THE ASSOCIATION OF PRISON LAWYERS

THE APL IS THE PROFESSIONAL ASSOCIATION OF PRISON LAWYERS IN ENGLAND & WALES

CASE STUDIES

The Association of Prison Lawyers (APL) was formed by a group of specialist prison lawyers in 2008 to represent the interests and views of practitioners in prison law. It currently represents the interests of around 360 members who specialize in representing prisoners.

APL members have extensive experience of representing prisoners in Courts, Parole Board and disciplinary proceedings, making representations to prisons and other agencies working with prisoners while they are in custody and during their transition into the community. APL members have played a central part in the development of public law in the prison context over the past three decades. Some of our members have been representing prisoners for well over twenty years.

APL exists to enable some of the most vulnerable members of our society to be represented by lawyers with appropriate levels of relevant expertise. Representing prisoners fairly and fearlessly not only ensures that vulnerable prisoners are not treated unfairly and unlawfully, but it also leads to the development of better protection for all members of society.

APL has worked closely with the Legal Services Commission (now the Legal Aid Agency), the Parole Board and other stake-holders in the area of prison law and penal policy to reduce the costs of legal aid in prison law and develop good working practices.

#saveukjustice

No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.

- Nelson Mandela

APL CASE STUDIES

The following Case Studies have been provided by APL members. They have been anonymised but they are all based upon actual cases and are verifiable. They represent a comparatively small sample of a very extensive dossier of similar cases. They are grouped into different categories according to the type of case or funding scheme.

Judicial Review

Adjudications

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Judicial Review

Mr I

Mr I was serving a fixed sentence. His 5 year old son was diagnosed with a brain tumour and given a very short life expectancy. He contacted us seeking advice in relation to his position. He and the child's mother wanted him to have as much contact with his son as possible.

'as much contact with his son as possible'

We helped him with an application to the prison for temporary release to facilitate contact. The prison granted an escorted visit, however, indicated no further visits would be granted.

We were able to assist him to challenge the decision not to grant any further home leave. We sent a formal pre-action letter and subsequently issued Judicial Review Proceedings in the High Court for further escorted visits.

Under the current proposals this firm would not have been able to help him to try to resolve this problem.

The High Court initially refused permission. We renewed his application and the case was listed for a renewal hearing to consider permission and also interim relief. We were ultimately successful after a number of contested hearings and our client was granted a schedule of further visits with his son prior to his release from prison.

Under the proposals the costs associated with the judicial review claim would have been at risk. It would have been extremely difficult to pursue the case.

When Mr I was released on licence from prison, restrictions were placed on contact with his son as part of his licence conditions. This was despite his deteriorating health and very short life expectancy and the fact that contact was in the child's interests.

We were able to assist the client to challenge his licence conditions. We would not be able to do so under the proposed legal aid cuts.

Again we were required to instigate Judicial Review Proceedings. Due to the urgent nature of the case an initial oral hearing was granted the day after the application was lodged. This was before permission was granted and under the proposals the substantial costs of this hearing would be at risk.

"[father and son] were together on the day the son passed away."

Numerous urgent judicial review hearings were necessary, where the barrister pushed for them to be granted proper contact. At each hearing the authorities tried to restrict contact. Ultimately the father and son were granted the contact they wanted by the High Court: they were granted more visits and then allowed to see each other every day; they were together on the day the son passed away.

Under the proposed funding cuts this family would not have had such access to a prison law solicitor. In addition, cuts to family law funding mean they would not have had access to a family law solicitor either. They would have been powerless in the face of the unlawful interference by the authorities in their lives. The mother told everyone that she wanted her son to be able to see his father as much as possible; that she needed the father to be there to support her and the family. Nobody listened to her, and nobody would have listened to her if the family had not had access to a solicitor. The government's proposals threaten all of this.

Adjudications

Mr C

C is serving an indeterminate IPP sentence. His tariff has expired. In order to achieve his release from prison he has to persuade the Parole Board that he does not need to be confined for the protection of the public. Most indeterminate sentenced prisoners need to spend a period in open conditions before they can make a realistic application for release.

