

Report To: Education & Communities Committee **Date:** 19 January 2016
Report By: Head of Safer & Inclusive Communities **Report No:** EDUCOM/02/16/DH
Contact Officer: Drew Hall **Contact No:** 01475 714272
Subject: Private Sector Housing - 'Missing Shares' Protocol & Guidance

1.0 PURPOSE

- 1.1 The purpose of this report is to seek the Committee's approval of a protocol and associated guidance to support owners of common property to repair and maintain their homes through the payment of 'missing shares' which will form part of the Council's ongoing approach in tackling housing disrepair in Inverclyde.

2.0 SUMMARY

- 2.1 The Committee on 4th November 2014 agreed to change the emphasis away from housing enforcement to earlier interventions by the Council in facilitating and encouraging property maintenance and repair by owners.
- 2.2 In line with this change in emphasis, Safer and Inclusive Communities have developed a protocol for delivery of 'missing shares' which will primarily be advice and information based, with the aim of facilitating and encouraging property owners in the maintenance and repair of property which is common to their property and other property. Practical assistance will be available to home owners to progress communal repairs and encourage the participation of all owners. The payment of 'missing shares' will be made available, as a last resort, to owners where relevant works cannot be funded by any other route and the Council is satisfied that applying owners have complied with relevant procedural requirements. The service of statutory Notices would continue where merited or required by legislation.
- 2.3 In practice, Officers will provide advice to enquiring owners to support and encourage collaborative working between the owners, emphasising the owners' responsibilities and the practical and financial benefits of working together to maintain their property.
- 2.4 It is hoped that this new approach, in the medium to long term, will begin to generate a change in attitude amongst owners/co-owners towards property maintenance and encourage a greater degree of co-operation and realism between co-owners in multi owned property e.g. tenement property.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Committee:
- a) approve the proposed protocol as outlined in section 5 of this report

John Arthur
Head of Safer & Inclusive Communities

4.0 BACKGROUND

- 4.1 The Housing (Scotland) Acts 2006 and 2014 provided Local Authorities with the power to pay a sum which represents an owner's share for maintenance costs where that owner is unable or unwilling to pay or where that owner cannot be found. This unpaid element of a required maintenance cost is known as a 'missing share'.
- 4.2 As set out in the Housing (Scotland) Act 2006, primary responsibility for the maintenance of property rests with the owner and repairs should be owner led. However, there are situations where a majority of owners are unable to progress necessary common repairs as a result of some owners being unable or unwilling to contribute their correctly apportioned share of the cost of the required works or where an owner cannot be traced.
- 4.3 The Committee report 'Private Sector Housing – Repair & Maintenance Strategy' sets out a changing approach towards property maintenance with a medium to long term aim of encouraging a greater degree of co-operation and realism between co-owners in communal settings. The proposed 'missing shares' protocol supports this changing approach. Report Ref- EDUCOM /73/14/DH
- 4.4 Safer and Inclusive Communities receive regular contact from owners across Inverclyde affected by co-owners who cannot or will not pay their shares for maintenance work. Adoption of the proposed protocol will ensure owners receive clear and consistent advice and assistance. Adoption will assist with delivery of Outcome 5 of the Local Housing Strategy - "Inverclyde residents take responsibility for their housing and communities" and also aligns with our Scheme of Assistance and Private Sector Housing Repair and Maintenance Strategy.

5.0 PROPOSALS

- 5.1 The proposed payment of 'missing shares' protocol & guidance are set out at Annexe I. Appendix A of the protocol sets out the process map for service delivery and illustrates the obligation on owners to satisfy legislative conditions before being able to secure a 'missing share' from the Council. It will be made clear by Officers of Safer and Inclusive Communities that the main responsibility for repair always falls to the owners and repairs must be owner led. Payment of a 'missing share' by the Council will only be considered as a last resort when other intervention methods and financial options have been evidenced and exhausted by the owners and is only available in respect of a residential property. The payment of a 'missing share' will not be applicable in properties subject to a Demolition Order or properties within a designated housing led regeneration area. Annexe 1
- 5.2 Advice and information on the process for applying for a 'missing share' will be provided to enquiring owner/co-owners of properties suffering disrepair. This advice and information will be in relation to organising necessary repairs efficiently and effectively and will cover topics such as: creating maintenance accounts, apportioning costs, contacting owners, organising owner meetings, identifying funding options, etc. This advice and information will be delivered from the 'missing shares' information pack which will include guidance and pro forma documents for owners in an electronic format.
- 5.3 Funding for 'missing shares' will be assessed on a prioritised basis with works which are either related to compliance with a statutory Notice, considered to be addressing serious disrepair or works forming part of a larger investment programme being given priority. Outwith these categories consideration will be given to other repairs on a case-by-case basis. It should be borne in mind, however, that all costs incurred in funding 'missing shares' are recoverable from the relevant owner via a Repayment Charge attached to the title of the property.

