

LEGAL STRUCTURES FOR YOUR SPORTS CLUB

Guidance to help you grow a
winning sports club.



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LEGAL STRUCTURES INTRODUCTION



Introduction

One of the most important choices you will make when forming your sports club is which legal structure to adopt.

The same choices can arise at a later stage in the club's development, when it may be appropriate to adopt a different legal structure – either because there is a need to have a more robust structure to ensure good governance and protection against key risks, given the increased scale of the operations or because there are new opportunities (perhaps those related to the community empowerment agenda) which can only be accessed if the club adopts a new structure.

Multiple Structures

In considering your options, you should bear in mind that there may be benefits in having two or more legal entities – reflecting different strands within the overall operations, or perhaps as a means to give protection to key assets such as the buildings and sports grounds.

There may be sports groups under the overall umbrella of the club who want to have greater independence, with their own governance structure and control of their own finances. Also, charitable status – if that is relevant to your club – may dictate that certain income-producing activities (particularly the operation of a bar) are carried on by a non-charitable legal entity,

The choices are plentiful and it can seem overwhelming deciding which option to take. It's worth taking your time over the decision and making sure the structure you choose is right for your club, as each structure has its own strengths.

This guide will walk through the various structures available to your club and outline the benefits and limitations of each legal form.

Please note this publication is a general summary produced by Club Development Scotland, the consultancy arm of Supporters Direct Scotland. It should not replace legal advice tailored to your club's specific circumstances.

Why Incorporate?

Many clubs in Scotland are unincorporated. This is a suitable setup for small members' or amateur clubs with no significant assets, no interest in property and who do not employ staff, enter into contracts or other arrangements involving risk.

However, unincorporated clubs have no "legal personality" and their committee members are personally liable for any decisions made on behalf of the club. Would you risk losing your

normally formed as a wholly-owned subsidiary (offshoot) of the main organisation.

If you do decide to adopt a more complex structure with two or more legal entities, it would be important to be clear about the linkages between the various entities – and including agreement on the financial aspects and arrangements for use of the sports facilities.

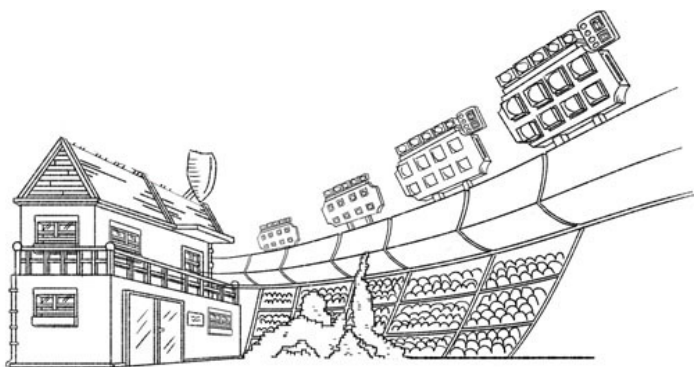
For simplicity, this guidance refers primarily to the factors to be taken into account in choosing a single legal entity for a sports club. Many of the points will, however, be helpful in coming to a preliminary view on what would be appropriate in the context of a model involving two or more legal entities.

house or savings on the chance something could happen at your club? If you're involved in a sports club committee and your club is unincorporated you may be doing just that.

That means that any successful legal claim (perhaps for an injury sustained on your premises) made against the club would be brought against the committee members - who would be personally liable if the injury was not covered by insurance and the club had insufficient assets to meet the claim. Incorporating your club will essentially see it become recognised as a legal entity in its own right, giving members limited liability (usually limited to a nominal £1) if there are debts or other liabilities that cannot be met from the club's funds and other assets.

If your club employs people, holds property (whether owned, or under a lease), enters into significant contracts (eg equipment leases; or a building contract for an extension to the club facilities) and/or carries on significant income-generating activities, there will be potential liabilities and claims (generally rising with the scale of activity) which cannot all be met by insurance. In those circumstances, it would be advisable for the committee to consider whether incorporation - whether as a company limited by guarantee, a registered society (co-operative or community-benefit society) or Scottish charitable incorporated organisation (SCIO) - would be appropriate for the protection of those involved in the club, particularly committee members.

A further benefit of incorporation is that the club would be seen as having adopted a robust legal structure, and that is generally helpful in the context of dealings with potential funders and other partner bodies.



