

# MARGARET ASHBOURNE

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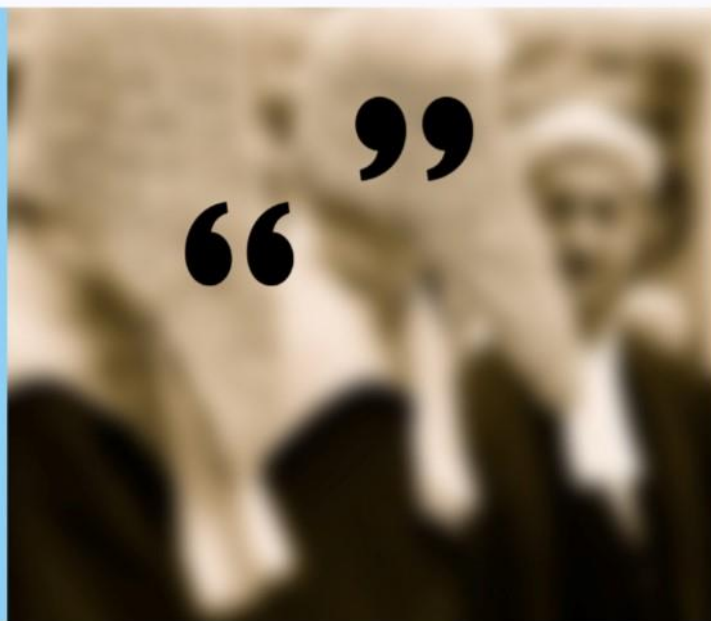
# INCHOATE LTD

**PRACTICAL LAW ACADEMY**

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# CASE MATERIALS



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UNIVERSITY OF  
BUCHAREST  
— VIRTUTE ET SAPIENTIA



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**IN THE BURY ST. EDMUNDS EMPLOYMENT TRIBUNAL**

**BETWEEN**

**MARGARET ASHBOURNE**

**Claimant**

**and**

**INCHOATE LTD.**

**Respondent**

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**GROUND OF COMPLAINT**

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1. The Claimant has been employed by the Respondent company since 1<sup>st</sup> February 2005 as the Director of Journalism (DJ) of *Inchoate* magazine. Her functions include liaising with legal academics, practising lawyers and barristers' clerks and encouraging them to publish legal updates or to provide gossip about the legal world. She is also responsible for supervising the work of 5 other journalists within the DJ team.

2. The Respondent company is part of a group of media-related companies owned by a holding company (Jackal Overseas Knowledge Enterprises). The day-to-day running of the Respondent company is in the hands of Nick Manning, who has been the Respondent's Chief Executive Officer since late 2014.

3. The Respondent's workforce is overwhelmingly under the age of 40 and male. The biggest group is aged between 18-30. The only new employee taken on in the last 12 months was male, and was aged under 30.

4. The Claimant claims that the CEO of the Respondent company (Nick Manning) has created a culture of intolerance, discrimination and harassment including on the grounds of sexual orientation, age and gender, contrary to the *Equality Act 2010*. The Claimant claims that she experienced discrimination on the grounds of the latter two characteristics during the period of time between early 2015 and March 2017, either directly from CEO Manning or in his presence or with his knowledge.

5. The Claimant further claims that the Respondent treated her less favourably because of the protected characteristics of age and sex contrary to the *Equality Act 2010* by not selecting her for promotion to the newly-created position of Deputy CEO in March 2017. The Deputy CEO position was advertised using language which indicated a preference for younger applicants and which reflected Mr Manning's preference for employees aged below 30 and his discriminatory attitude towards older employees, particularly women. This was reinforced by the discriminatory and mocking manner in which Mr Manning conducted the Claimant's interview for the Deputy CEO position. He

made multiple adverse references to old age, mocked the Claimant's non-use of social media and failed to properly assess the Claimant's knowledge, competencies and skills. He then appointed Mr Martin Bannilow to the position of Deputy CEO despite having no previous managerial experience.

9. The Claimant further claims that Mr Manning, acting on behalf of Respondent company, orchestrated a long-term plan of discrimination and harassment with the aim of encouraging the Claimant to resign from her position at the Respondent company or to provide a (false) justification for dismissing her.

10. Against that factual background, the Claimant resigned her position on 31<sup>st</sup> March 2017 and will contend as follows.

### **UNFAIR DISMISSAL**

11. The Claimant contends that she was dismissed within the meaning of *section 95(1)(c) of the Employment Rights Act 1996*.

12. By reason of its conduct, the Respondent breached the implied/explicit term of mutual trust and confidence between it and the Claimant, thereby entitling the Claimant to treat herself as having been discharged from further performance of her obligations and to consider herself as having been constructively dismissed.

### **AGE AND SEX DISCRIMINATION**

13. The Claimant contends that by failing to appoint her to the position of Deputy CEO, the Respondent treated her less favourably than it treated or would have treated other persons.

14. Further, the reason for the said less favourable treatment was by reason of the protected characteristics of age and sex.

15. Yet further, the actions of Mr Manning constituted harassment within the meaning of the *Equality Act 2010*.

**A. Lawyer**

**Dated this 1<sup>st</sup> day of June 2018**

IN THE BURY ST. EDMUNDS TRIBUNAL

BETWEEN

MARGARET ASHBOURNE

Claimant

and

INCHOATE LIMITED

Respondent

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**GROUNDS OF RESISTANCE**

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1. The Respondent company produces a law magazine in print and e-zine formats for legal professionals in the UK and Europe. Both formats of the magazine are called *Inchoate*. It began solely as a printed magazine in 2000 but has since expanded significantly its online presence as an online publication and a legal blog.
2. The Claimant commenced employment with the Respondent on 1<sup>st</sup> February 2005 as Director of Journalism (DJ). In performing the role of DJ, the Claimant worked alongside the Head of Internet Publications (Martin Bannilow) and reported to the CEO (Nick Manning).
3. The Claimant continued as DJ until 31st March 2017, on which date she tendered her resignation with immediate effect. The resignation was accepted by the Respondent's CEO on the same day.

**Performance of the Claimant**

4. The Claimant's performance at work was sub-standard and would have justified a decision to dismiss her either on the ground that she was failing to perform her contractual obligations or because she was performing those obligations negligently and incompetently.
5. On a number of occasions since at least 2014, it was made clear to the Claimant that the Respondent was committed to developing its social media presence and utilising new technologies. On each occasion, the Claimant was unwilling to embrace and support the Respondent's clear, legitimate and reasonable corporate aims. *Inter alia* the Claimant refused to upgrade her telephone to a smartphone, refused to make use of social media (Twitter, Facebook, Whatsapp, LinkedIn) for business development purposes, and refused offers to attend additional training to familiarise her with modern communication techniques and technologies.
6. The Claimant's annual appraisals for two consecutive years prior to her resignation noted a number of problems with her performance at work. In her 2016 report, it was noted that the Claimant

spent considerable periods of working time outside the office and that she was failing to produce publishable materials quickly enough to allow it to be used to the greatest effect on the company's websites and blogs. It was also noted that the Claimant had failed to integrate her team's work with the HIP team, to achieve synergy between its hard-copy printing and online/social-media presence. It was also noted that the Claimant appeared to have an alcohol-abuse problem and that this was unacceptable. The Claimant was offered assistance, in the form of the Company agreeing to pay for alcoholism rehabilitation treatment, but the Claimant refused.

7. In her 2017 annual appraisal, record was made of Claimant's poor team performance and continued failure to properly implement necessary corporate reforms. Suggestions were made for the Claimant to participate in a number of management re-training courses on e-marketing and social media, but she refused.

8. The Claimant's decision to resign must be understood and assessed in light of her continued poor performance at work, which had been properly investigated and reported by the Respondent. A decision to dismiss the Claimant would have been justified on a number of grounds but the Respondent and its CEO chose to give the Claimant a number of chances to remedy her poor performance. The Claimant repaid this loyalty by resigning from the company with no notice period, at a time and in circumstances which caused financial and reputational losses to the Respondent.

### **Christmas Party**

9. During the Respondent's Christmas party in December 2016, Mr Manning gave a speech congratulating the staff on their hard work, and motivating them for the year ahead. He particularly praised the Internet Publications Department for being largely responsible for the company's increased profitability. He also conveyed information from the Respondent's key advertising clients that they recognised the need for *Inchoate* to maintain its strong legal content whilst expanding its readership among the younger generation of internet-savvy consumers. The Respondent denies that any comments made by Mr Manning at this time, or at any other time, were discriminatory on the grounds of age, sex or any other characteristic.

### **Deputy CEO vacancy and resignation**

10. The Respondent's significant corporate growth led to the creation of a new position of Deputy CEO. This position was created and advertised internally, in March 2017. The Deputy CEO would be responsible for supervising both the Director of Journalism and the Head of Internet Publications teams.

