

Children and Young People Overview and Scrutiny Committee

12 June 2024

Care Experience as a Protected Characteristic

Report from: Dr Lee-Anne Farach, Director of People and Deputy Chief Executive

Author: Alex Kaitell, Head of Service Corporate Parenting and Youth Justice. Debbie Taylor, 16+ Service Manager

Summary

This report sets out why Medway Council should consider adopting care experienced as a protected characteristic.

The definition of care leaver and care experienced are often used interchangeably. A care leaver is defined within the Children Act 1989, the Leaving Care Act 2000, and the Children and Social Work Act 2017. The duties towards care leavers are set out within these legislative acts, however, do not include the more recent terminology of care experienced, which to date has not nationally been agreed. For the purpose of this report care experience will be used to define people who have been looked after at some point in time by the local authority.

In 2021, the Government commissioned Josh MacAlister to undertake an Independent Review of Children's Social Care. Published in May 2022, the review recommended that care experience should be treated as an additional protected characteristic: *"...to tackle the stigma and discrimination many care leavers face in their day to day lives, the UK should be the first country in the world to recognise the care experience as a legally protected characteristic in equalities legislation."* (p. 145)

Terry Galloway, co-founder of the website Care Leaver Offer, is leading a national campaign to take forward Josh MacAllister's recommendations. To date over 90 Local Authorities have agreed to add Care Experience as a protected characteristic. In doing so these Local Authorities have recognised and committed to acting upon the discrimination and stigma faced by care experienced people.

This report will be discussed at 18 July 2024 meeting of the Council.

1. Recommendations

- 1.1 The Children and Young People Overview and Scrutiny Committee is asked to note the report and provide any comments to 18 July Council meeting.

2. Budget and policy framework

- 2.1. The proposals set out in this report support Medway Council's values, council strategy and children's services corporate parenting strategy.

Medway Values

- 2.2. Medway Council Values aim to work together and in partnership with everyone that has an impact on the lives of our residents and businesses. The Council strives to empower communities, strengthen collaboration between communities, businesses, universities and the voluntary sector to maximise resources and knowledge.
- 2.3. Medway Councils Strategy sets out our ambition to "support residents to realise their potential especially young people, through the provision of services and initiatives that will help Medway become an even healthier and safer place to live."
- 2.4. Through Child Friendly Medway we seek to: "Improve the lives of children by ensuring their voices, needs, priorities and rights are an integral part of our strategies, policies, programmes and decisions".
- 2.5. Medway's Corporate Parenting Strategy 2024-2025 sets out Medway's vision and commitment to children in care and care leavers, identifying the actions we will take to meet the duties under The Children and Social Work Act 2017. The proposals within this report will enhance the council's commitment to its corporate parenting functions, in particular having regard to;
 - help those children and young people gain access to and make the best use of services provided by the local authority and its relevant partners.
 - promote high aspirations, and seek to secure the best outcomes, for those children and young people.
 - prepare those children and young people for adulthood and independent living

Alongside this, these proposals will strengthen Medway Council's commitment to delivering the Medway Pledge – a list of commitments developed by children in care and care leavers.

3. Background

The National Context

- 3.1 The independent review of Children's Social Care published in May 2022, captured the voices of children in care, care leavers and care experienced people as part of its consultation. It noted that for many care experienced people, discrimination, stigma and prejudice is a daily occurrence. As such the review included a recommendation that *"Care Experience should be a protected characteristic"*.
- 3.2 Stable Homes, Built on Love (February 2023) sets out a national reform of children social care, to respond to the recommendations of the McCallister Review. In response to the recommendation, we see an ambition *"to extend corporate parenting responsibilities to other government departments and relevant public bodies, subject to legislation (when parliamentary time allows). This will ensure that policies and services that affect children in care and care leavers better take account of the challenges that they face and provide opportunities for them to thrive."*
- 3.3 The first Council to pass this motion was Cumberland Council, a unitary authority, in August 2022. The review's chair, Josh MacAlister, said at the time he was "delighted" to hear of Cumberland's lead, adding: "The disadvantage faced by people who have spent time growing up in the care system should be the civil rights issue of our time. Children in care are powerless, are often invisible and they face some of the greatest inequalities that exist in England today." Terry Galloway said: "This is hugely significant. We want all local authorities to follow – it is the only way we will get system change. This motion is going to give care experienced people a voice."

Local Context

- 3.4 Today Medway has 167 care experienced young people open to Children's Services, and 475 children in care.
- 3.5 As a Council we strive to improve the life chances of children in care and care leavers. In the Ofsted Inspection in July 2023, the separate judgement for the care leavers service highlighted:
- "The service for care leavers has significantly improved since the previous inspection in 2019. Personal advisers are strong advocates for their young people. They know young people well and are committed, caring and dedicated to improving their lives. Personal advisers visit young people at a frequency that meets their needs. They provide practical help and advice to young people. The care leaver hub is a warm and welcoming environment. It is a safe space where young people can meet, socialise, attend groups and access support from their personal advisers, who are based there."*
- 3.6 The report went on to note that Ofsted recognised the progress of Medway Council's Corporate Parenting Board, in ensuring its collective responsibility for

providing the best possible care and safeguarding for children who are looked after.

