

Fatal pursuit of Mr X in Palmerston North

INTRODUCTION

1. At about 1:29pm on 28 May 2018 in Palmerston North, a Police officer started to pursue a blue Subaru on Monrad Street. The driver was thought to be Mr X (aged 15), and the Subaru was thought to be stolen.
2. The pursuit continued for a short time on Pioneer Highway, before Mr X lost control of the Subaru and crashed. Mr X and a young female passenger (Ms Z, aged 12) were killed. Another young female passenger (Ms Y, aged 16) survived, but sustained serious injuries. The pursuit lasted 1 minute 26 seconds and covered 3.3 kilometres.
3. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

Summary of events

6. Mr X, aged 15, was a young man who lived in Palmerston North. He was known to Police for stealing cars and had been involved in several Police pursuits. He did not have a driver licence.

7. On 26 May 2018, Police were informed that Mr X had removed his electronic monitoring bracelet, and left the address he was required to remain at as part of his bail conditions. Police started looking for Mr X, with the intention of arresting him.¹
8. At about 12.49pm on 28 May 2018, Mr X collected three girls (aged 12, 14, and 16) from the Highbury Whānau Centre in a blue car.² This was witnessed by staff at the Centre, who knew Mr X. A staff member rang Police to inform them what had happened, and that Mr X was involved. The staff member also provided the car's registration details, and told Police that they suspected that it was stolen (as they were aware of Mr X's tendency to take cars).
9. Meanwhile, Officer A read about this incident on the Police computer.³ Officer A had not dealt directly with Mr X, but was aware of his propensity to steal cars, that he had charges against him and that he had recently breached his electronic bail.
10. Officer A rang and spoke to the duty sergeant, a Youth Aid officer and another officer about the suspected sighting of Mr X to ensure that they were aware: *"I thought here's one of our recidivist offenders which is likely to be out offending again so I needed to ... get people out looking for him."* The Youth Aid officer advised he would go and look for the Subaru.
11. Officer A then drove his marked Police car towards Highbury to look for the Subaru. En route, at 1.04pm, he heard the Central Communications Centre (CentComms) dispatcher broadcast a general alert for all Police to look out for the Subaru, as a 'suspicious vehicle.' The Subaru had not been reported stolen by its owner at this stage.⁴

Officer A sights the Subaru

12. At about 1.29pm, Officer A was turning left from Monrad Street into Ronberg Street when he saw two cars approaching the intersection. Officer A identified the front car as the blue Subaru that he was looking for from its registration plate. He said he did not see who was inside the car, *"but due to the earlier job [he] suspected that [Mr X] was probably in the vehicle"* and decided to stop it.⁵
13. The Subaru turned left onto Monrad Street and accelerated away, followed by the second car. Officer A conducted a u-turn, turned on his lights and sirens and followed both cars onto Monrad Street. The second car was travelling at normal road speed but did not immediately pull over, obscuring Officer A's view of the Subaru. Officer A overtook it and continued after the Subaru.
14. Ms Y, in the back seat of the Subaru, later confirmed that she saw the Police car (who she believed contained two officers) do a u-turn to follow them. She said that Mr X knew Police were after him and sped away at 90kph.

¹ Oranga Tamariki Act 2017, section 214A.

² The young women attended an alternative education programme at the Highbury Whānau Centre.

³ Officer A is a Gold class driver, enabling him to engage in pursuits. At the time of this incident he had 13 years' service with New Zealand Police.

⁴ It was later established that the Subaru had been stolen from Freyberg College carpark sometime after 11:20am on 28 May 2018. It was reported stolen after the crash occurred.

⁵ One of the young women (aged 14) who had originally been picked up by Mr X had since got out.

