



Civil Justice Council

Guideline Hourly Rates 2020

A submission from the Association of Personal Injury Lawyers

December 2020

Data collection

APIL contacted key individuals within law firms who conduct personal injury (PI) work for data on:

- Location: Region of office. Where there is more than one office do, details of different rates charged.
- Average charge rate: A, B, C, D for PI/CN work
- Rates for specialist work
- If the firm conducts non-PI work, the rates charged in those other areas of expertise.

A total of 46 firms responded with data, which has been anonymised in the accompanying dataset.

The analysis below which compares PI rates with other work areas is based on responses from eight of those firms.

Opening comments

In the case of *Ohpen Operations UK Ltd v Invesco Fund Managers Ltd*¹ Mrs Justice O'Farrell said:

“As to the first point, the hourly rates of the defendant’s solicitors are much higher than the SCCO guideline rates. It is unsatisfactory that the guidelines are based on rates fixed in 2010 and reviewed in 2014, as they are not helpful in determining reasonable rates in 2019. The guideline rates are significantly lower than the current hourly rates in many London City solicitors, as used by both parties in this case. Further, updated guidelines would be very welcome.

¹ [2019] EWHC 2504 (TCC)

Solicitors providing such skill and expertise are entitled to charge the market hourly rate for their area of practice. The hourly rates charged cannot be considered in isolation when assessing the reasonableness of the costs incurred; it is but one factor that forms part of the skill, time and effort allocated to the application. It may be reasonable for a party to pay higher hourly rates to secure the necessary level of legal expertise, if that ensures appropriate direction in a case, including settlement strategy, with the effect of avoiding wasted costs and providing overall value.”

This decision is part of a growing number of decisions in which judicial opinion has made it clear that the present guideline hourly rates should, at least, be updated by inflation and should reflect the comparative expertise of the legal representative conducting the work.

See also the comments of Master Rowley in *Shulman v Kolomoisky and Bogolyubov*² and Master Whalan in *Re PLK, Aayan Ahmed Thakur, Nathaniel Chapman, Paul Nigel Tate*³.

In *Shulman* (which was not a personal injury claim) Master Rowley noted that “The Guideline Rates were last revised in 2010 and the length of time since then has led to them becoming much maligned..” adding that “the court is required to consider the so-called seven pillars of Wisdom in CPR 44.4(3) in order to arrive at a conclusion as to whether or not the rates claimed are reasonable... I accept entirely the comment that hourly rates considerably above the Guideline Rates are regularly agreed by clients using City solicitors for what can properly be called City work.”

In *PLK*, a clinical negligence claim, Master Whalan noted that “it must be acknowledged that the GHR cannot be applied fairly as an index of reasonable remuneration unless these rates are subject to some form of periodic, upwards review.” He indicated that in his view:

“in 2020 the GHR cannot be applied reasonably or equitably without some form of monetary uplift that recognises the erosive effect of inflation and, no doubt, other commercial pressures since the last formal review in 2010. I am conscious equally of the fact that I have no power to review or amend the GHR” (para 35).

Commenting, “It seems clear to me that the failure to review the GHR since 2010 constitutes an omission which is not simply regrettable but seriously problematic where the GHR form the ‘going rates’ applied on assessment. I do not merely express some empathy for Deputies engaged in COP work, I recognise also the force in the submission that the failure to review the GHR since 2010 threatens the viability of work that is fundamental to the operation of the COP and the court system generally” (para 31).

Of course the Civil Justice Council is aware of these decisions, but they corroborate APIL’s view that the GHR has had a deflating effect for the past decade which continues to pull down market rates which is unsustainable in the longer term. For firms to provide a high standard of service to their clients they need to be able to charge a rate that enables them to make a profit or they will cease to trade.

² [2020] 6 WLUK 620

³ [2020] 9 WLUK 364 : [2020] Costs LR 1349

Points to note on APIL's data collection – market rates

APIL took the position that obtaining data on market rates can provide an up to date indication of the real rates being charged in the sector. APIL collected data from numerous firms across England and Wales, the full dataset is provided.

