



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MORTON
Mr M Marenda
Ms G Mitchell

BETWEEN:

Ms M Newman

Claimant

AND

Commissioner of Police of the Metropolis

Respondent

ON: 10-14, 17, 24 and 25 March 2025 and 3 and 4 April and 19 May 2025 in
Chambers

Appearances:

For the Claimant: Ms N Cunningham, Counsel
Mr W Young, Counsel

For the Respondent: Ms A McColgan KC, Counsel

Judgment

It is the unanimous judgment of the Tribunal that the claimant's claims of:

1. direct discrimination because of religion or belief under s13 Equality Act 2010 ('Equality Act'); and
2. harassment related to religion or belief under s26 Equality Act;

are not well founded. Both claims are therefore dismissed.

Reasons

Introduction and preliminary matters

1. By a claim form presented on 7 September 2023 the claimant brought claims against the respondent of direct discrimination and harassment under ss 13 and 26 Equality Act respectively arising out of certain events taking place during the course of her employment, which is ongoing. The respondent resisted the claims.
2. At the final hearing both parties were represented by counsel throughout. There was a bundle of documents consisting of 1056 pages of which we read those to which we were directed by the parties. Partly as a consequence of the Tribunal's decision to include in the hearing evidence of certain matters that the claimant had not specifically referred to in the pleadings (the "Additional Matters"), various documents were handed up during the course of the hearing and there was eventually a supplementary bundle of 275 pages. References in this judgment to page numbers are references to page numbers in the main bundle. References to page numbers with the prefix "S" are to pages in the supplementary bundle.
3. In referring to the witnesses in these reasons the Tribunal has used the designations set out in the witness statements (or, in ACI Lockyear's case, the bundle of documents), although it is aware that some of these designations may have changed since those statements were written. The claimant gave evidence for herself and called one witness, DCI Charlotte Cadden, the National Strategic Bridger Lead, at the time seconded from Greater Manchester Police to the respondent. The respondent called five witnesses. Two additional witnesses were called as a consequence of the inclusion of reference in the claimant's witness statement of the Additional Matters. The respondent's witnesses were Christopher Moore, Intelligence Analyst and Trans Lead on the LGBT+ Network committee, Sergeant Keith Eccott, who holds a position on attachment in Frontline Policing Headquarters at New Scotland Yard ("NSY"), Acting Chief Superintendent Brigid Beehag-Fisher, who at the time of the matters giving rise to the claims was a Superintendent in Crime Prevention, Inclusion and Engagement ("CPIE"), Acting Chief Inspector Nick Lockyear of the Directorate of Professional Standards, and Detective Chief Superintendent Daniel Smith, lead for Interventions, Delivery and Engagement for the Culture, Diversity and Engagement Directorate ("CD&I"). This is a new Directorate which was set up in April 2024.
4. Prior to the public hearing there were several case management hearings held in private, beginning with a hearing dealing with a specific disclosure application on 17 February 2025 before Employment Judge Anderson. There was then a private hearing before this panel on 10 March dealing with an application by the respondent under rule 49 of the Employment Tribunal Rules 2024, at which representations were made by the parties and by two third parties, Tribunal Tweets and Sex Matters both of whom wished to be able to report on the proceedings during the course of the public hearing. Orders were made in respect of certain redactions to witness evidence and documents and agreement was reached in relation to a matter pertaining to one of the witnesses.
5. On the morning of 11 March there was a second hearing in private before the panel

to deal with an application by the respondent to exclude the Additional Matters set out in the claimant's evidence on the basis that they contained material that was irrelevant to the issues in the case. It was unfortunate that this issue arose so later in the day, but this appeared to be a consequence of the very late exchange of witness statements. Having heard submissions, the Tribunal was persuaded that the evidence in question was potentially relevant and ordered that it should be included. This entailed the calling of additional witnesses – Brigid Beehag-Fisher and Keith Eccott, whom the respondent had not envisaged calling until that day. It was to the credit of both witnesses that they attended the hearing at such short notice and with very little time to prepare and were able to give clear and helpful evidence to the Tribunal. The requirement to call additional witnesses and the need to deal with ancillary applications at the start of the final hearing had the effect of lengthening the hearing, which had originally been listed for five days. Fortunately, the panel and the parties were all able to make themselves available for additional days on 17, 24 and 25 March and the panel met in chambers on 3 and 4 April and 19 May.

6. The hearing took place in person but there were a number of remote observers, including representatives from Tribunal Tweets. Hence the hearing became in certain respects a hybrid public hearing. Whilst the hearing was in progress the witness statements, bundle and, on the final day of the hearing, submissions and authorities, were made available to remote observers via a link. Observers who attended in person were given access to these documents by means of hard copies at the back of the room. During the course of the public hearing the Tribunal received a number of applications from third parties for access to documents outside sitting hours including applications for copies of documents to download. The Tribunal received representations on these matters which it considered at a further short hearing in private at the start of the sixth day. The parties were not in agreement about what access should be given. The Tribunal gave a decision at a further short private hearing at the start of the seventh day that it was not prepared to allow the already extended hearing of the merits of the claimant's claims to be delayed any further and that any further consideration of whether additional access should be given to documents could and should wait until after judgment had been given in the case. As well as preventing further delay, this approach would make it clearer which documents might be necessary for the purpose of understanding how the Tribunal had reached its decision and thus whether their provision would further the principle of open justice. During the course of the hearing itself open justice was being observed by the provision of documents and witness statements in hard copy for those attending the hearing in person and via the link for those attending remotely. The link was updated during the course of the hearing to ensure additional documents were included.

7. The presence of a considerable number of online observers created difficulties at times, particularly during the course of PS Keith Eccott's evidence, when an observer interrupted the hearing by unmuting in circumstances where a great deal of background noise was audible. This person was not responsive to the Judge's request that they mute themselves and eventually had to be removed from the hearing. The Tribunal was satisfied that despite this potentially upsetting interruption, PS Eccott was able to give his evidence clearly and answer the questions that were put to him.

The issues in the case

8. The parties had agreed a list of issues and with the exception of one small, agreed amendment there was no suggestion that this list was incomplete or ought to be amended. However, by the time the parties made their submissions some of the issues had fallen away or were no longer pursued. We make it clear in these reasons where that was the case. The final agreed list for the hearing on liability was as follows.

1. Does C hold a protected "gender-critical" belief?
2. Did R's Women's Network share with R's officers and staff a Teams link to a live-streamed event to mark Trans Day of Visibility (TDOV) on 31 March 2023, encouraging wide attendance?
3. Did C receive the same invitation from a Superintendent from her Borough Command Unit?
4. Was the event widely marketed to officers and staff as an event put on by R?
5. What was the nature of the TDOV event? In particular:
 - a. Was attendance at the event compulsory?
 - b. Was it a training event which the Claimant was encouraged to attend in the course of her duties?
 - c. In what capacity was the organiser of the event operating in relation to its organisation;
 - d. In what capacity were speakers at the event speaking?
 - e. Was there any official record of the Claimant's attendance at the event?
 - f. Did the Claimant attend the event in the course of her duties?
 - g. Was the Claimant's attendance at the event regarded as falling within her working time?
 - h. Was the Claimant free to leave the event at any point?
6. When C logged on, were there about 45 people in attendance online?
7. Was the first talk at the event one given by Eva Echo called "Challenging the Narrative why it's important to challenge misinformation to ensure progress"?
8. Is Echo known as a trans woman and a trans rights activist with views hostile to gender-critical people?
9. Is the summary of Echo's talk at paragraphs 10-13 of C's particulars of claim accurate?
10. Did C find Echo's talk shocking and upsetting?
11. If so, was this reasonable in all the circumstances?

12. Was Echo's talk followed by applause and thanks as described at 115?
13. Did members of the in-person audience at New Scotland Yard hiss audibly in response to mention of Posie Parker (real name Kellie-Jay Keen)?
14. What was said by Saba Ali at the event?
15. Did the positive reception colleagues had given Echo and other speakers at the TDOV event make C feel fearful for herself as a gender-critical woman serving with R?
16. If so, was this reasonable in all the circumstances?
17. Was R's conduct in the respects set out at paragraphs 36 (a) - (d) of the grounds of claim unwanted by C?

[36 a. booked and invited a speaker at the Trans Day of Visibility event on 31 March 2023 who was known as a political activist and known for hostile views towards gender critical people and therefore likely to express those views at the event;

b. Issued a universal invitation and encouragement to officers and staff to attend knowing gender critical people were likely to be amongst the attendees;

c. The Respondent's officers applauded and provided positive feedback following Eva Echo's talk and none of the officers present challenged the speaker or sought to curtail the talk; and

d. The audience hissed when the speaker Stephanie Robinson mentioned Posie Parker, a prominent gender-critical activist, and no officers intervened to stop or challenge this.]

18. If yes, did that conduct have the purpose of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
19. If the answer to §17 is 'yes' and the answer to §18 is 'no', did the relevant conduct have the effect of violating the Claimant's dignity, or subjecting her to an intimidating, hostile, degrading, humiliating or offensive environment, taking into account:
 - a. the Claimant's perception;
 - b. the other circumstances of the case;
 - c. whether it is reasonable for the conduct to have that effect?
20. Is the Respondent liable for the relevant conduct, in particular, for the conduct of external speakers? [This issue had fallen away by the time of the claimant's submissions but is nevertheless addressed briefly in these reasons].

21. In the manner in which it treated C's complaint about TDOV, did R treat C less favourably than it would have treated an officer without C's protected belief, or with a different protected belief, who made a comparable complaint?

22. In the event that any part of C's claim is proved in respect of the actions of any individual officer(s) and or staff, did R take all reasonable steps to prevent that officer or those officers from doing that thing, or from doing anything of that description?

Findings of fact

9. There were relatively few disputes of fact in the case. Our findings below are based on the witness and documentary evidence with which we were presented and where there was a dispute of fact we have reached a decision on a balance of probabilities. We have also made findings that are limited to the issues that we were asked to determine. We heard a great deal of evidence that was not in fact relevant to those issues, and have not made findings where it is not necessary for us to do so. We say more about that in relation to the submissions we heard and in our conclusions about why we considered that to be the right approach.

10. We also wish to record that all of the witnesses gave evidence that appeared to the Tribunal to be thoughtful and truthful and that they did so straightforwardly and in a dignified way, which was of great assistance to the Tribunal in considering and resolving the difficult questions raised by the claims.

11. The claimant is a Detective Constable with the respondent, based in the Child Abuse Investigation Team at Croydon Custody Centre. She joined the respondent on 14 March 2022 and at the time of the matters giving rise to her claims she was still a Trainee Detective Constable and therefore in a very junior position.

12. The claimant's claims arise from her beliefs. She describes herself as a holding gender critical beliefs, which the Tribunal notes at the outset are protected beliefs for the purposes of s10 Equality Act following the decision of the Employment Appeal Tribunal in *Forstater v CGD Europe & Ors* UKEAT/0105/20. The claimant's beliefs were set out at paragraph 4 of her particulars of claim and there is no need to recite them in detail as the respondent did not seek to challenge the genuineness of the claimant's beliefs and did not dispute that her beliefs afford her protection from discrimination under the provisions of the Equality Act on which she relies. In summary, the claimant believes that biological sex is material, important and immutable and not to be conflated with gender identity. The respondent submitted that some gender critical beliefs may fall outside the protection of the Equality Act, but it was not the respondent's case that any of the claimant's beliefs fell into that category.

13. Soon after joining the respondent the claimant attended an "awareness" session delivered by PS Eccott as part of the onboarding of new recruits. This event, which took place on 9 June 2022, was not referred to in the claimant's particulars of claim and does not feature in the agreed list of issues. At the start of the hearing the Tribunal was persuaded that it had potential probative value in the claimant's direct

discrimination claim and that it might also have a bearing on remedy if the claimant were to succeed in any of her claims. We permitted the evidence to be included on that basis. In her witness statement the claimant refers to certain comments that PS Eccott made during the course of the training. She made a contemporaneous note of the event by means of an email to herself, on the same day at page 200. In that note she records "Sgt Eccott also told us that TERF - "Trans Exclusionary Radical Feminist" - is a name given to a group of lesbians who claim that transgender women who have sex with women without disclosing their sex have committed rape. He said that "they should check their legislation"". The claimant did not agree with the point of view being expressed and considered that the statement evinced hostility to someone holding her gender critical beliefs. The same day she also sent a strongly worded message to a WhatsApp group of like-minded women called the "Surrey Resisters", reporting on the remark and various other comments that she considered to have been misogynistic (S156).

14. In his evidence to the Tribunal PS Eccott described the purpose of the event as follows: "My role in these sessions was to facilitate discussion around the historical context of policing the LGBT+ community in London and develop awareness on how legislation and policing has affected tensions in the LGBT+ community and the relationship they have with the Police. To further then foster tolerance, acceptance and nurture empathy for the officers when they would then go out and police that section of the community." The context of the remark was thus a session about the relationship between the police and the LGBT+ community and about the kinds of hostile, insulting and derogatory speech that new police recruits were likely to encounter in the course of their duties. PS Eccott denied making the statement reported by the claimant and said that he had been reporting a belief held by others. It was clear from the claimant's evidence that she understood him to have said it as if it was his own position on the issue. In his evidence PS Eccott said that it is improbable that he would have made such a comment as that would have made him appear transphobic. This puzzled the Tribunal, as it seemed clear that the comment was broadly supportive of the trans perspective rather than critical of it. On balance we considered that PS Eccott made the remark as reported by the claimant, but we concluded from the evidence PS Eccott gave that he did not at the time he did so, have a clear grasp of the two perspectives in issue and why they are in tension with each other, or if he did, he made the remark without thought to how it might be perceived by someone with the claimant's views.

15. The claimant does not rely on the incident as forming part of her claim, but includes it as an example of something being said that indicated that there was hostility to gender critical beliefs amongst her colleagues. She also referred to various other comments that she considered to be misogynistic. Those additional remarks seemed to the Tribunal to have informed the claimant's response to the specific comment about "TERFs" and she made extensive reference to misogyny in her contemporaneous messages to the Surrey Resisters (S156-159). However, in the document at page 200 the claimant went on to say far more about why she found the sentiment about "TERFs" to be objectionable, indicating that it was very much on her mind at the time. It was clear from the evidence that the claimant felt that her perspective as a woman with gender critical beliefs had been treated dismissively and disrespectfully at the awareness session. Whilst the focus of session had been the LGBT+ community, PS Eccott's seeming lack of awareness of the meaning of

the remark attributed to him, which became apparent during his evidence, gives credence to the fact that the claimant would have experienced the session as dismissive of and potentially hostile to her views.

16. The claimant's claim to the tribunal arose from her attendance online at a "Trans Day of Visibility ("TDOV")" event, which took place both online and in person in a room at New Scotland Yard on 31 March 2023. The summary of the event in the claimant's particulars of claim was elaborated on in the respondent's grounds of resistance. This account was largely accepted by the claimant as an accurate description of the event and the manner in which it was organised and run. We also heard evidence about the setting up, format and content of the event from the claimant, Christopher Moore and Charlotte Cadden and were shown a number of documents that confirmed these accounts, in particular the advertisement at page 122, which set out the agenda. The respondent described the event as having been advertised as a community event, at which speakers would be sharing their lived experience as members of the trans and non-binary community. It was also advertised as being inclusive in nature, and open to all to attend and learn more about trans experiences. The Q&A section of the event was an opportunity to ask questions to find out more about the trans community. The invitation was mailed by Christopher Moore, the Trans Lead in the LGBT+ Network Staff Support Association ("SSA") to the LGBT+ Network, MO2, SSCL (external HR providers), LGBTI Network Police Scotland, Wales Police, BTP, and College of Policing and to a handful of contacts in various teams within the respondent, who were asked to share it with anyone who might be interested.

