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Council**

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Clackmannanshire Council

Housing Service

Private Sector

Missing Shares Policy

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1. Scope of the Policy

Clackmannanshire Council encourages private homeowners to maintain and repair their own homes. In buildings with multiple owners, homeowners may have a shared responsibility to carry out repairs to the common parts and areas of the building.

Where an owner does not contribute their share of costs for the necessary common repair and maintenance works, the Council may cover the costs of the missing share, following an application by the majority of owners who wish to undertake the works, but cannot do so because a share of the funds is missing. The missing share payment will be at the Council's discretion and will depend on a number of factors, including the extent and scale of disrepair and the resources available. The Council will require evidence that the owners have exhausted all other avenues before approaching the Council for assistance and have provided the relevant evidence.

No work should have taken place or be instructed until the Council has given the approval to proceed. The Missing Share cannot have been applied for retrospectively.

This policy sets out a framework of how the Council may support private homeowners in carrying out the necessary communal repair and maintenance works by paying any missing shares.

The Clackmannanshire Council's Missing Share Policy links in with and supports the aims of Clackmannanshire Council's Scheme of Assistance.

2. Aims of the Policy

The overarching aim of the policy is to facilitate the necessary works to the common parts and areas of the building which have shared ownership, by paying the missing share of costs of the minority of owners who do not to pay their share of costs.

The specific aims of this policy are to:

- Have a clear and concise process of how the Council will assess the applications, pay for and recover the costs associated with any missing shares;
- Help prevent private sector housing from falling below tolerable standard;
- Help improve the condition of private sector housing in line with Clackmannanshire Council's Scheme of Assistance;
- Aid in providing advice and assistance to help homeowners improve, repair and adapt their homes, including the common parts and areas of buildings;
- Raise awareness of the responsibilities associated with the repairs and maintenance of the common parts and areas of multi-ownership buildings.



3. Legislative Framework

Clackmannanshire Council will ensure that this policy adheres to all legislative requirements under relevant legislation and gives due regard to statutory guidance.

The main legislative framework for the Council to assess, pay for and recover the costs associated with missing shares is set out in the following acts:

- Housing (Scotland) Act 2006;
- Tenements (Scotland) Act 2004;
- Title Conditions (Scotland) Act 2003.

4. Shared Responsibilities for the Common Parts of the Building

All owners have shared responsibilities for maintaining common parts and areas of buildings shared between multiple owners. Common parts of the building may include, but are not limited to:

- The staircase and the common close;
- Door entry system;
- The roof;
- Chimneys, stacks and vents;
- Gutters and down pipes;
- Foundations;
- External walls of the building;
- Common paths.
- Common area shared window and glazed panels

The property title deeds usually set out the common areas and parts of the building that the property owner is responsible for maintaining, how decisions about management and maintenance should be taken and how costs are to be split between the owners.

Where the title deeds are silent or unclear, the Tenement Management Scheme (TMS) under the Tenements (Scotland) Act 2004 or Title Conditions (Scotland) Act 2003 (in relation to semi-detached/terraced properties with shared communal parts) may replace or fill any gaps in the deeds by setting out the scope of responsibilities and the procedures that the owners of multi-ownership buildings need to follow when making decisions about maintaining and repairing common parts of the building, how agreements will be reached and how costs will be apportioned.



5. Applying for a Missing Share

Before submitting an application for the payment of a missing share, the owners must be able to evidence that:

1. Correct procedures for agreeing and paying for the necessary works have been complied with and followed;
2. The majority of owners have agreed to have the communal repair or maintenance works carried out by reaching a scheme decision;
3. The work being carried out is reasonable and meets the definition of maintenance¹, which requires evidence from an appropriately qualified [RICS surveyor](#);
4. A joint maintenance account is open;
5. Each owner has been asked to pay their share of costs for communal repair or maintenance works;
6. Majority of owners have paid their share of costs into the joint maintenance account;
7. Attempts have been made to contact the missing share owner;
8. Alternative funding options have been considered before being rejected on the basis of being unsuitable. Please see appendix 2 for alternative funding options;
9. There is no outstanding litigation between the missing owners and other property owners within the building under section 5 of the Tenement (Scotland) Act 2004;
10. No works have taken place or have been instructed prior to the Council giving the approval to proceed. The Missing Share cannot have been applied for retrospectively.

The owners who wish to undertake the common works should delegate an owner to take a lead in making the application for the missing share payment.

