

Chair's introduction

Every year for the Chancery Bar Association is a busy one. 2016 has been no different. The fact we are able to do so much is, of course, down to the commitment of a large number of our members who give up their time for the Association, whether by sitting on the main committee or one of the sub-committees, speaking at a seminar or conference, responding to a consultation, or undertaking some other task. I am very grateful to all those who have contributed in the last year. That work is, of course, supported at all times by our Administrator, Francesca, without whom the Association's many activities would simply grind to a halt.

We have continued to run a very full education programme. The year started with the Annual Conference and we have put on a varied seminar programme, which included a popular Brexit seminar in November. The half-day Summer Conference is now a regular feature, and is particularly appreciated by our members who cannot make the Winter Conference.

Pro bono work remains at the heart of the Association's activities. The Chancery Litigants in Person Scheme ("CLIPS") has now been operating for three years and was this year successfully extended to the vacation applications court. CLIPS remains, as has been said many times before, the gold standard of duty schemes. We know there are many other courts that would like to implement similar schemes.

We have continued to travel. This year the Association made a long-haul trip the Cayman Islands in the spring and in the autumn we visited



Guernsey and Jersey. In May 2017 we will be putting on a conference in Hong Kong, with the support of the Hong Kong Bar Association and the Law Society of Hong Kong. This is an exciting prospect as we will be the first Specialist Bar Association from the UK to stage such an event in Hong Kong.

We are working with the Bar Council, and other SBAs in relation to the implications of Brexit on the work that our members do, and the opportunities Brexit may offer the legal sector. This, unsurprisingly, is a large and uncertain task, and will no doubt require further assistance from our members in 2017. On top of that there have been numerous consultations. We have responded to several during the course of the year and, at the time of writing, we are preparing the Association's response to the BSB's consultation in relation to the Future Training of the Bar. This is obviously of great importance to the Bar as a whole, and the Association will be supporting the two-part Bar Professional Training Course model proposed by Council of the Inns of Court and the Bar Council.

Last, and not least, we have had considerable success with our campaign to reform the process for the selection of Recorders. At our invitation Lord Justice Burnett, the Vice-Chair of the Judicial Appointments Commission, spoke to the Association in October. He revealed the fundamental changes that have been made to the selection process for the next Recorder competition so that pre-existing knowledge or experience of criminal law or family law is no longer required. Hopefully these changes will provide "the level playing field" we have sought for our members, and indeed all other civil practitioners. The next competition is due to launch in February 2017, and I wish every success to all of our members who decide to apply.

With all good wishes for 2017.

Amanda Tipples QC



Follow our new Twitter feed! You can find all the latest news from the association @ www.twitter.com/chancery_bar. Our Twitter handle is [@chancery_bar](https://twitter.com/chancery_bar)

Farewell to Penny Reed QC

When I was asked to write this piece, my first concern was how I was going to limit myself to the allotted space as Penny Reed QC has been such a superb Chair of the Chancery Bar Association in every way.

Seamlessly taking over from her predecessor, Tim Fancourt QC, whom she described as “a very hard act follow” she quickly developed the strategies they had begun as Chair and Vice Chair and added her own unique input.

Penny built on the commitment to establish and grow the CLIPS which at the time of writing has helped over 700 litigants in person and which the Chairman elect of the Bar Council described recently (having sat in observing two volunteers) in the following terms:

“I could not help but be proud of you both on behalf of the Bar. Rolls Royce service to those in need who have such low expectations of any help, let alone help for free from committed experts”.

CLIPS would simply not be the success it is today without the extraordinary effort and support shown by Penny.

In addition, Penny oversaw the launch of the Financial List on the part of the Chancery Bar Association as well as a number of other important initiatives affecting chancery practitioners.



She also presided over extremely successful international trips to Singapore, Cayman Islands and Gibraltar as well as the Winter and Summer Conferences and her work as Chair behind the scenes (for example on the Bar Council and in particular liaising with the Judicial Appointments Committee) has made an enormous difference to chancery practitioners' lives.

The most outstanding things about Penny, however, are her effortless kindness and grace - qualities which made every meeting and seminar she participated in a pleasure to attend. We miss her already and hope that she will long be a part of the wider Chancery Bar Association.

