



## **All on board?**

# **Navigating school transport issues**

**Focus Report: learning lessons from complaints**

**March 2017**

# **Contents**

<b><i>Introduction</i></b>	<b>1</b>
<b><i>LGO complaints</i></b>	<b>2</b>
<b><i>Legal context and legal position</i></b>	<b>3</b>
<b><i>Emerging issues</i></b>	<b>6</b>
<b><i>Special educational needs and school transport</i></b>	<b>10</b>
<b><i>Discretionary decisions</i></b>	<b>15</b>
<b><i>Getting things right</i></b>	<b>16</b>
<b><i>Scrutiny and the role of councillors</i></b>	<b>17</b>

## Introduction



Applying for the most appropriate school place for their child is one of the most important decisions many parents (or carers) believe they will make. How a child will travel to school and who will fund it may be one issue parents factor into their decision.

We are seeing an increase in complaints about school transport issues. Most of these relate to failures in process including:

- > failing to consult or inform parents of proposed changes to policy;
- > lack of clear information to enable parents to make properly informed decisions;

- > inadequate or poorly communicated decision making;
- > for children with special educational needs (SEN), failing to consider health and safety problems associated with their educational needs and disability when considering eligibility for transport.

We recognise and understand that on occasions difficult decisions have to be made, particularly in times of reduced public spending. But councils must ensure such decisions are made fairly, legally and transparently. Failure to do so can cause confusion,

financial hardship and significantly disadvantage some of the most vulnerable children, particularly those with special educational needs.

Parents need to understand how a decision (either at application or appeal stage) has been reached and what factors have been considered and taken into account.

We are publishing this report to highlight some of the common failings we see. We hope it will help councils to avoid some of the most common pitfalls and help parents understand what they can expect from their council if they apply for free school transport.

## LGO complaints

We have seen a marked increase in complaints about these issues over the past two years.

In 2015/16 we received 261 complaints and enquiries about school transport, compared with 160 in the previous year. In the first six months of this year, the uphold rate is 57%, which is above our average uphold rate for all complaints.

### What we expect

From our experience of dealing with complaints when things go wrong we know there are a number of steps that can be taken to avoid problems occurring.

Parents need sufficient information to enable them to make informed decisions. We therefore expect councils to:

- > provide clear and accurate information about school transport policies and changes to those policies;
- > ensure information is available in line with the relevant school admission round;
- > exercise discretion appropriately;
- > ensure that reasons are given for decisions reached on applications and any subsequent appeals.

Parents making an application for school transport should consider the following:

- > check on the council's website to find out which is their nearest qualifying school. It may not be their catchment school;
- > check the council's transport policy if intending to apply for a Church

Aided School (denominational transport). If the school is not the nearest qualifying school to their home address transport may not be provided, even if it exceeds the relevant walking distance;

- > families who have a low income (entitled to free school meals or in receipt of the maximum level of Working Tax Credit) may be eligible for free transport if certain criteria are satisfied;
- > distance can be measured in different ways. Parents should establish how a council calculates distance for admission purposes and for determining the nearest available school and check how it measures distance when deciding if a child lives outside the statutory walking route. The two can be different and this can cause confusion.

We see from our complaints that many councils are looking again at how and when they offer free school transport. The challenges faced by councils in providing free transport have been set out in a recent [Position Statement from the Association of Directors of Children's Services](#).

## Legal context and legal position

### Children and young people up to the end of compulsory school age (16)

School transport law is set out in the Education Act 1996 (the Act), as amended by the Education and Inspections Act 2006. Schedule 35B of the Act defines eligible children (those who qualify for free transport) as:

- > children unable to walk to school by reason of their special educational needs, disability, or mobility problem (including temporary medical conditions);
- > children unable to walk in safety to school because of the nature of the route, and;
- > children living outside 'statutory walking distance', which is two miles for children under eight and three miles for older children. Special rules about distance apply to children from low income families.

Eligible children only qualify for free transport to the nearest qualifying school. This is defined as the nearest publicly-maintained school, with places available, that provides education appropriate to the age, ability and aptitude of the child, and any special educational needs that the child may have. For children with special educational needs, if a school is the only school named in a Statement of Special Educational Needs or Educational, Health and Care (EHC) Plan, this means it is the nearest suitable school for school transport.