15. At 1.29:48pm Officer A advised CentComms that he was in pursuit of the blue Subaru, quoting the first three letters of the Subaru's registration details. Three seconds later the dispatcher activated the pursuit alert to notify the CentComms shift commander that a pursuit was in progress.⁶
16. Simultaneously, the dispatcher issued the pursuit warning, which Officer A only partially heard as another radio transmission cut over the dispatcher's communication.⁷ However, the dispatcher repeated the warning and Officer A formally acknowledged it a short time later.
17. The Subaru continued to accelerate towards the intersection with Pioneer Highway, then turned right onto Pioneer Highway towards Longburn. Officer A followed down Monrad Street, advising CentComms that he was appropriately certified to be the lead driver in a pursuit, and that the pursuit was *"heading out of town."*
18. Officer A stated that he drove slowly through the intersection that was controlled by a give way sign, and turned onto Pioneer Highway. Oncoming traffic stopped to make way for him. He could see the Subaru approximately 300 metres ahead of him.
19. At 1.30:28pm Officer A notified CentComms that he estimated that the Subaru was travelling at 140kph (in a 50kph posted speed zone). Officer A later told the Authority he believed that the Subaru was very close to entering a 100kph speed zone when he reported that speed. He also said that he kept his own speed below 80kph to minimise the risk to other road users.
20. Dashcam footage taken from a vehicle parked on the hard shoulder of Pioneer Highway, approximately 110 metres from the intersection with Monrad Street, shows the Subaru speeding southbound, followed by Officer A approximately six seconds later.
21. Meanwhile, the shift commander had arrived at the dispatcher's desk to take the role of pursuit controller.⁸ The dispatcher advised him that the pursuit was potentially connected to the earlier general alert issued about the Subaru; so the vehicle was probably stolen and the driver was potentially known. The shift commander said this briefing took approximately 25 seconds.
22. At 1.30:26pm and 1.30:32pm the dispatcher asked Officer A if he knew who the driver was. Three seconds later, Officer A radioed: *"I didn't see him but aware of the job earlier where they believe it was [Mr X] driving the stolen car."* The dispatcher acknowledged this.
23. The Authority asked Officer A how he would describe his level of belief that Mr X was driving the Subaru. Officer A stated it was *"greater than fifty percent"* but it couldn't be guaranteed as it had been some time since Mr X had been seen in the Subaru, and the original occupants could have changed position in the car, or have changed altogether.

⁶ The shift commander is a senior officer at the Police communications centre, usually ranked inspector.

⁷ The Police 'Fleeing driver' policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning: *"If there is any unjustified risk to any person you must abandon pursuit immediately, acknowledge"*.

⁸ The pursuit controller is responsible for supervising a pursuit and coordinating the overall tactical response.

24. Officer A said that he increased his speed as he passed the last residential road, approximately 400 metres from the point at which the posted speed limit became 100kph. Pioneer Highway at this point remains straight for a further 1.7km, before bending slightly to the right. Officer A said that he continued assessing the risks of the pursuit; and while the distance between himself and the Subaru had increased, the driver appeared to be well in control of the vehicle and the road was straight and dry. He therefore assessed that the risk the fleeing driver presented to the public was low.
25. At 1.30:48pm, the shift commander plugged his earphones into the dispatcher's computer to listen to the radio transmissions and assess the situation. He heard Officer A give the Subaru's estimated speed as 160kph; report that it was still travelling towards Longburn (away from Palmerston North), the traffic was light, and the roads were dry despite light drizzle.
26. Officer A said that he continued to accelerate in order to catch up with the Subaru, but lost sight of it as it went around the right-hand bend. Officer A believed he reached speeds of up to 177kph during the pursuit, slowing down to take the bend.
27. Ms Y told the Authority that the Police car was "*pretty far*" behind them, and she thought the Subaru reached speeds of 180 to 200kph. She said that both she and Ms Z told Mr X to slow down.

The Subaru crashes

28. As he went around the right-hand bend, Mr X lost control of the Subaru. It spun across the road and hit a power pole before sliding into a ditch on the opposite side of the road. Several members of the public witnessed the Subaru "*fish tail*" as it took the corner and slide across the road. They said the Police car arrived approximately ten seconds later.
29. Officer A said that he rounded the corner at a speed of approximately 160kph, and saw the crashed vehicle in a ditch. At 1.31:11pm he announced: "*Crash, crash, crash!*" over the radio.
30. Officer A ran to the crashed Subaru to assist the occupants. Several people from a nearby engineering workshop came to help. Only two people, Ms Y (the rear passenger) and Mr X were immediately visible in the badly damaged Subaru. Mr X was unconscious but was positioned in a way that meant Officer A could not immediately reach him.
31. At 1.31:45pm Officer A asked CentComms to send emergency services to his location.
32. Fire and ambulance services, and other Police units, arrived to cordon the scene, assist the injured young people and make the scene safe. A senior sergeant arrived at the scene and took control of the incident. Ms Y and Mr X were extracted from the Subaru and transported to hospital, however Mr X was pronounced dead on arrival. Ms Z was pronounced dead at the crash scene.
33. Officer A was tested for the presence of alcohol, and returned a negative test.