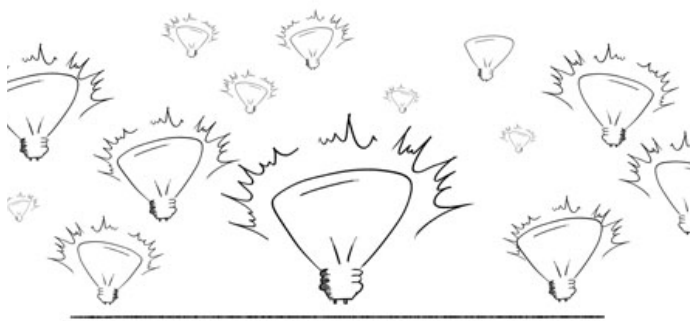
Advantages of Incorporation

- Committee members of clubs set up as unincorporated associations may be personally liable for the debts and other liabilities of the club if debts cannot be met from the assets of the club and/or claims cannot be met from an insurance policy.
- If those committee members were instead board members of a company, registered society or SCIO they would have no personal liability (other than in exceptional circumstances – see below).
- An unincorporated association cannot hold property in its own name and therefore any property is held by trustees. If the property is to be sold at some point in the future (or if there are other dealings with the property eg the grant of a lease), there will be a need to establish the linkage through the trustees ie tracing each resignation or death of a trustee and each appointment of a new trustee throughout the whole period. This obviously involves time and expense.
- If an unincorporated association enters into a building contract eg to take forward an extension to the club facilities, the club will meet the payments as they fall due under the building contract – but it is the committee members who would end up having to pay the building contractor (out of their own personal money) if the club had run out of funds eg due to a cost overrun.

Limited Liability

Limited liability does not offer absolute protection; in extreme circumstances, board members of legal entities can be held personally liable in relation to debts and/or other liabilities, notwithstanding the general principles of limited liability. Such circumstances are extremely rare but may occur when the board members have been reckless or negligent, have acted illegally or outwith their powers; or (in the case of limited companies) where they have caused the company to continue to run up debt beyond the point at which there was no longer a reasonable prospect of avoiding insolvent liquidation.

- However, if a property lease, an equipment lease, a building contract or other legal agreement is entered into in name of the company, registered society or SCIO, the other party can only claim against the company, registered society or SCIO – the other party will have no legal right to claim against individual board members.
- Unincorporated associations cannot sue or be sued in their own name. Legal proceedings must be brought and defended in the names of the committee members.
- Conversely companies, registered societies and SCIOs can sue and be sued in their own name.



Questions to Consider before Incorporating

- What are the **key risks** that you face, now and in the short- to medium- term? Do you need to incorporate, to get the benefit of protection for committee members – thinking about

risks from property/leases, building contracts, potential employee claims etc?

- Will you want **additional status?** Do you meet the criteria to have charitable status? Are you thinking of Community Amateur Sports Club status?
- How will you **raise your capital finance and ongoing revenue?** Grants? Loans? Shares? Community shares? Trading? Annual subscriptions? Donations?
- Who should have **control or ownership?** Do you want to give the wider community ownership? Or is there a small group of investors who will require ownership as a condition of providing finance? Or should control be limited to regular users of the facilities – or those participating at competitive level - rather than the wider community?

- What message do you want to give about **the nature of the organisation?** Do you want to be branded as a social enterprise? Do you want to be seen to be charitable? Or community focused, but not necessarily charitable? Or as an organisation focused on competitive sport only?

- Are there **sources of funding** – or other opportunities - which will only be available to you if you adopt a particular type of governance model? Certain funders will only support organisations which have membership open to the local community. Also, there are eligibility criteria (differing between different

Asset Locks

An Asset Lock is designed to ensure that the assets of a body which is intended to be nonprofit distributing are not distributed for the personal benefit of members – either while the body is operating or if it is ever wound up.

