

Home Detention Curfew

SELF HELP TOOLKIT

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PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

Home Detention Curfew

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What is Home Detention Curfew (HDC)?

Home Detention Curfew (HDC) is often called 'tagging'. It is a scheme by which a prisoner can be released 'early' subject to an electronically monitored curfew.

If you are released on HDC, you will be required to wear an electronic tag, normally around your ankle. This emits an electronic signal, which is monitored by a private company contracted by the Her Majesty's Prison and Probation Service (HMPPS) to ensure you do not breach the curfew.

Detailed guidance on HDC was set out in 2000 in Prison Service Order (PSO) 6700. This is still in force but has been amended many times to reflect various changes to the legal framework, eligibility criteria and other elements of the scheme.

HDC was first introduced in 1999 (under an amendment to the Criminal Justice Act 1991 contained in the Crime and Disorder Act 1998). These provisions were replaced by similar ones under the Criminal Justice Act 2003. Most recently the legal framework for the scheme was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The main Prison Service Instructions (PSIs) which contain guidance on HDC are PSIs 31/2003, 31/2006, 43/2012 and 01/2018. National Offender Management Service (NOMS) plans to consolidate all this various guidance into a new, single instruction at some point. Unfortunately this has not yet happened so you may have to look at various different documents in order to get the full picture.

Am I eligible for HDC?

Not everyone is eligible for HDC. Whether you are eligible or not will depend on a number of factors including the length of your sentence, the offence(s) for which you are in prison, any previous offences or your behaviour both on this sentence or any previous sentences. You do not need to apply to have your eligibility for HDC assessed. The prison should do this automatically.

Who cannot get HDC?

Some groups of prisoners are ruled out of the system altogether and are **ineligible** to apply. Other prisoners will be **'presumed unsuitable'** (see below).

You will be ineligible for HDC if you are sentenced to 4 years or over. It does not matter what your individual circumstances are. This is the case whether your four year term is a single sentence or is made up of a number of shorter sentences.

You will also be ineligible if you:

- have been convicted of a violent or sex offence and currently serving an extended sentence
- are a sex offender required to register
- are currently liable to removal from the UK
- are subject to a hospital order, hospital direction or transfer direction under the Mental Health Act 1983 s37, s45A or s47
- have ever been recalled from HDC (except in the case of a successful appeal)
- have ever been 'returned' to prison under s40 CJA 1991 or s116 of the Powers of Criminal Courts (Sentencing) Act 2000
- are serving a sentence for failing to return to custody following temporary release
- are currently serving a recall from early release on compassionate grounds
- have failed to comply with a curfew order

In addition, you will also be ineligible if your remaining sentence is so short that even if you were granted HDC, the period you would spend on tag would be less than 10 days.

I am eligible - but is my application going to be 'presumed unsuitable'?

If you are convicted of certain offences, you will be 'presumed unsuitable'. This means an application for HDC will not be granted unless there are 'exceptional circumstances'.

It is important to note that these are 'categories' of offence so there will be a number of offences that come within each of the categories.

You will be presumed unsuitable if you are currently serving a sentence of imprisonment for any of the following:

- Homicide (including death by reckless, dangerous or careless driving, aggravated vehicle-taking resulting in death)
- Explosives related charges
- Terrorism
- Possession of offensive weapons
- Possession of firearms with intent
- Cruelty to Children
- Offences aggravated on the grounds of race, religion or sexual orientation

Also presumed unsuitable is:

- anyone with a history of sexual offending but not currently required to register (this includes current offences where the registration threshold has not been met)
- anyone on standard or fixed term recall during the HDC period
- anyone who has been recalled during a previous period of HDC for reasons not linked to curfew breach

Recall is ignored for the purposes of determining HDC eligibility if you are on standard recall not during the HDC period.

The presumption of unsuitability is very difficult to overturn; it is hard to demonstrate that 'exceptional circumstances' apply. Each case must be considered on its own merits but there are only very limited grounds for claiming your case is exceptional. Essentially it will only be where:

- it is believed that the likelihood of you re-offending whilst on HDC is extremely small and;
- you have no previous convictions and;
- you are considered infirm either because of disability or age.

If none of the above applies will I get HDC?

