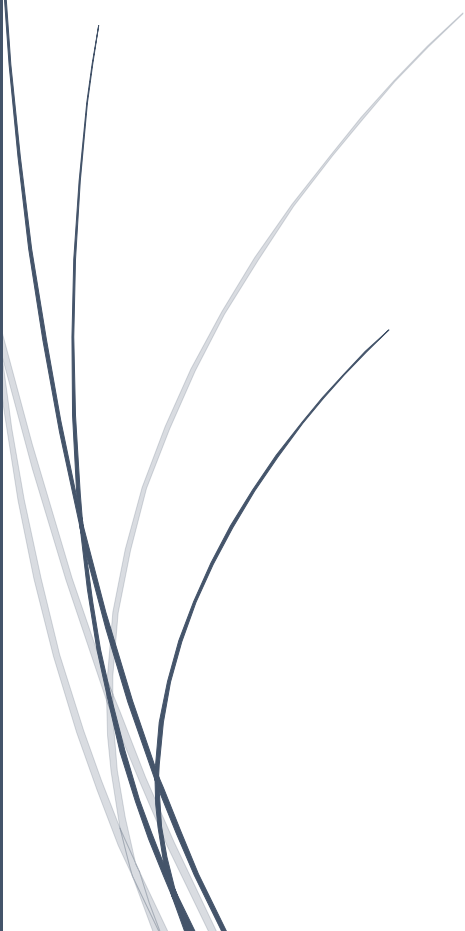
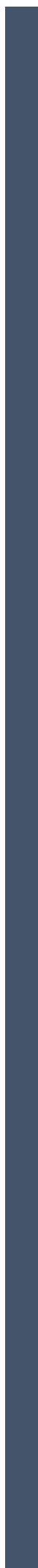


Care Experience as a Protected Characteristic

Summary Report



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1. Background for care experience as a Protected Characteristic across the UK

This summary report will discuss the background literature into care experience as a protected characteristic in England, Scotland and Wales prior to potential reform of the Equalities Act (2010) and discuss the benefits, challenges and next steps for Children's Services management team to consider.

1.1 Scotland and England

The Independent Review into Children's Social Care in England (MacAlister, J. 2022) made a recommendation for care experience to become a protected characteristic under the Equality Act 2010. In the UK, third sector organisations have fore fronted conversations about the value of care-experience being a Protected Characteristic (Who cares? Scotland and the Human Rights Commission, 2018) in both Scotland and England.

The Scottish Children's Reporter Administration reported that they will actively work to promote the equality for care experienced children and young people. As a part of this, they have developed internal policies to ensure care experienced is a protected characteristic. The purpose of this is to provide care experienced young people with protection from discrimination and harassment because of their care identity (Ibid, 2018).

Following successful lobbying at local authorities across the UK, approximately **60 to 70** local authorities in Scotland and England made a formal motion to recognise care experienced as a protected characteristic (Galloway, 2023). This includes protection from discrimination and harassment because of their care identity. Terry Galloway (2023, online) is a campaigner and care experienced. Terry Galloway provides a briefing paper outlining the arguments in favour of care experienced as a Protected characteristic as part of the Care Leaver Offer in England.

Approximately, **19 million young people** now live in an area **where care experience is recognised as a protected characteristic** (October 2023). The awareness is leading to increasing numbers of local authorities in England and Scotland to strengthen the case for care experience to be afforded legal protection under the Equalities Act (2010).

1.2 Scotland's position

Local authorities across Scotland have developed internal policies to ensure care experienced is a protected characteristic through third sector organisations lobbying government (Who Cares? Scotland, 2018).

Who cares? Scotland and the Equality and Human Rights Commission (2018) outline three key benefits for care experienced as a protected characteristic.

- 1. Ensures that any discrimination of someone with care experience is treated with the same seriousness as discrimination against people sharing any of the existing protected characteristics.**
- 2. Raises consciousness about the discrimination faced by care experienced young people and the importance of providing support to this group.**
- 3. Allows Corporate Parenting and equality and diversity work to be more closely aligned.**

Discrimination based on care identity has been recognised at a statutory level in Scotland, and Who Cares? Scotland argue that Corporate Parents have a duty to tackle that discrimination (see appendices). The Equality and Human Rights Commission is the equality body for Great Britain.

The Equality Act does not prevent Corporate Parents from taking action to address the needs of, or disadvantages faced by people with care experience, unless this causes unlawful indirect discrimination against people sharing one of the protected characteristics.

Corporate Parents can treat people with care experience more favourably than people who do not have care experience. This would only be unlawful if doing so, puts people who share a protected characteristic at a particular disadvantage that can't be justified.