In January he was involved in an incident with officers where he was accused of being violent and abusive towards them. He disputed the officers' version of events. Following the incident he was moved to the segregation unit. His adjudication (disciplinary hearing) was adjourned for legal advice. He sent a letter to his solicitor but the letter was never received.

He was moved to another prison. The adjudication was reconvened and he pleaded not guilty but he was found guilty of a disciplinary offence. The Governor did not hear any evidence from prison staff and simply accepted the written report by the reporting officer.

This finding of guilt was so close to the clients oral Parole Board hearing as to have a significant impact on his progression. The fact that he disputed the charge would not have carried any weight with the panel. The recent allegation of violent behaviour could have meant a progressive move was refused by the Parole Board.

We were able to draft written representations to appeal the finding of guilt. The appeal was allowed. Without our intervention the finding of guilt would have remained on the record.

The internal system completely failed because 1.) The letter requesting solicitors assistance never arrived. 2.) The Governor in the new establishment completely ignored the rules of procedure and despite hearing no live evidence still found C guilty 3.) Without the solicitors intervention the finding of guilt would have prevented C progressing.

Under the new proposals this prisoner would have been denied legal aid to instruct a lawyer. It is very likely that, as a result of the finding of guilt, the Parole Board would have refused progression. The cost to the taxpayer of a prisoner remaining in custody for longer than he needs to is significant.

Mother and Baby

Case 1

We represented a young woman, a Moroccan national who, prior to her offence had been working as a nursery assistant for four years. At the time of her offence, (which she continues to deny), she was pregnant. At the time of her sentence hearing, her baby son was 9 months old. She was his sole carer, had never left him and was still breastfeeding when she was sentenced to a 12 month custodial sentence and thereby immediately separated from her son.

"traumatised by being separated from her baby"

She had never been in trouble before and this was her first time in prison. She didn't speak or write English very well, was isolated and with no idea how prison worked, was very vulnerable. She was naturally completely grief stricken and traumatised by being separated from her baby and on her first few nights in custody, was screaming for him. Instead of being given support, she was placed on report for threatening behaviour and placed into segregation for the night. She was subsequently found guilty at her adjudication hearing, despite requesting legal representation.

She was not aware that she could make an application to be transferred to a mother and baby unit, so that she could be reunited with her baby, who was being looked after by an elderly aunt who was finding it difficult to cope with such a young child.

We advised her that she was entitled to apply for transfer to a mother and baby unit. Further to liaising urgently with the prison, the Council and expert social workers, a positive recommendation was made to the Board but rejected by the Governor on the basis of her reported adverse custodial behaviour, despite the unequivocal medical evidence warning of the detrimental impact that such separation would have on both our client and her baby.

She had not been entitled to representation before the Board and had found it very difficult to understand the proceedings and advocate effectively for herself, given the highly emotive issues that she was dealing with. When her application was rejected, she became very depressed, anxious and unwell.

We assisted her with her appeal, which involved very extensive liaison with the prison service to obtain highly relevant disclosure of security information and other significant documentation, none of which our client would have been able to obtain without the assistance of a lawyer. Detailed scrutiny of these reports showed that in fact all the adverse reports about her behaviour that had been relied on to reject her application to a mother and baby unit, could be explained as being a direct consequence of the highly stressful and traumatic circumstances of being in prison for the first time and being separated from her baby. There were also positive behavioural reports which the Governor had ignored.

Her appeal was successful and she was transferred to a mother and baby unit, where she was reunited with her baby and where she was reported as being a calming and positive presence.