Police investigation

34. Police investigated the incident, and determined that Officer A's actions were lawful.
35. A crash investigator from the Serious Crash Unit examined the crash scene and assessed other relevant factors. He determined that the crash was most probably caused by Mr X's excessive speed and lack of control while taking the right-hand corner. While the reason why Mr X lost control remains unclear, Ms Y said that he attempted to change gear immediately before losing control, and that he was inexperienced in driving cars with a manual transmission.
36. A toxicology report showed that Mr X was not under the influence of drugs or alcohol at the time of the crash.

THE AUTHORITY'S INVESTIGATION

37. As part of its investigation the Authority interviewed Officer A, the shift commander, Ms Z's whānau, Mr X's Youth Aid Officer, Ms Y and staff at the Highbury Whānau Centre. The Authority also visited the scene of the crash and reviewed documentation and audio provided by Police.

THE AUTHORITY'S FINDINGS

38. The Authority identified and considered the following issues:
 - 1) Did Officer A comply with law and policy when signalling the Subaru to stop, then pursuing it?
 - 2) Did Police comply with policy during the pursuit?
 - 3) Did Police take appropriate action after the crash?

Issue 1: Did Officer A comply with policy when signalling the Subaru to stop, then pursuing it?

39. When managing fleeing drivers, Police are required to balance protecting community safety against their duty to apprehend those who fail to stop, and to enforce the law.
40. Police use the TENR risk assessment methodology (set out in paragraphs 85-87) to continuously assess foreseeable and identified risks, and plan a response that prioritises public and Police safety. Both the threat posed by the fleeing driver and the risks of intervention must be actively managed.
41. The TENR risk assessment must be applied during four distinct phases of fleeing driver events: pre-initiation (before signalling a driver to stop); initiation (before deciding whether to pursue the fleeing vehicle); continuation (the duration of the pursuit) and abandonment.

Pre-initiation

42. Officer A's primary goal in going out to look for the Subaru was apprehending Mr X. He told the Authority that he assessed that there was a "greater than fifty percent chance" that the Subaru was being driven by Mr X, based on the information reported to Police. In the Authority's opinion, it was in fact highly likely that Mr X and other young people were in the Subaru and most likely that Mr X himself was driving.
43. In principle, Officer A was justified under section 9 of the Search and Surveillance Act 2012 to signal the Subaru to stop, as he reasonably believed that Mr X was inside.⁹ Mr X was 'unlawfully at large' having cut off his electronic monitoring bracelet and had left the address he was required to stay at. The Subaru itself was also suspected to have been stolen, which is an offence punishable by imprisonment.¹⁰
44. However, it was crucial that Officer A undertook a thorough risk assessment and considered his response before finding the Subaru. His planned response needed to mitigate risk and prioritise the safety of the Subaru's occupants and other road users.
45. The starting point of Officer A's assessment had to be the most likely scenario: Mr X was driving and, if signalled to stop, would almost certainly flee at speed. Having got away, he might attempt to dump the stolen car, and escape on foot. Officer A knew that Mr X had done this at least once before. He also knew that Mr X had a strong motivation to evade Police so as to avoid the consequences of his bail breach. In summary, having decided to flee, it was extremely unlikely that Mr X would then comply with Police instructions.
46. Mr X's inexperience, lack of driving skill and poor decision making under pressure meant that he posed a significant risk to himself, the Subaru's occupants and other road users if he fled Police.
47. Officer A did undertake some planning prior to leaving his office, calling three other officers to ensure they were aware and looking for the Subaru. One officer confirmed that he would also go and search.
48. However, he should have ensured that the search was coordinated and CentComms was aware, so that a stop would be effectively managed. For example, once sighted, the unit would radio CentComms with the Subaru's location, giving other units the chance to position themselves on potential flight routes with road spikes before the Subaru was signalled to stop. This planned response could limit the ability of the Subaru to flee, and remove the need for other units to pursue.
49. Alternatively, if this approach seemed unlikely to succeed, Officer A could have prioritised making inquiries over initiating a pursuit, as per Police policy.
50. Without appropriate resources or planning in place, the Authority considers that it was inappropriate to signal the Subaru to stop, and Officer A should not have done so.

⁹ The relevant legislation is set out in paragraph 81.

¹⁰ Crimes Act 1961, section 223.

