

# Alzheimer Scotland submission of 14 June 2023

## PE1976/F: Backdate council tax discounts for dementia to the date of GP certification

### **The impact of the legislative requirement in relation to eligibility for a qualifying state benefit (as set out in paragraph 8 of the Scottish Government's submission)**

The Local Government Finance Act (1992) uses the terms 'severe mental impairment' and 'severe impairment of intelligence and social functioning' in the provisions for discounts and exemptions. This legislation is over 30 years old and its language is outdated and unhelpful. It is our experience that many people are reluctant to, or indeed refuse to, apply for a discount or exemption for a family member on the basis that the terminology labels that person in such a stigmatising way. Stigmatising language contravenes human rights-based approaches that have informed the development of dementia policy and practice, as well as policy and practice relating to other health conditions and disability in Scotland. Nonetheless, we recognise that it is not within the powers of the Scottish Parliament to amend the use of these terms within the Local Government Finance Act (1992) or wider social security provisions which remain reserved to Westminster.

We believe that with the political will, there is a simple remedy to the issue raised in this petition relating to the existing power Scottish Ministers have to change or remove the additional conditions set out in secondary legislation relating to eligibility for a discount or exemption. The provisions for council tax discounts and exemptions are prescribed in both primary and secondary legislation. Part 2 of the Local Government Finance Act (1992) relates to Scotland. The Act makes provisions relating to liability for council tax including provisions under Section 72(6) for exempt dwellings and in Section 79 for discounts. Section 113 and paragraph 2 of Schedule 1 of the Act confers powers on Scottish Ministers to make orders in respect of the provisions for exemptions and discounts.

Under the provisions of the 1992 Act, a person with dementia may be eligible for a council tax discount or exemption on the grounds of severe

mental impairment. To qualify for a discount or an exemption, the person must satisfy the three conditions set out in Schedule 1, Paragraph 2 of the 1992 Act. Paragraph 2 (3) confers powers for Scottish Ministers to make such an order. Scottish Ministers may, but are not required to, make an order setting additional conditions.

The orders currently relevant to discounts and exemptions in Scotland are:

- Council Tax (Discounts) (Scotland) Consolidation and Amendment Order – this provides the additional condition that to qualify for a discount the person must “be eligible for a qualifying state benefit”.
- The Council Tax (Exempt Dwellings) (Scotland) Order 1997 – this makes provisions that “A dwelling which is occupied only by one or more persons who are disregarded for the purposes of discount by virtue of paragraph 2 of Schedule 1 to the Act” is exempt from Council tax liability.

The additional condition introduced in the Orders that require proof of a qualifying benefit does not necessarily provide confirmation of, or corroborate that, a person has a severe mental impairment. The first burden of proof involves the provision of a signed certificate from a qualified, professional medical practitioner whose judgement of an individual’s ability to meet the prescribed definition of severe mental impairment is assumed to be sound. The additional requirement to provide proof of eligibility of a qualifying state benefit adds no further substantiation of an individual’s severe mental impairment. Some people may already be in receipt of a qualifying benefit because of an unrelated illness or disability when they apply for a discount. Local authorities often request proof of an award of a qualifying benefit, typically a copy of the benefit award letter, but this does not corroborate the medical practitioner’s certificate as it does not indicate the reason(s) for the award of benefit. In our view, that creates an inherent unfairness in the process of applying for a discount or exemption on the basis of severe mental impairment.

It is our view that the current legal framework provides the powers to Scottish Ministers (and Scottish Parliament) to amend or remove the test requiring a person to be eligible to a qualifying benefit. We argue that this is unnecessary when the applicants already have a medical practitioner certify that they have a severe mental impairment. In our view, this would create a fairer, more equitable process for claiming a severe mental impairment discount or exemption of council tax for

people with dementia. If it is truly the parliament's intention that people can qualify for a council tax discount or exemption, then why require an additional and unnecessary test?

People living with dementia can experience barriers to claiming council tax discounts or exemptions due to the requirement to provide proof of eligibility for one of the qualifying benefits. While the Scottish Government acknowledges a claimant's right to have their qualifying benefit backdated to the date of claim, it fails to address issues around delays in applicants making a claim for benefit. The benefit system is complex and can be difficult for most people to navigate. For those living with dementia that complexity is even greater, maybe even impossible to navigate without assistance.