The assumption is that if you are neither ineligible nor presumed unsuitable, you will be approved for HDC. However, there are cases where it will be refused after the risk assessment is conducted.

HDC will be refused if any of the 'Exceptional Reasons for Refusal' criteria apply. These reasons must fall under one of these headings:

- (i) unacceptable risk to the victim or to members of the public
- (ii) a pattern of offending indicating likelihood of re-offending during the HDC period
- (iii) likelihood of failure to comply with the conditions of the curfew
- (iv) lack of suitable accommodation
- (v) shortness of the potential curfew

If any of the above applies it does not mean you will not be granted HDC. It means that rather than being presumed eligible when you apply, you will have to go through the full risk assessment process (see below).

How do I apply for HDC?

For prisoners serving sentences of 12 weeks or over but less than 4 years' imprisonment, eligibility and suitability for HDC will be considered automatically by the prison and you do not need to apply. Usually, the HDC eligibility date will be your release date unless you are ineligible or presumed unsuitable.

Your release date and HDC eligibility should be calculated within five working days of reception and the prison should inform you of this in writing using the HDC Eligibility Notification Forms. You should then receive a Proposed Address Form at least 10 weeks before your HDC eligibility date, or sooner if you are serving a very short sentence. This allows you to nominate a proposed address for release. You may also opt out of the HDC process at this point and will need to give a reason as to why you do not want HDC if this is the case.

If you have not been invited to submit a suitable address when there is less than **10 weeks to go** before your HDCED, you should make enquiries of your offender supervisor. Otherwise your application may not be completed before your HDCED and your release might be delayed.

PSI 01/2018 notes that although the aim is to complete the process before the HDC eligibility date, this is not always possible and in some cases, the process will start after the eligibility date.

A risk assessment and address checks will then be completed and a decision will be made about whether any exceptional reasons exist to refuse your HDC. If not, HDC will be granted.

According to the guidance in PSO 6700, if you meet the eligibility criteria, then preparation for HDC should be built into your sentence planning, categorisation reviews and other processes within the prison:

'All prisoners who appear to have a reasonable prospect of passing the risk assessment must be encouraged to focus on working towards their release on HDC. In particular, prisoners must be informed that they will need suitable accommodation which will have to be approved by the Probation Service to which to be curfewed and encouraged to locate such accommodation, if they do not have such an address.'

PSI 01/2018 contains the following useful time-table:

Timing	Action
5 days after sentence calculation	Identify HDC eligibility and presumed unsuitability. Notify offender using HDC Eligibility Notification Forms Provide copy to responsible officer and the Through The Gate (TTG) provider in the prison.
Thirteen weeks before HDC Eligibility Date	In relevant cases, case admin submits HDC-FNP to Home Office Immigration Enforcement (HOIE) - requiring return within 20 business days - to establish current immigration status and HOIE intentions on removal and detention
Ten weeks before HDCED	Offender given and supported to complete Proposed Address Form, providing details of their proposed release address or opt out notification.
Nine weeks before HDCED	Case Admin completes Part 1 of Address Checks form and invites responsible officer to complete part 2 within 10 business days.
Seven weeks prior to HDCED	Responsible officer returns completed Address Checks form, confirming informed occupier consent and electricity supply, reporting instructions, details of contact in victim contact service cases, and any non-standard licence conditions and outstanding risk management plan actions.
Five weeks prior to HDCED	Assessment and decision form completed. Decision-maker considers whether there are exceptional reasons to refuse HDC, and then decides whether or not to release on HDC.
Three weeks prior to HDCED	If necessary, case admin checks with responsible officer about outstanding risk management plan actions
Two weeks prior to HDCED	Offender, responsible officer, police and the Electronic Monitoring Contractor to be informed of decision on HDC
Day of release (on or as soon after HDCED as possible)	Copy of the licence to be sent to responsible officer, police and the Electronic Monitoring Contractor

How should I prepare so that I have the best chance of getting HDC?

If you have worked out that you are eligible for HDC and you think that you are likely to pass the risk assessment (see below), you should try to work out where you can stay or put in an application to see someone to discuss this. You will also need to note on form HDC2 who else might be living at the

address. You should also collect together any information (for example certificates from courses you have done) which you might need to submit in support of your application.

How do I know if my release address is 'suitable'?