The Act gives local authorities the power to make arrangements for children not covered by the statutory duty. This includes children who do not attend the

nearest qualifying school or who are below compulsory school age such as many children in their Reception year. Councils must have a policy setting out what they may provide to these children. There is no requirement for such arrangements to be free of charge, but local authorities can do this if they choose.

In 2014, the government issued statutory guidance (the Guidance) covering children up to the age of 16, which councils have a duty to have regard to. This says that local authorities should have in place a robust appeals procedure, should parents have cause for complaint or disagreement concerning their child's eligibility for travel support. Appeals procedures should be published alongside travel policy statements.

## Transport for students of sixth-form age

Councils do not have a duty to provide free transport for young people of sixth form age in education or training. This means students aged 16 to 18. It also includes 19-year-olds if they are continuing on a course started before the age of 19.

However, councils must publish an annual transport policy statement setting out the arrangements for the provision of transport that they consider necessary to help students of sixth form age to attend education or training. Arrangements for young people with learning difficulties or disabilities must be explicitly set out in the policy.

Councils have discretion to set their own arrangements and this is one of the areas where councils are cutting back on transport. In 2014 the government issued statutory guidance 'Post-16 transport to education and training' February 2014 that councils must consider in deciding their policy. This says they must take account of various factors, including:

- > the needs of those who could not access education or training if no arrangements were made – they should consider the needs of the most vulnerable or socially excluded and young people with learning difficulties and disabilities;
- > the need for young people to have reasonable opportunities to choose between courses;
- > the distance and journey time of the place of learning from the home – the statutory walking distance for children of compulsory school age can be used as a benchmark.

Up to 75 minutes each way is usually considered reasonable, but councils should consider the impact of a learning difficulty or disability on a young person's ability to walk the distance, and the nature of the route. As with children of compulsory school age, young people should be able to reach their place of learning without undue stress;

- > the cost of the transport to the place of learning and of any alternative way of ensuring attendance there – councils should target help on those who need it most, particularly families on a low income;
- > preferences based on religion.

Councils may ask parents for a contribution towards transport costs, but should exercise discretion in doing so, and have arrangements to support low income families.

There are different rules for young people of 19 and over who have an Education Health Care (EHC) Plan naming a particular institution.



## Shona's story

Shona had been attending a local school, specialising in the education of children and young people aged 11-18 with severe learning disabilities and autistic spectrum disorders, since the age of 16. Shona has a variety of needs and behavioural difficulties. She requires significant levels of support and supervision to keep herself and others safe. Transport had been provided by the council for her first year at the school in the lower sixth form.

Following a review of its policy, the council wrote to Shona's parents to say transport provision was being withdrawn. The parents were invited to make a new application if they wished to do so and a decision about eligibility would then be made by a panel of health and social care professionals. Shona's parents submitted their application with supporting documents and information to confirm she would not be able to travel safely independently. The application was rejected and Shona's parents appealed. A second panel refused the appeal on the basis that Shona did not meet the 'exceptional circumstances' criteria set out in its policy.

Our investigation found the decision letters issued by the original and subsequent appeal panels were formulaic and general. They did not provide any details of how Shona's individual circumstances had been considered. Neither the letters nor the notes made at the time of the panels showed how the specific matters Shona's parents had raised in their application and appeal had been considered. We recommended a fresh appeal and a review of the policy to ensure the criteria for exceptional circumstances were clearly explained. At the fresh appeal, transport provision was reinstated for Shona.



## Emerging issues

Evidence from our cases in the last two years indicates increases in complaints about three broad areas. This report will focus on those areas which are:

- > changes to school transport policies not being undertaken fairly or transparently and confusing or insufficient information about when free transport will be provided;
- > not applying the transport guidance properly when considering applications and conducting appeals. This includes those who are not of compulsory school ages (post 16 and under-five-year-olds);
- > children with SEN issues, including those not of compulsory school age.

Councils should have an internal appeals system for each of these areas. We generally do not investigate complaints until that process has been completed.

### Pamela's story

When Pamela applied online for a school place for her son for September 2015, she was unaware there had been a consultation about changes to the school transport policy. Pamela applied for the school which was identified on the council's website as her catchment school. She did not realise that the catchment school was not actually the nearest to her home address (the difference between the two was minimal).