To address the disadvantages faced by people with care experience, many organisations have adopted lawful policies or practices that benefit only people with care experience. For example:

- Local authorities offer discounted council tax schemes for those who left care (RCT Care leavers don't pay council tax since 2019, providing they stay in RCT).
- Further education and higher education reserve a certain number of spaces or bursary schemes for care experienced young people.
- Care leavers as a housing priority.

According to Who Cares Scotland? (2018), there can be confusion and uncertainty about the differences between positive action and positive discrimination. Positive action is not the same as positive discrimination.

Positive discrimination: Is unlawful under the Equalities Act because it involves more favourable or preferential treatment of someone because of one protected characteristic and this can lead to less favourable treatment to others.

Positive action is the 'preferential treatment of someone because of a protected characteristic but the purpose is to...benefit members of a disadvantaged or under-represented group who share a protected characteristic, or to address inequality and the treatment is a proportionate way of achieving that aim.

1.3 England's position

The Children's Commissioner for England released a survey mid- 2023 to care experienced young people across England asking young people to share their views about Care experience as a protected characteristic (Children's Commissioner, 2023:online).

Contact has been made with the policy team to find out the key results of the survey and we've been advised that the results will be made available later this financial year and we've been added to their mailing list.

The Children's Commissioner for England provides the arguments in favour and arguments against care experience as a protected characteristic as follows:

Arguments in favour

- Care experience can have a lifelong impact. It could bring change and a voice to young people.
- It could prevent discrimination, spark conversations and empower people who have experienced discrimination or trauma.

Arguments against

- Could result in more discrimination and stigmatisation.
- Some young people want separation from being care experienced.
- The system should be improved rather than politicised.
- People might feel pressured to reveal their experiences of being in care.
- Discrimination by existing protected characteristics is still prevalent.

1.4 Wales

In Wales, local councils have been tasked by Welsh Government to link to ‘*A Promise from Wales*’ by strengthening their corporate parenting board pledge to care experienced young people as a result of three care experienced summits held between December 2022 to the present.

1.5 Newport case study

Contact has been made with Newport council to hear about their updates as the first local authority in Wales to make care experience as a protected characteristic as part of their Corporate Parenting board responsibilities and council wide functions (See Appendix 1).

- The meeting was about the process and benefits of making care experience a protected characteristic in local authorities, based on the example of Newport.
- The meeting was held by Jay McCabe and Sarah Boyce, who are managers in Newport.
- The meeting covered the following topics:
 - The role of Rowan Aderyn, an ex-care leaver and successful businesswoman, who initiated and drove the motion in Newport with the help of Terry Galloway, an advocate for care leavers in England.
 - The briefing paper that Jay McCabe prepared and submitted to the cabinet, which outlined the benefits and the legal basis for the motion.
 - The event that Sarah organised, where care leavers met with cabinet members, received quilts as gifts, and witnessed the motion being passed.
 - The next steps of incorporating the care experience into the Equalities Action Plan and getting each directorate to respond to it.
 - The challenges and opportunities of providing accommodation, employment, and support for care leavers, especially for unaccompanied asylum-seeking young people.

Newport's briefing paper summarised (See Appendix 1).

Risks (and benefits/ opportunities)

There are several benefits resulting from the commitment (motion): -

- Greater opportunities for care leavers in terms of employment, housing, health, and education.
- Improving access to services.
- Influencing good practice in and across Newport.

Potential risks include: -

- Potential disagreements about the nature of this characteristic being protected.
- The operational and strategic implications and the need to review existing council wide work to reflect and adopt this characteristic in working practice.

Options/ decisions

1. To consider this proposal in principle and to support further discussions across Council service areas to understand the full implications and parameters for adding care experience as a protected characteristic.
2. To propose a motion at Council on 23.01.2024 as outlined above.

Newport's Next steps and timescale

Following agreement, detailed discussions to commence with Exec Board/CMT members to consider wider impact including on housing and homelessness services.

It is proposed to add care experienced as a protected characteristic within the next Strategic Equalities Plan to be published in April 2024.

1.6 Monmouthshire case study

Monmouthshire was asked about their plans for care experience as a protected characteristic and the following response was provided via email.

In Monmouthshire, whilst we fully support the concept, we have been very mindful that there are legal issues relating to protected characteristics that cannot come into play where something is not protected in law. Therefore, we are not looking to 'treat care experience as if it were a protected characteristic' because in our view it is not possible to do this unless it is legally a protected characteristic.

What we are doing is to adopt a position that recognises the disadvantages that care experienced people may face and where we are able to, address these. Actions therefore include including Care Experience within local authority Integrated Impact Assessments, give a right to interview to any care experienced person who meets the essential criteria for jobs

within MCC and consider the disadvantages faced by care experienced people when setting and reviewing the Council's Strategic Equality Objectives.

