THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms M Forstater	**v**	**(1) CGD Europe** **(2) Center for Global Development** **(3) Masood Ahmed**

Heard at: London Central

On: 21 and 22 March 2023
In Chambers 14 April 2023

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

Representation:
Claimant: **Mr B Cooper KC and Ms A Palmer, Counsel**
Respondent: **Ms O Dobbie, Counsel**

JUDGMENT ON REMEDIES

The unanimous judgment of the Tribunal is as follows:

1. **Compensation and interest are assessed as follows:**

   1.1 Compensation of £91,500.00.
   1.2 Interest of £14,904.31.

2. **The total sum payable to the Claimant is £106,404.31.**

3. **The First and Second Respondents are jointly and severally liable to pay the sum of £105,778.47.**

4. **The Third Respondent is jointly and severally liable with the First and Second Respondents to pay the sum of £99,625.79, included within the above sum of £105,778.47.**

5. **The Tribunal has not grossed up any part of the awards of compensation or interest, having found that this is not required. In the event that HMRC or another Tribunal takes the view or finds that**

any part of the award is taxable, this Tribunal would consider an application for an extension of time for a reconsideration of its decision not to apply grossing up.

REASONS

1. By its judgment and reasons sent to the parties on 6 July 2022, the Tribunal determined that the following complaints were well-founded:

1.1 Direct discrimination in the decision not to offer the Claimant an employment contract.

1.2 Direct discrimination in the decision not to renew the Claimant's visiting fellowship.

1.3 (Against the First and Second Respondents but not the Third Respondent) Victimisation in respect of the removal of the Claimant's profile from their website.

2. The issues to be determined in this hearing on remedies were as follows (in the order adopted by the parties in their submissions):

2.1 The amount of compensation for injury to feelings.

2.2 Whether there should be an award of aggravated damages, and if so of what amount.

2.3 Whether there should be an award of compensation for loss of earnings, and if so of what amount. The following matters are to be determined:

2.3.1 Whether the Claimant's departure from the Respondents' organisation was a novus actus interveniens, such that there should be no award for loss of earnings.

2.3.2 Subject to point 1 above, the loss, if any, to the date of assessment, and the amount of any future loss.

2.4 Interest.

2.5 Grossing up.

2.6 Apportionment.

3. These reasons are structured so as to deal with the evidence, findings, submissions, law and conclusions in respect of each issue in turn. The Tribunal is unanimous in the reasons.

4. The Tribunal heard further evidence from the Claimant and from Ms Patsy Mills on behalf of the Respondents. Ms Mills, Director of HR and Operations of CGD Europe, joined the Respondents' organisation in September 2021, and so after the events which gave rise to the claim. Both the Claimant and Ms Mills produced witness statements for the present hearing, and gave oral evidence. The Tribunal also reminded itself of its findings on liability and its reasons for these. We will refer where necessary to those reasons, and will not repeat explanations of terms used or matters described in them.

5. There was an agreed bundle of documents, which consisted of the bundle used at the liability hearing, with additional documents. Page numbers which follow refer to that bundle unless otherwise indicated.

6. The Tribunal noted and adopted Ms Dobbie's reliance on the Employment Appeal Tribunal's explanation in **MOD v Cannock [1994] ICR 918** that the purpose of compensation is that "as best as money can do it, the [Claimant] must be put into the position she would have been in but for the unlawful conduct."

Injury to feelings

7. The Claimant addressed injury to feelings in paragraphs 10-28 of her witness statement. She stated that, at the time when decisions were being made about her future with the Respondents' organisation, she was kept in the dark and that it was only subsequently (i.e. during the disclosure process in the claim) that she learned that individuals in Washington had been organising against her.

8. The Claimant stated that she was shocked and upset by the meeting on 13 February 2019 in which Mr Plant raised the matter of the video which was said to have reminded people of the Nazis, and said that he did not want to take the question of renewal of the Visiting Fellowship back to the SPG. The Claimant stated that she was extremely upset when on 25 February 2019 she learned from a misdirected email that the Visiting Fellowship would not be renewed.

