

BETWEEN

MAYA FORSTATER

Claimant

and

CGD EUROPE

Respondent

RE-AMENDED PARTICULARS OF CLAIM

1. The Claimant is a researcher, writer and advisor working in the field of sustainable development.
2. The Respondent is the European arm of the Center for Global Development ("CGD"), a not-for-profit think tank based in Washington DC which focuses on international development.
3. The Respondent was incorporated as a separate legal entity in 2014. It has its own staff and budget, but functionally it operates as part of CGD. There is one website for CGD which lists all staff including those of the Respondent, and all publications regardless of which staff produced them. Strategy for the Respondent is set by CGD's Strategy and Policy Group ("SPG"), which meets monthly in Washington DC with London members of the Group attending by video link.
4. Senior members of CGD staff can and do make decisions as to the status, engagement, employment and management of people working for the Respondent. Where this happened, the Claimant contends that they did so as agent for the Respondent and with the Respondent's authority.

5. In November 2016 the Claimant was appointed a visiting fellow of CGD. Visiting fellows are appointed by the SPG for a term of one year which can be renewed up to twice, so a visiting fellowship lasts for a maximum of three years. The renewal is usually a formality.
6. Visiting fellowships are not paid but there is a significant status attached to them. Some visiting fellows, including the Claimant, also perform work for CGD or the Respondent on a paid consultancy basis.
7. As a visiting fellow the Claimant had use of the Respondent's office and facilities, a business card and an email address; she attended weekly team lunches and was generally treated as part of the team. She was named as a member of the senior research team in CGD's employee welcome pack.
8. In January 2017 the Claimant was engaged by CGD for the year January to December 2017, on an output based contract, for payment of \$50,000 in total. She performed the contract in London.
9. The Claimant's visiting fellowship was renewed in December 2017 without question.
10. From March 2018 to May 2018 the Claimant had an output based contract with the Respondent for payment of £4,000.
11. In April 2018 the Claimant took on another contract with the Respondent, for 90 days at £400 a day to run from April 2018 to December 2018.
12. In August 2018 the Claimant began to talk about sex and gender issues on her personal Twitter account, which she has had for 10 years. Her Twitter biography stated that she was a visiting fellow of CGD.
13. Sex and gender was a topical issue at this time, as the government was consulting on proposals to reform the Gender Recognition Act 2004 to make it easier for transgender people to change their "gender", and therefore their legal sex, by self identification. The Claimant was concerned by these proposals, and she expressed that concern on Twitter.

14. On 2 October 2018, Luke Easley, HR Director for CGD, wrote to the Claimant saying that several staff had expressed concern about some of the language and tone in her recent engagement on Twitter in a discussion around gender identity and sex. He said that CGD do not require staff or affiliates to vet their public views and social media usage, but

“we do ask that these are free of exclusionary statements. There were several tweets you posted that are therefore problematic; for instance, you stated that a man’s internal feeling that he is a woman has no basis in material reality. A lot of people would find that offensive and exclusionary.”

He asked the Claimant to include a statement in her Twitter profile indicating that all tweets and views were her own.

15. The Claimant did this and replied to Luke Easley confirming that she had done so. She expanded on her views and explained why she believes it is important to have a respectful debate on these issues. She said that she was co-writing a blog post on this subject as it relates to the development sector, but if CGD did not want to host it she would look to place it elsewhere.
16. On 8 October 2018 the Claimant send Luke Easley a copy of the draft blog post and said she would appreciate his thoughts. He replied thanking her and said that others were better positioned to give feedback, including Holly Shulman (Communications Director) with whom he had shared it. He said he understood that she had also shared it with Mark Plant (a Senior Fellow based in London who is also Chief Operations Officer for the Respondent) and that this was great.
17. The Claimant received no feedback on the blog post from CGD / the Respondent and did not post it online at this time.
18. On or about 19 October 2018 a proposal for two years of project funding was submitted to the Gates Foundation, with a strong indication from the Foundation that it would be funded. The Claimant was named as a full time employee in the proposal, with \$85k per year budgeted for her time. The Claimant discussed this with Owen Barder, Director of the Respondent, and later with Mark Plant, and it was agreed in principle that she would become an employee at the Respondent contingent on the Gates grant coming through. The Gates project would only take

about 50% of her time, and she would also work 40% FTE on other projects for the Respondent.