- Claimants and defendants in personal injury claims may charge different rates for work on the same matter. The rate will be determined by the terms of any retainer which may have been agreed between the solicitor and the third party insurer client for whom the solicitor may conduct volume work, for example.
- APIL strongly suspects that if asked most or all of the main defendant representing firms would acknowledge that their hourly rates for non-personal injury private paying work are markedly more than guideline hourly rates and may well be more than GHR+ post 2010 inflation.
- The problem with collecting data on rates recovered is that the rates will inevitably reflect the current out of date GHRs and the data collected will inevitably be artificially depressed as a result. For example, some practitioners who responded to APIL's request for data indicated that they had decided to adopt the practice of using the court guideline hourly rates in all their cases for the area in which the claimant resides, the view being that doing so eliminated one usual area of disagreement in points of dispute.
- Where the hourly rate recoverable from the paying party is substantially less than the market rate being charged to the client, the client risks an additional costs liability. For personal injury claims this impacts upon damages which should be compensating for their injuries. In more serious cases this can have consequences for the claimant's long term plans. For lower value claims, it risks extinguishing the damages recovered. For example, one member who responded to APIL's call for evidence commented that "We have had to drop our rates for portal work so we do not completely erode the client's damages." This is a reason why, as the data shows below, personal injury market rates are substantially lower than the rates charged for the majority of other types of work.

Inflationary increases since 2010

In *Cohen v Fine*⁴, HHJ Hodge said

"In my experience of sitting in the Business and Property Courts, both in the North-West and in the Rolls Building, the present GHR are considerably below the rates actually being charged by the solicitors who practise in those courts. Likewise, the table of counsel's fees bears no relationship to the fees which the courts see being charged for counsel appearing in the Business and Property Courts.

⁴ [2020] EWHC 3278 (Ch)Costs

“In my judgment, pending the outcome of the present review, the GHR should be the subject of, at least, an increase that takes due account of inflation. Using the Bank of England Inflation Calculator, it seems to me that an increase in the (band one) figures for Manchester and Liverpool broadly in the order of 35% would be justified as a starting point (appropriately rounded-up for ease of calculation).”

Using the Lawtel inflation calculator to re-calculate the GHRs since 1 April 2010:*

GHRs should have increased by 32.09 per cent using RPI inflation calculator

	Band A		Band B		Band C		Band D	
	2010	2020	2010	2020	2010	2020	2010	2020
London 1	409	540.25	296	390.99	226	298.53	138	182.29
London 2	317	418.73	242	319.66	196	258.90	126	166.44
London 3	229 - 267 302.49 - 352.68		172 – 229 227.20 - 302.49		165	217.95	121	159.83
National 1	217	286.64	192	253.62	161	212.67	118	155.87
National 2	201	265.50	177	233.80	146	192.85	111	146.62

*Based on RPI of 222.8 in April 2010 and RPI of 294.3 in October 2020

Using a CPI calculator to re-calculate the GHRs since 2010*

GHRs should have increased by 22.309 per cent, using CPI inflation calculator

	Band A		Band B		Band C		Band D	
	2010	2019	2010	2020	2010	2020	2010	2020
London 1	409	500.25	296	362.04	226	276.42	138	168.79
London 2	317	387.72	242	295.99	196	239.73	126	154.11
London 3	229 - 267 280.09 - 326.57		172 – 229 210.37 - 280.09		165	201.81	121	147.99
National 1	217	265.41	192	234.83	161	196.92	118	144.33
National 2	201	245.84	177	216.49	146	178.57	111	135.76

*based on CPI from April 2010 to October 2020

Using the data submitted by our members the analysis shows:

- On average Multi-Track rates are above the rate of CPI inflation other than for National grades 3 C, National Grade 2 B,C, National Grade 1D;
- On average Multi-Track rates have increased at a rate below inflation based on RPI, other than for London Grade 3 A,B,C,D;
- On average all Fast-Track market rates have increased at a rate below inflation based on CPI, other than the rates for National Grade 3 D (which equals CPI since 2010) and National Grade 2 D which is just over at 24%.
- All Fast-Track market rates have increased at a rate below inflation based on the RPI.

Market rates for other types of work

Where firms provided rates for non-personal injury work, we compared them with their rates for personal injury work. The data analysis below looks at how rates for multi-track and fast-track personal injury work compare to the same firm's rates for other types of multi-track and fast-track work (such as tax or private client).

