



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs R McLean  
**Respondent:** Countrywide Care Homes (2) Ltd  
**Heard at:** Norwich  
**On:** 13 January 2020, 14 January 2020 and 15 January 2020  
**In Chambers:** 16 January 2020  
**Before:** Employment Judge J Blackwell  
**Members:** Mr M Robbins  
Mr C Tansley

## Representation

**Claimant:** In person  
**Respondent:** Miss F Mewles, Solicitor

# RESERVED JUDGMENT

The unanimous decision of the tribunal is as follows:-

1. The complaint of constructive unfair dismissal fails and is dismissed.
2. The Claimant is not disabled within the meaning of section 6 of the Equality Act 2010 (the 2010 Act) and therefore all her claims of disability discrimination fail.
3. The Claimant's claim of a breach of her employment contract in respect of a failure to pay a bonus payment fails and is dismissed.
4. The Respondent's counterclaim succeeds in part and the Claimant is ordered to pay to the Respondent the sum of £148.84.

# RESERVED REASONS

1. Mrs McLean represented herself and gave evidence on her own behalf. Miss Mewles ably represented the Respondent and she called Mr R Lake, the Respondent's Regional Head of HR, and Ms Lynne Mann, Regional Director. There was an agreed bundle of documents and references are to page numbers in that bundle. We had the benefit of oral submissions from Miss Mewles and written submissions from Mrs McLean.
2. There was an agreed list of issues but we propose to deal with disability discrimination as the first topic since, if we find there to be a breach of the Respondent's (hereinafter called CCH) statutory duty, then that would almost certainly lead to a finding that there was a breach of the implied term of trust and confidence.

### **Background findings of fact**

3. Mrs McLean joined CCH on 14 September 2015 as a Care Manager of the Dussindale Park Nursing Home.
4. CCH own and run care homes throughout the country and they are a large employer with a dedicated HR Department.
5. Mrs McLean resigned on a date which is disputed. It is common ground, however, that her effective date of termination was 20 October 2018.
6. Mrs McLean was successful in her role at Dussindale, transforming a failing home into a successful, profitable home. She was nominated for the manager of the year award in 2017.
7. She makes note in para 5 of her witness statement that she ended the usage of agency staff at Dussindale "*in a very short time*".
8. Mrs McLean's initial line manager was Colin Newton, the Regional Manager who had recruited her. Mrs McLean alleged throughout her evidence that Mr Newton impressed on her that managers should not show weakness.
9. In or about September 2017, Mrs McLean complained about Mr Newton's behaviour and that led to a mediation meeting held on 14 September 2017 (see 248 – 252 of the hearing bundle). It is clear from the notes that Mrs McLean strongly challenged certain aspects of Mr Newton's behaviour and she also challenged the way in which the bonus scheme was both calculated and paid.
10. The mediation meeting seems to have been successful; see the outcome letter at page 253.
11. The meeting made no reference to Mrs McLean's disability or that she was not coping in her role. The focus is on Mr Newton's behaviour and lack of communication.

12. Mr Lake was the HR representative for the region in which Dussindale was situated. It is common ground that Mrs McLean and Mr Lake met at least once a month and spoke on the telephone two or three times a week.
13. Also in September 2017, the manager at the neighbouring home, Mary Chapman Court, relocated. Both homes provided the same services and were of similar sizes, Mary Chapman being slightly smaller. It is clear that Mrs McLean was keen to take on the role of managing both Dussindale and Mary Chapman and indeed took up that joint role on 25 September 2017.
14. Mr Newton left soon afterwards apparently under a cloud and was replaced as Regional Director by Mrs Mann.
15. Mr Lake made regular visits and was in the habit of typing up the result of his visits as he went along. Such records were shared with the Regional Director but not with the home managers.
16. At 257 onwards, there are records of Mr Lake's visits in early 2018. In January, February and March, there were indications that Mrs McLean was not coping with managing both homes. In April, the Deputy Manager at Mary Chapman indicated that she was unhappy and contemplating resignation (see 263A).
17. In May and June Mr Lake's notes record of an improving situation (pages 263C to 263J). However, on a visit of 18 July 2018, Mr Lake was informed of concerns regarding receipts and expenses being claimed by Mrs McLean through the Home's petty cash system. That effectively began the chain of events which led to Mrs McLean's resignation.
18. Further allegations of financial irregularities emerged, including that some £2,600 of a deceased resident's cash was unaccounted for.
19. Mrs McLean was suspended on 24 November 2018 – see pages 311 – 312. Mr Lake began a lengthy and thorough investigation.
20. Mrs McLean raised a number of grievances (the first on 7 September) but she does not allege that the subject matter of the grievances affected her decision to resign.

