

Representing Members Reps' Handbook - Part 3



Introduction to This Handbook



This Handbook is for both newly elected and experienced reps and is a key resource for dealing with workplace issues. It covers representing members in grievances and disciplinary meetings.

Usdaw reps play a vital role in protecting members' interests. Grievance and disciplinary procedures help to protect members' terms and conditions and ensure that managers treat their workers fairly and consistently.

A rep's ability to support and represent members is dependent on effective union organisation. Usdaw is more likely to get good results where the membership is strong in workplaces.

This Handbook will help give reps the information they need to be more confident and effective when representing members, so that they continue to make workplaces better for everyone.

Best wishes,

Paddy Piers

Paddy Lillis (/ General Secretary



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Chapter 1 Dealing with Members' Issues

The first person that Usdaw members should turn to when they have an issue at work is their workplace rep.

An important part of your role is to support members by helping them take their concerns to the employer. However, just as important is your ability to help members sort out their issues collectively.

What Are the Issues?

You may be asked to deal with a wide range of issues. Here are some of the most common types:

Disciplinary cases – your employer may take action against a member for their conduct at work. You should make sure that you have a copy of the company Disciplinary Procedure (check your Staff Handbook or ask Personnel/HR).

Individual grievances - a member may have an issue which they wish to raise with the employer about their work, or about actions that affect them. Again, make sure you have a copy of the company Grievance Procedure (check your Staff Handbook or ask Personnel/ HR).

Collective issues or grievances – a group of members may have an issue to be discussed with the employer. Health and safety issues, for example, will nearly always affect more than one person. These can be dealt with through meetings or formal negotiations. Health and safety - most health and safety issues are dealt with through local discussion and negotiation with your employer. You may be a Health and Safety Rep as well as a Shop Steward and be able to deal with the issues alongside the member(s). If not, you should talk to the member(s) first then involve the Health and Safety Rep in your workplace.

Sickness absence - your employer may take action against a member for their sickness absence. Make sure that you have a copy of the company Sickness Absence Procedure (check your Staff Handbook or ask Personnel/HR).

Bullying and harassment - some employers have special procedures for dealing with bullying and harassment. If not, then use your Grievance Procedure.

Discrimination - many employers have specific procedures for dealing with discrimination - if not, then use your Grievance Procedure.

Redundancy – an employer has a statutory duty to consult with the recognised trade union on any redundancy they are proposing.

Individual or Collective Issue?

Most issues that you will come across as a rep in the workplace will be individual problems. However, sometimes issues can affect more than one person. An important task of a rep is to recognise when individual issues are part of a larger pattern that can be dealt with through collective action.

If a member has an issue, try to find out if other members are affected. Here are a few ways as to how you might do this:

- Ask the member who has raised the complaint if anyone else is involved.
- Talk to other reps in your workplace to see if workers in other departments have the same issue.
- Ask your Area Organiser if similar cases have been dealt with before.

If the issue affects more than one individual (collective):

- Bring members together to discuss the issue and decide on a plan to tackle it.
- Get help from other reps or your Area Organiser if you are unsure of what to do.
- Make sure that the member who raised the original complaint is involved in whatever action the Union decides to take.
- Don't sort the issue out on your own. Make sure you and your members sort out the issue with management together. This will help build the skills and confidence of your members.





Group issues often present an opportunity to organise and get any non-members signed up - their case will seem stronger to the employer if you have the majority of the workforce in the Union.

Union reps, along with Health and Safety Reps and Learning Reps, can act as a team, working together to find solutions to issues – for example, are there health and safety aspects that strengthen the grievance, or is training a possible solution?

Know Your Agreement

As the Usdaw rep you need to know and understand your Company/Usdaw Agreement - so familiarise yourself with it. Most Company/Usdaw Agreements will contain information relating to your Grievance and Disciplinary Procedures. Do you know who deals with the first stage of a grievance, how long they have to get back to you, who it goes to after that, and how many appeal stages your grievance procedure has? If you don't know the answers, check your Agreement or Grievance Procedure.

If you have any questions about your Agreement then ask a more experienced rep in your workplace or your Area Organiser. Usdaw training also helps reps to understand their Agreements and Grievance Procedure.

Things to do...

You will need a copy of your company's grievance procedure.

