IN THE EMPLOYMENT APPEAL TRIBUNAL **APPEAL NO: EA-2022-001163-NLD**

ON APPEAL FROM

THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

CASE NO: 2202172/2020

B E T W E E N : -

MISS ALLISON BAILEY	**Appellant**
-V-	
STONEWALL EQUALITY LIMITED	**First Respondent**
GARDEN COURT CHAMBERS LIMITED	**Second Respondent**
RAJIV MENON KC AND STEPHANIE HARRISON KC, sued on behalf of all members of Garden Court Chambers	**Third Respondent**

HEARING BUNDLE

Numbering of categories a. to l. below taken from EAT Practice Direction 2023, paragraph 11.3.2.

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Category b: the sealed Notice of Appeal			
b.	Notice of Appeal (Sealed)	9 June 2023	120-127
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Category d: any reply to a cross appeal: N/A			
Category e: any opinion expressed on the Sift			
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	Category f: the Order permitting the appeal to progress to a Full Hearing		
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	Category g: Any other relevant orders and judgments of the EAT		
g.	Notice of Hearing	26 August 2023	138-139
	Category h: the ET1 claim(s) and any document(s) that were attached		
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h. (ii)	Claimant's Particulars of Claim	9 April 2020	155-162
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	Category i: the ET3 response(s) and any document(s) that were attached (First Respondent)		
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1.	Email from Kirrin Medcalfe to Garden Court Chambers (First Instance Trial Bundle pp. 701-2)	31 October 2019	352-353

Doyle Clayton
Solicitors for the Claimant/Appellant
10 April 2024

Case No: 2202172/2020

EMPLOYMENT TRIBUNALS

Claimant: **Ms. Allison Bailey**

Respondents: **(1) Stonewall Equality Ltd**

(2) Garden Court Chambers Ltd

(3) Rajiv Menon QC and Stephanie Harrison QC, sued as representatives of all members of Garden Court Chambers except the claimant (see appendix 2)

London Central (remote) Public Hearing: 25-29 April, 3-5, 9-13, 16-20, 23-26 May 2022. Submissions 20 June 2022.

Panel Deliberation 21- 24 June, 22 July 2022

Before:

Employment Judge Goodman

Mr M. Reuby

Ms Z. Darmas

Representation

Claimant: Ben Cooper QC

First Respondent: Ijeoma Omambala QC and Robin Moira White, counsel

Second and Third Respondents: Andrew Hochhauser QC and Jane Russell, counsel

RESERVED JUDGMENT

1. The claim against the first respondent is dismissed
2. The second and third respondents discriminated against the claimant because of belief in respect of detriments 2 and 4. They also victimised her in respect of detriment 4 because of protected act 2.
3. The second and third respondents are ordered to pay the claimant £22,000 compensation for injury to feelings, and interest thereon of £4,693.33.
4. Claims of discrimination and victimisation by the second and third respondents in detriments 1,3 and 5 are dismissed.
5. The indirect discrimination claim against the second and third respondents is dismissed.

REASONS

1. The claimant is a barrister at Garden Court Chambers. Her area of practice is criminal defence work.

2. She believes that a woman is defined by her sex. She disagrees with the beliefs of those who say that a woman is defined by her gender, which may differ from her sex, and is for the individual to identify. She also holds views, which she says amount to a belief, about Stonewall's campaign on gender self-identity. All the respondents to her claim agree that gender critical belief (the term for the belief that women are defined by sex not gender) is protected as a belief under the Equality Act. They dispute that her views about Stonewall's campaigning on gender self-identity are part of this protected belief. The tribunal has to decide this.

3. The claimant has brought claims under the Equality Act against her chambers. Barristers are self-employed people who group together in chambers from which they work, and who agree to contribute a proportion of their earnings to cover the cost of premises and administration. The barristers at those chambers ("tenants") are members of an unincorporated association. There are 120 individual tenants. Not counting the claimant, the claim is brought against the other 119. The current elected Heads of Chambers represent them as the third respondent to the claim.

4. These barristers are also members of a service company, Garden Court Chambers Ltd, the second respondent to the claim, which owns the premises and employs their administrative staff ("clerks"). Chambers and the service company are sued separately, because the service company is liable for actions of its employed staff, but in practice their interests align, so they are jointly represented. In this decision, the second and third respondents will be called "Garden Court", except where it is necessary to make a distinction.

5. The claimant alleges not just that Garden Court barristers and their staff acted toward her in ways that were in breach of the Equality Act, but also that Stonewall, a campaigning group, induced, instructed or caused some of Garden Court's actions, or that they attempted to induce or cause those actions. Stonewall is the first respondent to the claim.

Claims and Issues

6. The claimant alleges that a series of actions by Garden Court, which have been identified on the list of issues as five detriments, were either (1)

victimisation, in its legal sense of some reprisal for invoking the Equality Act, or (2) direct discrimination because of her gender critical belief, or (3) indirect discrimination because of her sex or because of her lesbian sexual orientation.

7. The parties have agreed a list of the disputed issues, which appears in appendix 1 to these reasons, but as it is long, here is a very short outline of the events we have to examine.

8. In December 2018 the claimant complained to her colleagues about Garden Court becoming a Stonewall Diversity Champion and explained her concern related to belief about who was a woman. She says that because of this complaint she was given less work, leading to a fall in income the following year. Then in October 2019, she was involved in setting up the Lesbian Gay Alliance to resist transwomen self-identifying as women. Her tweets about this led to a number of complaints being made to Garden Court about the incompatibility of her views with trans rights. Garden Court chambers said they would investigate this. Stonewall then complained too. The claimant says this complaint was engineered by another member of Garden Court, Michelle Brewer, who supported trans rights. Garden Court's investigation concluded that two of the tweets were likely to offend the Bar Standards Board Code, by alleging criminality without foundation, and asked her to remove them. The claimant says it was detrimental to suggest these complaints needed investigation, and that the conclusion was wrong. Finally, she alleges a detriment by delay responding to a subject access request the claimant made in January 2020 for disclosure of documents by Garden Court.

9. There is a dispute whether two individuals associated with but not employed by Stonewall were acting as their agent.

10. There is a dispute whether some of the claims are in time.

The Hearing Timetable

11. The first two days were set aside for tribunal reading time. The claimant was unexpectedly taken ill and admitted to hospital at the end of the second day. Evidence therefore began on day 4, and the claimant herself started giving evidence on day 5, when she was fully fit. There was further slippage in the planned timetable, partly because of lack of flexibility in the availability of many witnesses, partly through cross-examination overrunning, and one day because of previously booked annual leave. The original timetable had allowed two days for counsel to write their written submissions at the end of the evidence, followed by five days for deliberation and judgment, ending 27 May. In the event, evidence did not end until 26 May. The parties were ordered to exchange written submissions on 15 June (counsels' other

commitments prevented them from doing this any earlier) and oral submissions were heard on 20 June. Judgment was reserved.

Public Access to the Hearing

12. The claim revolves around beliefs about whether natal sex or self identified gender determines who is a man or a woman. This topic arouses considerable public interest, and in some sections of the public, great hostility..

13. Unusually for an employment tribunal, members of the public and journalists observed the remote hearing in large numbers. At times there were up to 250. Many helpfully cooperated with each other, by repasting links to hearing materials for latecomers, and advising each other on technical difficulties, such as opening the online bundles. Otherwise observers were asked to email the clerk if they had a request or complaint, and not to use the chat room. A few were ill-disciplined, using the chat room to comment on the proceedings, and on one occasion to insult counsel; they were disconnected.

14. There was trouble with a few observer screen names: the tribunal did not allow names that were (In particular context) obvious harassment of a witness or counsel. Offenders were invited to log back in with a neutral name and then disconnected. The tribunal did permit screen names that indicated affiliation to one side or other in the sex/gender debate, despite several observer complaints about this, as they were deemed cultural markers (such as a lapel badge or item of clothing) which would be unobjectionable in a tribunal room or public gallery. The tribunal overlooked frivolous names if, as far as we could see, they did not harass any individual.

Evidence

15. To decide the issues the tribunal heard evidence from the following witnesses. They are named in order of first appearance; some had to be interposed before others had finished giving evidence:

Dr Nicola Williams (director of Fair Play for Women), **Dr Judith Green** (director of Woman's Place UK**)**, **Kate Barker** (managing director of Lesbian Gay Alliance) and **Lisa-Marie Taylo**r (CEO of FiLIA) on the disparate impact on women, or lesbians, of opposition to gender critical opinions

Allison Bailey, the claimant

Zeinab al-Farabi, a Stonewall employee who was Garden Court's account manager when Garden Court signed up as a Diversity Champion

Kirrin Medcalf, Stonewall's Head of Trans Inclusion

Leslie Thomas QC, joint Head of chambers 2016 –2020

Sanjay Sood-Smith, Stonewall's Executive Director Workplace and Community Programmes 2019 –2020

Shaan Knan, employee of LGBT Consortium and a member of Stonewall's Trans Advisory Group (STAG)

Rajiv Menon QC, current Head of Garden Court Chambers

Maya Sikand, former member of Garden Court, who investigated the complaints. (She has since been appointed QC and moved to Doughty Street).

Mia Hakl-Law, Human Resources Director employed by the second respondent

Judy Khan QC, joint Head of chambers 2017-2021

Charlie Tennent, crime team clerk, Garden Court

Luke Harvey, crime team clerk, Garden Court

Louise Hooper, member of Garden Court

David Renton, member of Garden Court

Marc Willers QC, joint Head of chambers 2016-2020

Stephen Clark, member of Garden Court

Liz Davies QC, joint Head of chambers from January 2020

Cathryn McGahey QC, barrister at Temple Garden Chambers, elected member of the Bar Council and (in 2019) vice-chair of the Bar Council's ethics committee. She was consulted by Garden Court about Stonewall's complaint about the claimant

Tom Wainwright, member of Garden Court

Colin Cook, Director of Clerking (head clerk) at Garden Court

David Renton, member of Garden Court

David de Menezes, Head of Communications and Marketing at Garden Court

Kathryn Cronin, member of Garden Court

Michelle Brewer, former member of Garden Court; from January 2020 a salaried First-Tier Tribunal Judge

Stephanie Harrison QC, member of Garden Court, member of management committee in 2019, joint head of chambers from January 2020,

16. Adjustments for disability had been made by E J Stout at an earlier case management hearing for the witness Kirrin Medcalf . The adjustments were to help him find text in documents. The tribunal was a little surprised when, as Shaan Knan was called, a request was made for extra time to make adjustments. On questioning what these adjustments were, the tribunal was told that when giving evidence he was to be accompanied by his mother, by a support worker and by a support dog. Further questioning elicited that the support worker was an employee of the first respondent's solicitor, to help with any IT technical difficulty. Mother and dog were there for moral support. There was no time to adjourn for a case management hearing, and in any case

medical evidence was not available. On the basis that some Garden Court witnesses had needed help from a technician, that his mother could have sat near him in a hearing room, and that a dog was unlikely to interfere with evidence, the adjustments were allowed, on condition the camera position was moved back so that all three people were visible on screen throughout his evidence. This was done.

17. The claimant's witness statement was very long and included much life history as background. This material was not formally excluded for lack of relevance, but she was not questioned on matters in her statement that did not relate to any issue the tribunal had to decide.

18. We had a hearing bundle of documents of 6,675 pages, supplemented by a second bundle which, in its fifth iteration, reached190 pages. We read those to which we were directed.

19. The main hearing bundle was exceptionally difficult to work with. Despite the guidance on preparation of electronic bundles in CPR, the Employment Tribunals Presidential Direction, Employment Judge Stout's explicit directions in earlier case management hearings, and the time the case had taken to come to hearing, it seemed to have been randomly thrown together. Sections were not OCR readable. Over 600 pages of Garden Court disclosure were not in the main index but in a 13 page sub-index inserted between pages 374 and 375. Five other sub-indexes had been grafted in, but did not reach the tribunal until 18 May. Pagination from earlier bundles had not been removed, complicating the search function. Pages had been inserted sideways. Email exchanges could be 2,000 or 4,000 pages apart. There was frequent duplication of the same emails or tweets. An additional 116 pages ("section L") did not reach the tribunal until 20 May. The supplementary bundle was added to more than once, and additions not always notified to the tribunal.

20. The agreed chronology was too brief and selective for annotation to ameliorate these deficiencies (for example, the case involved more than one time limit issue, but the chronology did not include the dates proceedings started or were amended). Some of the resulting difficulty was made up by the hard work of counsel between evidence closing and submissions, preparing a 26 page chronology, cross-referenced to bundle pages, but it would have been even more helpful if whichever solicitors had carriage of the main bundle had put it together properly in the first place, so we could use it when hearing the evidence. It would also have helped to have more references to documents in the witness statements. We supposed the lack of references was because the hearing bundle had been a moving target.

21. Each party had prepared an opening note of the legal arguments they deployed. These were supplemented on closing; then on 20 June each had an opportunity to answer points made by the others in an oral hearing. In all we

had 139 pages from the claimant, (plus 39 pages of timeline), with 58 pages from Stonewall and 140 pages from Garden Court. Soon after 20 June judgment was handed down in **Mackereth**, a decision relevant to what belief is protected, and with permission the parties made short additional written submissions. The careful written analysis has been helpful in discussing the claims.

Public Access to Written Hearing Materials

22. At the direction of the judge a downloadable bundle of the pleadings, list of issues, and the opening arguments was made available to observers from the start. The rest of the hearing bundle and the witness statements were available to the public online during hearing sessions. The claimant elected to make her own statement available on the internet.
23. Permission was given on day one for live tweeting of proceedings by way of reporting.
24. An application was made by the claimant, and by Tribunal Tweets, a collective which reports cases of interest in the gender/sex issue, to make the hearing bundle and witness statements downloadable and available to all. The tribunal heard an application on this point the next hearing day. An order was made on 3 May with oral reasons, and written reasons were sent next day. The order permitted downloadable access to accredited journalists so as to inform their understanding of proceedings, provided they limited their publication of documents to those portions cited by a witness in evidence in chief or in cross examination. Other observers could only read the materials during the hearing.
25. Tribunal Tweets, and a campaign group, Sex Matters Ltd, applied on 13 May to vary this order. A written decision refusing an extension of access was sent on 16 May. Both decisions set out the reasons for the restrictions imposed. A link to the 3 May order and reasons was posted in the chat room during hearing sessions.
26. Downloadable bundles were sent to several journalists, to individual members of Tribunal Tweets, and to others who wished to report on the proceedings, provided they agreed to abide by the restrictions in the order. Access was refused to an Australian journalist because she was outside the jurisdiction, where the restrictions in the order could not be enforced. The claimant's solicitors undertook the work of sending bundles, updating journalists with witness statements once a witness was called, and pasting relevant links in the chatroom each morning and afternoon.
27. Each witness statement was uploaded to be read (but not downloaded) as each witness was called, and then remained available for reading during the public sessions.
28. The order in which witnesses were called was not announced until the day before, for fear of witness intimidation. An incident on 3 May (the subject of a short case management hearing that afternoon) showed that the fear was not groundless.

29. There was an attempt to intimidate one of the non-legal panel members of the tribunal, via a social media approach to their partner on a hearing day. A warning was given in the next hearing session that threats, however veiled, were contempt; there was no further approach. We reminded ourselves of the duty to hear the case without fear or favour.

Rule 50 Redactions to the Public Bundle

30. Immediately before the hearing an email from the solicitor for the third respondent told us that redactions were being made to the public access bundle. They were asked on the first morning to state what redactions were proposed. The tribunal agreed that the names of clients of Garden Court barristers (charged with criminal offences) could be identified by initials, and telephone numbers and personal email addresses could be redacted to preserve privacy. The identities of clients were not required to understand whether or why the claimant's income fell in 2019. There was no need for private contact details to be available to understand the issues in the case. No other redactions were mentioned.

31. A day or so later, the third respondent's solicitor attached to correspondence on another subject a list of 17 *other* names to be redacted, still without any application for rule 50 anonymity redaction. At the request of the tribunal there was a private case management hearing to understand the reasons for this. Directions were then given to redact (1) the name of an individual who had withdrawn from a training panel but whose involvement was only after proceedings had begun, on grounds of relevance (2) the surname of an individual whose relevant email disclosed her sexual orientation, to balance her right to privacy with public understanding of events (3) the surnames of three other individuals who had complained to Garden Court in October 2019 in general terms about the claimant's public support of gender critical views, and a fourth person who had specifically asked for privacy, on ground that these four appeared to be members of the public unconnected with the first respondent, and may have been unaware of the public use of their complaints, and in the circumstances of this case risked harassment. Of the 17 therefore, only 6 names were redacted. Then only an hour after that decision was made, the solicitor for the third respondent asked for three other complainant's names (not on the list of 17) to be similarly redacted, on ground that they were in similar circumstances. A search of the bundle showed that one of these, Alex Drummond, was not only associated with Stonewall's trans advisory group but was named in the pleadings and in a witness statement, so the tribunal then ordered a further case management hearing, which was to include reconsideration of the earlier decision to redact the names of complainants to Garden Court, given that Stonewall's instruction or inducement to any act of discrimination by Garden Court was a contested matter in the case, and the names redacted might be linked more closely to Stonewall than had at first appeared. The tribunal was then assured in the hearing that the three late names had simply been

overlooked, that Alex Drummond's name had been included in error, and that redaction of her name was no longer sought. The claimant did not oppose redaction of the other two names. The tribunal, after discussion, agreed that the surnames of the additional two complainants (but not Alex Drummond) should also be redacted, and that the earlier redaction decision need not be reconsidered.

32. The tribunal was disappointed that the third respondent had sought to anonymise documents in the already agreed hearing bundle, which must have included agreement that the content was relevant to the issues, without first making an application to the tribunal under rule 50, especially in a case where public interest was unusually high, and where there had been so many case management hearings. Personal contact details, and sexual and health matters, are usually private and redaction may not be controversial, but not such extensive anonymity of names. It was only chance that the claimant's hospital admission at the start of the case made time available for this.

Structure of this decision

33. By and large this decision follows the usual format, first setting out the findings of fact we made on the basis of the evidence we heard and read, then stating the law relevant to the issue that has to be decided, and then discussing whether we find that the facts establish the claim made. At times the law and how it applies to the facts are set out in a section allocated to a particular claim or issue. Here is a short guide by paragraph number to navigating these reasons:

Findings of Fact - 34-249
General Law on discrimination cases - 250-259
Protected acts in victimisation claim - 260-278
Protection of Belief - 279-298
Detriment 1- 299-303
Detriment 2 – 304-318
Detriment 3 – 319
Detriment 4-320-328
Detriment 5- 329-330
Time limits – 331-339
Indirect Discrimination- 340-357
Claim against Stonewall – 358-390
Remedy – 391-400

Findings of Fact

34. Barristers are independent and self-employed. They are not workers or employees who receive the usual protections under the Equality Act. However, Part 5 of the Act, headed 'Work', includes in section 47 some protection for barristers: a barrister may not discriminate against a tenant by subjecting the tenant to detriment or pressure to leave Chambers. There must not be discrimination in access to benefits or services. Barristers must

not harass a tenant, or victimise a tenant in receiving benefits facilities or services. Section 57 goes on to provide that trade organisations, defined as an "organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists" must not harass, discriminate or victimise. A set of chambers can be such an organisation – **Horton v 1 Pump Court Chambers UKEAT/0775/03/MH**

35. Garden Court barristers are members of an unincorporated association and they assent to its statement of purpose. Each member also applies to become a member of the service company which owns the premises and employs the administrative staff. The Garden Court constitution provides that the Chambers meeting of all tenants is the supreme decision-making body. It meets twice a year. Day-to-day strategy and operational management are delegated to the management board, which is elected, and to the Directors employed by the service company, a private company limited by guarantee. Members of the management board are also directors of the service company. The management board has to set an annual strategy, and receive and approve business plans and budgets for the practice teams within Chambers. The Board is chaired by up to three joint Heads of Chambers, who are elected. The Heads each serve a maximum term of four years.

36. The clerks employed by the service company market their barristers' services to solicitors, take bookings for cases, bill for work done and collect payment. Each barrister has to pay 21% of gross income to Chambers to pay the rent and the salaries of the administrative staff.

37. The consequence of this arrangement is that barristers are expected to earn a certain level of income so they can make a realistic contribution to collective expenses, and there is an incentive to the clerks to keep them at work and their diaries full. Barristers are nevertheless free to engage in other activity. Many undertake promotional work by writing, lecturing and speaking at meetings. It can be important for the success of chambers that the set as a whole is perceived by the solicitors as having particular areas of expertise, and that they can provide competent backup should a barrister have to drop out ("return a brief") because another case has overrun, or they are ill, for example.

38. Garden Court had a particular focus on fighting inequality and protecting human rights. The claimant describes how she was attracted to its diversity and its commitment to justice for some of the most disadvantaged in society. There are work practice teams for crime, public law, and family. Some members focus on the rights of minorities, or the homeless, or victims of domestic abuse, gender-based violence and human trafficking, asylum and immigration, unlawful detention, inquests, and public enquiries. There are

the formal practice teams, which have budgets and strategy plans, and less formal groups, which share expertise in areas of particular interest or developing law. One such group was the Trans Rights Working Group (TRG) set up by Michelle Brewer, which we discuss later.

39. Chambers has a special fund to which all tenants contribute for making donations to legal campaigning and charitable organisations in defence of social justice, sometimes as a one-off donation of up to £3,000, and sometimes £16,000 spread over four years. Currently there are 19 long-term beneficiaries of funding. The criterion is that they do progressive work in the field of civil liberties and social justice. Current recipients in the field of women's rights include Women's Justice, Rights of Women and Southall Black sisters, There was unchallenged evidence that no organisation with a focus on advancing transgender rights had applied for funding.

40. The claimant qualified as a barrister on completing pupillage at Tooks Court and at Doughty Street. In November 2004 she was accepted as a tenant at Garden Court. She undertook criminal work. She only did defence work, but did not accept sex cases, or white-collar crime and financial fraud.

Belief

The philosophical approach to sex and gender

41. Belief about sex and gender lies at the heart of this case. We set out some background to assist understanding of what occurred. Discussion of whether the claimant's belief was protected comes later.

42. For thousands of years human societies have identified a difference between men and women on the basis of their observable physical characteristics. In most societies this brought in its train received ideas about what men and women could do, or should do, and the different roles each sex (as defined by their bodies) should play in social relations, in work, in government, ownership of property, and so on. In post-enlightenment Europe the idea developed that female biology was not determinative of social roles, indeed that social roles might restrict the development of sporting or intellectual capacity, so that many of the differences in men and women's abilities were not, as many thought, determined by the biological differences, but a product of socialisation. Male and female bodies were not the same thing as masculine and feminine behaviour. Mary Wollstonecraft and John Stuart Mill developed this. In the post war period these ideas received more attention. Particularly influential was Simone de Beauvoir's publication in 1948 of The Second Sex, a detailed examination of how women were thought to be different from men, and how women were in fact taught to be women. In part two, she began: "one is not born, but rather becomes, a woman". From this developed a philosophical exploration, initiated by Judith Butler, of the idea that woman is a socially determined category, rather than someone with particular physical characteristics linked

to childbearing. People could identify as of a gender other than that observed at birth, or both, or neither, in whichever they were comfortable. It was not just that women, defined biologically, should have rights and opportunities equal to those of men, but that the biological differences did not matter. This is gender self-identity.

The legal position on sex and gender

43. UK law defined the difference between men and women on the basis of their observable birth sex. From time to time some men and women have felt profoundly uncomfortable with their bodies, and decided to live as the opposite sex. If they lived in their acquired sex (with or without surgery) there were often legal difficulties. In 2002 the European Court of Human Rights held in **Goodwin v United Kingdom** that there must be some legal recognition for a person born a man who had undergone gender reassignment surgery and was now living as a woman. It was unsatisfactory that they had to live without dignity in a twilight zone. That case led to the enactment in the UK of the Gender Recognition Act 2004. A transsexual (the term used in the legislation) could now obtain a certificate that for legal purposes they now had an acquired sex different from that recorded at birth. To get a certificate it had to be shown that they had, or had had, gender dysphoria; there must be two medical certificates, one from a specialist in the area, discussing details of the diagnosis and treatment; the person must have lived in the acquired gender for two years and make a declaration that they intended to live in that gender for the rest of their life. Someone issued with a certificate becomes for all *legal* purposes the acquired gender.

44. On 2018 figures, around 5,000 people in the UK hold gender recognition certificates. Until the 2021 census is published, it is not known how many more people identify in the opposite gender without formal recognition. The Government Equality Office national LGBT survey research report in July 2018 suggested there could be 200,000 or even 500,000.

45. Some transgender people have undergone surgery, some not. It is not a requirement of a gender recognition certificate. In the course of the evidence we were taken to a July 2020 report on a YouGov survey of public opinion on transgender rights. Some of the questions were asked twice, on the second occasion specifying that the transgender person had not had gender reassignment surgery. This caused a plurality of the women surveyed to change their answer from allowing transwomen access to women's changing rooms and toilets to disallowing access. It seemed to show that many respondents to the survey had at first assumed a transwoman would have had surgery.

46. The case we heard was all about men transitioning to live as women. There are of course natal females who transition to live as men, indeed recent figures from the Tavistock GIDS service for young people with gender dysphoria record that up the 70% of recent referrals are natal girls.

Transition in this direction has not attracted the same attention.

47. Under the Equality Act 2010 it is as unlawful to discriminate against transsexuals (as they are called in the Act) as it is to discriminate against women, or because of race, or some other protected characteristic. They need not yet have a gender reassignment certificate. The protection is for someone who:

   "is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex".

48. The Equality Act provides some specific exceptions. In competitive sport, rules can exclude some to ensure fair competition and safety. Services can be provided to separate sexes or only to one sex without discriminating on grounds of gender reassignment if that is a proportionate means of achieving a legitimate aim. It can be legitimate to exclude transsexuals from single sex dormitories; an existing insurance policy need not apply to someone who has transitioned; there can be discrimination in religious schools and religious wedding ceremonies.

Proposals to Change the Law

49. More people identify in an acquired gender than have gender recognition certificates, though, as noted, how many is unclear. Many without certificates are unhappy that two medical reports are required, suggesting that they have a mental illness. Others resent the difficulty of having to live in the other sex without legal recognition for two years. Some dislike the delay and bureaucracy, or, if gender fluid, the requirement to commit to remaining in the acquired gender for life; some object to the requirement for annulment of marriage if their spouse does not wish to be remain married to them after transition. Some advocate simple gender self-identity.

50. In July 2018 the UK government consulted formally about reforming the Gender Recognition Act in England (a similar consultation had begun in Scotland in 2017). In September 2020 the government announced no changes would be made. The debate continues. In December 2021 the House of Commons Women and Equalities committee published the results of its own enquiry, recommending changes. In Scotland legislation making changes is proposed.

51. Opposition to proposed changes has focused on the need to preserve single sex spaces for natal women, and the single sex exemptions in the Equality Act. Some fear that self-identification of gender identity could facilitate abuse of women. Lesbians and gays are concerned that young people exploring

their sexual identity may identify in another gender when they are only same-sex attracted, or even that same-sex orientation will be erased.

52. The debate on reform has been polarised, often uncompromising, and sometimes hostile and abusive. Men and women who oppose gender self-identity can be labelled transphobes. Transgender people are in turn accused of homophobia and misogyny. It is probably relevant to the uncompromising tone that the issue is not one of philosophy but of the practical consequences. Many transpeople live in fear of challenge, ridicule and threats. Transwomen are subjected to open abuse and sometimes violence - as gay men sometimes are, possibly by the same people, policing masculinity. They also fear unpleasant challenges from women if they try to use women's toilets and changing rooms. From the other side, the long and continuing history of male violence towards women can make women fearful and mistrustful of admitting people with male bodies to protected spaces where they are vulnerable, such as rape crisis centres, public toilets, changing rooms and refuges. Others fear losing the chance to correct historic disadvantage, for example, in collecting equal pay statistics. People who are same-sex attracted are concerned that younger people may find it hard to recognise they are gay or lesbian when it is suggested to them that their confused feelings mean they are in fact of another gender. Opponents talk of women, or gays or lesbians, being "erased".

53. This tribunal does not have to adjudicate on whether it is correct to say that the difference between men and women is about biology (sex) or social role (gender). The decision of the Employment Appeal Tribunal in **Forstater v CGD Europe Ltd (2022) ICR 525** makes that clear. Both the belief that women are defined by sex, and the belief that gender is a matter of self-identity, are protected as beliefs. Toleration of difference is an essential characteristic of an open, pluralist society.

<u>Stonewall</u>

54. Stonewall is a large and widely respected charity with a mission to advance the rights of gay lesbian bisexual and trans people (LGBT). Starting in 1989 it has campaigned successfully to repeal section 28 of the Local Government Act 1988, end the ban on LGBT people in the armed forces, equalise the age of consent, and allow adoption by same-sex couples. It saw the introduction of civil partnerships (2004) and same sex marriage (2013). In 2015 it turned to transgender issues and gender recognition reform.

55. To assist the campaign on trans issues, Stonewall set up its Stonewall trans advisory group (STAG) in 2015. (The group was disbanded and replaced by an expert panel in 2021). STAG was briefed to produce a five year plan for trans communities.

56. We set out here the links between Stonewall and this group because of its involvement in complaints about the claimant in October 2019. We read an unsigned memorandum of understanding with track changes, showing discussion of detail over time. Although this document was never signed off, we considered it good evidence of how STAG operated, in part because there was no contrary evidence, in part because the discussion in the track changes was on detail rather than principle. It was to be an interface between Stonewall and other trans groups, to "provide additional credibility and authenticity for Stonewall when interacting with third parties", acting as a "critical friend". The group had 15 to 20 members, recruited by Stonewall and trained by Stonewall's trans-inclusion team. Its members were not paid, but Stonewall reimbursed expenses and bore the cost of its quarterly meetings. There was provision for resignation and for dismissal, by Stonewall, for misconduct. Stonewall's Head of trans-inclusion was to be a non-voting member. Some STAG members were members or employees of other trans-rights campaign groups, to fulfil its purpose as an interface. Shaan Knan was one of these, employed by LGBT Consortium to run its TON (Trans Organisational Network), which Kirrin Medcalf (a Stonewall employee) attended as a representative of Stonewall. Alex Drummond was an individual member of STAG. STAG had its own Facebook page. It could also access a section of the Stonewall website called the STAG wall. This was used for messages. Both sites were restricted to STAG members - Stonewall staff could not read them, except where they were both, as was Kirrin Medcalf. As to direction, Shaan Knan's evidence was that he had never been directed to act in a particular way, nor did he feel obliged to do so.

57. In March 2017 Stonewall published A Vision for Change, setting out action to advance trans equality at work, at home, in school and in public. It has also researched the levels of discrimination and hate crime experienced by trans people. This survey recorded that 2 in 5 had suffered an unpleasant "incident" and 1 in 8 had been physically attacked by a colleague or customer at work. There is no breakdown of the sex or gender of the attackers, but the report includes a quote from a trans person surveyed about two women ejecting them from women's toilets.

58. Stonewall also prepared detailed policies for employers to promote inclusion for trans people as well as gays and lesbians. Many organisations have signed up with its Diversity Champions Scheme, aimed to spread inclusion in workplaces. Other employers participate in its Workplace Equality Index, which ranks the top 100 participant organisations for inclusiveness.

59. This change in direction caused tension among some of Stonewall's traditional supporters. Lesbians in particular felt threatened that people with male bodies who identified as women would have access to same sex spaces, and alienated when told by some that they were transphobic if they

objected. At the annual Pride march in London in July 2018 a group of lesbian protesters carried banners that “transactivism erases lesbians”, to which Stonewall responded that “transwomen are women”. In October 2019 one of Stonewall’s co-founders, Simon Fanshawe, considered setting up a breakaway group, because Stonewall had “lost its way… they had “confused legal and biological questions with social identity”. This was the LGB Alliance.

60. Simon Fanshawe also identified the hostile tone of the debate. He deplored attacks on lesbians, and placards saying “Death to Terfs” or “punch a terf”, saying Stonewall had a historic responsibility to enable calm reasoned debate”. TERF stands for Trans Exclusionary Radical Feminist, and while it started as a descriptive term, in current usage it is offensive - as in the slide from “Pakistani” to “Paki” - although of course words can be reclaimed or used ironically by the group it is intended to offend, as has happened to “queer”. It was not shown on the evidence that Stonewall, as a matter of policy, promoted or encouraged this abuse. When Kirrin Medcalf, Stonewall’s Head of Trans Inclusion, was taken through a number of tweets directed at gender critical feminists from 2015 on - several variations on “kill all terfs”, with pictures of knives, guns, a garotte, or “kindly suck my ladydick, preferably choke on it” and the like - he commented: “these words are not reflective of the trans community”. In his view, nevertheless, the term ‘terf’ could not be a slur (offensive) because it was used by a powerless minority group, trans people, about those (feminists and lesbians), who they deemed transphobic because they “deny trans people’s lived reality”. Objecting to gender self-id was of itself transphobic (hatred of trans people), though he distanced himself from the threatened assaults.

<u>Garden Court and Stonewall – the December 2018 emails</u>

61. In November 2018 Garden Court chambers signed up to Stonewall’s Diversity Champions scheme. The initiative came from barristers in the family practice group, who had encountered trans children in divorce and care proceedings. In return for an annual fee of £2,500, Diversity Champions received a dedicated account manager to advise on best practice and conduct client meetings with Garden Court Chambers stakeholder groups, free places at Stonewall best practice seminars, use of the Stonewall Diversity Champions logo, free copies of Stonewall research publications, discounted rates for Stonewall conferences, and “regular networking opportunities with the other 750 member organisations”. The declared aim of the scheme was to develop inclusive workplaces.

62. There was an onboarding meeting with Stonewall on 14 December 2018. Stephen Lue (part of Garden Court’s family law team) then emailed all members of chambers:

"I am happy to announce that Chambers is now officially Stonewall diversity Champion… There will be a process of:

1. Reviewing our policies and procedures regarding parental leave, HR policies

2.training, best practice in relation to recruitment training. Procurement analysis. Access to jobs board targeting LGBT candidates

3. We will be able to use the Stonewall logo in our marketing materials

4. Business development: we become an organisation to whom Stonewall refer their discrimination work, LGBT asylum work, same-sex family cases, surrogacy, criminal cases involving gender fluidity and consent, et cetera. Stonewall is looking for partner in strategic litigation regarding the upcoming gender recognition act becoming law.

5. we will make an application to be ranked on workplace index. This will require contributions across the various teams and staff in Chambers.

6.there will be the odd extra (tasteful) rainbow unicorn on display

… It's just the beginning".

63. The claimant replied to all members of chambers:

> "I emphatically object to any formal association with Stonewall. Any proposed association with Stonewall should be a matter for chambers to consider. It should not go through on the nod. There are many of us within the LGBT community who fully support trans rights but who do not support the trans-extremism that is currently being advocated by Stonewall and others in respect of the proposal for self-id under revised GRA. Stonewall has been complicit in supporting a campaign of harassment, intimidation and threats made to anyone who questions its trans self-ID ideology especially lesbians and feminists. Those who object or even question the Stonewall self-id ideology have and continue to be threatened, often with rape and serious violence – by self-id trans women. This needs to be looked at again – urgently".

64. This email is the first protected disclosure in the victimisation claim. The tribunal will have to consider whether it qualifies for protection and whether the claimant suffered detriment because of it. What was the reaction that day?

65. On reading it, Stephen Lue emailed the Heads of chambers asking for support. He had understood that the signing had approval at board level, he was simply managing the project. Reversal would be damaging. "Stonewall is a mainstream LGBT rights organisation and are involved in campaign work that this Chambers aligns itself with".

66. At the same time he contacted the claimant, saying he had understood it had been agreed at board level as part of the family team business plan, but he would take her concerns to management. (In fact there is no evidence that he did more than ask for their support). Thanking him, the claimant said it was a sensitive issue and "I will not email again globally for the time being

and without evidence and productive suggestions for a sensible way forward". She did set about collecting some evidence, but did not write again.

67. Another member of chambers, Marguerite Russell, wrote to Stephen Lue and the claimant to make peace, pointing out:

> "I have seen women who worked all their lives and feminists trashed and vilified in recent times in this debate and I am amazed at the virulence of the response to anyone who wants to discuss how to make a movement safe for everyone. So Stephen please make sure that Allison in bravely raising a concern about safety and the silencing and aggression that exists is listened to and respected and Allison see if you can work with this and Stephen to see if we can create a discourse of respect gentleness and safety for all".

68. Michelle Brewer wrote more critically to the claimant, copied to all members of chambers:

> "I am unclear whether in your email you are suggesting that (i) support for self ID equates to trans extremism – I certainly do not consider myself as a trans extremist that I do strongly support self ID (ii) what exactly do you mean by trans extremism? It's a concept I'm not familiar with and (iii) how exactly is Stonewall complicit in a campaign of harassment, intimidation and threats to gender critical feminists? I have worked closely with Stonewall around the GRA consultation and other trans led organisations. I do not for one minute support any abuse from any quarter of the type you set out below and will and do condemn it in the strongest terms – it is however news to me that Stonewall has been in any way complicit in the conduct you allege".

69. Another member of chambers, Nerida Harford-Bell, replied to all that she was having dinner with the chair of Stonewall (Ruth Hunt) the next night and would raise Allison's concerns with her. Behind the scenes Michelle Brewer commented to Stephen Lue:

> "Great, now Allison's wholly unfounded allegations are going to be aired with Ruth – nothing like washing our dirty trans-phobic laundry in public".

70. David Neale, legal researcher, emailed the heads of chambers, copied to Stephen Lue, that he had found the claimant's email personally very upsetting. He wanted to register how strongly he felt about this.

> "Members of chambers (particularly Michelle and Stephanie) have done very important work in the area of trans rights and I feel strongly that chambers should continue to be a trans-inclusive space".

71. Judy Khan, one of the joint heads of chambers, replied to David Neale:

> "unfortunately some members of chambers do not always express themselves in a way that we would wish. Chambers will, of course, continue to be a trans-inclusive space and nothing Allison said will alter that fact. Michelle has sent a very clear response and I do not intend to respond to Allison in light of that, as I do not want to encourage lengthy email debate. If you want to treat this as a formal complaint against Allison – let us know. As far as I'm concerned, our collaboration with Stonewall will continue and is welcome".

72. Leslie Thomas, another joint head of chambers, chipped in, expressing solidarity:

> "Allison's views are not shared by the Heads or the vast majority of chambers".

David Neale said he was not pursuing a formal complaint, and agreed a chambers-wide email debate was not desirable.

73. Next day the claimant contacted Heads of chambers about security, fearing that having publicly spoken about Stonewall and self-id she would herself become a target - would chambers please remove home addresses and contact numbers from the intranet, and remind staff not to disclose personal information to those who did not need to know. Judy Khan replied that staff would be reminded about confidentiality, but there were no addresses on the intranet, just phone numbers. If she wanted, they could arrange proxy telephone numbers so clerks could use those to contact her about diary changes. The claimant said she was not concerned about telephone numbers. A week later Leslie Thomas followed up, asking: "did you actually receive any threats from anyone", which the claimant experienced as hostile scepticism about her concern for personal security. The claimant replied that threats were being made to feminists like herself by transwomen referring to them as "terfs", and that this was often accompanied by threats of male violence. She had been stunned to discover that Professor Alex Sharpe, a door tenant (associate) at Garden Court, referred to 'terfs' when tweeting as a member of Garden Court. The claimant reiterated that she supported trans rights, and that it was she who had brought into chambers the case of Justine McNally, a transman or lesbian who had been convicted of pretending to be a man to trick a woman into having sexual intercourse with her. She was supplying this information to put her fears into context. Leslie Thomas responded that this did not answer his question whether she had received threats, and asked if she wanted to make a complaint about Alex Sharpe. The claimant did not: if she did, Alex Sharpe "would use it to advance her agenda". (Alex Sharpe is an academic, herself a transwoman, who advocates gender self-identity).

74. Out of 120-odd members of chambers, just eight commented on the claimant's email about Stonewall. There is no evidence that it was discussed further. Of course it is possible that it was discussed face to face or by

telephone, leaving no documentary record, but time and again it was clear to us that many members of chambers had never met each other, perhaps unsurprising given their numbers, and that for most of the working day many would be in court. They might meet each other for a particular purpose or in connection with a particular case, but not otherwise. More widespread discussion seems unlikely. We note however that the Heads of chambers were unsympathetic, whether with her opinion or her way of expressing it.

Garden Court and Stonewall – how the Diversity Champion Scheme operated

75. Before going on to look at what consequences the 2018 Stonewall email had for the claimant, we consider how the Diversity Champion scheme played out in practice. Garden Court did not apply to the Workplace Equality Index, which would have rated their compliance and ranked them among the hundred best employers. They did not attend any seminars or networking events. They did add the logo to their website. Stonewall did review some of their employment policies and suggested changes, substituting “they” for “his/her”, to cover people with a non-binary identity, and a recommendation that “gender identity” was substituted for “gender reassignment” as a protected characteristic in the context of discrimination, so as to accommodate non-binary identities, but no changes were made. Stonewall did not refer any work. It was not clear they ever promised or intended to.

76. There was a further meeting about the Diversity Champion scheme in July 2019 when a new client account manager, Zeinab al-Farabi took over. At the end of August 2019 Stephen Lue emailed her saying Garden Court was considering not renewing its membership, as Stonewall “has not provided us with sufficient support and diligence” in their membership. Zeinab al-Farabi, replied that she was waiting to hear from Garden Court about the policy reviews, and as for work referral, Charity Commission standards meant that it was “not appropriate for us to engage in direct referral type activity”. That was not the objective of the programme, and went beyond the remit of the service. The annual fee was for a consultancy service to make policy, systems and procedures more LGBT inclusive. There was no further discussion. A planned meeting did not take place that year, but membership was renewed in November 2019.

77. At the height of the publicity of the claimant’s tweets about Stonewall, on 28 October 2019, Zeinab al-Farabi emailed Stephen Lue and Mia Hakl-Law offering support if required with press coverage. Stephen Lue emailed briefly that he was in court and never got back to her. No one else took up the offer.

78. In January 2020, Stonewall managers met Stephen Lue and Mia Hakl-Law, who remained unhappy with the service to date. In February Garden Court did not respond to an invitation to attend an event about the Workplace

Equality Index. Lockdown supervened. Court closures meant that the income of many barristers declined sharply. Garden Court's financial position became difficult. In November 2020 the Diversity Champion membership was not renewed.

79. Reviewing all this, we concluded that contact between Garden Court and Stonewall was minimal. Stonewall made offers which Garden Court did not take up. Garden Court did not adopt Stonewall's proposals for changes to their employment policies. Stonewall never referred the work that the practice group and marketing director may have been hoping for. The only practical advantage of the association to Garden Court was having the logo on their website, and their name on Stonewall's website, to reinforce their brand by association with a well-known radical group.

First Detriment – the Fall in Income

80. A substantial part of the claim is that because the claimant had protested in December 2018 about the association with Stonewall, whether because it was a protected act, or because it was an expression of her gender critical belief, she was deprived of work, leading to a fall in income in 2019. The opening schedule of loss claimed £105,554.41. On closing this was amended to £63,441.52.

81. Barristers' work is booked by their clerks. A solicitor may ring or email to book a barrister by name. In that case the clerk need only check the diary. Or a solicitor will tell the clerk what kind of case it is and ask them to suggest someone with appropriate experience. Often the clerks then send a selection of names and fees of those available and the solicitor chooses one. Criminal barristers often take work as "returns". meaning someone else was booked initially, but is no longer available, perhaps because another case has overrun, or they are called back on an earlier case for sentencing. This can mean taking a brief at quite short notice. Criminal trials can be unpredictable in other ways. A barrister might prepare for a long trial only to find as it starts that the defendant decides to plead guilty, or the prosecution offers no evidence.

82. This system means that where the solicitor does not request a barrister by name, there is scope for preferential treatment of some barristers. In the past, women barristers, for example, and sometimes ethnic minority barristers, have concluded that they are being cut out of work because of conscious or unconscious bias by clerks. As recently as 2017 women members of Garden Court organised a survey on the allocation of work, because it impacted on barristers seeking to gain enough suitable experience to be able to apply for silk (QC). They discovered along the way a consistent disparity in earnings for men and women of equivalent call. The resulting report by their Women's Task Force found some evidence

across all practice areas of men of equal call being preferred to women, and Mia Hakl-Law initiated training for the clerks. This is said to have led to an improvement. The claimant also spoke of stories of how barristers could be got rid of by being starved of work, and of the "subconscious influence of politics".

83. Well before the 2018 debate about Stonewall's association with Garden Court, the claimant had complained about not being allocated work of an appropriate level. In February 2015 she had made a complaint, which was investigated with the head clerk, but she withdrew before a meeting to discuss it. In July 2015 matters came to a head when she refused to cover three cases at one court, in different rooms, when asked at short notice. After discussion with Judy Khan, a meeting with the clerks was proposed for the end of July, which the claimant later cancelled, saying things had improved. The problem recurred in August 2015 when the claimant was booked without her knowledge to cover 2 short matters in a court where she was already appearing. She refused, and someone else had to attend court at no notice. The claimant then resigned. The difficulty seems however to have been resolved, as she remained a tenant. It is not known if this was chance – not enough big cases coming in then - or an example of the Women's Task Force conclusion that women were not getting a proper share of the work. It did show the claimant could be up or down in her assessment of her flow of work.

84. Barristers are paid as they bill. Legal aid work is billed at the completion of a case – there is no interim billing. There is often delay between billing and payment. In legal aid cases - most criminal work – the amounts billed are often reduced. Sometimes there is a negotiation in private cases too. This complicates the comparison of like with like. So does the choice of calendar year or financial year.

85. The tribunal had available chambers' accounting records showing the detail of bills and payments case by case for the claimant for a sequence of years, the claimant's diary and clerks' emails, showing bookings, and some analysis of the raw material. We were taken item by item through her diary and particular cases.

86. Here is the summary for the claimant's work from 2015 to 2019.

Year	work billed	payments	new cases
2015	54,285.93	50,580.85	82
2016	67,121.68	57,169 90	81
2017	85,797.49	72,569.37	56
2018	166,489.54	111,641.82	19
2019	39,553.55	51,682.10	23

Undoubtedly her income fell in 2019. These figures show steady growth in both billing and payment from 2015 to 2017, then in 2018 her billings nearly doubled, before collapsing to half the 2017 billing total. In 2019 payments were half those of 2018.

87. One of Garden Court's explanations for the fall is that a major change in the payment regime for Crown Court criminal defence work in April 2018 led to a reduction in income for many criminal defence barristers from 2019 onward. A change in the fee structure for preparation work in large cases, effective for legal aid certificates issued after 1 April 2018, meant all but very junior criminal barristers suffered a fall in income of 25% or more. The claimant agrees that this was *a* cause of falling income.

88. Judy Khan's evidence was that in 2019 the criminal bar as a whole also experienced the financial effect of decisions by the police to release suspects under investigation, rather than charge them, which reduced work for defence lawyers, and a decision by the Ministry of Justice not to sit Crown courts at full capacity, so as to reduce cost. This would delay trials that might have been expected in 2019. Nether observation was challenged. These changes would have affected criminal defence barristers across the board in 2019.

89. Rajiv Manon QC, current joint Head of chambers, had prepared a comparison of the income in the years 2018 and 2019 for the eight criminal defence barristers in the practice team who had not taken silk and were not on parental leave, with more than 8 years call (that is, of seniority). The claimant, 2001 call, saw an income drop of 54%. So did another barrister with 2005 call. The others in the table, suffered drops of 48% 39% 34% 30%, 27% and 25%. So all criminal defence barristers suffered substantial falls in income in 2019 as against 2018, but the claimant's fall was the joint highest of the eight.

90. Next, Garden Court say the claimant was not available for work for medical reasons for 5 to 6 months of the relevant period for 2019 billing. Despite a detailed examination of her diary and bookings, the picture is not clear. The claimant would book off periods in her diary when she did not want to work, but it is clear from the emails and bookings that the clerks knew to ring her if something came in for her, or which they thought might suit her, and she would rebook herself in so as to do it. She did have a practice of asking not to be booked for a day or so after finishing a long case, so that she could recuperate. For health reasons she did not want to travel outside London, and she preferred not to do short cases because of the demands of preparation and travel for proportionately less reward than in a longer case; such cases also "block out" space in the diary which might otherwise be available if a longer case came in at short notice. In the relevant period, she was booked out between 23 October 2018 and 4 January 2019 (showing she was in fact away from chambers in December 2018 when the Stonewall message went round). She then did a trial which ended 23 January 2019, which had been

booked in 2018. There was a slack period, when she had mainly short cases booked, but nothing substantial. On 18 February she notified that she would be away until 18 March and asked the clerk for a practice review (discussion), which was booked for 28 March, though when it came to it, the claimant was overrunning in a trial and she asked for it to be put off for a few weeks; as far as we could see she did not rebook her review. During March 2019 she did a 16 day multiple defendant trial, booked earlier that year. Over the last week in April she did another multi-defendant trial.

91. On 1 May the clerk told the claimant that a particular solicitor wanted to instruct her for a possession with intent to supply case. The claimant showed initial interest but, on reviewing, said that she did not wish to take on this kind of straightforward case - she had done much more complex work for this solicitor in the past. She went on: “it is May and I have not been offered a single brief of any substance. The only contact I had with you has been for a two-day sentence on the case that the solicitors dealt with in-house, which I refused, and now this. I am almost 50 years old and nearly 20 years call and I’m being clerked as if I’m a newly qualified barrister. It is soul destroying”. She would contact him after the bank holiday, because she wanted time to think about the future course. The clerk, Charlie Tennant, replied that he had thought it an opportunity to get back in with the solicitor who had not instructed her for a while, and that the year had unfortunately been a bit quiet due to the lack of charging by the police. She was valued by him and by the clerks’ room and they hoped for big work for her for the remainder of the year, but “unfortunately the start of the year has been slow for everybody inside and out of this Chambers”.

92. In June and July she appeared in 2 trials which had gone in to her diary in 2017. While appearing in the second of these she fell ill from complications of an earlier serious illness, and had to drop out, after being provided with a 3 week fit note by her GP. Once recovered she was offered a 3 week trial; she expressed interest, but the solicitor chose other counsel. At the end of July she decided to book August off, though she in fact rebooked herself for some work that came in that month.

93. At the end of September 2019 Charlie Tennant emailed the claimant to ask her plans for her diary this year – “are you looking for your diary to be filled up or are you relaxed at the moment?” The claimant replied that “next year’s diary is looking pretty good so far”, she wanted to reflect on what to take on for the rest of the year as she was doing “a lot of exciting extracurricular stuff at the moment,” but of course remembered she had to pay the rent. There is no sign of dissatisfaction with her clerking here.

94. In mid-October she did a four-day trial, booked in 2016. In October 2019 he was booked for a returned brief in a 38 day murder trial, but then the start was delayed until 25 November and it did not finish until January 2020, so the billing and payment does not appear in 2019 figures. She had meanwhile

brought in two large bookings for 2020, though in the event lockdown supervened and they were postponed.

95. The overall picture shows that from time to time she was offered substantial work. At other times there were slack periods when only smaller cases were available. Difficult though the figures are, the claimant does not seem to have booked out non-working time for many more days than she had in 2018. Judy Khan noted from the figures that the claimant had booked more non-working time than others had, in 2018 as well as in 2019 - the reduction in time available for trials remained the same for the claimant, but was more than colleagues. We regretted that we had no comparison of the working patterns or bookings for other criminal defence barristers, just the totals.

96. There was evidence from the clerks that the claimant had relatively few solicitors who booked her regularly, compared to some crime team tenants. It was also said that as she did not represent in sexual offences, or fraud, there was less work to go round for her. We did not know if the others in the comparator group had their own restrictions on the type of work they took on.

97. Some of her better cases in 2019 did not finish until 2020, including the best case of the year, which had been expected to start in October, other cases were postponed to 2020, with the result that income she could have expected for 2019 was not received until 2020. Several of the cases she did have booked in 2019 went short, causing unexpected gaps in her diary, and lower earnings than she could have expected from her bookings.

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98. Finally, Garden Court asserts that a bare comparison of 2018 and 2019 is not a true picture, and that 2018 was an outlier. Rajiv Menon gave as evidence of unpredictability that in 2013/14 he had earned twice what he had in the previous year, then in 2015/16 he had earned less than half the previous year's earnings. This is because criminal cases can drag on for years, with multiple delays, or a barrister can prepare for a long case, only to find it collapse when the accused pleads guilty or the prosecution offers no evidence. There is no interim billing in long cases, and there is a time lag between billing and being paid. The tribunal accepts – not least from the detailed examination of the claimant's activity - that the pattern of work could be feast or famine.

99. Judy Khan gave evidence that 2018 was a good year for many criminal defence barristers. The claimant's case was that her income for early years had been repressed, but that as she now had better clerking after the Women's Task Force report in 2017, this improvement would have continued into 2019, but for the impact of her December 2018 email about Stonewall,

100. Accepting that her income had fallen in calendar year 2019, we considered what evidence there was that the claimant's email of 14 December protesting

about the link with Stonewall led to a reduction in work. We accept that clerking could be susceptible to prejudice, and that consciously or not, clerks could steer work to others before the claimant because of her protest. This *could* happen; we need a little more to conclude that it *did* happen.

101. Each of the clerks was cross examined in some detail about the claimant's diary. At the start of the case, the claimant had named 19 individuals responsible for discriminating against her in respect of the fall in income. In closing, she withdrew allegations against 13 of them; 6 were left. Of the clerks, only Colin Cook, head of clerking remained. It had been alleged that one of the criminal team clerks, Luke Harvey, was close to the trans rights supporters in chambers, having hosted an email group for the trans rights working group set up by Michelle Brewer, but there was no evidence that he did more than simple administration, emailing about a meeting and booking a room, and she abandoned a claim that he had discriminated. The allegation that he had steered work away from her was abandoned. There was also no evidence of a wholesale change of the clerking team in February 2019, as the claimant had initially alleged. The changes had been made earlier in 2018, well before her protest email in December. The emails about 2019 bookings show the clerks were continuing to work for the claimant. Colin Cook was mainly responsible for clerking the silks. He appeared always to have had good relations with the claimant, and they had something in common, both being black and having had to get where they were the hard way. He saw them as "family". It is suggested that pressure from Heads of Chambers, and Michelle Brewer and Stephanie Harrison, both trans rights supporters, operated through Colin Cook to create the impression the claimant was out of favour and consequently should not be allocated work. Michelle Brewer worked mainly from home, and is unlikely to have had much day-to-day contact with the clerks. The clerks themselves seem to have had little knowledge of or interest in the gender critical/gender self-id debate; most conversation was about football. From time to time there were social gatherings with the clerks which the claimant attended, including in 2019, apparently on friendly terms. The clerks' evidence was that it was not in their interest to leave barristers with empty diaries, and from time to time they had to get someone to do the smaller cases to provide a service to solicitors and in hope of attracting bigger ones.

102. It was initially the claimant's case that her clerking was changed in February 2019 so that a clerk associated with the trans rights working group (TWG) now handled her work and was unsympathetic to her because of the December 2018 email. She now agrees that the change in clerking was a decision made earlier in 2018, before her email. In our finding the clerk's association with TWG was limited to setting up an email group and booking rooms, purely administrative tasks.

Trans Rights Supporters in Garden Court

103. We move on to consider the events leading to alleged detriments from October 2019. Before we go to that, we will examine who in chambers supported trans rights or held a gender self-id belief.

104. In 2016 Michelle Brewer, who had come across trans issues in her immigration practice, proposed to four people she knew outside chambers that they should create a Trans Equality Legal Initiative (TELI) to form a network to improve access to justice for trans people. They held a launch at the offices of Linklaters solicitors in November 2016. Linklaters provided most of the sponsorship, but Garden Court, one other set of chambers, and another firm of solicitors, also contributed.

107. Also in 2016 she proposed to other members of chambers that they should set up a trans rights working group (TWG). The aim was to share knowledge and expertise within chambers and build capacity across the practice teams to collaborate on trans rights issues. They organised an external training event in September 2016 about terminology, so as to work with lay clients in a trans-inclusive way. A clerk booked a room for the meeting,

108. Not much else happened for 18 months. Michelle Brewer decided to resurrect TWG, and in April 2018 there was a strategy group meeting attended by 8 barristers and 2 members of staff. These included Stephanie Harrison QC, Louise Hooper, Stephen Clark and Shu Shin Luh. They discussed training issues, and brainstormed ideas about sympathetic solicitors and civil society groups. The clerks set up an email group of about 23 people. Next month, on 25 May 2018, Michelle Brewer held an internal training session, attended by 6 people, to look at key issues in gender recognition reform. We have the minutes of that discussion, from which it is clear that some of those who attended (including Stephen Lue) were hitherto uncommitted and exploring the issues for the first time. From July to October 2018 there was a public consultation about statutory reform, run by the government Equalities Office. TWG did not submit a response, though Michelle Brewer herself helped on the response submitted by two other organisations. In June 2018 there was a media training event, not about issues facing the trans community, delivered by external academics for the whole of chambers; chambers provided cover for childcare. In October 2018 TWG arranged for Gendered Intelligence, a trans-rights campaign group, to provide internal training to barristers and staff on creating an inclusive environment for trans people.

109. TWG was not an official practice group. It was a loose association of interested individuals. There are a number of such groups within chambers As the description of its activity suggests, there was more talk than walk.

110. In a personal capacity, in February 2018 Michelle Brewer and another

advised Stonewall on the scope for reform of the Gender Recognition Act on a pro bono (free) basis, in conjunction with 2 academics. In November 2018 Michelle Brewer, plus a family barrister from Garden Court, and a barrister from another set of chambers, reviewed and advised Stonewall, again pro bono, on EHRC draft guidance for schools and transitioning pupils. This was the kind of work she and Stephen Clark were referring to in their December 2018 responses to the claimant's protest about signing Stonewall. In January 2019 Paul Twocock, Stonewall's Director of Campaigns, suggested a meeting with Stephen Lue about support for Stonewall's work, expressing appreciation for earlier help, but there was no meeting, and nothing came of it. In July 2019, Zeinab al-Farabi, Stonewall's client engagement manager, followed up on the meeting with Stephen Lue and Mia Hakl-Law, and hoped they were willing to "partake in a network of legal experts committed to extending LGBT rights through strategic litigation…as you mentioned you have a trans working group, I thought you could really help drive discussions and provide valuable contributions", but there was no more Garden Court interest in this than in the other offers under the Diversity Champions Scheme.

111. We concluded that although a handful of barristers within Garden Court were interested in trans rights, Garden Court as an association could not be said to have taken a position one way or the other on the sex/gender identity issue. We can see that trans rights campaigning groups do not seem to have received donations from their fund, that it was not unusual for members of chambers to do occasional pro bono work for good causes, and that sponsoring the TELI 2016 launch was, in context, a one-off marketing opportunity. Many were not on twitter, so oblivious to the toxicity of the trans-rights debate.

112. Finally, we noted from the evidence (for example in the responses to the December 2018 email) that there were members of chambers who thought of Stonewall as a campaign group that had done good things to advance gay rights, without necessarily appreciating that advocating gender recognition reform was now seen by some gays and lesbians, the original core constituency, as incompatible with their rights.