The basic initial requirement for a release address is that it is technically suitable for the installation of the electronic tagging equipment. This means that a property without a fixed or metered electricity supply would not be suitable. The monitoring equipment will usually operate via the mobile cellular network. It will only need a dedicated telephone line to be fitted if the mobile signal at the address is poor.

The next step will be for your offender manager (your outside probation officer) to assess the suitability of the proposed release address. S/he will either be from the National Probation Service (NPS) or from the local Community Rehabilitation Company (CRC). They must decide whether they think that the address is suitable taking into account a number of other factors. This will include considering whether, if you are released to that address, the risk you would pose to the public (including those living at or in the vicinity of the address) would be unacceptable. They will also have to assess whether releasing you there will pose an unacceptable risk of you reoffending or would suggest a probability that you would fail to comply with the conditions of curfew at that address.

If at any stage of the assessment, the proposed release address is considered unsuitable, you should generally be asked to provide an alternative one. This may hold up the process, so you should try to be aware of any possible issues in advance and either not suggest an address that is likely to be rejected, or have an alternative ready in case there is a problem.

Your address must be confirmed as suitable by both probation and the prison at least two working days prior to your release to it, in order to allow time for the licence to be drawn up and the contractors to install the equipment.

What happens if I am suitable for HDC but don't have an address?

If you do not have an address which has been considered suitable (or if, after release, you can no longer stay at an address to which you have been released on HDC) you can apply for accommodation to be provided via the Bail Accommodation and Support Service (BASS). This is an organisation run by a housing provider, Stonham, by arrangement with Her Majesty's Prison and Probation Service.

BASS accommodation consists of shared flats or houses, in which you have your own bedroom; furniture and bedding are provided and on arrival you will be provided with food for the first day, toiletries and a basic pay-as-you-go

phone. Fuller details of this scheme are set out in PSI 25/2013, which contains the BASS Service Specification.

How does the risk assessment process work?

All prisoners, who are eligible for HDC, must be assessed unless they are presumed unsuitable (and there are no exceptional circumstances), or are Category A, or the time remaining until the half way point of sentence is insufficient to enable a risk assessment to be undertaken and a curfew of at least 10 days to be imposed.

The risk assessment works on the basis that prisoners who are eligible and who are not presumed unsuitable will normally be released on HDC unless there are substantive reasons for keeping them in custody. PSO 6700 says such reasons must fall under one of these five headings:

- (i) unacceptable risk to the victim or to members of the public;
- (ii) a pattern of offending indicating likelihood of re-offending during the HDC period;
- (iii) likelihood of failure to comply with the conditions of the curfew;
- (iv) lack of suitable accommodation;
- (v) shortness of the potential curfew.

There are two types of HDC risk assessment: the standard suitability assessment, which is applied to all eligible prisoners and the enhanced assessment, which is applied to prisoners who:

- (i) Are serving over one year and do not have a successful record of temporary release during their current sentence;
- OR
- (ii) Are scored as high risk on the risk predictor scores for violent or sex offences or for risk of reimprisonment;
- OR
- (iii) Are judged in the suitability assessment to require further consideration.

The standard suitability assessment

This is designed to identify prisoners who are considered 'least likely to present an immediate risk to the public'. It should be done by a member of the Offender Management Unit (OMU), although other suitably experienced members of staff can be authorised to do assessment.

A member of staff, who has daily contact with you, such as an officer from your wing, will complete the assessment using the appropriate form. The OMU worker (or other person), who is doing the assessment, will then consider whether there are any immediately obvious issues which need further scrutiny by the prison or require input from outside probation. If you have mental health needs, healthcare staff may also be consulted at this stage.

If it is apparent to the prison staff on the initial scrutiny that you are not suitable for HDC – for example, due to multiple, recent breaches of orders, bail etc. – the assessment may be completed without the home probation service being consulted at all. If you think that a decision to do this has been made unfairly, you can 'appeal' (see below).

Otherwise your application will be forwarded to your probation officer in the relevant NPS or CRC office outside to ask if they have any comments on your suitability for release on HDC. In London contact between prisons and the NPS/CRC offices in individual areas goes via the '**Single Point of Contact (SPOC)**'. While designed to simplify and streamline the process, like many other stages in the HDC process this can have the effect of holding up consideration of your case. If you are already in touch with your NPS/CRC worker it is worth checking whether they have received the referral or not. If they have not, you should check if the prison has sent it. It is not possible to check with the SPOC.