- 5.4 Cases which are to be considered for payment of a 'missing share' will be provided with practical assistance by Officers such as attending an owners' meeting and notifying the non-participating owners of the likely financial impact of their position. Statutory Notices will be served as appropriate.
- 5.5 Where all elements of the obligations on participating owners have been complied with and it has been determined by Officers that it is appropriate for the Council to make payment of the 'missing share', an approval letter will be issued confirming the amount that will be paid into the property maintenance account upon completion of the works. For clarity, Inverclyde Council will simply be providing the 'missing share' and will not be surveying, commissioning, checking or approving any of the associated reports, quotes or invoices. At all times responsibility for the works and associated processes remains the responsibility of the owners.
- 5.6 Where a 'missing share' relates to a landlord who is unable or unwilling to pay for maintenance, consideration will be given to reviewing their 'fit and proper person' status in respect of Landlord Registration on the basis that they are not complying with their legislative obligations and/or are choosing to operate their business in such a way as to be detrimental to Inverclyde's housing stock. Where a statutory Notice has not been complied with, consideration will be given to a report being prepared for the Procurator Fiscal.

6.0 IMPLICATIONS

6.1 Financial Implications:

This should be cost neutral as the Housing (Scotland) Act 2006 provides a means of recovery of expenditure incurred by the Council including interest and administrative costs.

6.2 Human Resources:

Currently being met and will continue to be met within existing staffing.

6.3 Legal:

The proposal complies with the relevant legislation.

6.4 Equalities:

When delivering services to our customers, full cognisance is taken of equality and diversity processes and procedures.

6.5 Repopulation:

The proposal is aimed at improving Inverclyde's housing stock which will positively impact on repopulation.

7.0 CONSULTATIONS

- 7.1 Legal and Finance officers have been consulted on this proposal.

PAYMENT OF MISSING SHARES

Protocol and Guidance

1.0 Introduction

2.0 Background

3.0 Legislative Framework

3.1 Housing (Scotland) Act 2006

3.2 Tenements (Scotland) Act 2004 and Housing (Scotland) Act 2014

4.0 Strategic Fit

5.0 Assessment & Prioritisation

6.0 Payment and Recovery of Costs

7.0 Monitoring, Evaluation & Review

APPENDICES

A Process Map

B Application Checklist

C Definition of Communal Serious Disrepair

D Payment Application

1st December 2015

1.0 Introduction

The Scottish Government has enacted legislation which is designed to enable Local Authorities to assist owners in situations where communal repairs are required but works cannot be progressed as a result of an owner, or owners, being unwilling or unable to fund their share of the required works, or where owners cannot be found.

2.0 Background

Primary responsibility for the maintenance of property rests with the owner and repairs should be owner led. However, there are situations where the majority of owners within a property are unable to progress necessary works to common property communal works as a result of owner(s) being unwilling or unable to contribute to the cost of the works as set out in the title to the property; or where it is unreasonable to expect that owner to contribute to the cost; or where owners cannot be found. This unpaid contribution is known as a 'missing share'.

Legislative changes have taken place in recent years to allow Local Authorities to assist in situations such as this and Inverclyde Council has developed this protocol and guidance document to assist staff in the administration of these discretionary powers.

3.0 Legislative Framework

There are two key pieces of legislation providing Local Authorities with powers to make discretionary payment of a missing share(s) and these are as follows:

3.1 Housing (Scotland) Act 2006

Section 50 of the Housing (Scotland) Act 2006 provides Local Authorities with the power to pay into a maintenance account a sum which represents the estimated cost of a share which remains unpaid by an owner for maintenance of common property where that owner is unable or unwilling to pay; where it is unreasonable to expect that owner to pay; or where that owner cannot be found. The local authority may request that the non-complying owner provide information on their financial circumstances before deciding whether or not to provide financial assistance.

Section 50 requires that all of the owners responsible for the maintenance, including those who have not yet paid their share, be advised of the requirement to pay their share into the maintenance account by virtue of a notice. That notice must clearly set out a number of statements regarding the required works and provide a final date by which that owner's relevant share must be paid into the maintenance account. Maintenance and maintenance accounts are defined within Section 194 of the Act.