5.1. *Reaching a Scheme Decision*

The owners within the building must reach a scheme decision to carry out the necessary works in accordance with the title deeds, the Tenement Management Scheme or Title Conditions (Scotland) Act 2003.

A scheme decision is reached when the majority of the owners have voted in favour of the common repair or maintenance works to be carried out.

Before proceeding with the necessary works, all owners must be notified of the scheme decision in writing, and all owners who are not satisfied with the decision must be given 28 days from the date of the meeting or the date they were given notice (whichever is earlier) about the decision to allow them to progress an appeal against the decision at the Sheriff Court.

¹ As defined by section 194 of Housing (Scotland) Act 2006



5.2. *Section 50 Notice*

To apply for the missing share, the delegate owner must serve all owners with a section 50 notice under the Housing (Scotland) Act 2006. The notice is a formal request to all owners to advise them that they are required to pay their share of the estimated costs for the common works into a joint maintenance account. The notice gives homeowners the ability to make an application to the Council asking the Council to pay and recover any missing shares on behalf of any non-paying owners.

The notice must provide the following:

- Details of the common repair or maintenance works to be carried out;
- Proposed timescales for the works, including the commencement and the completion dates of the works;
- Date of the Scheme Decision reached to carry out the required maintenance;
- Names and addresses of all the owners who have agreed to the works;
- Details of the complete estimated costs and the share of costs for each owner, explaining how the costs have been reached and apportioned;
- Details of the joint maintenance account into which the share of owners' costs must be deposited;
- The final date by which the owners must pay their share into the maintenance account;

Section 50 notice should be issued to each property owner at their home address by recorded delivery or by email if the home address is unknown, with a read receipt obtained.

5.3. *Record of Service*

Together with the Section 50 Notice, all owners must be issued with the Record of Service of the Section 50 Notice. The Record must be signed by another person who acts as a witness to the service of the notice.

5.4. *Missing Share Application Form*

Once the deadline date for owners to pay into the maintenance account has passed following the service of the Section 50 Notice and the Record of Service, the owners must complete a missing share application form.

The form must include the following supporting information:

- Evidence of the Scheme Decision;



- Evidence of the notification of the scheme decision to the missing share owner;
- Copy of the Section 50 Notice served to each owner;
- Copies of the Record of Service issued to each owner;
- Copy of the owners' deeds, which confirms the apportionment of costs and liabilities associated with the common parts and areas of the building. TMS may be used to fill any gaps in title deeds;
- Copy of the up-to-date contractor quotes for the works;
- Copy of the Joint Maintenance Account statement. The statement must show all payments and should match the contractor's quote for the estimated costs of the works, less the missing share(s). Any discrepancies between the quoted costs, shares paid in and missing shares must be documented and explained.

6. Assessment of the application

Once the application has been submitted and received by the Council, the Council will assess the application.

Any decisions following the assessment of the application for the missing share will be final.

If the Council rejects an application for a missing share, the owners may still progress with the works by covering the missing share between themselves and recovering their contribution from the owner through the process under the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003.

For information on how to appeal the Council's decision, please see section 12 Appeals.

6.1. Eligibility

Clackmannanshire Council has no obligation to pay any missing shares. The payment is at the Council's discretion and will be subject to specific criteria, including the extent and the scale of property disrepair and the availability of resources to the Council at the time of an application being made.

The Council will consider works which will address tolerable standard issues, properties and buildings which are below the tolerable standard (BTS) or at risk of becoming BTS within 12 months (likely due to structural issue, need for wind and watertight repair and/or other maintenance works) will be priority.

Priority to pay any missing shares will be given to residential properties. Missing share payments for commercial properties may be considered where there is a mixture of residential and commercial properties within the same building.



6.2. *Contacting the Missing Owner*

After the application has been assessed, the Council will aim to contact any owners who have not paid their share of costs into the joint maintenance account. The Council will advise the non-paying owner that the request has been made by other owners asking the Council to pay any missing shares and will advise the non-paying owner of the associated costs of recovery of any missing share payments.

The Council will give the non-paying owner a period of up to 28 days in which to pay their share of the costs before proceeding with making a payment.

Where the missing share owner does not pay their share of costs, the Council will carry out a financial assessment to confirm the inability to pay before making a decision to contribute any missing shares.