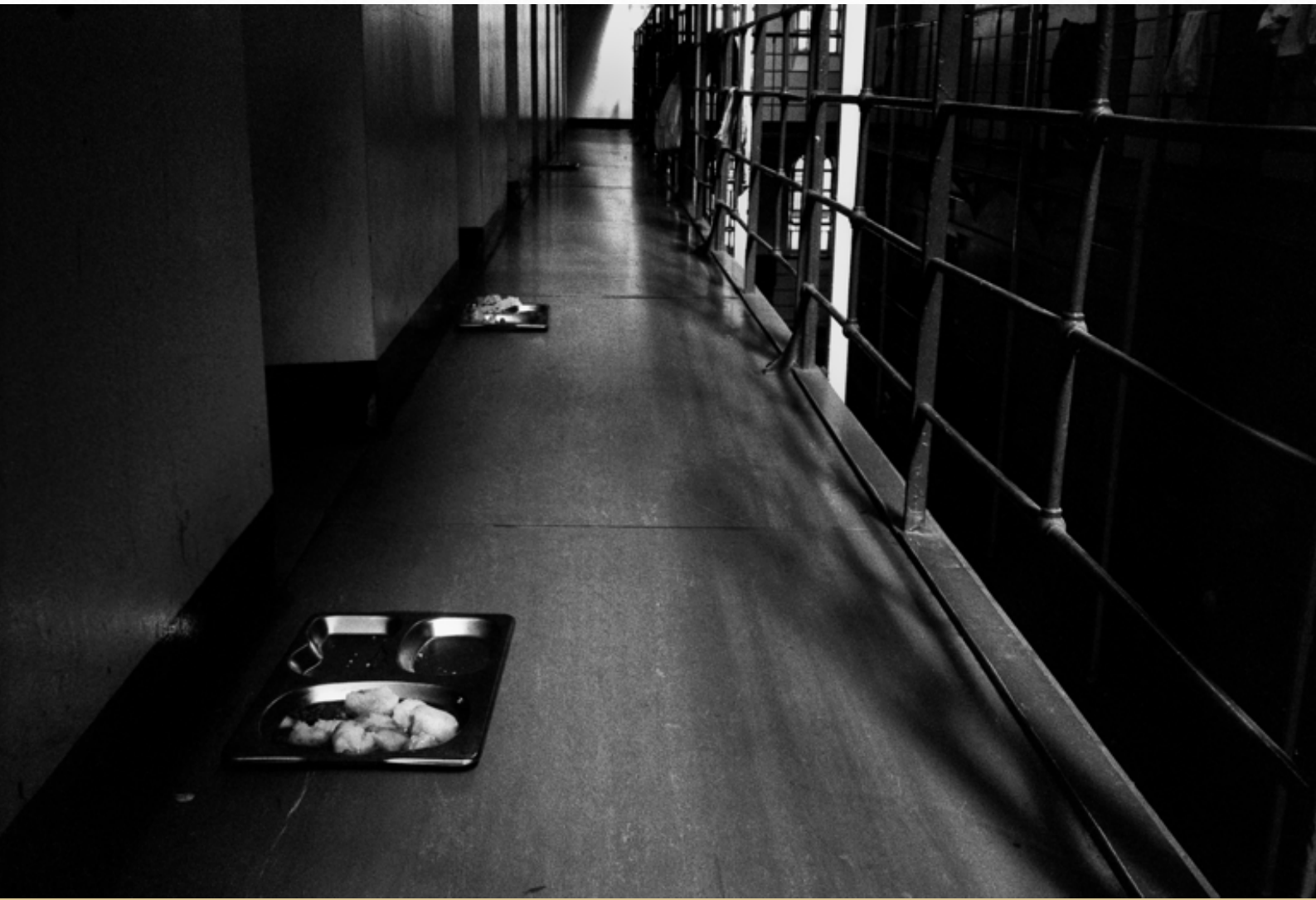
Under the government's proposals, our client would be expected to have achieved this herself, using the complaints procedures, without any assistance or support. Yet she spoke little English, could write even less, and had no idea of the existence of a mother and baby unit.