### **Disability discrimination**

#### **Introduction**

21. Regrettably, we have to begin by noting that we did not find Mrs McLean a credible witness. In a lengthy and thorough cross-examination, Miss Mewles revealed a large amount of contradictory evidence. Mrs McLean on many occasions either blamed her disability and/or her lack of legal advice. We are well aware of the difficulties of a litigant in person and we accept that Mrs McLean was diagnosed as having Myalgic Encephalomyelitis (ME) in 2012.

However, it does not seem to us that either or a combination of the two can explain, for example, the nomination of Mr Lake in February 2018 for a Company award, the manner in which she sent on 15 October 2018 a health questionnaire purporting to be the document she had sent to CCH in September 2015 and the contradictory evidence she gave about whether she believed or not that her dismissal was inevitable at the start of the investigation into financial irregularities.

22. Mrs McLean complained throughout about a number of missing documents, including the health questionnaire referred to above. As we conclude later on, we do not believe that that questionnaire was ever sent to CCH. Nor do we believe that the other missing documents which seemed to relate to Mrs McLean's recruitment and probationary period could have any significant effect upon the outcome of these proceedings.

### Disability

Was Mrs McLean disabled within the meaning of section 6 of the 2010 Act?

### The law

#### **"6 Disability**

- (1) *A person (P) has a disability if—*
- (a) *P has a physical or mental impairment, and*
  - (b) *the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."*

23. As to case law, we propose to follow the approach set out in the case of ***Goodwin v The Patent Office [1999] IRLR 4***. Thus, firstly we have to determine whether Mrs McLean has a mental or physical impairment. As we have already said, Mrs McLean was diagnosed with ME in 2012 and it is common ground therefore that she passes that first test. The second and more difficult requirement is that the impairment affects the Claimant's ability to carry out normal day to day activities. Further, does it have an adverse effect? As the headnote to ***Goodwin*** says:

*"The Act is concerned with a person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. The focus of the Act is on the things that the application either cannot or can only do with difficulty, rather on the things that the person can do."*

24. To determine that question, we have Mrs McLean's impact statement at pages 210 – 215. In summary, Mrs McLean complains of the following symptoms; tiredness, inability to sleep, migraines, anxiety, stress and

depression. It is clear that she is receiving medication for both migraines and anxiety, stress and depression.

25. Mrs McLean states that she struggles to get up, that she preserves all her energy at home by various copying mechanisms so that she can be fit to carry out her duties at work. She complains that she no longer enjoys food and struggles to eat. She also states that she cannot walk more than 2 miles, that she avoids public transport, does not like driving long distances, particularly to new destinations.
26. We also note that Mrs McLean had an excellent attendance record and none of the short periods of absence she had appears in any way related to ME or any of the other symptoms complained of by Mrs McLean.
27. We also note from the shift records that she has an excellent record of punctuality. We also note that she has a long commute from home to her place of work. Mrs McLean also told us that she had had a gastric band inserted and that that had had a significant effect on both her ability to eat and her enjoyment of food.
28. It is clear that her work involved a number of normal day to day activities. She walked about the Homes, she met with the residents of the Home, she at times worked in the kitchen preparing and cooking food. On behalf of both the Home and residents, she also carried out shopping on a regular basis.
29. We particularly note Mrs McLean's evidence that she found it very difficult to attend the annual awards ceremonies held by CCH. We accept that on one occasion, she did ask Mrs Mann for permission not to go and was told that she was expected to go in order to support her staff. We also note, however, her husband's email to CCH of 11 September 2018 at 516. In respect of that conference, Mr McLean says: "*Rache came back from conference this year full of energy – she was full of excitement to take her teams to the next level with regarding the cqc.*" He also makes reference to the fact that Mrs McLean travels long distances on business. We also accept that he does refer to Mrs McLean crying with exhaustion.
30. On balance, we accept that the impairment does adversely affect Mrs McLean's ability to carry out normal day to day activities.
31. The third question is put as follows in **Goodwin**:

*"Is the adverse effect substantial? Substantial means than minor or trivial rather than very large. The tribunal may take into account how the applicant appears to the tribunal to manage, although it should be slow to regard a person's capabilities in the relatively strange adversarial environment as an entirely reliable guide to the level of ability to perform*