The council believed that the information it had provided was clear. But the nearest school was actually in another council's area and there was nothing in the information provided to show boundaries were relevant. Pamela appealed the decision but transport was still refused. She then complained to us.

We found the information provided by the council was confusing. It was understandable that Pamela assumed the school showing as her catchment school was the nearest to her. The council should have advised parents to check with it to confirm which was the nearest school for free transport considerations.

We recommended the council pay Pamela £300 to recognise the lost opportunity to choose a school to which free transport would be provided. It agreed to do so.



## Changes to school transport policies

Councils are increasingly changing their school transport policies to bring them in line with their minimum duties under the law. Generally councils will restrict provision of free school transport to children attending their nearest suitable, or qualifying, school within the statutory distances. If not, free school transport will usually be refused.

It is not our role to intervene when council policies have been properly made. But, if a more restrictive policy is adopted, the council should provide clear, accessible and timely information to parents and schools. This should be available, and signposted on the council's website by the time of the relevant school admission round. This is to avoid disadvantaging parents who may otherwise miss the opportunity to apply to a school to which free transport would be available. If a child is already attending a school and free transport previously provided is withdrawn, account should be taken as to whether the child is at a critical stage in their education.

Parents should be readily able to find out which school is the nearest to their home. The measurement of distance should be accurate and clearly explained. This will allow parents to make properly informed decisions when deciding which school to apply for.

In dealing with complaints about disadvantage arising from policy changes we may consider these questions.

- > Did the council consult parents, schools and other interested parties in developing the new policy?
- > Was the policy change properly and clearly explained and readily available to parents on the council's website and in other publicity material?

- > Was the policy available and accessible by the time of the relevant school admission round?
- > Was it clear to parents how to establish which was their nearest school, or school to which free transport would be provided?
- > Is the system for measuring home to school distance clear, accurate and fair, and properly explained?
- > Is there flexibility within the policy and the appeal procedure for dealing with anomalies and special cases?

### Amy's story

Amy's daughter started secondary school in September 2015. Amy complained to us after the council refused to provide free school transport because the school was not the nearest school to her home.

The council explained that the way it measured distances for school admission purposes (in a straight line or as the crow flies) is different to the way transport routes are calculated (shortest walking or driving route).

We found that the council had failed to properly explain this to parents and the council agreed to our recommendation that it provide free transport to Amy's daughter for the remainder of that school year.

## Appeals

The [July 2014 Home to school travel and transport statutory guidance](#) for children and young people aged 5-16 years old recommends a two-stage appeals procedure. This is to ensure a consistent approach across all local authorities and to provide an impartial second stage for cases that are not resolved at the first stage.

A parent may challenge a decision on the basis of:

- > eligibility for transport;
- > distance measurement;
- > safety of the route;
- > exceptional circumstances.

Councils should publish their appeals process on their website. The recommended procedure is:

**Stage 1:** Review by a senior officer;

**Stage 2:** Review by an independent appeal panel.

Panel members do not have to be independent of the local authority but should be independent of the original decision-making process and suitably qualified.

At each stage the decision letter should explain:

- > how the review was carried out;
- > what other departments or agencies were consulted;
- > what factors were considered;
- > the rationale for the decision reached.

### Mandy's story

Mandy appealed against the council's decision to refuse free school transport for her youngest daughter Sophie, to travel to the school her sisters attended. Transport had previously been provided for the elder children due to the family's low income.

Following a review of entitlement, Mandy was told free transport would no longer be provided for her eldest child or Sophie but would be for her middle daughter as she was at a critical stage in her education and a move to a nearer school would be too disruptive.

Mandy asked the council to provide discretionary transport for Sophie as the family had been through a series of very difficult circumstances. Her husband had died and they had recently suffered a burglary at their home. It was important the girls remained together for support and Mandy's income was too low for her to be able to afford the fare.

The appeal panel considered the information provided including the financial details Mandy had given. It decided these did not meet the criteria for the provision of free transport. While this was technically correct, there was no evidence the panel considered whether there were exceptional circumstances to consider exercising discretion in this particular case. The council agreed to arrange a fresh panel.

The second stage decision letter should tell parents about their right to complain to us if they consider the appeal was not dealt with properly.