Ask Personnel/HR for a copy - you are entitled to see it.



Chapter 2 Representing Members in Grievances

Confidentiality

When dealing with individual grievances, members have a right to expect that you will not discuss their business with anyone who is not involved in the case. Wherever possible, always store personal information in a lockable cupboard to protect confidentiality.

Representing Individuals

The first thing you will need to do when a member approaches you with an issue is to find out the facts, so you can decide what kind of issue it is.

Most Grievance Procedures state that the member should try to sort the issue out informally with their manager first. This can help you as a rep, because it means that you don't have to deal with the issues that can be easily sorted out - you're there to deal with the concerns that have not been resolved for whatever reason. Watch out for the cases where the Usdaw member is afraid to act on their own initiative - in this case give the member the help and support they need.

Many issues can be best resolved informally in discussion with the member's manager. Where it isn't possible to resolve the issue informally, it is best to deal with it under the formal Grievance Procedure. Remember - you will need to get as much background information as possible. The more time you spend gathering information at this stage, the easier it will be to take further action.

Some issues that seem at first to be 'personal' and unrelated to work can lead to Reps discovering issues that need to be dealt with through the formal Grievance Procedure.

For example, time off work because of ill health may be due to a health and safety issue in the workplace. Or the fact that some members have trouble picking their children up from school might mean that they are unable to change their working patterns.

When dealing with individual grievances, you will need to decide the following:

- Does the member have a genuine grievance?
- Are management following Agreements or policies?
- Does it affect other members?
- Are health and safety issues involved?
- Is the law being broken?

Data Protection

As a rep, you will regularly come across personal data and information about your members. Data Protection is therefore an important aspect of the rep's role and you will need to deal with personal data fairly, securely and confidentially. The Union has produced a booklet and an online short course that provides guidance for you to follow. For more details go to www.usdaw.org.uk/gdprguide

If you are unsure of the answers to any of these questions, it is worth asking other reps if they have experienced the same issue before.

If you are still unsure, or if there is no one else in your workplace to ask, then your Area Organiser can advise you.

Get the full story!

Let's be diplomatic - your member isn't going to deliberately tell you the wrong story but they might just tell the story they think you need to hear in order to win their case! This means making sure that you get the full story from whomever you represent and that their story stacks up with other evidence.

Taking on a grievance that you know is weak wastes the member's time, your time and the time of managers involved. If you do not think the member has a genuine case, try to explain why and provide other options or solutions for improving the situation.

When you have decided what sort of issue it is and how to tackle it, you should make the following clear to the member:

- Explain that you will do your best, but you can't promise that you will resolve the issue - you don't want to raise false hopes.
- Explain what you are going to do next, who you will approach and how long it may take.
- Explain when and how you will report back to them.

The Grievance Procedure Should...

- Be made available to all workers.
- Be clear and put in writing.
- Be kept confidential.
- Have time limits for meetings and for employers' responses.
- Provide for at least one meeting with a manager who is not directly involved in the grievance.
- Provide a right to appeal with a more senior manager if a member is not happy with the outcome.
- Allow members to be represented at all grievance meetings and appeal meetings.
- Ensure that there is an opportunity for reps and members to put their case forward at grievance meetings and that it is considered and responded to by managers.
- Require that the outcome of any meeting or appeal is recorded in writing.
- Allow members and their reps to see any documentation relating to the meeting, comment on it and also amend any minutes of meetings if they are incorrect.
- Ensure that all personal data and information is kept and dealt with securely and confidentially.

Chapter 3 Checklist for Interviewing Members – Grievance Procedure

The checklist below is designed to help you interview members when handling issues.

Put Your Members at Ease

- To be able to give advice or work through problems, you and the member need to be able to talk together in a relaxed manner.
- Try to find somewhere quiet where you will not be interrupted.
- Try to calm the member down if they are angry or upset.
- Reassure the member that anything they wish to remain confidential will be kept so - ask them to identify what is confidential.
- Listen with empathy.
- Try to get a grasp of the issue and look at possible solutions.

Get the Facts

Whilst you need to be sensitive, you also need to establish the facts. Make sure you ask the key questions below:

- Who? name(s) of those involved.
- When? date and time of incident(s).
- Where? place of incident(s).