*normal day to day activities. The tribunal should examine how an applicant's abilities have actually been affected whilst on medication and then consider the deduced effects – the effects which they think there would have been but for the medication and whether the actual deduced effects on ability to carry out normal day to day activities is clearly more than trivial.”*

32. In that regard, we have had the benefit of no medical evidence as to the effect of medication. As to Mrs McLean's conduct in the tribunal and taking into account the caveat set out above, she was assertive and confident.
33. As noted above, we have significant doubts about Mrs McLean's evidence. In the context of disability, she states at para 32.0 of her witness statement:

*“I had been well for nearly 5 years – I have medication counselling and a very supportive family.”*

34. When that statement was put to her in cross-examination, she stated that that period of being well was in fact the 5 years prior to her employment with CCH, ie 2010 to 2015. That was not the context of para 32.0 and other contemporaneous documents show that Mrs McLean was referring to the period immediately preceding the investigation which led to her resignation. Again, this is supported by her husband's email at 516. See also at page 486 an extract from Mrs McLean's grievance document written on 7 September 2018 which makes it plain that the 5 year period of good health immediately precedes the investigation into financial irregularities. Therefore and taking into account the matters set out in paras 23 to 30 above, on the balance or probabilities, Mrs McLean has not proved that the impairment of ME has a substantial adverse effect on her ability to carry out normal day to day activities.
35. The fourth question therefore becomes otiose but we note that it was common ground that the impairment is long-term.
36. Although that finding means that Mrs McLean's claims based upon disability cannot succeed, nonetheless we propose to deal with the question of knowledge because that in turn impacts upon Mrs McLean's other main claim of constructive unfair dismissal.
37. Mrs McLean's evidence is that in September 2015, she submitted a health questionnaire to CCH a few days after the commencement of her employment. She also says (again see para 32.0 of her witness statement):

*“I did advise Rob and Lynne that I was struggling late 2017 early 2018 – perhaps I did not make myself clear – but then neither did they seek further clarification when I tried to talk to them both.”*

38. Once again, her evidence in cross-examination was rather different and was to the effect that she was constantly advising Mr Lake and Mrs Mann of her disability and the affect it was having on her ability to carry out her duties as Manager of two homes.
39. Firstly, to deal with the alleged submission of a health questionnaire in 2015, CCH carried out an audit of Mrs McLean's personnel records and could not find such a health questionnaire. Also missing were her interview notes and any records of assessments during her probationary period.
40. At page 643, is an email from Mrs McLean to CCH's HR Director, Ms Delic, which reads:

*"Hi Jenny*

*These are the documents I sent to Head Office back in 2015."*

Attached to that email is the document showing the diagnosis of ME dated 21 May 2012 and at pages 645 – 647 a health questionnaire which bears Mrs McLean's signature at page 647 and the date of 25 September 2015.

41. What Mrs McLean had failed to notice is that the health questionnaire had been revised in 2018 and it was that revised form she attached to her email.
42. In cross-examination, Mrs McLean said that she tried to withdraw the document but that Ms Delic would not agree. There is no documentary evidence to support that contention. Mrs McLean also said that at that time, she was in an emotionally vulnerable state.
43. Mrs McLean also accepted in cross-examination that she knew that at that stage, it was not the practice for management staff in 2015 to submit health questionnaires. We do not accept that Mrs McLean did submit a health questionnaire in September 2015. In our view, the email at page 643 is an attempt to mislead CCH.
44. The second allegation that would fix the Respondent with knowledge is Mrs McLean's assertion that she informed Messrs Newton, Lake and Lynne Mann repeatedly of her condition and its effect on her ability to carry out her duties. We found Mr Lake to be a convincing witness, Mrs Mann less so but both denied that Mrs McLean had ever made such comment.
45. We referred in our introduction to Mrs McLean's nomination of Mr Lake dated 27 February 2018 at 259 for the "*Head Office Hero*" award. Her nomination reads as follows:

*"Rob has been the one consistent, reliable and supportive member of my Regional Team. He is fair and considerate. He never falters and has so much positivity he makes the most tedious tasks fun. Rob is always available in a crisis (even at weekends) and manages*

*to talk what might seem to be worst case scenario into manageable bits. He is our rock in Norwich and we don't know what we would do without him. When I lost both my parents in 2016 – Rob was so very supportive and helped me to arrange time off, working from home and ensuring the safety of not only Dussindale but my health and welfare also. 2017 was a tough time for Dussindale and Mary Chapman and Rob helped me focus on the development of my Deputy's in order for me to facilitate safe management of 2 homes. I believe Rob should be recognised for the fabulous job (sic) he does (and being able to manage me!).*