Councils do not have to follow the recommended model. But they must take account of the statutory guidance and should have good reason for departing from it. We have seen examples of appeals systems where:

- > the second stage review is carried out by the head of the school transport department;
- > the second stage is a panel of councillors and the appeal is considered on the papers without the parent being able to attend;
- > the second stage is a panel of councillors, and parents may attend to present their case;
- > the second stage is a panel of councillors and the hearing is conducted following the good practice set out in the Schools Admission Appeals Code, after a decision by senior officers about whether there are exceptional circumstances justifying referring the case for appeal.

It is a matter for the council to decide which model it adopts. But we expect councils to be able to demonstrate good standards of decision-making. The process should be transparent. Councils need to be able to show the rationale for decisions with reference to the evidence seen, relevant law and council policy. They should provide parents with a full explanation of the decision so that if their appeal is turned

down they can understand how and why the officer or appeal panel arrived at the decision, and why their evidence and arguments were rejected. Councils need to keep adequate records to show how decisions are made.

### **Nilesh's story**

Nilesh submitted an application for free school transport for his child which was refused. The council's policy said parents may attend the appeal panel to present their case but the council did not mention this, or offer any invitation when it contacted Nilesh about the appeal process.

The appeal decision letter made no reference to the particular circumstances of Nilesh's case or reasons for making the appeal. This meant Nilesh was left doubting the panel had properly understood and considered his individual circumstances.

We recommended a fresh appeal with new members and an invitation for Nilesh to attend and put his case in person and the council agreed to do so.

## Special educational needs and school transport

Some children have special educational needs (SEN), disability or mobility problems that affect their ability to travel to school. Disabled children should not be treated less favourably than those without a disability. We have seen complaints involving children with SEN across a range of areas.

### The nearest qualifying school for children with special educational needs

The law gives parents of children with a Statement of Special Educational Needs (Statement) or Education, Health and Care Plan (EHC Plan) more rights to express a preference for a state school which they want their child to attend. Councils should meet a parent's preference for a state school, and specify the name of that school in the Statement or EHC Plan, if:

- > the school is suitable for the child's needs;
- > it does not cause unreasonable public expenditure; and
- > the child's placement is not incompatible with the efficient education of others at the school.

The Special Educational Needs Code of Practice (2001 and 2014) says a parent's preferred choice of school may be further away from the child's home than another school that can meet the child's special educational needs. In such cases the council could name a nearer school if naming a further school was an unreasonable use of public expenditure. The council could also agree to name the preferred school on condition the parent agrees to meet the transport costs.

The statutory guidance on home to school transport says an independent school can be a qualifying school for school transport if it is the only school named on the child's EHC Plan or Statement, or if it is the nearest of two or more schools named.

#### Charlie's story

Charlie has special educational needs. His Statement, setting out what educational support he needed, said he should attend a particular secondary school to meet his needs which was six miles from his home. This was the school his mum wanted him to attend as she felt it would be best for him.

His mum asked the council to give Charlie school transport but it refused. It said Charlie could attend another school nearer to his home, his catchment area school. But it had not explained this in his Statement. While Charlie's mum complained to us, she paid for a pass to get to and from school each day on the school bus.

We found the council should have given Charlie free school transport to his secondary school as this was the school his Statement said he should attend. This meant this secondary school was his nearest 'qualifying' school.

The council accepted our findings and paid Charlie's mum the £90 she had so far spent on the bus pass.



If parents are unhappy with the content of a Statement or EHC Plan, they have a right of appeal to the Special Educational Needs and Disability First Tier Tribunal. The Tribunal cannot determine a child's eligibility for school transport. But it can take into

account the whole cost of the placement, including any transport costs when deciding if the parents' preferred choice of school is incompatible with the efficient use of public resources.





## The child lives within the statutory walking distance to the school but has mobility problems or health and safety problems associated with their special educational needs or disability

Even though some children with mobility problems, special educational needs or a disability live within the statutory walking distance, the law and statutory guidance sets out three tests which can make the child 'eligible' for free school transport:

- > Councils must consider if the child has mobility or health and safety problems associated with their special educational needs or disability, which means it is not reasonable for the council to expect the child to walk to school. Councils should assess the eligibility for such children on an individual basis to identify their particular transport requirements;
- > If so, councils must consider whether it is reasonable to expect the child to walk to school if accompanied. For example, can an

adult prevent the health and safety risks posed by the child's special educational needs and disability?

