

childcare counsel



Our resident employment lawyer **Caroline Robins**, Eversheds principal associate, answers your questions

Q A manager is currently off sick and we would like to check her work email, as per our staff handbook.

A Email monitoring is restricted by data protection law. Simply relying on the wording in your handbook is not sufficient and additional steps should be taken to specifically notify the employee. In particular, what, how and why the email monitoring will be taking place, who will have access, and that the monitoring is for the specific purpose of ensuring business emails are not missed. It is important to have a written record of the communication.

There are a number of permitted and lawful purposes that the company can rely on – including legitimate interest of the company needing to be in a position to conduct its business.

Q Three weeks ago a staff member advised that he was unable to attend work due to an emergency. We have not heard from him since. Can we terminate his employment?

A The employee will not have gained sufficient service in order to bring an ordinary unfair dismissal claim. Notice of termination or a payment in lieu of notice (if permitted under the contract of employment) should, however, be given to avoid a wrongful dismissal claim.

However, there is a risk with terminating immediately if we don't know the reason for the absence. If the absence, and therefore any subsequent dismissal, is connected to a reason where there is no service requirement, there will be legal risk. For example, there is no service requirement for a discrimination claim. If the reason for absence is connected to a protected characteristic, such as a disability, the nursery could risk liability for discrimination if it terminates employment without further enquiry.

Further attempts should be made to contact him. He should be given a deadline to respond and warned that if he does not return to work or contact the nursery, it will take a decision regarding employment in his absence.

→ Send your questions to hannah.crown@markallengroup.com

managing equality and diversity, part 9: poverty

Poor chance

How are some settings providing the extra support that disadvantaged children need, asks **Gabriella Jozwiak**



The early years education context has clearly been identified by recent governments as one of the preferred locations for addressing social inequalities, states Newman University senior lecturer Mark Cronin in his introduction to *Poverty and Inclusion in Early Years Education*.

In recent years, early years settings have been expected to support low-income children in various ways, including offering 15 hours of weekly Government-funded childcare to disadvantaged two-year-olds. The difficulties of doing this in an under-resourced sector have been well reported, including Department for Education-commissioned research from 2018 that found providing the care was more expensive because of higher staff-to-child ratios, and higher levels of need and support for families in terms of explaining the entitlement. National Day Nurseries Association (NDNA) research among its members suggests more than half make a loss on funded places for two-year-olds.

Centre for Research in Early Childhood (CREC) director Chris Pascal says private, voluntary and independent (PVI) settings, as well as childminders, are being realistic when they say they can't meet the needs of all disadvantaged children. 'The complexity of the needs of some children [is] mind-

blowing,' she says. These might include mental health support and benefits, and housing advice for parents and carers, and health and special educational needs and disability (SEND) support for the child – all services previously more widely delivered in Children's Centres, which have reduced in capacity since 2010 (see box). 'Their job is to deliver a childcare place – not to work with the families or the wider community,' says Prof Pascal.

A study published by CREC this year of Birmingham's 27 maintained nursery schools revealed the extent of extra support that disadvantaged children need. It found the settings contributed more than £11.5 million a year more than they receive in funding, including feeding and clothing children. 'There's often more capacity in maintained settings because they're linked into other maintained services, like health and social care,' says Prof Pascal. 'A lot of the PVIs and childminders haven't got the capacity or the systems in the same place.'

'The range of need of disadvantaged children is high, with SEND particularly,' she continues, 'but also those who are asylum-seekers or experiencing domestic violence. Maintained settings have more advanced training and access to specialist support, which means they serve those children very well and are more inclusive.'

case studies

The Welsh Government has funded NDNA to increase capacity and improve diversity in the early years workforce by training unemployed people to become nursery assistants. Among its recruits are applicants from disadvantaged backgrounds, such as Gary Sibbald, 55, who was homeless when he began the 16-week, paid course and placement.

NDNA Cymru Childcare Works project manager Sarah Coates says when supporting employees from poorer backgrounds, managers must be mindful about individuals' needs. The project offered trainees mentoring as well as project co-ordinator support to

ensure they had someone with which to discuss any doubts. 'If you haven't been in work and you've relied on benefits, it's quite easy to say no – it's more trouble than it's worth,' says Ms Coates.

The project co-ordinator discussed with Mr Sibbald how his finances would change once he went into training. The project also offers travel subsistence and care for any dependents up until the trainee's first pay day.