9. In relation to her removal from the website, the Claimant stated that she found this very upsetting, as the implication was that the Respondents wished to dissociate themselves from her

10. In cross-examination Ms Dobbie took the Claimant to messages at pages 2115-2117 she had sent to a friend in November 2018 before she had learned that that she was not going to be offered an employment contract. The Claimant agreed that these showed that she was already feeling in something of a "slump" regarding her position with the Respondents. The messages suggested that she was unhappy about the uncertainty of her position. In another message at page 2119 the Claimant referred to not being offered an employment contract and (as she thought) continuing as a Visiting Fellow, saying "It's OK. Guess it wasn't meant to be." In answer to Ms Dobbie, the Claimant said that she was putting on a brave face.

11. The Tribunal concluded that the Claimant's feelings were stronger than disappointment about the failure to offer her an employment contract and that she

was, as she maintained in her witness statement, seriously upset by all three of the matters on which her complaints succeeded. We found that it was natural that she would be seriously upset by these. In particular, the Tribunal considered that the non-renewal of the Visiting Fellowship and the removal from the website were hurtful because they showed that the Respondents did not want to be associated with the Claimant. We found that the Claimant's expression of disappointment to her friend was not inconsistent with this: she would not necessarily express the full range of her feelings on every occasion when she discussed the situation.

12. Any award of compensation for injury to feelings should reflect the effects of the acts which have found to be wrongful, and not the whole of the situation including acts which have been found not to be wrongful, or which were not relied on in the first place: see **Thaine v LSE UKEAT/0144/10** (in the context of personal injury, which does not arise in the present case, but the principle remains applicable). That said, the Tribunal accepted Mr Cooper's submission that it should not take too "surgical" approach to the effects of the various acts, as individuals' feelings cannot be divided up in a precise way. We should make an award that is a realistic reflection of the effects of the acts which gave rise to the findings against the Respondents.

13. In **Vento v Chief Constable of West Yorkshire Police (No.2) [2003] ICR 318** the Court of Appeal identified three bands for awards for injury to feelings, namely:

13.1 Lower: "less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

13.2 Middle: "serious cases, which do not merit an award in the highest band."

13.3 Top: "the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment…"

14. There was a certain element of common ground. It was not suggested that the lower band might be applicable here. The Tribunal should apply the ranges for the different bands as at the date of the unlawful conduct: in the present case, these would be £8,600 to £25,700 for the middle band and £25,700 to £42,900 for the top band, with the most exceptional cases capable of exceeding that figure.

15. Beyond this, Mr Cooper contended that this was an example of the most serious type of case and argued for an award of £35,000. Ms Dobbie submitted that the case fell within the middle band and argued for a figure of £12,000 to £16,000.

16. The Tribunal concluded that the case fell within the middle band, but at the top of the range for that band. The discriminatory acts were significant and, as we have said, showed that the Respondents did not want to be associated with the Claimant. They affected the Claimant's status within the Respondents' organisation and in the eyes of the wider professional world. That said, they occurred alongside other acts which would have contributed to the Claimant's hurt

feelings and for which the Respondents are not liable. The unlawful acts occurred over a period of months (and so not days, on the one hand, or years, on the other). They had, however, consequences which continued for longer. The Claimant was of course aware of what had happened beyond the ending of her association with the Respondents, and she was reminded of it (and found out more about it) as the litigation progressed.

17. Taking all of these factors into account, the Tribunal concluded that the appropriate award for injury to feelings was £25,000.

Aggravated damages

18. While accepting that aggravated damages are an aspect of injury to feelings, the parties addressed this as a distinct topic, and the Tribunal will do the same. In **Commissioner of Police of the Metropolis v Shaw [2012] ICR 464** Underhill J in the Employment Appeal Tribunal set out the principles to be applied. In summary, these are:

18.1 These are compensatory, not punitive, and may be awarded where the manner in which the unlawful act was done, the motive for doing it, or the subsequent conduct of the Respondent in relation to it (including in the conduct of the litigation, were particularly high-handed, malicious, insulting, oppressive or otherwise contumelious, such that they aggravated the distress to the Claimant.

18.2 Any assessment of aggravated damages should take account of the overall award for injury to feelings and ensure that it is proportionate to the totality of the suffering caused to the Claimant.

18.3 Aggravated damages should generally be formulated as part of the overall amount for injury to feelings, incorporating an identified amount for aggravated damages and identifying the specific aggravating factors to which the Tribunal has attached weight.

19. Mr Cooper identified 10 potentially aggravating factors in the Schedule of Loss, (reproduced and re-formulated in part as 5 in his closing skeleton argument) in seeking an additional award of £10,000. The Tribunal will give its conclusions on these in summary form: it would not be proportionate to closely analyse each element.