The 2019 Tweets

113. The claimant had been one of those. She had supported Stonewall in its campaign for LGB rights. After the 2015 change in focus to trans rights, she was still generally in favour (without paying close attention), until late in 2017 she came across the website terfisaslur.com, with "page after page of screenshots of images of trans-rights activists attacking women in the most violent language and imagery possible.. These were self-declared LGBT activists calling for, and celebrating, violence against women". It was at this point, she says, that she understood why so many feminists opposed this form of tran- rights activism. "Much of mainstream trans-rights activism had evolved into something misogynist and abusive". In the claimant's view, the

Stonewall slogan “trans women are women” indicates that transwomen are “literally and for all purposes” women, who may not have a gender recognition certificate, and identify as women, even with beards. In the area of criminal justice, she was concerned that transwomen attacking women were being recorded as women in the crime statistics, which “obscures the reality of male violence”. She concluded that some of Stonewall’s trans rights agenda was “one of the most dangerous political and cultural movements we have seen in the West… Undemocratic and vicious. Most trans-identified men are heterosexual. Stonewall could not have failed to realise that extending the trans umbrella to include cross dressers… was going to destroy lesbian rights and women’s rights and boundaries”. She was concerned about Stonewall’s influence, in that they purported to represent LGB people, without recognising the concerns of women, and lesbians in particular, about the trans rights agenda.

114. In July 2019 the claimant posted a series of tweets commenting on the views expressed at a forum on reforms to the Gender Recognition Act 2004 where Stephen Clark of Garden Court spoke, along with Stephen Whittle, an academic, and a spokesperson from Mermaids, a children’s trans rights campaign group. She complained that Stephen Whittle had “scoffed” that men always had access to women’s changing rooms, and need only grab a bucket and claim they were the cleaner; this “confirmed in my mind just how delusional, ill informed and anti-women proponents of self ID are, even the lawyers”. She reported that the panel was incredulous that feminists only began to object to gender self ID in 2017, not recognising that this might be because of “the impact of new wave gender ideology”. He had been right to say that trans people have been self-identifying for 70 years, “but he did not engage with the one reality of trans self-id; men flaunting their masculinity, beards, penises deep voices, whilst also demanding to be called women”. He had said that all women and feminists concerned about self-id were fanatics, funded by US evangelicals. (The concern that anti-trans views were being promoted by the far right was also identified by Louise Hooper, a member of Garden Court, when in a tweet retweeted by Marc Willers QC, head of chambers, she said “the far right across Europe has a divide and rule tactic aimed at women’s equality and reproductive rights, LGBT rights and antidiscrimination generally. Don’t fall for it. The polling on trans issues is just a start”).

115. On 9 September 2019 the claimant tweeted: “there are no outrageous levels of violence against trans women in the UK or the USA, not when compared to the truly shocking levels of male violence against females. Yet the proposal is to allow any man, predator, lunatic, fetishist to self ID. That’s the fecking problem”.

116. After that we have a set of tweets identified as protected acts in the victimisation claim, which on the claimant’s case significantly influenced the actions in October and December 2019 that are detriments 2, 3, and 4 in

the list of issues, and detriment 5 in 2020. Eighteen tweets were identified in the claimant's Further and Better Particulars Of Claim, though tweet 10 itself is a thread of 14 tweets. They are discussed here in chronological order, while adding the numbering from the further particulars list, which is not chronological. For clarity of understanding, we interrupt the tweets list to insert into the timeline the actions relevant to detriment.

117. On 21 September 2019 (tweet 13) the claimant tweeted "#they call me terf because I put the rights and safety of women before men who want to live as women".

118. On 22 September (tweet 17) she tweeted: "Stonewall recently hired Morgan Page, a male bodied person who ran workshops with the sole aim of coaching heterosexual men identifying as lesbians on how they can coerce young lesbians into having sex with them. Page called "overcoming the cotton ceiling" and it is popular." (This is one of the two tweets that are the subject of detriment 4).

119. Michelle Brewer, who was not on twitter but was sent these by LGBT contacts outside chambers, messaged Stephen Lue about them, saying she was putting in a formal complaint the following day: "so intemperate". Stephen Lue replied that "this is a complex one for chambers", it was such a shame, as he had a strong personal affinity for the claimant. Michelle Brewer then sent the Morgan Page tweet to Stephanie Harrison QC, Stephen Clarke and Shu Shin Luh : "have you seen this – bloody shocking post by Allison – I will be in touch with Stonewall on Monday – but once I check accuracy I am putting in a formal complaint". (The message did not reach Stephanie Harrison, as she used an old contact number). "It has completely undermined our relationship with Stonewall and other organisations I'm working with – it's the constant bullying rants - shocking behaviour".

120. On 24 September (tweet 16) the claimant tweeted that "every safeguard, legal and political, ensuring the rights and safety of women seems to be collapsing in the face of trans extremism", a comment on Sussex police and a particular incident.

121. On 6 October (tweet 14) she tweeted about telling the Ministry of Justice to stop putting men into women's prisons, and the NHS that men could not self-id onto women's wards. Self-id was not, she said, the law of the land.

122. On 12 October (tweet 15) she said "trans genderism is real, self-id is not. It makes a mockery of the trans movement, of women, our rights and safety. The trans-women I know check their male privilege, they do not revel in it. We need boundaries and safeguards. Anyone arguing otherwise is not to be trusted".

“Concerning Tweets”

123. At this point, on 16 October 2019, Michelle Brewer made her complaint, though she did not call it that; it was framed as a request for guidance on use of social media by members of chambers. She emailed at length to the Heads of chambers, to members of the trans-rights working group, and to Mia Hakl-Law (Head of HR) on the subject of “Concerning Tweets”. She introduced herself as part of the chambers working group focusing on building their reputation as specialists in trans rights work, referring to the pro bono work for Stonewall, the EHRC and LGBT Foundation, and input into consultation on government policy on trans prisoners and asylum gender identity guidance, and to strong ties with specialist solicitors working on those cases. It was therefore “incredibly alarming” that individuals were informing her that Allison Bailey was tweeting comments “directly criticising and undermining GCC events considering trans rights and panellists invited to speak on the panel”. (A reference to Stephen Clark’s July 2019 participation). She had said there were no outrageous levels of violence against trans women, but that flew in the face of evidence. The claimant was entitled to her views and to express them, but these tweets compromised Garden Court’s message to the marginalised trans community that they were a safe space. She asked for guidance on any chambers’ policies dealing with the use of social media by members, and she offered to provide the relevant tweets if required.

124. Mia Hakl-Law, as Director of Operations and HR, responded that the email was very timely as: “I have drafted a social media policy which I put in to the next meeting for approval as we don’t have one in place”.

125. Maya Sikand (who was later asked to investigate the tweets) responded that she had not read all the tweets, but having just looked at the claimant’s feed, her twitter ID was very careful to say “own views not that of @Gardencourt law”, which “might make any censorship impossible”.

126. The next tweet (tweet 1) was on 17 October 2019 commenting on a tweet by Dawn Butler MP that the Tory government should reform the Gender Recognition Act now, and that transgender people had suffered a shocking 37% increase in hate crime. The claimant said: “women’s rights is not a political football. Women and girls have suffered, and continue to suffer, at the hands of predatory and abusive men. It is offensive and unacceptable to suggest, much less legislate, for a system whereby any man can declare himself lawfully to be a woman”.

127. On 18 October 2019 Garden Court received via its website enquiry form an anonymous message:

> "just thought you should know that one of your staff is spreading bigoted remarks about trans women… While Allison says her views are not your own, she clearly indicates that she is part of your organisation. Can your clients trust a person who doesn't respect the identities of others?"

This was the first of 11 such comments on the website from then to 28 October, and the only one to be anonymous. Of the other ten, two came from trans-rights campaign groups, Gendered Intelligence and LGBT Consortium. Eight came from individuals, whose full names are known, but whose surnames (with two exceptions) are omitted from the public bundle.

128. On 20 October (tweet 2) the claimant tweeted that she would be chairing a Woman's Place UK public meeting in Oxford on 25 October to advocate women's rights and academic freedom.

129. On 21 October Michelle Brewer told Tara Hewitt of TELI, one of those who had sent her the claimant's September tweets, that she had raised the matter with the Heads of chambers, "but that should not stop you putting in a formal complaint as well if you want to. The Bar Standards Board are taking a tough line now with barristers and social media".

<u>Launch of LGB Alliance and Resulting Twitter Storm</u>

130. On 22 October 2019 (tweet 3) the claimant sent the "launch tweet" that led to an avalanche of tweets in response, and to the Garden Court actions complained of as detriment. Commenting on the launch of LGB Alliance in London she said:

> "this is an historic moment for the lesbian, gay and bisexual movements. The LGB Alliance launched in London tonight, and we mean business. Spread the word, gender extremism is about to meet its match".

131. The LGB Alliance was formed that evening at a private meeting at the Conway Hall to review 50 years from the founding of the UK Gay Liberation Front in 1970. It was based on gender critical principles. The meeting was addressed by a number of former Gay Liberation or Stonewall activists, including Simon Fanshawe.

132. The claimant's launch tweet generated a strong reaction on Twitter, some of which was specifically directed at Garden Court. David de Menezes, who as Director of Marketing and Communications monitored this, emailed the heads of chambers the following day. There were critical responses, and responses in support. He listed the tweets mentioning Garden Court which had asked for a response. He said "some of those who have tweeted have thousands of followers, but the posts from some of these accounts and their profile descriptions don't seem particularly reputable.

However, it's very unusual for us to receive so many critical tweets directed at us within such a short space of time, so this could escalate. We are monitoring closely keeping screenshots". As the Heads were aware, he said, Michelle Brewer had raised concerns about Allison Bailey's tweets on transgender issues, but Michelle had told him that she was not against free speech. He went on: "I can see how this is problematic because of our reputation campaigning on transgender rights and LGBT issues". Her twitter account said she was a member of the Garden Court crime team, but also that her views were not theirs. He advised: "caution against us putting anything out on Twitter in response as it could prove to be a lightning rod, and it might just die down by tomorrow". This report was about tweets, not about the website enquiry forms, which had not yet reached him.

<u>The TON Meeting 23 October 2019</u>

133. Meanwhile, on Wednesday 23 October, Garden Court hosted a TON meeting, run by LGBT Consortium, to discuss data collection on gender identity. It had been booked through Michelle Brewer, following Garden Court's policy of letting civil society organisations use a room for meetings free of charge. No Garden Court members were present. It was attended by representatives from Stonewall (Kirrin Medcalf), Mermaids, Gendered Intelligence, LGBT Foundation, and other trans rights campaign groups. We set out the detail of this episode because it is relevant to alleged detriment 3, that Michelle Brewer solicited complaints about the claimant. That morning, before the meeting started, Shaan Knan, a STAG member, who had organised the meeting in his capacity as TON organizer employed by LBBT Consortium, telephoned Michelle Brewer, who was on holiday in Scotland with her family. He had been contacted by another participant complaining that the round table was being held at the chambers of the barrister who had expressed anti-trans views on social media; he was worried that others might also object. She told him that people who had concerns about the claimant's social media posts could send a complaint to the Heads of chambers. She added that she had already raised concerns with the Heads of chambers and they would be looking into it at a chambers meeting on Monday. It is not clear how Michelle Brewer knew that. There was to be a meeting of the management committee, which was going to discuss the draft social media policy, presumably in the context of Michelle Brewer's 16 October "Concerning tweets" email requesting guidance on policy; it is possible that she heard this from Mia Hakl-Law, as she had spoken to chambers a short while before her conversation with Shaan Knan.

134. Next day Michelle Brewer sent Shaan Knan a brief message asking how it had gone. His reply included: "I did bring up briefly the issue with the terfy barrister and asked people to support".

135. The minutes of the TON meeting show discussion on data collection: the proposed census question on trans identity; terminology in voter registration and care records. At the end is a note:

> "via Michelle Brewer Garden Court Chambers – Shaan Knan – community encouraged to write to Garden Court Chambers heads in the next couple of days expressing concern about Allison Bailey's (barrister) transphobic comments on Twitter. Chambers have a meeting to decide on formal action against barrister Allison Bailey. Shaan to send an email to round table participants".

These minutes were not circulated until many months later, (after the tribunal claim was presented), but we concluded that they were an accurate record. The level of detail suggested there had been some contemporary note, which Shaan Knan thought would have been made on his phone, since deleted.

136. Late on 23 October, several people, (surnames known but redacted) posted enquiry forms on the chambers website. Tracey said that Allison Bailey was promoting an organisation that espoused harmful anti-transgender rhetoric, and that in opposing transgender rights she was not acting in accordance with Garden Court's Diversity Champion programme of ensuring all LGBT staff were accepted without exception in the workplace. Carl mentioned her connection with Garden Court and that she frequently advocates for "transphobic perspectives", this reflected badly on Garden Court Chambers, in contravention of core duty 5 (an interesting reference to the Bar Standards Board Code). She was denying minority rights in a public account on Twitter. An anonymous contact asked: "why are you having a category trans rights on the website when one of your barristers is clearly transphobic and actively encouraging anti trans-feminine people by what is basically a hate group?" Flo said the claimant's anti-human rights approach was very unprofessional and did not align with Chambers. She was denying the human rights of queer and trans people, and if Garden Court was to be "taken seriously as a place which fits (sic) for the justice of all and leave no one behind", they needed to convey concern. Next day, Jennie expressed concern that Allison Bailey was "associating your organisation with that of hate speech, intolerance and trans phobia", she was entitled to her opinion but her profile identified Garden Court as her employer. They would lose clients, which was not good business. They should get her to delete reference to Garden Court from her Twitter account.

137. On the evening of 24 October Shaan Knan put a message on the STAG wall and on the STAG Facebook page. He said Allison Bailey of Garden Court supported the anti-trans LGB Alliance just launched. Garden Court had always been allies, and Michelle Brewer had flagged the issue internally to the Heads of chambers (presumably a reference to Michelle Brewer's 16 October email). "There will be a meeting on Monday with the head of GC Chambers to discuss if any formal actions against Bailey should be taken". He had spoken to Michelle Brewer "who told me she encourages the trans community to write messages of support (supporting action

against Bailey) to the head of Garden Court Chambers". He asked people to write by Monday morning.

138. He then wrote his own complaint, in his capacity as "LGBT Consortium's trans network coordinator of over 40 UK wide trans organisations". He referred to having worked alongside Michelle Brewer and Alex Sharpe, to their generous hosting of the round table, and that:

"in the current socio-political climate where hate crime against trans people is on the rise, and many trans people face daily harassment and constant stigmatisation, I find barrister Bailey's actions extremely harmful and completely against the ethos of Garden Court Chambers".

139. Alex Drummond (also a STAG member, but not identifying any affiliation in his complaint) sent a message too, saying he was disappointed that chambers was dragged into the LGB Alliance debacle when they had been so constructive and supportive of trans rights up till then. He hoped that:

"Allison Bailey can be dissuaded from a misguided mission and or distanced from tarnishing the otherwise good name of your Chambers".

He then sent a message to Shaan Knan saying "done".

140. Within chambers, Tom Wainwright emailed the Heads of chambers (headed Concerning Tweets, which links it to Michelle Brewer's 16 October message) about the claimant's 22 October launch tweet, which was:

"already causing damage to our reputation. Would the management please look at this urgently? There must be something in our constitution or diversity policy which precludes this".

Judy Khan thanked him and Michelle for bringing this to their attention. They would speak to her. She said Leslie Thomas was about to circulate some guidance from BSB which was on point and there was a draft policy they were about to implement. The claimant's views were her own, but the profile tied her to Garden Court.

The Response Tweet – Detriment 2

141. We set out here in detail the communications that led to Garden Court's decision to send the response tweet complained of as detriment 2 in the claim.

142. On the morning of 24 October, Leslie Thomas QC had emailed his co-Heads in response to David de Menezes's report the previous day. The question of tweets in a private capacity on controversial topics mentioning

membership of Garden Court had been raised a couple of weeks before (we take this to be a reference to Michele Brewer's Concerning tweets email), and "we took the view that as Allison had made it clear that her views are her own there wasn't much we could do. We can't silence her from using her Twitter account in her own personal capacity. But on reflection I can see that her Twitter account does it make it absolutely clear that she is a practitioner ..from Garden Court's crime team". To say that she did this in a private capacity was to his mind a contradiction. They should consider telling members that if they linked their profiles to chambers they needed to be more careful about what they tweeted so as not to bring chambers reputation into disrepute.

143. Leslie Thomas had that year become a member of the Bar Standards Board, and he went on to say that the new (October 2019) Guidance on the Use of Social Media from the Bar Standards Board seemed relevant at paragraph 3:

> "comments designed to demean or insult are likely to diminish public trust and confidence in the profession and could compromise the requirements that barristers to act with honesty and integrity (CD3) and not to unlawfully discriminate against any person (CD8). You should always take care to consider the content and tone of what you're posting and sharing. Comments that you reasonably considered to be in good taste may be considered distasteful or offensive by others".

He then queried whether any of the tweets fell foul of CD8. He had not himself read through the tweets. He left it to others to complain if they wished. If there were potential breaches, then as Heads of chambers they could take action and point this out.

144. Later that morning he emailed all members of chambers with a link to the new Bar Standards Board Guidance on the Use of Social Media. He quoted paragraph 3 (see above) in full. He said all members were bound by the Bar Code of Conduct and BSB would investigate complaints with regard to the Guidance issued.

145. The claimant could see what this was about, and replied to all commenting on the deployment of:

> "these emails in a fashion that could be construed as intimidating to those of us who are on social media advocating for views that may not be popular, but are nonetheless entirely lawful and reasonable".

There were ongoing efforts to target activists, by reporting them to professional bodies. She suggested that if the Heads of chambers were concerned that anyone in Chambers was in breach of BSB guidance they should contact that member immediately.

146. David Renton, reading this, was prompted to write to Michelle Brewer about views expressed by "another member of chambers" (Allison Bailey, though he did not name her) in a phone conversation a week ago "which just seem a million miles away from chambers values". Stephen Lue had suggested he speak to her about it, he suggested a meeting the following week. Michelle Brewer replied offering a time the following week but added: "the Heads of chambers and board are meeting to discuss on Monday so it might be an idea to relay to them your concerns since it is going through those channels". He said he was reluctant to do that, as he did still have to share a room with Allison Bailey, but wanted to find a way of "signalling – politely and firmly – but Chambers has a collective view and that it is also the view of the great majority of us". (This refers to the claimant having recently spent 45 minutes on the telephone talking emphatically about trans prisoners in women's prisons in the room they shared when he was trying to work).

147. Returning to the morning of 24 October, Judy Khan then wrote firmly to the claimant, copied to her co-Heads of chambers, saying: "more than one complaint has been made about the tweets on the transgender topic. No doubt you would point out that you are entitled to your views, that you spell out in your tweets that they are yours and not GC's views and that you do not intend to cause offence". She had asked Leslie Thomas to circulate the guidance. It was thought that her tweets were undermining the position of a number of members of chambers who were doing transgender work. The Heads appreciated the topic was sensitive, and that there were strong views either way but: "please can you bear in mind the work that has been done by others in Chambers and the possible offence caused by tweets". She asked her to "resist the temptation to respond in an intemperate way. We are simply trying to keep everyone together, while dealing with a myriad of other difficult issues". They would take the same approach if she had complained about someone else in Chambers.

148. The reference to "other difficult issues" sets the context in which the Heads made their decisions. Chambers had entered into a contract for a new IT software system. The head of IT would not implement it because in his view it would wreck their systems. Chambers was now contractually bound to make a £100,000 payment. Their chief executive had resigned the week before. Understandably they were preoccupied with this crisis.

149. Mid-morning on 24 October David de Menezes spoke to Mark Willers QC, another of the co-Heads, who passed on to the other two that there was now:

> "a real Twitter storm about Allison's tweets (David hasn't seen anything like it in 4 years at GCC) and we as a chambers are taking a lot of criticism".

One of the tweets had a screenshot of a complaint that had been sent to Chambers, so Mia Hakl-Law was asked to look for it on the website and David de Menezes was asked to draft a twitter response. Mark Willers said:

> "if we have received a formal complaint(s) we might be best advised to tweet out the fact that we will investigate the complaint in accordance with our complaints policy".

David de Menezes thought they should ask Allison Bailey to remove the reference to chambers on her Twitter profile, as that was "generating more incoming flack (sic) for Chambers". Leslie Thomas emailed his co-heads saying the claimant should be asked to delete tweets, and to delete that she was in Garden Court, and ended:

> "this is damaging to our reputation. Can I confirm that we are now investigating a complaint. The suggestion that she may have breached the Equalities Act is very serious, media PR fallout from this for our Chambers I don't even want to think about".

150. David de Menezes then sent links to screenshots to 20 tweets and two website enquiry forms to the joint heads flagging up the issues (due to the state of the hearing bundle it is not clear to the tribunal which these were):

> "the tweets directed at Garden Court pointing out concerns of Equality Act breach and contradiction with our commitment to human rights"..(The claimant had just sent out) "another tweet on gender neutral toilets which is getting a lot of attention. Our reputation has taken a hammering from this community on Twitter. The other key issue is that we are signed up Stonewall Diversity Champions with their logo on our website, and accreditation we signed up to as a Chambers, we have Allison criticising Stonewall on Twitter. One of the key questions is whether she has breached the Equality Act or any other rules of chambers or the BSB. There are differences of opinion on the issues she is commenting on. There are also issues around free speech which we need to be careful about".

Discussing what they could or should do about it, he said that on Twitter the damage was already done, so this was about damage limitation going forward. She could be asked to remove recent tweets, but "she tweets very regularly on this issue and has done so for about a year at least, so we can't put that genie back in the bottle". Their options were either to say nothing whilst the tweets were investigated and hope it died down. Or he could draft a tweet to say: "we are investigating the serious concerns expressed, in line with our complaints policies and we also say that these she has expressed in a personal capacity". He cautioned: "You should be aware that any tweet you put out will also generate a significant number of responses or even potential criticism for not going further by actively condemning her views, but I think the jury is out on that one until someone

has adjudicated on the complaints". On removing the reference to her association from GC from her Twitter profile, he said there were lots of tenants who mention they are members of chambers on their profiles while also saying that they tweet in a personal capacity, and: "tenants shouldn't be prevented from saying they are members of GC on the Twitter profile because they also sometimes tweet in a personal capacity. It's standard practice to say where you work in your profile and helps tenants benefit from an association with GC". If she were to be asked to remove the reference to Garden Court, that could be done on the basis either that doing so was damaging their reputation given her controversial views, or that her views clashed with the views of LGBT stakeholders they worked with, and the perception that her views were contrary to their commitment to equality and human rights, or that her tweets were in breach of the BSB social media policy if they were satisfied that was the case.

151. At this point Judy Khan, co-Head, tried to ring the claimant but the call went to voicemail.

152. Mia Hakl-Law emailed David de Menezes and the Heads of chambers, suggesting they needed to handle the matter:

> "as per disciplinary policy… as in send AB (the claimant) all the tweets we had which will together form this complaint, and ask her for a response to whichever one of you will be investigating… Without a doubt this is damaging our reputation and affects our business so we need to make her aware of that… I am obviously not suggesting we attempt to expel AB but even our constitution talks about damage to reputation as something that can lead to members being expelled. I'm just raising it as worth spelling out to AB that this is seriously damaging to GCC reputation".

153. David de Menezes thought they should:

> "tweet a reply to those who had specifically asked us for a response or who have raised a complaint on Twitter about Allison's remarks. This is a small number compared to the higher number of tweets from people who are sounding off, but are not asking us for a response. Our replies will certainly be retweeted to their followers and shared within this community".

They should not post a tweet that was not a reply to a complaint or question

> "because that will be seen by a much wider audience in our main feed… Most people outside of this community are not aware of this controversy at the present".

But they might have to do that "if things get really out of hand".

154. At 3:39pm Mark Willers emailed the claimant saying they had received several formal complaints about tweets posted in the last 24 hours, plus a large number of negative comments about Chambers' association with her on her twitter feed, and they were concerned that these were damaging to Chambers reputation, which would itself render her in breach of the constitution. They would:

> "need to investigate the complaints made against you in accordance with our complaints procedure as soon as possible".

In the meantime she was asked to cease tweeting on the subject as a member of Garden Court Chambers, and not conduct any media interviews. These steps were imperative because the Twitter storm was damaging their reputation, raised concerns about a breach of the equality legislation, and might breach BSB social media policy. In other words, the Heads had agreed there should be an investigation under the complaints procedure.

<u>Sending the Response Tweet 24 October</u>

155. By 5 pm David de Menezes had circulated a draft reply tweet (in fact two tweets, because of the word limit):

> "we are investigating concerns raised about Allison Bailey's comments in line with our complaints/BSB policies. We take these concerns very seriously and will take all appropriate action. Her views are expressed in a personal capacity and do not represent a position adopted by Garden Court. Garden Court Chambers is proud of its long-standing commitment to promoting equality, fighting discrimination and defending human rights".

Within 5 minutes the co-Heads of chambers approved this, and soon after it was sent to the senders of the specific tweets (7 of them), rather than as a global tweet. As expected it was retweeted. This is the action, the "response tweet", complained of as detriment two in the claim.

156. David de Menezes asked Mark Willers to send the tweet to Allison Bailey and to tell her it was being sent to those who had asked Garden Court for a response on Twitter, or raised a complaint on Twitter.

<u>The website statement</u>

157. Louise Hooper of TWG, in conjunction with Tom Wainwright and Michelle Brewer, now sent the Heads of chambers a draft statement for the website, declaring Garden Court's pride in supporting trans rights, and stating that LGB Alliance was not part of Garden Court Chambers or representative of its views. By now the LGB Alliance launch story was reported in Pink News, the Independent, and on Mumsnet. Stephanie Harrison QC, who subsequently became involved in decision-making about

the complaints, agreed, adding that someone should speak to Allison Bailey direct to say that was what they were doing; chambers had a long history of support for trans rights going back to 1988. Tom Wainwright took the initiative by tweeting himself that Garden Court was proud of its commitment to fighting equality and that they had been at the forefront of trans rights for decades.

158. Responding to their initiative, Judy Khan informed Louise Hooper, Stephanie Harrison, Tom Wainwright and her co-Heads that they tried to phone the claimant but had not yet managed to speak to her. They had sent an email. She proposed a shorter, toned down, statement: “Garden Court Chambers is proud to support trans rights. Human rights are universal and indivisible. We wish to make it clear the LGB Alliance is not part of Garden Court Chambers nor representative of the views of chambers”. She did not attach the rainbow flag that TWG wanted on the website statement, saying to her co-Heads this was undesirable as:

> “ we need to strike a balance in our response and we should be aware that there are differing views in chambers”.

159. That evening Judy Khan emailed the claimant, after a second attempt to speak to her by phone, to tell her they had now replied to tweeted complaints in the terms of the response tweet. She also passed on the statement proposed for the website.

160. The claimant replied that she was “confident that any proper and fair investigation by Chambers will exonerate me of any wrongdoing”. She wanted to insist that they followed a process that was procedurally fair and utterly transparent, which had not been the case so far. She could not agree to take steps in response to complaints or consider whether she was bringing Chambers into disrepute, without knowing what was being said about her and by whom. She asked to *see* the complaints, “so I that I can see for myself whether they are of any substance and judge whether Chambers acted properly in seeking to enforce a very serious curtailment of my freedom of speech and professional standing in chambers”. She also asked to be sent a copy of the procedure being used (grievance or complaint) and the names of the barristers investigating. She asked that Leslie Thomas, and anyone else on the current BSB board, should not investigate, otherwise that might prejudice her defence to any complaint that might be made before the BSB. Soon after she added that: “Chambers publishing anything whatsoever to suggest that I’m transphobic, unsupportive of trans rights or similar, will be defamatory and patently false, misleading and libellous.”

161. Judy Khan replied that the relevant materials were being collated “so that we can consider it”, and they had not yet had time to do that because

they were "dealing with a number of other time-consuming important issues" apart from their day jobs. They had acted particularly swiftly because of the damage to chambers' reputation. We see from this that she, like Leslie Thomas, had not yet read the tweets.

162. Judy Khan then reported to her co-Heads and managers that she just had "a very intemperate exchange" with the claimant, who said that they were walking chambers over a cliff on this; they had walked into an elephant trap set by Stonewall, who had a quid pro quo arrangement where chambers got work in exchange for their support, and the relationship with chambers was not objective. She had warned chambers not to associate themselves with Stonewall 18 months ago. She needed support, and had received death threats and threats of rape. Judy Khan said she did not know about these. The claimant also spoke about youngsters being forced into surgery to reassign their gender rather than admit to being a lesbian, and her rights as a lesbian were not being recognised, many comments made about social media therefore contravened the Equality Act. Chambers should support LGB Alliance, which the Tavistock (a reference to the troubled Gender Identity Clinic) and other professionals supported. The claimant had protested that the tweets should have been read before the emails sent, to which Judy Khan said they were "fully intent" on reading them, but had other pressing issues. The claimant would not agree that her tweets were controversial, nor that she should remove Garden Court from her Twitter profile.

163. Judy Khan also reported that the claimant thought the response tweet was defamatory. She commented:

"I can see why she would be upset by the one referring to an investigation"

but she could not see it as defamatory.

164. However, concerned about defamation, Judy Khan did ask David de Menezes if they could remove the response tweets for the time being until they had discussed the tweets. He said that they already been sent "to loads of people on Twitter" and if deleted now "we will end up the hugely adverse reaction from these people and an even more epic Twitter storm which is likely to get reported in media". They would be accused of backpedalling and it would look as if they were no longer investigating, which would become the story. It would also be ineffective, as news travelled fast on Twitter and others would screenshot the tweets and retweet them saying they had retracted.

165. Judy Khan told the claimant that it was not accepted the tweets were defamatory, but they would try to take them down until they had a chance to discuss it further. The claimant replied "have you looked at who is sending these tweets of complaint? White men?! You are proceeding to destroy my career and smear my character, making public entirely private

human resource declarations." Any PR disaster was entirely of their own making.

166. That morning the claimant emailed a member of the Bar Council with an account of the background asking them to require Garden Court to remove the tweets published online as a safety measure. She said she had received additional online threats following Garden Court's tweet. Garden Court had no means of verifying the veracity of the complaint tweet posts.

> "They have published online what should be confidential details of chamber's complaint's procedure against me and BSB protocols".

Her professional standing was in jeopardy. She also been advised to seek an injunction if Garden Court would not voluntarily remove them.

167. The claimant then emailed Judy Khan that Garden Court's actions were contrary to section 47(2) of the Equality Act, discriminating and harassing her on the basis of sex, philosophical belief and sexual orientation, as well as being defamatory. She wanted the tweets about her taken down at once. After that she agreed to make no further public comment on either side until they could discuss the way forward. Until she heard in reply she reserved her rights, including the right to apply for an injunction.

168. Judy Khan then asked the claimant to agree an even more reduced version of their website statement, and she did. On the morning of Friday 25 October Garden Court published a website statement which just said:

> "We wish to make it clear that LGB Alliance is not part of Garden Court chambers nor representative of the views of chambers".

169. Judy Khan then told the claimant they were not able to remove their response tweets, but if they had any more complaints they would just reply that they were being looked into. They were sorry to hear about threats and willing to discuss safeguarding with her. In a phone call the claimant said she would go to the High Court and speak to journalists.

170. The claimant did not go to the High Court but she did give an interview to the Sunday Times, published on 27 October with the headline - Lesbian Barrister: my bosses bowed to transgender 'hate mob'. (The story had already been reported the previous day by the Independent, Pink News and the Telegraph). It reported that she was "under investigation for her stance on transgender ideology" after she helped launch of the LGB Alliance pressure group. The response tweet was reported, as well as Garden Court having signed up with Stonewall as a Diversity Champion. She commented that Stonewall had signed up many companies, public bodies, voluntary sector organisation and government departments to their manifesto and value system regarding trans rights and "without most of the public realising it, a large swathe of British employers signed up to the Stonewall value system". LGB Alliance had written to the Equality and Human Rights

Commission to complain that Stonewall was using public funds to promote gender identity rather than gender reassignment as a protected characteristic. Further, she "had "no faith" that Garden Court would conduct a fair complaints process. The threat to her career would have "a chilling effect on others who dare to think independently of Stonewall". The story included a quote from Judy Khan that they had not made any findings of fact or ruling, and that they utterly condemned threats to any person in chambers or otherwise.

171. The claimant then tweeted a screenshot of the article (tweet 2, duplicated as tweet 19) adding:

> "I and many other women are grateful to @the times for fairly and accurately reporting on the appalling levels of intimidation, fear and coercion that are driving the @stonewalluk trans self-ID agenda".

This is the second of the two tweets with which detriment 4 is concerned.

172. On 26 October (tweet 4) the claimant invited interested people to go to the LGB Facebook page, not its twitter account "given the attacks on this account (search spam, fake accounts, false accusations et cetera)", with the message: "we are not anti-trans. We are pro LGB. We are advocating for LGB rights".

173. Tweet 6, 28 October, retweeted a link to the Sunday Times article, thanking those who had sent messages of support, saying it wasn't about her, it was about what "Stonewall and gender extremism have done to our politics and institutions and it is chilling". Tweet 7, on 29 October, tweeted about Just Giving cancelling LGB Alliance's fundraising page, commenting "just think what this means LGB. The T has said that this is a marriage that we cannot leave, even if the T becomes abusive. If we try to leave, will be threatened. If we do manage to leave, will be starved of cash". Tweet 8 the same day asked people to ask Just Giving to end the suspension of LGB.

174. Meanwhile, there were more complaints on the GCC website.

175. One (name given, but asking for anonymity) commented on the Twitter pile-ups of one side against the other, pointing out that other employers would subject her to disciplinary action and dismiss her for gross misconduct; she was in a position of considerable public trust and mocking trans people. Trans phobia was incredibly dangerous, especially at a time when trans people were "under almost constant and vicious attacks on the media and online". People like the claimant were calling for the complete eradication of transgender people.

176. Cara English of the campaign group Gendered Intelligence also lodged a complaint on 28 October that the launch tweet's reference to "gender extremism" caught all trans people, and was a dog whistle to dehumanise trans people, or paint them as aggressive. She referred to CD5 (core duty) of the Bar Standards Board handbook, "not to behave in a way which is likely to diminish the trust and confidence which the public places in your or your profession". Her views would hold her an 'unreliable actor' in cases where clients are trans, and were in opposition to the rights of equality bestowed upon trans people by the Equality Act, and so diminish the trust the public placed in her and Garden Court Chambers.

The Investigation Process

177. On Friday 25 October, Mia Hakl-Law asked Maya Sikand to investigate the complaints under the chambers' complaints procedure.

178. There was now discussion within chambers to clarify what was going on. When Stephanie Harrison QC had asked Judy Khan on 26 October whether the response tweet had been sanctioned by the heads of chambers or something David de Menezes had put out, Judy Khan explained it *had*, as she had been "told there had been numerous complaints by tweet and it was thought that there was a need to get something out urgently to avoid damage to our reputation". Michelle Brewer's email (16 October) was not the prompt. Stephanie Harrison commented: "OK so Maya is not investigating a formal complaint as such but is considering whether any of the social media content crosses the BSB line". Judy Khan confirmed that, and that "Maya is collating all the material and will report on it". The decision on action would be for Heads of Chambers.

179. By Monday 28 October, as enquiries came in following weekend reporting of the story, David de Menezes, drafting a comment for the press, recommended they did not use the word "investigation", which was "causing some issues for us and is being construed as heavy-handed". Judy Khan suggested the investigation was completed quickly so they could move on after making a public statement. Mia Hakl-Law fed back that Maya Sikand could not do the work that week, and counselled against making any statement on the outcome, adding that they did not publish findings in relation to complaints following the internal process and "doing it this time might land us in serious trouble". To a colleague, Rajiv Menon commented: "the reality is that neither Allison nor chambers has covered itself in glory so far. Why on earth has chambers been drawn into something that has nothing to do with us? When did we start investigating the tweets of those we disagree with posting news items like the one about Allison's new group? We have unnecessarily made Allison a martyr and got mud all over our faces in the process". Henry Blaxland QC (a former Head) commented: "I still don't properly get it. Sexual politics round the trans issue makes the Brexit debate seem positively benign". On 30 October Liz Davies QC wrote

to the Heads of Chambers at some length expressing the view that the claimant's tweets and posts said nothing transphobic, and that it was entirely a matter of free speech. The claimant's freedom of expression should not be curbed. Talking of "gender extremism" was not hate speech, it reflected the complexity of the debate in which she had strong views. She regretted that Chambers had been dragged into a toxic debate; they should not be dissuaded from defending the principle of free speech. The immediate response was unfortunate because it "gave the impression we were slapping down Allison, rather than simply avoiding comment".

180. Judy Khan reported the position to the management board on the afternoon of 28 October. She said the claimant:

> "was not being investigated but the complaints were the subject of consideration by the heads of Chambers and other senior members".

To a suggestion that the claimant should be offered an olive branch so she felt less isolated, the board agreed that a woman's officer could do this, but it was not something that should be mandated by the management committee or the board. Claire Wade then left her a voicemail message of support.

181. Judy Khan now asked David de Menezes to send the Heads the tweets of complaint he had received about Allison to which he had sent the response tweet (she thought there were at least 10 or so people complaining). She wanted the tweets to be collated:

> "so that we can actually now consider whether the complaints being made are justified".

182. On 29 October Maya Sikand was sent a copy of the complaints policy, the messages received from the website (anonymised), and the claimant's tweets on the subject going back to the end of September.

183. The complaints policy defines a complaint as one made in writing, including by email, addressed to the Head of Chambers, supplying name and address. It is silent on the status of tweets, which do not have an address and may not have a name. Paragraph 7 says when there is a complaint it is for the Head of chambers to determine what has gone wrong; then, at paragraph 8:

> "if the matter raises issues which, in the opinion of the head of Chambers, require an investigator to determine the facts, he will appoint a suitable member of Chambers to carry out an investigation."

It goes on that the investigator will be given the documents, can interview witnesses, may need to contact the complainer for further information, and

will prepare a report for the head of chambers.

184. Maya Sikand asked the co-Heads to confirm that paragraph 8 had been triggered (i.e. that they had decided it required investigation of the facts).

185. After reading the material, she asked David de Menezes for some background – a chronology, who he had tweeted a reply to, and what they had said that required a reply. Were they "all white men" as the claimant said? Were the tweeters the same people as those who subsequently made complaints on the web form.? Had Garden Court's feed received any tweets, and how many of them were supportive of or opposing the claimant? He replied with a summary of the timeline, and screenshots of the tweets they had responded to. From the profiles of the seven who had been sent response tweets, he could tell that two were men, one a transwoman, and three had no indication of gender. The other was Lewisham LGBT Forum. Based on a photo, one of the men was white, otherwise there was no indication of race. Only one of the tweets to which he had sent the response tweet could be identified as having also used the web form to complain – Carl, known on Twitter as Kai, whose preferred pronoun was they, but it was hard to tell if the tweeters were the same as the website complainers, as some of the complaints were anonymous. The criteria used when deciding to respond to any tweet were either that they put Garden Court's Twitter handle at the front, the usual convention on Twitter when asking someone for a response, or had asked direct questions, or had attached a screenshot of their (webform) complaint.

Maya Sikand's Initial Report

186. Maya Sikand produced a report on this batch of tweets and webform complaints (4 November, eight drafts). Reviewing the 22 October launch tweet which had generated so much opposition, she concluded that the claimant's words ("gender extremism has met its match") were:

> "deliberately provocative, but did not express transphobic views, nor was it discriminatory, nor was it in breach of core duty 5 or the BSB social media policy".

Although some considered it offensive, it was not designed to demean and insult trans people.

187. She did take issue with the Sunday Times article, which the tweets and webform complaints did not complain about). Her concern was what it said about Stonewall and its relationship with Garden Court, as it was implicit to membership of Garden Court that a barrister did nothing to damage its reputation and business interests. However, as they did not have an explicit internal policy on social media and media use to make it clear where the

line was drawn, and as they did not know the exact words she had used in the interview, they should not take action.

188. At the end of the drafting process she recommended that they say nothing on social media, though they would have to write to those who had formally complained. Stephanie Harrison had proposed taking no further action as it did not offend any internal policy of GCC. But overall, we can see that her conclusion was that there was nothing to investigate.

Stonewall's Complaint

189. While the report on the original reference was being drafted, Kirrin Medcalf of Stonewall had now sent his own complaint, dated 31 October, to Garden Court. The complaint seems to have been drafted on 28 October, when he posted on the STAG wall "done" (referring to Shaan Knan's appeal there to send messages of support) with a comment, adding that he had found an earlier offensive tweet, probably the Morgan Page one.

190. Identifying himself as Head of Trans Inclusion at Stonewall, he complained of 11 tweets by the claimant, giving their links. Some of these went back to September, so before the launch tweet. He praised Garden Court's positive relationship with the trans community, but:

> "for Garden Court Chambers to continue associating with a barrister who is actively campaigning for a reduction in trans rights and equality, while also specifically targeting our staff with transphobic abuse on a public platform, puts us in a difficult position with yourselves: the safety of our staff and community will always be Stonewall's first priority".

The reference to Stonewall staff concerns tweet 17, the tweet about Morgan Page on 22 September. He said this targeted a woman who worked for Stonewall, and called her – "Morgan Page, a male". He complained of Allison Bailey calling their campaign "trans extremism", which encouraged violence. He also complained of the accusation that Stonewall engaged in "appalling levels of intimidation, fear and coercion".

Michelle Brewer's Part in Complaints Made – Detriment 3

191. At this point in the narrative we take a step back to consider the facts relating to detriment 3 in the claim. The claimant's case is that Michelle Brewer of Garden Court colluded with Stonewall in the submission of their complaint against her, and/ or invited the submission of the complaint. The acts complained of are listed in the further and particulars the claimant supplied. They are a message to an outside individual on 22 September, Michelle Brewer's email to the heads of Chambers on 16 October, the conversation with Shaan Knan on 23 October, his STAG posts on 25 October, and contact between them from then till 6 November. From this it

is to be inferred that Michelle Brewer procured third party complaints against the claimant, Shaan Knan's complaint of 25 October, and Kirrin Medcalf's complaint on 31 October.

192. The outside individual on 22 September was Tara Hewitt, a TELI associate of Michelle Brewer. She sent her the claimant's tweets, as Michelle Brewer herself was not on Twitter. It is clear from the messages between Michelle Brewer and her TWG colleagues within Chambers that she was shocked by the claimant's tone. We know too from her December 2018 email to the claimant that she believed the claimant's view of transgender identity, and her opposition to Stonewall, were wrong. Michelle Brewer had also invested her own time and effort in trans rights causes, even if in our finding the TWG was not especially effective as a group, and she was angry that trans rights groups would no longer consider Garden Court a "safe space". Her evidence was that at first she had intended to contact Stonewall, but decided on reflection it was better just to bring the tweets to the attention of the Heads of Chambers. The immediate prompt for her 16 October email was being sent further tweets by Tara Hewitt about the claimant chairing the Woman's Place event, which reminded her of the earlier tweets. The basis of the 16 October email was to seek guidance on the use of social media in view of what Michelle Brewer saw to be reputational harm to Garden Court – attacking an invited speaker, and saying Stonewall had gone rogue, an allegation she thought without any foundation. In our finding, Michelle Brewer made her 16 October complaint to the Heads of chambers of own initiative. She told the outsider who had sent her the tweets what she had done, but in our finding, that was not because she had been asked to complain.

193. On the various interactions Michelle Brewer had with others which led them to lodge complaints, her evidence is that when directly approached she did no more than signpost Chambers complaints procedure. We examined these in detail to test whether that was right, or whether she was getting others to complain.

194. The first of these was a message to Tara Hewitt on 21 October saying she had raised the tweets with the heads of Chambers "but that should not stop you putting a formal complaint as well if you want to". We concluded this was not encouraging Tara Hewitt to complain, if anything, it suggested that she did not need to. This was signposting, and we could not see it was objectionable to state that there was a complaints procedure for members of the public to use.

195. The important conversation is the one with Shaan Knan on the morning of 23 October. Both Shaan Knan and Michelle Brewer agreed that he took the initiative in phoning her. It is also clear that he was not a friend, at most they had met once or twice at campaign meetings. He contacted her in his capacity as TON network officer, employed by LGBT consortium, not as a

member of STAG. Michelle Brewer did not know of his connection with Stonewall through STAG. He rang chambers, they put her through to Michelle Brewer. Both remember that she was parking her car at the time and hit something. They differ on the content of the conversation. According to Shaan Knan, he just rang to clarify arrangements for the TON meeting that day. It was Michelle Brewer who raised tweets. He did not use Twitter much, and he had never heard of Allison Bailey or the LGB Alliance; it was Michelle Brewer who said that Garden Court was investigating anti-trans tweets, and asked him to get member organisations to send messages of support. He understood it was a disciplinary issue to be decided on 28 October. After the call, he read the tweets and decided they were clearly anti-trans, and raised the matter at the end of the TON meeting later that day, asking sympathisers to write to heads of Chambers in time for that meeting. On Michelle Brewer's account, by contrast, he telephoned her in some agitation because another participant had complained about the meeting being held at Garden Court given the claimant's anti-trans views expressed on social media, and other participants might agree; he had been responsible for organising the meeting at Garden Court and wanted advice on how to handle it. On her account, she suggested that if any participant had concerns about the claimant's social media posts, there was a complaint mechanism they could use. She told him she had already raised the social media posts and that the Heads of chambers would be looking into them on 28 October, with the intention of reassuring him that Garden Court would be dealing with the matter. She did not suggest formal action or discipline. Next day she sent a short text to ask how things went, because he had been worried. Challenged with this account, Shaan Knan simply said he could not remember much about the conversation.

196. Our conclusion was that Shan Knan had rung because another participant had complained and he knew her to be sympathetic to transgender campaigners. Had he only wanted to talk about arrangements, he could have discussed this with one of the clerks, rather than specifically asking for Michelle Brewer who was away on holiday. Michelle Brewer, apprehensive about TON cancelling the meeting, alienating contacts she had built up with a view to developing her practice, if chambers was portrayed as anti-trans, wanted to reassure him that there were trans-supporters in Chambers, and so told him she had already put the tweets to the heads of Chambers who would be considering them the following week, and mentioned using the procedure as an action that could be taken by concerned participants if they wished. In our view Shan Knan got the wrong end of the stick about the nature or disciplinary purpose of the 28 October meeting, unsurprising as it was a phone call, and he knew little about the internal working of Garden Court. While it is possible that Michelle Brewer saw this as an opportunity to build a case against the claimant, we think it is better interpreted in the way that is clear from the message she sent Tara Hewitt, that is, a response to people who contacted her with concerns about the claimant's social media activity as a member of Garden Court, by flagging that there was a complaints procedure. We did not see this as procuring complaints. To hold otherwise would be to require that when contacted by unhappy users of Garden Court facilities she should keep

silent about the existence of a complaints procedure. At its highest she wanted to reassure a trans rights organisation that Garden Court was a safe place for them.

197. In follow-up to the TON meeting, on 25 October Shaan Knan decided to use the STAG wall and Facebook page as a way of reaching trans-rights supporters to encourage messages to be sent to Garden Court about the claimant. We know that he and Alex Drummond sent complaints which were part of Maya Sikand's initial investigation. On 28 October he also emailed those who had attended TON on 23 October, and among other things reminded them that Garden Court had a meeting that day. Although these actions were a consequence of Michelle Brewer telling him she had brought the tweets to the attention of Heads of Chambers, and that they were meeting to discuss it, and that there was a complaints procedure concerned people could use, these actions were taken on his initiative and it could not be said that she had intended anything more than reassuring those who, she had been told, were concerned about attending meetings at Garden Court. He did report back to Michelle Brewer that he had raised "the terfy barrister" at the meeting, but they were not otherwise in contact, and when on 6 November he asked the outcome, she did not reply.

198. There was also contact between Michelle Brewer and Jay Stewart, CEO of the campaign group, Gendered Intelligence. On 24 October he emailed her, linking to a tweet "this is a bit of a worry. She replied: "these tweets and her media quotes are now the subject of our internal complaint process which the heads of Chambers are dealing with over the weekend for board meeting on Monday – it is being taken very seriously and as an urgent matter". Although we know that on 28 October Cara English of Gendered Intelligence sent a complaint, there is no evidence that Michelle Brewer went further than the words of this message. She mentioned the internal complaint process because following the response tweet that was now public. In this exchange she did not suggest (as she had with Tara Hewitt of TELI) that he made a complaint himself. And it was he who had approached her about it. This reinforces our conclusion that she did not procure complaints, and when she mentioned the procedure at all, it was to reassure anxious trans rights supporters that the matter was in hand.

199. The important complaint is the one made by Kirrin Medcalf of Stonewall on 31 October. Kirrin Medcalf was present at the TON meeting on 23 October, to represent Stonewall. He knew Michelle Brewer was a member of TELI, but he had never met her, and she was not at the meeting. He had only joined Stonewall a few weeks before, and was unaware of Garden Court, in particular that it was a Stonewall Diversity Champion. Given the long list of Diversity Champion organisations, this is plausible. He said the meeting discussed data gathering; the message about Allison Bailey came at the very end of the meeting and was not discussed. He said it was only the follow-up message from Shaan Knan on 25 October that prompted him

to review the claimant's tweets, at which point he decided a complaint should be made. He must have seen the post on the STAG wall because on 28 October he posted "done! (Also discovered that she is one of the people targeting a trans member of our staff with online abuse so have put that into the email as well)". This suggests that the 31 October email of complaint to Garden Court had been already drafted by the morning of 28 October.

200. We need to return to this complaint in connection with the claim against Stonewall itself. For now, it was not, in our finding, procured by Michelle Brewer.

201. If we had found Michelle Brewer solicited or procured any complaint, we would not have held that she did so as an agent of chambers, or as a member of TWG, as in our finding TWG was an informal group, not an agent of Garden Court.

Tweet 10

202. Mia Hakl-Law sent the Stonewall complaint to Maya Sikand on 4 November. She also sent her a new string of 14 tweets (Tweet 10) about Stonewall, posted by the claimant on 2 November. In this string the claimant said Stonewall was a political lobbying group, not democratically elected, with no mandate to declare itself the voice of all LGBT people, though treated by government, charity and private sector as if was mandated. It had spun LGBT rights so completely that any challenge to its agenda was deemed hate speech rather than a healthy and essential part of a functioning democracy. It made it respectable for youth to scream out and threaten feminists. Lesbians are threatened at pride events, while "welcoming grown men dressed as little girls". Stonewall had made it respectable "for truly fascistic tactics to be weaponised against the biggest threat to the trans agenda: radical feminists are lesbians, even though not one of us has killed or assaulted a transwoman. our crimes are far worse: wrong think and resistance". Their "wicked brilliance" had convinced the LGBT movement that lesbians did not deserve political representation. It was a "lobbying juggernaut" for "so-called international best practice". The treatment endured by LGB Alliance so far demonstrated how corrupting its gender ideology was. Its slogans were not benign, and "our politicians and leaders watched on in silence. Watched as women were kicked out (of) bars for declaring their same-sex attraction". LGB Alliance would not stifle respectful debate. They would encourage a plurality of views. Material reality had not changed. The drive to mixed-sex facilities was driven in defiance of the needs of women. She hoped "more sensible and moderate trans activists" would step out of the shadows and join them. They wanted trans youth to reach maturity before "setting off down a path in which you cannot return without serious scars". Finally, an appeal to government, charitable, public and private sectors: "please stop swallowing whole the agenda fed to you by @stonewalluk". "We will show you a more democratic,

safer way to advance LGBT rights".

203. Reading this new material Maya Sikand commented to Julie Khan:

> "given that we are Stonewall Diversity Champion, I do not think she should be maligning them".

It was a problem there was no social media policy in place. She anticipated a further complaint from Stonewall about the 2 November string. (There was not).

204. Correspondence on the day shows Stephanie Harrison was concerned about the Morgan Page tweet. She thought "Coerce young lesbians into having sex with them" must fall within BSB policy not to accuse people of criminal or abusive behaviour without grounds. Stephanie Harrison suggested they spoke to the Bar Council person responsible for the Code to get advice, while noting that there was as yet no complaint about that. (Kirrin Medcalf had complained about calling Morgan Page male, not that she or Stonewall was being accused of promoting coercion). Stephanie Harrison declined to investigate herself, because of her legal and campaigning work on trans rights.

205. On close examination of the Stonewall complaint, Maya Sikand decided it had to be dealt with as separate to the batch she had already reviewed, because all the tweets now complained of predated the 22 October launch tweet. She was however persuaded by Stephanie Harrison that she should extend the existing report to deal with all in one go, so there was only one "media storm".

206. Having concluded her report on the initial batch referred late on 4 November, on 6 November she wrote to the claimant that having reviewed the tweets and the complaints about them, she considered that 2 of the tweets included in the Stonewall complaint of 31 October "may offend CD5, 3 and 8 and/or the BSB guidance". The whole complaint was attached. She welcomed the claimant's views on why she considered they did *not* breach core duties 3 or 8. She confirmed she had not done any legal work for Stonewall or any other organisation promoting transgender rights.

207. The 2 tweets she identified as requiring comment on the passages she emboldened were:

(1) 22. 9. 2019 "Stonewall recently hired Morgan Page, a male bodied person who ran workshops **with the sole aim of coaching heterosexual man who identify as lesbians on how they can coerce young lesbians into having sex with them.** Page called

"overcoming the cotton ceiling" and it is popular."

(2) 27.10.19 (Sunday Times article) "On this issue I and many other women are grateful to @thetimes for fairly and accurately reporting on the **appalling levels of intimidation, fear and coercion** that are driving the @stonewalluk trans self-ID agenda".

She pointed out that there was nothing in the Sunday Times article itself about intimidation fear and coercion.

208. Before the claimant replied to this, she had already sent three more tweets for which protection is claimed in the victimisation claim. Tweet 9, on 31 October, linked to a video of her speech to the Women's Place UK panel on 25 October 2019. She added "I'm not transphobic and neither is the LGB Alliance". Tweet 10 on 2 November (discussion of Stonewall policy) has already been discussed. Tweet 11 on 9 November linked to a tweet from LGB Alliance about how and why it was founded; she said it was "committed to placing logic, reason and evidence before dogma and enforced thinking". Tweet 12 on 12 November retweeted a Labour Women's declaration on women's sex-based rights, inviting people to sign it.

The Claimant's Defence

209. The claimant responded at some length (32 pages) on 21 November 2019. This response is the third protected act in the victimisation claim. The respondents admit it is protected, but deny that it caused detriments 4 and 5.

210. The core duties that the claimant was being asked to consider are:

core duty 3: you must act with honesty and integrity

core duty 5: you must not behave in a way which is likely to diminish the trust and confidence which the public places in new or in the profession

core duty 8: you must not discriminate unlawfully against any person.

211. In her reply the claimant denied that she was in breach of any of these core duties, or the BSB Social Media Guidance. The passages objected to were her honest understanding, and she explained why. She did not understand how either tweet could be viewed as discrimination or harassment and in her view, Stonewall's complaint was itself an act of discrimination on the basis of a philosophical belief, sex and sexual orientation. Her belief in gender critical feminism met the test in Grainger v Nicholson, and caused concern that chambers, in accepting and advancing a complaint against her might also be engaging in the same discrimination.

212. From paragraph 12 she summarised gender critical feminism as the view that sex was an observable reality, and while trans women should be respected, “the freedoms of provisions referred as such, but in any scenario in which that chosen gender identity conflicts with the rights of women, then the rights of women should prevail. Rights, freedoms and provisions that are reserved to women were are reserved to women on the basis of their sex, and not their gender”. She described some of her personal history and friendships with transsexual and transgender people. They needed protection from discrimination, but she did not believe that people could literally change their sex, and saying so was “not a statement of bigotry but of biological reality”. Broadly she supported the current law in the Equality Act, protecting the process of transition, but did not believe that changing one’s legal sex could be declaratory. The consequences for women and men doing so are profoundly dangerous. She was horrified at Stonewall’s self ID slogan: “acceptance without exception”, which could include a male-bodied person who was a sex offender, rapist or violent who declared himself to be a woman. She was not saying that trans people were more likely to be sex offenders, rapists or violent, “but men are statistically more likely to hold those characteristics”. The protection of single sex spaces in the Equality Act was hard-won, and she was distressed “that in a rush to provide trans women with easy access to changing their sex, we are throwing women’s rights under the bus”. Stonewall had opened the door to men who wished to be abusive to lesbians and women. On a declaration that they were trans, male-bodied people could coerce harass and intimidate lesbians and radical feminists with impunity. She provided a link to “heterosexual male bodied persons with full beards… Declaring themselves lesbian and arguing that lesbians who reject them as same-sex partners are being transphobic”.

213. Next she discussed the detail of the two tweets she had been asked about.

214. On tweet 1 (Morgan Page), she sent a screenshot of their workshop at Planned Parenthood Toronto. This says:

> “workshop cycle 1: overcoming the cotton ceiling: breaking down sexual barriers for queer and trans women, with Morgan M Page.
>
> “Overcoming the cotton ceiling will explore the sexual barriers queer and trans women face within the broader queer women’s communities through group discussion and the hands-on creation of this visual representations of these barriers. Participants will work together to identify barriers, strategise ways to overcome them, and build community. Open to all trans women and M AA B gender queer folks”.

215. The claimant explained that “cotton ceiling” referred to natal men

identifying as women being unable to have sex with lesbians because lesbians do not have sex with someone who has a penis. It was profoundly homophobic to require lesbians have sex with a man and call her transphobic or otherwise bigoted should she refuse to do so.

> "This is coercive sexual behaviour; if it were not, no workshops would be necessary. It is regarded by many women and lesbians as an example of rape culture".

216. She listed a number of press reports, including one from 2012: "the cotton ceiling is real and it is time for all queer and trans people to fight back". The claimant said she was:

> "utterly aghast that an LGBT charity, Stonewall, would employ an individual who espouses this homophobic message. It confirms to lesbians and non-lesbians that women's safety and our sexual autonomy is secondary to the sexual desires of men. We are to be forced at law to have zero boundaries from predatory men that we are to be accused of thought crime and have our livelihoods threatened if we express any opposition".