- > If so, councils must consider if it is reasonable to expect the adult to accompany the child on the journey, taking into account a range of factors including the child's age and whether one would normally expect a child of that age to be accompanied.

The families of some children with special educational needs or disabilities may be in receipt of the higher rate of the mobility component of Disability Living Allowance. The Department for Education has confirmed in Parliament that being in receipt of this allowance does not necessarily confer eligibility for free school transport but neither does it preclude it if the child is an eligible child.



## Will and Daniel's stories

Will and Daniel's mums were part of a group of four families who complained to us about similar problems with the council's decision to stop providing their sons with school transport.

Will is a teenager with SEN and disabilities, including autism. He is very sensitive to noise and is not aware of any risk of danger. His secondary school is nearly four miles from his home. The council had taken him to school in a taxi with another teenager since 2014. In 2016 the council reviewed the specialist transport it provided and decided to stop providing him with a taxi because he had no mobility problems. It said he could use public transport instead: a one mile walk along a partly unlit route, a train and a bus. Will's mum appealed the decision but lost.

Will tried going on the school bus but he became very distressed. From then on his mum had to drive him to and from school. His school wrote to the council to say it felt its decision was wrong as Will could not cope with the noise of public transport. Will's school said the council was expecting him to be independent when it had been told he has never been independent. The council reviewed its decision and decided to provide the taxi again.

We found the council had not considered everything it should have as the information available in 2016 was the same as in 2014. It had only considered Will's mobility and not whether there were any health and safety concerns caused by Will's SEN or disability that would affect what transport he used to get to school. We found Will's mum should not have had to drive him to school. The council agreed to pay Will's mum £600 to acknowledge the cost and time and trouble she was put to transporting Will to school by car.

Daniel is a teenager with SEN, has significant medical and physical difficulties and autism. He also gets a mobility component of Disability Living Allowance (DLA) because the government believes he has significant mobility problems. Since 2014 Daniel has been attending a special school just under a mile from his home. The council transported him to school on a minibus designed for disabled children. In 2016 the council reviewed the arrangement and decided to stop providing Daniel with a seat on the minibus because he had no mobility problems and he would be safe if his parents accompanied him to school.

Daniel's mum appealed and provided evidence from his hospital doctor and school to show his disability meant he would not walk, gets distressed by loud noises and has no awareness of danger. The council refused her appeal saying there was no evidence he had mobility problems.

We found the council had not considered everything it should have. It had not explained why it thought Daniel did not have mobility problems associated with his SEN when his school and doctor said he did and the government had awarded him DLA based on his mobility problems. We also found it had not properly explained why it was reasonable to say his parents could accompany him to school and if they did whether he would be safe on the journey. The council agreed to pay Daniel's mum £500 for the distress and disruption caused, and also agreed to review the decision taking into account all the relevant information.

## The suitability of specialist transport provision to disabled children including the use of escorts

For travel arrangements to be suitable, they must also be safe and reasonably stress free, to enable the child to arrive at school ready for a day of study. For some children with SEN, medical needs or a disability, the transport is only suitable if an escort is provided.

Where an escort is required, councils need to provide suitably trained escorts and they must have safeguarding checks by the Disclosure and Barring Service. The training could cover the needs of disabled children, communication skills and the implementation of health care protocols.

### Milo's story

Milo has complex SEN and medical needs including epilepsy. The council transported him to school using a bus for disabled children with two escorts on the bus as well as the driver.

On one particular day the escorts did not realise Milo was suffering a seizure even though one of the other children said he was. They did not call for emergency assistance. They waited until he got to school and could see the school nurse. His mum said his seizure lasted for approximately 45 minutes. If a seizure lasts five minutes or more, Milo should be given medication and the emergency services called.

Milo's mum complained but the council did not interview the escorts or respond to her complaint. Milo's mum was so worried that the escorts did not know what to do in a medical emergency she decided she would need to take Milo to school herself and asked the council to pay her mileage. The council refused to do this.

We found that the council had failed to have properly trained escorts and it had failed to respond to Milo's mum's concerns. She was therefore justified in taking Milo to school herself.

As a result of our investigation, the department was given a significant increase in its budget. This has enabled it to take steps to make sure Milo (and other children with similar needs) can travel safely to school by bus.