Initiation

51. Once it was apparent that the driver of the Subaru was not going to stop for Police, Officer A was required to undertake a second risk assessment and decide whether to commence a pursuit. This risk assessment needed to weigh the risks of pursuing the Subaru against the need to apprehend Mr X, and recover a vehicle that was probably stolen.
52. It remained highly relevant to this risk assessment that the Subaru probably contained several young people as well as Mr X. The fact that the driver of the Subaru had fled demonstrated that the driver's actions were influenced by the presence of Police, and that his or her decision making was reactionary and did not prioritise safety.
53. A pursuit in these circumstances was not an effective tactic. If Mr X was driving, he was not going to pull over safely and comply with Police instructions. Irrespective, Mr X posed the greatest risk to himself and others when he was in control of a car. While his propensity to flee from Police in the past had created risks to the public, he was not otherwise a violent offender. Consequently, an attempt to pursue Mr X in fact increased the risk to the public, rather than mitigating it. It was not worth the risk.
54. It is clear to the Authority that the risks of a pursuit in this instance far outweighed the need to urgently apprehend Mr X and recover stolen property.
55. It would have been less dangerous to broadcast the Subaru's direction of travel, so that other units could keep an eye out for it. A tactical plan could have been formulated involving other units setting cordons and road spikes. Additionally, there was the option to make inquiries at addresses associated with Mr X in order to find him.
56. Officer A told the Authority that he would never have commenced the pursuit in this case if he had foreseen the outcome, but he felt he was "*duty-bound*" to act to protect property and the public. However, Officer A's decision to initiate a pursuit did not in fact prioritise public safety during this incident, as policy required.

FINDING

Officer A's decision making was based on an inappropriate TENR assessment, and did not comply with the overarching principles of the fleeing driver policy. He should not have:

- signalled the Subaru to stop without first mitigating the foreseeable risks; or
- commenced a pursuit.

Issue 2: Did Police comply with policy during the pursuit?

57. The Authority will assess the actions of Police during the pursuit, irrespective of the fact that the Authority has found that Officer A should not have commenced a pursuit.

Officer A

58. The Authority is mindful that Officer A was on his own, and had to focus on driving and making risk assessments and decisions, as well as providing radio updates to CentComms. This gave him a significant cognitive workload under time pressure.
59. Officer A complied with policy by advising CentComms that he was commencing a pursuit of the Subaru; his location, driver certification and direction of travel. He acknowledged the pursuit warning and provided information about the road conditions.
60. Officer A was required to undertake a continuous risk assessment while in pursuit. This needed to include information he knew or strongly suspected, such as the likely identity of the driver, the risks associated with that individual, and the risk to other people in the Subaru. It also required consideration of the way the Subaru was being driven.
61. Mr X sped down Monrad Street, drove straight through a busy intersection and on to Pioneer Highway, where he continued to accelerate despite the 50kph speed limited zone. Having followed the Subaru onto Pioneer Highway and seen that it was still accelerating, Officer A should have realised that it was unlikely that the driver would stop safely, and the risks of the pursuit were unjustified. Officer A should have abandoned the pursuit at this point.

Shift commander

62. The shift commander was briefed for approximately 25 seconds and listened to the remaining 23 seconds of the pursuit before the crash took place. He said that he would usually plug straight into the radio transmissions, but in this case there was relevant information about the vehicle and suspected driver which he needed to be informed of first.
63. He then used the period of time he was listening to the radio transmissions to consider and assess what he had been told, and what additional information he needed.
64. He was aware the Subaru was travelling at approximately 160kph out of Palmerston North which he knew was a long, straight section of road with a 100kph speed limit. The road was dry and traffic was minimal. He believed that this gave him *“a few seconds spare”* to assess the situation.
65. He had been informed that the identity of the driver was suspected but was *“gathering his thoughts as to whether the actual identity [of the driver] was known.”* It appears that he was aware that the suspected driver was a young person.
66. He told the Authority that the age of the driver and car occupants is *“definitely a factor”* and the speed was such that *“it probably would have been verging more...above the line of abandoning [the pursuit].”* However, he also wanted information about the manner in which the fleeing driver was handling the Subaru, for example whether it was staying within its lane.
67. The shift commander said that he was weighing all these factors, and had not made his final decision when the crash occurred. He was not aware of Mr X’s history and recent behaviour,

or that the Subaru had already reached 140kph along the residential section of Pioneer Highway.

68. The Authority considers that, had the shift commander had been aware of Mr X's propensity to steal cars and flee from Police, the correct decision would have been to abandon the pursuit immediately.
69. However, as this was not the case, the Authority accepts that it was reasonable for the shift commander to take time to receive a briefing, and thereafter consider the information available to him rather than make an immediate decision to abandon the pursuit.

FINDINGS

Officer A should have abandoned the pursuit when he followed the Subaru on to Pioneer Avenue and saw that it was still accelerating away.

The shift commander did not have sufficient time and information to make a decision about abandoning the pursuit before the crash occurred.

