

Focus on Enforcement (FoE) Review of Adult Care Homes

**Care Quality Commission and Department of
Health Response**

February 2014

Summary and key points

- The Care Quality Commission (CQC) and the Department of Health (DH) welcome the opportunity to provide a response to the Department of Business, Innovation and Skills' (BIS) Focus on Enforcement Review of the Adult Care Homes Sector. This was an important review that identified a number of key findings about the impact of regulation on adult care home providers, and highlighted a number of concerns around CQC's regulatory model and its ability to assess effectively and report on the quality of care people receive
- CQC is transforming the way it regulates adult care homes following the launch of its three-year strategy in April 2013. CQC is developing its new approach through extensive co-production with stakeholders across the adult social care sector, including representatives of providers and local authorities. The findings of the Focus on Enforcement review will be directly addressed through this co-production work and related projects to help ensure that providers have confidence in CQC's new approach and its ability to meet the concerns highlighted in the review.
- Among the key changes CQC will be introducing that will address the findings are:

Greater transparency and expertise in its regulatory model

- CQC will deliver greater transparency and expertise in its judgements against five key questions it will ask of all services: are they safe, effective, caring, responsive and well-led? This will involve building a definitive view of 'what good looks like' that will enable it to make clear judgements about the quality and safety of services, and the characteristics of what different levels of quality look like.
- This new approach will help ensure that commissioners are more able to rely upon CQC providing a definitive judgement on quality, avoiding the need for them to duplicate information requests from care homes for their judgements, and thereby helping to reduce duplication of inspection providers.

Introduction of ratings

- CQC recognises that ratings are crucial to the public, to providers and to commissioners in assessing the quality of services. A good or outstanding rating will be a powerful driver of quality in the market and will help to encourage improvement by driving demand for the highest rated providers. From 2014, CQC will start work to award ratings to all adult care homes.
- **Commissioners of adult social care should be confident that they can limit the focus of their assessments to areas not related to the standards of care already assessed and rating by CQC, thereby reducing unnecessary duplication and burden on providers.**

Strengthening the capability of inspectors to deliver expert judgements

- CQC is undertaking a fundamental restructure to put in place more specialised inspectors in adult social care. This will be underpinned by specific training and guidance to equip staff with the right skills and knowledge to carry out their roles effectively. There will be access to additional specialist knowledge and expertise during the inspection process and inspectors will operate within a structured judgement framework to support a consistent decision making process and to ensure that ratings are comparable.
- **These measures will address concerns about variability in inspectors' knowledge and capability and help foster greater confidence by providers, people who use services and commissioners in CQC's judgements and ratings.**

Response to review findings

- The table below sets out in detail CQC and DH's response to the specific findings of the Focus on Enforcement review, including timetables for delivery and the expected benefits to providers. Where the outcome of activity, and therefore expected benefits, are not yet defined, this is because they are all still being developed through the co-production process. In this case, CQC has outlined the timetable for the co-production of its regulatory approach.

