was in pain. It emerged later that she had sustained a broken hip.

There is no suggestion that the broken hip was caused by a police officer/staff member, but the matter should be referred to the IPCC. This is owing to the potential breach of Article 3. The woman was left in custody for a prolonged period without access to medical treatment, despite telling officers on numerous occasions that she was injured and in pain. She was dismissed as being drunk, without any proper medical assessment taking place.

Child sexual exploitation (CSE) cases

Child sexual exploitation (CSE) and child sexual abuse (CSA) cases may feature allegations that:

- a police officer/staff member is alleged to have carried out or assisted in the commission of the offence
- there was a failure to investigate an allegation of CSE/CSA properly
- there was a failure to act on or record intelligence relating to CSE/CSA
- intelligence indicated that a person was at risk of CSE/CSA, but no action was taken
- police failed to share information with partner agencies
- a police officer/staff member developed inappropriate relationships with vulnerable children

Case study 21 – failure to investigate CSE adequately

Police were notified by Childline that a teenage boy had told them he had been sexually assaulted. Over the next three years, the boy told the police about a further 13 sexual offences. His carers complained about the slow pace of the investigations and about the lack of impartiality shown by the investigating officers. A dedicated team was then allocated to investigate all of the offences against the boy. More than 35 people were identified using evidence on seized electronic devices, intelligence and video evidence from the victim. All of this evidence was available to the original investigation.

This matter should be referred to the IPCC. In the original investigation, the police failed to investigate adequately. They also failed to pursue evidential opportunities, which resulted in the young person being subjected to further sexual exploitation by the offenders.

A child is someone aged 17 years or under.

Because of the historic nature of some of these cases, forces may take reasonable time to identify and assess whether complaints, conduct matters or DSIs should be referred to the IPCC. Initial enquiries may include identifying the people involved, establishing the dates of potential offences, and securing any documentation available.

Case study 22 – failure to act on intelligence

During a multi-agency meeting where 'at-risk' children are discussed, concerns were raised about a local man's association with children. There were reports that he had been abusing them. After the meeting, the police officer who attended did not record this information and no further action was taken. The man was not arrested and went on to abuse another child.

The police officer in this case failed to protect the child by not acting on information received about 'at-risk' children. This matter should be referred to the IPCC.

Get in touch

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