20. The Tribunal did not consider that the senior individuals within the Respondents' organisation who opposed the Claimant's belief did so in an insulting or high-handed manner. They expressed firm opposition to the Claimant's beliefs in an area which is the subject of vigorous public debate, and in which the Claimant had expressed herself with vigour. Sir Masood Ahmed's conversation with Mr Plant about pausing the push for funding of tax and illicit flow work did not, perhaps, involve a full explanation of the former's reasons, but did not, in the Tribunal's judgment, amount to a high-handed or deceitful approach.

21. The Tribunal did not consider that the litigation as such had been conducted in a manner such as to merit an award of aggravated damages. Challenging the Claimant's belief as not meriting protection was not, the Tribunal found, an aggravating factor: the Employment Judge at first instance had, after all, found for the Respondents on this. Similarly, had EJ Tayler considered that the evidence called on the Respondents' behalf to be irrelevant or expressed in unacceptable terms, he presumably would have said so. The Tribunal did not find that the cross-examination of the Claimant was unduly harsh or protracted.

22. There were aspects of the case in which the evidence given on Respondents' behalf could be criticised. An example of this was the evidence about the removal of the Claimant's profile from the website (paragraphs 235-239 of the liability reasons) in which Mr Easley ultimately could not support the pleaded case. Another was that about the SPG meeting on 6 December 2018, in which Mr Plant and Sir Masood Ahmed disagreed over whether there had been a "visceral reaction" to the Claimant's beliefs on the part of some people. The Tribunal did not ultimately consider that these were the sort of matters that would justify and award of aggravated damages. It is not unusual for points such as these to arise in a long and complex trial, and there was no reason to believe that they had aggravated the Claimant's feelings.

23. The Tribunal recognised that the Claimant has been subjected to a considerable amount of hostile and, as we find, distressing adverse comment on social media. It was not suggested on her behalf that this was the direct responsibility of the Respondents, but it was suggested that it could be inferred that there was a "whispering campaign" against her in which her beliefs and conduct were misrepresented by individuals acting on behalf of the Respondents. The Tribunal did not consider that this could properly be inferred. The debate about gender-critical beliefs and transgender rights is one which is, at times, expressed in vigorous and/or emotive terms. The Tribunal considered that debate of this nature continued around the current proceedings and the judgments given by the Employment Tribunal and the Employment Appeal Tribunal did not mean that the Respondents had been engaged in a campaign against the Claimant behind the scenes.

24. The Tribunal found the position to be different with regard to the Respondents' public statements about the proceedings. There could be no doubt that these had been made. In a press release (at page 2903) following the Employment Appeal Tribunal's decision, Ms Glassman wrote:

"The decision is disappointing and surprising because we believe Judge Tayler got it right when he found this type of offensive speech causes harm to trans people……"

25. Following this, on 21 June 2021 at page 2911, 85 staff members wrote to Sir Masood Ahmed and Ms Glassman quoting the press release and encouraging the Respondents to appeal the EAT's judgment. The letter included the words: "We believe CGD must take a consistent stance against all forms of bigotry……" The letter was shared with the publication "Pink News", which quoted extensively

from it, including the references to causing harm to trans people and to bigotry. CGD's Director of Communications Sean Bartlett was quoted as saying that:

"Masood and Amanda were grateful to receive the letter, which they felt was thoughtfully framed and considerate and in the best spirit of CGD's culture."

26. A further press release on 28 June 2021 at pages 2912 announced that the Respondents would not be appealing against the EAT's judgment, but would return to fight the claim in the Employment Tribunal. Ms Glassman wrote as follows:

"While we are disappointed in the recent ruling by the Employment Appeal Tribunal, we note that the judgment makes it clear that while gender-critical beliefs may be protected, actions that harass or discriminate against trans people cannot be undertaken with impunity……."

27. The Tribunal reached the following conclusions about these communications:

27.1 The press release at page 2903 referring to EJ Tayler's decision did not quote the words of that decision. EJ Tayler did not say "this type of offensive speech causes harm to trans people". In paragraph 91 of his reasons, EJ Tayler said that "The Claimant could generally avoid the huge offence caused by calling a trans woman a man without having to refer to her as a woman, as it is often not necessary to refer to a person sex at all"; and that "it is legitimate to exclude a belief that necessarily harms the rights of others…." Although EJ Tayler referred to causing offence and harming rights, he did not characterise the Claimant's words as offensive or as causing harm to trans people. The press release attributed to EJ Tayler a stronger criticism of the Claimant's belief than the one he actually expressed. In the Tribunal's judgment, it was inflammatory in the context of this hotly contested area of debate to assert that a judge had found that the Claimant's beliefs cause harm to people.