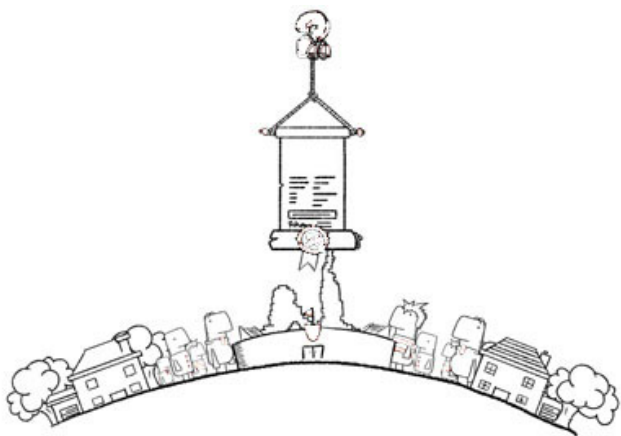
Through an asset lock, the assets of the organisation are protected, in the sense that there is a prohibition on any assets being transferred otherwise than (a) at market value or (b) for the benefit of the community or (c) to another assetlocked body ie a charity or a Community Interest Company. That means that the members of the organisation cannot sell the

grounds to a private developer, wind up the club and split the sale proceeds among themselves.

Most entities are able to write some form of asset lock into their governing documents, but the most secure approach is to adopt a legal model where the asset lock is based on legislation, backed up by a regulator – at a practical level, that means having charitable status or Community Interest Company (CIC) status; or, in the case of a community benefit society, building in a specific statutory asset lock to the rules.

rights conferred by community empowerment legislation) that would need to be satisfied if you were wanting to access opportunities such as community right to buy.

- Are there **tax benefits** that you need to access? Are they vital or just nice if you can get them? This might include exemptions from corporation tax on trading income, and/or access to tax reliefs for donors or investors and/or the ability to maximise the benefit of donations by reclaiming tax via gift aid.
- **Ease of setting up.** Are you ready to involve other people? How quickly do you need to set up? Are there funders or other key stakeholders that need to be part of the process of developing the new legal structure?
- **Ongoing bureaucracy.** Are you geared up to cope with the administrative tasks that need to be carried out? Companies have to notify Companies House of a number of changes, as well as filing annual accounts and an annual confirmation statement, while SCIOs have quite light-touch requirements so far as those aspects are concerned.
- **Flexibility.** Do you need to have a flexible structure that you can change later? Have you considered what your legal status should be in 3-5 years' (or 10 years) time? Have you considered how this will affect your club development & business plan? Have you and your committee discussed what the clubs long term ambitions are and will your legal status compliment this plan?



Governing Documents

A governing document is extremely important

to an organisation; it is the rule book regulating governance of the club. The governing document may start its life as some rules scribbled down as you go along but as your organisation grows and develops you will need to formalise these rules – especially if you are applying for funding, as funders very often ask you to send them your governing documents with any bids that you submit. If you are looking to form a legal entity with limited liability, it will be essential that you have a proper governing document suitable for that legal entity.

The legal form your organisation takes will determine what type of governing document you have, which will be one of the following:

- Rules: for a registered society (co-operative or community benefit society)
- Articles of Association: for a company
- Trust Deed or Declaration of Trust: for a trust (ie a trust in the legal sense; not just a company or SCIO or registered society with "Trust" in the name)
- Constitution: for a SCIO or unincorporated association.

It is important to remember that organisations have to operate in line with their legal purposes, or objects. In other words your objects determine what you can and cannot do in the future. It is important to get this right at the start – but it should also be borne in mind that it will be possible to amend the purposes set out in your governing document at a later date, if things change.

The key requirement is that the legal structure should reflect the type of organisation that the club wants to be:

- owned and controlled by a group of conventional shareholders who can get financial returns from dividends and from selling their shares; or
- owned and controlled by holders of community shares, with limited interest on shares and the right to repayment after a specified period; and with the balance of profits being recycled within the club or applied to community benefit; or
- non-profit distributing, and with membership open to regular users of the facilities; or
- non-profit distributing, and with membership open to the local community.

Other key features include the composition of the board – appointed by major shareholders, or democratically elected by holders of community shares or by the membership; and often with a small number of places reserved for people appointed by the board themselves, on the basis of special skills that they can bring.

Governing document templates may be accessed from Club Development Scotland, tailored to reflect the features that are likely to be most applicable to sports clubs.



Share Issues

Only some types of legal entity can issue shares (see below) and the types of shares can vary (see references below to community shares under “Community Benefit Society”). Co-operatives and community benefit societies generally issue token £1 shares to those wanting to take up membership; but shares can also be used as a means to raise money to finance the operations of an organisation or a specific project or facility.