217. On tweet 2, she said the Stonewall complaint was itself an example of the coercion she meant. The 31 October complaint : "conveys the express intention of causing me to lose by tenancy" - ("for Garden Court Chambers to continue associating with (AB)… puts us in a difficult position with yourselves… I trust you will do what is right"). "This is done to me on the basis of my philosophical belief and because I disagree with the Stonewall trans self ID agenda". It was a direct threat to her livelihood and had caused a great deal of fear. The other tweets complained about in Stonewall's complaint, the ones which had not been put to her by Chambers, were unsupportable. For Stonewall to complain about them was "oppressive and deliberately misleading" – they were not fit for any investigation. She went through some of these tweets, explaining how the construction of them was misleading and "malevolent, twisting facts and meaning". She discussed the threats made against gender critical feminists, with a link to terfisaslur.com and invited a twitter search for "*terf*". That would show how long Stonewall had been aware of the nature and extent of the abuse gender critical feminists faced from men and transwomen online. A Garden Court door tenant, Alex Sharpe, had repeatedly used the term *terf* online and on Twitter, and had commented favourably about Chambers distancing itself from LGB Alliance and the claimant. She also noted that Gendered Intelligence, of which Michelle Brewer was a trustee, solicited complaints about her from organisations including Stonewall. "Rather than call out the misogyny directed at lesbians and women online, Stonewall has sought to pour petrol on the flames". They told lesbians that they must "get with the T" and there was no debate about it. Banners to that effect were carried at Pride marches and those who disagreed were targeted for abuse. She gave

two examples, one of gender critical feminists being ejected from bars and a September 2019 meeting where windows and doors were kicked and banged by opponents of gender critical feminists. She attached 3 more articles on the topic. Stonewall's use of language like "hate group" for opponent organisations had led to the physical intimidation of gender critical feminists. Finally, "in the midst of this horrific backslash (sic) against lesbians, Stonewall decided to unilaterally redefine homosexuality, not as same-sex attraction and desire, but as same-gender desire, thereby wiping out the identities of all homosexuals and leaving lesbians in particular open to the predatory behaviour of any man, "so long as he prefaces his coercive behaviour, demands and desires with the magic words "I am trans", regardless of whether there is any objective evidence of this".

218. The complaint from Stonewall sought to interfere with her Convention rights under articles 9 and 10. The complaint from Stonewall also interfered with her protection from discrimination. Stonewall's complaint about her was motivated by the politics of the launch of LGB Alliance. "The tone of Stonewall's complaint makes it clear that they think they have entered into a quid pro quo with Chambers; that Chambers will "do the right thing" and sack me."

219. In conclusion, Garden Court adopting the complaint "despite its obvious shortcomings", was adopting a third party's attempt to harass her. Garden Court had made "repeated public statements of its investigation of me before the complaint which is now being processed". Her tweets were designed to convey her philosophical beliefs and opinions on the rights, safety and autonomy of women, especially lesbians, in the light of proposals to change to self ID, in the context of a political lobbying group, Stonewall, seeking to erode and erase those rights. She did modify her behaviour, mindful of the BSB guidance. For example, when posting a tweet or thread she avoided commenting on critical, hostile or abusive comments, to avoid getting into heated debates. Core duty 3 did not require her to shy away from engaging in issues of the day, however contentious. She was respectful about gender identity and "you will note that I refer to Morgan Page as a male-bodied person, factually correct, and not as a man.

220. She then attached 17 pages of tweets displaying violent abuse of gender critical feminists, and some of the tweets of Alex Sharpe (which do not involve violent abuse). (This prompted an enquiry within Chambers as to whether door tenants had been sent the social media policy asking them to say their views were their own, as Alex Sharpe's Twitter profile did not say so.)

221. Maya Sikand's initial response to this was: "the language is highly provocative and emotive throughout, the assertions are sometimes inaccurate and <u>on a very quick read</u> appears to accuse us of harassment for "accepting" the complaint".

222. Picking up on the claimant saying that Garden Court had made repeated

public statements of investigation for the complaint now being processed, she sent the claimant (25 November) a list of the earlier tweets and complaints she had already looked at and rejected, pointing out that she had only asked her to comment on two tweets in the Stonewall group.

Consulting Cathryn McGahey

223. The decision was made to follow through on the approach to the Bar Council Ethics Committee for advice on the social media guidance.. Stephanie Harrison telephoned Cathryn McGahey QC to explore whether she could give background advice. She agreed to give "provisional confidential advice on this difficult and sensitive matter" and so Stephanie Harrison sent her the Stonewall complaint in full, and Maya Sikand's email to the claimant asking for a response. The response itself was not sent. Stephanie Harrison and Judy Khan agreed that they had no consent from the claimant to disclose the documents, which did include much personal information; they do not seem to have considered asking permission. Cathryn McGahey replied "while these tweets may be on the borderline, whether or not they cross that line will depend on whether the truth of them can be substantiated, or, at least, one of them a legitimate comment on the underlying facts". She noted that Stonewall's complaint was not so much about reference to coercion but the description of Morgan Page as male bodied. She had found online references to the workshop, but asked whether the claimant had in mind specific comments on the published content the workshop to substantiate allegations that coercion is involved. On the second tweet, she asked to see the Times article referred to.

224. Maya Sikand proposed sending the extract from the claimant's letter about the Morgan Page tweet, and the Times article "which says nothing about Stonewall behaving in the way described", but challenged by Stephanie Harrison that they had no consent to disclose the claimant's response letter, she agreed, and so it was not sent, just the Sunday Times article and the IPPF cotton ceiling workshop advertisement of 2012, and a later defence of it by Toronto IPPF.

225. Cathryn McGahey gave her considered advice on the 3 December. It was an informal view, which did not bind the BSB, confidential to chambers, but could be shared it if they wished. She concluded that "the vast majority of the comments published by Allison would not amount to a breach of CD5, or any other professional obligation." They would take into account that her comments were contributions to a debate on an issue of legitimate public interest and importance, they were not expressed in gratuitously offensive or insulting terms, the nature of the debate made it inevitable that offence was caused to those on one side by comments of those on the other, but contributing to the debate was not likely to diminish public trust in the profession. They were not designed to insult or demean. In addition, they were clearly made in her capacity as a campaigner for human rights in a

specific arena, rather than as a barrister, so had little relevance to the trust the public should have in the Bar as a whole. The comments did not carry “the resounding overtones of seriousness, reprehensible conduct” that amounted to professional misconduct.

226. The same points could be made about the two specific tweets, but she shared the concerns identified by Garden Court. While calling Morgan Page ‘male bodied’ was necessary to make a point, she had seen nothing in the publicly available material on overcoming the cotton ceiling to justify an allegation that coercion of young lesbians was advocated on the course. She also seen the International Planned Parenthood Federation report after the event. (The tribunal has also read this: the way it is written suggests it was a response to lesbian criticism of the workshop). This report had clarified:

> “we believe that all people have the right to say no to sex and to exercise other forms of control over their bodies. The workshop does not and was never intended to advocate or promote overcoming any individual woman’s objections to sexual activity. Instead this workshop explores the ways in which ideologies of trans phobia and trans misogyny impact sexual desire”.

In the absence of material on how the workshop explored the impact of trans phobia on sexual desire, it was reasonable to assume that the course addressed means of overcoming the perceived barrier, but the aim could equally have been achieved through the promotion of education, persuasion or integration. There was a risk of a finding that her comment was likely to diminish trust and profession by alleging that Morgan Page had encouraged sexual assaults on young women in circumstances where the allegation could not be shown to be true. People tended to trust barristers’ public statements because they were barristers. The BSB would have to consider whether she was reckless as to the truth, which would indicate a lack of honesty and integrity, or whether (as she assumed) she honestly believed her allegation to be true.

227. On tweet two, that could reasonably read to imply that Stonewall itself was behind a criminal campaign against those who oppose its position on trans issues. If the allegation could not be substantiated there was a risk of finding a breach of CD 5 and/or CD3.

228. She added that neither tweet engaged CD8, and neither tweet amounted to serious misconduct that Chambers was obliged to report to the BSB. She did not question Allison Bailey’s honesty – “she clearly believes passionately in the right that she is promoting, and equally passionately about the conduct of those who take a different view”. Nevertheless, the two tweets were “probably over the borderline of acceptable conduct”, as she published allegations of criminal or disreputable conduct that she could not

substantiate. She expressed her reservations: there was obviously a highly subjective element in all this and the BSB might take a different view. She could discuss with other vice-prseidents.

229. Stephanie Harrison shared this with the Heads of Chambers and Maya Sikand, who said: "this is brilliantly drafted and very helpful and chimes with our collective gut instinct". Judy Khan ruled there was no need for further advice, as the conclusion was they did not have to report the tweets to the BSB.

The Final Report

230. Maya Sikand then prepared her report for the Heads of Chambers, and sent it to them on 11 December. Judy Khan expressed the view that it was good enough to be sent to the claimant, who would be relieved to read it, and each side could then draw a line and move on. Stephanie Harrison however took the view that they could not just say there was a *risk* of a breach of the core duties. They had to make a finding. Unlike Cathryn McGahey, they had the claimant's full explanations. On the basis that these explanations did not substantiate allegations of alleged criminal conduct, which Cathryn McGahey had said would "probably" breach the guidelines, they could say it was "likely" to breach the BSB guidelines. Maya Sikand protested: "I didn't ask for tracks Steph! I'm not your junior in a case!", but nevertheless went on to make the change. She said she did this because on reflection she agreed, not because Stephanie Harrison had suggested it.

231. This revision was sent to the claimant and the Heads of Chambers late on 11 December. Mark Willers commented next day that he agreed with Maya's recommendation, but with some reservations about the second tweet. He did not think it could be read as saying Stonewall was guilty of the appalling conduct, rather, it was that conduct which was driving Stonewall's agenda. It could however be read *as if* Stonewall was complicit, and without evidence that seemed to him in breach of core duties 5 and 3.

232. On 15 December Judy Khan informed the claimant that the Heads of Chambers had accepted the report. They agreed with the conclusion that the BSB would be likely to make findings that the two tweets breached core duties 3 or 5 of the Bar Code of Conduct. "In the circumstances we would ask you to delete those two tweets. We do not intend to report you to the BSB, as we do not consider that this amounts to the type of serious misconduct which would require us to do so", but she would be aware that others might report them.

233. The report was not distributed within Chambers. Nor was it sent to Stonewall, or to any other complainant.

234. Although the claimant initially responded that she would delete the tweets, on 20 December she said that having considered the report carefully, she had decided not to delete either tweet. She did not think either tweet offended her core duties as a barrister. The report's reasoning was flawed and relied far too heavily on the trans-lobby's talking points and propaganda. Chambers themselves had refused to delete their response tweets, saying that once they are published, they were published. The same went for hers. Also, if she were referred to the BSB, taking the tweets down could indicate a concession on her part that they *were* likely to breach core duties.

235. On 20 January 2020 Chambers received two more webform enquiries complaining about the claimant's expression of her views, one named, one anonymous. They said Garden Court promoted themselves as fighting injustice and defending human rights but they associated with someone who "repeatedly promotes, encourages and perpetuates hate speech against trans community". How could they uphold these ideals yet continue to work alongside her. Maya Sikand pointed out that Garden Court's problem was that they had openly said they were investigating, but could not publicly announce the findings. Mia Hakl-Law commented: "I don't think we should treat this as a complaint. And I really don't think we should encourage people to elaborate on what is clearly a statement he wants to make". Garden Court's managers decided to leave well alone.

236. On 25 January 2020 the claimant wrote to Judy Khan asking what Chambers proposed to do about publishing the outcome of this investigation into the Stonewall complaint. She did not want or expect any of it to be in the public domain, but Chambers had decided to publish online that it was investigating in line with BSB guidelines, and she did not think it could just be left hanging. This led to some internal debate. In the event, Judy Khan replied on 28 January that they would not ordinarily publish findings, and it was not in her interest that they did. She was however happy to renew her initial offer to meet to discuss the report, which the claimant had deferred until the report was available. The claimant did not take up the offer.

<u>Comparative Complaint Handling</u>

237. The claimant invites us to compare how complaints about her were handled with how complaints about others were handled.

238. The first is a complaint made on 20 December 2020 about a tweet by another member of Garden Court (XY) in which he said that Zionism was a kind of racism, and colonial. The complaint was that this was anti-Semitic and a form of racism. It "follows a pattern of attack on persons of the Jewish

religion who identify with Zionism"; Further, it was in breach of BSB social media guidelines. XY responded at length with academic analysis of his views, and on the BSB point, said he was not contributing to a debate, it was a one-off statement, protected by article 10. It did not bring Garden Court or the Bar into disrepute. The new heads of Chambers, Stephanie Harrison and Judy Kahn, responded on 27 January 2021 rejecting the complaint as the tweet was "a personal opinion for which X could identify an objective basis and justification". His views were not those of Garden Court. The BSB guidance was "extremely widely drawn and contains no helpful guidance on how it is to be applied in practice".

239. The other complaint was one the claimant herself made about Steven Simblett QC in October 2020. When he got the DSAR from the claimant's solicitors he had responded angrily and at length, accusing the claimant of a public begging campaign (a reference to her crowdfunding of the litigation), wasting his time, and "trawling hopelessly for information in support of a spurious and misconceived claim". The claimant made a complaint within chambers about his behaviour, on which Kathryn Cronin had adjudicated. She recommended each apologise to the other and they did.

The DSAR

240. Detriment 5 in the claim is that the Garden Court respondents failed to comply with subject access requests. The individuals identified in this part of the claim are Judy Khan, Liz Davies and Stephanie Harrison, who by the end of January 2021 were the joint heads of Chambers directing the service company, and Colin Cook and Mia Hakl-Law as employees of the second respondent.

241. On 20 January 2020 the claimant made a request under the Data Protection Act for data subject access (a DSAR). It was addressed to the service company. The request stated her concern "that I have been subjected to unlawful discrimination and victimisation by Garden Court Chambers as a result of complaints made against me by Stonewall, which in turn arise from concerns I have raised with chambers about the conduct of Stonewall.". Those concerns included protected acts within the meaning of section 27 of the Equality Act. The data requested the Diversity Champion scheme signing in 2018, clerking arrangements and fee income from December 2018, any discussion of her conduct on social media, or LGB Alliance, or the Stonewall complaint and its investigation. She named a number of individual members of chambers service company employees who may have handled data. She identified variations of her name and Twitter handle as search terms. This request is the fifth protected act alleged in the victimisation claim.

242. Mia Hakl-Law responded on 2 March. The allegation of breach of the Equality Act was denied. She was entitled to personal data but not documents and emails. She was reminded that the barristers were individually registered as data controllers with the Information Commissioner; the service company could not control personal data processed or used by individual barristers in the course of practice and could not lawfully access the email accounts of individual barristers. Garden Court service company held no personal data for her about the Stonewall Diversity Champion programme except her reply- all email. She was sent copies of data and emails related to clerking arrangements and fee income, and where she was put forward for work opportunities that the criminal clerking team. She was sent emails on their server discussing her conduct and social media where they related to the service company. They did not understand why LGB Alliance was within her personal data. They did enclose personal data in emails relating to complaint about Stonewall unless covered by an exemption. They included "information in respect of which a claim to legal professional privilege… could be maintained in legal proceedings".

243. The claimant had also asked for further information. She was told that investigation was done by Maya Sikand, the decision made by Judy Khan and Mark Willis as Heads of Chambers, excluding Leslie Thomas at her request. Stephanie Harrison had provided legal advice. No action had been taken against her. She had been requested to remove two tweets . She had refused to do so and no action had been taken as result of that refusal.

244. The claimant's solicitor came back complaining that as the members' emails were stored on Garden Court servers, they must be data controllers. In particular he noted the absence of the complaints of "the trans group". Analysing the emails that had been disclosed, he asked for the initial batch of complaints referred to Maya Sikand, which so far the claimant had not seen. On 9 April the claimant served her claim in these proceedings, and Judy Khan told the claimant's solicitors they had to refer it to their insurers before taking any further steps.

245. A similar request had now been made to Stonewall. The claimant's solicitor told the service company they were now aware of "communication between Chambers and Stonewall in October 2019", and that these facts did not appear in the investigation report and seemed to have been withheld from disclosure so far. Judy Khan replied denying there had been collaboration between chambers and Stonewall over the complaint. The claimant then sent Garden Court three items disclosed by Stonewall which, it was argued, showed STAG members were aware that there was to be a chambers meeting on 28 October on "formal action against barrister Bailey", but, judging by the response tweets sent days earlier, Garden Court had already decided to investigate complaints about her.

246. In September 2020 the claimant's solicitors made subject access requests to individual members of chambers, having by now recognised the legal difference between the second and third respondents and that they were separate data controllers. (A proposal to add the third respondent as a party was made in September 2020, and the amendment allowed after a hearing in February 2021 of applications to strike out the claims). It was at this point the claimant made the complaint about Stephen Simblett's response.

247. Tempers were still running high in August 2021 when the claimant asked crime team colleagues to recommend an expert in modern slavery for a report and Mark Gatley replied: "hi Allison, are you still suing us?", and when she responded with disappointment, said "if you're fighting people who have been your friends and your family for many years, how can you even expect their support?" Within 12 hours he calmed down and did recommend someone. The claimant complained about this episode to Stephanie Harrison and Rajiv Menon (now heads of Chambers). Raviv Menon spoke to both and prepared a written adjudication. He doubted there was in fact detriment, the claimant having been provided with assistance next day, but Mark Gatley had used 'inappropriate and ill-advised' language, which he had acknowledged when he made the recommendation. The claimant had alleged a wider hostile environment in chambers, but she had not given details. A lesson learned was that members of chambers should not raise the claimant's claim with her directly or indirectly until the litigation was over, unless they were official representatives of chambers. Judy Khan was going to write to everyone about that, so that relations within chambers remained professional and respectful. These two incidents are the only specific examples of individual reaction to her bringing claims. Kathryn Cronin's evidence suggested that members of chambers were upset about claims being made against them; she said that was hardly surprising.

248. The claimant herself was not able to specify how either Garden Court respondent failed to reply to the request, and referred the question to her solicitors, but mentions in her witness statement the omission from 3 March 2020 disclosures by the service company of the first version of Maya Sikand's report, and the advice of Cathryn McGahey. It was not clear to us when these deficiencies were put right, what had been disclosed, either by the service company or by individual members of chambers, by February 2019 when there was a hearing of an application to strike out. Given the number of drafts (possibly 11) of the report, it is not clear to us how the omission of one of them was a detriment. It is harder to understand why Cathryn McGahey's view was not shared in 2020 when she had explicitly said it could be shared. The reasons given by the service company for not disclosing more than they did were (1) that they were not data controllers for individual barristers, and (2) privilege. Of the first, they were right. We can understand the frustration experienced by the claimant if she or her

solicitors understood the second and third respondents to be the same, and note that the claimant conceded the point when in September she made requests of individual barristers, and they responded, followed by the amendment to add the third respondent. The Heads of chambers will have been directors of the service company, but we are not clear that their emails were omitted from the March 2020 data gathering. Of the assertion of privilege, the service company said there had been external advice on this; as the claimant had threatened defamation and an injunction in October 2019, they might feel obliged to get further advice.

249. It caused us concern that Stephanie Harrison, who was to become head of chambers on 31 January 2020, was in charge of directing Mia Hakl-Law what documents should be disclosed in response to the DSAR, when we knew she took a particular view of the claimant's tweets and views and supported gender self-identity. There were redactions to some of the 14 December 2018 emails on grounds they were private exchanges when some were between the heads of chambers, and no disclosure of Maya Sikand and Mia Hakl-Law's brief exchanges about the claimant's tweets on Stonewall on 2 November, and whether they should be included in investigations, with Maya Sikand indicating disapproval of what the claimant said, as they were Diversity Champions. We do not know why these were omitted, as Mia Hakl-Law was not asked about this. It seems to have been on the grounds that they were not relevant to the matters being investigated, though that would not be an exemption to a subject access request. It also seems the initial view of the service company was that all discussion with Maya Sikand before she concluded the report was privileged. It is not known when this view was taken; presumably once the insurers were involved there would have been external solicitors advising. It could therefore have been based on an opinion as to privilege, relating to the threat of defamation. That may have been wrong. If it was right, privilege was waived in April 2021 when the amendment adding the third respondent was allowed and the strike out application dismissed. All the correspondence between Cathryn McGahey and Stephanie Harrison was omitted until after February 2021. Presumably it was thought that taking advice from Ms McGahey was legal advice. This is an odd view, because she was being asked to advise on the application of the BSB guidance in relation to an internal complaints procedure.

Relevant Law

Direct Discrimination

250. By section 13 of the Equality Act:

> 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.

251. Protected characteristics are listed in section 4. They include gender reassignment, sex, sexual orientation, and religion or belief.

252. Section 23 (1) provides:

"On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case".

253. Sometimes there is an actual comparator. Sometimes there is not, and it is necessary to consider a hypothetical ("would treat") comparator as a means of testing whether the treatment was less favourable and because of the protected characteristic.

254. There are cases where the reason for the treatment cannot be dissociated from a protected characteristic, so that the protected characteristic is the reason for the treatment, even if the motive was benign. An example is **James v Eastleigh Borough Council (1990) 2 AC 751**, where reduced prices were available to people over state retirement age, but because there were different retirement ages for men and women, the treatment was discriminatory because of sex, as a man over 60 (when women could retire) but under 65 (when men could retire|) had to pay more. Another is **Bull v Hall (2013) UKSC 73** , about a refusal to let a double bedded room to men in civil partnership, but only to married couples (at a time when marriage was only between men and women), where it was held that the reason given was a proxy for discrimination on grounds of sexual orientation. There can also be situations where something is objected to by customers, and discrimination occurs because of that objection. If the objection is discriminatory (as for example, an objection to working with a Muslim woman wearing a headscarf), and the objection is in practice an objection to her religion, then a protected characteristic is the reason for the less favourable treatment – **Bougnaoui v Micropole SA (2018) ICR 139.**

255. In other cases, the tribunal must examine the reason for the difference in treatment carefully, to understand whether it was because of a protected characteristic. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

"(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."

256. How this is to operate is discussed in **Igen v Wong (2005) ICR 931.** The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts**.** If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is "in no

sense whatsoever" because of the protected characteristic. Tribunals are to bear in mind that many of the facts require to prove any explanation are in the hands of the respondent.

257. Despite that, it not always necessary to take the apply the test in two stages. As stated in **Hewage v Grampian Health Board, 2012 ICR 1054**, a case may: "require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other".

258. **Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: "the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were" because of a protected characteristic. There must be facts to support the conclusion that there was discrimination, not "a mere intuitive hunch". **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent's explanation. There is no need to prove positively the protected characteristic was the reason for treatment, as tribunals can draw inferences in the absence of explanation – **Network Rail Infrastructure Ltd v Griffiths-Henry (2006) IRLR 88** - but Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR 867,** that the bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

259. A reason is a set of facts, or as the case may be, a set of beliefs, that operate on the discriminator's mind- **Abernethy v Mott Hay and Anderson**. This demands close focus on why an alleged discriminator acted as he did. If there is more than one reason, tribunals must consider whether the protected act or protected characteristic had a 'significant influence' on what occurred – **Nagarajan v London Regional Transport (2000) 1AC 501.**

Protected Acts and Victimisation

261. Section 27 of the Equality Act 2010 prohibits victimisation. Victimisation is where a person A, subjects another person B, to detriment because B has done a protected act, or because A suspects that B has done or may do a protected act. A protected act is defined as:

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act

262. **Aziz v Trinity Street Taxis Ltd (1988) ICR 534,** which held that a secret recording made in the hope of obtaining evidence to prove a suspicion of discriminatory treatment was capable of being a protected act, shows that the scope is extensive. Of (d) the tribunal must consider the point made in **Durrani v L.B. Ealing UKEAT/0560/2012**, "there must be something to show it is a complaint to which at least potentially the Act applies". In **Waters v Metropolitan Police Commissioner (1997) ICR 1073** the allegation relied on need not state explicitly that an act of discrimination had occurred, and "all that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of section 6 (2) (b)" (a reference to the pre-2010 legislation).

Detriment

263. A detriment is something which, from the point of view of the victim, a reasonable person would consider to her disadvantage, including anything which gives rise to a reasonable sense of grievance . An unjustified sense of grievance cannot amount to a detriment; whatever the subjective perception of the individual making the claim, there must also be an objective element- **Barclays Bank v Kapur (no. 2) (1995) IRLR 87.** The sense of grievance does not require "some physical or economic consequence" to amount to detriment, as employment tribunals can award compensation for injury to feelings – **Shamoon v RUC (2003) UKHL11.**

Protected Acts in the Victimisation claim

260. Having regard to the law, we review the five protected acts relied on.

<u>1- the December 2018 email</u>

261. Was the claimant's December 2018 email about Stonewall a protected act? Subsections (c) and (d) of section 27(2) are relied on.

262. The claimant argues that this email was protected because the allegations of harassment and discrimination she made there against Stonewall were about breaches of the Equality Act, because the context was Stonewall exercising influence via its Diversity Champion scheme. The respondent argues that the discrimination and harassment that the claimant alleges against Stonewall in this email are not made in the context of the breach of the Equality Act, which prohibits harassment by employers and employees, and harassment by service providers of service users, but is not a freestanding prohibition of harassment in any context whatever. It is argued that the allegations that unnamed third parties were said to have committed harassment would not by themselves amount a breach of the Equality Act by Stonewall. The third party harassment of the claimant herself might amount to a criminal offence or a civil wrong, but did not allege facts capable of amounting in law to a

breach of the Equality Act. To this the claimant argues that section 27(2) (c) - “doing any other thing for the purposes of or in connection with this Act” - is wide enough to catch what she was saying about Stonewall.

263. When in her email the claimant said Stonewall advocated trans extremism, that was in relation to proposed reform of the Gender Recognition Act. In itself, that is not an allegation of a breach of the Equality Act. She went on to say that Stonewall was “complicit in supporting a campaign of harassment”, and went on to give some detail of harassment perpetrated by individuals. Harassment related to a protected characteristic is prohibited by the Equality Act where it falls within one of the relationships identified in the Act, such as service provision, employment, qualifications bodies, as so on. The context of the allegation was Garden Court’s formal association with Stonewall as a Diversity Champion. In evidence, she said she feared the influence Stonewall would acquire over Garden Court, and the context supports that, though she could also be saying the association would damage chambers’ reputation, which is not a breach of the Equality Act. We concluded that the definition of what is protected , which includes that A suspects that B has done a protected act, suggests that a detailed analysis of who thought exactly what was being alleged is not necessary, provided it is reasonably clear that someone is alleging that someone else is breaching the Equality Act, and that there is a relevant context within which it might have been breached. The discriminator’s reason, and what influence the protected act had on the action said to be detriment, falls to be examined separately, and would include considering what the discriminator thought was being said.

264. The email does not say Stonewall was harassing anyone, only that Stonewall was “complicit” in the actions of others, because of its “Stonewall self-id ideology”. She was not saying that Stonewall itself has such a campaign. It may be an allegation of breach of section 111, that Stonewall instructed, induced or caused harassment. If so it is not clear what the protected relationship would be between Stonewall and those carrying out harassment because of opposition to a belief about sex and gender. It is also doubtful that “complicity” without more suffices, as it is hard to see that passive behaviour that would not amount to instruction, inducement or causing. The harassment the claimant had in mind was not arising in an employment relationship or a service provider relationship, but as part of a campaign to change the law, or more generally, promote inclusion of transgendered people in society. The lack of detail of what Stonewall is doing, other than promoting an idea of whether women are defined by sex or gender, indicated to us that it was not an allegation that Stonewall is in breach of the Equality Act, nor is it done by reference to the Act. It was done as part of a controversial public debate about a matter of belief. We concluded the email was not a protected act.

265. It is undoubtedly a clear statement of the claimant’s belief with regard to Stonewall and its part in the gender self-identity debate. If the belief is protected, we would have to consider whether that expression of her belief caused the fall in work and income for 2019.

<u>2- the 19 tweets September – November 2019</u>

266. We next review the 19 tweets for which protection is claimed as

protected act 2, taking them in date order, sorting those we concluded were protected from those that are not.

Tweets not protected

267. We concluded the following were not protected. Tweet 13 on 21 September is said by the claimant to advocate the established definition of woman under the Equality Act. We considered this strained the meaning of allegation of breach too far. It could not be understood as such, even by lawyers. Tweet 16 on 24 September is obscure; what if anything was being alleged, or what safeguards were collapsing in the face of trans-extremism? We did not understand it as an allegation of breach of the Act. Tweet 14 is a retweet of a comment that the then Equalities Minister had dropped proposals to reform the Gender Recognition Act, and calls on the NHS and MoJ not to put men in women's wards and prisons. Again, this reads as a statement in a campaign, not as breach of the Equality Act; if men are transitioning or have transitioned, they have the protected characteristic of gender reassignment under the Equality Act, and arguably (no detail of the basis on which men were being placed in women's wards) no breach is being alleged. The tweet is about the gender self-identity basis for gender reassignment.

268. Tweet 15 on 12 October concerns a campaign on single sex facilities. We could not understand it as an allegation of breach, rather than a statement of belief. Tweet 1, commenting on Dawn Butler's stance on the Gender Recognition Act, and saying that women and girls are suffered at the hands of predatory and abusive men, is claimed as an allegation of harassment related to sex, and preservation of the existing definition under the Act, relying on 27(2)(c) "doing any other thing for the purposes of or in connection with the Act" but though this is wide drafting, we considered it unlikely that Parliament contemplated that a statement in a campaign opposing a proposed reform of the Gender Recognition Act could give rise to a victimisation claim, when statements made in campaigns for changes to other statutes would not. It is better treated as an expression of belief, which may qualify that way for the protection of the Equality Act. The Equality Act protects gender reassignment as a characteristic but does not require a gender recognition certificate. Tweet 2, on 20 October, simply advertises the claimant's chairmanship of the meeting on women's rights. It makes no reference at all to the Equality Act, even by implication. Tweet 3, on 22 October, is the launch tweet, declaring that gender extremism is about to meet its match. The claimant argues that this is a campaign against gender self-identity in reform of the Gender Recognition Act, and the reference to extremism is to the claimant's belief that gender self-identity was liable to promote discrimination of LGBT people who opposed self-identity. We hold that there are insufficient facts in this tweet for it to be considered an allegation of a breach of the Equality Act, or that it was done "for the purposes of or in connection with the Act". The same goes for tweet 4 on 26 October with a simple statement that the LGB Alliance is advocating LGB rights.

269. Tweets 7 and 8 are about LGB Alliance's Just Giving donation page being closed down. There is a reference to gender extremism's chilling

effect on politics and institutions, and to the T in LGBT being abusive. We consider this was a campaign statement, and that any reference to the Equality Act was obscure. We could not read into it the allegation of discrimination on the part of Just Giving, or causing or inducement by transactivists, that is suggested by the claimant.

270. Tweet 9, on 31 October, includes a link to a video of the claimant's speech to the Women's Place meeting on 25 October. It referred to "rank misogyny and homophobia" having found a home in many parts of the modern trans movement, and that they were opposed to the extremist trans-agenda being advanced in a climate of deliberate fear and intimidation from all quarters, but specifically targeted women, viciously, and especially vision viciously at women of colour". The claimant argues that this refers to the campaign to oppose same sex orientation being redefined as "same gender". We did not understand that there was a proposal to redefine "sex" as the protected characteristic, rather than a campaign to reform the Gender Recognition Act, and concluded that this was too strained an interpretation of what was said to qualify for protection under the Equality Act.

271. Tweet 10, on 2 November, is the thread of 14 tweets denouncing the "corrupting" influence of Stonewall's approach to gender self-identity. Reading and rereading this thread, we could not detect allegations of breach of the Equality Act, rather than general statements opposing the campaigning on gender self-identity. The claimant has argued that her reference to "what we have endured getting LGB Alliance off the ground" included by implication Garden Court's action against her. Although by now the claimant had told Judy Khan in person and in writing that she thought the response tweet was a breach of the Equality Act, we did not think that Garden Court would get this reference from the tweet thread. We concluded this thread is not protected.

272. Tweet 11 on 9 November refers readers to the "true story" of how and why LGB Alliance was founded, with a link to a passage from the campaign group's Twitter feed, which we do not have, just five unrelated sentences extracted from it by the claimant in the further particulars. One of these is to lesbians being mocked and ostracized at Pride events; the claimant says it is an allegation that Stonewall caused or induced conduct that amounted to direct discrimination because of sexual orientation, harassment or belief. Absent evidence that anyone else at Garden Court had read it like that , we considered this not to be a statement of facts or matters that could be read as an allegation of breach of the Act. The persecution outlined seems to have occurred in public, rather than the context of any employment service provider relationship. A reference to downgrading a meeting at LSE to a private meeting, could conceivably be an allegation that LSE as a service provider had discriminated, but we thought this required too much explaining for the tweet to be understood as a protected act.

273. Tweet 12 on 12 November publishes a link to an article in the Morning Star about the Labour women's declaration, and the campaign for single sex facilities. This is explained as supporting a campaign for rights established within the Equality Act. Again we thought this was likely to be

read as part of a campaign statement on reforming the Gender Recognition Act, not an allegation of breach or 'anything done in connection with the Act'.

Protected tweets

274. Tweets 5 (duplicated at 19) and 6 (duplicated at 18) on 27 and 28 October 2019 respectively, were protected. Tweet 5 is a link to the Sunday Times article, with a picture of the cutting. While the quotes she reproduces are largely about Stonewall, it does include her comment that her chambers had bowed to the hate mob, which can be understood as an assertion of discrimination because of belief. We did not consider that the more extensive comments about intimidation fear and coercion inherent in Stonewall's gender self-identity campaign qualify for protection under the Equality Act. As a campaign statement it was about the Gender Recognition Act, not the Equality Act. We could not detect in it an allegation that Stonewall had instructed induced or caused a breach of the Equality Act, though it does state that signing up as a Stonewall Diversity Champion meant that they were adopting Stonewall's promotion of gender identity, rather than gender reassignment, as a protected characteristic. Tweet 6, on 28 October, thanks people for messages of support and solidarity, while adding "this isn't about me". It is doubtful that this added much to the effect of tweet 5, but it links back to the Sunday Times article, so qualifies in the limited way allowed in respect of tweet 5.

275. Tweet 17 is also protected. This is the 22 September Morgan Page tweet. Based on what is set out, it is being alleged that Morgan Page on behalf of Stonewall induced or caused others to harass lesbians, and although it is doubtful that this harassment would have occurred in a protected relationship, there was a service agreement between Stonewall and those who had signed up for the workshop.

3- Claimant's Response to Investigation

276. Moving on, protected act 3, the claimant's document of the 22 November is admitted by all respondents to be protected.

4- DSAR January 2020

277. Protected act 4 is the subject access request of 20 January 2020 made to Garden Court. This contains an allegation that the claimant has been discriminated against or victimised by Garden Court, and we find it a protected act.

5- ACAS certificate

278. The fifth protected act is the early conciliation certificate, the claimant having approached ACAS on 8 February 2020 for early conciliation prior to starting these proceedings. The certificate contains no details of the dispute, but at the time the only conceivable dispute between the claimant and the service company concerned the Equality Act, as the claimant was not employed by them; other disputes with chambers would have to be litigated in the court, where early conciliation is not required. Read in conjunction with the statement in the subject access request, as it would

have to be, it is probably protected as a step towards bringing proceedings under the Act.

Protection of the Claimant's Belief

279. The beliefs for which Equality Act protection is claimed are set out in paragraph 8 of the further revised amended particulars of claim:

"She believed (and continues to believe) that the first respondent's campaigning on gender theory is sexist and homophobic. In particular, the claimant believed and believes that:

(a) Sex is real and observable. Gender (as proselytised by the First Respondent) is a subjective identity: immeasurable, unobservable and with no objective basis.

(b) At the root of the First Respondent's espousal of gender theory is the slogan that "Trans Women Are Women". This is advanced literally, meaning that a person born as a man who identifies as a woman literally becomes a woman for all purposes and in all circumstances purely and exclusively on the basis of their chosen identity. To all intents and purposes, the First Respondent has reclassified "sex" with "gender identity".

(c) The tone of the First Respondent's campaigning on this subject has been binary, absolutist and evangelical. It may be summarised as "You are with us, or you are a bigot." Discussions on the subject have become extremely vitriolic, largely as a result of the First Respondent's absolutist tone, replicated by other organisations with which the First Respondent works closely. This has resulted in threats against women (including threats of violence and sexual violence) becoming commonplace. The First Respondent has been complicit in these threats being made.

(d) Gender theory as proselytised by the First Respondent is severely detrimental to women for numerous reasons, including that it denies women the ability to have female only spaces, for example in prisons, changing rooms, medical settings, rape and domestic violence refuges and in sport.

(e) Gender theory as proselytised by the First Respondent is severely detrimental to lesbians. In reclassifying "sex" with "gender", the First Respondent has reclassified homosexuality from "same sex attraction" to "same gender attraction". The result of this is that heterosexual men who identify as trans women and are sexually attracted to women are to be treated as lesbians. There is therefore an encouragement by followers of gender theory (including the First Respondent) on lesbians to have sex with male-bodied people. To reject this encouragement is to be labelled as bigoted. This is inherently homophobic because it denies the reality and legitimacy of same sex attraction and invites opprobrium and threatening behaviour upon people who recognise that reality and legitimacy.

(f) It is particularly damaging to lesbians that the First Respondent has taken this position. The First Respondent had been the foremost gay and lesbian rights

campaigning organisation in the UK and one of the world's leading such organisations. The adoption of gender theory by the First Respondent therefore left those gay, lesbian and bisexual people who did not ascribe to gender theory without the representation that the First Respondent had previously provided, and left those people labelled as bigots by their primary representative organisation.

280. As is apparent from the opening sentence of this formulation, the entire statement of belief is set in the context of campaigning for changes in gender recognition.

Relevant Law on Belief

281. All parties agree, following **Forstater**, that 8(a) is a protected belief. For the rest, the respondents assert that these are not protected because they are matters of opinion, not belief.

282. Stonewall further argues that it is not possible to sever one part of the statement from the rest: they must stand and fall as a whole. The claimant and Garden Court accept that they can be severed, that is, a tribunal could decide that some parts of this description of the claimant's belief (8 (a) for example) are protected, and others are not.

283. Section 10 of the Equality Act 2010 defines the protected characteristic of religion and belief in these words:

> (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
>
> (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

285. Courts and Tribunals must so far as possible read and give effect to UK law in a way which is compatible with the European Convention on Human Rights.

Article 9 of the Convention, which is reproduced in the schedule to the Human Right Act 1998, states:

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

Article 10 concerns freedom of expression

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not

prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

286. Deciding exactly what was protected by this provision, especially in the context of philosophical rather than religious belief, led to a number of judicial decisions which are usefully summarised in **Grainger v Nicholson (2010) ICR 360**. Drawing on these earlier decisions in order to decide whether a belief in climate change was protected, five criteria were identified as characteristic of beliefs qualifying for protection:

(i) the belief must be genuinely held

(ii) it must be a belief, and not simply an opinion based upon the present state of information.

(iii) it must concern a weighty and substantial aspect of human life and endeavour

(iv) it must attain a level of cogency, seriousness, cohesion and importance

(v) it must be worthy of respect in a democratic society and not conflict with the fundamental rights of others.

287. Criterion (ii) derives from **McClintock v Department of Constitutional Affairs (2008) IRLR 29,** where the claimant agreed that a view he held now (on same-sex couples adopting) might change on receiving further evidence on children's outcomes. Criterion (iv) was emphasised in **Mackereth v DWP (2022) 99**, a case where the tribunal had considered the progressive narrowing of that claimant's beliefs about appropriate pronouns for transgendered people and the effect on their mental health in the context of his Christian belief about impersonating the opposite sex, and concluded they lacked cohesion or cogency. Criterion (v) was the subject of discussion in **Forstater v CGT Europe (2022) ICR1,** another case on gender critical belief, and considered what the limits were when a belief conflicted with a belief held by others. The beliefs excluded from protection were those that involved grave violation to the rights of others "tantamount to the destruction of those rights", having regard to article 17 of the ECHR about acts "aimed at the destruction of any of the rights and freedoms" in the Convention.

288. The criteria are to be applied to a person's relevant beliefs on a particular topic as a whole. Further:

> "It is not for the court to embark on an enquiry into the asserted belief and judge its "validity" by some objective standard such as the source material upon which the claimant founds this belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual".

Beliefs may be unorthodox, even repellent, but: "in matters of human rights, the courts should not show liberal tolerance only to tolerant liberals" - **R (Williamson) v Secretary of State for Education and Employment (2005) 2 AC 246**, a case about corporal punishment of children.

Protected Belief - Discussion

289. The formulation of the claimant's beliefs in the particulars of claim is evidenced by her witness statement, and in the contemporary evidence, by her December 2018 tweet about chambers signing as Stonewall's Diversity Champion, and by the sequence of tweets on women and gender self-identity from July 2019 through to November 2019. By its nature, a tweet is too short to explain much, and must be punchy to attract attention. The claimant's thread of 2 November unpacks some of her beliefs about Stonewall, which are elaborated and explained still further in her 21 November defence to the charge that two particular tweets offended barristers' core duties.

290. Applying the Grainger criteria to the beliefs she held, we concluded that her beliefs, not just about gender self-identity, but about the pernicious effect of Stonewall's campaign promoting gender self-identity were genuine. We also found that these amounted to beliefs, not just opinions which might change with further evidence, because at the core of her opposition to Stonewall, frequently stated, was her understanding that their stance on gender theory – transwomen are women – a matter of their belief, underlay and was driving forward the erosion of women's rights, access to single sex spaces and lesbian identity; it also underlay the characterisation of gender critical belief as *transphobic* and a hate crime, which was leading some to violence against gender critical believers. The claimant does not have to be correct, or have evidence to show this – religious beliefs can be difficult to prove. Her statements show that her belief was that Stonewall's espousal of gender self-identity as a theory led to the practical consequences she deplored. We considered whether these were matters of opinion, based on fact rather than belief. The only way we would see any change to her belief was if Stonewall itself modified its approach to gender identity theory so as to accommodate the possibility that physical differences between men and women based on sex should lead to say, spaces reserved for women based on sex not gender, and separate sporting competitions, based on sex. That would not be a change based on evidence, but a change based on Stonewall modifying its belief such that the claimant would no longer consider there was a conflict.

291. Belief on gender theory is a belief about a weighty and substantial aspect of human life, especially when reform of the law based on that belief may have significant practical consequences for women as currently defined in law. The claimant's beliefs, taken as a whole, in our finding pass the test of cogency, seriousness, cohesion and importance. They cohere because of the claimant's understanding that gender theory, adopted without compromise, generates the range of adverse consequences for women and lesbians that

are described in her list of beliefs. Her objections to Stonewall are all because of the gender self-identity theory which she believed to be erroneous. We concluded it was not possible to separate Stonewall as a campaigning organisation from the gender theory with which the claimant disagreed. Her objection to Stonewall "proselytising" gender self-identity theory is about the difference between her belief and theirs. To separate them would be like holding that homosexuals may lack belief in evangelical Christian teaching about sinfulness of same-sex orientation, but not be protected when they speak against a church institution, or that reformed Protestants are not protected when they denounce the Church of Rome as the whore of Babylon or the Pope as the Antichrist. Manifesting those beliefs *may* be limited under articles 9 and 10. The beliefs set out by the claimant cohere as an interrelated whole because they are all underpinned by the conflicting view of gender and sex.

292. Finally, we concluded that expressing hostility to Stonewall campaigning on the basis of gender self-identity did not seek to destroy the rights of others, in a way that would not be worthy of respect in a democratic society. It was part of the "dust and heat" (Milton: *Areopagitica)* generated by the conflict of opinion that must nonetheless be tolerated to avoid the greater evil of censorship.

293. We concluded that all the claimant's pleaded beliefs, not just the belief that woman is sex not gender, are protected.

294. It should be emphasised that this is not to say that the claimant is right. Transwomen can also need safe spaces, because they too can be subject to violence; there may too be an element of moral panic about transwomen who are not convicted sex offenders being placed in women's prisons. Her beliefs on this are however, in our finding, protected.

295. Where the treatment complained of was because of the way a belief is manifested, rather than the belief itself, a tribunal may have to consider whether it was the objectionable manifestation, not the belief itself, which was the reason for the act complained of – **Page v NHS Trust Development Authority (2021) ICR 941.** There can be "inappropriate manifestation**" – Wasteney v East London NHS Foundation Trust (2016) ICR 643,** where attempting to convert a Muslim work colleague to Christianity was inappropriate because one was Head of department and the other a trainee. This was confirmed in **Forstater**, which cautioned that on occasions manifesting a belief (the example there was misgendering) could amount to unlawful harassment, or some other breach of the Equality Act. In this area weight must be given to Article 10. In **R (Miller) v College of Policing (2022) HRLR6**, the issue was the police recording a non-crime hate incident when Mr Miller posted about transwomen in terms that were "for the most part either opaque or profane or unsophisticated". However "intemperate or inoffensive" his language, he did not lose the protection of article 10 when they were clear expressions of opinion on a topic of current controversy.

296. In other words, belief need not only be expressed nicely in a democratic society. John Stuart Mill wrote, in *On Liberty*, that "truth, in the great practical concerns of life… has to be made by the rough process of the struggle between combatants fighting under hostile banners", adding "not the violent conflict between parts of the truth, but the quiet suppression of half of it, is the formidable evil". (Though he did go on to recommend "studied moderation of language and the most cautious avoidance of unnecessary offence", in order to get a hearing for anything that was not already received opinion). In the words of Sedley L J in **Redmond-Bate v DPP (1999) EWHC Admin 733** , "free speech includes not only the inoffensive but also the irritating, the contentious, the eccentric, the heretical, the unwelcome and provocative, provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having".

297. The second and third respondents argue that Ms Bailey cannot rely on this when, as a barrister, she accused Stonewall of criminal conduct without foundation. Article 10 (2) sets limits to freedom of expression where necessary, and as a barrister her expression should not undermine trust in the profession by asserting criminality where there was none. The BSB guidance must have been drafted with article 10 in mind.

298. Taking this guidance, and submission, into account, we considered whether or not the claimant's belief or any protected act, was the respondent's reason for any detrimental (victimisation) or less favourable (direct discrimination) treatment we may find. In the following sections we discuss whether there was a detriment, and why.

Detriment 1 – The Fall in Income

299. The claimant has proved that she suffered a steep fall in earnings in 2019. One other in her cohort had a similar fall, another not much less. Her fall was on the high side. This suggests that the extraneous reasons related to the kind of work she did (change in fee structure, less charging by the police, Crown courts operating at restricted capacity to meet tight budgets) are significant.

300. There were relatively few new bookings for her in 2019; it was suggested at the time that this was across the board, and she did not demur. Over the year, work did come in for her, she was able to accept a good returned brief, she was unlucky that some of her cases ran short or were delayed. She was regularly put forward for work, if not always of the quality she wanted. There is no reason to think that solicitors were nudged not to choose her when several names were put forward; the claimant's specific complaint about this was that supplying lists from which to choose did not involve "active clerking" to promote her, not that she was in some way disparaged, or that others in her group were treated any differently. These are consistent with the normal vicissitudes of the Crown court system and solicitors' habits.

301. Her protest about the association with Stonewall seems to have attracted the attention of only a few members of Chambers. There was no evidence of ongoing discussion of it after December 2018. The clerks will have seen the claimant's reply-all email, but there is no evidence that they paid it much attention, and some evidence that it went over their heads. There is no evidence that the clerks knew, or cared, or were swayed by any attitude to the claimant on the part of the Heads of chambers. The Heads of chambers could have spoken to Colin Cook, but it is not shown how he influenced the allocation of criminal work; this remains speculation. There are other reasons why she suffered a fall in income. It was in all their interests to keep her busy.

302. We also took account of the claimant's approach at the time. In May 2019 she was told that all work was slow. She did not dispute that. If the reason for the slowdown was chambers politics, because of the Stonewall email, that does not explain why her bookings improved later in 2019. By September 2019, she said there was no complaint. The first time *after* May 2019 that the claimant said she had suffered a fall in bookings or income was on 20 January 2020, when she made the DSAR. According to her witness statement, "it was at this point that I realised the significance of my change of clerking in early 2019 and understood that I had a claim relating to my clerking". She has since conceded that the change in clerking preceded her email. She did not say that she was looking at her fee income and had noted a fall. This is a factor suggesting that she did not consider the email in December 2018 *had* caused any detriment until the events of October and November 2019, when there was a Twitter storm about her, and a complaint from Stonewall, and so with hindsight she attributed slow bookings to a hostile reaction to her complaint about the signing with Stonewall.

303. We could not conclude that it was shown that the fall in income was in any way influenced (let alone significantly influenced) by her December 2018 email to all chambers, or that gender critical belief and her belief about Stonewall had any influence. The possibility that hostility to her intervention informally influenced the allocation of work to her detriment remains only a theory. The claimant has not proved facts from which we could conclude in the absence of explanation from the respondent that there was discrimination; if she had, we would have accepted the respondents' non-discriminatory explanation.

Detriment 2 – Response Tweet

304. This is the response tweet sent by David de Menezes on 24 October to seven people who had tweeted Garden Court protesting about the claimant's views, saying that Chambers were investigating in accordance with the complaints/BSB policy, that they took the concerns seriously, and were considering appropriate action. He did this, with the approval of Heads of Chambers, knowing and intending that it would spread beyond the initial recipients.

305. The claimant's sense of grievance stems from the use of the word "investigation", to the public.

306. Was her sense of grievance reasonable? 'Investigation' might mean no more than "we will look at it and get back to you". However, we concluded it was reasonable to be aggrieved by this tweet. It suggested she had done something which at the least required investigation, and so might lead to action, which could suggest some punishment. It was not necessary: the complaints procedure envisages appointing an investigator if the Heads decide investigation is needed, but we know that at least two Heads, possibly all three, had not read either the tweets or the complaints. Had they read them, they might soon have concluded, as did Maya Sikand when she reviewed them, that whatever the rhetoric about breach of the Equality Act and core duties, there was nothing to investigate. They were just statements opposing the claimant's views. In any case, at the time of the response tweet, only one was formally a complaint as defined by the policy, which made no provision for tweets. Even if they had delegated the consideration to Maya Sikand, calling this investigation was harmful.

307. The decision was made in haste: had they looked at the complaint policy they would first have asked complainants for names and addresses. They may also have considered the requirement for confidentiality, and whether that was extended only to the complainant.

308. Had Garden Court wanted to damp the twitter storm, they could have replied that Garden Court did not associate itself with the claimant's views made in a personal capacity, along the lines of the website statement. They might have considered the harm to the claimant of making this public when the outcome would not be published. They might have considered the claimant's state of mind when investigation was announced to the world, when she had not seen the complaints. But the decision was made in haste by Heads preoccupied with a concurrent crisis, and just wanting this one to stop. Had they not been under such pressure they may considered whether the damage to their reputation was significant or even a storm. Judy Khan, generally unsympathetic to the claimant's "intemperate" tone, recognised why she was upset by the response tweet. By January 2020, cooler heads, having learned from experience, decided to say nothing to a similar "complaint".

309. This was a detriment.

310. With the response tweet (detriment 2) we are concerned only with direct discrimination, as we have found that none of the tweets preceding the response tweet on 24 October are protected acts.

311. There was in any case no evidence that the claimant's December 2018 tweet about Stonewall on the occasion of the Diversity Champion signing was in anyone's mind when the decision was made about the response tweet. Even if we had found it was a protected act, we would not have found that it significantly or materially influenced the decision to send a response tweet in October 2019. It is of course consistent with the statements she made in the various tweets leading up to the response tweet.

312. The Heads of chambers who authorised the response tweet had not read the claimant's tweets (though attached to the report they had) or seen the complaints, which were in the nature of protests against her gender critical view. They relied on the reports of David de Menezes. He reported the unprecedented response, and damage to their reputation. He commented on criticism of Stonewall when they displayed a diversity champion logo. (In fact only one of the complainants mentioned Garden Court being a Diversity Champion, most of them complained of transphobia). He did note that this was about a difference of opinion, and they should be careful about free speech. We know from Judy Khan's communication with the claimant that day that she knew generally that the tweets were about "the transgender topic", and she spoke of causing offence, and expressing herself in an intemperate way. We know from the claimant's email to members of chambers after Leslie Thomas circulated the BSB social media guidance that morning that she considered her tweets were "advocacy for views" that were "lawful and reasonable". We know that Leslie Thomas had in mind Michelle Brewer's 16 October email about the claimant's opposition to gender self-identity in which she said the claimant was damaging chambers work on trans rights, but do not know if he had read the September tweets she had been referring to. Given that he was travelling at the time, and that the Heads were already preoccupied with recent serious developments within chambers management, it seems unlikely.

313. Garden Court's argument is that the views themselves were not the reason for the decision. The occasion was the need to damp down the Twitter storm, and the reason was concern that they breached BSB core duties and social media guidelines. They say neither the managers nor the Heads were motivated by the claimant's belief.

314. The claimant argues that we should draw inferences from primary facts to conclude that "Chambers was predisposed to give credence to and seek to appease those who called her trans-phobic". We are invited to consider that the Twitter storm itself was in fact not extensive, and that many of those who had tweeted to chambers on 23 and early on the 24 October were not reputable, and had relatively few followers. Had the Heads clicked on the links sent to them by David de Menezes they would have seen the threats to the claimant. It was not necessary to send a response by tweet, (which they expected to be retweeted), at all, as complainants on the web form (as required) could be informed by email. They were already discussing a response before there was any *complaint*, rather than tweets. The tribunal is invited to consider that there was no need to investigate the anti-Semitism complaint in January 2020, no action was taken when the claimant brought to their attention (in 2018) that Alex Sharpe referred to 'terfs', an offensive term, and did not say that it was a personal opinion. We are also invited to consider the failure to send Maya Sikand the many messages of support for the claimant, and the email evidence that messages of support were being dismissed as sent by the claimant's friends , as evidence of chambers attitude towards her. We were asked to consider the fact that political activism was normal within chambers, and there was no requirement to obtain permission, or warn the Heads of a coming storm, as suggested by Judy Khan. Finally, a desire to appease people who complain of the claimant's beliefs, and so seek

to discriminate, means that their actions cannot be dissociated from that. We are asked to consider whether that is indissociable from expression of her beliefs as the reason.

315. The immediate reason for sending the response tweets was to damp down the Twitter storm so as to limit the damage to chambers reputation for supporting human rights, which was under attack. But in making the decision, the heads of chambers were aware that the controversy arose from differences of opinion on the nature of sex and gender. The question of free expression of belief had been raised with them raised both by David de Menezes and the claimant; even at 16 October Maya Sikand had recognised it was about censorship. As for social media guidance and breach of core duties, chambers had no policy of its own, and probably only Leslie Thomas had studied the new BSB guidance, but he himself said he had not read the tweets, and none of them was in a position to form a view on whether the tweets she had sent out could have been in breach. The complaints made were readily dismissed by Maya Sikand when she saw them as mere statements disagreeing with the claimant's position. Faced with a Twitter storm on gender self-identity, they picked sides. The Heads chose to prefer the view that the claimant was in the wrong and that her tweets should be investigated, because there was a lot of opposition to the views expressed in them. They knew it was about sex versus gender. Although in evidence all professed not to have a view in the sex versus gender debate, we concluded that they were opposed to her, perhaps because they had not appreciated the consequences of the transgender debate which the claimant was protesting about, perhaps because they were unused to the forceful tone of Twitter communication. It is clear from Judy Khan's communications to and about the claimant in December 2018, and on 24 October 2019, that she disliked the way the claimant expressed herself, but on this occasion, given that at the time none of them had read beyond the claimant's Twitter statement that the views were her own, it is more likely that it was her statements of belief in themselves, (and the opponents' protests that this was contrary to Garden Court's reputation as a human rights chambers) that led to this decision, rather than the terms in which she expressed them.

316. Although we considered the lack of care and thought could be attributed to the atmosphere of crisis, the lack of sympathy for the claimant then and later suggested that was not the only factor. We concluded that the material fact operating on their decision to send a response tweet was the attack on Garden Court for its association with someone who expressed views contrary to theirs, that is, because the claimant had expressed a view in the sex versus gender debate. The attack could not be dissociated from her views. The Heads knew this, but did not pause to consider a neutral approach.

317. Was the treatment less favourable than the treatment received by someone who had not expressed this belief? When it came to the complaint of antisemitism in January 2020, there was no response to anyone to suggest there was an investigation. We were not taken to other complaints about members of chambers, other than by members themselves. On Alex Sharpe, the respondents said there had been no formal complaint for them to take the

matter up. The complaints policy does not require a response, nor (as was clear when the tweets were read) any investigation. We had to consider why this was. We concluded it was because she had expressed unpopular views on a matter of public debate.

318. We concluded that the less favourable treatment was because of her views about gender self-identity and Stonewall's role promoting gender self-identity. We did not consider that the way she manifested her belief was the reason. The limitations of articles 9(2) or 10(2) of the Convention were not considered by the respondents themselves, when they reviewed the tweets complained of, to limit the protection.

Detriment 3 – Procuring Complaints

319. As we have found that detriment 3 is not made out on the facts we do not need to assess whether the reason for it was the claimant's belief, or the fact that she had alleged breaches of the Equality Act in the September and October 2019 tweets listed as protected acts.

Detriment 4 – the Investigation Outcome

320. The detriment alleged is Garden Court upholding the Stonewall complaint, finding that the claimant's tweets 17 (Morgan Page, 22 September) and 5 (Sunday Times, 27 October) were likely to breach BSB core duties.

321. Was this a detriment, that is, was the claimant's sense of grievance at this outcome reasonable? The respondent argues that she was asked to take the tweets down, and that nothing more occurred when she did not, so little or no harm was done. The tribunal does not accept this: the claimant did not know there would be no action when she refused to take them down, and there must have been some psychic cost to her decision to make a stand, having initially said she would. There was also her sense of injustice, being found "likely to have breached BSB Code" and core duties.

322. Would a reasonable person consider that when she had tweeted her views on a matter of public debate in her own name she was likely to breach Bar Standards Board core duties? The claimant knew other members of chambers tweeted on controversial issues. She believed there was coercion in the Morgan Page workshop. Stonewall did not object to "coercion" in the Morgan Page tweet, only to misgendering, a charge that Maya Sikand did not accept. The focus on "coercion" came from Stephanie Harrison, who on 4 November pointed out to Maya Sikand it must be a breach of BSB guidelines. The claimant had given details of the workshops. In evidence it became clear she understood using the term "cotton ceiling" was to liken the reluctance of lesbians to have sex with trans women ("cotton" referring to the barrier of their underwear) to the "glass ceiling" met by women seeking promotion to higher levels in employment, so by implication discriminatory. Young lesbians would be "coerced" by suggestions that they were transphobic in refusing sex and so

be ashamed, and reluctantly agree, against their will. This seem to have been the strategy she had in mind when she spoke of coercion; not physical force, but an argument that having boundaries against sex with male bodies was transphobic. It can be understood how those who were meeting this for the first time (like Maya Sikand and Cathryn McGahey) might not appreciate the nuance of "coerce" here. However the claimant had included several links for elucidation of "cotton ceiling", including to terfisaslur.com documenting transwomen's abuse of gender critical feminists, which would have made the topic less obscure. They were not given to Cathryn McGahey, and it is not clear Ms Sikand read them. Miss McGahey had to resort to additional material, and rely on her own interpretation of the IPPF report - in evidence she said she understood the workshop to be reconciliatory, like Nelson Mandela attending a Springboks rugby game to demonstrate solidarity with South Africa as a whole, white and black. Stonewall itself did not understand there was an accusation of sexual assault, perhaps because they were familiar with the debate. We can understand the claimant's grievance, even if we did not appreciate at first reading how the workshop could be coercive. It was a reasonable sense of grievance.