17. In describing the event to the Women's Network Christopher Moore said, "The event isn't just for the Trans and Non-Binary community; everyone is welcome to join regardless of their background. Talks will include discussions around allies, trans families, and building bridges with communities where trust can be difficult to obtain, so there will absolutely be something useful for everyone whether you are transgender, you know someone who is, or even if you're not sure you've ever met a trans person face to face before". The timing of the event was in part a response to the Baroness Casey Review: *"An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service"* (the "Casey Review") and the perceived absence of any reference to issues relevant to the trans community in the report that followed the review. As to the impact of the event on those holding gender critical beliefs, he said "I did not consider whether or not anyone with gender critical beliefs would attend the event and so the event was not planned with them in mind. This meant that I did not do anything specific to actively support or contradict gender critical beliefs. However, individuals with gender critical beliefs were certainly welcome to join the event. As stated in the invite for the event – all were welcome to attend". He also said during his evidence, when questioned about whether he had carried out checks on the speakers and their views whilst arranging the event that there had been no policy requiring him to do so and he was not aware that others had done that for other events so this did not occur to him. He said "I certainly don't have any feelings of active hatred to gender critical people and I believe anyone has same rights to safety. I am not motivated by hostility to gender critical beliefs. I did not mind them attending, but did not expect them to be and the event was not planned with them in mind in a positive or negative way".

18. With reference to the list of issues (issue 4) and whether this was an event “put on” by the respondent, we found that the answer was somewhat nuanced. The event was created and “put on” by the LGBT+ SSA. The claimant did not dispute that the role of SSAs is to:

- a. Provide a safe space for discussion of issues;
- b. Provide a source of support for individual staff who may be facing challenges at work;
- c. including signposting to the appropriate support;
- d. Raise the awareness of issues that affect people who share the protected characteristics;
- e. Provide advice, guidance and insight in relation to emerging policies, equality impact assessments and stakeholder group discussions;
- f. Support the professional development of staff who share the protected characteristic;
- g. Recognise intersectionality and engage across networks to ensure coordination, effectiveness and reduce duplication;
- h. Support the police service to deliver fair and equitable service to all communities.

19. The evidence we heard about the operation of SSAs from Christopher Moore and DCS Smith showed that at the time the TDOV was organised SSAs had considerable autonomy in putting events together and they did not operate to a set of guidelines or with oversight from senior officers. DCS Smith told the Tribunal that it was not necessarily the case at the time that every staff association event was fully endorsed, whilst more recently the respondent has introduced Informed Assessment Guidelines and a requirement for greater scrutiny of the policing purpose of events of this nature. We considered that to be a credible position, consistent with the remainder of the evidence that we heard about the TDOV. We did not hear evidence about other events and did not need to draw any wider conclusions in order to address the issues in this case. With regard to the TDOV itself, we found that the Christopher Moore was at the time able to organise the event and speakers without significant oversight to the extent that it would not be accurate to describe the event as having been “put on” by the respondent as distinct from the SSA, which had a considerable amount of autonomy.

20. We also find however that there was a clear measure of support for the event, as shown by the presence of some senior officers at the respondent and by the fact that it took place in a room at New Scotland Yard, thus in a central and prominent location, that it was widely advertised across the respondent and certain partner organisations and that certain attendants are likely to have been attending during working time. Whilst the precise nature of the agenda and choice of speakers and content was left to the discretion of the SSA, the event was facilitated by the respondent and the presence of senior members of staff gave credence to it and was indicative of support. From the perspective of liability under s 109 Equality Act, had there been any breach of the Equality Act by the respondent’s employees or officers in the manner in which the TDOV had been organised or run, the respondent would have been liable.

21. As regards issue 5, we find as the following facts:

- a. the event came to the claimant’s attention via the Women’s Network

- (which was also publicising events on neurodiversity (page 277));
- b. she also learned of it via a Superintendent in her Borough Command Unit (page 290);
 - c. attendance at the event was not compulsory as was evident from the content of the invitation. The purpose of the event was primarily educational, but attendance was voluntary;
 - d. the claimant did not attend the event in the course of her duties as on her own evidence she logged on from home before work, was getting ready for work whilst she was listening and logged off when it was time for her to leave for work;
 - e. the claimant's attendance at the event was not regarded as falling within her working time for the same reasons;
 - f. the event was not a training or similar event which the claimant was encouraged to attend in the course of her duties. The Tribunal briefly hesitated over this conclusion, but decided that although the event was widely advertised, there was no evidence that anyone in authority was specifically promoting it or encouraging particular individuals to participate in the sense that it formed part of formal police training. It was an educational event at which attendance was voluntary for those who might be interested in the subject matter, as the claimant indeed was as she confirmed in her evidence;
 - g. Christopher Moore was operating in his capacity as Trans Lead in the LGBT+ Network SSA in organising the event. The claimant did not dispute this;
 - h. there was no official record of the attendance of the claimant or anyone else at the event, which was captured only on the Teams attendance report. This was clear from the evidence and it was put to the respondent by the claimant that it was regrettable that as a result of the manner in which her complaint about the event was dealt with these records were not preserved;
 - i. as summarised by the respondent in its grounds of response, the claimant was free to leave the event at any point and could (and did) do this by logging off. A number of people joined and left the event at different times (sometimes multiple times) and the invitation included the agenda so that people could join to listen to a particular speaker if they wished to, and then log off afterwards. Not all in-person attendees were able to remain for the entire event. No comment was made about people leaving (whether in-person or virtually) and there was no risk of awkwardness or embarrassment for anyone who wished to leave the event. The claimant did not in fact dispute this account of the event and the Tribunal found it to be consistent with the way in which the event was advertised and with the fact that the claimant had been able to log in from home without any concern that she would need to leave before the end;
 - j. there were about 45 people logged on online when the claimant joined. There were approximately 30-35 people in the room itself – which was the capacity of the room in question (issue 6).

22. The Tribunal was also of the view that the speakers were external speakers and not speaking on behalf of the respondent. It was clear that two of the speakers in

particular, Eva Echo and Saba Ali, were regular participants in events and that they were reimbursed for their expenses and to varying degrees remunerated. Christopher Moore told the Tribunal that Eva Echo “was a member of the Trans and Non-Binary Forum. I was aware that Eva was involved with the MPS [Metropolitan Police Service] in other areas as well, believing her to be a vetted member of the Learning and Development Community Facilitators, so I felt comfortable that it would be appropriate for Eva to attend an MPS event. In addition, I also believed that Eva had both attended and participated in MPS events previously”. The claimant suggested that Eva Echo and Saba Ali were so frequently engaged to speak that they had ceased to be truly independent of the respondent and in the course of the grievance the claimant later raised she suggested that Eva Echo was a volunteer for the respondent. The Tribunal did not find on the basis of the evidence presented to us that Eva Echo was anything other than an independent person who engaged with the respondent in a number of different ways, but not to an extent that would render the respondent liable under s109 Equality Act. We found that Eva Echo was engaged in the expectation that they would express their own views and indeed that was largely the point of engaging them. ACS Beehag-Fisher, DCS Smith and ACI Lockyear gave evidence of the need of the respondent to engage with all sections of the community it polices and to seek to understand a variety of perspectives, some of which would be challenging, or not widely held. All the respondent’s witnesses said that a range of views would be tolerated at events such as the TDOV, provided that they did not cross the boundary into speech that would be unlawful. They all said that what might be unacceptable in a police officer or an individual employed by the respondent, might be tolerated in external speakers, who were not bound to uphold police values (a summary of which appear in Schedule 2 Regulation 5 of the Police (Conduct) Regulations 2020) or comply with norms and standards applicable to police officers and the respondent’s civilian staff. It appeared from DCS Smith’s evidence that a more detailed policy has now evolved in respect of the expectations of external speakers, but at the time of the events giving rise to the claimant’s complaints, they were given considerable latitude in what they said and how they said it.

23. The relative latitude seemingly afforded to external speakers at the time was evident from Eva Echo’s talk at the TDOV, which was entitled “Challenging the Narrative – why it’s important to challenge misinformation to ensure progress” (issue 7). The parties agreed that Eva Echo said the following (issue 9):

- a. that those who oppose or raise concerns about transwomen's access to female sports and spaces are motivated by hate with transwomen being an easy target;
- b. that those same people showed "cult-like behaviour" of being "obsessed" and of having "twisted, warped views";
- c. that without challenge from trans people and their allies, "they will get away with it";
- d. that the concerns of opponents of trans people's rights were a "manufactured moral panic";
- e. that "These so-called saviours of women's rights - where were they when Roe v Wade was overturned?", referring to a recent US Supreme Court decision to overrule a case which made abortion a constitutional right;
- f. that tackling misinformation would "save" people, saying "Everyone needs to

step up and tackle misinformation," and that the audience should contact their MPs and "if you're unfortunate enough to have a Tory as an MP you can hound them";

g. advised officers to tackle concerns about women's safety by "reframing the story". suggesting that they ask those concerned: Did Sarah Everard's killer have a GRC [Gender Recognition Certificate]"? and suggested that: "If they say trans women are sexual predators - ask why do you think that? Where are the stats? You quickly find there are no stats";

h. "Testosterone is more powerful than oestrogen. Any cisgender man can go into women's toilets and say don't worry I'm a transman and get away with it - they can't have it both ways";

i. "They see men as trying to invade women's spaces - but toxic masculinity will not allow a man to change gender just to win a swimming race - it's not going to work";

j. the Government had an "anti-woke" agenda which was "not dissimilar to s28" [a reference to a former Conservative Government policy forbidding publicly funded institutions from promoting homosexuality].

24. The Tribunal was asked to determine whether Eva Echo was known as a trans woman and trans rights activist with views hostile to gender critical people (issue 8). That is an issue in three parts. It was not in dispute that Eva Echo was a trans woman. The Tribunal did not however consider that it was equipped to make an assessment of whether Eva Echo was a trans rights activist, or indeed what the specific meaning of "activist" is in the context we were dealing with. What we could determine on the basis of the witness evidence and documents was that Eva Echo wrote and spoke extensively and in strong terms about issues that concerned the trans community and in critical terms about opposing views. The bundle contained a number of documents in which Eva Echo expressed views and made statements that those holding gender critical views such as the claimant, would be likely to disagree with. The words cited by the claimant and recorded at paragraph 23(b) above in particular could be regarded as hostile to the people holding those views and not just the views themselves. The Tribunal was shown a number of other documents in support of the proposition that Eva Echo held views hostile to gender critical people. Some of these did seem to the Tribunal to convey hostility to those holding gender critical views - the online exchange of comments at S27-29 was such an example. Others would be more fairly described as taking issue with an argument or point of view and not as attacking the holder of those views as distinct from the views themselves or the way that those views were represented in the media (for example pages 211 and 263). On balance however there was enough material presented to us to make it probable that anyone informed about the terms of the debate between those supporting trans people and those holding gender critical views, would understand Eva Echo to be a person who was capable of strong criticism of those with gender critical views themselves.

25. It was not disputed that the event as a whole received a positive response. The respondent did not accept that Eva Echo's talk was specifically well received or applauded, but despite the respondent's contention that the evidence of the response to the event was limited and incomplete, we accepted the claimant's evidence that the talk itself was applauded, or that there were other indications that it was well received. The Tribunal was shown a number of pages of positive

comments (pages 315-321) which appeared to be directed at the event as a whole and the speakers as a group and none of which identified Eva Echo for particular praise. But it clearly could not be deduced from this evidence that everyone in attendance wholeheartedly approved of, condoned or endorsed everything they heard and all the views that were expressed. There is likely to be a wide range of possible responses amongst the members of an audience at such an event and individual speakers may be applauded out of courtesy, even if there is substantial disagreement with what they say by some of the audience. The number of participants at the event was very small compared to the size of the respondent's workforce of 55,000 people. The number of those who commented positively was even smaller. We considered that it would not be possible to draw anything other than limited conclusions about individual attitudes to the speakers from the fact that the event received some positive comment and endorsement on the day, still less any definite conclusions about the attitude of the respondent as an institution.

26. We find that the Claimant herself was disturbed by what she heard (issue 10). We return to the question of whether it was reasonable for her to have felt as she did (issue 11). Her contemporaneous notes, subsequently annotated, were at pages 306-3 and contain material about more than one of the speakers (including Saba Ali). They are consistent with the summary in paragraph 23. The most detailed notes were about Eva Echo's talk.

27. The claimant's notes also record that a mention of Posie Parker, also known as Kellie-Jay Keen, elicited a negative response from the audience which the claimant recorded as hissing. DCI Charlotte Cadden recorded the response as "booing". The claimant also sent a message to a WhatsApp group of which she is a member called the "Surrey Resisters" saying "The Trans meeting today was not good. Posie Parker's name was hissed. Wondering what to do about it".

28. The Tribunal was satisfied that there had been some form of negative response to the mention of Posie Parker (issue 13). As to the reason for that negative response, we did not hear any definitive evidence as to why those present reacted as they did. It might have been Posie Parker's reputation as a gender critical activist, or it might have been something else such as her views on other matters, some of which were reputed to be highly controversial. The claimant agreed in cross examination that Posie Parker was a controversial figure. Christopher Moore described her as a very divisive figure and "famously anti-trans". He said however that he had been preoccupied with preparing to deliver his own talk and had not registered booing or hissing. We did not hear evidence directly from anyone who reacted adversely to a mention of Posie Parker's name and are therefore unable to draw a firm conclusion as to why there had been such a reaction. The claimant assumed that it was a response to Posie Parker's gender critical views and on a balance of probabilities, given the nature of the event we consider that to have been the more likely explanation. The claimant was also dismayed that it indicated what she considered to be an insouciant attitude to violence against women and girls (witness statement paragraph 44). As we have observed in paragraph 25 however, the conclusions that can be drawn from this reaction about the attitudes and disposition of any individual participant are necessarily limited, still more so in considering the respondent as an institution.

29. The list of issues required the Tribunal to make findings as to what was said by Saba Ali at the TDOV (issue 14), although we queried the extent to which this was relevant to the claimant's complaints as it did not seem to be a central concern or otherwise feature in the list of issues. For the sake of completeness, we address it briefly here. Saba Ali's talk was summarised by Charlotte Cadden in largely unchallenged evidence and by the claimant in her annotations to her contemporaneous notes, where she wrote "Saba Ali. Talked about the need to be allies to trans people and the Conversion Therapy Bill". The remainder of her recorded comments in that section of her notes referred to audience members at the event. Charlotte Cadden gave a more detailed account of what Saba Ali said, but the Tribunal was concerned with the claimant's reaction, not that of other individuals. The claimant's evidence in chief on Saba Ali was as follows; "I only listened partially to the other speakers' talks as I was showering, dressing and preparing for the day ahead.... Saba Ali did not speak in the same unpleasant terms as the previous speaker but presented controversial opinion as established fact and encouraged political activism. Saba Ali — who identified herself as a straight woman — urged the audience to sign a petition supporting the trans activist position on conversion therapy legislation." In cross examination the claimant confirmed that she was not in fact complaining about the content of Saba Ali's speech, but was focused on what Eva Echo had said and on the reaction to the mention of Posie Parker. The Tribunal therefore concluded there was no need for it to consider Saba Ali's contribution any further.