People living with dementia may not accept their diagnosis or recognise their level of need which may result in a decision to delay or refuse to make a claim for benefit. Furthermore, people with dementia may have less awareness or understanding of their eligibility for benefits and may not make a claim simply because they do not know that they are eligible. Many benefits are not well promoted, and even in situations where individuals are directed towards making a claim for benefit, this is not supported by the availability of easily accessible materials and resources that can provide further information and assistance to enable people with dementia to make a claim. This can result in a significant period of time where a person may be entitled to a qualifying benefit based on their level of need but due to the barriers they experience, they have not made a claim. Not only do they lose out on the benefits to which they may be eligible for, this also prevents them qualifying for a council tax discount or exemption.

Additionally, the Scottish Government fails to address the delays to benefit eligibility built-in to current claiming processes. For people claiming disability benefits, the criteria for making a claim for benefit includes the need to satisfy the disability conditions for a period of time becoming eligible. This means that those claiming disability benefits need to meet the disability conditions for a period of 3 or 6 months before being eligible to claim. These delays result in waiting periods when an individual is experiencing the symptoms of their condition yet remains ineligible for benefit and consequently ineligible for the council tax discount or exemption.

## **The variation in the approach taken to assessment by local authorities across Scotland**

We considered the court judgement mentioned in this petition and have no doubt that the local authority court decision is correct given the current legal provisions. We recognise variation in approaches to the promotion and provision of accessible information, as well as the application of the legislation relating to council tax discounts and exemptions by authorities across Scotland.

Alzheimer Scotland welcomes the delivery of a consistent approach to the assessment and application of severe mental impairment discounts and exemptions to ensure equity and fairness in the delivery of the right to council tax discounts and exemptions. It is our understanding that all 32 local authorities must apply the criteria outlined in the legislation to all applicants and we would seek to clarify the position of all local authorities regarding their interpretation of the legislation and how they apply the criteria at the current time. Entitlement to a discount or exemption, and when it should be applied, should be uniform across the whole country and guidance should be developed to ensure the fair application of the legislation that best supports and benefits people living with dementia regardless of where they live.

If steps are taken to remove the condition of receipt of a qualifying state benefit, the process of assessment and application of severe mental impairment discounts and exemptions will be simplified. Local authorities will no longer need to interpret the legislation relating to when a discount should be applied and existing mechanisms for evidencing the presence of severe mental impairment through medical certification can continue unhindered.

## **The level and variation across Scotland for referrals for post-diagnostic support for people newly diagnosed with dementia**

Alzheimer Scotland has recognised and promoted the value and importance of post-diagnostic support and has supported the ongoing development of post-diagnostic support as a policy aim since the first National Dementia Strategy was published in 2010. This includes the Scottish Government's commitment to provide every person diagnosed with dementia with minimum of 12 months post diagnostic support from a named link worker. This support includes ensuring that people have

help to access to all of the financial assistance that they may be entitled to from social security benefits and other sources such as council tax discounts or exemptions.

In the years since the post diagnostic support commitment was made, referrals to this critical support have remained below 50 percent. There is a significant gap in the delivery of post-diagnostic support to people with dementia which must be addressed. The Covid-19 pandemic has had a considerable impact. Increased waiting lists mean that people living with dementia have to wait longer for the support that they need, and subsequently, many people with dementia are presenting with more advanced illness which makes the delivery of the 5 pillar model less effective.

In the last 12 months, the Scottish Government has provided additional funding and investment in the workforce needed to deliver effective post-diagnostic support and that has provided additional capacity to meet this critical commitment. In our recent [response to the Scottish Government's consultation on the fourth National Dementia Strategy](#), Alzheimer Scotland identified some of the difficulties with the current delivery of post-diagnostic support services and made a number of recommendations to address these issues.

While we welcome the Scottish Government's increased investment in the delivery of post-diagnostic support services, there remains ongoing uncertainties around future funding commitments. Short-term funding commitments and last-minute budget approval create insecurities for service delivery and must be addressed to fulfil the guarantee to provide people with dementia a minimum of one year of post-diagnostic support.

Going forward, more needs to be done to fulfil the commitments to deliver high-quality post-diagnostic support services outlined in previous National Dementia Strategies. While significant progress has been made, the implementation and delivery of the commitments have fallen short of expectations. Inconsistency in the delivery of the quality improvement framework, gaps in the data needed to effectively evaluate the delivery of post-diagnostic support, and increased waiting times mean that people are not feeling the benefit of the delivery of post-diagnostic support that could be achieved. Indeed, these views were echoed by people living with dementia and their carers who participated in our process of [public engagement](#) in response to the consultation on the next National Dementia Strategy. With the ongoing development of

the next National Dementia Strategy, it is Alzheimer Scotland's hope that the Scottish Government makes a clear commitment to the delivery of high-quality post-diagnostic support that meets the needs of people living with dementia and their carers.