

Meeting of the Board 13 June 2019

ITEM 8

## Ill-Health

### Introduction

1. This paper updates the Board on the position of ill-health retirement within the schemes, with regards to;
  - i. [FRA understanding of the Ill-Health process](#)
  - ii. [Review of Ill-Health Tier](#)
  - iii. [Certificates and Guidance](#)

### Action Required

2. The Board are asked to note the information provided with regards to i. and ii. above.
3. The Board are asked to consider the points raised with regards to a review of certificates and guidance, and consider whether a working group should be formed to review the certificates and guidance.
4. It is the Secretariat's recommendation that a working group if formed should consist of six people. This should comprise the Board Secretariat, an employer and employee SAB member, the chair of the LGA communications group and two FRA stakeholders, preferably with HR responsibilities. A member from the Home Office team should also be invited to observe.

### Background

5. It is the responsibility of the Fire and Rescue Authority (FRA) to manage ill-health retirements. Under the funding requirement of the scheme, the authority have to make a payment of two times pensionable pay for a lower tier ill-health award and four times for a higher tier ill-health award into the notional funding account.
6. FRAs struggle with their knowledge of the pension and compensation schemes, which can lead to decisions on ill-health and injury pensions being challenged.
7. In order to support FRAs with their knowledge, a quick guide<sup>1</sup> of the scheme regulations is available on [www.fpsregs.org](http://www.fpsregs.org). Further resources are also available on the password controlled member page.<sup>2</sup>

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<sup>1</sup> <http://www.fpsregs.org/images/admin/illhealth.pdf>

<sup>2</sup> <http://www.fpsregs.org/index.php/member-area/ill-health-and-injury>

8. The current IQMP Guidance<sup>3</sup> prepared by DCLG in consultation with the Firefighters Pension Committee (FPC) was published in October 2012.
9. The LGA Bluelight pensions team are running an ill-health workshop on 19 June 2019 at Smith Square to further inform FRAs of their responsibilities under the pension scheme rules.<sup>4</sup>

### FRA understanding of the ill-health process

10. It has been established that there are two particular aspects of the scheme that cause some confusion within the ill-health process.

### 11. Single source or 'One-pot' ill-health

- 11.1. Single source ill-health means that it is the rules that are in force at the time of ill health retirement that are relevant in determining access to benefits. This means that a member who has been moved into the 2015 scheme (FPS 2015) from either the 1992 or 2006 scheme (FPS 1992 or FPS 2006) would be considered for ill-health under the rules of the 2015 scheme only [[Part 5, Chapter 4](#)].
- 11.2. This is as a result of over-arching policy that applies to all public sector pension schemes. The overarching legal principle is that, unlike entitlement to ordinary retirement pension benefits, there is no legal entitlement ("accrued right") to ill health benefits - rights only crystallise at the appropriate 'trigger point', which will be when the criteria of scheme rules are met, normally the point of ill health retirement itself.
- 11.3. Fire Authorities and IQMPs should be aware that this will mean
  - Normal Pension Age (NPA) of FPS 2015 is age 60<sup>5</sup>, this means when considering incapacity to NPA under [rule 65, paragraphs 1a and 2a](#) the IQMP needs to consider this **to age 60**, regardless of whether a portion of pension was accumulated under the FPS 1992 scheme rules and attracts an NPA of 55
  - Under the FPS 1992, in order to determine whether the higher tier is payable (unable to perform regular employment), the IQMP does not need to consider whether the incapacity for regular employment is permanent to NPA, this only needs to be determined at the date of the IQMP decision. However, under FPS 2006 and FPS 2015 the incapacity for regular employment does need to be permanent to NPA.