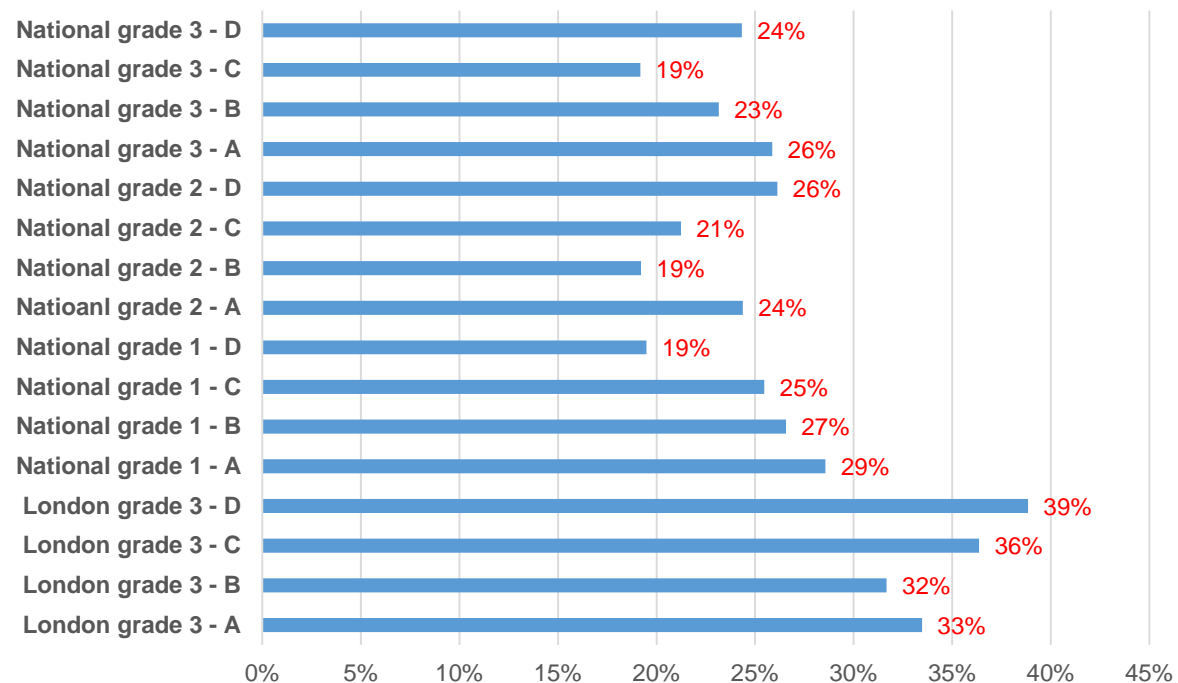
Across most work areas and bands the rate for personal injury work is lower, sometimes significantly so. In those cases where the personal injury rate is higher, the difference is relatively small.

- Of the various types of work compared in our dataset, 62% of other multi-track work rates are higher than those charged for personal injury work.
- Of the personal injury rates which are higher than the rates for other types of multi-track work, the difference is small: between 0.5 and 6.6 percent.
- Fast-track personal injury work is also charged out at lower rates than 50 per cent of the other types of work in our data set. The difference on those areas with higher rates is small: 31.25 per cent of fast-track work has hourly rates higher than other types of work: ranging from 1.2 to 6.5 per cent.

This undermines one of the key concerns expounded by defendant personal injury lawyers: that conditional fee agreements (CFAs) act to artificially inflate the hourly rates claimed upon assessment by claimants. It is clear from our data that the hourly rates that a claimant would actually pay his solicitor for the services provided are much lower than hourly rates which would be agreed with and regularly paid by the same individual for other types of work at the same firm.

The chart below looks at how current market rates for multi-track personal injury work compares to the guideline hourly rate. As you can see, across each pay band and grade, average market rates for this work are significantly higher than the guideline hourly rate. The difference ranges from 19 per cent above the guideline hourly rate, to 39 per cent above the guideline hourly rate.