Shares can be issued to both individuals and corporate bodies; depending on how this

Examples of tax benefits for charities include:

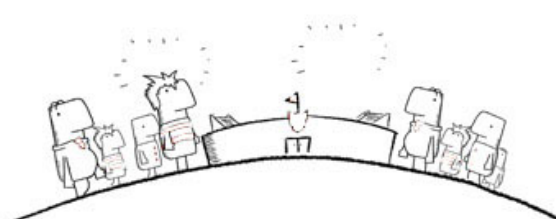
- Gift Aid on individual and company donations
- Payroll Giving allowed
- Grants may be available from other charities, e.g. community foundations and other bodies supporting charities
- Income and corporation tax relief for gifts of shares and property
- All rental income exempt from tax
- Inheritance tax relief on gifts
- Gifts of assets on “no-gain no-loss” basis for capital gains

is structured (including the type of shares that are issued), it can have a major effect on how decisions are made. As private limited companies cannot make public share offers, these shares are usually bought by a handful of wealthier individuals who can end up owning and controlling the majority of the club; and they will generally have control over who serves on the board.

Alternatively, community shares usually operate on a one-member-onevote basis, provide only limited financial returns to community investors, and include provision for the community investors to participate in democratic elections to the board. It is important to think about how you intend to raise the finance for your club before deciding whether you require the ability to issue shares.

If you’re going to be reliant upon income generating activities, grants and donations, it may not be relevant whether you can issue shares – and many grant funders will not be comfortable about providing support to profit distributing organisations. Grant support for projects falling with the general community empowerment agenda will generally be conditional on the organisation having open community membership. It would also be fair to say that charitable status (see below) brings access to the widest range of grant funders.

COMMUNITY



Charitable Status

Being a charity is a legal status for an organisation, not a type of legal entity or organisational structure. Its benefits for clubs can include increased access to funding opportunities, tax exemptions, the ability to maximise the benefit of donations through reclaiming tax under gift aid, and an enhanced image for the work it is doing within wider society.

In order to gain charitable status, a club would need to meet two criteria:

1. The purposes of the club must be exclusively charitable. They cannot have a mix of charitable and non-charitable purposes (though a non-charitable subsidiary or other linked legal entity can be used for noncharitable activities, meaning that the main legal entity can access charitable status). It should be noted that a club which is involved solely in elite sport will not be eligible for charitable status
2. The club must be set up for public benefit (rather than for an individual or small select group of people; and access to benefits must not be “unduly restrictive” – one particular issue being high charges if these are considered to be too much of a barrier).

In Scotland, charitable status is awarded, following a formal application process by the Office of the Scottish Charity Regulator (OSCR). In order to access the tax reliefs, a new charity then has to register with HMRC – but (other than in exceptional cases) that is purely a form-filling exercise.

In order to be eligible for charitable status, the legal entity must be non-profit distributing – that would exclude a club owned by a small group of shareholders. There is scope, however, for a community benefit society issuing community shares to be recognised as a charity – though that is a new development in Scotland and there are few examples to date.

Charitable status brings with it the need to comply with charity law – and those serving on the board have certain legal duties as charity trustees. The requirements are not, however, particularly onerous; and the charity trustee duties are broadly in line with what would generally be regarded as common-sense principles supporting good governance. Clubs registered as charities are unable to pay players, unless for coaching as part of a wider community setup.

Charitable Status and Gift Aid

One of the main advantages of a sports club becoming a charity is the ability to claim Gift Aid on membership fees, something unavailable to Community Amateur Sport Clubs. Most sport club membership subscriptions are not gifts, they’re made to gain access to the facilities and services provided by the charity, such as training or matches.

However, membership subscriptions paid to charities that secure voting rights and the right to attend a charity’s AGM are considered gifts provided they do not secure any right to the personal use of any facilities or services provided by the charity.

Read our full guidance on memberships and gift aid on our website clubdevelopment.scot

Community Amateur Sport Clubs

Similarly to charitable status, Community Amateur Sport Club (CASC) status is a legal status which can offer benefits such as tax reliefs and the ability to reclaim tax under Gift Aid.