Review Findings	Action	Timetable
<p data-bbox="236 185 453 248">1. Duplication of activities</p> <p data-bbox="236 315 453 640">“Providers are experiencing significant duplication of activities by Local Authorities and the CQC and say this is taking them away from providing care”</p> <p data-bbox="236 931 453 1317">“Some information requests from public authorities seem to be placing conflicting requirements on providers- leaving them uncertain about what is required in order to be compliant.”</p>	<p data-bbox="475 185 826 221">We agree with these findings.</p> <p data-bbox="475 248 1150 607">i) CQC is transforming its approach to the regulation of adult social care to deliver greater transparency and expertise in its judgements against five key questions it will ask of all services: are they safe, effective, caring, responsive and well led? The development of this approach is underway following the publication of its signposting document, <i>A Fresh Start to the Regulation and Inspection of Adult Social Care</i> in October 2013, and is being driven through a process of co-production with stakeholders in adult social care, including providers and commissioners.</p> <p data-bbox="475 640 1150 999">ii) CQC has established an external group of stakeholders including trade associations, the Association of Directors of Adult Social Services (ADASS), other regulators, large corporate providers, people who use services, their carers and voluntary organisations to take forward the co-production work. It will also hold a series of roundtable discussions with key stakeholders to cover a range of issues including what quality looks like; establish a number of stakeholder task and finish groups on key topics such as ratings; and seek views and feedback from its online community of approximately 1,500 members.</p> <p data-bbox="475 1032 1150 1379">iii) To support local authorities in their role as Commissioners, DH has commissioned the Local Government Association (LGA) and ADASS to develop sector-led Commissioning Standards. The standards will identify best practice, including what information commissioners need in addition to information collected by other bodies to carry out their functions effectively. This could include directing local authorities to information available from CQC, such as Area Profiles, helping to minimise the duplication and variation of information requests.</p> <p data-bbox="475 1413 1150 1581">iv) The Care Bill, currently before Parliament, will place additional duties on local authorities in relation to Market Shaping. The Department is developing Statutory Guidance that will describe how local authorities should exercise these duties.</p> <p data-bbox="475 1615 1150 1738">The Statutory Guidance will explicitly reference best practice standards, including contract management and the need to avoid unnecessary duplication and burdens on provider organisations.</p> <p data-bbox="475 1771 1150 2024">v) This will help ensure that commissioners are more able to rely upon CQC for a definitive judgement on quality in relation to the five key questions, to reduce the need for them to separately request information from providers that might conflict with CQC’s requirements. This will help to give providers greater certainty around the requirements to follow in these areas, as commissioners would be able to defer to CQC’s assessment.</p>	<p data-bbox="1169 248 1361 539">CQC will consult on its new approach in Spring 2014, with full implementation of its new model from October 2014.</p> <p data-bbox="1169 1032 1361 1223">The Commissioning Standards are due to be rolled out from Autumn 2014.</p> <p data-bbox="1169 1256 1361 1514">Subject to the passage of the Care Bill, Statutory Guidance will commence from April 2015.</p>

	Providers should expect to see these benefits as the new model is implemented.	
<p>2. Lack of coordination</p> <p>“Efforts to minimise information burdens and to coordinate between different public bodies are better in some areas than others- but this can lead to increased uncertainty for homes that deal with multiple authorities.”</p> <p>“The evidence we heard suggested that in at least some areas, there is very limited joining up and information sharing taking place between public agencies.”</p> <p>“We were told CQC do not favour joint inspections, that they are reluctant to share their programme of planned inspections with local authorities, and similarly do not feel it is appropriate to share their quality and risk profiles.”</p>	<p>We agree with these findings.</p> <p>i) CQC is working with local authorities through ADASS nominated representatives, the Health and Social Care Information Centre (HSCIC) and representatives of providers to plan improvements in i) the coordination of activity and ii) the sharing of information between CQC and local authorities. Specifically, the work will cover the following areas from design to delivery:</p> <ul style="list-style-type: none"> • Alignment and coordination where possible of inspection visits from CQC and contract monitoring visits from local authorities via better sharing of schedules • Agreement between CQC, local authorities and providers on the data and information collected by local authorities that can be shared • Agreement between CQC, local authorities and HSCIC on who is best placed to receive and analyse the data and information from local authorities • Clarification by CQC to providers and commissioners on the data it holds, how this informs inspection activity and how it aims to share data where possible. <p>ii) CQC is also working with HSCIC on a project to investigate the feasibility of automating the extraction of data from council adult social care information systems. This has the potential to provide client and provider level information that could help CQC to target its regulatory activity more effectively and support a robust ratings system.</p> <p>iii) CQC already has in place several Memoranda of Understanding (MoU) with a range of partner organisations (http://www.cqc.org.uk/public/about-us/partnerships-other-organisations/joint-working-agreements). MoUs set out the high level commitment of both organisations to work together in ways that promote clarity of roles and responsibilities and the sharing of information. CQC is increasingly supplementing its MoUs with operational working arrangements, which detail how it will share information.</p> <p>iv) CQC has a liaison agreement in place with the Health and Safety Executive to ensure information is shared between organisations in a timely manner. CQC is extending this agreement to include local authority health and safety roles.</p> <p>v) CQC and the Nursing and Midwifery Council are developing a joint working protocol to be completed by the end of March 2014.</p>	<p>A detailed project plan for the ADASS/HSCIC project will be developed by April 2014.</p> <p>HSCIC is responsible for the delivery of the feasibility project of automatic extraction of data from council adult social care information system, which is due to report in March 2014.</p> <p>Some MoUs are currently under review.</p>