The next step is a 'home visit' to the proposed address by your probation officer (unless s/he considers it not to be necessary).

Once that is done, the OMU worker in the prison will complete the form and summarise your suitability for HDC, based on:

- a review of the available core documentation from your prison file and initial categorisation form;
- the report from the member of prison staff who filled in the first part of the form;
- comments from the probation service/CRC;
- a risk prediction score based on your current and previous criminal offences

They will then either recommend that you are suitable for release on HDC, without further inquiry or refer you for enhanced assessment.

If there is a recommendation to release at this stage, the application will be signed off by a Governor or other suitably qualified person. [PSI 53/2004]

Enhanced assessment and review boards

Enhanced assessment involves your case being considered by a review board. In prisons where a lot of prisoners are released on HDC, such boards are timetabled for a regular weekly slot; in others they are convened on a more *ad hoc* basis.

The board will consider your application. It will have a copy of the necessary background information. These boards used to be made up of a Governor grade and a seconded probation officer. Now they are made up of various different staff members, who have delegated authority from the Governor on the basis that they are competent to:

- chair a risk assessment board (if that is the particular role);
- understand the relevant policy and procedure in detail;
- make a reasoned recommendation based upon the evidence presented.

When considering the form and core documents, the board must note in particular:

- previous criminal history and any evidence as to the causes of offending behaviour;
- participation in and response to offending behaviour work in prison;
- response to any periods of release on temporary licence;
- relevant behaviour in prison, for example disciplinary offences;
- any known external factors which may affect likelihood of re-offending;
- home circumstances and stability of close relationships.

PSO 6700 says that the risk assessment must:

'balance any risk to the public presented by the bringing forward of the release date against the potential benefits of incorporating a period of Home Detention Curfew within the prisoner's sentence'.

This means that a decision is made on the basis that it is not possible to ensure that you do not represent any risk at all of reoffending during your HDC period, but that the board has decided that the risk is manageable.

Once a decision has been made, the chair of the board must record it on form HDC4 together with the basis for the board's conclusions. If an authorised Governor has sat on the HDC board, s/he may then confirm the decision. If the person chairing the board is not authorised to confirm the decision, s/he must refer the decision to an authorised Governor for confirmation of the decision.

The actual decision whether to release a prisoner on Home Detention Curfew must be taken by an authorised Governor on behalf of the Secretary of State. The Governor (or in private prisons the controller) is authorised to take this decision on behalf of the Secretary of State. The governing Governor may however delegate the task to a Governor of Band 7 or 8 Level or above.

What happens if I move prison?

You should not be transferred whilst an HDC assessment is underway. However, in practice this does happen reasonably often.

If you are transferred during the assessment process, the relevant papers must be transferred immediately and the new establishment must continue the assessment immediately. Assessments and reports already completed should normally not be recommissioned (for instance no further report by the new wing officer should normally be required if the assessment already contains a report by the previous wing officer). And if an enhanced assessment has already been recommended, this should go ahead on the basis of existing papers.

If the assessment has already been completed the new prison should not normally overturn this decision unless new information has come to light or you were transferred on disciplinary grounds which have a bearing on your suitability.

Although the paperwork in such a case will have been compiled mainly in the prison you have come from, it is still the Governor of the prison from which you are actually in who has the responsibility for authorising your release on behalf of the Secretary of State.

Can I submit representations to the review board and what should I write in them?

You have a right to submit representations in support of your application but you do not have to. You need to bear in mind the balancing test the board will make. Where it is clear what the 'risk factors' in your case are (for example, drug use), you should list any courses you have done to address this, or provide any other evidence, such as proof of negative Mandatory Drug Tests (MDTs) or Voluntary Drug Tests (VDTs). Then, you should list the benefits that will be achieved if you are released on HDC, such as you being able to work or attend college. Although the board should have most of this information already, this is not 100% guaranteed and there have been many instances of boards making wrong decisions having insufficient or wrong information in front of them.

If you have a good custodial record, have maintained your Enhanced privilege level and have avoided getting many or any adjudications, you should point this out, and provide any relevant detail. However, this in itself does not guarantee your release, as the risks which the board will be considering in the community may, as the guidance says, 'bear no relation to the risk that the prisoner might present to... family or general public'.