Issue 3: Did Police take appropriate action after the crash?

70. Officer A immediately called emergency services to the scene of the crash, and went to help the occupants of the Subaru. Three officers and several civilians also arrived in the first few minutes and attempted to help the injured young people and direct traffic.
71. The Authority is satisfied that the scene was appropriately managed and controlled, to allow appropriate investigations to take place into the cause of the crash.

FINDING

Police took appropriate action at the scene following the crash.

CONCLUSION

Review of Fleeing Drivers in New Zealand

72. A number of the issues raised in this incident were highlighted in the recently released results of a joint review of fleeing driver events conducted by the Authority and New Zealand Police.¹¹
73. The most prominent characteristic of this incident is the tragic loss of two young lives (12 and 15 years old), and the significant injuries suffered by a third young person.
74. The review identified the importance of considering the age of the fleeing offender and any passengers as part of the officer's TENR assessment during a fleeing driver event. While we

¹¹ *Fleeing Drivers in New Zealand: A collaborative review of events, practices and procedures*, March 2019.

still need to better understand what motivates young people like Mr X to flee, it is apparent that a lack of driving experience and their lack of fully developed brain function means that young offenders are more likely to engage in high-speed or risky driving behaviour to avoid apprehension. It is crucial that this heightened risk is properly recognised and factored into decision-making.

75. More generally, the review found that the manner in which the TENR framework is applied in practice is very dependent on the way an officer identifies, assesses and manages risk, based on their own frame of reference. More risk tolerant staff may take unnecessary risks to apprehend offenders for relatively minor offences, which is inconsistent with tenets of the fleeing driver policy.
76. The review concluded that a risk-averse approach to fleeing driver events more effectively balances the risk of not pursuing against the risk of commencing or continuing a pursuit. This approach needs to be embedded into staff mind-set when it comes to managing fleeing driver events.
77. This incident demonstrates the importance of a risk-averse approach, especially where it is believed that young people are involved. If Officer A's training and consequent approach had been risk-averse, the outcome might have been avoided.
78. As a result of the review, Police have accepted eight high level recommendations to improve Police management of fleeing driver events. These recommendations are underpinned by an Action Plan.
79. Amongst other recommendations, Police will:
 - reassess training to ensure it is fit for purpose for enabling staff to effectively manage fleeing driver events, including the application of TENR; and
 - commission further research and analysis of fleeing drivers to improve understanding of drivers' motivations for fleeing, including a focus on young people.

Investigation conclusions

80. Following its investigation into this incident, the Authority has found that:
 - 1) Officer A's decision making was based on an inappropriate TENR assessment, and did not comply with the overarching principles of the fleeing driver policy. He should not have:
 - signalled the Subaru to stop without first mitigating the foreseeable risks; or
 - commenced a pursuit.
 - 2) Officer A should have abandoned the pursuit when he followed the Subaru on to Pioneer Avenue and saw that it was still accelerating away.

- 3) The shift commander did not have sufficient time and information to make a decision about abandoning the pursuit before the crash occurred.
- 4) Police took appropriate action at the scene following the crash.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

23 May 2019

IPCA: 17-2421

Search and Surveillance Act 2012

81. Section 9 of the Search and Surveillance Act 2012 empowers Police to stop a vehicle without a warrant to arrest a person if they have reasonable grounds to believe that that person has committed an offence punishable by imprisonment or is unlawfully at large.

Fleeing driver policy

82. The overriding principle of the Police fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”* Additional principles set out in the policy include:
- a) Fleeing driver events must be managed in the safest possible manner.
 - b) An inquiry phase is preferred over a fleeing driver pursuit wherever possible and when circumstances allow.
 - c) Fleeing driver events will only be commenced and/or continued when the seriousness of the offence and the necessity for immediate apprehension outweigh the risk of pursuing.
 - d) The fact that a driver fails to stop when signalled does not in itself justify a pursuit.
 - e) Decisions to abandon fleeing driver events will be supported.
 - f) Police employees will use risk-based assessments (i.e. TENR) and apply a flexible response to changing circumstances.
 - g) Fleeing drivers will be held to account.
83. The fleeing driver policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so). They must advise Police Communications of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.
84. Police Communications transmits pursuit warning to all vehicles involved: *“{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”*

Risk assessment

85. Under the Police ‘Fleeing driver’ policy, the pursuing officer must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.

86. The assessment required of officers includes consideration of the following:

- a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
- b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
- c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
- d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.

87. The TENR risk assessment must weigh up:

“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”

Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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