<p>2. Lack of coordination (cont.)</p>	<p>CQC has also committed to the development of a MoU with the LGA to be completed in early 2014.</p> <p>vi) This work will help deliver improved coordination between CQC and local authorities in the collection, sharing and analysis of data, to reduce the need for separate requests for duplicate data, thereby reducing unnecessary burden placed on providers. CQC will be able to provide greater detail on the expected benefit of this work to providers from April 2014.</p> <p>vii) DH is developing statutory guidance on local authority commissioning and intends to include an element requiring local authorities to consider CQC quality ratings and other standards that assess providers' services, and manage any apparent differences between CQC and the authority's assessment about the quality of a specific provider.</p> <p>viii) CQC is considering a proposal for a mixed model of announced and unannounced inspections as part of the co-production of its new regulatory approach. This will include consideration of the practicalities and benefits of sharing inspection schedules and undertaking joint inspections with local authorities. In some cases, joint inspections may be possible depending on the focus and timing of the visit; however many of CQC's inspections will continue to take place in response to risk, at short notice, when it might not be possible to arrange a visit together. Similarly, some of its inspections will take place outside of normal working hours, such as at evenings and weekends.</p> <p>ix) CQC has developed Area Profiles based on local authority boundaries as part of its information sharing with local partner organisations. Area Profiles are an information tool about CQC's regulatory activity and the quality and safety of local services. They will contribute to local area discussions on coordinating oversight activity, to provide information about the standard of local care provision and help to support greater transparency, open access and exchange of information between CQC and other public bodies locally. CQC will continue to review their use in helping to improve coordination between local authorities and reduce burden.</p> <p>x) In structuring her directorate, the Chief Inspector for Adult Social Care will introduce designated managers for local authorities. It will be a key part of their role to develop effective relationships with local authorities to support greater coordination of activity and joined up working. The restructure will be undertaken alongside the development of CQC's new regulatory approach.</p>	<p>Dates of review are contained in each individual memorandum.</p> <p>The Commissioning Standards are due to be rolled out from Autumn 2014.</p> <p>This will form part of the overall co-production of CQC's new regulatory approach.</p>
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	CQC will be able to provide greater detail on the expected benefit of this work to providers from Spring 2014.	
<p>3. Limitations of current assessment framework</p> <p>“The current pass/fail approach to assessing and reporting compliance is felt by the sector to have serious limitations...It is felt to be driving behaviour to deliver compliance, not quality. It doesn't distinguish 'good' from 'acceptable'. It provides limited incentives to improve.”</p> <p>“Some providers felt that there is a disparity between the impact of findings of minor and major compliance issues on a care home's reputation...It was a source of frustration that once compliance issues were resolved and proof can be provided to the CQC, there were not mechanisms in place to allow the compliance status to be changed immediately.”</p>	<p>We agree with these findings.</p> <p>i) CQC's new regulatory approach will enable it to make clear judgements about the quality and safety of services, and the characteristics of what different levels of quality look like. CQC will always start by looking for 'good' care and will use its new descriptions of 'outstanding', 'good', 'requires improvement' and 'inadequate' to guide its judgements. CQC will develop a definitive view of 'good' as part of its co-production work with stakeholders in adult social care, including providers and local authority representatives. It will develop a handbook for providers to explain what 'good' looks like. This will form part of the formal consultation that it will undertake in Spring 2014.</p> <p>ii) This is a significant shift from a pass/fail approach to compliance and should enable providers and commissioners to understand much more clearly the quality and safety of the services and how they can improve. Providers should expect to see the benefit of this new approach from Spring 2014, as CQC consults on its new approach and starts to roll out the first wave of its pilot inspections.</p> <p>iii) CQC will introduce ratings that will replace the compliance/non-compliance approach with an assessment that rates providers on a scale of:</p> <ul style="list-style-type: none"> • Outstanding • Good • Requires Improvement • Inadequate <p>iv) CQC recognises that ratings are crucial to the public, to providers and to commissioners in assessing the quality of services. These will provide a reliable judgement to help them choose care that is safe, effective, caring, responsive and well-led.</p> <p>v) Ratings will be based on judgements by expert inspectors and information gained from other partners, such as local authorities, as well as people who use services. A good or outstanding rating will be a powerful driver of quality in the market and will help to encourage improvement by driving demand for the highest rated providers. Commissioners of adult social care should be confident that they can limit the focus of their contract monitoring activity to areas not related to the standards of care already assessed and rated by CQC.</p> <p>vi) The introduction of ratings will give a far more detailed, holistic picture of the quality of a service than the previous model of compliance/non-compliance.</p>	<p>CQC will fully implement its new model in October 2014.</p> <p>CQC will test its new approach by carrying out a significant number of inspections and evaluating the outcome by gathering feedback from stakeholders. This will be done in two waves: one in Spring 2014 and one in Summer 2014.</p> <p>CQC will start to award shadow ratings during its second wave of pilots, which it will publish in October 2014. CQC anticipates all adult social care services being rated by March 2016.</p>

