



# Hazell Carr Pensions Services (HCPS) SSAS

New Loan Guide

**If you require this document in another format for ease of reading, please let us know.**

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### Important Note

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This document is updated regularly. Please ensure you are referring to the latest document by visiting [Xafinity.com](http://Xafinity.com) and/or contacting your SSAS consultant.

## 1. New Loans - Introduction

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### Background

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All loans must satisfy HM Revenue and Customs (HMRC) requirements, which may vary from time to time. To meet these, Hazell Carr Pensions Services (HCPS) and our professional partners have set out what is needed, as detailed in this guide.

Please note that HCPS reserves the right to decline a proposed loan from the SSAS before completion. However, only in extreme circumstances will we not complete a transaction after the completion of the loan documentation.

### Member Trustees' Considerations

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Where a SSAS has members within 10 years of their expected retirement date, the Member Trustees must give serious consideration (and obtain suitable advice) as to whether a loan is suitable. As a guide, the Member Trustees and their advisers should consider: -

- (a) When the members actually intend to retire.
- (b) Whether or not there is/will be sufficient liquidity in the SSAS to fund the members' intended retirement option(s).
- (c) When the members intend to uplift their benefits and purchase an annuity.
- (d) That the loan may need to be repaid early to help fund the payment of a member's benefits (e.g. death/retirement benefits).

To be clear, we are not stating that a loan should not be advanced within 10 years of a member's expected retirement date, but the above points should be fully considered.

### Security

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Loans advanced to a "connected party" on or after 6 April 2006 must be on a secured basis. This security must be in the form of a first legal charge over an asset, valued at an amount at least equal to the value of the loan capital plus all interest payable throughout the term of the loan. This security must be fully in place and registered prior to any loan being advanced. Normally, this asset will be owned by the borrower and cannot be currently owned by the SSAS. The fees and costs associated with the creation of the first legal charge must be met by the Borrower.

It is not a HMRC requirement for loans advanced to an unconnected third party to be secured, but it is prudent for the Member Trustees to do so.

### Our Role

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Our key role is to ensure that any transaction is acceptable to and meets HMRC requirements. In addition, we are here to help co-ordinate the preparation of legal documentation and prepare the loan agreement. At any point, please feel free to contact your SSAS consultant with any questions that you may have.

### Timescales

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It can take up to 2 months to complete a loan from a SSAS. Please ensure that all parties are aware of the likely timescale.

## 2. New Loans – Key Points

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This section outlines the key points to consider when the Member Trustees are looking to advance a loan from an HCPS SSAS.

- If all of the members are not Member Trustees, a loan cannot be advanced to a “sponsoring employer”.
- Under the terms of the Pension Act 1995, before making any investment decision, the Member Trustees must obtain and consider proper advice. This advice must be in writing from someone who is qualified and experienced in both financial matters and pension scheme investments. HCPS does not need to see a copy of this written advice.
- In almost all cases a loan from the SSAS is to a Company that sponsors or participates in the SSAS. These are acceptable “connected party” transactions.
- The SSAS may lend money to unconnected third parties, although this is rare in practice. Where this is to be the case, HMRC do not stipulate the same requirements as they do for loans to a connected party – see [RPSM07103190](#). For further details, please contact your SSAS consultant.
- A SSAS **cannot** transact directly or indirectly with any non-approved schemes or the following “connected parties”: -
  - (a) A scheme member or spouse or relative of a scheme member.
  - (b) A partnership where one of the partners is a scheme member or relative of a scheme member.
  - (c) A Company controlled by any of the parties detailed above in (a) and (b) that does not sponsor or participate in the SSAS.
- The total amount the SSAS can lend is limited to 50% of the net market value of the scheme assets as at the date the loan is advanced.
- Any loan from a HCPS SSAS to a “connected party” must be for a commercial purpose that relates to the day-to-day business activities of the borrower and on the terms detailed below: -
  - (a) For a maximum term of 5 years.
  - (b) Only on a secured basis. This security will involve the creation of Legal Charge (or Standard Security). The security must be a first charge over an asset for an amount that is at least equal to the amount of the loan plus all interest due over the loan term. This security **must** be fully in place and registered before the loan is advanced. Failure to do so will result in an unauthorised payment charge. The security documentation will be prepared by our Solicitors at a cost, please see page 6 for further details.
  - (c) On a fixed interest rate based on the published HMRC rate as at the time of advance. This rate must be at least 1% above the base lending rates of the main High Street banks. This rate is published on the HMRC website at [HMRC Interest Rates](#).
  - (d) Capital and interest is payable by Standing Order monthly in arrears. It is an HCPS requirement for capital and interest to be paid in equal instalments.
  - (e) In respect of commercial property being used as security in England and Wales, HCPS will also take out a Restriction with the Land Registry so that the named property cannot be sold without HCPS’s permission.
  - (f) In respect of commercial property being used as security in Northern Ireland, HCPS will also take out an Inhibition with the Land Registry so that the named property cannot be sold without HCPS’s permission.