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<sup>3</sup> <http://www.fpsregs.org/images/illhealth/IQMPGuidance4Oct12.pdf>

<sup>4</sup>

<https://lgaevents.local.gov.uk/lga/frontend/reg/thome.csp?pageID=257428&eventID=758&CSPCHD=00100100000JINi0oGS9GMttWYtxiodPKLVksnS0CQVoObBTj>

<sup>5</sup> As defined by [regulation 3](#) 'Interpretation' of the 2014 Regulations

Therefore, regardless of whether a portion of pension was accumulated under the FPS 1992 scheme rules, incapacity for regular employment would need to be assessed up until NPA (age 60).”

## **12. IQMP opinion on incapacity being ‘likely to’ continue to NPA**

12.1. In order to award an ill-health pension, the FRA have to request an Independent Qualified Medical Practitioner (IQMP) to determine the nature of disability and its likelihood of continuing to NPA.

12.2. Under the FPS 2015, the IQMP must consider rules 65<sup>6</sup> and 152<sup>7</sup> with regards to the incapacity lasting until NPA. Under rule 65 (1a & 2a) the condition to be met for ill-health is where incapacity will continue to normal pension age. Rule 152 says that the scheme manager must request an IQMP to provide an opinion on whether the incapacity is likely to continue to normal pension age.

12.3. The term ‘likely to’ is less definitive than ‘will’. ‘Will’ implies that there should be no doubt, whereas ‘likely to’ allows for some discretion of opinion. Anecdotally we understand that some IQMPs may make conservative judgments on this point, as it is maybe difficult to make a definitive judgment on some conditions.

12.4. FRAs have a duty to ‘not act blindly’ on receipt of an IQMP opinion. We reported in FPS [bulletin 13](#) and [14](#) on the responsibility of the decision maker (the authority) to not act blindly in accepting a medical opinion, and to ensure the IQMP reaches their opinion in a proper manner. Various case law was cited in the bulletins. Therefore with regards to fulfilling this duty we recommend that FRAs should;

- i. Ask for reassurance that any judgment made by the IQMP on the capacity of the person to undertake regular employment to normal pension age, has been made bearing in mind [regulation 152](#) and the wording ‘likely to’, rather than will.
- ii. Ask the IQMP to state any reasons given if they feel the member would not be ‘likely to’ be incapacitated until normal pension age, so they can ensure the decision was reached in a proper manner considering all evidence.

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<sup>6</sup> <http://www.legislation.gov.uk/uksi/2014/2848/regulation/65/made>

<sup>7</sup> <http://www.legislation.gov.uk/uksi/2014/2848/regulation/152/made>

12.5. Regulations

	FPS 1992	FPS 2006	FPS 2015
Entitlement to Ill-Health	<a href="#">B3</a> 'is incapable of – no requirement to consider permanency	<a href="#">Part 3, Rule 2</a> 'he is permanently disabled'	<a href="#">65</a> 'will'
Role of IQMP	<a href="#">H1</a> 'likely to'	<a href="#">Part 8, Rule 2</a> 'likely to'	<a href="#">152</a> 'likely to'
Permanent	<a href="#">A10</a> <sup>8</sup>	<a href="#">Part 1, Rule 3</a>	<a href="#">65(1a)</a>

**Upwards Review of Ill-Health Tier**

13. There are two levels of an ill-health award that might be payable to a firefighter.

- Lower Tier Ill-Health is where the individual can no longer perform the role of a firefighter on a permanent basis up until normal pension age
- Higher Tier Ill-Health is where the individual can no longer perform any regular employment<sup>9</sup> on a permanent basis up until NPA.<sup>10</sup>

14. Where an ill-health pension is awarded at lower tier ill-health and the health of the person later deteriorates there is no ability to review the ill-health tier upwards and award a higher tier.

15. The Board should note that where ill-health arises from an incident on duty, the Firefighter would also be eligible for an award under the compensation scheme. The compensation scheme allows for a review of the pension awarded both up and down the scales.