To register as a CASC your club must meet the following qualifying conditions and meet them on an ongoing basis - otherwise the club may lose its CASC status and be subject to a deregistration charge:

- Be open to the whole community
- Be organised on an amateur basis
- Have as its main purpose the provision of facilities for, and the promotion of

- participation in, one or more eligible sports.
- Not exceed the income limit
- Meet the management condition
- Meet the location condition and with at least 50% of its members taking part in the sports activities.

Once registered as a CASC, a club can’t apply to be recognised as a charity. To convert a registered CASC to a charity involves transferring over the assets and activities to a new charity and closing down (winding up) the CASC. A club does not require to be incorporated to benefit from CASC status, although it may help. If you are thinking of applying for CASC status, it is worth considering how you would meet the criteria to be a CASC.

LEGAL STRUCTURE	GOVERNING DOCUMENT	REGULATORY BODY
Company Limited by Guarantee (CLG)	Articles	Companies House
Company Limited by Shares (CLS)	Articles	Companies House
Scottish Charitable Incorporated Organisation (SCIO)	Constitution	OSCR
Community Interest Company (CIC)	Articles	Companies House
Community Benefit Society (CBS)	Rules	Financial Conduct Authority
Unincorporated Association	Constitution	Isn't Registered (unless a charity, in which case, OSCR)
Trust	Trust Deed or Declaration	Isn't Registered (unless a charity, in which case, OSCR)

LIMITED LIABILITY?	CAN SHARES BE ISSUED?	CHARITABLE STATUS?	ASSET LOCK?
		 (possible)	 (possible with charitable status or CIC status)
			 (though CIC status is possible)
	 (depends whether CLS or CLG version)		
		 (possible)	 (possible)
		 (possible)	 (if charitable)
		 (possible)	 (if charitable)

Company Limited by Guarantee

A Company Limited by Guarantee (CLG) does not have a share capital or shareholders, but instead has members who vote on elections to the board and constitutional issues such as alterations to the articles. Each member guarantees to pay a small amount if the club becomes insolvent (normally £1), hence the name "limited by guarantee" ie their liability is limited to the amount that they guarantee. The structure is very flexible, and common among not-for-profit organisations such as clubs or charities where membership is frequently changing.

A company limited by guarantee will not pay any dividends to its members, and it cannot be used for community share issues.

Companies limited by guarantee can have charitable status, but must then adhere to both charity and company law and will have to report annually to both OSCR and Companies House. As an alternative to charitable status, a company limited by guarantee can have Community Interest Company (CIC) status (see below); or it can choose to have neither charitable status nor CIC status.

Company Limited by Shares

A Company Limited by Shares (CLS) has shareholders with limited liability but its shares must not be offered to the general public, unlike those of a Public Limited Company (PLC). Many clubs that are incorporated as companies have sold shares to particular investors to raise capital.

In a CLS, the shareholders' obligation is to pay the company for the shares they have taken in it. If shares are not fully paid for, the balance will be payable by the shareholder if the company goes into liquidation ie the shareholders' liability is limited to the sums unpaid on their shares, hence "limited by shares". The basic principle (the details will depend on the type of shares etc) is that the investor puts money into the company, and in return the company gives it a percentage of ownership and control, in the form of shares.

If anyone holds over 50% of the shares then they can normally control who sits on the board of directors, and if they hold 75% of the shares then they are usually able to change

its constitution and are therefore in complete control of the company.

A CLS cannot gain charitable status - other than where its shareholders are charities themselves (which would not be applicable here). As a profit distributing organisation, many sources of grant funding will be unwilling to provide financial support – other than (in exceptional cases) for specific projects which have a clear charitable or public benefit objective.

A CLS may be suitable for clubs where there are investors who wish to invest significant money in the club in the form of shares and where those involved are prepared to see the club operating as a profit distributing organisation; the investors can benefit from payment of dividends and an increase in the value of their shares (which can be sold).

A variant on that traditional model would be to use a company limited by shares with CIC status. That would mean that shareholders could receive only limited dividends (the cap is currently set at 35% of distributable profits), and there would be an asset lock; as a matter of practice, companies limited by shares with CIC status are quite uncommon, particularly where it is envisaged that there will be a major investment in shares.

If an investor would be prepared to provide finance in the form of loans rather than shares, that would be compatible with a non-profit distributing type of legal entity eg a company limited by guarantee.

