



EXECUTIVE 17th August 2023

Report Title	Designating Care Experience as a Protected Characteristic
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Lead Member	Cllr Scott Edwards, Executive Member for Children, Families, Education and Skills

Key Decision	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in by Scrutiny?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there public sector equality duty implications?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information (whether in appendices or not)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972	

List of Appendices

None

1. Purpose of Report

- 1.1 As corporate parents, it is the responsibility of all officers and Councillors to support children and young people that have been in our care, ensuring that they receive the same opportunities that we would want for our own children. We know, however, that people with care experience face disadvantage and potential discrimination in society.

- 1.2 This report is part of a wider focus by our Corporate Parenting Board on what additional measures can be put in place by the local authority to further improve outcomes for children that are looked after and people with care experience.

- 1.3 The recommendation of this report is that North Northamptonshire Council treats care experience as if it were a protected characteristic under the 2010 Equalities Act (as amended).

2. Executive Summary

- 2.1 The Public Sector Equality Duty is a duty imposed on all UK public bodies by Section 149 of the Equality Act 2010, to take equalities considerations into account when exercising any of their functions and taking decisions. This includes a requirement to advance equality of opportunity between people who share a protected characteristic and those who do not.
- 2.2 'Care Experience' is a term used to describe people who are, or who have been, in the care of a local authority. Care experience is not deemed to be a 'protected characteristic'.
- 2.3 In treating care experience as if it were a protected characteristic, it means that North Northamptonshire Council must actively and explicitly take the needs of this cohort into account in all future policy and decision making. This will include a requirement to undertake Equality Impact Assessments that explicitly considers the needs of this cohort of people.
- 2.4 Extending the definition of protected characteristics also places a duty on the authority to include details about care experience in the annual publication of information relating to people who share a protected characteristic in services and employment. This will enable the Council to measure and monitor the impact of services and policy decisions on this cohort more meaningfully.

3. Recommendations

- 3.1 It is recommended that the Executive:
- i) Agree that 'care experience' will be treated as if it were a Protected Characteristic under the Equalities Act 2010 so that decisions on future services and policies made and adopted by the council are assessed and consider the impact on people with care experience.
 - ii) Approve the amendment of North Northamptonshire Council's Equality, Diversity and Inclusion Policy, and its Equality Strategy 2021- 2025 to reflect 'care experience' being treated as if it were a protected characteristic.
- 3.2 Reasons for Recommendations – The rationale behind this recommendation is that it will help to further embed ways of working within the local authority that specifically take the needs of people with care experience into account. In doing so the Council will be strengthening its role as a corporate parent.

- 3.3 Alternative Options Considered - the alternative option would be not to adopt care experience as a protected characteristic. This is not recommended as it will not further the needs of people with care experience or address the underlying stigma and discrimination that they can face in society.

4. Report Background

- 4.1 The Public Sector Equality Duty (PSED) is a duty imposed on all UK public bodies by Section 149 of the Equality Act 2010, to take equalities considerations into account when exercising any of their functions and taking decisions. This includes giving due regard to achieving the following:

- I. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- II. Advance equality of opportunity between people who share a protected characteristic and those who do not.
- III. Foster good relations between people who share a protected characteristic.

- 4.2 The equality duty covers the following protected characteristics: *age; disability; gender reassignment, pregnancy and maternity; race; religion or belief; sex and sexual orientation, marriage and civil partnership.*

- 4.3 'Care Experience' is not classified as a protected characteristic. The term has no statutory basis but is an umbrella term used to refer to individuals who are, or who have been, in care.

- 4.4 The Independent Review of Children's Social Care (MacAlister 2022) has highlighted the significant levels of discrimination and disadvantage faced by care experienced people:

"Many care experienced people face discrimination, stigma and prejudice in their day to day lives. Public perceptions of care experience centre on the idea that children are irredeemably damaged and that can lead to discrimination and assumptions being made" (MacAlister 2022)

"Hearing testimony from care experienced people sharing the discrimination they have experienced, even from a very young age, it is clear that such discrimination can be similar in nature to other groups that have a legally protected characteristic under the Equality Act (2010)" (MacAlister 2022)

- 4.5 There is a wealth of data that supports MacAlister's (2022) conclusions that care experienced people are disadvantaged in society. For example¹:

- I. 41% of care experienced young people aged 19-21 are not in education, employment or training (NEET), compared with the national average of 12%.

