Case Number: 2200909/2019

THE EMPLOYMENT TRIBUNALS

BETWEN

Claimant	**AND**	**Respondents**
Maya Forstater		(R1) CGD Europe (R2) Center for Global Development (R3) Masood Ahmed

Heard at : London Central Employment Tribunal
On: 7 - 11, 14-18,
21-23 March 2022
In Chambers 5 & 7 April 2022

Before: Employment Judge Glennie
Members: Ms G Carpenter
Mr R Miller

Representations
For the Claimant: Mr B Cooper QC and Ms A Palmer, Counsel
For the Respondents: Ms O Dobbie, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. **The complaints of direct discrimination because of belief are well founded against all Respondents in respect of:**

   1.1 The decision not to offer the Claimant an employment contract.

   1.2 The decision not to renew the Claimant's visiting fellowship.

2. **The other complaints of direct discrimination because of belief are dismissed.**

3. **The complaint of victimisation is well founded against the First and Second Respondents in respect of the removal of the Claimant's profile from their website.**

4. **The complaint of victimisation in respect of withdrawal of an offer to engage the Claimant as a consultant is dismissed.**

5. **The complaints of harassment and indirect discrimination (sex and belief) are dismissed.**

6. **Remedies for the successful complaints and any issues as to apportionment between the Respondents will be determined at a future hearing.**

REASONS

1. By her claim to the Tribunal the Claimant, Ms Forstater, brought the following complaints:

(1) Direct discrimination because of belief.
(2) Harassment related to belief.
(3) Indirect discrimination (belief).
(4) Indirect sex discrimination.
(5) Victimisation (sex or belief).

2. All three Respondents disputed those complaints.

3. The complaint of indirect sex discrimination was not pursued at the hearing.

4. Save where indicated to the contrary, the Tribunal is unanimous in these reasons.

The proceedings to date

5. The Tribunal (Employment Judge Tayler) had decided at a preliminary hearing that the Claimant's belief was not protected under the Equality Act 2010. Ms Forstater appealed against that judgment and the Employment Appeal Tribunal upheld the appeal, deciding that the relevant belief is protected. The present hearing was therefore listed in order to determine all of the other issues on liability.

6. In paragraph 1 of its judgment the Employment Appeal Tribunal (Choudhury P presiding) summarised Ms Forstater's belief in the following terms.

> "The Claimant holds the belief that biological sex is real, important, immutable and not to be conflated with gender identity. She considers that statements such as "woman means adult human female" or "trans women are male" are

statements of neutral fact and are not expressions of antipathy towards trans people or "transphobic".

7. Choudhury P set out the core elements of Ms Forstater's belief in greater detail in paragraphs 44-50 of the EAT's judgment, including reference to passages in the ET's reasons, using the shorthand expression "gender-critical belief". In the course of her evidence in the present hearing, Ms Forstater said the following about her belief, when asked about a tweet in which she referred to "literal delusions":

"I have made clear that I have used the word "woman" to mean adult female. It is impossible for a male to become female. It is possible to undergo a social transition. Anyone who believes a male can become female and give birth, that is a delusion. My belief is that sex is real and immutable. I haven't expressed an opinion on gender."

8. It is, perhaps, worth emphasising at the outset of these reasons that the present Tribunal is not concerned with the issues that have been decided by the EAT, save for the fact that the Tribunal, and the parties, are bound by the EAT's judgment. Furthermore, the exercise of determining the issues before this Tribunal does not in any way involve an assessment of the merits of gender-critical belief. It is sufficient for the Tribunal to note that the relevant belief is protected.

9. The Tribunal also adds the observation at this stage that, in these reasons, it has quoted extensively from emails and other materials. We have done this, rather than try to paraphrase the contents, because both parties (justifiably, in the Tribunal's judgement) placed considerable reliance on the precise words used. This was particularly so in the case of the issues about expression / manifestation of belief, and as to the findings that the Tribunal should make as to the reasons why certain decisions were made.

The issues

Employment status and liability of Respondents

10. Was the Claimant an employee of the First and / or Second Respondents within the meaning of section 83(2) of the Equality Act 2010 and, if so, for what periods.

11. Did the matters about which the Claimant complains (or any of them) occur:

(1) When the Claimant was an employee within the meaning of Section 83 of the Equality Act and if so, was it sufficiently connected to such employment; or

(2) When she was a prospective employee/applicant for employment within Section 39(1) or (3) and/or Section 40(1)(b) of the Equality Act (and if so, was it sufficiently connected to that status); or

(3) After a relevant relationship had ended, and if so, did the discrimination arise out of, or was it closely connected to, the relationship that had ended within the meaning of Section 108 of the Equality Act.

12. If so, and to the extent that any of the substantive causes of action below are established:

(1) Were they done by employees and/or agents of the First and/or Second Respondents as employers for the purposes of Section 109 of the Equality Act?

(2) Were they done in particular by the Third Respondent as an employee and/or agent of the First and/or Second Respondents as employers for the purposes of Sections 109 and 110 of the Equality Act?

(3) Consequently, which Respondents are liable.

Direct Belief Discrimination

13. Did any of the following happen?

(1) In November 2018 did the Respondents or any of them decide not to give the Claimant an employment contract to work on the Gates funded project and other projects.

(2) In later 2018 and early 2019 did the Respondents or any of them subject the Claimant to an investigation for expressing her beliefs on her Twitter account.

(3) Did the Respondents or any of them deny the Claimant any information about the complaints against her or any opportunity to explain or defend herself.

(4) In late February 2019 did the Third Respondent decide not to renew the Claimant's Visiting Fellowship (retrospectively) for a third year.

(5) In late February 2019 or early March 2019 did the Respondents or any of them decide not to engage the Claimant on a consultancy contract for the Gates funded project.

14. If so, in doing so did the Respondent treat the Claimant less favourably than it would have treated a hypothetical comparator in the same or not materially different circumstances who did not hold and/or express/manifest the Claimant's protected belief.

15. If so, was that less favourable treatment because of the protected belief.

Harassment related to belief

16. If the Respondents or any of them did the acts alleged above:

(1) Did this constitute unwanted conduct related to the Claimant's protected characteristic of holding and/or expressing/manifesting the protected belief.

(2) If so, did that conduct have the purpose or effect of:

(a) Violating the Claimant's dignity, or
(b) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

Having regard in particular to:

(i) The Claimant's perception,
(ii) The other circumstances of the case, and
(iii) Whether it is reasonable for the conduct to have had that effect.

Indirect Belief Discrimination

17. Did the Respondents or any of them apply a provision, criterion or practice that Visiting Fellows, employees and prospective employees should not express the relevant belief, even on their Twitter account, failing which they would be penalised.

18. If so, did this PCP put people holding the Claimant's belief at a particular disadvantage compared to those who do not hold that belief.

19. If so, did it put the Claimant at that disadvantage.

20. If so, has the relevant Respondent shown that the PCP is a proportionate means of achieving a legitimate aim. The Respondents rely on the following legitimate aims:

(1) Providing a safe working environment for all staff, including trans persons, free from discrimination and harassment and ensuring their wellbeing and dignity at work.

(2) Promoting the Respondents' values as an inclusive organisation.

Articles 9 & 10 ECHR

21. If the Respondents or any of them did the acts alleged above and/or applied the PCP as alleged above:

(1) Did that constitute an interference with the Claimant's rights under Articles 9 and/or 10.

(2) If so, can such interference be justified for the purposes of paragraphs 9(2) and/or 10(2).

(3) If so, how (if at all) does that conclusion affect the analysis under any or all of issues 3.1, 3.2, 3.3, 4.2, 4.3 and/or 6.4 above, having regard to the Tribunal's obligations under sections 3 and 6 of the Human Rights Act 1998?

Victimisation

22. The Respondents accept that the Claimant did the following protected acts.

(a) On 28 February 2019 she said to the Third Respondent that as a woman standing up for women's rights, she had been told that she was not welcome.

(b) On 15 March 2019 she presented this claim to the Employment Tribunal.

(c) On 9 April 2019 she advised the Respondents that she had lodged a claim for discrimination in the Employment Tribunal.

(d) On 5 May 2019, she lodged a crowd funder making public the fact of the Tribunal claim for belief discrimination, with the header "I lost my job for talking about women's rights", which was widely publicised on social media.

(e) She cooperated with The Sunday Times running an article running an article about the case which was published on 5 May 2019.

23 Did the Claimant do the following acts:

(f) Say to the Third Respondent on 28 February 2019 that sex is a protected characteristic under UK law.

(g) Say to the Third Respondent in an email dated 1 March 2019 that "the reason for the lack of consensus is because some people object to my view on sex and gender identity, as reflected on Twitter."

24 If so, did these acts or any of them constitute a protected act pursuant to Section 27 of the Equality Act 2010.

25 Alternatively, did the Respondents or any of them believe, following the Claimant's phone call with the Third Respondent on 28 February 2019 and/or the Claimant's email to the Third Respondent on 1 March 2019, that the Claimant had done or might do a protected act.

26 Did the Respondents or any of them subject the Claimant to the following detriments.

(1) Did the Third Respondent send the Claimant an email on 5 March 2019 abruptly ending the discussion between them, and effectively

withdrawing his offer for the Claimant to continue working on the Gates project as a consultant.

(2) Did the Respondents or any of them on or about 9 May 2019 remove the Claimant's profile as a former Visiting Fellow from its website.

27 If so, did the relevant Respondent subject the Claimant to the detriment because the Claimant had done any of the protected acts above and/or because it believed she had done or might do a protected act.

Time Limits

28 Are any of the claims on the face of the matter out of time.

(1) If so, do the claims or some of them taken together constitute conduct extending over a period, the end of which was in time.

(2) If not, is it just and equitable to extend time?

Evidence and Findings of Fact

29 In these reasons the Tribunal will for ease of reference refer to the Claimant as Ms Forstater; to the First Respondent as CGD Europe; to the Second Respondent as CGD; and to the Third Respondent as Mr Ahmed. The Respondents will from time to time be referred to collectively as such, when there is no need to distinguish between them.

30 The Tribunal heard evidence from the following witnesses.

(1) Ms Forstater, who is a researcher, writer, and campaigner with an active social media presence, including a Twitter account and a personal blog which predate her involvement with the Respondents.

(2) Mr Luke Easley, who was at the time of the events with which the Tribunal is concerned Director of HR and Administration for CGD and who is currently CGD's Vice President of Operations, in which capacity he continues to oversee HR and Administration.

(3) Ms Amanda Glassman, who was Chief Operating Officer for CGD in Washington in 2017, then becoming Executive Vice President and a Senior Fellow at CGD, and as from 1 June 2019 Chief Executive Officer of CGD Europe. (Ms Glassman had joined GCD in October 2010 as Director of Global Health and a Senior Fellow).

(4) Mr Mark Plant, who joined CGD in the Summer of 2017, becoming an employee early in 2018. In September 2018 he relocated from Washington to London to provide advisory services to CGD Europe management and to work as interim COO to support the London office. Mr Plant took on the role of permanent CGD Europe COO on 3

December 2018. He is currently employed jointly by both CGD and CGD Europe, being paid a partial salary by each entity.

(5) Mr Masood Ahmed, who joined CGD as President in January 2017 following an extensive career in other organisations. As President he is also Chair of the Board of Trustees of CGD Europe.

31 There was an agreed bundle of documents containing some 2300 pages, plus a small number of extra documents added in the course of the hearing. Page numbers in these reasons refer to the agreed bundle unless otherwise indicated. There was also an agreed bundle of authorities containing 86 items (mostly reported cases).

32 CGD is a not for profit "think tank" founded in 2001, its base being in Washington DC. It was common ground that, as a think tank, wide ranging and vigorous discussion and debate were the norm. Mr Ahmed described CGD's role in the following terms in paragraph 1 of his witness statement:

> "… CGD is a nonprofit think tank based in Washington DC. CGD works to reduce global poverty and improve lives through innovative economic research that drives better policy and practice by the world's top decision makers. We focus on the intersection of developing countries and the governments, institutions, and corporations that can help them deliver great progress. Our scholars conduct rigorous, impartial analysis informed by evidence and experts from around the world, to shape intellectual debate and design practical policy solutions in our area of focus".

33 CGD Europe was established in 2011 as a branch of CGD, based in London. CGD Europe was incorporated in January 2014 and registered as a charity in June 2014.

34 Certain aspects of the way in which CGD and CGD Europe operate are relevant to these proceedings. CGD and CGD Europe undertake research projects relevant to their areas of interest. These are funded by interested third parties, such as charitable organisations and government departments. There are fundraisers based in Washington and London.

35 There are employees, in the "full" sense of those working under a contract of employment, including Senior Fellows, Senior Policy Analysts, Research Assistants, and others. There are also Visiting Fellows. These are researchers who are appointed for renewable periods of 12 month and who work in areas of interest to the Respondents. The Tribunal understood that this arrangement could be of benefit to both parties: the Respondents by being linked to leading experts in their fields, the Visiting Fellows by being associated with the Respondents. Visiting Fellows may, or may not, enter into separate consultancy agreements from time to time in order to work on specific contracts.

36 Mr Easley and Ms Glassman described the arrangements for Visiting Fellows. These received no remuneration for the role: any paid work would arise under a consultancy agreement. Visiting Fellows are invited to attend the London or Washington office on occasions at their discretion, but have no working hours and are not required or expected to attend any meetings. The relationship is not governed by any terms or conditions.

37 The Respondents' organisation includes the Strategy and Policy Group (the SPG). Members of this at the material time included Mr Plant, Ms Glassman and Ms Ellen Mackenzie, the CFO of CGD Europe, as well as others. Mr Easley generally attended the SPG meetings, although he was not formally a member of the SPG. There was an issue as to the respective roles of Mr Ahmed and the SPG in relation to decisions made about Ms Forstater, to which we will return later in these reasons.

38 With regard to the relationship between CGD and CGD Europe, Mr Ahmed described in paragraph 6 of his witness statement a process of moving to a model whereby the two entities functioned as two offices under a single mission – a concept identified as "One CGD". Reference to this could be found in various documents. For example, in the minutes of the CGD Europe Board meetings of 1 November 2017 at page 322 and of 22 March 2018 at page 334 it was recorded, under the heading "One CGD" that:

"The Europe programme operates on the principle internally dubbed "One CGD", meaning:

- For day to day purposes, the Europe team is managed as part of CGD, reports to the President of CGD, and is supervised by SPG. (There are some specific exceptions to this, to comply with good governance and UK charity and company law)."

39 The minutes of the meeting on 22 March 2018 continued on page 335 with the observation that, subject to some "frictions", One CGD had worked well and that "for the most part, CGD Europe has been successful in remaining a seamless part of the whole organisation."

40 When cross-examined about this aspect, Mr Ahmed said these entries represented "the principle" in November 2017, but that the degree to which this applied consistently needed to be taken forward. He added that much of the time, but not all of the time, the organisation operated with an integrated management structure. He agreed that the management team always reported to the President (himself). He maintained that the Respondents' pleaded case that CGD and CGD Europe were separate organisations was accurate, citing the fact that they were separate legal entities with separate Boards.

41 The Tribunal's findings about the relationship between CGD and CGD Europe depends not only on the evidence discussed so far, but also on some of

the correspondence involving Ms Forstater. Those findings will therefore be explained after the latter evidence has been described.

42 Ms Forstater set up her own consultancy in around 2000, around 15 years before her association with the Respondents began. She had her own website and worked with various organisations on projects relating to sustainable development and similar concerns.

43 On 6 January 2015 Ms Forstater was engaged by CGD Europe to produce a paper on illicit financial flows for a sterling equivalent of $7,500. The agreement, entitled "self employed consultancy agreement" was at pages 223-242 of the bundle. The work under this agreement took place over the period 6 January to 31 May 2015. Ms Forstater understood herself to have the status of an external contractor during this period.

44 The draft paper produced by Ms Forstater was put online in July 2015. At this time she began discussions, mainly with Ms Ramachandran, a Senior Fellow, about developing a longer-term programme of work on taxation and illicit financial flows. Ms Forstater wrote concept notes and met potential funders for the work. Her evidence was that she did so on the basis of an agreement made by email and verbally that if funding were obtained, she would become a Visiting Fellow for a year with an associated consultancy contract, and with the objective of developing a longer-term programme of work. This evidence was supported by an email from Ms Ramachandran on 4 May 2016 at page 455 which contained the following:

> "Let's focus on getting funding and on our longer-term research. It will take a little while (probably two to three months) for the Omidyar and Ford processes to be completed, but I do hope to bring you on as a Visiting Fellow or something like that for a full year so focusing on that now".

45 During this time Ms Forstater continued to pursue opportunities and to carry out work for other organisations via her own consultancy, independently of the Respondents.

46 Funding for the one-year project was secured from the Ford Foundation. Ms Ramachandran proposed Ms Forstater as a Visiting Fellow and on 8 November 2016 the SPG approved this.

47 On 8 November 2016 Ms Glassman sent formal notification of Ms Forstater's appointment as a Visiting Fellow by way of a letter at page 481. This stated that she was invited to become a Visiting Fellow at CGD for a one-year term with the possibility of renewal at the end of that period. The letter continued:

> "As a CGD Visiting Fellow, we hope that you will make regular use of CGD's policy outreach capability and consider us to be one of the main outlets for your work. Possibilities include sending us your working papers and other research for CGD publication, speaking at CGD events, submitting short

> commentaries for posting on CGD's blog, publishing a CGD book, or publicising testimony that your might provide to governments".
>
> "We hope that you will use your CGD affiliation as part of your CV and wherever else appropriate. We also hope that you will publish frequently on CGD's website. Please note that CGD published papers are required to disclose all sources of funding for the research. We request that you not use your affiliation or publish with CGD where it might be a potential ethical, legal, financial, or other conflict of interest, or be perceived as such …"

48 On 10 November 2016 at page 483, in the course of the emails about the arrangements for the appointment as a Visiting Fellow, Ms Forstater asked how she should be designated. Ms Glassman replied:

> "For affiliation, just Center for Global Development is fine. We do not distinguish between the two offices and have a single unified website."

49 Also on 10 November 2016 Ms Ramachandran sent an email to Ms Forstater which included the following:

> "You should attend Thursday lunches in our London office whenever you wish … and plan to visit DC two or three times next year."

50 Ms Forstater submitted a biography to be used by the Respondents, including links to her Twitter account and her personal blog. She added: "Visiting Fellow at CGDE" to her personal Twitter biography.

51 Ms Forstater gave the following account of her understanding of her role in an email to Ms Ramachandran of 4 December 2016 at page 498:

> "As we discussed I will see this as an approximately three day/week role over the course of the year and will, if it works, aim to get into a rhythm of being in the office one or two days a week and taking part in CGD lunches.
>
> "I have started to attend events … with "CGD Visiting Fellow" on my badge and meeting people to catch up and tell them what we are doing, without yet getting into the formal interviews.
>
> "The rest of the time next year I am planning on doing other complementary work on the tax and illicit flows agenda".

52 In the same email Ms Forstater stated that she was planning to continue working with other entities including "the B Team" and the European Tax Policy Forum and observed that there would be cases in which she would need to be clear where things (i.e. her activities) were not CGD-related.

53 On 12 December 2016 a further agreement ("the second contract") was entered into between Ms Forstater and CGD. Commencing at page 243, this was headed "agreement for consulting services". The second contract asserted that Ms Forstater had the status of an independent contractor and stated, "consultant

shall not be an employee of CGD within the meaning of any workers compensation law, the Social Security Act, Federal or State Tax Laws or any other Federal or State law". The second contract stated that the consultant would be responsible for all taxes on compensation arising under the agreement. It also stated that the consultant should personally perform the services required under the agreement with that standard of care, skill and diligence normally provided by professional persons in the performance of similar services. The second contract identified a term beginning in January 2017 and continuing through December 2017. The second contract provided for total compensation of $50,000 payable in instalments of $10,000, $10,000 and $30,000 respectively on delivery of specific papers.

54 Exhibit A to the second contract identified the background and objective of the project as being to carry out work to strengthen the evidence based on tax and illicit flows. Under the heading "consultant's scope of work" Exhibit A identified matters such as initial interviews, developing an overview paper, attending and presenting at events, working with the CGD team to develop and co-host convenings and events, writing blog posts for CGD's website, developing working papers and, at item 7, working with CGD colleagues to lay the groundwork for a larger multi-year project in the same area of work.

55 Ms Forstater and Mr Easley were in agreement that the second contract was made with CGD as a party as a matter of administrative convenience, because the Ford Foundation was based in New York and the funding was to be paid to CGD.

56 During 2017 Ms Forstater carried out work under the second contract, including seeking longer-term funding from the Ford Foundation and other organisations.

57 On 18 October 2017 Ms Ramachandran sent an email to Ms Forstater at page 561 which included the following:

> "More substantive stuff – I raised the possibility of hiring you as a Research Associate in the London Office. Owen [Mr Barder, CEO of CGD Europe] is keen. It would be tied to new funding so we would have to wait till new funding comes through. Is this something you would be interested in? It will give you a CGD email address! Something to think about … nothing can be done until funding is secured".

