

## CHILDCARE COUNSEL



Our resident employment lawyer, **Caroline Robins**, principal associate at **Eversheds**, answers your questions. To ask a question, email [hannah.crown@markallengroup.com](mailto:hannah.crown@markallengroup.com)

I often come across myths or misconceptions about employment law in the early years. Over the next two issues, I will set out some of these myths and explain the correct legal positions.

### 1 'A resignation by an employee is not valid until accepted by the nursery'

This is not correct. It is not open to an employer to refuse to accept an employee's resignation. Once a resignation is given, the employee's employment will end on the date the notice period expires. Further, the employee cannot lawfully withdraw the resignation without the employer's agreement.

### 2 'If the temperature of the nursery is above 24°C or below 18°C, the nursery will be acting unlawfully in requiring employees to remain at work'

There's no law for minimum or maximum working temperatures. Guidance suggests a minimum of 16°C, although there's no guidance for a maximum. Health and safety laws require that the workplace temperature should be kept at a comfortable level.

### 3 'On termination of employment, final payments must be made on the final day of employment. If not, the employment will continue until payment is made'

This is not correct. The right to any final payments (including annual leave and redundancy pay) is triggered on the last day of employment, but there is no legally specified period within which such payments must be made. The norm is to include this in the employee's final pay, paid on the usual salary payment date. If this is after the final date of employment, it does not extend employment.

### 4 'If a job offer has been accepted but the new employee has not yet started work, the offer can simply be withdrawn'

Once a candidate has accepted an unconditional offer of employment, a binding contract exists, even if the individual has not yet started at the nursery. If the nursery does not proceed with the hire and simply withdraws the offer, it will be in breach of contract unless the contract is terminated by giving notice in accordance with the contract terms. The candidate could be entitled to damages for any such breach. However, often the offer is made subject to a number of conditions (such as satisfactory references, proof of qualifications, proof of the right to work in the UK, etc). This means that an obligation to employ the candidate will not exist (and the offer can therefore simply be withdrawn) until all of those conditions are satisfied.

## TRAINING: COLLABORATIVE WORKING, PART 2

# Talk therapy

Is it really possible for leaders of unconnected settings to work together for the mutual benefit of all, including the children? Yes, explains *Carla Solvason*

I remember with much fondness and gratitude my head teacher at my very first primary teaching job. He was supportive, positive, caring, laid-back. We would go to him with every complaint that we had; from workload to a lack of whiteboard pens. He was always supportive and never critical.

Within two years of my starting at the school he had suffered a heart attack. To the relief of all, it was not fatal, but there is no doubt in our minds that all of that negativity he was absorbing had a part to play in his health deteriorating. Who was supporting him while he was relentlessly supporting us?

Our leaders have an arduous job, and it's probably far tougher now than it was way back then, pre-EYFS. Leaders have to deal with all of the stress emitted from the 'shop floor'. They are sometimes forced into placing unreasonable burdens upon their staff because of the demands of new and unwieldy policy. Then they have to try to absorb some of the pressures from 'the powers that be' in order to ease those demands on their staff. Sometimes the upward and downward pressure must squeeze the life out of them. One of the head teachers I worked with in my recent research commented that they had been warned off headship because it was the loneliest job in the world.

Having looked at general gains made by working in clusters in my previous article, I'd like to focus on the personal and emotional benefits for head teachers, or managers (I'll refer to them as 'leaders'). My research into this area involved working with groups of usually four to seven leaders who met regularly from schools that were unconnected apart from the fact they were based in a local authority area.

### Trusting relationships

The groups met as equals, there was no hierarchy to contend with and no fear of judgement. There was no need to put on 'a show' for fear of revealing weaknesses. It was a safe space to ask those questions that you might fear looking stupid asking elsewhere. Sometimes leaders found that just knowing that other leaders had the

same problems or felt the same way was enough to encourage them that they were doing okay. One new leader found it particularly difficult dealing with the HR aspect of her new role and some difficult staff in particular. She found great comfort in discovering that the difficulties that she was experiencing were commonplace and she was guided towards appropriate solutions through the extensive knowledge of her peers.

The leaders who took part said the opportunity to be totally transparent was almost therapeutic. Some of the leaders said that when they were thinking about applying for headship, knowing that the group would be there to support them gave them the confidence that they needed to 'take the plunge'.

### New ideas

Sometimes the support given by cluster members is very practical. At one meeting, in the North of England, one leader discussed how her self-evaluation form (SEF) had been critiqued by a more experienced member of her cluster during one of their meetings. Although this prompted him to apologise, she stopped him, saying how useful it had been. She explained that he had pointed out to her where her paperwork failed to make a convincing argument, but in a supportive way. He had then explained how she needed to word her evidence in order to strengthen it and had given her his own SEF as an example. His support prevented Ofsted from asking precisely the same questions that he was raising.