30. Issue 15 required the Tribunal to determine whether the positive reception colleagues had given Eva Echo and other speakers at the TDOV made the claimant fearful for herself as a gender critical woman serving with the respondent. The claimant's witness statement describes her reaction to the event in the following terms:

"I felt like an incognito Daniel in the lion's den. I struggled to square the MPS' demands that officers challenge comments in private WhatsApp conversations with the unchallenged public endorsement of hostility towards GC [gender critical] people I had witnessed. Given the applause and positive comments in the chat it seemed likely that the audience did not recognise what was said as discriminatory, perhaps because they were not aware of an alternative view or perhaps the speech accorded with their existing views. Either that, or they were acting with impunity. This was especially disconcerting as there were personnel from hate crime policy, HR, legal and CPIE present. I thought these staff would likely be aware of the Forstater ruling and of the societal divide over these issues.

I also assumed intelligence staff present — such as Kit Moore — would likely be aware of the risk of public disorder and the need to calm rather than inflame community tensions. I felt that the event, and in particular painting GC women as a threat to trans safety, increased the risk to anyone openly GC. It was extraordinary to me that no-one else seemed to see that.

I was upset, however my overwhelming feeling was of isolation and dread at the knowledge that it was down to me — a trainee detective on probation, with no standing or support network in the MPS — to do something about what had happened. Out of 54,000 people in the MPS I felt there was no-one else I could speak to about this."

31. In cross examination the claimant was asked about her decision to attend the event. She said that she had signed up for it because she was interested in the area. When it was put to her that she had strong views on the issues likely to be discussed

and she might expect the views of those attending the event to be very different she agreed that that was fair. She did not look up the speakers beforehand and when it was put to her that as someone with a journalistic background who had previously been “burnt” by writing on the issue, this seemed almost incredible, the exchange was as follows:

A I had just started working on Croydon CID [January 2023] which was the biggest shock to the system ever – it felt like a war zone. Going to hospitals to deal with people wounded for no reasons. That experience was dominating my head. I can see why I would not have looked them up. This was a side issue – it was no longer a focus or interest. Knife crime was my main focus as I was seeing things I had no idea about. A really shocking situation I was in.

Q It must have been emotionally draining

A I wouldn't say that. It was shocking. I felt that my eyes had been opened by what was going on in Croydon. I was also learning what it meant to be a police officer. Gender critical issues remained an interest but not the major interest, not dominating my thoughts at the time.

Q S160 The WhatsApp from you to Surrey Resistance Group on 1 April 2023. It looks as though there had been other correspondence about it.

A It looks as though that was likely.

Q So you were still sufficiently concerned to be in contact with the group and go to the meeting

A I guess.

32. She was also asked about her participation in the event:

Q You could have removed yourself at any time

A Correct

Q I suggest you stayed where you were because you felt you strongly disapproved of what you were hearing and strongly disapproved about the takeover of the MPS by trans ideology and wanted to understand the position

A No I wasn't thinking of this - I was reacting to what I heard

Q You felt in a minority

A I felt isolated yes

Q That can happen when you hold different views from others and those other views are being expressed.

A But this wasn't a normal situation this was an event run by my employer and I was hearing very unpleasant things about people who share my views to applause and no challenge.

Q You were online, not in the room. Do you say you experienced it differently because it was at New Scotland Yard?

A Yes that played a part – it's the headquarters and what you associate with the important things. I work out of a small station in Croydon

Q You weren't targeted in this event

A Not personally as an individual

Q Not attacked

A No

Q There was no criticism of you as an individual

A Agreed yes

Q You held views that you thought were unpopular and chose not to express them

A I feared the consequences

Q You would not expect an atheist to feel comfortable in a room full of Moslems

A Not if they were being slagged off

33. In relation to issue 15 the Tribunal therefore concluded that the claimant did feel somewhat fearful that if she spoke out about her views at work, she might receive a hostile response. She based this on the positive response she had heard expressed

for what Eva Echo had said and the hissing (or booing) of Posie Parker.

34. As to whether this was a reasonable response (issue 16), the Tribunal discussed this at some length and our findings on it are set out in our conclusions.

35. Pausing there, to summarise our findings on the claimant's actual complaint of harassment, the list of issues identified four aspects of the respondent's conduct as amounting to harassment within s26 Equality Act. She complains that the respondent:

a. Booked and invited a speaker at the Trans Day of Visibility event on 31 March 2023 who was known as a political activist and known for hostile views towards gender critical people and therefore likely to express those views at the event;

b. Issued a universal invitation and encouragement to officers and staff to attend knowing gender critical people were likely to be amongst the attendees;

c. The Respondent's officers applauded and provided positive feedback following Eva Echo's talk and none of the officers present challenged the speaker or sought to curtail the talk; and

d. The audience hissed when the speaker Stephanie Robinson mentioned Posie Parker, a prominent gender-critical activist, and no officers intervened to stop or challenge this.

36. Taking each of these in turn, we find that the respondent booked and invited a speaker at the Trans Day of Visibility event on 31 March 2023 who was known for strong and at times hostile views towards the beliefs of gender critical people which at times were expressed as hostility to the holders of those beliefs. It was likely, given the speaker topic, that some of those views would be expressed at the event.

37. We find that the invitation was widely circulated, and that all were welcome, but that little, if any, thought was given to whether those with gender critical views would attend. It was not directed at that audience and we find from Christopher Moore's evidence that the organisers did not address their minds to whether holders of gender critical beliefs were likely to attend.

38. We find that the Respondent's officers applauded and provided positive feedback about the event and that none of the officers present challenged the speakers or sought to curtail the talks.

39. We find that there was an adverse reaction to the mention of Posie Parker and that there was no intervention to stop this.

40. Despite her concerns about the potential reaction the claimant decided after the event to raise the matter internally. She sought advice from a former Superintendent from another force about how to go about it. This person was a member of an external organisation called the Women's Rights Network ("WRN"), which the claimant is not. The claimant described the person concerned as a "GC acquaintance". This acquaintance advised the claimant to raise the complaint

through the respondent's Directorate of Professional Standards (DPS). The Claimant then sent an email to the DPS setting out her account of the TDOV.

41. The detailed complaint, dated 6 April 2023, was at page 339 and sets out a contemporaneous account of her reaction. After explaining the process she had adopted so far, she wrote:

I am writing to draw DPS' attention to an incident that I believe represent a risk to the Met. I feel there is a real risk that members of the public, and particularly women, may be treated by Met Officers in a way that would discriminate unfairly and unlawfully. Baroness Casey's report has highlighted this concern.

42. Having set out the background to the conflict between supporters of trans rights and those holding gender critical views the claimant wrote as set out below. We consider it important to set out the claimant's contemporaneous complaint in full. We return in our conclusions to the impact on our decision on her claim of harassment under s 26 Equality Act of the manner in which she framed her complaint at the time:

In my view the Met's role is to ensure both groups are protected from harm. As a public body the Met has a duty to foster good relations between those who share a protected characteristic and those who do not. The Code of Ethics requires that the Met acts impartially when policing groups with opposing political views. British values also require mutual respect and tolerance for those with different beliefs.

In my previous role as a journalist I have written about conflicts between women's rights and trans rights and it is a topic I remain interested in. I am also aware that trust and confidence in the Met amongst women in London is low and I hope to address that as part of the "new" Met.

Trans Day of Visibility 2023: Meeting in SN

On Friday 31st March 2023 I logged into a Trans Day of Visibility meeting via teams. Superintendent Angela Gentry had sent an invitation to all SN Outlook users to attend this meeting, regardless as background. I had also received a message from the Network of Women encouraging attendance.

The message from NOW said the meeting was about "building bridges with communities where trust can be difficult to obtain". I decided to attend as I was off duty that morning. The meeting was in person and on teams. When I logged in there were around 45 people in attendance online including a substantial number from MO6 Intelligence. It was not possible to tell how many people were attending in person. I logged in while the contributor Eva Echo was talking. The introductory information said Eva Echo sits on the CPS' hate crime panel. I made some notes on Ms Echo's speech as she was speaking. I was concerned about what I heard.

She described people who oppose or raise concerns about transwomen's access to female sports and spaces as right-wingers motivated by hate. She said the people raising these issues had no previous history of concern about women's rights, asking: "Where were they when Roe v Wade was overturned?" [A reference to the recent US Supreme Court decision to overturn abortion as a constitutional right]. I knew that this was untrue as I know a number of people who hold these beliefs and have long histories of campaigning for women's rights and safety and a larger number who could not be described as a right wingers.

Eva Echo said that her political opponents on this issue were members of a cult, were "obsessed" with "twisted, warped" views, that their concerns were a "manufactured moral

panic” and that trans people were “an easy target for their hate”. She said that if not challenged the haters would “get away with it”, that they were a small group who were spreading misinformation and they were threatening to remove all that trans people have in their lives.

She said tackling misinformation spread by her opponents would “save” people and repeatedly urged officers to intervene when she heard these views expressed. “Everyone needs to step up and tackle misinformation,” she said. She said officers should contact their MPs and “if you’re unfortunate enough to have a Tory as an MP you can hound them”. She did not say whether officers should be intervening in their personal capacity or in their role as officers.

She suggested that safety concerns be tackled by “reframing the story”. She suggested officers should ask those concerned: “Did Sarah Everard’s killer have a GRC [Gender Recognition Certificate]”? and later said: “If they say trans women are sexual predators – ask why do you think that? Where are the stats? You quickly find there are no stats.” She said: “They see men as trying to invade women’s spaces – but toxic masculinity will not allow a man to change gender just to win a swimming race – it’s not going to work.” She said the Government had an “anti-woke” agenda which was “not dissimilar to s28” [a reference to a previous Government policy forbidding publicly funded institutions from promoting homosexuality].

She said that newspapers reporting on the conflict between trans and women’s rights were part of a “propaganda machine – not dissimilar from Russia” which was using reports on this issue as a “distraction tactic” from their main mission to “create an ideal civilisation where certain people thrive”.

I did not hear much of the other talks. However at one stage the activist Posie Parker’s name was mentioned by a different speaker and the audience hissed in response. Posie Parker aka Kellie-Jay Keen is the founder of a campaigning group called Standing for Women, which stages events called Let Women Speak. These are events at which women are invited to speak in an outdoor public space at a microphone about women’s rights. These are free speech events which have attracted violent protests from trans activists in the UK and elsewhere and require public order policing. I have seen allegations online that the policing of these events in London has not adequately protected women.

I do not feel, from what I heard of it, that this meeting would help meet the needs of trans people in London. Eva Echo portrayed an extreme, one-sided and conspiratorial view of a complex debate. In the meeting she demonised people with the protected characteristic of gender critical beliefs without challenge, presenting them in her words as “twisted” and hateful. In fact surveys of the public in England have shown no majority support for the presence of males who identify in women in female sports and facilities. World Athletics recently announced rules barring people who have gone through male puberty from certain women’s events after a careful consideration of the evidence.

There is no evidence that the Government is planning anything similar to s28 for trans people. Most people do support trans people being allowed to live their lives free from harassment and unlawful discrimination as do I. However there are genuine points of conflict between women’s and trans rights that need to be worked out carefully. Eva Echo seemed to have no interest in doing that and in contrast was encouraging officers to take a political and radical stance to no challenge or encouragement from the audience.

Eva Echo stated that there were no stats indicating trans women have acted as sexual predators when in fact the Government’s statistics on trans women prisoners suggest that they are more likely than other male prisoners to have committed a sexual offence. The Isla Bryson case in Scotland (and numerous other examples) show that male sex offenders identifying as women do exist. The idea that “toxic masculinity” would prevent men pretending to be women for nefarious reasons is surprising coming from anyone involved in the CJS. In my view women’s safety is a legitimate anxiety in this context and I am concerned by the suggestion that the police should challenge anyone expressing such views. I believe that were they to do so in their capacity of police officers there is a risk

they may open themselves up to legal challenge as in *Harry Miller v College of Policing* (in which a man who had expressed gender-critical views online was visited by a police officer at his work who said: "I need to check your thinking". The High Court found this to be a breach of Mr Miller's right to freedom of expression).

In my view the hissing at the mention of Posie Parker was completely inappropriate given that there were members of the audience who may well be policing or planning the policing of her events. I am not confident following this event that Posie Parker or the attendees at her event will receive an impartial policing service.

I ask the Met whether it would consider it appropriate to applaud and congratulate a member of a religion who had made a speech denigrating atheists or gay people (or vice versa) as "twisted" and being part of a "cult". It would never do so and I am at a loss as to why such speech was considered appropriate in this case.

At various points during Eva Echo's talk I wanted to challenge what was said but was scared that I would then be labelled part of the "cult" and that there would be repercussions. I noticed that there were 5-8 people from MO6 Intelligence in the Teams audience as well as someone from the HQ Directorate of Legal Services, Continuous Policing Improvement (hate crime) and HQ Human Resources. I would say I was probably the most junior person at the meeting on Teams. There were external people in the audience too.

After the meeting I looked up Eva Echo on Instagram and found she made numerous statements directly accusing JK Rowling (who is very vocal in her support for single sex spaces) of being on a crusade to "erase trans people" and causing the death of Brianna Ghey, a transgender 16 year old who was killed recently for reasons so far unknown to the public. The Ghey case is sub-judice as the suspects (who are themselves children) are awaiting trial and the police have asked the public to "avoid speculation online and be wary of sharing misinformation relating this case."

Eva Echo's statements are unprofessional and risk jeopardising the trial. She also made public statements criticising the media for failing to report on vigils held for Ghey as an assumed victim of transphobia. As someone involved in the CJS she must know that the press is bound by sub-judice rules not to report matters that could prejudice the trial or risk fines for contempt of court. In my view her statements may have had the effect of inflaming tensions and feelings of oppression within the transgender population; she is the opposite of the calming voice needed at times like this.

I discussed the Trans Day of Visibility meeting with a former senior police officer friend outside the Met who suggested I raise it with DPS. Subsequent to this discussion I became extremely concerned about the consequences for me raising this issue (I wondered if I might be "fitted up" in some way).

In my previous career I attracted calls for my sacking after I wrote what I consider to be a balanced piece for the Law Society Gazette on the use of female pronouns for suspects during rape trials.

I remain concerned that the consequences of this report will go beyond ending my career at the Met. However I also believe that once it becomes known this report has been made I will be easily identifiable by trained intelligence officers using the meeting attendee list. I therefore I believe I will be safer making this report under my own name than anonymously.

Conclusion

I consider that as a result of this event there is a risk that women who express "gender critical" beliefs will not be treated impartially by the police despite the requirement of the Code of Ethics, the findings in *Maya Forstater v CGD Europe* and the fact these are beliefs held by the majority of the population. I am concerned that there will be further

reputational risk to the Met if officers act on Eva Echo's views and challenge members of the public who express political views they are fully entitled to hold.

I hope that you will judge the information I have provided impartially and check with other people who attended the event to verify my account.

