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# LEASEHOLD SERVICE CHARGES EXPLAINED



# ABOUT THIS BOOKLET

This booklet sets out the provisions in the law, in relation to various matters, including:

- **The setting and recovery of leasehold service charges;**
- **The rights of both the leaseholder and Hafod to challenge or substantiate the charges before a Leasehold Valuation Tribunal;**
- **The obligations placed upon us to consult with you before carrying out qualifying works or entering into long-term agreements;**
- **The statutory controls on demands;**
- **Accounting for the charges**

The Association recognises Leaseholders as home owners although the law governing service charges, for example, is governed by the various Landlord and Tenant Acts.

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# WHAT ARE LEASEHOLD SERVICE CHARGES?

Leasehold Service Charges are set by us to recover the costs we incur in providing services to your home in accordance with your lease. The charge normally covers the cost of such matters as general maintenance and repairs, (insurance of the building) and, where services are provided, such as, central heating, lifts, lighting and cleaning of common areas, landscaping and window cleaning etc. The charges may also include the costs of management by us and for contributions to a reserve fund.

We provide certain services, and in return set a service charge to recover costs incurred. Your lease will usually give the timescales of how often payments are to be made. The service charge period is usually a year, but payments may be required on a half-yearly or a quarterly basis.

Your lease will usually set out the percentage or proportion of the service charge payable, but sometimes we will stipulate a 'fair' or 'just' proportion where different groups of occupiers benefit from different services, there will be provision to recover an appropriate charge.

## SURPLUS / DEFICIT

A provision exists for (an adjustment) at the year end when the actual costs are known. If interim payments have been made, and they exceed expenditure, the adjustment will be a surplus. In addition if insufficient payments have been made to cover the expenditure, the adjustment will be a deficit. The surplus / deficit will be added to the following year's leasehold service charge calculation. We will provide a breakdown of the surplus / deficit in the Audited Accounts.

**We also offer the facility to clear the deficit in one lump sum!**

# SITE SERVICE COSTS

Costs we incur for site services such as; communal electricity, communal cleaning, repairs to equipment, communal television aerials, landscaping / grounds maintenance, window cleaning, repairs to lighting, communal clothes lines, service contracts (such as gates or lifts), fire safety equipment and emergency lighting, communal maintenance, door entry systems and sundries (such as new signs etc.)

We provide a full breakdown of the site service costs each year.

For more information on site service costs please see our Site Services booklet.

# INSURANCE

The insurance charge covers the cost of insuring the building fabric. You are advised to seek your own contents insurance policy to protect the belongings within your home.

# GENERAL REPAIRS RESERVE

The purpose of the general repairs reserve is to build up a sum of money to cover the cost of irregular and expensive works such as, structural repairs like a new roof or lift replacement (where applicable). The general repairs reserve also includes a sum to carry out cyclical painting to common (internal and external) areas.

The general repairs reserve is broken down into components like new roofs, new windows etc. and a lifespan is attached to each component. We calculate the cost of replacing each component and divide the costs by the lifespan for the component. The cost of a new roof would be divided by 60 years which is the estimated lifespan for this component. The component costs are then divided equally by all residents (leaseholders and tenants) in the site / block.

We have established a general repairs reserve to ensure we have sufficient funds to carry out long term works that could be costly. We want to avoid invoicing leaseholders with large one-off bills, and to assist with leaseholders' budgeting.

Contributions to the reserve fund are not repayable when a flat is sold, but will aid the resale value.

# DEPRECIATION

In some areas we may depreciate the costs of some works over a number of years to avoid charging one off bills to leaseholders. We may for example need to replace a door entry system to a block of flats and instead of charging the residents the costs in one year we may depreciate the charges and recoup them over a longer period such as 5 years.

# MANAGEMENT FEE

Finally we charge a management to cover the costs of managing; the leasehold charges, site services, communal works, stock condition works, cyclical painting etc. Typically we charge 15% a year management fee.

# PAYMENT FREQUENCY

Your Lease will indicate how often you are required to pay your leasehold service charge.

# POWER TO RECOVER LEASEHOLD SERVICE CHARGES

It is important to understand our power to levy a Leasehold Service Charge and your obligation to pay it are governed by the provisions of your lease. Your lease is a contract between you and the Association and there is no obligation to pay anything other than what is provided for in the lease.