19. On 21 November 2018 Mark Plant announced at a team lunch that the Gates Foundation grant had been agreed, without first telling the Claimant, which she found strange and humiliating.
20. After lunch, Mark Plant told the Claimant that CGD had changed its mind and did not want to employ her, but instead proposed that she should stay on and work on the Gates project on a consultancy basis, and when her visiting fellowship was up in one year's time, continue as a non-resident fellow. He made it clear that this was "because of your tweets." He told the Claimant that she had antagonised key personnel in Washington (he did not say who) by tweeting about sex and gender, and that these relationships were irrevocably broken. He suggested the Claimant's best course of action would be to stay in London, not try and build bridges with Washington, get on and do the Gates project on a half time consultancy basis, and not seek to fundraise or bring other projects into CGD.
21. The Claimant agreed to continue on this basis as it seemed to her she had no choice. She did not think that she had any rights, and she had been isolated from the senior team in Washington.
22. In December 2018 the Claimant's visiting fellowship came up for renewal.
23. On or about 17 December 2018 Mark Plant told the Claimant that at the recent SPG meeting no decision had been reached on renewing her visiting fellowship – there had been strong opposition from some people in Washington, and he had only saved the motion from being refused altogether by proposing that a "process" take place in London rather than Washington to investigate the specifics of the case, consider the broader issue of intellectual freedom and social media policy, and bring back a report so that the SPG could discuss it again in January.
24. The Claimant sent Mark Plant an email attaching the latest version of her draft blog post and asking to be allowed to make the case that this was a policy issue around the world that people and institutions ought to be able to talk about clearly and without being told that it is offensive to talk about women as a sex.

25. On 19 December 2018 the Claimant followed up on this with another email thanking Mark Plant for having spoken up for her, along with others in the London office, but arguing that it was not in her interest to remain completely outside this process, unable to make any representations herself. She said that she would like to be able to write to the senior team direct to explain her position. She followed up asking to know the names of the members of the senior team so that she could write to them.
26. On 20 December 2018 Mark Plant responded saying that he would be establishing a process involving Cindy Huang, a Senior Policy Fellow in the DC office, and an external consultant, to consider how to move forward. He said he intended to get it done swiftly. In the meantime he advised against the course of action proposed by the Claimant. He said this was now a question not for the SPG but for the management of the Respondent. He felt an email from the Claimant to the SPG could be counterproductive. The Claimant accepted this advice.
27. On 10 January 2019, having heard nothing further, the Claimant emailed Mark Plant to express her concern as she did not know whether she would be continuing as a visiting fellow or not, and did not know whether she would be doing the Gates funded project or not or whether she should be looking for other work. He replied that he was pushing things as quickly as he could.
28. Finally on 7 February 2019 Mark Plant sent the Claimant a report by Quantum Impact, a US based consultancy.
29. The report stated that there had already been three independent reviews of the Claimant's tweets, by:
 - 1) An external diversity and inclusion expert;
 - 2) An external expert in workplace dispute resolution;
 - 3) An internal fellow.
30. It said that all three reviews had agreed that
 - 1) Several of the social media posts contained language that was offensive and/or disrespectful;
 - 2) None of the content expressly violated CGD's existing policy;

- 3) CGD needed an organisational policy to help guide this and future discussions, including around social media use and expression of freedom.
31. The Claimant had had no involvement in any of these reviews and had never been shown what tweets were involved or what was being said about them, nor had she been given any opportunity to respond. Nor had she been shown the conclusions of any of these reviews.
32. Quantum Impact had therefore embarked on a fourth review, involving “discrete [sic] questions” to “a tenured professor of LGBTQ studies, an HR and legal expert, and a D&I [diversity and inclusion] expert engaged in cases involving transgender staff members.”
33. Again the Claimant was given no opportunity whatsoever to defend herself in this review.
34. In respect of “Tweets from October” the report concluded that
- “Several of her posts highlighted critical parts of the debate and invited discussion; several were offensive to staff members and to independent reviewers for two primary reasons: first, several posts used exclusionary language and second, posts used fear-mongering against a marginalized community.”
35. The Claimant strongly disputes this characterisation of her tweets.
36. The report also considered the Claimant’s draft blog post, notwithstanding that she had never published it, noting that “Although she was not looking to have CGD publish the blog article, she did share the blog article with several colleagues”.
37. The report concluded that the article “used disrespectful and offensive language including verbiage [sic] that suggested that a group of individuals has not existed in history, and language crafted to induce fear against a marginalized community. Such language stands in opposition to CGD’s values of for a non-hostile, fear-free and inclusive workplace.”