7. Paying for the Missing Share

Once the Council has agreed to pay the missing share following the assessment of the application, the Council will advise the building owners of the decision in writing and the amount of the costs that the Council will cover.

Subject to available resources, the Council will contribute a minimum of £500 and up to a maximum of £20,000 (exclusive of VAT) to cover the costs of any one missing share. The payment excludes any professional cost.

The Council will pay the missing share into the existing joint maintenance account. The payment will be made upon satisfactory completion of the works and the submission of the invoice for payment.

8. Recovery of Costs

Following the payment, the Council will notify any missing share owners of the payment made and will advise how costs of any missing shares will be recovered.

The missing share owner will be charged an administration fee of 15% over and above the missing share total amount to cover the professional and legal costs and any other costs associated with the administration/processing/management of the missing share application. Any subsequent interest rates may be applied in the course of debt recovery in line with Clackmannanshire Council's Corporate Debt and Write-Off Policy.

The Council will issue an invoice to the missing share owner and will recover the costs associated with the missing share contributions via the debt recovery process in line with Clackmannanshire Council's Corporate Debt and Write-Off Policy. The Council will also register a Notice of Potential Liability of Costs with Registers of Scotland and/or inhibition



against the property and/or the owner of the missing share. The Notice will protect the Council in the event of any disposal of the property of the missing share prior to repayment of the invoice.

The Council acknowledges that it may not be financially viable for every missing share owner to repay the missing share debt outright. Following an assessment of owners' financial circumstances, the Council may offer affordable repayment plans to repay the debt in instalments which debt will include the administration fee (detailed above) together with interest charged (at a rate to be determined) per annum above the Bank of England Base Rate on the outstanding balance.

Where the Council has offered a payment plan (as detailed above) the Council will register a Repayment Charge over the missing share owner's property in terms of the Housing (Scotland) Act 2006 Part 7 Section 172 (or any other charging mechanism available to the Council) with the debt being payable over a minimum of 5 years up to a maximum of 30 years (from the date of the missing share invoice). The maximum term will be subject to financial assessment and relevant to the scope of works undertaken.

If the owner does not engage with the Council, fails to settle the invoice in full within 14 days or fails to keep to an agreed payment plan, the Council will seek recovery of the full missing share debt and any costs associated with the recovery action, including any interest and administrative costs from the owner of the missing share property.

Over and above the above where the Council pays any missing shares on behalf of a registered landlord, the landlord may be referred under landlord registration to the licensing committee for failure to repay debt and/or carry out necessary repairs, and their status as fit and proper landlord may be affected.

9. Equal Opportunities and Diversity

Clackmannanshire Council is committed to the elimination of unlawful discrimination, advancing equality of opportunity and fostering good relations between people.

The Council believes that equality of opportunity should be a guiding principle in all of its activities. The Council aims to ensure that its commitment to equality is embedded in all council services and in the organisations that it funds.

In accordance with the Equality Act 2010, the Council is actively working towards the elimination of policies and practices that discriminate unfairly on grounds including age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race including colour, nationality, ethnic or national origin; religion or belief; sex; and sexual orientation.



10. Privacy Statement

Clackmannanshire Council must adhere with its legal obligations under Data Protection Legislation as set out in the Data Protection Act 2018 and UK General Protection Regulation (GDPR).

In order to provide the required and/or requested services, the Council will collect, store and process relevant personal information or data.

Personal information may also be shared with other partner agencies and organisations.

Personal information will be kept securely, as long as required by law and/or by specific service requirements. Once the data is no longer required, it will be securely disposed of. The Council has a Record Retention Schedule which sets out the period of time and reasons for keeping particular records. The Retention Schedule is available on request.

Under the Data Protection Act 2018 and the Freedom of Information (Scotland) Act 2002, individuals have the right to access personal information and data held about them by Clackmannanshire Council as well as the right to access information from records held by the Council.

To submit a Subject Access or Freedom of Information request, please follow [the link](#).

To make a complaint in relation to the Council's handling and processing of personal data and information, please contact the [Information Commissioner's Office](#).

For further information on Clackmannanshire Council's data protection practices, please visit the Council's [Data Protection Statement](#). For the Council's Data Protection Policy, please follow the [link](#). For further information on freedom of information laws, please visit the [Scottish Information Commissioner webpage](#).

11. Complaints

If the customer is dissatisfied with the provided services and/or the standards of service, please follow the Council's Complaints Procedure. Complaints can be made in person, in writing, by email or online. For further information on the Complaints Procedure and how to make a complaint, please visit the [Council's Complaints Procedure webpage](#).