323. On tweet 2, the claimant explained that her assertion that "appalling levels of intimidation" drove the Stonewall trans self-ID agenda, as evidenced by the fact that they had made complaint about her tweets at all. Her tweet 10 string of tweets about Stonewall, dated 2 November, which *had* been read by Maya Sikand, stated more than once that Stonewall had "spun" LGBT rights such that it was "respectable" to scream at and threaten feminists, and that Stonewall "made it respectable for truly fascistic tactics to be weaponised" against feminists and lesbians for crimes of "wrong think and resistance". That was not saying, exactly, that Stonewall itself promoted intimidation. It might only mean that their adoption of gender self-ID encouraged the intransigent attitude resulting in gender critical feminists being called transphobes and abused online and in person. Her response of 21 November 2019, explains "rather than call out the misogyny directed at lesbians and women online, Stonewall has sought to pour petrol on the flames, by its campaign slogan "L with the T – not a debate". Further, Stonewall's "use of language like hate group… Leads to the physical intimidation against gender critical feminists" as shown in the video to which she had included a link. None of this was seen by Catherine McGahey. It is not clear that Maya Sikand read it attentively, when she said the claimant should not be saying this about Stonewall and she expected another complaint. It was a point understood by one of the Heads, Mark Willers (11 December comment). It is reasonable for the claimant to resent that her explanation had not been heeded.

324. What part was played in this finding and request either by the claimant's gender critical belief, or by any tweet found to be a protected act?

325. The further and better particulars set out a complaint of (1) seeking advice from Cathryn McGahey without sending her he claimant's explanatory response, (2) arguing that the outcome should not be "at risk" of breach, but "likely" to breach the code, (3) Maya Sikand altering her conclusion accordingly (4) the Heads not disclosing any earlier version or Cathryn

McGahey's advice (5) the interventions of Stephanie Harrison, who should not have been involved because of her opinions on gender self-ID. The tribunal is invited to infer from the deficiencies in process that the outcome was influenced by prejudice about her beliefs, and (as evidence, not an actual comparator) to compare the XY antisemitism complaint in January 2020.

326. Garden Court argues that imperfections in the process if any, do not lead to a conclusion that the claimant's beliefs were the reason for the findings. Cathryn McGahey had no axe to grind and her evidence to the tribunal was that had she seen the claimant's response, she would have made the same decision. All concerned were reluctant to report the claimant to the BSB themselves, and the advice the claimant was given was "as much for the claimant's protection as Garden Court's". Further, the claimant was her own worst enemy, causing further abuse by the tweet 10 string on 2 November. Judy Khan had already pointed out on 25 October (in the context of the response tweet) that the claimant was at fault, knowing a storm would be generated, and failing to discuss it with Garden Court Chambers first.

327. Looking at the process overall, we concluded that an initial reference to Cathryn McGahey in order to seek outline guidance on how the new, widely drawn, Guidance on Social Media would be applied was a reasonable step. But what happened, in effect, was that a decision on whether the claimant had grounds to support her assertions of coercion and intimidation was outsourced to Ms McGahey, crucially, without supplying her with the claimant's full account. Stephanie Harrison opposed sending her the claimant's response, and Stephanie Harrison said that the material supplied by the claimant did not show grounds for her assertions of criminal conduct. As a result, the finding that the claimant did not have grounds for asserting coercion or intimidation in the two tweets was made without either Cathryn McGahey or Maya Sikand taking account of her detailed explanations, which might certainly have led to a conclusion that the mention of intimidation was not unjustified. Unfair process of itself does not indicate discrimination, but the intervention of someone who held views opposed to those of the claimant suggests that it was her views that influenced this decision. Stephanie Harrison also contested Maya Sikand's initial, milder, conclusion, which might have led to a different report back to the claimant. Ms Harrison had already demonstrated her opposition to the claimant's views about trans rights and about Stonewall, and had herself recognised that she should not be involved. It is hard not to infer that her own view on gender critical feminism as hostility to trans rights played a part in this decision. Maya Sikand, initially neutral, had shown hostility to the claimant's 2 November tweets about Stonewall (tweet 10), and seems to have been influenced by Garden Court being a Diversity Champion, though Kirrin Medcalf's complaint made no mention of this. From this we can infer that disapproval of the claimant's beliefs about Stonewall informed her sense that there must be *some* breach of the core duties here. Even though one of the Heads had reservations about the finding on tweet 2, all approved it without discussion. Judy Khan had shown little patience for the claimant in respect of her December 2018 tweet about Stonewall, or the launch tweet and the discussions about it. So had Leslie Thomas. In 2019 his immediate reaction to tweets and complaints about the claimant's tweets was that they

must be in breach of the BSB guidance when, in the event, Maya Sikand found they did not offend found they did not offend. The handling of the XY complaint soon after this one shows greater recognition of legitimate expression of views on a controversial topic, although of course XY's tweet was about racism, rather than criminal conduct. The Garden Court respondents did not make their finding because the manifestation of her belief, even in such forceful terms, breached the BSB guidelines in such a way as to cross the limitations in articles 9 or 10, when it was not conduct they were obliged to report, and they did not heed the claimant's explanations of intimidation and coercion, or consider whether or how this justified limitation on speech and manifestation of belief. We did not understand what she had said to harm the reputation of others to the extent required to limit the application of article 10.

328. From these matters we conclude that the claimant's gender critical belief, and in particular her belief about Stonewall's promotion of gender self-identity encouraging and being complicit in hostility to gender critical feminists, significantly influenced the finding that her two tweets were "likely" to breach core duties. We also find that her tweets 17 and 5 materially influenced the finding, but not her response email, so to that extent the victimisation claim succeeds.

Detriment 5 – DSAR

329. Was this is a detriment? Reviewing the facts we found, there was substantial compliance. We can understand the claimant's frustration on the question of who was the data controller for individual barristers' emails. After March 2020 all activity will have been impeded by lockdown, which caused wide-ranging practical difficulties for many organisations, whether in searching for documents, redacting documents, getting advice, and so on. The claimant had already pleaded the claim against the service company. If there was detriment, it was in relation to bringing her claim against Garden Court. She indicated she was bringing a claim in September 2020, although the hearing did not take place until February 2021. The delay was not caused by any lack of documents. She was able to draft a pleading for her claim against the third respondent. The claimant argues that she was put in jeopardy of having her claim struck out because she had pleaded the outcome of the process as detriment, but was handicapped in showing that was the case because of the redactions and omissions, notably the Cathryn McGahey advice, and the debate between Maya Sikand, the Heads, and Stephanie Harrison about the investigation. At that stage disclosure had not yet been ordered in these proceedings, the claimant's access to documents was through the subject access request. We read carefully Employment Judge Stout's written reasons for not striking out the claim or ordering a deposit. She properly took account of the pleaded case, taking it at its highest, given that this was not a hearing of evidence, and had regard to the fact that documents were not yet available. At an open preliminary hearing, it is often the case that documents are not yet available because disclosure is not yet taken place in the proceedings. It should be noted that a DSAR and disclosure in proceedings are governed by different rules. The DSAR covers personal data, which may or may not be relevant to a claim. Disclosure in proceedings requires all documents, whether or not they contain personal data, if they are relevant to the issues and

necessary to decide them. We concluded that these particular redactions and omissions from the subject access request contributed to the claimant's overall sense of frustration in the litigation, but the frustration arose from differing views on who was the data controller, and the redactions and omissions cannot be blamed for the failure to bring a claim against the third respondent which will have held up her claim significantly. and they did not subject her to detriment. She may have been upset and annoyed that she had to wait for disclosure in the tribunal proceedings to understand the detail of the internal process , but that is normal in litigation.

330. Had we concluded that there was detriment caused by incomplete compliance with the subject access request, we might have drawn an inference that the reason for the redaction and omission was hostility to the claimant's beliefs on Stonewall, or on sex and gender, or to the access request itself being a protected act, indicating that she was making a claim against chambers under the Equality Act. This would be because of the involvement of Stephanie Harrison in directing redactions in January 2020, what appears to be have been an unusual approach to privilege in relation to the reference to Cathryn McGahey, privilege being dropped after April 2021, when taken in conjunction with the hostility shown to the making of a claim. The tribunal does not have access to the legal advice given to the respondents on privilege, but taking these facts together we might have inferred that the allegation of discrimination or harassment, with or without the involvement of Stonewall, was a material influence.

Time Limits in the Claims against the Garden Court Respondents

331. While we have decided that the victimisation and direct discrimination claims in respect of detriment one fail because it cannot be shown that the December email was the cause, in case we are wrong about that, we consider Garden Court's case that the claims for fall in income are brought out of time.

332. The time limit for presenting a claim under the Equality Act is 3 months from the date of the action complained of, or, if there is conduct extending over a period, the date that period ends. Garden Court argues that as on the claimant's own account she was in court almost every day from 23 October 2019 in complex cases, the conduct of which she complains (withholding instructions and work) ended no later than then, so that the victimisation and indirect discrimination claims brought against the service company (the 2nd respondent) are out of time, as she did not start the early conciliation procedure until 10 February 2020, so only acts from 11 November 2019 are in time. Secondly, she did not apply to amend the claim to add the third respondent (Garden Court Chambers) until October 2020, and the application was allowed in February 2021, so that is well out of time. Thirdly, the claim that there was direct discrimination because of belief against either of the Garden Court respondents was not made until October 2021, so that claim is well out of time.

333. Where a claim is out of time as, under the Equality Act, a court or tribunal

has a discretion to allow a claim to proceed if it is just and equitable. The principles guiding the exercise of this discussion are summarised in **Miller v Ministry of Justice UKEAT/003/15**. It is a wide discretion. Time limits are to be observed strictly and there is no presumption that time will be extended unless it can be justified. An extension is the exception rather than the rule. Tribunals must consider relevant factors. These can include the factors relevant to the Limitation Act 1980, set out in **British Coal Corporation v Keeble (1997) IRLR 336**, but this is not a requirement **Afolabi v Southwark London Borough Council (2003) ICR 800**. That the length of and reasons for delay are important is emphasised in **Adedeji v University Hospitals Birmingham NHS Foundation trust (2021) EWCA Civ 23.** It is always the case that the relevant factors must be balanced to establish whether prejudice to the respondent is greater than prejudice to the claimant.

334. In our finding, the victimisation claims against the second respondent for detrimenst 1 and 2 are out of time but it is just and equitable to allow them to proceed out of time. Clearly, bookings, and the claimant's appreciation of the overall picture, fluctuated from time to time. She was offered a plausible explanation in May 2019 and things did seem to get better. She would not get the picture of the overall fall until the year was complete. From October 2019 until January 2020, she was engaged in a major trial and will have had little time to examine her past year's billing and income – though she does not seem to have given the figures detailed attention thereafter, as even by the start of trial she compared billings in one year with income in the next. As for the response tweet, also out of time, we note that events were moving fast, she was tied up in a long trial; it was probably not until 6 November at the very earliest that she could have appreciated that the response tweet was not strictly part of the same course of conduct that resulted in the investigation outcome, as she was only being asked about the Stonewall complaint; the respondents were not seriously prejudiced by this delay because so much was documented.

335. As against the third respondent, all claims are well out of time. The explanation for delay seems to have been that she or her solicitors did not give much thought to how the Equality Act applied to a set of chambers, or the special status of barristers, which does them no credit, although a criminal defence barrister may have had little cause to think status in civil litigation. The dispute about the subject access request and who was a data controller seem to have prompted some rethinking, leading to the application to amend in September 2020. On prejudice, the Heads of chambers had already to be involved in defending the claim against the service company, so there is little prejudice in the fact of delay. The evidence is not compromised by delay. The delay did of course complicate the progress of the case to trial. We concluded that it was just and equitable to extend for that claim too.

336. The final time point concerns the claim of direct discrimination because of religion and belief. To recap the sequence of events, the claimant started proceedings against the first and second respondents in April 2020. She applied to amend her claim to add the third respondent in October 2020. That

was granted at the preliminary hearing in February 2021. She then had to provide further and better particulars of her claim, which she did in May 2021. On 30 September 2021 she proposed to amend again, by adding to her indirect discrimination and victimisation claims, a claim of direct discrimination because of philosophical belief.

337. At a hearing in October 2021 the amendment was allowed, which took into account the fact that it was made out of time, but did not of course decide whether there should be a just and equitable extension, which was left to this hearing. It was held relevant that the indirect discrimination claim already included an allegation that Garden Court had applied a provision criterion or practice of treating gender critical beliefs as bigoted (see below) , so matters of belief were already there for the tribunal to consider. A direct discrimination claim (unlike an indirect discrimination claim) involves examining the mental processes of those alleged to have discriminated; the tribunal would already have to consider those processes to decide the existing victimisation claim. As against Stonewall, the basic claim under section 111 remained the same, and what would now be different was the basic contravention alleged on the part of Garden Court, now direct discrimination rather than indirect discrimination because of the practice of treating gender critical belief as bigoted.

338. The claimant explains the delay in adding direct discrimination because of belief by reference to the claim brought by Maya Forstater against her employer. In that case, there was a 7 day preliminary hearing in November 2019 at London Central Employment Tribunal on whether gender critical belief was protected. In a decision made on 18 December 2019 such belief was held not to be protected. The decision was reversed by the Employment Appeal Tribunal in June 2021. The claimant explains that she had limited resources, and did not wish to expend them on a lengthy preliminary hearing which might well have the same outcome. She does not explain the delay between 10 June and 30 September. The respondent complains of the delay and expense caused by the repleading of the claim, at a time when a number of individual members of chambers were being identified as responsible. The respondents also point out that the first instance decision in **Forstater** was not binding on another employment tribunal, further, that in the (likely) knowledge that it was to be appealed, she could bring a claim and ask for it to be stayed pending the appeal outcome.

339. Weighing up the balance of prejudice between the parties, the tribunal has decided that an extension for the claimant is just and equitable. It is correct to say, as Employment Judge Stout did when giving reasons for allowing the amendment, that a claim of direct discrimination because of belief is a neater and less convoluted way of expressing the claimant's grievance than claims of victimisation or of indirect discrimination because of sex or sexual orientation. It was reasonable that the claimant was discouraged by the length and cost of the preliminary hearing on belief. That might be different now of course of course, given the Employment Appeal Tribunal direction in Forstater that ordinarily a hearing on religion and belief should not last longer than a day. She could have brought her application sooner, but as there needed to

be a preliminary hearing to decide it, it may not have saved much time. Matters of gender critical belief had already to be considered as a provision criterion or practice in the indirect discrimination claim, and the reasons why Garden Court made its decisions had to be considered in the context of the victimisation claim. As a result little additional evidence had to be collected or considered. The respondents already had to cover these areas in their defence; the claimant would be prejudiced by not being able to present what is probably the meat of her case in a straightforward way.

Indirect Discrimination

340. Section 19 of the Equality Act concerns indirect discrimination and provides:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

Sex, sexual orientation, and religion and belief are protected characteristics for indirect discrimination, but this claim is only brought in respect of sex and sexual orientation. When the claim was amended on 12 October 2021 to add direct discrimination because of religion and belief, there was no application to add religion and belief to the indirect discrimination claim.

341. When deciding indirect discrimination claims, the tribunal must consider all four points in section 19(2), as analysed in **MacCulloch v ICI (2005) IRLR 846**.

342. The EHRC's statutory Code of Practice on the Equality Act in the field of employment gives guidance on how to interpret the Act, though it is not itself a legal authority. It says 'provision, criterion or practice' (PCP) is not defined by the Act, but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A PCP may also include decisions to do something in the future – such as a policy or criterion that has not yet been applied – as well as a 'one-off' or discretionary decision.

343. A one-off decision (setting as a provision that part-time working must be no less than 75% of working time) was allowed as a PCP in **British Airways plc v Starmer (2005) IRLR 862**. But where the PCP was a practice, there must be an element of repetition, not just a one-off application, and if it related to procedure, there must be something that applies to others, not just the

complainant, otherwise there could be no comparative disadvantage, even in theory - **Nottingham City Transport Ltd v Harvey (2013) EqLR 4,** which concerned a PCP in a claim for reasonable adjustment for disability. In **Ishola v Transport for London (2020) EWCA Civ 112,** another reasonable adjustment case, the Court of Appeal held that all three words in PCP "carry the connotation of the state of affairs… indicating how similar cases are generally treated or how a similar case would be treated if it occurred again" and "although a one-off decision or act can be a practice, "it is not necessarily one", and agreed that a decision not to decide the claimant's grievance before he returned to work was not a PCP but a one-off act.

344. When the tribunal comes to consider whether a PCP places people with the relevant protected characteristic at a particular disadvantage compared to those who do not have the characteristic, statistical evidence is not necessary – any evidence that the protected characteristic is more likely to be associated with particular disadvantage arising from the PCP is acceptable – **Chief Constable of West Yorkshire Police v Homer (2012) ICR 704.** Instead of requiring statistical comparisons where no statistics might exist, with the complexities of identifying those who could comply, and how great the disparity had to be, "all that is needed is a particular disadvantage when compared with other people who do not share the characteristic in question". In a case where statistical evidence *was* being considered, it was held more informative to compare the ratio of protected characteristic in the disadvantaged group to the non-disadvantaged group than to look at absolute numbers – **Barry v Midland Bank (1999) ICR 859.**

345. The claimant relies on two provisions, criteria or practices (PCPs).

<u>First PCP – treating gender critical beliefs as bigoted</u>

346. This is : "the treatment by the second and/or third respondents (and/or by individuals for whose actions (they) are liable) of gender critical beliefs as being bigoted or otherwise unworthy of respect".

347. The claimant sets out the matters on which she relies over 24 paragraphs of the further and better particulars of claim. In summary these are: the launch of TELI in 2016, with Michelle Brewer's declaration that "the government has to adopt a method of gender recognition based on self-determination"; the tweets of door tenant Alex Sharpe in 2018 about gender recognition reform, in particular "the cost of doing so for cis women are negligible. The cost of not doing so for trans women and non-binary folk are substantial"; the existence and activities of TWG; David Neale's complaint on 14 December 2018 that the claimant's Stonewall email was "transphobic, offensive and hurtful", with Judy Khan and Leslie Thomas responding that Chambers would continue to be a trans-inclusive space, and that the claimant's views were not shared by the heads or the vast majority of Chambers; the October 2019 exchanges

between David Renton and Michelle Brewer, implying that the claimant's gender critical beliefs were bigoted and not worthy of respect; that Stephen Lue directed Mr Renton and Miss Brewer in this; the Garden Court response through to 25 October 2019, the proposal (not carried through as it was deleted before publication) to include in the website statement that Garden Court was "proud to support trans rights- human rights are universal and indivisible". From these the tribunal is invited to infer that Chambers had a collective view that the claimant's views were bigoted and/or otherwise unworthy of respect, shared by the great majority of members of chambers. With regard to Leslie Thomas, the tribunal was asked to consider his 24 October 2019 conclusion that the launch tweet had breached the Equality Act, his agreement to recuse himself from the investigation into her conduct, his advice to Maya Sikand on 4 November 2019 on how the complaints should be investigated, including that the claimant had breached the BSB code of conduct, suggesting an individual to approach for advice, to be compared with Leslie Thomas's reaction to David Neale's comments on the December 18 Stonewall tweet; Leslie Thomas's treatment of the complainant's complaint of abusive social media conduct by Alex Sharpe, and his actions in November and December 2019 in response to complaints, including the 31 October Stonewall complaint. In respect of Judy Khan and Mark Willers, the tribunal was invited to consider their involvement in Maya Sikand's reports, the deviation from Cathryn McGahey's advice, and the report being presented as Maya Sikand's sole work; the tribunal is invited to infer that the purpose of not putting the claimant's response to Miss McGahey was to make the report's conclusion less favourable to her. The tribunal was also asked to consider the part played by Stephanie Harrison in the Sikand report: not disclosing the claimant's detailed response to Ms McGahey, rewriting the report to make the conclusion more adverse to the claimant, emailing on 24 October implying that the claimant's involvement in LGB Alliance was transphobic and insulting, and emailing on 11 November to the Heads of chambers proposing investigation "in the knowledge and expectation that Stonewall complain to the Bar Council", so that regulatory sanction would not be attributable to chambers. On Maya Sikand, the claimant pleads that she was a member of TWG; that on 16 October she corresponded about censoring the claimant's tweets, that she accepted the initial redraft to her report, to the claimant's detriment, including Stephanie Harrison's proposal to strengthen the conclusion, the comparison between Ms Khan's reaction to Stonewall complaint - "slagging off Stonewall to that degree"- with her dismissive response to a caseworker expressing support for the claimant deploring treatment for her political views, and to the comment on the tweet of 18 October ("why did no one notice it?") suggesting that she was extracting matters for further investigation; but not asking the claimant to comment on it, also in her view that even if the tweet was removed the BSB could investigate, and the exasperated tone of her initial commentary on the claimant's response, saying that it included much irrelevant material. Finally, to show bigotry as a PCP, the claimant relies on the ways different complaints by others were treated. A complaint of anti-semitism on Garden Court website was dismissed on grounds which should have applied to complaints about the claimant; the dismissal of her complaint about Stephen Simblett.

348. Garden Court denies there was such a PCP, in 32 subparagraphs. It is argued that these isolated matters relating to a few individuals within a large Chambers do not add up to a "formal or informal policy", or practice, on gender critical views.

Discussion

349. We could not conclude that Garden Court Chambers as a whole had a practice of treating gender critical beliefs as bigoted. TELI was and remained a project of Michelle Brewer, and the fact that Garden Court contributed to the launch in 2016 was not, in our finding, significant, given the lack of similar action. Alex Sharpe in 2018 tweeted in support of gender self-identity, but there is no indication that the door tenant's views are representative of Garden Court. David Neale received some sympathy in December 2018 when he complained about the claimant's email of December 2018 as an attack on Stonewall. He was told that the claimant's views were not those of chambers as a whole, and that chambers remained a trans-inclusive space, but it does not follow that chambers adopted a position supporting gender self-identity, it could equally well mean that chambers supported diversity and inclusion. The exchanges between David Renton and Michelle Brewer in October 2019, and Stephen Lue advising David Renton to speak to Michelle Brewer about his difficulty, do not suggest that this is a chambers-wide view. They were associated with the TWG, a small section of chambers.

350. On the allegations against those involved in the decision-making, that is the three Heads of Chambers, plus Maya Sikand, and Stephanie Harris, Leslie Thomas's remark on 24 October was an off-the-cuff comment. Leslie Thomas recused himself because he was on the Bar Council, not because he believed the claimant had breached the social media guidance, and his initial response that the tweets breached the Code indicate that he thought this was the only possible valid ground on which objection to her tweets could be made, rather than a conclusion that they did breach the guidance. As for Alex Sharpe, her activity was treated differently to the claimant because the claimant did not make a complaint about Alex Sharpe, nor did anyone else, whereas there were complaints about the claimant's activity. It is not a material comparison. As for Judy Khan and Mark Willers, their acceptance of the investigation report and Cathryn McGahey's advice is a one-off decision, whatever criticism might be made of it, and does not indicate a practice of holding gender critical views bigoted. Whatever the concerns about the approaches taken by the three heads of Chambers and Maya Sikand to the complaints, these are better considered as religion and belief grounds for any disadvantage proved. In the absence of any other examples of gender critical beliefs being treated in this way, we are not persuaded that there was a *practice* of holding that such beliefs were bigoted, it was a one-off decision. There was a complaint about the claimant's tweets in January 2020, when Garden Court elected to do nothing.

351. If we had held that this was a PCP, we would have had difficulty finding that women, or lesbians, suffered disproportionately as a result of this PCP, compared to men, or to heterosexual women. The claimant invites us to compare gender critical activists against others, rather than people holding gender critical views as against those who do not. Women have a particular interest in the preservation of single sex spaces, but, anecdotally, men also take a position in this debate - for example, those of traditional social views on a range of matters, or Christian evangelicals – and it is plausible (the tribunal had no evidence either way) that some, even much, of the violence shown to transwomen comes from men who hold gender critical opinions. The evidence we heard from the four campaign groups opposing gender self-identity shows that women join groups campaigning for women's rights, and some of these women are lesbians. It does not tell us much about the proportions of men and women and lesbians and heterosexual women within the gender critical group, either when measuring activists against those who do not engage in campaign activity, or against the general population. It does not show that women, rather than men, are at a substantial disadvantage when comparing a gender critical group with a non-gender critical group, nor does it show that lesbian women are at a substantial disadvantage compared to heterosexual women. The YouGov poll showed women *more* likely than men to agree that people should be allowed to self-identify, and *more* likely to agree that a transwoman was a woman. Women were more likely than men to agree transgender women should be allowed to use women's changing rooms and women's toilets and domestic violence refuges if they were themselves victims, although these views changed when told that the transgender person had not had gender reassignment surgery. Women then agreed that transgender women should not be allowed to use women's toilets, or women's changing rooms, though on the latter point men *still* took a stronger view than women. We had no figures at all on the proportion of lesbians in the gender critical group as compared with the general population. Taking the evidence as a whole, we could not conclude that a practice of considering gender critical views bigoted showed women at proportionately greater disadvantage than men. We also had no evidence on lesbians being at any different disadvantage to women as a whole: the campaign group witnesses did not collect this information and relied, within very small samples, on impression.

<u>Second PCP- allowing Stonewall to direct the complaints process</u>

352. The second PCP is "the second and third respondent (including by individuals for whose actions (they) are liable) allowing the first respondent to direct its complaint process".

353. The particulars of this claim extend over 11 paragraphs. The claimant relies on Garden Court being a Diversity Champion, Shaan Knan inviting TON members to complain about the claimant prompted by Michelle Brewer, Maya Sikand changing her view of whether the claimant had breached the BSB when she saw the Stonewall complaint, Stonewall's complaint questioning how chambers could continue its association with the claimant, inviting them

to do “what is right”, Maya Sikand commenting on 4 November that Chambers was a Diversity Champion and the claimant should not be maligning them, Stephanie Harrison perpetrating “a serious misrepresentation of Cathryn McGahey’s advice, by withholding the advice from the claimant”, and finally, supplying the clerks’ email addresses to Stonewall for the purpose of their complaint.

354. Garden Court denies that there was such a PCP, and in any event, denies Stephen Lue or Michelle Brewer were authorised agents of Chambers. They were not Heads, or members of the management committee, or party to any decision-making process; Stephen Lue was not even aware of the complaint or the process. David de Menezes and Mia Hakl-Law were authorised agents of Garden Court, but played no part in the Stonewall complaint investigation. As for the Heads of Chambers, plus Maya Sikand and Stephanie Harrison, it is denied that being a Stonewall Diversity Champion shows Stonewall controlled the complaint process, that Shaan Knan was their agent or Stonewall’s in his complaint, or that the initial draft report changed because Maya Sikand saw further tweets in which the claimant mentioned Stonewall. It is denied that either respondent procured Kirrin Medcalf’s complaint, that Maya Sikand allowed Stonewall to direct the investigation, or that she was not the decision-maker. Stephanie Harrison did not keep Ms McGahey’s advice from Heads of Chambers when they made the decision, and it is denied that Ms Harrison kept relevant material from MsGahey. On clerks’ emails, they were publicly available on the website.

<u>Second PCP – Discussion and Conclusion</u>

355. We concluded there was no evidence whatsoever that Stonewall directed Garden Court’s investigation process. Stonewall was unable to get Garden Court as a Diversity Champion to amend its employment policies or join its networking, let alone direct its complaint process. In the preceding weeks, when there was a question whether Garden Court would renew its membership, Stonewall was very clear about not referring work, which might have given them some leverage, as part of the scheme. On our finding, Michelle Brewer did not procure complaints; at most she directed concerned individuals to the availability of the complaint process. Stonewall’s complaint of 31 October was only a complaint. There is no evidence that Stonewall directed how that complaint was handled; they did not follow it up, or even ask the outcome. Shaan Knan, a STAG member, did ask about the outcome of complaints about the launch tweet, but got no answer. As we know, none of those complaints were held by Maya Sikand to be worth investigating Shaan Knan did not know about the Stonewall complaint. Maya Sikand’s comment on tweet 10 was her own observation, not prompted by Stonewall. Whatever might be thought of Stephanie Harrison not sending the claimant’s full response to Ms McGahey, there is no evidence that Stonewall were in contact with Stephanie Harrison at the time of investigation; their only contact with Garden Court was a brief offer of support over the publicity of the claimant’s

launch tweet, and to that there was no reply. The clerks' email addresses are not secret. Alleging that Stonewall directed the complaint process was a conspiracy theory.

356. For clarity, we therefore also find that detriment 20.6 in the claim against Stonewall (discussed below) is not made out.

357. We do not need to consider proportionate disadvantage or justification. On either PCP, the indirect discrimination claim does not succeed.

The Claim against Stonewall

358. Section 111 of the Equality Act is headed "Instructing, Causing or Inducing contraventions". It says:

(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 112(1) (a basic contravention).

(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.

(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.

(4) For the purposes of subsection (3), inducement may be direct or indirect.

(5) Proceedings for a contravention of this section may be brought—

..(b) by C, if C is subjected to a detriment as a result of A's conduct;

(6) For the purposes of subsection (5), it does not matter whether—

(a) the basic contravention occurs;

(b) any other proceedings are, or may be, brought in relation to A's conduct.

(7)This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.

(8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.

(9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating—

..(b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.

359. The claimant's claim is that Stonewall instructed or caused or induced contraventions, alternatively, that they attempted to cause or induce contraventions. By s.111(7) there must be a relationship between Stonewall and Garden Court: the claimant says Stonewall was a service provider, and that this is sufficient to establish a relationship in which A was in a position to commit a basic contravention. A is Stonewall, B is Garden Court, C is the claimant.

360. Of the mental element required, where the basic contraventions themselves require a mental element (as in direct discrimination and victimisation) then the tribunal must find that A's reason for its instruction,

inducement, causing, or attempts to induce or cause conduct that would amount to a basic contravention were significantly influenced by the claimant's protected characteristic (here, belief), even if that was not the motive, or was not the conscious reason.

361. Any conduct amounting to instructing, causing or inducing, or attempting the latter two, must result in C being subjected to detriment, even if no basic contravention occurred – section 111 (5). The tribunal having found that the claimant did not suffer detriments 1, 3 or 5, we are only concerned with detriments 2 and 4, the response tweet and the investigation finding. It should be added, in the context of detriment 1 (where there was a fall in earnings) that Stonewall was not aware of the claimant's email of December 2018 protesting about the signing of the Diversity Champion scheme until these proceedings were brought, so cannot have had any cause to induce (etc) or attempt to induce any allocation of work away from the claimant.

362. In **NHS Development Authority v Saiger (2018) ICR 297**, it was held that there must be evidence of actual instruction, causation, inducement, or attempt to cause or induce. It was not sufficient to show that persons were in a position to do those things.

363. The burden of proof is on the claimant, on the balance of probabilities, and subject to the Equality Act provision on burden of proof.

364. The conduct on which the claimant relies is set out in paragraph 15 of the list of issues. The first five are matters arising in the conduct of the Diversity Champion scheme, already discussed. The next group are the actions of Shaan Knan and Alex Drummond on 25 October (6-8,10) asking for messages of support to be sent to Garden Court, and sending their own messages to Garden Court (13), and Shaan Knan's messages to Michelle Brewer on 24 October and 6 November (11,12). Stonewall denies liability for any action of Shaan Knan and Alex Drummond. Finally the claimant relies on the Kirrin Medcalf's response to Shaan Knan's message on the wall (9), and his complaint to Garden Court on 31 October (14).

365. Taking (1)-(5) first, Stonewall knew nothing of the claimant's December 2018 protest about the Diversity Champion signing. The only individuals Stonewall dealt with at Garden Court who had anything to do with the decisions about the response tweet were David de Menezes, who set up the scheme, and Mia Hakl-Law, who corresponded with Stonewall about Garden Court's employment policies. Neither made decisions, though they did contribute to the debate with the Heads of chambers on what to do, including recommending the response tweet. David de Menezes thought it worth noting in his report that Garden Court were Stonewall Diversity Champions, but here we note that Stonewall up to that point had done nothing to suggest any work would be directed to Garden Court (by Zeinab al-Farabi, quite the contrary), or that there would be any naming and shaming of Garden Court for their views or associations. That might have been a factor operating on the mind of David de Menezes, who as marketing director will have been concerned about damage to the Garden Court brand, but Stonewall itself said and did nothing to give that impression. In the

course of evidence, the claimant described the Diversity Champion scheme as an “organised protection racket”. In our finding that was not the case.

366. Nor did Stonewall act through Michelle Brewer, She had worked for them pro bono. If she opposed the claimant’s expression of her views, or tried to draw them to the attention of the Heads, or informed concerned people there was a complaints procedure and that there was to be a meeting to discuss the claimant’s tweets, she did so from conviction, not because of anything Stonewall said or did.

367. We next address Kirrin Medcalf’s complaint on behalf of Stonewall - (9) and (14). As Head of Trans Inclusion he objected to the claimant on a number of grounds: (a) transgendering in various of the claimant’s tweets, including Morgan Page, a member of staff (b) attacks on trans people’s rights to access to women’s prisons and hospital wards (c) aligning Stonewall with extremism, intimidation and inflaming the debate (d) chairing meetings of Women’s Place, a ‘hate group’.

368. It is obscure what he wanted to achieve or Garden Court to do. The claimant sees the statement that continued association with her put them in a difficult position as a threat that she should be expelled if Stonewall was to continue its relationship with Garden Court. This is certainly one reading. Kirrin Medcalf said it was about the safety of staff if they were to continue working with Garden Court. This is not clear from his email, but is consistent with the protest about “targeting our staff with transphobic abuse” on a public platform, and to “the safety of our staff and community” being their priority Kirrin Medcalf explained that his staff safety as his purpose in writing the email in a little more detail. He is himself trans. Transwomen are apprehensive of being challenged in a hostile way by natal women if they use female toilets. They are often objects of violence. He did not say whether the violence came from women or men. He did attend a further meeting at Garden Court a month later, on prison policy, and decided that to mitigate the risk of challenge he would not arrive early, would attend with a cis-male colleague, and would not wear anything that associated him with Stonewall. But if mitigation of risk was his purpose in writing the complaint email, we considered it will have been wholly obscure to the recipients. Other than the final mention of safety, this concern could not be detected. Agreeing that he had not given any detail of his safety concern or what would mitigate any risk, he said in evidence that he had thought they would get back to him about it and they could have a discussion. To our minds however it was implausible that what he wanted was a discussion of arrangements for access to female toilets, or he would have said so.

369. Challenged on why he was not more specific about what he wanted, he said he had “had his advocacy hat on”, which we understand to mean that he was writing to protest about her views (stated to come from a member of Garden Court) and put the case for trangendered people. In other words, he wrote without any specific aim in mind except perhaps a public denial of association with her views.

370. He denied it was a response to the Sunday Times article on 27 October, saying he did not read the paper, and in any case that kind of abuse of Stonewall was a normal media perception. A clipping of the article was

however shown in one of the tweets he complained about, and was considered relevant by Maya Sikand.

371. Asked about the delay between drafting the email on 28 October and sending it on the 31 October, he agreed that it was inconceivable that he would send a complaint in the name of Stonewall after only 5 weeks in the job without some input from a supervisor, but had no recollection of specific supervision. There is a supervision note of 30 October with Laura Russell, which mentions an email, but not the subject matter.

372. It is less likely he had in mind any formal action by chambers when he was too late for the meeting date advertised by Shaan Knan, though it is a possibility. The lack of any follow up to this complaint - it was not mentioned in the meeting with Garden Court about the scheme early in 2020 for example, even though they had had no response at all from Garden Court in two months – indicates that Kirrin Medcalf and Stonewall had not in fact been looking for any action. It was just a protest.

373. What is *not* present in the complaint is any reference to Garden Court being a Diversity Champion; he mentions only work by Alex Sharpe, and use of the premises for round table meetings, which relate only to individual members' activity, not any corporate relationship. In this context, Garden Court provided voluntary services to Stonewall, not Stonewall to Garden Court; it was Stonewall that stood to lose. The email contains no instruction. If there some *inducement* here (fear of losing Stonewall Diversity Champion status, more generally a breach of obligation to Stonewall, and some loss of brand association), it lay in the minds of Garden Court managers and Heads. It did not come from Stonewall. There was not even an attempt at inducement. It was clear from evidence that Kirrin Medcalf was alive to Stonewall's soft power – of the Diversity Champion scheme, he said organisations liked to be associated with Stonewall "because it made them look good" – but we did not consider that the terms of his letter, which did not mention the scheme, suggested brand damage, or amounted to inducement.

374. It was suggested that Kirrin Medcalf must have been aware of the Diversity Champion scheme, because Zeinab al-Farabi contacted Garden Court a few days later, early in November, to offer assistance, and his office would have been talking about the media stir. We did not conclude that he *would* have been aware they were Diversity Champions. The evidence of Zeinab al-Farabi, which we accept, is that she was shocked when she learned of the complaint at the time of her making her own witness statement, as it should have gone through her, as the Garden Court account manager. Sanjay Sood Smith, in overall charge of the Diversity Champion scheme at the time, did not consider that Stonewall *could* terminate the relationship, and checking the document signed in November 2018, the tribunal notes there is no mention of having to support Stonewall's interpretation of transgender rights, or of Stonewall ending the arrangement for any reason. He had not known about Kirrin Medcalf's complaint either, and said that had he done, would have told him not to speak about no longer associating with Garden Court, as they would remain a Diversity Champion,

though he could legitimately write about the safety of staff attending meetings there.

375. In reaching this finding we take account of earlier letters Stonewall had sent to organisations about treatment of trans people. We were taken to some redacted correspondence about an LGBT officer at the FBU, formerly a Diversity Champion network chair. She had made public statements that Stonewall in promoting trans rights had abandoned lesbians, starting with a radio discussion on transwomen in all female shortlists. They corresponded with her about it on her private email address. She gave them a forthright reply and nothing occurred. There is no sign they contacted the union about her (there was a plan for a “separate conversation” with them, but no indication whether that happened; all the names are redacted from the internal Stonewall emails), or that they focussed on anything more than public opinion. In other correspondence, they wrote to Marks and Spencer, which was a Diversity Champion, and to Center Parcs, which was not, about their treatment of trans people. There seem to have been no threats here, just intervention to promote inclusion. This does not show use of the Diversity Champion scheme as leverage.

376. Was it in fact seen by Garden Court as an inducement? Only the tweets which seemed to allege criminal behaviour were taken seriously, and Stonewall had not complained of allegations of criminal behaviour in one of those. Concern about the claimant’s tweets and the BSB guidance had preceded this complaint – it came from Leslie Thomas at the time of the various protests about the claimant’s launch tweet. Although both David de Menezes in October (before Kirrin Medcalf’s letter) and Maya Sikand when she read tweet 10, had mentioned Stonewall in the context of the claimant’s tweets, that status was not the basis of the decision to investigate these two tweets out of the many complained of. Nor did it play a part in her finding that these tweets were likely to breach core duties. At most, their reaction to an attack on Stonewall, seen as an ally, was to consider whether there were any grounds for finding the claimant in the wrong, and reaching for BSB social media guidance as the only candidate. That was Stephanie Harrison’s response to the claimant’s tweet 10, which Stonewall did not complain about. That did not come from Stonewall. Kirin Medcalf did not know about Bar standards or barristers’ duties.

377. As for causing, in the “but for” sense it is true that if Kirrin Medcalf had not written, Maya Sikand’s report would have been limited to the original batch referred, which she would have dismissed without investigation. The email was the occasion of the report, no more. Was the letter an attempt to cause discrimination against the claimant? We concluded that it was no more than protest, with an appeal to a perceived ally in a ‘them and us’ debate.

378. With respect to 6,7,8 and - and 9, about Kirrin Medcalf, we need to consider whether the STAG members, Shaan Knan and Alex Drummond, acted as agents of Stonewall when they sent complaints about the claimant.

379. Before doing so, a review of the timeline of events reminds us that four complaints were lodged on 23 October, the day of the TON round table at Garden Court. Their full names are known to the parties. It has not been

suggested that any of them were associated with Stonewall or had attended the TON meeting, even though Tracey mentioned the Diversity Champion scheme, so we conclude this was her initiative, unprompted by what Shaan Knan said at the meeting. A fifth (from Jennie) arrived next day. The response tweet went out soon after 5 pm that day. Shan Knan did not post on the wall or on Facebook until the evening of 25 October, immediately followed by the complaints of Alex Drummond and Shaan Knan. On the morning of 28 October Kirrin Medcalf posted his "done" message on the wall, though we know this was not sent until 31 October. This means we are only concerned with detriment 4. The response tweet was sent out before anything came about as a result of Shaan Knan's message to TON participants.

Agency – relevant law

380. By section 109 of the Equality Act,

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

381. **Ministry of Defence v Kemeh (2014) ICR 65** confirms that this does not mean the principal must authorise the act complained of; it is enough that he does something he has been authorised to do; it was also held that common principles of agency apply. That normally means an agent has been given the power to affect the principal's relations with third parties, but could also include someone who did not – a canvassing agent, as in estate agency – who has a fiduciary relationship with the principal and limited to acts on his behalf. It is distinct from vicarious liability. There must be some degree of control - **Bowstead and Reynolds** on Agency. **In Kemeh,** the claimant's employer had insufficient control over the contractor's employee for it to be said she was their agent. In **Unite the Union v Naillard 2018) EWCA Civ 1203**, the test of agency was identified as whether the discriminator was exercising authority conferred by the principal. In that case, the trade union was held liable for the actions of two elected officials (their agents) who had harassed an employee of the union, as what they did was within the scope of their authority.

382. Stonewall argues that neither Shaan Knan, nor Alex Drummond, nor members of TON, acted with express or implied authority from Stonewall.

383. The claimant argues that STAG was "in the territory of" a canvassing agent for Stonewall, its purpose being to link with other parts of the trans rights community. It is enough that they have authority to act on behalf the principal in some capacity, and for their benefit.

384. We have to consider whether in the conduct complained of, Shaan Knan or Alex Drummond were acting as individuals in some capacity for another organisation, or as members of STAG, and if so, whether as Stonewall's agent.

385. The appeal at the TON meeting on 23 October (6) was made by Shaan Knan in his capacity as organiser of the meeting, that is, as an employee of LGBT consortium. His telephone call to Michelle Brewer that morning, when he learned chambers were having a meeting the following Monday, was also

in his capacity as meeting organiser, another TON member having raised the claimant's role in LGB Alliance with him. Asked about this, the claimant asserted that they were "one and the same", because he was also a member of STAG. In our finding, simply being a member of STAG did not mean that was the same thing, and he did not make the appeal on behalf of STAG or in his capacity as a STAG member.

386. When Shaan Knan told Michelle Brewer on 24 October that he had asked people to support Garden Court against the "terfy barrister", this was a follow-up to the contact they had made the day before in his role as TON organiser. His next message to her was on 6 November (12), when he gave his apologies for a trans prisoner round table that afternoon and asked about the "outcome of the Bailey case". The round table was not a Stonewall event, and as already noted, his contact with her was made in his capacity as an employee of LGBT Consortium. This lends nothing to the argument that his activities promoting messages to Garden Court were as an agent of Stonewall

387. Did his use of STAG wall (7) and the STAG Facebook page (10) mean that he used these to appeal for messages of support to Garden Court as an agent of Stonewall? Our conclusion was that when sent these messages on the evening of 24 October, he was following up on his undertaking to the TON meeting to send an email to members about this. He used the page and the wall because it was useful, and would reach other people and organisations in the trans community who were also STAG members. This was an authorised use of the page and wall, which was to facilitate messages within the group, a group set up to link Stonewall to other trans rights campaigners and give them credibility in this area. Their content was not however accessible to anyone in Stonewall, other than Kirrin Medcalf as head of trans-inclusion. Even on the memorandum of understanding, it is doubtful that Kirrin Mecalf had authority to control or forbid what STAG members did on the wall, as he was a non-voting member of STAG. All he could have done was report misconduct in order to invoke a procedure for removal of the member. In our finding, Stonewall had insufficient control over the use made by STAG members of the wall and page to make users their agents. STAG's role in relation to Stonewall was to link it to trans campaigners and produce a five year plan. Making complaints about gender critical activists was not what it was set up for. There was no actual or ostensible authority for this.

388. We know from Alex Drummond's post on the wall (8) that his own message to Garden Court was prompted by Shaan Knan. It made no reference to the capacity in which he complained, and simply asked that they dissuade or distance themselves from the claimant tarnishing their good name. Even if he was an agent of Stonewall in posting this message, it is too weak to amount to an inducement, let alone a cause or an attempt. In any case it did not result in detriment.

389. There is no element of inducement or causing or attempting to do those things in the message Shaan Knan sent himself (7). It was a simple protest. It made no mention of any organisation with which he was associated, nor any suggestion of what action should be taken by Garden Court. There is nothing to suggest that in this he acted as an agent of Stonewall, rather than, more obviously, as TON network officer for LGBT Consortium, which was the reason

for his contact with Michelle Brewer on 23 October.

Claim against Stonewall - Conclusion

390. We conclude that the claim that Stonewall instructed, induced or caused, or attempted to induce or cause detriment to the claimant does not succeed.

Remedy for Detriments 2 and 4

391. There is no claim for financial loss arising from either detriment. We are assess an award for injury to feelings only. There is also a claim for aggravated damages.

392. In respect of detriment 2, the response tweet, we took into account that the claimant was already stressed and under attack on Twitter because of the launch tweet. We have to assess the added stress of injury caused by it being announced on Twitter that the complaints were being investigated. Her sense of outrage that she was now under attack, not just by strangers, but by her own colleagues in chambers, is shown in the interview she gave to the Sunday Times. Apprehension and injury will have been increased by the delay in telling her which procedure was being used – not an idle question, as Mia Hakl-Law had suggested using the disciplinary procedure – and delay in sending her complaints, or identifying which tweets were complained about. It would have been hard to maintain composure over these weeks, and even when she knew the outcome in December, she will still have felt a sense of unfairness and injustice at not having seen the complaints that had been announced as under investigation. It will have rankled that there was no public statement to put right the suggestion she had been at fault. She was not in fact sent the complaints until disclosure of documents, and the investigation report she received dealt only with 31 October complaint, not the complaints said to be under investigation in response tweet on 24 October. That will have perpetuated the sense of injustice.

393. Detriment 4, the outcome of the investigation, will have involved some additional injury, because the claimant was asked to take the tweets down, and it will have taken some nerve to decide not to in the month when she was considering this. She will have had to consider that this might have consequences, although we know in the event it did not, so this injury was less, and will have diminished in time. She will have been left with a sense of injustice that she was "likely to have" breached core duties in her tweets, when Chambers had not referred her to the BSB, no one else complained, and on her view she was legitimately expressing her opinions.

394. A sense of injury can diminish in time, but the hostility she experienced in Chambers, as shown in the emails she had from Mark Gatley, and her solicitors from Stephen Simblett QC, will have prolonged it.

395. The range of awards for injury to feelings is set out in **Vento v Chief Constable of West Yorkshire (no.2) (2003) IRLR 102.** We considered that although the 2 detriments could be considered one-off events, their effect on the claimant's sense of injustice was more prolonged, and it is appropriate to place it in the middle band. As updated, for claims presented after 6 April 2020 (this claim was presented on 9 April), that is a range of £9,000-£27,000.

396. The invites us to make an award of aggravated damages. Aggravated damages payable as a form of injury to feelings, rather than to punish the respondent – **HM Land Registry v McGlue UKEAT 0435/11**. They are to compensate the distress caused by high-handed insulting or oppressive behaviour – **Broome v Cassell 1972 1 All ER 801** - or by conduct motivated by spite, animosity or vindictiveness.

397. The tribunal was invited to take account of chambers failing to support the claimant in October 2019, saying in effect that she had brought death threats on herself, failing to engage with her explanation of her 2 tweets or supply it to Ms McGahey, withholding documents until after the strike out application, and trying to get the claim struck out on the basis that the proceedings were abusive . This concerns the witness statement Judy Khan made for the strike out application in which she asserted that redactions in documents at that stage did not conceal anyone acting on behalf of Garden Court, when the names of the people Stephen Lue's email of 14 December 2018 went to, including her own, had been redacted, that exchanges with other Heads of chambers that day had been omitted, saying it was a private exchange, and omitting Michelle Brewer's email to her and others of 16 October 2019 asking for guidance on the claimant's tweets. Cross-examined, Ms Khan said that the redactions had been made by others (it is not clear who did - we know that Stephanie Harrison supervised redactions from the service company disclosure in January 2020, but we do not know if these were included then as part of the DSAR request to Garden Court in September 2020). She added that at the time she made the statement, her sister had just died and she would not have checked the detail before signing.

398. We agreed that the claimant's colleagues, and Judy Khan in particular, were unsympathetic at the time, suggesting the claimant brought matters on her own head by tweeting on a controversial topic, even suggesting that she ought to have told them first, and paid little heed to her report of death threats, and had allowed an offer of support, provided it was not authorised by the Heads. As mentioned, we noted hostility from other members of chambers later, which may not have been limited to those two. We do not take account of redactions from documents and the witness statement for the February 2021 strike out hearing. Applying to strike out a claim that is thought to be vexatious, as a collateral attack on Stonewall, is a legitimate step. The omissions were not significant and put right later, and we accepted Judy Khan's evidence that she was distracted from taking the care with her witness statement that she may now wish she had taken. Failure to send Ms McGahey the claimant's response, or to take much account of the claimant's response in the decision on the investigation report, are already allowed for decision that she suffered detriment thereby and so have been compensated.

399. Weighing up the strength and length of the claimant's injury to feelings we award £22,000, £2,000 of which is aggravated damages.

Interest on Award

400. The Industrial Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, as amended in 2013, provides that a tribunal shall consider awarding interest in discrimination cases, and to provide written reasons if they

decide not to, or decide to reduce interest because it would otherwise cause serious injustice. We could see no reason not to award interest as set out in the regulations, which provide for interest at the judgement rate (8%) from the date of injury to the calculation date. On the face at the date of injury was 24 October 2019, but we allow that some of the award includes additional injury in December 2019, and the continuation thereafter. To take this into account we have adjusted the date of injury to 24 November 2019. That means applying interest at 8% per annum for a period of 32 months, making interest £4,693.33.

Sarah Goodman

EMPLOYMENT JUDGE GOODMAN

25 July 2022

JUDGMENT AND REASONS SENT to the PARTIES ON

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. 27th July 2022

Olu
FOR THE TRIBUNAL OFFICE

APPENDIX 1

AGREED LIST OF ISSUES

A. Victimisation by Garden Court

1. **Has the Claimant done one or more protected act**?

The Claimant relies on the following (see §24(a) of the Further Revised Amended Particulars of Claim dated 28 September 2021 ("Particulars of Claim") and the Further Particulars of Tweets relied on by Claimant as Protected Acts dated 25 October 2021 ("Particulars of Protected Act Tweets"):

1.1. The Claimant's email of 14 December 2018;

1.2. The Claimant's tweets as set out in the Particulars of Protected Act Tweets dated 25 October 2021;

1.3. The Claimant's response dated 21 November 2019 to the First Respondent's complaint against her;

1.4. The Claimant's Subject Access Requests to the First and Second Respondents dated 30 January 2020;

1.5. The Claimant's Early Conciliation notifications to ACAS in respect of the First and Second Respondents dated 10 February 2020.

2. The Respondents' position is:

2.1. **Stonewall admits** that the act at paragraph 1.3 was a protected act (see §24 of Stonewall's Further Re-Amended Grounds of Resistance dated 26 November 2021 - "Stonewall's Response"). **Stonewall otherwise denies** that the acts listed in paragraph 1.1 – 1.2 and 1.4 – 1.5 were protected acts.

2.2. **Garden Court admits** that the act at paragraph 1.3 above was a protected act and denies that the acts listed in paragraph 1.1 – 1.2 and 1.4 – 1.5 above are capable of amounting to protected acts (see §§60-62 of the Re-Re-Amended Response dated 26 November 2021 ("Garden Court's Response").

3. **Did Garden Court carry out the treatment identified below:**

3.1. **Alleged Detriment 1**: The withholding of instructions and work in 2019, causing the Claimant financial loss.

3.1.1. The principal facts and matters relied on in support of this treatment are set out at paragraphs 3 to 5 of the Claimant's Further and Better Particulars and paragraph 64 of Garden Court's Response responds to this.

3.2. **Alleged Detriment 2**: The publishing of a statement stating that the Claimant was under investigation.

3.2.1. The principal facts and matters relied on in support of this treatment are set out at paragraphs 6 to 23 of the Claimant's Further and Better Particulars and paragraph 65 of Garden Court's Response responds to this.

3.3. **Alleged Detriment 3:** Stonewall's complaint to Garden Court.

3.3.1. The principal facts and matters relied on in support of this treatment are set out at paragraphs 24 to 33 and 82 to 88 of the Claimant's Further and Better Particulars and paragraph 66 of Garden Court's Response responds to this.

3**.4. Alleged Detriment 4**: The upholding of the complaint by Garden Court.

3.4.1. The principal facts and matters relied on in support of this treatment are set out at paragraphs 34 to 40 of the Claimant's Further and Better Particulars and paragraph 67 of Garden Court's Response responds to this.

3.5. **Alleged Detriment 5**: Garden Court's failure to comply with the Subject Access Requests.

3.5.1. The principal facts and matters relied on in support of this treatment are set out at paragraphs 41 to 46 of the Claimant's Further and Better Particulars and paragraph 68 of Garden Court's Response responds to this..

4. To the extent that any of the treatment set out in paragraph 3 above occurred, **were the individuals who carried out such treatment acting as authorised agents and/or in the course of employment for either (or both)** of the Garden Court Respondents for the purposes of s 109 of the Equality Act 2010?

5. To the extent that any treatment set out in paragraph 3 above occurred and was done by inidividuals as authorised agents/employees of either (or both) of the Garden Court Respondents as set out in paragraph 4 above, **did such treatment constitute a detriment?**

6. If so, was any such treatment **because of any protected act(s) done by the Claimant**?

B Direct belief discrimination by Garden Court

7. Did the Claimant hold the beliefs set out in paragraph 8 of the Particulars of Claim, or any of hem?

8. If so, are those beliefs (or any of them) philosophical beliefs within the meaning of s 10 of the Equality Act 2010?

9. If so, did Garden Court discriminate against the Claimant because of those philosophical beliefs? In particular:

9.1. Did Garden Court carry out the treatment identified at paragraph 3 above (or any of it)?

9.2. If so, were the individuals who carried out such treatment acting as authorised agents and/or in the course of employment for either (or both) of the Garden Court Respondents for the purposes of s 109 of the Equality Act 2010?

9.3. If so, was that treatment a detriment?

9.4. If so, was that treatment less favourable treatment because of the philosophical belief of the Claimant (as identified at paragraphs 7-8 above)?

10. On a comparison of cases for the purposes of s 13 of the Equality Act 2010 there must be no material difference between the circumstances relating to each case. The Claimant relies on a hypothetical comparator. The Claimant's position is that identifying the material circumstances for the purposes of defining a hypothetical comparator is not a matter that is solely or primarily for her and is not in any event necessary or appropriate at this stage, but is a matter for all parties to address in submissions in light of the evidence, in particular because the issues of 'less favourable treatment' and 'reason why' are interrelated aspects of a single question to which the shifting burden of proof applies, such that the material circumstances for the purposes of the 'less

favourable treatment' issue depend on the reason(s) for the treatment in question and may (if the burden shifts) be for the Respondents to prove - Shamoon v Chief Constable of Royal Ulster Constabulary [2003] ICR 337, HL. It is the Respondents' position that it is for the Claimant to show a prima facie case of discrimination and that involves identifying the features of a hypothetical comparator and that there is no reason why the Claimant should not be able to identify what she relies upon as the features of a hypothetical comparator now.

C. **Indirect discrimination by Garden Court: sex and sexual orientation**

11. Are the following capable of constituting provisions, criteria and/or practices ("PCPs") namely:

11.1. **First PCP: The treatment of gender critical beliefs as being bigoted or otherwise unworthy of respect.**

11.1.1. The principal facts and matters relied on in support of the existence of this PCP are set out at <u>paragraphs 47 to 70</u> of the Claimant's Further and Better Particulars and <u>paragraphs 70-72 of</u> Garden Court's Response responds to this.

11.2. Second PCP: Allowing Stonewall to direct Garden Court's complaints process.

11.2.1. The principal facts and matters relied on in support of the existence of this PCP are set out at <u>paragraphs 71 to 81</u> of the Claimant's Further and Better Particulars and <u>paragraphs 73 - 75</u> of Garden Court's Response responds to this.

12. If so, did Garden Court apply either or both of the PCPs (i) to the Claimant and (ii) to persons with whom the Claimant does not share the protected characteristics of sex and/or sexual orientation?

13. If so, did the PCPs put persons with whom the Claimant does share the protected characteristics of sex and/or sexual orientation at a particular disadvantage when compared with persons with whom the Claimant does not share the protected characteristics of sex and/or sexual orientation? The Claimant's case is that women and/or lesbians are more likely to have and actively to express strongly held gender critical beliefs and are therefore more likely to be treated as bigoted and to have complaints upheld against them as a result of the PCPs upon which she relies.

14. If so, did the PCPs put the Claimant at that disadvantage?

D Instructing, causing or inducement by Stonewall of Garden Court's alleged unlawful conduct

15. **Did Stonewall do the following conduct**:

15.1. Review Garden Court's policies and recommend amendments to these;

15.2. Offer discounted awareness raising sessions and training to Garden Court;

15.3. Offer to assist Garden Court with networking when they were attending networking events at Stonewall's offices;

15.4. On 3 January and 17 July 2019, by the actions of Reg Kheraj and Zainab Al-Farabi (Chambers' Account Managers at Stonewall) suggest that there should be formal relationship of Chambers "supporting" Stonewall's work in "driving forward the agenda for full LGBT equality in the UK";

15.5. Inform Stephen Lue that Stonewall was looking for a partner in strategic litigation regarding "the upcoming Gender Recognition Act becoming law";

15.6. By the actions of Shaan Knan, encourage attendees at the LGBT Consortium's Trans-Organisational Network Round Table to write to Garden Court's Heads of Chambers to send messages to Garden Court to make complaints about the Claimant in advance of an upcoming meeting at which Heads of Chambers would decide how to address complaints against the Claimant;

15.7. On 25 October 2019, by the actions of Shaan Knan, post on The Wall state that: "I spoke to Michelle Brewer … who told me she encourages the trans community to write messages of support (supporting action against Bailey) to the Heads of Garden Court Chambers. … Please write to the Head of Garden Court Chambers by Monday morning…"

Stonewall admits that Shaan Knan posted this statement on the Wall;

15.8. In response to Shaan Knan's post at paragraph 15.7 above, by the actions of Alex Drummond write: "Done."

Stonewall admits that Alex Drummond posted this statement on the Wall;

15.9. In response to Shaan Knan's post at paragraph 15.7 above, by the actions of Kirrin Medcalf write: "Done! (also discovered that she was one of the people targeting atrans member of our staff with online abuse so have put that into the email as well)."

Stonewall admits that Kirrin Medcalf posted this statement on the Wall.