Case II

We were contacted by a prisoner after she had been refused a place on the Mother & Baby Unit (MBU). She said that social services were unsupportive of her application for a place on the MBU and that subsequently a decision had been made to refuse her a place on the basis of social services position. The prisoners baby was due in less than 10 days time. We made urgent representations as to her suitability, and obtained permission from Social Services to examine her file. On considering the file there were un-substantiated allegations of behaviour which Social Services had reported as fact. We obtained statements from both family members and professionals involved in her care previously which cast significant doubt on these allegations, and after submitting these statements the prisoner was granted a place on the MBU. The cost of the case was some 700 to the LSC, and a baby was able to remain with her mother.

Under the current proposals both prisoners would have had to resolve these issues alone by using complaints procedures. There is no prospect that the complaints procedures would have resolved either case bearing in mind the urgency and complexity of the cases and the clients' difficulties in representing themselves.

Rehabilitation and Sentence Progression



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Mr I

In 1987 Mr I was given a discretionary life sentence with a tariff of 10 years. By the time his tariff had expired, no rehabilitation work that was catered to his individual needs had been provided by the Prison Service. Mr I had engaged with offending behaviour interventions but as a result of his medical problems, in particular cognitive impairment caused by brain surgery in 2003, the offending behaviour group work was not effective at reducing his risk.

It was identified that Mr I should engage in highly specialised individual work with a clinical psychologist. We corresponded with the prison service about this, but we were told that there was no funding in place for this treatment.

Mr I was left to stagnate for a number of years. Mr I tried unsuccessfully to resolve this problem through the complaint process. By 2008 he had spent 20 years in custody and had had 8 parole reviews at which the Parole Board reiterated that his risk had not been sufficiently reduced.

In August 2009, we sent a formal pre-action letter which identified the need for individualised work due to Mr Is particular circumstances and his disability.

"the legal costs incurred were less than the costs of keeping Mr I in prison"

Following the issue of a claim for judicial review, a neuropsychological report was undertaken, and appropriate one-to-one work was finally provided.

The case demonstrates that vulnerable people are deprived of the opportunity to progress through the prison system. Without the assistance of lawyers Mr I would continue to be detained with no hope of progress. The legal costs incurred were significantly less than the continuing costs of keeping Mr I in prison.

Mr B

Mr B is a mandatory life sentence prisoner who was given a 10 year tariff in 1996.

Mr B stagnated as his risks were not properly explored or identified. For many years there was a suggestion that Mr B suffered from autism but no steps were taken to confirm this. During an oral parole hearing in 2010 (Mr Bs fourth review), the panel noted that an autistic spectrum assessment had taken place but only on the initiative of his legal representative. The panel was also concerned that no other effort had been made to identify resources to help with the obvious learning disabilities and commented that they were dismayed that [his] progress through [his] sentence had been seriously delayed by this failure.

"the prisoner stagnated as his risks were not properly explored or identified"

The 2010 panel commented that further work in relation to his self management skills would need to be delivered via 1:1 work with a psychologist, as a suitably resourced establishment is necessary. The panel also requested that input be provided for the next parole review by a consultant forensic learning disability psychiatrist.

The Parole Board's recommendations were not acted upon and eventually pre-action correspondence was sent making specific reference to the 2010 Parole Board decision. The one to one work was then provided and Mr B had a meaningful parole review and is now progressing well in open conditions.

Without assistance from his lawyers, Mr B would not have been provided with appropriate interventions and would still be stagnating in closed conditions until yet another decision was issued by the Parole Board.

Mr D

Prisoner D was an IPP sentenced prisoner. He had learning difficulties. The Parole Board declined a progressive move due to outstanding risk reduction work. He remained at a B category prison for a lengthy period in order to complete work on alcohol misuse, however, this course was subsequently withdrawn due to a lack of resources.

During the period before his next parole hearing, we made representations to the Prison Service regarding the need for appropriate rehabilitation work for D. We also liaised with various prisons running suitable interventions to determine availability. D was ultimately transferred to another prison to complete rehabilitation work and later received a positive recommendation for a move to open conditions from the Parole Board. This would not have happened without intervention from lawyers.