Scottish Charitable Incorporated Organisation

The Scottish Charitable Incorporated Organisation (SCIO) is a legal form designed specifically for Scottish charities. It is a corporate body like a company or a registered society – but is formed and regulated by OSCR rather than by Companies House or the Financial Conduct Authority. It also provides limited liability; the legislation provides that the members of a SCIO are not liable for its debts or other liabilities if the SCIO is wound up. Unlike other types of legal entity with charitable status, SCIOs are only required to report to OSCR - whereas companies with charitable status must also report to Companies House and charitable community benefit societies must also report to the Financial Conduct Authority. The legislation governing SCIOs is also much simpler than

the legislation governing companies and community benefit societies.

One point to note is that a SCIO – unlike a company or community benefit society - cannot grant a particular type of security (a floating charge). A SCIO can, however, grant any form of fixed security (eg a standard security over land or buildings) in the same way as any other type of legal entity, and in practice fixed securities are generally regarded by lenders as much more attractive as security than a floating charge; the likelihood, therefore, is that this particular disadvantage of the SCIO model will not cause any real problems.

Community Interest Company

A Community Interest Company (CIC) is a type of company designed for organisations that want to use their profits and assets for the public good. CICs can be established either as companies limited by guarantee (CLG) (the vast majority of CICs take that form), or companies limited by shares (CLS). CICs have to carry out activities which benefit the community; the community interest test is, however, wider than the tests which need to be met for charitable status.

The articles of association of Community Interest Companies must include specific wording which, for example, restricts the way in which the assets can be used (i.e. the asset lock – see above), and will generally be more complex than the articles for a company limited by guarantee or company limited by shares without CIC status.

CIC status brings with it fewer legal requirements than charitable status – but does not in itself confer any special tax advantages. There are no restrictions on payments for CIC directors (providing the level of remuneration is not inconsistent with the community interest test) whereas it is a requirement of charity law that a majority of the board members must not be paid remuneration by the charity. Offering limited liability, and with the protection of an asset lock to prevent its value being distributed, a CIC may be a structure worth considering for your club.

Community Benefit Society

As the name suggests, a Community Benefit Society (CBS) exists for the broader benefit of the community - in this case, the community within which the football club is located. CBSs have community benefit written into their governing documents, operate on a democratic one-member-one-vote basis and can be an attractive prospect for grant funders who can be safe in the knowledge that they are giving support to an asset locked organisation (assuming it adopts statutory asset lock).

CBS are incorporated organisations that carry on a business (in this case, the running of the sports facilities etc) for the benefit of their community. Profits cannot be distributed among members and are instead reinvested into the club or used to support projects within the community.

A CBS can also issue shares (known as community shares) carrying a capped rate of interest, and on the basis that it will be up to the board to decide whether the club can afford to pay interest each year. Organisations can also buy shares in the society; but regardless of how much is invested, everyone is entitled to just one vote at annual general meetings and other members' meetings.

Offering limited liability, the ability to issue shares, the opportunity for charitable status and an asset lock to prevent its value being distributed for members' personal benefit, a CBS can be an attractive legal structure for a club. It should be noted, though, that the Financial Conduct Authority is a much less user-friendly regulator than Companies House, and formal processes at the FCA can be a lot slower. Also, if your rules are not closely in line with an existing model already registered with the FCA, the incorporation process can be much more expensive, and might take several weeks/months to complete. For these reasons it is generally better to choose a different legal entity if you don't think there is a firm prospect of issuing community shares in the future.

NEXT STEPS:

If you wish to incorporate, first decide which legal structure best suits your Club and email us to discuss incorporation in more detail, don't hesitate to email us at info@clubdevelopment.scot to discuss the options.

ABOUT CLUB DEVELOPMENT SCOTLAND

Club Development Scotland is a one-stop resource for sport clubs of any size to help them best govern and develop their activities.

While we can't guarantee sporting success, we can bring unrivalled experience to show you a route to succeed as a club as one of Scotland's leading sport club consultants.

Club Development Scotland is the consultancy arm of Supporters Direct Scotland, a membership organisation created to address the disconnect between clubs and communities.

This is an extension of the work that has been delivered throughout England and Wales by Supporters Direct, where we have helped sports groups raise more than £50 million.

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