Where any doubt arises, reference should be made to the wording of your lease and legal advice should be sought if necessary.

# THE REQUIREMENT FOR REASONABLENESS

Usually your lease provides for us to recover costs for maintenance, repair and upkeep of the building, including management costs, from you.

The law also expects us to behave in a 'reasonable' manner with regard to expenditure on the building. We have a mutual interest in maintaining the condition and the value of your home.

## DEMANDS FOR LEASEHOLD SERVICE CHARGES

All demands for leasehold service charges must be in writing and must contain our name and address. The leasehold service charge is not payable until this information is given.

Normally your lease will provide for the leasehold service charge to be demanded in advance, but occasions will arise when the demands are issued after completion of the works or provision of the service (see Section 20 Notice). In these cases a statutory time limit applies: we must issue the demand within 18 months of us incurring the cost. If the demand is provided later than this, we cannot recover the costs at all, unless a notice is served during the 18 months stating that costs have been incurred and that you will be required to contribute to them by payment of a service charge.

# SUMMARY OF SERVICE CHARGE ACCOUNTS

Whilst we provide a full breakdown of leasehold service charges you have a statutory right to seek a summary of the leasehold service charge account from us under Section 21 of the Landlord and Tenant Act 1985. The request must be in writing and can require a summary of the 'relevant costs in relation to the service charges payable' in respect of the last accounting year, or where accounts are not kept by accounting years, the past 12 months preceding the request.

Where we have received such a demand, we must provide the summary within one month (or within six months of the end of the 12-month accounting period, whichever is the later).

## **The summary should show:**

- How the costs relate to the service charge demand, or if they will be included in a later demand;
- Any items for which the landlord did not receive a demand for payment during the accounting period;
- Any items for which a demand was received and for which no payment was made during the accounting period;
- Any items for which a demand was received and for which payment was made during the accounting period; and
- Whether any of the costs relate to works for which an improvement grant has been or is to be paid.

All of our accounts are independently audited.



# RIGHTS TO FURTHER INFORMATION (INSPECTION OF RECEIPTS)

As well as receiving the summary, you have the right under Section 22 of the Landlord and Tenant Act 1985 to inspect documents relating to the service charge as a follow-up to provide more detail on the summary. Within a period of six months from receipt of the summary, the service charge payer (or the secretary of a Recognised Residents' Association) may write to us requiring us to allow access to and inspection of the accounts, receipts and any other documents relevant to the service charge information in the summary and to provide facilities for them to be copied.

Facilities for inspection must be provided within one month of the request, and must be available for a period of two months.

# FAILURE TO PROVIDE A SUMMARY OR ALLOW ACCESS TO FURTHER INFORMATION

Where we fail without reasonable excuse to comply with either a request for a summary or to inspect supporting documents we commit a summary offence on conviction and are liable for a fine of up to £2,500.

# CONSULTATION

The law requires that you must be consulted before we carry out works above a certain value or enter into a long-term agreement for the provision of services.

Service Charge payers must be consulted before we commence qualifying works, other than under a long-term agreement, which will cost any leaseholder more than £250, or enters into a long-term contract worth more than £100 for any leaseholder in any accounting year (a 'qualifying long-term agreement').

# CONSULTATION ON MAJOR WORKS

Where we propose to carry out works of repair, maintenance or improvement which would cost an individual service charge payer more than £250, we must, before proceeding, formally consult all those expected to contribute to the cost (under Section 20 of Landlord and Tenant Act 1985). This has the dual effect of giving notice of his intentions to the leaseholders and seeking their view on the proposed works.