Amanda Hardy QC

Pro Bono

The Pro Bono Sub-Committee has had an active and productive year, particularly with the continued success of the Chancery Litigants in Person (CLIPS) scheme and its extension to members of COMBAR and TECBAR and the SAHCA (Solicitors' Association of Higher Courts Advocates).

Since January 2014, there have been well over 700 CLIPS volunteers. The Chancery Judges continue to described the scheme as “...transformative” and “the most important thing the Chancery Bar Association does”. We have liaised with the Family Law Bar Association and the Employment Tribunal Litigants in Person Scheme (ELIPS) to assist them with the setting up of their schemes.

We have been working closely with the new Chief Executive of the Bar Pro Bono Unit, Jess Cambell, to

streamline access from a CLIPS day to further substantive help through the Unit. We continue to work closely with

the Central London County Court on the Court's scheme. We spoke at a training seminar for the Deputy High Court Judges in October on Litigants in Person and have been liaising with Lord Justice Jackson in relation to a Court of Appeal scheme. We also took part in the Bar Pro Bono Quiz night and the London Legal Walk. Many thanks to the members of the Pro Bono Sub Committee who have been very active and of course to all the CLIPS volunteers and the judges they appear in front of. Finally, we are continually grateful for the support of Seymona Cole and



Alex Akoto at the RCJ Advice Bureau.

Amanda Hardy QC

Annual Conference 2016: Fresh Perspectives

This year's annual gathering proved to be untroubled by snow, transport issues or memory lapses. It should be remembered for some engaging talks exploring the fresh perspectives of the conference title, the practical workshop sessions and a highly enjoyable and well-attended evening reception.

As usual we ran ten practical workshops. Like my predecessors on the organising committee, I am hugely grateful to those busy practitioners who create topical problems in the knowledge that they will be picked over in public by the combined might of the Chancery Bar. This year, in addition to traditional workshop favourites, we included sessions on mediation and practice management as we sought to live up to our conference title.

Bracketing the workshops we had a variety of speakers covering a range of subjects. Elizabeth Cooke took us behind the scenes of her work at the Law Commission and Prof. Madeleine Bernhardt, led us deep into the minds of the parties involved in a cross examination. Following the Paris Conference on Climate Change in December 2015, Lord Carnwath provided us with a truly fresh perspective on how climate change will impact on the law. The changing climate of the Chancery Division was then explained by the Chancellor - and, given his recent appointment as Master of



the Rolls, this seems an appropriate occasion to thank him for all of the support that he has given the Association.

A highlight for me was the talk by Jonathan Gaunt QC on Shakespeare and Equity, which, despite starting late, carried on by popular demand well after the official start of the evening reception. It was somehow reassuring that, to Shakespeare's contemporaries, the word “equitie” was seen as an attribute of God, which went with being righteous. Given this, it was strange to find so many parallels with the subject-matter of Mr Justice Snowden's talk the next day - “Equity and financial law”. We thank all of these speakers for their talks.

Thanks also go to the panels of speakers who provided their own fresh perspectives on the CLIPS scheme and the fast moving world of professional ethics - in particular, the frightening implications of a failure to keep client information secure.

At the risk of sounding like a speaker at an awards ceremony, I should end with more thanks to the people whose efforts made the event possible. I would thank, in particular, the members of the organising committee (Janet Bignall QC, Raquel Agnello QC, Andrew de Mestre, Mark Mullen, Catherine Doran and Francesca Compton, the Association's administrator) all of whom provided much needed expertise, support and enthusiasm.

Nicholas Caddick QC

Academic Liaison

This year's round of the Academic Liaison Sub-Committee's successful programme of bi-annual requests to academic members, asking about their current work and other activities of interest drew a great response leading, for example, to Professor Peter Watts QC and Professor Graham Virgo being invited to lock horns in debate at the Summer Conference.

We have also continued our programme of communication with student bodies and academics. We have started work on plans to work closely with the Equality and Diversity Sub-Committee over the course of next year to look at furthering opportunities to highlight Chancery work to highly able students from a broad spectrum of universities and educational backgrounds.

This year the Bar Council has repeated its cross-specialism Careers Fair. The Association opted to support the Bar

Council Fair this year on a continued trial basis. We worked with the Bar Council behind the scenes throughout the year to provide detailed feedback gleaned from our members, to ensure that prices for Chancery sets attending were kept close to those of previous years and that Chancery work received a prominent platform at the event, which was held at the University of Law on 22 October. We are now preparing a report to enable the Association to consider its future participation in the Bar Council's event, or whether to revert to a free-standing, specialist event in the future.

