

Citizen Participation and Public Petitions Committee

13th Meeting, 2023 (Session 6), Wednesday
20 September 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. The Committee last considered this petition at its meeting on [18 January 2023](#). At that meeting, the Committee agreed to write to the Scottish Government, Citizens Advice Scotland, Dementia Scotland and Alzheimer Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the Scottish Government, the Petitioner and Alzheimer Scotland which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 4 signatures have been received on this petition.

Action

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 affecting 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

Extract from Official Report of last consideration of PE1976 on 18 January 2023

The Convener: PE1976, which was lodged by Derek Brown, calls on the Scottish Parliament to urge the Scottish Government to require council tax discounts to be backdated to the date on which a person was certified as being severely mentally impaired, if they then go on to qualify for a relevant benefit.

Derek Brown submitted a freedom of information request and found that 22 of the 32 Scottish local authorities backdate council tax discounts to the date when a person received their first qualifying state benefit payment rather than the date from which they were certified as being severely mentally impaired. The SPICe briefing highlights the requirement for someone applying for attendance allowance to have needed support for at least six months before being eligible for the benefit, potentially creating a gap of six months between diagnosis and receipt of a qualifying benefit. The briefing also notes challenges in navigating benefit application processes and accessing post-diagnostic support.

The Scottish Government states that local authorities have the ability to backdate applications to the later date of either the medical certification or the date of application to a qualifying benefit. Because of that, the Scottish Government has no plans to amend the law in relation to council tax discounts.

Derek Brown's submission details his personal experience and that of his wife, Margaret, who suffers from Alzheimer's disease, in England. He explains that they only became aware of his wife's entitlement to attendance allowance months after her diagnosis and then her entitlement to a council tax discount the following year. The council applied the council tax discount from the date on which Margaret received attendance allowance, ten months later.

Do members have any comments or suggestions for action? It is an interesting petition.

David Torrance: Yes, it is, convener, particularly because of those discrepancies across local authorities. The committee could write to the relevant stakeholders, including Citizens Advice Scotland, Dementia Scotland and Alzheimer Scotland to seek their views on the actions that the petition calls for; the impact of the legislative requirement in relation to eligibility for a qualifying state benefit; the variation in the approaches taken to assessment by local authorities across Scotland; and the level and variation across Scotland of referrals for post-diagnostic support for people who have been newly diagnosed with dementia.

The Convener: I am also interested to know whether the Scottish Government is aware of the variation that is being applied to assessments by different local authorities. It would be useful for us to draw the situation to the Government's attention along with the consequential issues that arise for individuals as a result.

Fergus Ewing: The petitioner has raised a point of principle. If it is right that those benefits, whatever they are, should be paid from the date when the individual is certified as having dementia, surely that should apply to all benefits. It is a general principle. We could not and should not tolerate a system whereby some authorities, whether they be local authorities, quangos or whatever, decide to give help to those individuals and others do not. It is a postcode lottery—that would be the rather pejorative way of putting it. However, a lot of people around Scotland who should be getting the benefit of a 25 per cent reduction in council tax are not getting it. That is prima facie unfair.

All I am saying, convener, is that, in addition to the actions that have been suggested and if members agree, the point might be made that, as a general principle, there must be a universal application of the system. Whatever that system is, it should be universal and some people should not be left out.

We are really indebted to the petitioner for highlighting the issue. I was not aware of it and the petitioner has done us a good service for bringing it to the Parliament.

The Convener: I agree with that.

Alexander Stewart: I very much concur with that. The petition has identified that there is a risk of financial loss to individuals. Mr Ewing has articulated that it should not be the case that individuals who have been diagnosed and have certification are not given the proper benefits to which they are entitled. That financial loss should be unacceptable at any level.

The Convener: People should neither be denied the benefits to which they are entitled, nor should their entitlement to receive them be from a variable date depending on where they happen to live. I have a great deal of sympathy with the argument that the petitioner articulates.

Are we agreed on how to progress the petition?

Members *indicated agreement.*

The Convener: The petition is important, and we will take forward the issues that it raises.

Annexe C

Scottish Government submission of 20 April 2023

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

Thank you for your correspondence requesting further information from the Scottish Government in relation to PE1976.

Council tax, as a local tax, provides both financial and administrative accountability to individual councils. Whilst the law that defines all aspects of council tax is a matter for the Scottish Government and Parliament, how councils interpret and administer the law, including in relation to the backdating of council tax discounts and disregards in individual cases, is rightfully a matter for each local authority to determine.

