

Treating Care Experience as a Protected Characteristic

Initial Report

Maggie Allen, Jonny Hoyle, Nicki Watkinson

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 you are twice as likely to be a prisoner as you are to be an apprentice. 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 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 whilst those outcomes are better than our statistical neighbours, they are still far behind those of the general population.

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 522 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 Leaving Care Teams based in 4 localities across the county.

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 many 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 we are able to ringfence Apprenticeship opportunities for Care Leavers. The leisure centres offer free access to care leavers and looked after children with their foster carer. NYC care leavers are exempt from paying council tax within North Yorkshire

Recently, Nicki Watkinson worked with colleagues in Leisure and Tourism to obtain free tickets to shows at Scarborough's Open Air Theatre, in addition to free access to other tourism related activities for children in care, care leavers and foster carers.

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.

Implications

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.

Young People's views

The Leaving Care Service undertook an initial workshop with a group of care leavers. The first element of the workshop was helping young people understand what the Equality Act is, and how it might be applied.

Overall, the feedback from this session was positive in favour of Care Experience being recognised as a protected characteristic. A summary of their feedback was:

'It would be a good thing as many people don't know what a care leaver is and therefore they may have more understanding if it is a protected characteristic if for example we act in a certain way or sometimes behave differently'

'I definitely feel like It would be positive to have protected characteristics for care leavers, care leavers are generally under represented anyway and this will make it more formal and therefore make a difference and in turn will inform people and enable more research. I think good examples of where we may need additional support (protected characteristics) in the work place and at college/university are if we are suffering from mental health linked in to the trauma we may have suffered and our experiences as children – there is a need for additional awareness and support and possibly time off if needed. We also need to be prioritised for schemes within the workplace such as CBT and therapy if it is offered via occupational health/human resources. Also possible awareness that we do not have the support of families etc and have more financial commitments as may be living in independence early so help with travel costs or excepting that we may need to work from home more. Also to recognise foster parents as parents and have bereavement leave etc in line with blood relatives.

'no idea'

'A bit more leniency for first year trainee's in job roles and to protect care leavers from bullying due to their circumstances.'

'It would be a good thing, care leavers have been through so many different experiences that others have not, for young people claiming asylum many people can never imagine what they have been through, they have the added issue of struggling with language and getting used to different cultures and how we do things differently and different religions (for example needing to pray in work time).'

'Definitely as good thing and it should have already been done. All work places should offer counselling'

'Yes it would be a positive thing but we also need to make sure we don't get special treatment and circled out as others would wonder why we are getting special treatment. Sometimes workplaces are not aware of the challenges we face, living for example in homeless shelters and not having money to eat but being expected to work long shifts'

'Yes it is a good idea, we may need time off for things like this trip and engaging with our support workers but it is a tricky one as I told work gradually that I was a care leaver and some may not want work to know they are. Everyone deserves a chance to work and if you can't manage work because of your background and experiences and lack of support in work something needs to change.'

'A good idea, I know someone who has ADHD and emotional health needs and she needs so much more support to be able to work.'

Cost and Risk

There would be some internal costs to adopting Care Experience as a protected characteristic. 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

Recognising care experience as a protected characteristic is the method that a large number of Local Authorities have pursued but the goal is to minimise the inequalities the care experienced community faces.

As a leading, bold and innovative local authority our recommendation is that we should pursue formally recognising care experience as a protected characteristic, but we should do this with a focus on affecting meaningful change.

We should create a task and finish group with representation from all directorates in the council to carefully consider 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.

Protected Characteristics

We should provide a workshop to senior leaders across all directorates about care experience and the varied roles and responsibilities of corporate parents and we should offer ideas about how each directorate could recognise the disadvantage care experienced people have and some of the ways these could be mitigated.

We should allocate a project manager to oversee the transformation and implement changes as necessary. Feeding back to the new, repurposed Multi Agency Looked After Partnership.

We should use this forum to share examples of how all areas of North Yorkshire Council are exercising their corporate parenting responsibilities and working towards positively impacting the outcomes for our care experienced members of society.