16. We have been told that not being able to review the tier of ill-health upwards is more of an issue in cases relating to mental health ill-health. This is where the IQMP has assessed at lower tier only as the incapacity for regular employment was not assessed as permanent, however following the determination the health has not improved, the member is not capable of returning to regular employment and the health further deteriorates. It appears this is often because 'permanency' in mental health ill-health can be difficult to diagnose, this tends to be because;

<sup>8</sup> Paragraph 1A amended by [SI 2005/2980](#)

<sup>9</sup> Defined under [Regulation 3](#) 'Interpretation' of the 2014 regulations as being 'employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises'.

<sup>10</sup> For the 1992 scheme this assessment is made at the date of the IQMP decision only. See paragraph [3.1.1](#)

- a) it is more difficult to obtain a diagnosis of being permanently unable to complete any work as health could improve with treatment, and
- b) practitioners are mindful that a diagnosis of 'permanent' to mental health issues could significantly affect the well-being of the individual.

17. The Board have discussed before introducing the ability to review an ill-health case in payment with the opportunity to review the tier upwards to higher tier ill-health.
18. The Home Office current informal view is that later deterioration of ill-health is not a pension scheme liability. The FRA should ensure that the correct decision on ill-health is taken by the IQMP at the time of the review.

### **Certificates and Guidance**

19. In order for the IQMP to evidence the decision that they have made, a set of IQMP certificates were agreed by a working party led by DCLG in 2009 and endorsed by the FPC.
20. Over time these certificates have changed and evolved and when the 2015 scheme was introduced the certificates were not officially amended which led to FRAs creating their own versions.
21. A range of certificates, while not officially endorsed by LGA were held on the members password protected page of the regulations website for authorities use, while the communications group considered whether they were fit for purpose, these have been temporarily disabled while the forms are reviewed.
22. The ill-health certificates for FPS1992, FPS 2006 and FPS 2015 are reproduced in [appendix A](#)
23. It would be desirable to provide a central set of certificates and revised guidance for FRAs use. **In order to develop this, the Scheme Advisory Board are asked to consider the following points;**
24. What are the certificates hoping to achieve?
- 24.1. As part of the ill-health process, there are in effect three decisions that need to be taken;
- First, the decision whether to end an employee's contract. This can only be taken by the employer. Management need to make decisions on any non-medical aspects of the case before consideration for onward referral.
  - Second, the medical decision on whether or not the case meets the criteria within the pension scheme for ill health retirement and the award of an ill-health pension, which must be determined by a suitably qualified occupational health doctor.

Third, the employer's decision, based on the medical opinion, on the terms under which the employee should leave.

24.2. Should the IQMP forms achieve the second part only, which is to evidence the medical decision taken, or are the forms also to be used by FRAs HR process in terms of considering ending employment?

24.3. This is an important question to consider, because this would reflect whether including a section on redeployment is necessary, or as the current forms reflect, the IQMP should have read the authority's decision on the first stage.

24.4. Another approach would be to design a form for FRAs to use at the first stage, to which the IQMP ticks to confirm they have read.

## 25. Re-deployment

25.1. Should the IQMP form have a section on re-deployment opportunities? The previous form designed in 2009 had a section reasonable adjustment / suitable employment, which was removed in the later versions.

### **SECTION D: REASONABLE ADJUSTMENT/SUITABLE REDEPLOYMENT**

The Fire and Rescue Authority have considered the following reasonable adjustments and/or suitable redeployments: *(Authority to set out action that has been considered and why reasonable adjustment/redeployment is not possible)*

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The Authority is satisfied that reasonable adjustment or redeployment is not applicable/available

Signed: .....; Position:.....

Print name: .....

25.2. The [new form](#) asks the IQMP to confirm that they have considered the FRAs report on reasonable adjustments / redeployment, but this is not as explicit as the old form.

*(tick relevant boxes)*

- the duties appropriate to the role of the firefighter
- the medical history held on fire and rescue authority records
- the medical history held by the firefighter's general practitioner
- the fire and rescue authority's report regarding reasonable adjustments and/or suitable redeployments
- the DCLG Guidance Notes for IQMPs
- report(s) / additional information: .....