- The monthly capital and interest payment is established at the outset of the loan. There is a set calculation as to how this is arrived at. An example is provided below for information purposes: -

The XYZ Ltd SSAS makes a loan of £50,000 to XYZ Ltd (“the Sponsoring Employer”) on 3 January 2009 for a period of 5 years. As at 3 January 2009, the HMRC defined interest rate was 3%. This means that over the 5 years period, the total interest payable by XYZ Ltd is £7,500 (based on £50,000 x 3% x 5).

The “required amount” repayable by XYZ Ltd at the end of the first loan year and subsequent years is: -

$$[(£50,000 + £7,500) / 5] \times 1 = £11,500$$

The monthly payment by Standing Order is £11,500 / 12 = £958.34.

The asset that the security is taken against must be valued at an amount of at least £57,500. This security must be fully in place before the loan is advanced.

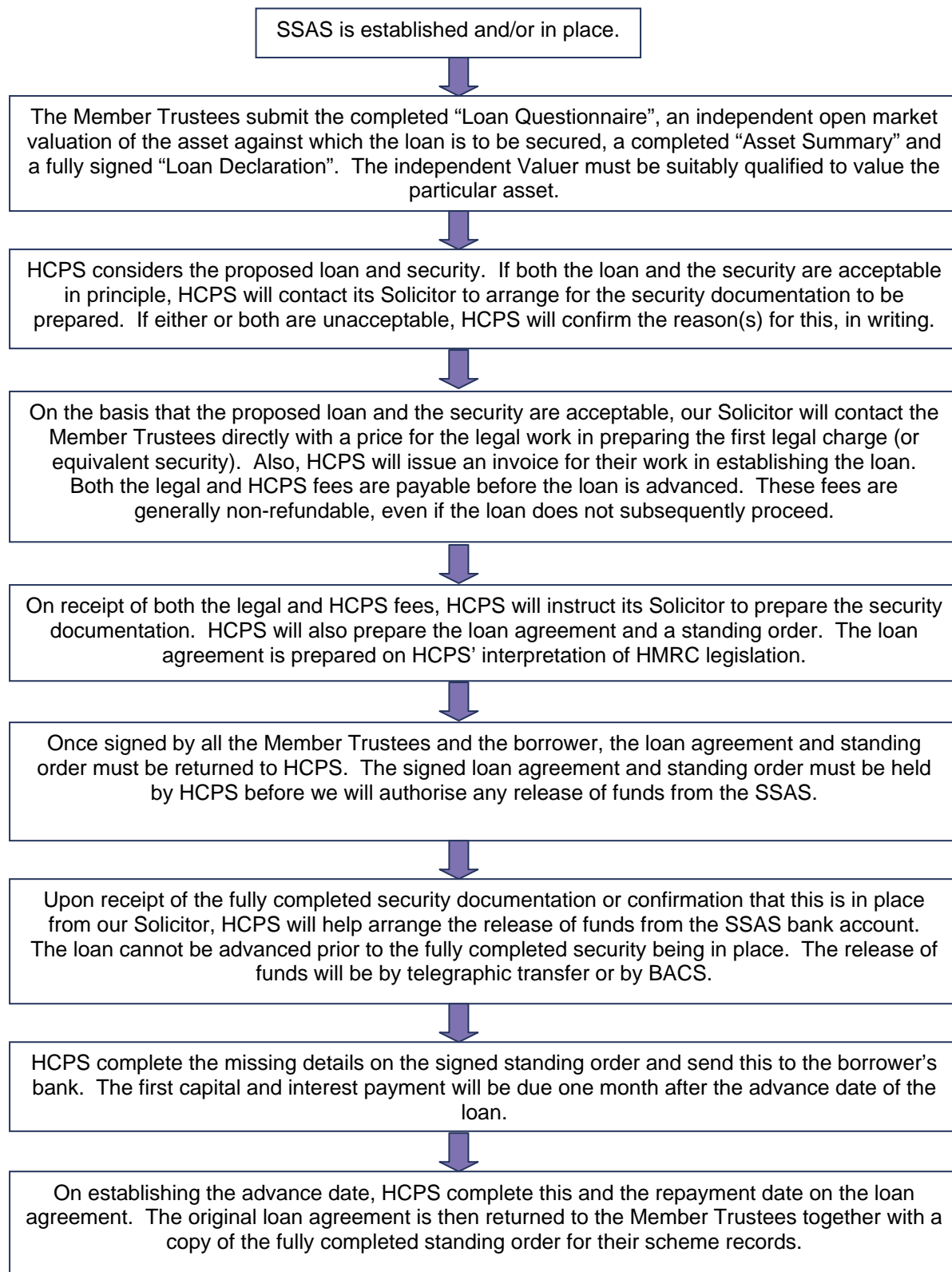
- HCPS will require an independent open market valuation confirming the current market value of the asset that the loan is to be secured against. This must be prepared by an independent firm (or individual) with suitable qualifications to value the particular asset and they must set out the terms of the valuation. This valuation should be no more than 3 months old at the advance date of the loan. Where the asset that is being used as security is a depreciating asset and the use of this asset as security has been agreed by HCPS, the independent open market valuation should also provide the estimated value at the end of the loan term taking into account a commercial depreciation rate.
- Failure to pay capital and interest in accordance with the loan agreement and when due will lead to unauthorised payment charges being levied against the scheme. It is imperative that such charges are avoided.
- The most suitable asset for a SSAS to accept as security is a commercial property that the SSAS is able to place a first Legal Charge over. This means that the particular commercial property cannot have any existing security over it. HCPS will consider other assets as security. In terms of HMRC legislation, plant and machinery (or any other tangible moveable asset) can be used as security for a loan. However, on using such an asset, it is particularly