
TACKLING THE BARRIERS EXPERIENCED BY CARE EXPERIENCED PEOPLE IN SCOTTISH BORDERS

**Report by Stuart Easingwood, Director Social Work and Practice
(CSWO)**

Scottish Borders Council

31st August 2023

1 PURPOSE AND SUMMARY

- 1.1 In November 2022 Councillors Anderson and Ramage brought forward a motion in support of making care experience a protected characteristic for Scottish Borders Council. A decision was taken to amend the motion so that no further action was taken until a report was presented by the Director of Social Work and Practice on the barriers faced by Care Experienced People and how the Council can address that.**
- 1.2 This report explores the work that is currently being undertaken to tackle the barriers experienced by care experienced people (Care experienced people is used to describe anyone who is currently, or has been, in the care system. For example, kinship care, looked after at home, foster care, residential care, secure homes, and adoption) and further action the Council could take overcome these.**

2 RECOMMENDATIONS

- 2.1 I recommend that in recognition of the Council's commitment to the Promise and our responsibility as corporate parents to take positive action to improve the lives of care experienced children and create communities where all children have the right to grow up loved, safe and respected:**
 - (a) That Scottish Borders Council voluntarily ensure that Care Experience is considered in strategic decision making by amending our Integrated Impact Assessment process to include Care Experienced individuals.**
 - (b) As part of the work the Children and Young People's Planning Partnership (CYPPP) is doing to deliver The**

Promise and ensure Corporate Parenting responsibilities are met, we will engage with care experienced individuals to ascertain their views on Care Experience being a recognised protected characteristic under the Equality Act (2010).

3 BACKGROUND

3.1 **Part 9 of the Children and Young People (Scotland) Act 2014** introduced legislation focusing on the duties and responsibilities of Corporate Parents. The Statutory Guidance that was published after the implementation of Part 9 of the Act in April 2016 outlines the requirements that Corporate Parents are to adhere to.

3.2 Part 9 has also listed Corporate Parents (Appendix 1), highlighting the collaboration and partnership requirements that need to be put in place to meet the needs of this vulnerable group. All employees at Scottish Borders Council are classed as corporate parents within the legislation.

3.3 **The Corporate Parenting Duties are:-**

(a) be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom Part 9 applies, (Care Experienced)

(b) assess the needs of those children and young people for services and support it provides,

(c) promote the interests of those children and young people,

(d) seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing,

(e) to take such action as it considers appropriate to help those children and young people—

(i) to access opportunities it provides in pursuance of paragraph (d),

(ii) to make use of services, and access support, which it provides, and

(f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

3.4 **Equality Act 2010-** Under the Equality Act 2010 it is unlawful to discriminate, harass or victimise someone because they have or are perceived to have one of the characteristics protected under the Act, or if they are associated with someone who has a protected characteristic.

3.5 This means for someone to be protected from discrimination and harassment under the Act, they must share one of the nine protected characteristics. The characteristic of care experience is not protected under the Act at this time.

3.6 These characteristics are:-

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief

- sex
- sexual orientation

- 3.7 **The Promise** -Three years ago the national Independent Care Review heard that Scotland needed to change how it cares for children, young people and their families, and concluded the care system required a radical overhaul.
- 3.8 “The Promise” was subsequently developed consisting of 80 changes to support a whole system redesign. Since then, the National Promise Team have published a National Plan for 2021-2024 and the Promise ‘Change One Programme’, highlighting their expectations around what should be accomplished by 2024.
- 3.9 Scotland’s care system has the potential to set up children and young people for life. When we get it right, everyone with care experience can thrive throughout their lives: they can do well in school, have good mental health, and succeed at work. We need to keep the Promise so that all Scotland’s children and young people can flourish.
- 3.10 The Promise and Plan 21- 24 recommendations did not include a recommendation of making care experience a protected characteristic, as the feedback from care experienced children, young people and their families on this issue was inconclusive at that time. However, since November 2022, 3 local authorities in Scotland have introduced care experience as a protected characteristic. (Edinburgh City, Falkirk and North Ayrshire.)
- 3.11 The Scottish Borders has welcomed The Promise. Work undertaken to date includes:
- recruiting a Promise Implementation Officer and a Promise Project Worker to support this work across the Scottish Borders;
 - a restructure of our multi-agency Children’s Strategic Planning Partnership to ensure that the Promise is our umbrella policy driver for children and young people’s services and that strategic corporate parenting becomes a core responsibility for the new Children and Young People’s Planning Partnership (CYPPP) Board;
 - developing a Champions Board approach to ensure the voices of care experienced children and young people are at the heart of decision making in Scottish Borders;
 - creating a ‘Scottish Borders Reframing Our Language’ guide based on recommendations from care experienced young people across Scotland and foster carers from our Scottish Borders Service Development Group;
 - our fostering conference 2023 which centred on the Promise with a keynote from colleagues at the Promise Scotland;
 - raising awareness of the Promise through teams and face to face workshops;
 - development of a corporate parenting e-learning module by a range of local corporate parents in partnership with Who Cares? Scotland;