Finally, although the members of the Academic Liaison Sub-Committee were sad to say goodbye to Professor Ben MacFarlane of UCL, who has been such a fantastic contributor to the work of the Sub-Committee for several years, we were delighted to be able to appoint Dr Stephen Watterson of Trinity Hall, Cambridge to replace him and we look forward to continuing the close co-operation between the worlds of Chancery practice and academia.

Lyndsey De Mestre

Cayman

And so back to Seven Mile Beach in 2016...It is never much of a hardship to return to the clear azure waters, friendly atmosphere and excellent restaurants of the Cayman Islands. The Association was back for its third Conference in the newly refurbished Marriott Beach Resort. It was an opportunity to cement existing relationships and establish new ones; our trainee placement scheme, run with the Cayman Islands Law Society and Caymanian Bar Association, with its mutual benefits, certainly ensures a warm welcome for us. And this year we held the conference in conjunction with two local specialist associations: RISA (Recovery and Insolvency Specialists Association) and STEP Cayman which helped with publicity and attendance.

The conference was held over two half days which we vaguely divided between company/insolvency topics (with RISA) and trusts (with STEP). Having said that, Shan Warnock-Smith QC, busily in and out of court in Cayman that week, was slotted into the Thursday afternoon with her lively "Some Like it Hot" trust cases roundup. She was surrounded by two high-powered panel sessions: the first covering the use and abuse of corporate powers; the second focusing on the very topical issue of Cayman insolvency

Channel Islands

So popular a destination was this for members of the Association that we managed to run two conferences rather than one, with delegates in Guernsey on day 1 treated to an entirely different menu of talks from the delegates in Jersey on day 2. They were all commendably up-to-date, entertainingly presented and detailed – and seemed to be correspondingly well received by full audiences.

In **Guernsey**, the perennially popular topic of freezing injunctions was covered by Rory Brown; Edward Hewitt helped everyone to know what to do when trustee appointments go wrong; and Alexander Learmonth navigated the exciting seas of forgery in wills. After tea, Peter de Verneuil Smith dealt with limitation periods in negligence actions before a panel session (Eason Rajah QC, Thomas Dumont and Richard Dew) discussed trusts and divorce – and just how powerful those Family Division judges really are.

In **Jersey**, Penelope Reed QC told us when trustees should and shouldn't disclose information to beneficiaries, Eleanor



clawback claims. Finally that day, Peter Shaw kept us up to date with the latest on freezing orders, following which we moved to the heat of the

setting sun and our reception on the beach. All was going wonderfully until about half an hour in we were viciously attacked by an extraordinary swarm of mosquitoes – but we Chancery practitioners are stoic. It was an unforgettable evening...

Numbers were a bit thinner on the Friday morning but the quality of presentations was not. Quentin Cregan entertained us all with an introduction to IP while Barbara Rich tackled mental capacity and Amanda Hardy QC and Stephen Arthur gave us some tax issues to ponder. Our conference was rounded off with an interactive panel session on offshore trusts and English divorces, warning us on how the Family Division deals with trusts.

No doubt we will be back in Cayman in due course and I recommend it. Our long-haul trip in 2017 will be to Hong Kong.

Michael Green QC



Temple covered cross border insolvency and restructuring issues, Martha Maher looked at when directors'/agents' actions and states of mind can be attributed to their companies; while Amanda Hardy QC and I attempted to unpick the proposed new changes to the taxation of foreign domiciliaries and their trusts. Alex Hall Taylor and Benjamin Wood then enjoyed a hard fought and theatrical debate on the rights and duties arising in investment management cases, under the judicial eye of Catherine Newman QC. Convivial drinks followed both days' talks, with a notable number of local judges attending in Guernsey. We were made to feel very welcome in the Channel Islands and much look forward to a return in the near future.

Oliver Marre

Summer Conference

The third annual summer conference on 5 July marked a change of venue to the Royal College of Surgeons. The afternoon was well attended and the sessions spanned the range of Chancery Bar topics.