If you want to tailor your representations directly to the factors which the board will be considering, you can write subheadings and set out why you:

- do not present an unacceptable risk to any previous victim or to members of the general public;
- do not have a pattern of offending which indicates a likelihood of re-offending during the HDC period;
- are not likely to fail to comply with the conditions of the curfew;
- have a good and suitable address for release.

If you have successfully complied with HDC before or been tagged pre-sentence or on bail, been subject to a curfew or a community order or any other arrangement involving reporting or monitoring, it is worth pointing this out, as this will greatly assist in making out the case that you are trustworthy and can be released without undue risk.

If you have breached such orders in the past and there are mitigating circumstances, such as the breach was a long time ago or related specifically to a type of behaviour, such as alcohol abuse, which you can show you have put behind you, it is worth setting this out.

Obviously, the more such breaches you have, the more difficult it is to make out your case. The same applies to multiple past offences. The PSO says: 'if the offender's past history and current circumstances are such that, even given the constraints of the curfew, there is a clear **probability** that he or she

will return to offending within the period they are on Home Detention Curfew, then release must be refused’.

How long can I get HDC for?

The maximum HDC period is currently 135 days (4½ months). It was originally 60 days. It was then increased first to 90, then in 2003 to 135 days. There have been rumours within the prison system that the tagging period will be extended to six or nine months or that the scheme will be extended from prisoners serving less than four years to those serving up to six, or some other formulation. However, we are not currently aware of any intention on the government’s part to increase either the number of days for which you can get HDC or the length of sentence to which it can be applied.

You must serve at least a quarter of your sentence before being released on HDC and cannot be released until you have served at least 28 days. The table below gives more detail on this:

<i>Sentence Length</i>	<i>Requisite Period to be Served before HDC Eligibility Date</i>
12 weeks or more but less than 16 weeks	28 days
16 weeks or more but less than 18 months	One quarter of the sentence
18 months or more but less than 4 years	One quarter of the sentence, plus whatever is left until 135 days before the half-way point of the sentence.

Although you cannot be released on HDC before your HDC Eligibility Date (HDCED), it is very common for prisoners who are granted HDC to be released later than that date – sometimes by weeks or even months, due to remand or delays in the assessment process. This can be very frustrating. However, other than chasing up the HDC clerk and any other people who are involved, such as your probation officer, there is probably little you can do about this as the courts have recognised that, provided the delays are reasonable, NOMS will have discharged its duty.

That said, in very specific circumstances where the prison’s errors have resulted in HDC release being delayed, you may have redress. In the case of *McCreaner v MOJ* [2014] a former prisoner was granted damages for the six weeks he was detained after he should have been released on HDC, on the basis that the prison had been negligent in failing to give his application the priority the policy demanded.

What happens if I am granted HDC?

You will be notified that you have been granted HDC. The prison will then notify the contractor within 14 days of your HDCED that they need to be prepared to go to your address to install the equipment and meet you there to fit your tag. However it is accepted that this is very often not possible. In any case, there needs to be a minimum of 24 hours' notice.

You will then be released on a standard HDC licence, which you will have to sign to say you accept the terms set out in it. **A copy of a licence is included on page 17 at the back of this pack.** You will be fitted with an electronic tag and subject to a curfew whereby you need to remain in your home, usually for 12 hours a day, from 7pm to 7am. In specific circumstances, such as work arrangements, the hours can be varied. However, the curfew period should not fall below 9 hours per day, other than on the first day of release.

Occasional variations can also be made for specific events. Some such variations can be authorised by the contractor but others, together with any general changes either to the hours or the address need to be authorised by the Governor of the prison you were released from.

If an employer wants you to work hours that conflict with your curfew (and remember travelling time) ask them to put the request in writing and tell them that you will need to rearrange things first and this may take some time. Then ask your offender manager and the prison to consider the request as a priority. It is **absolutely essential** that you wait to get the curfew hours on your licence varied by the Governor before working the new hours. If you don't, you may end up recalled to prison even if you were working (see below).

What happens if I am refused HDC? Can I appeal?

