

## childcare counsel



**Rhys ap Iwan,**  
solicitor at  
Morgan LaRoche  
recaps on nurseries'  
legal obligations  
should there be  
another lockdown

While Covid-19 remains with us, there is unfortunately always the possibility of another lockdown. It is worthwhile to remind ourselves of the duties and obligations of nurseries, from a consumer rights perspective.

### Law

Where Covid-19 laws prevent a nursery from delivering a service, or prevent a consumer from using the service, then payments must be returned to the customer. Payments already made for a service (which now cannot go ahead) must be returned to the customer, and no payments can be collected for services that cannot be performed.

### Personal decisions

In cases where the customer makes their own decision not to use the services, independently of any laws or guidance, then a business has a strong argument that the customer is not entitled to a refund, and ongoing payments remain due.

### Guidance

In cases where the business or individual is following Government guidance as opposed to law, the legal position in respect of contracts is more complicated. For example, if a parent has been advised that they are at serious risk of harm if they were to contract Covid-19 and isolation is recommended (but not mandated), the customer may still be considered to be entitled to a refund, because their circumstances prevent them from using the services. Situations like these must be considered on a case-by-case basis.

### Rights to refunds

When providing refunds, a business is entitled to offer credits as an option, but it is not permitted to do anything that would imply that a cash refund is not available. Many independent businesses have asked regular customers to make voluntary donations while the business is closed. This is permitted, provided that the customer understands that donations are made entirely at their discretion.

## anti-racist leadership: part 1

# Think again

In the first part of a new series, **Liz Pemberton** sets out how early years leaders can instil anti-racist practice



ILLUSTRATION: NAOMI TIPPING

**I**t was hard to ignore the events of summer 2020 that re-ignited important conversations around racism. The murder of George Floyd, a Black man, in the USA by white police officer Derek Chauvin impacted on us in a multitude of ways depending on our own lived experiences and our proximity to the direct impact of racism in our own lives.

Working in the early years, our experiences with hearing stories like this can sometimes seem disconnected from our practice. The wider discussions about racism in the media and perhaps with our family and friends could have positioned conversations about race as contentious, difficult, or not nice. It may seem that these conversations always end up making white people look and feel bad by reducing them to a soundbite that all white people are bad and all Black people are always victims. This is a myth that needs to be dispelled because it is reductive and inaccurate. I believe there needs to be a reframing of discussions about race and racism which are much more nuanced and specific, especially in relation to the early years sector.

The Department for Education's 2017 figures about the racial make-up of the UK's early childhood educator workforce state that it is predominantly white. In his journal paper 'Black educators in (white) settings: Making racial identity visible in Early

Childhood Education and Care in England, UK', Shaddai Tembo analyses the need to ensure that the narratives of Black early years educators are brought to the forefront so we are able to listen and construct an alternative narrative about how personal identity is developed within white spaces in the sector by using firsthand accounts.

### Why is this important?

In our sector, accounts of racism and conversations about race are rarely told or written about from the voice of the people on the receiving end. An overwhelming amount of books and papers are written by white early years lecturers, academics, practitioners and activists about the subject. If only white voices dominate this narrative, it creates an imbalance in the way we receive information about race, cultural diversity and racism in the sector.

Do those racially marginal voices hold no value? That's not the case, so Black people should be given the platform to write and speak about their own experiences, rather than have them conveyed by white people.

As a sector we need to cast our net wider and strive for much better representation and inclusivity. Technology, and in particular social media, makes sourcing new and much more informed voices easier for all of us, including those who are based in predominantly white areas. Early years

settings should be actively approaching people from different cultures or heritages wherever possible – families in our care or people in the community – to welcome them into our settings so they are more visible. Ask them what books, activities and resources we should be sharing to ensure that we are representing them correctly.

### Why is this series needed?

In order to gain a more balanced understanding of anti-racist leadership, conversations must discuss race as a social construct – that historically racial hierarchies were created for social and financial gain by those who perceived themselves to be on the higher rungs of racial hierarchies. We also need to examine the impact of racism on those perceived to be on the lower rungs of these racial hierarchies, the presence of whiteness and the effects of anti-blackness. We need to discuss why people racialised as white must decentre themselves in discussions about racism, and why derailing conversations about racism to conversations about diversity and inclusion are not helpful, if we are to get a better understanding about anti-racist practice in the early years sector. The additional understanding of how race intersects with a whole host of other protected characteristics including gender, sexual orientation and disability is also something that we cannot avoid if we are to really deepen our understanding.

Anti-racist practice presents lots to grapple with for those who are only considering what I have listed for the first time, and I will expand on this reframing through this four-part series. If these things make you feel unsettled, it can instantly become something that you switch off from and do not engage with.