The event kicked off with a panel session on a commercial theme, res judicata and issue estoppel in the modern world, featuring Elizabeth

Jones QC, Ian Clarke QC and Richard Meade QC, wittily chaired by Richard Millett QC. Ian spoke on the organising principles, before Richard tackled the IP angle and Elizabeth explained its application in the international context.

That led into two sets of stimulating workshop sessions, one on proprietary estoppel led by Master Matthews and Robert Bowker and the other on fraud in insolvency proceedings by Chief Registrar Baister and Marcia Shekerdemian QC.

After the cream tea break, Mr Justice Mostyn gave an extremely thought-provoking view of transparency and

privacy in financial matters, drawing on his Family Division experience. That led into a spirited 20-minute question and answer session about the strength of the case for open justice.

The debate slot delivered a fascinating exchange between Professor Peter Watts QC (Professor at the University of Auckland and visiting Leverhulme Professor at the University of Oxford) and Professor Graham Virgo (Professor of English Private Law and Pro-Vice Chancellor for Education at the University of Cambridge) on the question of whether unjust enrichment is a satisfactory legal concept, Professor Watts arguing that it is not, and Professor Virgo responding with a defence of the principle.

The day finished on a high with some closing thoughts from the outgoing Chair of the Association, Penelope Reed QC, and some words from her successor, Amanda Tipples QC, topped off by champagne and canapés in the library upstairs.

Jonathan Hiliard QC



Equality & Diversity

The Equality and Diversity committee has had an exciting year. It has been particularly diverse as it has had two chairs (hello to Marcia Shekerdamian QC and goodbye and thank you to Rebecca Stubbs QC) and spawned a new Wellbeing committee to address a vitally important topic.

We have been busy assisting students from disadvantaged backgrounds with interview technique in association with the Sutton Trust and we hope to take this further next year. We have contributed initiatives concerning gender diversity in the judiciary and our mentoring scheme is open every term to all members who consider their career or general wellbeing would be advanced by it. Some fantastic relationships have developed from the scheme and studies show that mentoring really can assist with wellbeing issues.

The Association also attended the PRIDE march in London for the first time. It was a joyous occasion and we walked (some in wigs and gowns) with the Bar Council and the Law Society. A whole range of members came – from junior tenants to silks – as well Registrar Barber and even a baby. Our presence was reported in the Observer and we consider this helpful in demonstrating that the Chancery Bar is open to people of all backgrounds, sexuality, gender, colour, etc to the wider public.

Following the excellent wellbeing seminar in February we are planning further seminars on subjects as diverse as shared parental leave and reasonable adjustments for disabled people.

Ruth Hughes

Interview with Lord Sumption

Lord Sumption was catapulted into the Supreme Court in 2012. He is the first person in more than half a century, and only the sixth person ever, to have been appointed to the highest court in the country without first sitting as a full time judge. He describes the opportunity of such appointment as “an offer that I could not refuse”. On a blustery November afternoon, Lord Sumption was kind enough to invite us up to his room on the Judges’ corridor at the Supreme Court for a cup of tea and a wonderfully wide ranging discussion.

Reflecting on the similarities and differences between life on the Bench and at the Bar, he describes the analytical process undertaken by a judge as “not actually very different from advocacy”. “An advocate starts from the answer his client needs and within the limits of honesty seeks to work backwards to get there. A judge tends to start with an instinctive view and works backwards. So you start with the answer and work backwards in both cases... You may hit the buffer before you get to the desired destination, in which case a judge changes his mind; an advocate does not have that option.”

The trait that Lord Sumption values most in an advocate is “breadth of legal vision”. While cases are often highly specialised in their subject matter, in order to be persuasive and therefore successful, particularly in the higher courts, an advocate needs to be able to “see where his submissions fit within the general scheme of law”. Lord Sumption is keen to stress that he is not an opponent of specialism “but people who focus only on the law of bicycle mortgages, because they have a bicycle mortgage at issue in the present case, are not doing the court or their clients much good.

Ultimately, as the highest court of appeal, we are very much concerned with what the knock-on effects of deciding a case in a particular way are going to be on the law in general.”