11. Both Mr Martin Bannilow and the Claimant applied for the Deputy CEO role and their interviews took place respectively on 29<sup>th</sup> and 30<sup>th</sup> March 2017. Both candidates were asked the same core questions. In particular, both candidates were asked how they would build relationships with modern legal academics and practitioners who increasingly communicate legal developments and research via their own blogs and twitter accounts, and how they would use *Inchoate's* social media profiles to increase subscriptions and advertising revenue.

12. Mr Bannilow's interview was by far the most satisfactory and he was offered, and accepted, the Deputy CEO position. The Respondent asserts that a proper process was followed and denies that the Claimant was denied the opportunity for promotion on the grounds of her age or sex. The Respondent also denies that the Claimant was in any way subjected to ridicule or harassment during her interview or at any other stage.



13. On 31<sup>st</sup> March 2017, the Claimant was informed verbally by Mr Manning that she had not been chosen for the position of Deputy CEO. The Claimant did not initially appear unduly disappointed by this decision, so it came as a surprise when she submitted her instant resignation by email later that day, particularly since the Claimant knew she was involved in important company business at that time and that, by failing to provide the notice period required by the terms of the her Employment Agreement, she would cause harm to the Respondent.

14. On the same day, Nick Manning responded to the Claimant and accepted her resignation. He specifically asked the Claimant if she had performed all of her obligations, but he received no reply.

15. The Claimant's resignation was tendered with immediate effect, contrary to clause 2 of her Employment Contract, which requires that no less than 2 months' prior notice be given in writing by the terminating party. In consequence of the Claimant's breach of contract, the Respondent was unable to print a series of articles on which the Claimant had been working as part of her employment obligations. The Respondent had previously incurred time and expenditure in advertising the forthcoming publication of these articles and, having failed to publish them due to the Claimant's breach of contract suffered a loss of reputation and financial losses.

### **Constructive Unfair Dismissal**

16. The Respondent denies that the Claimant has been constructively dismissed as alleged or at all. In particular, the Respondent denies that it has breached the Claimant's contract of employment.

17. The Respondent asserts that the Claimant's resignation on 31<sup>st</sup> March 2017 was accepted and that this is the date that her employment with the Respondent ended.

### **Age and Sex Discrimination**

18. The Respondent denies that it has discriminated against the Claimant on the grounds of age, sex, or in any other manner.

19. The Respondent asserts that it appointed Mr Bannilow as Deputy CEO solely because he possessed the particular skills and experience required for the role and his recent performance in the company had been exemplary. In contrast, the Claimant performed poorly during her interview and was inadequately performing her employment duties at that time, as evidenced by her performance appraisals.

20. Yet further, the Claimant's claim for harassment is denied.

**SHERBERT DIP QC**

**Dated this 21<sup>st</sup> day of June 2018**

Case No. 1301983/2018

IN THE BURY ST. EDMUNDS EMPLOYMENT TRIBUNAL

BETWEEN

MARGARET ASHBOURNE

Claimant

and

INCHOATE LTD.

Respondent

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WITNESS STATEMENT OF MARGARET ASHBOURNE

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I, **MARGARET ASHBOURNE**, of Flat 2, 12 Arbour Road, Highbury, London, the Claimant in this matter, will say as follows:

1. I was born on 1<sup>st</sup> August 1950 and am currently 58 years old. I graduated Queen Mary University in London in 1972 with a first-class honours degree in media studies.
2. Between 1972-1974 I sought a career in music with some friends from University but our band (*Steel Spinster*) was unsuccessful. I left the band shortly before the remaining members changed the name to *Iron Maiden* and went on to become world famous.
3. Between 1974-1986 I worked as a freelance journalist at a musical magazine (the *New Musical Express*). In 1976 I was promoted to the head of the rock-music department and was responsible for coordinating and editing the work of 25 other journalists, as well as writing my own articles for the magazine.
4. In 1986 I was headhunted to run a team of 15 investigative journalists for the satirical political magazine *Private Eye*. I worked closely with the main editor, Ian Hislop, and learned a talent for spotting, researching and publishing news stories before other media outlets were even aware of them. Some of the stories that I and my team wrote won various awards for investigative journalism. During my time at *Private Eye* I attended numerous courses on innovative writing. From 1990 I also began to work as a part-time lecturer in media studies at the City of London Polytechnic (which later became the London Metropolitan University). I continued both employment positions until August 2000.
5. Having left *Private Eye* I wished to take a break from employment. Accordingly, in 2000-2001 I completed a postgraduate degree in New Media at the London Guildhall University. During that time, I became friends with a number of law students at the University and I started to become more and more interested in the scandals and gossip occurring amongst both academic and practising lawyers.

6. In early 2001, purely for fun, I created my own weekly newsletter (*The Jury's Out*) which contained a mixture of factual and humorous-fictitious stories about the legal and academic worlds. It proved popular and soon various companies began to pay to advertise their products/services in it. I began to spend more and more time amongst legal academics and practising lawyers, many of whom published short stories and legal updates in my newsletter. In short, *The Jury's Out* became very well-known and popular. I was able to support myself from the income the magazine generated and I became self-employed for a few years.

7. In 2005, the Respondent company approached me and asked to buy all of the rights I owned in *The Jury's Out*. The deal, which I accepted, also involved me being employed by the Respondent as the head of a team of writers to publish stories in the Respondent's magazine (*Inchoate*). *Inchoate's* target audience was also legal professionals. From that point onwards, *The Jury's Out* ceased to exist and I became the Director of Journalism (DJ) at *Inchoate*. Aside from supervising the work of 5 other journalists, my responsibilities included continuing to liaise with legal academics, practising lawyers and barristers' clerks and encouraging them to publish legal updates or to provide gossip about the legal world.

8. When I originally began working for the Respondent, the internet and cellphone revolutions were only just beginning. Hard-copy, printed publications were still the Respondent's main source of revenue and my team was the most important from a business perspective. The articles produced by me and my team were extremely popular and sales of *Inchoate* increased dramatically. However, as time went on, the Respondent placed increasing importance on internet sales and social media.

9. In 2010 the Respondent created a new role, Head of Internet Publications (HIP), to which Bruno Humperdink was appointed. Although I was slightly suspicious at first about Bruno's eccentric appearance (he had dyed his hair blue and shaved off his eyebrows) and mannerisms (he adopted a very strong German accent, despite coming from Birmingham), we soon got on very well. Bruno was only 5 years younger than me and we shared the same outlook on many things, including the fact that internet-dominated publications were often more concerned with publishing stories quickly than in researching them properly and publicising the highest-quality stories.

10. In 2014, the Respondent company was floated on the stock exchange and the majority stake was bought by *Jackal Overseas Knowledge Enterprises (JOKE)*. Shortly afterwards JOKE appointed a new Chief Executive Officer (CEO), Nick Manning.

11. At the Christmas party in 2014, Manning gave a speech at which he stated how JOKE had invested lots of money in the Respondent company and how it had great plans for *Inchoate* to become the leading online magazine for lawyers and legal academics. He also announced plans to develop an online blog and *Inchoate* mobile telephone apps. He compared *Inchoate* to the growth of Premier League football clubs and said that, just as football had become only part of what those clubs now sell, the actual content of *Inchoate* would soon be only part of what we sell. The company's *brand* would now be the product and the magazine, whether in print or online, would be just one of many ways in which the brand was marketed. He also referred to market research which apparently showed that lawyers aged 25-30 are the most popular target group of companies which advertise in *Inchoate*. He said it was time to introduce some fresh ideas and fresh new faces to make sure that the company stayed in touch with the youth who will be tomorrow's legal practitioners. I confess to not having originally understood everything that Manning said during that speech, but it later became clear that it would have serious implications on my role in the company.

12. In early 2015, Manning dismissed Bruno Humperdink. I met privately with Bruno afterwards and he said that Manning had been extremely aggressive with him. Manning apparently told Bruno that his main priority was the internet and e-business and that Bruno was "*the least hip HIP that I*

[Manning'] have ever come across". Bruno said that Manning accused him of being too old and out of touch with social media. Bruno also said that Manning was uncomfortable with his fairly-open homosexuality, but he did not provide examples of anything homophobic Manning had said or done. Bruno received payment as part of a settlement agreement and left the Respondent. He told me that he planned to travel the world. I have not had any contact with him since that time and do not know where he currently lives.

13. Following Bruno's dismissal, Manning immediately hired a new HIP (Martin Bannilow). I do not know how many people were interviewed for the job but I do not recall anyone else attending the office for interview. Rumours existed that Manning and Bannilow were friends outside work. I later discovered that they attended the same school as children and grew up in the same part of London. Manning and Bannilow certainly got on very well at work. They often shared jokes between themselves and would send messages, pictures or videos to each other's telephones, even during important meetings. I was never made a part of these in-jokes, although I know I sometimes featured as the subject of those jokes. On one occasion, as I was about to give an important presentation to the senior management team (comprising myself, Bannilow and Manning), Manning played Bannilow a YouTube video in which an elderly lady aged in her 70's breaks wind after eating a home delivered pizza (he later told me it was called "Old Lady Eating Pizza and Farting"). Manning found this extremely amusing and, when he could see that I didn't, he said that he imagined me eating pizza and farting in front of the TV during weekends. He could see that I was unamused, but he told me to lighten up and let off some steam, at which point both he and Bannilow laughed so hard that we had to postpone the meeting.

