

**\*\*\* Press Release \*\*\***

**7 July 2023**

**GARDEN COURT CHAMBERS ORDERED TO PAY ALLISON BAILEY COSTS**

In a judgment on costs published on 6 July 2023, the Employment Tribunal has:

1. Ordered Garden Court to pay Allison Bailey the Claimant the maximum amount of costs that can be awarded on summary assessment (£20,000) for Garden Court's unreasonable conduct in the preparation of the bundle; and
2. Dismissed a counter-application by Garden Court for costs in relation to the parts of the claim on which Miss Bailey did not succeed.

This follows the Tribunal's liability judgment in July 2022, in which it upheld Miss Bailey's claims for direct belief discrimination against Garden Court for its reaction to her tweets about the erasure of sex-based rights, safety and safeguarding, and the medicalisation of gender non-conforming children and young people. Other aspects of Miss Bailey's case against Garden Court, and her related claim against Stonewall, were not upheld.

In its liability judgment, the Tribunal had commented that the trial bundle "*seemed to have been randomly thrown together*" and identified significant problems which made it "*exceptionally difficult to work with*".

These problems substantially increased the total costs and were a significant distraction and burden on Miss Bailey and her legal team in the months leading up to the trial. The impact on Miss Bailey was serious: as the Tribunal recognises in its costs judgment, the problems with the bundle "*made it very difficult for the claimant... to make adequate preparation for trial*".

It is for those reasons that Miss Bailey applied for her costs incurred as a result of Garden Court's unreasonable conduct in their preparation of the bundle.

Garden Court had responsibility for the production of the bundle and even resisted handing responsibility to Miss Bailey and her legal team when she offered to take over. Despite this, Garden Court sought to argue, in response to Miss Bailey's application, that the problems were caused by a lack of cooperation on the part of her solicitors. In its judgment on costs, the Tribunal roundly rejects that submission and finds that Miss Bailey's solicitors had sought to point out the problems with the bundle and offer solutions but had been rebuffed, often in an unnecessarily hostile manner.

The Tribunal finds that a central reason for the problems with the bundle was that Garden Court had "*chopped up*" email chains into separate emails, which made it difficult to follow the threads, and had produced these as a single pdf of more than 1000 pages which was not indexed and could not be electronically searched. The Tribunal finds that when Miss Bailey's solicitors pointed out these problems and tried to find solutions, they were met with

*“unmerited and unhelpful”* accusations that it was they who were not cooperating, but that despite this *“for a time the claimant’s team kept going with stoic goodwill”*. The Tribunal concludes:

*“There were some real problems in how the bundle was being put together. [Garden Court’s] solicitor was not prepared to address them in a constructive way, sometimes not at all.”*

As a result, the Tribunal finds that Garden Court’s conduct in preparing the bundle was unreasonable and that Miss Bailey should be awarded £20,000. This is the maximum that the Tribunal could award without sending the case for a detailed assessment of costs. The Tribunal decided not to send the case for a detailed assessment mainly in order to avoid the further cost that would be involved and to *“provide a clean break and an end to litigation, at any rate for Garden Court”*.

Garden Court had also made a cross-application for costs against Miss Bailey in relation to the parts of her claim on which she had not succeeded. The Tribunal dismissed that application. In relation to her claim that she had lost work because of hostility to her beliefs, the Tribunal noted that there had been *“strident”* discussion of Miss Bailey’s beliefs at the time of her tweets and that she was aware of evidence that *“bias in allocation of work”* had disadvantaged women in chambers. In those circumstances, the Tribunal held that it was *“not fanciful to consider that there might be similar unacknowledged bias against members of chambers who were unpopular”* for opposing Stonewall’s position on sex and gender. The Tribunal held that there had also been evidence to support Miss Bailey’s case that a member of chambers, Michelle Brewer, had solicited complaints against Miss Bailey as part of a Trans Rights Working Group endorsed by chambers. Therefore, even though Miss Bailey’s claims on those aspects did not ultimately succeed, it had not been unreasonable for her to pursue them.

The important messages which this litigation sends, in light of both the liability and costs judgment, are:

1. Employers and organisations need to be aware that they cannot silence people who oppose Stonewall’s policies and who wish to speak up about the erasure of sex-based rights, safety and safeguarding of women and children, and the medicalisation of gender non-conforming children and young people.
2. Employers and organisations who face such claims cannot engage in unreasonable conduct of the litigation in a way that increases costs with impunity.
3. Nor can such employers or organisations use the threat of costs if claims do not succeed to deter claimants: as this costs judgment shows, Tribunals will be astute to uphold the right of claimants in employment tribunals to bring claims for which they have reasonable grounds without having to pay the other side’s costs simply because some or all of those claims may not fully succeed.

4. Even so, the costs of litigating these complex issues are enormous and will almost inevitably exceed the compensation that can realistically be recovered: Miss Bailey's total costs in this case have exceeded £750,000 and Garden Court's were more than £675,000. Garden Court's unreasonable conduct in preparing the bundle contributed significantly to those totals and the Tribunal has recognised that with a substantial award against Garden Court.
5. But the total costs and overall result in this case show how utterly invaluable it is to have the support of thousands of ordinary people through crowd funders, to enforce the right of women to speak up for their beliefs in sex-based rights, safety and safeguarding and against extreme gender ideology, and to ensure that organisations do not get away with attempts to shut down and silence debate on those matters. Without such support, it would not be possible to bring claims like this or to take on organisations like Garden Court, who have the resources to engage in aggressive litigation of the kind criticised by the Tribunal in its judgment on costs.

Finally, Miss Bailey's appeal against the Tribunal's dismissal of her claim against Stonewall remains outstanding. Stonewall may yet be held legally liable for their complaint to Garden Court Chambers about her, which was the basis for part of Garden Court's discriminatory conduct.

## **ENDS**

### **Notes to Editors:**

1. Allison Bailey is not giving interviews or doing any further press.
2. Allison Bailey retired from practise at the Bar in March 2023, having spent 22 years at the criminal Bar, 19 years of which were spent at Garden Court Chambers.
3. For technical questions on the judgment and its significance for employment law in the UK, email Peter Daly at Doyle Clayton Solicitors [pdaly@doyleclayton.co.uk](mailto:pdaly@doyleclayton.co.uk). No on-record comments will be given.