Given that D had learning difficulties he was not able to deal with the situation himself. His situation, combined with his learning difficulties, and inability to solve problems meant he became increasingly frustrated with his situation. His behaviour deteriorated and this was seen as evidence of ongoing risk. Had D not had access to a solicitor to help him progress then it is likely his behaviour would have continued to deteriorate, he would not have gained access to appropriate work to help him manage his behaviour and he would not have been successful at his parole review.

Our intervention saved costs in terms of continued detention in a Category B prison and also those associated with delays to the parole process. It also contributed to D's rehabilitation and a significant improvement to his behaviour which will help to protect the public in future.

The work carried out by lawyers in these cases would not be possible under the proposals to cut legal aid for prisoners.

Categorisation

Category A

We recently represented a prisoner T who had made numerous attempts to seek his removal from High Risk Category A status, arguing that prison service information was either wrong or was not based on evidence.

Representations were made around factual errors involved with his index offence, security intelligence, consistency in public policy decision making, and the policy guidance contained in the National Security Framework, a document which is neither in prison libraries nor available on the intranet.

The end result was that T was downgraded to Category B. This had wider implications than simply for the particular prisoner, given that his disabled mother was able to visit more regularly, he was able to engage with external educational courses and was able to start to address the rest of his sentence plan.

The cost of category A places is significantly higher than those in category B prisons. This case has resulted in significant savings to the public purse. It is wholly unrealistic to expect that a similar outcome would have been achieved via the complaints procedure and without legal assistance.

Category D

The majority of indeterminate sentenced (IS) prisoners will need to spend a period in open conditions before they can seek their release from prison. Once an IS prisoner has achieved a progressive move to open conditions (category D), they can find themselves being transferred back to the closed estate with their category D status being suspended.

If an IS prisoner is transferred back to closed conditions, the Secretary of State's representative will review the transfer to consider whether they can be returned back to open conditions. Representations can be submitted in support of a return to open conditions.

Mr P

Mr P was returned to closed conditions as his mental health deteriorated. He sought assistance from his lawyer. Insufficient mental health and primary health care staff were available in the open prison. Therefore, he was returned to closed conditions. With the benefit of legal representation Mr P's health needs were reviewed, he was prescribed appropriate medication and was returned to open conditions following a paper review.

Mr S

Mr S was returned to closed conditions as he was considered to have been drinking on a town visit. Upon his return to open conditions, he was seen swaying and slurred his speech. Mr S highlighted that his mental health medication had significantly increased over the last 2 weeks. He was returned to closed conditions on the basis of allegations that he had drunk alcohol. Representations were submitted highlighting the lack of evidence to support the allegations made. Mr S was returned to open conditions following a paper review.

Mr B

Mr B was alleged to be using illegal substances in addition to his methadone prescription and was returned to closed conditions. He instructed lawyers to assist him with representations in support of his return to open conditions. Evidence was obtained to show:

i. he had produced numerous negative drug tests to demonstrate that he was not using any illicit substances.

ii. upon his arrival into the closed estate, another MDT was given showing there were no illicit substances in his system.

iii. two days after the accusation against him was made, he was granted release on temporary licence during the evening to attend a Narcotic Anonymous meeting in the community to which he had travelled unaccompanied and returned to the prison in accordance with his licence conditions.

Following representations highlighting these matters Mr B's case was reviewed on the papers and he was granted his return to open conditions.

These sentence cases were completed for a fixed fee of £220.00. If the relevant evidence had not been gathered and representations had not been prepared and submitted for these clients, it is extremely likely that the Secretary of State would have referred the case to the Parole Board, who would have listed an oral hearing to deal with the issues, specifically the continued suitability for open conditions. This would have required:

a. *A three member Parole Panel convening at a closed establishment;*
b. *Probation officer's attendance at the hearing including travel and time out of the office (travelling usually a lengthy distance);*
c. *The closed prison needing to hosting the oral hearing;*
d. *Representation for the prisoners at the oral hearing*
e. *The prisoners spending more time in the closed estate and their release inevitably being delayed*

The costs incurred would be vastly higher than the legal aid cost of representations being prepared and submitted by the prisoners' lawyers. This kind of work will not be possible if the cuts to legal aid are implemented.