- We must serve a notice of intention on you (and on the secretary of the Recognised Tenants' Association, if there is one), which:
  1. Describes in general terms the proposed works or specifies where a description of the proposed works can be inspected and the hours during which it can be inspected. The inspection facilities must be made available free of charge, at a specified time and place. If, at that time and place, there are no facilities for copying the proposals, then the landlord must, on request, provide a copy of the description;
  2. Explains why we consider the works necessary;
  3. Identifies the persons the we have asked, or propose to ask, for an estimate of the costs;
  4. Invites observations in writing and states where the observation should be sent;
  5. Invite you (and the Recognised Tenants' Association) to nominate a person from whom we should try to obtain an estimate. (This invitation does not apply, however, in cases where a public notice of works is to be made in the Official Journal of the European Union (see EU implications for consultation above);

Both you (and the Recognised Resident' Association) has **a period of 30 days in which to send views to the landlord.**

- If it is a case where you or Recognised Residents' Association is able to nominate a contractor and more than one nomination of an alternative contractor is made, then we must try to obtain an estimate from:
  1. The person who received the most nominations; or
  2. If two or more people received the same number of nominations, then we can seek an estimate from any one or more of these nominees;

3. If neither (1) or (2) applies, then we must obtain an estimate from any nominee. At least one of the estimates must be from a contractor wholly unconnected with us, that is, not an associated or subsidiary company or one in the ownership of us. Where you or the association has nominated a contractor, we must try to obtain an estimate from that contractor and must include this in the estimates submitted or made available to all leaseholders.

Next, in most cases we must serve a second notice on all leaseholders, the **Notice of Proposals**. This sets out the details of the proposed works and the likely costs. We must supply a statement setting out the estimated amounts of the proposed work specified in at least two of the estimates, and make available for inspection all of the estimates for the work, without charge.

Where a public notice is required for EU purposes, a contract statement should be provided setting out the name and address of the person with whom we propose to contract; particulars of any connection between them (apart from the proposed contract); and, where reasonably practicable, an estimated amount of the relevant contribution to be incurred by you, or, if this is not possible, the total amount of expenditure for the building to which the contract relates, again where practicable. If neither is possible, reasons should be given as to why this is so.

The notice must include a summary of all leaseholders' observations received by us in response to the first notice, and our response to them. Again, we must invite observations and allow 30 days for them to be made.

- We must **'have regard to' the observations** we have received. This does not mean we are obliged to follow or act on the comments, but, if challenged later at the Leasehold Valuation Tribunal (LVT) on the reasonableness of the costs, we will need to show that we paid due regard to observations or provide justification as to why we did not.
- If any leaseholder, or the Recognised Residents' Association, made any observations or nominated an alternative contractor where they were able to do so, then, within 21 days after entering into the contract, we must serve a further notice on each leaseholder and any Recognised Residents' Association stating our reasons for awarding the contract, and provide a summary of any observations received and our response to them; or, instead of serving notice, we can specify the place and hours at which a statement of those reasons may be inspected. However, this notice is not necessary where the person to whom the contract has been awarded was nominated by the leaseholders or Recognised Residents' Association, or submitted the lowest estimate. Again, this notice can be referred to in any dispute before an LVT.

In cases where the **works are considered urgent**, for example, a leaking roof or a dangerous structure, or in other cases where the landlord wishes to proceed quickly, we may apply to the LVT for an order to dispense with the consultation procedure. In such a case, the LVT will notify all service charge payers of the proposal.

**If we fail to carry out the consultation process in the correct form or has not sought and been given a dispensation from the LVT, we will be unable to recover the cost of the works from all leaseholders beyond the statutory limit of £250 per leaseholder.**

## CONSULTATION ON LONG TERM AGREEMENTS

Where we propose to let a contract for the provision of services for a period of more than 12 months, and the apportioned cost to any individual leaseholder is more than £100 a year, we must also consult you before proceeding. The contract could be, for example, for maintenance of the lift, a door-entry system or an alarm system in a retirement scheme, for window or other cleaning, for garden maintenance or simply for supplies of materials – i.e. any contract which will produce a charge upon you. (The procedure also relates to long-term contracts for maintenance or building works and this is considered separately below. However, contracts of employment are exempt from the consultation procedure.)

- The process and timescale are similar to those for qualifying works. We must serve the Notice of Intention on each leaseholder (and on the secretary of the Recognised Tenants' Association, if one exists) which:
  1. Describes in general terms the proposed arrangement or specifies the place and hours where a description of the proposed agreement can be inspected. If facilities for making copies are not made available, on request and free of charge, we must provide a copy of the description;
  2. Explains why we consider the long-term agreement, and any qualifying works provided for in the agreement, necessary;
  3. Identifies the proposed contractor, if known at this stage;
  4. Invites observations and states where the observations should be sent;

5. Invites you and the Recognised Tenants' Association to nominate a person from whom we should try to obtain an estimate, or, in cases where a public notice is required, explain that this is the case and why they are not being invited to nominate a person.

