

Treating Care Experience as a Protected Characteristic

Introduction

In 2022, The Independent Review of Children’s Social Care recommended that Care Experience should become a protected characteristic as an addition to the protected characteristics already defined by the Equality Act 2010.

In its response, the government declined to take this forward, saying that it was concerned that by doing so it might increase the stigma relating to Care Experience but the Author, Josh MacAlister, has continued to support this recommendation, telling the Moving On Up Network in 2024 that Local Authorities have a “moral duty” to treat Care Experience as a Protected Characteristic. There is a well-publicised national campaign, led by care experienced people, for Local Authorities to adopt this motion and to date, 92 Local Authorities have signed up.

As corporate parents we have a duty to consider our role in this and this paper will set out the framework, rationale and recommendations.

For the purpose of clarity this report will discuss Care Leavers, as defined by the Children (Leaving Care) Act 2000 and people with Care Experience, which is broadly accepted to refer to people who have been in care during childhood. Care Leavers are a defined group but are also represented in the Care Experienced community.

When referencing Protected Characteristics as defined by the Equality Act (2010) these are:

- Age
- Disability
- Sex
- Gender reassignment
- Marriage or Civil Partnerships (in employment only)
- Pregnancy and Maternity
- Race

- Religion or Belief
- Sexual Orientation

Background

Care Experienced people face significant barriers and discrimination throughout their lives. An overt example of this was a letting agent in Manchester advertising a property which read “No history of substance misuse....., no care leavers, no criminal convictions”. There was outrage about the advert but this is not an isolated example. Care experienced people face discrimination and stigma in areas across housing, health, education, relationships, employment and the criminal justice system.

Care Leavers are underrepresented in all of the areas we would want your children to be in and overrepresented in all of the areas we wouldn't. Statistics from the Department for Education in 2022 show that if you are a Care Leaver in England that approximately 13% of Care Leavers go to university compared with 43% of the general population and a UCL study in 2018 found that if you are Care Experienced in England, you are **70% more likely to die prematurely** than someone who is not Care Experienced.

In North Yorkshire we work hard to achieve the very best outcomes for our care leavers, and these outcomes are better than many of our statistical neighbours, having received ‘Outstanding’ by Ofsted in 2023.

There have been some misconceptions that by making Care Experience a protected characteristic we could inadvertently create additional labels and stereotypes for the Care Experience community. Our view is that having and using a protected characteristic is a personal choice and therefore if an individual didn't want their characteristic to be disclosed, they have the choice and autonomy not to disclose it.

There has also been some criticism in the sector about local authorities who have adopted this motion but without then implementing meaningful changes.

North Yorkshire Context

Currently we support 512 young people who meet the criteria to be defined as Care Leavers but there are many more citizens of North Yorkshire who are Care Experienced, meaning they have spent some time in care but not enough, or not at the right time, to be deemed a Care Leaver.

Care Leavers are supported by our Care Planning and Support teams and Children's Disabilities Teams until they reach 18 and then are supported by our 5 Leaving Care Teams across the county.

As shared above our services were judged by Ofsted to be outstanding in consecutive inspections. We have a strong Local Offer to Care Leavers and we work hard to maintain positive relationships with our colleagues in Housing, Job Centres and the Health Service in an effort to maximise the support available to Care Leavers in North Yorkshire. We have also created the “Always Here” offer for care leavers which means that regardless of their age, we will always offer information, advice and guidance to young people. This offer is a leading offer in the country and many more authorities are now working to create something similar.

It is anticipated that treating Care Experience as a protected characteristic would have more implications for the other directorates in the council than it does for the Children and Young People’s Service.

We already have many initiatives established that would contribute to our “reasonable adjustments” if we were to treat Care Experience as a protected characteristic. Examples of this are that we guarantee interviews to Care Leavers who meet the minimum requirements for jobs within North Yorkshire Council, there is a section on the application section which enables Care Leavers to identify someone who can support them with their applications and in previous years we have been able to ringfence Apprenticeship opportunities for Care Leavers.

If we were to consider Care Experience as a protected characteristic we would need to widen understanding of what this means to all areas of the council including, but not limited to, planning, the delivery of adult social care, GDPR and data collection, Public Health, commissioning and housing.

Impact

Recognising Care Experience as a protected characteristic in North Yorkshire would mean that we would apply the same principles as we currently do with the other protected characteristics. We would need to undertake and amend our Equalities Impact Assessment and would need to amend some of the council policies to reflect that we are considering Care Experience as a protected characteristic. A practical example of the types of policies we might amend as a result would be to amend the Leave Policy in areas such as Compassionate Leave to include Previous Foster Carers everywhere that currently designates parents or close family members.

By amending the Equalities Impact assessment, we would effectively be asking all officers of the council to consider the impact of changes specifically on people with Care Experience alongside the other protected characteristics and to be mindful of direct or indirect discrimination.

Cost and Risk

There could be some costs to adopting Care Experience as a protected characteristic and we will need to identify if there are and how this would be funded. We would need to create a working group to map and implement the changes to our policies, or we could repurpose a group like the Multi-Agency Looked After Partnership to firstly recognise the new council's approach to corporate parenting and at the same time consider how we would disseminate learning and consideration across the whole council.

We would also need to obtain legal advice in relation to our position. The approach that other local authorities have taken is to create a "local protected characteristic" which is not enforceable in law using the Equality Act 2010 but would be enforceable in relation to the council's duties to comply with its Equality and Diversity Policies.

As a leading and ambitious local authority there might be a reputational risk if we didn't adopt Care Experience as a protected characteristic in light of the recommendation of the Independent Review of Children's Social Care and the national campaign, led by Care Experienced people which currently has 92 local authorities signed up.

North Yorkshire is an innovative local authority. We created the Moving On Up network which champions apprenticeships for Care Leavers. The network is sector leading and influential with policy makers, employers, local authorities and training providers. The last Moving On Up network was dedicated to the topic of Protected Characteristics. Held on the 14th May 2024 there were over 200 attendees who provided mixed reviews from Local Authorities who had adopted Care Experience as a protected characteristic. Some felt they had adopted it but weren't sure what they would do differently as a result, whilst others had adopted it and had made some progress on areas such as ringfencing opportunities for care leavers, which is something we have been doing for a number of years.

Recommendation

As a leading, and innovative local authority our recommendation is that we should carefully consider care experience as a protected characteristic but not make hasty decisions.

We would propose to set up a task and finish group with representation from all directorates in the council to carefully consider any potential costs and the implications of considering care experience a protected characteristic. As discussed earlier, we have already been able to implement many changes to recognise the disadvantages care leavers face.

We should seek legal advice about the impact on the council as a whole of adopting this motion.

We should also deliver sessions with young people leaving care in North Yorkshire to help them understand what a protected characteristic is, and what the implications for them would be and we should keep their views central to any decision the council makes about whether what we currently do is adequate, whether there is more we could do without treating care experience as a protected characteristic or whether we should consider care experience as a protected characteristic.

Once this is complete, we would propose to present the findings to the scrutiny committee alongside a recommendation about whether or not we should treat care experience as a protected characteristic and what we would want to achieve if we did.

This would then produce a Policy Report, which would follow normal processes, for proper consideration of the Executive and Full Council for a decision.