.....

**26. Do you need one certificate per scheme or a multi-purpose certificate**

26.1. This is an issue that the communications group has wrestled with, with an even split of views. For this I have replicated the view of Eunice Heaney below

“Having studied the terminology used to express entitlement to awards under all of the schemes, I soon came to the conclusion that there was very limited scope for multipurpose forms, i.e. certificates which could cater, within a single form, for more than one of the schemes. The certificates could become quite long and cumbersome, and potentially confusing for the IQMP who has to complete them.

I thought the best approach would be to design a range of certificates for each of the schemes. More than one certificate can be issued in cases where, for example, a person is being considered both for ill-health retirement and an injury award. And of course nowadays a person may have more than one employment, with those employments covered by different pension schemes. If a person holds more than one job with an Authority, a separate form for each employment should be completed.

Where two certificates are issued for completion I have tried to stress, where relevant, that if the IQMP is required to make a statement of no previous involvement in a case, the date will have to be the same on both forms. One of the problems encountered in producing these certificates is the inconsistency between the schemes regarding whether an IQMP who provided the initial opinion can provide a subsequent opinion.”

26.2. Having discussed this with the SAB legal adviser, the secretariats preferred view is to have a form for each scheme, this is because we believe a multi-purpose form has more room for error.

26.3. However this is a different view from that which was taken when the forms were designed in 2009 and consulted on by FPC. **Therefore we would ask the Scheme Advisory Board to consider their preference for a form for each scheme or a multi-purpose form.**

Board Secretariat

10 June 2019

**Appendix A  
FPS 1992**

..... FIRE AND RESCUE AUTHORITY

**FIREFIGHTERS' PENSION SCHEME 1992  
Medical Certificate A: Rule B3 and Rule H1**

**Opinion of Independent Qualified Medical Practitioner  
in respect of a firefighter member of FPS 1992  
for consideration of ill-health award**

**PERSONAL DETAILS**

Name of firefighter .....

Role/post .....

Employee number ..... NI Number .....

Date of birth ..... Age .....

Address .....

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Date entered Fire and Rescue Service .....

Date left the Fire and Rescue Service *(if applicable)* .....

**DETAILS OF INCAPACITY**

**OCCASIONED BY INFIRMITY OF MIND OR BODY**

Nature of incapacity considered for the purpose of this opinion:

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**OPINION**

All relevant boxes should be ticked . Do not place a cross in the box as it may be misconstrued.

**I [EXAMINED THE FIREFIGHTER ON (date) ..... AND] HAVE CONSIDERED:**

*(tick relevant boxes)*

- the duties appropriate to the role of the firefighter
- the medical history held on fire and rescue authority records
- the medical history held by the firefighter's general practitioner
- the fire and rescue authority's report regarding reasonable adjustments and/or suitable redeployments
- the DCLG Guidance Notes for IQMPs
- report(s) / additional information: .....

.....

**MY OPINION IS THAT:** *(tick relevant boxes)*

*In the following, "disablement" means incapacity, occasioned by infirmity of mind or body, for the performance of duty, and "permanent" means that at the time when the question arises for decision the disablement seems likely (based on the ordinary balance of probabilities) to be permanent having regard to whether it will continue, at least, to normal pension age, i.e. age 55, and to whether all appropriate treatment options have been exhausted – see DCLG Guidance.*

# Firefighters' Pensions (England) Scheme Advisory Board

## Paper 1

1. The firefighter –

is  is not

suffering from the incapacity detailed on page 1 of this document.

2. The firefighter, by reason of the incapacity –

is  is not

disabled for engaging in firefighting. If so disabled, the disablement –

is  is not

likely to be permanent.

3. The firefighter, by reason of the incapacity –

is  is not\*

disabled for performing the duties of a regular firefighter additional to engaging in firefighting. If so disabled, the disablement –

is  is not

likely to be permanent.