- The time period for providing observations, as for qualifying works, is 30 days. We shall, after considering any leaseholders observations, proceed to obtain estimates from our chosen contractors. If you nominate an alternative contractor, we must try to obtain an estimate from that contractor.
- We must then serve a further notice on all leaseholders and the association setting out the estimates (as for qualifying works), but in this case must also include a statement which:
  - identifies the proposed contractor;
  - identifies any connection between the contractor and us;
  - where reasonably practicable, sets out the estimate of costs to the service charge payer. If that is not possible, then an estimate for the costs as they relate to the building or other relevant premises must be set out, or, where that is not practicable, an estimate of the unit cost or hourly or daily rate applicable;
  - where no public notice is required, includes a statement for the provisions (if any) for variation of any amount specified in or to be determined under the proposed agreement and the duration of the agreement;
  - where the proposed agreement relates to the appointment of a managing agent, the statement must indicate whether the agent is a member of a professional body or trade association (for example, RICS (Royal Institution of Chartered Surveyors), ARMA (Association of Residential Managing Agents) or ARHM (Association of Retirement Housing Managers) and whether he subscribes to a code of practice or voluntary accreditation scheme.

The notice must include a summary of the leaseholders' observations received by us in response to the first notice, and our response to them.

- Again, the notice must invite observations and state the address and timescale (minimum 30 days). As with qualifying works, we must have regard to the observations and, where observations or nominations were received from the leaseholders or a Recognised Tenants' Association, give our reasons in writing for awarding the contract, as well as a summary of the observations received and his response to them.

- When entering into the agreement, we must write to each leaseholder and any Recognised Residents' Association within 21 days with his reasons for entering into the agreement, or specify a place and the hours at which a statement of those reasons may be seen, together with any observations received and his response to them. However, this process is not necessary where the agreement is with someone nominated by the leaseholders or the Recognised Residents' Association, or who submitted the lowest estimate.

As with qualifying works, we will not be able to recover charges beyond the statutory amount (£100 per leaseholder per annum) if we fail to carry out the consultation procedure.

## WORKS UNDER LONG TERM AGREEMENTS

In some cases, we may wish to enter into a long-term agreement for maintenance, repair and improvement works to the building, and this requires a different consultation process.

From your point of view, the position is different from normal arrangements. The initial award of the long-term agreement will be subject to the procedures described above for long-term agreements. For any subsequent proposals for qualifying works, we must still serve the qualifying works consultation notice, but will not invite the nomination of an alternative contractor as one is already in place.

However, we are still obliged to have regard to any observations received before proceeding with the works. Where we receive observations we must reply within 21 days, in writing, stating our response to the observations. The qualifying works notice shall:

- describe in general terms the proposed works or specify the place and hours where a description of the proposed works can be inspected;
- state our reasons for considering it necessary to carry out the proposed works;
- contain a statement of the total amount of the expenditure estimated by us as likely to be incurred by us on, and in connection with, the works;
- invite observations in writing in relation to those works or by our estimated expenditure and state the address and time limits for responses.

# EU IMPLICATIONS FOR CONSIDERATION

Some very large contracts may come within the rules for tendering within the European Union (the EU procurement rules), which require public advertisement in the Official Journal of the European Communities.

In these cases the above procedures are a little different, with no right for the nomination of a contractor. The issue is too complicated to cover in a general note and, where the situation applies, individual advice should be sought from LEASE (contact details at the back of this booklet) or a solicitor.

# LEASEHOLD SERVICE CHARGES SUMMARY AND CONCLUSIONS

**It is the central principle of leasehold service charges, and perhaps the cause of much of the ill feeling and dispute which often arise, that it is the landlord who takes the decisions as to how to commit the expenditure of the leaseholders' money. This applies in all situations where flats are centrally managed and applies equally where the leaseholders themselves manage their building. However, legislation provides protection to the service charge payer and imposes rigorous obligations upon the provider:**

- Charges must be reasonable and may be challenged at the LVT.
- Service charge payers must be consulted before we commence qualifying works, other than under a long-term agreement, which will cost any leaseholder more than £250, or enters into a long-term contract worth more than £100 for any leaseholder in any accounting year (a 'qualifying long-term agreement').
- Demands for payment must be served within time limits (18 months), and in due course new legislation will require a summary of your rights and obligations to accompany such demands.
- We must account for all annual expenditure through a summary of relevant costs following a written request from you or secretary of the Recognised Residents' Association. After the summary is provided, you or the secretary of the Recognised Residents' Association can inspect the relevant documents.