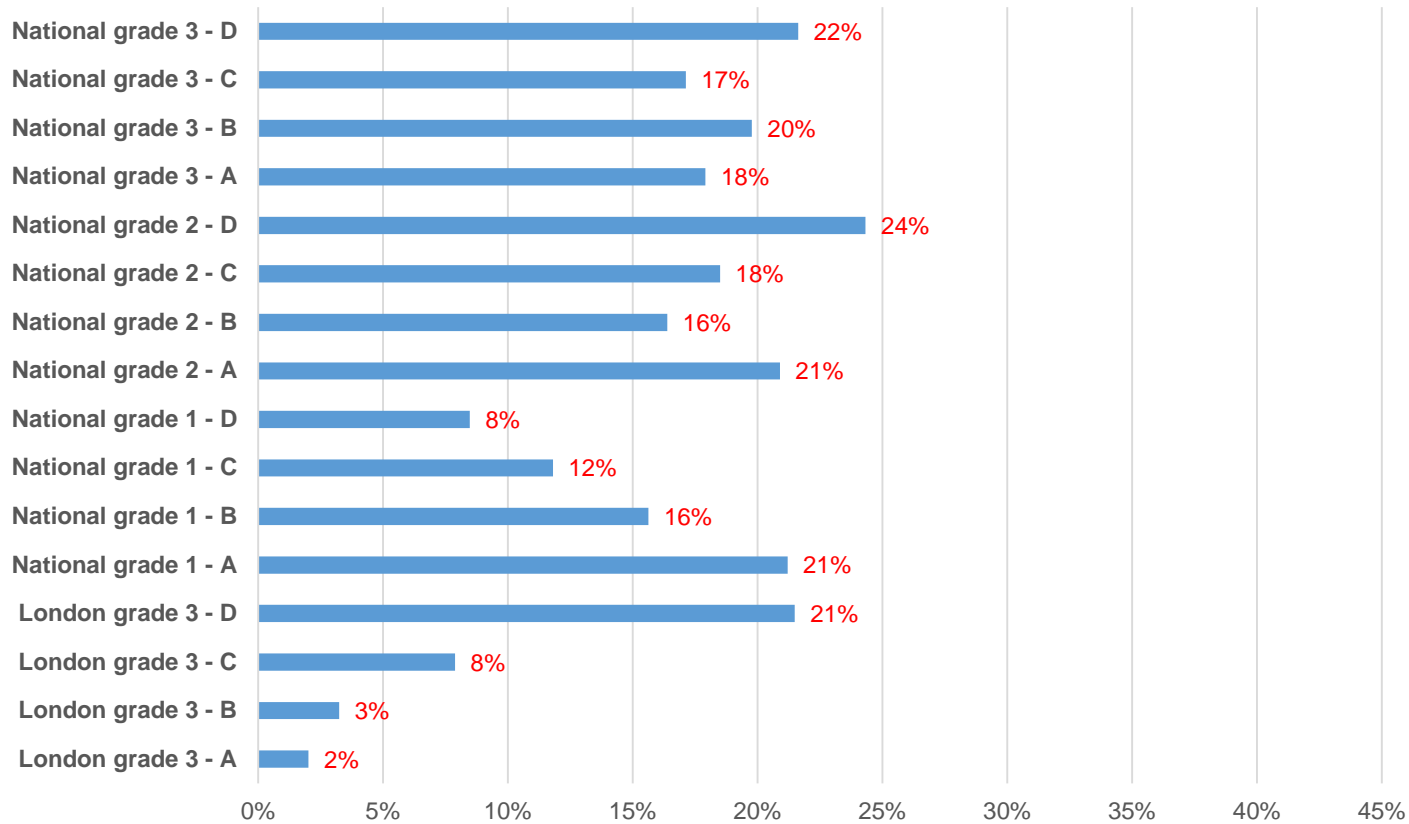
Average market rate for multi-track personal injury claims: % increase on guideline hourly rate



By way of background, London grades 1 and 2 have been excluded from this analysis due to the very small number of rates which were provided for these two grades.

The chart below looks at how current market rates for fast-track personal injury work compares to the guideline hourly rate. Across each pay band and grade, average market rates for this work are higher than the guideline hourly rate. However, the percentage increases seen are lower than for multi-track work, as is to be expected.

