

childcare counsel



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

Q A maintenance worker at the nursery has just asked to be paid holiday when he takes his vacation in August. However, the nursery has a contract with him that clearly states he is self-employed. Is he due holiday pay?

A Despite what the contract says and depending on the reality of the arrangements with the individual, it is possible that he could be entitled to holiday pay and other rights as a "worker".

Employers commonly assume that workers treated as self-employed for tax purposes have no employment rights. While that is true for those self-employed who genuinely run their own independent businesses, it is incorrect for a growing number of self-employed workers. Further, the documentation between the parties and tax status is rarely determinative of whether an individual is self-employed, a worker or an employee and the courts and tribunals will instead consider the arrangements in practice.

Control, mutuality of obligation and personal service should all be taken into account in determining the legal status of an individual. If an individual is deemed to be a worker, they will be legally entitled to rights such as the national minimum wage, paid holidays, rest breaks, auto-enrolment pension, maximum working time and protection against discrimination.

Q The nursery often uses settlement agreements when staff leave. They include confidentiality and non-disclosure clauses, requiring the employee to keep certain facts related to the termination of the employment confidential. Is this allowed?

A Assuming they are appropriately drafted, such clauses are legally permissible. However, the use of confidentiality clauses in settlement agreements continues to be a focus for public debate. What is clear from recent events and headlines is that the use of non-disclosure and confidentiality terms will be subject to increased scrutiny.

The Equality and Human Rights Commission has issued a report on sexual harassment in the workplace which makes a number of recommendations aimed at restricting the use of non-disclosure and confidentiality clauses. In addition, the House of Commons Select Committee for Women and Equalities has launched an inquiry into the use of non-disclosure agreements.

I suggest you review your standard settlement agreement to ensure the scope of the circumstances in which disclosure will be permitted remains appropriate.

child protection

In harm's way

Understanding why child abuse happens, and the role of settings in protection. By **Eunice Lumsden**

While abuse can and does take place outside the family, the majority of abused children,

especially very young children, are abused in the privacy of their family.

There are no definite reasons why some people abuse and others do not, and abusers come from all areas of society. Moreover, different families can face similar challenges that can lead to abuse in one family but not in another. Mothers are more likely to be responsible for physical abuse, emotional abuse and neglect, primarily because they are usually the main caretaker. Men are usually, but not exclusively, the perpetrators of sexual abuse, and female children rather than males tend to be the victims.

There is no one clear type of abuse, abuser or reason. There is no checklist; rather, a number of factors have been identified that result in families being deemed 'vulnerable' and in need of support. These include marital conflict, unwanted pregnancy, mental health, drug and alcohol dependency, previous experience of abuse, unemployment, low income and poor housing. However, changes in family structure, cultural diversity, globalisation and the internet have further complicated the area of child protection. Therefore, theoretical frameworks to support an understanding of the causes of child abuse take on greater significance.

The work of the late Brian Charles Corby is also invaluable here. He identified three broad theoretical perspectives that help us comprehend why some people abuse children:

- Psychological theories: those that focus on the instinctive and psychological qualities of individuals who abuse.
- Social psychological theories: those that focus on the dynamics of the interaction between the abuser, child and immediate environment.
- Sociological perspectives: those that emphasise social and political conditions as the most important reason for child abuse.



These theoretical perspectives facilitate greater understanding of abuse in relation to specific situations. For example, psychological theories indicate that there may be predispositions to abuse because of early deprivation or other factors such as experiencing domestic violence. Alternately, social psychological theories suggest the immediate environment can lead to maltreatment occurring; for example, because of the interplay between an unwanted pregnancy, domestic violence, unemployment and poor housing. The sociological perspective would perceive this same situation as the interplay between the State, the impact of policies and the social conditions of the family.

Another perspective that supports understanding of the reasons for abuse is how power is used. Anti-discriminatory practice acknowledges the power we all have; it is how it is used that is the important factor for abuse. Parents, or those caring for young children, are in positions of power; their role is to support, protect and teach until those children are independent. However, one of the defining features of

maltreatment is when 'at least one person, usually a parent figure... is misusing the power they have over the child'. Celia Doyle [senior lecturer in early childhood studies and social work at the University of Northampton] contends that abuse can occur not only at the micro level of the family, but also at national and international levels against particular groups or countries. She has also identified three preconditions that can lead to abuse.

First, where people abuse or misuse the power they have; second, where victims are objectified 'either at an individual level when abusers fail to see the essential humanity of their victim, or at a societal level such as occurred during the slave trade when "slaves" were viewed as commodities'; third, when people are silent witnesses and do not recognise or appreciate the seriousness of different situations – they may also be 'co-victims too frightened to disclose; or associates of the abuser who gain vicarious pleasure from the victim's suffering'.