- progressing with plans to develop an independent advocacy service for children and young people (in line with the Joint Inspection recommendations from earlier this year and 2016)

- 3.12 We are committed to improving outcomes for children, young people and families in Scottish Borders and recognise that when we meet their needs, our communities thrive. Whilst some progress has been made in the first two years, there are many areas we will continue to develop, evolve and improve in the years to come.

- 3.13 **The Independent Care Review in England-** In a national context, The Independent Review of Children’s Care in England (May 2022) commented:

- 3.14 *‘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.*

- 3.15 *‘Making care experience a protected characteristic 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’.*

- 3.16 **Stigma and Discrimination-** The evidence around the impact of stigma and discrimination on care experienced children, young people and families was reviewed as part of the Scottish Independent Care Review. Stigma is a complex phenomenon. The impacts of stigma are wide ranging and vary greatly from one individual to another. The Care Review discussed the following:
 - **stigmatising language and terminology:** children and young people reported the overuse of acronyms or too much jargon by professionals involved in their care, which they found difficult to understand and did not like.
 - **Lack of respect for children’s privacy:** children and young people were concerned that they were not always able to control who knew intimate details about their lives
 - **Unfair or different treatment:** children and young people sometimes felt they were not allowed to do similar things to their peers. They said there were ‘too many rules’ and sanctions and those supporting them did not have enough discretion about how the rules should be applied, e.g. delays in permissions for school trips/haircuts/sleepovers; needed a police check before visiting friends’ houses; waiting for health and safety checks before taking part in activities
 - **Actions that unnecessarily identify children as ‘looked after’:** this includes things such as holding meetings associated with being in care during school time which could result in them being taken out of

lessons, workers wearing ID badges when out in the community with children and young people

- **Stigmatising experiences at school:** teasing, bullying or rejection by other children for being in care, being worried that school staff did not always hold high aspirations for them, being subject to discrimination from adults, including teachers and other professionals
- **Views of the general public on the 'care system' and children in care**
- **Representations in the media:** our media often churns out stereotypes of care experienced children and young people as 'lost causes' and 'problem children.' This affects our attitudes and behaviours, often in ways we don't even realise. This stigma and discrimination affect people with care experience in all areas of their life.

3.17 It's time to change the story, and the recommendations in the Promise seek to address this. Children in Scotland may become involved in the care system when their parents have trouble navigating the challenges of their lives. Just like stormy weather can make it hard to stay on an even keel, things like poverty, social exclusion, poor housing, and chronic unemployment can make it difficult for parents to stay afloat and provide children with the best care and support.

4 ASSESSMENT

- 4.1 Who Cares? Scotland and the Equality and Human Rights Commission outlined in their report in 2018, that the statutory guidance on corporate parenting makes it clear that this duty includes taking action to tackle discrimination faced by care experienced children and young people. This means that discrimination based on care identity has been recognised at a statutory level in Scotland, and corporate parents have a duty to tackle that discrimination.
- 4.2 The Council uses an Integrated Impact Assessment (IIA) to meet the requirements of the Equality Act 2010, Human and Children's Rights conventions, Fairer Scotland Duty 2018 and the Climate Change (Scotland) Act 2009.
- 4.3 The IIA is an integral part of the Council's decision-making process, enabling it to identify and address any unintended consequences of its decisions. The scope of potential impacts include: equalities and diversity, human rights, the environment and the economy.
- 4.4 Alongside our multi-agency work to keep the Promise outlined above, Scottish Borders Council could further tackle the discrimination faced by care experienced children, young people, and adults by voluntarily amending the content of the Fairer Scotland Duty contained in our Integrated Impact Assessments to include Care Experienced individuals.
- 4.5 Although this amendment would only apply to our own organisation, this would nonetheless ensure that, internally at least, any strategic decision making made by the Council involves consideration of children, young

people and adults with care experience. It would also require that awareness about the discrimination faced by care experienced children, young people and adults is raised and addressed.