The parties were agreed that the reference to "hiring" meant being taken on as an employee in the full sense.

58 On 24 October 2017 Ms Ramachandran informed Ms Forstater that her Visiting Fellowship had been renewed for one further year (Ms Glassman had previously indicated that this would be from the end of October 2017 at page 599).

59 In the event, the Ford Foundation did not agree to cover any additional work arising from the second contract after the original term of one year. On 15 February 2018 at page 631 Ms Ramachandran sent a message to Ms Forstater saying that she was planning to speak to Mr Ahmed in the near future and that "I

am pitching you as wider than tax – this is key so able to work on resource mobilisation more broadly including blended finance etc".

60 Then on 22 February 2018 at page 643 Ms Ramachandran sent an email to Ms Forstater which included the following:

> "I had a conversation yesterday with Masood re your work. Masood has read almost everything you have published on our website and thinks that you do excellent work. He described your work as deconstructing problems down to first principles (which is how I think of it as well). His recommendation is for you to stay on for now as a Visiting Fellow, and sees your options as follows:
>
> (1) Continue to work on tax and seek funding for it, he sees tax as your real passion or
>
> (2) Diversify into another area (international resource mobilisation?) as a signal of breadth. My sense is that he would like to see you broaden the scope of your work before we revisit the possibility of appointing you as full-time staff."

61 There followed on 2 March 2018 an email from Mr Ahmed to Mr Barder dealing with a number of matters and individuals, including Ms Forstater. Mr Ahmed wrote that there were two areas of work that Ms Forstater could continue to do with CGD Europe if the financing for them could be liberated. These were building a positive agenda in the international tax area going beyond the largely deconstructionist work she had been doing; and, subject to reallocating Mr Barder's own time, working on the commercial confidentiality working group. Mr Ahmed concluded that "in any event, any commitment we make to her would be limited in time and scope".

62 On 1 April 2018 Mr Forstater entered into another agreement (the third contract), this time with CGD Europe. This was at pages 247 onwards in the bundle and was headed as a contract for consultancy services. The schedule to the agreement at page 257 provided for a commencement date of 1 March 2018 and an end date of 1 May 2018. The contract was for the provision of a single paper for a payment of £4,000.

63 Ms Forstater entered into a further agreement (the fourth contract) with CGD Europe on 5 April 2018, the documents being at pages 259 onwards. This again was headed as a contract for consultancy services. Clause 2.1 provided that:

"CGD Europe shall engage the Service Provider and the Service Provider shall provide the Individual to carry out the services on the terms of this agreement".

Clause 2.3 provided:

"…..the Service Provider shall procure that the Individual shall:

(a) Comply with such reasonable regulations and directions as CGD Europe may from time to time prescribe in connection with the provision of the Services."

And clause 2.5:

"The Service Provider shall procure that the Individual shall devote sufficient of his or her time, attention and abilities as is necessary for the proper and effective provision of the services."

64 Clause 3 provided that in the event of the Individual being unable to provide the Services due to absence or injury, the Service Provider could arrange for another suitable person to carry out the Services, subject to CGD Europe's approval.

65 Ms Forstater was identified as both the Service Provider and the Individual.

66 Clause 9.1 at page 265 provided as follows:

> "The Service Provider and CGD Europe agree that, in accordance with their understanding of the law, the relationship between them is that of client and contractor. Nothing in this agreement shall be construed to express or imply any other relationship, in particular there shall be no employment relationship or partnership between either the Service Provider and CGD Europe or the Individual and CGD Europe".

67 Clause 9.2 provided that the service provider would be solely responsible for the payment of all national insurance contributions, income tax etc.

68 In the Schedule to the fourth contract the services to be provided were defined as follows:

> (1) You will be responsible for organising working group meetings/logistics and developing background materials for the commercial confidentiality working group (the CCWG) with substantive inputs and review from Charles Kenny, or his designee (CK). Alongside organising the three meetings and working with the Co-Chairs of the CCWG on meeting content, direction, and outcomes, this would involve:
>
> (i) Co authoring with CK with inputs from the CCWG Chairs, the draft text of a consensus document regarding commercial confidentiality and government contracts to be refined, expanded, and agreed by the working group as a whole and finalised by you and CK as well as.
>
> (ii) Co authoring a (non consensus) background paper discussing issues, approaches, and evidence.
>
> (iii) CGD shall be kept informed on the various stages of the process.

69 The commencement date for the fourth contract was 5 April 2018 and the end date 31 December 2018. Fees were payable at the rate of £400 per day up to a maximum of 90 days during the contract term. The contract could be terminated by either party at any time on 60 days' notice.

70 As previously, during 2018 Ms Forstater continued to work for other clients as well as the Respondents via her consultancy.

71 There was little dispute, as a matter of fact, as to the way in which Ms Forstater worked for the Respondents, although there was a significant difference between the parties as to the implications of this. The Tribunal found that the following applied throughout the period from around December 2016 to around December 2018:

71.1 In addition to carrying out the work specified in the various contracts, Ms Forstater took part in the Respondents' efforts to attract funding for projects on which it was intended that she would be engaged.

71.2 Ms Forstater had some degree of freedom over how she did the work under the various contracts, and when she did it.

71.3 There were no fixed working days or hours, and there was no provision for booking or taking holiday. There was no provision for holiday pay or sick pay.

71.4 Ms Forstater did not have a line manager.

72 On 22 June 2018 a budget overview for 2019 for CGD Europe included the statement that "if funding permits, we propose to take on Maya Forstater to take forward work on tax and transparency". Mr Cooper contended that the observation on page 344 in the same document that the recommendation would involve incurring staff costs in the short run meant that "taking on" Ms Forstater could only mean taking her on as a member of employed staff. The Tribunal agreed that the reference to staff costs had this meaning, and that there was therefore some prospect of Ms Forstater being offered an employed role.

73 On 8 August 2018 Mr Plant sent an email to the Claimant in which he made the following reference to the hoped-for funding from the Gates Foundation.

> "On funding, I think the most we can squeeze out of this grant is 50% of your time. We then look to DFID or other sources to bring you up to 90% and my understanding is that with 50% we could discuss bringing you on as a staff member Fellow rather than a Visiting Fellow.
>
> I will keep you posted as we go".

Mr Plant's evidence was that at this time he had not spoken to Mr Ahmed about the prospect of Ms Forstater joining as a staff member.

74 An email exchange took place on 25 September 2018 in which Ms Forstater was incorrectly included in the list of Fellows who were asked for activity reports (these being asked only of Fellows who were full staff members). This led to Ms Glassman writing on 26 September 2018 at page 974 the words "hopefully next year". This again suggested that there was some prospect of the offer of an employed role.

75 By this time the government had begun consultation on proposed amendments to the Gender Recognition Act, and Ms Forstater was posting tweets about issues of sex and gender. On 25 September 2018 she initiated a Twitter discussion which featured prominently in the evidence heard by the Tribunal. CGD and CGD Europe had previously included a pledge on their website not to have all male recruitment panels (abbreviated to "manels"). In this context Ms Forstater posted a tweet at page 912 which was followed by a discussion on Twitter which extended over 60 pages of the bundle.

76 The parties' respective counsel highlighted various elements of this conversation in cross-examination and in their closing submissions. It would be impracticable and disproportionate to try to set out every item to which the Tribunal was referred. The following, however, seemed to us to be the most significant in the context of the issues that we have to decide.

77 A particular conversation began at page 912 with a tweet by Ms Forstater. In this tweet she referred to an item that had been posted by Credit Suisse congratulating one of their executives, named as Pips Bunce, on being listed in the top one hundred female executives list in 2018 by a particular organisation identified as "Women in Business". Pips Bunce was referred to elsewhere in the evidence, in summary, as follows. Pips Bunce describes themself as gender fluid, spending some time presenting to the world as a man named Phillip, and some time presenting to the world as a woman named Pippa. This hearing was not directly about Pips Bunce in any way, but they featured quite prominently in the evidence and in order to give the context of some of the tweets that were in issue, it is necessary to know that Pips Bunce is a father who spent much of their earlier career presenting to the world as a man.

78 Ms Forstater's tweet on 25 September 2018 on page 912 read as follows:

> "I've got a Q for my male Twitter friends who have pledged not to appear on all male panels – if u were invited on a panel w Pips Bunce – one of FTs top one hundred female champions of women in biz and another guy would u say yes or call the organisers and say sorry I don't do #manels?"

79 The conversation then continued with someone named Matt writing:

> "If Bunce feels in whole or in part a woman, then he would count as one.
> But I feel like one could make reasoned arguments either way, and that's ok.

> Seems to me the point of the pledge is to be effective in the 99% of cases where there is not room for reasoned argument".
>
> Ms Forstater replied;
>
> "Thanks for being brave and taking the plunge with an answer Matt! As you know I disagree!"

80 The conversation continued, and on page 915 an individual named Cordelia observed that Pips' inclusion on the list seemed insensitive to both women and trans people to which Ms Forstater replied;

> "I don't think it was just insensitive I think it was misogynistic and insulting! … Imagine FT were running a list of black and ethnic minority business leaders and they awarded a white person because of the way they wear their hair and their clothes".

81 Then on page 932 an individual named Rachael added as a p.s. to a tweet an item from the Guardian newspaper with the words (apparently Rachael's own observation) "there is no comparison between transgender people and Rachael Dol …." This was a reference to Rachel Dolezal. The Tribunal was informed and understood that there was some controversy concerning Rachel Dolezal in that it was asserted (whether rightly or not is not within the Tribunal's remit) that she maintained that she was black when she was in fact white.

82 Ms Forstater replied in the following terms, which subsequently became the focus of considerable attention within the Respondents' organisation and in the course of the present hearing:

> "I honestly don't see the difference between Rachel Dolezal's internal feeling that she is black and a man's internal feeling that he is a woman (i.e., adult human female). Neither has basis in material reality".

83 Ms Forstater had made an earlier reference to the concept of material reality in a tweet on page 921. Again in answer to Rachael, who had asserted that anyone who identifies as a woman should be counted as one, Ms Forstater replied in these terms:

> "Yes, people should of course be able to define their identity anyway they like but other people are not compelled to accept it as relating to any material reality. It is not possible to identify into the sex: woman but you can identity [sic] your gender as woman (or whatever) …"

84 There were tweets at page 934 to which both parties made reference. Ms Forstater wrote a tweet which concluded with the words "think for a second about the difference between "I met a woman" and "I met a man"… followed by another tweet which began:

> … in a dark alley, on a blind date, at a conference, giving me a lift etc.? Women take different precautions. Now social convention is telling women,

> even when you know someone is male you must ignore that, they pose no additional risk than any other woman".

85 Another employee of the Respondent, Mr Baker, wrote "but I don't see why you have to refuse to acknowledge their womanhood in normal life to do that". Ms Forstater replied:

> "Because the places that women and girls get assaulted and harassed are "normal life!!!" At school. At work. In churches. At sport centres. On dates. In bars. On trains. In lifts. At conferences …"

86 Ms Dobbie styled these tweets by Ms Forstater as "catastrophising", meaning, as the Tribunal understood it, emphasising the worst possible outcome or scenario in a particular situation. Mr Cooper contended that what was demonstrated here was Ms Forstater's concern about the conflation of sex and gender and the implications for measures designed to protect women and/or address long standing sex discrimination. In any event, the next tweet by Ms Forstater on the same page read as follows:

> "I am perfectly happy to use preferred pronouns and accept everyone's humanity and right to free expression. Transwomen are transwomen. That's great. Enforcing the dogma that transwomen are women is totalitarian".

87 Mr Cooper also pointed to the exchange on page 945 in which Ms Forstater wrote;

> "The majority of transwomen are intact males (i.e. social not surgical transition). Being forced to share sleeping accommodation, showers, changing etc. .. or be subject to intimate searches by a transwomen will be just as humiliating and scary as if it was any other man".

And then on page 953, on the issue of male only panels:

> "(obviously manels thing is small, but it is interesting to think thru). i.e. yes, the typical manel we are reacting against is four old, posh, white men. Sex diversity is not the only thing we care about. But a panel of men of different ages, races and backgrounds is still a manel".

88 Ms Dobbie drew the Tribunal's attention to two tweets by Ms Forstater on page 958 in the following terms:

> "You can colour me totally surprised that the good people of development Twitter (at least most of who have chatted with me) say they believe that male people can be woman, in some real sense. And that insisting we need a word for female people is old hat (and mean and not inclusive)".

> "Under "self ID" a transwoman is any male who identifies as a woman (a feeling in their head). I am a woman, but I don't have a feeling in my head. I don't think a male person who "feels female" is literally the same as a female person (though it is polite to treat ppl as they like) .."

89 Ms Dobbie suggested that Ms Forstater's reference to a feeling in the head was implying, or could be taken as implying, that transgender people were subject to a mental illness. The Tribunal did not agree with that interpretation. We considered that the expression indicated something more like a thought or a belief.

90 Ms Forstater's tweet at page 919 referring to Pips Bunce also received considerable attention in the course of the hearing. She wrote the following in response to another individual who suggested that the award to Pips Bunce posed a tough question:

> "You think? He is a part time cross dresser who mainly goes by the name of Phillip. I think the FT were wrong to put him on a list of top female executives and wrong for him to accept the award".

91 There was considerable discussion of Ms Forstater's use of the expression "part time cross dresser" with reference to Pips Bunce. The Tribunal was referred to material in which the latter described themself in the following terms on page 2169:

> "Like many trans individuals I have been trans all my life. For me, my trans side is limited to gender expression as I am happy in my assigned gender but like to express different gender identities. Put simply I like to dress up as both gender forms and I embrace both parts of myself equally. To me, they are both merely ways of expressing different attributes of myself and therefore I consider myself gender variant".

Pips Bunce continued that they are straight and have been happily married for over twenty years and have two children; that they spend equal time expressing different personas and that colleagues were used to seeing them as Phil or Pippa. Then on page 2171, Pips Bunce said this:

> "For me, being gender fluid means I am non-binary, at no fixed point on the gender expression spectrum. I personally I have no desire to transition – it doesn't affect my physical make up, whereas for others that identify the same, they do wish to transition – there really are no hard and fast rules as these are only labels.
>
> "The best analogy is that it is exactly the same as when you are choosing what clothes to wear. You have an internal preference and think, "right, today I have a preference for wearing a dress or trousers or a peplum skirt or trainers or high heels". It's purely a preference. There is no other physical driver, it's more internal"

92 The Tribunal has quoted as extensively as we have from Pips Bunce's statements about themself because of the importance attached by the Respondents to Ms Forstater's characterisation of Pips Bunce as "a part time cross dresser". We will give our conclusions about this aspect later in these reasons.

93 On 26 September 2018 Ms Forstater attended a demonstration described as supporting two women who were being prosecuted for malicious communications in connection with their opposition to the proposed amendments to the Gender Recognition Act. On her return she brought into the office a hard copy of a booklet which she had previously posted on Twitter produced by the organisation Fair Play for Women. It was common ground that there was some discussion with colleagues about the demonstration and Ms Forstater left a copy of the booklet in the office for anyone who wished to read it.

94 The booklet was at pages 876 to 891. The Tribunal found that this was a campaigning document which sought to persuade people to complete the government consultation about the proposed amendments to the Gender Reassignment Act in a particular way. On page 876 the title page had in bold white and red block capitals on a black background the words: Save Female Rights! Page 877 contained the following:

> **FEMALE RIGHTS ARE UNDER ATTACK!**
>
> "The government is threatening a legal change that will rob women and girls of their rights. Shockingly, no one in our entire Parliament is stopping them.
>
> The government has said it wants to change the Gender Recognition Act to make it easier for transgender people to change their birth certificate to the opposite sex.
>
> There are many ways of supporting transgender people, but it is crucial that, whatever changes are made, they do not come at the expense of female rights.
>
> One of the ideas the government is considering, called "Self Sex–ID", will destroy the legal definition of "females" and "women" and with it the legal rights of those born female, leading to the end of women only spaces.
>
> Most people can see the stupidity, danger, and unfairness of sex self-ID. A recent national poll found that just 18% of the electorate support it"

95 The document continued in what the Tribunal found to be a campaigning style, urging readers to complete the consultation questions with answers that were appropriate to the aims of the document as set out in the previous paragraph.

96 When asked about this document in cross-examination, Mr Ahmed said that he understood that it was a campaigning leaflet on a political issue under current debate in the United Kingdom. He said that his objection was that he did not think that a campaign leaflet of this nature should be brought into the office and that he took it as being offensive and not appropriate in the workplace. When asked for an example of what he found offensive, Mr Ahmed pointed to page 883 which referred to questions in the consultation about whether changes to the Gender Recognition Act would affect women's access to male-free space. The leaflet read in part:

> "Women and girls have a legal right not to be inclusive when it comes to their private spaces.
>
> The other person's birth sex is what matters when it comes to dignity, safety, and fairness for women.
>
> This is why equality law has special rules to allow female – only spaces to exclude **all** people who were born male where this is deemed necessary, even if they are transgender".

The document continued that women's access to such spaces would be jeopardised if the reforms were enacted. Mr Ahmed stated that he thought that here the document was implying that the reforms would enable trans people to come into spaces and that this would create greater risks for women.

97 In the same connection, Mr Ahmed referred to page 887, which included the statement:

> "Women and girls are uniquely vulnerable when undressed or asleep. Its common sense and perfectly lawful to exclude male – born people from sleeping in accommodation for women. It's what we all expect and take for granted".

The document then referred to specific examples such as hospitals, youth hostels and sleeper trains. It continued:

> "Sex self-ID is a licence for male sexual predators to enter female spaces to carry out sexual crimes against women at their most vulnerable.
>
> For example, if a man enters a female-only sleeping area and exposes his penis to women, the victims can call security or the police, who have the right to eject him and prosecute.
>
> However, if that same man says he is a woman, he would be allowed to enter, undress, and expose his penis to women in that female only sleeping area. Anyone who complains could find themselves accused of transphobia, while he is allowed to remain".

98 Mr Ahmed stated that this passage carried the implication that there would be greater incidences of people in female bodies being exposed to people who are in male bodies. When Mr Cooper asked why that was offensive, Mr Ahmed replied "it is offensive to imply that allowing trans people to self identify would lead to an increase in risks, threats and discomfort for cis women" and "what is implied is to assume that if more transwomen are able to identify as such the risks go up. Making that link I find offensive".

99 Then, between 26 September and 1 October 2018 Ms Forstater engaged in a conversation on the Respondents' internal messaging system "Slack" with Mr Baker. They had previously had a conversation in the office on what Mr Baker described as the "trans rights issue", and he said that he thought that some of the

ways in which Ms Forstater had talked about the issue crossed over into being disrespectful, giving the example of saying that trans women are "men in make-up and heels". Mr Baker expressed the opinion that feminists and trans rights people were natural allies. In her reply on page 979 Ms Forstater referred to people who she said wanted to undermine protections for women and children, and included a link to an article about a convicted paedophile. She then expressed some agreement with Mr Baker, as she wrote:

> "You are right on tone. I should be careful and not unnecessarily antagonistic. But if people find the basic biological truth that "women are adult human females" or "transwomen are male" offensive then they will be offended.
>
> "Of course, in social situations I would treat any trans women as an honorary female, and use whatever pronouns etc. … I wouldn't try to hurt anyone's feelings, but I don't think people should be compelled to play along with literal delusions like "transwomen are women".
>
> "I don't think I said "transwomen are men in dresses and heels" - - I said Pips Bunce is a man in heels. This is true. Phillip Bunce says he identifies as a man and enjoys wearing women's clothes. Having reached a senior position at Credit Suisse he started bringing this hobby to work. I think the power dynamics of that are weird. I think it is obscene that the FT included this self identified man on a list of top female executives because he wears a wig and a dress occasionally (and that he felt entitled to accept the award). So, no I don't think we should be respectful of this! Anyway, thanks for thoughts. I do take your point on tone."

Then on page 980 Mr Baker wrote again expressing a number of opinions about the meaning of words and whether those meanings were or were not immutable, commenting on Ms Forstater's definition of womanhood, and asserting that "you can get where you want to go without it."

100 Ms Forstater was asked in cross-examination about the link to the article concerning the convicted paedophile. She described the individual concerned as "a cross dresser and trans activist" and continued: "I am not saying this is a reason for not recognising trans people. I'm saying there are people using the trans movement to silence people who are campaigning for safeguarding."

101 In submissions, Ms Dobbie referred to Ms Forstater's observation in the message that "I know this sounds like moral panic", suggesting that this was an accurate description. The Tribunal considered that, in this instance, Ms Forstater was making use of an actual case in order to illustrate the argument she was putting forward. We did not consider it unreasonable or excessive to refer to this case.

102 On 28 September 2018 an individual identified in this hearing as complainant one (C1), a member of staff in Washington, spoke to Mr Easley about the

Claimant's tweets. In paragraph 14 of his second witness statement Mr Easley said this:

> "I became aware of the concerns regarding some of the Claimant's tweets on September 28, 2018, when the first of four members of staff came to my office to discuss their concerns. C1 was mid-management level and was based in the fund-raising team in Washington. During the discussion, C1 explained that she had seen the Claimant's Twitter feed and felt that a number of her tweets were transphobic. C1 also raised that she felt the Claimant's Twitter activity could be problematic for relationships with funders from a reputational perspective for CGD".