Where a payment has been made to cover a missing share, section 172 of the Act enables local authorities to recover the payment, administrative expenses incurred in making the payment and interest on the payment by way of a repayment charge.

3.2 Tenements (Scotland) Act 2004 and Housing (Scotland) Act 2014

The Housing (Scotland) Act 2014 introduced an amendment to the Tenements (Scotland) Act 2004 which provides local authorities with the power to pay a sum representing an owner's share of Tenement Management Scheme costs for maintenance where that owner is unable or unwilling to pay or where that owner cannot be found. Local authorities are required to give notice to such owner prior to making any payment.

Schedule 1 of the Tenements (Scotland) Act 2004 confirms the definition of maintenance which includes the installation of insulation. Schedule 1 also sets out the rules to be followed in a Tenement Management Scheme, which should be used where the title deeds do not include provision for decision making.

Where a payment has been made to cover a missing share, section 172 of the Housing (Scotland) Act 2006 enables local authorities to recover the payment and administrative expenses incurred in making the payment by way of a repayment charge. It is of note that interest on a payment made under the Tenements (Scotland) Act 2004 cannot be recovered and that a repayment charge cannot be placed on a commercial property.

4.0 Strategic Fit

The Inverclyde Local Housing Strategy (LHS) is designed to show how Inverclyde Council will deliver its housing related services. Outcome 5 of the LHS "Inverclyde residents take responsibility for their housing and communities," includes a number of policies designed to ensure that the physical condition of a property is maintained to a good standard. This means newly occurring repairs should be responded to but also that the more fundamental but predictable works of renewing or repairing structural elements of the property need to be planned for and funded.

The payment of 'missing shares' will assist in delivering outcome 5 of the LHS and the assessment, prioritisation and payment of 'missing shares' will be delivered as part of the Council's Scheme of Assistance which sets out the Council's approach to delivering advice and information, practical assistance and financial assistance to home owners in Inverclyde. 'Missing shares' will include all elements of advice, information and assistance and the level of assistance will vary from case to case.

At its meeting of 4th November 2014 the Education and Communities Committee agreed to a change in emphasis to tackling private sector disrepair to include earlier intervention in property maintenance and repair. The payment of 'missing shares' will facilitate property maintenance and repair but will be considered as a last resort when other intervention methods have been exhausted. The payment of a missing share will not be applicable in properties subject to a Demolition Order or properties within a designated housing led regeneration area.

5.0 Assessment & Prioritisation

It is expected that the majority of representations from owners to pay a 'missing share' will be considered under the Housing (Scotland) Act 2006 legislative process which provides a methodical framework for owner led delivery including;

- Owners required to set up a maintenance account
- Notice required to be given to all owners, by owners, which sets out clear obligations and requirements
- Recovery of full expenses including interest

Consideration will be given to the use of paying a 'missing share' under the Tenements (Scotland) Act 2004 where the installation of insulation is the maintenance issue or there is other good reason for doing so. However, the use of this legislation should be restricted as the Council is obliged to serve notice on the non-compliant owners and is unable to recover interest charges accumulated over the 30 year repayment charge period. Appendix A sets out the process for delivery of missing shares and Officers should follow this process to ensure consistency.

5.1 Consideration will be given to applications received from a majority of property owners regarding owners who are unable or unwilling to participate in required maintenance works, or who cannot be found by the owners. In circumstances where it is considered to be unreasonable to expect the owner to pay for the works the applying owners will be advised accordingly.

For an application to progress through the process of assessment it requires to be signed by all relevant owners and also requires to provide proof that;

- a) the proposed works are required,
- b) the missing share is for a residential property,
- c) the proposed works meet the definition of maintenance,
- d) contact or discussion has been attempted with the non-compliant owner, and that,
- e) the costs are reasonable and correctly apportioned

Any application unable to meet the basic criteria will be rejected, with the owners advised of the reason for rejection and given advice on how to progress matters

themselves. An information pack which includes information and pro forma documents has been developed and this should be used by staff to ensure that clear, concise and consistent information is provided to owners.

5.2 Where an application meets the basic criteria the owners will be engaged to determine the level of discussion and contact with the non-compliant owner which has taken place. Officers will consider the level and frequency of contact and assess its appropriateness, providing advice and information to the applying owners where the contact with the non-compliant owner is considered to be non-existent, poor quality, infrequent or has not taken reasonable consideration of any responses received. Advice and information will be given to the owners on the option of funding the 'missing share' themselves and taking legal action against the non-compliant owner to recover costs due to them. A case record and checklist is set out at Appendix B and this should be prepared and kept up to date for any application for a 'missing share'. The checklist will provide all relevant Officers with a clear position on the current status of the case.