The judge in *Miller v College of Policing* noted that the person who complained about Mr Miller demonstrated "how quickly some involved in the transgender debate are prepared to accuse others with whom they disagree of showing hatred, or as being transphobic when they are not, but simply hold a different view." On the evidence heard at the meeting and based on her publicly expressed views, Eva Echo at minimum falls into this category. At worst her speech could be considered evidence of "hate" towards those with gender critical beliefs. I am deeply concerned that she is on the CPS panel providing advice on hate crime prosecutions and expect the DPS will raise my concerns with the CPS.

43. The claimant received a response on 17 April 2023 from Ciaran Overall, Detective Sergeant in the Intelligence Bureau Anti-Corruption and Abuse Command (page 361). He said:

Dear Melanie

Thank you for your emails

The role of the core desk has responsibility for the initial assessment, research and evaluation and dissemination of intelligence. Develops pro-active opportunities to disrupt corrupt practise and criminality carried out by a small number of officers and staff.

From what I have read I cannot see that you have passed on any information relating to any of the above, if you are concerned about what you heard in the talk from a member of a partner organisation I would in the first instance raise your concerns with your line management.

44. The claimant queried this and wrote back to DS Overall on 18 April 2023 saying, "Is there a process for appealing or escalating this decision? I do feel this is a DPS issue and that it's not something my DS [her line manager] would be the right person to resolve. Many thanks. Melanie". DS Overall replied the same day and said:

"If you wish to escalate this it would be through your line management, if you and your DS agree that it's not for him to resolve then you can go higher than that or you could attempt to share your views with the organiser of the presentation.

I accept that you feel that this is a DPS issue, but it isn't. The person you are sharing your views on is not even a part of this organisation".

45. DS Overall did not give evidence at the hearing and the Tribunal was reliant on the contemporaneous documents and the evidence of ACI Lockyear for its understanding. But the explanation given by DS Overall at the time, in the Tribunal's view, spoke for itself. He was simply telling the claimant that the DPS was not the correct channel for the kind of complaint she wanted to make. The Tribunal was shown the documents that set out the remit of the DPS – pages 1030-1034. It was clear from these pages that the responsibility of the DPS was a range of matters touching on the conduct of police officers and the respondent's employees. Potentially of most relevance was the Discrimination Investigation Unit whose remit was described as to "investigate allegations of discrimination, victimisation, bullying and harassment where the alleged behaviour would justify dismissal. The cases

arise from public complaints, conduct matters, employment tribunals and the grievance procedure.” The purpose was described as raising the standards of discrimination investigations across the respondent. DS Overall’s response arose from his perception, which was consistent with the claimant’s account of the complaint she wished to raise, that this was not a conduct matter concerning staff or officers. The claimant was complaining about the content of a talk given by an external speaker, not about the conduct of any officer member of staff. She also accepted in cross examination that her complaint was not one that could have resulted in the dismissal of any officer or staff member. When asked whether she was making a complaint about Christopher Moore she said, “Definitely not”.

46. ACI Lockyear was cross examined about DS Overall’s response to the claimant’s initial submission to the DPS. He accepted that the claimant should have been referred to someone else, ideally, and that he would have liked to have seen a more helpful response. He maintained however that it was correct to have referred the claimant to her line manager and that the response would have been the same if the comments objected to by a complainant had referred to trans people, rather than those with gender critical beliefs. ACI Lockyear’s evidence in cross examination was as follows:

Q What C had complained about was derogatory comments about colleagues who have GC views.

A Yes about but not by colleagues.

Q And that colleagues had applauded

A That was her perception. The complaints regime (it’s a regulated profession) and the law says that we apply the indication test first – is there an indication from the circumstances or evidence that a person serving with the police has committed misconduct. In this case there was no real dispute that something said that was a pro trans perspective critical of those with GC views did not meet the test because it involved their own right to express their ideology. Hissing did not amount to misconduct. So the legal threshold for starting an investigation was not met.

Q So you are saying that if what is alleged taken at its highest does not seem to amount to misconduct or an offence no further action will follow.

A Yes. I did not think what was alleged would have amounted to misconduct or an offence.

Q R now accepts is that it was true.

A So I understand.

Q The claimant did what she was told and was fobbed off.

A No – she was told we could not act because the speakers were external....

Q Page 1039 when to contact the Police Standards Unit [“PSU”] – the claimant should have been referred to the PSU

A No – to line manager – see first sentence. This was the advice she was given.

Q If the DPS had treated C as someone raising a genuine concern in good faith it would have found a way through for her.

A Ciaran Overall was responding to what he usually dealt with – this was not intelligence. I would like to see people being a bit more helpful than that. But the outcome would have been the same. That is what it looks like he was doing

Q If someone had complained about other protected characteristics the DPS would have got involved

A If the situation had been exactly analogous to the claimant’s I would have responded in the same way. If the event involved comments about trans people I would take the same approach.

Q The Met’s attitude to gender critical belief is asymmetrical – gender identity theory is right and good and virtuous and gender critical belief is pretty suspect but the Met has to tolerate it because of Forstater

A I don’t think that’s entirely fair There are elements of truth to it and prior to Forstater we were not aware of the nature of the gender critical view and there was an imbalance. The Met

is a big ship slow to turn around and people will be working through their views and attitudes. I do not think Met has signed up to one thing and is hostile to the opposing view.

47. The claimant appeared in cross examination to take issue with the statement that Eva Echo did not form part of the respondent's organisation, but the Tribunal has made its findings of fact on the matter above at paragraph 22. At the time she decided not to take matters further with the DPS but instead decided to raise her concerns with her Police Federation Representative Alex Woolley. Her email to Sergeant Woolley, dated 21 April 2023, was at page 374. She then chased for a response on 30 May 2023 in an email to Alania Pilkington, the Federation's head of equality and having received a response she directed Alania Pilkington to Christopher Moore as organiser of the event. However, she subsequently decided not to take matters any further via that route either as a result of her considering that her concerns had been misrepresented to Christopher Moore by Alania Pilkington.

48. The claimant's next step was to raise a grievance, which she did on 12 June 2023 (page 434) using form 6690 "Notification of Concern". Before addressing that, the Tribunal notes that it was not entirely satisfied with the claimant's explanation for not raising her concerns with her line manager. She did not tell the Tribunal that she thought that he held views that were hostile to those holding gender critical beliefs. She said, "I did not want to approach my sergeant. I was very new to the team — only four months into my first rotation. Given the unmanageable workload at borough level, I felt he would not appreciate me handing him responsibility for managing a complaint of this nature". But we were perplexed that she did not feel she could rise a question with him about the correct procedure for raising concerns about an external speaker, which would not have required her to go into detail about her complaint. It was put to ACI Lockyear that the point of the DPS is that people do not want to make themselves out as a troublemaker with their line manager. In response he said "Sometimes there is a real fear of victimisation but the DPS is to ensure independent investigation in a proportionate and tiered way. It's not mandatory to use a line manager but that is usually going to be a good place to start to get a steer unless the line manager is implicated." The claimant did not suggest that her line manager was in any way implicated or had ever expressed any views that might lead her to consider that he would be hostile to her beliefs, but she nevertheless decided not to approach him and instead pursued the issue through the grievance process, attaching the report that she had submitted to the DPS to a completed grievance form. She had not been signposted to the grievance process by either the DPS or by the Federation, which was at least partly responsible for the delay in her submitting the grievance. In the part of the form allocated to a description of the informal resolution stage of the grievance the claimant wrote:

I did not want to raise a grievance initially.

I therefore approached the DPS which said it would not do anything about my concern

I then went to my Fed Rep who suggested approaching Mr Moore informally.

The Fed Rep misrepresented my concerns to Mr Moore

Mr Moore's response worried me and also led me to believe that the issue could not be resolved informally.

It was only at this point that I discovered the Met's grievance hub - neither the DPS nor Fed had signposted me there.

My complaint concerns someone from outside the Met and I am also seeking a policy change. I suggest it would not be suitable for informal resolution. In addition the DPS and Federation have together taken more than two months to respond to me. A considerable

amount of time has therefore passed since the incident and I feel moving to the formal stage now will help avoid further unnecessary delay.

49. The Claimant received a reply from human resources on 23 June 2023 (page 444), acknowledging the grievance and informing the claimant that it would now be reviewed and assessed. She received a substantive response on 27 June from Daniela Issaq, grievance administrator for the grievance management team, informing her as follows:

Hi Melanie,

A GMT assessor has reviewed your grievance submission and has stated the following:

We are unable to review any of the issues raised against Eva Echo as she is independent of the MPS, and the grievance process jurisdiction only applies to MPS officers, staff, contractors and volunteers.

The desired outcomes relating to Eva Echo and DPS are not within scope of the grievance process. Please keep in mind that the ethos of grievance is resolution and learning.

We can review the element of the grievance regarding Kit Moore – but could you please provide further information to the concerns relating to Kit.

We have placed your grievance on hold pending this information from you

50. The claimant replied:

Have you actually investigated whether Eva has a contractual or voluntary position within the MPS? She says on her social media bios that she has a MPS L&D role.

With regards Kit Moore I am not sure of the role he played at this event, though he appeared to be the organiser and I believe also presented/chaired it. My concern about the event covers the pre-vetting of speakers and speech content, the lack of intervention when Eva made abusive comments and when Posie Parker was hissed and those who praised Eva's speech - including someone involved in MPS hate crime policy. This seems a bigger issue than one individual who I don't want to single out unnecessarily ...

I had thought research about the event and Eva would be done as part of the grievance process – I am not really in a position to investigate Kit's or anyone else's role myself as a very junior TDC. This needs really sensitive handling.

I apologise if I have got this wrong or my application isn't clear. I have been trying to raise these issues for almost three months now and it feels as though all I've had is people telling me that my complaints/requests aren't valid or are made in the wrong forum. I'm now not clear what outcomes I am allowed to ask for.

Given that since the first week of joining my cohort has been warned time and again to be so careful what we say on Whatsapp groups or not to belong to them at all because of the risk of being compromised by another group member saying something inappropriate, it seems incredible that someone can say such horrible things openly at an MPS meeting in NSY and be applauded for them by dozens of colleagues. And yet raising concerns about this is so difficult.

On 29 June 2023 Daniela Issaq replied as follows:

Dear Melanie,

Thank you for your email.

I would like to address the points you have raised in your previous email. Firstly, I want to clarify that there is no record of an employee or volunteer named Eva Echo within our HR system or the directory. This indicates that Eva Echo is not employed by the MPS and therefore any complaints or concerns regarding Eva Echo cannot be considered within the scope of the grievance process.

Furthermore, in your grievance, you mentioned Kit Moore and the DPS as the subjects of your complaint. While there may be grounds to review concerns related to Kit Moore, it is important to note that complaints regarding DPS policies should be addressed directly with the DPS itself, as they are responsible for reviewing and addressing their own policies.

I want to emphasise that we are not suggesting that your concerns are invalid. However, they fall outside the scope of the grievance process. The purpose of the grievance process is to facilitate the resolution of workplace disputes and organisational learning. As such, we can offer a range of outcomes, including mediation, discussions with the individuals involved, individual action plans, individual activities and recommending an apology.

If you would like to proceed with your grievance regarding Kit Moore, please provide further clarification regarding the specific issues you wish to address. This will enable us to review and assess your concerns appropriately.

Thank you for your understanding, and please feel free to reach out if you have any further questions or require additional assistance.

51. In response, on 30 June 2023 the claimant said:

"I don't really think I can add anything else. I only put Kit's name on the grievance as he was listed on the invitation and was one of the presenters however I don't know his exact role. It's the event I'm concerned about and there were clearly lots of people involved - all the details about that are in the DPS complaint that I forwarded to you."

Ms Isaaq replied, closing the grievance on 5 July 2023. Her email said:

"A GMT assessor has undertaken a thorough review of the complaint you submitted to the DPS and have understood your concerns to be relating to the speech delivered by Eva Echo. As previously mentioned, since Eva is neither an employee, contractor or volunteer of the MPS, the accusations against her do not fall under the purview of the MPS Grievance process. Consequently, I am unable to proceed with your grievance. If you have any further information pertaining to any other individual connected to your grievance, please update your 6690 form to include these matters. Since you have not provided any additional information regarding the issues involving Kit Moore, I cannot address this particular point. Considering the circumstances, your grievance will now be closed. However, the process will remain open to you if you wish to submit any supplementary information about Kit Moore or express concerns regarding other matters."

52. Before addressing what happened next, we will address another issue of which the claimant was unaware at the time of the TDOV, about which Brigid Beehag-Fisher gave evidence. The claimant did not refer to this issue in her particulars of claim and the Tribunal considered in a private case management hearing that preceded the public hearing the respondent's application to exclude the evidence as irrelevant to the issues. For reasons given orally at that hearing the Tribunal decided to admit the evidence in order to fully understand its potential relevance to the claimant's claims.

53. The claimant's purpose in including this evidence seemed to be twofold. Her first

purpose was to lend credence to her argument that at the time of the TDOV and her grievance the respondent was institutionally biased against people with gender critical views. Pausing there, the Tribunal considered that it was not its role to make such an assessment, which could only be made after a systematic inquiry into the manner in which the respondent conducts its operations that are beyond the scope of an individual employment claim. It is simply not the function of an employment tribunal to undertake such an enquiry and it is neither equipped nor empowered to do so. The claimant's second purpose however was to lend support to her argument that the burden of proof shifted to the respondent as a result of the evidence in question – that it provided the evidence of discrimination required by the decision in *Madarassy v Nomura International Plc* [2007] EWCA Civ 33, to shift the burden to the respondent to prove that its handling of the claimant's grievance was in no way tainted by discrimination against those who shared her protected beliefs. We return to our conclusions on this later in this judgment, but now set out the facts that we found in relation to this issue.

54. ACS Beehag Fisher was at the time of the complaints raised in this case the lead responsibility officer for trans policy work. Her evidence was relevant to a part of the claimant's evidence that concerned a speaker and commentator on trans issues called Jane Fae, whose publicly stated views the claimant regarded as hostile to those with gender critical beliefs. Jane Fae was invited by the respondent's LGBT Network and the CPIE team to speak during LGBT history month in February 2023 on the subject of "Transphobia in the media". This invitation elicited protest from an anonymous source, expressing objection and suggesting, amongst other things that Jane Fae supported extreme pornography. ACS Beehag-Fisher investigated the concerns about Jane Fae's views and consulted Commander Colin Wingrove before the event. A decision was taken to allow the event to go ahead, with ACS Beehag-Fisher acting as compere. She also met with Jane Fae beforehand in order to emphasise the values that needed to be adhered to and to reiterate that discriminatory or intolerant language or behaviour was not acceptable. There were no incidents, but after the event there was further concern expressed via comments on the intranet, from those who did not think that Jane Fae ought to have been allowed to speak (pages 224-225). After further consultation with Colin Wingrove and other colleagues ACS Beehag-Fisher posted the following response (page 225-226):

Thank you to everyone who has fed back their concerns, either in the comments below or to me directly. We are a learning organisation, and I am grateful for everyone's openness and willingness to challenge.

As part of the Met's LGBT+ History Month programme of events, the organisation 'Trans Media Watch' was invited to speak to colleagues. The organisation sent its director, Jane Fae, a subject matter expert on the portrayal of trans people in the media. When concerns were raised by colleagues about the nature of some of Jane's tweets and views, these were reviewed by CPIE. We also consulted with the LGBT+ IAG. Prior to all our events, speakers have been briefed on our values and standards, and Jane's presentation was limited to the issue of trans identity in the media.

