

Citizen Participation and Public Petitions Committee

1st Meeting, 2023 (Session 6), Wednesday 18
January 2023

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

Petitioner Derek James Brown

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to require council tax discounts to be backdated to the date a person was certified as being severely mentally impaired, where they then go on to qualify for a relevant benefit.

Webpage <https://petitions.parliament.scot/petitions/PE1976>

Introduction

1. This is a new petition that was lodged on 26 September 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected not to collect this information.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. Two submissions have been provided by the petitioner. They are included at **Annexe D**.

Action

7. The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

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

Petitioner

Derek James Brown

Date Lodged

26/09/22

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to require council tax discounts to be backdated to the date a person was certified as being severely mentally impaired, where they then go on to qualify for a relevant benefit.

Previous action

I have written to Liz Smith MSP. In January 2020 I appealed to a Tribunal, in December 2020, I took it to the High Court (Brown v Hambleton District Council [2021] EWHC 1 (Admin).pdf) which established that the present laws allow councils to wait until both, GP certification and the Qualifying Benefit are received.

I did a Freedom of Information request which established that 22 out of 32 Scottish Councils do not backdate to the date of GP certification effecting 20,253 households.

I have undertaken 3 GOV.UK online petitions.

Background information

There are over 600,000 people with dementia in the UK who receive care at home.

People with dementia are only disregarded (not counted) for council tax if they have a medical certificate and are in receipt of certain benefits. This means that many people with dementia have to wait months or years to qualify for council tax discounts after they have been diagnosed.

If council tax discounts were backdated to the date a person was certified as being severely mentally impaired, people with dementia could potentially save thousands of pounds.

Annexe B

The logo for SPICe (The Information Centre) is displayed within a purple and blue gradient rounded rectangle. The text 'SPICe' is in a large, white, sans-serif font, while 'The Information Centre' and 'An t-Ionad Fiosrachaidh' are in a smaller, white, sans-serif font below it.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1976](#): ‘Backdate council tax discounts for dementia to the date of GP certification’, lodged by Derek James Brown

[PE1976](#) calls on the Scottish Parliament to urge the Scottish Government to backdate council tax discounts to the date a person with dementia was certified by their GP as being severely mentally impaired, so that they may claim their full entitlement.

Brief overview of issues raised by the petition

Responsibility for council tax and associated benefits and discounts

Responsibility for council tax was [devolved to Scotland](#) under the Scotland Act 1998.

Applications for council tax discounts and exemption in Scotland are [managed by the relevant local authority](#).

Previous actions taken by the petitioner

[The petitioner appealed](#) to the English Valuation Tribunal in January 2020, and later the English High Court in January 2021, following his local English council’s decision to backdate his council tax discount to the date of his wife’s receipt of Attendance Allowance, rather than the date she was diagnosed with dementia. The appeal was dismissed by the Valuation Tribunal, and the High Court found in favour of the petitioner’s local council.

Entitlement to council tax support for severely mentally impaired people

It is estimated that [90,000 people](#) in Scotland are currently living with dementia. People living with dementia in Scotland are considered eligible for council tax support on the grounds of [severe mental impairment](#).

A person who is considered severely mentally impaired is eligible for support ranging from a 25% council tax discount, to exemption from council tax if they live alone, or all members of the household are severely mentally impaired.

To apply for a council tax discount or exemption on these grounds, a person with dementia's GP must certify that they are severely mentally impaired, and they must be eligible for a qualifying state benefit.

Many local authorities in Scotland backdate council tax discount claims for severely mentally impaired people to the date when they first received a qualifying benefit payment related to their condition, rather than the date of onset of their condition as certified by their GP. [The City of Edinburgh Council](#), for example, states that council tax discounts for severely mentally impaired people "will begin from the date your impairment started and you received a [qualifying] benefit." The list of qualifying benefits includes:

- incapacity benefit
- attendance allowance
- severe disablement allowance
- employment and support allowance
- armed forces independence payment
- disability element of working tax credit
- unemployment supplement or allowance
- income support (which includes the disability premium)
- daily living component of personal independence payment
- care component (at the high or middle rate) of disability living allowance
- increased rate of disablement pension where constant attendance is needed.