Lord Sumption speaks with warmth about those individuals with whom he has worked and locked horns during his distinguished career at the Bar. He describes the late Robert Alexander (Lord Alexander), a former colleague in chambers, as someone from whom he learnt a great deal, and Sir Sydney Kentridge as an “absolutely magical advocate”. He names Gordon Pollock as the outstanding advocate currently in practice: “He can be brutal, not to say thuggish – I do not suppose I am exempt from the laws of libel but I do not suppose he would mind – but for sheer



combination of eloquence, intellectual rigour and speed of thinking on his feet I do not think I have ever encountered anyone of the same class.”

As for the world of chancery, Lord Sumption notes that the Chancery Division has a much broader range of work today than it did historically, “chiefly because of the application of equitable doctrines to a wide range of financial and business transactions”. Asked to name a chancery case that he considers of particular interest, Lord Sumption cites the case of *Macmillan Inc. v Bishopsgate Investment Trust Plc*. This, Lord Sumption suggests, illustrates not only the breadth of areas that now fall under the chancery umbrella but also the exceptional imagination, rigour

and intellectual penetration characteristic of one of the great modern chancery judges, Lord Millett, someone for whom Lord Sumption has “enormous admiration”.

It is oral advocacy which is the element of the profession which Lord Sumption considers particularly special, and for anyone concerned that the importance of oral advocacy is diminished in the present age, Lord Sumption is clear that this is not so. He changes his own mind in the course of argument in between a quarter and a third of cases. “Advocacy often makes a difference, and if it does not make a difference to the result it may often make a big difference to the reasoning and the quality of the reasoning.”

Lord Sumption speaks of both continuity and change when it comes to the shift in 2009 from the Appellate Committee of the House of Lords to the Supreme Court. Although the highest court’s powers have not changed, the court now has much higher public profile. He speaks of Lord Phillips, the first President of the Supreme Court, as being keen to

take the opportunity presented by the change of physical location and profile to bring the making of law home to the population at large rather than just to professionals, particularly important in an age where Human Rights Act related matters form a significant element of the court’s work. He also describes what is perhaps a more deliberative and collegiate approach than existed historically in the way that the highest court reaches its decisions. “We now go to a lot of trouble to make sure we are producing a coherent answer to the problem in issue. We comment on each other’s judgments and I think this is enormously healthy and helps to ensure there is always a clear ratio for our decisions. It means that they are better reasoned as there is nothing like constructive criticism from our colleagues to make one think hard about what one is saying.”

Discussing matters away from the court room, we touch upon Lord Sumption’s well known passion for history. If he could spend one day with someone in history it would be Benjamin Disraeli: “the only true genius to have held high political office”. If he were to start a PhD tomorrow it would be on something to do with the middle ages. This is a period of particular fascination, providing the origin of the administrative state but at the same time being a period “where individuals still mattered enough for some colour to come into the events that one is looking at”.

Looking to the future, Lord Sumption comments on what might happen to law in this country after Brexit: “A great deal depends on what will replace EU law...it sounds as if it will in any event result in the cessation of references to the CJEU and that will make some difference.”

As the November light fades over Westminster, we ask Lord Sumption what he would do if the President of the Supreme Court were to invite him to take a month off and head overseas. Lord Sumption is clear that his destination would be Paris so as to enable him to carry out research, reading archives for the next volume of his work on the Hundred Years War. In *Desert Island Discs* fashion, we ask Lord Sumption to name the book and luxury he would take with him on such voyage: “Virgil’s *Aeneid*, which is the ultimate in civilised poetry; and for my luxury, am I allowed to bring my wife?”

We leave the Supreme Court fizzing with thoughts and ideas after a tremendously interesting discussion. Lord Sumption describes life as a judge as an important public duty (while noting wryly that it is a duty which he took some time to observe before taking up his current appointment), extremely hard work and intellectually satisfying. With a number of important decisions eagerly awaited, including in respect of Brexit and Article 50, these are fascinating times at the Supreme Court, both for those involved in its work and for onlookers alike.

Jonathan Davey QC & Oliver Marre

Junior Chancery Bar

The remit of the JCB is to represent the interests of the more junior members of the Association, to support their professional development and to provide a social and networking forum.

In January, the JCB piloted a weekly Pilates class, intended to make it easier for members to exercise regularly in order to look after their health and combat the effects of stress in practice. This was well received, and we are delighted to say the invitation is now extended to all members of the Association. Andrew Spink QC and Hermann Boeddinghaus shared their experience at an extremely successful cross-examination master class. This was oversubscribed, attracting attention from more senior juniors and silks and even from outside the Association, and there have been calls for a similar event to be provided for the whole Association.