There is no specific appeals procedure. However you can 'appeal' via the complaints system, up to the Prisons and Probation Ombudsman. At all stages of the process, the appeal must be treated as urgent.

For your appeal you are entitled to the reasons for the refusal and copies of all relevant reports.

What if I am a foreign national prisoner (FNP)?

Foreign national prisoners are not eligible if they:

- are liable to deportation under section 3(5) of the Immigration Act 1971 and have been notified of a decision to make a deportation order;
- have a court recommendation for deportation;
- have been notified of a decision to refuse leave to enter the UK;

- are an illegal entrant within the meaning of section 33 of the Immigration Act 1971; or
- are liable to removal under section 10 of the Immigration and Asylum Act 1999.

If you have been notified of liability for deportation but there has not yet been a decision to deport, any application for HDC must still be considered although you will be presumed unsuitable unless there are exceptional circumstances justifying release. For example this might be where the Home Office has confirmed that deportation is unlikely to take place in the foreseeable future and they do not intend to detain you on release from prison.

In practice it is extremely difficult for anyone who is not a British citizen to get released on HDC. This is because the checks which the immigration authorities do on prisoners are frequently not completed until just before the half-way release point, which is, of course, after your HDCED.

What if I am subject to a Confiscation Order?

If you have been given a default sentence as a result of a Confiscation Order you will be ineligible for HDC once you are serving that default term. However there are some circumstances when you can still get HDC on your main sentence. Please refer to the PAS Information Sheet on Confiscation Orders.

Can I get legal representation or advice? Is legal aid available?

Unfortunately, since the cuts to legal aid in December 2013, there is very limited provision for legal aid to fund legal advice or representation in prison law. Although Legal Aid has since been restored to some areas of prison law, it will not cover HDC applications or reviews. Unless you either pay a legal representative or find one who will assist you for free, you will have to do any work in the run-up to your HDC application yourself. There are some law firms that will do such cases for relatively low fees.

The same also applies in most cases to appeals against HDC refusal. Although in some very specific and limited situations, legal aid might be available under the Legal Help scheme, or through the issuing of a legal aid certificate to investigate the merits of judicial review.

What happens if I breach my curfew or licence?

Once you have been released on HDC, if you breach your licence it may be revoked and if it is, you will be recalled to prison. This can happen either on the grounds of a breach of the curfew condition itself (under section 255(1)(a) of the Criminal Justice Act 2003) or because of a more general licence breach, of the type which would be likely to see you recalled to prison from a licence which did not involve electronic tagging (under section 254 of the same Act).

You can submit an appeal against curfew breach and should be given an appeals pack by the prison shortly after recall. If your appeal is successful you will be released back on to your tag; if not, you will remain in custody until the half-way point of the sentence (i.e. the point you would have been released if you had not been granted HDC).

If you are recalled purely because you could no longer be monitored at your approved address through no fault of your own, you can be re-released to a new address without appealing. So, although you may appeal it will generally be much quicker to work to get a new address cleared. Once it is, you can be re-released on HDC. If you are recalled under section 254, there are two types of recall:

Fixed Term Recall

You will be released after 28 days (14 days for sentences under 12 months), either back onto HDC if there is sufficient time and you have a suitable address, or under the licence which relates to the remainder of your supervision period.

Standard Recall

You will remain in custody until the end of your sentence (SED) unless you successfully appeal against your recall or the Parole Board or Secretary of State directs that you should be released on licence prior to that point.

Table of revised forms used in the HDC process

The forms on in the left-hand side of the table below replace the forms used in the HDC Assessment Process prior to January 2018:

HDC Notification of Eligibility HDC Notification of Ineligibility/Presumed Unsuitability/Insufficient Time	Replaces the HDC9
HDC Proposed Address	Replaces the HDC 2
HDC Address Checks	Replaces the HDC 3, HDC 3A, HDC 3B and the PD1 (where used in an HDC Release)
HDC Assessment and Decision	Replaces the HDC 1, HDC 1A and HDC 4
HDC Refuse/Postpone Notification	Replaces the HDC 6

PRISONERS' ADVICE SERVICE PO BOX 46199 LONDON EC1M 4XA
 TEL: 020 7253 3323 / 0845 430 8923
 (Mondays - Wednesdays - Fridays 10.00 - 1.00 p.m. and 2.00 - 5.00 p.m.)

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