46. When that was put to Mrs McLean in cross-examination, she said that she and her fellow Norwich home managers had decided that Norwich did not get its fair share of recognition so they put a number of names in a hat and Mr Lake's was drawn out. They then decided to write the absolute opposite of that which they really felt about the nominee. That explanation in our view is simply not credible. We believe that the nomination set out above did at that time reflect Mrs McLean's genuine view of Mr Lake.
47. We note also that there is no documentary record of Mrs McLean's assertion that she was constantly seeking support. In answer to that, Mrs McLean said that she did not like to show weakness. This is a contradictory response in that there is clearly no difference from seeking help by telephone and by a different medium, eg email. Further, we can see from the way in which she challenged Mr Newton in September 2017 that Mrs McLean was not averse to confrontations with her line manager.
48. We do not believe that Mrs McLean ever complained, either to Mr Lake or Mrs Mann of her disability, its effect on her ability to manage and/or that she was not coping. Thus, there is nothing to suggest that CCH knew of Mrs McLean's disability.
49. Ought CCH to have known of that disability? The only evidence seems to us to be relevant to this question is Mrs McLean's attendance record and, as we have indicated above, it was a good record with no absences that appear in any way to be connected with ME. We therefore conclude that there was nothing to put CCH on notice.

#### **Constructive unfair dismissal**

50. We propose to take the agreed list of issues in a different order. Firstly, Mrs McLean has to prove that there has been a repudiatory breach of her contract of employment. In this case she relies upon the implied term of trust and confidence. In summary, she relies upon a number of matters:
  - (a) Firstly, the lack of support from Mr Lake and Mrs Mann.
  - (b) Secondly, that the CCH's expectation that the Claimant should work 46 hours per week as opposed to her contractual hours of 40 hours per week.

- (c) Thirdly, CCH not allowing her to organise agency staff to cover certain shifts, which included day and night shifts as well as weekends.
  - (d) Fourthly, not permitting movement of staff between the Norwich homes.
  - (e) CCH's action of suspending her indefinitely on 23 August 2018 without pay after 21 days, which forced Mrs McLean to make a decision as without pay she could not live.
51. There were two other matters which Mrs McLean initially relied on but withdrew as factors in her dismissal, namely firstly failing to pay the Claimant a bonus for the quarter ending July 2018 and secondly there not being fair pay between the homes managers in Norwich.
52. The last straw therefore becomes the suspension and there is a contractual provision – see page 113 at paragraph 7 which has the effect that Mrs McLean complains of.
53. We have dealt above with the lack of support allegation in the context of CCH's knowledge of Mrs McLean's disability and we do not believe that there was a lack of support. We accept that Mrs Mann's approach was noninterventionist based upon her experience that a new manager almost always meets some form of resistance. She relied upon Mr Lake's report that there had been an improvement in April, May and June but we are satisfied that had she been asked for assistance, she would have reacted in an appropriate way. Again, as we have said above, we accept Mr Lake's evidence supported by contemporaneous documents that Mrs McLean never told him that she was not coping.
54. In our view, in early 2018 there began a deterioration of relationship between Mrs McLean and the Deputy Manager at Mary Chapman (as noted above she threatened to resign) and the two administration assistants based respectively at Dussindale and Mary Chapman. These were matters that were within Mrs McLean's remit to manage. For example, she could have begun either conduct or capability procedures, whichever was applicable to the circumstances. She could have sought assistance from Mr Lake or Mrs Mann and we have found that she did not do so.
55. As to the complaint that the Claimant should work 46 hours per week as opposed to her contractual hours of 40 hours per week, we accept that Mrs McLean often did work in excess of 40 hours per week and we accept that there was a period when she worked 12 consecutive days. We note at page 101 when her contract of employment was varied on 4 October 2017 to reflect the fact that at that time she was managing both Mary Chapman and Dussindale that her hours of work are described as:

*“40 per week. Due to the nature of your role you may be required to work in excess of these at times.”*