38. Again, the Claimant strongly disputes this characterisation of her draft blog post. In fact, since leaving the Respondent the Claimant has published it, it has been read by 2,500 people and she has had no feedback that it is offensive.
39. The report goes on to consider additional social media activity by the Claimant after she had been notified by the HR director that a complaint had been made, notwithstanding that the Claimant had modified her Twitter biography as requested by Luke Easley to make it clear that views expressed were her own.
40. The authors go on to claim that “Fellow B [the Claimant] interacts on social media with content that is fear mongering. For example, she re-tweeted a video that uses explicit images and threatening music, linking acknowledging [sic] transgender individuals with increased sexual assaults.”
41. Again, the Claimant strongly disputes this characterisation of her Twitter interactions and of the content of the video to which she had tweeted a link.
42. The report made a series of “findings” which did not include any express finding that the Claimant had breached any identifiable policy of CGD or of the Respondent.
43. The report recommended:
 - 1) That “CGD convene a working group to help clarify CGD’s internal values and draft an organizational policy for all staff”
 - 2) That interim guidelines be provided while this policy is being drafted
 - 3) That for this specific incident and any future incidents CGD leadership engage in dialogue with affected staff members individually, to re-affirm CGD’s values and re-set expectations for behaviours moving forward.
44. It is quite clear from these recommendations that there was, yet again, no finding that the Claimant had breached any existing policy.
45. In his email to the Claimant on 7 March 2019 attaching this report, Mark Plant noted that the final recommendation was that CGD management discuss the situation with the Claimant and seek a constructive way forward. Before having

that conversation, he offered the Claimant an opportunity to comment in writing on the report.

46. On 11 February 2019 the Claimant sent Mark Plant a detailed response to the report. She will rely on this response for its full effect.
47. On 13 February 2019 the Claimant and Mark Plant met to discuss the matter. The Claimant said that the Quantum Impact report was inadequate. Mark Plant agreed with this, so they set it aside.
48. Mark Plant then verbally gave the Claimant some idea of which tweets had been judged “offensive”. This included tweets in which she had referred to “material reality”, for example saying that “being male or female is a material reality”, and a Fair Play for Women video she had linked to, that has black, red and white graphics and ominous music, which was said to “remind people of the Nazis.”
49. The Claimant said that she stood by her tweets, but had decided to tweet less on this topic on her personal Twitter account since most of her followers are more interested in tax and development issues. She would also agree not to raise the topic in conversation in the office again.
50. Mark Plant agreed with this plan and said they should get on with contracting her for the Gates project. However, at the end of the meeting he said “I don’t want to take this back to the SPG for a decision [on the visiting fellowship], I think you should just be a consultant”. The Claimant left the meeting upset.
51. On 15 February 2019 the Claimant emailed Mark Plant and apologised for having walked out on him. She stated that continuing as a visiting fellow was important to her, and she explained why. She said that she did not want to walk away from it; “if the SPG decide they don’t want me as a visiting fellow that should be their decision.” She acknowledged that there may be a risk in doing this. She asked if it was worth her talking it over with Mark Plant and Masood Ahmed, President of CGD.
52. Mark Plant then agreed to take the decision to the SPG at the Claimant’s request. He asked her to write a note to the SPG setting out her proposal on how she would

avoid giving offence in the office, but continue to engage on the topic outside of her work at CGD.

53. On 22 February 2019 the Claimant sent Mark Plant a draft note to the SPG. He did not respond. The Claimant chased up asking “has this gone to the SPG?” He replied that it had just gone to Masood Ahmed, Amanda Glassman (Chief Operating Officer), Ellen Mackenzie (Chief Financial Officer) and Luke Easley, and that there would be discussion among them as to how to take this forward.
54. On 28 February 2019 Masood Ahmed called the Claimant to give her a decision.
55. Masood Ahmed told the Claimant that he had decided that he didn’t want to renew her visiting fellowship for another year, but he was happy for her to continue to work as a consultant on the Gates project. He said he had reached this decision because CGD recognises people for whatever sex or gender they identify as, and the Claimant’s position on this had led to a lot of stress among other staff, so that when the decision came up whether to renew her visiting fellowship, he could not get consensus among the senior fellows that it should be renewed.
56. The Claimant pointed out that in UK discrimination law there is a protected characteristic of sex and it is not self identified, it is what it says on your birth certificate, so she felt that to say that her viewpoint, which is aligned to UK law, is unacceptable because the CGD takes a view which is not aligned to UK law, was unjustifiable. She asked on what grounds other than expediency a decision was being made that she would not be part of the team.
57. Masood Ahmed replied that he was making a hiring decision, and repeated that the issue was a lack of consensus and without that consensus he didn’t feel it would be productive to move forward on that. However he assured her that he did want to be consistent with the law in the UK so he would double check that this was the case.
58. The Claimant pointed out that she was named as a full time employee in the proposal to the Gates Foundation and that CGD had made a verbal commitment to employ her, and the lack of consensus he was relying on was based on the fact that she had an opinion that is consistent with UK law.