103 Mr Easley referred to a note that he had made at the time at page 983. He identified the relevant part of this referring to C1 as reading, "Maya tweets transphobic not comfortable, exclusive gender/gender identity/sex feels problematic for funders".

104 On the same day C1 also expressed concerns to Ms Glassman who summarised these in paragraph 27 of her witness statement as being "she perceived the tweets to be transphobic and representing a reputational risk to the organisation".

105 Also on 28 September 2018 a second complainant (C2), another member of the fund-raising team based in Washington, came to speak to Mr Easley. In paragraph 15 of his second witness statement Mr Easley said this:

> "C2 said that she found the Claimant's tweets very uncomfortable and felt they did not reflect CGD's values. C2 noted that she would feel uncomfortable working on funding proposals and raising funds for projects on which the Claimant would be engaged, because she was personally offended by the way the Claimant had expressed these views. C2 made it clear that she and C1 had discussed their concerns".

106 On 1 October 2018 a member of staff in the London office (identified as C3) called Mr Easley via video. In paragraph 16 of his second witness statement Mr Easley said that C3 stated that the Claimant had been arguing the views that she had been discussing on social media more openly in the London office and had been advocating her views to staff.

107 There followed on 1 October 2018 a series of emails beginning with one at page 991 from Mr Easley to Ms Holly Shulman (CGD's Communications Director), copied to Ms Ellen Mackenzie (CGD's CFO) and Ms Glassman. Mr Easley wrote:

> "A cohort of associate staff came to me this am voicing concerns that Maya Forstater is expressing transphobic viewpoints on Twitter and her profile lists her as a Visiting Fellow and mentions CGD's Twitter. I reviewed her tweets and believe she is making a nuanced argument that although I may disagree with (not entirely sure, but irrelevant) doesn't not [sic] seem to be offensive or inappropriate but I would ask that you each take a look and weigh in as well".

108 Ms Glassman replied also on page 991, additionally copying in Mr Ahmed and Mr Plant. Her email included the words "I have reviewed and agree with your assessment". Ms Glassman made some observations about the uses of social media channels and asked Mr Ahmed if he had thoughts on how to proceed or whether to leave it.

109 On page 993 Mr Ahmed wrote the following in an email:

> "I did review her tweets (and, in the process of opening the thread, inadvertently pressed "like" instead!) I am afraid I didn't do a focused enough review to take a view on exactly what the debate was about, but it was clear that it was sparking some strong emotions.
>
> "I think we should have a broader discussion of how we use social media as CGD Fellows. There is a range of practices and views across the Fellows …
>
> "Even if we don't reach a consensus, a Wednesday discussion would help to make people aware of the sensitivities of colleagues and boundaries that should be respected.
>
> "Any other suggestions on the best way forward?"

110 Mr Plant then sent an email at page 992 saying:

> "There was some discussion over lunch of this issue in the European office as a result of these tweets. I don't think her argument (as I understand it, and I don't have the patience to go through all the posts) is inherently transphobic. It is more an argument about the meaning of words, although the transgender community is very sensitive to the use of words.
>
> "I am unclear in my mind what to suggest we do about it, if anything. At least we should raise her colleagues' concern about her tweets, without naming names. Beyond that, I need to ponder".

111 Mr Easley wrote again at page 994. In his email he noted that the Respondents did not have a social media policy and he made some suggestions about what such a policy might include. He then added:

> "Maybe we ask everyone to add the customary "my tweets are my own …" disclaimer. And we can respond to the associate staff that while we recognise disagreement over viewpoints, nothing here crosses the line to hate speech, discriminatory language, etc."

112 Earlier in the exchange in an email at page 1001 Ms Shulman had referred to a draft policy and briefings with people when they started with the organisation about not being sexist or racist in communications. She then wrote the following:

> "I understand where all of you are coming from, but I would like to chat with Farah [a consultant with the consultancy Quantum Impact, ["QI"] about this to get their impressions because to me this does seem to be an attack on a group of people based on their identity. I will take another look at the whole today – this is based on me seeing a few in real time".

113 There was then at some point on 1 October 2018 a telephone conversation involving Ms Farah Mahesri of QI, Mr Easley and Ms Shulman. This led to an email from Ms Mahesri at pages 1018 to 1022 in which she gave her thoughts about the issue and how the Respondents might respond to it.

114 Mr Easley also stated that at some point after 1 October 2018 (he could not be sure of the precise timing) a fourth person, (C4), voiced concern to him about Ms Forstater's tweets. Mr Easley stated that C4 was his neighbour in the Washington office and frequently spoke to him about various matters.

115 When Mr Easley was cross-examined about this aspect of the matter he agreed that initially none of Ms Glassman, Mr Ahmed, Mr Plant or himself saw any immediate offence in Ms Forstater's tweets. He stated that at that stage he had read about 25% of them. Mr Easley agreed that there came a point where he changed his mind about whether the tweets were offensive. When Mr Cooper asked him whether the meeting with Ms Mahesri had taken place before he changed his mind Mr Easley said that he did not recall that being the case. He said that his recollection of the meeting was basically one of briefing Ms Mahesri, and he said that he did not think that the meeting had changed his mind.

116 Mr Cooper pointed out that at page 1387 Mr Easley had forwarded a version of Ms Mahesri's email of 1 October 2018 in which the first paragraph was shown with the following words omitted, "I wanted to start off by apologising if I said anything out of line on our call earlier, I have been rambling a lot all day and I feel like I may have put my foot in my mouth a few times (and the irony of the situation isn't lost on me:). Mr Easley said that he did not have any recollection of Ms Mahesri having said anything for which she might have needed to apologise. Mr Cooper asked whether she had said something like that they were dinosaurs for failing to spot transphobia. Mr Easley replied that he did not think that Ms Mahesri had said anything like that, but that he did not have any explanation for why the relevant words had been omitted.

117 Then on 2 October 2018 at page 1034 Mr Easley sent an email addressed or copied to all of those who had been involved in the exchanges on 1 October 2018 in which he wrote the following:

> "Also, two interim steps I propose we consider taking now while pondering next steps:
>
> "Say to the staff who came to me that we plan to engage in this dialogue as part of the QI training and reiterate Maya's position is not CGD's vis a vis our equality policy which does apply to gender identity.

> I also would like to tell Maya she is making some of the staff uncomfortable with language that I now view as problematic in word and tone after reading way too many tweets. We understand there are legitimate research questions to be discussed here but there is a difference between her and CGD's position regarding gender identity. We all must be mindful of using inflammatory language (we can give examples – in one tweet she says "man's internal feeling that he is a woman has no basis in reality").

118 When asked about this, Mr Easley agreed that he had omitted the word "material" from the phrase he was quoting from Ms Forstater's tweet. He said that this was an accident, and he did not agree with the suggestion that he had not tried to understand "material reality". Mr Easley said that he thought that the statement that a transwoman is not a woman was offensive, but he denied the suggestion that Ms Shulman and Ms Mackenzie had prompted him to go through the tweets with that in mind. Following some email discussion of drafts Mr Easley sent a further email to Ms Forstater on 2 October 2018 at page 1050 which read as follows:

> "Several staff have expressed concern about some of the language and tone in your recent engagement on Twitter in a discussion around gender identity and sex.
>
> "CGD does not require staff or affiliated experts to vet their public views and social media usage with the organisation. However, we do ask that these debates be free of exclusionary statements. There were several tweets you posted that are therefore problematic; for instance, you stated that a man's internal feeling that he is a woman has no basis in material reality. A lot of people would find that offensive and exclusionary.
>
> "Of course, this is not a research topic for CGD; it is only relevant to our organisation as an employer and event host/organiser, where we respect each person's self-definition and wish to convey our commitment to inclusion.
>
> "As to our commitment to have diverse panels, for CGD the inclusion of any person identifying as female would indeed meet the test of diversity.
>
> "As a next step, could you please include a statement in your Twitter profile that indicates "all tweets and views are my own", and ideally clarify somewhere in the tweet stream that your views are personal and not related to your work at CGD or CGDs policies?
>
> "If you have any follow up questions you can reach out to me, Amanda Glassman or Masood Ahmed."

119 On the same date at page 1051 Mr Easley sent an email to C1 and C2 which included the following:

> "I have contacted Maya to let her know that her views are in contrast to CGD's views of recognising a person's self identified gender, whether on panels or within other institutional practices. We have asked her to add a

> tweet that clarifies this, and discussed with her how her use of exclusionary, inflammatory language is unacceptable to us…"

120 Ms Forstater replied to Mr Easley on the same day at pages 1052-1053, copied to Mr Ahmed, Ms Glassman and Mr Barder, and later forwarded to others, including Mr Plant. In it Ms Forstater said that she had added the disclaimer requested and that she stood by her statement that a man's internal feeling that he is a woman has no basis in material reality. She continued as follows:

> "… i.e. they do not in any way make him a woman. Gender identity and sex are two different things, and a person cannot literally change sex. This does not mean that people's internal feelings are not their real feelings, or that the condition of gender dysphoria is not genuine (similarly an anorexic person's feeling that they are overweight does not have a basis in the material reality about the state of their body, anorexia is nevertheless a serious condition)."
>
> Ms Forstater stated that single sex spaces are critical for women to access education and to be safe in the public sphere. She then continued:
>
> "I have been told that it is offensive to say "transwomen are men" or that women means "adult human female". However since these statements are true, I will continue to say them. Yes, the definition of females excludes males (but includes women who do not conform with gender norms). Policy debates where facts are viewed as offensive are dangerous. I would of course respect anyone's self definition of their gender identity in any social and professional context; I have no desire or intention to be rude to people".
>
> "I have had several informal online and live conversations with individual colleagues in London (including where we have agreed to disagree) and am happy to engage with anyone in DC who is interested in discussing philosophical, empirical or policy questions".

121 In paragraph 30 of his witness statement Mr Easley characterised Ms Forstater's reply as "proselytising", which the Tribunal understood to mean something like an unacceptably vigorous attempt to convert the recipient of the email to her beliefs. The Tribunal concluded that the email fell short of that. Ms Forstater was asserting her belief in clear terms and plainly intended to put those beliefs persuasively, but her reference to agreeing to disagree and the expression of interest in discussion ran counter to the suggestion of proselytising.

122 Ms Forstater concluded her email by referring to the blog post on which she was working, saying that she would be happy to share this with whoever was appropriate at CGD, but that if CGD did not wish to host a blog post on the topic then she would look to place it somewhere else.

123 Another aspect of this reply which received attention in the course of the hearing was the analogy that Ms Forstater drew with anorexia. In paragraph 32 of her witness statement Ms Glassman said that she regarded this as inflammatory because it was likening transwomen to people with anorexia (which Ms Glassman described as a mental illness). The Tribunal could see the dangers of such an

analogy (and perhaps there are similar dangers inherent in many analogies) but did not consider that it was inflammatory in the way suggested by Ms Glassman. Ms Forstater was seeking to illustrate her belief that a person's real feelings may differ from "material reality".

124 On 4 October 2018 Ms Mackenzie sent an email at page 1060 to Mr Plant, copied to Ms Glassman and Mr Ahmed. This read as follows:

> "Maya's 2nd year as a VF expires this month.
>
> "If you decide to renew, I think there should be a robust discussion. I suspect there would be some backlash from some staff.
>
> Please advise".

In paragraph 18 of his second witness statement Mr Easley said that at this time he was keeping Ms Mackenzie in the loop, she being his supervisor, and that he recalled that generally she was quite disconcerted at the way that Ms Forstater had expressed her views on Twitter once he had flagged the matter to her. He said, "she felt the manner of the discussion the Claimant engaged with on her social media was inappropriate and far outside the bounds of usual respectful CGD debate on issues".

125 Ms Mackenzie's email about the potential renewal of Ms Forstater's Visiting Fellowship led to an email exchange over pages 1061-1064, all on 4 October 2018. Mr Plant wrote as follows:

> "Thanks for letting me know. I certainly want to renew, given that she figures prominently in the DRM grant. In fact, we had talked about making her a Senior Fellow if the grant went through.
>
> I realise there will backlash, so I want to think through both actions. Thoughts from all welcome. Including Luke, given his interchanges with associate staff. Will there also be backlash from Senior staff??

Ms Mackenzie wrote to Ms Glassman saying:

> "Can you respond to Mark and say that just because Maya is in a grant is no reason to continue affiliating with her".

Following this, Ms Glassman wrote to Mr Plant, copied to Ms Mackenzie, Mr Ahmed and Mr Easley, saying:

> "It's possible to substitute or modify work arrangements under grants, so don't feel constrained by that. She could also consult to produce a selected piece. Let's see what her blog says …
>
> "Continued VF likely ok if this episode is handled by her appropriately – I don't yet see a reason to disbar her as a VF (again, we would be applying our

> vague policies in a totally inconsistent way). Hard to feel confident about senior fellow-dom however."

126 Still on 4 October 2018 Mr Easley wrote to Mr Plant, Ms Mackenzie, Ms Glassman and Mr Ahmed as follows:

> "We should be well prepared to discuss the rationale behind a decision to renew because I think they will demand it. I am not sure I can articulate a good one. My issue is not that she offended staff by expressing an unpopular view (that happens all the time); but that she is standing by her inflammatory rhetoric. If we had a transgender staff member and chose to hire someone who referred to transgender people as "part time cross dressers", I would not be able to reasonably defend that decision to the staff".

Ms Glassman responded to that email saying "Ick [presumably I] didn't see that one, can we wait a couple of weeks to see what happens and I will monitor more closely".

Mr Ahmed wrote asking "I am assuming the quote is not hypothetical?" and Mr Easley replied on 5 October 2018 at page 1072

> "Unfortunately, no she was commenting on a transgender woman who FT named as a top female executive. She said he was a part time cross dresser named Phillip and it was wrong of him (her pronoun choice) to accept the award".

To this, Mr Ahmed replied:

> "That's not right. It does make my doubts stronger".

127 Meanwhile Ms Forstater had sent the draft blog to various colleagues. Mr Barder suggested some edits, all of which bar one Ms Forstater accepted, resisting a change from the phrase "males who identify as woman" to "anyone who identifies as a woman, regardless of their sex at birth". Ultimately, Ms Glassman discouraged Ms Forstater from pursuing publication of the blog on the CGD website, and that matter went no further.

128 On 13 October 2018 Ms Forstater posted on Twitter material including a campaign video produced by Fair Play for Women. The video put forward similar arguments to those in the booklet referred to above. Various features of the video, in addition to its message as such, were relied on by the Respondents in support of the argument that it was offensive. It was described as containing "ominous music": the Tribunal agreed that it did. A cartoon-style hand shown taking away women's rights was drawn in a way that made it look "evil" or threatening. Attention was also drawn to the red and black lettering used in the video, which Mr Plant said reminded him of the Nazis.

129 The Tribunal did not consider that any of these features took the video beyond what was legitimate in a campaigning item in a debate of this nature.

Ominous or threatening music and illustrations were, no doubt, used in order to emphasise the authors' argument that something that they regarded as ominous and threatening was being proposed. The Tribunal found that there was nothing unusual in music and illustrations being used in this way, whether in political campaigns or (to different effect) in commercial advertising. We did not consider (if it was being suggested) that it could be regarded as offensive to use the colours red and black.

130 There was a meeting of the SPG, or part of it, in mid October 2018. This gave rise to an email of 17 October 2018 from Mr Plant to Mr Ahmed at page 1185. Mr Plant said that he was uncomfortable that a discussion about social media policy had "veered off" into a discussion of the particular case of Ms Forstater. In paragraph 17 of his witness statement Mr Plant said:

> "To the best of my recollection at some point during October 2018, some part of the SPG must have met to discuss the social media policy and that meeting turned to the Claimant's tweets as a live example of what the difficulties in establishing policy were. This moved into a discussion of the substance and form of her remarks and what we should do about renewal of her Visiting Fellowship. I felt quite uncomfortable about this as the discussion had been intended to be one of policy rather than being about the Claimant's specific case, and I raised this with Masood… He was sympathetic to my point of view about this…."

131 In cross-examination Mr Cooper asked Mr Plant about what he had said concerning the "substance and form" of Ms Forstater's remarks. Referring to paragraph 17 of his witness statement, Mr Plant agreed that the discussion had veered into strong views about the substance and form of Ms Forstater's beliefs. Mr Plant said that people present did not like the way Ms Forstater was saying things and agreed that it was also correct that they did not like what she had said.

132 There then took place discussions about future funding for the tax and illicit flows work on which Ms Forstater would potentially be engaged. (This had been an aspect of the funding being sought from the Gates Foundation. There had also been discussion of seeking additional funding from DFID and others).

133 On 25 October 2018 at page 1217 Ms Mackenzie wrote to Mr Ahmed, copied to Ms Glassman saying; "you might want to give Mark [Mr Plant] a heads up about Maya. My understanding is that there is an active effort… to find her funding at DFID". When asked about this, Mr Plant said that he did not know about any discussions concerning Ms Forstater's position at this stage. He denied the suggestion that he was given a "heads up" to the effect that the funding push with DFID should be halted.

134 On 30 October 2018 Ms Mackenzie sent an email to Ms Glassman at page 1225 in which she wrote "Taking Mark off the thread. Masood mentioned using some of this money for [G]. If we take Maya off the grant can we redirect it to [G]?" The Tribunal agreed with Mr Cooper's suggestion that this must have been a reference to the Gates grant.

135 Then on 31 October 2018 there was an email exchange on page 1228 between Mr Easley and Ms Mackenzie. Mr Easley said that Mr Ahmed had asked him to confirm the end date of Ms Forstater's Visiting Fellowship. Ms Mackenzie replied to this saying that the term expired on 31 October and that this was the end of year 2. Ms Mackenzie added that as a VF Ms Forstater was eligible for 3 years, but renewed annually. Mr Easley responded to this writing:

> "Thanks. I think Masood is leaning towards not renewing but allowing her to keep working on the DRM grant as a consultant because this puts more distance between us FYI".

136 On 2 November 2018 Mr Plant spoke to Mr Ahmed. In paragraph 17 of his witness statement Mr Plant said this:

> "In or around early November 2018, I had a conversation with Masood about the Claimant's current position and funding streams. As I mentioned previously, there had been some discussion with DFID earlier in the year about some potential future work that they might fund which the Claimant could do. Masood's view was that we should not actively drive this discussion forward at this stage, while the question of the Claimant's future with CGD and CGD Europe needed to be resolved. We therefore agreed that we would not push for further funding for her work from DFID at this stage, and on 2 November 2018 I so informed the fundraising team…. I messaged this as it being because Masood did not see the Claimant's work as being central to CGD's work. This was absolutely the case, although it was not the sole and immediate driver for putting a hold on the DFID discussions at that point".

137 Mr Plant did not state in his witness statement what else might have been a driver in the decision to put a hold on the DFID discussions. His email of 2 November 2018 at page 1237 to Mr Conry contained the following:

> "I just had a talk with Masood, he is hesitant to push forward for increased funding for Maya Forstater's work with DFID and others, as he doesn't see it as central to the development finance work, he thinks CGD should be doing in the next few years".

When asked about this in cross-examination Mr Plant said that it was correct that he and Mr Ahmed had had a conversation, that the push for DFIF funding was to stop, and that Mr Ahmed had informed him that the line of work was not something that he wanted to invest in heavily. He said that Mr Ahmed told him that he did not see this work as a long-term prospect with the development finance work they were doing, and that he did not see it as central to what CGD was doing. When it was put to Mr Plant that he was being told to get less money in with a view to blocking Ms Forstater's work, he denied that. Mr Plant recognised that in point of time the discussions about funding from DFID followed Ms Forstater's tweets but said that he did not think the tweets resulted in that decision.

138 Mr Ahmed's evidence about this aspect was somewhat different, as he stated that Ms Forstater's tweets had played a role in this decision. He said this about it in his witness statement.

> "37. On October 25, 2018, Ellen emailed me to suggest that I give Mark a "heads up" about the Claimant as she understood there to be an active effort by fundraising colleagues to find the Claimant funding from DFID [1217] I felt that given that we were still working out the implications of the Claimant's social media activities for CGD and for our future relationship with her, it would be prudent to hold off from actively raising additional funding for her work at that point. Whilst work can always be delivered by other individuals and funding can be repurposed, we work very hard to secure our funding, from limited sources, and it would not be helpful to our fundraising efforts to pursue funding from one of our larger funders for work that we may then need to repackage with them".
>
> "38. I spoke with Mark, I believe on November 2, and asked him to convey to the fundraising team that they should pause on these efforts. At no time did I say that this was a permanent position, it was a temporary measure while we worked through the issues about the Claimant's tweets. I understand that Mark conveyed my reservations to Kevin Conry, who had responsibility for the fundraising team, soon after my discussion with Mark…"

139 When cross-examined about the conversation with Mr Plant on 2 November Mr Ahmed denied giving Mr Plant an untrue line about the funding, in other words, telling him that the issue was about the importance or relevance of the work on tax and illicit flows rather than about Ms Forstater's tweets. Mr Ahmed said:

> "What I said to Mark Plant was that he needed to put a pause on the DFID funding while we decided whether there was going to be a future relationship with the Claimant".
>
> "From his witness statement I thought we had the same view. I will ask him what led him to say what he did".

