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## **Meeting of the Cabinet – 28<sup>th</sup> June 2023**

### **Report of the Director of Children's Services**

#### **Care Experienced to be Protected Characteristic**

##### **Purpose of report**

1. This report proposes that Dudley MBC support the proposal of recognising care experience as a protected characteristic.

##### **Recommendations**

2. It is recommended after due diligence and organisational wide scoping that:
  - When making any decisions in relation to policies or formulating plans, that Dudley recognise that care experienced people are a vulnerable group who face discrimination;
  - That future decisions, services and policies made and adopted by the Council should be assessed through the councils new and improved Corporate Equality Impact Assessments to determine the impact of changes on people with care experience, alongside those who formally share a Protected Characteristic
  - To work towards a best practice model, that enables us to integrate Care Experience as if it were a Protected Characteristic (Understanding the full legal obligation of this; as it may not have an impact on employment and/or Equality law by which we are bound).
  - Dudley MBC to proactively seek out and listen to the voices of care experienced people when developing appropriate new policies based on their views;

- Dudley's Corporate Parenting Board in collaboration with the relevant stakeholders across the organisation to oversee the delivery of this commitment

## **Background**

### Protected Characteristics

3. In the Equality Act 2010, nine characteristics were identified as 'protected characteristics'. These are the characteristics where evidence shows there is still significant discrimination in employment, provision of goods and services and access to services such as education and health.
  1. age
  2. gender reassignment
  3. being married or in a civil partnership
  4. being pregnant or on maternity leave
  5. disability
  6. race including colour, nationality, ethnic or national origin
  7. religion or belief
  8. sex
  9. sexual orientation

*Please note; the passing of the Carers Leavers Act that has just received Royal Ascent – we expect those with caring responsibilities to become the 10<sup>th</sup> protected characteristic, prior to care “experienced” people.*

### National Context

4. The Independent Review of Children's Social Care headed by Josh McCallister published in May 2022 a final report and recommendations that included:

“Government should make care experience a protected characteristic” and “new legislation should be passed which broadens corporate parenting responsibilities across a wider set of public bodies and organisations.”

### On Protected Characteristics for Care Experience - (Care Review May 2022)

5. “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.

6. One young person told the review that a teacher had told them “You’re smart - for a kid in care”, another young person said “I don’t want people to point out that I am in care if I don’t want that mentioned. It makes me so cross – that shouldn’t happen.”
7. This stigma and discrimination can be explicit, and often comes with assumptions about the likely characteristics of children and adults that have care experience. They can also be implicit and are evidenced in the way care experience is discussed in schools, workplaces, and the media.
8. At its worst this can lead to care experienced people being refused employment, failing to succeed in education or facing unfair judgements about their ability to parent when they have children and families of their own.
9. 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). So, while there may be ways that society can help reduce stigma and discrimination, including creating greater public consciousness on these issues, just as with other areas of equality, there is a case to go further. Therefore, the Government should make care experience a protected characteristic.
10. Despite making up 1.4 per cent of the UK population, care experienced people account for 25% of both the homeless and the prison population in England. Nearly 50% of all under 21-year-olds in contact with the criminal justice system have been in care.
11. 31 Councils have already agreed to treat care experience as a protected characteristic (list in appendix A)

### Local Context

12. In Dudley there are currently 274 care experienced young people aged 18–24 years old that are working with our care leaving service. In the next 12 months, 56 young people will become Dudley Care experienced when they turn 18.

13. 123 young people are not in education employment or training which is 44.8% of our care experienced young people. This shows the challenges faced by care experienced young people, who are at times disadvantaged by the care experiences they have had and the way that they are perceived.
14. Our Corporate Parenting Board works closely with children in care and those who are care experienced and is committed to improving outcomes and increasing opportunities for these young people. The Board is keen that the council and our partners recognise the impact of discrimination on our care experienced young people. This awareness will allow these young people to have improved educational, employment and wellbeing opportunities. This commitment from DMBC will demonstrate to our children in care that we are determined to support them to be productive and active members of our community, challenging stigma and negative attitudes. Care experienced young people can then be proud to be in that category rather than worrying it will be a negative judgement on them.
15. This ensures that supporting care experienced adults is not an add-on, but a fundamental aspect of policy and development and decision making for all the council. Policies are developed with equity at their heart, ensuring that care experienced individuals have the support and opportunities within Dudley to thrive.

#### Current support

16. Dudley children's services already has a joint protocol with housing enabling care experienced young people to have access to priority housing. This properly supports the priority for our young people to be in suitable accommodation. Dudley also receives levelling up funding from the Department of Education to fund a dedicated homeless prevention personal advisor to work within our care leavers team.
17. We have a dedicated personal advisor who works directly with our young people to support them into education employment and training; this post is funded from the returning care leaver grant we have in place until 2024.
18. With care experience being recognised as a protected characteristic we could then build on the work of these already established initiatives and widen options throughout the council. The timing is opportune as Ofsted have introduced a new judgement for services for Care Leavers and we have started the work to review the requirements.