59. Masood Ahmed simply reiterated his decision and that he was happy for her to continue to contribute to the project and he hoped she would be able to do that.
60. The Claimant said that she didn't see how she could, having been told she was not welcome. As a woman standing up for women's rights, she had been told she was not welcome in the office, not welcome in the team, not welcome on the website, not welcome to use CGD business cards or to introduce herself to people externally as being in any way connected to the team, so she didn't think it would be possible to continue to work with CGD for the next two years. She said that CGD had pushed and pushed to say she was worthless and had no status in this organisation and was not welcome, but was now saying please continue to work for us – she didn't think that was any way to treat people.
61. The Claimant was quite upset by this point. Masood Ahmed noted this and suggested they think a bit more about whether and how it would be possible, and they could talk about it again. The Claimant agreed to this and the conversation ended there.
62. On Friday 1 March 2019 the Claimant sent an email to Masood Ahmed summarising their conversation as follows:

Dear Masood

Thank you for our call yesterday. I want to confirm understanding from the conversation that:

1. CGD views the process of deciding whether to renew my term as a Visiting Fellow as a hiring decision.
2. You have decided not to take that decision to the SPG because you predict there would not be consensus amongst the senior fellows.
3. The reason for the lack of consensus is because some people object to my view on sex and gender identity, as reflected on twitter, and the fact that I have stated that I intend to continue to engage and write on this topic outside of CGD.
4. CGD would like instead to hire me as a consultant over two years to work on the Gates funded tax project and also to undertake the final part of the Commercial Confidentiality (Luminate funded) project.

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

Thank you.

63. Masood Ahmed did not respond to this request by close of business on Monday or at all.
64. On Tuesday 5 March, Masood Ahmed emailed the Claimant, copied to Amanda Glassman, Ellen Mackenzie, Luke Easley and Mark Plant, as follows:

Dear Maya

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

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

Best,
Masood Ahmed

65. The Claimant took it from the shortness and finality of this response that the offer for her to continue to work as a consultant was no longer open. The Claimant was shocked by this. While she had said that she did not think she could stay on as a consultant, they had left it that she would take time to think about this and that she and Masood Ahmed would then discuss it further.
66. On 6 March 2019 the Claimant sent an email to all staff headed "Dear colleagues – on leaving CGD" in which she expressed her sadness at leaving and set out the reasons why she was leaving. She also published the blog post that she had written in October, and publicised the blog post on Twitter.

Belief

67. The Claimant believes that "sex" is a material reality which should not be conflated with "gender" or "gender identity". Being female is an immutable biological fact, not a feeling or an identity. Moreover, sex matters. It is important

to be able to talk about and take action against the discrimination, violence and oppression that still affect women and girls because they were born female.

68. The Claimant contends that this is a philosophical belief qualifying for protection under the Equality Act 2010.
69. Alternatively, the Claimant contends that some people believe that everyone has an inner “gender”, which may be the same as or different to their sex at birth, and that gender effectively trumps sex, so that “trans men are men” and “trans women are women”. Typically such proponents believe that “trans women are women” from the moment they identify as women (if not before). That appears to be the position taken by CGD.
70. The Claimant contends that this too is a philosophical belief qualifying for protection under the Equality Act 2010.
71. The Claimant does not share this belief. The Claimant’s lack of belief is also protected under the Equality Act 2010.

Direct discrimination (belief)

72. The Claimant contends that the Respondent or its agents directly discriminated against her because of her belief / lack of belief:
 - (1) In deciding not to give her an employment contract to work on the Gates funded project and other projects;
 - (2) In subjecting her to an investigation for expressing her beliefs on her personal Twitter account;
 - (3) In denying her, in the course of that investigation, any information about the complaints against her or any opportunity to explain or defend herself;
 - (4) In deciding not to renew her visiting fellowship for a third year;
 - (5) In deciding not to engage her on a consultancy contract for the duration of the Gates funded project.