15.10. On 25 October 2019, by the actions of Shaan Knan publish a post on a private STAG/Stonewall Facebook page in which he stated, "…I posted on stag wall just now asking for your support (by Monday). Trans ally barristers at Garden Court Chambers are meeting Head of Chambers on Monday, hoping to take formal action against barrister Allison Bailey who has posted anti trans messages on social media in her barrister capacity (Pro LGB Alliance launch etc). We need messages of support for our friends there eg Michelle Brewer, Alex Sharpe.. Pls read on The Wall. Let's not let Bailey get away with it!"

Stonewall admits that Shaan Knan posted this statement on the STAG Facebook page.

15.11. On 24 October 2019, in response to a request from Ms Brewer for an update on"yesterday", by the actions of Shaan Knan send Ms Brewer a WhatsApp message stating: "...I did bring up briefly the issue with the terfy barrister and asked people to support and write to Head of GC. I hope to put something together tonight..."

Stonewall admits that Shaan Knan sent this WhatsApp message.

15.12. On 6 November 2019, by the actions of Shaan Knan send Ms Brewer a WhatsApp message stating : "…i m afraid i likely won't make it to this afternoon's trans prisoner round table… Also would be great to catch up on the outcome of the Bailey case…"

Stonewall admits that Shaan Knan sent this WhatsApp message.

15.13. On 25 October 2019, by the actions of Shaan Knan send an email to Garden Court's Heads of Chambers about the Claimant's conduct as set out in paragraph 94 of the Claimant's Further and Better Particulars.

Stonewall admits that Shaan Knan sent an email to the Second Respondent's Heads of Chambers on 25 October 2019 raising concerns about the Claimant's conduct.

15.14. On 31 October 2019 by the actions of Kirrin Medcalf send an email to Garden Court's Heads of Chambers about the Claimant's conduct, including stating, "… for Garden Court Chambers to continue associating with a barrister who is actively campaigning for a reduction in trans rights and equality, while also specifically targeting members of our staff with transphobic abuse on a public platform, puts us in a difficult position with yourselves: the safety of our staff and community will always be Stonewalls first priority. I trust that you will do what is right and stand in solidarity with trans people".

Stonewall admits that Kirrin Medcalf sent an email to the Second Respondent's Heads of Chambers on 31 October 2019 in those terms.

16. **Did the conduct referred to at paragraphs 15.1 to 15.14 above amount to the instruction, or attempt to instruct, Garden Court to act in a way which did or would constitute a basic contravention by:**

16.1. subjecting the Claimant to a detriment because she had done one or more of theprotected acts referred to in paragraph 1 above contrary to s 27 of the Equality Act 2010 - **victimisation**

16.2. **directly discriminating** against the Claimant because of a philosophical belief contrary to s 13 of the Equality Act 2010; and/or

16.3. applying one or both of the PCPs referred to at paragraph 11 above? If so, would the application of either of such PCPs have placed the Claimant and others who are (i) women or (ii) lesbians at a particular disadvantage when compared with persons who are not (i) women or (ii) lesbians contrary to section 19 of the Equality Act 2010? – **indirect discrimination**

17. **Did the conduct referred to at paragraphs 15.1 to 15.14 above amount to the causing, or an attempt to cause, Garden Court to act in a way which did or would constitute a basic contravention by:**

17.1. subjecting the Claimant to a detriment because she had done one or more of theprotected acts referred to in paragraph 1 above contrary to section 27 of the Equality Act 2010; and/ or

17.2. directly discriminating against the Claimant because of a philosophical belief contrary to section 13 of the Equality Act 2010; and/or 17.3. applying one or both of the PCPs referred to at paragraph 11 above? If so, would the application of either of such PCPs have placed the Claimant and others who are (i) women or (ii) lesbians at a particular disadvantage when compared with persons who are not (i) women or (ii) lesbians contrary to section 19 of the Equality Act 2010?

18. Did the conduct referred to at paragraphs 15.1 to 15.14 above amount to inducement, or an attempt to induce, the Second and/or Third Respondents, directly or indirectly, to act in a way which did or would constitute a basic contravention by:

18.1. subjecting the Claimant to a detriment because she had done one or more of the protected acts referred to in paragraph 1 above contrary to section 27 of the Equality Act 2010; and/ or

18.2. directly discriminating against the Claimant because of a philosophical belief contrary to section 13 of the Equality Act 2010; and/or

18.3. applying one or both of the PCPs referred to at paragraph 11 above? If so, would the application of either of such PCPs have placed the Claimant and others who are (i) women or (ii) lesbians at a particular disadvantage when compared with persons who are not (i) women or (ii) lesbians contrary to section 19 of the Equality Act 2010?

19. **Is Stonewall vicariously liable for the conduct referred to at paragraphs 15.1 to 15.14 on the basis that the individuals who did the acts in question were acting as authorised agents and/or in the course of employment for Stonewall** for the purposes of s 109 of the Equality Act 2010?

Stonewall admits that it is vicariously liable for the actions of Reg Kheraj, Zainab Al-Farabi and Kirrin Medcalf. Stonewall denies that it is vicariously liable for the actions of Shaan Knan and Alex Drummond.

20. **Has the Claimant been subjected to a detriment as a result of Stonewall's conduct?** The Claimant relies on the following alleged detriments:

20.1. The withholding of instructions and work by Garden Court (and/or by individuals for whose actions Garden Court are liable – see paragraph 4 above) in 2019, causing the Claimant financial loss;

20.2. The publishing of a statement on 24 October 2019 by or on behalf of Garden Court stating that the Claimant was under investigation;

20.3. Stonewall's complaint to the Third Respondent dated 31 October 2019;

20.4. The outcome of the investigative process by Garden Court (and/or by individuals for whose actions Garden Court are liable – see paragraph 4 above);

20.5. Garden Court's failure to comply with the Subject Access Requests;

20.6. The application of the PCPs referred to at paragraph 11 above.

21. **For the avoidance of doubt,** the Claimant and Stonewall agree that, pursuant to s 111(6) of the Equality Act 2010, it does not matter whether:

21.1. A basic contravention occurs; or

21.2. Any other proceedings are, or may be, brought in relation to Garden Court's conduct.

E Jurisdiction: time limits

22. The Claimant commenced early conciliation on 10 February 2020 in relation to the First and Second Respondents. The early conciliation period ended on 10 March 2020 and the Claimant presented the claim on 9 April 2020. In those circumstances, having regard to the primary limitation period in s 123 of the Equality Act 2010 and the extension to that period by reason of early conciliation pursuant to s 140B of that Act, the causes of action as originally pleaded are <u>in time</u> in respect of any act which occurred <u>on or after 11 November 2019</u>. Therefore, in respect of any acts which occurred before that date:

22.1. Do they constitute conduct extending over a period which ended on or after 11 November 2019 for the purposes of s 123(3)(a) of the Equality Act 2010?

22.2. If not, is it just and equitable to extend time pursuant to s 123(2)(b) of the Equality Act 2010?

23. In relation to claims against the Third Respondent (save for the direct belief discrimination claim):

23.1. Does any different cut-off date apply?

The Third Respondent maintains, applying *Ryan v Bennington Training Services Ltd EAT/0345/08,* that it is 3 months (less one day) prior to 9 April 2020, the date the claim was presented, namely, 10 January 2020 and, in the circumstances, there is no extension for early conciliation which would apply to the claim against the Third Respondent.

The Claimant maintains that the question of whether any additional or different limitation barrier applies in respect of the claim against the Third Respondent has already been determined in the negative by the ET Judgment sent to the parties on 14 February 2021 at §32; alternatively and in any event that the benefit of the extension for early conciliation also applies in principle to the claim against the Third Respondent by reason of the broad scope of the 'matter' covered by such conciliation under section 18A of the Employment Tribunals Act 1996 ,applying *Science Warehouse Ltd v Mills [2016] ICR 252, EAT* and *Drake International Systems Ltd & others v Blue Arrow Ltd [2016] ICR 445, EAT*; and consequently in either event that the relevant cut-off date for the claim against the Third Respondent is the same as for the claims against the First and Second Respondents, namely 11 November 2019.

23.2. If so, then in respect of any acts which occurred before any such different date:

23.2.1. Do they constitute conduct extending over a period which ended on or after that date for the purposes of s 123(3)(a) of the Equality Act 2010? The Third Respondent's position is that this argument is not available for the Claimant by reason of the judgment allowing the amendment.

23.2.2. If not, is it just and equitable to extend time pursuant to s 123(2)(b) of the Equality Act 2010?

24. In respect of the claim for direct belief discrimination against Garden Court 1, which is to be treated as presented on the date on which permission to amend was granted, namely 12 November 2021 (See *Galilee v CMP [2018] ICR 634*), is it just and equitable to extend time pursuant to s 123(2)(b) of the Equality Act 2010?

For the avoidance of doubt, the amendment to the claim against Stonewall to rely on instructing / causing / inducing direct belief discrimination did not constitute a new cause of action and therefore no additional limitation point arises in respect of that claim: see paragraphs 16-17 of the Written Reasons for Decision on Amendment Application of EJ Stout, sent to the parties on 12 November 2021.

D. **Remedy**

25. The Claimant seeks:

25.1. A declaration that the Respondents breached the Equality Act 2010, and that:

25.1.1. Garden Court victimised her, directly discriminated against her because of her philosophical beleifs and indirectly discriminated against her on grounds of her sex and/or sexual orientation; and

25.1.2. Stonewall instructed, caused or induced (or attempted to instruct, cause or induce) Garden Court to contravene the Equality Act 2010.

25.2. Recommendations for the Respondents.

25.3. Compensation from the Respondents at such level as the tribunal sees fit.

26. What declaration(s) (if any) should the Tribunal make?

27. What recommendations (if any) are appropriate?

28. What compensation (if any) should the Tribunal award the Claimant, having regard to:

28.1. any losses suffered by the Claimant as a result of any unlawful discrimination by the Respondents and the steps taken by the Claimant to mitigate any losses; and

28.2. any injury to feelings suffered by the Claimant.

29. In the event that any compensation is awarded in respect of any acts of unlawful discrimination, what loss is caused by or attributable to such act(s) of discrimination and which Respondent(s) was/were responsible for such unlawful discrimination? Are any of the Respondents jointly and severally liable?

APPENDIX TWO

LIST OF MEMBERS OF GARDEN COURT

MEMBERS ON 31 DEC 2019

Mr Laurie Fransman QC
Mr Henry Blaxland QC
Mr Michael Turner QC
Mr Icah Peart QC
Mr Stephen Kamlish QC
Mr Ian Peddie QC
Mr Dexter Dias QC
Mr James Scobie QC
Ms Judy Khan QC
Mr Rajiv Menon QC
Mr AlI Bajwa QC
Mr Bernard Tetlow QC
Mr Peter Wilcock QC
Ms Stephanie Harrison QC
Mr Leslie Thomas QC
Mr Marc Willers QC
Ms Liz Davies
Mr Michael Ivers QC
Ms Di Middleton QC
Ms Clare Wade QC
Ms Sonali Naik QC
Ms Amanda Weston QC
Miss Brenda Campbell QC
Mr Keir Monteith QC
Mr David Emanuel QC
Mr Hossein Zahir QC
Mr Stephen Simblet
Ms Allison Munroe
Ms Anya Lewis
Mr Sam Robinson
Mr Mark Gatley
Ms Nicola Braganza
Mr Michael House
Ms Marguerite Russell
Ms Sarah Forster
Mr Patrick Roche
Mr Ben Beaumont
Mr Lalith de Kauwe
Ms Kathryn Cronin
Ms Celia Graves
Mr Michael Hall
Ms Ravinder Rahal
Mr Stephen Cottle
Ms Nerida Harford-Bell
Ms Amanda Meusz
Mr Peter Jorro
Mr Christopher Williams
Mr Bill Evans
Mr Alistair Polson
Mr Alexander Taylor-Camara
Mr Piers Mostyn

Mr Peter Rowlands
Ms Bethan Harris
Ms Carol Hawley
Ms Rebecca Chapman
Mr Edward Fitzpatrick
Ms Maggie Jones
Mr Malek Wan Daud
Ms Valerie Easty
Ms Helen Curtis
Mr Henry Drayton
Mr Rajeev Thacker
Mr Kevin Gannon
Mr Duran Seddon
Ms Navita Atreya
Mr David Jones
Mr Edward Grieves
Ms Amina Ahmed
Ms Grace Brown
Mr Gregor Ferguson
Ms Birinder Kang
Mr Roger Pezzani
Mr Nick Wrack
Miss Jacqueline Vallejo
Mr Patrick Lewis
Ms Louise Hooper
Ms Sharon Love
Mrs Helen Butcher
Mr Adrian Berry
Mr Paul Troop
Mr Adrian Marshall Williams
Ms Mai-Ling Savage
Ms Rebekah Wilson
Ms Katharine Marks
Mr Hugh Mullan
Ms Hannah Rought-Brooks
Ms Emma Favata
Mr Ronan Toal
Miss Minka Braun
Mr Sam Parham
Ms Catherine O'Donnell
Mr Edward Elliott
Mr Christian Wasunna
Miss Marina Sergides
Ms Felicity Williams
Mr Desmond Rutledge
Miss Allison Bailey
Mr Sadat Sayeed
Dr Timothy Baldwin
Mr Colin Yeo
Miss Irena Sabic
Mrs Maha Sardar
Ms Victoria Meads
Ms Stella Harris
Mr Alex Rose
Ms Abigail Smith

Ms Bansi Soni
Mr Tom Wainwright
Miss Abigail Bache
Miss Davina Krishnan
Mr Mark Symes
Mr Christopher McWatters
Mr Andrew Eaton
Mr William Tautz
Mrs Dinah Loeb
Mr Stephen Marsh
Ms Joanne Cecil
Ms Lucie Wibberley
Ms Justine Compton
Ms Artis Kakonge
Ms Sarah Hemingway
Mr Greg Ó Ceallaigh
Ms Victoria Burgess
Mr Stephen Lue
Mr Giles Newell
Ms Jo Wilding
Ms Kirsten Heaven
Mr Alexander Grigg
Mr Richard Reynolds
Ms Helen Foot
Ms Hannah Wyatt
Mr David Renton
Miss Shahida Begum
Ms Gemma Loughran
Ms Lyndsey Sambrooks-Wright
Ms Thalia Maragh
Mr Raza Halim
Mr Ali Bandegani
Ms Gráinne Mellon
Mr Gerwyn Wise
Mr Russell Fraser
Mr Owen Greenhall
Mr Michael Goold
Mr Jacob Bindman
Miss Emma Fenn
Mr Connor Johnston
Mr Paul Clark
Miss Maria Moodie
Mr Bijan Hoshi
Ms Emma Fitzsimons
Ms Catherine Oborne
Ms Alia Akram
Ms Naomi Wiseman
Ms Nisha Bambhra
Mr Taimour Lay
Mr James Holmes
Miss Tessa Buchanan
Ms Una Morris
Mr David Sellwood
Ms Grace Capel
Ms Sophie Caseley

Ms Susan Wright
Mr Thomas Copeland
Mr Stephen Clark
Ms Audrey Mogan
Miss Katherine Duncan
Mr Sebastian Elgueta
Miss Ubah Dirie
Ms Monifa Walters-Thompson
Mr Meredoc McMinn
Mr Lee Sergent
Ms Ann Osborne
Mr Tihomir Mak
Ms Laura Profumo
Mr Franck Magennis
Mr Courtenay Barklem
Mrs Navida Quadi
Ms Ella Gunn
Mr Steven Galliver-Andrew
Ms Kate Aubrey-Johnson
Ms Michelle Brewer
Ms Bryony Poynor
Ms Maya Naidoo
Ms Maya Sikand
Ms Shu Shin Luh
Mr Anthony Vaughan
Ms Camila Zapata Besso
Mr Sean Horstead
Mr Tom Stoate
Mr Ifeyanyi Odogwu
Ms Miranda Butler
Mr Mukhtiar Singh

MEMBERS WHO JOINED DURING 2019

Mr Mukhtiar Singh - 25 March 2019
Mr Hugh Mullan - 01 May 2019
Mr Gerwyn Wise - 02 May 2019
Ms Camila Zapata Besso - 18 July 2019
Ms Ubah Dirie - 12 Aug 2019
Ms Ella Gunn - 14 Oct 2019
Mr Steven Galliver-Andrew - 14 Oct 2019
Mr Lee Sergent - 04 Nov 2019

MEMBERS WHO LEFT BETWEEN 31.12.19 AND 28.08.2020

Ms Michelle Brewer - left 31 January 2020
Ms Bryony Poynor - left 31 March 2020
Ms Maya Naidoo - left 04 April 2020

09 Jun 2023
EMPLOYMENT APPEAL TRIBUNAL
EA-2022-001163-NLD

IN THE EMPLOYMENT APPEAL TRIBUNAL **Appeal No.**

BETWEEN

MS ALLISON BAILEY

Appellant

and

(1) STONEWALL EQUALITY LTD

(2) GARDEN COURT CHAMBERS LTD

(3) RAJIV MENON QC and STEPHANIE HARRISON QC sued as Representatives of all members of Garden Court Chambers (except the Appellant)

Respondents

NOTICE OF APPEAL

A. The appellant is Ms Allison Bailey, [redacted]

B. Any communication relating to this appeal may be sent to the appellant care of Peter Daly, Doyle Clayton Solicitors Ltd, One Crown Court, Cheapside, London, EC2V 6LR. Email: [redacted].

C. The appellant appeals from the Judgment and Reasons of the London Central Employment Tribunal (the 'Tribunal') sent to the parties on 27 July 2022 (the 'Judgment').

D. The parties to the proceedings before the employment tribunal, other than the appellant were:

i. Stonewall Equality Ltd, 192 St John Street, London, EC1V 4JY, represented before the Tribunal by CMS Cameron McKenna Nabarro Olswang LLP, Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN. The solicitors with conduct of the matter

ii. Garden Court Chambers Ltd, 57-60 Lincoln's Inn Fields, London, WC2A 3LJ, represented before the Tribunal by TMP Solicitors LLP,

iii. Rajiv Menon QC and Stephanie Harrison QC sued as Representatives of all members of Garden Court Chambers (except the appellant), 57-60 Lincoln's Inn Fields, London, WC2A 3LJ, also represented before the Tribunal by Ms .

E. Copies of:

i. the written record of the employment tribunal's judgment and the written reasons of the employment tribunal;

ii. the claim (ET1), including the final Further Revised Amended Particulars of Claim, Further and Better Particulars and Further Particularisation of the Tweets. Earlier versions of the pleadings are not provided as they are incorporated within the Final versions attached herewith;

iii. the response (ET3) of the first respondent, including both the Grounds of Resistance in their original form and the final Further Re-Amended Grounds of Resistance; and

iv. the response (ET3) of the second respondent, including both the Grounds of Resistance of the Second Respondent in their original form and the final Re-Re-Amended Grounds of Resistance of the Second and Third Respondents (which stood as the response of both the second and third respondents). Earlier versions of the pleadings are not provided as they are incorporated within the Final versions attached herewith;

are attached to this Notice.

F. The appellant has not made any application to the employment tribunal for a review or reconsideration of its judgment.

For clarity and convenience, in the Grounds of Appeal set out below, the appellant will be referred to as 'the Claimant', the first respondent will be referred to as 'Stonewall' and the second and third respondents will be referred to collectively as 'Garden Court'.

G. The grounds upon which this appeal is brought are that the employment tribunal erred in law in dismissing the Claimant's claim against Stonewall under section 111 of the Equality Act 2010 ('EqA10') in respect of the complaint to Garden Court made by Kirrin Medcalf, Head of Trans Inclusion at Stonewall:

Numbered Grounds

Ground 1: wrong test for causation under s111(2)

1. The Tribunal erred in rejecting the claim for causing a basic contravention by applying the wrong test for causation and/or remoteness under EqA10, s111(2) and/or by wrongly focusing on subjective intentions of Mr Medcalf and/or by wrongly importing a requirement that he must have intended the specific basic contravention which occurred.

2. There is no requirement in EqA10, s111 that the basic contravention which in fact occurs must have been exactly what was intended by the s111 respondent, or that there need be any conscious subjective intention to cause any particular outcome and/or to bring about any particular discrimination. Such conscious subjective intention is not a necessary ingredient of unlawful discrimination generally and is not required under s111. In a claim for causing a basic contravention in the form of direct discrimination, it is sufficient to establish liability that:

    (a) the s111 respondent (or their employee or agent) does something in respect of the claimant,

(b) in doing so they are materially influenced (consciously or subconsciously) by the protected characteristic, applying the same test that applies in respect of direct discrimination under s13, and

(c) their actions cause (in a but for sense) a basic contravention against the claimant which was (objectively) a reasonably foreseeable consequence of those actions.

3. On the Tribunal's own findings:

(a) It rejected Mr Medcalf's own explanation in evidence for writing the complaint (Judgment, §368) and held instead that he sent it in order to register a 'protest' about the Claimant (Judgment, §§372 & 377).

(b) That protest was about matters which constituted the Claimant's protected beliefs (Judgment, §§279, 290-291 & 367) – it was a *'protest about her views'* (i.e. her beliefs) (§369).

(c) But for that protest, the basic contravention by Garden Court which the Tribunal found *did* occur in respect of detriment 4 would not have occurred (Judgment, §377).

4. Those facts are sufficient for the claim to succeed.

5. The basis on which the Tribunal nevertheless found that the claim for causing a basic contravention under s111(2) was not made out was that, although detriment 4 would not have occurred but for Mr Medcalf's complaint, that was *'the occasion of the report [by Maya Sikand on behalf of Garden Court], no more'*; and Mr Medcalf's complaint itself was not *'looking for any action'* but was *'no more than [a] protest, with an appeal to a perceived ally in a "them and us" debate'* (Judgment, §§369, 372, 377). Those reasons do not clearly or adequately explain the legal test which the Tribunal thought that it was applying in order to dismiss the claim (and for that reason alone the Tribunal erred), but the Tribunal's reliance on those matters can only be explained on the basis that it thought that a conscious subjective intention to bring about particular action was a necessary ingredient of liability, and/or that the action in fact taken by Garden Court was too remote

and/or otherwise broke the chain of causation. In both of those respects, the Tribunal erred: no conscious subjective intention to bring about particular action was required and, on the Tribunal's own finding that Mr Medcalf complained to Garden Court in order to register a 'protest' against the Claimant's beliefs, a formal investigation and consequential action because of those beliefs of the kind which occurred was a reasonably foreseeable consequence. Indeed, even on the Tribunal's own findings, at least *'a public denial of association with [the Claimant's] views'* was something that Mr Medcalf may have intended (Judgment, §369).

6. Further and in any event, to register a 'protest' by means of a formal complaint must entail an intention that the recipient of the complaint will investigate and take some consequential action, even if the complainant does not have particular action in mind. Consequently, even if (contrary to the primary arguments above) an intention to bring about some consequential action is a necessary ingredient under s111(2), where such a complaint is made because of the Claimant's protected beliefs and results (in a but for sense) in an investigation and/or other consequential action which is to the Claimant's detriment (whether or not that action itself amounts to a basic contravention), that complaint must be regarded as having caused (or as an attempt to cause) direct discrimination. Therefore, on the Tribunal's own findings (summarised at paragraph 7.2 above), Mr Medcalf's complaint must in any event be regarded as having caused (or as an attempt to cause) direct discrimination in contravention of s111(2), and to conclude otherwise on those findings is perverse.

Ground 2: wrong approach to inducement under s111(3) and the salience of the relevant relationship

7. The Tribunal further erred in treating (in particular at Judgment, §§373-6) exploitation of the relevant relationship under EqA10, s111(7) (namely Garden Court's membership of Stonewall's Diversity Champions scheme) as a necessary ingredient of unlawful inducement under s111(3). There is no such requirement: the EHRC *Code of Practice on Employment (2011)* makes clear that persuasion alone is sufficient for something to be an inducement; it does not have to be linked to either carrot or stick (§9.18). Inducement does not, therefore, need to include

an element of threat or exploitation, whether related to the relevant relationship or otherwise. The only requirement in respect of the relevant relationship is that it is one in which the s111 respondent *could* discriminate against the other party to that relationship. There is no requirement that the relationship itself is in fact consciously perceived by either party to have been relevant to the inducement, whether as a tool of exploitation or otherwise. Moreover, as with causing a basic contravention under s111(2) (above), there is no requirement that the inducement must be subjectively intended to bring about the particular form of basic contravention which actually occurs. It is sufficient to establish liability for inducing a basic contravention under s111(3) that the s111 respondent (or their employee or agent) does something which seeks to persuade the other party to the relevant relationship to take *some* (detrimental) action in relation to the claimant because of the relevant protected characteristic. But it is not necessary for the s111 respondent to intend the particular detriment which occurred, or to have in mind any particular detriment.

8. The findings that there was no exploitation of the Diversity Champions relationship and no intention to bring about a particular consequence were, however, central to the Tribunal's reasoning on inducement, in particular at §§372-3 & 376. The Tribunal therefore erred in that regard.

9. Moreover, on the Tribunal's findings, Mr Medcalf's actions in registering a 'protest' by way of a formal complaint must have been intended to induce *some* formal consideration of the issue and some action adverse to the Claimant – even if only *'public denial of association'* (cf Judgment, §369). That is sufficient to establish liability for inducing (or attempting to induce) a direct discrimination contrary to s111(3).

Outcome sought

H. The Claimant seeks an order that the appeal is upheld and substituting a finding that her claim against Stonewall in respect of Mr Medcalf's complaint succeeds.

BEN COOPER QC

Dated 7 September 2022

<u>IN THE EMPLOYMENT APPEAL TRIBUNAL</u>

<u>Appeal No. </u>

BETWEEN

MS ALLISON BAILEY

<u>Appellant</u>

and

(1) STONEWALL EQUALITY LTD

(2) GARDEN COURT CHAMBERS LTD

(3) RAJIV MENON QC and STEPHANIE HARRISON QC sued as Representatives of all members of Garden Court Chambers (except the Claimant)

<u>Respondents</u>

NOTICE OF APPEAL

Doyle Clayton

REF. PD/PD/B2906

Ben Cooper QC

Old Square Chambers

EA-2022-001163-NLD

RESPONDENT'S ANSWER

APPEAL FROM DECISION OF EMPLOYMENT TRIBUNAL/CERTIFICATION OFFICER

Ms Allison Bailey v (1) Stonewall Equality Ltd (2) Garden Court Chambers Ltd (3) Rajiv Menon KC and Stephanie Harrison KC (sued as representatives of all members of Garden Court except the Appellant)

1. The Respondent is: ***(name and address of Respondent)***

Stonewall Equality Limited, 192 St John Street, London EC1V 4JY.

2. Any communication relating to this appeal may be sent to the respondent at: ***(Respondent's address for service, including telephone number, if any)***

The solicitors with conduct of this matter are [redacted] an [redacted] of CMS Cameron McKenna Nabarro Olswang LLP,

CMS Cameron McKenna Nabarro Olswang LLP,
Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN

Email: [redacted]

Email: [redacted]

3. The Respondent intends to resist the appeal of: ***(here give the name of the Appellant)***

Ms Allison Bailey

The grounds on which the Respondent will rely are the grounds relied upon by the Employment Tribunal for making the Judgment, Decision or Order appealed from and the following grounds:

(here set out grounds which differ from those relied upon by the Employment Tribunal or Certification Officer, as the case may be)

1. The Employment Tribunal's findings of facts support its decision to dismiss the claims against the First Respondent.

2. The Claimant wrongly equates the investigation of a complaint with a basic contravention within the meaning of section 111 of the Equality Act 2010. The mere

investigation of a complaint is not, without more, a basic contravention within the meaning of section 111 of the Equality Act 2010.

3. There was no finding by the Employment Tribunal that the First Respondent's complaint was made in bad faith or with the intention of discriminating against the Claimant.

4. In these circumstances, the Employment Tribunal was not only entitled to, but bound to dismiss the Claimant's claim pursuant to section 111.

Further and in the alternative

5. The purported summary of the Employment Tribunal's findings at paragraph 3 of the Notice of Appeal places a gloss on the Employment Tribunal's actual reasoning and is both inaccurate and incomplete.

6. The Employment Tribunal correctly directed itself that, where the basic contraventions themselves require a mental element (as in direct discrimination and victimisation) then the Tribunal must find that the First Respondent's reason for its instruction, inducement or causing a basic contravention, or its attempts to do so, were significantly influenced by the Claimant's protected characteristic, even if that was not the motive or the conscious reason (Judgment p.97 §365).

7. The Employment Tribunal applied the correct test for causing or attempting to cause a basic contravention under section 111.

8. The Employment Tribunal's reasoning reflects the fact that it understood and applied the distinction between a protected characteristic being an important part of the context or a 'but for' cause of the treatment complained of and it being a subjective reason for that treatment.

9. Nothing in the Employment Tribunal's reasons suggests that it considered it a requirement that the First Respondent intended the specific basic contravention which in fact occurred. Accordingly, the Employment Tribunal did not wrongly focus on the subjective intentions of the First Respondent.

10. The Employment Tribunal's reasons and analysis are consistent with the finding that in making a complaint the First Respondent did not cause or attempt to cause the Second Respondent to do anything in respect of the Claimant. It was, as the Employment Tribunal found, "no more than [a] protest." (Judgment p.99,100 §§372, 377). Further, it was consistent with other interventions to promote inclusion that the First Respondent had made which the Claimant had placed in evidence.

11. The Employment Tribunal did not treat exploitation of the relevant relationship under section 111(7) as a necessary ingredient of unlawful inducement under section 111(3). The Employment Tribunal was entitled to consider that the presence or absence of reference to the relevant relationship in the context of whether there were any inferences which might properly be drawn in all the circumstances of the case.

12. The Employment Tribunal concluded that there was no actual or attempted inducement having properly directed itself on the law and having considered detailed written and oral submissions on the relevant law. Its findings in this regard are clear and trenchant. (Judgment p.99 §373).

13. Further and in any event the Employment Tribunal's findings in respect of the First Respondent's actions are a complete answer to the proposition that the First Respondent sought to *persuade* the Second Respondent to do anything because of the relevant protected characteristic.

Disposal

14. If contrary to the First Respondent's contentions the Employment Tribunal erred in law in any material respect, the correct order on disposal would be for this matter to be remitted to the Employment Tribunal.

IJEOMA OMAMBALA KC

4. The Respondent cross-appeals from *(here give particulars of the decision appealed from)*

The First Respondent does not cross appeal.

5. The Respondent's grounds of appeal are *(here state the grounds of appeal)*

N/A

Date......7 July 2023...... **Signed**......CMS Cameron McKenna Nabarro Olswang LLP......

EA-2022-001163-NLD

RESPONDENT'S ANSWER

APPEAL FROM DECISION OF EMPLOYMENT TRIBUNAL/CERTIFICATION OFFICER

Ms Allison Bailey v (1) Stonewall Equality Ltd (2) Garden Court Chambers Ltd (3) Rajiv Menon KC and Stephanie Harrison KC (sued as representatives of all members of Garden Court except the Appellant)

1. **The Respondent is:**

(2) Garden Court Chambers Ltd
(3) Rajiv Menon KC and Stephanie Harrison KC (sued as representatives of all members of Garden Court except the Appellant)

Garden Court Chambers
57-60 Lincoln's Inn Fields,
London, WC2A 3LJ

2. **Any communication relating to this appeal may be sent to the respondent at:**
(Respondent's address for service, including telephone number, if any)

TMP Solicitors LLP
99
Bishopsgate
London
EC2M 3XB

3. **The Respondent intends to resist the appeal of:** Ms Allison Bailey

The grounds on which the Respondent will rely are [the grounds relied upon by the Employment Tribunal/Certification Officer for making the Judgment, Decision or Order appealed from][and][the following grounds]

(here set out grounds which differ from those relied upon by the Employment Tribunal or Certification Officer, as the case may be)

On the basis that the pleaded grounds of appeal seek to challenge the Tribunal's conclusion that the Claimant's claim against Stonewall under S.111 of the Equality Act 2010 was not made out, this appeal is not against the Second and Third Respondents and there is no reason for the Second and Third Respondents to be involved. They do not resist the appeal strictly on this basis and will not comment on the grounds of appeal. If, however subsequent documents, such as skeleton arguments, raise issues relating to the Second and Third Respondents, the Second and Third Respondents may seek permission to file written submissions and/or make oral submissions or file other documentation in response.

FORM 3 CONT'D\......

4. The Respondent cross-appeals from *(here give particulars of the decision appealed from)*

N/A

5. The Respondent's grounds of appeal are *(here state the grounds of appeal)*

See Reply 3 above.

Date 5 July 2023

Signed T M P Solicitors LLP

Ref: EA-2022-001163-NLD

APPEALS SIFTED DIRECTLY TO FULL HEARING

REASONS

Appellant	MS ALLISON BAILEY
Respondent	STONEWALL EQUALITY LTD AND ORS
Reference number	EA-2022-001163-NLD
Sift Judge	EADY P

Reasons:

The proposed grounds of appeal raise reasonably arguable questions of law relating to the approach of the Employment Tribunal to the application of sub-sections 111 (2) and (3) **Equality Act 2010**. It warrants consideration at a full hearing.

Eady P

6 March 2023

EA-2022-001163-NLD

EMPLOYMENT APPEAL TRIBUNAL

Potential Appeal No EA-2022-001163-NLD

BEFORE

THE HONOURABLE MRS JUSTICE EADY DBE, PRESIDENT
IN CHAMBERS

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunal Act 1996 from the decision of an Employment Tribunal sitting at Central London and sent to the parties on the 27th day of July 2022.

BETWEEN:

Ms Allison Bailey — Appellant

- and -

1. Stonewall Equality Ltd
2. Garden Court Chambers Ltd
3. Rajiv Menon KC and Stephanie Harrison KC (sued as representatives of all members of Garden Court except the Appellant) — Respondents

UPON a Notice of Appeal received on the 6th day of September 2022

IT IS ORDERED THAT:

1. This appeal be set down for a full hearing for the Reasons attached hereto. The time estimate for this hearing (including time for judgment to be delivered) is 1 ½ days [*the parties are to notify the Tribunal in writing if and so soon as they disagree with such estimate*]. Category A.

2. Within 28 days of the **seal date of this Order,** the Respondents must lodge with the Employment Appeal Tribunal and serve on the Appellant an Answer, and if such Answer includes a cross-appeal shall forthwith apply to the Employment Appeal Tribunal on paper on notice to the Appellant for directions as to the hearing or disposal of such cross-appeal.

3. The parties will be notified of the hearing date in due course. The hearing will be conducted in person. If any party has a concern about attending a hearing in person they should raise it in writing to the EAT (with a copy to the other party or parties) within 14 days of the seal date of this Order or, if the concern arises later because of a change in circumstances, as soon as practicable after the concern arises. The other party or parties may then write to the EAT (copy to the party that has raised the concern) with any comments, within 7 days of receipt. A Judge or the Registrar will thereafter decide whether the hearing should proceed in person or remotely or some other Order should be made, and the parties will be notified of their decision. The EAT may, itself, notify the parties that the hearing will be converted to a remote hearing, should it be decided that it is appropriate or necessary to do so.

4. If it is considered by any party that a point of law raised in the appeal or cross-appeal cannot be argued without reference to evidence given (or not given) at the Employment Tribunal, the nature of which does not, or does not sufficiently, appear from the written reasons of the Employment Tribunal, then the parties so contending shall within 28 days of the seal date of

this Order give notice to the other party(ies), and they shall seek to co-operate in the agreement of a statement or note in that regard; in the absence of such agreement within 14 days of such request, either party shall be at liberty to apply on paper within 7 days thereafter to the Employment Appeal Tribunal, giving notice to the other party(ies), in relation to such evidence (whether for the purpose of resolving such disagreement or of seeking answers to a questionnaire or requesting the Employment Judge's notes (in whole or in part), from the relevant Employment Tribunal).

5. The parties shall co-operate in compiling and agreeing and shall, by no later than 28 days prior to the date fixed for the hearing of the full appeal, lodge with the Employment Appeal Tribunal **2** copies of an agreed, indexed and paginated bundle of material documents for the hearing of the appeal prepared in accordance with the Employment Appeal Tribunal Practice Direction. It shall consist of the Judgment against which the appeal is made, the sealed Notice of Appeal, the Claim (ET1), Response (ET3), any questionnaires and replies, relevant orders, judgments and written reasons of the Employment Tribunal, relevant orders and judgments of the Employment Appeal Tribunal, any affidavits and comments (where ordered under paragraph **9** above). In addition, other relevant documents which (a) were before the Employment Tribunal; and (b) to which it will be ***necessary*** for any party to refer during the appeal may be added as a separate bundle. Permission must be sought if it is proposed to lodge a separate bundle which is in excess of 50 pages: any excess will have to be justified.

6. The Appellant shall lodge with the Employment Appeal Tribunal and serve on the Respondents a chronology and the parties shall exchange and lodge with the Employment Appeal Tribunal skeleton arguments for the purposes of this appeal, not less than 14 days before the date fixed for the hearing of the full appeal.

7. The parties shall co-operate in agreeing a list of authorities and shall jointly or severally lodge a list or lists and copies of such authorities for the purposes of the appeal not less than 7 days prior to the date fixed for the hearing of the full appeal. The authorities are to consist only of those which identify a relevant principle, and not those which are merely illustrative of it. If more than 10 are to be relied on, the parties must be prepared to justify their selection to the court. They are to be arranged in chronological order in a ring-file binder, separated by tabs, with relevant passages clearly marked by side-lining, highlighting, or in some other effective way. Electronic copies of reports may be used, but where the authority is reported in the ICR or IRLR series, in the official series of Law Reports, or if not, the All England Reports, then so far as the parties' facilities permit it a copy (whether electronic or not) of one of those reports must be utilised. You do not need to include copies of any authority shown in the list of 'familiar authorities' on the EAT's website, as copies are available in court.

8. The parties are permitted to apply for this Order, or part of it (save for paragraph 1), to be varied, supplemented or revoked. Any such application should be copied to the other party or parties. The Employment Appeal Tribunal may, on its own initiative, vary, supplement or revoke this Order, or part of it. If this order, or any part of it is varied, supplemented or revoked, the parties will be notified.

D A T E D the 13th day of March 2023

TO: Doyle Clayton Solicitors Ltd for the Appellant
CMS Cameron Mckenna Nabarro Olswang LLP for the 1st Respondent
TMP Solicitors LLP for the 2nd Respondent
Rajiv Menon KC the Respondent
Stephanie Harrison KC the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No. 2202172/2020)

EMPLOYMENT APPEAL TRIBUNAL

Appeal No: **EA-2022-001163-NLD**

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the decision of an Employment Tribunal sitting at Central London Employment Tribunal and sent to the parties on the 27th Day of July 2022.

B E T W E E N	Ms Allison Bailey	Appellant
	and	
	1. Stonewall Equality Ltd, 2. Garden Court Chambers Limited, 3. Rajiv Menon, 4. Ms Stephanie Harrison QC	Respondents

NOTICE OF HEARING

TAKE NOTICE that this Appeal will be in the List for hearing before the Employment Appeal Tribunal sitting at

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

10:30AM on the **14th &15th /05/2024**

The estimated duration of the hearing is **1 ½ Days** and you are required forthwith to notify the Registrar of any matters that may affect the length of the hearing.

Dated the 26 August 2023

For the Registrar

TO: Doyle Clayton Solicitors Ltd for the Appellant
CMS Cameron Mckenna Nabarro Olswang LLP for the 1st Respondent
TMP Solicitors LLP for the 2nd ,3rd & 4th Respondents

The Secretary of the Employment Tribunals

Please note:

(a) Any interim applications must be made AT LEAST SEVEN DAYS BEFORE THE DATE OF THE HEARING.

(b) Authorities to which you or Counsel may refer should be lodged in accordance with paragraph 16 of the EAT Practice Direction 2018

(c) Should the Appeal be settled or withdrawn before the date of the hearing the parties MUST notify the Tribunal IMMEDIATELY

(d) Although a time has been set for the hearing of this appeal you should be aware that circumstances may mean this matter can come on anytime before 4.00 pm.

(e) If you have a representative, or have applied to any organisation for representation, you must ensure that they are sent a copy of this notice, as this Court will not do it on your behalf.

(f) The Free Representation Unit (FRU) and the Bar Pro Bono Unit (BPBU) are not part of the Employment Appeal Tribunal

EMPLOYMENT APPEAL TRIBUNAL

NOTICE OF APPEARANCE

Our Reference: **EA-2022-001163-NLD**

For the attention of the Registrar

Ms Allison Bailey v (1) Stonewall Equality Ltd (2) Garden Court Chambers Ltd (3) Rajiv Menon KC and Stephanie Harrison KC (sued as representatives of all members of Garden Court except the Appellant)

I have received your letter and Notice of Hearing concerning the Hearing on **14th &15th /05/2024**

Please ✓ the option(s) that applies to you:

	✓
It is my intention to be represented at the hearing	
It is my intention to be present at the hearing	
I do not intend to be present at the hearing	
I do not intend to be present or represented at the hearing and will rely on written submissions	

Signed ……………………………………………………………………………
Appellant/on behalf of the Appellant

Date ……………………………………………………………………….....

Employment Tribunal

Claim form

Official Use Only			
Tribunal office	London Central		
Case number		Date received	09/04/2020

You must complete all questions marked with an '*'

1 Your details

1.1 Title ☐ Mr ☐ Mrs ☐ Miss ☑ Ms

1.2* First name (or names): Allison

1.3* Surname or family name: Bailey

1.4 Date of birth: [redacted] Are you? ☐ Male ☑ Female

1.5* Address
- Number or name: c/o Slater and Gordon UK Limited
- Street: 90 High Holborn
- Town/City: London
- County: Greater London
- Postcode: WC1V 6LJ

1.6 Phone number
Where we can contact you during the day:

1.7 Mobile number (if different):

1.8 How would you prefer us to contact you? (Please tick only one box) ☑ Email ☐ Post ☐ Fax
Whatever your preference please note that some documents cannot be sent electronically

1.9 Email address: [redacted]

1.10 Fax number:

2 Respondent's details (that is the employer, person or organisation against whom you are making a claim)

2.1* Give the name of your employer or the person or organisation you are claiming against (If you need to you can add more respondents at 2.4): Stonewall Equality Limited

2.2* Address
- Number or name: 192
- Street: St John Street
- Town/City: London
- County: Greater London
- Postcode: EC1V 4JY

Phone number:

© Crown copyright 2017

2.3* Do you have an Acas early conciliation certificate number?

☑ Yes ☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

R116075/20/12

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

2.4 If you worked at a different address from the one you have given at 2.2 please give the full address

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.5 If there are other respondents please tick this box and put their names and addresses here. ☑

(If there is not enough room here for the names of all the additional respondents then you can add any others at Section 13.)

Respondent 2

Name: Garden Court Chambers Limited

Address

Number or name: 57-60

Street: Lincolns Inn Fields

Town/City: London

County: Greater London

Postcode: WC1V 6LJ

Phone number

2.6 Do you have an Acas early conciliation certificate number?

☑ Yes ☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

R116073/20/30

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 3

2.7 Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.8 Do you have an Acas early conciliation certificate number?

☐ Yes ☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.Acas.org.uk

If Yes, please give the Acas early conciliation certificate number

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

3 Multiple cases

3.1 Are you aware that your claim is one of a number of claims against the same employer arising from the same, or similar, circumstances?

☐ Yes ☑ No

If Yes, and you know the names of any other claimants, add them here. This will allow us to link your claim to other related claims.

4 Cases where the respondent was not your employer

4.1 If you were not employed by any of the respondents you have named but are making a claim for some reason connected to employment (for example, relating to a job application which you made or against a trade union, qualifying body or the like) please state the type of claim you are making here. (You will get the chance to provide details later):

Now go to Section 8

5 Employment details

If you are or were employed please give the following information, if possible.

5.1 When did your employment start?

Is your employment continuing? ☐ Yes ☐ No

If your employment has ended, when did it end?

If your employment has not ended, are you in a period of notice and, if so, when will that end?

5.2 Please say what job you do or did.

6 Earnings and benefits

6.1 How many hours on average do, or did you work each week in the job this claim is about? [ ] hours each week

6.2 How much are, or were you paid?

Pay before tax £ [ ] Weekly [ ] Monthly

Normal take-home pay (Incl. overtime, commission, bonuses etc.) £ [ ] Weekly [ ] Monthly

6.3 If your employment has ended, did you work (or were you paid for) a period of notice? [ ] Yes [ ] No

If Yes, how many weeks, or months' notice did you work, or were you paid for? [ ] weeks [ ] months

6.4 Were you in your employer's pension scheme? [ ] Yes [ ] No

6.5 If you received any other benefits, e.g. company car, medical insurance, etc, from your employer, please give details.

7 If your employment with the respondent has ended, what has happened since?

7.1 Have you got another job? [ ] Yes [ ] No

If No, please **go to section 8**

7.2 Please say when you started (or will start) work.

7.3 Please say how much you are now earning (or will earn). £

8 Type and details of claim

8.1* Please indicate the type of claim you are making by ticking one or more of the boxes below.

- [ ] I was unfairly dismissed (including constructive dismissal)
- [x] I was discriminated against on the grounds of:
  - [ ] age
  - [ ] race
  - [ ] gender reassignment
  - [ ] disability
  - [ ] pregnancy or maternity
  - [ ] marriage or civil partnership
  - [x] sexual orientation
  - [x] sex (including equal pay)
  - [ ] religion or belief
- [ ] I am claiming a redundancy payment
- [ ] I am owed
  - [ ] notice pay
  - [ ] holiday pay
  - [ ] arrears of pay
  - [ ] other payments
- [x] I am making another type of claim which the Employment Tribunal can deal with.

(Please state the nature of the claim. Examples are provided in the Guidance.)

Victimisation (s.27 EqA)

8.2* Please set out the background and details of your claim in the space below.

The details of your claim should include **the date(s) when the event(s) you are complaining about happened.** Please use the blank sheet at the end of the form if needed.

Please see attached Particulars of Claim.

9 What do you want if your claim is successful?

9.1 Please tick the relevant box(es) to say what you want if your claim is successful:

- [ ] If claiming unfair dismissal, to get your old job back and compensation (reinstatement)
- [ ] If claiming unfair dismissal, to get another job with the same employer or associated employer and compensation (re-engagement)
- [x] Compensation only
- [x] If claiming discrimination, a recommendation (see Guidance).

9.2 What compensation or remedy are you seeking?

If you are claiming financial compensation please give as much detail as you can about how much you are claiming and how you have calculated this sum. (Please note any figure stated below will be viewed as helpful information but it will not restrict what you can claim and you will be permitted to revise the sum claimed later. See the Guidance for further information about how you can calculate compensation). **If you are seeking any other remedy from the Tribunal which you have not already identified please also state this below.**

Schedule of Loss to follow.

10 Information to regulators in protected disclosure cases

10.1 If your claim consists of, or includes, a claim that you are making a protected disclosure under the Employment Rights Act 1996 (otherwise known as a 'whistleblowing' claim), please tick the box if you want a copy of this form, or information from it, to be forwarded on your behalf to a relevant regulator (known as a 'prescribed person' under the relevant legislation) by tribunal staff. (See Guidance). ☐

11 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

11.1 Name of representative: Peter Daly

11.2 Name of organisation: Slater and Gordon UK Limited

11.3 Address
Number or name: 90
Street: High Holborn
Town/City: London
County: Greater London
Postcode: WC1V 6LJ

11.4 DX number (If known): DX: 202 London/Chancery Lane

11.5 Phone number: 03309955619

11.6 Mobile number (If different):

11.7 Their reference for correspondence:

11.8 Email address: peter.daly@slatergordon.co.uk

11.9 How would you prefer us to communicate with them? (Please tick only one box) ☐ Email ☐ Post ☐ Fax

11.10 Fax number:

12 Disability

12.1 Do you have a disability? ☐ Yes ☑ No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system, including for any hearings that maybe held at tribunal premises.

13 Details of additional respondents

Section 2.4 allows you to list up to three respondents. If there are any more respondents please provide their details here

Respondent 4

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number? ☐ Yes ☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

- ☐ Another person I'm making the claim with has an Acas early conciliation certificate number
- ☐ Acas doesn't have the power to conciliate on some or all of my claim
- ☐ My employer has already been in touch with Acas
- ☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 5

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number? ☐ Yes ☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

14 Final check

Please re-read the form and check you have entered all the relevant information.
Once you are satisfied, please tick this box. ☐

Data Protection Act 1998.
We will send a copy of this form to the respondent and Acas. We will put the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department for Business Energy and Industrial Strategy to assist research into the use and effectiveness of employment tribunals.

15 Additional information

You can provide additional information about your claim in this section.

If you're part of a group claim, give the Acas early conciliation certificate numbers for other people in your group. If they don't have numbers, tell us why.

Please see attached Particulars of Claim.

HM Courts & Tribunals Service

Diversity Monitoring Questionnaire

It is important to us that everyone who has contact with HM Courts & Tribunals Service, receives equal treatment. We need to find out whether our policies are effective and to take steps to ensure the impact of future policies can be fully assessed to try to avoid any adverse impacts on any particular groups of people. That is why we are asking you to complete the following questionnaire, which will be used to provide us with the relevant statistical information. **Your answers will be treated in strict confidence.**

Thank you in advance for your co-operation.

Claim type

Please confirm the type of claim that you are bringing to the employment tribunal. This will help us in analysing the other information provided in this form.

- (a) ☐ Unfair dismissal or constructive dismissal
- (b) ☐ Discrimination
- (c) ☐ Redundancy payment
- (d) ☐ Other payments you are owed
- (e) ☐ Other complaints

Sex

What is your sex?

- (a) ☐ Female
- (b) ☐ Male
- (c) ☐ Prefer not to say

Age group

Which age group are you in?

- (a) ☐ Under 25
- (b) ☐ 25-34
- (c) ☐ 35-44
- (d) ☐ 45-54
- (e) ☐ 55-64
- (f) ☐ 65 and over
- (g) ☐ Prefer not to say

Ethnicity

What is your ethnic group?

White

- (a) ☐ English / Welsh / Scottish / Northern Irish / British
- (b) ☐ Irish
- (c) ☐ Gypsy or Irish Traveller
- (d) ☐ Any other White background

Mixed / multiple ethnic groups

- (e) ☐ White and Black Caribbean
- (f) ☐ White and Black African
- (g) ☐ White and Asian
- (h) ☐ Any other Mixed / multiple ethnic background

Asian / Asian British

- (i) ☐ Indian
- (j) ☐ Pakistani
- (k) ☐ Bangladeshi
- (l) ☐ Chinese
- (m) ☐ Any other Asian background

Black / African / Caribbean / Black British

- (n) ☐ African
- (o) ☐ Caribbean
- (p) ☐ Any other Black / African / Caribbean background

Other ethnic group

- (q) ☐ Arab
- (r) ☐ Any other ethnic group

- (s) ☐ Prefer not to say

9 April 2020 - ET1 as submitted

Disability

The Equality Act 2010 defines a disabled person as 'Someone who has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'.

Conditions covered may include, for example, severe depression, dyslexia, epilepsy and arthritis.

Do you have any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Marriage and Civil Partnership

Are you?

- (a) ☐ Single, that is, never married and never registered in a same-sex civil partnership
- (b) ☐ Married
- (c) ☐ Separated, but still legally married
- (d) ☐ Divorced
- (e) ☐ Widowed
- (f) ☐ In a registered same-sex civil partnership
- (g) ☐ Separated, but still legally in a same-sex civil partnership
- (h) ☐ Formerly in a same-sex civil partnership which is now legally dissolved
- (I) ☐ Surviving partner from a same-sex civil partnership
- (J) ☐ Prefer not to say

Religion and belief

What is your religion?

- (a) ☐ No religion
- (b) ☐ Christian (including Church of England, Catholic, Protestant and all other Christian denominations)
- (c) ☐ Buddhist
- (d) ☐ Hindu
- (e) ☐ Jewish
- (f) ☐ Muslim
- (g) ☐ Sikh
- (h) ☐ Any other religion (please describe)
- (I) ☐ Prefer not to say

Caring responsibilites

Do you have any caring responsibilities, (for example; children, elderly relatives, partners etc.)?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Sexual identity

Which of the options below best describes how you think of yourself?

- (a) ☐ Heterosexual/Straight
- (b) ☐ Gay /Lesbian
- (c) ☐ Bisexual
- (d) ☐ Other
- (e) ☐ Prefer not to say

Gender identity

Please describe your gender identity?

- (a) ☐ Male (including female-to-male trans men)
- (b) ☐ Female (including male-to-female trans women)
- (c) ☐ Prefer not to say

Is your gender identity different to the sex you were assumed to be at birth?

- (f) ☐ Yes
- (g) ☐ No
- (h) ☐ Prefer not to say

Pregnancy and maternity

Were you pregant when the issue you are making a claim about took place?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Thank you for taking the time to complete this questionnaire.

Employment Tribunals check list

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

If your claim has been submitted on-line or posted you should receive confirmation of receipt from the office dealing with your claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the claim is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us. If you want to submit on-line please go back to the form and click the submit button, otherwise follow the check list before you post the completed form to the relevant office address.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Employment Tribunal Customer Contact Centre (Mon – Fri, 8.30am – 5pm) they can also provide general procedural information about the Employment Tribunals.

Phone: 0300 123 1024 (England & Wales)

Phone: 0141 354 8574 (Scotland)

Or

Textphone: 18001 0300 123 1024 (England & Wales)

Textphone: 18001 0141 354 8574 (Scotland)

IN THE EMPLOYMENT TRIBUNAL **CASE NUMBER: TBC**
LONDON CENTRAL

B E T W E E N:

MS ALLISON BAILEY

(Claimant)

-and-

STONEWALL EQUALITY LIMITED (1)
GARDEN COURT CHAMBERS LIMITED (2)

(Respondents)

Particulars of Claim

Introduction

(1) These pleadings are lodged protectively in light of the ACAS Early Conciliation Certificates which were issued on 10 March 2020. The Claimant has lodged Subject Access Requests against the Respondents, neither of which she believes to have been validly complied with, and both of which she anticipates will yield further information relevant to the claim and to these pleadings. In addition, the coronavirus has had a significant impact on the Claimant's preparation of the claim. It is anticipated that Further and Better Particulars will be issued in due course.

Claims Advanced

(2) The Claimant advances the following claims:

(a) Unlawful victimisation by the Second Respondent, contrary to s.27 EqA by way of s.47(5) Equality Act 2010 ("**EqA**");

(b) Unlawful indirect sex discrimination and unlawful indirect discrimination because of sexual orientation contrary to s.19 EqA by way of s.47 EqA.

(c) The instructing, causing or inducement of the Second Respondent's unlawful conduct by the First Respondent, contrary to s.111 EqA; and

(d) Victimisation by the First Respondent, contrary to s.47(6) EqA.

Facts Relied On

(3) The Claimant is a woman, a lesbian and a lifelong campaigner for lesbian and gay rights.

(4) The First Respondent is a charity. It lists its activities in its Charity Commission filings as "*promoting equality and human rights for lesbian, gay, bisexual and trans people*".

(5) The Second Respondent is a barristers' chambers. The Claimant is a tenant of the Second Respondent.

(6) On 14 December 2018, Stephen Lue of the Second Respondent sent a mass email to the Second Respondent's employees, tenants and pupils. The email stated that the Second Respondent had entered into a relationship with the First Respondent, becoming a "Stonewall Diversity Champion".

(7) The Claimant replied the same day. She expressed misgivings and stated that this relationship should not have been entered into without discussion within chambers.

(8) The reason for the Claimant's misgivings was that she believed (and continues to believe) that the First Respondent's campaigning on gender theory is sexist and homophobic. In particular, the Claimant believed and believes that:

 (a) Sex is real and observable. Gender (as proselytised by the First Respondent) is a subjective identity: immeasurable, unobservable and with no objective basis.

 (b) At the root of the First Respondent's espousal of gender theory is the slogan that "Trans Women Are Women". This is advanced literally, meaning that a person born as a man who identifies as a woman literally becomes a woman for all purposes and in all circumstances purely and exclusively on the basis of their chosen identity. To all intents and purposes, the First Respondent has reclassified "sex" with "gender".

 (c) The tone of the First Respondent's campaigning on this subject has been binary, absolutist and evangelical. It may be summarised as "You are with us, or you are a bigot." Discussions on the subject have become extremely vitriolic, largely as a result of the First Respondent's absolutist tone,

replicated by other organisations with which the First Respondent works closely. This has resulted in threats against women (including threats of violence and sexual violence) becoming commonplace. The First Respondent has been complicit in these threats being made.

(d) Gender theory as proselytised by the First Respondent is severely detrimental to women for numerous reasons, including that it denies women the ability to have female only spaces, for example in prisons, changing rooms, medical settings, rape and domestic violence refuges and in sport.

(e) Gender theory as proselytised by the First Respondent is severely detrimental to lesbians. In reclassifying "sex" with "gender", the First Respondent has reclassified homosexuality from "same sex attraction" to "same gender attraction". The result of this is that men who identify as trans women and are sexually attracted to women are to be treated as lesbians. There is therefore an encouragement by followers of gender theory (including the First Respondent) on lesbians to have sex with male-bodied people. To reject this encouragement is to be labelled as bigoted. This is inherently homophobic because it denies the reality and legitimacy of same sex attraction and invites opprobrium and threatening behaviour upon people who recognise that reality and legitimacy.

(f) It is particularly damaging to lesbians that the First Respondent has taken this position. The First Respondent had been the foremost gay and lesbian rights campaigning organisation in the UK and one of the world's leading such organisations. The adoption of gender theory by the First Respondent therefore left those gay, lesbian and bisexual people who did not ascribe to gender theory without the representation that the First Respondent had previously provided, and left those people labelled as bigots by their primary representative organisation.

(9) The Claimant's email on 14 December 2018 was a protected act within the meaning of s.27(2) (c) and (d) EqA.

(10) In 2019, the Claimant's fee income was substantially reduced in comparison to previous years, most notably to 2018.

(11) In October 2019, the Claimant founded, with others, the LGB Alliance. This was a group set up to campaign for LGB rights without the gender theory espoused by the First Respondent.

(12) The Claimant announced the founding of LGB Alliance via her twitter account. In launching the campaign, the Claimant made statements which were protected acts pursuant to s.27(2) (c) and (d), including that the First Respondent's campaigning on gender theory was discriminatory to women and to lesbians.

(13) The launch of the LGB Alliance yielded some responses from members of the public, some supportive and some critical. Submissions of complaint and of support were made to the Second Respondent about the Claimant. The Second Respondent made a public statement that the Claimant was under investigation. An investigation commenced.

(14) Around a week later, a complaint against the Claimant was received by the Second Respondent from the First Respondent. This complaint became the focus of the Second Respondent's investigation into the Claimant.

(15) The Claimant engaged fully with the investigation. She pointed out in her response that the First Respondent's complaint was misleading and disingenuous. The response was a protected act within the meaning of s.27(2) (c) and (d) EqA.

(16) The First Respondent's complaint to the Second Respondent was upheld. This amounted to a detriment against the Claimant.

(17) The Claimant believes that:

    (a) The Second Respondent invited and/or colluded with the First Respondent in the submission of the complaint against her;

    (b) The Claimant's protected acts were the reason for the complaint; and

    (c) The Second Respondent upheld the complaint against her at the explicit or implied instruction of the First Respondent.