5.3 If the applicants are considered to have exhausted all routes of contact with the owner and are themselves unable to fund the 'missing share', the Council may engage the non-compliant owner with a view to assessing their individual situation. Non-compliant owners will be advised of the 8% interest rate and administrative expenses which will be charged to them by the Council where a 'missing share' is paid. Where an owner is unwilling or unable to pay their share, or where that owner cannot be found, consideration will be given to the Council making a payment to the maintenance account which represents the 'missing share'. Any owner who is unable to pay will be provided with additional advice or information or will be offered a referral to alternative services who may be able to provide additional support or information particular to that owner's situation.

5.4 Priority will be given to applications where it is clearly demonstrated that;

- the application meets the required criteria,
- frequent and reasonable contact has been attempted,
- the owner is unable or unwilling to pay or cannot be found,
- the other owners cannot collectively meet the 'missing share', and

that the proposed works are, in order of priority, either;

- in response to the service of a notice,
- addressing serious disrepair in line with the Council's definition of serious disrepair as set out at Appendix C,
- part of a planned investment/improvement programme at that building, or
- complimenting an area based programme of investment.

Other repairs will be considered for inclusion on a case-by-case basis.

Owners must submit a maintenance plan which sets out their intentions for future maintenance of the property; this plan must be to the satisfaction of the Council.

5.5 In situations where a landlord is unable or unwilling to pay for their share of the estimated costs for maintenance, consideration will be given to reviewing their 'fit and proper person' status in respect of Landlord Registration on the basis that they are not complying with their legislative obligations and/or are operating their business in such a way as to be detrimental to Inverclyde's housing stock. A referral to the Private Rented Housing Panel for further action will be considered and, where a statutory notice has not been complied with, consideration will be given to a report being prepared for the Procurator Fiscal.

6.0 Payment & Recovery of Costs

As previously noted in paras 3.1 and 3.2, the local authority's ability to recover all costs associated with providing a 'missing share' will directly influence the legislation used. Therefore, it is likely that the Housing (Scotland) Act 2006 will be used in the majority of 'missing share' cases and recovery of expenses will be made via a repayment charge against the property if the invoice raised by the Council is not paid in full.

During the works programme undertaken as a result of the local authority paying a 'missing share' it may be the case that an owner becomes able to meet the full cost of their share. In these circumstances the owner should be encouraged to place the relevant sum in the maintenance account in advance of completion of the works.

Any payment made by Inverclyde Council will be made direct to the maintenance account and all participating owners are required to sign a payment application which confirms their agreement to this and which provides the banking details for the maintenance account. A payment application is set out at Appendix D.

It is expected that in the majority of cases the owner will remain without funds upon completion of works and that a repayment charge will require to be registered against the title to property to ensure that the local authority is able to recover the missing payment, associated expenses and interest.

7.0 Monitoring, Evaluation & Review

To ensure that the 'missing shares' policy and associated resources are being used effectively and that they contribute to the outcomes of the LHS, a monitoring, evaluation and review cycle will be undertaken.

Annual statistics will be sought and evaluated internally to ensure that the policy objectives are being maintained, that the Scheme of Assistance continues to have an appropriate focus on the private housing sector and that the improvements