¹ www.homeforgood.org.uk/statistics

- II. 13% of care experienced young people are in higher education by their 19th birthday, compared to 45% in the wider population.
 - III. 25% of all homeless people are thought to be care experienced.
 - IV. Almost 25% of adult prison population have previously been in care, and nearly 50% of under 21-year-olds in contact with the criminal justice system have spent time in care.
- 4.6 MacAlister (2022) made the recommendation in his report that ‘Government should make care experience a protected characteristic’ and concluded that this would ‘provide greater authority to employers, businesses, public services and policy makers to put in place policies and programmes which promote better outcomes for care experienced people.’
- 4.7 The Government are yet to commit to making care experience a protected characteristic, but there are a growing number of local authorities acting locally. At time of writing 34 local authorities nationally have passed motions adopting care experience as a protected characteristic².
- 4.8 In treating care experience as if it were a protected characteristic, it means that North Northamptonshire Council must actively and explicitly take the needs of this cohort into account in all future policy and decision making. This will include a requirement to undertake Equality Impact Assessments that explicitly considers the needs of this cohort of people.
- 4.9 Extending the definition of protected characteristics also places a duty on the authority to include details about care experience in the annual publication of information relating to people who share a protected characteristic in services and employment. This will enable the Council to measure and monitor the impact of services and policy decisions on this cohort more meaningfully.

5. Issues and Choices

- 5.1 An alternative option would be to maintain the status quo and not adopt care experience as a protected characteristic. It is proposed that this be discounted as an option because the Corporate Parenting responsibility of the local authority is that it should do all it can to protect and promote the welfare of young people that have been in our care.
- 5.2 A risk of not adopting this proposal is that future policies and procedures implemented by the Council do not give due consideration to the impact on people with care experience.

6. Next Steps

- 6.1. If the Executive agree to these recommendations these proposals will then be taken to Full Council for ratification.
- 6.2. Following ratification, the Children's Commissioning Service and Human Resources Departments will work together to implement policy and process change within the organisation, with progress reviewed through the Corporate Parenting Board. Following an initial scoping exercise, it has been concluded that all work can be implemented within existing resources.

7. Implications (including financial implications)

7.1 Resources, Financial and Transformation

- 7.1.1 There are no direct financial implications for adopting care experience as a protected characteristic. Work to update policies and procedures will be led by the Equalities Team within the Human Resources Department. This work required is limited and can be managed within existing resources.

7.2 Legal and Governance

- 7.2.1 The Council has duties to provide support to care leavers under the Children Act 1989 as amended by the Children and Social Work Act 2017. The proposals set out in this report will enable the Council to carry out these duties.
- 7.2.2 There will be a requirement that the needs of care experienced people are explicitly considered in all future decisions made by the Council where an Equality Impact Assessment is required. A failure to carry out a robust Equality Impact Assessment could lead to the decision being challenged through the Courts by way of Judicial Review.

7.3 Relevant Policies and Plans

- 7.3.1 The Equalities Team will lead work to ensure all relevant policies and procedures are updated to incorporate care experience as a protected characteristic. This will include updating the following:
 - a) The Equality Screening Assessments (ESAs) and Equality Impact Assessments (EIAs).
 - b) Template documents used by the Council in consultation/engagement
 - c) Equalities and Diversity Training
 - d) Update the equality objectives set out in the Council's Equalities Strategy and Equalities Policy.

7.4 Risk

7.4.1 There are no significant risks arising from the proposed recommendations in this report.

7.4.2 The recognition of care experienced as a protected characteristic by the Council does not create any enforceable rights for those who have this characteristic. It is not at present one of the protected characteristics under the Equality Act 2010, in respect of which discrimination is unlawful.

7.4.3 The report recommends recognising 'Care Experienced' as a Protected Characteristic to demonstrate the Council's commitment to advancing equality of opportunity between those with care experience and those without and doing so in advance of national reform which will mandate this for all councils.

7.5 Consultation

7.5.1 There is no planned consultation as part of this proposal. If the decision is endorsed by Executive, local authority officers will work with the Northamptonshire Children's Trust to engage people with care experience to jointly produce an implementation plan.

7.6 Consideration by Executive Advisory Panel

7.6.1 Not applicable

7.7 Consideration by Scrutiny

7.7.1 Not applicable

7.8 Equality Implications

7.8.1 This recommendation of this report is to extend the list of protected characteristics as set out in the Equality Act (2010). In doing so, it will ensure that the needs of people with care experience will be explicitly considered.

7.8.2 An Equalities Screening Tool has been completed and highlights the beneficial impact that these proposals will have on the Council ability to demonstrate it is meeting the needs of all residents under the Equalities Act (2010).

7.9 Climate and Environment Impact

7.9.1 There are no implications on the climate and the environment.

7.10 Community Impact

7.10.1 There is no specific impact on particular localities.

7.11 Crime and Disorder Impact

7.11.1 There are no specific impacts on crime and disorder

8 Background Papers

8.1 Further information about the national campaign for local authorities to treat care experience as a protected characteristic is available here:

[Care Leaver Local Offer :: Home / Blog Articles \(careleaveroffer.co.uk\)](http://careleaveroffer.co.uk)