(18) The First Respondent's "Diversity Champion" programme involves lecturing and educating its champions on issues relevant to the First Respondent's

campaigning priorities. This includes gender theory. The Claimant therefore believes that the First Respondent dictated the direction of the Second Respondent's treatment of the Claimant.

(19) The Claimant submitted Subject Access Requests to the Respondents. The Subject Access requests were protected acts within the meaning of s.27(2) (c) and (d) EqA.

(20) The Claimant commenced Early Conciliation and notified both of the Respondents that she was considering Tribunal proceedings against them. These were protected acts.

(21) The First Respondent replied to the Subject Access Request by denying that it held any of the Claimant's data. The Claimant believed that this denial was false because the complaint that the First Respondent had submitted ought to have been provided to the Claimant in response to the Subject Access Requests. The Claimant believed that there were other such documents, which she had not previously seen, which had also been withheld. These were detriments.

(22) The Claimant wrote again to the First Respondent drawing their attention to the apparently missing data. As at the date of settling these pleadings she has received neither acknowledgment nor response to this letter. This is a detriment.

(23) The Second Respondent provided three lever arches of documents in response to the Claimant's Subject Access Request, much of which was duplication. The Claimant noted documents that were missing and wrote to the Second Respondent asking for these documents to be provided. The Second Respondent replied and asked for some extra time to complete this task which was complicated because of coronavirus.

Claims

(24) The Claimant claims victimisation.

(a) The protected acts are:

(i) The Claimant's email of 18 December 2018.

(ii) The Claimant's tweets around the launching of the LGB Alliance.

(iii) The Claimant's response to the First Respondent's complaint against her.

(iv) The Claimant's Subject Access Requests.

(v) The Claimant's Early Conciliation application.

(b) The detriments are:

(i) The withholding of instructions and work by the Second Respondent in 2019, causing her financial loss.

(ii) The publishing of a statement by the Second Respondent stating that the Claimant was under investigation.

(iii) The First Respondent's complaint to the Second Respondent.

(iv) The upholding of the complaint by the Second Respondent.

(v) The failure by both Respondents to comply with the Subject Access Requests.

(25) The Claimant claims indirect sex and sexual orientation discrimination.

(a) The PCPs are:

(i) The treatment by the Respondents of gender critical beliefs as being bigoted or otherwise unworthy of respect.

(ii) The Second Respondent allowing the First Respondent to direct its complaint process.

(b) The PCPs cause substantial disadvantage to women, and to lesbians, because women, and lesbians in particular, are more likely to have gender critical beliefs, and are therefore more likely to be treated as being bigoted or otherwise to have complaints upheld against them, and the Claimant suffered these disadvantages.

(26) The Claimant seeks compensation from the Respondents at such level as the Tribunal sees fit, declarations, and recommendations.

(27) As set out above, the nature of this matter is that the Claimant has not been privy to communications between the Respondents. She has made reasonable efforts

to access that communication by means of Subject Access Requests, but these have not been complied with. The Claimant therefore intends to further and better particularise her claim at such time as she is reasonably able to do so.

Slater and Gordon Lawyers
Solicitors for the Claimant
9 April 2020

IN THE EMPLOYMENT TRIBUNAL
LONDON CENTRAL

CASE NUMBER: 2202172/2020

B E T W E E N:

MS ALLISON BAILEY

(Claimant)

-and-

STONEWALL EQUALITY LIMITED (1)
GARDEN COURT CHAMBERS LIMITED (2)
JUDY KHAN QC, STEPHANIE HARRISON QC AND LIZ DAVIES, SUED AS REPRESENTATIVES OF ALL MEMBERS OF GARDEN COURT CHAMBERS EXCEPT THE CLAIMANT (3)

(Respondents)

Particulars of Claim

Introduction

(1) These pleadings are lodged protectively in light of the ACAS Early Conciliation Certificates which were issued on 10 March 2020. The Claimant has lodged Subject Access Requests against the First and Second Respondents, neither of which she believes to have been validly complied with, and both of which she anticipates will yield further information relevant to the claim and to these pleadings. She has also lodged Subject Access Requests against a number of members of Garden Court Chambers. In addition, the coronavirus has had a significant impact on the Claimant's preparation of the claim. It is anticipated that Further and Better Particulars will be issued in due course.

Claims Advanced

(2) The Claimant advances the following claims:

(a) Unlawful victimisation by the Second and Third Respondents, contrary to s.27 EqA by way of s.47~~(5)~~ Equality Act 2010 ("**EqA**");

(b) Unlawful indirect sex discrimination and unlawful indirect discrimination because of sexual orientation by the Second and Third Respondents contrary to s.19 EqA by way of s.47 EqA~~.~~; and

~~(c)~~ The instructing, causing or inducement of the Second and Third Respondent~~'~~s' unlawful conduct by the First Respondent, contrary to s.111 EqA~~; and~~

(d) ~~Victimisation by the First Respondent, contrary to s.47(6) EqA~~.

Facts Relied On

(3) The Claimant is a woman, a lesbian and a lifelong campaigner for lesbian and gay rights.

(4) The First Respondent is a charity. It lists its activities in its Charity Commission filings as "*promoting equality and human rights for lesbian, gay, bisexual and trans people*".

(5) The Second Respondent is a service company incorporated by the Third Respondent, *inter alia*, for the purposes of employing the staff engaged in administering and providing clerking services to the Third Respondent.

(5a) The Third Respondent is a barristers' chambers. The Claimant is a tenant of the ~~Second~~ Third Respondent. The Third Respondent is an unincorporated association. For this reason the claim is brought (so far as it concerns the Third Respondent) against barristers who are the current Heads of Chambers: Judy Khan QC, Stephanie Harrison QC and Liz Davies.

(6) On 14 December 2018, Stephen Lue (a member of the ~~Second~~ Third Respondent) sent a mass email to

the Second Respondent's employees and the Third Respondent's~~,~~ tenants and pupils. The email stated that the ~~Second~~ Third Respondent had entered into a relationship with the First Respondent, becoming a "Stonewall Diversity Champion".

(7) The Claimant replied the same day. She expressed misgivings and stated that this relationship should not have been entered into without discussion within chambers.

(8) The reason for the Claimant's misgivings was that she believed (and continues to believe) that the First Respondent's campaigning on gender theory is sexist and homophobic. In particular, the Claimant believed and believes that:

(a) Sex is real and observable. Gender (as proselytised by the First Respondent) is a subjective identity: immeasurable, unobservable and with no objective basis.

(b) At the root of the First Respondent's espousal of gender theory is the slogan that "Trans Women Are Women". This is advanced literally, meaning that a person born as a man who identifies as a woman literally becomes a woman for all purposes and in all circumstances purely and exclusively on the basis of their chosen identity. To all intents and purposes, the First Respondent has reclassified "sex" with "gender identity".

(c) The tone of the First Respondent's campaigning on this subject has been binary, absolutist and evangelical. It may be summarised as "You are with us, or you are a bigot." Discussions on the subject have become extremely vitriolic, largely as a result of the First Respondent's absolutist tone, replicated by other organisations with which the First Respondent works closely. This has resulted in threats against women (including threats of violence and sexual violence) becoming commonplace. The First Respondent has been complicit in these threats being made.

(d) Gender theory as proselytised by the First Respondent is severely detrimental to women for numerous reasons, including that it denies women the ability to have female only spaces, for example in prisons, changing rooms, medical settings, rape and domestic violence refuges and in sport.

(e) Gender theory as proselytised by the First Respondent is severely detrimental to lesbians. In reclassifying "sex" with "gender", the First Respondent has reclassified homosexuality from "same sex attraction" to "same gender attraction". The result of this is that heterosexual men who identify as trans women and are sexually attracted to women are to be treated as lesbians. There is therefore an encouragement by followers of gender theory (including the First Respondent) on lesbians to have sex with male-bodied people. To reject this encouragement is to be labelled as bigoted. This is inherently homophobic because it denies the reality and legitimacy of same sex attraction and invites opprobrium and threatening behaviour upon people who recognise that reality and legitimacy.

(f) It is particularly damaging to lesbians that the First Respondent has taken this position. The First Respondent had been the foremost gay and lesbian rights campaigning organisation in the UK and one of the world's leading such organisations. The adoption of gender theory by the First Respondent therefore left those gay, lesbian and bisexual people who did not ascribe to gender theory without the representation that the First Respondent had previously provided, and left those people labelled as bigots by their primary representative organisation.

(9) The Claimant's email on 14 December 2018 was a protected act within the meaning of s.27(2) (c) and (d) EqA.

(10) In 2019, the Claimant's fee income was substantially reduced in comparison to previous years.

(11) In October 2019, the Claimant launched, with others, the LGB Alliance. This was a group set up to campaign for LGB rights without the gender theory espoused by the First Respondent.

(12) The Claimant announced the founding of LGB Alliance via her twitter account. In launching the campaign, the Claimant made statements which were protected acts

pursuant to s.27(2) (c) and (d), including that the First Respondent's campaigning on gender theory was discriminatory to women and to lesbians.

(13) The launch of the LGB Alliance yielded some responses from members of the public, some supportive and some critical. Submissions of complaint and of support were made to the Second Respondent about the Claimant. The Second and/or Third Respondent made a public statement that the Claimant was under investigation. An investigation commenced.

(14) Around a week later, a complaint against the Claimant was received by the ~~Second~~ Third Respondent's then Heads of Chambers (Leslie Thomas QC, Judy Khan QC and Marc Willers QC) from the First Respondent. This complaint became the focus of the Second and/or Third Respondent's investigation into the Claimant.

(15) The Claimant engaged fully with the investigation. She pointed out in her response that the First Respondent's complaint was misleading and disingenuous. The response was a protected act within the meaning of s.27(2) (c) and (d) EqA.

(16) The First Respondent's complaint to the ~~Second~~ Third Respondent's Heads of Chambers was upheld. This amounted to a detriment against the Claimant.

(17) The Claimant believes that:

(a) Individuals for whom t~~T~~he Second Respondent was liable, and/or members of the Third Respondent, invited and/or colluded with the First Respondent in the submission of the complaint against her;

(b) The Claimant's protected acts were the reason for the complaint; and

(c) The ~~Second~~ Third Respondent (or its Heads of Chambers) initiated the investigation into the Claimant and upheld the complaint against her at the explicit or implied instruction of the First Respondent.

(18) The First Respondent's "Diversity Champion" programme involves lecturing and educating its champions on issues relevant to the First Respondent's campaigning priorities. This includes gender theory. The Claimant therefore believes that the First Respondent dictated the direction of the Second and Third Respondent~~'~~s' treatment of the Claimant.

(19) The Claimant submitted Subject Access Requests to the First and Second Respondents. The Subject Access requests were protected acts within the meaning of s.27(2) (c) and (d) EqA.

(20) The Claimant commenced Early Conciliation and notified ~~both of~~ the Respondents that she was considering Tribunal proceedings against them. These were protected acts.

(21) The First Respondent replied to the Subject Access Request by denying that it held any of the Claimant's data. The Claimant believed that this denial was false because the complaint that the First Respondent had submitted ought to have been provided to the Claimant in response to the Subject Access Requests. The Claimant believed that there were other such documents, which she had not previously seen, which had also been withheld. ~~These were detriments.~~

(22) The Claimant wrote again to the First Respondent drawing their attention to the apparently missing data which was provided on 23 April. ~~As at the date of settling these pleadings she has received neither acknowledgment nor response to this letter. This is a detriment.~~

(23) The Second Respondent provided three lever arches of documents in response to the Claimant's Subject Access Request, much of which was duplication. The Claimant noted documents that were missing and wrote to the Second Respondent asking for these documents to be provided. The Second Respondent replied and asked for some extra time to complete this task which was complicated because of coronavirus. More recently the Second Respondent provided additional disclosure and notified the Claimant that it was not data controller for members of Chambers. The Claimant has accordingly made Subject Access requests in relation to a number of the Third Respondents' members and is awaiting their responses.

(23a) It may be necessary further to amend these Particulars of Claim, including by adding additional respondents, if the outcome of the Claimant's additional Subject Access Requests discloses additional unlawful acts by members of Chambers for which the Third Respondent may not be liable.

Claims

(24) The Claimant claims victimisation.

(a) The protected acts are:

(i) The Claimant's email of 18 December 2018.

(ii) The Claimant's tweets around the launching of the LGB Alliance.

(iii) The Claimant's response to the First Respondent's complaint against her.

(iv) The Claimant's Subject Access Requests.

(v) The Claimant's Early Conciliation application.

(b) The detriments are:

(i) The withholding of instructions and work by the Second Respondent and/or by members of the Third Respondent in 2019, causing her financial loss.

(ii) The publishing of a statement by the Second and/or Third Respondent stating that the Claimant was under investigation.

(iii) The First Respondent's complaint to the ~~Second~~ Third Respondent.

(iv) The upholding of the complaint by the ~~Second~~ Third Respondent (or its Heads of Chambers).

(v) The Second and/or Third Respondents' failure ~~by both Respondents~~ to comply with the Subject Access Requests~~.~~.

(25) The Claimant claims indirect sex and sexual orientation discrimination.

(a) The PCPs are:

(i) The treatment by the Second and/or Third Respondents of gender critical beliefs as being bigoted or otherwise unworthy of respect.

(ii) The Second and Third Respondent allowing the First Respondent to direct its complaint process.

(b) The PCPs cause substantial disadvantage to women, and to lesbians, because women, and lesbians in particular, are more likely to have gender critical beliefs, and are therefore more likely to be treated as being bigoted

or otherwise to have complaints upheld against them, and the Claimant suffered these disadvantages.

(26) The Claimant seeks compensation from the Respondents at such level as the Tribunal sees fit, declarations, and recommendations.

(27) As set out above, the nature of this matter is that the Claimant has not been privy to communications between the Respondents. She has made reasonable efforts to access that communication by means of Subject Access Requests, but these have not been complied with. The Claimant therefore intends to further and better particularise her claim at such time as she is reasonably able to do so.

Slater and Gordon Lawyers
Solicitors for the Claimant
9 April 2020, amended on 2 October 2020

IN THE EMPLOYMENT TRIBUNAL **Case No: 220217/2020**
(LONDON CENTRAL)

BETWEEN

MS ALLISON BAILEY

Claimant

- and -

(1) STONEWALL EQUALITY LIMITED

(2) GARDEN COURT CHAMBERS LIMITED

(3) RAJIV MENON QC AND STEPHANIE HARRISON QC SUED AS REPRESENTATIVES OF ALL MEMBERS OF GARDEN COURT CHAMBERS EXCEPT THE CLAIMANT

Respondents

FURTHER AND BETTER PARTICULARS

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1. These Further and Better Particulars set out the following further particulars of the Claimant's claim in accordance with paragraph (4) of the case management orders sent to the parties on 16 February 2021:

   a) Individuals who are said to have victimised the Claimant by subjecting her to detriments;

   b) Individuals who are said to have operated the PCPs pleaded at paragraph 25 and what principal matters are relied on as evidencing that those PCPs existed;

   c) Individuals, both from Stonewall and from Chambers, who are said to have colluded at paragraph 17(a) and how, when and by what means it is alleged they did so;

   d) What matters the Claimant relies on as constituting the causing, instructing or inducing by Stonewall;

e) In relation to each individual identified pursuant to paragraphs (a) to (d) above, what principal matters are relied on as evidencing that they were individuals acting as authorised agent, and/or in the course of employment by the Chambers or the Service Company

2. For the avoidance of doubt, where these Further and Better Particulars set out the principal facts and matters relied on in support of the Claimant's case as set out herein and in the Revised Amended Particulars of Claim, those identify the essential nature of, and principal basis for, the Claimant's case in respect of the matters identified in paragraph (4) of the case management orders, based on the material available to the Claimant at this stage, and they do not, and should not be understood to, limit the evidence, facts and matters upon which the Claimant will rely at trial.

Detriments

Detriment 1 – The withholding of instructions and work by the Second and/or Third Respondents (and/or by individuals for whose actions the Second and/or Third Respondents are liable) in 2019, causing her financial loss

Individuals who victimised the Claimant by subjecting her to the detriment at paragraph 24(b)(i)

3. The Claimant was subjected to this detriment by Colin Cook (Director of Clerking and Senior Clerk), Luke Harvey (Deputy Crime Team Practice Manager), Christina Eleftheriou (Crime Team Assistant) and the members of Chambers named in respect of the other detriments and/or PCPs below. The principal facts and matters on which the Claimant relies in respect of Colin Cook, Luke Harvey and Christina Eleftheriou are as follows:

   a) From 1 February 2019, the Claimant's clerking was changed from Charlie Tennent (Senior Crime Team Practice Manager), the senior crime clerk, to Christina Eleftheriou, an assistant in the Crime Team, and Luke Harvey, a junior clerk who had recently moved from civil clerking to crime. This was a material reduction in the seniority of those who were clerking the Claimant.

   b) Luke Harvey was the clerking assistant to Garden Court's Transrights Working Group.

c) Ms Eleftheriou and Mr Harvey had no prior knowledge of the Claimant and were significantly more junior than Mr Tennent and inexperienced in clerking in crime. This was to the Claimant's detriment because it is the role of a barrister's clerks to explain a barrister's practice and abilities to solicitors who might instruct that barrister, and to be trusted and knowledgeable about that barrister's particular strengths in relation to criminal cases and their complexity. Their lack of experience and knowledge meant that they were unable properly to clerk the Claimant.

d) The Claimant experienced a reduction in billing of £106,000 in 2019. Only two other barristers in her cohort experienced a reduction of £50,000 or more. The average reduction was less than £18,000.

4. It is to be inferred that Colin Cook subjected the Claimant to the detriment at paragraph 24(b)(i) of the Revised Amended Particulars of Claim, at the behest of and/or in concert with and/or under the influence of other members of Chambers named within these pleadings because (a) the matters pleaded at paragraph 3 above both individually and collectively operated to the Claimant's disadvantage and there is no good reason for those steps to have been taken; (b) the further facts and matters set out below in respect of the other detriments and PCPs support the inference that, since those matters cannot be otherwise explained, they were done because of hostility to and/or an adverse view of the Claimant arising from her First Protected Act, which was widely shared by senior members of Chambers; (c) it is to be inferred that those views were known to Colin Cook and/or Luke Harvey and/or Christina Eleftheriou; and (d) as the Director of Clerking, each of the matters pleaded at paragraph 3 above was done under Mr Cook's managerial authority.

Principal matters relied on as evidencing that they were individuals acting as authorised agent, and/or in the course of employment by Chambers or the Service Company

5. Colin Cook, Luke Harvey and Christina Eleftheriou are employed by the Service Company. They were at all material times and in all material respects relevant to this allegation acting in the course of their employment with the Service Company and/or as agents of Chambers. The capacity in which the relevant members of Chambers were acting is addressed further below in relation to each of them: for the avoidance of doubt they were at all material times and in all material respects relevant to this allegation acting in their roles as officers and/or

committee/group members of Chambers, as identified in relation to each of them below, and were accordingly acting as agents of Chambers.

Detriment 2 – The publishing of a statement by or on behalf of the Second and/or Third Respondents stating that the Claimant was under investigation

6. On 16 October 2019, Michelle Brewer emailed Mia Hakl-Law, Chambers' Director of Operations & Human Resources; Garden Court's Transrights Working Group; and the then Heads of Chambers about the Claimant's tweets. Ms Brewer expressed concern about the content of the Claimant's tweets in light of Chambers' commitment to working with Stonewall and other trans rights pressure groups and organisations; its advisory work, training and events on trans rights. Referring to the Claimant's tweets, Ms Brewer stated, "*The tweets from a member of chambers does compromise our message to the community that we are a safe space – whether that be to clients, organisations and/or members of chambers (barristers and staff).*" She asked whether Garden Court had any policies that deal with the Claimant's tweets and the use of social media by members of chambers.

7. Ms Hakl-Law responded later that day, stating that Ms Brewer's email had been timely.

8. On 22 October 2019, the Claimant published a tweet regarding the launch of the LGB Alliance.

9. On the morning of 24 October 2019, Tom Wainwright responded to Ms Hakl-Law's email copying a response to the Claimant's 22 October 2019 tweet. He stated, "*Allison has formed or is part of a new Anti-Trans LGB Group. This is already causing damage to our reputation. Could management please look into this urgently? There must be something in our constitution or diversity policy which precludes this. Is there any guidance as to what we can or should say in response.*"

10. Shortly thereafter Mr Thomas QC emailed members of chambers reminding them of Bar Council Guidance on the use of Social Media. Ms Khan QC emailed the Claimant, advising her that:

"*More than one complaint has been made about your tweets on the transgender topic…This email is not an attempt to intimidate or threaten you. If you made a complaint about someone*

else in GC, we would adopt exactly the same approach. We will, of course, take into account your views."

11. Marc Willers QC emailed the Claimant that afternoon, advising her that Chambers had received several formal complaints and a number of negative comments about her tweets. He expressed concern that her tweets were damaging chambers' reputation. The Claimant was advised that the complaints would be investigated as soon as possible.

12. Throughout 24 October 2019, Judy Khan QC, Leslie Thomas QC, Marc Willers QC, Mia Hakl-Law and David de Menezes (Director of Communications & Marketing) were in frequent email contact discussing the Claimant's tweet, tweets Garden Court were receiving in response, and the drafting of a tweet confirming that the Claimant was under investigation. In an email from David De Menezes to the Heads of Chambers on 24 October 2019 he wrote:

    "*The* [Claimant's] *tweets below mentioning GC point out a contradiction between our human rights ethos and Allison's views"*

13. By the afternoon of 24 October 2019, David de Menezes published multiple tweets via Chambers' twitter account in response to tweets which contained complaints about the Claimant, as follows:

    "*We are investigating concerns raised about Allison Bailey's comments in line with our complaints/BSB policies. We take these concerns v seriously & will take all appropriate action. Her views are expressed in a personal capacity & do not represent a position adopted by Garden Ct.*

    Garden Court Chambers is fiercely proud of its long-standing commitment to promoting equality, fighting discrimination and defending human rights."

14. At 5.51pm, Louise Hooper (Barrister) emailed Judy Khan QC, Leslie Thomas QC, Stephanie Harrison QC, Tom Wainwright (Barrister) and Michelle Brewer (Barrister), suggesting a statement for Garden Court chambers to publish in response to the Claimant's tweets.

15. Michelle Brewer and Louise Hooper exchanged text messages between 24 and 25 October 2019 discussing the content of the Claimant's tweets and a potential statement in response.

16. The focus of these discussions was about how Garden Court could and should put out a transgender positive statement, including consideration of Chambers tweeting an image of a large Transgender Pride Flag.

Individuals who victimised the Claimant by subjecting her to the detriment at paragraph 24(b)(ii)

17. The Heads of Chambers Leslie Thomas QC, Judy Khan QC and Marc Willers QC; and member of the Management Committee Stephanie Harrison QC.

18. David De Menezes (Communications & Marketing Director) and Mia Hakl-Law (Director of Operations & Human Resources).

19. Louise Hooper, Tom Wainwright, and Michelle Brewer, Barrister Members of Garden Court Chambers.

Principal matters relied on as evidencing that they were individuals acting as authorised agent, and/or in the course of employment by Chambers or the Service Company

20. Leslie Thomas QC, Judy Khan QC and Marc Willers QC were the then Heads of Chambers, and Stephanie Harrison QC was a member of the Management Committee. They were at all material times and in all material respects relevant to this allegation acting in that capacity as agents of Chambers.

21. David de Menezes and Mia Hakl-Law are employed by the Service Company and were at all material times and in all material respects relevant to this allegation acting in the course of their employment with the Service Company and/or as agents of Chambers.

22. Louise Hooper, Tom Wainwright and Michelle Brewer are members of Chambers' Transrights Working Group.

    a) In or around May 2018, a Transrights Working Group ("TWG") was set up in Chambers by Michelle Brewer. This group comprised members of chambers who wished to or were specialising in legal work and campaigning arising from trans issues and proposed government reform of the Gender Recognition Act 2004;

b) The TWG organised training for clients, internal training and sought to advance a trans rights agenda in line with that of Stonewall and other trans rights pressure groups. These groups included Gendered Intelligence, Trans Media Watch, Mermaids and the LGBT Consortium;

c) The TWG was used to form a strategic alliance with Stonewall on the proposed reform of the Gender Recognition Act (which was subsequently not pursued by the current Government) and later through membership of Stonewall's Diversity Champions programme, when Chambers joined the scheme in December 2018;

d) The TWG marketed Chambers as a hub for trans rights work and hosted various events on trans rights for a number of trans rights organisations and pressure groups;

e) The TWG had a dedicated, formal email address at Garden Court Chambers;

f) The TWG had formal support from clerks in administering its activities at Garden Court Chambers;

g) TWG events were suitable for Chambers funding for attendees 'childcare costs;

h) Louise Hooper, Tom Wainwright and Michelle Brewer were active members of the TWG.

23. In the premises, the TWG was an official Chambers group which carried out its activities on behalf of Chambers and, when acting in the course of or in connection with the TWG, its members were agents of Chambers for the purposes of sections 109 and 110 of the Equality Act 2010. Louise Hooper, Tom Wainwright and Michelle Brewer were at all material times and in all material respects relevant to this allegation acting in that capacity as agents of Chambers.

Detriment 3 – The First Respondent's complaint to the Third Respondent

24. On 22 September 2019, Michelle Brewer told Stephanie Harrison QC, Stephen Clark (Barrister), Stephen Lue (Barrister) and Shu Shin Luh (Barrister) that she would be in touch with Stonewall regarding the Claimant's tweets and informing them that she would be putting in a formal complaint against the Claimant.

25. On the same date, Ms Brewer sent messages to an unidentified individual stating that she had "*already sent to a crew in chambers and will speak to stonewall tomorrow"* referring to the Claimant's tweets. On 16 October 2019, that individual sent Ms Brewer a message stating, "*Hi Michelle just for information same Barrister from your chambers is now chairing transphobic womens place UK event"*.

26. On 21 October 2019, Ms Brewer replied, stating, "*I have raised it all with the heads of chambers – but that should not stop you putting in a formal complaint as well if you want to. The Bar standards board are taking a tough line now with barristers and social media…",* and "*You can make a formal complaint to heads of chambers either in person or as [redacted] if [redacted] wants to go down that line"*.

27. On 16 October 2019, Ms Brewer sent the email set out at paragraph 6 above.

28. On 23 October 2019, Chambers hosted a Roundtable about the census for the Consortium's Trans Organisations Network. Attendees included Stonewall's Head of Policy Josh Bradlow and members of the Stonewall Trans Advisory Group. At Ms Brewer's suggestion or instruction, Shaan Knan of Stonewall / STAG specifically encouraged attendees to write to the Heads of Chambers making complaints against the Claimant, and reference was made to the upcoming meeting at which Heads of Chambers would decide how to address complaints against the Claimant.

29. On 25 October 2019, Shaan Knan stated, in a post on the Wall (an internal Stonewall electronic message board), that Michelle Brewer had encouraged "*the trans community to write messages of support (supporting action against Bailey) to the Head of Garden Court Chambers*."

30. Michelle Brewer and Shaan Knan were in contact by phone, text message and WhatsApp between 23 October and 6 November 2019 (paragraph 91 below).

31. It is to be inferred from the foregoing that Ms Brewer procured the following:

    a) Third party complaints against the Claimant to Chambers;

    b) On 25 October 2019, Shaan Knan's complaint against the Claimant to Chambers;

c) On 31 October 2019, Kirrin Medcalf's complaint against the Claimant to Chambers on behalf of Stonewall.

Individuals who victimised the Claimant by subjecting her to the detriment at paragraph 24(b)(iii)

32. Michelle Brewer

Principal matters relied on as evidencing that they were individuals acting as authorised agent, and/or in the course of employment by Chambers or the Service Company

33. Michelle Brewer's actions in liaising between members of Chambers and Stonewall individuals, including Shaan Knan, were done on behalf of Chambers as a member of Garden Court's Transrights Working Group. She was, therefore, at all material times and in all material respects relevant to this allegation acting as an agent for Chambers.

Detriment 4 – The upholding of the complaint by the Third Respondent (and/or by individuals for whose actions the Third Respondent is liable)

34. Maya Sikand was a senior member of chambers and was a member of the Management Committee. She was appointed by the Heads of Chambers to prepare a report into complaints about the Claimant ("**The Sikand Report**"). The means and date of her appointment are not known to the Claimant. There were various iterations of the Sikand Report. There were broadly four versions of it (each of which had various iterations):

    a) An initial report by Ms Sikand dated 4 November 2019, which found that the Claimant had breached no rule or regulation ("**The First Sikand Report**"). This was the only document which was drafted solely by Ms Sikand and without the input of Mr Willers QC, Ms Harrison QC or Ms Khan QC.

    b) The First Sikand Report was then amended by Stephanie Harrison QC, Judy Khan QC and Marc Willers QC, in conjunction with Ms Sikand, to create a fresh report ("**The Second Sikand Report**"). This process took place over email. In doing so, Stephanie Harrison QC referred to the Claimant's tweets as "*very clearly breach*[ing] *the BSB guidelines"*. The outcome of this process was that the 31 October 2019 Stonewall Complaint was

separated from the matters which Ms Sikand had considered under the First Sikand Report and made the subject of a further investigation.

c) Between the Second Sikand Report, and the Third Sikand Report, the 31 October 2019 Stonewall Complaint was put to the Claimant. On 21 November 2019, the Claimant provided Ms Sikand with a comprehensive response to the complaint, including an explanation for her reasonable belief in the truthfulness of the statements she made in the tweets about which Stonewall had complained. Ms Sikand shared this with Ms Harrison QC, Ms Khan QC and Mr Willers QC.

d) Separately, Ms Harrison QC on behalf of Ms Sikand, Mr Willers QC and Ms Khan QC approached Cathryn McGahey QC, a member of the Bar Standards Ethics Committee, to procure Ms McGahey QC's view on whether the Claimant's tweets as particularised in the 31 October 2019 Stonewall Complaint had breached the BSB Code. Ms McGahey QC's initial view, given on 29 November 2019, was that "*while these tweets may be on the borderline, whether or not they cross that line may well depend on whether the truth of them can be substantiated or, at least, whether they amount to legitimate comment on the underlying facts… If you could let me know some time whether you think that you will be able to identify the material on which Allison was commenting, that would be really helpful*." Ms Harrison replied the same day "*On the premise that there is nothing sufficient to substantiate the allegation of coercion* [the substance of one of the Claimant's tweets under investigation] *what is your view?"* The Claimant's response to the complaint – which ran to 32 pages – was withheld from Ms McGahey QC. Ms McGahey QC submitted her advice to Ms Harrison QC on 3 December 2019. She concluded that if the Claimant could not substantiate the assertions made in the tweets under investigation, she "*may be at risk of a finding of a breach of CD5 and/or CD3*" and (emphasis added): "*I think, though, that the two tweets are nevertheless <u>probably</u> over the borderline of acceptable conduct, <u>on the basis that</u> Allison's views are sincerely held but that she has published allegations of criminal and/or disreputable conduct that she cannot substantiate*". Ms McGahey pointed out that her advice was subjective, and that others, including the BSB or other members of the Ethics Committee on which Ms McGahey QC sat, may issue different advice. She asked whether Garden Court wanted "*more formal advice*", which they declined. The withholding of the Claimant's response to the Stonewall Complaint which

substantiated her tweets, and Ms Harrison QC seeking advice from Ms McGahey QC on the basis that the Claimant could not substantiate her tweets, was therefore material to the substance of Ms McGahey QC's advice.

e) Ms Sikand submitted a report to the Heads of Chambers and Ms Harrison QC shortly after midnight on 11 December 2019 ("**The Third Sikand Report**"), in which Ms Sikand considered the 31 October 2019 Stonewall complaint. She did not conclude that the Claimant had or was likely to have breached the Bar Standards Code. Ms Sikand replicated the advice from Ms McGahey QC of the BSB that the Claimant "*may be at risk*" of a BSB finding that she had breached the BSB code. However, neither the Third Sikand Report nor the Fourth Sikand Report made any reference to Ms McGahey QC; to any outside advice having been received; to Ms McGahey QC's request for the Claimant explanation of the truthfulness of the tweets; to the withholding of this explanation from Ms McGahey QC; or to Ms McGahey QC's advice having been given "*on the basis that*" the Claimant could not give the substantiation that she had in fact given. The Third Sikand Report was adopted from the Second Sikand Report (and by extension the First Sikand Report).

f) On receipt of the Third Sikand Report, Ms Harrison objected: "*I don't see how we can just proceed on the basis there is a risk* [that the Claimant's statements] *are a breach* [of the BSB Code] – *we have to make a finding don't we*?" Ms Sikand replied "*I don't agree - I can't say definitively - no-one can.*" Nevertheless, Ms Harrison QC amended the Third Sikand Report, tracking her changes in the document. Ms Harrison QC's changes changed the "*may be at risk*" language adopted by Ms Sikand from Ms McGahey QC's advice into a conclusion that the Claimant "*is likely to*" have breached the BSB Code, contrary to Ms McGahey QC's advice, and despite the withholding from Ms McGahey QC of the Claimant's explanation of the truthfulness of the statements under investigation. Ms Sikand objected to Ms Harrison QC making these changes: "*I didn't ask for tracks Steph! I'm not your junior in a case!*".

g) A further report was prepared on 11 December 2019, which was provided to the Claimant later that day ("**The Fourth Sikand Report**"). This concluded that the Claimant "*was likely*" to have breached the Bar Standards Code, contrary to the conclusion of the Third

Sikand Report. The tracked version of the Third Sikand Report to which Ms Sikand objected was not the Fourth Sikand Report – further changes were made between this version and the Fourth Sikand Report that was sent to the Claimant – but the changes to the Third Sikand Report's conclusions, and the adoption of the "*is likely to*" language by Ms Harrison QC in her changes were retained in the Fourth Sikand Report. Garden Court has not, despite requests from the Claimant, disclosed the documents which would account for the difference between Ms Harrison QC's tracked changes to the Third Sikand Report and the Fourth Sikand Report.

h) The Fourth Sikand Report was presented as being the exclusive work of Ms Sikand. As set out above, this was not the case: each of Ms Khan QC, Ms Harrison QC and Mr Willers QC had a hand in drafting it. They, together with Ms Sikand, were both individually and collectively responsible for its contents.

Individuals who victimised the Claimant by subjecting her to the detriment at paragraph 24(b)(iv)

35. Stephanie Harrison QC

36. Maya Sikand

37. Judy Khan QC, Marc Willers QC and Leslie Thomas QC

Principal matters relied on as evidencing that they were individuals acting as authorised agent, and/or in the course of employment by Chambers or the Service Company

38. Maya Sikand was appointed by the Heads of Chambers to decide the Stonewall complaint on behalf of Chambers. In the premises, she was at all material times and in all material respects relevant to this allegation acting as agent for Chambers.

39. Stephanie Harrison QC was a member of Chambers' Management Board. She was at all material times and in all material respects relevant to this allegation acting in that capacity and, therefore, as agent for Chambers.

40. Judy Khan QC, Marc Willers QC and Leslie Thomas QC were Heads of Chambers during 2019. They were at all material times and in all material respects relevant to this allegation acting in that capacity and, therefore, as agents for Chambers.

Detriment 5 – the Second and/or Third Respondents' failure to comply with the Subject Access Requests

Individuals who victimised the Claimant by subjecting her to the detriment at paragraph 24(b)(v)

41. Judy Khan QC, Stephanie Harrison QC and Liz Davies, the Heads of Chambers.

42. Colin Cook, the Director of Clerking, who was responsible for ensuring that the appropriate material was provided to Mia Hakl-Law.

43. Mia Hakl-Law, the Director of Operations & Human Resources, who was the person primarily responsible for responding to the SAR

Principal matters relied on as evidencing that they were individuals acting as authorised agent, and/or in the course of employment by Chambers or the Service Company

44. Judy Khan QC, Stephanie Harrison QC and Liz Davies were the then Heads of Chambers at the material time. They were at all material times and in all material respects relevant to this allegation acting in that capacity and, therefore, as agents for Chambers.

45. Colin Cook, the Director of Clerking, was an employee of the Service Company. He was at all material times and in all material respects relevant to this allegation acting in that capacity in the course of his employment with the Service Company and/or as agent of Chambers.

46. Mia Hakl-Law was an employee of the Service Company. She was at all material times and in all material respects relevant to this allegation acting in that capacity in the course of her employment with the Service Company and/or as agent of Chambers.

<u>**PCPs**</u>

PCP 1 – The treatment by the Second and/or Third Respondents (and/or by individuals for whose actions the Second and/or Third Respondents are liable) of gender critical beliefs as being bigoted or otherwise unworthy of respect

Individuals who are said to have operated this PCP

47. David Neale (Barrister & Chambers Researcher)

48. David Renton (Barrister)

49. Leslie Thomas QC

50. Judy Khan QC and Marc Willers QC

51. Stephanie Harrison QC

52. Maya Sikand (now Queen's Counsel)

53. Michelle Brewer, Louise Hooper, Tom Wainwright, Alex Sharpe, Shu Shin Luh, Stephen Clark and Stephen Lue, all Barristers at Garden Court.

Principal matters relied on as evidencing that this PCP existed

54. Garden Court Chambers as a corporate entity whole heartedly adopted Stonewall's pro-gender theory viewpoint from at least 2017. It is a fundamental aspect of Stonewall's pro-gender theory viewpoint that gender critical beliefs are bigoted and unworthy of respect. Garden Court Chambers 'corporate adoption of this viewpoint is evidenced in part by its corporate social media output (relevant examples of which have been collated and disclosed by the Claimant in a single document), seminars, hosting of key transgender pressure groups and organisations and events. The Claimant further relies on the following:

    a) Chambers sponsored and hosted the launch of the Trans Equality Legal Initiative ("TELI") on 20 May 2016. TELI was founded by Michelle Brewer. Michelle Brewer, Louise Hooper and Stephanie Harrison QC were speakers at the launch event. The launch was 'live-tweeted 'via Chambers 'twitter account. Tweets published by Chambers during the event had the intention of demonstrating that the views expressed by TELI were Chambers ' corporate view. These tweets included:

        i) "*Garden Court's Michelle Brewer & @UKTEL founder on @UKTELI mission:* "*We are about realising rights, not justifying rights" #TELI16 @michelle"*; and

        ii) "*Michelle Brewer: To stop acting unlawfully I believe the gov has to adopt method of gender recognition based on self-determination" #TELI16"*, both published on 18 November 2016

b) Chambers has published tweets promoting door tenant Alex Sharpe's writings on the Gender Reform Act consultation, including the following, published on 19 October 2018:

> "*We should embrace reform. The costs of doing so for cis women are negligible. The costs of NOT doing so for trans and non-binary folk are substantial." Our @AlexSharpe64 writes for @inherentlyhuman on the current debate surrounding the #GRA consultation"*

55. Furthermore, the existence of the Transrights Working Group and its activities, as set out at paragraph 22 above, are relied on as evidencing that this PCP existed.

56. On 14 December 2018, Chambers Researcher and Barrister David Neale complained about the Claimant's first protected act, characterising her statements as "*transphobic, offensive and hurtful"*. Judy Khan QC and Leslie Thomas QC responded on 14 December 2018, including the following, which implied that they considered the Claimant to be bigoted and unworthy of respect:

a) Judy Khan QC stated, "*Unfortunately, some members of Chambers do not always express themselves in a way that we would wish. Chambers will, of course, continue to be a trans-inclusive space and nothing that Allison has said will alter that fact.*"

b) Leslie Thomas QC stated, "*I completely agree with the sentiment and way forward as expressed by Judy. Allison* [sic] *views are not shared by the heads or the vast majority of chambers. In solidarity."*

57. Email correspondence between David Renton (Barrister), with whom the Claimant shares a room in chambers, and Michelle Brewer between 24 and 30 October 2019 implies that Mr Renton considered the Claimant's gender critical beliefs as bigoted and not worthy of respect. Mr Renton's belief in this regard was shared by Mr Lue (Barrister), who directed Mr Renton to Ms Brewer.

a) In an email from Mr Renton to Michelle Brewer on 24 October 2019, Mr Renton states that he had spoken to Stephen Lue who had directed him to email Michelle Brewer. In his email to Ms Brewer, Mr Renton states that he had become "*increasingly concerned in recent weeks by the conduct of a fellow member of chambers",* and that his concerns were

about "*the views I heard her express at great length in a phone conversation in our room a week ago, which just seem a million miles away from chambers values".*

b) On 28 October 2019, Mr Renton includes a tweet from the Claimant in an email to Ms Brewer and states, "*Basically, it was just 45 minutes of insisting again and again that all trans prisoners were male-bodied and rapists, etc etc… I am just trying to work out if there's anyway of signalling – politely and firmly – that chambers has a collective view and that it is also the view of the great majority of us."*

58. On 25 October 2019, Chambers sent several tweets containing the following statement: "*We are investigating concerns raised about Allison Bailey's comments in line with our complaints/BSB policies. We take these concerns v seriously & will take all appropriate action. Her views are expressed in a personal capacity & do not represent a position adopted by Garden Ct. Garden Court Chambers is fiercely proud of its long-standing commitment to promoting equality, fighting discrimination and defending human rights*." Chambers also posted a statement on its website, which read: "*We wish to make it clear that LGB Alliance is not part of Garden Court Chambers nor representative of the views of Chambers*." An earlier version of the website statement included the same text but started with two additional sentences: "*Garden Court Chambers is proud to support trans rights. Human rights are universal and indivisible."* This had been put to the Claimant for her approval prior to publication by Ms Khan QC. The Claimant declined to provide that approval, describing the statements as defamatory. Her reason for describing the statements as defamatory was that they indicated that the Claimant was hostile to human rights. Following her refusal to approve the statement that was put to her, the statement was then published without those two sentences included. It is to be inferred from the original drafting of the statement that was put to the Claimant that Chambers considered that LGB Alliance did not support trans rights and did not consider human rights to be universal and indivisible. It is further to be inferred that Chambers considered the Claimant to hold the same views. It is further to be inferred that Chambers considered the Claimant to be bigoted and unworthy of respect because they considered that she held these views.

59. It is to be inferred from the foregoing paragraphs that Chamber had *"a collective view*" (as it was termed by Mr Renton) that the Claimant's beliefs were bigoted and/or otherwise unworthy

of respect, and that this collective view was shared by a great majority of members of Chambers, including Mr Renton and Mr Lue.

60. Individuals identified below treated the Claimant in a way which was disrespectful and incompatible with their status as senior members of the bar. It is to be inferred from the facts and matters identified (both in respect of Chambers 'adoption of Stonewall's position above and in respect of the relevant individuals below) that they did this because they considered the Claimant's belief to be bigoted and unworthy of respect, thus justifying actions which they would otherwise not have taken. The specific actions are set out below.

61. With respect to Leslie Thomas QC:

    a) In email correspondence dated 24 October 2019, Mr Thomas QC concluded that the Claimant had breached the Equality Act 2010 ("**the Act**") by virtue of her tweet announcing the launch of the LGB Alliance. Mr Thomas QC's assertion that the tweet had breached the Act was demonstrative of his view that the Claimant's beliefs were bigoted and unworthy of respect.

    b) On 24 October 2019, the Claimant requested that Mr Thomas QC recuse himself from the investigation being undertaken into her conduct, by reason of his position on the Bar Standards Board. Mr Thomas QC agreed.

    c) On 4 November 2019, Mr Thomas QC advised Maya Sikand on how the complaints against the Claimant should be investigated and the conclusions she should make in her report to the Heads of Chambers, despite having previously agreed to recuse himself from the process of the investigation of those complaints. On the same day, Mr Thomas QC advised Maya Sikand that the Claimant had breached the Bar Standards Board Code of Conduct. He also suggested an individual at the Bar Standards Board who could be contacted for confidential advice.

    d) The Claimant will further rely on a comparison of Mr Thomas QC's reactions to the following incidents to demonstrate that he considered the Claimant's beliefs to be bigoted and unworthy of respect:

i) On 14 December 2018, David Neale raised concerns to Mr Thomas QC about the Claimant's First Protected Act (paragraph 56 above);

ii) On 22 December 2018, the Claimant raised concerns to Mr Thomas QC of abusive social media conduct by Alex Sharpe (Door Tenant) against people who hold gender critical beliefs, such as those held by the Claimant;

iii) Mr Thomas QC's actions in November and December 2019 in response to the complaints against the Claimant, including the 31 October 2019 Stonewall complaint.

62. In particular, Mr Thomas QC's reaction to the Claimant's concerns about Alex Sharpe were dismissive and combative towards the Claimant, while his reaction to David Neale was supportive; and his involvements with the complaints against the Claimant in November and December 2019 were designed to maximise the prospect of a finding against the Claimant. The Claimant and Mr Thomas QC had a generally positive relationship apart from these incidents. It is to be inferred that the Claimant's belief – and in particular Mr Thomas QC's view of that belief as bigoted and unworthy of respect – was the basis for the differences between his actions in respect of those three incidents.

63. With respect to Judy Khan QC and Marc Willers QC, paragraph 34 above is restated, and in particular the involvement of Ms Khan QC and Mr Willers QC in the Sikand Reports, the deviation of the Fourth Sikand Report from Ms McGahey QC's advice, and the presentation of the Fourth Sikand Report as being the sole work of Ms Sikand. These had the effect, and it is to be inferred also the purpose, of ensuring that Ms McGahey QC's advice could not take account of the Claimant's responses and was therefore less likely to be favourable to her. It is to be inferred that this was because of their view that the Claimant's belief was bigoted and unworthy of respect

64. With respect to Stephanie Harrison QC:

a) Paragraphs 34 and 63 above are restated in respect of Ms Harrison QC. Ms Harrison QC failed to disclose the Claimant's detailed response to the Stonewall Complaint to Ms McGahey QC, despite Ms McGahey QC explicitly asking for the Claimant's response to be provided to her, and rewrote the Third Sikand Report in order to reach conclusions significantly more adverse to the Claimant. This had the effect, and it is to be inferred

also the purpose, of ensuring that Ms McGahey QC's advice could not take account of the Claimant's responses and was therefore less likely to be favourable to her. Ms Harrison QC's amendments to the Third Sikand Report, which were retained in the Fourth Sikand Report, unfairly concluded against the Claimant.

b) On 24 October 2019, Ms Harrison QC sent an email which implied that in her view the Claimant's involvement in LGB Alliance was transphobic and otherwise insulting.

c) On 11 November 2019, Ms Harrison QC sent an email to the Heads of Chambers, Ms Sikand and Ms Hakl-Law, in which she stated" *I suppose we just have to sit this out but is there any advantage now in meeting with her and offering her that* ["that" being the Claimant taking down the tweets in the 31 October 2019 Stonewall Complaint] *as the solution ? Or seeking resolution with* [Stonewall] – *what ever we do they can just make the complaint to the Bar Council?".* Ms Harrison QC was thereby proposing an ostensible resolution be put to the Claimant which appeared to conclude the investigation, but in the knowledge or expectation that Stonewall would complain to the Bar Council, with the effect that regulatory sanction might be taken against the Claimant, which would not be attributable to Chambers.

65. With respect to Maya Sikand:

a) Ms Sikand was a member of Chambers Transrights Working Group and on 16 October 2019 corresponded with members of that group about censoring the Claimant's tweets prior to Ms Sikand being appointed to investigate the Claimant.

b) Ms Sikand accepted the redrafting of the First Sikand Report to the Heads of Chambers (which created the Second Sikand Report), to the detriment of the Claimant.

c) Ms Sikand appears (although disclosure relating to this has not been made) to have accepted the redrafting of the Third Sikand Report by Ms Harrison QC and which resulted in the Fourth Sikand Report, despite the changes making her conclusions significantly more serious and thus to the detriment of the Claimant.

d) The Claimant will draw a comparison between Ms Sikand's reaction to the Stonewall complaint ("*Christ I had no idea she was sitting there slagging off Stonewall to that*

degree") and her dismissive reaction to correspondence which was supportive of the Claimant (for example "*This caseworker expresses typically inaccurate views. We are not investigating* [the Claimant] *for her political views but as to whether her tweets offend the BSB. Ffs* [For Fuck's Sake]". On 6 November, she wrote about the same individual: "*There are various letters of support, there is nothing to respond to here in my view, partic not from a misguided caseworker somewhere (our complaints are not about her political membership)… We will bear it in mind…*". The comment "*we will bear it in mind*" was off-hand, ironic and dismissive and was intended to be read as such by the recipients of the comment: they all knew that letters in support of the Claimant were not given any consideration at all, save for one letter from Harriet Wistrich, which had been dealt with by the time that Ms Sikand made this comment. Only complaints about the Claimant were taken into account. During this period Chambers were aware that the Claimant received extensive messages of support online and by email. Many of those were from lawyers. She also received in Chambers many of letters and postcards with messages of support post marked from around the world. Chambers were also aware that the Claimant received flowers and gifts from her supporters sent to her in Chambers on several occasions.

e) Ms Sikand's various comments the Claimant's tweets, which Ms Sikand shared while preparing her reports demonstrate her view that the Claimant's beliefs were bigoted and/or otherwise unworthy of respect. For example, On 4 November 2019, Maya Sikand wrote "*How did we miss* [the Claimant's tweet] *on the 18th October? Why did no-one notice it? I've removed that one and the Stonewall one".* By stating that she had "*removed*" the Claimant's 18 October tweet, Ms Sikand was stating that she had removed it from consideration in the First Sikand Report and was thus retaining the 18 October tweet for investigation as a breach of the BSB Code in the subsequent Sikand Reports. Ms Sikand therefore considered the Claimant's 18 October tweet to be worthy of consideration for sanction. By asking "*How did we miss* [it]? *Why did no-one notice it?*", Ms Sikand was reflecting that the purpose of extracting particular matters for further investigation was to find a basis for sanctioning the Claimant. The Claimant's 18 October tweet stated "*Women's rights are not a political football. Women & girls have suffered, and continue to suffer, at the hands of predatory & abusive men. It is offensive & unacceptable to suggest, much less legislate, for a system whereby *any* man can declare himself lawfully*

to be a woman." Ms Sikand's reading of this statement as worthy of consideration for regulatory sanction indicated that she considered the Claimant's views as expressed in the tweet unworthy of respect.

f) In reply to Ms Harrison QC's suggestion for a resolution with the Claimant (paragraph 64(c) above), Ms Sikand took no exception other than a practical one, which was that even if the Claimant accepted the proposal, Chambers may still have to investigate other of the Claimant's tweets. "*Trouble is, there are, as you know, further* [Stonewall] *tweets* [written by the Claimant] *on 2/11 which are likely to offend. If she was minded to adhere to the BSB Guidance, would she have posted those? We don't have a complaint about those I know. We have no idea if* [Stonewall] *will or will not refer her to the BSB (not Bar Council)*". In other words, even if the Claimant agreed to take down the tweets complained about by Stonewall, Ms Sikand still wished to pursue a further investigation because there was no guarantee that Stonewall would actually complain to the BSB. This attitude and approach demonstrates Ms Sikand's view that the Claimant's beliefs were bigoted and/or otherwise unworthy of respect and that she should be sanctioned for them by any means.

g) Ms Sikand made incomplete, inaccurate or misleading statements in her correspondence with the Claimant while she was investigating the complaints against her:

   i) In an email on 11 November 2019, Ms Sikand wrote to the Claimant that Ms Sikand "*only asked for a response in relation to two tweets in Stonewall's complaint"*. As set out above, various other tweets were material to Ms Sikand's decision making (including the 18 October tweet, tweets on 2 and 4 November, and the tweets in which Sikand characterised the Claimant as "*sitting there slagging Stonewall off*" (paragraph 65(d) above).

   ii) In her 11 November 2019 email to the Claimant, Ms Sikand also said that she was "*certainly not pre-judging the complaints I am looking into*." As set out above, Ms Sikand had explicitly pre-judged the complaints. This email to the Claimant had been drafted with the assistance of Ms Harrison QC, Mr Willers QC, Ms Khan QC and Mia Hakl-Law. The correspondence agreeing the wording of this eight-line email ran to 114 pages of emails between them. The purpose of the email to the Claimant was to invite the Claimant to remove her tweets, and this was presented to her in the email as

a means by which she would avoid BSB sanction. However, Ms Sikand stated this in the belief that it was not true: in an earlier email proposing her wording to the Claimant, Ms Sikand wrote to Ms Harrison QC, Ms Khan QC, Mr Willers QC and Ms Hakl-Law "*(That said I'm guessing the BSB will look into a tweet if reported, even if removed AFTER reporting?)"*

iii) In an email to the Claimant on 25 November 2019, Ms Sikand wrote: "*In my attached e-mail of 6/11 I thought I had made clear that I was looking into a number of complaints, but that I would only contact you about those that I considered required a response."* This incorrectly implied that any tweets other than the two particularised in the Sikand Report were not considered worthy of criticism and/or sanction, hence not requiring a response. In fact, the opposite was true: Ms Sikand considered them (and therefore pre-judged them) so clearly worthy of criticism that she declined even to invite the Claimant to offer an explanation of them or be permitted to defend herself.

h) Ms Sikand's reaction to the Claimant's response to the 31 October 2019 Stonewall complaint was dismissive. In an email to Ms Khan QC, Mr Willers QC, Ms Harrison QC and Ms Hakl;Law, Ms Sikand wrote of the Claimant's response: "*The language is highly provocative and emotive throughout, the assertions are sometimes inaccurate, and <u>on a very quick read</u>, appears to accuse us of harassment for* "*accepting" the complaint. It also includes personal and sensitive disclosure, in my view irrelevant to these complaints*." What Ms Sikand dismissed as "*irrelevant*" was the Claimant's disclosure about suffering sexual abuse in childhood perpetrated by a man who was soon to be released from prison for his crimes against her and her concern about the safeguarding issues implicit in allowing males to self-declare themselves women.

66. Michelle Brewer, Louise Hooper, Tom Wainwright, Alex Sharpe, Stephen Clark, Shu Shin Luh, Stephen Lue and Maya Sikand were all members of Chambers 'Transrights Working Group and all made statements which demonstrate and/or from which it is to be inferred that they believed the Claimant's gender critical views and activities were transphobic, bigoted or unworthy of respect, including:

a) WhatsApp exchanges between Michelle Brewer and Louise Hooper, Shu Shin Luh and Stephen Clark in which the following statements were made:

i) On 22 September 2019, Ms Brewer sent a WhatsApp message to Stephanie Harrison QC, Stephen Clark and Shu Shin Luh stating, "*Have you seen this – bloody shocking post by Alison – I will be in touch with stonewall on Monday – but once chk accuracy I am putting in a formal complaint"*

ii) On 22 September 2019, Ms Brewer forwarded one of the Claimant's tweets to Shu Shin Luh who responded, inter alia, "*WFT?!?!* [What the fuck]", "*There's quite a lot of crazy posts"* and *"…I think Allison really needs to reign it in. This is so wrong"*.

iii) On 23 October 2019, Mr Clark wrote in a text message to Ms Brewer, "*Just so you know, everyone is going mental because Allison Bailey has launched the "LGB Alliance" to support Lesbians, Gays and Bisexual rights. No trans allowed. Happy half term!"*

iv) On 24 October 2019, Ms Hooper sent Ms Brewer a WhatsApp message including a proposed statement in response to the Claimant's 22 October 2019 tweet. The proposed statement included the sentence, "*We wish to make it clear that LGB Alliance is not connected to Garden Court Chambers nor representative of the views of Chambers."* Ms Brewer responded, "*Yeh that's excellent x*". After forwarding a link to an article about the Claimant, Ms Brewer wrote, "*What a cluster fuck just sent this to David in marketing"* and later wrote, "*All I care about is that we make clear that we support trans rights so very much like the stonewall statement"*

b) Other communications between these Members of Chambers, including:

i) On 14 December 2018, Michelle Brewer emailed Stephen Lue to say: "*Great now Allison's wholly unfounded allegations are going to be aired with Ruth* [Hunt – then CEO or Chair of Stonewall] – *nothing like washing our dirty transphobic laundry in public"*.

ii) On 24 October 2019, Mr Thomas QC emailed members of Garden Court about the BSB Social Media Guidance. The Claimant replied to this email stating that she had it in the forefront of her mind. Shu Shin Luh emailed Michelle Brewer, asking about the Claimant "*Is she delusional????*", to which Ms Brewer responded "*Yes….*"

c) As set out at paragraph 9 above, on 24 October 2019, Mr Wainwright emailed Mia Hakl-Law (Director of Operations &Human Resources), the Transrights Working Group and the then Heads of Chambers bringing the Claimant's 22 October 2019 tweet to their attention and stating, "*It would appear from Twitter this morning that Allison has formed or is part of a new Anti-Trans LGB Group. This is already causing damage to our reputation.".*

d) On several occasions, Prof Alex Sharpe has published tweets, tweeting as a member of Garden Court Chambers, referring to "TERFs" (an offensive term used to insult and defame radical feminists who challenge gender theory as trans-exclusionary), including on 15 October 2018. Prof Sharpe also sent abusive tweets to Professor Kathleen Stock OBE and Professor Rosa Freedman labelling them as "TERFs" on 17 November 2018. Prof Sharpe did so because both women, university professors in philosophy and law respectively, argue in favour of the *status quo* to maintain single sex provision, and against the self-declaration (self-ID) of sex. These tweets were known to Chambers, because screenshots of them, taken on Saturday 22 December 2018 but not provided by the Claimant (either in her complaint to Leslie Thomas QC the same day (paragraph 61(d)(ii) above), or otherwise) have been disclosed by Garden Court in these proceedings. As far as the Claimant is aware, Chambers took no steps to address Prof Sharpe's tweets or to require Sharpe to remove reference to her status as a member of Garden Court Chambers, as the Claimant was requested to do by the Heads of Chambers in the immediate aftermath of her tweet launching the LGB Alliance.

e) Ms Brewer corresponding with an unknown person from Gendered Intelligence on 25 October 2019, notifying them that the Claimant's "*tweets and her media quotes are now the subject of our internal complaint process which the heads of chambers are dealing with over the weekend for board meeting on Monday*". On 26 October 2019 Gendered Intelligence published a tweet (since deleted, but a screenshot was produced by the Claimant in Annex 1 to her response to the Stonewall Complaint dated 21 November 2019) encouraging "*everyone*" to complain about the Claimant to Garden Court Chambers: "*We would encourage everyone to write a letter of to GCC expressing your concern about the barrister in question and the new group*".

67. The Claimant will also rely on a complaint made by various third parties about another Garden Court barrister who was accused of having made antisemitic statements. Those allegations were more serious for Garden Court than the Stonewall allegations against the Claimant, because the allegedly antisemitic statements were published by Garden Court on its website. Garden Court's response to all of these complaints was to dismiss them, deploying in large part legal reasoning that should have been applied equally to dismiss the complaints against the Claimant. It is to be inferred that the reason that they were not so deployed in favour of the Claimant was because the Claimant's gender critical beliefs were seen as bigoted and unworthy of respect by Garden Court, whereas the allegedly antisemitic views of the other barrister were not.

68. Furthermore, on 23 October 2020, the Claimant had occasion to submit a complaint against her colleague and fellow barrister member of Garden Court Chambers, Stephen Simblet QC. On 13 September 2020, the Claimant submitted a subject access request to Mr Simlet QC via her solicitors. Mr Simbet QC's responses were abusive, unprofessional and included threats against the Claimant and her solicitors of investigation by the ICO and professional regulators.