<p>3. Limitations of the current assessment framework (cont.)</p> <p>“The lack of any finer grading seems to be one of the factors leading to local authorities to duplicate CQC’s activity.”</p>	<p>Minor changes in the status of a provider’s compliance would therefore not change an overall rating, as this would be built on a much more thorough and expert assessment of a service, based on CQC’s new inspection model and supported by an intelligent monitoring tool that uses a wide range of information to assess risk.</p> <p>vii) Ratings will support local authorities in making their commissioning decisions and help to reduce the need for them to duplicate CQC’s inspection activity. This approach will also be supported in the commissioning guidance for local authorities being developed by ADASS and the LGA, supported by DH.</p> <p>viii) CQC will continue to carry out inspections in response to information that indicates there may be a risk to the quality of care. In line with the principles of better regulation, it will re-inspect services that are inadequate or require improvement more frequently, with its judgements and website updated after those re-inspections. It will also carry out random inspections of a number of good and outstanding services to ensure its regulatory judgements remain valid.</p> <p>ix) One of the issues set out in <i>A Fresh Start for the Regulation and Inspection of Adult Social Care</i> was whether or not CQC should offer providers the option of paying for an earlier re-inspection in some circumstances. CQC will discuss this approach with stakeholders as part of its co-production work to inform its consultation proposals for Spring 2014. If this is supported by the sector, it is one mechanism whereby CQC could inspect some services more quickly, should a provider request this.</p> <p>x) CQC already states on its website when it is undertaking an inspection of a particular service and it will publish the rating of a service after an inspection.</p> <p>Part of its current development work is considering the timescales for publication of the rating following the inspection.</p> <p>xi) This represents a fundamental change to CQC’s approach to the regulation of adult social care that directly addresses the findings of the Focus on Enforcement review on the need for a system that will provide an incentive to improve, that will introduce grading that enables those providing, commissioning and choosing care with a clear judgement on the quality of services, and that will be more responsive to changes in the quality of care.</p>	
<p>4. Varied capability among inspectors</p>	<p>We agree with these findings.</p> <p>i) Many of CQC’s inspectors have a social care background and when new inspectors are recruited, they will be appointed with a relevant professional</p>	