important that the Borrower pays all legal fees and costs associated with the creation of the first legal charge. The SSAS cannot meet these legal fees and costs as by doing so this will lead to a tax charge being payable by the SSAS on the cost of the creation of this first legal charge. For further details, please contact your SSAS consultant.

Where an asset other than commercial property is to be used as security, HCPS reserve the right to charge additional fees on a time-cost basis.

- HCPS’ view on the suitability of an asset for security may differ depending on our role under the SSAS.
- Any loan cannot be for a purpose which could be classed as indirect investment in “Taxable Property” as this would generate unauthorised payments and could lead to scheme de-registration. The only exception is if the property in question is used for the employer’s trade and the member or connected persons do not have the use of it. Further details relating to “Taxable Property” are available from HCPS on request.
- Valuations of any SEDOL related assets held under the scheme (for lending calculation purposes) such as Quoted Shares or Gilts must be provided as the “Statutory Market Value” (SMV).
- Legal fees are fully payable by the borrower. HCPS fees are payable by the SSAS or the Sponsoring Employer.

### 3. New Loan – A Summary

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## 4. HCPS' Solicitors

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### Overview

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Over the years, HCPS have developed links with various companies, which we use to streamline procedures and overall costs.

In relation to legal work, our chosen Solicitors are Bevirs Solicitors in England & Wales, Harper Macleod in Scotland and Shean Dickson Merrick in Northern Ireland. The decision to use these particular Solicitors is based on past experience of using various different Solicitors with varying knowledge of pension legislation.

Our Solicitors will prepare the security documentation. The security must be a first charge over an asset for an amount that is at least the amount of the loan plus all interest due throughout the loan term. The value of the asset must be supported by an independent open market valuation.