56. Thus, there was no breach of the express term as to hours of work.
57. The next matter complained of is the allegation that Mrs McLean was not allowed to use agency staff to cover certain shifts. There is abundant evidence in the bundle that agency staff were widely used, though we accept that there was a general rule that agency staff should not be used in the kitchen.
58. The procedure was that the home managers should first seek authority from Mr Lake and Mrs McLean complained that he was often not available. She went on to concede, however, that when he was not available, she nevertheless employed agency staff and got retrospective approval. This complaint also has to be looked at in the context that it is common ground that it is sensible to reduce the use of agency staff for two main reasons. Firstly, they are more expensive and, secondly, permanent staff tend to build a much better relationship with residents, which therefore leads to happier residents. As we have noted before, Mrs McLean complements herself for having reduced the use of agency staff at Dussindale in a very short time – see para 5 of her witness statement. Clearly, it was therefore within her power as manager to carry that out at both homes.
59. The next complaint is that she was not permitted to move staff between the three Norwich homes. That is patently not true. There was movement of nurses between the homes. We accept that there was a reluctance from particularly the lower paid members of staff to accept work in another home. But, again, it seems to us that this was a matter that was within Mrs McLean’s remit as Home Manager of both Dussindale and Mary Chapman.
60. Finally, we turn to the suspension on 23 August 2018. CCH were entitled contractually to pay only three weeks of full pay. In fact, until she left on 20 October, Mrs McLean was either paid full pay or contractual sick pay. It is also clear from her cross-examination that as at 7 September 2018, Mrs McLean believed, arising from previous experience, that if there was a lengthy period of suspension, ie exceeding 21 days, then the suspended employee would continue to be paid.
61. What constitutes a breach of the implied term of mutual trust and confidence is perhaps most succinctly expressed in the judgment in that well-known judgment of Browne- Wilkinson J in **Woods v Wm Car Services (Peterborough) Ltd [1981] ICR 666** in which he said:

*“To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.”*

62. Given that it seems to us that much of what Mrs McLean complains of was within her powers as Manager and that we have expressly found that Mrs McLean did not seek support and therefore it cannot have been denied, there was no breach of the implied term of trust and confidence.
63. Thus, it is not necessary for us to answer the question whether Mrs McLean resigned as a consequence of a breach of the implied term of trust and confidence. However, we would say that there is clear evidence that Mrs McLean's motivation in resigning on 7 September 2018 was to avoid a disciplinary process which she believed would end in a finding of gross misconduct and therefore dismissal. The secondary objective was to acquire a standard reference, ie a neutral reference which would have enabled her to have gained employment out with the care sector. That clear evidence emerges from Mrs McLean's cross-examination in which she conceded that the alleged final straw of the imposition of the contractual suspension payment period was not in her mind as of 7 September.

#### **Breach of contract/bonus payment**

64. Did Mrs McLean have an express contractual entitlement to a bonus? As a matter of arithmetic, if Mrs McLean succeeds, then the sum is agreed at £750.
65. There is a dearth of documentary evidence on this point. In her original letter of appointment at page 81, there is a line under the heading of "*Details of your employer are as follows:*"
- "Bonus: Non Contractual Bonus Available"*
66. The following facts are relevant and are common ground:
- 66.1 That Mrs McLean was informed on a number of occasions that if a manager earned the bonus, it would be paid.
- 66.2 That the advertisement for her role referred only to a "bonus".
- 66.3 That Mrs McLean was in post at the cut-off point in respect of the £750 had been earned.
- 66.4 That Mrs McLean was not an employee when that bonus was paid in December 2018.
67. There is also evidence in particular from the mediation meeting with Mr Newton in September 2017 that there was a lack of understanding of how the bonus was calculated and payments of the bonus were erratic.

68. On this limited evidence, we are satisfied that the bonus was not contractual but that there was a custom and practice of paying it if KPIs were met.
69. However, Mr Lake's evidence is to the effect that it was also custom and practice that employees who are either under suspension, subject to disciplinary proceedings or had left the business at the time that payment was made were not paid the bonus payment.
70. Given that it is a discretionary scheme, was CCH's failure to pay capricious, perverse or irrational? Mr Lake's explanation was that one of the purposes of the scheme was to reward loyalty and therefore it was reasonable not to pay employees who had left the business, as was the case with Mrs McLean. It seems to us that it cannot be said that CCH's action in not paying was either capricious, perverse or irrational. Thus, Mrs McLean is not entitled to the payment of £750.