Backdating council tax discount claims for severely mentally impaired people

According to a Freedom of Information request response received by the petitioner and referenced in the petition, 22 of the 32 Scottish local authorities currently backdate council tax discounts to the date a person received their first qualifying state benefit payment, rather than the date from which they were certified as severely mentally impaired.

In practice, this means that some people living with dementia may face setbacks in eligibility for council tax discounts, as there may be delays between receiving a diagnosis and either applying for, or becoming eligible for, qualifying state benefits. To be eligible for [Attendance Allowance](#), for instance, the applicant must have required help or support for at least six months due to their condition, potentially resulting in a waiting period of at least six months between a person with dementia's diagnosis and their receipt of a qualifying benefit.

Additionally, people newly diagnosed with dementia and their carers may not know that they are entitled to certain state benefits, and the application process can be challenging to navigate. Difficulties in accessing post-diagnostic support, which includes financial and state benefit advice, may mean that people living with dementia in Scotland remain unaware of these entitlements for some time following diagnosis. [Public Health Scotland's latest report](#) on access to post-diagnostic support for people with dementia showed that 42.9% of the estimated number of people newly diagnosed with dementia were referred for post-diagnostic support in 2019-20, suggesting that approximately half of people diagnosed with dementia during this period were not referred to the service.

Scottish Parliament action

There has been no Scottish Parliament action concerning this issue to date.

Scottish Government action

There has been no Scottish Government action concerning this issue to date.

Sarah Swift
Researcher
24/10/2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP

Annexe C

Scottish Government submission of 24 October 2022

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

Scottish Government response to petition PE1976, calling on the Scottish Government to require the severe mental impairment (SMI) council tax discount to be backdated to the date a person is certified as being severely mentally impaired by a qualified medical professional, where they go on to qualify for a qualifying state benefit.

The petitioner states:

“people with dementia are only disregarded (not counted) for council tax if they have a medical certificate and are in receipt of certain benefits. This means that many people with dementia have to wait months or years to qualify for council tax discounts after they have been diagnosed. If council tax discounts were backdated to the date a person was certified as being severely mentally impaired, people with dementia could potentially save thousands of pounds.”

The discount the petition refers to applies where a resident who is both certified as having a severe mental impairment by a qualified medical professional and entitled to a qualifying state benefit can be disregarded for council tax discount purposes. The effect of this disregard is that the 25% council tax single person discount can remain in place where it might otherwise be lost because a person with severe mental impairment is resident.

An associated council tax property exemption can apply to properties occupied exclusively by (i) residents regarded as having severe mental impairment and (ii) certain other classes of resident (including, for example, students and school leavers) in any combination. Our understanding is this petition relates solely to the council tax discount, although similar considerations apply to this related exemption.

The Scottish Government acknowledges the valuable role these council tax entitlements play in supporting eligible households.

The Local Government Finance Act 1992 defines severe mental impairment as "a severe impairment of intelligence and social functioning (however caused) which appears to be permanent" with medical certification required for these criteria to be regarded as being met.

The qualifying state benefits used as criteria for the severe mental impairment council tax discount and exemption are set out in Article 4 of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003.

As the law demands medical certification by a qualified medical practitioner and entitlement to a qualifying state benefit for the discount to apply, the date at which entitlement to the discount may start is the later of (i) the date of medical certification and (ii) the first day of qualifying benefit entitlement. Entitlement to each of the qualifying state benefits begins on the date of application by the claimant rather than the date any benefit entitlement decision was made. Therefore, local authorities administering the severe mental impairment council tax discount are able to backdate its entitlement to the first date of entitlement to the relevant qualifying state benefit.

Council tax, as a local tax, provides both financial and administrative accountability to individual councils and therefore backdating of council tax discounts in individual cases is a matter for each local authority to determine. However, the Scottish Government understands that local authorities in Scotland routinely backdate this and other discounts where sufficient supporting evidence can be demonstrated. If a local authority refuses to backdate households have the right to appeal to the relevant local Valuation Appeal Committee, which can resolve individual disputes.