*\*Complete Point 5 if you have ticked this "is not" box.*

4. The firefighter's disablement is such that he/she –

is  is not

capable of undertaking regular employment.

*"Regular employment" means employment (inside and/or outside the Fire and Rescue Service) for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the question of disablement arises for decision.*

*(If there is insufficient space below in which to complete a response to points 5 and 8, continue comments onto a separate paper and attach to this Certificate.)*

5. The firefighter's general state of health and fitness is satisfactory to carry out the following duties of his/her role –

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6. The disablement –

has  has not

been brought about, or contributed to, by the firefighter's own default.

# Firefighters' Pensions (England) Scheme Advisory Board

## Paper 1

*To be answered in a medical context only.*

7. Suggested date for review (if opinion is that firefighter is permanently disabled) .....

8. Additional comments –

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### STATEMENT OF INDEPENDENCE

I have not previously advised, or given my opinion on, or otherwise been involved in this particular case for which this opinion has been requested.

I am not acting, and have not at any time acted, as the representative of the above-named firefighter, or the Fire and Rescue Authority, or any other party in relation to the same case.

**Signed** ..... **Date** .....

**Name and qualifications** .....

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**FIREFIGHTERS' PENSION SCHEME 2006**

**Medical Certificate A: Part 3 Rule 2 and Part 8 Rule 2**

**Opinion of Independent Qualified Medical Practitioner  
in respect of a firefighter member of FPS 2006  
for consideration of ill-health award**

**PERSONAL DETAILS**

Name of firefighter .....

Role/post .....

Employee number ..... NI Number .....

Date of birth ..... Current age .....

Address .....

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Date entered Fire and Rescue Service .....

Date left the Fire and Rescue Service (*if applicable*) .....

Membership type in this post:     Regular firefighter                       Standard member                       Special member

Retained firefighter                       Standard member                       Special member

Normal retirement age:                       60                       55

**DETAILS OF INCAPACITY**

**OCCASIONED BY INFIRMITY OF MIND OR BODY**

Nature of incapacity considered for the purpose of this opinion:

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**OPINION**

All relevant boxes should be ticked . Do not place a cross in the box as it may be misconstrued.

**I [EXAMINED THE FIREFIGHTER ON (date) ..... AND] HAVE CONSIDERED:**

(tick relevant boxes)

- the duties appropriate to the role of the firefighter
- the medical history held on fire and rescue authority records
- the medical history held by the firefighter's general practitioner
- the fire and rescue authority's report regarding reasonable adjustments and/or suitable redeployments
- the DCLG Guidance Notes for IQMPs
- report(s) / additional information: .....

.....

**MY OPINION IS THAT:** (tick relevant boxes)

*In the following, "disablement" means such incapacity, occasioned by infirmity of mind or body, as makes the firefighter unable to perform any duties of the role in which last employed, and "permanent" means that at the time when the question arises for decision the disablement seems likely (based on the ordinary balance of probabilities) to be permanent having regard to whether it will continue, at least, to normal retirement age, i.e. age 60 for regular firefighter members and standard retained firefighters, age 55 for special firefighter members – as shown on Page 1, and to whether all appropriate treatment options have been exhausted – see DCLG Guidance.*

# Firefighters' Pensions (England) Scheme Advisory Board

## Paper 1

1. The firefighter –

is  is not

suffering from the incapacity detailed on page 1 of this document.

2. The firefighter, by reason of the incapacity –

is  is not

disabled for engaging in firefighting. If so disabled, the disablement –

is  is not

likely to be permanent.

3. The firefighter, by reason of the incapacity –

is  is not\*

disabled for performing the duties of his/her role additional to engaging in firefighting. If so disabled, the disablement –

is  is not

likely to be permanent.

*\*Complete Point 5 if you have ticked this "is not" box.*

4. The firefighter's disablement is such that he/she –

is  is not

capable of undertaking regular employment.