<p>“The sector feels there is varied capability amongst inspectors... There were reports of inconsistency in judgements and assessments. The sector would welcome procedures that can offer a degree of independence in reviewing regulatory decisions, outside the current costly legal appeals process. Providers told us that they generally do not appeal decisions currently because it simply involves asking the inspector to revisit their own decision.”</p> <p>“Some [inspectors] were described as not being sufficiently knowledgeable about care homes, described as not being specialists and having no background in the sector.”</p>	<p>background.</p> <p>There will be access to additional specialist knowledge and expertise through an increased number of Experts by Experience (people with experience of care) and specialist advisers during the inspection process.</p> <p>ii) CQC is developing a revised assessment framework, which will mean that whilst inspectors’ professional judgement will be central to their work, they will operate within a structured framework to support a consistent decision making process and to ensure that ratings are comparable.</p> <p>iii) CQC will design and implement an improved corporate quality framework to enable it to ensure consistency and rigour in its approach. This work is being carried out alongside the development of CQC’s new regulatory approach to ensure that appropriate and robust quality control and assurance measures are built into its new model. This includes processes for assuring consistency in making judgements and writing inspection reports.</p> <p>iv) CQC is involving stakeholders in the development of tools to support consistency in its approach to enforcement. For example, it will establish panels that will consider a sample of rating judgements to check their consistency.</p> <p>CQC is also working on an appeals policy for ratings that will be introduced alongside ratings in October 2014. It is anticipated that the policy will enable appeals to be heard by a person other than the inspector/inspection team that awarded the rating. This will build on its existing quality assurance approach whereby all inspection reports are peer reviewed and provide opportunities for providers to respond before reports are published. Providers have 10 working days from receiving a draft report to comment on its factual accuracy. This process can result in CQC reviewing its regulatory judgement.</p> <p>v) When CQC takes enforcement action, providers are able to make representations including against the publication of warning notices and notices of proposal for various matters, such as varying conditions of registration. Representations are considered within CQC by someone different to the original decision maker. If providers remain unhappy with CQC’s judgement on enforcement decisions other than warning notices, fixed penalty notices or convictions for offences, they are able to appeal to the First Tier Tribunal.</p>	<p>CQC’s operational restructure and transition will be completed by April 2014.</p> <p>CQC’s revised assessment framework is being development through its co-production process.</p> <p>The CQC Academy has been launched and is developing training and support for staff in line with the development of CQC’s new regulatory model.</p>
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	<p>vi) CQC will ensure that its inspectors deliver professional judgements that are supported by objective measures and evidence. CQC's Academy will provide training to staff to operate effectively under the new regulatory model, and is currently designing training for its adult social care workforce to ensure it is equipped with the right skills and knowledge. It will be supported by detailed guidance for inspectors developed through extensive co-production with the adult social care sector.</p> <p>vii) These measures will address the concerns about variability in inspectors' knowledge and capability and help foster greater confidence by providers, people who use services and commissioners in CQC's judgements and ratings. This benefit will start to be delivered from Spring 2014 following completion of CQC's restructure to support a more expert inspection directorate for adult social care and the roll out of pilot inspections under CQC's new regulatory approach.</p> <p>CQC is also strengthening the skills and knowledge of its inspectors, providing focused learning and development based on a curriculum agreed with the Chief Inspector for Adult Social Care.</p>	
<p>5. Investigating complaints</p> <p>"Some stakeholders representing the wider public expressed concern about the fact that the CQC did not investigate complaints."</p>	<p>We think that it is important to clarify CQC's role in relation to this finding.</p> <p>i) CQC is very keen for people to tell it about their experiences of care, whether it is a concern, an observation, a positive report about a service or an issue they have raised as a formal complaint. This information may lead CQC to make further enquiries, including contacting the provider of the service if people give their permission for it to do so. It may use the information to help it decide what to look at when it inspects, or to bring forward an inspection.</p> <p>ii) CQC may also look in detail at specific cases and use them to inform the judgements it makes about care services. Wherever possible it will let people know what action it has taken as a result and will report publicly on all the information it has received from people and what it has done in response.</p> <p>iii) However, it is important to say that CQC is not able to settle formal complaints on behalf of individuals. It is the duty of the provider to do this and, where necessary, the relevant ombudsman or professional regulator. The only exceptions to this are formal complaints made by people whose rights are restricted under the Mental Health Act (or their representatives) about the way staff have used their powers under the Act.</p> <p>iv) Where people want to make a formal complaint to a provider or to the ombudsman, CQC will support them by providing information that helps them to understand how to do this.</p>	<p>CQC's role in complaints was set out in <i>A New Start: Responses to our consultation on changes to the way CQC regulates, inspects and monitors care services</i>, published in October 2013.</p>