Overall, the Scottish Government would be very disappointed if there were delays or discrepancies in entitlement as described by the petitioner. However, because local authorities already have the ability to backdate applications, Scottish Ministers have no plans to amend the law at this time.

More widely, the Scottish Government would highlight to the Committee the wider difference in support available for all households who might struggle to meet their council tax in Scotland compared to England, where we understand this petitioner resides. In Scotland, the single Council Tax Reduction scheme reduces council tax liabilities based on household income and characteristics, including where members of the household have a disability and/or limited capability for work such as

those in receipt of the SMI discount. Over 450,000 households benefit from the Council Tax Reduction scheme in Scotland, with approximately 80% of those receiving a full reduction and so not having to pay council tax. In contrast, council tax support schemes for those of working age in England are designed and implemented by individual local authorities, with reductions in funding meaning that most councils there require each household to contribute a minimum amount (in some cases up to half) of their council tax, irrespective of means to do so.

In conclusion, as the Scottish Government considers that local authorities currently have the ability to backdate applications for the council tax disregard for persons determined as having a severe mental impairment, Scottish Ministers have no plans to amend the law at this time. At the same time, the Scottish Government also highlights the higher levels of support available to all households who might struggle to meet their council tax liability in Scotland than in England.

Annexe D

Petitioner submission of 30 September 2022

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

In early 2018 my beautiful wife Margaret was diagnosed with Alzheimer's Disease the most common form of Dementia.

In December of 2018 I learnt in a chance discussion with Age UK that Margaret was entitled to Attendance Allowance and in February 2019 again by a chance discussion with our frailty nurse that we may be entitled to a 25% discount on our council tax. (The 100% exemption applies to people with dementia living alone).

The council insisted that rather than the date Margaret was certified (diagnosed) by her GP as having Severe Mental Impairment (SMI) council tax discount would only start from the date Margaret first received Attendance Allowance which was some 10 months later. I questioned this with our council, Hambleton District Council and wrote to our MP Rishi Sunak.

In January 2020 I appealed to a Valuation Tribunal and in December 2020 to the High Court.

The High Court Judge confirmed that the laws as they stand allow councils to hold back on council tax discounts and exemptions until the date of receipt of Attendance Allowance, or in the case of people below pensionable age either DLA or PIP. The high court judge acknowledged that I was not appealing for any financial benefit to myself as the court fees outweighed the backdated claim.

This led to my 3 online GOV.UK petitions and a paper petition being presented to the House of Commons on the 15th June 2022. Even though my wife is unable to hold any conversation we have worked alongside many charities and have appeared on TV and Radio together with articles in National and Local Press. These include the second part of the BBC 2 documentary "Inside the Care Crisis with Ed Balls", on 3 occasions on GB News Television and I took part in an interview with David Lammy on LBC radio.

With Council Tax being a devolved issue any changes in the law within Scotland requires the approval of the Scottish Parliament.
In the process of preparing for the High Court appearance I undertook a Freedom of Information request.

As a small correction to the previous action section in my petition, the 22 councils not backdating to the date of GP Certification should have been effecting 18,947 and not 20,253 households as stated.

The figure of "over 600,000 people in the UK who receive care at home" is taken from the research undertaken by Kings College London and the London School of Economics for the Alzheimer's Society where they estimate that over 1 Million people in the UK now have dementia and that 61% are living at home.

<https://www.dementiastatistics.org/statistics/prevalence-projections-in-the-uk/>

I hope that this information will add to the understanding of the previous action and background information and I apologise for my error on the figures.

Petitioner submission of 2 November 2022 PE1976/C: Backdate council tax discounts for dementia to the date of GP certification

**With reference to the SPICe Briefing posted on the 25 October 2022
I would make the following comments:-**

First and foremost, the content of the briefing itself is very comprehensive and extremely accurate.