If the customer remains dissatisfied with the final decision or the way the complaint has been handled following the Council's Complaints Handling Procedure, they can make a complaint to the Scottish Public Services Ombudsman (SPSO) by completing a [complaints form found online](#) or calling on 0800 377 7330.

For further information on how to make a complaint to SPSO, please visit the [SPSO website](#).



12. Appeals

If any of the owners are dissatisfied with the Council's decision following the assessment of the application, they may wish to appeal the decision to the Court of Session.

For further information on how to appeal the decision, please visit the [Scottish Courts and Tribunals Service website](#).

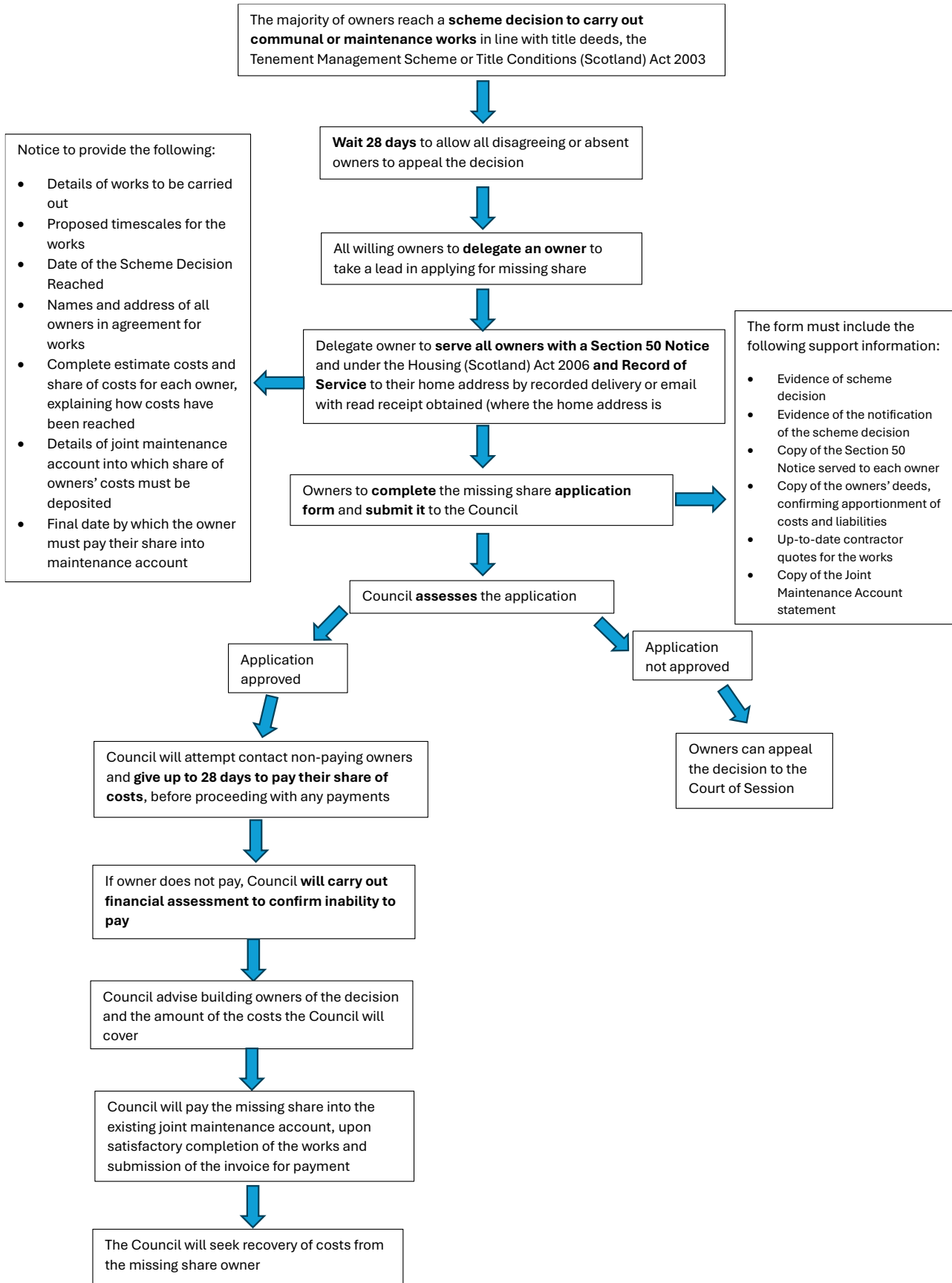
13. Monitoring and Reviewing

The policy will be continuously monitored to ensure that it is performing efficiently against the aims set out in the policy.