Resettlement

Miss B

We represented a 17 year old female, Miss B, who was diagnosed with ADHD. She was released from prison with only minimal supervision. When she was released to a hostel she found she was sharing a room with a much older woman with a history of alcohol issues, the room had no pillow and no lighting. She was unsupervised during the evenings and had no purposeful activities. She was told on release that she would be referred to employment access services but this did not happen.

"has not returned to custody since"

Despite her vulnerability and her obvious needs, Miss B had not been provided with the community care support to which she was legally entitled. She and her mother had made several complaints about the support she was receiving but Social Services and the Youth Offending Team had failed to respond. It was after legal intervention that a lawful assessment was completed. Miss B was provided with a care plan, placed in suitable and age appropriate accommodation and has not returned to custody since. If she had remained in the hostel without support, it is very likely that she would have been recalled to prison. The cost of this case was a fixed fee of £220. Had she been recalled, the cost to the public purse would have been over £40000.

Mr W

We represented a 17 year old, Mr W, who had been convicted of violent disorder in the context of a demonstration against Government proposals to introduce student fees. He had been studying for his A levels at College at the time of the offence. He was sentenced to 36 months in custody. At his sentencing hearing, the Judge expressed regret at having to sentence a young man to such a substantial term of custody.

As his prison lawyers we wanted to ensure that W's custodial sentence would not completely damage his future prospects in a way which went beyond the intentions of the sentencing Judge. It seemed that the only way to achieve this was to ensure that he only lost one year of education, rather than two. His College had offered him a place starting at the beginning of the next school year, if he was able to attend part time. It was offered to him on the basis that whilst he was at school he was an excellent pupil and in their view, his offence was entirely out of character.

We calculated that if W was granted Release On Temporary Licence (ROTL) to attend College on a part-time basis between September and December, then he could be considered for release on Home Detention Curfew (HDC) in December. If he were to be released on HDC he would be able to attend College full time in January. This would mean that he would then be released on licence into a structured environment proving meaningful and positive social engagement which would ensure his successful resettlement into the community.

The prison in which he was detained had encouraged him to seek employment in a supermarket. They had not been willing to consider allowing him to attend an external educational establishment as part of his resettlement plans. We made detailed representations to the Governor, after extensive liaison with the school, his Probation Officer (who had initially opposed his plan), the education department at the prison and W's family. We applied the relevant Prison Service Instruction and pointed out that it was entirely within the Governor's remit to facilitate the College's request that he be allowed to attend. We argued that successful resettlement for our client would be best achieved through a gradual reintegration into education, thereby re-establishing our client's links with his community and allowing him to resume his A-Level studies.

Ultimately, the Governor did allow him to be released on temporary licence to attend his old College. Had our request not been facilitated, our client would have lost his place. It is highly likely that this would have harmed his prospects of resettling in the community and impacted on his future employment prospects. He was later released on Home Detention Curfew, saving thousands in tax payers' money.

Mr M

We represented a 47 year old man, Mr M, who was coming to the end of a 4 year sentence. He suffered with cognitive dysfunction, severely impaired memory, language impairments and serious learning disabilities. He also suffered with mental health problems. The Health Care department at the prison contacted us. They had been unable to secure any services for him on release from Social Services and were concerned as to how he was going to cope in the community. He was unable to properly utilise the complaints procedure because of his health issues. We were able to advise him and to secure a lawful community care assessment by his local authority. He was consequently released from prison with an appropriate level of support. Without our intervention this would not have happened and the consequences for him and potentially for the public would have been severe.

Under the proposals to cut legal aid, it will not be possible for prisoners to obtain advice and assistance for resettlement and licence problems.

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