CASE STUDY: Toby and Nadine

Samantha (21) has two children by different fathers: Toby, aged three-and-a-half; and Nadine, aged two. Both attend nursery for 15 hours per week. Samantha was adopted as a young child, having suffered neglect as a baby. She has a reasonable relationship with her adoptive parents, and they continue to support her emotionally and financially.

Samantha became pregnant at 17 but did not tell anyone until she was six months pregnant, and did not appear to know who the father was. Samantha's relationship with Nadine's father, Simon, was volatile, and the police were called regularly because of suspected domestic violence linked to alcohol and drugs.

Simon had a history of drug dealing and, on the day the police arrested him, Samantha received a notice of eviction from her house for non-payment of rent. The next day she took both children to the nursery and admitted to hitting Toby, leaving a bruise on his face. She said he would not do what he was told and she just lashed out.

PRACTICE POINT: The importance of understanding why abuse happens

It is vital that those working in early childhood education and care (ECEC) settings understand that there are

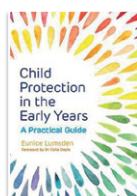
multi-faceted causes for abuse, and conclusions should not be drawn from limited information. Practitioners need to remain professional at all times, share and record concerns, and avoid informal conversations about families that may lead to judgemental comments and stereotyping abusers.

In this case study, Samantha's earliest experiences were of neglect, which can impact on all aspects of development and across the life course. She continues to be supported by her adoptive parents. This situation does not necessarily mean that the children are being abused. Samantha is under considerable stress, a situation that may have led her to respond to Toby's behaviour by inappropriately smacking him. Actually, at the time of writing this book, smacking a child in the UK was not against the law, although this was about to change, as is already the case in Scotland.

However, this family is vulnerable to abuse occurring because of the dynamics of the adult relationships, where power appears to be being misused, alongside alcohol- and drug-related issues and police involvement. Furthermore, there are financial issues leading to the non-payment of rent and possible eviction.

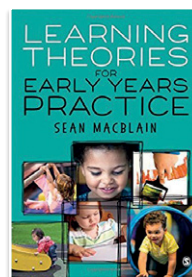
The ECEC setting has an important role to play in supporting the family and other professionals working with them. Most importantly, they are powerful advocates for infants and young children. The holistic knowledge of the child and their development provides an invaluable contribution to any multi-professional assessment being undertaken. The ECEC environment provides rich opportunities for quality play experiences that focus specifically on social and emotional as well as cognitive development, communication and fine and gross motor skills.

Finally, ECEC provides a crucial opportunity to work alongside parents or primary caregivers to enhance their understanding of their child's development needs and the importance of the home learning environment. ■



■ This is an edited extract from *Child Protection in the Early Years* by Eunice Lumsden (Jessica Kingsley, £16.99)

book corner



Learning Theories for Early Years Practice
By Sean MacBlain (Sage, £21.99)

Summaries of theorists from Rousseau and Locke to well-known names such as Froebel and Montessori are presented here in their

historical and social context, to help the reader understand their significance. The book is divided into three main sections – Early Influences, Modern Influences, and Challenges for Theorists in a Changing World – where the author links key theorists to the main issues and developments that face early years practitioners today, such as emotional intelligence, digital learning and Forest School. Theories are critiqued with strengths and weaknesses, case studies and comparisons to other theories. With case studies and discussion points.

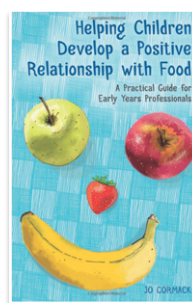


BSL Mini Topics for Tots

By Deaf Books, (£3.99, Amazon)

A bite-sized guide to British sign language vocabulary,

this simple book has BSL basic handshapes and finger-spelling alphabet, and uses a flashcard-style depiction of key words. It is divided into sections such as greetings, colours, minibeasts and birthdays, with a series of QR codes leading to other resources.



Helping Children Develop a Positive Relationship with Food
By Jo Cormack (Jessica Kingsley, £14.99)

About a quarter of children are considered 'picky eaters', while obesity is on the rise. This book uses evidence to give practical guidance

about how to support children's physical and psychological health when it comes to food, explaining the different ways children relate to food, and how eating is often treated as a behaviour to be controlled rather than trusting the child to learn to understand and respond to the signals from their body and brain. Includes advice on understanding our own relationship with food, nutrition, autism, and staff training. Also features a reference section for trouble-shooting.