- 3.7 The Family Business subgroup of the board has worked hard to encourage more organisations/businesses/community groups within Medway to embrace the notion of Corporate Parents and build a community of support around Medway's children and young people. Despite this, care experienced people face significant barriers that impact them throughout their lives.
- 3.8 The Council's Commitment to the Equalities Act 2010 is set out in the fair access, diversity and inclusion policy. The council aims to "improve the quality of life and opportunities for everyone living, working, learning, playing and visiting Medway". Medway as a council "works to eliminate unlawful discrimination, harassment and victimisation; promote equality of opportunity; fosters good relations between different sections of the community and improves the quality of life and opportunities for everyone".
- 3.9 As a Council we want "to be acknowledged as an organisation that promotes fair access and inclusion", that "is committed to ensuring that no service user, employee, job applicant, partner, contractor, supplier or member of the public will be unlawfully discriminated, harassed or victimised on the grounds of race; ethnicity; nationality; ethnic or national origin; colour; disability; gender identity or presentation; marital or civil partnership status; maternity or pregnancy; family and caring responsibilities; sex; sexual orientation; age; HIV status; religion or belief; political beliefs; social class; trades union activity; or irrelevant spent convictions
- 3.10 Medway's care experienced young people tell us that by adopting care experience as a protected characteristic it brings hope to them that there will be an increased understanding about care experience, they would be better supported by other organisations and agencies, including schools, housing, and potential employers.
- 3.11 Care experienced young people described being in care/care experienced as:
 - A double stigma (alongside another protected characteristic)
 - Something to keep quiet about
 - An unwanted label
 - An additional pressure
 - A barrier
- 3.12. It is widely reported that care experienced young people have poorer outcomes than their peers, and that they continue to, face discrimination across housing, health, education, relationships, employment and the criminal justice system.
- 3.13. Many will face barriers that impact them throughout their lives as society fails to take their needs into consideration but by making care experienced a protected characteristic, Medway will go even further beyond its commitment to equalities, and the principles of corporate parenting to a council that is proactive in its response to its equality's duties.

- 3.14. Medway's Local Offer to care leavers already: -
- offers to fully fund council tax to care leavers up to the age 25
 - offers to act as a Corporate Rent Guarantor
 - offers priority banding when applying for social housing in Medway
 - offers to fund the cost of the first TV license
 - offers to fund 10 driving lessons
 - offers to pay for driving license and driving tests
 - provides £3000 setting up home money when moving into own tenancy
 - provides a higher education bursary
 - pays rent costs when at university
 - offers the Staying Put arrangement
- 3.15. Medway Council already has a good offer (as noted by the Good Ofsted rating for Care Leavers), nonetheless, there is more work to be done to improve the life chances of care experienced people through into adulthood, and this calls for a wider response from all relevant services across the Council and out into partner organisations.
- 3.16. If Medway Council, and its partners, were treating care experience as a protected characteristic it would help to address the enduring inequalities and stigma faced by many people who have spent time in the care of a local authority as a child and who live in Medway as an adult.

4. Options

- 4.1. A) Approve care experience as a protected characteristic** – this is recommended. In doing so the council is recognising and acknowledging that care experienced people are a group who are likely to face discrimination. As a council we have a duty to put the needs of disadvantaged people at the heart at the heart of decision-making through co-production and collaboration. As corporate parents, we are demonstrating our commitment to care leavers as opposed to waiting for national legislative change.
- 4.2. B) Do not approve care experience as a protected characteristic** – The Council could choose not to adopt care experience as a protected characteristic and continue with its existing approach. This is not recommended. It is anticipated that national reform and the campaign by Terry Galloway will result in care experience becoming a protected characteristic under the Equalities Act in the future.

5. Advice and analysis

- 5.1. This report is recommending that Medway Council recognise care experience as an additional protected characteristic. This recognition not only promotes fairness and social justice but also encourages greater inclusivity within the Council.

- 5.2. Bringing care experience to the forefront of the Council more widely will ensure all officers of the Council, and its partners, actively consider their role as a Corporate Parent for Medway's children in care and care experienced people.
- 5.3. Doing so will support Council members and officers to provide better and more inclusive services.
- 5.4. Proactively recognising care experience as a locally protected characteristic has significant implications for equality. Medway Council will be acknowledging the unique challenges and experiences faced by care experienced people and will be actively and openly seeking to address the need for specific protections and support,
- 5.5. Medway Council will be demonstrating a commitment to address the inequalities and barriers faced by this marginalised group, as it does with the 9 other groups already recognised in law, thereby helping to reduce discrimination amongst this cohort.
- 5.6. This proposal ensures that care experienced people are afforded the same opportunities and access to services as other protected groups. It creates an additional and corporate platform for care experienced people to have their voices heard and to support their needs being met.

6. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Increase demand for support and service	All CYP would be in scope of the proposals as will adults who were in the care of other local authorities as children but now live in Medway as adults.	Remove the offer to act as Mentors for all those with care experience.	B II
Reputational	Adopting this proposal will be in advance of any national reform	If faced with a national challenge, Medway will not be alone in this as over 90 authorities have taken this stance.	C III
Reputational	Other authorities across the region may adopt this as a protected characteristic,	Medway should be proactive and become a proactive council leading the way across the region.	B II

Risk	Description	Action to avoid or mitigate risk	Risk rating
	leaving Medway behind		

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

7. Consultation

- 7.1. The recognition of care experience as a protected characteristic is an ongoing national campaign, supported by care experienced people across the UK, Josh MacAlister, Terry Galloway, and other Local Authorities who have already passed this motion.
- 7.2. Locally, Medway's Corporate Parenting Service and the Medway Children and Young People's Council have been actively seeking views of Medway's children in care and care leavers. The consultation is ongoing, and more voices are regularly added. We are planning on forming an ambassador group for this campaign so we can hear from more care experienced people and share views and lived experiences loudly and broadly. Below are some examples of the views collated so far.
- 7.3. Overall, a common theme was their experiences of discrimination and feeling 'labelled' which has taken various forms and has penetrated several aspects of their lives.
- 7.4. One care experienced young adult reported experiencing a 'double disadvantage' where they feel they are being disadvantaged due to both their disability and their care experience.
- 7.5. School was raised as a specific place of discrimination due to what was felt to be a lack of understanding from peers and teachers about young people in care. This left them feeling uncomfortable talking about their experiences to staff and other peers and has extended into their adulthood and the level of support they feel they get.
- 7.6. Due to these experiences, these young adults report finding it difficult to live independently and access jobs to support themselves. As a result, these young people believe that making care experience a protected characteristic would increase the understanding of the public about what care experience is. Furthermore, it would protect them, and future care experienced young

people, from the same discriminatory experiences they have faced and continue to face.

- 7.7. Of the young people who were interviewed, several are currently attending university and have reported feeling that they have made it “despite” their adverse life experiences and feel they have achieved beyond what they were expected to.
- 7.8. A common theme that was raised was the feeling that additional pressure was placed upon them by professionals to achieve which has, in some cases, caused them to develop intense anxiety about failing.
- 7.9. Furthermore, even in this sub-population of young people who have attended university, those with care experience are still facing barriers to employment. For example, one young person reported their ongoing experience of being denied forensic jobs in the police due to their “childhood background” and the criminal records of family members. This is despite the fact they have no contact with their family due to the reasons they were taken into care. For this young person, care experience becoming a protected characteristic would mean that organisations would have to look past their childhood experiences, which they had no control over, and would allow their achievements to define them, not their past.
- 7.10. Housing remains a common area where young people have reported experiencing indirect discrimination based on their care experience. An example of this, disclosed by a care experienced young person, is the common use of ‘guarantor schemes’, where an individual needs to have a guarantor to be able to rent a property or to pay six months’ rent in advance. For this young person to rent privately, they had to ask their partner’s parents to be their guarantor, which led to them feeling anxious about the relationship as they felt they could have lost the property if the relationship ended. Moreover, there is a general feeling from young people with care experience that landlords are either unaware of the implications of care experience (such as not having a family to financially support them or having an erratic address history) or that they are openly discriminating against young people with care experience due to their pre-conceived notions of care experienced young people causing trouble. Due to this, these young people believe that if care experience was protected, it would be easier to access housing as housing providers and landlords would not be able to discriminate against them.

8 Climate change implications

- 8.1. This proposal does not have any climate change implications.

9 Financial implications

- 9.1. There will be a cost to the Council of updating existing policy documents across the council.

9.2. Adopting care experience as a protected characteristic could result in an increased demand for services, particularly adult services, if there is an offer to act as mentors for all people who have been in the care system.

10. Legal implications

10.1. The Council has existing duties to provide support to care leavers under the Children Act 1989, as amended by the Children and Social Work Act 2017 to include seven corporate parenting principles that the Council should have regard to when exercising its duties to children in care.

10.2. Section 4 of the Equality Act 2010 sets out 9 characteristics and people with those characteristics are protected from discrimination on the grounds of those characteristics. There is no legal reason why the Council cannot add care experienced to the list to be considered locally in all situations where protected characteristics are considered (including, but not limited to decisions on future services and policies, and including equality impact assessments)

10.3. While legally permissible to take a position of treating 'care experience' as an additional protected characteristic, this will require reflecting in the Council's policies and procedures to ensure that the commitments and obligations are clearly set out and established. Once established the Council will be expected to comply with the relevant duties and could be subject to legal challenge where a duty was not complied with.

Lead officer contact.

Alex Kaitell Head of Corporate Parenting, alex.kaitell@medway.gov.uk

Tel: 01634 334434

Appendices

None

Background papers

None