27.2 Sharing the letter from 85 staff members with Pink News caused further distribution of what had been said in the press release about harm to trans people and indicated that the Respondents' organisation regarded the Claimant's belief as amounting to "bigotry" (even though the EAT had held that it was protected).

27.3 The press release at page 2912, in a similar way to that at page 2903, contained a paraphrase of the EAT's observations. The relevant part of these was that "This judgment does **not** mean that those with gender-critical beliefs can "misgender" trans people with impunity. The Claimant, like everyone else, will continue to be subject to the prohibitions on discrimination and harassment that apply to everyone else." The Tribunal found that, to perhaps a lesser extent than the press release at page 2903, this also implied a judicial criticism of the Claimant that had not been made. The EAT

had not suggested that the Claimant had harassed or discriminated against anyone, but the press release in referring to "actions" suggested that something of this nature had occurred.

28. The Tribunal found that, taken as a whole, these public statements on the Respondents' behalf amounted to oppressive or high-handed conduct in overstating judicial observations about the Claimant's belief and in equating that belief to bigotry. In paragraph 74 of her remedies witness statement the Claimant said that it was "an awful feeling" to experience abuse from and shunning by people as a result of how CGD had portrayed her, and that it was very hard on her family to see her portrayed in this way. The Tribunal accepted this evidence, and concluded that an award of aggravated damages should be made.

29. On quantum, the Tribunal had regard to the main award for injury to feelings and to the fact that the Claimant had established aggravation of that injury in respect of only one of a number of factors relied on. The Tribunal concluded that an additional award of £2,000 was appropriate, taking the total award for injury to feelings, including aggravated damages, to £27,000.

Loss of earnings

30. As indicated above, there was an issue as to whether the Claimant's departure from the Respondent's organisation amounted to a novus actus interveniens, in other words a new cause, in relation to any financial losses after that date. In paragraph 51 of her written submissions Ms Dobbie argued that the Claimant's "goodbye" email of 6 March 2019 at pages 1923-1925 was an inadvertent act of termination, sent in the erroneous belief that Sir Masood Ahmed's email of 5 March 2019 had terminated the contract, and that it was a new cause which broke the chain of causation. Ms Dobbie further argued that this aspect of the claim could not be, and was not advanced, as a complaint of constructive dismissal.

31. The Tribunal agreed with the latter submission. The Claimant's case at the liability hearing was that she believed that Sir Masood Ahmed's email had terminated the whole relationship with the Respondents' organisation, not just the Visiting Fellowship, and that she wrote her "goodbye" email on that basis. It was not her case that she had decided to resign, or to leave the organisation. In paragraph 215 of its liability reasons the Tribunal recorded the Claimant's evidence that after the conversation on 25 February 2019 she had not made up her mind whether she would be prepared to work as a consultant if the Visiting Fellowship were not renewed. In paragraph 218 of those reasons, the Tribunal recorded that it was the Claimant's case that "any objective person considering Mr Ahmed's email in context would understand that it was terminating the relationship in its entirety." To the extent that the Claimant was suggesting otherwise in paragraph 26 of her remedies witness statement when she said that "the treatment made it impossible for me to continue working for CGD in any capacity", the Tribunal considered that she was over-stating the position. Her evidence at the liability hearing was that she was unsure.

32. The Tribunal considered that, in order to determine whether the "goodbye" email was a new cause, it was necessary to return to our findings in paragraphs 221 and 222 of the liability reasons. These were as follows:

32.1 (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."

32.2 (222) "……..the Tribunal concluded that, read objectively and in context, Mr Ahmed's email did not impliedly withdraw the offer of a consultancy agreement….."

33. This finding means that the Claimant misinterpreted Sir Masood Ahmed's email. The Tribunal has found that her doing so was at least influenced by her being unsure whether she wanted to continue and her belief that she had become unwelcome.

