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# NORTH AYRSHIRE COUNCIL

13<sup>th</sup> December 2023

## North Ayrshire Council

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**Title:** **Treating Care Experienced as a Protected Characteristic in North Ayrshire Council Equality Impact Assessments**

**Purpose:** To consider the impact of treating “care experienced” as a protected characteristic for the purposes of Equality Impact Assessments (EIA) and approve next steps in implementing this policy.

**Recommendation:** Council agrees: (i) to adopt the proposed definition of “care experienced” for the purpose of EIAs; and (ii) to amend the EIA template to include “care experienced” as a protected characteristic.

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## 1. Executive Summary

1.1. This paper provides an update on the work that has been undertaken since North Ayrshire Council agreed the following motion on 29th March 2023:

*“(a) To support adding “Care Experienced” to be treated as a protected characteristic in North Ayrshire’s Equality Impact Assessments to ensure all decisions made by Council gave specific focus on how the Council could improve the lives of care experienced young people; and*

*(b) To request that a report be brought to the Council to outline the next steps, including the Equalities Impact Assessments required, to implement this policy.”*

This paper also seeks Council’s agreement to the proposed next steps required to implement this policy.

## 2. Background

2.1. The Equality Act 2010 prohibits discrimination on the grounds of the following protected characteristics (hereinafter referred to as the “statutory protected characteristics”):

2.1.1. Age

- 2.1.2. Disability
- 2.1.3. Gender reassignment
- 2.1.4. Marriage and civil partnership
- 2.1.5. Pregnancy and maternity
- 2.1.6. Race
- 2.1.7. Religion or belief
- 2.1.8. Sex
- 2.1.9. Sexual orientation

2.2. The public sector equality duty requires local authorities to have due regard to:

- a) The need to eliminate discrimination, harassment, victimization and any other conduct that is prohibited by or under the Equality Act;
- b) The need to advance equality of opportunity between persons who share a relevant statutory protected characteristic and persons who do not share it; and
- c) The need to foster good relations between persons who share a relevant statutory protected characteristic and those who do not share it.

2.3. Whenever a proposed new or revised policy or practice would have an impact on the public sector equality duty outlined above, the Council must carry out an EIA to assess the impact of the proposal on people who have a statutory protected characteristic.

2.4. If a decision is taken to amend the EIA template to include “care experienced” as a protected characteristic, it will be important to include a clear definition of what “care experienced” means for these purposes. The following definition is proposed:

*“Anyone under the age of 26 years in the North Ayrshire area for whom North Ayrshire Council is, or has been, the Corporate Parent, or who is, or has been, looked after by North Ayrshire Council or any other local authority at any stage of their childhood, no matter how short. By ‘looked after’ we mean that the child or young person has been looked after by a local authority in foster care, kinship care or in residential care, or has been living at home subject to a compulsory supervision order made by the children’s hearing or has been subject to a kinship care order made by the court.”*

- 2.5. The Council has obtained legal advice from King’s Counsel which confirms that in principle it would be competent to treat “care experienced” (as defined above) as though it was a protected characteristic for the purpose of EIAs. However, the proposal to amend the EIA template to include “care experienced” is a proposed new or revised policy or practice which could have an impact on the public sector equality duty, and accordingly an EIA requires to be carried out to assess the impact of this proposal on those who have a statutory protected characteristic before a final decision is reached on whether to adopt the policy. An EIA has been completed to assess the impact of adopting the above definition of “care experienced” as a protected characteristic in future EIAs. The EIA concluded that the implications of treating “care experienced” as a protected characteristic in future EIAs are broadly positive.
- 2.6. For the avoidance of doubt, “care experienced” would be treated as a protected characteristic for the purposes of EIAs only: the proposed change would not amount to a wholesale adoption of the public sector equality duty in relation to care experienced people. Similarly, the definition of “care experienced” adopted for the purposes of the EIA would not be used by the Council for any other purpose.

## **2.7. Next steps**

- 2.8. If Council approves the recommendations set out in this report then the EIA template will be amended accordingly. This change will be supported with additional guidance on the challenges people who are care experienced face, information on taking a trauma informed approach and links to additional information and support.

## **3. Proposals**

- 3.1. It is recommended that Council agrees: (i) to adopt the proposed definition of “care experienced” for the purpose of EIAs; and (ii) to amend the EIA template to include “care experienced” as a protected characteristic.

## **4. Implications/Socio-economic Duty**

### **Financial**

- 4.1. There are no financial implications arising directly out of this report. If the scope of EIAs is extended as proposed then this could ultimately influence future decisions which have a financial impact, however the Council would not be compelled to reach any particular substantive decision because of the EIA. EIAs are a procedural requirement whereby Councils are required to demonstrate that they have had “due regard” to the impact of a proposed policy on people with protected characteristics. Councils can legitimately make decisions which an EIA shows will have a negative impact on people with protected characteristics provided there are countervailing factors which justify this.

## **Human Resources**

4.2. The proposed changes can be implemented with existing resources.

## **Legal**

4.3. The Council is under a statutory duty to carry out EIAs in respect of the statutory protected characteristics. The proposals set out in this report to expand the scope of our existing EIA template have been informed by expert legal advice.

## **Equality/Socio-economic**

4.4. The motion has been assessed and there is nothing to suggest that the proposal is likely to have any significant detrimental impact on any of the statutory protected characteristics. The proposal is expected to have positive impacts in cases where people with statutory protected characteristics are also care experienced and experience compound discrimination as a result.

## **Climate Change and Carbon**

4.5. None.

## **Key Priorities**

4.6. This paper supports Our Council Plan aim a 'North Ayrshire that is fair for all'. The Communities and Local Democracy priority contains a key activity on 'ensuring an inclusive, fair, rights-based and asset-based approach to our work' and 'our residents, including our children and young people, are confident in exercising their rights and actively do so'.

## **Community Wealth Building**

4.7. None.

## **Consultation**

4.8. Consultation was undertaken with area experts within our Council as listed in the Equality Impact Assessment.

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