- What? nature of the issue; what has happened?
- Why? The member(s) explanation of why it is an issue and how it may be fixed.

The 'Why' Question is Important

You need background information both to help you make the case and to identify any possible weak points or solutions to the issue.

Try to obtain a copy of the member's Staff Handbook or contract of employment.

Members sometimes withhold information for different reasons. Follow the advice below:

- Probe the answers try to tease out more information in support of what you are being told.
- Sum up the facts of the case as you understand them - check you have got the key points.
- Your case should be based on the facts; you should not lie for the member.
- Your role is to try to ensure that they are treated fairly and properly and a solution is found if possible.



Ask the Member What They Want You to Do

It is important to know what the member wants. Talk to them and agree what they would be happy for you to do. It may be:

- To investigate the matter further.
- To advise them on their options.
- To assist them with a grievance.
- To establish what outcome they would want.
- Nothing, as they are afraid to pursue the matter.

Propose Action and Report Back

- Be sympathetic and honest.
- Do not make promises or raise false hopes.
- If in doubt about the case, seek advice from another rep or your Area Organiser.
- If what they want is not achievable, explain this factually.
- Don't just say, "It is a waste of time".
- Explain what you are going to do, who you will approach and how long it may take.
- Agree when you will report back.

Chapter 4 Representing Members in Grievance Meetings

Follow the guidance below to help you when representing members in a grievance meeting.

Know in Advance

- The date and time of the grievance meeting.
- Arrange time off for you and your member before the meeting so that you can prepare the case.
- Ensure you have all the relevant information, documents and facts relating to the member's grievance.

The Right to Be Represented

- The member has the right to ask for a rep at a grievance meeting and to be represented.
- The rep gets time to meet with the member and prepare the case before the meeting.
- The rep gets to speak to who s/he needs to in order to prepare and to see all the evidence.
- The rep and member should work out beforehand who is going to say what.

During the Grievance Meeting

 Assist the member to make their case clearly and simply.

- Refer to the appropriate Agreements and procedures. If management refer to a policy or procedure, ask them to show you it.
- Keep your cool respond calmly to management's arguments/ statements and listen carefully to their responses.
- Make sure you have a copy of the company Grievance Procedure and that everyone is following it correctly.
- The rep (or the member) can call for an adjournment at any time.
- Let the manager know what outcome the member is seeking, eg improved terms and conditions of employment or compensation for any employment rights that have been breached.
- Always keep written notes throughout the meeting and ensure that the outcome is recorded. If there is a note taker, make sure you get a copy of their notes too.
- Ensure that all personal data and information is kept and dealt with securely and confidentially.
- Always, always, always double check at the end of the meeting that your understanding of where you are at is the same as the manager's - don't leave any room for misunderstanding.

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You're the Usdaw rep! Your role is in the title!

You are there to represent the member. This means that if you and the member agree you are there to do all the talking, then you do all the talking! You are not there as the silent witness or as moral support - you are there to make your presence known and present your member's case.

After the Grievance Meeting

- The employer should inform the member of the outcome of the grievance meeting, in writing, within the timescales of their Grievance Procedure.
- The rep should advise the member of their right to appeal within the relevant time limit if the member is not satisfied with the outcome.
- Always seek advice from your Area Organiser on whether the case should be pursued to an Employment Tribunal. Remember there are strict time limits for Employment Tribunals, so don't forget to give the member the Legal Plus Postcard reminding them of their rights.

Remember: there are timescales within the Grievance Procedure – you should always check the Grievance Procedure to make sure you are sticking to these.

Remember that Usdaw is here to help you. If you need some help or advice, pick up the phone and ask (your Agreement will almost certainly give you the right to use the company phone – in private).

We Decide If It Goes Further

It's for you and the member to decide whether or not you wish the grievance to go to the next stage. There will always be the possibility of it having to go further and that's why it is really important that you keep notes - you need to be able to explain what has happened.

Always inform your Area Organiser of the outcome of any grievances and make sure you give them your notes relating to any grievance meetings. Ensure that all personal data and information is kept and dealt with securely and confidentially.

When the procedure is complete, and the outcome implemented, you should destroy all personal information collected as part of the case.

Things to do...

Use the *Grievance Procedure* – *Identifying the Facts* worksheet on the next page to help you keep a record of any members' grievances.