The escorts who transport children with high or complex needs have had training, carry information about children like Milo and know when to call 999. The council also agreed to reimburse Milo's mum the mileage costs of taking him to school along with £500 to remedy the frustration caused and additional child care expenses she incurred.

## Discretionary decisions

Councils must provide free school transport to 'eligible' children. Eligible children are those of compulsory school age, who attend their nearest suitable school.

Compulsory school age begins the term after a child turns five and ends in June of the school year they turn 16. Children who are not of compulsory school age are, therefore, not eligible.

Councils **may** make such travel arrangements as they consider necessary to facilitate the attendance at school of

children who are not eligible children. They can charge for providing travel assistance to these children.

Although the question of what is necessary is a matter for councils, in deciding that question they must exercise their judgment judiciously and in good faith.

The law and the Special Educational Needs Code of Practice say councils must have policies for making travel arrangements to non eligible children and young people.

### Seb's story

Seb has SEN and is disabled. He has difficulty standing and walking so uses a buggy. The council decided he should attend a special school. The school is more than two miles from his home. Seb's parents applied for school transport as they believed the school was further than the 'statutory walking' distance. Seb was due to start in the Reception class in September but he would not be five years old until the summer term so he would not be of compulsory school age until he started in Year 1.

The council refused to give Seb transport because he was not yet of compulsory school age. Its policy only covered children of compulsory school age. The council told Seb's parents there were no exceptional reasons why it should use its powers to provide him with school transport before he turned five. Seb's parents struggled to get him to school and told us he would regularly miss one day a week at school. They said they could not use public transport as they found it difficult to use it with Seb in his buggy.

We found the council did not have a policy for children who are not 'eligible' children, such as those below compulsory school age, and it should have done. We found it had considered Seb's case against the wrong policy. We asked the council to consider Seb's case again by deciding if it was necessary for it to provide transport to Seb to facilitate his attendance at school and to publish a policy for children like Seb who were not 'eligible' children. We also found the council had not considered if it should have conducted other assessments of Seb as a disabled child which might have resulted in help getting Seb to school before he was five. As a result of our investigation the council reconsidered his case and decided to provide Seb with transport. It accepted it had decided he should attend the school and he would qualify for transport when he was five because he lives more than two miles from the school.



## Getting things right

From our investigations we have identified the importance of getting the following right in order to avoid findings of fault:

- > consult parents, schools and other interested parties on changes to school transport policies;
- > ensure information about how to find out which school is the nearest for school transport is clear and accessible and that it may be different to their catchment area school for admissions;
- > provide clear and accurate information about how measurements of home to school distance are measured for deciding both which is the nearest suitable school and whether a child lives outside of the statutory walking distance;
- > ensure the exercise of discretion is properly considered and reasons are given for the decisions reached;
- > for those who are not eligible children, carefully and judiciously consider what is necessary when considering whether to exercise discretion;
- > for children with special educational needs and disability, ensure not just their mobility but any health and safety difficulties associated with their special educational needs or disability are considered;
- > do not have policies that automatically preclude those families who receive the higher rate of the mobility component of Disability Living Allowance. The Department for Education has said in Parliament that being in receipt of this allowance does not necessarily confer eligibility for free school transport but neither does it preclude it if the child is an eligible child.





## Scrutiny and the role of councillors

Councils and all other bodies providing local public services should be accountable to the people who use them. The LGO was established by Parliament to support this. We recommend a number of key questions that councillors, who have a democratic mandate to scrutinise the way councils carry out their functions, can consider asking.

### Does your council:

- > Have a policy for transport that complies with the 2014 guidance and an annual policy statement setting out arrangements for young people of sixth form age?
- > Publish information on its website that enables parents to easily understand which is their catchment school and whether this is considered the nearest available school for transport purposes?
- > Ensure its appeal panels are aware of the circumstances when they should consider (and record) the exercise of discretion in reaching its decision?
- > Have policies for making travel arrangements for non eligible children and young people in accordance with the SEN Code of Practice?
- > Take due account of a child's mobility and health and safety problems associated with any SEN or disability when considering if they may be eligible for free transport?
- > Ensure the decision letters it issues following applications for transport or subsequent appeals are sufficiently reasoned and detailed to enable parents to properly understand all factors considered in reaching the decision made?



## **Local Government Ombudsman**

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