73. The Claimant did not breach any policy of the Respondent in expressing her views on Twitter.
74. To the extent that the Claimant was given instructions by Luke Easley of CGD as to what she should not say on Twitter, namely:
- (1) she was asked to avoid “exclusionary statements”;
 - (2) she was given, as an example of “exclusionary statements”, the fact that she had stated that a man’s internal feeling that he is a woman has no basis in material reality, and was told that “a lot of people would find that offensive and exclusionary”;
 - (3) she was told that at CGD “we respect each person’s self-definition and wish to convey our commitment to inclusion”;
 - (4) she was told that in relation to diversity on panels, from CGD’s point of view “the inclusion of any person identifying as female would indeed meet the test of diversity”;

these instructions were in themselves discriminatory as they were predicated on the belief that sex is not a material reality and that it is possible to identify into being a woman.

Harassment (belief)

- 74A. Alternatively, the acts of direct discrimination set out above constituted unwanted conduct related to the Claimant’s belief which had the purpose or effect of violating her dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

Indirect discrimination (belief)

75. Alternatively the Claimant contends that the Respondent applied a provision, criterion or practice that visiting fellows, employees and prospective employees should not express the belief identified at paragraph 67 above, even on their personal Twitter account, failing which they would be penalised.
76. This provision, criterion or practice put people holding the Claimant’s belief at a particular disadvantage compared to those who do not hold that belief, and in particular it put the Claimant at that disadvantage; and cannot be objectively justified.

77. The Claimant was subjected to each of the detriments identified in para.72 above.

Indirect discrimination (sex)

78. The Claimant contends that the belief she identifies at paragraph 67 above, whether a protected belief or not, is much more likely to be held by women than men, and is likely to be held much more strongly by women than men. The vast majority of those opposing the government's proposals for self-identification of gender, for example, are women.

79. The Respondent applied a provision, criterion or practice that visiting fellows, employees and prospective employees should not express the belief identified at paragraph 67 above, even on their personal Twitter account, failing which they would be penalised.

80. This provision, criterion or practice applied to everyone in those categories but put women at a particular disadvantage compared to men, and in particular put the Claimant at that disadvantage; and cannot be objectively justified.

81. The Claimant was subjected to each of the detriments identified in para.72 above.

Victimisation (sex and/or belief)

82. The Claimant contends that the statements she made on the phone to Masood Ahmed on 28 February 2019 about sex being a protected characteristic under UK law, and also that as a woman standing up for women's rights, she had been told she was not welcome, amounted to a protected act or acts.

83. The Claimant contends that the statement she made in paragraph 3 of her email to Masood Ahmed on 1 March 2019 ("The reason for the lack of consensus is because some people object to my view on sex and gender identity, as reflected on twitter") was a protected act.

84. Further the Claimant contends that following the phone call with Masood Ahmed on 28 February 2019 and/or the Claimant's email of 1 March 2019, the Respondent believed that the Claimant may do a protected act.

85. The Claimant contends that the email from Masood Ahmed on 5 March 2019, abruptly ending the discussion between them, and effectively withdrawing his offer for the Claimant to continue working on the Gates project as a consultant, was an act of victimisation.

85A. The Claimant went on to do four further protected acts:

(a) On 15 March 2019 the Claimant presented this claim to the employment tribunal.

(b) On 9 April 2019 the Claimant advised the Respondent that she had lodged a claim for discrimination in the employment tribunal.

(c) On 5 May 2019 the Claimant launched a crowd funder making public the fact of her tribunal claim for belief discrimination, with the header "I lost my job for talking about women's rights." This was widely publicised on social media.

(d) On the same day the Sunday Times ran an article about the case with the Claimant's cooperation and with quotes from the Claimant.

85B. On or about 9 May 2019, the Respondent removed the Claimant's profile from its website. The Respondent maintains profiles on its website for its former staff, fellows and even in some cases interns, and prior to 9 May 2019 had maintained a profile for the Claimant. The removal of the Claimant's profile was detrimental to the Claimant because it reflected negatively on the Claimant's performance of her duties while employed by the Respondent. The Claimant will say that there was nothing in the performance of her duties while employed by the Respondent that could justify the removal of her profile. The Claimant contends that this was an act of victimisation in response to one or more of the four further protected acts.

Time

86. The Claimant contends that all of the matters complained of above constitute "conduct extending over a period" for the purpose of section 123 Equality Act 2010.

87. Alternatively if and to the extent necessary the Claimant will ask the tribunal to extend time. In particular the Claimant believed that she did not have any rights because she was not employed under a contract of employment. It was only after

the Claimant mentioned on Twitter that she had lost her job at the Respondent over this issue that some days later she received legal advice and became aware that this was not true. The Claimant lodged her claim as soon as possible thereafter.

88. The Claimant seeks

- (a) a declaration
- (b) compensation for financial loss and injury to feelings
- (c) a recommendation, and
- (d) interest.

21 March 2019

Re-amended 20 May 2019