What is a missing share?

The Housing (Scotland) Act 2006 (the act) allows the council to consider paying a ‘missing share’ for an owner who cannot fund their share of the cost of common works being carried out to their properties.

Payment is at the council’s discretion and will be subject to the extent and scale of disrepair, council priorities and available resources.

When would a missing share be used?

Missing shares are 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. 4 in a block flats, or tenement flats.

A majority of owners must agree to the work being carried out and must show the council that certain procedures for agreeing to and paying for works have been followed before an application for ‘missing share’ can be submitted to the council. For example owners should take notes of any meetings held where the majority of owners agree to the works as these may be required to be submitted to the council as evidence of any decisions taken.

What procedures do the owners have to follow?

Owners will need to open a ‘maintenance account’, that is a bank or building society account set up to hold owners funds which are used to pay for any common repair and maintenance costs. Although the bank may not have an account they
brand as a “maintenance account”, they may offer a similar product such as a treasurers account. 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.

Once the maintenance account has been set up, the owners should 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 (s50). Further details on what is involved in this process is noted below. Owners must then deposit their individual share of the cost of work (excluding any grant payments that might be available) into the maintenance account.

It would be beneficial for owners (or their agents) to serve correspondence in the format of a ‘s50 notice’ at an early stage in the repair process, for example, when owners are initially being asked to pay their contribution towards the cost of work into a maintenance account. This means that should an owner decide not to join in with the repairs process that the required s50 notice has already been served on all owners. This would then allow for an application for missing shares to be made to the council as the next step in the process without having to issue further correspondence.

What information needs to be provided to owners on the section 50 notice?

The council can only consider an application for missing share if it is satisfied that all owners have been provided with written notice setting out the following information:

• 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 is 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 last date for owners to pay their share into the maintenance account
The council can issue you with a sample section 50 notice for information as well as guidance notes on the information to be provided within a notice. An owner or person nominated by the owners must prepare and issue the notices. The council cannot carry out this step for owners.

What happens if an owner doesn’t pay their share of costs into the maintenance account?

Once the final date for owners to make payment into the maintenance account has passed, it will be known if a missing share is required. If a missing share is required the nominated person would request a missing share application form from the council. The form will be completed and returned to request that the council pay a ‘missing share’.

The application form will be returned to the council along with a copy of each request for payment sent to the owners. The council will also request evidence that the notices have been served on the owners. Evidence provided could be copies of recorded delivery slips, or a signed statement from the person who delivered the notices and the person who witnessed delivery.

A bank statement from the maintenance account will also be required to show which owners have made payment into the account and the balance sitting in the account. 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.

What will the council do once the application is received?

The council can consider payment of a missing share for an owner who is:

- unable to pay in the funds; or
- it is unreasonable to ask them to do so; or
- the owner cannot be identified or found, by reasonable inquiry.
- or an owner is unwilling to pay.

Before considering an application the council must be satisfied that the maintenance being carried out is reasonable; that each owner is being asked to pay their correct share of the costs; and that written notice requesting payment has been provided to each owner, where traceable.
Once the council receive a missing share application we will contact any owner who has not paid into the account. Those owners will be asked to confirm that they received the notice notifying them to make payment and 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. The owner will also be advised of how the council recovers the missing share along with interest and fees that apply.

Grants will not be payable to owners who receive a missing share. 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.

How does the council recover the missing share from the owner who did not pay into the maintenance account?

If the council choose to pay a missing share on behalf of an owner the contribution made will be recovered through a repayment charge placed on the title of the property owned by the non paying owner. Any fees incurred by the council in the process will be recharged and interest may apply. The repayment charge will remain on the title and be recovered on resale or transfer of the property if this is not paid by the owner in full before then.

What if the council cannot pay a missing share?

There is no obligation for the council to pay a missing share and we will only consider applications for missing shares 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. Further advice on how owners can do this would be available from the local Citizens Advice Bureau, or owner’s solicitor.

Citizens Advice Bureau or a solicitor will also be able to provide more advice on how to complete the process of issuing a s50 notice and applying to the council for any missing share; they can confirm how costs should be split between owners according to the title deeds; and can provide information about other options such as serving a notice of potential liability, if appropriate, for recovering shares from non paying owners.

A Guide To Missing Shares Useful information for home owners
Further Information

- **Citizens Advice Scotland**  
online directory to find your local bureau.  
  **t:** 0131 550 1000  
  [www.cas.org.uk](http://www.cas.org.uk)

- **Under One Roof** provides impartial advice on repairs and maintenance for flat owners in Scotland.  
  **e:** info@underoneroof.scot  
  [www.underoneroof.scot](http://www.underoneroof.scot)