14. I initially disliked Bannilow quite a lot when he joined the company. Professionally speaking, I think there were many better people in the HIP team who would have been better replacements for Bruno than Bannilow, who had no management experience at all. Personally speaking, I initially disliked his brash way of behaving and the grovelling way he seemed to act around Manning, including laughing at all of his offensive jokes.

15. With time, however, I learned to tolerate and perhaps even to like Bannilow. When he was on his own, he could even be very kind and considerate. Overall, we didn't spend too much time together because for most of the time I worked on separate things to him, and I continued to spend much time out of the office at meetings with academics, lawyers and clerks, researching potential news stories.

16. However, whenever I was forced to meet Bannilow and Manning together, such as during senior staff meetings, I felt that Bannilow encouraged Manning and joined in with his discriminatory behaviour towards me because of my age and gender. They often called my telephone "ancient" as said it was nearly as old as me. They sometimes made sexist comments about the appearance of female lawyers or academics whose photographs appeared alongside stories I published in the magazine. When they saw my disapproval at such comments, they rolled their eyes at each other. On numerous occasions I felt extremely uncomfortable but felt powerless to do or say anything. Manning was the only person to whom I could complain and both he and Bannilow seemed to enjoy their jokes and "banter".

17. I started to suspect that Manning wanted to dismiss me when, in January 2016, he performed my annual staff appraisal. Until then, my annual appraisal had always been very positive. However, in the first appraisal performed by Manning he said that I was spending too much time out of the office, that I was not producing articles quickly enough to allow *Inchoate* to compete with other online legal news websites and blogs, and that I was failing to properly integrate my team's work with the company's general goal of ensuring synergy between its hard-copy printing and online/social-media presence. He also accused me of drinking while at work and suggested that I go on a program for alcoholics, which was ridiculous. I sometimes meet with lawyers' clerks or barristers in a pub, but I

very rarely have anything alcoholic to drink unless the person I'm meeting would be offended if I didn't.

18. In January 2017, Manning again gave me a negative assessment during my annual appraisal. He said that my department was outdated and needed serious reform, which he doubted I was capable of implementing. He accused my team of making losses, which is ridiculous because *Inchoate* had just announced its' largest profit in 4 years. He said that I had 6 months to improve things and he suggested that I attend a number of management re-training courses on e-marketing and social media. I refused because I knew that, if I attended, he would treat it as if I was admitting to problems in my team, which there weren't. From then onwards, I did all I could to avoid Manning. I worked diligently with my team to discuss potential ways to integrate more with Bannilow's HIP team but otherwise I simply carried on performing my journalistic work as usual.

19. In March 2017, everyone in the firm received an in-house email which announced the creation of a new post, the Deputy CEO, which would *inter alia* supervise and manage the company's overall marketing strategy, including having control over the existing DJ and HIP positions and their respective teams. It said that existing staff would first be able to interview for the Deputy CEO position and it welcomed applications from anyone within the company "*particularly those who offer fresh, new ideas that reflect the youthful image we are expanding on social media*". I wrote to Manning, expressing an interest in the position and asking how he would view my application. I could tell from his negative reply that I did not have a realistic chance, but I resolved to try.

20. During my interview on 30<sup>th</sup> March, Manning constantly referred to his dislike of "old" ideas, "old" methods and "old-school journalism", each time over-emphasising his use of the word *old*. He said that *Inchoate* needed to dominate the readership market for 25-30 year old lawyers' and academics and then smirked as he read from my CV that I had studied media studies in 1972. He emphasised the title of my *New Media* postgraduate diploma from 2000, presumably to make the point that my knowledge was out of date, then asked why my CV didn't contain details of my LinkedIn, Twitter and Facebook accounts. I told him I didn't have such accounts. In fact, I do have a Facebook account but I use it only for personal communications with friends and do not want work colleagues to start trying to contact me on it. Mr Manning then asked me a few questions but appeared disinterested in anything I had to say.

21. Early the next morning (31<sup>st</sup> March), Mr Manning briefly spoke to me at my desk. He told me that Bannilow had been appointed as the Deputy CEO and would be organising meetings with me and the replacement HIP in the next few weeks. Before leaving, he winked and said "*don't forget that time is ticking for you. Only a few weeks to go until our next serious chat. I hope you have some new ideas to present.*"

22. With Manning and Banilow together at the top of the company, I knew my days were numbered. I am too proud and I have had too illustrious a career to be bullied, mocked or dismissed by either of them, so I returned home and wrote a resignation letter the same day, which Manning accepted.

23. I confirm that the above is true to the best of my knowledge and belief.

Signed

Dated

Case No. 1301983/2018

IN THE BURY ST. EDMUNDS EMPLOYMENT TRIBUNAL

BETWEEN

MARGARET ASHBOURNE

Claimant

and

INCHOATE LTD.

Respondent

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**WITNESS STATEMENT OF NICK MANNING**

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I, NICK MANNING, of 221B Baker Street, London NW1 6XE, appearing as a witness of the Respondent in this matter, will say as follows:

24. I was born on 28<sup>th</sup> March 1980. I am 38 years old. I studied Finance and Accounting at Loughborough University (1998-2001) before completing a postgraduate degree in Business Psychology (2002-2003). I have attended and passed numerous courses on the effective use of the internet and social media in business. In 2012, I presented a very well-received speech during a TEDx conference in Slough, called *Shaping the Future with Social Media*.

25. Between 2003-2009 I worked in various sectors of the high-tech economy and expanded my business acumen on a broad range of issues. During 2009-2011 I ran my own start-up business before selling it for a considerable profit. In 2012-2014 I worked as an assistant to the Chief Editor of *Seventeen*, a magazine for teenage girls which includes articles on fashion, diet, relationship advice etc.

26. In 2014, I was approached by *Jackal Overseas Knowledge Enterprises* (JOKE), a group company which owns numerous media-related enterprises, including newspaper, magazine and TV producers. I was asked to become Chief Executive Officer (CEO) of the Respondent company, which produces a monthly magazine called *Inchoate*, aimed at legal professionals. The magazine has existed since 2000 and, although it had always been profitable, JOKE wanted to expand its considerable business potential by developing its e-business and social media presence. JOKE had paid for a widespread survey of consumer and business trends which showed that the key target audience for publications like *Inchoate* was 25-30 year-old lawyers. Obviously, neither JOKE nor I planned to ignore other sub-sections of the legal professions, but it was clear that the fastest business growth would come if we increased focus on the 25-30 age range.

27. In my first few months as CEO, I concluded that some of the company's existing management were ill-equipped to implement the necessary reforms and developments. In particular, the Head of Internet Publications (HIP) at that time, Bruno Humperdink, had virtually no experience or knowledge of social media and freely admitted that he preferred paper-print to e-publications. It was apparent

that we would be unable to work together and I concluded a generous settlement deal with him in exchange for his resignation. For a brief while, he threatened to sue the company for discrimination on the grounds of sexual orientation but he soon changed his mind about this. No one would have taken seriously an allegation that I would discriminate, or allow others to discriminate, against a person because of their personal characteristics, whether sexual orientation, ethnicity, religion, age, disability, gender or anything else. I take my decisions based solely on business and everyone knows that.

28. I then hired Martin Bannilow as the new HIP. I had worked briefly with him as part of the editorial staff on *Seventeen* and, although we worked on different aspects of that magazine, I knew of his good reputation as hard working and very creative. I interviewed another 4 or 5 people for the HIP position at *Inchoate* but Bannilow was clearly the best. He shared and supported JOKE's vision for developing *Inchoate's* social media presence and he had many good ideas for increasing sales among the target audience. He was aware of the latest trends in e-marketing and was a regular user, both professionally and personally, of cutting-edge apps and software that could be utilised for marketing purposes. He joked that he learned about newly-trending apps and software very quickly because he has 3 kids from different generations (aged 10, 15 and 19) who tell him what's hot and what's not.