On page 2 it references Attendance Allowance and on page 3 it makes reference to Public Health Scotland's report on access to post-diagnostic support suggesting that in 2019-20 approximately half of the people diagnosed with dementia were not referred to post-diagnostic support. Notwithstanding that, on page 26 of Public Health Scotland's report it links to Alzheimer's Scotland for further information on post-diagnostic support.

Alzheimer's Scotland explains the 5 key aspects of post-diagnostic support and to the right under the heading of "Making the most of your post-diagnostic support" it invites you to "Download here".

If you scroll down to page 15 it says:-

"You are supported to make practical arrangements, for example: setting up Power of Attorney and claiming benefits such as Attendance Allowance, Personal Independence Payment, Carer's Credit and Self-Directed Support."

My point being that even though Attendance Allowance and Personal Independence Payments are Qualifying Benefits for Council Tax SMI Discount or Exemption I could find no reference to the person with dementia being potentially eligible for either Council Tax SMI Discount or Exemption.

As the SPICe briefing points out this adds further challenges for people newly diagnosed with dementia.

With reference to the Scottish Government response posted on 02 November 2022 I would make the following comments:-

In the title and in the second paragraph when I used the term backdate council tax discounts for dementia, I was referring to both council tax SMI discount and council tax SMI exemption.

The Scottish Government response says:-

"Entitlement to each of the qualifying state benefits begins on the date of application by the claimant rather than the date any benefit entitlement decision was made. Therefore, local authorities administering the severe mental impairment council tax discount are able to backdate its entitlement to the first date of entitlement to the relevant qualifying state benefit."

I find this a little misleading because as I stated in in my background information:-

"people with dementia are only disregarded (not counted) for council tax if they have a medical certificate and are in receipt of certain benefits"

As the DWP make very clear on their application form for Attendance Allowance (The qualifying benefit that applies to some 95% of people

with dementia) entitlement and receipt of the benefit commences on the date of receipt of the application by the DWP. The suggestion that "local authorities administering the severe mental impairment council tax discount are able to backdate its entitlement to the first date of entitlement to the relevant qualifying state benefit" is as I said misleading because the local authorities have no ability to backdate from the date of entitlement to the date of application because they are one and the same.

Referring to the Scottish Government response where it says:-

"However, the Scottish Government understands that local authorities in Scotland routinely backdate this and other discounts where sufficient supporting evidence can be demonstrated"

And:-

"Overall, the Scottish Government would be very disappointed if there were delays or discrepancies in entitlement as described by the petitioner"

I would point to the "Previous action taken" presented in PE1976.

In the Freedom Of Information request dated 01/01/2020, that I undertook in preparation to attend a High Court Hearing on this subject:- 10 Scottish Councils stated that their policy was to automatically backdate to the date of GP certification once both criteria had been met (effecting 3,654 dementia households) and 22 Scottish Councils maintain the policy of starting the discount/exemption from the date both criteria have been met (effecting 18,947 dementia households). I can provide numbers and policy statements council by council.

I would also refer to my point highlighted in the SPICe Briefing, that unless or until the household with dementia becomes aware of the availability of either Council Tax Discount or exemption they could be waiting years before they receive that entitlement.

In addition, as several councils pointed out even having claimed the entitlement, under the "statute of limitations", councils are only obliged to backdate to a maximum of 6 years.

Finally I refer to the Scottish Government response where it says:-

"Over 450,000 households benefit from the Council Tax Reduction scheme in Scotland."

My only comment is that as of 01/01/2020 only 22,601 dementia households in Scotland received either Council Tax Discount or Exemption.

I would add that according to research by Kings College London and the LSE for the Alzheimer's Society they estimate that as of 01/01/2020 there were 80,201 people in Scotland with dementia.

<https://www.dementiastatistics.org/statistics/prevalence-projections-in-the-uk/>

In Conclusion

I would ask that the committee consider the information above and ask the Scottish Government to implement the proposal that once a person has met both criteria as laid down in the Local Government Finance Act 1992, council tax SMI discount and exemption are backdated to the date of GP Certification.