*Regular employment" means employment (inside and/or outside the Fire and Rescue Service) for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises.*

*(If there is insufficient space below in which to complete a response to Points 5 and 7, continue comments onto a separate paper and attach to this Certificate.)*

5. The firefighter's general state of health and fitness is satisfactory to carry out the following duties of his/her role –

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6. Suggested date for review (if opinion is that firefighter is permanently disabled) .....

7. Additional comments –

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**STATEMENT OF INDEPENDENCE**

I have not previously advised, or given my opinion on, or otherwise been involved in this particular case for which this opinion has been requested.

I am not acting, and have not at any time acted, as the representative of the above-named firefighter, or the Fire and Rescue Authority, or any other party in relation to the same case.

**Signed** ..... **Date** .....

**Name and qualifications** .....

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**FIREFIGHTERS' PENSION SCHEME 2015  
Medical Certificate A: Regulations 65 and 152**

**Opinion of Independent Qualified Medical Practitioner  
in respect of a firefighter member of FPS 2015  
for consideration of ill-health award**

**PERSONAL DETAILS**

Name of firefighter .....

Role/post .....

Employee number ..... NI Number .....

Date of birth ..... Current age .....

Address .....

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Date entered Fire and Rescue Service .....

Date left the Fire and Rescue Service *(if applicable)* .....

Membership of Firefighters' Pension Scheme 2015 From ..... To .....

Transition member of:  Firefighters' Pension Scheme 1992  Firefighters' Pension Scheme 2006

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**DETAILS OF INFIRMITY OF MIND OR BODY**

Nature of incapacity considered for the purpose of this opinion:

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**OPINION**

*All relevant boxes should be ticked . Do not place a cross in the box as it may be misconstrued.*

**I [EXAMINED THE FIREFIGHTER ON (date) ..... AND] HAVE CONSIDERED:**

*(tick relevant boxes)*

- the duties appropriate to the role of the firefighter
  - the medical history held on fire and rescue authority records
  - the medical history held by the firefighter's general practitioner
  - the fire and rescue authority's report regarding reasonable adjustments and/or suitable redeployments
  - the DCLG Guidance Notes for IQMPs
  - report(s) / additional information: .....
- .....

# Firefighters' Pensions (England) Scheme Advisory Board

## Paper 1

**MY OPINION IS THAT:** *(tick relevant boxes)*

1. The firefighter –

is  is not

suffering from the infirmity of mind or body detailed on page 1 of this document.

*(Proceed to Point 2 if you have ticked the "is" box.)*

2. The firefighter, because of the stated infirmity of mind or body –

is  is not

incapable of performing any of the duties of the role in which last employed

*(Proceed to Point 3 if you have ticked the "is" box. If you have ticked the "is not" box, proceed to Point 6 on the next page.)*

3. The incapacity for the duties of the role, to which Point 2 refers –

will  will not

likely continue until normal pension age (age 60).

*(Proceed to Point 4 if you have ticked the "will" box.)*

4. The firefighter, because of the stated infirmity of mind or body –

is  is not

capable of undertaking regular employment, i.e. employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises.

*(Proceed to Point 5 if you have ticked the "is not" box.)*

5. The incapacity for regular employment, to which Point 4 refers –

will  will not

likely continue until normal pension age (age 60).

*(If there is insufficient space below in which to complete a response to Points 6 and 8, continue comments onto a separate paper and attach to this Certificate.)*

6. The firefighter's general state of health and fitness is satisfactory to carry out the following duties of his/her role –

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7. Suggested date for review (*if opinion is that firefighter is permanently disabled*) .....

8. Additional comments –

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**STATEMENT OF INDEPENDENCE**

I have not previously advised, or given an opinion on, or otherwise been involved in, this particular case for which this opinion has been requested.

I am not acting, and have not at any time acted, as the representative of the above-named scheme member, the scheme manager, or any other party in relation to the same case.

**Signed** ..... **Date** .....

**Name and qualifications** .....

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