Average market rate for fast-track personal injury claims: % increase on guideline hourly rate

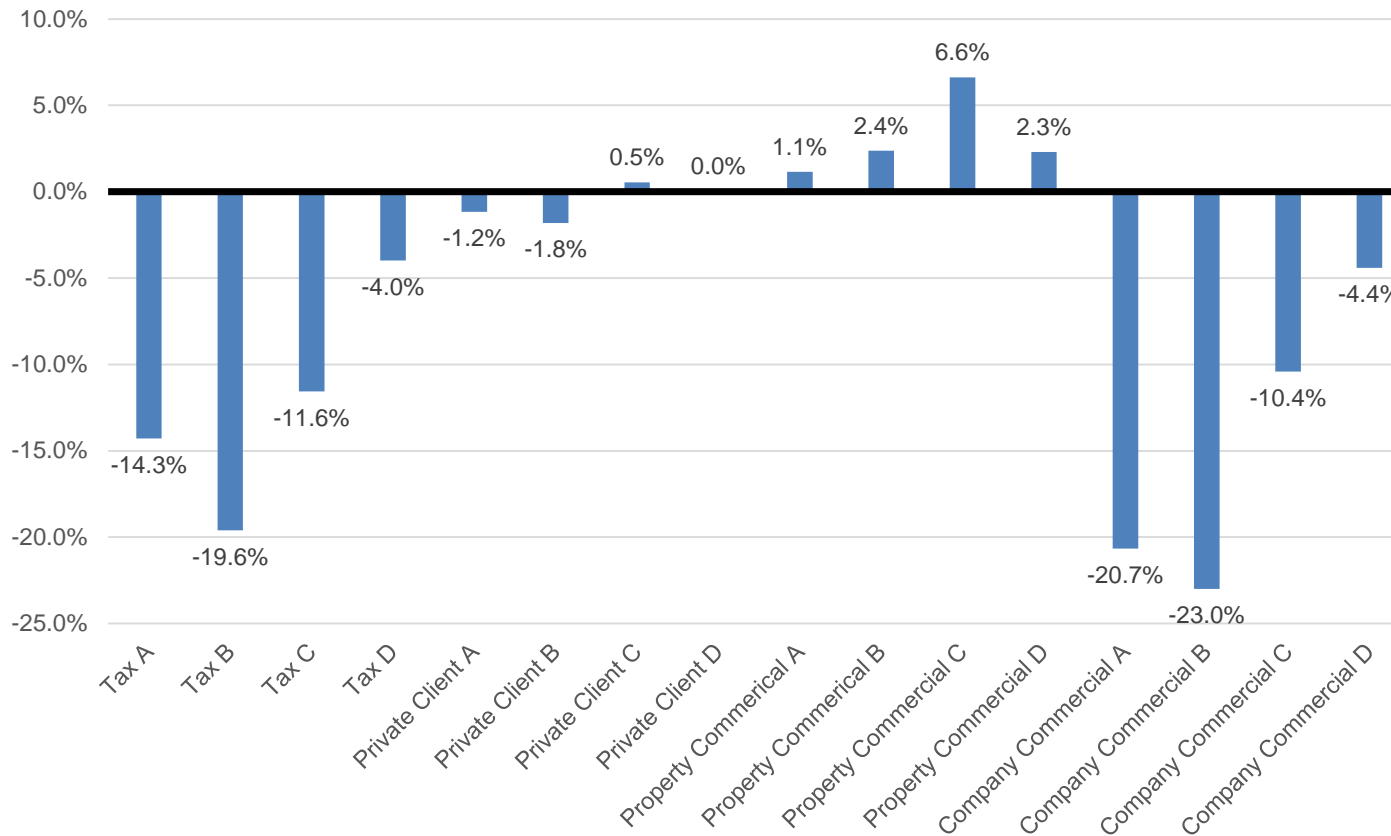


By way of background, London grades 1 and 2 have been excluded from this analysis due to the very small number of rates which were provided for these two grades.

Where firms provided rates for non-personal injury work, this has been compared with their rates for personal injury work. The chart below looks at how rates for multi-track personal injury work compares to the same firm's rates for other types of multi-track work (e.g. tax).

Where the bar is below the black line, this indicates that the average rate for PI work is lower. As you can see, across most work areas and pay bands the rate for PI work is lower, sometimes significantly so. In those cases where the PI rate is higher the difference is relatively small.