29. *Inchoate's* Director of Journalism, the Claimant (Ms Ashbourne), was a stark contrast to Bannilow, in the sense that she was very outdated as regards social media and new technologies. I offered to provide her with a company smartphone, with the hope of introducing her to some basic apps such as Facebook, Twitter or Whatsapp, but she said she wasn't interested and insisted on keeping her old Nokia telephone which resembled a house-brick. Later on, when it became clear exactly how badly out of touch Ms Ashbourne was with modern technology, I offered to send her on various courses to familiarise herself with the use of IT, software and apps in modern business, but she refused. She often repeated, I assumed jokingly, that her role was journalism and the only technology she needed was a pen and a piece of paper. She seemed unable or unwilling to grasp the company's desire to expand our online and social-media presence so that it would ultimately be more important than our paper-copy publications. On a number of occasions, I made it known to her that, although I highly valued and appreciated her team's work, I expected everyone to assist in synergising the hard-copy and e-business sides of the company. She never explicitly disagreed but also never did anything tangible to show that she was trying, like the rest of us, to help implement these aims.

30. Ms Ashbourne's lack of IT experience was disappointing, but not catastrophic. She was, after all, part of the journalism side of the business as opposed to the sales or marketing team. If she had been willing to dedicate herself to our business model transition or to learn more about the potential for utilising social media in business, I am sure she could have gone on to lead her team to great success. However, her reluctant attitude and negative approach towards the reforms as a whole was a much bigger problem which I drew to her attention on a number of occasions.

31. I also believe that Ms Ashbourne had problems with alcohol. She would regularly arrive late to work, looking hung-over. She would also disappear for very long lunches, lasting a few hours, and return smelling of alcohol. The time she required to prepare articles for publication was extending and it was starting to cause genuine problems for the business. Accordingly, having already tried to discuss this with her informally, I felt obliged to raise it formally at her annual staff appraisal in January 2016. Despite having grounds to complain, I tried to approach the issue sensitively. I emphasised that I valued her experience and knowledge, but could not tolerate alcohol problems in the workplace. I informed her that I and others had noticed how she often seemed depressed and angry and how her drinking seemed to be affecting her ability to interact with her team and other staff members. A few of her team had informally told me how difficult they were finding it to work with her. They noticed that whenever anyone joked or tried to have fun, she would often interpret this as

if she were the butt of the joke and become angry. I had experienced this myself with Ms Ashbourne, so I knew the complaints were true. During her appraisal, I offered to give her time off and to pay for a course on overcoming alcohol abuse, but she refused. Without ever admitting fault, she promised to remedy the situation and, indeed, for some time I did not notice her smelling of alcohol or looking hung-over.

32. Between January and November 2016, things with Ms Ashbourne appeared to have improved. Her general demeanour was more pleasant, she was no longer regularly late for work and her team members said that her attitude towards them was much friendlier. However, they also informed me that virtually nothing had been done to implement the various reforms I had recommended to encourage greater cooperation between the DJ and HIP teams. I confirmed this with various members of Ms Ashbourne's team and began an in-depth review of her department in December 2016.

33. At the company's Christmas party in 2016, I gave a speech congratulating the staff on their hard work. In particular, I congratulated the HIP team which was largely responsible for us having recently won two awards for our online blog and having achieved 100,000 followers on Twitter. Almost single-handedly, the HIP team had helped *Inchoate* to generate its' largest profit in 4 years. As I presented small gifts to various members of the HIP team, Ms Ashbourne fell into the Christmas tree. She had clearly been drinking and seemed to have drunkenly stumbled. She left the party almost immediately afterwards. In any case, I would not have felt it appropriate to speak with her at the time about her behaviour. I did, however, raise it after the Christmas holidays during her next staff appraisal.

34. By the time of Ms Ashbourne's staff appraisal in January 2017, I was already aware of her lack of progress in modernising her team's work and integrating with the HIP team. The number of truly interesting articles that she and her team produced was also declining, and the time required to prepare each article was increasing. All of this was starting to have a noticeable effect on our company's performance and in particular on the synergy I desired between the paper/internet aspects of the business. I informed her that, if not for the outstanding work of the HIP team, *Inchoate* would have been in serious trouble, but she completely disagreed and said I was being ridiculous. I told Ms Ashbourne that I would give her 6 months to implement the necessary reforms within her team, following which I would formally review the situation. In order to help her understand the need for such reforms, I offered to pay for her to attend courses in e-marketing and social media, but she refused.

35. Between January 2017 and March 2017, Ms Ashbourne's behaviour became problematic again. She was again regularly away from the office and she seemed to be avoiding me. Her team told me that she occasionally mentioned team reforms, but that little or nothing happened as regards their practical implementation. Accordingly, it came as quite a surprise when she wrote me an email in response to an in-house announcement advertising the new role of Deputy CEO. It was clear that this role involved responsibility over both the DJ and HIL teams. Since she appeared to have lost control of her own DJ team and knew virtually nothing about e-marketing, it was rather optimistic of her to think she stood a realistic chance of being accepted for the new role. Nevertheless, I believe in giving everyone a chance so I told her we would welcome her application.

36. When she arrived at the interview, which I led together with a representative from JOKE's board of directors, it seemed to me that she was only there in order to try and provoke a reaction from me, presumably so that she could use it to sue the company. Almost instantly she said that she knew she had no chance of getting the job because she was female and too old. I told her that neither I nor the company discriminates on any grounds and that I simply wanted to fight old ideas and out-of-date business methods. I assured her that I believe we can create a wonderful business model by fusing old-school journalism with ultra-modern publication methods. She seemed



disinterested in anything other than trying to get me to admit, in front of JOKE's representative, that I am a sexist, ageist idiot which, of course, I am not. Indeed, it would be strange for her to have applied to work so closely with me, as the company's Deputy CEO, if she really thought this.

37. I believe that, for some time, Ms Ashbourne has felt under pressure due to her inability to adapt to modern journalism and business methods. I believe that this pressure led her to develop a problem with alcohol, or for pre-existing alcoholism to return or worsen, and that this significantly impacted on the way in which she interpreted many things at work. She seems to believe that *Inchoate's* offices were a hotbed of discrimination, but this was never the case, and never will be while I remain CEO.

38. Following the conclusion of the interviews for the Deputy CEO, it was decided to offer Mr Mannilow the position. He interviewed much better than anyone else and he had exactly the high-tech, media-savvy skills set which would be required for the job. He is a 'Superuser' on both Facebook and Twitter, having more than 20,000 followers on both platforms, which helps to give him the edge on most online users when reaching out to potential clients and customers. He is also a really nice guy who gets on well with all of the other staff and has a great sense of humour, which would help him in future team-building.

39. When I informed Ms Ashbourne that Mr Bannilow had been chosen for the Deputy CEO position, she initially seemed to take the news rather well. That pleased me because I had been worried she would overreact. I wished her well in continuing her team's reforms and returned to my desk. Later that day, I received her resignation email. In light of her performance and behaviour until that point, plus the aggressive tone she adopted in her resignation email, I accepted her resignation the same day. I believe that her performance at work was so incompetent that, in any case, she was failing to perform her contractual obligations and that I perhaps should have dismissed her earlier. I fear that, without drastic change (which she seemed unwilling or unable to make) I may have been forced to dismiss her at some stage in any case.

40. I later discovered that Ms Ashbourne resigned at a time and in such a way as was designed to cause harm and embarrassment to the company. She had been working on a series of high-profile articles which we had spent a lot of time and effort promoting in advance, but resigned before handing them over to us for publication. I have no doubt that she did this with the aim of inflicting harm on the company.

41. I confirm that the above is true to the best of my knowledge and belief.

Signed

Dated

Case No. 1301983/2018

IN THE BURY ST. EDMUNDS EMPLOYMENT TRIBUNAL

BETWEEN

MARGARET ASHBOURNE

Claimant

and

INCHOATE LTD.

Respondent

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**WITNESS STATEMENT OF MARTIN BANNILOW**

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I, MARTIN BANNILOW, of 8 Copacabana Avenue, London W47-SNY, appearing as a witness of the Respondent in this matter, will say as follows:

1. I was born on 17<sup>th</sup> June 1982. I am currently 36 years old. I left school in 1998 at the age of 16 and began working at a local newspaper factory. I began as a general assistant but achieved promotions and worked my way up to become a sales representative for the newspaper, which I did until 2008. I then worked for the newspaper's e-sales team and was responsible for advertising the newspaper and increasing the number of readers' subscriptions. I proved to be very successful at this and was soon recruited to work for the producer of *Seventeen* magazine, again as part of their e-sales team. I worked there from August 2011 until February 2015, at which time I was approached by the CEO of the Respondent company and asked if I would like to interview for the job of Head of Internet Publications (HIP) at *Inchoate* magazine.
2. When I joined *Inchoate* in 2015, Nick Manning informed me that the company was undergoing a serious transition, intended to bring it into the 21<sup>st</sup> century. For many years, *Inchoate* had been a traditional print-copy magazine, available in the shops every month. I was informed that, since 2010, the company had wanted to supplement the paper version of *Inchoate* with an online version that would be constantly updated. The sales of paper copies were intended to increase online viewing, and *vice versa*, with the aim of increasing sales and advertising revenue. However, little progress had been made since 2010, so I was hired to replace the previous HIP.
3. Between 15<sup>th</sup> January 2015, when I joined *Inchoate*, and 1<sup>st</sup> April 2017, when I was appointed as the Deputy CEO, I and my team implemented tremendously successful reforms regarding the magazine's presence online and via social media. The combined efforts of my team and the journalistic department increased profits and resulted in *Inchoate* receiving a number of awards, including for Best Online Law Journal 2016, Best Legal Blog 2016 and Best Wig Mag 2017. Our success was greatly appreciated by all involved and was probably a decisive factor in me being appointed to the newly-created Deputy CEO position.