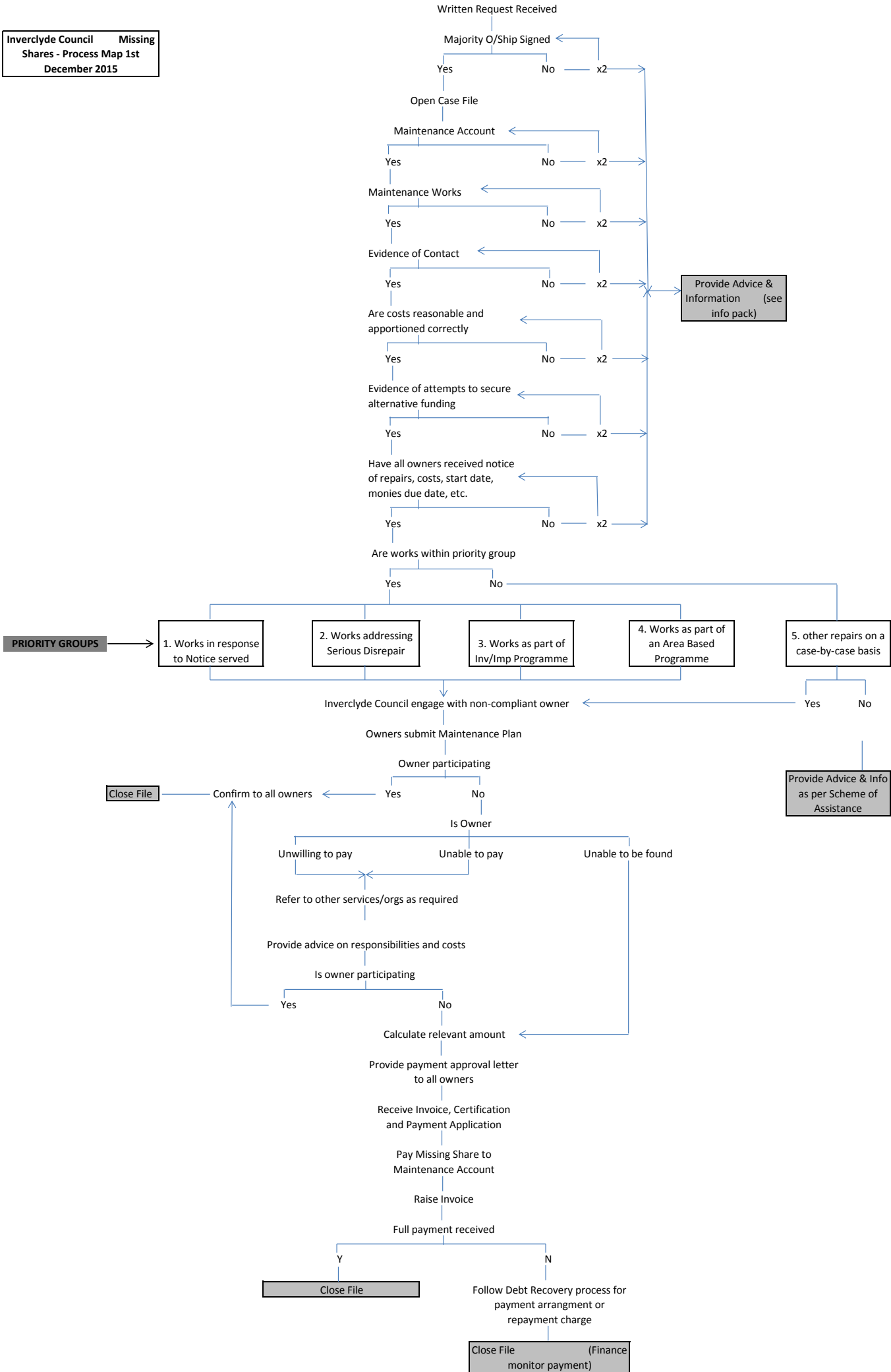
delivered are reported via the monitoring of Outcome 5 of the LHS. The policy will be reviewed annually to ensure that it remains fit for purpose, with amendments and adjustments made as necessary.

APPENDICES

- A Process Map**
- B Application Checklist**
- C Definition of Serious Disrepair**
- D Payment Mandate**

Appendix A Process Map

Inverclyde Council Missing Shares - Process Map 1st December 2015



Appendix B

Missing Shares Checklist & Case Notes											
1	Case No:	MS/			2	Lead Officer					
3		Property Details		Address:							
	<u>Flat</u>	<u>Owner</u>		<u>REN</u>		<u>Participating</u>		<u>Contact Details</u>			
	G/1					Y / N					
	G/2					Y / N					
	1/1					Y / N					
	1/2					Y / N					
	1/3					Y / N					
	2/1					Y / N					
	2/2					Y / N					
	2/3					Y / N					
	3/1					Y / N					
	3/2					Y / N					
	3/3					Y / N					
4		Description of Works									
5		Are Works Defined as Maintenance			Y / N	6		Have Majority Agreed			Y / N
7		Do Title Deeds Confirm Apportionment of Costs			Y / N	8		Maintenance Account Open			Y / N
9		Have Costs Been Correctly Apportioned			Y / N	10		Are Costs Reasonable			Y / N
11		Has Non-Complying Owner Been Contacted by the Majority of Owners				Y / N					
11a		Type and Frequency of Contact									
	<u>Type</u>		<u>Date</u>			<u>Response</u>					
12		Details of Alternative Funding Sources Sought									
	<u>Type</u>					<u>Outcome</u>					
	Majority Funding										
	Majority Funding with Debt Recovery										
	Majority Funding with Charge Against Title										
	Other (specify).....										
13		Have all Owners Been Provided With Relevant Formal, Written Notification				Y / N					
14		Are Proposed Works Within One of the Confirmed Priority Groups				1 / 2 / 3 / 4					
15		Confirm Reason For Inclusion if Outwith Priority Group									
					<u>Authorised By</u>	<u>Date</u>					
16		Reason for Missing Share Being Required				<u>Owner Unwilling</u>	<u>Owner Unable</u>	<u>Owner Untraceable</u>			
17		Financial Assessment Complete			Y / N	18		Value of Missing Share		£	
19		Date Share Due To Be Paid				20		Date Works Due To Start			
21		Date of Completion of Works				22		Payment Made to Maintenance Account		Y / N	
23		<u>Recovery Method</u>		<u>Invoice Paid / Repayment Arrangement / Repayment Charge</u>							
Complete						Date					