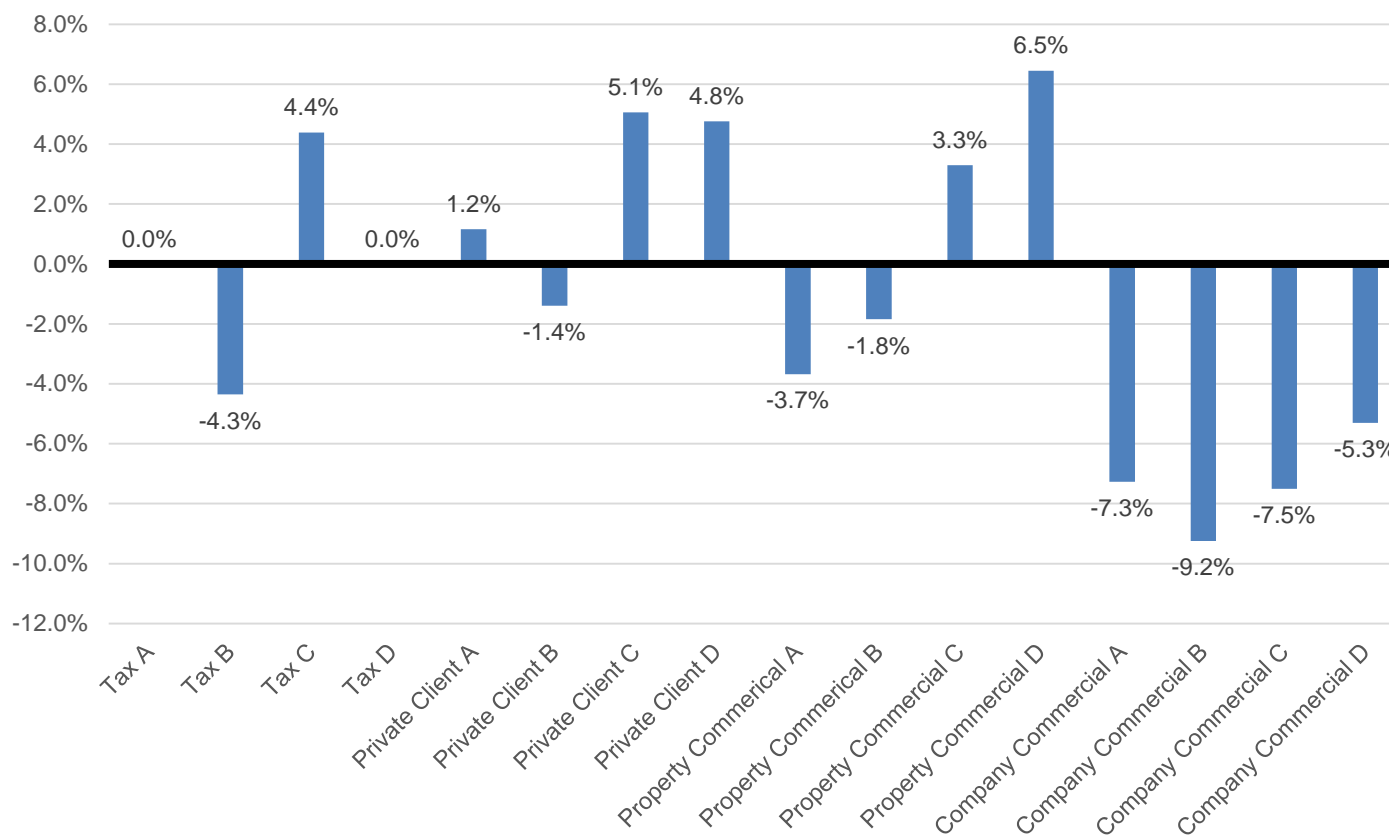
Average multi-track rate: % difference between PI and other types of work



The chart below looks at how rates for fast-track personal injury work compares to the same firm's rates for other types of fast-track work (e.g. tax). Again, where the bar is below the black line, this indicates that the average rate for PI work is lower.

As you can see, the rate for PI work is lower across several work areas and pay bands. In those cases where the PI rate is higher, the difference is relatively small.

Average fast-track rate: % difference between PI and other types of work



About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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