<p>6. Inspections “Some in the sector felt there was too much emphasis on paperwork by regulators and those commissioning places, and not enough on assessing the standard of care.”</p>	<p>We agree with this finding.</p> <p>i) At the heart of CQC’s new regulatory approach in adult social care is the experience of people who use services. This was described in <i>A Fresh Start to the Regulation and Inspection of Adult Social Care</i> as the Mum’s Test (is this service good enough for my mum?).</p> <p>ii) CQC will ensure that most of its time on inspection is focused on talking to people who use services and to staff rather than checking paperwork.</p> <p>ii) CQC will make more systematic use of people’s views and experiences, including by exploring whether there are more observational tools it can use to help understand the experiences of those less able to give their views, as well as better mechanisms for obtaining information from local groups, Healthwatch, community healthcare staff and providers. This was set out in <i>A Fresh Start</i> and is being developed through CQC’s co-production process with stakeholders, including providers.</p> <p>iii) However, CQC will always want to ensure that it sees and assesses important paperwork as part of its inspection process, including- for example- the care plans of those receiving care, risk assessments and staff rotas to ensure that they are clear and comprehensive.</p> <p>iv) This new approach will address directly the concern felt by some in the sector that CQC needed to focus on the actual care provided and on the experience of residents and will deliver benefits as CQC implements its new regulatory model.</p>	<p>The timetable for CQC’s co-production work is set out above.</p>
<p>7. Confidence in the regulatory regime “There is evidence of a lack of public confidence in aspects of the regulatory regime.”</p>	<p>We agree with this finding.</p> <p>i) DH is consulting on changes to the requirements for registration with CQC to incorporate new fundamental standards. These will set a basic standard below which services should never fall. Where these standards are breached, CQC will be able to take action against providers including, in the most severe cases, bringing a prosecution without the need for an advance warning notice.</p> <p>ii) As part of its new regulatory approach, CQC will develop clear Guidance for Providers to explain what providers need to do to ensure they meet the new regulations.</p> <p>iii) DH also want the new regulations to be easier to understand and simpler to interpret. It intends to achieve this by including in each requirement an outcome that has to be met and by removing some of the detailed references to specific actions that providers are currently required to take.</p>	<p>New registration requirements are intended to come into force in October 2014.</p>

<p>7. Confidence in the regulatory regime (cont.)</p>	<p>It also intends to reduce the number of requirements and consolidate the regulations. DH intends to test the cost to business of the fundamental standards through consultation.</p> <p>iv) These changes will give providers, people who use services and commissioners a clear picture of the fundamentals of care below which no provider must fall without facing serious consequences. They will support providers to be clear about the regulations that underpin these fundamental standards by ensuring that they are easier to understand and interpret. They will give CQC the power to take swifter enforcement action in response to breaches, giving the sector greater confidence that action will be taken against sub-standard providers. It is anticipated that these changes will be introduced when the new registration requirements come into force in October 2014.</p>	
<p>8. Role of accreditation</p> <p>“Some stakeholders have mentioned that accreditation could have an important role in the care home sector.”</p>	<p>We agree with this finding.</p> <p>i) CQC recognises the potential for existing accreditation schemes to help inform its regulatory approach as an assurance or information source. To identify how accreditation can be used, CQC has formed a steering group to help establish what schemes there are and to provide more detail about them. Once established, CQC will decide which schemes can provide useful assurance on the quality and safety of particular services.</p> <p>ii) This work will feed into the development of CQC’s new regulatory approach in adult social care. Its co-production work to develop the new approach will involve holding a series of stakeholder roundtable discussions including one on the use of accreditation schemes in February, and outputs from this will inform its consultation in Spring 2014.</p> <p>iii) CQC is also undertaking work with the UK Accreditation Service (UKAS), the Healthcare Quality Improvement Partnership (HQIP) and others to develop an ‘accredit the accreditors’ scheme to enable CQC to recognise whether a scheme has met a specified standard of robustness and quality. CQC is working closely with UKAS on this, including being a member of UKAS’ forums and holding regular meetings with the service.</p> <p>iv) The review acknowledged this is a complex issue, which is why CQC is looking at the role of accreditation as part of its co-production work with the sector, including with providers, and through a project with the UKAS and others to ensure that it is considered fully. CQC will be able to provide greater detail on the expected benefit of this work to providers from April 2014.</p>	<p>Criteria that will set the parameters for a good quality accreditation scheme will be agreed in early 2014.</p> <p>UKAS/HQIP will develop a method to implement a scheme from April/May 2014.</p> <p>CQC will develop its own framework for assessing accreditation schemes to be used in the interim period from April 2014 until the more formal scheme is underway.</p>

	<p>The Department of Health is keen to understand where accreditation might add value to the work in the social care sector. We have seen how it can bring benefits to specific sectors in health where delivery standards have been less well developed. For care homes it is less clear what the benefits might be as clear standards will be set and assessed by the CQC and it is necessary to avoid accreditation duplicating the role of the regulator.</p>	
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