You can photocopy the worksheet and use it every time you represent a member in a grievance meeting.

Remember – give a copy to your Area Organiser once you have filled it in.



Grievance Procedure - Identifying the Facts

Member's Name and Membership Number:

Company:

Why? The reason for the issue.

When? The date/time the issue occurred.

Where? The place where the issue is occurring.

What? The nature of the problem.

Who? The people involved.

Outcome? What does the member hope to achieve from the grievance?

Timescales: Are there any time limits to consider?

Agreed course of action:

Ensure that all personal data and information is kept and dealt with securely and confidentially.

Today's date:
Who hears the grievance:

Chapter 5 Representing Members in Disciplinary Meetings

As with a grievance case, if a member approaches you because they are being disciplined, you need to establish all the facts and make sure you understand the case.

Where possible, always store personal information in a lockable cupboard to protect confidentiality.

Conduct or Capability?

When dealing with a member's disciplinary case the first thing to find out is whether it is a conduct issue or a capability issue.

Conduct - This refers to an employee's personal behaviour or actions. When this behaviour falls below the standards expected by the company because it is unreasonable, unacceptable, goes against company policy or is not within the bounds of reasonable behaviour expected of staff - it is called misconduct.

Capability – This refers to a person's ability to do their job. For example, if an employee is struggling to meet the requirements of their job description and, after an investigation into this, other options (such as extra training) should be explored before disciplinary action is taken.

It is important that you make sure the member understands the possible consequences if the disciplinary meeting goes against them. In serious cases, ie gross misconduct, these consequences could include dismissal.

You will need to be especially careful in finding out all the facts of the case. Someone who is facing a disciplinary is likely to remember the facts that support their case more easily than facts that are more uncomfortable.

You should try to talk to witnesses if you can as management almost certainly will. You will also need copies of any witness statements taken by management, even if the statements have been made anonymously. Contact your Area Organiser if you have any difficulty getting hold of the documentation relating to a case.

It is your responsibility to check that managers follow their own procedures properly. If they make mistakes they may try to argue that this can be dealt with on appeal. You should not accept this argument - raise it and make a note of anything you believe was handled incorrectly. If a member decides to appeal - the procedural mistakes can be raised by the Area Organiser.

Don't let management rush you into a disciplinary meeting. You are perfectly entitled to insist on having enough reasonable time to prepare your case properly with the member.

You and your member have the right to test the evidence and your member has the right to go through a proper disciplinary process.

Remember...

- Ask to see all the evidence against your member from the employer.
- Challenge the evidence from the employer.
- Gather your own evidence for the meeting.

Things to do...

Make sure you have a copy of your company's policy on Disciplinary Procedures.

Ask Personnel/HR for a copy – you are entitled to see it.

What is Gross Miscounduct?

Gross Miscounduct is a single act of misconduct that is serious enough on its own to justify the employee's immediate dismissal. As there is no statutory definition of what defines gross misconduct, it is up to each employer to determine what types of conduct are regarded as gross misconduct. Check your company's Disciplinary Procedure.

The Disciplinary Procedure Should...

- Be in writing.
- Be dealt with without delay by management.
- Be kept confidential.
- Ensure that an investigation is carried out before an employer decides to take disciplinary action.

- Tell an individual what disciplinary action may be taken against them, including dismissal.
- Provide the member and rep with all the relevant documentation relating to the case before the disciplinary meeting.
- Allow members to be represented in disciplinary meetings.
- Provide members with the right to appeal against any disciplinary action.

Chapter 6 Disciplinary Procedure

It's About Improvement Not Punishment

The purpose of any Disciplinary Procedure is to correct, not to punish. It is about helping poor performing employees to become effective again. This means that the manager should always consider counselling as the first option - disciplinary action is a last resort.

Remember - management must carry out a full investigation before any disciplinary meeting to establish the facts.

Follow this guidance to help you when representing members.

Know in Advance

- The date and time of the disciplinary meeting.
- What the accusation is and that a full investigation has been carried out by management prior to the meeting.
- What evidence there is (eg witness statements, CCTV footage, etc).
 Ask to see the evidence before the meeting.
- Remember disciplinary issues can cause a lot of distress for the member. Try to provide support and reassurance but never provide any guarantees about the outcome.