34. The Tribunal then considered whether, in those circumstances, there was a new cause which broke the chain of causation. In addressing the legal test for this, Mr Cooper took the Tribunal to the judgment of Kerr J in **Rihan v Ernst and Young Global Limited and others [2020] EWHC 901 (QB)**. In paragraph 801 of his judgment Kerr J cited an earlier formulation of the principle by Gross LJ in terms of "an event of such impact that it "obliterates" the wrongdoing of the Defendant." In paragraph 823 Kerr J identified the essential question as being whether the Claimant had acted unreasonably so as to break the chain of causation.

35. The question of unreasonable conduct breaking the chain of causation was considered by the Court of Appeal in the context of a claim in negligence for damages for personal injury in **Spencer v Wincanton Holdings Limited [2009] EWCA Civ 1404**. In paragraph 15 of his judgment, with which Longmore LJ agreed, Sedley LJ said that:

"……..a succession of consequences which in fact and in logic is infinite will be halted by the law when it becomes unfair to let it continue. In relation to tortious liability for personal injury this point is reached when (although not only when) the claimant suffers a further injury which, while it would not have happened without the initial injury, has been in substance brought about by the claimant and not the tortfeasor";

and, quoting in paragraph 20 from earlier authorities (as did Aikens LJ in his judgment):

"……the degree of unreasonable conduct which is required is…….very high".

36. The Tribunal concluded that a "very high" degree of unreasonable conduct would be required to break the chain of causation in the present case. Although the Tribunal has found that the Claimant misinterpreted Sir Masood Ahmed's email, we did not consider that doing so amounted to such conduct in the circumstances. The Tribunal's finding as to what the email meant when considered objectively does not mean that the Claimant's misreading of it was "highly unreasonable". In paragraph 220 of the liability reasons, the Tribunal commented that this had not been an easy issue to resolve. We found that, in circumstances where Sir Masood Ahmed was saying as little as possible, and the Claimant was reading the email in the light of feeling unsure whether she wished to continue with the organisation and that she was unwelcome, it was not highly unreasonable for her to interpret the email as bringing the whole relationship to an end.

37. The Tribunal then turned to the assessment of the loss of earnings flowing from the acts of discrimination. There were several variables to consider, namely

37.1 What the Claimant would have earned had she continued as a Visiting Fellow.

37.2 What chance was there that the Claimant would have been offered, and would have accepted, an employed role.

37.3 What she would have earned had she done so.

37.4 Whether the Claimant had unreasonably failed to mitigate her losses.

37.5 What actual mitigation has occurred and, if there has been an unreasonable failure, what should have occurred.

38. There was a wide difference between the parties as to how these factors should be analysed and assessed, and as to the interplay between them. For reasons of proportionality, the Tribunal will concentrate on its own analysis of and conclusions about the issues, rather than setting out all of the competing arguments advanced by the parties.

39. The Tribunal first considered what the position would have been if the Claimant had continued as a Visiting Fellow (which was possible for one further year, the practice being for Visiting Fellowships not to extend beyond 3 years). Funding was available from the Gates Grant for 0.5 of a full time role (0.5 FTE). The Tribunal found that, had she continued as a Visiting Fellow, the Claimant would have taken up the 0.5 FTE provided by the Gates Grant. She would also have continued with the work in commercial confidentiality project, for which funding had been secured.

40. The Claimant and Mr Plant had discussed aiming for a total of 0.9 FTE for her, finding the remaining 0.4 from other funders. This might have been wholly successful, partly successful, or wholly unsuccessful. If at all successful, it might have applied to some or all of the period covered by the Gates Grant.

41. Ms Dobbie further argued that the Claimant would not have wanted to remain as a consultant without the title of Visiting Fellow (i.e. after one more year). Perhaps more convincingly, Ms Dobbie also argued that the Claimant was already on a trajectory to change her career path and work in the area of sex and gender before the discriminatory acts took place. Ms Dobbie pointed to activities such as beginning to tweet about the subject in summer 2018; seeking in October 2018 to publish an article on the subject with the Respondents elsewhere. After the discriminatory acts, the Claimant became more active in this area. She gave interviews on the subject in May 2019; sought funding for work in the area in November 2019 (at pages 2784-2787); and in October 2020 set up her own organisation, "Sex Matters".