Best practice support went far beyond comparing SEFs. Short pieces of research were used as a prompt for discussion; but in addition to rather than instead of exploring areas of concern that were brought to the meeting. The research provided an opportunity to inject new ideas into the discussion and, potentially, into practice. This prevented the tendency to recirculate existing ideas rather than move practice forward.

A phrase often used by the leaders was that the cluster meetings provided the opportunity to become aware of possible 'next practice' rather than simply keep



had achieved. In this way they were empowered to feel more confident, not only in the time that they spent together, but also when they went back to their own settings. Their batteries were recharged.

### Challenges

The more time that I spent chatting with the leaders who were part of collaborative groups and exploring their views, the less I could understand why this wasn't something that all leaders did. I did, however, encounter some who had their doubts. These were embedded in the view that settings are in 'competition' with one another.

This was summarised in the following queries made by leaders who were not part of a cluster:

- We are a failing setting, who would want to work with us?
- Why would we want to support another setting to improve when they would then 'steal' our numbers and our 'success'?

During my research, I found people were polarised on this and there was very little grey area. And the views that they had were based on their values. In the most simplified terms, there were those who put the children first and those who put their 'success' as head teachers first. This caused me to reflect on how sad it is that competition has now become so entrenched within our education system. That some leaders become so blinded by the concept of 'winners and losers' that they cannot see that by supporting one another, by playing to strengths and sharing ideas, everyone wins. That education is not about egos, but about what is best for the children we care for.

When the cluster leaders I worked with talked about the needs of 'our children', they were referring to the needs of the children within their city. They spoke collectively, not individually. The word 'ubuntu' was used, an African term relating to compassion and humanity, to sharing responsibility within a community. This philosophy says, 'I am who I am because of who we all are, the failure of one of our own reflects upon us all.' ■

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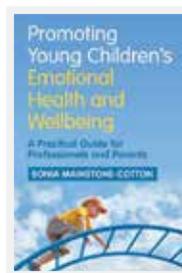
revisiting best practice. Leaders left the meetings with fresh ideas that they knew were viable because they had been tried and tested by their peers. One leader described how excited she felt when she left cluster meetings with a list of new ideas to take back to her staff.

### A safety net

These relationships didn't just exist for the duration of the cluster meetings: members of the group were available for each other in times of panic or confusion. Whether it was dealing with a call from Ofsted or a demand for figures that they had lost, they knew that there were colleagues who had 'been there' and could offer words of support. Through carrying out setting visits (see the previous instalment of this series), they had developed a genuine understanding of one another's situation, and what the school was good at and where weaknesses were. This meant that when a leader had a problem, there were people to offer them advice based on a sound knowledge and understanding of their school and their individual context. This understanding helped the leaders to maintain perspective and to refocus.

Just as important as providing security was the role that the group played in reminding one another of their successes. Many of us are our own worst enemies when it comes to focusing on the negative. How many of us, when we have received 19 outstanding lots of feedback, can only focus upon the one that was not so good? The group recognised the importance of building one another up, of reminding one another of all that they

# Books for your shelf



**Promoting Young Children's Emotional Health and Wellbeing**  
By Sonia Mainstone-Cotton (Jessica Kingsley, £14.99)

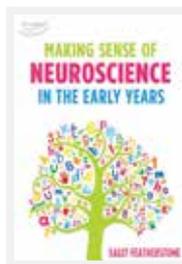
With the concept of well-being gaining traction across society, this book looks at the well-being of young children, taking in traditional themes of playfulness and creativity, as well as 'un-rushing and stillness'. With practical suggestions for those working with children aged from birth to five years, the book also includes games and activities designed to promote children's emotional health.



**The Character Conundrum**  
By Matt Lloyd-Rose (Routledge, £16.99)

Designed for primary and secondary classrooms, this nonetheless is interesting in that it tackles the hotly contested question of what role schools can play in developing 'character'.

Based on a combination of ground-level investigations and academic research, the book advocates a deliberate and consistent approach to knowing which mindsets, skills and habits you're trying to develop. Seemingly minor changes can translate into a major effect on pupils, the author contends. The book contains a step-by-step guide to bringing this approach to life, including a framework of pupil outcomes, a flowchart of teacher actions, classroom case studies and a wealth of tried-and-tested strategies from primary and secondary schools across the UK.



**Making Sense of Neuroscience in the Early Years**  
By Sally Featherstone (Bloomsbury, £18.99)

Translating research about child neuroscience into practice in education is a daunting prospect for most practitioners. In fact, many see it as fraught with difficulties and risky. This book is a comprehensive position statement for practitioners that highlights: where we are now; what we know; what we don't know; what research developments mean; and how this fits in with the Government expectations within the EYFS framework.