### The counterclaim

71. The initial counterclaim was set out in the amended Response as an appendix at page 79. At the beginning of the proceedings, CCH withdrew those parts of the claim which related to purchases from Amazon and the "*money taken from deceased resident*".
72. We should note that before her cross-examination on these topics, we warned Mrs McLean that she was at risk of incriminating herself because, as we understand it, there is an ongoing police investigation (proceeding at its usual snail pace) into the items set out at appendix 1 and in particular the sum of £2,696 cash belonging to a deceased resident that is unaccounted for.
73. There are therefore two remaining categories of counterclaim – six invoices relating to expenditure by Mrs McLean at the World End pub which is two miles from her home but a considerable distance from Dussindale and Mary Chapman. There are six separate invoices but they relate only to four dates, namely 4 May 2018, 1 June 2018, 9 June 2018 and 1 July 2018. The investigation into these receipts began because Mr Lake obtained the receipts set out above and had concerns about them. At page 281, he writes to Mrs Mann and Ms Delic:

“... ”

*Any thoughts?? I'm seriously concerned! How can you have a meeting with a potential residents family at the same time as taking staff out for a meal for recognition (09<sup>th</sup> June) ...??”*

74. Mrs McLean was asked by Mrs Mann to explain the receipts and she does so at page 282. Dealing with the receipt for 4 May, she says that this relates to a prospective employee, a Mr Lovett, who in fact did not commence

employment until 9 May. Mr Lovett would not engage with Mr Lake in his investigation of that receipt. Mrs McLean's evidence was to the effect that she liked to put her arm around all employees and she was aware that Mr Lovett was being abused by his gay partner. She went on to add that Mr Lovett became abusive and demanded money from her. Again, we simply do not find Mrs McLean's evidence credible.

75. Turning to the receipt for the 1 June, Mrs McLean's evidence at 282 is:

*"I think it was (D – that is Dora Ciabatora) but shes Mary Chapman so wrong allocation – domestic abuse."*

76. Mr Lake interviewed Miss Ciabatora who, at page 435, denied that she was subject to domestic abuse and further denied that she had ever been to the World End pub with Mrs McLean.

77. As to 9 June, there are two receipts. Mrs McLean's explanation is:

*"enquiry – met with family whos Mother lived in sheltered accommodation in same village as pub/convenient as I was meeting (A) for a heart to heart."*

78. A is identified as Ms Radu and she was interviewed by Mr Lake at pages 441 – 443. She denies that she had ever gone to the World End public house with Mrs McLean. As to that invoice, Mrs McLean later changed her evidence to the effect that it was in fact her daughter-in-law who was a hairdresser who she had met for a "heart to heart".

79. As to the meeting at exactly the same time with a family whose relative was a prospective resident, Mrs McLean conveniently recalled that the prospective resident had died but could not recall the name of the family. Thus, Mr Lake was unable to pursue the matter further.

80. As to the invoice relating to 1 July, Mrs McLean identifies this as relating to a meeting with a Miss Raynor, an ex-employee wanting to come back. Miss Raynor was interviewed by Mr Lake – see pages 433 – 434. She accepted that she was interested in returning to CCH's employment. She accepted that she had received an email at page 457 from Mrs McLean which had surprised her because she had not been in contact with Mrs McLean in respect of wishing to re-join CCH. She further said that she had not met Mrs McLean at the World End pub. In relation to the email at 357, it was Mr Lake's evidence that there was no such policy of not employing former staff. Indeed, such a policy would be very surprising.

81. Mrs McLean's response to those who denied having met her at the World End pub was to assert that they were lying. Taken either individually or as a whole in relation to these invoices, Mrs McLean's evidence is simply not credible. We therefore conclude that these invoices were not legitimately

incurred by Mrs McLean and therefore CCH are entitled to reimbursement in the sum of £148.84.

- 82. As to the second part of the counterclaim, this relates to what CCH say are vouchers unaccounted for in the sum of £250. It is common ground that £400 worth of vouchers were provided to Mrs McLean for distribution to staff members as a thank you for good service. It is also common ground that there are receipts for only £150 worth of vouchers – see 344 – 346.
- 83. Mrs McLean asserts that sums may have been paid out on different occasions and that there is a reconciliation document which would show that. It is also common ground that one other person, namely Mr Lake, had access to the safe in which the vouchers were stored.
- 84. On the balance of probabilities, there is insufficient evidence to support the contention that Mrs McLean took the balance of the vouchers for her own use. Therefore, that part of the counterclaim fails.

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Employment Judge J Blackwell

Date: 31/01/2020

JUDGMENT SENT TO THE PARTIES ON

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31/01/2020  
FOR THE TRIBUNAL OFFICE

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