The Right to Be Represented

- The member has the right to ask for a rep and to be represented.
- The rep gets reasonable time to meet with the member and prepare the case before the meeting.
- The rep gets to speak to who s/he needs to in order to prepare and to see all the evidence.
- The rep is not there just as a silent witness.
- The rep and member should work out beforehand who is going to say what.

During the Meeting

- Make your case clearly and simply.
- Refer to the appropriate agreements and procedures. If management refer to a policy or procedure, ask them to show you it.
- Keep your cool respond calmly to management's arguments/ statements.
- Question management's witnesses.
- Focus on the issue and the manager you are speaking to.
- Put forward any arguments for mitigation.

- The rep (or the member) can call for an adjournment at any time.
- Always keep written notes throughout the meeting. If there is a note taker, make sure you get a copy of their notes too. Remember - your Area Organiser may need to see the notes at a later stage.

Ensure that all personal data and information is kept and dealt with securely and confidentially.

If a manager introduces new evidence at the meeting, you should ask for an adjournment and seek advice from your Area Organiser straight away.

Management should not introduce new charges or allegations if an employee has not been given prior notice and the opportunity to prepare their defence.

A Fair Hearing

- Make sure you have the correct procedure and that everyone is following it correctly.
- The manager should be independent and not previously involved in the case.
- The outcome should not be prejudged (in other words - the member isn't asked to come into the office for a verbal warning, etc without a meeting taking place and all the evidence being heard first).

- A thorough investigation should have taken place before the disciplinary meeting.
- The member has the opportunity to put their case forward and for it to be considered properly.
- Reasonable adjustments should be offered - for example, if a member has a disability or language issue.

After the Meeting

The employer will decide whether to impose a disciplinary penalty. This might include:

- A verbal warning.
- A written warning.
- A final written warning.
- Action short of dismissal, for example - demotion or suspension without pay.
- A dismissal without notice.
- An instant or summary dismissal

 but only for the most serious offences. No one should be dismissed for a first offence unless it is considered to be gross misconduct (check your Disciplinary Procedures for what your employer describes as gross misconduct).

Old warnings that are spent should be disregarded by the employer.

It is possible to have separate warnings at the same time - for example a live verbal warning for wearing inappropriate jewellery and a live verbal warning for being late.

Mitigating circumstances should be taken into account.

A consistent approach should be adopted when deciding the outcome.

Training needs should be identified and a plan drawn up to help the member improve.

Special circumstances which might make it appropriate to lessen a penalty should be considered.

Any action should be reasonable.

The Right to Appeal

Before the appeal meeting, meet with the member to discuss the possibility of appealing and the reasons for the appeal.

An independent manager should hear the appeal.

The procedure may allow for a further appeal – especially if facing dismissal (check the Disciplinary Procedure).

Remember – there are timescales within the disciplinary appeals procedure. You should always check the Disciplinary Procedure to make sure you are sticking to these.

Acas Says...

That the following should be considered before deciding a disciplinary penalty:

- The employee's disciplinary and general record.
- Length of service.
- Actions taken in any previous similar case.
- The explanations given by the employee.
- Special factors relating to the employee's health or disability.
- And, most important of all, whether the intended disciplinary action is reasonable under the circumstances.



In certain circumstances it may be necessary to extend the timescales. This will be done by joint agreement and a date should be set as near as possible to the original timeframe.

Members who consider that they have been unfairly dismissed have three months less one day from the date of dismissal to lodge a claim at an Employment Tribunal for unfair dismissal. Remember to be aware of time limits on appeals.

It is important that we notify any member who is dismissed of any right they may have to take the matter to an Employment Tribunal (we have a legal obligation to do so). Any member who is dismissed should be given the Legal Plus Postcard. Always inform your Area Organiser straight away if the member is dismissed. In such cases, you should also ensure that the individual retains their membership through paying subs by direct debit. This will ensure they are covered for appeal hearings and potentially Employment Tribunal cases.

When procedure is complete, and the outcome implemented, you should destroy all personal information collected as part of the case.

Chapter 7 Top Tips for Representing Members

Get training – Your Area Organiser will meet with you to agree any necessary training and development needs that you may have. Remember that shadowing experienced reps can also be useful.