# MANAGEMENT CHARGES

The Commonhold and Leasehold Reform Act 2002 introduced rights in respect of management charges. These are defined as ‘an amount payable by a tenant as part of or in addition to rent, which is payable directly or indirectly for:

- The grant of approvals under the lease or applications for such approvals;
  - For or in connection with the provision of information or documents by or on behalf of us or a person party to the lease other than us or you;
  - Costs arising from non-payment of a sum due to us;
  - Costs arising in connection with a breach (or alleged breach) of the lease.’
- Any management charge demanded by us must be reasonable in order for us to recover the charge, and must be accompanied by a summary of your rights and obligations in respect of administration charges. If the summary is not included, the charge is not regarded as being payable.

## GROUND RENT

Ground rent is a payment made by you to us as a condition of the lease. The payment of ground rent (as with any rent) is specified by the lease and should be paid on the due date. Although it is your responsibility to pay the rent, this must be subject to prior notification from us who must use a form of notice prescribed by Regulations.

The rent cannot be legally recovered by the landlord unless he has first asked for it.



# NOTICE FOR PAYING GROUND RENT

**You are not liable to pay the ground rent unless we have demanded it. The demand must be in the prescribed form and must specify:**

- The amount of the rent due;
- The date on which you are liable to pay it, or if the demand is sent after the due date, the date on which it would have been payable under the terms of the lease.

The date specified for payment must not be less than 30 days or more than 60 days after date of service of the Notice, or before it is meant to be paid in accordance with the lease. It may be sent by post to the address of the house or flat to which it relates, unless you have previously notified us of an alternative address.

**The Notice of Demand must also include:**

- The name of the leaseholder to whom the notice is given;
- The period for which the rent demanded relates;
- The name and address of the person or company to whom the payment is to be made;
- Our name and address
- Certain supporting information, provided as notes to the Notice.

We cannot begin any legal steps for recovery of the rent, including action for forfeiture and possession, unless we have previously served the demand in the correct format, given the correct period of notice, and you have failed to respond.

# ARREARS RECOVERY PROCESS

We recognise that at times you may suffer from financial hardship that makes it difficult for you to meet your commitments. However, we need to keep the level of service charge arrears to a minimum in order to maximise income in the interest of both the Association and leaseholders.

Hafod HA will make every attempt to contact you to discuss your arrear situation and offer independent financial advice with many payment methods available

However if you are in breach of the terms of your Lease for money owed in excess of £350 it will result in us contacting the mortgage lender who may clear the arrears on behalf of you following direct contact

If the mortgage lender fails to clear the arrears or if there is no mortgage on the property application will be made to the County Court for a Money Judgment Order. Following a Money Judgment Order being received if non-payment still persists the Order can be enforced as follows:

- a. An Attachment of Earnings Order
- b. A charge on the property
- c. An oral hearing at which income and expenditure accounts will be discussed with a Court Official to agree a payment proposal to clear the arrears

If all the above processes are exhausted and you still refuse to pay, we can apply for a Section 146 notice.

# FORFEITURE AND POSSESSION

The final sanction for us faced with a leaseholder in breach of their lease due to the failure to pay the leasehold service charges, ground rent is to take steps to forfeit the lease and to repossess your home. This is a right in law, but it is not possible to obtain possession without a court order. The process is commenced, generally, by the service of a valid notice under Section 146 of the Law of Property Act 1925, the Notice of Seeking Possession.

We now have to prove that a breach of a covenant or condition in the lease has occurred before we can serve a valid Section 146 Notice. There are also controls on the use of forfeiture to recover sums of less than £350 or sums that have been outstanding for less than 3 years.

We cannot serve a valid section 146 notice unless you have agreed the arrears or that the breach has occurred or that the breach has been finally determined by a LVT or a court or under a post-dispute arbitration agreement. A determination becomes final at the end of any period provided for appeal and we may not serve the Section 146 notice until 14 days after that date.