This is in addition to the statutory support offered to care experienced young people up to age 25 in MCC, such as 100% council tax exemption, priority access to housing, personal advisors who provide advice, assistance and support.

1.7 Wrexham case study

Wrexham was asked about their plans for care experience as a protected characteristic via Teams. Wrexham are in the process of reviewing care experience as a protected characteristic.

Wrexham have been taking steps to raise the profile of Corporate Parenting Board among elected members and staff. They tried a whole council approach but have now tailored this to each individual party and individual wards for elected members to understand their Corporate Parenting Board responsibilities.

1.8 Swansea case study

Swansea was asked about their ideas for care experience as a protected characteristic via a Teams discussion. Their view is that the voice of care experienced young people should be heard and should come directly from care experienced young people.

Swansea have developed podcasts with young people to help champion the issues that matter to care experienced young people. This includes 7 podcast recordings that are all youth led. The podcasts were used to help develop their Corporate Parenting Board Pledge and Corporate Parenting Board have heard these podcasts about the issues that matter to young people in Swansea.

There are 8 to 15 young people that meet on a regular basis with their Participation and Children's Right's Officer. Swansea have offered their podcast equipment to link with RCT to do podcasts between young people in RCT and Swansea to discuss care experience as a protected characteristic and whether there is momentum to develop this further and take information to the Children's Commissioner for Wales on a national level. Josh Price can be contacted on Josh.Price@swansea.gov.uk

2. Benefits of Care Experienced as a Protected Characteristic

The benefits can be summarised as follows:

- Ensures that any discrimination of someone with care experience is treated with the same seriousness as discrimination against people sharing any of the existing protected characteristics.
- Raises consciousness about the discrimination faced by care experienced young people and the importance of providing support to this group.

- Allows Corporate Parenting and equality and diversity work to be more closely aligned.
- Care experienced people face significant barriers that impact them throughout their lives.
- Society often does not take their needs into account.
- Care experience people often face discrimination and stigma across housing, health, education, relationships, employment and in the criminal justice system (see Newport's briefing note).
 - ✚ 25% of homeless people across the UK are care experienced.
 - ✚ Care experienced are 3 times less likely to access higher education and the gap is widening across the UK.
 - ✚ Care experienced are 70% more likely to die prematurely across the UK.
- Inconsistent support in different geographical areas.
- As Corporate Parents councillors have a collective responsibility for providing the best possible care and safeguarding for children looked after by us as an authority.
- Young people would not be denied housing on the basis of them being care experienced.
- Under the Equality Act 2010 there would be scope to improve the opportunity for young people who are care experienced to access housing.

(See Care Leaver's protected Characteristic, noted in Newport's briefing paper, Appendix 1).

3. The Challenges of Care Experienced as a Protected Characteristic

- Could result in more discrimination and stigmatisation.
- Some young people want separation from being care experienced.
- The system should be improved rather than politicised.
- People might feel pressured to reveal their experiences of being in care.
- Discrimination by existing protected characteristics is still prevalent.
- Potential disagreements about the nature of this characteristic being protected.
- The operational and strategic implications and the need to review existing council wide work to reflect and adopt this characteristic in working practice.

Points for Consideration

- Currently, care leavers in RCT are in the top priority band for housing. As a result of the Coronavirus pandemic, more groups of people were added to the top priority band for accommodation, and therefore this top band is now more populous than before. Despite being considered a priority, young people are struggling to secure accommodation when leaving care, with many having no option other than to be placed in temporary accommodation, or present as homeless.
 - If being care experienced were to become a protected characteristic, there is not a guarantee that care leavers would become a priority within the priority housing band, and this issue could remain unchanged.
 - The local authority would be duty bound to have due regard to the need to advance equality of opportunity between people who share a relevant

characteristic and people who do not (Shelter, 2024). However, for young people leaving care to benefit from this protected characteristic in terms of housing, further work would need to be done around the priority banding, as their current status as a priority is not ensuring they are able to access their own housing when they leave care.

- If care experienced were to become a protected characteristic, Unaccompanied Asylum-Seeking Children (UASC) would become protected just as mainstream looked after children would, but delays in the granting of asylum claims poses concerns when looking to afford UASC young people the same protections. UASC young people are not able to join the Common Housing Register or claim Universal Credit or other benefits until they are granted asylum. UASC young people therefore could not benefit from an increased priority for housing while their claims are being processed, and the delays in asylum claims that young people have been experiencing since March 2023 mean it would be unlikely that they would benefit from this increased priority in the same way other care experienced young people might.
 - Discussion with Newport Children’s Services around this concern indicated that this is also a concern for them, and there are no current plans to ensure UASC young people do not ‘lose out’ compared to other care experienced young people.

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