140 The Tribunal concluded as a matter of probability that the conversation was along the lines stated by Mr Plant, i.e. that Mr Ahmed told him that the funding push should be paused because Mr Ahmed did not see the Claimant's work as being central to that of CGD. Mr Cooper submitted that the appropriate conclusion to be drawn from this was that Mr Ahmed was seeking to conceal the true reason for pausing the funding and therefore the true reason why Ms Forstater's future with CGD was in doubt, i.e. the tweets, by feeding Mr Plant an untrue "line" about reposition in relation to the type of work being done.

141 Ultimately, the Tribunal did not find it necessary to resolve this aspect of what had passed between Mr Ahmed and Mr Plant. It is sufficient to record that the Tribunal finds that at this point Mr Ahmed was directing a pause in the seeking of further funding for the tax and illicit flow work, and that his own evidence was that the reason for this was uncertainty about Ms Forstater's future with the Respondents arising from "working out the implications of the Claimant's social media activities for CGD and for our future relationship with her".

142 There followed on 6 November 2018 an email exchange at page 1243 between Mr Ahmed and Mr Plant about the Gates funding. Mr Ahmed wrote that he had spoken to an individual at the Gates Foundation who had said that "they had only included international tax stuff in the DRM grant because they thought we were very keen on it". Mr Ahmed continued that they would be happy for some of the money to be redirected and he concluded "what's the most useful way to get this message from Gates for our internal purposes?"

143 Mr Plant's reply included the following:

> "I don't know how to get Gates to do this. But we should first need to confront Maya directly I think. Passing the burden to Gates for our internal reprioritisation seems a bad idea. But we need to check legal vulnerabilities vis a vis Maya".

144 The Gates Foundation approved the funding sought on 17 November 2018. Mr Plant was to announce this to the CGD Europe team on 21 November 2018. On 19 November 2018 he sent an email at page 1274 to Mr Ahmed, copied to Ms Glassman, which read as follows:

> "Maya has asked to talk with me this Wednesday, presumably about the DRM grant, future fundraising prospects and her position at CGD. I need to get my messages straight before we speak.
>
> "Masood had discussed with [an individual in the Gates Foundation] the possibility of redirecting the money in the DRM grant to other ends, but in the end that didn't happen as best I can tell. I suppose we can still have that conversation, but is it worth it? I don't know if the two of you have discussed this.
>
> "On future fundraising prospects, I will say that management has decided it doesn't want to pursue this line of work and so, while Maya is welcome to look for funding, we won't devote any corporate resources to the effort ….
>
> "On her position I will say that we will continue with her in her current position as Visiting Senior Fellow, but given the shift in corporate priorities we don't see a possibility for making her full time staff. Note that this is a shift in the message we have given earlier.
>
> Do I have it right? I expect it won't go down well with her and there will be push back from Owen as well".

145 Mr Plant announced that the grant had been awarded at a general meeting of the CGD Europe team on 21 November 2018. He and Ms Forstater agreed that the latter was dismayed by the way in which this was announced without prior warning to her. They spoke after the meeting.

146 Ms Forstater's account of this meeting was in paragraph 217 and 219 of her witness statement, including the following:

> "In this meeting Mark told me that CGD had changed its mind and did not want to employ me on staff, but that I could instead stay on as a Visiting Fellow for one year, and then be a "non-resident Fellow" (I was told at this point that Visiting Fellowships are only allowed to last for a maximum of three years) and be paid under a consultancy contract (i.e. the Gates project alone). Mark made it clear it was "because of your tweets."
>
> "Mark told me that I had antagonised key personnel in Washington by tweeting about sex and gender (he did not say who, and I have no idea) and that these relationships were irrevocably broken. He suggested that the best course of action now was for me to stay in London, where I had good relationships and not to try to build bridges with the team in Washington, but instead to get on and do the Gates project on a half time basis, and not to seek to fundraise further or develop other projects at CGD but take on other projects outside of CGD".

147 Ms Forstater continued that at this time she was not aware that she had any protection under the Equality Act and so she accepted the suggestion, as she thought she had no choice. She stated that she understood that the intention was for Mr Plant to nominate her for renewal of the Visiting Fellowship and to draw up a consultancy contract.

148 When cross-examined about this aspect Ms Forstater said:

> "Mark said to me I wouldn't be employed because I had antagonised people in Washington over my tweets. He didn't say anything about the breadth of my work. He said I had antagonised people in Washington with my tweets and there was not enough support to bring me on".

149 Mr Plant said the following about this meeting in paragraph 20 of his witness statement:

> "I told her that I was keen for her to do the Gates Foundation work, but I did not see a route for her to Senior Fellowship (employment) at that point because the work she was doing was not core to CGD. It was clear to me that Masood did not see a future for the Claimant or her work beyond the DRM grant, which would have lasted two years. He was willing to let me supervise her on DRM but didn't want any expansion of her work any further, this would have been the case irrespective of the tweets. At that time, I did not expect that there was going to be an issue about the Claimant being renewed as a Visiting Fellow for a further year, although it became apparent in a subsequent email exchange (21 November 2018) that Ellen Mackenzie felt differently…."

150 When cross-examining about these matters Mr Cooper put it to Mr Plant that the 6 November 2018 email at page 1243 meant that Mr Ahmed wanted to get the Gates Foundation to provide cover for his decision to stop funding for Ms Forstater's work. Mr Plant replied that he did not know what Mr Ahmed meant, but that it was correct that this was how he understood it. When Mr Cooper asked him whether he was told that the pause on fundraising efforts was because of the

ongoing discussion about Ms Forstater's tweets Mr Plant replied, "not to my recollection".

151 When asked about the meeting on 21 November 2018 Mr Plant first said, in accordance with the content of his witness statement, that his recollection was that he told Ms Forstater that she could not expect to be appointed to a Senior Fellowship and therefore to employment because of a reprioritisation in the work. When asked whether he had said that Ms Forstater had antagonised people in Washington with her tweets and that the relationship had irretrievably broken down, Mr Plant once again replied that he did not recall. Mr Cooper took Mr Plant to a number of messages at pages 2119 and 2121 which Ms Forstater had sent to friends after the meeting, the contents of which were consistent with her account of what had been said. In particular at page 2120 Ms Forstater wrote "tweeting about this I'm also told is part of why I didn't get hired by CGD" and on page 2121 she wrote "Mark Plant said so when he was telling me they've changed their mind" and then "there's the Twitter stuff". When taken to each of these Mr Plant once again said that he did not recall saying these things.

152 The Employment Judge asked Mr Plant to clarify what he meant by the expression "I do not recall" and variations of that, and in particular whether by that he meant something to the effect that to the best of his recollection he did not say what was being put to him, or whether he meant that he might or might not have said it, he could not remember. Mr Plant replied that it was the latter. Mr Cooper then took Mr Plant to an email at page 2122 sent by the Claimant in which again she asserted "they've already downgraded the offer from employment to part time consultancy partly because of the Twitter thing". In response to this Mr Plant again said that he could not remember one way or the other whether he had said that.

153 On this issue the Tribunal concluded as a matter of probability that Mr Plant did say to Ms Forstater that she had antagonised people in Washington with her tweets and words to the effect that at least part of the reason why she was not going to be offered a Senior Fellowship (i.e. employment) was her tweets. We concluded this for the following reasons.

153.1 There was effectively no evidence to counter Ms Forstater's account of Mr Plant saying these things. Ultimately, the position was that Ms Forstater stated that he had said them, and Mr Plant said that he might or might not have done.

153.2 Ms Forstater's communications to third parties referred to above were consistent with the account that she gave in her evidence.

153.3 On 12 December 2018 Mr Easley produced a timeline of events relating to the controversy about Ms Forstater's beliefs. This timeline, which was circulated to various people including Mr Plant, referred among other matters to this particular conversation on 21 November 2018, indicating that he, and presumably Mr Plant, considered that the conversation had some connection with the issues around Ms Forstater's beliefs.

154 The Tribunal further concluded that Ms Forstater's tweets were in fact a part of the reason why she was not offered employment in the shape of a Senior Fellowship. We so concluded because Mr Ahmed's own evidence, as quoted above, was to this effect, and because we have found, as a matter of probability, that Mr Plant told Ms Forstater that this was the case.

155 Also on 21 November 2018 Mr Plant sent an email at page 1278 to Mr Ahmed, Ms Glassman and Ms Mackenzie referring to his conversation of that date with Ms Forstater and saying, "I guess we need to put her name forward to the SPG for the renewal of her third year?", referring here to Ms Forstater's Visiting Fellowship. Miss Mackenzie replied at page 1280 saying that she thought a different outcome had been agreed, namely that Ms Forstater would work as a consultant, to which Mr Ahmed responded at page 1281 in the following terms:

> "Yes. That was when we thought she had done the full three years as a Visiting Fellow. Turns out that is not the case. So, this is an ok outcome. Let's discuss at SPG".

156 On 29 November 2018 Mr Plant sent an email to Mr Ahmed, Ms Glassman, Ms Mackenzie and Mr Easley in which he suggested that the consensus was:

"Continue Maya's appointment for a third and last year as a Visiting Fellow and contract with her to do her work on the Gates grant … (Ellen would prefer a contract relation with no email access but given that Maya has done what we asked of her regarding her Twitter feed, it's hard to justify breaking the relation at this point. She is also committed to attending the diversity training at CGDE in January and, if desired, to a structured conversation mediated by Geetha Ravindra, with staff who took offence at her tweets)".

157 An SPG meeting was arranged to take place on 6 December 2018. Before this on 3 December 2018 Ms Mackenzie wrote the following to Ms Glassman at page 1357: "Mark is going to add Maya's VF status to SPG agenda. I've been organising with Holly and Cindy. We want to try the amplification technique, in case you want to join in:".

158 Mr Plant duly asked for the proposal to continue Ms Forstater's Visiting Fellowship to be added to the agenda for the meeting on 6 December 2018. That meeting took place: there were no minutes of it. The Respondents' witnesses said the following about the discussion concerning Ms Forstater.

159 Mr Easley stated in paragraphs 39 and 40 of his second witness statement that he said that it would be very difficult for him to support the renewal or strengthening of the Respondents' affiliation with Ms Forstater in any way. He said the risks associated with remaining affiliated with her included her saying something which could be considered discriminatory; her causing division amongst staff because of being allowed to continue to use CGD channels to advance her views and because she tended to do so in what he felt was an adversarial way; that Ms Forstater might misgender or offend individuals; that he considered that

the way Ms Forstater expressed her views undermined the Respondents' diversity, equality and inclusion work; and that there was a risk of damaging the Respondents' reputation. Mr Easley continued that he recalled Mr Plant supporting the continuation of Ms Forstater's Visiting Fellowship. He said that his recollection was that a number of people made it clear that they were not in favour of renewal and that he recalled in particular a senior male Fellow from the US office being "outraged at the way the Claimant had expressed her views and strongly advocated for her affiliation to end".

160 Ms Glassman stated that before the meeting she had made a more detailed review of Ms Forstater's tweets, some of which she considered to be "totally unacceptable from an employer standpoint". In her oral evidence Ms Glassman said her role at the meeting was to listen and that she did not voice her thoughts, although she confirmed that these were that Ms Forstater should not be retained as Visiting Fellow. In paragraph 47 of her witness statement Ms Glassman put it in this way: "My view at that stage was that having reviewed the Claimant's Twitter activity in more detail, we could have proceeded without further investigation and discussion to let the Claimant's Visiting Fellowship lapse".

161 As to what others said at the meeting, Ms Glassman stated also in paragraph 47 "My recollection is that several people raised concerns during the meeting about renewal as there were a lot of hurt feelings within the organisation about the way in which the Claimant had advanced some of her views, namely that her approach was dogmatic and one sided, and this had caused offence and could continue to do so".

162 Mr Plant in paragraph 22 of his witness statement said that the decision about the Visiting Fellowship was Mr Ahmed's, but that he had a leadership style of seeking to reach or build consensus. Mr Plant said that he made the case in favour of renewing the Visiting Fellowship and that his position about the offence and risks caused by Ms Forstater's tweets and actions could be addressed by setting parameters about what she should and should not share on a platform associated with CGD. Mr Plant continued "others, however, clearly strongly felt that the manner in which the Claimant had chosen to share her views on sex and gender was offensive and that it would be unacceptable to give her any further platform as a Visiting Fellow from which to have the opportunity to continue to do so in a way linked to CGD. I recall Luke Easley and Ellen Mackenzie being among those who expressed strong views about the offensive nature of the Claimant's behaviour and messaging".

163 Mr Plant further said that he did not recall the positions of the other members of the group, but that there was a clear division with it being particularly evident that he and Ms Mackenzie were "polarised". In his oral evidence Mr Plant said that there was a "visceral reaction" on the part of some of those present at the meeting. When asked whether Ms Mackenzie had said that Ms Forstater's views could not be accepted, Mr Plant replied that he did not remember Ms Mackenzie saying that but added "I remember one senior colleague saying along those lines".

164 Mr Ahmed stated in paragraph 42 of his witness statement that Ms Mackenzie and Mr Easley were really concerned in their HR capacity about the potential impact of Ms Forstater's messaging on staff and on the signal that the Respondents would be sending by bringing her on board for another year. He acknowledged that Mr Plant had proposed the renewal of the Visiting Fellowship and had been supported by Mr Kenny. Mr Ahmed continued in paragraph 43 that the disagreement at the meeting was not about the beliefs that Ms Forstater was expressing, the focus was instead on whether the Respondents wanted their platform and affiliation to be used to promote messaging that was inconsistent with their values, irrelevant to and distracting from their mission, and at the cost of causing angst and upset to their staff.

165 When cross-examined Mr Ahmed said that he would not agree with Mr Plant's description of "a visceral reaction" on the part of some individuals. He said that the nature of the conversation was that "this was bad for us". Mr Ahmed said he was trying very hard to recollect whether anyone at the SPG meeting expressed views about the beliefs themselves. He said that some people explained what the tweets said and continued "we didn't get into a discussion of whether the beliefs were acceptable".

166 The Tribunal found it unlikely that the discussion had not touched upon the question whether Ms Forstater's beliefs were in themselves acceptable or not. We found as a matter of probability that Mr Plant's recollection of some people expressing a visceral reaction was correct. Ms Mackenzie had evidently felt strongly enough about the situation to be organising opposition to the renewal of Ms Forstater's Visiting Fellowship. Mr Plant recalled a senior colleague (not Ms Mackenzie) expressing the view that Ms Forstater's beliefs were unacceptable. Ms Glassman had privately come to the view that the Visiting Fellowship could have been left unrenewed without further investigation or discussion, although she attributed the hurt feelings within the organisation to Ms Forstater's approach about being dogmatic and one sided.

167 The upshot of the meeting was that Mr Easley and a colleague were asked to look into the matter further. Mr Easley and Mr Plant both described the purpose of the exercise as being to establish the facts. Mr Plant said that this was not meant to be a formal investigation. Mr Ahmed described the conclusion in the following way in paragraphs 46 and 47 of his witness statement:

> 46 "I was keen that we should proceed on an informed basis as I was conscious that the status of the transgender debate was rather different in the UK and in the US. In the UK at the time the political legislative movement was towards greater inclusivity, with consultation about reform to the Gender Recognition Act. Conversely, in the US at that time the Trump administration was tabling legislation that would curtail the rights of transgender people. In light of these different political backdrops, comments – on either side of this debate – would have the potential to cause greater offence in one location than they might in the other if they were not made sensitively and respectfully. Given that CGD and CGD Europe, Washington DC and London offices work

very closely together, I needed to ensure that this issue was addressed in a way that took into account the sensitivities on both sides of the Atlantic.

"47 … I didn't think some kind of formal/disciplinary investigation was appropriate in the circumstances. Instead, I wanted us to focus on getting the facts and their implications in a way that would enable us to move forward with a degree of consensus".

168 The Tribunal accepted Mr Ahmed's evidence, supported by Mr Plant and Mr Easley, about the purpose of these further investigations. What followed did not proceed in the way that a disciplinary investigation would, in particular not involving any "charge" or formal allegation, or any input from Ms Forstater.

169 Still on 6 December 2018 Mr Easley sent an email to the QI consultancy regarding the fact finding exercise and asking for guidance on questions that might be put. Mr Easley stated that the possibilities were those of renewing the Visiting Fellowship, making a consultancy arrangement with Ms Forstater in order to complete her work, or ending the relationship altogether. This was consistent with the approach of seeking a way forward, rather than that of a disciplinary investigation.

170 On 17 December 2018 CGD Europe issued an anti-harassment and bullying policy, the covering email to which stated that there would be a chance to discuss this at a workshop on 15 January. Ms Forstater sent an email on 17 December to Ms Godfrey who had sent out the new policy but also copying in Mr Plant, Mr Easley and the entire CGD Europe email address list. Ms Forstater pointed out that at one point the policy referred to "gender" in a way that suggested that this was a protected characteristic, and stated that under the Equality Act the relevant protected characteristics are sex and gender reassignment. Ms Forstater also commented that a prohibition of "generating receiving or forwarding any message or graphic that might be taken as offensive to any race, religion, national origin group or any other protected group" seemed to be an overly broad prohibition as it would prohibit the sharing of any message that might be taken as offensive to any groups, religion or belief system.

171 Ms Forstater said that failure to share someone's beliefs is not the same as mockery or disdain for them, and she expressed the hope that CGD Europe did not mean to close down areas of robust, serious expression of views because they might be taken as offensive by adherents to any religion or other belief system. She continued:

"For example I know that some people are offended by the statement that males who identify as women are not women. However this is in line with how the Equalities Act defines woman (as a "female of any age"), and how the convention on the elimination of all forms of discrimination against women defines "discrimination against women" as being on the basis of sex thus circulating these definitions from the Equalities Act or the CEDAW might be viewed as offensive and could potentially be prohibited under this policy!"

> "I am sure that these issues will come up at the workshop on January 15, and I hope the nuances can be discussed".

172 When asked about this in cross-examination Ms Forstater said that she included the entire CGD Europe mailing list because doing so was in keeping with CGD Europe's culture and furthermore she did not wish to take up time at the workshop. She denied trying to compel CGD to allow her to air her views.

173 On the same day, 17 December 2018, Ms Forstater and Mr Plant spoke by telephone. Ms Forstater's account in paragraph 266 of her witness statement was that Mr Plant said that no decision had been reached at the SPG meeting and that this was "because of my tweets". She continued that Mr Plant said that there had been strong voices from Washington and that he had saved the renewal of the Visiting Fellowship from being refused altogether by proposing that a "process" take place in London rather than Washington to investigate. In cross-examination Mr Plant agreed that he told Ms Forstater that there was strong opposition to renewal of her Visiting Fellowship. He said "I believe I told her fact finding was being engaged in and that her tweets had something to do with it".

174 On 18 December 2018 Mr Plant made a recommendation to Mr Ahmed that an advisory committee be set up consisting of himself and Ms Cindy Huang. Mr Ahmed agreed to this and to the suggestion that this committee should work with an external consultant. To that end on 19 December 2018 Mr Plant sent an email to Ruth Szabo-Khalastchi, a consultant with the QI consultancy, asking whether she would be prepared to assist with this. Mr Plant stated that Ms Forstater was active on Twitter both with her CGD related work

"…..but also on the issue of sex and gender - whether they are the same, whether sex is a mutable condition and where the rights of transgender people might come into conflict with those of women. It is a live policy issue in the UK, a very controversial one, and one where she takes what appears to be a minority view that raises a visceral reaction in many people. Some of her tweets were disturbing enough for a few CGD employees to complain to our Human Resources Director in Washington and an "investigation" took place. She was informed that her tweets were a cause of discomfort for many, which she regretted. She was also asked to make clear on the masthead of her Twitter feed that her views were her own not those of CGD."

Mr Plant referred to the SPG meeting and his proposal that the Visiting Fellowship should be renewed and the resistance to that. He said that what was sought was a plausible way forward to make an informed decision that would respect Ms Forstater's rights "and at the same time deal with those who feel aggrieved by her public positions on the sex/gender issue".

175 Ms Szabo-Khalastchi provided a draft report on 9 January 2019 and a final report on 13 January 2019. The latter included a recommendation that a further report might be obtained from the QI consultancy, following which CGD Europe engaged Ms Mahesri Of QI to produce a report. The Tribunal noted that, in the email commissioning the second report at pages 1634-1635, Mr Plant said that "Maya should be allowed to contribute to such a report, read it once it is done, and

offer any comments." This may have involved some lack of clarity about when in the preparation of the report it was that Ms Forstater was to be involved, but it is evident that it was not intended that she should be excluded from contributing to it.

