

Citizen Participation and Public Petitions Committee
Wednesday 12 June 2024
11th Meeting, 2024 (Session 6)

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

Introduction

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>

1. [The Committee last considered this petition at its meeting on 20 September 2023.](#) At that meeting, the Committee agreed to write to the Scottish Government.
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 written submissions from the Scottish Government, the Petitioner, and Alzheimer Scotland which are set out in **Annexe C**.
4. [The Committee had received 7 written submissions prior to the its last consideration of the petition.](#)
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 24 October 2022.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 5 signatures have been received on this petition.

Action

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

Clerks to the Committee
June 2024

Annexe A: Summary of petition

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

Petitioner

Derek James Brown

Date Lodged

26 September 2022

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: Extract from Official Report of last consideration of PE1976 on 20 September 2023

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

The Scottish Government's recent submission acknowledges the differing approaches to the administration of council tax disregard and says that officials are working with the Convention of Scottish Local Authorities to encourage local authorities to adopt a common approach. Colleagues will remember that we established that it was quite different depending on where you lived in Scotland whether you got that benefit redress. The submission was sent in May and said that the COSLA leadership was scheduled to consider the proposal "in the coming weeks."

According to Alzheimer Scotland, the Scottish ministers have the power, through secondary legislation, to amend or remove the statutory test that requires applicants for council tax discount who have severe mental impairment to be eligible for a qualifying state benefit. Alzheimer Scotland considers that the requirement is unnecessary and adds unfairness to the application process, particularly for individuals who have dementia. Alzheimer Scotland wants entitlement to a discount or exemption to be uniform across Scotland and wants guidance to be developed to ensure the fair application of the legislation.

The petitioner's most recent written submission draws attention to his petition to the United Kingdom Parliament, as well as to a UK Government response that states that councils can apply discretionary council tax discounts or exemptions in circumstances where individuals with a severe mental impairment have not demonstrated entitlement to a qualifying benefit. There has been a move in that direction in the rest of the UK, where people obviously feel that the legislation allows that to take place. What might we further do, colleagues? Are there any suggestions?

Foyso Choudhury: Did the Government look into COSLA's consideration? Did we have any correspondence regarding that?

The Convener: We could write to the Government asking what the outcome of any of that was. That would be perfectly reasonable, particularly in relation to this point. Is there anything else that we could do?

Maurice Golden: As you said in a previous meeting, convener, there is still some way to go on the issue, and we do not have an adequate response. With Alzheimer Scotland's recent written submission, it is worth following up with the Scottish Government about its intentions to amend or remove the legislative test requiring severely mentally impaired people to be eligible for a qualifying benefit to obtain a council tax disregard.

The Convener: That would be reasonable. We could point out that it appears from the petitioner's submission that the UK Government has indicated that it has moved in that direction—or, if it has not moved in that direction, it has clarified that it is possible for that to happen in the rest of the UK—and, therefore, the Scottish Government might want to consider following suit. Does the committee agree to keep the petition open and move forward on that basis?

Members *indicated agreement.*

Annexe C: Written submissions

Scottish Government submission of 10 October 2023

PE1976/H: 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.

Local authority approaches

As advised in our response to PE1976/D officials are working with COSLA to try to encourage all 32 local authorities to adopt a common approach to administering a disregard for persons suffering from Severe Mental Impairment.

A draft Severe Mental Impairment application form was presented to COSLA in March 2023. The COSLA Community Wellbeing Board gave their approval the adoption of a common approach in April 2023. Officials are continuing their engagement with COSLA to encourage local authorities to adopt this common approach.

The Scottish Government amended the list of qualifying benefits for Severe Mental Impairment in The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 on 5 May 2023. These amendments came into force on 14 June 2023.

Legislative test

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.

In addition, to be classed as severely mentally impaired for the purposes of Council Tax liability, a person must be entitled to, or the partner of someone who is entitled to, certain benefits; or a person who would be so entitled, but for the fact that they are of pension age. The rules in relation to benefits are set out severe mental impairment in Article 4 of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003.