As a modern service we engage with all communities, including those who don't share our values. Not to do so means we never speak to those directly who cause concern or upset to many, and we don't open the dialogue to change. I extend an invitation to all who have concerns about how we engage our speakers to email me directly, so we can incorporate this into our planning for future events.

55. Simultaneously with discussing and agreeing this comment, ACS Beehag-Fisher conducted a review and entered into email correspondence with two of the officers involved, including one whom it was agreed by the parties would be referred to as “Mike” in order to protect his identity. The Tribunal agreed to this limited interference with open justice given the tangential relevance of this issue to the claimant’s claims and the fact that the anonymisation of Mike was not contested. There were several emails exchanged between ACS Beehag-Fisher and Mike, including about Jane Fae’s alleged links to extreme pornography (S233-249).

56. After receiving her response from the DPS the claimant approached some of the officers who had raised concerns about Jane Fae with the intention of finding out whether ACS Beehag-Fisher would be likely to respond sympathetically if she were to raise her concerns about the TDOV with her. Through this she learned that Mike had been the subject of a disciplinary process initiated by ACS Beehag-Fisher in April 2023 on the grounds that he held transphobic views. Whilst the claimant’s evidence on this was hearsay, the bare facts of the matter were not denied by ACS Beehag-Fisher. We were also referred to the disciplinary referral itself (Form “MM1” on pages S253-265). The summary at page S258 make it clear that ACS Beehag-Fisher was initiating the process on the ground that in her view Mike held and had expressed transphobic views which were incompatible with being a police officer. On page S259 she sets out two grounds for the referral – the first being the fact that he appeared to have raised concerns about Jane Fae without sufficient verification in relation to his sources and the second, which was supported by a complaint from an officer who had witnessed the conduct (S265), being his conduct in referring to a trans woman suspect by male pronouns and dead naming the individual during a training presentation on counter-terrorism. The officer’s statements continued “I also noticed that [Mike] had a sticker on his laptop which was visible during the presentation. The sticker was a flag in the suffragette colours of purple, white and green in horizontal stripes and had the words “DEEDS NOT WORDS” imposed over the top. This flag and phrase are historically linked to the movement for women’s suffrage, however I am aware that in recent years this has been taken on and used by the people who describe themselves as gender critical. I consider this to be indicative of trans exclusionary and discriminatory beliefs and values”. It was confirmed to the Tribunal that the flag and the “Deeds not words” phrase are indeed used by some people holding gender critical views.

57. ACS Beehag-Fisher said in summarising the complaint:

“There is a pattern here that indicates the Officer is prejudiced against trans people and is sharing these views to discredit and misinform others about trans officers. The additional display of the “Deeds not words” logo indicates that he is unabashed at holding these views”.

58. ACS Beehag-Fisher’s said in her evidence that she had had no option but to initiate the disciplinary action. She considered that there was evidence of wrongdoing and that she was obliged to report it and under a duty to do so. In her witness statement she said:

“The Officer who had been present at the training provided a statement in which they further stated that in recent years this has been taken on and used by the people who describe themselves as ‘Gender Critical’, which they considered to be indicative of trans-

exclusionary and discriminatory beliefs and values.

Every Officer in the MPS has a duty to report potential wrongdoing. There is no discretion. I had received an allegation of potential misconduct, so I completed relevant fact finding (by taking a statement) and, as per MPS policy, completed an MM1 for review by an independent officer holding the role of Appropriate Authority”.

In cross examination she said that the Casey Review had found that misconduct reporting in the respondent was lacking. The Review had had a significant impact on the organisation – she said “It is difficult to understand the shock wave that went through the Met as a result of the Baroness Casey Review. We were instructed to engage with our staff. Everyone was spoken to and we had many fora for understanding how this was impacting. There were two issues – the Met was not dealing with discrimination complaints properly and issues about complaints that had been missed. I had a duty to report the allegation which was brought to me by an officer. It is then sent to professional standards”. It was put to her, but firmly denied by her, that the statements she had made about the sticker showed that she considered that there was something problematic about holding gender critical views and that “if you do you should keep quiet about them”. Her cross examination included the following exchange:

Q See S195 and 199. Is it fair to say that you regard GC websites as inherently transphobic?

A See my reference to the MPS Code of ethics and the MPS values on S199. You can have your own views, but can’t let them interfere with your work as PO. Unconscious bias training helps officers understand their own frame of reference. Everyone treated without fear or favour. You absolutely can’t bring your own views into the workplace.

Q This is not an adequate answer – you could say this of racist views. A GC view is a protected belief. Holding a racist view is not.

I suggest you don’t negate that by pointing to the Met values.

A No I don’t think GC views are inherently transphobic. It’s a protected belief. London is a varied and amazing and diverse place and GC views have a place there. We need to be listening to those voices as well. We don’t just police one section of the community and need to listen to and gain the trust of the whole community.

Q Can a staff member properly act on a GC view and express it in the workplace.

A Mr Smith will answer. We have just had a GC network agreed so yes.

Q So for example if a police station had men’s and women’s changing and showering facilities and a trans identifying officer worked there would it be possible for a women officer GC to object to the trans officer using them.

A Yes and they would be listened to.

Q They would not be disciplined for transphobic behaviour

A As long as it was raised in a way that was not rude or offensive.

Q So now police officers who want to express core GC beliefs can do so

A It’s a protected belief and you are entitled to hold it and express it. Yes, provided no intent to hurt or harm. But would depend on the intention behind the behaviour.

59. This evidence is set out at some length, although we have concluded that it is of tangential relevance to the issues arising from the claimant’s complaints in this claim. As previously noted, the claimant relied on it as probative of a general disposition at the respondent towards those holding gender critical beliefs. The Tribunal has explained above why it declines to make any finding about the respondent’s disposition as an institution. We note at this point that ACS Beehag-Fisher’s decision to refer Mike for potential disciplinary action indicated that she was highly sensitised to the possibility of discrimination against trans people and that she was ready to act on the assumption that displaying a suffragette sticker could be indicative of holding problematic or discriminatory views. This therefore suggests a

tendency on her own part at the time of the matters giving rise to the claim, to regard gender critical views and attitudes as unacceptable and potentially discriminatory in and of themselves – a view that her evidence together with a response to a question from the panel, suggested that she has subsequently modified. But we did not consider that this had any bearing on the way that the claimant's complaint was dealt with for reasons we go on to consider further.

60. Before we do so we note that ACS Beehag-Fisher's action did not itself amount to disciplinary action. The form MM1 was then independently assessed by the DPS and in this instance no disciplinary action against Mike actually followed, as recorded in the Misconduct Review form MR1 (S212-223) which contained the outcome of an initial investigation into potential misconduct. As S220 records, Mike was recommended to "learn through reflection" in relation to four points identified at the end of the MR1, but the specific allegations against him were not upheld and, amongst other findings, the suggestion that displaying a "Deeds not words" sticker is inherently transphobic was rejected.

61. Returning now to the aftermath of the claimant's grievance, we heard evidence on the developments that ensued from ACI Nick Lockyear and DCS Smith. Two weeks after the claimant received the email from Daniela Isaaq closing her grievance, the respondent received a complaint about the TDOV from the WRN, authored by Heather Binning. The letter, dated 19 July 2023, was at page 472-474 and there is no need to cite its contents here. It was referred to the DPS and ACI Lockyear became involved in responding to it. In supervising the response to the letter, ACI Lockyear became aware on or around 2 August 2023 of the claimant's attempts to raise her own concerns about the TDOV through the DPS and the grievance process. By that stage the claimant had begun the process of ACAS early conciliation and the respondent was aware of the possibility of legal action.

62. One of the concerns the respondent developed in connection with the letter from the WRN was how information about the TDOV had become known outside the organisation. At pages S205-206 there was an exchange between ACI Lockyear and his DPS colleague Lara Pink dated 7 August 2023. Lara Pink's email includes a communication from the grievance team attaching the claimant's grievance and confirming that it had been deemed out of scope. In her email to ACI Lockyear she suggests that the claimant might have approached the WRN following rejection of her grievance ("I suspect we have our officer who approached the Federation"). He replies "OK let's do this – as TDC Newman did originally try to communicate this to us I think we can approach her again. I think ask Rob [Robert Frost also of the DPS] to speak to her – basically reiterate she can't make a complaint but in the interests of helping us look into it properly is she willing to speak to us. Then, if she will, we need to see if she can corroborate any of what's in the letter [from the WRN]".

63. It was said by Ms Cunningham that that this was an underhand way to treat the claimant and, by implication, discriminatory. The respondent's main preoccupation in these exchanges, Ms Cunningham suggested, was to identify the source of a leak about the TDOV to the WRN. The Tribunal considered this carefully, but did not think this was a fair reading of what had happened. ACI Lockyear said that he asked Robert Frost to find out what had happened because the claimant's grievance had by then been forwarded to the DPS. It was therefore considering the WRN complaint

in tandem with its realisation that the claimant had been trying to raise a similar issue and was trying to get to the bottom of what had occurred. Looked at overall the documents do not, on a fair reading convey an intention to find out if the claimant was the “mole”, as was suggested to ACI Lockyear in cross-examination, but to understand that events that had led to the complaints from both the claimant and the WRN.

64. This was followed by a call from Robert Frost to the claimant and a letter summarising what was discussed (page 504). This said:

Hi Melanie,

Thank you for taking my call earlier.

As explained I am part of the DPS and I review complaints and conduct matters that are submitted to the organisation. As part of my role my team deal with correspondence sent into the Commissioner that may be a public complaint. It is for my team to review these submission and make recommendations on how they should be handled. As you are aware we have received a letter from Women's Right Network (WRN) about the event on the 31st March 2023

Just to summarise our conversation.

- 1. You did submit a grievance, which has been closed.**
- 2. You have sought advice from WRN, from an ex Supt who is affiliated to the WRN.**
- 3. The letter received by the Commissioner is nothing to do with you and you specifically asked that your contact with WRN was confidential.**
- 4. You have submitted an ET against the organisation and this is currently ongoing. You have been issued a certificate to pursue the claim against the Met and this certificate will expire within 6 weeks. You need to submit the certificate for your claim to continue.**

In summary your concern was the speeches and their contents were wrong, caused offence and the reaction of some of the attendees when certain things were said caused you alarm. You have tried to raise these issues within the organisation and they have been ultimately closed down. You currently have an ET about your concerns, which is ongoing.

You really don't want to get anybody into trouble but would like your concerns heard and addressed. You would furthermore be willing to assist in a review of the day to see if any learning/advice/recommendations can be identified for future events across the whole of the MPS.

Thank you again for taking my call. I hope to be in contact with you soon regarding what action we are going to take.

Please note that I am not here to dissuade you from continuing your ET. This is decision for you alone. I will try and address your concerns, but if these have not been addressed adequately or in a timely manner then you will have no other choice but to continue with the ET, as explained by you.

I will be in touch.

In fact, there was no further contact from Robert Frost to the claimant, a fact for which ACI Lockyear offered an apology during cross examination. He said:

If so I apologise – we should have followed up. Someone from DPS should have contacted her. Within the regs [Police Conduct Regulations] we are bound to comply with data protection unless there is a reason to communicate – subject of complaint, complainant

(member of the public) or an interested person. If it is an officer we were at the time technically not permitted to tell an officer if we were not going to take a matter further as they are technically not an interested person. Our policy has changed since. I think we should have communicated. If I had spoken to her, I would have reiterated that we could not investigate the content of the speeches as the people were external. As for the hissing – see my statement [in which he said “It was also suggested that there was some hissing at the mention of a person who held contrary, gender critical, views. In my view, as this was a day clearly advertised as celebrating trans rights and trans people, it was not unreasonable for those attending to hold and express such views. Doing so by hissing at someone – not present – who was seen as actively campaigning against trans rights is to some degree disrespectful, but not to the extent that it could reasonably have justified disciplinary action]. I would also have told her about the review process which did in fact happen.

65. At page 513 ACI Lockyear wrote to Lara Pink and Robert Frost again on 11 August having received their detailed summary of the background to the complaint. Robert Frost had written (page 516) of his discussion with the claimant:

The conversation held on the 8th of August with Melanie can be summarised as follows.

1. She sought advice from a colleague how (sic) informed her to raise this with the DPS. She do (sic) and submitted an e- mail to IB. They replied back to her stating it was not their role to review or provide assistance. They signposted her to her line manager. (see attached e-mail)
2. Melanie then took further advice and submitted a grievance - which was NFA'd. Melanie then submitted an ET and this has been logged with a certificate to proceed with the claim within 6 weeks. This certificate needs to be submitted within that time frame of the case will be closed.
4. I am apparently the only person who has contacted her and asked what she would like out of this process. I explained that a review of the day may well take place and she could be party to that review. She appeared very receptive to this.
5. I did get the impression that she does not want to pursue an ET, but feels that as the organisation is not taking her concerns seriously that this is the only avenue open to her. She made it clear that if no action is taken to her satisfaction then the ET will proceed. This was not delivered as a threat, but I felt it was important that we understood this point as it has taken 3 months for us to get to this point and I am the only person who has actually spoken with her. The expiry of the six weeks is not known, but it may well be relatively soon.

I believe the following course of action needs to be completed.

1. A letter sent to Ms Binning, acknowledging her letter and explaining our course of action, from the DPS.
2. No misconduct review of the event - as I am of the opinion that there is no indication of misconduct.
3. No misconduct for the officer who provided the details of Kit Moore to WRN. The other parties named are not part of the MPS and can seek their own recourse if need. I understand that this may well be the case.
4. A review of the day with Melanie being brought into the review to express her views and her concerns. I am of the opinion that this review should be done by either Supt Rawlinson's department or IRSC to ensure that there is strategic oversight of events like this and to ensure that the reputation of the organisation is not brought into disrepute in future. This will have to be done very soon as the time frame for Melanie is short before the certificate expires.

66. ACI Lockyear responded as follows on 11 August 2023:

Hi Rob & Lara,

Many thanks for your work on this. Following our discussion I agree that you have followed

all reasonable lines of enquiry. At this stage there is no indication that a person serving with the police may have committed a crime or misconduct.

We have an agreement in principle that Mr Rawlinson will lead an internal review into the organisation of staff support group events like this one, with a view to offering guidance. You've drafted a proposed letter to Dr Binning which Mr Rawlinson and I have both commented on, and is still being tweaked. However, this will go out as closure for the WRN letter, with the internal review to follow.

On this basis there is no call for further action in relation to DPS.

67. There was no further action in relation to the Claimant's submission to the DPS or her grievance after this point and the claimant decided to continue with the Tribunal claim. There was in due course however a review by Mr Rawlinson as prefaced by ACI Lockyear, which resulted in the Informed Assessment Guidelines (S64-82) to which we return below. Overall, the Tribunal did not consider that it was correct to characterise the sequence of events we have set out as a "refusal" to deal with the claimant's complaints as submitted by Ms Cunningham in her closing submissions. The picture was more complex – there was clear engagement with the complaint itself and the respondent has since acted to engage with and address some of the concerns the claimant raised. The fact that this has taken time, is unsurprising given the size, nature and complexity of the respondent's organisation.