42. Mr Cooper submitted that this was a career-long loss case and that the Tribunal should take a multiplier / multiplicand approach, discounting for uncertainties. The Tribunal considered that the uncertainties and variables were such that this was not realistic. We concluded that the following reasonably reflected the impact of all of these factors:

42.1 Assess what the Claimant would have earned under the 0.5 FTE provided by the Gates grant over the full period of 2 years.

42.2 Make no allowance for the prospect of the additional 0.4 being found, so as to reflect the uncertainties about that and the chance that the Claimant would have left the organisation before the end of the 2-year period, whether because of ceasing to be a Visiting Fellow, or to pursue her work in sex and gender, or for any other reason.

42.3 Allow for any actual mitigation, or failure to mitigate

43. The Tribunal will come to the loss of the chance of an employed role in due course, but at this stage will set out its calculation taking the approach in paragraph 41 above.

44. The funding submission to the Gates foundation showed the Claimant being "charged" at a sterling equivalent of around £140,000 FTE. The Tribunal accepted that this did not mean that the Claimant would have been paid at that rate: it is a familiar that organisations and agencies will charge out their workers at a higher rate than they are paid as there is the need to cover administrative and other costs. The spreadsheet at page 2509 showing salaries in 2019 indicated salary ranges of £77,769 - £139,230 FTE for a grade 6 Associate Fellow and £91,076 - £140,615 for a grade 7 Research or Policy Fellow. The Tribunal considered that these were the bands within which the Claimant's remuneration would have fallen, and that a likely gross figure was around £95,000 FTE. At 0.5 FTE this would give £47,500.

45. The commercial confidentiality project was budgeted to pay the Claimant £13,500 per annum. Her probable gross earnings were therefore £47,500 + £13,500 = £61,000. The Tribunal did not have the information to calculate the

Claimant's precise net earnings from this figure, but took a figure of £45,000 as a reasonable estimate.

46. In the tax year 2019-2020 the Claimant's net earnings from her activities (necessarily other than with the Respondents) were £30,714.04. The Tribunal did not consider that there had been any failure to mitigate her losses. The Claimant had done a considerable amount of work in the context of having been discriminated against"" in a way which became public knowledge. The Tribunal accepted that she had done her best in the circumstances.

47. Taking a round figure of £31,000 for the Claimant's net earnings in 2019-2020, the net loss was £14,000.

48. In 2020-2021 the Claimant's net earnings were sufficiently similar to the prospective earnings with the Respondents, including a probable 4% increase, for the Tribunal to find that (in this particular respect) she had mitigated her losses via her other work.

49. The Tribunal therefore concluded that the Claimant's net loss of earnings over the two years covered by the Gates grant funding was £14,000.

50. The Tribunal then considered the issue as to the chance that, in the absence of the discriminatory element in the decision, the Claimant would have been offered, and would have accepted, an employed role. The starting point for this assessment is the Tribunal's finding at paragraph 281 of the liability reasons that: "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". The relevant comment was that any commitment made to the Claimant "would be limited in time and scope."

51. It is correct, as submitted by Mr Cooper, that the issue of the chance that the Claimant would otherwise have been offered an employment contract was not for determination at the liability stage, and that the Tribunal did not then hear argument on it. The Tribunal's observation, however, reflected its view on the evidence given by Mr Plant and Sir Masood Ahmed and the contemporaneous documents.

52. Neither Mr Plant nor Sir Masood Ahmed gave evidence at the remedies hearing. Although we were told that they were not in the United Kingdom, there was no obvious reason why they could not have been called had the Respondents wished to do that. Ms Mills' evidence on this aspect was of limited value, partly because she joined the Respondents after the relevant events, and partly because, as she accepted, she was speaking from what she had seen in the documents and her professional expertise in HR, rather than personal knowledge of the situation. The Tribunal concluded that it should base its conclusions on this aspect primarily on the evidence at the liability hearing, in the light of the parties' submissions in the present hearing.

53. Ms Dobbie contended that there was no real or substantial chance that the Claimant would have been retained in an employed or any role beyond the end of the Gates grant period in Spring 2021. Mr Cooper's argument was summarised in paragraph 24 of the Schedule of Loss in the following terms:

"….the most likely scenario is that she would have been taken on by CGD as an employee, even if not at the outset of the Gates project then at least by the end of that 2-year project. But even if that did not happen, it is clear that she would have been engaged for the 2 years of that project at a similar level of earnings to an employed Fellow and would thereafter have been in a position to continue her career at that level of security and income; whereas she has in fact been forced to change her career path for one in which her earnings are very much lower and will never recover."