69. Chambers appointed Barrister Kathryn Cronin, one of Chambers' most senior members, to investigate the Claimant's complaint. Ms Cronin provided her outcome letter on 6 January 2020. Ms Cronin almost entirely rejected the Claimant's complaint. Unbeknownst to the Claimant – and without any counter complaint from Mr Simblet QC – Ms Cronin had decided to investigate the Claimant in the course of investigating Mr Simblet QC. She recommended that the Claimant apologise to Mr Simblet QC for the content of her complaint.

70. Ms Cronin's almost wholesale rejection of the Claimant's complaint and her decision to investigate the Claimant for her complaint can be compared to Chambers' handling of the 31 October 2019 Stonewall complaint against the Claimant. It is to be inferred that the reason for

Mr Simblet QC and Ms Cronin's behaviour set out above was because they considered the Claimant's gender critical beliefs to be bigoted and unworthy of respect.

PCP 2 – The Second and Third Respondent (including by individuals for whose actions the Second and/or Third Respondents are liable) allowing the First Respondent to direct its complaint process

Individuals who are said to have operated this PCP

71. Stephen Lue (Barrister member of Garden Court), David de Menezes (Marketing & Communications Director) and Mia Hakl Law (Director of Operations & Human Resources)

72. Michelle Brewer (Barrister member of Garden Court)

73. Maya Sikand (now Queen's Counsel)

74. Stephanie Harrison QC, Judy Khan QC, Mark Willers QC and Lesley Thomas QC.

Principal matters relied on as evidencing that this PCP existed

75. Chambers is a Stonewall Diversity Champion. Stephen Lue, David de Menezes and Mia Hakl Law were the main individuals responsible for liaising with Stonewall regarding Chambers' status as a Stonewall Diversity Champion.

76. At a meeting at Garden Court Chambers on 23 October 2019 (referred to further at paragraph 83 below), Shaan Knan (Stonewall) invited those present to complain about the Claimant. He was prompted to do so by Michelle Brewer.

77. Ms Sikand's initial conclusion in the First Sikand Report was that the Claimant had breached no rule or provision. Her view changed when she saw tweets in which the Claimant mentioned Stonewall and her final report was subsequently co-authored by the Heads of Chambers, yet presented as her independent investigation.

78. In Stonewall's complaint dated 31 October 2019, on behalf of Stonewall, Kirrin Medcalf threatened "*...for Garden Court Chambers to continue associating with a barrister who is actively campaigning for a reduction in trans rights and equality, while also specifically targeting members of our staff with transphobic abuse on a public platform, puts us in a*

difficult position with yourselves: the safety of our staff and community will always be Stonewalls first priority. I trust that you will do what is right and stand in solidarity with trans people."

79. On 4 November 2019, Maya Sikand stated in an email to Heads of Chambers, David de Menezes and Mia Hakl Law:

    "*Given that we are a Stonewall Diversity Champion, I do not think* [the Claimant] *should be maligning them."*

80. As set out at paragraph 34 above, Ms Harrison QC procured advice from Ms McGahey QC in the course of the investigation into Stonewall's complaint, but then perpetrated a serious misrepresentation of that advice and inserted it into the Fourth Sikand Report in order to make the conclusions significantly more adverse to the Claimant, having misrepresented whether the Claimant could substantiate the tweets, and having withheld from Ms McGahey QC the Claimant's response to the complaint.

81. One iteration of the 31 October 2019 Garden Court complaint was sent to the Claimant's clerks, via particular Garden Court email addresses that are not publicly available and/or would not be identified by a member of the public as a suitable recipient for a complaint against the Claimant. The Claimant has sought disclosure of the communication/s by which these email addresses were provided to Stonewall, but this disclosure has not been forthcoming. These email addresses can only have been provided by individuals at Garden Court and it is to be inferred that they were provided specifically for the purpose of facilitating Stonewall's complaint against her.

<u>Stonewall</u>

Individuals, both from Stonewall and from Chambers, who are said to have colluded at paragraph 17(a) and how, when and by what means it is alleged they did so:

82. Stonewall is (vicariously) liable for the actions of the members of the Stonewall Trans Advisory Group ("STAG") and Shaan Knan of STAG in particular:

a) Stonewall created STAG in 2015 "*to formally campaign on trans issues…*". STAG has between 15 and 20 members and it meets quarterly. Stonewall's CEO, Executive Director of Campaigns and Strategy, Director of Campaigns, Policy and Research, Trans Engagement Officers and other Stonewall staff actively engaged in projects involving STAG and had a standing invitation to STAG meetings;

b) Stonewall's own Memorandum of Understanding with STAG states – in the section entitled "*Accountability*" – "*While remaining a* '*critical friend*' *should be its primary role, STAG exists by creation and for all practical purposes, under the Stonewall umbrella. STAG Chair and Vice-Chair (and STAG members by extension) are ultimately accountable to Stonewall's Executive Director of Campaigns & Strategy who is in turn accountable to Stonewall CEO and Board of Trustees*";

c) Stonewall has responsibility for funding costs associated with STAG meetings and STAG-related training events;

d) STAG members can claim travel and subsistence expenses from Stonewall in relation to STAG work;

e) Stonewall's Head of Trans Inclusion is an ex-officio member of STAG and an employee of Stonewall;

f) STAG's policies are to be adopted in line with Stonewall's policies and in agreement with Stonewall;

g) In the event of misconduct, investigations are to be carried out by individuals from both STAG and Stonewall;

h) Stonewall operates a private communication platform entitled 'The Wall'. STAG have access to and communicate via the Wall, and communicated about the Claimant on The Wall;

i) Shaan Knan is a member of STAG. It is to be inferred from the foregoing that the actions done by Shaan Knan set out in the following paragraphs were done in his capacity as an agent of Stonewall.

83. On 22 September 2019, Michelle Brewer told Stephanie Harrison QC, Stephen Clark and Shu Shin Luh that she would be in touch with Stonewall regarding the Claimant's tweets.

84. On 23 October 2019, Garden Court hosted a Roundtable about the ONS census for the Consortium's Trans Organisations Network. Attendees included Stonewall's Head of Policy Josh Bradlow and members of the Stonewall Trans Advisory Group. At Michelle Brewer's suggestion or instruction, Shaan Knan specifically encouraged attendees to write to the Heads of Chambers making complaints against the Claimant, and reference was made to the upcoming meeting at which Heads of Chambers would decide how to address complaints against the Claimant (information which it can be inferred came from Michelle Brewer acting in her capacity as an agent of Chambers).

85. On 25 October 2019, Shaan Knan, in a post on The Wall (a private Stonewall communication platform) stated that Michelle Brewer had encouraged "*the trans community to write messages of support (supporting action against Bailey) to the Head of Garden Court Chambers*."

86. On the same day, Shaan Knan published a post on a private STAG/Stonewall Facebook page in which he stated, *"...I posted on stag wall just now asking for your support (by Monday). Trans ally barristers at Garden Court Chambers are meeting Head of Chambers on Monday, hoping to take formal action against barrister Allison Bailey who has posted anti trans messages on social media in her barrister capacity (Pro LGB Alliance launch etc). We need messages of support for our friends there eg Michelle Brewer, Alex Sharpe.. Pls read on The Wall. Let's not let Bailey get away with it!"*

87. Michelle Brewer and Shaan Knan were in contact by phone, text message and WhatsApp between 23 October and 6 November 2019. In particular:

    a) On 24 October 2019, in response to a request from Ms Brewer for an update on "*yesterday"*, Shaan Knan wrote: "*...I did bring up briefly the issue with the terfy barrister and asked people to support and write to Head of GC. I hope to put something together tonight..."*

    b) On 6 November 2019, Mr Knan wrote: *"...i m afraid i likely won't make it to this afternoon's trans prisoner round table… Also would be great to catch up on the outcome of the Bailey case…"*

88. For the avoidance of doubt, the foregoing facts and matters are those which the Claimant has been able to identify from the disclosure so far provided. It is to be inferred that the contact between those individuals was more extensive.

What matters the Claimant relies on as constituting the causing, instructing or inducing by Stonewall:

89. Chambers is a Stonewall Diversity Champion. This is a paid programme which involved, *inter alia,* a review of all Garden Court's policies, recommended amendments to those policies, an offer of discounted awareness raising sessions and training, an offer to assist with networking when attending Stonewall's events.

90. On 3 January and 17 July 2019, Reg Kheraj and Zainab Al-Farabi – Chambers' Account Managers at Stonewall – suggested that there should be formal relationship of Chambers "*supporting*" Stonewall's work in "*driving forward the agenda for full LGBT equality in the UK*". On 14 December 2018, Stephen Lue sent an email to Chambers announcing that Chambers had become a Stonewall Diversity Champion. His email stated "*Stonewall is looking for partner in strategic litigation regarding the upcoming Gender Recognition Act becoming law.*"

91. Contact between Michelle Brewer and Shaan Knan between 23 October and 6 November 2019 (paragraphs 84 and 87 above).

92. Shaan Knan's Facebook post dated 25 October 2019 (paragraph 86 above).

93. Shaan Knan, Alex Drummond (also of STAG/Stonewall) and Kirrin Medcalf's statements on Stonewall's 'Wall' dated 25 October 2019, in particular:

    a) On 25 October 2019, Shaan Knan wrote, "*I spoke to Michelle Brewer … who told me she encourages the trans community to write messages of support (supporting action against Bailey) to the Heads of Garden Court Chambers. … Please write to the Head of Garden Court Chambers by Monday morning…*"

    b) In response, Alex Drummond wrote: "*Done.*"

c) Also in response, Kirrin Medcalf wrote, "*Done! (also discovered that she was one of the people targeting a trans member of our staff with online abuse so have put that into the email as well).".*

94. Shaan Knan's complaint against the Claimant dated 25 October 2019, in particular:

"*Garden Court Chambers have been tremendously supportive of trans equality, and I have worked alongside many wonderful allied barristers (eg Michelle Brewer, Alex Sharpe) for many years on many issues, for example GRA reform and trans prison policy… Just last week, Consortium held a round table at your premises – thanks to Michelle Brewer – discussing issues around the Census/ONS and data collection of gender identity; we had representatives from Stonewall [redacted] and many more established organisations. We are very grateful for your ongoing support indeed. In the current socio-political climate where hate crime against trans people is on the rise, and many trans people face daily harassment and constant stigmatisation, I find barrister Bailey's actions extremely harmful and completely against the ethos of Garden Court Chambers*

95. Stonewall's complaint of 31 October 2019, in particular:

"*Garden Court barristers have always been allies to trans people and to Stonewall, which is something we are very proud of and grateful for. However, for Garden Court Chambers to continue associating with a barrister who is actively campaigning for a reduction in trans rights and equality, while also specifically targeting members of our staff with transphobic abuse on a public platform, puts us in a difficult position with yourselves: the safety of our staff and community will always be Stonewalls first priority. I trust that you will do what is right and stand in solidarity with trans people."*

96. It is to be inferred from the foregoing that, having regard to the influence which Stonewall had upon the Second and/or Third Respondents, both by virtue of its Diversity Champion programme and/or by virtue of its association with and/or influence upon members of Chambers generally:

a) By each of the acts referred to in paragraphs 82-95 above, Stonewall and/or its employees or agents sought to deploy that influence in to order cause, instruct or induce action against the Claimant by the Second and/or Third Respondents, whether or not the particular action

sought was actually procured, which was (or would have been) a basic contravention; and/or

b) By those acts or some of them and whether individually or in combination, Stonewall and/or its employees or agents caused, instructed or induced the Second and/or Third Respondents to uphold (in part) Stonewall's complaints against the Claimant and/or subject her to the other detriments of which she complains.

BEN COOPER QC

RACHEL OWUSU-AGYEI

PETER DALY

25 MAY 2021

IN THE EMPLOYMENT TRIBUNAL
LONDON CENTRAL
B E T W E E N

Case no: 2202172/2020

MS ALLISON BAILEY

Claimant

and

(1) STONEWALL EQUALITY LIMITED
(2) GARDEN COURT CHAMBERS LIMITED
(3) ~~JUDY KHAN QC,~~ STEPHANIE HARRISON QC and RAJIV MENON QC ~~AND LIZ DAVIES~~,
sued as Representatives of all members of
GARDEN COURT CHAMBERS
except the Claimant

Respondents

FURTHER REVISED ~~DRAFT~~
AMENDED PARTICULARS OF CLAIM

INTRODUCTION

1. These pleadings ~~are~~ were lodged protectively in light of the ACAS Early Conciliation Certificates which were issued on 10 March 2020. The Claimant has lodged Subject Access Requests against the First and Second Respondents, neither of which she believes to have been validly complied with, and both of which she anticipates will yield further information relevant to the claim and to these pleadings. She has also lodged Subject Access Requests against a number of members of Garden Court Chambers. In addition, the coronavirus has had a significant impact on the Claimant's preparation of the claim. ~~It is anticipated that Further and Better Particulars will be issued in due course.~~ The Claimant reserves her position, pending receipt of complete responses to her Subject Access

Requests, as to the need to add to these Particulars of Claim should new information come into her possession belatedly.

CLAIMS ADVANCED

2. The Claimant advances the following claims:

(a) Unlawful victimisation by the Second and Third Respondents, contrary to s.27 Equality Act 2010 (“EqA”) EqA, by way of ss. 47, 57 and/or 109 EqA ~~Equality Act 2010 (“EqA”)~~;

(b) Unlawful indirect sex discrimination and unlawful indirect discrimination because of sexual orientation by the Second and Third Respondents contrary to s.19 EqA by way of ss.47, 57 and/or 109 EqA~~.~~; ~~and~~

(c) Unlawful direct belief discrimination contrary to s. 13 EqA by way of ss.47, 57 and/or 109 EqA; and

(d) The instructing, causing or inducement of the Second and Third Respondent’s’ unlawful conduct by the First Respondent, contrary to s.111 EqA~~; and~~

~~(e) Victimisation by the First Respondent, contrary to s.47(6) EqA.~~

FACTS RELIED ON

3. The Claimant is a woman, a lesbian and a lifelong campaigner for lesbian and gay rights.

4. The First Respondent is a charity. It lists its activities in its Charity Commission filings as “*promoting equality and human rights for lesbian, gay, bisexual and trans people*”.

5. The Second Respondent is a service company incorporated by the Third Respondent, *inter alia*, for the purposes of employing the staff engaged in administering and providing clerking services to the Third Respondent.

5A. The Third Respondent is a barristers' chambers. The Claimant is a tenant of the ~~Second~~ Third Respondent. The Third Respondent is an unincorporated association. For this reason the claim is brought (so far as it concerns the Third Respondent) against barristers who are the current Heads of Chambers: Judy Khan QC, Stephanie Harrison QC and Liz Davies

6. On 14 December 2018, Stephen Lue (a member of the ~~Second~~ Third Respondent) sent a mass email to the Second Respondent's employees and the Third Respondent's~~,~~ tenants and pupils. The email stated that the ~~Second~~ Third Respondent had entered into a relationship with the First Respondent, becoming a "Stonewall Diversity Champion".

7. The Claimant replied the same day. She expressed misgivings and stated that this relationship should not have been entered into without discussion within chambers.

8. The reason for the Claimant's misgivings was that she believed (and continues to believe) that the First Respondent's campaigning on gender theory is sexist and homophobic. In particular, the Claimant believed and believes that:

   (a) Sex is real and observable. Gender (as proselytised by the First Respondent) is a subjective identity: immeasurable, unobservable and with no objective basis.

   (b) At the root of the First Respondent's espousal of gender theory is the slogan that "Trans Women Are Women". This is advanced literally, meaning that a person born as a man who identifies as a woman literally becomes a woman for all purposes and in all circumstances purely and exclusively on the basis of their chosen identity. To all intents and purposes, the First Respondent has reclassified "sex" with "gender identity".

(c) The tone of the First Respondent's campaigning on this subject has been binary, absolutist and evangelical. It may be summarised as "You are with us, or you are a bigot." Discussions on the subject have become extremely vitriolic, largely as a result of the First Respondent's absolutist tone, replicated by other organisations with which the First Respondent works closely. This has resulted in threats against women (including threats of violence and sexual violence) becoming commonplace. The First Respondent has been complicit in these threats being made.

(d) Gender theory as proselytised by the First Respondent is severely detrimental to women for numerous reasons, including that it denies women the ability to have female only spaces, for example in prisons, changing rooms, medical settings, rape and domestic violence refuges and in sport.

(e) Gender theory as proselytised by the First Respondent is severely detrimental to lesbians. In reclassifying "sex" with "gender", the First Respondent has reclassified homosexuality from "same sex attraction" to "same gender attraction". The result of this is that heterosexual men who identify as trans women and are sexually attracted to women are to be treated as lesbians. There is therefore an encouragement by followers of gender theory (including the First Respondent) on lesbians to have sex with male-bodied people. To reject this encouragement is to be labelled as bigoted. This is inherently homophobic because it denies the reality and legitimacy of same sex attraction and invites opprobrium and threatening behaviour upon people who recognise that reality and legitimacy.

(f) It is particularly damaging to lesbians that the First Respondent has taken this position. The First Respondent had been the foremost gay and lesbian rights campaigning organisation in the UK and one of the world's leading such organisations. The adoption of gender theory by the First Respondent therefore left those gay, lesbian and bisexual people who did not ascribe to gender theory without the representation that the First Respondent had previously provided, and left those people labelled as bigots by their primary representative organisation.

9. The Claimant's email on 14 December 2018 was a protected act within the meaning of s.27(2) (c) and (d) EqA.

10. In 2019, the Claimant's fee income was substantially reduced in comparison to previous years.

11. In October 2019, the Claimant founded, with others, the LGB Alliance. This was a group set up to campaign for LGB rights without the gender theory espoused by the First Respondent.

12. The Claimant announced the founding of LGB Alliance via her twitter account. In launching the campaign, the Claimant made statements which were protected acts pursuant to s.27(2) (c) and (d), including that the First Respondent's campaigning on gender theory was discriminatory to women and to lesbians.

13. The launch of the LGB Alliance yielded some responses from members of the public, some supportive and some critical. Submissions of complaint and of support were made to the Second Respondent about the Claimant. The Second and/or Third Respondent made a public statement that the Claimant was under investigation. An investigation commenced.

14. Around a week later, a complaint against the Claimant was received by the ~~Second~~ Third Respondent's then Heads of Chambers (Leslie Thomas QC, Judy Khan QC and Marc Willers QC) from the First Respondent. This complaint became the focus of the Second and/or Third Respondent's investigation into the Claimant.

15. The Claimant engaged fully with the investigation. She pointed out in her response that the First Respondent's complaint was misleading and disingenuous. The response was a protected act within the meaning of s.27(2) (c) and (d) EqA.

16. The First Respondent’s complaint to the ~~Second~~ Third Respondent’s Heads of Chambers was upheld. This amounted to a detriment against the Claimant.

17. The Claimant’s case is ~~believes~~ that:

    a. Individuals for whose actions t~~T~~he Second and/or Third Respondents are liable ~~invited and/or~~ colluded with the First Respondent in the submission of the complaint against her and/or invited the submission of the complaint;

    b. The Claimant’s protected acts were the reason for those actions and for the complaint; and

    c. The ~~Second~~ Third Respondent (acting through members of chambers including its Heads of Chambers) initiated the investigation into the Claimant and upheld the complaint against her at the explicit or implied inducement or instruction of the First Respondent.

18. The First Respondent’s “Diversity Champion” programme involves lecturing and educating its champions on issues relevant to the First Respondent’s campaigning priorities. This includes gender theory. It also involves providing public recognition to organisations named as Diversity Champions. The Claimant’s case is that ~~therefore believes~~ that the First Respondent induced, caused or instructed, and/or dictated the direction of the Second and Third Respondent~~’~~s’ treatment of the Claimant.

19. The Claimant submitted Subject Access Requests to the First and Second Respondents. The Subject Access requests were protected acts within the meaning of s.27(2) (c) and (d) EqA.

20. The Claimant commenced Early Conciliation and notified ~~both of~~ the Respondents that she was considering Tribunal proceedings against them. These were protected acts.

21. The First Respondent replied to the Subject Access Request by denying that it held any of the Claimant’s data. The Claimant believed that this denial was false because the complaint

that the First Respondent had submitted ought to have been provided to the Claimant in response to the Subject Access Requests. The Claimant believed that there were other such documents, which she had not previously seen, which had also been withheld. ~~These were detriments.~~

22. The Claimant wrote again to the First Respondent drawing their attention to the apparently missing data which was provided on 23 April. ~~As at the date of settling these pleadings she has received neither acknowledgment nor response to this letter. This is a detriment.~~

23. The Second Respondent provided three lever arches of documents in response to the Claimant's Subject Access Request, much of which was duplication. The Claimant noted documents that were missing and wrote to the Second Respondent asking for these documents to be provided. The Second Respondent replied and asked for some extra time to complete this task which was complicated because of coronavirus. More recently the Second Respondent provided additional disclosure and notified the Claimant that it was not data controller for members of Chambers. The Claimant has accordingly made Subject Access requests in relation to a number of the Third Respondents' members and is awaiting their responses.

23A. It may be necessary to amend these Particulars of Claim further, including by adding additional respondents, if the responses to the Claimant's additional Subject Access Requests disclose additional unlawful acts. The Claimant's position is reserved in this respect.

CLAIMS

24. The Claimant claims victimisation.

(a) The protected acts are:

(i) The Claimant's email of 18 December 2018.

(ii) The Claimant's tweets around the launching of the LGB Alliance.

(iii) The Claimant's response to the First Respondent's complaint against her.

(iv) The Claimant's Subject Access Requests.

(v) The Claimant's Early Conciliation application.

(b) The detriments are:

(i) The withholding of instructions and work by the Second and/or Third Respondents (and/or by individuals for whose actions the Second and/or Third Respondents are liable) in 2019, causing her financial loss.

(ii) The publishing of a statement by or on behalf of the Second and/or Third Respondents stating that the Claimant was under investigation.

(iii) The First Respondent's complaint to the ~~Second~~ Third Respondent.

(iv) The upholding of the complaint by the ~~Second~~ Third Respondent (and/or by individuals for whose actions the Third Respondent is liable).

(v) The Second and/or Third Respondents' failure ~~by both Respondents~~ to comply with the Subject Access Request~~s~~.

25. The Claimant claims indirect sex and sexual orientation discrimination.

(a) The PCPs are:

(i) The treatment by the Second and/or Third Respondents (and/or by individuals for whose actions the Second and/or Third Respondents are liable) of gender critical beliefs as being bigoted or otherwise unworthy of respect.

(ii) The Second and Third Respondent (including by individuals for whose actions the Second and/or Third Respondents are liable) allowing the First Respondent to direct its complaint process.

(b) The PCPs cause substantial disadvantage to women, and to lesbians, because women, and lesbians in particular, are more likely to have gender critical beliefs, and are therefore more likely to be treated as being bigoted or otherwise to have complaints upheld against them~~, and the Claimant suffered these disadvantages~~.

(c) The PCPs were applied to the Claimant and put her at the disadvantage identified at (b) above.

25A. The Claimant claims direct belief discrimination.

(a) The Claimant's beliefs set out at paragraph 8 above (or any of them) are philosophical beliefs within the meaning of s.10 EqA.

(b) The Second and/or Third Respondents (and/or individuals for whose actions the Second and/or Third Respondents are liable) subjected the Claimant to the detriments set out at paragraph 24(b) above, as further particularised in paragraphs 3-46 of the Claimant's Further and Better Particulars, because of those beliefs. The principal matters that the Claimant relies on as supporting the inference that those detriments were done because of her beliefs are the same as those relied on in support of the first PCP at paragraph 25(a)(i) above, as further particularised in paragraphs 54-70 of the Claimant's Further and Better Particulars.

26. The Claimant seeks compensation from the Respondents at such level as the Tribunal sees fit, declarations, and recommendations.

27. As set out above, the nature of this matter is that the Claimant has not been privy to communications between the Respondents. She has made reasonable efforts to access that communication by means of Subject Access Requests, but these have not been complied with. The Claimant therefore intends to further and better particularise her claim at such time as she is reasonably able to do so.

~~Slater and Gordon Lawyers~~

~~Solicitors for the Claimant~~

~~9 April 2020~~

Amended by

BEN COLLINS QC

RACHEL OWUSU-AGYEI

Old Square Chambers

3 February 2021

Further amended by

BEN COOPER QC

28 September 2021

IN THE EMPLOYMENT TRIBUNAL
(LONDON CENTRAL)

Case No: 220217/2020

BETWEEN

MS ALLISON BAILEY **(Claimant)**

- and -

STONEWALL EQUALITY LIMITED & Ors. **(Respondent)**

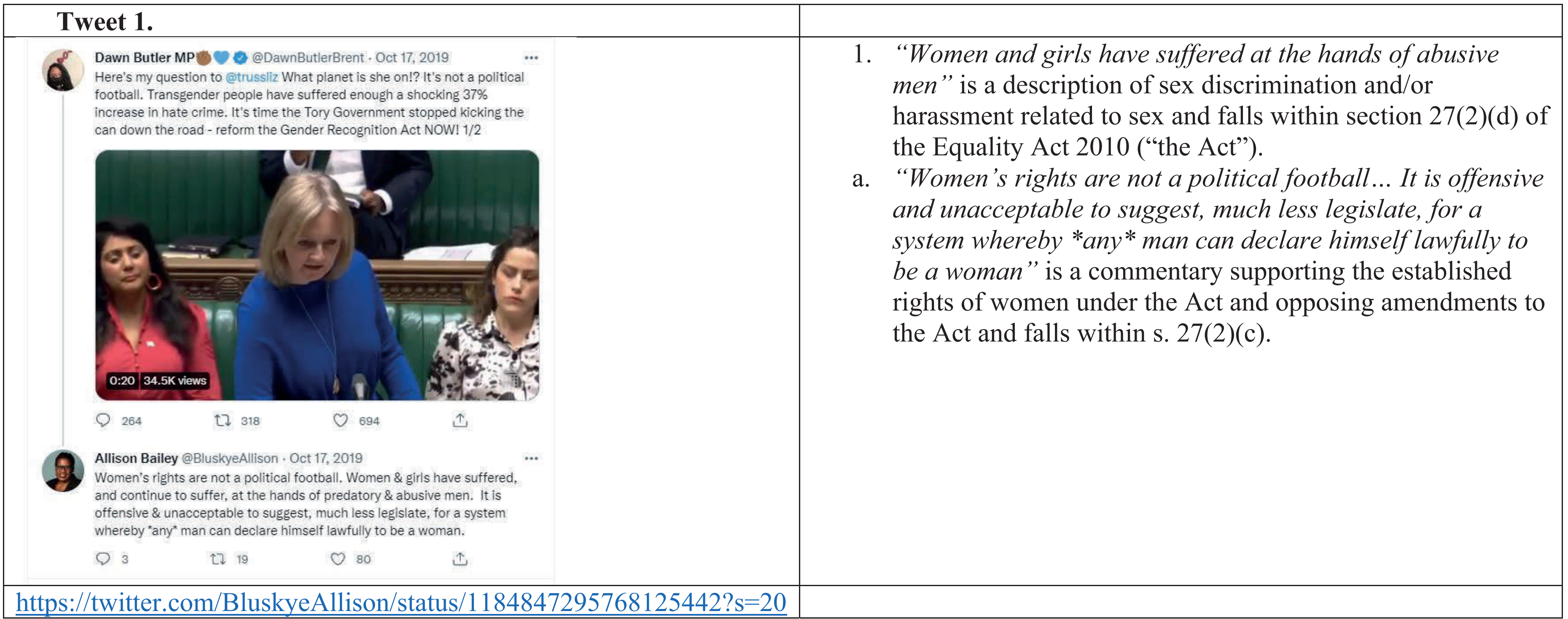
FURTHER PARTICULARISATION OF TWEETS RELIED ON BY CLAIMANT AS PROTECTED ACTS

All of the tweets referred to below must be read and understood by reference to the relevant context in which they were published including (but not limited to):

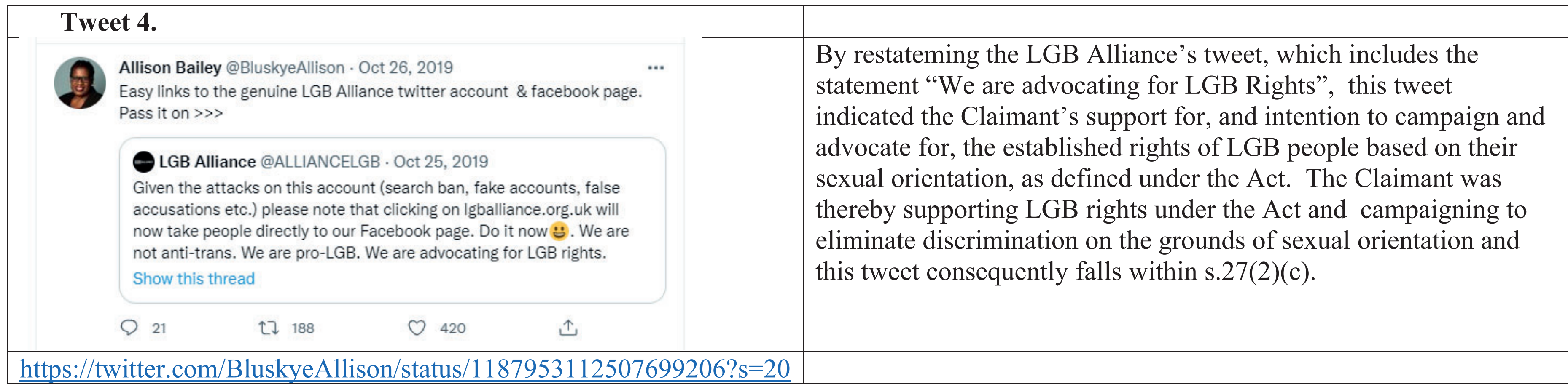
(1) The launch of the LGB Alliance and the principles and objectives which it supports;
(2) The overall content and context of the Claimant's tweets at or around the material time;
(3) The on-going debate at the material time about the reality and importance of sex in particular for women's rights, the opposing views of trans activists, and differing views about the scope and importance of freedom of belief and expression within that debate;

The meanings and/or inferences ascribed to the tweets below are those the meanings and/or inferences which a reasonable person with knowledge of the relevant context would ascribe to them, and in any event are the meanings and/or inferences intended by the Claimant. This proposition applies to each of the tweets referred to below but, for convenience, is not repeated separately in respect of each.

<u>Tweets in the Schedule to the draft List of Issues sent on 30 September 2021</u>

<table>
<tr><th>Tweet 1.</th><th></th></tr>
<tr><td>
</td>
<td>1. “Women and girls have suffered at the hands of abusive men” is a description of sex discrimination and/or harassment related to sex and falls within section 27(2)(d) of the Equality Act 2010 (“the Act”).
a. “Women’s rights are not a political football… It is offensive and unacceptable to suggest, much less legislate, for a system whereby *any* man can declare himself lawfully to be a woman” is a commentary supporting the established rights of women under the Act and opposing amendments to the Act and falls within s. 27(2)(c).</td></tr>
<tr><td>https://twitter.com/BluskyeAllison/status/1184847295768125442?s=20</td><td></td></tr>
</table>

Tweet 2.	
Allison Bailey @BluskyeAllison · Oct 20, 2019 I'm delighted & honoured to chair the Woman's_Place_UK public meeting in Oxford on 25/10/19, in my home town. It's an opportunity to discuss & advocate for *women's* rights & academic freedom. Tickets are still available. Courage speaks to courage. Be there. Womans_Place_UK @Womans_Place_UK · Oct 7, 2019 A Woman's Place is at the lectern will be our 25th meeting. Thank you @selina_todd @8RosarioSanchez Susan Matthews & @BluskyeAllison eventbrite.co.uk/e/a-womans-pla... 22 132 554	By promoting a public meeting to *"discuss & advovate for *women's* rights & academic freedom… Courage speaks to courage"* the Claimant was indicating (a) her support for the established rights of women and protection for philosophical beliefs under the Act and (b) her opposition to the actions of, in particular, academic institutions which she believed were discriminating on those grounds. Her tweet implicitly contained an allegation to that effect. In the premises, the tweet falls within s.27(2)(c) and/or (d).
https://twitter.com/BluskyeAllison/status/1185822109139984384?s=20	
Tweet 3.	
Allison Bailey @BluskyeAllison · Oct 22, 2019 This is an historic moment for the Lesbian, Gay and Bisexual movement. *LGB Alliance* launched in London tonight, and we mean business. Spread the word, gender extremism is about to meet its match. 1.7K 1.7K 2.8K	This tweet as a whole meant that the LGB Alliance would (a) campaign for the rights of LGB people under the Act (and more generally); and (b) would oppose "gender extremism", meaning the actions and objectives of trans activists which the Claimant reasonably believed would undermine the established rights of LGB people and/or was liable to promote discrimination and/or harassment of LGB people who opposed gender self-identification and gender identity theory. This tweet therefore falls within s.27(2)(c) and/or (d).
https://twitter.com/BluskyeAllison/status/1186767223555272719?s=20	



Tweet 4.	
Allison Bailey @BluskyeAllison · Oct 26, 2019 Easy links to the genuine LGB Alliance twitter account & facebook page. Pass it on >>> LGB Alliance @ALLIANCELGB · Oct 25, 2019 Given the attacks on this account (search ban, fake accounts, false accusations etc.) please note that clicking on lgballiance.org.uk will now take people directly to our Facebook page. Do it now 😃. We are not anti-trans. We are pro-LGB. We are advocating for LGB rights. Show this thread 21 188 420	By restateming the LGB Alliance's tweet, which includes the statement "We are advocating for LGB Rights", this tweet indicated the Claimant's support for, and intention to campaign and advocate for, the established rights of LGB people based on their sexual orientation, as defined under the Act. The Claimant was thereby supporting LGB rights under the Act and campaigning to eliminate discrimination on the grounds of sexual orientation and this tweet consequently falls within s.27(2)(c).
https://twitter.com/BluskyeAllison/status/1187953112507699206?s=20	

<table>
<tr><td>Tweet 5.</td><td></td></tr>
<tr><td>

Allison Bailey @BluskyeAllison · Oct 27, 2019
@NicholasHellen thank you for your article. On this issue, I and many other women are grateful to @thetimes for fairly & accurately reporting on the appalling levels of intimidation, fear & coercion that are driving the @stonewalluk trans self-ID agenda.

NEWS | NEWS
r: my bosses bowed to
49 · 469 · 1.1K
</td><td>
This tweet endorses and republishes the text of The Sunday Times article, including the quotes that the Claimant gave to The Sunday Times in preparing the article. The Claimant thereby:

Alleged that Garden Court Chambers had directly discriminated against her because of her beliefs and/or victimised her by placing her under investigation for supporting the LGB Alliance and by failing to provide her with any support in respect of the abuse she was facing;
Alleged that Stonewall (amongst others) caused or induced that action;
Alleged that Stonewall was instructing, causing and/or inducing other employers and educational institutions to breach the Act by adopting an understanding of trans rights which was inconsistent with the Act and was leading to direct belief discrimination and/or harassment related to belief and/or victimisation of people – especially women – who held and/or expressed gender critical beliefs through intimidation, fear and coercion; and
Indicated that the Claimant, through her involvement in and support of the LGB Alliance, supported existing rights as defined in the Act and was campaigning to protect those rights and end discrimination against people for holding and/or expressing gender critical views.

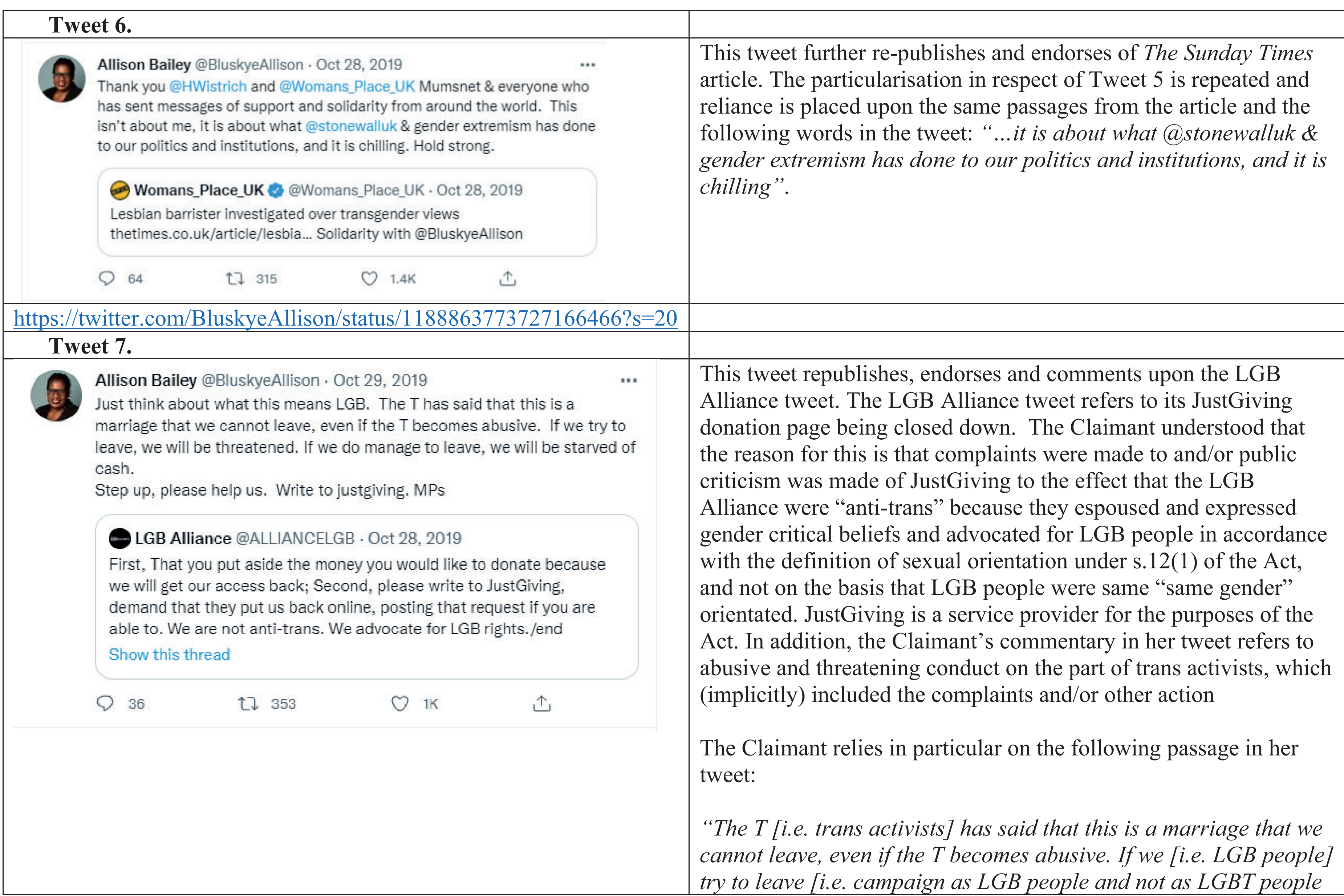
The tweet (including its endorsement and replication of the article) therefore falls within s.27(2)(c) and/or (d).

The following passages in particular, read individually and/or as a whole, carry the meanings set out above:

“[The Claimant]… has said her chambers bowed to the ‘hate mob’.”
</td></tr>
</table>

	"Bailey was subjected to a torrent of abuse and death threats after she posted on social media 'Gender extremism is about to meet its match'." *"The LGB Alliance has said its mission is "asserting the right of lesbians, bisexuals and gay men to define themselves as same sex attrcted".* *"Bailey said her chambers had 'simply gone along with what the hate mob want' and were 'offering me no support whatsoever'."* *"She pointed out that Garden Court, which handles many transgender cases, had signed up as a Stonewall 'diversity champion'."* *"'The bigger picture,' she added, 'is that Stonewall have signed up many companies, public bodies, voluntary sector organisation and government departments to their manifesto and their value system regarding trans rights. What we call Stonewall law. Without most of the public realising it, a large swathe of British employers have signed up to the Stonewall value system.'"* *"The LGB Alliance has written to the [EHRC] to complain that Stonewall is using its public funds to promote gender identity rather than gender reassignment as a protected characteristic."* *"'So successful has 'Stonewall law' been that the planned compulsory education in primary and secondary schools from 2020 will tell children that 'gender identity' is a reality which they need to understand.'"*

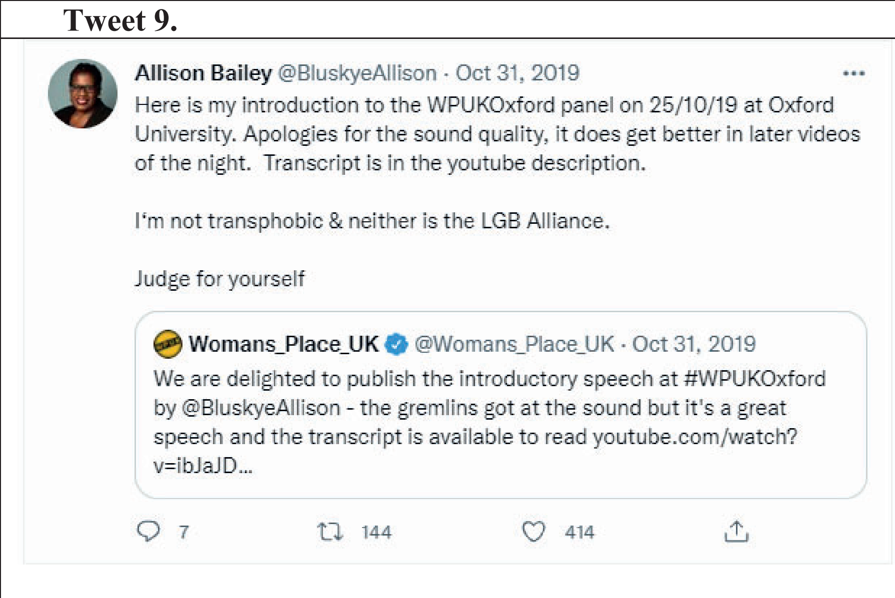
	"I and many other women are grateful to @thetimes for fairly & accurately reporting on the appalling levels of intimidation, fear & coercion that are driving the @stonewalluk trans self-ID agenda."
https://twitter.com/BluskyeAllison/status/1188365954255863808?s=20	



Tweet 6.	
Allison Bailey @BluskyeAllison · Oct 28, 2019 Thank you @HWistrich and @Womans_Place_UK Mumsnet & everyone who has sent messages of support and solidarity from around the world. This isn't about me, it is about what @stonewalluk & gender extremism has done to our politics and institutions, and it is chilling. Hold strong. Womans_Place_UK @Womans_Place_UK · Oct 28, 2019 Lesbian barrister investigated over transgender views thetimes.co.uk/article/lesbia... Solidarity with @BluskyeAllison 64 315 1.4K	This tweet further re-publishes and endorses of *The Sunday Times* article. The particularisation in respect of Tweet 5 is repeated and reliance is placed upon the same passages from the article and the following words in the tweet: *"…it is about what @stonewalluk & gender extremism has done to our politics and institutions, and it is chilling"*.
https://twitter.com/BluskyeAllison/status/1188863773727166466?s=20	
Tweet 7.	
Allison Bailey @BluskyeAllison · Oct 29, 2019 Just think about what this means LGB. The T has said that this is a marriage that we cannot leave, even if the T becomes abusive. If we try to leave, we will be threatened. If we do manage to leave, we will be starved of cash. Step up, please help us. Write to justgiving. MPs LGB Alliance @ALLIANCELGB · Oct 28, 2019 First, That you put aside the money you would like to donate because we will get our access back; Second, please write to JustGiving, demand that they put us back online, posting that request if you are able to. We are not anti-trans. We advocate for LGB rights./end Show this thread 36 353 1K	This tweet republishes, endorses and comments upon the LGB Alliance tweet. The LGB Alliance tweet refers to its JustGiving donation page being closed down. The Claimant understood that the reason for this is that complaints were made to and/or public criticism was made of JustGiving to the effect that the LGB Alliance were "anti-trans" because they espoused and expressed gender critical beliefs and advocated for LGB people in accordance with the definition of sexual orientation under s.12(1) of the Act, and not on the basis that LGB people were same "same gender" orientated. JustGiving is a service provider for the purposes of the Act. In addition, the Claimant's commentary in her tweet refers to abusive and threatening conduct on the part of trans activists, which (implicitly) included the complaints and/or other action The Claimant relies in particular on the following passage in her tweet: *"The T [i.e. trans activists] has said that this is a marriage that we cannot leave, even if the T becomes abusive. If we [i.e. LGB people] try to leave [i.e. campaign as LGB people and not as LGBT people*

	in accordance with gender identity theory] we will be threatened. If we do manage to leave, we will be startved of cash." In the premises, this tweet fell within s.27(2)(c) and/or (d) in that in it the Claimant: 1. Alleged that JustGiving directly discriminated against the LGB Alliance and/or its supporters because of their gender critical beliefs and/or sexual orientation; 2. Alleged that such discrimination was caused and/or induced by trans activists, including by engaging in behaviour amounting to direct discrimination because of belief and/or sexual orientation and/or harassment related to belief and/or sexual orientation; 3. Supported and engaged in campaigning on behalf of the LGB Alliance's objective of advocating for the established definition and rights of LGB people under the Act.
https://twitter.com/BluskyeAllison/status/1189048999661244416?s=20	

Tweet 8.	
Allison Bailey @BluskyeAllison · Oct 29, 2019 Please consider taking a moment to write to Just Giving to ask them to end the suspension of the LGB tl.gd/n_1sr22b2 via @garyjamespowell 37 109 250	In this tweet the Claimant again referred to the suspensioin of the LGB Alliance's JustGiving page. In context (including in particular the Claimant's other tweets sent at or around that time), the Clamiant was inviting people to write to JustGiving to ask them to end that suspension because it was motivated by antipathy towards the LGB Alliance's espousal of gender criticial beliefs and/or its support for the rights of LGB people based on the existing definition of sexual orientation under s.12(1) of the Act (and not using a definition of "same gender" orientation derived from gender identity theory). In the premises, this tweet referred to an (implicit) allegation that JustGiving directly discriminated against the LGB alliance and/or its supporters because of their gender critical beliefs and/or sexual orientation and therefore falls within s.27(2)(d).
https://twitter.com/BluskyeAllison/status/1188863773727166466?s=20	

Tweet 9.	
	This tweet republished and publicised a video and transcript of the speech delivered by the Claimant on 25 October 2019 (https://youtu.be/ibJaJDaWpME), which included the following: *"I want to begin by offering our collective thanks to the University of Oxford... I hope that the courage that the University of Oxford has shown, will act as an example, and shame those other institutions around the world that are not showing nearly as much courage* *I have recently had the privilege of joining and helping to get off the ground the LGB Alliance. It is an organisation that seeks to serve the interest of same sex attracted people.* *Contrary to what is said online, we are not a transphobic organisation.* *However we are opposed to the rank misogyny and homophobia that has found a home in too many parts of the modern trans movement...* *We are opposed to extremist trans agenda being advanced in a climate of deliberate fear and intimidation from all quarters, but that is specifically targeted at women, viciously, and especially viciously at women of colour."* By publicising that speech and emphasing in the tweet that she is *"not transphobic & neither is the LGB Alliance"* the Claimant: 1. Alleged that trans activists were, by creating a climate of deliberate fear and intimidation, causing and/or inducing (amongst others) academic institutions and other employers

	to silence people espousing and expressing gender critical beliefs, in particular women, lesbians and gay people; 2. Alleged that trans activists (again including in particular Stonewall and/or people acting on its behalf and/or at its instigation) were, by creating a climate of deliberate fear and intimidation, causing and/or inducing (amongst others) academic instutitions and other employers to adopt a definition of sexual orientation based on "same gender" orientation as opposed to same-sex orientation, which was leading to direct sexual orientation discrimination and/or harassment related to sexual orientation of lesbians and gay men; 3. Supported and engaged in campaigning on behalf of the LGB Alliance's objective of advocating for the established definition and rights of LGB people under the Act. In the premises, this tweet falls within s.27(2)(c) and/or (d).
https://twitter.com/BluskyeAllison/status/1189989845566918657?s=20	

Tweet 10. (Thread of 14 tweets)	
Allison Bailey @BluskyeAllison · Nov 2, 2019 @stonewalluk is a political lobbying group. It's not democratically elected. It has no mandate to declare itself the voice of *all* LGBT ppl, yet it behaves as if it does — & is treated by government, charitable & private sector orgs as if it speaks for us all. It does not. 1/ 53 691 1.6K Allison Bailey @BluskyeAllison · Nov 2, 2019 @stonewalluk has spun LGBT rights so completely that *any* challenge or question to its agenda is deemed hate speech, rather than being a healthy & essential part of a functioning democracy. It made it respectable for youth to no platform, scream at & threaten feminists. 2/ 4 138 851 Allison Bailey @BluskyeAllison · Nov 2, 2019 @stonewalluk made it respectable for lesbians to be screamed at & threatened at Pride events around the world, whilst welcoming grown men dressed as little girls, some clutching teddy bears & men crawling on all fours, arses in the air on leashes, in full puppy fetish. 3/ 24 182 854 Allison Bailey @BluskyeAllison · Nov 2, 2019 @stonewalluk made it respectable for truly fascistic tactics to be weaponised against the biggest threat to the trans agenda: radical feminists & lesbians, even though not one of us has killed or assaulted a trans woman. Our crimes were far worse: wrong-think & resistance. 4/ 11 139 826 Allison Bailey @BluskyeAllison · Nov 2, 2019 @stonewalluk's wicked brilliance was that as a political lobbying group it convinced the LGBT movement that we do not deserve the plurality of political representation that other groups enjoy. It was their way or it was no way. Democracy was for straight people, apparently. 5/ 7 104 688 Allison Bailey @BluskyeAllison · Nov 2, 2019 @stonewalluk what passes for so called 'international best practice' is in fact often simply what this lobbying juggernaut and its sister lobbying groups in the USA decided was international best practice. All in a climate in which any dissent was viciously & publicly put down.6/	This is a thread of 14 tweets published consecutively. The thread should be treated as a single publication, akin to an article, and is therefore a single act for the purposes of s.27. The thread contains the following allegations allegations of contravention of the Act which fall within s.27(2)(d): 1. *"@stonewalluk… is treated by government, charitable and private sector orgs as if it speaks for all of us* [i.e. all LGBT people]… *@stonewalluk has spun LGBT rights so completely that *any* challenge or question to its agenda is deemed hate speech, rather than being a healthy & essential part of a functioning democracy."* This is an allegation that Stonewall has caused and/or induced employers and/or service providers in the public, private and charitable sectors to discriminate against people for espousing and/or expressing beliefs about sex and gender that conflict with Stonewall's position. 2. "[Stonewall] *made it respectable for youth to no platform, scream at & threaten feminists."* This is an allegation that Stonewall has caused and/or induced such employers and/or service providers to discriminate against and/or harass feminists in a way that amounts to direct and/or indirect sex and/or belief discrimination and/or harassment related to sex and/or belief. 3. "[Stonewall] *made it respectable for lesbians to be screamed at & threatened at Pride events around the world."* This is an allegation that Stonewall has caused and/or induced conduct against lesbians whom it purports to represent (and who are therefore amongst those two whom it holds itself out as providing services) to be subjected to direct discrimination because of their sex and/or sexual orientation and/or beliefs and/or harassment related to their sex and/or sexual orientation and/or belief.

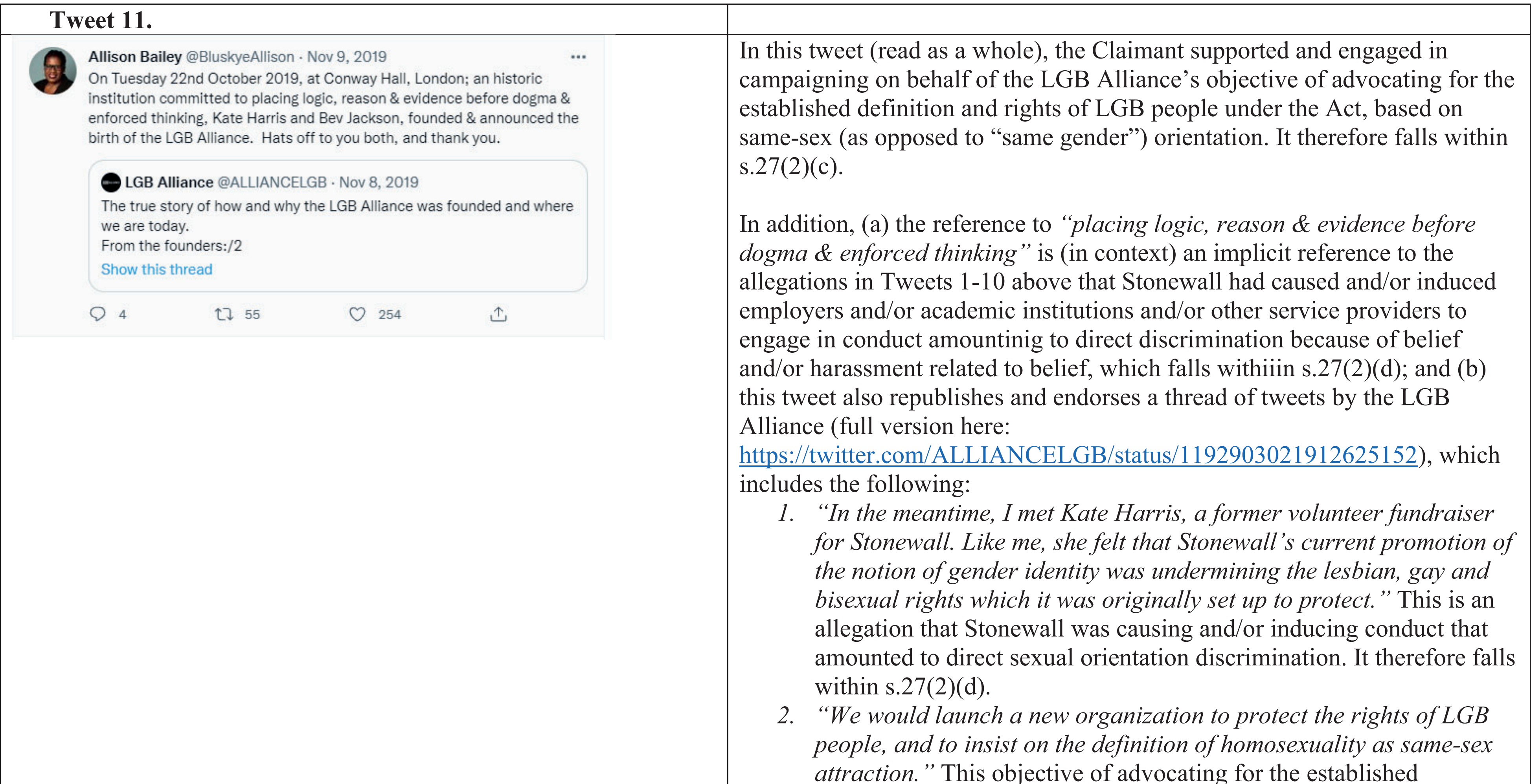
Allison Bailey @BluskyeAllison · Nov 2, 2019 If you are in any doubt about just how corrupting @stonewall & the gender ideology it pushes is, look no further than what we have endured getting LGB Alliance off the ground. It should horrify anyone who believes in freedom of speech, freedom of association & democracy. 7/ 7 · 163 · 807 **Allison Bailey** @BluskyeAllison · Nov 2, 2019 @stonewalluk those slogans 'L with the T' etc, were not benign, they were "orders" reinforced with menaces, and our politicians & leaders watched on in silence. Watched as women were kicked out bars for declaring their same sex attraction. 8/ 13 · 104 · 683 **Allison Bailey** @BluskyeAllison · Nov 2, 2019 Does the LGB Alliance have all of the answers? Of course we don't, but unlike @stonewalluk we will not pretend to. We will not seek to stifle & silence respectful debate. We will encourage a plurality of views and orgs to advance LGBT rights around the world. 4 · 103 · 734 **Allison Bailey** @BluskyeAllison · Nov 2, 2019 Material reality has not changed. The drive to move toward mix-sex facilities is not driven by the needs of women, it is driven in defiance of our needs. It is being driven by the needs of men who wish to live as women. That's going to stop, right now. 10/ 18 · 218 · 1K **Allison Bailey** @BluskyeAllison · Nov 2, 2019 I hope that more sensible and moderate trans activists will step out of the shadows now & form groups to advance a trans agenda that places safeguarding at its core. We work with such trans women, they are our friends and allies & we wish them well. 11/ 17 · 101 · 728 **Allison Bailey** @BluskyeAllison · Nov 2, 2019 For trans youth reading this, we want you to live your authentic life. But we want you to reach full physical, sexual & emotional maturity before setting off down a path from which you cannot return without serious scars. 12/	4. *"@stonewalluk made it respectiable for truly ascistic tactics to be weaponised against… radical feminists & lesbians.. Our crimes were… wrong-think & resistance."* This is an allegation that Stonewall has caused and/or induced (amongst others) employers and/or service providers in the public, private and charitable sectors to engage in conduct designed to silence radical feminists and lesbians that amounts to direct discrimination because of their beliefs and/or sex and/or sexual orientation and/or harassment related to their beliefs and/or sex and/or sexual orientation. 5. *"@stonewalluk's wicked brilliance was that as a political lobbying group it convinced the LGBT movement that we do not deserve the plurality of political representation that other groups enjoy. It was their way or it was not way. Democracy was for straight people, apparently."* This is an allegation that Stonewall has directly itself as a service provider to gay people, and/or by causing and/or inducing other organisations providing services to gay people to act, sought to silence the voices of gay people who disagree with its trans activist agenda in a way that amounts to direct discrimination because of belief and/or sexual orientation and/or harassment related to belief and/or sexual orientation. 6. *"All in a climate in which any dissent was viciously and publicly put down."* This is an allegation that Stonewall directly itself as a service provider to gay people, and/or by causing and/or inducing other service providers and/or organisations in the public, private and charitable sectors to act, sought to publicly put down dissent from its trans activist agenda in a way that amounts to direct discrimination because of belief and/or sexual orientation and/or harassment related to belief and/or sexual orientation. 7. *"…look no further than what we have endured getting LGB Alliance off the ground. It should horrify anyone who believes in freedom of speech, freedom of association & democracy."* The reference to *"what we have endured"* implicitly includes the (well-publicised) action taken by Garden Court Chambers against the

Claimant. This passage therefore includes an allegation that Stonewall and/or persons acting on its behalf and/or at its instigation had caused or induced Garden Court Chambers to take action detrimental to the Claimant in a way that amounted to direct belief discrimination and/or harassment related to belief.