Appendix C

Primary Building Elements				
A primary element fails if more than 20% of the element requires repair or replacement. Failure of one or more primary elements defines Serious Disrepair				
Ref No.	Element	Type	Example	Measurement
13	Wall Structure	External or common	Vertical/diagonal cracking, inadequate expansion joints, wall tie corrosion, twisted, cracked, overloaded or slipped lintels, bowing and oversailing of walls	Surface area basis
15	Foundations	External or common	Evidence showing in other primary elements, e.g. vertical or diagonal cracking of wall structure, sloping floors, etc.	Linear basis
16	Roof Structure	External or common	Defective roof structure evidenced by ponding, sagging, humping, outward spread, etc.	Linear basis
Secondary Building Elements				
A secondary element fails if more than 20% of the element requires repair or replacement. Failure of two or more secondary elements defines Serious Disrepair				
Ref No.	Element	Type	Example	Measurement
17	Principal Roof Covering	External or common	Problems including missing, broken or slipped slates or tiles; torn or cracked flat roof coverings	Surface area basis
18	Chimney Stacks	External or common	Broken, unseated, unsafe pots, leaning stacks, decayed masonry, defective pointing	Linear basis
19	Flashings	External or common	Problems including detached flashings, loose cement fillings and damaged verges.	Linear basis
20	Rainwater Goods	External or common	Cracked or corroded gutters or downpipes, missing fittings	Linear basis
21	External Wall Finish	External or common	Disrepair to pointing, brickwork, blockwork or render	Surface area basis
22	Common access decks/galleries/balustrades	Common elements	Deck finishes and substrate; structural supports; railings; drainage and drainage outlets; waterproof finishes and skirtings of long access balconies, galleries and decks.	Linear basis
23	Common Access Stairs	Common elements	Including disintegration of concrete slab or treads, movement of slab, corrosion to steelwork, damages to finishes including balustrades.	Weighted linear basis
27	Damp Proof Course	External	Problems of internal rising damp could indicate a breached DPC	Linear basis
29	Common Windows and Rooflights	Common elements	As per individual external windows and doors	Weighted surface area basis
30	Underground Drainage	External or common	Defective manhole, gullies, branches or collapsed drains	Linear basis

Appendix D

Missing Shares - Payment Application

All participating owners and joint owners must complete Section 1.

Please score through the word options which do not apply to your situation and then sign the declaration below.

OWNER'S DECLARATION

REF: MS/0

1. I/We declare that I/we, the undersigned, am/are the owner(s) of the property at,

Postcode

and that I/we hereby make application for a missing share payment being made by Inverclyde Council to the undernoted maintenance account upon satisfactory submission of an invoice and any related information requested.

Print Name:

Flat Position:

Signature:

Date:

Print Name:

Flat Position:

Signature:

Date:

Print Name:

Flat Position:

Signature:

Date:

Print Name:

Flat Position:

Signature:

Date:

Print Name:

Flat Position:

Signature:

Date:

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Flat Position:

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Date:

Print Name:

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Print Name:	Flat Position:
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Signature:	Date:
Print Name:	Flat Position:
Signature:	Date:
Print Name:	Flat Position:
Signature:	Date:

Maintenance Account - Banking Details	
Name of account:	
Name of Account	
Signatory 1:	
Name of Account	
Signatory 2:	
Bank/Building	
Society Name:	
Bank/Building	
Society Address:	
Postcode	
Account Number:	
Sort Code:	