Where the dispute is about arrears, we must also obtain a determination from the LVT that the amount is payable, and therefore reasonable.

**So, where we wish to commence forfeiture action, the steps to be taken are:**

- You must agree that the breach has occurred and that any arrears are duly owing; or
- We must make application to the LVT for a determination that the breach has occurred; and
- Where the breach involves arrears, that the sum is payable and reasonable;
- After the determination becomes final, you must be allowed a further 14 days in which to resolve the breach or settle the arrears;
- Where, after 14 days you have not resolved the breach, the we may proceed with service of the Section 146 notice. This will require separate determination by the county court.

## COMPLAINTS

If you are unhappy with a service provided by us please let us know; we are committed to providing high quality services and if they fall below the standard you expect, we want the opportunity to put it right.

# APPLICATION TO THE LVT

Both landlords and leaseholders have a right to ask a Leasehold Valuation Tribunal whether a charge, or a proposed charge, is reasonable; however, there is no statutory definition of what is 'reasonable'.

The Tribunal will consider the evidence presented and then make a determination on the matter. An application may be made to the LVT whether or not the charge has already been paid. It can be in respect of costs already incurred for works, services or other charges, or in respect of an estimate or budget. However, if the charges have been agreed by the parties or finally determined by a court or tribunal, or by post-dispute arbitration, no application to an LVT can be made.

**The questions the LVT are likely to ask are:**

1. Was it, or would it be, in the circumstances, reasonable for the costs to be incurred and, if so:

2. Were or will the works or services provided be to a reasonable standard?
3. What are the landlord's procedures for assessing and controlling the costs, including supervision?

The parties may present evidence on any of these matters and question the evidence given by the other party.

**The LVT may also determine:**

- Whether the service charge is payable under the lease;
- By whom and to whom it is payable;
- The date on which it may be payable; and
- The manner of payment (for example, if it may be paid by direct debit or standing order).

## THE LAW

The Landlord and Tenant Act 1985 (as amended) sets out the basic ground rules for service charges, defining what is considered a service charge, setting out requirements for reasonableness and for prior consultation of leaseholders.

**Section 18 (1) of the Act defines a service charge as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent:**

**(1) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's**

**costs of management; and (2) the whole or part of which varies or may vary according to the relevant costs.'**

The items included in (1) above are those required to be reasonable and on which a LVT may make a determination of reasonableness.

# USEFUL CONTACTS

For further advice and information you can contact:

**LEASE** – The Leasehold Advisory Service  
31 Worship Street, London EC2A 2DX  
Tel: **0845 345 1993** or **020 7374 5380**  
Fax: **020 7374 5373**  
Email: **info@lease-advice.org**  
Website: **www.lease-advice.org**

**LEASE** provides free advice and guidance to leaseholders and landlords on all aspects of leasehold law, including problems with service charges, the right to manage, possession proceedings and rights to lease extension and freehold acquisition. **LEASE** is funded by the Department for Communities and Local Government and the Welsh Assembly Government.

**ARMA** – The Association of Residential Managing Agents  
178 Battersea Park Road, London SW11 4ND  
Tel: **020 7978 2607** Fax: **020 7498 6153**  
Email: **info@arma.org.uk**  
Website: **www.arma.org.uk**

**ARMA** is the leading trade body in England and Wales that focuses exclusively on matters relating to the block management of residential property, whether for landlords or resident management companies. Members agree to adopt and comply with the principal objectives of the Association and undertake to follow the codes of practice issued by **ARMA** and the Royal Institution of Chartered Surveyors.

**ARHM** – the Association of Retirement Housing Managers  
Southbank House, Black Prince Road,  
London SE1 7SJ  
Tel: **020 7463 0660** Fax: **020 7463 0661**  
Email: **enquirers@arhm.org**  
Website: **www.arhm.org**

**ARHM** is the leading trade body for managers and landlords of leasehold schemes purpose-built for retired people, whether for landlords or resident management companies. Its members agree to comply with its code of practice for private retirement schemes and to offer leaseholders access to an independent ombudsman scheme.



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as well as in alternative formats on request



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## CONTACT DETAILS

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Hafod Housing Association

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