68. For completeness we address, briefly, two further matters about which we heard a considerable amount of evidence, as we understood it, in pursuit of the claimant's desire to make broader points about the general attitude of the respondent to gender critical beliefs. For reasons set out elsewhere in this judgment we have declined to make findings on these broader submissions, but irrespective of that we make the following observations. The first matter was the alleged contrast between the way that the letter of complaint from the WRN was dealt with and responded to and the handling of a complaint raised by Saba Ali. Saba Ali's complaint was at page 459 and concerned the same alleged leak of information about the TDOV to the WRN, which led to unwelcome publicity and comment about Saba Ali. It was suggested that the treatment of Saba Ali's complaint was more favourable and sympathetic than the treatment of the complaint by the WRN. The Tribunal did not consider that the two complaints were comparable such that any conclusions could reasonably be drawn. The circumstances of the complainants were too dissimilar, and Saba Ali had an ongoing working relationship with the respondent which mandated a different approach. Both the WRN and Saba Ali complaints were responded to – the WRN's on 6 September 2023 (page 523) and Saba Ali's on 12 October 2023 (page 533). Nothing turns on the handling of those responses that is relevant to the issues in this claim.

69. We were also asked to draw conclusions from about the decision of the respondent, conveyed through an announcement at page 538, to withdraw its association with Attiq Malik, chair of the London Muslim Communities Forum, after comments he made after the 7 October 2023 attacks by Hamas in Israel. Again, it appeared to be suggested that this was relevant to the picture the claimant wished to paint of the organisation's general disposition towards the gender critical viewpoint at the time. We again found that the circumstances of this announcement were entirely different and not relevant to the claimant's particular complaints and

the tribunal does not need to and was not equipped to make any further findings on it. We considered that the comparison was on the face of it wholly inappropriate given the global significance of the events of 7 October 2023 and the potential for civic unrest in response to those events.

70. We turn now to the aftermath of the claimant's complaints. On 8 October 2024 the Claimant was approached by the respondent's Director of Intelligence and informed that DCS Smith had been asked to conduct a learning review of the TDOV. The claimant spoke with DCS Smith but reiterated that she did not want and was not seeking the initiation of disciplinary against any individual officer. What she wanted to achieve was institutional learning and policy change. The review resulted in eight recommendations, one of which was that the respondent "consider how we can engage with internal staff who hold gender critical views as part of EIA or other consultation". This has ultimately led to the establishment of a Gender Critical Network at the respondent, although we heard evidence that the process of implementation has not been straightforward and has met with some resistance from some officers and employees of the respondent, in particular trans officers and some from LGBT+ backgrounds. We also note however that some of the correspondence sent in reaction to the establishment of the network has resulted in "words of advice" from DCS Smith.

71. It was clear from DCS Smith's evidence that he concluded that there were lessons to be learned from the TDOV and his remaining recommendations addressed matters such as support to the SSAs to ensure that events meet a policing purpose, the reaffirmation of the importance of policing's impartiality, and the use of detailed Informed Assessment Protocols that were introduced in October 2024 (pages S63-82). One objective of the protocols is to ensure that events are not automatically endorsed by the respondent and that there is informed reflection about the suitability of speakers. It is clear that the respondent considered that there were lessons to be learned from the aftermath of the TDOV, particularly about the necessity for the police to maintain public confidence in its impartiality. DCS Smith wrote in his review:

Upon review of the evidence gathered in this matter I find Melanie's and Charlotte's account of the event to be credible. Melanie took notes at the time and completed accounts at an early stage into the DPS and the Grievance team which remain consistent. Charlotte's account mirrors that of Melanie's in what was said. I believe it is highly likely that others who were in attendance and have contributed to this review do not remember any controversial statements because what was said is largely consistent with their world view and took place some year and a half ago. That is perfectly appropriate from a personal perspective for which I hold no criticism. However when viewed from the perspective of the MPS' role in society, to police for all and remain impartial in matters of politics, policing without fear or favour then I come to the conclusion that the approach from which the topic was discussed was not appropriate. Although there is learning for Kit, I find that at the time the MPS had nothing in place to support officers and staff in thinking through these issues. Kit is an analyst within MO2 and cannot automatically be expected to consider the wider issues that the MPS has to consider.

Although this and other events are well intentioned some can pose a risk to public confidence by breaching or appearing to breach our duty of impartiality. This is especially true where the events can be deemed political or can attract significant local or national attention. This risk can be exacerbated by the use of New Scotland Yard or by the attendance of high ranking officers and staff.

The mere impression that the MPS supports one side of a debate over another can lead to a

loss of confidence in communities. However at the same time the MPS has an Equality Duty (Appendix B) under the Equality Act 2010 as such this is a fine balance that events have to tread.

A new system of SSA's and Networks seeking authority for events to be held at NSY is now in place following another SSA utilising NSY for an event that was deemed too political for police premises. SSA/Network events are now routed through the SSA Hub for review prior to funding or authorisation to use NSY or senior attendance.

72. These matters postdate the claimant's claims, but in the tribunal's view formed part of the respondent's overall response to the claimant's complaints. It was clear from a response provided by DCS Smith to a question posed by one of the panel, that the respondent only realised the significance of the claimant's concerns and decided to investigate and act on them, as a result of the claimant's decision to begin employment tribunal proceedings.

Applicable legal framework

73. There were several sections of the Equality Act 2010 that were relevant to the claims.

74. **S39 (2)** of the Act proscribes discrimination by an employer against an employee by (among other things) dismissing them or subjecting them to any other detriment. S40 proscribes harassment of employees.

75. **S42** provides that

- (1) For the purposes of this Part [Work], holding the office of constable is to be treated as employment—
 - (a) by the chief officer, in respect of any act done by the chief officer in relation to a constable or appointment to the office of constable...

76. **S13** defines direct discrimination:

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

S 26 defines 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.

77. **S109** deal with the liability of employers and principals:

- (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
- (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
 - (a) from doing that thing, or
 - (b) from doing anything of that description.

78. **S136** deals with the burden of proof:

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (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 subsection (2) does not apply if A shows that A did not contravene the provision.

In summary, if there are facts from which the tribunal could decide in the absence of any other explanation that the claimant has been discriminated against, then the tribunal must find that discrimination has occurred unless the respondent shows the contrary. It is generally recognised that it is unusual for there to be clear evidence of discrimination and that the tribunal should expect to consider matters in accordance with the relevant provisions in respect of the burden of proof and the guidance in respect thereof set out in *Igen v Wong and others* [2005] IRLR 258 confirmed by the Court of Appeal in *Madarassy v Nomura International plc* [2007] IRLR 246. In the latter case it was also confirmed, albeit applying the pre-Equality Act wording, that a simple difference in status (related to a protected characteristic) and a difference in treatment is not enough in itself to shift the burden of proof to the Respondent; something more is needed.

79. We were also referred to and took into consideration the following authorities:

- a. *Richmond Pharmacology Ltd v Dhaliwal* [2009] ICR 724 5;
- b. *Grant v HM Land Registry* [2011] EWCA Civ 769, [2011] IRLR 1390 15;

- c. Pemberton v Inwood [2018] ICR 1291 31;
- d. Kemeh v Ministry of Defence [2014] EWCA Civ 91, [2014] ICR 625 66;
- e. GMB v Henderson [2015] IRLR 451 86;
- f. Forstater v CGD Europe & Ors [2022] ICR 1;
- g. Gringer plc v Nicholson & Ors [2009] UKEAT/0219/09
- h. Qureshi v Victoria University of Manchester [2001] ICR 863;
- i. Anya v University of Oxford [2001] ICR 847.

Submissions

80. It is fair to say that despite the relative narrowness of the factual issues and the relatively limited dispute as to the bare facts of the case, the Tribunal was subjected to very extensive argument on how we should interpret those facts and the conclusions we should draw from them. Both representatives produced detailed written submissions, which were supplemented on the eighth day of the hearing with lengthy oral submissions. Some of the submissions were less than helpful in enabling the Tribunal to reach conclusions on the issues, because they addressed matters that it was not the Tribunal's role to determine.

81. Before turning to our conclusions, we wish to record our concern that the claimant or her representatives also sought at times to expand the hearing beyond what the Tribunal needed to engage with in order to determine the issues. One manifestation of this unnecessary expansion of the case was the setting out in detail the propositions that constitute the claimant's beliefs and cross examining the respondent's witnesses at length about their own beliefs and views. In addition to this Ms Cunningham argued, that whilst the Tribunal might not want to express a view on the four propositions constituting the claimant's beliefs that she set out in her submissions, we nevertheless should do so, as refusing to do so "would confuse impartiality between different metaphysical beliefs, which is proper, with impartiality as between fact and fiction which is not proper stance for a judicial or police function." This invitation was problematic in a number of ways, not least that it invited the Tribunal to accept as true, a proposition that is in contention in the conflict that has given rise to this case. This was thus an invitation to come down on one side rather than the other in a debate that forms the background to the dispute, rather than an issue in the case, contrary to Ms Cunningham's submission that this was not the case. That is categorically not the role of the employment tribunal.

82. Furthermore, the Tribunal considered it completely unnecessary to engage with the theory behind the claimant's beliefs. It was not in dispute that she holds belief that are protected under the Equality Act and we therefore did not need to consider or arrive at a judgment about the particular constituents of her belief system. It was equally unnecessary to question the witnesses about their beliefs to the extent that all the representatives did so. On the claimant's side this appeared to be a consequence of the claimant's desire to prove that the respondent had been "captured" by people espousing gender identity theory. This too appeared to the Tribunal to be an inappropriate expansion of a claim by an individual about breaches of provisions of the Equality Act. Aside from the difficulty the Tribunal would have had in arriving at such a sweeping conclusion on the basis of the limited and selective evidence that was necessarily put forward in pursuit of an individual employment claim, this suggestion was at best a misunderstanding, surprising in the

circumstances, of the role of the employment tribunal in determining an Equality Act claim. As for Ms Cunningham's suggestion that we ought to express a view on the four propositions, we strongly disagree. This was simply not required and could not have been part of our function unless we had been asked to determine whether the claimant's belief was a protected belief, or whether she had been subjected to adverse treatment because of a manifestation of her beliefs, which we were not.

83. We have accordingly limited our conclusions to the narrower questions set out in the list of issues.

84. We summarise the key germane points of the submissions here.

Claimant

85. The claimant's submissions were summarised as follows.

The question at the heart of this case is a simple one: is it lawful for an employer to host and condone talks to which its workforce is generally invited, at which members of a group defined by an Equality Act 2010 protected characteristic are demonised and held up to ridicule and contempt? The claim complains of five things that C says R or its officers and/or employees did, all focused on the Trans Day of Visibility which its LGBT+ Network held on 31 March 2023:

- a. **booked and invited a speaker, Eva Echo, who was known for hostile views towards "gender-critical" people, and therefore likely to express those views at the event;**
- b. **issued a universal invitation and encouragement to officers and staff to attend, knowing that GC individuals were likely to be among those who attended;**
- c. **applauded and provided positive feedback following Echo's talk, and said nothing to challenge what was said or curtail the talk;**
- d. **those present hissed when Posie Parker's name was mentioned, and no-one present intervened to challenge that behaviour;**
- e. **refused to deal with her DPS complaint about the event.**

The first four of those are put as acts of harassment related to C's protected belief; the last as direct discrimination because of it.

Issue 20 on the agreed LOI does not arise, since C does not say that R was liable for the conduct of external speakers. The conduct complained of was done (or not done) by officers or staff of R, for which it is liable under section 109 EqA (subject only to any 'reasonable steps' defence in s109(4)).

86. In support of these general points Ms Cunningham and Mr Young submitted that:

- a. there was ample evidence before the Tribunal to show that the respondent could and should have been aware of Eva Echo's habitual conduct towards people with gender critical beliefs at the point when of the invitation to speak at the TDOV;
- b. that speakers at the TDOV, especially Eva Echo and Saba Ali, were people who had a significant degree of association with the respondent;
- c. that no specific guidelines were issued to them about what it would be appropriate to say and how it would be appropriate to express their views;
- d. the invitation to the TDOV was a universal one, and expressly extended to all officers;
- e. combined with the first allegation, this amounted to unwanted conduct

- related to the claimant's protected gender critical belief. It was related to the belief because it was likely that by inviting Eva Echo (and the other speakers to speak at the TDOV, and then issuing an open invitation to the event, the respondent was arranging an event at which people holding the claimant's protected belief would be denigrated;
- f. The respondent did not dispute what was said at the event;
 - g. The claimant's reaction in finding that the event created an offensive and hostile environment to someone holding her gender critical beliefs was reasonable;
 - h. A corollary of gender-critical beliefs being held to be worthy of respect in a democratic society is that it will be reasonable for a person holding such beliefs to feel that beings vilified in such strong terms creates a hostile and offensive environment for them;
 - i. The respondent's officers and staff are not entitled to be kept "safe" from beliefs and opinions with which they disagree, however profoundly. They are entitled not to be vilified and held up to the contempt of their colleagues with the apparent approval of their seniors and the organisation;
 - j. The failure of the respondent to properly vet the speakers caused the claimant to be exposed to such vilification;
 - k. The booing/hissing of Posie Parker amounted to further unwanted conduct which reasonably made the claimant feel intimidated;
 - l. It was reasonable for the claimant to conclude from the positive response the speakers received that the environment was hostile to her beliefs;
 - m. the decision by the DPS not to investigate the claimant's complaint and the decision not to progress her grievance were decisions taken because of her protected gender critical beliefs, the claimant relying on the way a hypothetical comparator would have been treated if they had held different beliefs (including being an adherent to a particular religion) and had complained about attending a Met Police event where external speakers had said offensive and hostile things about their beliefs or religion.

Respondent

87.Ms McColgan observed that the background to this case involves the balance required to be struck by employers, including the respondent, between competing and deeply held beliefs and matters of fundamental personal identity, in this case in the difficult area of what might be characterised as trans rights/ gender ideology and gender critical views in which even the terminology in use is deeply contested. The respondent is also subject to the public sector equality duty, which requires it to have due regard to the need to eliminate discrimination of all kinds. Ms McColgan also submitted, correctly in our view, that the question of whether the respondent has struck the correct balance, or discharged its duty, is not one that the Tribunal was required or equipped or has the jurisdiction to answer. We were required to address the list of issues, as we have already acknowledged.

88.Beyond that, the Respondent structured its submissions largely by reference to the list of issues, evaluating the evidence in relation to each element of the list. The Tribunal weighed those submissions in reaching its findings of fact as well as the

conclusions that follow. A large part of the submissions concerned a detailed analysis of the TDOV, its organisation, content, reception and aftermath by reference to the allegation that what occurred amounted to harassment under s26 Equality Act. The respondent's main submission was that what occurred did not meet the threshold for harassment under s26(1)(b) and that there are particular features of a case involving the protected characteristic of belief that make that so.

89. The claimant's case did not involve any allegation about speech by a member of the respondent's staff or one of its officers and the respondent submitted that this was a point of critical importance in relation to the harassment allegation – the allegation of hostile or offensive content at the event was against a third party. Ms McColgan submitted that it is clear from the decision of the Court of Appeal in *Unite the Union v Nailard* [2019] ICR 28 that an employer will be liable for harassment by a third party only where the protected characteristic formed part of the motivation for inaction on the part of the employer (or someone for whom it was liable); only if the employer's failure to protect from the third party behaviour itself satisfied the requirements of s26 Equality Act would it be liable under that provision. It is not enough to invite speakers to speak, even if their agenda is well known (addressing paragraph 36(a) of the Particulars of Claim), unless there is a discriminatory motivation in doing so on the part of the employer or those for whom it is responsible. She submitted that that had not been the case in this claim, and there was insufficient causal link between the respondent inviting the speaker and the harassment of which the claimant complains.