54. The Tribunal has already expressed its conclusions about the position had the Claimant continued as a Visiting Fellow during the lifetime of the Gates grant. We did not consider that it was "likely" that the Claimant would have been taken on as an employee during that time. Our observation in the liability reasons about there being only a relatively small prospect of the Claimant being offered employment as a Senior Fellow was specific to that role, but on further consideration we found that there was a relatively small prospect of the Claimant being offered, and accepting, any employed role. Our reasons for this were as follows:

54.1 Ms Mills relied on a document at pages 2472-2476 showing "job families" within the organisation, with salary levels ranging downwards from level 8. A Senior Fellow / Senior Policy Fellow at level 8 has a leadership role and typically a PhD or equivalent and 10 or more years of experience in policy development. A Research Fellow / Policy Fellow at level 7 typically has a PhD and 6 or more years of experience. An Associate Fellow at level 6 typically has a PhD and 3 or more years of experience.

54.2 The Claimant has a Bachelor's degree. Not having a PhD is not a complete bar to being appointed to any of the "Fellow" level roles: the evidence was that there has been one individual who has been appointed to such a role and who also held a Bachelor's degree. In addition, an exchange of messages at page 631 shows that Ms Ramachandran told the Claimant that she was speaking to Sir Masood Ahmed about the possibility of an employed role "as a research fellow if possible". Nonetheless, the Tribunal considered that not having a PhD or equivalent would have been a significant impediment to the Claimant being employed in a Fellow level role.

54.3 Ms Mills suggested that if the Claimant were to have been offered an employed role, it would have been at level 5, as a Senior Policy Analyst. The Tribunal found it unlikely that that this would have been offered, and even less likely that the Claimant would have accepted such a position. In her oral evidence Ms Mills said that she was not aware of any Visiting Fellow having become a Senior

Policy Analyst, and when it was put to her that the Claimant found the suggestion insulting, she replied that she could understand that.

54.4 The Tribunal also considered that the factors that suggested that the Claimant was likely (although not certain) to change her career trajectory at some point were applicable to this element also.

55. The Tribunal considered that, taking all of the above into account, there was around a 20% chance that, absent the discrimination, the Claimant would have been offered and would have accepted a Research Fellow or Associate Fellow role at some point during or soon after the Gates grant period. Beyond that, there was also the additional (and the Tribunal considered, substantial) prospect that even had this happened, the Claimant would still have moved into her current field of work.

56. The Tribunal concluded that the uncertainties were such that it was not realistic to try to assess this head of loss on a multiplier / multiplicand basis, whether for life with a smaller than 20% chance overall, or for a shorter period using the figure of 20%. The Tribunal considered that another way of looking at the matter was that the discrimination had limited the opportunities available to the Claimant and had precipitated a career change which might well have happened in any event, but not at this particular time. The Tribunal accepted the Claimant's evidence that she had sought roles in the international development field, and had obtained some work, but had found that her opportunities were limited because of the discrimination she had experienced. (The Tribunal agreed with Mr Cooper's submission, in answer to a suggestion put to the Claimant in cross-examination, that it would be for the Respondents to prove that any refusal to engage her was an act of discrimination by those persons, and that they had not established this).

57. Ultimately, the Tribunal concluded that this head of loss should be assessed as a combination of the loss of a chance of employment and a loss of earning capacity.

58. As to quantum, the Tribunal considered that there was no satisfactory arithmetical approach that could be applied, and that it should award a lump sum reflecting all of the possibilities one way or the other, uncertainties as to when the various possibilities might have occurred, and what the financial consequences of those things occurring or not occurring might have been. We concluded that a realistic figure was one which represented approximately one year's net earnings from the Claimant's current work, and awarded £50,000.

Interest

59. The sums awarded therefore are:

59.1 Injury to feelings, including aggravated damages, £27,000.

59.2 Loss of earnings to Spring 2021, £14,000.

59.3 Loss of chance / loss of earning capacity, £50,000.

60. Regulation 2 of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 requires the Tribunal to consider including interest on the sums awarded. The current rate under regulation 3 is 8%. The Regulations continue as follows:

4 Calculation of interest

(1) In this regulation and regulations 5 and 6, "day of calculation" means the day on which the amount of interest is calculated by the Tribunal.
(2) In regulation 6, "mid-point date" means the day which falls half way through the period mentioned in paragraph (3) or, where the number of days in that period is even, the first day of the second half of the period.
(3) The period referred to in paragraph (2) is the period beginning on the date….of the contravention and, in other cases, of the act of discrimination complained of, and ending on the day of calculation.