4. Mr Manning informed me that Margaret Ashbourne and 2 other people would also be interviewing for the CEO position but, since I had only just played a leading role in helping the company achieve record profits, I felt confident about my chances of promotion and I was not overly surprised when I was chosen to become Deputy CEO.

5. Aside from my recent successes, I have always enjoyed a good relationship with Nick Manning. We have a lot of things in common, such as our work experience, our vision for leveraging social media to enhance business and our sense of humour. We both support Wimbledon football club, so we see each other at matches sometimes or chat about football at work.

6. Margaret Ashbourne is someone with whom I didn't have much contact at the beginning of my time at *Inchoate* but we worked together a lot closer as time progressed. It became clear to me that, in order for the online magazine and blog to reach their full potential, we would need to make sure that our use of daily newswire services (such as Reuters) to get stories/information for publication was supported by meatier, lengthier articles from our investigative journalism team, led by Margaret.

7. Margaret was a strange kind of a woman, nothing like the women I had worked with up until that point. She wasn't married and didn't have any kids, which made it a bit awkward to find things to chit-chat about, but sometimes she could be really funny and tell stories about her rock-n-roll past that would make your sides hurt from laughing. Other times, she seemed uninterested, or even upset, when people around her were trying to have a laugh, as if she had left her sense of humour at home that day. You never really knew which reaction you were going to get from her, but she clearly didn't like some of Nick's jokes and sometimes acted offended, even if a joke wasn't about her (which is generally wasn't, because no-one wanted to deal with her offended reactions). She also wasn't afraid of letting Nick know that she disapproved, sometimes verbally and sometimes just with a look that could kill. She could be a bit of a *prima donna* which sometimes made me feel nervous, but I don't think she took it too seriously because, to the best of my knowledge, she never complained to anyone else in the office about it.

8. Margaret wasn't the most up-to-date person as regards the internet, social media, apps etc. but she seemed keen enough to learn and intelligent enough to understand things when I explained them to her. I think she would have been able to get up-to-speed with my side of the business quicker than I would have been able to understand how to be an investigative journalist.

9. When I discovered that Margaret had resigned, I was very surprised. Recently, she and I had been working together to coordinate the publication of a series of stories concerning the use of poodle-hair (instead of horsehair) by some Chinese manufacturers of barristers' wigs that have entered the UK market. Margaret knew that we had been promoting this story online and via the blog for some time and that we were due to publish the full story the week after she resigned. She had been working very hard on that story, but it was never published because she took it with her when she resigned. That must have been a shame for her. It was definitely embarrassing for me and my team, because we had to backtrack from publishing that story, which caused us to receive quite a lot of negative feedback and mockery online.

10. I confirm that the above is true to the best of my knowledge and belief.

Signed

Dated



Applicable Law

**The (fictional) Employment Rights Act 1996**

***Section 95: Circumstances in which an employee is dismissed.***

1. For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)—
  - a. the contract under which he is employed is terminated by the employer (whether with or without notice),
  - b. he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or
  - c. the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct (constructive dismissal).
2. An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
  - a. the employer gives notice to the employee to terminate his contract of employment, and
  - b. at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

**The (fictional) Equality Act 2010**

***i. Introduction***

An Act to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to increase equality of opportunity.

***Section 3: Employment***

1. It is unlawful for an employer, in relation to employment by him, to discriminate against a person—

- a. in the arrangements he makes for the purpose of determining to whom he should offer employment;
  - b. in the terms on which he offers that person employment; or
  - c. by refusing to offer, or deliberately not offering, him employment.
2. It is unlawful for an employer, in relation to a person whom he employs, to discriminate against that person—
- a. in the terms of employment which he affords him;
  - b. in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
  - c. by refusing to afford him, or deliberately not affording him, any such opportunity; or
  - d. by dismissing him, or subjecting him to any other detriment.
3. It is unlawful for an employer, in relation to employment by him to subject to harassment a person whom he employs or who has applied to him for employment.

#### **Section 4: Direct discrimination**

- a) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- b) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
- c) ...
- d) ...
- e) ...
- f) If the protected characteristic is sex—
  - (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
  - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

#### **Section 5: Protected characteristic of Age**

1. a person ("A") discriminates against another person ("B") if—
  - a. on grounds of B's age, A treats B less favourably than he treats or would treat other persons, or
  - b. A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—
    - i. which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and

ii. which puts B at that disadvantage, and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

2. A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

3. In this Section—

a. "age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and

b. the reference in paragraph (1)(a) to B's age includes B's apparent age.

4. Harassment on grounds of age—

a. For the purposes of this Section, a person ("A") subjects another person ("B") to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of—

i. violating B's dignity; or

ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

b. Conduct shall be regarded as having the effect specified in paragraph (4)(a)(i) or (ii) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

### ***Section 6: Protected characteristic of Sex***

1. In relation to the protected characteristic of sex—

a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;

b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

### ***Section 13: Exception for genuine occupational requirement etc***

1. In relation to discrimination, Section 3—

a. does not apply to any employment;

b. does not apply to promotion or transfer to, or training for, any employment; and

c. does not apply to dismissal from any employment,

where paragraph (2) applies.

2. This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

a. possessing a characteristic related to age is a genuine and determining occupational requirement;

b. it is proportionate to apply that requirement in the particular case; and

c. either—

i. the person to whom that requirement is applied does not meet it, or

ii. the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

***Section 17: Liability of employers and principals***

1. Anything done by a person in the course of his employment shall be treated for the purposes of this Act as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.
2. Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act as done by that other person as well as by him.
3. In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.



**1<sup>ST</sup> FEBRUARY 2005**

**Margaret Ashbourne**

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**Employment contract**

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This agreement is dated 1<sup>st</sup> February 2005 and is concluded

**BY AND BETWEEN**

(1) Inchoate Ltd, incorporated and registered in England and Wales with company number 09573780 whose registered office at Exeter Buildings, Holborn, London N1 E22 (“**The Company**”)

**-and-**

(2) Margaret Ashbourne of Flat 2, 12 Arbour Road, Highbury, London (“**The Employee**”)

**1. TERMS**

1.1 The headings in this agreement are inserted for convenience only and shall not affect its construction

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

1.5 ‘Client’ means any commercial partner who instructs the Company to advertise, promote or deliver any of its objectives, including any and all other clients or business contacts.

1.6 ‘Content Producer’ means legal practitioners, legal academics and other persons qualified to provide written commentary on developments in the law of the United Kingdom or of relevance to the European legal services market.

**2. COMMENCEMENT**

2.1 The Employee shall commence employment under the terms of this agreement on 1st February 2005 and shall continue, subject to the remaining terms of this agreement, until terminated by either party giving the other not less than 2 months’ prior notice in writing.

2.2 The first 3 months of the employment shall be a probationary period and the employment may be terminated during this period at any time on one week’s notice or payment in lieu of notice. The Company may, at its discretion, extend the probationary period for up to a further 6 months. During the probationary period the Employee’s performance and suitability for continued employment will be monitored and assessed. Any decision(s) taken in this regard shall be entirely at the discretion of the Employer.

**3. EMPLOYEE WARRANTIES**

3.1 The Employee represents and warrants to the Company that, by entering into this agreement or performing any of her obligations under it, she will not be in breach of any court order or any express or implied terms of any contract or other obligation binding on her and undertakes to indemnify the Company against any claims, costs, damages, liabilities or expenses which the Company may incur as a result if she is in breach of any such obligations.

3.2 The Employee warrants that she is entitled to work in the European Union without any additional approvals and will notify the Company immediately if she ceases to be so entitled during the employment.

#### **4. DUTIES**

4.1 The Employee shall be employed as the Company's Director of Journalism.

4.2 Neither the Employer nor the Employee shall, without good reason, act in breach the duty of mutual trust and confidence which exists between them. This duty shall include, but not be limited to, a mutual duty to refrain from acting, intentionally or unreasonably, in such a manner as to harm the best interests of the other party and thereby seriously damage trust and confidence between the parties.

4.3 The Employee's obligations will include:

- a) Supervising and managing the Journalism Team and all activities for which that team is responsible;
- b) Individually producing high-quality publishable material for use by the Employer
- c) Building and maintaining contacts with Content Producers and other 3<sup>rd</sup> parties who may provide information, materials or connections that may be of use to the Company;
- d) Liaising with the Company's other staff members to ensure the greatest fulfilment of the Company's corporate and other strategies;
- e) Any and all corporate policies, rules, regulations and processes, whether documented or otherwise, which are publicly available within the company and/or which have been communicated to the Employee, whether individually or as part of general staff communications.