176 On 14 January 2019 Mr Plant spoke to Ms Forstater, telling her that QI would be producing a report. He agreed that he probably did present this in terms of a case study to inform a general policy. He also agreed in cross-examination that Ms Mahesri was briefed that CGD did not have an institutional position on gender critical views.

177 In the event Ms Mahesri produced two versions of her report on 1 February 2019. In her covering email to Mr Plant and Mr Easley at page 1718 Ms Mahesri stated that she and her colleague had spent some time reviewing Ms Forstater's online presence (mostly Twitter) and that of some of the other individuals that she followed or re tweeted. The email included the following:

> "Our main finding is that Maya fully knows exactly what in her arguments and her writings is offensive and discriminatory. She has colleagues who have faced reprimands from their employers for saying the exact things she has. She knows exactly what is problematic about what she is saying …
>
> "Based on our analysis, I then decided to do two reports. The first one is an internal report for you and Luke (and I recommend reading it first) that is my honest assessment and detailed recommendations for a conversation that we think Mark needs to have in person with Maya. We highly encourage that the conversation is verbal.
>
> "We know that Mark also wanted to be able to show Maya a written product, so I did write a more public facing document (recommend reading it second). It's really vague – I did it very deliberately because I recommend against getting into a discussion with Maya on topics such as "is saying that trans women aren't women offensive" because she knows the whole context of the discussion really really well and I recommend in being really cautious about not getting pulled into that debate".

178 Mr Cooper and Ms Dobbie used different expressions to describe the two reports. We will refer to them as version one ("the internal report") which at the time was seen only by Mr Plant and Mr Easley, and version two, the version that was made more widely available. Ms Forstater first saw version one when it was disclosed in the course of the present proceedings.

179 Version one of the report is at pages 1720-1728 of the bundle and version two at pages 1759-1763. The Tribunal did not find it necessary to analyse the two reports in detail given that Ms Mahesri did not make any decisions regarding Ms Forstater and given the limited distribution of version one. The Tribunal however noted the following points.

180 In version one on page 1721 Ms Mahesri referred again to reviewing Ms Forstater's Twitter feed and wrote:

> "Based on this review, our main finding is that Maya is fully aware that her language and arguments are considered by much of society to be offensive".
>
> In giving examples Ms Mahesri included Ms Forstater's retweeting of the video discussed above and described this as using:
>
> "Black and red wording and ominous music to argue that transwomen are likely to just be predatory men who change their gender identity in order to assault women.
>
> "As Cindy wrote in her analysis "in this video, I see time-worn fear-mongering techniques that are often used to demonise vulnerable minorities …"

181 Ms Mahesri also referred to an open letter signed by various scholars and researchers which had been retweeted by Ms Forstater and which Ms Mahesri said outlined point by point "everything QI would have put in a report dissecting Maya's blog and clarifying what points in her blog are discriminatory and/or offensive". In this context, Ms Mahesri quoted from the letter the observation "indeed we think that it makes a number of claims that are inherently transphobic and that are not backed by any evidence, for instance the article asserts that transwomen are not women (transwomen are not biologically female)".

182 On page 1727 under the title "additional analysis of materials (internal use only)" Ms Mahesri recommended against getting into a debate with Ms Forstater over the question whether a particular phrase or sentence was offensive or violated policy because this would lead to a debate on semantics. She continued that her findings for internal purposes only included the following:

> "Argument itself is offensive. Maya's main argument that transgender women are not women is at baseline offensive because it seeks to eliminate the existence of a group of people".

The Tribunal considered that this reference to Ms Forstater's "argument" was in truth a reference to her belief and that this showed that apart from any issues as to the language used, Ms Mahesri concluded that this belief was itself offensive.

183 Version 2 was, as Ms Mahesri wrote, expressed in vaguer terms than version one. On page 1759 Ms Mahesri said that pinpointing disrespectful conduct was difficult and there was a lot of grey area. She continued:

> "Overall, we found that the Fellow either did cross the line or almost crossed the line in terms of respectful workplace based conduct enough times over the course of several months that we recommend CGD leadership take action and reset positive norms and expectations. In

> doing so, we note that it is not CGD leadership's role to convince the Fellow that the opinions in question are incorrect; nor it is for the Fellow to convince leadership of the validity of the opinions in question. Rather, leadership's role is to make absolutely clear what CGD's internal policies and guidelines are with regard to respectful dialogue, and set expectations for the future.
>
> "Finally, we recommend that CGD's leadership develop a global policy that outlines CGDs stance on academic freedom and freedom of expression".

184 The findings set out in version two did not include any specific references to tweets by Ms Forstater. The recommendations given on page 1763 were for the creation of an organisational policy for all staff; interim guidelines to cover the period while the policy was being drafted; and that CGD leadership should conduct a summary investigation and then engage in a dialogue with affected staff members individually for the purpose of providing an opportunity "to discuss the situation overall, and reaffirm CGD's values, reset expectations for behaviours moving forward and to model an inclusive work environment".

185 Mr Plant sent version two to Ms Forstater on 7 February 2019. Ms Forstater responded to the report on 11 February 2019. In her covering email to Mr Plant she stated that she agreed with the suggested next step that CGD management should discuss the situation with her and seek a constructive way forward, but that she considered that there were several problems with the QI report as the basis for this. She developed these further in the detailed response which was attached to the email. In her own email at page 1778 Ms Forstater concluded as follows:

> "Quantum Impact judge me guilty of using "disrespectful and offensive language" but do not quote any particular language. I suspect that at that heart of their judgment is not an issue of language (which could be rectified by editing, deleting particular tweets, and apologising for poor choice of language) but substantive differences in opinion about whether being a woman is a matter of biology or identity, and a reflection of broader pressure across society to shut down debate on this issue. I would hope that the heart of CGD's culture is a commitment to hold open the space for debate, analysis and evidence on policy relevant issues, rather than to take offence at them".

186 In her detailed response Ms Forstater made similar observations to those quoted from the email and addressed a number of points. Ms Forstater disputed the apparent proposition that defining "women" as "adult human females" was offensive although she accepted that it was necessarily exclusionary as it excluded men from the definition of women. Ms Forstater gave her observations on the suggestion that she had suggested or implied that a group of individuals had not existed in history and that she was engaged in fear mongering. On page 1783 Ms Forstater observed that the report, whilst stating that parts of her arguments were considered offensive, and that she had used disrespectful language, had not defined the standards concerned, nor had the offensive elements of her tweets or article been identified.

187 On page 1784 Ms Forstater challenged as inaccurate on matters of fact five elements of the report and on page 1785 she criticised the understanding of UK equality law and international human rights law as shown in the report.

188 On the same day, 11 February 2019, Mr Plant forwarded version two to Mr Ahmed, Ms Glassman and Ms Mackenzie, copying in Mr Easley. Ms Mackenzie then sent an email to Ms Glassman at page 1788 referring to the report and writing "can you put an end to this? We should not invest any more time or resources into dealing with Maya. We will pursue a social media policy, but we should end our affiliation with her". Later on 19 February 2019 Mr Easley sent an email at page 1806 to Mr Plant and Mr Ahmed, copied to Ms Mackenzie and Ms Glassman, in which he observed that, although not formally a member of the SPG, he would not support Ms Forstater as a Visiting Fellow. He said that the position was less clear about whether that automatically disqualified her as being a consultant, and said that if Ms Forstater could agree to this, he could live with a consultant arrangement.

189 Ms Forstater and Mr Plant met to discuss the situation on 13 February 2019. Their evidence was substantially in agreement about what was said at this meeting. Ms Forstater said that the QI report was inadequate, and, in her words, Mr Plant agreed; in his words he acknowledged that it had some deficiencies. They agreed that they would not focus on the details of the report. Ms Forstater said that whilst she stood by the content of her tweets, she had decided to tweet less on the relevant topic on her main Twitter account and that she would focus on tax matters. She said that she would not raise the topic in conversation in the office again and agreed that she should not have left the Fair Play for Women booklet on the desk in the office, as she was a hot desker and so should not be leaving things on a desk at the end of the day. In his oral evidence Mr Plant agreed that he thought that Ms Forstater was being constructive in this conversation and that it provided a basis to move forward.

190 Ms Forstater said to Mr Plant that she had still not been told which of her tweets were offensive. It was common ground that he replied that there had been complaints about the video which was said to "remind people of the Nazis" and that the tweet including the phrase "no basis in material reality" was regarded as offensive.

191 At the end of the meeting Mr Plant said that he did not want to take the Visiting Fellowship question back to SPG for a decision, and that his view was that Ms Forstater should continue as a consultant on the Gates grant, at which point Ms Forstater excused herself and left the meeting because she was becoming distressed. In his oral evidence Mr Plant said that his reasons for not wishing to take the Visiting Fellowship issue to the SPG were that he thought that the chances were slim that it would be approved, that it would encounter substantial resistance, and would reignite the debate.

192 On 18 February 2019 Mr Plant sent an email at page 1803 to Mr Ahmed copied to Ms Mackenzie, Ms Glassman and Mr Easley. This included the following:

> "I had a discussion with Maya last week. She seems to understand the sensitivities involved in her work on sex/gender and that it should be kept out of the workplace unless there is a specific invitation by a colleague to talk about it. She is also sensitive to ensuring that her tweets show respect for others and do not dismiss the dignity and feelings of trans and other people. Finally, she understands that CGD policy is that transwomen (or men) are women or men and that we do not make the sex/gender distinction in our workplace.
>
> "I suggested that the best way forward would be to put her on contract for the Gates grant and move forward with the work. She would still like to be considered for a third year as Visiting Fellow, which, as I understand it will require another discussion by the SPG".

Mr Plant concluded that he was intending to speak to Ms Forstater again that week to discuss the way forward and he asked whether Mr Ahmed would be willing to have a brief phone call with Ms Forstater before the SPG meeting on February 28. He observed, "whatever the outcome, we need to bring this to a close".

193 Ms Mackenzie responded making it clear that she did not support renewing the Visiting Fellowship or engaging Ms Forstater as a consultant. As already stated above, Mr Easley's stance was that he would not support the Visiting Fellowship but he could live with a consultant arrangement on certain terms.

194 Mr Plant and Ms Forstater spoke again on 20 February 2019. Ms Forstater repeated her position regarding the restricted use of her main Twitter account and her agreement not to initiate discussions with colleagues about sex/gender issues. Mr Plant agreed that he would take the matter of the Visiting Fellowship renewal to the SPG and he asked Ms Forstater to write a note for that purpose.

195 Ms Forstater duly produced a note which is at pages 1821-1824. In this she referred to her understanding of CGD's values and she stated that:

> "The issue at hand is my belief that women exist, as a material reality based on biological sex and that human rights protections for women and girls on the basis of sex need to continue"

196 Ms Forstater referred to the QI report and attached her response to it. She continued as follows:

> "I suspect that at the heart of this is not an issue of specific language or tone, but the substantive difference in opinion that exists about whether it is acceptable to say that the definition of women is based on biology and excludes men (including those who identify as transwomen). Or whether that in itself is seen as an offensive thing to say.

> "This is not just a matter of words. I extend people the courtesy of calling them by whatever name and pronouns they request in most social situations but there are live policy issues about whether women and girls should be forced to share prison cells and women's refuges, changing and washing facilities in schools and public places, and women's sports competitions with male bodied people. The case may be made in either direction, and arguments should be heard, but language prohibitions prevent these discussions taking place clearly, and prevent women from understanding the rights they currently have, and that they stand to lose if they lose the definition of women".

Ms Forstater concluded her note in the following way:

> "… I recognise that this issue does not directly relate to my work on tax at CGD and that colleagues at CGD have their own freedom of belief and speech to choose which issues to talk about. I added a disclaimer to my Twitter bio when that was requested of me and have since decided not to tweet very much about this issue on my main Twitter account … as most of my followers there follow me for content on tax, accountability and sustainable development. Nor will I initiate conversation about it in the office".
>
> "I will however continue to write about it and engage in public debate in my own name outside of these two venues and I am always willing to talk to anyone, whether on tone and language, substantive issues or on how to take the debate forward".

197 Then on 22 February 2019 Mr Plant sent an email at pages 1825 to 1826 to Mr Ahmed, Ms Mackenzie, Ms Glassman and Mr Easley. This referred to the two conversations that Mr Plant had had with Ms Forstater and continued as follows:

> "I would support her reappointment as Visiting Fellow for one year. Maya has a strong personality and will not shy away from the debate, especially when she feels strongly about an issue.
>
> "As the reports from both Ruth Szabo and Quantum Impact underscore, CGD has promoted a culture of allowing Fellows to take any position they want on a policy issue – there is no corporate line on policy issues but clearly there are some policy positions we would find abhorrent and would want to disassociate ourselves from someone who took them (e.g. at an extreme, racial extinction or apartheid). The question is whether Maya's position is so extreme that is merits disassociation. I would argue that it does not.
>
> "The particular issue in question, sex vs gender, is a sensitive one and excites passions on both sides but it is worth noting that it is a live and lively policy debate in the UK (whereas it was largely settled in the USA) … I don't like Maya's position and I think it is wrongly argued by her and other proponents, but it is a more common one here in the UK than in the USA.

> "I don't know exactly where we could draw "the line" as to what policy positions merit disassociation. I couldn't tell a newly joining Fellow what s/he where the boundaries might be. We need to articulate a corporate position on this as both consultants suggest. Absent of corporate position, should we end Maya's appointment as Visiting Fellow? I would be hard pressed to articulate the policy line she stepped over, perhaps it is that her policy stance is at variance with our personnel policy of respecting transgender persons as members of their chosen sex rather than their birth sex, stands. But did she know that ex ante? Knowing it ex post, even if not the stated policy, she now understands that the issue is not appropriate for our workplace.
>
> "And if it is not about her policy line, but her behaviour, then we are on weak grounds. The reports find that she did not violate our bullying and harassment policies (some of which were articulated after her tweets began). She understands that she may have inadvertently offended people and raised issues that are not appropriate to our workplace and has moderated her behaviour. I would note that she has taken all remedial measures we have asked of her to date.
>
> "I acknowledge there is some PR risk to a continued association, but in the UK the PR risk could run in the opposite direction, given the norms outlined in the article above.
>
> "I know the others on this email disagree with me and this is now a matter for Masood to decide. I will of course respect that decision. I hope, if it is against continuing her as a Visiting Fellow, that we can keep her on as a consultant".

198 The Tribunal noted that Mr Plant referred to what he described as Ms Forstater's "policy position" or "policy stance", equating to her belief, and to her "behaviour", the latter being distinguished from the former. He also referred to Ms Forstater's willingness to take the "remedial measures" asked of her.

199 In fact, no further meeting of the SPG to discuss whether or not Ms Forstater's Visiting Fellowship should be continued ever took place. In paragraph 58 of his witness statement Mr Ahmed said "based on my assessment of the situation, I decided that the best course for CGD as an institution was not to renew the Claimant's VF affiliation". He went on to identify six risks which he said would be involved in continuing the Visiting Fellowship and which he was not prepared to take. In summary, these were as follows:

(1) Reputational risks in that funders or potential affiliates or staff could have believed that Ms Forstater's views represented those of CGD, leading to them having reservations about being involved with the organisation.

(2) Diversion away from core areas and/or key messages, in the sense of getting drawn into a debate on a controversial issue which was not related to CGD's core business.

(3) Resources: Mr Ahmed said that resources were better spent advancing CGD's work as opposed to trying to manage fallout from Ms Forstater's social media activity.

(4) A risk to existing staff and a risk of alienating future applicants: Mr Ahmed wrote "as already mentioned I was not concerned that the Claimant held the views that she did but the way in which she was expressing them led to a risk of offending existing staff (whether cis or trans) and exposing us to potential legal claims for discrimination and/or harassment."

(5) Proselytism of views: here Mr Ahmed wrote "I had no problem with the Claimant holding the views that she did, but I was not comfortable with the way and the extent to which the Claimant sought to try and convince others that her view was the only "truth", thereby denying others their strongly held truths."

(6) Division at SPG level: Mr Ahmed said that the SPG was divided and that he perceived a threat to the previously good cooperation and collaboration between colleagues in the US and the UK if the matter could not be resolved.

200 Mr Ahmed continued in his witness statement that in the light of these matters "at the start of the week beginning February 25" he took the decision to let the Visiting Fellowship lapse without renewal. He said that he also took the view that the question whether Ms Forstater would continue as a consultant was one for CGD Europe and not for CGD, adding that he was personally content for Ms Forstater to continue as a consultant.

201 On 25 February 2019 Mr Ahmed's personal assistant inadvertently copied Ms Forstater into an email to Mr Plant saying that she was scheduling a call between Mr Ahmed and Ms Forstater and "Ellen's asked me to reach out to you to please provide talking points to Masood re: the decision, before he speaks with her". This prompted Ms Forstater to send an email to Mr Plant asking whether a decision had been made and saying that she thought that the idea was that her note would be presented to the SPG so that this could be done. Mr Plant replied the following morning saying that Mr Ahmed had decided not to pursue the option of Visiting Fellow and that he wanted to explain his reasoning to Ms Forstater. Mr Plant also apologised for the mistake that had prompted the emergence of this.

202 Mr Cooper challenged Mr Ahmed's account of the reasons for the decision and the proposition that the decision was genuinely Mr Ahmed's alone rather than a collective one. In order to understand that challenge it is necessary to consider a document prepared by Mr Plant as the "talking points" referred to in the email exchange above for Mr Ahmed to use in his call with Ms Forstater, and the evidence about what was said in the course of that conversation.

203 On 26 February 2019 Mr Plant sent an email to Mr Ahmed at page 1847 in which he referred to the inadvertent communication to Ms Forstater that the

decision had been made, and saying that nonetheless he thought that Mr Ahmed should have a brief phone call with Ms Forstater about that decision. Mr Plant suggested that Mr Ahmed should say that as President of CGD he had the ultimate decision making authority on the matter and that he should put forward the following as his reasoning for not renewing Ms Forstater's Visiting Fellowship:

(1) The position you have taken in the sex/gender issue runs contrary to CGD policy – we recognise the right of persons to self-identify their sex and gender and we respect those people for whom they are. While I recognise that there is an active argument about this, particularly in the UK, it is precarious for us, both in terms of our public stance and managing our staff, to implicitly support you in this debate.

(2) Whilst CGD Fellows have a wide berth in which to take policy positions, there are clearly some policy positions that we would not tolerate and some, perhaps like the sex/gender issue, that are borderline. It certainly is not central to our work and it has caused distress among our staff.

(3) In such instances where a Fellow is involved in a contentious debate, it is my obligation as President to see if there is a consensus among other Senior Fellows as to whether to make/continue an appointment. In this case, through informal consultations I have found that there is no such consensus and further debate would not bring about any consensus.

204 Ms Forstater sent an email to Mr Plant, copied to Mr Ahmed at page 1856 on 26 February 2019. Among other things she said that she did not trust verbal communication any more because everything that had been said to her verbally had later been withdrawn. Ms Forstater relied on this point as a reason or justification for her decision to record her conversation with Mr Ahmed, without informing him that she was doing so, when that took place on 28 February 2019.

205 The transcript of this conversation was at pages 1861-1867. The Tribunal had it in mind that Ms Forstater knew that the conversation was being recorded and that Mr Ahmed did not. The conversation included the following from Mr Ahmed.

205.1 On page 1861: "and in terms of we've arrived … I've kind of decided that I don't want to renew the Visiting Fellowship for another year, which would be in any event the sort of third year of the process, but Mark wants to, you to continue to work as a consultant on the DRM Gates grant, and I'm happy for him to continue, to do that, for you to do that if that's something you would like to do".

205.2 On page 1862: "and then I want to just to give you a little bit of a sense of sort of how we, you know why we arrived there. There was a long and somewhat difficult process but the bottom line is that because this issue where, of sex/gender, you know in CGD you know we have a kind of, CGD policy on this is that we recognise the right of people to self identify their sex and gender and we sort of respect

those people for whatever sex/gender they identify themselves, and I understand there is an active argument about this in the UK, but I think it's become an issue where your position on it has led to quite a lot of distress amongst other staff, and so, what, when that came up in terms of the decision of whether to go ahead with renewing your contract – your Visiting Fellowship for another year, I mean what my obligation was to make sure that there was a degree of consensus among the other Senior Fellows, that that's something we wanted to do, and I went through a process trying to ascertain whether we'd have that consensus, and despite going through that and some degree of discussion around it I can't find that consensus among the Senior Fellows ..."

205.3 On page 1865: "I don't want to make sort of generalised propositions from it, I guess all I am saying is that in this particular instance, it was you know the, as a result of the views that you'd expressed and the reactions and the stress its caused to others and the lack of consensus so its not so much being on the team, because as a consultant you can still contribute to it, but indeed as a Visiting Fellow for CGD, that's why we decided that …"

206 The conversation included the following from Ms Forstater:

206.1 On page 1863: "I don't think CGD can unilaterally say we don't recognise the protected characteristic of sex in the Equality Act, because you know that's the law, which doesn't mean that anyone needs to be not accepted, not you know anything but CGD cannot say "we don't accept the protected characteristic of sex" and similarly I think to decide that it is unacceptable for somebody to advocate for protecting against equality and discrimination around the protected characteristic of sex as its set out in UK Law, seems you know quite perverse" and continuing on page 1864: "you know the point of a policy is to be fair to both people on either side of that relation and you know given that I was not found to have broken that policy, you know, I just feel like, you know what is it that, on what basis other than expediency is the decision being made that I am, you know, am not going to be part of the team?"