Generally, the most suitable asset a loan can be secured against is a commercial property with no existing borrowing. In respect of commercial property situated in England, Wales or Northern Ireland being used as security, our Solicitors will also ensure a restriction or inhibition is put in place with the Land Registry so that the property cannot be sold without HCPS' permission.

Any security documentation will be prepared, where possible, to reflect the need for the borrower to sell the asset should we be required to enforce the legal charge.

Our Solicitors are happy to quote for their fees before carrying out any work, upon request. Their fees are payable in advance by the borrower. The borrower's cheque should be made payable to "Bevirs Solicitors", "Harper Macleod LLP" or "Shean Dickson Merrick" depending on who is carrying out the legal work.

Our Solicitors' details and addresses are shown overleaf.

## Bevirs Solicitors

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For legal work in England and Wales, Bevirs Solicitors will represent the Member Trustees and HCPS. Their contact details are shown below: -

<b>Address:</b>	Sonya Woolnough Bevirs Solicitors 141 High Street Wootton Bassett Wiltshire SN4 7AZ
<b>Website:</b>	<a href="http://www.bevirs.co.uk/">http://www.bevirs.co.uk/</a>
<b>DX:</b>	40350 Wootton Bassett
<b>Telephone:</b>	01793 848900
<b>Fax:</b>	01793 853191
<b>Email:</b>	<a href="mailto:sonya.woolnough@bevirs.co.uk">sonya.woolnough@bevirs.co.uk</a>

## Harper Macleod LLP

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For any legal work in Scotland, Harper Macleod will represent the Member Trustees and HCPS. Their contact details are shown below: -

<b>Address:</b>	Douglas Reid Harper Macleod LLP The Ca'd'oro 45 Gordon Street Glasgow G1 3PE
<b>Website:</b>	<a href="http://www.harpermacleod.co.uk">www.harpermacleod.co.uk</a>
<b>DX:</b>	GW86
<b>Telephone:</b>	0141 221 8888
<b>Fax:</b>	0141 226 4198
<b>Email:</b>	<a href="mailto:douglas.reid@harpermacleod.co.uk">douglas.reid@harpermacleod.co.uk</a>

## Shean Dickson Merrick

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For any legal work in Northern Ireland, Shean Dickson Merrick will represent the Member Trustees and HCPS. Their contact details are shown below: -

<b>Address:</b>	David Moffett Shean Dickson Merrick Solicitors 14-16 High Street Belfast BT1 2BS
<b>Website:</b>	<a href="http://www.shean-dickson-merrick.com">www.shean-dickson-merrick.com</a>
<b>Telephone:</b>	028 9032 6878
<b>Fax:</b>	028 9032 3473
<b>Email:</b>	<a href="mailto:davidm@shean-dickson-merrick.com">davidm@shean-dickson-merrick.com</a>

## 5. Terms, Links & Initial Paperwork

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This section is designed as an aid to explaining various terms that you may run into during a SSAS loan transaction.

### Connected Parties

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Generally in respect of a SSAS this will either be: -

- (a) A member or spouse or relative of a member.
- (b) A partnership where one of the partners is a member or relative of a scheme member.
- (c) The SSAS' Principal Employer.

Where the SSAS is dealing with a connected party, the transaction must be "arms length". This is an HMRC requirement. As an example of this, any outstanding loan capital and interest must be pursued by Member Trustees, even if the borrower is their Company. The full definition is available at: - <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM07102130.htm>.

### Legal Charge

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A legal charge is a formal document that gives a lender certain rights over the property/land/asset in return for the loan. Basically, it allows them certain repossession rights if the terms of the loan are not met. Where the legal charge is over property/land, this will be registered at the Land Registry by the lender to show the interest they hold over the property/land.

### Lending Limits – HMRC Definition

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The formal definition of approvable limits can be found at: -

<http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm07103120.htm>

### Loan Repayment Terms – HMRC Definition

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The formal definition of approvable terms can be found at: -

<http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm07103140.htm>

### Loan Interest Rate – HMRC Definition

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The formal definition can be found at: -

<http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm07103080.htm>

### Taxable Property – HMRC Definition

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The formal definition can be found at: -

<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM07109010.htm>

## Loan Questionnaire

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This questionnaire has been designed to give HCPS the minimum information we'll need to consider a proposed loan. All parts the questionnaire **must** be answered. Blanks or "to follow" are not acceptable.