4.4 The Company may make changes to the Employee's job title, duties or work location by agreement with the Employee.

4.5 During the employment, the Employee shall:

- a) unless prevented by Incapacity, devote the whole of her time, attention and abilities to the business of the Company;
- b) diligently exercise such powers and perform such duties as may from time to time be assigned to her by the Company together with such person or persons as the Company may appoint to act jointly with her;
- c) comply with all reasonable and lawful directions given to her by the Company;

- d) promptly make such reports to the Senior Corporate Managers in connection with the affairs of the Company or a given project on such matters and at such times as are reasonably required;
- e) report her own wrongdoing and any wrongdoing or proposed wrongdoing of any other employee to a Senior Manager immediately on becoming aware of it;
- f) use her best endeavours to promote, protect, develop and extend the business of the Company; and
- g) consent to the Company monitoring and recording any use that she makes of the Company's electronic communications systems, including email, corporate Facebook and Twitter accounts and Whatsapp for the purpose of ensuring that the Company's rules are being complied with and for legitimate business purposes.

4.6 The Employee shall comply with any rules, policies and procedures set out in the Staff Handbook. The Staff Handbook is non-contractual and does not form part of this agreement and the Company may amend it at any time. To the extent that there is any conflict between the terms of this agreement and the Staff Handbook, this agreement shall prevail.

4.7 All documents, manuals, hardware and software provided for the Employee's use by the Company, and any data or documents (including copies) produced, maintained or stored on the Company's computer systems or other electronic equipment (including mobile phones), remain the property of the Company. The Employee must return all such items to the Company upon being requested to do so by the Company at any time.

## **5. PLACE OF WORK**

5.1 The Employee's normal place of work is Holborn, London or such other place within which the Company may reasonably require for the proper performance and exercise of her duties.

5.2 The Employee will from time to time be required to work from the offices of Clients or Content Producers during projects or content delivery.

5.3 The Employee agrees to travel on the Company's business both within the United Kingdom or abroad as may be required for the proper performance of her duties under the employment. On such occasions, the Company will reimburse the employee's reasonable costs of travel subject to being presented with evidence of purchase.

5.4 The Employee may from time to time be required to work from home or outside the office.

## **6. HOURS OF WORK**

6.1 The Employee's normal working hours shall be 0900 to 1800 on Mondays to Fridays and such additional or irregular hours as are necessary for the proper performance of her duties and to meet the business needs of the Company. The Employee acknowledges that she shall not receive further remuneration in respect of such additional hours.

6.2 The Employee shall be entitled to a 45-minute lunch break each working day.

## **7. SALARY**

7.1 The Employee shall be paid a salary of £60,000.00 per annum which will be payable monthly in arrears on or about the first day of each month directly into the Employee's bank or building society account.

7.2 The Company may deduct from the salary, or any other sums owed to the Employee, any money owed to the Company by the Employee.

## **8. EXPENSES**

8.1 The Company shall reimburse (or procure the reimbursement of) all reasonable expenses wholly, properly and necessarily incurred by the Employee in the course of the employment, subject to production of VAT receipts or other appropriate evidence of payment.

## **9. HOLIDAYS**

9.1 The Company's holiday year runs from 16 January and for a period of one calendar year. If the Employee's employment starts or finishes part way through the holiday year, the Employee's holiday entitlement during that year shall be calculated on a pro-rata basis rounded up to the nearest half day.

9.2 The Employee is entitled to 20 days' paid holiday during each holiday year or the pro rata equivalent if working part-time. In addition, the Employee is entitled to take the usual public holidays in England and Wales, or a day in lieu where the Company requires the Employee to work on a public holiday.

9.3 The Employee shall give the Company at least 3 weeks' notice of any proposed holiday dates and these must be agreed in writing in advance.

9.4 The Employee cannot carry forward untaken holiday from one holiday year to the following holiday year.

9.5 The Company shall not pay the Employee in lieu of untaken holiday except on termination of employment.

9.6 If the Employee has taken more holiday than her accrued entitlement at the date her employment terminates, the Company shall be entitled to deduct the excess holiday pay from any payments due to the Employee for each excess day.

## **10. INCAPACITY**

10.1 If the Employee is absent from work due to incapacity, the Employee shall notify the senior manager or line manager of the reason for the absence as soon as possible but no later than 0900 on the first day of absence or as soon as reasonably practicable.

10.2 The Employee shall certify her absence in accordance with the Company sickness policy in the Staff Handbook.

10.3 After the Employee has completed 12 months' continuous service and subject to her compliance with this agreement and the Company sickness policy (as amended from time to time), the Employee shall receive sick pay to a maximum of £1,000.00 in any 12-month period, which may be amended from time to time. Any statutory sick pay will be calculated on the basis of the Employee's usual working days in this agreement.

10.4 The Employee agrees to consent to medical examinations (at the Company's expense) by a doctor nominated by the Company should the Company so require. The Employee agrees that any report produced in connection with any such examination may be disclosed to the Company and the Company may discuss the contents of the report with the relevant doctor.

10.5 The rights of the Company to terminate the employment under the terms of this agreement apply even when such termination would or might cause the Employee to forfeit any entitlement to sick pay or other benefits.

## 11. CONFIDENTIAL INFORMATION

11.1 In this agreement, confidential information means information (whether or not recorded in documentary or digital form relating to the business, products, affairs and finances of the Company for the time being confidential to the Company or any of its clients and trade secrets including, without limitation, technical data and know-how relating to the business of the Company or any of its clients or business contacts.

11.2 The Employee acknowledges that in the course of the employment she will have access to Confidential Information. The Employee agrees to accept the restrictions in this Clause 11.

11.3 The Employee shall not (except in the proper course of her duties), either during the employment or at any time after its termination (however arising), use or disclose to any person, company or other organisation whatsoever (and shall use her best endeavours to prevent the publication or disclosure of) any Confidential Information. This shall not apply to:

- a) any use or disclosure authorised by the senior manager or line manager or required by law;
- b) any information which is already in, or comes into, the public domain other than through the Employee's unauthorised disclosure; or
- c) any protected disclosure.

## 12. PAYMENT IN LIEU OF NOTICE

12.1 The Company may, in its sole and absolute discretion, terminate the employment at any time and with immediate effect by notifying the Employee that the Company is exercising its right under this Clause 12 and that it will make within 28 days a payment in lieu of notice ("**Payment in Lieu**"), to the Employee. This Payment in Lieu will be equal to the basic salary (as at the date of termination) which the Employee would have been entitled to receive under this agreement during the notice period referred to in Clause 2 (or, if notice has already been given, during the remainder of the notice period) less income tax and National Insurance contributions. For the avoidance of doubt, the Payment in Lieu shall not include any element in relation to:

- a) any bonus or commission payments that might otherwise have been due during the period for which the Payment in Lieu is made;
- b) any payment in respect of benefits which the Employee would have been entitled to receive during the period for which the Payment in Lieu is made; and
- c) any payment in respect of any holiday entitlement that would have accrued during the period for which the Payment in Lieu is made.

12.2 The Company may pay any sums due under Clause 12.1 in equal monthly instalments until the date on which the notice period referred to in Clause 2 would have expired if notice had been given. The Employee shall be obliged to seek alternative income during this period and to notify the Company of any income so received. The instalment payments shall then be reduced by the amount of such income.

12.3 The Employee shall have no right to receive a Payment in Lieu unless the Company has exercised its discretion in Clause 12.1. Nothing in this Clause 12 shall prevent the Company from terminating the employment in breach.

12.4 Notwithstanding Clause 12.1 the Employee shall not be entitled to any Payment in Lieu if the Company would otherwise have been entitled to terminate the employment without notice in accordance with Clause 13. In that case the Company shall also be entitled to recover from the Employee any Payment in Lieu (or instalments thereof) already made.

#### **GARDEN LEAVE**

12.5 Following service of notice to terminate the employment by either party, or if the Employee purports to terminate the employment in breach of contract, the Company may by written notice place the Employee on Garden Leave for the whole or part of the remainder of the employment.

12.6 During any period of Garden Leave:

- a) the Company shall be under no obligation to provide any work to the Employee and may revoke any powers the Employee holds on behalf of the Company;
- b) the Company may require the Employee to carry out alternative duties or to only perform such specific duties as are expressly assigned to the Employee, at such location (including the Employee's home) as the Company may decide;
- c) the Employee shall continue to receive her basic salary in the usual way and subject to the terms of any benefit arrangement;
- d) the Employee shall remain an employee of the Company and bound by the terms of this agreement (including any implied duties of good faith and fidelity);
- e) the Employee shall ensure that the directors and/or operations manager knows where she will be and how she can be contacted during each working day (except during any periods taken as holiday in the usual way);
- f) the Company may exclude the Employee from any premises of the Company; and
- g) the Company may require the Employee not to contact or deal with (or attempt to contact or deal with) any officer, employee, consultant, Client, customer, supplier, agent, distributor,

shareholder, adviser or other business contact of the Company.