We were also pleased to see that the JCB wellbeing seminar held last year has been followed by initiatives at Association level.

We continue to forge relationships outside the Association. This year has seen joint events with the Property Litigation Association and the Junior London Solicitor Litigation Association, sponsorship for attendance at a Young Barristers’ Committee workshop, and an invitation to events hosted by ConTra (a new association for contentious trusts associates).

The JCB has had an important input into the Association’s consultation responses and other policy work, in particular the Briggs review and the proposals for an online court, the BSB’s consultation on Future Bar Training, and the Bar Council consultation on fixed costs. At the Annual Bar Conference, Lord Justice Briggs, Andrew de Mestre, Ruth Hughes and Eleanor Holland held a session aimed at the Young Bar, dealing with the challenges and opportunities on the horizon arising from the online court, Rolls Building initiatives, and new technologies.

The JCB has continued to provide opportunities for members to build a community. We hosted a drinks reception in May (to which members were encouraged to bring their sets’ second six pupils) and a whisky tasting in November (following an interesting NPP seminar), and we finished the year with Christmas drinks.

Eleanor Holland

Marshalling

The CLIPS scheme has for some time enjoyed a partnership with the JCB whereby those 6 years' call and below are offered the chance to marshal High Court Judges sitting in the Interim Applications Court. Applying for the marshalling scheme is straightforward and involves sending expressions of interest.

I applied for a place on the scheme and was given 3 days shadowing Mrs Justice Proudman and Mr Justice Newey. Having been somewhat apprehensive, I thoroughly enjoyed it and found it genuinely useful. First, I learned

that the rules about submission of skeleton arguments and bundles exist for good reason. The applications judges are often under enormous pressure during their two-week rotation, and have very limited time (usually after they have finished sitting for the day) to prepare for the next day. Second, seeing advocacy from the bench was a real eye-opener; some styles certainly come across better than others!

I would encourage juniors to apply, and have little doubt that even the most competent would benefit from the experience.

Harriet Holmes

ChBA Consultation responses 2016

Title	Consultor	ChBA team
Bills of Sale	Law Commission	Edward Cumming and Professor Duncan Sheehan
Court of Appeal appeals Practice Direction	CPRC	Malcolm Davis-White QC, Lesley Anderson QC, Eason Rajah QC, Ruth Hughes, Heather Murphy, James McWilliams
European Insolvency Law	EU commission	Peter Arden QC, Mark Arnold QC, Conn McEvilly
Fixed cost fee proposal	Bar Council	Andrew Twigger QC and William East
Insolvency of consumer saving schemes	Law Commission	Joseph Curl
Legal Services Market Study statement of scope	Competition and Markets Authority	Alexander Learmonth
McKenzie friends	High Court	Christopher Boardman and Christopher Heather
Mental Capacity and deprivation of liberty	Law Commission	Barbara Rich
Privatising Land Registry	DBIS	Caroline Hutton
Probate Registry Fees	MOJ	Helene Pines Richman and Alexander Learmonth
Register of people with significant control	DBIS	Josh Lewison
Threshold standards and competencies	BSB	Josh Lewison, William East, Oliver Phillips
Trusts (Jersey) Law	State of Jersey	Nicholas Le Poidevin QC, Thomas Fletcher, Jordan Holland and Francesca Perselli
Updating the Land Registration Act 2002	Law Commission	Rodney Stewart Smith, Simon Brilliant, John Dagnall
Thirteenth Programme of Law Reform (specifically Leasehold reform)	Law Commission	Timothy Fancourt QC, Andrew Twigger QC, Oliver Radley-Gardner, Cecily Crampin and Professor Duncan Sheehan
Technical Issues in Charity Law	Law Commission	William Henderson
Expert in Overseas Courts	Bar Council	Richard Millett QC
CPD Rules and Regulations	BSB	Thomas Robinson and Ruth Hughes
Modernising Judicial Terms	Ministry of Justice	Richard Dew and Helen Evans
Strengthening the Tax Avoidance Disclosure Regimes for Indirect Taxes and Inheritance Tax	HMCS	Oliver Marre

We would like to thank the contributors, photographers and editor for all the time and effort devoted to the ChBA Review 2016

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