<b>(a) Please provide the name and registered office address of proposed borrower.</b>	
<b>(b) Does the proposed borrower sponsor or participate in the SSAS. If not, what is the connection (if any) between the pension fund and the proposed borrower? If there is no connection at all, what led to the proposed unconnected borrower approaching the Member Trustees for a loan?</b>	
<b>(c) Proposed loan amount and loan purpose.</b>	
<b>(d) Proposed loan term. This should be in full years and for no more than 5 years.</b>	
<b>(e) Proposed fixed loan interest rate. Normally this will be "Minimum HMRC rate".</b>	
<b>(f) Please detail the asset that is to be offered as suitable security for the loan. Please confirm who currently owns this and its current open market valuation. HCPS will require a copy of the independently prepared valuation supporting the value completed below.</b>	<p><b>Asset:</b></p> <p><b>Current Asset Owner:</b></p> <p><b>Value &amp; Valuation Date:</b></p>
<b>(g) As the security on any loan from the SSAS must be in the form of a first legal charge, please confirm that there are no existing legal charges held over the asset detailed in (f) above. If there are, how are the SSAS security requirements going to be met?</b>	
<b>(h) Are existing scheme assets purely funding the loan or is a new contribution, transfer-in and/or SSAS borrowing being used to help fund it? Please detail.</b>	

## Loan Questionnaire

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(i) When is the proposed borrower looking for the loan to be advanced by? Please remember that it can take up to 2 months to finalise a loan.

(j) Please provide the bank details below for the borrower's bank account that will be used to pay the monthly loan capital and interest. These details will be shown in the standing order that HCPS will produce for the borrower to sign.

Bank Name & Address:

Bank Account Name:

Sort Code:

Bank Account Number:

## Important Notes

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1. This form **must** be fully completed after reading the "HCPS SSAS – New Loan Guide".
2. When returning this questionnaire, please provide a copy of an independent valuation of the asset to be used for the loan security.
3. In addition to points 1 and 2, you **must** also complete and return the "Asset Summary" and a fully signed "Loan Declaration" which are overleaf.
4. Once fully signed on behalf of the borrower, the standing order that is produced with the information provided in (j) will be sent directly to the borrower's bank on the loan being advanced.
5. Please refer to the "Terms & Links" within "HCPS SSAS – New Loan Guide" to ensure that you are familiar with key terms.
6. No SSAS loan should be considered without professional written financial advice.
7. The SSAS Member Trustees and HCPS will be represented by Bevirs Solicitors (in England & Wales), Harper Macleod (in Scotland) and Shean Dickson Merrick (in Northern Ireland).



**Loan Declaration**

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**(“the Scheme”)**

I/We the undersigned hereby declare: -

- 1. That all relevant information has been provided and it is true and correct to the best of our knowledge.
- 2. Where fees are not met within 30 days of request, we hereby authorise Hazell Carr Pensions Services (HCPS) to meet any legal fees and HCPS fees from the scheme funds.
- 3. That HCPS shall not be responsible for any fees or charges that are levied as a result of any loan or proposed loan from the Scheme.
- 4. Any loan from the scheme, which would be classed as indirect investment in Taxable Property, will be used for the sole purpose of the borrower’s trade and no member or connected persons will have the use of it.
- 5. Where security is on an asset that is classed as “tangible moveable property” in terms of HMRC legislation, we understand that there is a tax charge on the cost of the creation of the first legal charge (i.e. the legal costs) and that this will be payable by the Scheme.

Please sign on the dotted line and print your name where indicated. All member Trustees must sign this Declaration.

Date .....

Signature: .....	Signature: .....
Print Name: .....	Print Name: .....
Signature: .....	Signature: .....
Print Name: .....	Print Name: .....
Signature: .....	Signature: .....
Print Name: .....	Print Name: .....

## Contacting HCPS

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Xafinity  
Scotia House  
Castle Business Park  
Stirling  
FK9 4TZ

[www.xafinity.com](http://www.xafinity.com)

Tel: 01786 434250

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