### **13. TERMINATION WITHOUT NOTICE**

13.1 The Company may also terminate the employment with immediate effect without notice and with no liability to make any further payment to the Employee (other than in respect of amounts accrued due at the date of termination) if the Employee:

- a) is guilty of any gross misconduct affecting the business of the Company any Clients;
- b) commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Company or its Clients;
- c) is, in the reasonable opinion of the senior manager, negligent and incompetent in the performance of her duties;
- d) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- e) ceases to be eligible to work in the EU;
- f) is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Company brings or is likely to bring the Employee or the Company or its Clients into disrepute or is materially adverse to the interests of the Company or its Clients;
- g) is guilty of a serious breach of any rules issued by the Company from time to time regarding its electronic communications systems; or
- h) is unable by reason of incapacity to perform her duties under this agreement.

13.2 The rights of the Company under Clause 13.1 are without prejudice to any other rights that it might have at law to terminate the employment or to accept any breach of this agreement by the Employee as having brought the agreement to an end. Any delay by the Company in exercising its rights to terminate shall not constitute a waiver thereof.

### **14. OBLIGATIONS ON TERMINATION**

14.1 On termination of the employment (however arising) the Employee shall:

- a) Immediately deliver to the Company all documents, books, materials, records, correspondence, papers, account passwords and information (on whatever media and wherever located) relating to the business or affairs of the Company or its Clients or its business contacts, any keys, credit cards and any other property of the Company which is in her possession or under her control;
- b) irretrievably delete any information relating to the business of the Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in her possession or under her control outside the Company's premises; and
- c) provide a signed statement that she has complied fully with her obligations under this Clause



14.1 together with such reasonable evidence of compliance as the Company may request.

## **15. DISCIPLINARY AND GRIEVANCE PROCEDURES**

15.1 The Employee is subject to the Company's disciplinary and grievance procedures. These procedures are non-contractual and do not form part of the Employee's contract of employment.

15.2 If the Employee wants to raise a grievance, she may apply in writing to the directors or operations manager in accordance with the Company's grievance procedure.

15.3 If the Employee wishes to appeal against a disciplinary decision she may apply in writing to a senior manager or line manager in accordance with the Company's disciplinary procedure.

15.4 The Company may suspend the Employee from any or all of her duties for no longer than is necessary to investigate any disciplinary matter involving the Employee or so long as is otherwise reasonable while any disciplinary procedure against the Employee is outstanding.

15.5 During any period of suspension:

- a) the Employee shall continue to receive her basic salary and all contractual benefits in the usual way and subject to the terms of any benefit arrangement;
- b) the Employee shall remain an employee of the Company and bound by the terms of this agreement;
- c) the Employee shall ensure that senior managers or the line manager knows where she will be and how she can be contacted during each working day (except during any periods taken as holiday in the usual way);
- d) the Company may exclude the Employee from her place of work or any other premises of the Company or its Clients; and
- e) the Company may require the Employee not to contact or deal with (or attempt to contact or deal with) any officer, employee, consultant, Client, customer, supplier, agent, distributor, shareholder, adviser or other business contact of the Company.

## **16. ENTIRE AGREEMENT**

16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

16.4 Nothing in this clause shall limit or exclude any liability for fraud.

**17. VARIATION**

17.1 No variation or agreed termination of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18. COUNTERPARTS**

18.1 This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**19. GOVERNING LAW**

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**20. JURISDICTION**

20.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by.....

.....

for and on behalf of Inchoate Ltd

Director/Senior Corporate Manager

Date.....

Signed by.....

.....

The Employee

Date.....

Exhibit 1:

**Internal email correspondence advertising position of Deputy CEO at Inchoate Ltd.**

---

**Sent:** 10 March 2017 14:56

**From:** CEO Nick Manning <n.manning@inchoate.co.uk >

**To:** All-Staff <everyone@inchoate.co.uk >

**Subject:** Deputy CEO position – interviews 29<sup>th</sup>-30<sup>th</sup> March

Dear all

I write to inform you that we will soon be creating a new position in the company – Deputy CEO – and to invite you to contact me if you are interested in applying.

As you know, the recent launch of the *I-blog* and expansion of our social media presence has resulted in a great financial year for us. But this is just the beginning of our ongoing transformation and we plan to intensify our efforts in the coming year.

The new Deputy CEO will work closely with me and help to speed-up the full coordination and supervision of our existing DJ and HIP teams, so that we can benefit from their full synergetic potential and use our growing media presence to leverage a growth in subscriptions.

As you know, our key target market for maximised growth is the 25-30 y.o. legal professional, preferably female. This is a very challenging sector of the consumer demographic and we need to adopt some sky-blue and outside-the-box thinking to maximise results.

To show my faith in all of you, we have decided to interview internally at first. We welcome applications from any of you but particularly those who offer fresh, new ideas that reflect the youthful image we are expanding on social media.

Please contact James at HR if you are interested in applying. He'll liaise with you regarding the rest of the steps before the interviews take place on 29<sup>th</sup> and 30<sup>th</sup> March.

**Exhibit 2:**

**Correspondence between Claimant and Nick Manning (re Deputy CEO position)**

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**Sent:** 11 March 2017 12:15  
**From:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >  
**To:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**Subject:** Re: Deputy CEO position – interviews 29<sup>th</sup>-30<sup>th</sup> March

Dear Nick

I read with interest your email re the new Deputy CEO post. I am very interested in being interviewed for this position.

As you know, I have considerable experience in journalism, media studies, new media and all aspects of communication. I also have long-term experience in managing a team and in delivery top-quality individual work. I have worked at Inchoate for 13 years now and I have an excellent relationship with the staff and an unrivalled working knowledge of the firm's history.

Please let me know what you think about my prospects and whether you would encourage me to apply.

Yours,  
Margaret

---

**Sent:** 11 March 2017 12:30  
**From:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**To:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >  
**Subject:** Re: Deputy CEO position – interviews 29<sup>th</sup>-30<sup>th</sup> March

Margaret

No need to write me your CV by email. My mail explained what to do if you're interested. Obviously can't comment on your prospects, but I've encouraged everyone to apply (that's why I sent the email to everyone). Sorry that I don't have time to come and roll out the red carpet for you individually. In fact, I was looking for you earlier today to discuss something but you weren't at your desk again – where were you and are you there now?

NM

---

**Sent:** 11 March 2017 13:15  
**From:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >

**To:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**Subject:** Re: Deputy CEO position – interviews 29<sup>th</sup>-30<sup>th</sup> March

Dear Nick

I'm currently out of the office and waiting for a meeting with someone who has promised to give me some very juicy gossip about the new Minister of Justice and what he got up to when he was studying at Oxford. Will keep you posted.

Just to be clear, I'm not looking for any favours or special treatment regarding the Deputy CEO position, just trying to make sure that it's worth my time even trying. At my age, I have to be careful about spending time as efficiently as possible! 😊

Yours,  
Margaret.

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**Sent:** 11 March 2017 13:18  
**From:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**To:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >  
**Subject:** Re: Deputy CEO position – interviews 29<sup>th</sup>-30<sup>th</sup> March

Understood.

BTW – at your age, I would have thought any occasion to get a bit dressed up would be worth looking forward to. :)

NM

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**Sent:** 11 March 2017 13:20  
**From:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >  
**To:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**Subject:** Re: Deputy CEO position – interviews 29<sup>th</sup>-30<sup>th</sup> March



**Exhibit 3:**

**Claimant's resignation letter** (sent by email)

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**Sent:** 31st March 2017 13:15  
**From:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >  
**To:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**Subject:** Resignation

Dear Nick

I write to resign from my position as DJ, effective forthwith.

I feel this will not come as a surprise to you and that you have wanted this for some time. Over the past 4 years, I have tried to ignore and rise above the poisonous atmosphere within Inchoate but it has slowly choked me and I feel unable to breathe in these toxic discriminatory fumes for a second longer.

I will not demean myself by recalling the litany of distasteful, malicious and hurtful jokes or comments that I have been forced to listen to you making over the years, whether to me or to Mr Bannilow or others while I was present. As low as my opinion of you may be, I still credit you with enough intelligence to know what I am talking about.

The blackness of the atmosphere which currently exists within Inchoate is matched only by the transparency of your plans to force me to resign, retire or otherwise just disappear. For the last 2 years I have bitten my tongue as you have made baseless accusations against me and questioned my ability to do my job properly. No more.