- 4.6 As well as helping us to meet our duties as a corporate parent, there are further potential benefits for the Council. For example, corporate parenting work and equality and diversity work overlap in several different ways. Including care experience in our Integrated Impact Assessment would allow these two workstreams to be more closely aligned and provide clarity on how the two areas should interact. In addition, the responsibility to support care experienced individuals would become an intrinsic part of Scottish Borders Council's culture and strategic decision-making process. It would no longer be relegated to certain teams but would become a responsibility permeating all levels of our organisation.
- 4.7 It should be noted here that this initial report has been compiled without any involvement of care experienced children, young people or adults from within Scottish Borders. We need to ensure that any action we take does not make a child, young person or adult feel that their 'care identity' is overly visible within the community. We must also be mindful and sensitive about how any actions we take could (even inadvertently) reinforce the stigma associated with care experience, and therefore involvement of individuals from our local care experienced communities in the next stage of this work will be crucial.
- 4.8 All children and young people need the same things to thrive: a stable home, strong support and steady, loving relationships. Incorporating 'care experience' into our integrated impact assessment could be a further way in which we keep the Promise and ensure we are providing these things for each and every child, young person and care experienced adult in Scottish Borders.

5 IMPLICATIONS

5.1 Financial

- (a) There are no costs attached to any of the recommendations contained in this report.

5.2 Risk and Mitigations

The Promise has 'voice' at the heart of its recommendations:

'active listening and engagement must be fundamental to the way Scotland makes decisions and supports children and families...'
(p13)

If we do not engage with care experienced individuals in Scottish Borders, we will not be keeping them at the heart of our decision making around this important issue.

5.3 Integrated Impact Assessment

An integrated impact assessment will be undertaken on the further report submitted following engagement with Care Experienced individuals.

5.4 Sustainable Development Goals

UN SD Goal	Impact
End poverty in all its forms	N/A
End hunger, achieve food security and improved nutrition and promote sustainable agriculture	N/A
Ensure healthy lives and promote wellbeing for all at all ages	N/A
Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all	N/A
Ensure access to affordable, reliable, sustainable, and modern energy for all	N/A
Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all	N/A
Reduce inequalities within and among countries	N/A
Make cities and human settlements inclusive, safe resilient and sustainable	N/A

5.5 Climate Change

There is no impact on climate change as a result of endorsing the publication of this report.

5.6 Rural Proofing

There are no rural proofing implications contained in this report.

5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to either the Scheme of Administration or the Scheme of Delegation as a result of publishing the Champions Board report.

6 CONSULTATION

6. We consulted with:

- all members of the Corporate Management Team

Approved by

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Title: Director of Social Work and Practice (CSWO)

Author(s)

Name	Stuart Easingwood, Director of Social Work and Practice (CSWO)
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• Background Papers:

- Galloway, T. *Care Experience as a Protected Characteristic*. Care Leaver Offer. Available from: [Care Experience as a Protected Characteristic \(careleaveroffer.co.uk\)](http://careleaveroffer.co.uk) [17th August 2023]
- Independent Care Review (2020a) *Evidence Framework*. Glasgow: Independent Care Review. Available from: https://www.carereview.scot/wp-content/uploads/2020/07/ICR_Evidence_Framework_v2-1.pdf [17th August 2023]
- Independent Care Review (2020b) *The Promise*. Glasgow: Independent Care Review. Available from: <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf> [17th August 2023]
- Who Cares? Scotland and The Equality and Human Rights Commission (2018) *Care Experience and Protected Characteristics*. Glasgow: Who Cares? Scotland. Available from: https://www.celcis.org/application/files/2015/1879/0916/WCS_and_EHRC_2018_Care_Experience_and_Protected_Characteristics.pdf [17th August 2023]

Previous Minute Reference: 24th November 2022, Item 14.

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