90. However, Ms McColgan also addressed the content of Eva Echo's talk and submitted that the talk itself did not meet the subjective threshold for harassment under s26(1)(b). However, if the Tribunal disagreed and thought that the subjective threshold was met (which we took to mean that the Claimant experienced the talk as intimidating, hostile, offensive, humiliating or degrading) we should nevertheless conclude that the objective threshold was not met, applying the criteria in s26(4) and taking into account the features of a case involving protected beliefs.

91. On that Ms McColgan first referred us to *Richmond Pharmacology Ltd v Dhaliwal and Grant v HM Land Registry*, which she submitted, show that the threshold imposed by s26(4) Equality Act is robust, and that not every upsetting incident related to a protected characteristic is harassment. This is all the more so, she submitted, in a situation in which one person's expression of their protected beliefs causes upset to another because of their protected beliefs, and/or for reasons associated with another protected characteristic such as gender reassignment. Article 10 European Convention on Human Rights ("ECHR") protects the right to freedom of expression, including "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". The right is subject to such limitations as are "necessary in a democratic society ... for the protection of the reputation or rights of others" but protection of the right may involve upholding the right to express views that are capable of causing offence, shock or disturbance. Ms McColgan referred the Tribunal to sections of the leading text on human rights law (*Lester, Pannick & Herberg: Human Rights Law and Practice*) for further discussion of this submission. Her primary submission, therefore, was that the threshold test for harassment was not met in this case, taking into consideration the provisions of Article 10, although she accepted that there was

no direct authority on the interplay between Article 10 and the test in s26 Equality Act.

92. As regards the direct discrimination complaint and a suggestion by the claimant that the respondent had advanced no evidence to explain why it had not accepted the claimant's complaints about the TDOV Ms McColgan submitted that the explanation lay in the documentary evidence which was explained and given context by ACI Lockyear. She also provided detailed submissions on the evidence the Tribunal heard in relation to the direct discrimination complaint which, as with the corresponding submissions made by the claimant, we considered carefully before reaching our conclusions.

Supplemental submissions – Higgs v Farmor's School

93. In light of the respondent's submissions, the Tribunal considered that it ought to have regard to remarks in the decision of the Court of Appeal in *Higgs v Farmor's School* [2025] [EWCA] Civ 109 at paragraphs 61-65, albeit that that case was concerned with the question of whether the dismissal of an employee for manifesting her beliefs was proportionate, taking into consideration her Convention rights. But the passage in question sets out the principles that a Tribunal must take into account in dealing with cases touching on freedom of expression such as this one. The relevant passage reads as follows and addresses some of the points put by Ms McColgan and elaborated on by her in her oral submissions, where she made the further point that beliefs that meet the criteria set out in *Grainger plc v Nicholson & Ors* [2009] UKEAT/0219/09 are both to be protected and can be freely expressed, but are not entitled to be free from challenge:

61. The protection of the right of free speech, including speech expressing a person's religious or other beliefs, has always been regarded as a cardinal principle of the common law, and it is of course now also protected by the incorporation by the 1998 Act of articles 9 and 10 of the Convention. There are many decisions of the highest authority expounding the relevant principles, but I do not need to recapitulate them here. I only note three points to which Mr O'Dair, and the FSU in its written submissions, attached particular importance.

62. First, freedom of speech necessarily entails the freedom to express opinions that may shock and offend. The most authoritative statement to this effect is probably that of the ECtHR at para. 46 of its judgment in *Vajnai v. Hungary* [2008] ECHR 1910, where it said: "The Court further reiterates that freedom of expression, as secured in Article 10 §1 of the Convention, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to Article 10 §2, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb; such are the demands of pluralism, tolerance and broad-mindedness, without which there is no 'democratic society' Although freedom of expression may be subject to exceptions, they 'must be narrowly interpreted' and 'the necessity for any restrictions must be convincingly established' (see, for instance, *Observer and Guardian v the United Kingdom*, 26 November 1991, §59, Series A no. 216)."

A very frequently-cited domestic authority to the same effect is *Redmond-Bate v Director of Public Prosecutions* [1999] EWHC Admin 733, where Sedley LJ, sitting with Collins J in the Divisional Court said, at para. 20:

"Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative ... Freedom only to speak inoffensively is not worth having ..."

63. Second, the protection of freedom of speech is particularly important in the case of "political speech" – that is, expression of opinion on matters of public and political interest. At para. 47 of its judgment in *Vajnai* the ECtHR stressed "that there is little scope under Article 10 §2 of the Convention for restrictions on political speech or on the debate of questions of public interest".
64. Third, in any given case it is important to be alive not just to the effect of restrictions on freedom of speech in that case but to their chilling effect more widely. In *R (Miller) v College of Policing* [2021] EWCA Civ 1926, [2022] 1 WLR 4987, Sharp P said, at para. 68: "The concept of a chilling effect in the context of freedom of expression is an extremely important one. It often arises in discussions about what if any restrictions on journalistic activity are lawful; but in my judgment it is equally important when considering the rights of private citizens to express their views within the limits of the law, including and one might say in particular, on controversial matters of public interest."
65. These are principles which any court or tribunal must have at the forefront of its mind in considering a case involving freedom of speech, including the expression of religious or other beliefs. It should be noted, however, that in each of those cases the Court was concerned with limitations on free speech imposed by a public authority. The present case is concerned with an interference with free speech on the part of an employer against an employee, and it is necessary to assess whether the interference was justified in the context of the employment relationship and the law applicable to it.
94. As neither of the parties had referred to *Higgs v Farmor's School* in its submissions, the Tribunal asked for additional submissions on the relevance of this passage to the issues in the case. The respondent submitted that the passage was squarely relevant and reiterated the points made in paragraphs 24-27 of its initial submissions. The claimant took the opposite view and argued that the passage had no relevance to this case. The claimant's written submissions on this point argued that it would be 'a large and unwarranted leap' from the conclusions reached by the Court of Appeal in *Higgs* to the conclusion that Article 10 gave Eva Echo a positive right to be invited or permitted to speak at an event at NSY without constraint by the respondent. A finding that this amounted to harassment would not, the claimant submitted, amount to an interference with anyone's Article 10 rights. In the alternative the claimant argued that that Article 10 is not a gateway into permitting employees to harass each other at work and in any event the statutory definition in s26 already encapsulates the balancing exercise required by Article 10. The claimant considered that Article 10 does not have any role in determining the proper limits of s26 Equality Act and supported this argument with a hypothetical example involving the criticism of Jews or Muslims on a Christian Day of Visibility.
95. We return at this juncture to the list of issues, which it was our task to determine. In essence there were two matters – did the claimant's experience of the TDOV amount to harassment within the meaning of s26 Equality Act and, in the manner in which it treated the claimant's complaint about TDOV, did the respondent treat her less favourably than it would have treated an officer without her protected belief, or with a different protected belief, who made a comparable complaint?

Conclusions – harassment

96. The specific issues for determination on the harassment complaint were as follows:

- a. Was R's conduct in the respects set out at paragraphs 36(a)-(d) of the grounds of claim above unwanted by C?

[36 a. Booked and invited a speaker at the Trans Day of Visibility event on 31 March

2023 who was known as a political activist and known for hostile views towards gender critical people and therefore likely to express those views at the event;

b. Issued a universal invitation and encouragement to officers and staff to attend knowing gender critical people were likely to be amongst the attendees;

c. The Respondent's officers applauded and provided positive feedback following Eva Echo's talk and none of the officers present challenged the speaker or sought to curtail the talk; and

d. The audience hissed when the speaker Stephanie Robinson mentioned Posie Parker, a prominent gender-critical activist, and no officers intervened to stop or challenge this.]

b. If yes, did that conduct have the purpose of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

c. If the answer to (a) is 'yes' and the answer to (b) is 'no', did the relevant conduct have the effect of violating the Claimant's dignity, or subjecting her to an intimidating, hostile, degrading, humiliating or offensive environment, taking into account:

i. The Claimant's perception;

ii. the other circumstances of the case;

iii. whether it is reasonable for the conduct to have that effect?

97. The first question is the nature of the conduct of those for which the respondent is legally liable. Eva Echo was not employed by the respondent and the respondent was not legally liable under s109 Equality Act for what Eva Echo said and the claimant in any event did not seek to say that it was, at least by the time of the submissions. On that, it seemed to the Tribunal that the claimant's position had changed over the course of the evolution of the list of issues and in the course of the hearing. Some of the questioning of the respondent's witnesses seemed to be aimed at suggesting that there was a relationship between the Eva Echo and the respondent that gave rise to liability under s 109 Equality Act. In case of any doubt about what the claimant was actually claiming, we have found that there was not. In addition to this, Ms McColgan reminded the tribunal that there are no extant third-party harassment provisions on which the claimant can rely. We agreed with that. The claimant can only complain of what the respondent did, through its officers and employees. The conduct the claimant complained of for which the respondent can be held responsible were the four matters set out in the preceding paragraph.

98. In terms of what the respondent actually did, as distinct from what Eva Echo did, we start by finding that it was no part of the respondent's purpose in setting up the event to have the effect proscribed by s 26(1)(b). We were completely satisfied from Christopher Moore's evidence on his intentions in setting up the event and inviting Eva Echo to speak, that it was not his purpose to harass those with gender critical beliefs, within the definition. As noted, he did not have those with gender critical beliefs in mind when organising it and did not expect them to attend the event. We had no reason to doubt his evidence that he did not act out of hostility towards them or with the purpose of violating their dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for them.

99. We in fact went further than this and concluded that the respondent's conduct in inviting Eva Echo to speak at the TDOV was not conduct related to the claimant's

protected characteristic of holding gender critical beliefs at all. The holders of gender critical beliefs were not in the minds of the organisers of the event, consciously or unconsciously. The event was not directed at them, they were not expressly invited to it and their attendance was neither sought nor discouraged. On that basis, the booking of Eva Echo to speak at the TDOV did not amount to harassment within s26. The same is true of the invitation to attend the event. The holders of gender critical beliefs were not in mind and the sending of the invitation was not, we find, conduct related to their protected belief. The first two of the matters the claimant relies on in paragraph 36 of her particulars of claim were not therefore conduct related to the claimant's protected characteristic and on that basis did not amount to harassment.

100. This conclusion is reinforced by Ms McColgan's different, but related submissions relying on Nailard, and her argument that there was an insufficient causal nexus between the behaviour of Eva Echo that the claimant found objectionable and the booking of Eva Echo to speak. This same argument, that the causal nexus is insufficient, applies to the issuing of the invitation to attend the event. The Tribunal agreed that there was insufficient connection between the booking of Eva Echo and the issuing of the invitation and the impact on the claimant of Eva Echo's talk. It was not the respondent's actions in organising the event and issuing the invitation that produced the effect that the claimant complains of. In case we are wrong in that conclusion we also address the setting up of the event and the invitation to participate from a different perspective in paragraph 105 of these reasons.

101. What concerned the claimant about the event itself was the content of Eva Echo's speech, the positive reception that speech and the event as a whole received and the adverse reaction to the mention of Posie Parker. The respondent has accepted that these matters amounted to unwanted conduct and we consider that they were clearly matters related to the claimant's protected beliefs. The respondent was not responsible for the content of the speech, and when considering the respondent's potential liability, the focus is therefore on the other two matters. However, if the content of the speech had not caused a reaction in the claimant she would not have been concerned about the positive response it received. It is therefore necessary to consider whether the speech itself met the subjective threshold for liability under s26 in that it did cause the claimant to consider that her dignity had been violated, or the speech had created an intimidating, hostile, degrading, humiliating or offensive environment for her that was "approved" by those present. This first requires evidence of the claimant's actual reaction. We will then consider the objective question under s26(4) of whether the conduct complained of amounted to harassment in light of the claimant's perception, all the circumstances of the case and whether was reasonable for the conduct complained of to have that effect.

102. As for the subjective threshold, the claimant describes the impact on her in the passage quoted at paragraph 30 above, which we repeat here.

"I felt like an incognito Daniel in the lion's den. I struggled to square the MPS' demands that officers challenge comments in private WhatsApp conversations with the unchallenged public endorsement of hostility towards GC people I had witnessed. Given the applause and positive comments in the chat it seemed likely that the audience did not recognise what was said as discriminatory, perhaps because they were not aware of an alternative view or perhaps the speech accorded with their existing views. Either that,

or they were acting with impunity. This was especially disconcerting as there were personnel from hate crime policy, HR, legal and CPIE present. I thought these staff would likely be aware of the Forstater ruling and of the societal divide over these issues.

I also assumed intelligence staff present — such as Kit Moore — would likely be aware of the risk of public disorder and the need to calm rather than inflame community tensions. I felt that the event, and in particular painting GC women as a threat to trans safety, increased the risk to anyone openly GC. It was extraordinary to me that no-one else seemed to see that.

I was upset, however my overwhelming feeling was of isolation and dread at the knowledge that it was down to me — a trainee detective on probation, with no standing or support network in the MPS — to do something about what had happened. Out of 54,000 people in the MPS I felt there was no-one else I could speak to about this.”

103.The claimant therefore left the event feeling that she had witnessed an “unchallenged public endorsement of hostility towards GC people” and a sense that she was on her own in dealing with it. Her feelings therefore encompassed the event itself and what she anticipated might follow if she acted on what she had heard. She described herself as “upset”. The Tribunal debated the claimant’s reaction at length, in light of what Eva Echo said and the reaction to it. We concluded that she was offended by what she heard and regarded the remarks as evincing hostility towards those with gender critical beliefs. Her reaction also cannot realistically be separated from what she regarded as an endorsement of what she heard by the audience and she was certainly disturbed by the experience as a whole. The subjective threshold test under s26 was therefore met.

104.Turning to the objective analysis under s26(4), was it reasonable for the event to have had the effect claimed, given the claimant’s perception and all the surrounding circumstances? The event itself had the purpose of improving the visibility of trans people within the respondent. It was by its nature a partisan event. The claimant attended the event without compulsion or encouragement, out of a well-established prior interest in the subject. It was a subject she had taken an active interest in and written about in her previous professional life. She had her own well-developed views on the subject and was already fully aware that the debate was heated and involved strong expressions of belief and frequent ad hominem attacks on both sides. When she did choose to attend, she encountered in one of the talks an unsurprisingly (in the circumstances) unbalanced presentation of issues related to her protected belief and some expressions of hostility towards holders of those beliefs. We were asked by Ms McColgan to incorporate into our conclusions under s26(4) a consideration of Article 10 of the ECHR and the necessity to give full weight to the importance of freedom of expression when deciding whether objectively it is reasonable for hostile or offensive speech to amount to harassment under s26. We consider that we are also mandated to do so by the passage in *Higgs v Farmor’s School* which we have set out above and did not accept the claimant’s submission that the passage has no relevance to the issues in this case. Contrary to that submission we consider that the balancing exercise required under Article 10 is relevant to the exercise of the discretion given to Tribunals in making the assessment of which of the surrounding circumstances are relevant to the harassment complaint and the extent to which it is reasonable for the conduct to have the effect complained of.