Stay in touch - Always keep members informed about what is happening and what you intend to do next. Always inform members when and how you will report back to them.

Be realistic - Do your best but remember never to promise more than you can reasonably expect to deliver.

Remember - Your local Usdaw office and your Area Organiser are there to help so, if in doubt, always contact them for advice.

Stay alert - Always listen carefully to members and management alike.

Find out as much as you can - Always try to get as much information as you need. The more time you spend gathering information the more prepared you are likely to be.

Take notes of the meeting – They may be used at a later date. Your Area Organiser will certainly want to see any notes from the disciplinary meeting as they may be used during the appeal meeting and at an Employment Tribunal. Ensure that all personal data and information is kept and dealt with securely and confidentially.



Publicising the outcome - When you have achieved a good outcome for your members it is important to publicise your successes (always be mindful of data protection and ask permission from the member first). This will raise the profile of the Union and will assist in recruiting new members.

Things to do...

Use the Disciplinary Procedure – Identifying the Facts worksheet and Disciplinary Procedure – Lodging An Appeal worksheet on the next pages to help you keep a record of any members' disciplinary meetings and appeals.

You can photocopy the worksheets and use them every time you represent a member in a disciplinary meeting or appeal.

Remember to give a copy to your Area Organiser once you have filled it in.

Disciplinary Procedure - Identifying the Facts

Member's Name and Membership Number:

Company:

Why? The reason for the disciplinary.

When? The date/time - is this within the timescales?

Where? The place where the issue is occurring.

What? The nature of the problem, eg conduct or capability.

Who? The people involved.

Corrective action: Addressing the problem and the reasoning against disciplinary action.

Ensure that all personal data and information is kept and dealt with securely and confidentially.

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	Today's date:	
	Who hears the disciplinary:	

Disciplinary Procedure - Lodging and Appeal

Member's Name and Membership Number:

Company:

Why? The reason(s) for the appeal.

When? The date/time - is this within the timescales?

Summary of the appeal meeting:

Outcome of the appeal?

Ensure that all personal data and information is kept and dealt with securely and confidentially.

Today's date: Who hears the appeal:

Jargon Buster

Appeal

This is the process for requesting a change to a formal decision. At all stages of the Grievance and Disciplinary Procedures, employees have the opportunity to appeal if they are unhappy with the outcome.

Capability

This refers to a person's ability to do their job. For example, if an employee is struggling to meet the requirements of their job description. After an investigation into this, other avenues (such as extra training) should be explored before disciplinary action is taken.

Conduct

This refers to an employee's personal behaviour or actions. When this behaviour falls below the standards expected by the company – because it is unreasonable, unacceptable, goes against company policy or is not within the bounds of reasonable behaviour expected of staff – it is called misconduct.

Data Protection

As a rep, you will regularly come across personal data and information about your members. Data Protection is therefore an important aspect of the rep's role and you will need to deal with personal data fairly, securely and confidentially. The Union has produced a booklet and an online short course that provides guidance for you to follow.





Demotion

Where an employee is assigned to a lower level job.

Disciplinary

Disciplinary action may occur if the company has concerns about an employee's performance (capability) or behaviour (conduct).

Disciplinary Investigation

Management should always carry out a full investigation to establish the facts before a disciplinary meeting takes place.

Dismissal

Where an employee's contract of employment is terminated.

Formal Procedure

If an issue cannot be resolved informally then it is raised using the formal process.

Grievance

The term 'grievance' simply refers to a concern, issue or complaint that an employee is experiencing at work that they decide to raise with their employer.

Informal Procedure

The initial stage before the formal Grievance Procedure.

Mitigating Circumstances

Any special circumstances which might make it appropriate to adjust the severity of the disciplinary penalty.

Representation

Where someone assists or acts on behalf of an employee in meetings with managers. This is usually a union rep but it can be a workplace colleague.

Suspension

Where an employee is prevented from attending work as a result of disciplinary action. This can either be paid suspension (ie pending the outcome of a disciplinary investigation) or unpaid suspension (ie as a disciplinary penalty once an employee's actions are proved).

Timescales

The period in which meetings should be completed.

Warnings

Disciplinary action that can be taken against an employee. There are usually four levels of formal warnings: verbal, first written, final written and dismissal or suspension or demotion.



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