However, the Scottish Government is aware of the differing approaches across Scotland's local authorities to the administration of the council tax disregard for persons suffering from a Severe Mental Impairment (SMI) and how unfair it can be for the most vulnerable to be subject to a divergence of approaches within Scotland.

Scottish Ministers therefore instructed officials to work with COSLA to try to encourage all 32 Scottish local authorities to adopt a common approach to administering this disregard. This would directly address one of the Committee's concerns and have the result of ensuring that no matter where someone applies for this disregard in Scotland, the process, backdating policy and the application form would be identical. It is our understanding that COSLA's political leadership is scheduled to consider this proposal in the coming weeks.

The Scottish Government's initial response to the Committee also noted that the law does allow for applications for the council tax disregard for persons determined as having a severe mental impairment to be backdated to when the applicant became eligible. The Scottish Government will ensure that legislation defining the qualifying state

benefits, and thus eligibility, for this disregard is kept up to date to reflect the changing benefits landscape.

Although there are no current plans for wider amendments to the law determining eligibility for the council tax SMI disregard, Scottish Ministers convened a Joint Working Group, co-chaired with the Scottish Greens and COSLA, which is considering meaningful short term changes to council tax to reflect circumstances created by the cost crisis and approaches to longer term reform. The establishment of this Joint Working Group has created the forum for the Scottish Government and local government to jointly assess and consider matters such as those identified by the Committee.

Petitioner submission of 3 May 2022

PE1976/E – Backdate council tax discounts for dementia to the date of GP certification.

With reference to PE1976/D: Scottish Government submission of 20 April 2023 I would make the following comments:-

PE1976 requests that Council Tax SMI disregards, both discounts and exemptions, be backdated to the date of GP certification once both criteria of eligibility have been met.

The Scottish Government submission PE1976/D instructs officials to work with COSLA to try to encourage all 32 Scottish local authorities to adopt a common approach to administering this disregard.

The Freedom of Information request I undertook in January 2020 indicated that 10 Scottish councils backdated SMI disregards to the date of GP certification.

My High Court appeal in December 2020 established that the present laws allow councils to wait until both GP certification and the Qualifying Benefit are received.

I repeated the Freedom of Information request in January 2023 which indicates that only one Scottish council (South Ayrshire Council) presently backdate SMI disregards to the date of GP certification.

Thus over the past 2 years, 31 out of the 32 Scottish local authorities have already adopted a common approach to administering SMI disregard.

I appeal to the Scottish Ministers through the Joint Working Group to consider meaningful changes, both in the short term and long term, to change the law in Scotland such that once the state benefit and thus eligibility has been met then Council Tax disregards for the people of Scotland with Severe Mental Impairment have their disregards started from the date of GP certification.

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 issued 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 before 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 a 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 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.

Petitioner submission of 6 September 2023

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

With reference to PE1976/F Alzheimer Scotland submission of 14 June 2023

Presently Council Tax Severe Mental Impairment (SMI) disregards across Scotland, Wales and England require the person to be in receipt of both a "qualifying benefit" and GP certification stating when the person first had Dementia. Council Tax is managed by individual local authorities however, the qualifying benefits come under the control of the central UK Government's Department of Work and Pensions.

In line with the proposal made by Alzheimer Scotland, I would invite the Scottish Ministers through the Joint Working Group to consider the observation made in response to the petition placed before the House of Commons on the petitioner's behalf on 5th September 2022 by the then Chancellor Rishi Sunak.¹

<https://hansard.parliament.uk/Commons/2022-09-05/debates/22090562000168/CouncilTaxDiscountsForDementia>

I would ask that consideration be given to the final paragraph of the observation which reads:

“However, councils have considerable flexibility, under section 13A of the Local Government Finance Act 1992, to provide discretionary council tax discounts or exemptions to anyone in their area where they consider that appropriate. This could include offering support to those individuals with a severe mental impairment, including where they may not have demonstrated entitlement to a qualifying benefit.”

¹ Note by the Clerk: By way of clarification - the petition was presented to the House by the then Chancellor, Rishi Sunak MP, on the petitioner's behalf. The observation (from which the quote is taken) was made by Paul Scully MP (Minister of State) on behalf of the UK Government