206.2 On page 1866: (in response to Mr Ahmed suggesting that Ms Forstater could continue to work on the project as a consultant but not as a Visiting Fellow) Ms Forstater replied: "I don't think … yeah. I can't see how it's possible." Following this, Mr Ahmed suggested that Ms Forstater should think about the position and that they could have a further conversation to which she replied "Yeah. I mean, I can't see how I can feel welcome in the office if I've been told that I am not welcome and I can't see how I can feel welcome as part of the team if I've been told I'm not welcome". The conversation closed with Mr Ahmed proposing "shall we kind of just maybe think a bit more about whether and how it's possible and then talk again?" to which Ms Forstater replied "ok".

207 The Tribunal then returned to Mr Ahmed's evidence about the decision not to renew the Visiting Fellowship. In cross-examination Mr Ahmed agreed that in the telephone call he did not refer to the elements of reputational risk or diversion from core areas and key messages, or proselytism of views, as referred to in his witness statement. Mr Ahmed also said that having reviewed Ms Forstater's tweets, he was not convinced that she would refrain from engaging in the debate where she had strong views. He agreed that if he had asked about this, Ms Forstater would have had the opportunity to say that she had set up an anonymous Twitter account for that purpose.

208 When asked about the identified risk of staff being offended, Mr Ahmed agreed that this meant a risk of staff objecting to working with Ms Forstater given the views she had expressed, but added "they took objection to the way she was describing transwomen in a transphobic manner".

209 Mr Ahmed said that he had clicked on links in order to view the Fair Play for Women video and leaflet. Mr Cooper challenged his evidence (in paragraph 52 of his witness statement) that one item that had concerned him was Ms Forstater's engagement on Twitter with the Comic Relief organisation, pointing out that the only document in which this was mentioned was version one of the QI report, which Mr Ahmed had not seen at this time. Mr Ahmed replied that he believed that Ms Glassman had told him about it (although it is the case that she also had apparently not seen version one by this point).

210 The Tribunal reached the following findings of fact about the decision not to renew the Visiting Fellowship and the reasons for it.

210.1 Although in the telephone conversation Mr Ahmed referred on a number of occasions to "we" rather than to "I", this was a figure of speech rather than a revealing slip that indicated a collective decision. Clearly, members of senior management had expressed their views and had sought to influence the decision by doing so. For example, Mr Plant had expressed himself as being in favour of renewing the Visiting Fellowship and Ms Mackenzie had expressed views against that. Nothing in the contemporaneous documents suggested a collective decision involving anything like a vote, or similar. The Tribunal found that the decision was in fact made by Mr Ahmed, albeit his decision was influenced by the views expressed by members of senior management.

210.2 One of the matters that influenced Mr Ahmed's decision was what he described as the lack of consensus amongst senior management. This meant in reality opposition from Mr Easley, Ms Glassman and Ms Mackenzie (strenuous opposition in the case of the last named).

210.3 Mr Ahmed did not at the time have in mind the distinction between Ms Forstater's belief and her expression of it. This distinction has assumed considerable importance in the current litigation, but there

would have been no reason for Mr Ahmed to be aware of its potential significance when he was considering the Visiting Fellowship renewal issue. The Tribunal did not, however, accept Mr Ahmed's explanation in cross-examination that "when I said position, I meant presence, what you've been doing rather than substantive view". Mr Ahmed agreed that when Mr Plant wrote "position" in the talking points for him to use, the latter meant position and not "presence". The transcript of the telephone conversation between Mr Ahmed and Ms Forstater showed that he had stated that CGD recognised the right of people to self-identify their sex and gender. A reference in that context to Ms Forstater's "position" on the issue meant, as the Tribunal found, her substantive position or, in other words, her belief.

210.4 Mr Ahmed was therefore saying that, at least in part, it was Ms Forstater's "position" (i.e. her substantive belief) that had given rise to opposition to the renewal of the Visiting Fellowship. That reflected Mr Plant's email of 26 February 2019 and his acceptance of that point in cross-examination.

211 On 1 March 2019 Ms Forstater sent an email at pages 1880-1881 to CGD's Ombudsperson including the text of a note that she was intending to send to Mr Ahmed. She referred to the QI report's conclusion that she had not broken the harassment and bullying policy and said that the downgrading of the offer from employment, to Visiting Fellow, to consultant, was a significant demotion which would make it difficult for her to fulfil the work. Ms Forstater continued:

> "I think that this treatment is unfair, and is discrimination in relation to the protected characteristic of belief … [which she went on to explain]
>
> "I understand that as a thinktank CGD makes hiring decisions based on consensus amongst the senior team, however this cannot mean that Senior Fellows are able to veto hiring or retaining people because of someone's protected characteristic, as this would not be compatible with the law. CGD cannot unilaterally redefine legally protected characteristics such as sex, and then penalise people who argue for the legal definition to be respected".

212 Later on the same day Ms Forstater sent to Mr Ahmed the email (at page 1884) prefigured in her email to the Ombudsperson. This read as follows:

> "Thank you for our call yesterday. I want to confirm understanding from the conversation that:
>
> (1) CGD views the process of deciding whether to renew my term as a Visiting Fellow as a hiring decision.
> (2) You have decided not to take that decision to the SPG because you predict there would not be consensus among the Senior Fellows.
> (3) The reason for the lack of consensus is because some people object to my view on sex and gender identify, as reflected on Twitter, and the fact

that I have stated that I intend to continue to engage and write on this topic outside of CGD.

(4) CGD would like instead to hire me as a consultant over two years to work on the Gates funded tax project and also to undertake the final part of the commercial confidentiality…..project.

(5) CGD does not recognise the protected characteristic of sex as recorded on someone's birth certificate but takes the position that sex is a self-defined characteristic which is interchangeable with self-defined gender identity.

Please let me know by close of business on Monday if possible whether these are correct understandings"

213 Following this Mr Ahmed sought views from Mr Plant, Ms Glassman and Ms Mackenzie, and some legal advice was taken, the nature of which naturally remains unknown to the Tribunal. On 5 March 2019 Mr Plant sent an email to Mr Ahmed and Ms Mackenzie at pages 1900-1901 which was heavily redacted, but which included the words "see below from the lawyers" then a redacted section and the words "and we will see what happens". Ms Mackenzie replied later that day saying, "agree he should send email asap". Thirteen minutes later, still on 5 March 2019, Mr Ahmed sent an email at page 1905 to Ms Forstater, copied to Ms Glassman, Ms Mackenzie, Mr Easley and Mr Plant, which read as follows:

"Dear Maya
In follow up to our phone conversation last Thursday I wanted to confirm in writing that your appointment as Visiting Fellow at CGD will not be renewed for a third year with immediate effect. In one week's time your CGD email account will be closed.

Thank you for your contribution to CGD and CGD Europe's work over the last two and a half years.

Best, Masood Ahmed"

214 Mr Ahmed's evidence was that this email was intended only to confirm that the Visiting Fellowship was not going to be renewed, and that it was not intended to withdraw the offer for Ms Forstater to continue as a consultant. He pointed out that the email did not contain words to the latter effect. He accepted that, equally, it did not say words to the effect that he or the organisation were looking forward to Ms Forstater working as a consultant in the future and that "you could argue that it would have been clearer".

215 In her witness statement Ms Forstater said (at paragraph 423) that she was shocked by the email and that "I took it from the shortness and finality of this message, and the fact that Masood had not responded to my request to confirm my understanding of the conversation, that the offer to continue to work as a consultant was now longer on the table". In paragraph 424 Ms Forstater said she accepted that after the conversation on 25 February she had not been sure whether she would be prepared to work as a consultant if her Visiting Fellowship was not renewed but she said her mind was not yet made up. Ms Dobbie put it to

Ms Forstater in cross-examination that the email did not withdraw the offer of the consultancy. Ms Forstater replied that the expression of thanks for her work over the last two and a half years sounded final.

216 There was no doubt that Mr Ahmed had informed Ms Forstater that the Visiting Fellowship would not be renewed and had confirmed that in the email.

217 On 6 March 2019 Ms Forstater sent an email at pages 1923-1925 to a large number of individuals within the organisation. She began with the following words:

> "It is with sadness and disappointment that I am leaving the Centre for Global Development. I have loved being part of the team and was planning to work on the Gates Foundation Funded "Domestic Resource Mobilisation" programme, which I helped to develop, over the next two years as well as to continue with policy outreach on the Commercial Transparency Principles from the working group that I co-led last year. I have enjoyed working with you all in London and visiting in Washington DC over the past two and a half years …"

Ms Forstater continued that she had joined the organisation via an unconventional route and said:

> "So, I am leaving by the same route I came in: being argumentative on Twitter and unwilling to stay quiet about "The Emperors New Clothes" in service of a progressive movement.
> The issue at hand is nothing to do with being an outspoken woman about tax but being outspoken about being a woman. I believe that it is critical for inclusion and equality to recognise that male and female sexes exist, being a woman is a material reality based on biological sex, not performing gender stereotypes or having a universal feminine feeling. Protections for women's equality in policy, law and practice rely on having a clear definition of women. This is by its nature exclusionary. It may seem kind and inclusive to say that "anyone who identifies as a woman is a woman" it is incoherent and undermines women's rights …"

Later in the email Ms Forstater continued as follows:

> "However, in tweeting about the issue I caused offence and complaints were raised to CGD management, following an investigation it was found that I had not violated CGDs bullying and harassment policy, but I had nevertheless said things, including in the draft of the article I published today that some people find "offensive and disrespectful". The offer for me to be employed at CGD to work on the DRM project was rescinded finally the offer to continue as a Visiting Fellow was also withdrawn last week"

218 There remained the issue as to whether Mr Ahmed's email of 5 March 2019 impliedly withdrew the offer of a consultancy agreement. The Respondents' case was that the email did not do this and that Ms Forstater brought the whole

relationship to an end by sending her "farewell" email on 6 March 2019. Ms Forstater's case was that any objective person considering Mr Ahmed's email in context would understand that it was terminating the relationship in its entirety.

219 The Tribunal accepted that, as submitted by Mr Cooper, that the question had to be viewed objectively and within context. The Tribunal noted the following:

219.1 The words "thank you for your contribution to CGD and CGD Europe's work" sounded final and could be read as suggesting that Ms Forstater would not be doing any more work for the organisation, whether as a Visiting Fellow or in any other capacity.

219.2 The words that followed "over the last two and a half years", however, reflected Ms Forstater's time as a Visiting Fellow and not the totality of her relationship with the organisation.

219.3 Ms Forstater did not say in her farewell email that she had previously been offered the opportunity to work under a consultancy agreement but that this too had been withdrawn. In that email she stated that the final thing to occur was the withdrawal of the offer to continue as a Visiting Fellow.

219.4 In the same email, Ms Forstater also referred to working with the organisation "over the past two and a half years" which, as stated above, was the term of her Visiting Fellowship rather than the totality of her time with the organisation.

220 This was not a simple issue to resolve. Neither Mr Ahmed nor Ms Forstater made any specific reference to the possible consultancy agreement in their emails. Mr Ahmed did not expressly state that the entire relationship was at an end, while Ms Forstater did not expressly state that she had been told to go. She said that she was "leaving" and gave an account of the history which omitted the offer of a consultancy.

221 The Tribunal considered that, as a matter of probability, Mr Ahmed was intentionally saying as little as possible. We also considered, again as a matter of probability, that Ms Forstater read the email in a way that was consistent with her own position of being at least unsure whether she would want to continue solely as a consultant, and of believing that she had become unwelcome in the Respondents' organisation.

222 Taking all of the above into account, the Tribunal concluded that, read objectively and in context, Mr Ahmed's email did not impliedly withdraw the offer of a consultancy agreement. The context included the express statement that the Visiting Fellowship would not be renewed and the reference to the period of two and a half years, which related to the Visiting Fellowship. Although the words "thank you…[etc]" sound like what might be said at the end of a relationship, they do not necessarily exclude the possibility of the relationship continuing, or resuming, under a different arrangement.

223 There followed on 6 and 7 March 2019 various responses to and comments on Ms Forstater's email from members of CGD's management. Mr Cooper placed reliance on these in relation to the issue of why the decision not to renew the Visiting Fellowship was made.

224 On page 1933 Mr Plant said that Ms Forstater's email was creating quite a stir and that management needed to respond. He referred to an informal discussion with other members of staff and observed "of course her email was incorrect, particularly regarding being unasked from doing her work on DRM, but I don't think contradicting her will help us at all". Mr Plant made a proposal as to what he should say to staff in London which included the following: "Management of CGD judged that the positions she took on sex and gender were not consistent with the values of CGD as an institution". The Tribunal again noted the reference to "positions" as opposed to the mode of expression of views or beliefs. Ms Glassman replied to this on page 1938 suggesting variations to the proposed text, but not to that particular sentence about the positions taken on sex and gender. Ms Glassman proposed that it should be said that Ms Forstater had finished her contract and her appointment as a Visiting Fellow had expired, to which Mr Plant responded at page 1942 that to say it was just the end of the contract was "a dodge".

225 On page 1954 Mr Ahmed expressed approval of Ms Glassman's draft including, therefore, the sentence which had remained from Mr Plant's draft about positions taken on sex and gender. On page 1956 Ms Mackenzie wrote:

> "I don't think we should say anything about her positions regarding sex and gender. This is exactly what she is suggesting as the reason we did not review her VF. I think we should also assume she will see this email.
>
> I delete highlighted sentence [i.e. the one about positions regarding sex and gender] and add something like:
>
> "After several complaints to Human Resources, we felt it important to address concerns regarding activities that made several colleagues feel uncomfortable. We never tried to convince Maya that her opinions in question were incorrect. Our goal was to set clear guidelines with regard to respectful dialogue in the workplace and set expectations for the future. Unfortunately, we were unsuccessful in our efforts to find a mutual way forward."

226 Then on page 1958 Mr Plant wrote: "I respectfully disagree with Ellen, Maya did everything we asked of her and agreed to moderate her behaviour and did so, there was no negotiation to find a way forward. Management decided it did not want to renew her appointment as a Senior Fellow. For transparency management should say why. The only thing Maya was intransigent on was her views". Ms Mackenzie then wrote at page 1958 to Mr Ahmed saying that Mr Plant's statement was "extremely concerning" and that Mr Ahmed should have a private word with Mr Plant to the effect that "his view does not reflect the view of management". Mr

Ahmed sent an email at page 1967 proposing to take the approach suggested by Ms Mackenzie. There was some discussion about whether sending an email was necessary and on page 1970 Mr Plant wrote again saying that he considered that it was. He then continued as follows:

> "And honest you must be. I disagree strongly with the line you take that "our goal was to set clear guidelines regarding respectful dialogue in the workplace and set expectations for the future in the end, unfortunately, we were unsuccessful in our efforts to find a mutual way forward and this led to a parting of the ways." We made no attempt to set such guidelines. We asked Maya to make clear her Twitter views were not [sic] her own. She moderated her post on Twitter without our asking. While her response to the QI report was defensive, in the subsequent conversation I had with her she saw that some of what she said was problematic in the office and agreed to desist. And while she insisted that the alleged pamphlet was left on her desk, not distributed, she agreed not to bring any such materials into the office. Therein was the basis for some agreement, but we never gave it a chance to get there. I supported going to the SPG and was overruled. The one thing she wasn't going to do was change her views or her personality (strong, outspoken, and often irritating), but when have we demanded that of anyone? If we did, many of us would be long gone.
>
> "The honest statement is that her values were not consistent with our corporate values of openness to transgender people and that crossed a line, albeit ill defined…
>
> I also have a problem with the use of the mysterious "we" in the email. Who is "we"? In fact, Masood listened to various sides and made a judgment call"

227 Then on page 1974 Mr Plant sent his proposed text for the email which included the words "I [or management] judged that the positions Maya took on sex and gender, and the manner in which they were articulated, were not consistent with the core values of CGD as an institution".

228 The management correspondence on this ended there and, in the event, no such message was sent out to staff within the organisation.

229 Ms Forstater presented her claim to the Tribunal on 15 March 2019. There followed a series of events which she relied on as giving rise to the complaint of victimisation.

230 On 5 March 2019 Ms Mckenzie had sent an email at page 1906 asking those in charge of the Respondents' website to remove Ms Forstater from it as a Visiting Fellow. Ms Forstater presented her claim to the Tribunal on 15 March 2019 and, as demonstrated by a screenshot at page 2062, by 26 April 2019 her biography had been moved to the Alumni page of CGD's website, where she was described as a former Visiting Fellow (as were various other individuals).

231 On 5 May 2019 the Sunday Times published an article at page 2000 onwards based on an interview with Ms Forstater. The article stated that she had lost her job for saying that transgender women are not women. It referred to the Tribunal proceedings and quoted Ms Forstater as saying "I lost my job for speaking up about women's rights in a careful way and in a tone of ordinary discussion and disagreement". The article referred to an appeal Ms Forstater had instituted to fund the litigation, and that appeal on Crowdjustice was at pages 2002 onwards.

232 In paragraph 468 of her witness statement Ms Forstater said that on 18 May 2019 she discovered that her profile could no longer be found on CGD's website. She further stated that she found that her expert page and biography had been removed between 8 and 9 May 2019.

233 On 22 May 2019 Ms Forstater applied to amend her claim to add a complaint of victimisation, identifying the removal of her profile from the website as the detriment. The Respondents presented their response and grounds of resistance on 14 June 2019, addressing the victimisation complaint in the following terms at paragraph 37 of the grounds of resistance on page 77:

> "It is correct that the Claimant's profile was removed from the website after the decision was made not to renew her Visiting Fellowship. This is consistent with CGD's policy which is not to retain profiles of individuals on the website once their affiliation has ended".

234 Mr Easley said the following about this aspect in his second witness statement:

234.1 Paragraph 66 … "The removal of the Claimant's website profile was not in retaliation for anything. I can see from page 1859 that Mark had said at the time it was decided that her Visiting Fellowship was not going to be renewed that she would no longer be mentioned on our website. I also note that Ellen wrote to our IT web update team to ask them to remove the Claimant as a Visiting Fellow from our website (1906). Clearly, when someone ceases their affiliation with us, we would not keep them on the website, or retain an email address for them etc. However, I have no knowledge of how well organised the website amendment is."

234.2 Paragraph 67 … "My understanding is that maintenance of the website was done periodically, and not in real time (so not, for example, on the exact date of a Visiting Fellow's expiration). It is apparent that this was not actioned at the time her affiliation ended and only came to light as not having been done when the Claimant filed her claim, which triggered internal discussion about the ending of the Claimant's fellowship. This in turn would understandably have promoted the communications team to review the website and arrange for the removal of the Claimant's profile."

235 When cross-examined about this aspect Mr Easley agreed that it was the case that, at the time Ms Forstater's profile was removed from the website, CGD had a policy of retaining former Visiting Fellows on the Alumni page. He said "I was mistaken, it was based on a combination of my knowledge and assumption. Regrettably, I didn't check it". Mr Easley agreed that it was correct that in the first instance CGD followed a policy of showing a former Visiting Fellow on the Alumni page. He also said it was the case that this practice was changed immediately after the Sunday Times article and the crowd funding appeal.

236 In the light of these answers, Mr Cooper put it to Mr Easley that the Respondents had pleaded a false case and then tried to change their policy after the event. Mr Easley replied that it was based on his misunderstanding. He accepted that Ms Forstater's profile had been removed in response to the Sunday Times article and said, "I wasn't part of the conversation why to remove it. It's an inference I draw from the dates".

237 Mr Easley continued that, while he was not saying that the removal of Ms Forstater's profile was pure coincidence, equally, it was not a cover up. He said that he thought that the communications team was saying that it was not a good idea to keep all the Alumni on the website. Mr Easley said "I'm making an assumption that the comms team weren't told about the filing of the grounds of resistance. This highlighted that it's not a good idea to keep this list of people previously associated with CGD". He then agreed with Mr Cooper's proposition that it would, then, have been the truthful position say that CGD used to put Alumni on the website; they had removed Ms Forstater because of the Sunday Times article; and (at the times of the grounds of resistance) they were now changing the previous policy.

238 In paragraph 65 of his witness statement Mr Plant, referring to this issue, said that it was standard practice that when someone stopped being a Visiting Fellow that there should be no more mention of them on the website as one of CGD's experts. He continued "I was not aware that the Claimant's details had not been removed from the website until the following year when she raised this in her claim, and I can only assume that this was due to a laxity by colleagues in actioning the removal of names from the website as they should have done". He was not cross-examined about this.