Scottish Ministers have used the power in Paragraph 2 (c) of schedule 1 of the Local Government Finance Act 1992, amongst other powers, to make the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003.

As noted, Article 4 of that Order is what sets down the requirements for benefit entitlement in relation to severe mental impairment. It would be within the competence of Ministers to amend the Order to remove that requirement, in the same way as it was within the competence of Ministers to make the 2003 Order in the first place. This is about liability to Council Tax, which falls within devolved competence.

Discretionary discounts and exemptions

We refer to Alzheimer Scotland's submission of 14 June 2023, in connection with petition PE1976/F. The submission suggests that 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. Section 13A(1)(c), which provides flexibility for local authorities in reducing liability to council tax, only applies to England and Wales.

The equivalent provision that applies to Scotland is section 80 of the Local Government Finance Act 1992, however this does not provide the flexibility that applies in England and Wales. It requires that any reduction in council tax liability be provided for by Regulations.

I hope that you find this helpful.

Local Taxation Unit

Petitioner submission of 17 October 2023

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

Local authority approaches

Regarding "officials are working with COSLA to try to encourage all 32 local authorities to adopt a common approach to administering a disregard for persons suffering from Severe Mental Impairment."

I would refer to PE1976/D 20 April 2023:

The petitioner 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 since the petitioners initial FOI request of 2020, 31 out of the 32 Scottish local authorities have adopted a common approach to administering SMI disregard, be it to start Council Tax SMI disregards from the date both criteria are met (Qualifying Benefit plus GP Certification).

Legislative test

I would reiterate part of the final paragraph:

"It would be within the competence of Ministers to amend the Order to remove that requirement (referring to benefit entitlement), in the same way as it was within the competence of Ministers to make the 2003 Order in the first place."

Discretionary discounts and exemptions

The Local Taxation Unit of the Scottish Government Submission of 10 October 2023 points out that Local Government Finance Act 1992, does not provide the flexibility in Scotland that applies in England and Wales. It requires that any reduction in council tax liability be provided for by Regulations.

In contrast I refer to the final paragraph of the Scottish Government submission of 24 October 2022 PE1976/B which states:

"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."

Taking into account the Government's Legislative and Discretionary submissions of 10 October 2023 together with the Government submission of 24 October 2022, the petitioner appeals to the Scottish Ministers through the Joint Working Group 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 27 October 2023

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

I write to you in response to the Scottish Government submission of 10 October (PE1976/H) regarding the petition regarding the legislation relating to the application of council tax discounts and exemptions.

Alzheimer Scotland notes that the Scottish Government's response wrongly attributes the reference to the use of section 13A of the Local Government Finance Act 1992 as a means to provide flexibility for Scottish local authorities to reduce council tax liability to Alzheimer Scotland. We would like to clarify that this should be attributed to the petitioner's submission of 6 September (PE1976/G).

However, Alzheimer Scotland is keen for the Committee to note that the Scottish Government response indicates its agreement with our assessment that the Scottish Ministers have the authority to remove the requirements for benefit entitlement in relation to severe mental impairment. The powers in Paragraph 2 (c) of schedule 1 of the Local Government Finance Act 1992 enables the Scottish Ministers to either make or not make the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003 which include the conditions which are placed on those who are seeking a council tax exemption. By not making the Order, the Scottish Ministers can remove the requirement to provide proof of eligibility to a qualifying benefit. We continue to support the position that the test requiring eligibility to a qualifying benefit

for this purpose is both unfair and unnecessary, as outlined in our previous correspondence to the Committee (PE1976/F).

Alzheimer Scotland advocates strongly for the Scottish Government to act upon its legislative ability to make the necessary changes to ensure that people with a severe mental impairment, including those living with dementia, are able to access their entitlement to an exemption more equitably and fairly. We recognise that that this can only be truly achieved through a national, legislative approach rather than the provision for variation between local authority areas which provides a platform for different interpretations of the regulations and various approaches to delivering the legislation. We urge the Committee to consider making a recommendation for action to remedy this issue.