The Council will review and evaluate this policy every 3 years to ensure the adherence to the relevant legislation and statutory guidance as well as changes in organisational practices and policies.



14. Appendix 1. Missing Share Process Flowchart





15. Appendix 2. Tolerable Standard Definition

In line with Housing (Scotland) Act 1987, a house meets tolerable standard if the house:

1. is structurally stable;
2. is substantially free from rising or penetrating damp;
3. has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
4. has satisfactory thermal insulation;
5. has an adequate piped supply of wholesome water available within the house;
6. has a sink provided with a satisfactory supply of both hot and cold water within the house;
7. has a water closet, or waterless closet, available for the exclusive use of the occupants of the house and suitably located within the house;
8. has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
9. has an effective system for the drainage and disposal of foul and surface water;
10. where electricity is supplied to the property, the house has a supply of electricity that complies with the relevant electrical installation requirements for that supply, and is adequate and safe to use;
11. has satisfactory facilities for the cooking of food within the house;
12. has satisfactory access to all external doors and outbuildings;
13. has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;
14. has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health.

A house will not meet the tolerable standard if it fails to fulfil one or more of the criteria above as set out within the legislation.



16. Appendix 3. Providing Evidence for Identifying and Contacting Owners

The owners are required to keep a record of contact and any responses received in order to evidence that contact has been made with any missing share owners. Contact may be made in-person, via telephone call, posted letter, e-mail or other forms of electronic communication.

Where ownership details for an individual property are not known or there are no contact details for the owner, the owners applying for a missing share payment must be able to provide evidence to the Council that they have taken all reasonable steps to identify and contact the missing share owner.

Possible avenues to identify and contact an absent owner may include, but are not limited to:

- Register of Scotland – The Register holds ownership details for all residential properties in Scotland, including contact details for the owner at the time of purchase and information on any outstanding mortgage or secured loan. For further information on the Register of Scotland, please visit www.ros.gov.uk
- Electoral Register – The Register lists the names of individuals who have registered to vote at a property and may hold information about the ownership of the property. For further information on Clackmannanshire Council’s Electoral Register, please email registration@centralscotland-vjb.gov.uk
- Landlord Register – The Register holds the contact details for landlords and any acting agents for all let property within a local authority area. For further information on the Landlord register, please visit www.landlordregistrationscotland.gov.uk
- Companies House – Companies House may be used to identify and/or find contact details for property owners where they are linked to a business. For further information on the Companies House, please visit www.companieshouse.gov.uk
- The Insolvency Register – The Register may be used to find contact details for the absent owner where the owner of the property has been declared bankrupt or has applied for bankruptcy. For further information, please visit <https://roi.aib.gov.uk/roi>

The owners must be able to provide evidence of reaching a scheme decision and notifying all owners of the scheme decision at the time of the application for a missing share payment to the Council. The owners should record the times, dates and the outcome of the meeting/consultation taken to vote and reach a scheme decision, including the names and addresses of owners who have agreed to have the works carried out.

Any subsequent actions taken as a result of the meeting must be notified to all owners in writing. The notification of the scheme decision should include the dates and times of the meeting, the outcome of the decision, the nature and details of the works, the owner’s legal obligations, total estimates costs and the owner’s share of costs and other relevant information.



As part of the due diligence, the majority of owners may also have a solicitor write to the non-participating owner setting out the owner's obligations and the additional costs incurred.

17. Appendix 4. Alternative Funding Options

The owners must have considered all other alternative funding options prior to applying to the Council for a missing share payment.

Common Alternative funding options may include to:

1. Agree to carry out the repair or maintenance works by reaching a majority decision and split the costs between the participating owners;
2. Agree to carry out the repair or maintenance works by reaching a majority decision and split the costs between the participating owners, and send the non-participating owner a formal invoice requesting payment. Raise an action in the Sherriff Court against the non-participating owner for recovery of any outstanding payments.

The owners must be able to explain the reasons for rejecting alternative funding options and detail these within the formal application for a missing share payment.