



# MISSING SHARE SCHEME – Guidance Note



Our Missing Share Scheme is there to help property owners who are having problems getting other owners to pay their share of repair costs to common areas of a tenement or block of flats. This can hold up much needed repairs. Depending on the circumstances, the Council can choose to pay a missing share on behalf of an owner and recover the contribution. This means that owners can get on with their repairs.

This guidance note provides information on:

- what a missing share is.
- how our Missing Share Scheme works.
- when you can apply for a missing share.
- how to apply for a missing share.

## What is a Missing Share?

- A missing share refers to the portion of maintenance costs that an owner is responsible for but has not paid; either because they are unwilling, unable, or cannot be located. In such cases, the Housing (Scotland) Act 2006 allows the Council to consider paying the missing share to ensure essential repairs can proceed.
- Payment is at the Council's discretion and will be subject to criteria including the extent and scale of disrepair and available resources.
- A missing share is only paid for common repairs i.e. where title deeds show that the owners of two or more properties are responsible for repairs to the common parts of the block e.g. four in a block of flats or tenement flats.
- A majority of owners must agree to the work being carried out and must show that certain procedures for agreeing to and paying for works have been followed before an application for a missing share can be submitted to the Council. This will usually be in accordance with the title deeds for the property, or the Tenement (Scotland) Act 2004 in circumstances where the title deeds are inconsistent or incomplete. Please see our Organising Repairs and Maintenance guidance note for further advice.



## What are the conditions for applying for a missing share payment?

It is important that owners can show that they have followed a set of procedures before the Council will consider their application. Owners will need to:

- show that the maintenance being carried out is reasonable.
- show that a scheme decision has been taken and all owners have been notified.
- show that each owner is being asked to pay their correct share of the costs.
- open a 'maintenance account', that is, a bank account set up to hold owners' funds which are used to pay for any common repair and maintenance costs. The maintenance account should be interest bearing. The account should be set up by either the property manager (factor) or at least two other people to authorise transactions on behalf of the other owners.
- nominate a person to write to all the owners advising them that they have to deposit their share of the cost of work into the maintenance account. This process is referred to as serving a Section 50 Notice. You'll find more details on what to include below.
- show that an owner hasn't paid their share of repair costs into the maintenance account by the deadline provided.

## What to include in your written notice to owners

As mentioned above, the Council can only consider an application for a missing share if it is satisfied that all owners have been provided with a Section 50 notice. This written notice must include:

- the maintenance which is needed.
- when the works are to be started and finished.
- when the maintenance was required and/or agreed (including the names of those who agreed it).
- an estimated cost of the work and why this is considered reasonable.
- what the full share of the costs are for each owner, with an explanation of how this amount is reached.
- evidence of the maintenance account, including details of where it is held.
- the date for owners to pay their share into the maintenance account.

An owner or person nominated by the owners must prepare and issue their Section 50 notice. A template is available to help with preparation of this notice; please contact us for a copy. The Council cannot carry out this step for owners.



## How to make a Missing Share Scheme application

- We recommend contacting us at the early stages of the repairs process. This allows you to make full use of the support available and ensures all scheme requirements are met; helping to avoid delays later on and, in some cases, removing the need for an application. If you'd like advice or wish to discuss a potential application, please get in touch.
- Complete an application form. Your nominated person should contact us to request a copy.
- Provide the following documentation:
  - **Contractor quotes** - Copies of at least two quotes for the proposed work.
  - **Title documents** - A copy of the title document(s) which confirm the apportionment of costs.
  - **Maintenance account statement** - A copy of the building's maintenance account statement which evidences the missing share(s). The Council will only consider an application for missing shares where at least 51% of owners have paid their share of the costs into the maintenance account.
  - **Evidence of scheme decision** - A copy of meeting minutes, voting forms etc. showing the majority voted in favour of the work.
  - **Section 50 Notice** - A copy of the notice sent to the missing share owner(s).
  - **Section 50 Notice proof of service** - Proof of posting or copy of email.

### Please note:

- Applications will not be considered if repair works have already started.
- The minimum missing share which can be applied for is £500 per share and the maximum is £25,000 per share.
- The Council will take no ownership or responsibility for organising or supervising any maintenance work, even when a missing share has been paid towards it. This will remain a civil matter between the joint owners and the companies who carry out the work.

## What happens after you apply?

- Once we receive a Missing Share Scheme application, we will contact any owner who has not paid into the account.
- Owners who have not paid may be asked to provide details of their financial situation before the Council will make a decision on whether to contribute a missing share or not.
- Owners who have not paid will also be advised of how the Council recovers the missing share along with fees that apply and interest.
- If a missing share has to be paid on a property owned by a landlord their status as a fit and proper landlord may be affected.
- If the application is approved, we will confirm this in writing to the owners prior to the works commencing. Upon satisfactory completion of the works and the submission of an appropriate invoice for payment, we will pay the missing share into the existing joint maintenance account.



## How do we recover the missing share?

- If the Council chooses to pay a missing share on behalf of an owner, the contribution made will be recovered through the Council's debt recovery policy and may result in a Repayment Charge being placed on the title of the property owned by the non-paying owner.
- The Council will recover all costs associated with the missing share payment and will apply an additional 15% fee on top of the amount to cover administrative, legal and professional costs. Interest may also apply.
- The Repayment Charge will remain on the property title, and the debt will be recovered on resale or transfer of the property if this is not paid by the owner in full before then.

## What if we can't pay a missing share?

- There is no obligation for the Council to pay a missing share, and we will only consider applications subject to resources and Council priorities.
- If the Council does not contribute a missing share, owners may still want to progress with works by covering the missing share between them and recovering their contribution from the owner.
- Owners can get further advice on how to do this from Citizens Advice Scotland, their solicitor, or the Council's Scheme of Assistance service. They may also be able to provide more advice on:
  - how to complete the process of issuing a Section 50 notice and applying to the Council for any missing share.
  - how costs should be split between owners according to the title deeds.
  - options such as serving a notice of potential liability, if appropriate, for recovering shares from non-paying owners.
- Advice is also available from Under One Roof (<https://underoneroof.scot/>); a charity dedicated to providing free and impartial information to tenement flat owners.

For information and advice about organising common repairs and the Missing Share Scheme please contact **Housing Strategy, Policy & Development** on **0300 100 1800** [housingenquiries@scotborders.gov.uk](mailto:housingenquiries@scotborders.gov.uk) or via our website, using the Contact Housing Strategy online form [Contact Housing Strategy](#)