239 The Tribunal made the following findings about this aspect of the matter.

239.1 Prior to May 2019 the Respondents had a practice of moving the profiles of former Visiting Fellows to the Alumni page of their website. In April 2019 Ms Forstater's profile was moved in accordance with this policy.

239.2 Ms Forstater's profile was removed from the Alumni page because of the Sunday Times article. Apart from the obvious coincidence in time, Mr Easley conceded as much in his oral evidence.

239.3 The Respondents' pleaded case that there was a pre-existing policy of removing profiles of Visiting Fellows when they ceased to act as such, was clearly incorrect. There was a clear coincidence in time between the presenting of the grounds of resistance containing this incorrect pleading and the removal of the profiles of all former Visiting Fellows from the Alumni page. One possible explanation for this was the one advanced by Mr Cooper, namely that this was an after the event attempt to manipulate the evidence in support of a pleaded case that the Respondents knew to be incorrect. The Tribunal did not consider that it could make a positive finding to this effect.

239.4 Neither, however, could the Tribunal make a positive finding in favour of an element of Mr Easley's concession, namely that the Respondents had (genuinely) changed their policy at this time. That part of Mr Easley's concession was only made in response to a question in cross-examination in which Mr Cooper proposed a potentially truthful pleading. It was not Mr Easley's evidence that this positively was what had occurred: he made it clear throughout his evidence on this aspect of the matter that he did not know what had occurred and that he was making assumptions.

239.5 The Tribunal will give its conclusions about the consequences of these findings later in these reasons.

The applicable law and conclusions

240 The Tribunal returned to the list of issues and used this as a framework for its legal analysis.

Employment Status and Liability of Respondents

241 Save to the extent that Ms Forstater may have been an applicant for employment under s.39(1), a question which does not in the event need to be decided, liability in this case is contingent on there being a relationship of employment within the terms of the Equality Act 2010 between the Claimant and one or both of the Respondents at the relevant time. Section 83(2)(a) provides that "employment" means employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.

242 It was agreed by the parties that the concept of an individual being employed under a contract personally to do work under section 83(2)(a) involves essentially the same elements as that of a "worker" under the Employment Rights Act 1996. (This agreement reflects what was said by HHJ Tayler in **Alemi v Mitchell [2021] IRLR 263** at paragraph 9 and by Lord Wilson in paragraphs 13 and 14 of the judgment of the Supreme Court in **Pimlico Plumbers Ltd v Smith [2018] IRLR 872**). There must be a contract, which requires the claimant to do work personally, and the respondent must not be a client or customer of a business or profession of the claimant.

243 Ms Forstater's primary case was that she was employed under a contract personally to do work, that contract being of an overarching nature beginning with the second contract in December 2016 and ending with the non-renewal of her Visiting Fellowship in February 2019. In the alternative to this, she contended that she was an employee during the period when the acts that she complains of occurred, i.e. October 2018 to March 2019. The Respondents contended that Ms Forstater was at no point employed and that she was throughout an independent contractor.

244 In the first instance the Tribunal concentrated its attention on the nature of the relationship during the period when the acts complained of occurred. In October 2018 Ms Forstater held a Visiting Fellowship and was carrying out work under the terms of the fourth contract.

245 There was no doubt that as at October 2018 there was a contract. The Tribunal found that this required Ms Forstater to do work personally. Although the contract provided for a limited possibility of provision of a substitute to carry out the work, subject to CGD Europe's agreement, the Tribunal found that it was very unlikely that this would ever have been operated in practice. The contract was entered into on the basis of Ms Forstater's particular expertise and knowledge. There was no evidence of the existence or identity of a possible substitute, had she become ill or suffered injury.

246 Was it, then, the case that the Respondent (the Tribunal uses this word intentionally, as there is an issue about whether both or only one of CGD Europe and CGD were parties to the contract) was a client or customer of Ms Forstater's business or profession? In addressing this question, the Tribunal has to take into account all of the relevant circumstances (see e.g. the observation of Lord Clarke JSC in **Jivraj v Hashwani [2011] UKSC 40** that "[these] are broad questions which depend upon the circumstances of the particular case. They depend upon a detailed consideration of the relationship between the parties….The answer will depend upon an analysis of the substance of the matter having regard to all the circumstances of the case").

247 Ms Dobbie relied on a number of features of the relationship between the parties as indicating that this was one of independent contractor and client. The Tribunal considered that some of these were in fact neutral on the point. Ms Forstater continued to work for other organisations, but this would not prevent her being an Equality Act employee of the Respondents, if the contract with them was properly understood as giving rise to this. She was responsible for her own tax and national insurance, but so are many Equality Act employees as they are regarded as self-employed for tax purposes. The contract was of fixed duration, but so can a contract of employment be of fixed duration. Ms Forstater was under no obligation to accept the fourth contract, but once she had, that was of no significance to the question of her status by virtue of it.

248 The Tribunal accepted that Ms Forstater was able to negotiate with the Respondents as to the rate at which she would be paid and was not presented with a standard rate. She used her own laptop when doing the Respondents' work. She had no line manager and was not the subject of any appraisal or similar regime. She was not required to work any particular hours or days. The Tribunal considered that these features were more typical of work as an independent contractor.

249 Against these, the Tribunal found that there were other features of the relationship between the parties which were more suggestive of Equality Act employment. Clause 2.3 of the contract required Ms Forstater to comply with CGD Europe's "reasonable regulations and directions". The Schedule set out in some detail the work that was required. This went beyond identifying a piece of research or the production of a particular paper. The Schedule provided that Ms Forstater would organise three working group meetings and work with the co-chairs of the working group. It also provided that she would co-author one document with Mr Kenny and another alone. Ms Forstater was to keep CGD (sic) informed of "the various stages of the process".

250 The Tribunal concluded that the provisions of the Schedule showed a greater degree of control by the Respondents over the way in which Ms Forstater would do the work than would usually be the case for an independent contractor. Although the contract did not specify any particular working hours or days, Ms Forstater was required to work with Mr Kenny and the co-chairs, and so was not free to select when and where she worked. She was paid by the day, and not by items produced.

251 Ms Forstater actively involved in seeking funding for the Respondents' projects in which she might be involved. No doubt it was in her interests to do so, as she would hope to be engaged on those projects, but the Tribunal considered that this showed a degree of integration into the organisation.

252 The Tribunal considered that the Visiting Fellowship was also important in this context. We found the following to be of significance:

252.1 (Paragraph 47 above) Ms Glassman expressed the hope that Ms Forstater would consider CGD one of the main outlets for her work, would use her affiliation as part of her CV, and would publish frequently on CGD's website.

252.2 (Paragraph 49 above) Ms Ramachandran suggested that Ms Forstater should attend lunches in London when she could, and visit Washington DC 2 or 3 times a year.

252.3 (Paragraph 51 above) Ms Forstater said that she saw the role as involving about 3 days per week and that she envisaged coming into the office on 1 or 2 days per week. She was attending events with

the designation CGD Visiting Fellow on her badge, and was meeting people and telling them what "we" are doing.

252.4 (Paragraph 60 above) Ms Ramachandran gave Ms Forstater guidance on how her work might be developed within CGD.

253 The Tribunal considered that all of the above were consistent with a degree of integration into the organisation that would not occur if the organisation were a client or customer of the service provider. A client would not seek to guide an independent contractor with regard to career development; would be unlikely to suggest how frequently a contractor should attend the offices; and would not ask a contractor to treat them as a main outlet for her work. Ms Forstater's indication of how she saw the role is similar and suggests an Equality Act employment relationship, rather than one of independent contractor and client.

254 Taking into account all of the above, the Tribunal found that the combination of the fourth contract and the Visiting Fellowship gave rise to employment under a contract personally to do work within the meaning of section 83(2).

255 Thereafter there were potential issues as to whether the Visiting Fellowship came to an end by virtue of not being renewed on 31 October 2018, or continued until Mr Ahmed told Ms Forstater that it would not be renewed on 28 February 2019, on the basis that the general expectation was that a Visiting Fellowship would be renewed for a third year. There was also a potential issue as to whether Ms Forstater had continued to work under the terms of the fourth contract into January and February 2019 because, although the expressed end date of that contract was the end of 2018, she was still completing some of the work that was necessary under it into the new year.

256 The Tribunal concluded that it was not necessary to resolve these particular matters. This was because section 108 of the Equality Act provides as follows:

(1) A person (A) must not discriminate against another (B) if –

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

257 The Tribunal had no doubt that if the correct view was that the contract had come to an end on 31 October 2018, or 31 December 2018, or at the point when Ms Forstater ceased work under the fourth contract, that the matters complained of arose out of and were closely connected to the employment relationship.

258 It was also, therefore, unnecessary to decide whether there was an overarching contract between the parties over a longer period such as to give rise

to Equality Act employment. Had it been necessary to do so, the Tribunal would have decided that there was not. Our finding is that the combination of the Visiting Fellowship and the fourth contract gave rise to an Equality Act employment relationship. We considered that either of these alone would have been insufficient.

259 The question whether there was an employment relationship includes in this case the further question, if so, with whom?

260 CGD and CGD Europe are and were separate legal entities. The Tribunal found that they nonetheless operated as a single organisation. In particular:

260.1 The Respondents maintained the concept of "One CGD". As stated in paragraph 38 above, by March 2018 the CGD Europe board minutes were describing the Europe team as managed as part of CGD for day-to-day purposes and as "a seamless part of the whole organisation".

260.2 As recorded at paragraph 48 above, Ms Glassman stated that "we do not distinguish between the two offices".

260.3 The Visiting Fellowship was throughout described as being "at" CGD. The contracts were with CGD Europe, except for the second, which was with CGD for administrative convenience. The fourth contract provided that Ms Forstater should keep CGD informed. There was no suggestion that a distinction was being drawn for this purpose between the two entities.

260.4 As can be seen throughout the evidence cited above, in day to day activities and discussions the organisation was routinely referred to as "CGD", without any distinction being drawn between that and CGD Europe.

261 The general presumption is that an employee cannot have more than one employer in respect of the same work. This is, however, only a presumption, which can be displaced (see e.g. **Dacas v Brook Street Bureau (UK) Limited [2004] ICR 1437** where, in an admittedly different context, the Court of Appeal envisaged the possibility of "more than one entity exercising the functions of an employer"). In the present case, the Tribunal found that the way in which the two entities operated as a single organisation meant that it would be unrealistic to say that either was the employer to the exclusion of the other, and that in fact both were employers.

Equality Act complaints

Burden of proof

262 Before turning to the particular complaints, the Tribunal reminded itself of the provisions in section 136 of the Equality Act relating to the burden of proof. These are as follows:

> *(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*
> *(3) But sub section (2) does not apply if (A) shows that (A) did not contravene the provision.*

263 In **Efobi v Royal Mail Group Ltd [2021] ICR 1263** the Supreme Court confirmed that the two stage approach identified in relation to the previous anti-discrimination legislation in the cases of **Igen v Wong [2005] ICR 931** and **Madarassy v Nomura [2007] ICR 867** remained valid under the Equality Act. At the first stage, the burden is on the claimant to prove, on the balance of probabilities, facts from which the Tribunal could properly conclude, in the absence of an adequate explanation, that an unlawful act of discrimination had occurred. If such facts were proved, the burden moved to the respondent at the second stage to explain the reason(s) for the alleged discriminatory treatment and satisfy the tribunal that the protected characteristic had played no part in those reasons.

264 In paragraph 38 of the judgment, with which the other Justices agreed, Lord Leggatt JSC also cited the words of Lord Hope in **Hewage v Grampian Health Board [2012] ICR 1054** that it is important not to make too much of the role of the burden of proof provisions and that:

"They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Direct Belief Discrimination

265 Section 13(1) of the Equality Act provides that:

A person (A) discriminates against another (B) if, because of a protected characteristic (A) treats (B) less favourably that (A) treats or would treat others.

266 In cases such as the present, where harassment and direct discrimination are relied on as alternative causes of action based on the same facts, Tribunals will often consider the complaint of harassment first. The reason for this is that under that cause of action, the acts complained of need only be "related to" the protected characteristic, as opposed to "because of" the protected characteristic as required for direct discrimination; and the effect of the relevant part of section 212(1) of the Equality Act is that complaints of harassment and direct discrimination are mutually exclusive. In the present case, Mr Cooper invited the Tribunal to consider direct discrimination first and we have done so, on the basis that this was Ms Forstater's primary case.

267 The acts complained of as acts of direct discrimination are set out in sub paragraphs 1-5 of paragraph 2.1 of the list of issues. In relation to the question whether these or any of them happened, the Tribunal's findings of fact above lead to the following conclusions (with the numbering of the sub-paragraphs below following those in the list of issues):

267.1 In November 2021 Mr Ahmed decided not to give Ms Forstater a contract of employment as a Senior Fellow.

267.2 In late 2018 / early 2019 the Respondents engaged Ms Szabo and Ms Mahesri to produce reports into the issues arising in relation to Ms Forstater's expression of her beliefs.

267.3 Those reports were prepared without involving Ms Forstater, and so in that sense without giving her the opportunity to explain or defend herself.

267.4 In late February 2019 Mr Ahmed decided not to renew Ms Forstater's Visiting Fellowship for a third year.

267.5 The Respondents did not make a decision not to engage Ms Forstater on a consultancy contract for the Gates funded project.

268 Issue 2.2 then asks whether the Respondents treated Ms Forstater less favourably than they would have treated a hypothetical comparator in the same or not materially different circumstances who did not hold and/or express/manifest her protected belief. This issue brings to the fore a central aspect of the case, which is the potential distinction between holding a protected belief and expressing or manifesting that belief.

269 In paragraphs 123-124 of her written closing submissions Ms Dobbie advanced the proposition that the correct comparator was an individual who did not hold the same gender critical belief as Ms Forstater, but who did and said the same things. In other words, the sole difference between Ms Forstater and the comparator would be that the latter did not in fact believe what he or she was saying, whereas Ms Forstater did.

270 As Ms Dobbie submitted, there is some support for this proposition (which at first sight the Tribunal found surprising) in paragraph 79 of the judgment of the Court of Appeal in **Page v NHS Trust Development Authority [2021] ICR 941.** Underhill LJ observed that:

"……the Trust would obviously have acted in the same way, even if the views expressed were not the product of any religious or other protected belief. (It may not be a very likely hypothesis that a director of the Trust would have expressed himself as the appellant did unless he had held the same beliefs; but it is precisely

because the exercise of constructing a hypothetical comparator is frequently so artificial that Lord Nicholls said what he did in **Shamooon**.)"

Shortly before this passage, Underhill LJ summarised what Lord Nicholls said in **Shamoon** in the following terms: "It is trite law that it is *not* necessary in every case to construct a hypothetical comparator, and that doing so is often a less straightforward route to the right result than making a finding as to the reason why the respondent did the act complained of……"

271 In the light of this guidance, the Tribunal moved directly to issue 2.3, which asks whether the treatment concerned was because of the protected belief.

272 In addressing this question, the Tribunal reminded itself of the following:

272.1 In order to satisfy the "because of" test, it is not necessary for the protected belief to be the whole of the reason, or even the principal reason, for the treatment. In **Nagarajan v London Regional Transport [1999] ICR 877** Lord Nicholls said this at page 886E-F, in the context of a complaint of race discrimination:

> "Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others……If racial grounds…..had a significant influence on the outcome, discrimination was made out."

272.2 As confirmed in **Efobi**, it is possible for the Tribunal to make direct findings without invoking the burden of proof provisions, or to apply the two-stage **Madarassy** approach. The Tribunal has found itself able to take the former approach to this issue.

273 The Tribunal has already referred to the potential distinction between the holding of a protected belief and the expression of that belief. Underhill LJ explained the distinction in the following way in paragraph 68 of the Court of Appeal's judgment in **Page**:

"In the context of the protected characteristic of religion or belief the Employment Appeal Tribunal case law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the

consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself."

274 Underhill LJ then addressed the employment tribunal's findings in the particular circumstances of the case as follows:

"The Authority took disciplinary action against the appellant not because he was a Christian or because he held the traditional family belief but because he expressed the latter belief (and his other views about homosexuality) in the national media in circumstances which, on the tribunal's findings, justified the action taken."

275 For the purposes of the present case, the Tribunal understands the relevant distinction to be between the holding of the protected belief and/or the manifestation of that belief in a way to which objection could not be justifiably taken on the one hand, versus the manifestation of the belief in a way to which objection could justifiably be taken, on the other.

276 Section 3(1) of the Human Rights Act 1998 provides that, so far as it is possible to do so, primary and subordinate legislation must be read in a way which is compatible with the rights arising under the European Convention on Human Rights. Article 9.2 of the Convention is of particular relevance to the issue currently under discussion. The Tribunal will set out here the provisions of Articles 9 and 10. These are as follows:

Article 9

1. *Everyone has the right to freedom of thought, conscience and religion; This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

Article 10

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licencing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

277 In paragraph 55 of the judgment of the Employment Appeal Tribunal in **Wasteney v East London NHS Foundation Trust [2016] ICR 643** HHJ Eady QC explained the relevance of Article 9.2 to the "reason why" question in cases such as the present as follows:

"……If the case is one of direct discrimination then the focus on *the reason why* the less favourable treatment occurred should permit an employment tribunal to identify those case where the treatment is *not* because of the manifestation of the religion or belief but because of the inappropriate manner of the manifestation (where what is "inappropriate" may be tested by reference to Article 9.2 and the case law in that respect)."

278 Article 9.2 refers to limitations on the freedom to manifest belief which are "necessary in a democratic society" in order to achieve the stated objectives. In paragraph 59 of the judgment in **Page** Underhill LJ explained this under the subheading "Justification" in the following terms:

"There was no issue before us as to the test for establishing justification under paragraph 2 of article 9, and the equivalent paragraph in article 10. The language there used requires an assessment of proportionality, as classically expounded in the decision of the Supreme Court in **Bank Mellatt v HM Treasury (No.2) [2014] AC 700, 771** (see para 20 of the judgment of Lord Sumption JSC). It is a sufficient summary for present purposes to say that that involves balancing the interference with the fundamental right in question against the legitimate interests recognised by paragraph 2 of both articles."

279 Paragraph 20 of Lord Sumption JSC's said judgment reads in part as follows:

"……the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them."

280 The Tribunal then turned to the "reason why" question in relation to the facts of the present case.

281 The first act in question is the decision not to give Ms Forstater an employment contract as a Senior Fellow. The Tribunal considered that, although Mr Plant had represented the position as hopeful, there was in fact only a relatively small prospect of this being offered in any event, given Mr Ahmed's comments in his email of 2 March 2018. That said, the Tribunal has found (as stated in paragraph 154 above) that Ms Forstater's tweets were a part of the reason why she was not offered employment. We also find that this was a substantial (i.e.

more than trivial) part of the reason: Mr Ahmed did not suggest that it was trivial, and Mr Plant would not have said what he did about the point if it had been trivial.

282 As indicated above, the Tribunal has reached this finding directly, without recourse to the burden of proof provisions. We would have reached the same result via the latter route. Absent an explanation from the Respondents, the facts are such that the Tribunal could properly conclude that the tweets were a substantial part of the reason why Ms Forstater was not offered employment; and the Respondent's evidence, far from proving the contrary, supports the finding that they were.

283 This conclusion led the Tribunal to ask itself whether the tweets were a manifestation of Ms Forstater's belief to which objection could reasonably be taken (as per **Page**) or an inappropriate manner of manifesting the belief (essentially the same point as per **Wasteney**). In doing so, we reminded ourselves that it would be an error to treat a mere statement of Ms Forstater's protected belief as inherently unreasonable or inappropriate: see e.g. the observation of Choudhury P in the Employment Appeal Tribunal's judgment in the present claim that: "….beliefs may well be profoundly offensive and even distressing to many others, but they are beliefs that are and must be tolerated in a pluralist society."

284 The Tribunal has already referred to the prominent part played in the evidence by Ms Forstater's tweet about Pips Bunce, including the description "part time cross-dresser", and related material. Although agreeing in the result, there was some difference between the members of the Tribunal as to how this particular tweet should be regarded. All three agreed that it read as an uncomplimentary and dismissive observation about Pips Bunce, and that it was intended to be provocative: the point could have been made in more moderate terms.

285 Employment Judge Glennie and Mr Miller considered, however, that this expression did not amount to an objectionable or inappropriate manifestation of Ms Forstater's belief, given the context of a debate on a matter of public interest; the fact that Pips Bunce had put themself forward in public as a person who is gender fluid and who dresses sometimes as a woman and sometimes as a man; and that Pips Bunce had accepted an award or accolade stated to be for women. Ms Carpenter differed from this, and considered that this particular expression was objectively inappropriate or objectionable, essentially for the reasons that the Tribunal has given above as our unanimous view of the tweet. As will be explained, however, in the final analysis the Tribunal was unanimous in its overall conclusion.