5 No interest shall be included in respect of any sum awarded for a loss or matter which will occur after the day of calculation……

6 (1) Subject to the following paragraphs of this regulation –

(a) In the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation.
(b) In the case of all other sums……interest shall be for the period beginning on the mid-point date and ending on the day of calculation.

(2) ……..

(3). Where the Tribunal considers that, in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the periods in paragraphs (1) or (2), it may –

(a) Calculate interest, or as the case may be interest on the particular sum, for such different period, or
(b) Calculate interest for such different periods in respect of various sums in the award,
as it considers appropriate in the circumstances, having regard to the provisions of these Regulations.

61. Dealing first with the relevant dates, the Tribunal took the date of the decision not to offer the Claimant an employment contract as being 19 November 2018, when Mr Plant sent his email to Sir Masood Ahmed confirming that this was what the Claimant was to be told. Sir Masood's evidence about when he took the decision about the Visiting Fellowship was "the start of the week beginning February 25": the Tribunal therefore took the date for calculation purposes as 25 February 2019. The Claimant's profile was removed from the website on 8/9 May 2019.

62. The Tribunal did not consider that it was practicable to try to divide the losses as between the different dates for the purposes of calculating interest. We took the pragmatic approach of selecting 25 February 2019 as the date of the act of discrimination.

63. The day of calculation is 14 April 2023. That is a period of 1,144 days. The mid-point date is 573 days from the date of the act of discrimination (the first day of the second half of that period) and so 571 days from the calculation date.

64. Interest on the award for injury to feelings of £27,000 would therefore run for 1,144 days. This would produce the following:

27,000 x 8% = 2,160.
Daily rate, 2,160 divided by 365 = 5.917
5.917 x 1,144 = 6,769.05

65. Turning to the financial losses, the Tribunal considered whether, in principle, interest should run on the sum of £50,000 as in the same way for the "pure" past loss. We concluded that it should, as although it does not reflect a specific past period, it is essentially a loss that has accrued, rather than a specific future loss.

66. The calculation therefore is as follows:

64,000 x 8% = 5,120
Daily rate, 5,120 divided by 365 = 14.027
14.027 x 571 = 8,009.42

67. The total of the above figures is £14,778.47. The Tribunal considered whether awarding interest for these periods, with that result, would cause serious injustice. We concluded that it would not. Although the figure is substantial, and the rate of 8% higher than interest rates in general over the relevant period, in the Tribunal's judgment serious injustice would involve something more than this.

Grossing up

68. The Tribunal agreed with Mr Cooper's submission that its conclusion as to the Claimant's status was based on the Equality Act definition of employment, meaning that, on the face of the matter, she was not in employment within the meaning of section 4 of the Income Tax (Earnings and Pensions) Act 2003. This would have the consequence that none of the compensation would be taxable, and grossing up would not therefore be required.

69. We also agreed that the appropriate course in the circumstances would be to record that, if HMRC or another Tribunal should take the view or find that any part of the award is taxable, the Tribunal would consider an application for an extension of time for a reconsideration of its decision not to gross up the award.

Apportionment

70. The total amount payable to the Claimant is:

27,000.00
14,000.00
50,000.00
14,778.47

£ 105,778.47

71. The Tribunal agreed with Mr Cooper's submission that apportionment was relevant only to the element of injury to feelings arising from the victimisation, as Sir Masood Ahmed is not personally liable for that. The Tribunal assessed that at £5,000 of the total of £25,000, regarding the failure to offer an employed role and the failure to renew the Visiting Fellowship as overall of greater significance to the Claimant's feelings. Interest on the £5,000 would be:

5,000 x 8% = 400
Daily rate, divide by 365 = 1.095
1,144 days = 1,252,68

72. In order to calculate Sir Masood Ahmed's personal liability (jointly and severally with the other Respondents, it is therefore necessary to deduct £6,152.68 from the total of £105,778.47, giving £99,625.79.

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Employment Judge Glennie

Dated: ……30 June 2023……...……..

Judgment sent to the parties on:

30/06/2023

…….....
For the Tribunal Office