Mr Sibbald is now employed full-time at Li'l Angels Nursery in Deeside, where he did his placement.

Nursery manager Sue Evans says it was important not to give Mr Sibbald any

preferential treatment. 'He's so committed,' she says. 'He's got himself off benefits now, is paying his own rent, and is doing his Level 2 training.' Ms Evans says Mr Sibbald's experiences meant he could relate to families facing financial problems. He was also always keen to do extra hours and help out as much as he could. 'The parents were all behind him – no-one complained,' she says.



Maintained schools are free, and so are more likely to attract lower-income families. However, Ms Pascal points out that they work in partnership with other settings, as the hours they offer are often topped up by a childminder or PVI settings.

Allens Croft Nursery School deputy head teacher and special educational needs co-ordinator Laura Hitchmough says practitioners must work in partnership with families from poorer backgrounds. Her nursery, which was included in the Birmingham study, caters for children with high levels of disadvantage: 35 per cent of its 150 under-fives were eligible for free school meals, while 39 per cent were entitled to the Early Years Pupil Premium. The setting has a focus on settling in children to provide an opportunity to get to know parents and build trust. Senior leaders stand on the door every day to greet families, and are trained to look out for signals that something might be wrong.

'Because we know our families so well, you can see a difference in their well-being,' Ms Hitchmough says. 'Their presentation is slightly different, or they're coming into

school holding back tears. You take them to one side and ask if everything is OK.'

The setting has a scheme with a local food bank that means it can offer families vouchers or hampers. But Ms Hitchmough says it is important to offer such support in the right way. 'Parents may be reluctant to take it,' she advises, and suggests having discreet conversations away from other parents to avoid any embarrassment.

Ms Hitchmough also points out that families can shift from being financially comfortable to struggling if, for example, they are made redundant or their benefits are frozen. In such situations the nursery has offered families additional free hours so parents can attend job interviews. 'We haven't got vacant spaces, but I can always be counted into numbers,' she explains.

Prior to 2017 there was a Children's Centre located at the school, which would support families with additional needs. But the local authority decommissioned the service, meaning the nursery now has to signpost families to other support, such as benefits advice.

Ms Hitchmough says children arrive at

school hungry every day, so the setting provides a substantial morning snack. They will also provide lunch if a child has arrived without a packed meal, or one of poor quality. 'There's not a day when a child isn't out for some reason, so there's always spare food,' she says. 'It's not so much there's a massive cost to the school – it's being resourceful and making the most of what you have.'

Local families also donate used clothes to the school for children who might need them. 'Staff are also very good at celebrating everything,' says Ms Hitchmough. 'There are children who come in with new shoes, but the child beside them has got their older sister's. That is also celebrated.'

Reflective questions:

1. Are you actively looking out for indicators that might suggest a change in circumstances for a child in your care?
2. Are you making the most of the available local support to which you can signpost families in need?
3. Do you celebrate children's appearance and possessions equally? ■

Action for Children head of policy and research Eleanor Briggs on child poverty in the UK

Changes to the benefit systems, combined with slow wage growth and rising prices for everyday goods, have led to an increase in the number of families living in poverty across the UK. Between 2011 and 2018, child poverty in the UK rose from 27 per cent to 30 per cent, meaning 4.1 million children now live in poverty – a figure set to rise to record levels in the next few years.

Poverty disproportionately affects children living in large families and lone-parent households. Yet in-work poverty has also risen. More than two-thirds (70 per cent) of children in

poverty are living in a family where at least one person works. Being poor has an impact on children's lives, including poorer mental and physical health, lower educational attainment and reduced employment prospects.

Research shows a six-month developmental gap between toddlers from higher and lower income families by 24 months. In England only 57 per cent of children eligible for free school meals in 2017/18 were considered to have reached a good level of development on starting primary school, compared with 74 per cent of

their peers. This makes the recent decline in numbers of disadvantaged two-year-olds taking up their funded place at nursery a cause for concern.

Analysis from Action for Children shows usage of Children's Centres has dropped by nearly a fifth since 2014, with the most-deprived local authorities seeing the number of children using centres fall by 22 per cent, compared with a 12 per cent drop in the least-deprived. Meanwhile, estimates suggest more than 1,000 centres have closed, with cuts to Children's Centre spending of 62 per cent since 2010.