19. Regionally, we have established a Care Leaver Board. This will support the increasingly consistent regional offer for our care experienced young people, as well as the work nationally through the care leaver offer group. <https://www.careleaveroffer.co.uk/pages/about>

### Outcomes

20. Our ambition is to build on our January 2023 ILACS judgement of requires improvement to be good, to ensure all of our services to children and young people are consistently good. Our development work with children in care and care leavers will improve their experience and support them to achieve their ambitions.
21. Recognising care experience as a protected characteristic will provide a framework to raise awareness across the Borough, ensuring an understanding of the impact of this for many young people in terms of unemployment, health issues, over-representation in the criminal justice system. These indicators will improve and care experienced young people will have a better chance of achieving their dreams and ambitions.

### Finance

22. Until the scoping exercise is completed, we are unable to identify if there is any requirement for additional financial investment attached to this proposal.
23. All staff will have a responsibility to consider Care Experience as a protected characteristic when developing plans, policies and services as with the other 9 protected characteristics, therefore upskilling and training will be required organisational wide.

### Law

24. This proposal seeks to oblige Dudley Metropolitan Borough Council (the Council) to treat '*care experienced*' as a protected characteristic, within the meaning of the Equality Act 2010 and where that Act requires the Council to act or prohibits it from acting in a specific manner in relation to those with a protected characteristic, the Council would be expected act in the same way in relation to '*care experienced*' people and groups.
25. At present, the Children and Social Work Act 2017 and the Children Act 1989, as amended, obliges the Council support the children and young people in its care under these Acts and to publish details of the support available to care leavers up to the age of 25 years.

26. Whilst the Equality Act 2010:

- Prohibits the Council from:
  - Discriminating against those with a protected characteristic by treating them less favourably, directly or indirectly, for a reason relating to that characteristic;
  - Harassing those with a protected characteristic by engaging in unwanted conduct that causes them unnecessary distress or harm, for a reason relating to a relevant protected characteristic; and
  - Victimising someone by subjecting to a detriment because it believes they have or are intending to do a protected act, such as assisting someone with a protected characteristic or making an allegation on their behalf;

AND

- Obliges the Council to:
  - make ‘reasonable adjustments’ to enable those with protected characteristics to access and use its facilities and services; and
  - comply with its Public Sector Equality Duty, which involves having due regard to the following in the exercise of its functions:
    - (i) Eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
    - (ii) Advancing equality of opportunity between people who share a protected characteristic and those who do not; and
    - (iii) Fostering good relations between people who share a protected characteristic and those who do not.

27. The proposal would therefore result in the Council voluntarily extending its responsibilities to taking into account the needs and views of all ‘*care experienced*’ individuals and groups, in the performance of all of the Council’s functions, irrespective of where those individuals and groups are from or their age.

28. If after due consideration of the available information the Cabinet wishes to approve this proposal, it has the legal power to do so under section 1 of the Localism Act 2011. This gives the Council a general power of competence and entitles it to do anything that individuals may do, providing it is satisfied that the action is in the best interests of its residents and is not prohibited by some other law.

## **Risk Management**

29. There are no forecasted risks to this proposal.

## **Equality Impact**

30. This will extend the consideration of impact on those who are care experienced in a positive way. An equality impact assessment is required.

## **Human Resources/Organisational Development**

31. Until the scoping exercise is completed, we are unable to identify the level of impact this will have on Human Resources, and Organisational Development.
32. As the custodians of all people policies, this introduction will have a large impact on both of these areas of the council, based on the requirement of potential amendments to policy, and reasonable adjustments.
33. We are asking for all staff will have a responsibility to consider Care Experience as a protected characteristic when developing plans, policies and services as with the other nine protected characteristics, therefore upskilling and training will be required organisational wide.

## **Commercial/Procurement**

34. There is no forecasted impact on Commercial/Procurement, other than those working in this area to take on board Care Experienced as a protected characteristic as with the other 9 protected characteristics.

## **Environment/Climate Change**

35. There is no forecasted impact on Environment/Climate Change, other than those working in this area to take on board Care Experienced as a protected characteristic as with the other 9 protected characteristics.

## **Council Priorities and Projects**

36. As corporate parents, councillors have a collective responsibility for providing the best possible care and safeguarding for the children who are looked after by Dudley as an authority:
37. The Public Sector Equality Duty requires public bodies, such as councils, to eliminate unlawful discrimination, harassment, and victimization of people with protected characteristics.



**Catherine Driscoll**  
**Director of Children's Services**

Report Author: Catherine Driscoll  
Telephone: 01384 812032  
Email: [catherine.driscoll@dudley.gov.uk](mailto:catherine.driscoll@dudley.gov.uk)

## **Appendices**

- Appendix 1 – Councils that have agreed to treat care experience as a protected characteristic