105.If “freedom of speech necessarily entails the freedom to express opinions that may shock and offend” and “the protection of freedom of speech is particularly important in the case of “political speech” – that is, expression of opinion on matters of public and political interest” we consider that a Tribunal applying s 26(4)(c) should hesitate to conclude that speech that offends a holder of a protected belief because it challenges aspects of that belief system or the thinking of its adherents has the effect proscribed by s 26(1)(b). However, in reaching such a conclusion all the surrounding circumstances must also be weighed. In this case those circumstances include the nature and purpose of the event, the claimant’s purpose in attending it and the claimant’s familiarity with the manner in which the public debate on the issue has been conducted. We reminded ourselves that the most objectionable of the statements made by Eva Echo was the description of those with gender critical views as showing “cult-like behaviour,” of being “obsessed” and of having “twisted, warped views”. The quotation in Higgs from the judgment of Sharp P in *R (Miller) v College of Policing* [2021] EWCA Civ 1926, at para. 68 is applicable here: “The concept of a chilling effect in the context of freedom of expression is an extremely important one. It often arises in discussions about what if any restrictions on journalistic activity are lawful; but in my judgment it is equally important when considering the rights of private citizens to express their views within the limits of the law, including and one might say in particular, on controversial matters of public interest.” This is not to create a hierarchy of rights, as Ms Cunningham characterised it, but to give proper weight to the right to freedom of expression in considering the circumstances of the harassment allegation. In all the circumstances of this case, including the right of Eva Echo to express views that are potentially shocking or offensive, the right of those attending to hear such views and understand the nature of the debate in question but also including the nature and purpose of the event and the claimant’s purpose in attending it, it would not be reasonable to construe the manner in which Eva Echo was permitted to speak (and the respondent’s actions in setting up the event and issuing invitations to participate) as amounting to harassment related to her protected belief. We did not find the claimants analogy with hypothetical events that involved different kinds of belief helpful. The factual matrix is particular to each case, particularly in the arena of contested beliefs, where the nature and history of the conflict between different beliefs may itself be a relevant factor. It was part of the respondent’s purpose in hosting the event to promote understanding of a particular set of beliefs. The process of gaining such an understanding may involve exposure to the strength of feeling evoked by the conflicting belief system, as it did in this case.

106.The respondent’s witnesses were united in their emphasis in the importance for policing in London that the police listen to and are cognisant of a wide range of views and experiences, some of them arguably objectionable or objectionably expressed. That too forms part of the circumstances that must be weighed in determining whether the event in question amounted to harassment in this case. In our judgment it points away from a conclusion that harassment was established.

107.Secondly, given the nature and purpose of the event and what can be read into the response a speaker receives, we concluded that it would not have been reasonable for the claimant to feel fearful at that juncture, and to the extent that she did so, she was assuming, without any substantial reason, that the positive response

Eva Echo had received and the negative response to the mention of Posie Parker, would translate into offensive, hostile, degrading, humiliation or intimidating treatment of her, an officer of the respondent, on the grounds of her beliefs. Ms McColgan submitted that the claimant's representatives repeatedly conflated attendance at the TDOV with condoning all that was said there. We agree that that was to conflate two distinct things. As a matter of fact, in the events that followed, there was no such treatment of the claimant, and claimant did not at any time in this claim allege that anything had been done to her, or any remark directed at her, because of her beliefs. But we have not based our finding on what did or did not happen afterwards, but on what we considered that it was reasonable for the claimant to feel at the time of the TDOV, given all the surrounding facts and circumstances and the size and nature of the event. Whilst the claimant's evidence did convey some fear of reprisals and adverse consequences for her career if she raised concerns about what she had heard, those fears seem to have arisen from a number of assumptions about what would happen, rather than reasonable deductions from what she had actually seen and heard. We have addressed this point further in paragraph 25 of these reasons.

108. In her written complaint, set out at paragraph 42, the claimant makes two references to feeling concerned that if she made a complaint about the event she might be subjected to repercussions that might even bring her career to an end, basing this on the reception Eva Echo's speech had received and its apparent endorsement by senior personnel. She was not complaining about anything that had actually been said or done to her at the event. In fact, the majority of the complaint is an exegesis about the terms of the debate and what each side is said to believe and the claimant's broader concerns about how the issue was being policed. This indicates that the real nature of the complaint itself was not about the way she had been or expected to be treated as an individual officer holding gender critical beliefs, but a broader complaint about the way she perceived the respondent to be placing itself in relation to the issue. Her comment on the hissing/booing of Posie Parker was consistent with that. She said in relation to that issue: "I am not confident following this event that Posie Parker or the attendees at her event will receive an impartial policing service". The Tribunal thought that her conclusion that the working environment in general was hostile to her beliefs was a sweeping conclusion to have reached, given the particular event in question, its size, purpose and the nature of those attending, if indeed that was her conclusion. It was understandable that the claimant's confidence about the reception she would receive if she raised a complaint might have been called into question to a degree by what she heard and the reception it received, but this did not justify the broad and unwarranted assumptions she appears to have made about the prevalence of hostility to gender critical beliefs and what might happen if she expressed a different viewpoint.

109. The claimant also said that she had perceived the event as an invitation to act against gender critical people. The sections of the talk to which the Tribunal was referred and on which it was asked to make findings of fact seemed however to be primarily aimed at tackling concerns about alleged misinformation in the debate between those supportive of trans rights and those with gender critical views. The claimant might reasonably have concluded from that that if she expressed her views, she might have to defend them against opposing views. That is the nature of debate about a highly divisive and sensitive subject where those involved have world views

that are difficult to reconcile. The claimant cannot have been surprised at what she heard, knowing, as she did how divisive the issue is and how strongly, and sometimes offensively, views on both sides are expressed. It is important to note that one of the matters on which she relies in her claim – the treatment of Mike for appearing to support and promote a gender critical perspective – was not known to the claimant at the time and it cannot therefore have made any contribution to how she experienced the TDOV. We did not think that the claimant's belief that the event constituted an invitation to act against gender critical people, as distinct from engaging critically with their ideas, was justified.

110. Applying all of these observations to the test in s26(4), we concluded that the speech that the claimant objected to and the reaction to it at the event, did not amount to unlawful harassment in this case.

Conclusions – direct discrimination

111. In dealing with the second question the Tribunal was required to engage with the burden of proof, the outcome of the direct discrimination claim being determined by whether we considered that the burden had shifted to the respondent and whether, if it had done so, the respondent had provided sufficient explanation to prove on a balance of probabilities that the actions of which the claimant complained had been in no way tainted by discrimination.

112. The claimant sought to say that the respondent had succumbed to “institutional capture” as Ms Cunningham put it, by persons holding beliefs about gender identity with which the claimant disagrees. In paragraph 74 of her written submissions Ms Cunningham summed up the proposition it wanted the Tribunal to accept as follows [our emphasis]: “All of the above examples constitute evidence that C was right when she described “institutional discrimination against those with GC beliefs” in an email to the respondent in December 2023 [553]¹. Or, to use perhaps a more precise (and judicially sanctioned) term, that there was a “continuing discriminatory state of affairs” towards **persons with such belief** throughout the relevant period. One

¹ What the claimant said at page 553-4 was as follows:

I am hoping that by providing this additional information the Met will be able to see that its stance of regularly hosting and platforming individuals who are overtly hostile to gender critical women, allowing them to indoctrinate officers and failing to provide or provide for alternative viewpoints, is discriminatory - in fact it is evidence of institutional discrimination against those with GC beliefs.

I believe the MPS is:

- discriminating against officers/staff who are GC including myself and;
- failing in its duty of impartiality towards members of the public who are GC such as Posie Parker who need police services
- potentially failing in its duty of impartiality towards suspects and victims in crimes involving disputes over trans rights

This is obviously a sensitive and difficult area and I believe that this situation arose in part because the Met is keen to build trust within the LGBTQ community. However the LGBTQ community is split over trans rights just as the rest of the country is and my firm belief is that these efforts are actually damaging trust in the police, and not only amongst GC

women. If the situation continues I believe a serious incident will eventually occur that will damage trust still further. When I joined the Met in 2022 I did so when it was still massively under fire from women in the aftermath of Sarah Everard's death. I joined because I believe the police are necessary for women's safety and I wanted to do something practical to help. However, when I joined (under criticism from friends and family) I also decided I would speak up if I saw anything wrong.

manifestation of it was the DPS' refusal to engage with C's complaint (and the subsequent refusal to engage with her grievance)."

113. It was accepted in cross examination by ACI Lockyear that the respondent's approach to gender critical beliefs has evolved since the matters giving rise to this claim. He accepted that "prior to Forstater we were not aware of the nature of the gender critical view and there was an imbalance". The Tribunal noted that the EAT's decision in Forstater was handed down two years prior to the events in question, but accepted that, as ACI Lockyear said in his evidence that an organisation such as the respondent "is a big ship slow to turn around and people will be working through their views and attitudes". This was a straightforward acceptance by a thoughtful and credible witness, that at the time the claimant complained, there was a lack of understanding and awareness of the gender critical viewpoint. This acceptance was reinforced by the findings of DCS Smith's subsequent review into the TDOV and the recommendations he made as a result.

114. As a reminder s136 states as follows:

Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(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 subsection (2) does not apply if A shows that A did not contravene the provision.

115. The Tribunal must therefore start with the facts that were proved by the claimant and decide whether she has established sufficient facts to indicate that discrimination had occurred. We are invited by the claimant firstly to accept that her proposition about "institutional capture". The Tribunal did not regard itself as equipped to make such a wide-ranging finding about an institution employing 55,000 people, with operations and an organisational structure of immense sophistication and complexity. To make such a finding in the context of an individual employment claim would not, in our view, be a proper or responsible exercise of our jurisdiction. We furthermore do not need to do so, given ACI Lockyear's acceptance that there was a tendency within the Respondent at the time to give limited credence to the gender critical viewpoint and the subsequent steps taken by the respondent to improve the representation of those with gender critical beliefs within the respondent. We consider that this acceptance, which was endorsed by the evidence of ACS Beehag-Fisher and DCS Smith that thinking about the gender critical viewpoint has evolved at a personal and institutional level since the claimant brought her complaint, was sufficient to shift the burden to the respondent to explain why it handled the claimant's complaints in the way that it did and to prove to the tribunal that on a balance of probabilities the decisions taken were not at any stage tainted by discrimination.

116. The claimant sought to say that the respondent offered little or no evidence as regards this part of her claim and it is the case that some of the decision makers such as DS Overall and Daniela Isaaq did not give oral evidence to the Tribunal. But

there was a significant amount of documentary evidence of the individual decisions taken including, in each case an explanation for the rejection of the complaint. We were unable to find in this contemporaneous documentation any evidence of discrimination towards gender critical beliefs operating on the minds of any of those who made these decisions. It is the thought processes of the decision maker that are relevant in a direct discrimination claim and what might be operating on the minds of other individuals is not relevant to this question, unless for example (which we did not find to be the case here) that there is clear evidence that in acting as they did an individual was simply carrying out instructions by someone who was consciously or unconsciously discriminating. We have given very careful thought to this point given the evidence the claimant has asked us to take into consideration. But the claimant's argument that the respondent had at the time taken a particular approach to the question of gender critical beliefs as an institution, is in our judgment not one that could by itself lead to a finding of direct discrimination, even if an assessment of whether there existed institutional discrimination of that kind is one that the employment tribunal is equipped or has jurisdiction to determine, a point we have already addressed. A finding of direct discrimination would involve specific acceptance that an individual has consciously or unconsciously discriminated when taking the actions that are the subject of the complaint. We have not found that to be the case in relation to any of the actions under scrutiny in these proceedings.

117. On the contrary, the contemporaneous evidence persuaded us that the decisions taken in response to the claimant's complaints were taken for reasons related to the nature of the respondent's internal processes, the manner in which the claimant chose to pursue them and the restrictions she voluntarily imposed on what she wanted the respondent to investigate. The individual decisions taken by Ciaran Overall, Daniela Isaaq and ACI Lockyear, were not taken because of the nature of the claimant's beliefs, but because she was not complaining about officers or employees of the respondent. She was told in terms by Ms Isaaq that if she wanted to bring a complaint against Christopher Moore then matters would have been taken further. It is a matter of speculation how the process would have unfolded had she made a different decision and whether the steps that the respondent has subsequently taken to address the issues that the claimant has raised, would have happened more quickly. But it was because she did not want to do this that the process ended where it did. We concluded that the outcome would not have been any different if she had held a different belief. She was insistent that she did not want to bring a complaint against any individual officer, which is perhaps to her credit, but the consequence was that the procedures made available to her did not suit her what she was trying to achieve.

118. As for the actions taken in the period after the complaint, it is difficult to regard the manner in which the respondent has acted on since as either evidence of the implacable hostility suggested by the claimant's submissions, or nothing more than a reluctant reaction to the pressure of employment tribunal proceedings. It seemed to the Tribunal to have been far more reflective than that and indicative of a genuine and thoughtful engagement with the complex issues raised by the claimant's arguments. Those who share the claimant's beliefs now have their own network. Some of those who opposed this measure have been issued with "words of advice". None of these steps could reasonably be regarded as detrimental or unfavourable to the claimant.

119. The claimant's ultimate purpose was succinctly summarised at the end of her witness statement where she says:

"I feel this tribunal should not have been necessary. WRN raised concerns to no avail. I have done everything I can — via the DPS, Federation, Grievance Team, HMIC and emails to the MPS — to persuade the MPS that TDOV is indicative of institutional discrimination where the trans perspective is seen as the default or correct view, and GC women's view is seen as bigoted at worst or irrelevant and unworthy of consideration at best. Approaches to the Network of Women and an application to join the Culture, Inclusion and Diversity Shadow Board were unsuccessful. The recent approval of GCN was a positive step but insufficient given that before its (still delayed) launch it was met with a public (internally) hostile and discriminatory statement from the same Network that organised TDOV.

I feel only a public ruling that TDOV was discriminatory and an act of harassment in the context of all these facts will persuade the MPS that its reaction to my complaint to date has been inadequate and that more decisive management action in support of gender critical staff is needed."

120. The claimant was clearly frustrated that the means by which she chose to bring to the respondent's attention an issue about which she felt so strongly was not yielding results. It appeared to the Tribunal that there was no obvious route for the claimant to raise her concerns about the TDOV, but at the same time it was the claimant herself who placed constraints on the way she raised the issue, by for example, not speaking to her line manager about it and by deciding that she did not want to complain about any individual officer. The claimant's complaint in the quoted passage is that her claim should not have been necessary. The Tribunal would make a different point, which is that an individual employment claim is not the right mechanism for addressing concerns about matters of policy and the manner in which a policing service should approach a highly sensitive and divisive national debate. At the same time, it would appear that the claimant's claim has contributed to substantial changes in the manner in which the respondent accommodates gender critical beliefs and a review of the way in which it engages with external speakers across a broad spectrum of issues. None of that however is the remit of the employment tribunal. Within that remit we have not found any evidence that in responding to the claimant in the way that it did the respondent's officers and employees discriminated against the claimant or treated her differently from the way they would have treated a hypothetical comparator with different beliefs who had raised a complaint in the same way as the claimant did in this case.

121. The claimants' claims of direct discrimination and harassment are not well founded and are dismissed.

Employment Judge Morton
Date: 25 June 2025

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