286 Ms Dobbie drew the Tribunal's attention to other tweets, as follows:

286.1 At pages 921 and 1034, where Ms Fortstater asserted that "other people are not compelled to accept it [the proposition that a transwoman is a woman] as relating to any material reality" and that " a man's internal feeling that he is a woman has no basis in material reality". The Tribunal considered it to be clear that individuals might

be offended by these statements. They are, however, straightforward statements of Ms Forstater's (protected) gender critical belief. The Tribunal considered that to characterise these as manifestations of the belief to which objection could reasonably be taken would be to hold that the belief itself was not worthy of protection, when the Employment Appeal Tribunal has decided that this is not the case.

286.2 At pages 915 and 932, where Ms Forstater drew a comparison between transwomen and Rachel Dolezal. The Tribunal did not consider it necessary or appropriate to embark on any analysis of Rachel Dolezal's situation. We found, however, that the point that Ms Forstater was making – that there is an analogy to be drawn between someone who is white identifying as black and someone who is (according to gender critical belief) male identifying as a woman – did little more than assert her gender critical belief.

286.3 At page 934, stating that "the places that women and girls get assaulted and harassed are 'normal life'". Ms Dobbie described this as "catastrophising" from a debate about transwomen being recognised as female for the purposes of interviewing panels to extreme circumstances of violence. The Tribunal considered that what Ms Forstater had written was an unobjectionable observation in the course of the debate, and that even if this was an expression of a worst-possible scenario, that was not an objectively unreasonable observation to make.

286.4 At page 958 describing self-identification as a woman as "a feeling in their head". The Tribunal has already indicated that it rejects the suggestion that this equates self-identification with mental illness. We found that this also did little more than assert Ms Forstater's gender critical belief.

286.5 At pages 958 and 1002 mocking those who do not share her belief by saying that she is surprised that people, including "smart people" can say that they believe that male people can be women, and that they are "tying themselves in knots". The Tribunal considered that, as mockery goes, these were fairly mild examples. Mocking or satirising the opposing view is part of the common currency of debate. The Tribunal considered that, while mockery might reach the level of being objectively unreasonable, it clearly had not reached that level here.

286.6 At page 1003 suggesting that people might be asked about their sex for the purposes of avoiding manels. In her written submissions Ms Dobbie suggested that Ms Forstater had confirmed that she meant that it would be appropriate to ask someone to prove their birth sex. The Tribunal found that this was slightly overstating the

position Ms Forstater had taken, and that what she in fact said was to the effect that it would not be possible to know that a panel was mixed without asking, and that she did not know whether it would be appropriate to ask for proof. The Tribunal found that this was not an objectively unreasonable expression of Ms Forstater's belief. It was a logical application of that belief to a particular situation, i.e. that of avoiding all-male panels.

287 The Tribunal also considered the tweets with reference to Article 9.2 of the Convention. We found that considerations of public safety, and the protection of public health and morals, were not engaged. The rights and freedoms of others are relevant, to the extent that it might be said that the proposed reforms of the Gender Recognition Act would have given rise to rights under the amended Act, and that expressing opposition to that reform therefore had a potential impact on the rights of others. The Tribunal considered, however, that this could not mean that, in a democratic society, debate on proposed legal reforms could not take place, or could be significantly restricted.

288 The Tribunal has addressed the particular tweets relied on by Ms Dobbie in her submissions. The Tribunal has been unanimous in finding that all but one of these were not objectively offensive or unreasonable. The majority has made the same finding in relation to the remaining one.

289 The Tribunal also considered all of the other tweets to which we were referred in the course of the hearing, and unanimously concluded that none of these was objectively offensive or unreasonable. We concluded that Ms Dobbie had identified those which were the strongest candidates for such a finding.

290 The other materials relied on by Ms Dobbie were the booklet, the video, and the link at page 979 to an item about a convicted paedophile. The Tribunal came to the following conclusions about these:

290.1 The booklet was not an objectively offensive or unreasonable expression of the relevant belief. It is expressed in robust, campaigning terms. The Tribunal considered, however, with regard to the words quoted above, that in a debate of this nature it is not objectively unreasonable or offensive to describe the opposing view as stupid, dangerous or unfair. Mr Ahmed said that he found it offensive to imply that allowing trans people to self-identify would lead to an increase in "risks, threats and discomfort to cis women." It was clear to the Tribunal that people could indeed be offended by this. Mr Cooper contended that the argument being put forward was in fact different, being that allowing male-bodied individuals access to women-only spaces gave rise to risks, etc. The Tribunal found that, in any event, this was an expression of the core gender-critical belief and not objectively offensive as such.

290.2 In any event, Ms Forstater subsequently agreed that she should not have left the booklet on the desk (and impliedly, therefore, that she would not do so again).

290.3 For the reasons already given above, the Tribunal found that the video was not an objectively offensive or unreasonable expression of the relevant belief.

290.4 Also for the reasons given above in the findings of fact, the Tribunal concluded that including a link to the item about the convicted paedophile was not an objectively offensive or unreasonable expression of the relevant belief.

291 A further matter relied upon by Ms Dobbie was the principle that obliging a person to manifest a belief which they does not hold can be a limitation on their Article 9.1 rights. Ms Dobbie argued that this principle was engaged in that the Respondents were being compelled to manifest gender-critical belief by association with Ms Forstater.

292 The Tribunal did not agree that this principle was engaged in the present case. The cases relied on by Ms Dobbie involved a manifestation of a belief by the person concerned, rather than an association with someone who expressed that belief. In **Buscarini v San Marino (1999) 30 EHRR 208**, non-believers were obliged to swear a Christian oath as a condition of remaining members of Parliament. In **Royal Bahamas Defence Force v Laramore [2017] 1 WLR 2752** a Muslim petty officer was required to be present and to remove his cap during Christian prayers. The issue in **RT (Zimbabwe) v Secretary of State for the Home Department [2103] AC 152** was whether asylum seekers should be returned to Zimbabwe, where they faced a risk of persecution if they failed to demonstrate positive support for that country's regime. In **Lee v Ashers Baking Company [2018] UKSC 49** the bakers were being required to produce a cake bearing a message with which they profoundly disagreed.

293 In the present case, the Respondents were not being compelled to express or manifest Ms Forstater's belief. The most that could be said was that Ms Forstater expressed her belief, and that people who knew that she was associated with the Respondents may have in that (indirect) way have associated them with the belief. The Tribunal found that this was very different from the cases where a person could complain of being compelled to manifest a belief. Furthermore, when asked to add a disclaimer to her tweets, Ms Forstater agreed to do so.

294 The Tribunal was unanimous in considering that the question whether Ms Forstater's manifestation of her belief was such that objection could reasonably be taken to it should be considered by reference to the overall picture. In other words, the Tribunal was unanimous in considering that it was not necessarily the case that if Ms Forstater had expressed her belief in an objectively offensive way on a

single occasion, that would be sufficient to justify detrimental action by her employer. The question was fact sensitive.

295 The Tribunal was unanimous in concluding that this threshold had not been reached, whether on the basis (according to the majority) that Ms Forstater had never crossed the line into an objectively unreasonable expression of her belief, or (according to the minority) that although she had done so once, that was not sufficient to justify detrimental action by the Respondents.

296 With regard to justification, the Tribunal considered that elements (iii) and (iv) identified by Lord Sumption JSC in **Bank Mellatt**, identified in **Page** as aspects of proportionality, were relevant. The Tribunal has not been unanimous in its findings about the Pips Bunce Tweet. We were, however, unanimous in finding in any event that it was not proportionate to allow this to influence the decision about whether to offer Ms Forstater an employment contract.

297 Element (iii) asks whether a less intrusive measure could have been used. The Tribunal found that it could: Ms Forstater had agreed to the steps asked of her by Mr Plant. She had added a disclaimer to her Twitter account, had said that she would tweet less on her main account and would concentrate on tax issues, and had agreed not to initiate discussions on her beliefs in the office. These would have very substantially mitigated the risk of future concerns of a similar nature.

298 Element (iv) asks whether a fair balance had been struck between the rights of the individual and the interests of the community. If the minority view of the relevant tweet should be preferred to the majority view, the Tribunal would be unanimous in finding that a fair balance had not been struck in the decision not to offer an employment contract when only one tweet out of a very large number was to be regarded as objectively offensive or unreasonable.

299 The Tribunal therefore found that the complaint of direct discrimination was well founded with regard to the complaint regarding the decision not to give Ms Forstater an employment contract. The issue as to time limits regarding this complaint will be addressed below.

300 The Tribunal also concluded that the complaint was well-founded as against all three Respondents. The act of discrimination itself was Mr Ahmed's. He was acting on behalf of both CGD and CGD Europe, given the close integration of the two bodies under the One CGD principle. Any question as to apportionment between the Respondents can be dealt with at the remedies stage.

301 The Tribunal's conclusions regarding whether or not the tweets and other materials were an objectively offensive or unreasonable manifestation of the relevant belief; Articles 9 and 10; compelled speech; and justification, are all applicable to the remaining three complaints of direct discrimination. These can therefore be dealt with more shortly.

302 Complaints 2 and 3 of the direct discrimination complaints concerned the two investigations and reports (one of which was provided in two versions) carried out by QI. The Tribunal's findings in paragraphs 167 and 168 above led to us accepting Ms Dobbie's submission that the purpose of engaging QI to produce the reports was to obtain management guidance and not to conduct an investigation of a disciplinary nature. The Tribunal reached the following conclusions on these aspects:

302.1 Although the Respondents' case was not specifically argued in this way, we had some doubt as to whether this amounted to "treatment" of Ms Forstater. However, as this was not part of the submissions before the Tribunal, this is not a point on which our decision rests.

302.2 The Tribunal accepted that the Respondents sought advice as to the way forward because of "the need to navigate the tricky territory they found themselves in" (as put by Ms Dobbie) and not because of Ms Forstater's belief. That need was something distinct from the belief or the reasonable expression of this: it arose from the complaints, division of opinion at SPG level, and the concern about how to deal with the situation going forward.

302.3 The Tribunal found that the failure to involve Ms Forstater in the investigation until the draft report was received occurred because of the instruction given in the email described in paragraph 175 above. This could have been read as meaning that she should be involved while the report was being compiled, or once it had been drafted. It was apparent that there was no intention to exclude her from commenting. This did not occur because of her belief.

303 The Tribunal reached these findings directly in accordance with the **Hewage** approach. The outcome would have been the same under the two-stage approach, as the findings mean that the Tribunal has accepted the explanation advanced by the Respondents.

304 The Tribunal therefore found that these complaints were not made out as acts of direct discrimination. We therefore considered them under the alternative cause of action of harassment.

305 Section 26 of the Equality Act contains the following provisions about harassment:

(1) A person (A) harasses another (B) if –
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) The conduct has the purpose or effect of –
(i) violating B's dignity, or

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

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
(a) The perception of B;
(b) The other circumstances of the case;
(c) Whether it is reasonable for the conduct to have that effect.

306 The Tribunal proceeded on the assumption that the investigation and failure to involve Ms Forstater in it amounted to unwanted conduct. We found that the investigation and report(s) were commissioned for a reason related to Ms Forstater's belief. The perceived need for these arose from the "tricky territory" in which the Respondents found themselves, which was itself related to the protected belief. The same was not the case for the failure to involve Ms Forstater before the production of the draft report, for the reasons identified in relation to direct discrimination.

307 The Tribunal's findings as to the reason why the report was commissioned exclude the purpose being to harass Ms Forstater. As to its effect, as identified in paragraph 177 above, Ms Forstater was aware that the report had been commissioned but was told that this would be in terms of a case study to inform a general policy. There was no evidence that she felt harassed at this stage. When she read version 2 of the report, Ms Forstater was critical of it (see paragraphs 185-187 above), but what she said did not suggest that she felt harassed by it. The Tribunal concluded that it was not Ms Forstater's perception that the matters concerning the investigation and the report had the effect of harassing her. We also concluded that it would not be reasonable for them to have that effect.

308 In a similar way to that explained in relation to direct discrimination, the Tribunal has reached the conclusion that the complaint of harassment is not made out using the direct **Hewage** approach; and the result would be the same under the two-stage approach.

309 The fourth act of unfavourable treatment relied on is the decision not to renew the Visiting Fellowship. The Tribunal has found at paragraph 210 above that this decision was made by Mr Ahmed and that, correctly understood, his decision was influenced by opposition to renewal on the part of members of the SPG. We have also found that this opposition arose, at least in part, from Ms Forstater's substantive belief.

310 The Tribunal concluded that this finding means that the decision was made because of Ms Forstater's belief. We found that there were two possible ways to analyse the finding, both of which led to the same conclusion, as follows.

311 The Tribunal's primary conclusion on this point is that Mr Ahmed took on board the opposition expressed by Ms Mckenzie, Ms Glassman and Mr Easley and, in doing so, made it a part of his reason for deciding not to renew. In the

telephone conversation with Ms Forstater he stated that her "position" (i.e. her substantive belief) had caused distress. Whatever his personal view of that belief as such might have been, the belief (including reasonable expression of it) was factor in his decision not to renew. In other words, if Mr Ahmed's thought process was along the lines that the Respondents could not tolerate the reasonable expression of the belief because of the offence caused to others, the belief was a reason for the decision.

312 The alternative analysis involves the assumption that Mr Ahmed had distanced himself from the opinions of those individuals, but made the decision out of a desire to avoid dissent within the SPG. In **Royal Mail Group v Jhuti [2020] ICR 731** Lord Wilson JSC, giving the judgment of the Supreme Court, observed that:

> "If a person in the hierarchy of responsibility above the employee…determines that, for reason A…..the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision maker adopts….it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination."

313 In the present case, the opposition to the renewal was not hidden from Mr Ahmed. The Tribunal considered, however, that the **Jhuti** analysis should not be confined to situations where someone has deceived the decision maker. We concluded that, as a matter of logic, it would be equally applicable where the individuals concerned openly influenced the decision, and their (discriminatory) opposition was a factor in the decision.

314 Alternatively, if the matter is considered in terms of the two stage process, the talking points at page 1847 prepared by Mr Plant to be used by Mr Ahmed included the observation that the "policy position" taken by Ms Forstater (i.e. her belief) in relation to sex/gender was on the borderline of what the Respondents would not tolerate. The Tribunal considered that, in the absence of an explanation by the Respondents, this would be sufficient to form the basis of a finding that Ms Forstater's belief was a non-trivial part of the reason for the non-renewal of the Visiting Fellowship. Given the Tribunal's finding that Mr Ahmed was influenced by opposition to Ms Forstater's belief, the Respondents had failed to discharge the burden of proving that they did not discriminate.

315 This aspect of the claim is therefore well founded, and for the reasons given in relation to the first complaint, against all three Respondents.

316 In the circumstances, the alternative formulations of the claim as harassment and indirect discrimination do not arise for decision in respect of complaints 1 and 4 as the claim has succeeded as one of direct discrimination.

317 Indirect discrimination does not arise for decision in respect of complaints 2 and 3 for the reason identified by Mr Cooper and Ms Palmer in paragraph 119 of

their opening submissions, namely that the Tribunal has not held that those actions were taken because of the manifestation of Ms Forstater's belief.

Victimisation

318 Section 27 of the Equality Act contains the following provisions:

> *(1) A person (A) victimises another person (B) if (A) subjects (B) to a detriment because –*
> *(a) (B) does a protected act, or*
> *(b) (A) beliefs that (B) has done, or may do, a protected act*
>
> *(2) Each of the following is a protected act –*
> *(a) Bringing proceedings under this act;*
> *(b) …*
> *(c) Doing any other thing for the purposes of or in connection with this act;*
> *(d) Making an allegation (whether or not express) that (A) or another person has contravened this act.*

319 Ms Forstater relied on seven protected acts. Protected acts (a)-(e) are accepted by the Respondent as set out in paragraph 7.1 above.

320 It is more convenient to deal with the Tribunal's conclusions on the suggested detriments before turning to the two disputed protected acts. The first detriment relied on is the withdrawal of the offer to Ms Forstater to continue working as a consultant. Our finding is that this was not withdrawn and that it was Ms Forstater who brought the relationship to an end. This detriment therefore did not occur.

321 In relation to the removal of Ms Forstater's profile as a former Visiting Fellow from the website, the ultimate position on Mr Easley's evidence was that the account of this put forward by the Respondents initially was not correct, but that he was seemingly unable to provide an alternative explanation of what had in fact occurred on the Respondents' case. There were two elements which, in the Tribunal's judgement, meant that, in the absence of an adequate explanation from the Respondents, a finding of victimisation could properly be made.

322 The first was the coincidence in time between Ms Forstater launching her crowd funder and taking part in the Sunday Times article (both on 5 May 2019) and the removal of her profile by 9 May 2019. The second was the Respondents' advancing of what was subsequently accepted as an incorrect explanation of what had occurred. Taken together, and in the absence of an adequate explanation, a Tribunal could properly infer that the incorrect account had been given in an attempt to avoid admitting that the profile had been removed because of the protected act.

323 The Respondents have not advanced an alternative explanation for this. Mr Easley said that what occurred was neither a pure coincidence, nor a cover up. He was unable, however, to give any positive account of what it was that had

happened. The Tribunal found that the Respondents had failed to discharge the burden of proving that victimisation had not occurred. This complaint is therefore well founded.

324 On this aspect, there is no evidence linking Mr Ahmed directly with the complaint, which is therefore found against the First and Second Respondents only.

325 The two further protected acts relied on are as set out in paragraph 7.2 above. There is no doubt that, as a matter of fact, (f) was said and (g) was written. The Tribunal reached the following conclusions about these:

325.1 These further suggested protected acts have no real impact on the outcome of the case. The Tribunal has decided that the Respondents did not withdraw the offer of a consultancy, and that there was no detriment in that regard. We have also found that the website profile was removed in response to the Sunday Times article. The chronology does not suggest that these earlier acts were causally relevant to this.

325.2 With regard to act (f) The Tribunal found that, in context, saying that sex is a protected characteristic was not a protected act. Of the possible forms of protected act set out in section 27 of the Equality Act, only (c), "doing any other thing for the purposes of or in connection with the Act", was potentially applicable. The Tribunal considered, however, that making the general observation that sex is a protected characteristic did not amount to doing something in connection with the Act. We found that the section should not be interpreted as meaning that absolutely any act or statement related to the Act is potentially protected: it should be something akin to one of the other three forms of act (bringing proceedings, giving evidence or information, making an allegation), all of which involve action of some sort.

325.3 With regard to act (g), the Tribunal found that stating that the lack of consensus was because some people objected to Ms Forstater's view on sex and gender identity was a protected act because she was saying that this was the reason why the Visiting Fellowship was not being renewed. She was alleging, at least impliedly, that this was an act of discrimination. There was no suggestion that the allegation was false or made in bad faith. As stated above, however, this was not causally linked with the removal of Ms Forstater's profile from the website.

Time limits

326 Section 123 of the Equality Act includes the following provisions about time limits:

> *(1)…….Proceedings on a complaint….may not be brought after the end of –*
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(3) For the purposes of this section –*
> *(a) Conduct extending over a period is to be treated as done at the end of the period;*
> *(b) Failure to do something is to be treated as occurring when the person in question decided on it.*

327 The parties were agreed that the complaint about the decision not to give the Claimant an employment contract in November 2018 would on the face of the matter be out of time if it had stood alone.

328 The Tribunal found that this in fact formed part of a course of conduct extending over a period including the decision not to renew the Visiting Fellowship. We so decided because:

328.1 The two decisions were made by the same person, Mr Ahmed.

328.2 The two decisions were, at least in part, made for the same reason, namely Ms Forstater's belief and/or the reasonable expression of that belief.

329 The complaint about the later decision was within time and therefore the effect was to bring the earlier complaint within time as well.

330 Separately, were it necessary, the Tribunal would find it just and equitable to extend time in respect of the complaint about the failure to offer an employment contract. Ms Forstater's main explanation for not bringing a claim earlier was that she was not aware that she was able to do so. The Tribunal did not find that reason as such very compelling: there is a great deal of information readily available online about the Equality Act and employment tribunals. Ms Forstater is a researcher and has a particular interest in issues which include consideration of protected characteristics.

331 That said, there has been no evidential prejudice to the Respondents in relation to this aspect. No witness claimed to be in any difficulty recalling relevant matters. The lapse of time has not been great. There would be prejudice to the Claimant were the Tribunal to decide that she was not able to take this complaint

forward. We concluded that this prejudice outweighed any prejudice there might be to the Respondents in having to face a claim brought out of time.

Remaining matters

332 Remedies and any issues as to apportionment remain to be dealt with at a further hearing. The parties should liaise over any further case management required, including as to the time estimate for the further hearing and dates to avoid.

333 A short preliminary hearing to list the remedies hearing and deal with any outstanding case management issues will probably be required. The parties should notify the Tribunal when they are ready to proceed with this.

334 Complainants 1-4 remain anonymised under the Tribunal's order to that effect. Any applications in that regard should be made in writing, with a view to these also being addressed at the case management hearing.

EMPLOYMENT JUDGE GLENNIE

On: ……6 July 2022……..……..

DECISION SENT TO THE PARTIES:

06/07/2022.

AND ENTERED IN THE REGISTER
06/07/2022

FOR THE SECRETARY OF THE TRIBUNALS