By appointing Mr Bannilow to the role of Deputy CEO, despite his clear lack of experience, you have made a very clear statement to me and the rest of the Inchoate staff. You are more concerned about having a banter-buddy and stooge by your side than in ensuring this company is run properly. You would rather have the Deputy CEO be a man with no experience than a woman, regardless of her competence and skills. You value the skills of those who write 200-character tweets over those whose literary skills helped to build this magazine and who will be critical in ensuring its survival.

Everyone has choices to make. I cannot, in good conscience, continue to work for Inchoate while you remain in control and make choices which have caused me personal grief and which, I fear, will lead the company to ruin.

Yours,  
Margaret

---

**Sent:** 31st March 2017 14:30  
**From:** CEO Nick Manning <n.manning@inchoate.co.uk >  
**To:** Margaret Ashbourne (DJ) <M.Ashbourne@inchoate.co.uk >  
**Subject:** Resignation

Dear Margaret

I was shocked and saddened to read your email. I had no idea that you felt this way. It is a great pity that you did not come to speak to me about your feelings during the past few years – perhaps we could have identified the real root of the problem and dealt with it.

I understand that you are upset at missing out on the Deputy CEO position. Nevertheless, that does not entitle you to call into question our decision to appoint Martin, nor does it entitle you to write so bitterly about things that you (but no one else) find unsatisfactory within the company.

I can only conclude that, given the depth of your feelings on this issue and the fact that you have apparently felt this way for a considerable period of time, our professional relationship has reached the point where it is inconceivable for us to continue working together. I regret that you did not speak to me earlier, and more calmly, but I feel that I have no choice other than to accept your resignation.

I assume that, prior to leaving, you spoke with members of your team to instruct them about any issues that remain outstanding and which they may need to take over in your absence?

Yours,  
Nick Manning

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**Exhibit 4:**





## Staff Performance Appraisal Form

### Part 1 Personal Particulars

Name of Appraisee	
Staff Number (if any)	MARGARET ASHBOURNE
Post	
Section	DIRECTOR OF JOURNALISM
Date of Employment	03/02/2005
Period under Review	From 01/01/2015 To 01/01/2016

### Part 2 Record of Assessment / Review

	Appraisee	Management Committee (MC) Member or Supervisor of the appraisee
Name	M ASHBOURNE	NICK MANNING
Signature		
Post	Director of Journalism	CEO
Date (dd / mm / yyyy)		16/01/2016

### Part 3 Performance Assessment

	Rating (✓)				
Attendance	5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )
Job knowledge and skills	5 ( )	4 ( )	3 (✓)	2 ( )	1 ( )
Quality of work	5 ( )	4 (✓)	3 ( )	2 ( )	1 ( )
Initiative and motivation	5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )
Team work	5 ( )	4 (✓)	3 ( )	2 ( )	1 ( )
General conduct	5 ( )	4 ( )	3 (✓)	2 ( )	1 ( )
Discipline	5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )

### Overall Performance Rating

Substantially exceeds job requirements	Exceeds job requirements	Meets job requirements	Partially meets job requirements	Does not meet most job requirements
5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )

**Special task taken up or commendation obtained by the appraisee during the appraisal period (to be filled by the MC member / Supervisor)**

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**Overall comments on performance (to be filled by the MC member / Supervisor)**

Knowledge and performance of the appraisee is highly valued by the company. It was emphasised that much greater emphasis is needed on developing and promoting relationships with content producers using social media and to prepare content that is readily adaptable (perhaps even primarily useable) for electronic purposes. It was also said that the company will

continue its growth push in the direction of digital content. It was also noted that there has been a drop in the quantity and quality of publishable material, and that greater synergy was required between the appraiser's department and the online content department (HIP)

Issues of less than satisfactory timekeeping and attendance were addressed, with observations made about the appraiser spending large amounts of time out of the office, as well as the impression of excessive alcohol consumption when representing the magazine. Appraiser was offered to be sent on an external dependency-reduction course, but this was rejected by the appraiser. The appraiser was commended for accepting the constructive nature of the criticism.

**Additional comments to be added by the appraiser following receipt of the appraisal**

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*I am aware of the strategic importance placed by the company on e-sales and social media. I will endeavour to assist the company in achieving its goals inter alia by liaising with the HIP team and by continuing to produce high-quality publishable material for use in both written and electronic formats. The latter takes time and often requires me to leave the office. It sometimes requires me to meet with people in places which sell (and smell of) alcohol. Neither of these is a problem and I reject any suggestion that they are.*

---

Assessment Areas	Rating Guidelines
1. Attendance	5 = No late for work or absence record, willing to take urgent tasks at short notice 4 = No late for work or absence record during the appraisal period 3 = Less than 3 times of late for work or absence record during the appraisal period 2 = 3 times of late for work or absence record during the appraisal period 1 = More than 3 times of late for work or absence record during the appraisal period
2. Job knowledge and skills	5 = Substantially exceeds job requirements
3. Quality of work	4 = Exceeds job requirements
4. Initiative and motivation	3 = Meets job requirements
5. Team work	2 = Partially meets job requirements
6. General conduct	1 = Does not meet most job requirements
7. Discipline	5 = No disciplinary record, always follow supervisor's and working instructions 4 = No disciplinary record 3 = Less than 3 times of disciplinary record 2 = 3 times of disciplinary record 1 = More than 3 times of disciplinary record

**Exhibit 5:**



## Staff Performance Appraisal Form

### Part 1 Personal Particulars

Name of Appraisee	
Staff Number (if any)	MARGARET ASHBOURNE
Post	
Section	DIRECTOR OF JOURNALISM
Date of Employment	03/02/2005
Period under Review	From 01/01/2016 To 01/01/2017

### Part 2 Record of Assessment / Review

	Appraisee	Management Committee (MC) Member or Supervisor of the appraisee
Name	M ASHBOURNE	NICK MANNING
Signature		
Post	Director of Journalism	CEO
Date (dd / mm / yyyy)		18/01/2017

### Part 3 Performance Assessment

	Rating (✓)				
Attendance	5 ( )	4 ( )	3 (✓)	2 ( )	1 ( )
Job knowledge and skills	5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )
Quality of work	5 ( )	4 ( )	3 (✓)	2 ( )	1 ( )
Initiative and motivation	5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )
Team work	5 ( )	4 ( )	3 ( )	2 ( )	1 ( )
General conduct	5 ( )	4 ( )	3 (✓)	2 ( )	1 ( )
Discipline	5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )

### Overall Performance Rating

Substantially exceeds job requirements	Exceeds job requirements	Meets job requirements	Partially meets job requirements	Does not meet most job requirements
5 ( )	4 ( )	3 ( )	2 (✓)	1 ( )

**Special task taken up or commendation obtained by the appraisee during the appraisal period (to be filled by the MC member / Supervisor)**

The appraisee was asked during the 2016 appraisal to increase focus on internet-based content and to develop systems for managing relationships with content producers online. Unfortunately not much has occurred in the interim period.

**Overall comments on performance (to be filled by the MC member / Supervisor)**

While there have been improvements in the appraisee's demeanor since the previous review, it was emphasised, even more than in the previous review, that more work needed to be put into achieving the stated company objective of developing systems to guarantee strong legal

development content – that everything is moving online, including personal relationships, and this is where the focus of the journalism department must be – online! Among other suggestions put to the appraisee to achieve this, attendance on a management re-training and e-marketing course was offered. The appraisee is simply not doing enough to integrate her team with the rest of the company and our corporate goals. This needs to change! Recommendations were made for the appraisee to attend courses to familiarise her with the advantages of e-commerce and social media business techniques.

**Additional comments to be added by the appraisee following receipt of the appraisal**

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*The DJ team's contribution to the company's success is indisputable. Without us, there would be nothing for the webpages and blogs to publish. The company's e-revolution remains ongoing and, in addition to working hard to produce publishable stories, I and the DJ team are doing what we can to help make it a reality. I do not think that attendance at courses on e-marketing will help to speed up this process, but I am grateful for the opportunity.*

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Assessment Areas	Rating Guidelines
1. Attendance	<p>5 = No late for work or absence record, willing to take <del>urgently</del> at short notice</p> <p>4 = No late for work or absence record during the appraisal period</p> <p>3 = Less than 3 times of late for work or absence record during the appraisal period</p> <p>2 = 3 times of late for work or absence record during the appraisal period</p> <p>1 = More than 3 times of late for work or absence record during the appraisal period</p>
2. Job knowledge and skills	5 = Substantially exceeds job requirements
3. Quality of work	4 = Exceeds job requirements
4. Initiative and motivation	3 = Meets job requirements
5. Team work	2 = Partially meets job requirements
6. General conduct	1 = Does not meet most job requirements
7. Discipline	<p>5 = No disciplinary record, always follow supervisor's and working instructions</p> <p>4 = No disciplinary record</p> <p>3 = Less than 3 times of disciplinary record</p> <p>2 = 3 times of disciplinary record</p> <p>1 = More than 3 times of disciplinary record</p>