If you are leading an early years team, it is essential that you have a solid understanding of anti-racist practice in the same way that you do of safeguarding. In fact, the two intersect. We must be more assertive and confident about how we lead teams in this area if we want to ensure that our settings serve all our children and families holistically. We need to move past an approach that talks about tolerance or conflates celebrating multiculturalism with being anti-racist. It is going to require that you, as leaders, come to this with more than an open heart and mind but with a commitment to ensuring that this practice becomes embedded within the culture of your leadership.

### Aren't we doing enough?

The words 'diversity and inclusion' have become so overused and misunderstood that you could almost be forgiven for thinking that the sector is already doing enough to promote this. The early years does not sit

outside of wider society but should reflect it. We should always strive for this in how our settings look and, more importantly, how they feel when we are laying proper foundations for children's learning.

There are pockets of the country that are predominantly white, but this is not true of the country as a whole, nor the world. We are, after all, preparing our children to become global citizens. With this in mind, even if our settings are all white, how do we ensure that the children are getting a positive, balanced and fair view of people with different racialised identities to their own?

If the experiences of the teams that we lead are limited and we ourselves as leaders have never examined our own internalised racism, then how do we expect to co-create an environment that has equity at its core? Just think, if racism is highlighted to you by a team member and you dismiss it because you do not understand what racism is then what harm could you be perpetuating for the children in your care and what messages are you giving your wider team about how you manage racist incidents? If a team member came to you with a safeguarding concern, would you not go straight to the local authority guidance on how to manage a safeguarding concern with immediacy? This is where policy and structural racism come in, but we will discuss this further in the second part of this series.

### But what can I do?

For 16 years, I was a nursery manager in a setting where the children and families were predominantly Black African-Caribbean. Being based in the heart of Birmingham, I always made a conscious decision to recruit staff whose racial and cultural identities were diverse. If you are reading this in a setting located in a largely white part of the country where you rarely see other people whose racial identity isn't white, then you may be thinking that recruiting a team so diverse is near impossible. Don't despair, I will be presenting ideas about how to overcome this later in the series.

The heritages of my practitioners ranged from being rooted in Ghana, Poland, Nigeria and Bangladesh to those who were born in Birmingham and whose parents were Jamaican like mine. My decision to ensure I had a multi-ethnic, multi-racial and multicultural team was based on the fact that I had a duty of care to ensure the children and families who used my services were submerged among a variety of people. These practitioners came with a wide range of lived experiences, practices and approaches to care and education. After all, nothing is learned in a monocultural environment.

### I'm scared of getting it wrong...

I'm often told this during my training and consultancy. My response is always the

same: anti-racism is not a destination that you reach. It is a journey that you go on and it is lifelong.

Sometimes, even as adults, we have good intentions but say or do the wrong thing, which can cause offense. Isn't this part of learning? We don't dissuade the children in our care from doing things just in case they get them wrong, we guide and support them.

Often, when approaching anti-racism, white practitioners are so fearful of getting it wrong and of being corrected or feeling embarrassed that they centre those feelings over the feelings of the marginalised person who has directly suffered because of the impact of racism. I mentioned earlier the need for people racialised as white to decentre themselves. Well, this is the point that they should do so.

As a leader, your team are looking to you for guidance and instruction in this area and, irrespective of your racialised identity, you must have a firm stance about how to lead on this.

A stance that I have taken and urge you to do is to not let the fear of getting it wrong stop you from saying or doing something when it comes to challenging racism.

Start by being reflective and looking inwards at the views that you may have grown up believing about other people who do not share your racialised identity. Call out racism and manage racist incidents in your personal life; this could include having conversations with racist family members or friends. By practising this you are equipping yourself as a leader and can then share these tools with your team. ■

*Liz Pemberton is director of The Black Nursery Manager, a training and consultancy firm that focuses on anti-racist practice in the early years. She is a trained teacher and former nursery manager.*

### further reading

- 'Black educators in (white) settings: Making racial identity visible in Early Childhood Education and Care in England, UK' by Shaddai Tembo: <https://bit.ly/3qH0jUH>
- *Living While Black* by Guilaine Kinouani
- *10% Braver: Inspiring women to lead education*, edited by Vivienne Porritt and Keziah Featherstone
- *Communicate For Change* by Genelle Aldred
- *Creating an Anti-Racist Culture in the Early Years* by Sandra Smidt
- *Black Teacher* by Beryl Gilroy
- 'Anti-racist school leadership: making "race" count in leadership preparation and development' by Professor Paul Miller: <https://bit.ly/3rqeRYR>