8. *"…those slogans 'L with the T' etc, were not benign, they were *orders* reinforced with menaces … as women were kicked out of bars for declaring their same sex attraction"* This is an allegation that Stonewall had caused and/or induced services providers, such as bars, to directly discriminate against lesbians for declaring that their sexual orientation was based on same-sex (as opposed to "same gender") attraction, and therefore amounted to direct discrimination because of sexual orientation and/or sex and/or belief.
9. *"Government, charitable, public & private sector, please stop swallowing whole the agenda fed to you be* [sic] *@stonewalluk. You wouldn't do so for any other group of ppl."* This is an allegatioin that employers and/or service providers in the public, private and charitable sectors had been caused or inducted by Stonewall to adopt its position on sex and gender in a way that they would not do in respect of lobbying organisations advocating on behalf of other groups and in a way that was detrimental to gay people and/or those with beliefs that dissent from Stonewall's position. It is an allegation that Stonewall had caused and/or induced direct belief and/or sexual orientation discrimination.

In addition, by promoting the LGB Alliance and its position in all of the passages referred to above and in tweets 13 and 14 in the thread, the Claimant supported and engaged in campaigning on behalf of the LGB Alliance's objective of advocating for the established definition and rights of LGB people under the Act. The thread as a whole therefore falls within s.27(2)(c).

https://twitter.com/BluskyeAllison/status/1190704035298455553?s=20 (Link to final tweet in thread)	

<table>
<tr><th>Tweet 11.</th><th></th></tr>
<tr><td>


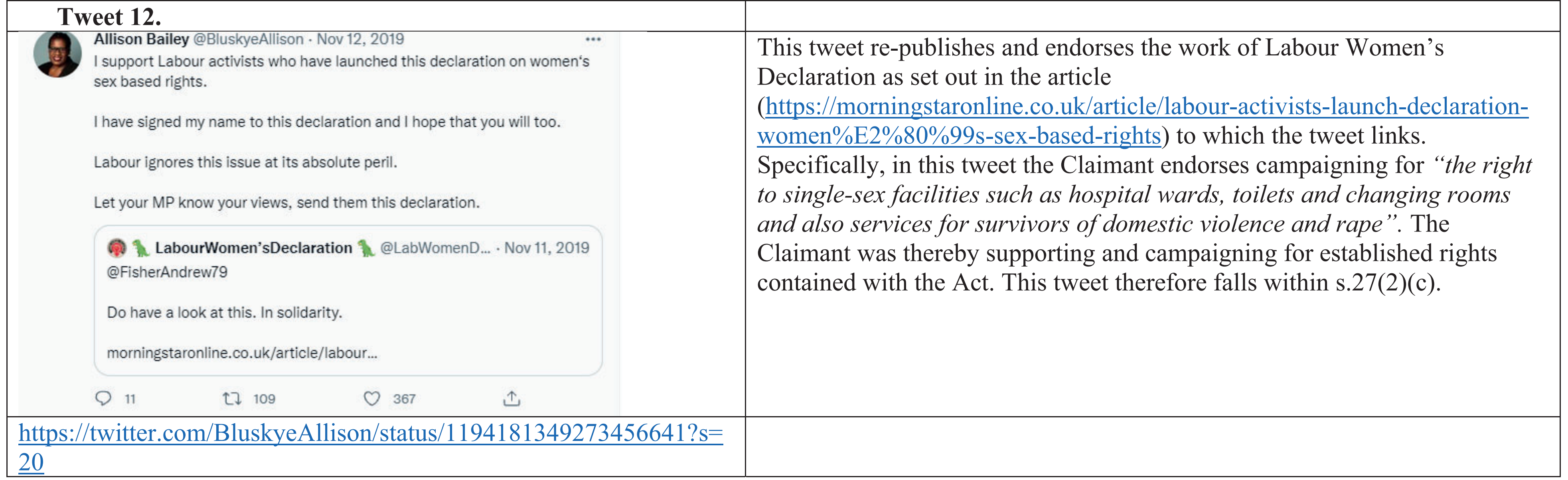
</td><td>
In this tweet (read as a whole), the Claimant supported and engaged in campaigning on behalf of the LGB Alliance's objective of advocating for the established definition and rights of LGB people under the Act, based on same-sex (as opposed to "same gender") orientation. It therefore falls within s.27(2)(c).

In addition, (a) the reference to "placing logic, reason & evidence before dogma & enforced thinking" is (in context) an implicit reference to the allegations in Tweets 1-10 above that Stonewall had caused and/or induced employers and/or academic institutions and/or other service providers to engage in conduct amountinig to direct discrimination because of belief and/or harassment related to belief, which falls withiiin s.27(2)(d); and (b) this tweet also republishes and endorses a thread of tweets by the LGB Alliance (full version here: https://twitter.com/ALLIANCELGB/status/1192903021912625152), which includes the following:

"In the meantime, I met Kate Harris, a former volunteer fundraiser for Stonewall. Like me, she felt that Stonewall's current promotion of the notion of gender identity was undermining the lesbian, gay and bisexual rights which it was originally set up to protect." This is an allegation that Stonewall was causing and/or inducing conduct that amounted to direct sexual orientation discrimination. It therefore falls within s.27(2)(d).
"We would launch a new organization to protect the rights of LGB people, and to insist on the definition of homosexuality as same-sex attraction." This objective of advocating for the established

</td></tr>
</table>

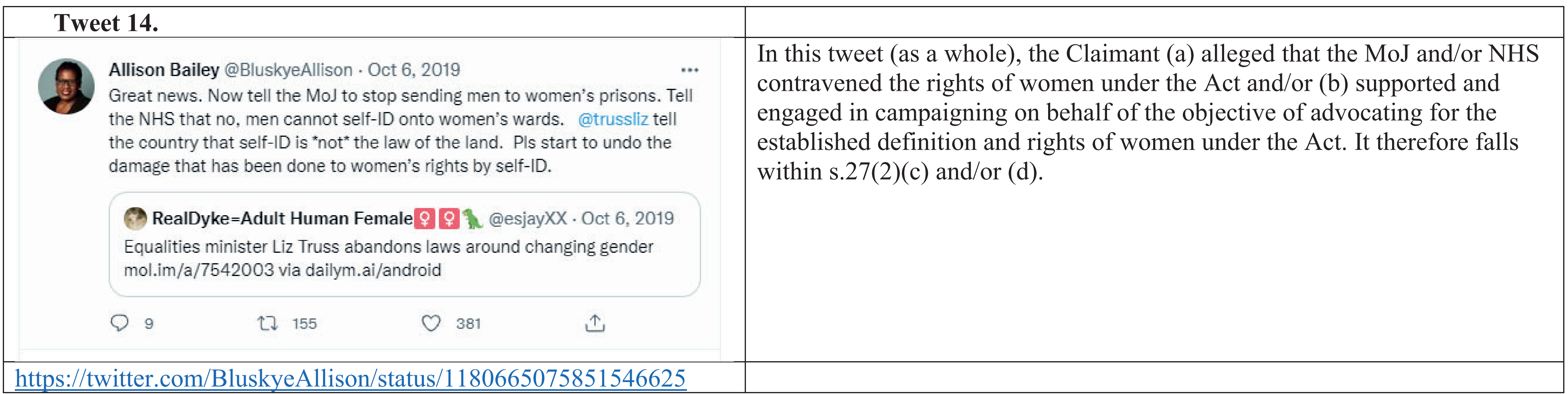
	definition and rights of LGB people under the Act. It therefore falls within s.27(2)(c). 3. *"In July, I was told the LSE event had been downgraded to a private meeting."* This is an allegation that LSE had directly discriminated by "downgrading" a meeting because of belief and/or sexual orientation. It therefore falls within s.27(2)(d). 4. *"Lesbians have actually been mocked and ostracized at Pride events, with the likes of Jan Gooding, Stonewall's chair, cheering this abuse on."*. This is an allegation that Stonewall has caused and/or induced conduct, including by service providers involved in the organisation and/or provision of services at Pride events, that amounts to direct discrimination because of sexual orientation and/or belief, and/or harassment related to sexual orientation and/or belief. It therefore falls within s.27(2)(d).
https://twitter.com/BluskyeAllison/status/1193082532780290048?s=20	

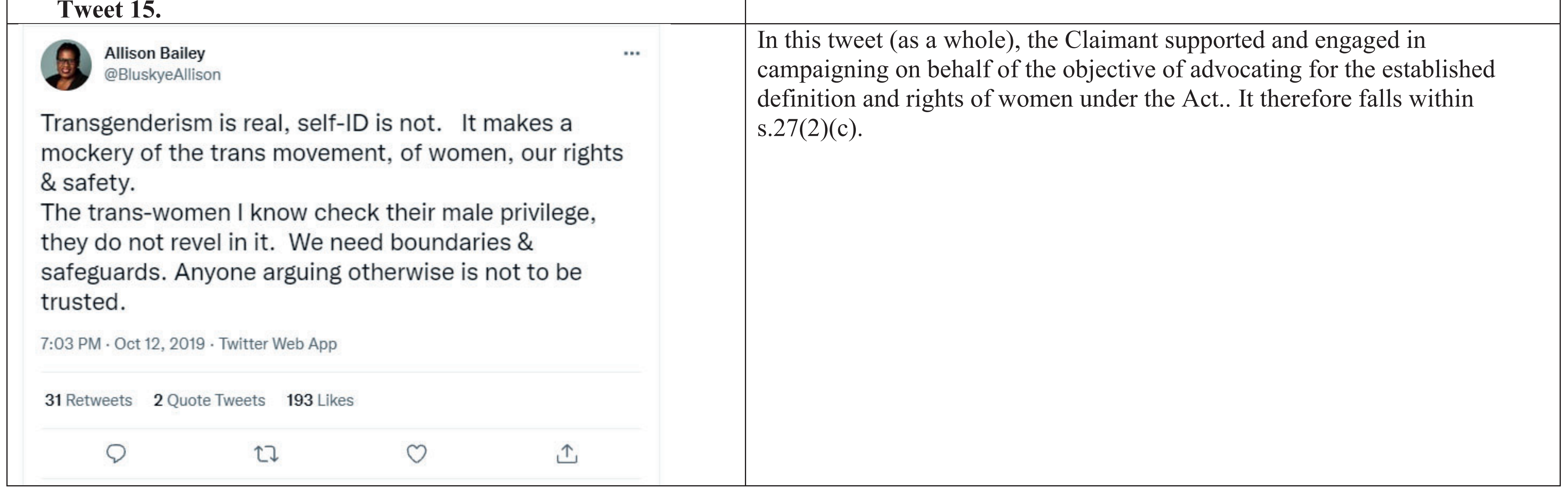


Tweet 12.	
[tweet screenshot above]	This tweet re-publishes and endorses the work of Labour Women's Declaration as set out in the article (https://morningstaronline.co.uk/article/labour-activists-launch-declaration-women%E2%80%99s-sex-based-rights) to which the tweet links. Specifically, in this tweet the Claimant endorses campaigning for *"the right to single-sex facilities such as hospital wards, toilets and changing rooms and also services for survivors of domestic violence and rape"*. The Claimant was thereby supporting and campaigning for established rights contained with the Act. This tweet therefore falls within s.27(2)(c).
https://twitter.com/BluskyeAllison/status/1194181349273456641?s=20	

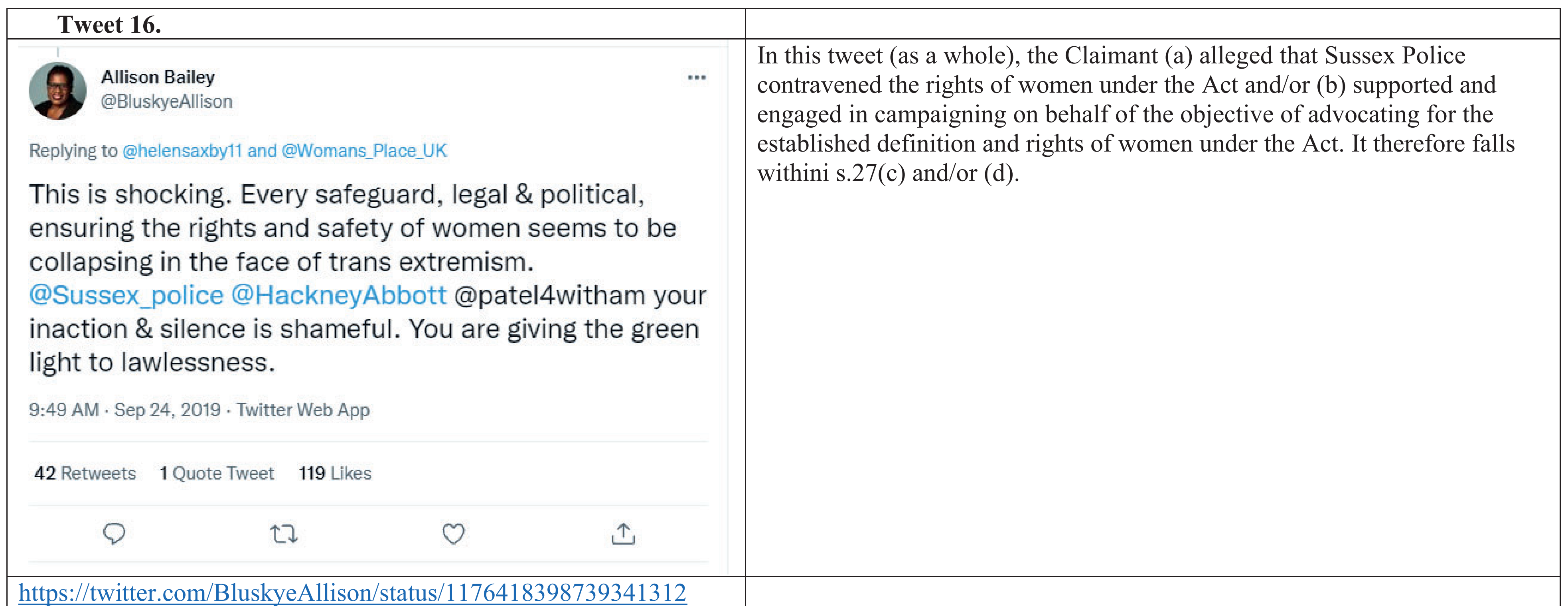
Tweets particularised in the Stonewall complaint of 31 October 2019:

Tweet 13.	
Allison Bailey @BluskyeAllison · Sep 21, 2019 #TheyCallMeTerf because I put the rights and safety of women before men who want to live as women. 8 26 121	In this tweet (as a whole), the Claimant supported and engaged in campaigning on behalf of the objective of advocating for the established definition and rights of women under the Act. It therefore falls within s.27(2)(c).
https://twitter.com/BluskyeAllison/status/1175364385734373376	

Tweet 14.	
	In this tweet (as a whole), the Claimant (a) alleged that the MoJ and/or NHS contravened the rights of women under the Act and/or (b) supported and engaged in campaigning on behalf of the objective of advocating for the established definition and rights of women under the Act. It therefore falls within s.27(2)(c) and/or (d).
https://twitter.com/BluskyeAllison/status/1180665075851546625	

Tweet 15.	
	In this tweet (as a whole), the Claimant supported and engaged in campaigning on behalf of the objective of advocating for the established definition and rights of women under the Act.. It therefore falls within s.27(2)(c).

https://twitter.com/BluskyeAllison/status/1183080781838716933	

Tweet 16.	
	In this tweet (as a whole), the Claimant (a) alleged that Sussex Police contravened the rights of women under the Act and/or (b) supported and engaged in campaigning on behalf of the objective of advocating for the established definition and rights of women under the Act. It therefore falls withini s.27(c) and/or (d).
https://twitter.com/BluskyeAllison/status/1176418398739341312	

Tweet 17.	
Allison Bailey @BluskyeAllison Stonewall recently hired Morgan Page, a male bodied person who ran workshops with the sole aim of coaching heterosexual men who identify as lesbians on how they can coerce young lesbians into having sex with them. Page called "overcoming the cotton ceiling" and it is popular. 12:53 PM · Sep 22, 2019 · Twitter Web App 59 Retweets 1 Quote Tweet 151 Likes	In this tweet (as a whole), the Claimant (a) alleged that Morgan Page provided services (in the form of workshops) to males on how to employ strategies to overcome the sexual boundaries of lesbians, in which the Claimant believed that he was teaching that it is "transphobic" for lesbians to have a sexual orientation based on same-sex attraction to other women (as opposed to "same gender" attraction to males who identify as women) and by coaching males who identify as lesbians thereby to shame lesbians into havng sex with them, which entailed harassment because of sexual orientation and/or sex and/or belief, and/or direct discrimination because of sexual orientation and/or sex and/or belief; and (b) supported and engaged in campaigning on behalf of the objective of advocating for the established definition and rights of LGB people, and lesbians in particular, under the Act, based on same-sex (as opposed to "same gender") orientation. It therefore falls within s.27(2)(c) and/or (d).
https://twitter.com/BluskyeAllison/status/1175739790181974017	
Tweet 18.	The tweet on 28 October 2019 at 5.03PM is the same as Tweet 6 and the particularisation above is repeated
Tweet 19.	The tweet on 27 Oct 21019 at 8.04AM is the same as Tweet 5 and the particularsation above is repeated.

Doyle Clayton Solicitors
Solicitors for the Claimant
25 October 2021

Response form

Case number	2202172/2020

You must complete all questions marked with an '*'

1 Claimant's name

1.1 Claimant's name: Allison Bailey

2 Respondent's details

2.1* Name of individual, company or organisation: Stonewall Equality Limited

2.2 Name of contact: Via representative

2.3* Address
- Number or name: 192
- Street: St. John Street
- Town/City: London
- County:
- Postcode: EC1V 4JY

DX number (If known):

2.4 Phone number
Where we can contact you during the day:

Mobile number (If different):

2.5 How would you prefer us to contact you? (Please tick only one box)
☐ Email ☐ Post ☐ Fax
Whatever your preference please note that some documents cannot be sent electronically

2.6 Email address:

Fax number:

2.7 How many people does this organisation employ in Great Britain?

2.8 Does this organisation have more than one site in Great Britain? ☐ Yes ☐ No

2.9 If Yes, how many people are employed at the place where the claimant worked?

© Crown copyrigl

3 Acas Early Conciliation details

3.1 Do you agree with the details given by the claimant about early conciliation with Acas?

☐ Yes ☐ No

If No, please explain why, for example, has the claimant given the correct Acas early conciliation certificate number or do you disagree that the claimant is exempt from early conciliation, if so why?

4 Employment details

4.1 Are the dates of employment given by the claimant correct?

☐ Yes ☐ No

If Yes, please **go to question 4.2**

If No, please give the dates and say why you disagree with the dates given by the claimant

When their employment started

When their employment ended or will end

I disagree with the dates for the following reasons

4.2 Is their employment continuing?

☐ Yes ☐ No

4.3 Is the claimant's description of their job or job title correct?

☐ Yes ☐ No

If Yes, please **go to Section 5**

If No, please give the details you believe to be correct

5 Earnings and benefits

5.1 Are the claimant's hours of work correct? ☐ Yes ☐ No

If No, please enter the details you believe to be correct. [ ] hours each week

5.2 Are the earnings details given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to question 5.3**

If No, please give the details you believe to be correct below

Pay before tax (Incl. overtime, commission, bonuses etc.) £ ☐ Weekly ☐ Monthly

Normal take-home pay (Incl. overtime, commission, bonuses etc.) £ ☐ Weekly ☐ Monthly

5.3 Is the information given by the claimant correct about being paid for, or working a period of notice? ☐ Yes ☐ No

If Yes, please **go to question 5.4**

If No, please give the details you believe to be correct below. If you gave them no notice or didn't pay them instead of letting them work their notice, please explain what happened and why.

5.4 Are the details about pension and other benefits e.g. company car, medical insurance, etc. given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to Section 6**

If No, please give the details you believe to be correct.

6 Response

6.1* Do you defend the claim? ☐ Yes ☐ No

If No, please **go to Section 7**

If Yes, please set out the facts which you rely on to defend the claim.
(See Guidance - If needed, please use the blank sheet at the end of this form.)

Please see attached Grounds of Resistance.

7 Employer's Contract Claim

7.1 Only available in limited circumstances where the claimant has made a contract claim. (See Guidance)

7.2 If you wish to make an Employer's Contract Claim in response to the claimant's claim, please tick this box and complete question 7.3 ☐

7.3 Please set out the background and details of your claim below, which should include all important dates
(see Guidance for more information on what details should be included)

8 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

8.1 Name of representative: [redacted]

8.2 Name of organisation: CMS Cameron McKenna Nabarro Olswang LLP

8.3 Address

Number or name: Saltire Court

Street: 20 Castle Terrace

Town/City: Edinburgh

County:

Postcode: EH1 2EN

8.4 DX number (If known):

8.5 Phone number: [redacted]

8.6 Mobile phone:

8.7 Their reference for correspondence: OS0428.00006

8.8 How would you prefer us to communicate with them? (Please tick only one box) ` Email Post Fax

8.9 Email address: [redacted]

8.10 Fax number:

9 Disability

9.1 Do you have a disability? Yes ` No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as the claim progresses through the system, including for any hearings that maybe held at tribunal premises.

Please re-read the form and check you have entered all the relevant information.
Once you are satisfied, please tick this box. `

Employment Tribunals check list and cover sheet

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

Once your response has been received, you should receive confirmation from the office dealing with the claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the response is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us. If you want to submit your response online please go to www.gov.uk/being-taken-to-employment-tribunal-by-employee.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Customer Contact Centre - see details below

General Data Protection Regulations

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter.

To receive a paper copy of this privacy notice, please call our Customer Contact Centre - see details below

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

Customer Contact Centre

England and Wales: 0300 123 1024
Welsh speakers only: 0300 303 5176
Scotland: 0300 790 6234

Textphone: 18001 0300 123 1024 (England and Wales)
Textphone: 18001 0300 790 6234 (Scotland)

(Mon - Fri, 9am -5pm), they can also provide general procedural information about the Employment Tribunals.

Continuation sheet

CASE NUMBER: 2202172/2020

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN:

ALLISON BAILEY

Claimant

- v -

STONEWALL EQUALITY LIMITED

First Respondent

and

GARDEN COURT CHAMBERS

Second Respondent

GROUNDS OF RESISTANCE

Jurisdiction

1. These Grounds of Resistance are submitted on behalf of the First Respondent.
2. The Claimant and the First Respondent do not have a relationship of the type falling within Chapter 1 of Part 5 of the Equality Act 2010 (the "**EqA**"). The First Respondent submits that the Tribunal does not therefore have jurisdiction to hear the Claimant's claims of indirect discrimination on the grounds of sex and/or sexual orientation and victimisation under sections 19 and 27 of the EqA respectively. In particular, the First Respondent has not instructed the Claimant in her capacity as a barrister and contrary to the Claimant's assertion in her Grounds of Claim, section 47(6) of the EqA is not engaged.
3. Furthermore, the First and Second Respondents do not have relationship of the type falling within section 111(7) of the EqA. Accordingly, the First Respondent submits that the Tribunal does not have jurisdiction to hear the Claimant's claim under section 111 of the EqA that the First Respondent instructed, caused or induced the Second Respondent to contravene the EqA in relation to the Claimant.
4. Without prejudice to the First Respondent's position at paragraphs 3 and 4 above, the First Respondent submits that the Claimant's claim of victimisation based on the First Respondent's letter to the Second Respondent dated 31 October 2020 is time-barred. The Claimant commenced early conciliation on 10 February 2020, which was more than three months after the alleged detriment, and the Claimant's claim was not presented to the Tribunal until 9 April 2020. It is denied that the alleged acts amounted to conduct extending over a period within the meaning of section 123(3)(a) of the EqA and/ or that it is just and equitable in the circumstances to extend the time limit in respect of these matters.
5. The First Respondent submits that the Claimant's claim has no reasonable prospects of success on the basis that the Tribunal has no jurisdiction in respect of the Claimant's claims against the First Respondent. The First Respondent accordingly requests a preliminary hearing on strike-out to determine the matter of whether the Claimant's claim should be struck out as on the grounds that the claim has no reasonable prospect of success.
6. Alternatively, if the Tribunal is not minded to strike out the claim, the First Respondent requests that a deposit order is granted on the grounds that the claims against it have little prospect of success. The First Respondent would request in the circumstances that the maximum deposit order of £1,000 per allegation/claim is granted.

UK-642512636

7. The Claimant has not specified the date(s) on which she allegedly suffered disadvantage as a result of the First Respondent's alleged provision, criteria or practice. The Claimant is called upon to specify the relevant dates and the First Respondent reserves its position on time-bar pending receipt of such further specification.

Background

8. The First Respondent is a lesbian, gay, bisexual and transgender (LGBT) rights charity in the UK. One of the First Respondent's objectives is to work with institutions to (i) create inclusive and accepting cultures (ii) ensure they understand and value brought to them by LGBT people and (iii) empower them to be advocates and agents of positive change. Pursuant to these aims, the First Respondent set up a 'Diversity Champions' programme.

9. The Diversity Champion's programme seeks to ensure that LGBT staff are accepted in the workplace. Over 850 organisations in the UK have signed up to be Diversity Champions. The First Respondent works with those organisations to develop structured and systematic policies and practices that embed inclusion across their organisations. Participating employers are permitted to display the First Respondent's Diversity Champion logo on their website and other promotional materials.

Relationship between the First and Second Respondents

10. The Second Respondent is a Diversity Champion of the First Respondent. This is the extent of the relationship between the First and Second Respondents. As stated at paragraph 3 above, the First and Second Respondents do not have a relationship of the type falling within section 111(7) of the EqA.

Relationship between the First Respondent and the Claimant

11. The First Respondent does not have a direct relationship with the Claimant. There is no relationship between the Claimant and the First Respondent such that Chapter 1 of Part 5 of the EqA would be engaged.

The Claimant's allegations

12. Around October 2019, the First Respondent became aware of comments made by the Claimant in the public domain about trans-people, including the First Respondent's own staff. These included:

    (a) the Claimant retweeting threats of violence;

    (b) the Claimant liking and writing social media posts that called trans women men, including one written by the Claimant describing one of the First Respondent's (trans) women employees as a man;

    (c) the Claimant calling for trans people to be stripped of their legal rights;

    (d) the Claimant describing the campaign for the equality of trans people as 'trans extremism', which the First Respondent considered inflammatory and encouraging violent resistance; and

    (e) the Claimant making unfounded allegations against the First Respondent.

13. The First Respondent considered that the Claimant's comments were anti-trans. It was particularly concerned about the inflammatory nature of some of the comments because statistics showed that hate crimes against trans people had increased by 37 per cent in the previous year and that 12 per cent of trans people had been physically attacked by customers or colleagues in their workplaces.

14. Around the same time, the First Respondent became aware that the Claimant was a tenant of the Second Respondent as the Claimant referred to her association with the Second Respondent in her Twitter "bio".

15. A key tenet of being a Diversity Champion is creating an inclusive workplace and the First Respondent was concerned that the trans-exclusionary comments and actions of the Claimant were at odds with this. It therefore wrote to the Second Respondent on 31 October 2019 setting out its concerns and requesting that the Second Respondent "*stand in solidarity with trans people*".

16. The First Respondent also encouraged its staff to write to the Second Respondent to raise any concerns they had about the Claimant's conduct.

17. The First Respondent had no further contact with the Second Respondent. The First Respondent was not involved in any investigation carried out by the Second Respondent into the Claimant's conduct and was not privy to the Claimant's response referred to in paragraph 15 of her Grounds of Claim. The first time the First Respondent became aware of the Claimant's response was when it received her Grounds of Claim from the Claimant's solicitor. The First Respondent did not receive a response to its letter dated 31 October 2019 from the Second Respondent.

18. The Claimant submitted a data subject access request to the First Respondent by email dated 30 January 2020 (the "**DSAR**"). The First Respondent has disclosed all relevant personal data falling within the scope of the Claimant's DSAR.

Legal submissions

19. The First Respondent submits that the Tribunal has no jurisdiction to hear the Claimant's claims against it for the reasons set out at paragraphs 2, 3 and 4 of these Grounds of Resistance.

20. In the event that the Tribunal concludes that it does have jurisdiction to hear the Claimant's claims (which is denied), the First Respondent denies that alleged acts set out in paragraph 24(a) of the Claimant's Grounds of Claim are protected acts within the meaning of section 27 of the EqA. The First Respondent further denies that it victimised or discriminated against the Claimant, or that it instructed, caused or induced any unlawful conduct of the Second Respondent, as alleged or at all.

21. The First Respondent reserves the right to apply for further and better particulars from the Claimant and to amend this response if the Tribunal determines that it has jurisdiction to consider the claims against the First Respondent.

22. The Claimant's statements in her Ground of Claim are denied in so far as they are inconsistent with this response.

8 September 2020
CMS Cameron McKenna Nabarro Olswang LLP

CASE NUMBER: 2202172/2020

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN:

ALLISON BAILEY

Claimant

- v -

STONEWALL EQUALITY LIMITED

First Respondent

and

GARDEN COURT CHAMBERS LIMITED

Second Respondent

and

(3) RAJIV MENON QC and STEPHANIE HARRISON QC, sued as representatives of all members of GARDEN COURT CHAMBERS except the Claimant

Third Respondent

FURTHER RE-AMENDED GROUNDS OF RESISTANCE

Background

1. These Further Re-Amended Grounds of Resistance are submitted on behalf of the First Respondent. They have been updated following receipt of the Claimant's Further and Better Particulars dated 25 May 2021 ("**F&BP**").

2. The First Respondent is a lesbian, gay, bisexual and transgender (LGBT) rights charity in the UK. One of the First Respondent's objectives is to work with institutions to (i) create inclusive and accepting cultures (ii) ensure they understand and value the significant benefits brought to them by LGBT people in their workplaces and (iii) empower them to be advocates and agents of positive change. Pursuant to these aims, the First Respondent set up a 'Diversity Champions' programme.

3. The Diversity Champions programme seeks to ensure that LGBT staff are accepted in the workplace. Over 850 organisations in the UK have signed up to be Diversity Champions. The First Respondent works with those organisations to develop structured and systematic policies and practices that embed inclusion across their organisations. Participating employers are permitted to display the First Respondent's Diversity Champion logo on their website and other promotional materials. There are no minimum requirements for an organisation to become a Diversity Champion and they are not required to act on the First Respondent's recommendations in order to maintain their Diversity Champion status. The Diversity Champions programme's focus is on outlining ways in which employers *can* be more LGBT-inclusive but it does not *mandate* that employers take particular steps. The First Respondent recognises that all employers are on a journey to becoming more LGBT-inclusive and it supports them wherever they are on such journeys.

Relationship between the Respondents

4. The Second Respondent became a Diversity Champion of the First Respondent in November 2018. It is accepted that at the material time the First Respondent provided a service to the Second and Third Respondents by way of the Diversity Champions programme.

UK-642512636

Trans-Organisational Network Meeting

5. On 23 October 2019, Kirrin Medcalf, the Head of Trans-Inclusion at the First Respondent, and Josh Bradlow, the then-Head of Policy at the First Respondent, attended a meeting at the Second Respondent (the "**October 2019 Meeting**"). Although the October 2019 Meeting was held at the Second Respondent, no-one from the Second Respondent (including for the avoidance of doubt any of the Third Respondents) attended it.

6. The October 2019 Meeting had been convened by the Trans-Organisational Network ("**TON**"). The TON is a network of trans-specific organisations. The First Respondent, along with many other organisations, is a member of the TON. The TON is run by the LGBT Consortium and chaired by Shaan Knan, who is employed by the LGBT Consortium.

7. At the outset of the October 2019 Meeting, Shaan Knan advised that a member of the TON had raised concerns with him about meeting at the Second Respondent's premises due to the anti-trans views expressed by the Claimant on social media. The meeting attendees agreed that they would contact the Second Respondent to express concern at the Claimant's anti-trans comments.

The First Respondent's complaint about the Claimant

8. Following the October 2019 Meeting, Kirrin Medcalf looked at the Claimant's Twitter page and considered that a number of the Claimant's tweets were anti-trans. Kirrin Medcalf was concerned about the inflammatory nature of some of the tweets, particularly as one of these named another of the First Respondent's employees in a highly derogatory tweet. Kirrin Medcalf considered that they and other members of their team may be put at risk if they were to come into contact with the Claimant at future meetings at the Second Respondent. Statistics show that hate crimes against trans people had increased by 40 per cent in 2018 and that 12 per cent of trans people had been physically attacked by customers or colleagues in their workplaces.

9. Kirrin Medcalf therefore complained to the Second Respondent on 31 October 2019. In their email of complaint they referred to the fact that they had become aware of comments made by the Claimant in the public domain about trans-people, including the First Respondent's own staff. These included:

(a) the Claimant retweeting threats of violence;

(b) the Claimant liking and writing social media posts that called trans women men, including one written by the Claimant describing one of the First Respondent's (trans) women employees as a man;

(c) the Claimant calling for trans people to be stripped of their legal rights;

(d) the Claimant describing the campaign for the equality of trans people as 'trans extremism', which Kirrin Medcalf considered inflammatory and encouraging violent resistance; and

(e) the Claimant making unfounded allegations against the First Respondent.

10. For the avoidance of doubt, Kirrin Medcalf was not a member of the First Respondent's team that was responsible for liaising with the Diversity Champions. Indeed, Kirrin Medcalf was not aware that the Second Respondent was a Diversity Champion at the time of submitting their complaint.

11. After submitting their complaint, Kirrin Medcalf had no further contact with the Second and/or Third Respondents. The First Respondent did not receive a response from the Second and/or Third Respondent to Kirrin Medcalf's complaint and only became aware of the outcome in the course of these proceedings.

12. Neither Kirrin Medcalf nor anyone else at the First Respondent were involved in any investigation carried out by the Second and/or Third Respondents into the Claimant's conduct and they were not privy to the Claimant's response referred to in paragraph 15 of her Claimant's Re-Amended Grounds of Claim. The First Respondent only became aware of the Claimant's response was when it received the Grounds of Claim from her solicitor and only came into possession of the response as part of the disclosure process in these proceedings.

13. The Claimant submitted a data subject access request to the First Respondent by email dated 30 January 2020 (the "**DSAR**"). The First Respondent complied with the Claimant's DSAR and confirmed that it had done so by letter to the Claimant's solicitors dated 12 June 2020.

The Stonewall Trans Advisory Group ("STAG")

14. The STAG seeks to increase the voices of trans people within the First Respondent. It comprises up to 18 individuals from the trans community at any one time, none of whom employees or workers of the First Respondent, in addition to Kirrin Medcalf, who is an *ex officio* member of the STAG. The STAG meets quarterly. The First Respondent consults with the STAG on its strategic direction and takes into account, but is in not required to follow, its feedback. At least one of the First Respondent's employees usually attends the STAG meetings.

15. Members of the STAG do not have an email account with the First Respondent. They can however communicate with one other via a specific page on 'The Wall'. 'The Wall' forms part of the First Respondent's internal intranet, whereby users are able to post on designated groups. Members of the STAG had access to the 'STAG group' on the Wall, in which they could post messages for the other members of the STAG Wall group to read. There is also a private STAG Facebook page, which STAG members can use to communicate with one another.

16. It is admitted that Shaan Knan is a member of the STAG but it is denied that he attended and/or chaired the October 2019 Meeting in his capacity as a member of the STAG. Shaan Knan attended and chaired the October 2019 Meeting in his capacity as an employee of the LGBT Consortium.

17. It is admitted that Shaan Knan posted on the STAG group of the Wall on 25 October 2019 regarding the Claimant. In that post he stated that "*you probably by now have heard about the barrister Allison Bailey @BluskyeAllison affiliated with Garden Court Chambers who supports the anti-trans LGB Alliance that's just launched*" and advising that Michelle Brewer "*encourages the trans community to write messages of support (supporting action against Bailey) to the Head of Garden Court Chambers.*" It is further admitted that Alex Drummond, another member of the STAG, and Kirrin Medcalf, made the comments on the STAG group of the Wall referred to at paragraphs 93(b) and (c) of the F&BP.

18. It is admitted that Shaan Knan also posted on the STAG Facebook group page on 25 October 2019. In that post he referred to his post on the Wall and asked for messages of support for trans allies at the Second and Third Respondent to be sent to the Heads of Chambers at the Second Respondent.

Legal submissions

19. The First Respondent denies that it instructed, caused or induced any unlawful conduct of the Second and/or Third Respondents, as alleged or at all.

Vicarious liability

20. The First Respondent denies that it is vicariously liable for the actions of the members of the STAG other than Kirrin Medcalf, who was also an employee of the First Respondent, as alleged or at all.

21. Furthermore, it is submitted that other than in respect of the posts on the Wall and STAG Facebook group page dated 25 October 2019 (as detailed at paragraphs 17 and 18 above), all other conduct referred to in the F&BP relating to Shaan Knan was undertaken in his capacity as an employee of the LGBT Consortium and not in his capacity as a member of the STAG. In particular, in Shaan Knan's email to the Second and Third Respondents dated 25 October 2019 regarding the Claimant's conduct, which is referred to at paragraph 94 of the F&BP, he expressly stated "*I am writing this brief message in my capacity as LGBT Consortium's trans network coordinator*." No admission is made in relation to the capacity in which Shaan Knan was acting in respect of the posts on the Wall and STAG Facebook group page dated 25 October 2019.

The matters relied on by the Claimant as instructing, causing or inducing discrimination as set out in the F&BP

22. The First Respondent denies that the matters set out in paragraphs 89 to 96 of the F&BP constitute the instruction, causing or inducement by it of any unlawful discrimination of the Claimant by the

Second and/or Third Respondents, or an attempt to instruct, cause or induce the unlawful discrimination of the Claimant by the Second and/or Third Respondents. In particular:

(a) Members of the Diversity Champions programme are provided with general advice and guidance as to how they can make their workplaces more LGBT-inclusive. They are not required to take any specific actions. The only service taken up by the Second and Third Respondents under the Diversity Champions programme was a review of certain of its policies to make them more LGBT-inclusive. It is submitted that mere membership of the Diversity Champion Programme, particularly when the only service that was utilised by the Second and Third Respondents was a policy review, cannot and does not constitute the instruction, causing or inducement of the alleged unlawful discrimination of the Claimant by the Second and/or Third Respondents, or an attempt to do so.

(b) It is further admitted that there were some discussions between the Respondents regarding the establishment of a strategic litigation partnership. However, it is denied that any such partnership was formed between the Respondents. In any event, no factual basis has been plead by the Claimant as to how any such alleged strategic litigation partnership amounted to the instruction, causing or inducement of the Second and/or Third Respondents to unlawfully discriminate against the Claimant (or an attempt to do so).

(c) Without prejudice to paragraphs 20 and 21 above, it is denied that the messages between Shaan Knan and Michelle Brewer between 23 October and 6 November 2019 (as referred to at paragraphs 84 and 87 of the F&BP) constitute the instruction, causing or inducement of the alleged unlawful discrimination of the Claimant by the Second and/or Third Respondents (or an attempt to do so). The messages referred to in the F&BP demonstrate that Michelle Brewer was encouraging Shaan Knan to write to the Second Respondent about the Claimant's conduct, not vice versa.

(d) Shaan Knan's post on the STAG Facebook page was not visible to any members of the Second and/or Third Respondents. It is submitted that, without prejudice to paragraphs 20 and 21 above, it cannot therefore constitute the instruction, causing or inducement of the Second and/or Third Respondents.

(e) Neither Shaan Knan's post on the STAG Wall, nor Alex Drummond or Kirrin Medcalf's replies to this, were visible to any members of the Second and/or Third Respondents. It is submitted that, without prejudice to paragraphs 20 and 21 above, they cannot therefore constitute the instruction, causing or inducement of the Second and/or Third Respondents.

(f) Without prejudice to paragraphs 20 and 21 above, it is denied that the message from Shaan Knan to the Second and/or Third Respondents dated 25 October 2019 constituted the instruction, causing or inducement of the alleged unlawful discrimination of the Claimant by the Second and/or Third Respondents (or an attempt to do so). Shaan Knan's message is largely factual and the Claimant has not specified the basis on which it constitutes an instruction to or otherwise caused or induced (or attempted to do so) the behaviour of the Second and/or Third Respondents.

(g) It is perverse to suggest that complaints by Shaan Knan and Kirrin Medcalf constituted the instruction, causing or inducement of the Second and/or Third Respondents to unlawfully discriminate against the Claimant when the complaints were made at the instigation of the Second and/or Third Respondents. Indeed the Claimant states at paragraph 31 of her F&BP that Michelle Brewer "*<u>procured</u>…[t]hird party complaints against the Claimant to Chambers*" (our emphasis), including the emails from Kirrin Medcalf and Shaan Knan referred to at paragraphs 9 and 21 above. Furthermore, at paragraph 84 of her F&BP, the Claimant states that "*<u>At Michelle Brewer's specific suggestion or instruction</u>, Shaan Knan specifically encouraged attendees to write to the Heads of Chambers*" (our emphasis).

(h) The fact that the First Respondent may have been in a position to influence the Second and/or Third Respondents, as stated at paragraph 96 of the F&BP, does not in itself constitute the instruction, causing or inducement of the Second and/or Third Respondents by the First Respondent to unlawfully discriminate against the Claimant (or an attempt to do so). The First Respondent can only be liable if it did in fact instruct, cause or induce the unlawful discrimination of the Claimant by the Second and/or Third Respondents (or attempt to do so). Whether it was in a position to influence the

Second and/or Third Respondents is therefore irrelevant. In any event, the First Respondent is not the only organisation to have adopted the stance that it has on trans rights; indeed the Claimant refers at paragraph 22(b) of her F&BP to the Second Respondent's Trans Rights Working Group adopting a "*trans rights agenda in line with that of Stonewall and other trans rights pressure groups*" including "*Gendered intelligence, Trans Media Watch, Mermaids and the LGBT Consortium*". Furthermore, the Claimant refers at paragraph 54 of her F&BP to the fact that the Second Respondent adopted the same "*pro-gender theory viewpoint from at least 2017*", which was well in advance of any of the matters set out in paragraphs 89 to 96 of the F&BP that the Claimant relies upon as constituting the instruction, causing, or inducement by the First Respondent arising.

Instructing, causing or inducing victimisation

23. The First Respondent denies that it instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant as alleged at paragraph 24 of the Claimant's Re-Amended Grounds of Claim, in the F&BP or at all.

Alleged protected acts

24. In respect of each of the alleged protected acts set out in paragraph 24(a) of the Claimant's Re-Amended Grounds of Claim:

(a) It is denied that the Claimant's email of 14 December 2018, referred to at paragraph 24(a)(i) of the Claimant's Re-Amended Grounds of Claim (and we understand erroneously stated at such paragraph 24(a)(i) as being dated 18 rather than 14 December 2018), is a protected act. In any event, the First Respondent did not become aware of such email until these proceedings were raised and it was provided to the First Respondent as part of the disclosure process. The First Respondent could not therefore have instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant because of such protected act.

(b) It is not admitted that the Claimant's tweets regarding the launching of the LGB Alliance, referred to at paragraph 24(a)(ii) of the Claimant's Re-Amended Grounds of Claim, are protected acts. The Claimant has failed to specify the content of those tweets or the basis on which she asserts that they are protected acts.

(c) It is admitted that the Claimant's response dated 21 November 2019 to the First Respondent's complaint about her, referred to at paragraph 24(a)(iii) of the Claimant's Re-Amended Grounds of Claim, is capable of being a protected act. However, the First Respondent did not become aware of such response until these proceedings were raised and it was provided to the First Respondent as part of the disclosure process. The First Respondent could not therefore have instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant because of such protected act.

(d) It is admitted that the Claimant's DSAR to the First Respondent, referred to at paragraph 24(a)(iv) of the Claimant's Re-Amended Grounds of Claim, is capable of being a protected act. However, the DSAR was received by the First Respondent on 30 January 2020 and the matters that the Claimant relies upon at paragraphs 89 to 95 of the F&BP as constituting the instruction, causing or inducing by the First Respondent of the Second and/or Third Respondents' alleged unlawful discrimination of the Claimant occurred prior to the date the Claimant's DSAR was received by the First Respondent. The matters relied upon by the Claimant as constituting the instruction, causing or inducing by the First Respondent could not therefore have been because of the Claimant's DSAR. It is not admitted that the Claimant's data subject access requests to the Second and/or Third Respondents are protected acts. The Claimant has not specified what Third Respondents she submitted data subject access requests to and is relying on as protected acts. In any event, the First Respondent did not have sight of any of the Claimant's data subject access requests to the Second and/or Third Respondents until these proceedings were raised and they were provided as part of the disclosure process. The First Respondent could not therefore have instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant because of such protected act.

(e) It is denied that the Claimant's ACAS early conciliation application in respect of the First Respondent was a protected act. No information was provided by ACAS to the First Respondent about the nature

of Claimant's prospective claim and indeed ACAS did not contact the First Respondent at all regarding the Claimant's claim prior to such claim being lodged with the Tribunal. It is not admitted that the Claimant's ACAS early conciliation applications in respect of the Second and/or Third Respondents are protected acts. The First Respondent was not privy to the ACAS conciliation process in respect of the Second and/or Third Respondents.

25. The Claimant has not specified which alleged matters in paragraphs 89 to 96 of the F&BP are alleged to have been because of which protected act(s). In any event, the First Respondent denies any of the matters specified in paragraphs 89 to 96 of the F&BP were because of any alleged protected act. In particular, Kirrin Medcalf complained to the Second and/or Third Respondents because they were concerned about the anti-trans rhetoric espoused online by the Claimant and the impact this had on the wellbeing and safety of the First Respondent's staff, one of whom had been named by the Claimant on social media in the context of a highly derogatory tweet.

Alleged detriments

26. The Claimant has not specified which alleged detriment(s) are alleged to have been because of which protected act(s) nor which detriment(s) she alleges that the First Respondent instructed, caused or induced.

27. The First Respondent denies that it instructed, caused or induced the detriments alleged by the Claimant due to a protected act by the Claimant or otherwise. The First Respondent further submits that the detriment particularised at paragraph 24(b)(iii) of the Claimant's Re-Amended Grounds of Claim, namely the First Respondent's complaint to the Second and Third Respondents dated 31 October 2019, was an act of the First Respondent and cannot therefore be an act that the First Respondent instructed, caused or induced the Second and or/Third Respondents to commit.

Instructing, causing or inducing indirect discrimination

28. The First Respondent denies that it instructed, caused or induced the Second and/or Third Respondents to indirectly discriminate against the Claimant as alleged at paragraph 25 of the Claimant's Re-Amended Grounds of Claim, in the F&BP or at all.

29. The First Respondent denies that the Second and/or Third Respondents applied a provision, criterion or practice ("**PCP**") of "*allowing the First Respondent to direct its complaint process*." The First Respondent submitted a complaint to the Second Respondent in respect of the Claimant's conduct and was one of a number of organisations and individuals to do so. The First Respondent had no involvement in the process carried out by the Second and/or Third Respondents in respect of the complaint.

30. *Esto* the Tribunal finds that the Second and/or Third Respondents did apply the alleged PCPs, the First Respondent does not admit that these placed the Claimant and those who share her sex and sexual orientation at a particular disadvantage in comparison with individuals who do not share the Claimant's sex and/or sexual orientation. In particular, the First Respondent's position is that (i) the evidence demonstrates that the Claimant's gender critical beliefs are more likely to be held by men than women and (ii) there is no evidence that lesbians are more likely to hold gender critical beliefs than non-lesbians.

31. *Esto* the Tribunal finds that the First Respondent did instruct, cause or induce the Second and/or Third Respondents to apply the alleged PCPs and that these placed the Claimant at a substantial disadvantage because of her sex and/or sexual orientation, the First Respondent submits that this was a proportionate means of achieving a legitimate aim, such legitimate aim including but not necessarily being limited to the protection of the health, safety and wellbeing of its employees.

32. The Claimant's statements in her Ground of Claim are denied in so far as they are inconsistent with this response.

8 June 2021
CMS Cameron McKenna Nabarro Olswang LLP

CASE NUMBER: 2202172/2020

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN:

ALLISON BAILEY

Claimant

- v -

STONEWALL EQUALITY LIMITED

First Respondent

and

GARDEN COURT CHAMBERS LIMITED

Second Respondent

and

(3) RAJIV MENON QC and STEPHANIE HARRISON QC, sued as representatives of all members of GARDEN COURT CHAMBERS except the Claimant

Third Respondent

FURTHER RE-AMENDED GROUNDS OF RESISTANCE

Background

1. These Further Re-Amended Grounds of Resistance are submitted on behalf of the First Respondent. They have been updated following receipt of the Claimant's Further and Better Particulars dated 25 May 2021 ("**F&BP**") and Further Particularisation of Tweets dated 26 October 2021.

2. The First Respondent is a lesbian, gay, bisexual and transgender (LGBT) rights charity in the UK. One of the First Respondent's objectives is to work with institutions to (i) create inclusive and accepting cultures (ii) ensure they understand and value the significant benefits brought to them by LGBT people in their workplaces and (iii) empower them to be advocates and agents of positive change. Pursuant to these aims, the First Respondent set up a 'Diversity Champions' programme.

3. The Diversity Champions programme seeks to ensure that LGBT staff are accepted in the workplace. Over 850 organisations in the UK have signed up to be Diversity Champions. The First Respondent works with those organisations to develop structured and systematic policies and practices that embed inclusion across their organisations. Participating employers are permitted to display the First Respondent's Diversity Champion logo on their website and other promotional materials. There are no minimum requirements for an organisation to become a Diversity Champion and they are not required to act on the First Respondent's recommendations in order to maintain their Diversity Champion status. The Diversity Champions programme's focus is on outlining ways in which employers *can* be more LGBT-inclusive but it does not *mandate* that employers take particular steps. The First Respondent recognises that all employers are on a journey to becoming more LGBT-inclusive and it supports them wherever they are on such journeys.

Relationship between the Respondents

4. The Second Respondent became a Diversity Champion of the First Respondent in November 2018. It is accepted that at the material time the First Respondent provided a service to the Second and Third Respondents by way of the Diversity Champions programme.

Trans-Organisational Network Meeting

5. On 23 October 2019, Kirrin Medcalf, the Head of Trans-Inclusion at the First Respondent, and Josh Bradlow, the then-Head of Policy at the First Respondent, attended a meeting at the Second Respondent (the "**October 2019 Meeting**"). Although the October 2019 Meeting was held at the Second Respondent, no-one from the Second Respondent (including for the avoidance of doubt any of the Third Respondents) attended it.

6. The October 2019 Meeting had been convened by the Trans-Organisational Network ("**TON**"). The TON is a network of trans-specific organisations. The First Respondent, along with many other organisations, is a member of the TON. The TON is run by the LGBT Consortium and chaired by Shaan Knan, who is employed by the LGBT Consortium.

7. At the outset of the October 2019 Meeting, Shaan Knan advised that a member of the TON had raised concerns with him about meeting at the Second Respondent's premises due to the anti-trans views expressed by the Claimant on social media. The meeting attendees agreed that they would contact the Second Respondent to express concern at the Claimant's anti-trans comments.

The First Respondent's complaint about the Claimant

8. Following the October 2019 Meeting, Kirrin Medcalf looked at the Claimant's Twitter page and considered that a number of the Claimant's tweets were anti-trans. Kirrin Medcalf was concerned about the inflammatory nature of some of the tweets, particularly as one of these named another of the First Respondent's employees in a highly derogatory tweet. Kirrin Medcalf considered that they and other members of their team may be put at risk if they were to come into contact with the Claimant at future meetings at the Second Respondent. Statistics show that hate crimes against trans people had increased by 40 per cent in 2018 and that 12 per cent of trans people had been physically attacked by customers or colleagues in their workplaces.

9. Kirrin Medcalf therefore complained to the Second Respondent on 31 October 2019. In their email of complaint they referred to the fact that they had become aware of comments made by the Claimant in the public domain about trans-people, including the First Respondent's own staff. These included:

(a) the Claimant retweeting threats of violence;

(b) the Claimant liking and writing social media posts that called trans women men, including one written by the Claimant describing one of the First Respondent's (trans) women employees as a man;

(c) the Claimant calling for trans people to be stripped of their legal rights;

(d) the Claimant describing the campaign for the equality of trans people as 'trans extremism', which Kirrin Medcalf considered inflammatory and encouraging violent resistance; and

(e) the Claimant making unfounded allegations against the First Respondent.

10. For the avoidance of doubt, Kirrin Medcalf was not a member of the First Respondent's team that was responsible for liaising with the Diversity Champions. Indeed, Kirrin Medcalf was not aware that the Second Respondent was a Diversity Champion at the time of submitting their complaint.

11. After submitting their complaint, Kirrin Medcalf had no further contact with the Second and/or Third Respondents. The First Respondent did not receive a response from the Second and/or Third Respondent to Kirrin Medcalf's complaint and only became aware of the outcome in the course of these proceedings.

12. Neither Kirrin Medcalf nor anyone else at the First Respondent were involved in any investigation carried out by the Second and/or Third Respondents into the Claimant's conduct and they were not privy to the Claimant's response referred to in paragraph 15 of her Claimant's Re-Amended Grounds of Claim. The First Respondent only became aware of the Claimant's response was when it received the Grounds of Claim from her solicitor and only came into possession of the response as part of the disclosure process in these proceedings.

13. The Claimant submitted a data subject access request to the First Respondent by email dated 30 January 2020 (the "**DSAR**"). The First Respondent complied with the Claimant's DSAR and confirmed that it had done so by letter to the Claimant's solicitors dated 12 June 2020.

The Stonewall Trans Advisory Group ("STAG")

14. The STAG seeks to increase the voices of trans people within the First Respondent. It comprises up to 18 individuals from the trans community at any one time, none of whom employees or workers of the First Respondent, in addition to Kirrin Medcalf, who is an *ex officio* member of the STAG. The STAG meets quarterly. The First Respondent consults with the STAG on its strategic direction and takes into account, but is in not required to follow, its feedback. At least one of the First Respondent's employees usually attends the STAG meetings.

15. Members of the STAG do not have an email account with the First Respondent. They can however communicate with one other via a specific page on 'The Wall'. 'The Wall' forms part of the First Respondent's internal intranet, whereby users are able to post on designated groups. Members of the STAG had access to the 'STAG group' on the Wall, in which they could post messages for the other members of the STAG Wall group to read. There is also a private STAG Facebook page, which STAG members can use to communicate with one another.

16. It is admitted that Shaan Knan is a member of the STAG but it is denied that he attended and/or chaired the October 2019 Meeting in his capacity as a member of the STAG. Shaan Knan attended and chaired the October 2019 Meeting in his capacity as an employee of the LGBT Consortium.

17. It is admitted that Shaan Knan posted on the STAG group of the Wall on 25 October 2019 regarding the Claimant. In that post he stated that "*you probably by now have heard about the barrister Allison Bailey @BluskyeAllison affiliated with Garden Court Chambers who supports the anti-trans LGB Alliance that's just launched*" and advising that Michelle Brewer "*encourages the trans community to write messages of support (supporting action against Bailey) to the Head of Garden Court Chambers.*" It is further admitted that Alex Drummond, another member of the STAG, and Kirrin Medcalf, made the comments on the STAG group of the Wall referred to at paragraphs 93(b) and (c) of the F&BP.

18. It is admitted that Shaan Knan also posted on the STAG Facebook group page on 25 October 2019. In that post he referred to his post on the Wall and asked for messages of support for trans allies at the Second and Third Respondent to be sent to the Heads of Chambers at the Second Respondent.

Legal submissions

19. The First Respondent denies that it instructed, caused or induced any unlawful conduct of the Second and/or Third Respondents, as alleged or at all.

Vicarious liability

20. The First Respondent denies that it is vicariously liable for the actions of the members of the STAG other than Kirrin Medcalf, who was also an employee of the First Respondent, as alleged or at all.

21. Furthermore, it is submitted that other than in respect of the posts on the Wall and STAG Facebook group page dated 25 October 2019 (as detailed at paragraphs 17 and 18 above), all other conduct referred to in the F&BP relating to Shaan Knan was undertaken in his capacity as an employee of the LGBT Consortium and not in his capacity as a member of the STAG. In particular, in Shaan Knan's email to the Second and Third Respondents dated 25 October 2019 regarding the Claimant's conduct, which is referred to at paragraph 94 of the F&BP, he expressly stated "*I am writing this brief message in my capacity as LGBT Consortium's trans network coordinator*." No admission is made in relation to the capacity in which Shaan Knan was acting in respect of the posts on the Wall and STAG Facebook group page dated 25 October 2019.

The matters relied on by the Claimant as instructing, causing or inducing discrimination as set out in the F&BP

22. The First Respondent denies that the matters set out in paragraphs 89 to 96 of the F&BP constitute the instruction, causing or inducement by it of any unlawful discrimination of the Claimant by the

Second and/or Third Respondents, or an attempt to instruct, cause or induce the unlawful discrimination of the Claimant by the Second and/or Third Respondents. In particular:

(a) Members of the Diversity Champions programme are provided with general advice and guidance as to how they can make their workplaces more LGBT-inclusive. They are not required to take any specific actions. The only service taken up by the Second and Third Respondents under the Diversity Champions programme was a review of certain of its policies to make them more LGBT-inclusive. It is submitted that mere membership of the Diversity Champion Programme, particularly when the only service that was utilised by the Second and Third Respondents was a policy review, cannot and does not constitute the instruction, causing or inducement of the alleged unlawful discrimination of the Claimant by the Second and/or Third Respondents, or an attempt to do so.

(b) It is further admitted that there were some discussions between the Respondents regarding the establishment of a strategic litigation partnership. However, it is denied that any such partnership was formed between the Respondents. In any event, no factual basis has been plead by the Claimant as to how any such alleged strategic litigation partnership amounted to the instruction, causing or inducement of the Second and/or Third Respondents to unlawfully discriminate against the Claimant (or an attempt to do so).

(c) Without prejudice to paragraphs 20 and 21 above, it is denied that the messages between Shaan Knan and Michelle Brewer between 23 October and 6 November 2019 (as referred to at paragraphs 84 and 87 of the F&BP) constitute the instruction, causing or inducement of the alleged unlawful discrimination of the Claimant by the Second and/or Third Respondents (or an attempt to do so). The messages referred to in the F&BP demonstrate that Michelle Brewer was encouraging Shaan Knan to write to the Second Respondent about the Claimant's conduct, not vice versa.

(d) Shaan Knan's post on the STAG Facebook page was not visible to any members of the Second and/or Third Respondents. It is submitted that, without prejudice to paragraphs 20 and 21 above, it cannot therefore constitute the instruction, causing or inducement of the Second and/or Third Respondents.

(e) Neither Shaan Knan's post on the STAG Wall, nor Alex Drummond or Kirrin Medcalf's replies to this, were visible to any members of the Second and/or Third Respondents. It is submitted that, without prejudice to paragraphs 20 and 21 above, they cannot therefore constitute the instruction, causing or inducement of the Second and/or Third Respondents.

(f) Without prejudice to paragraphs 20 and 21 above, it is denied that the message from Shaan Knan to the Second and/or Third Respondents dated 25 October 2019 constituted the instruction, causing or inducement of the alleged unlawful discrimination of the Claimant by the Second and/or Third Respondents (or an attempt to do so). Shaan Knan's message is largely factual and the Claimant has not specified the basis on which it constitutes an instruction to or otherwise caused or induced (or attempted to do so) the behaviour of the Second and/or Third Respondents.

(g) It is perverse to suggest that complaints by Shaan Knan and Kirrin Medcalf constituted the instruction, causing or inducement of the Second and/or Third Respondents to unlawfully discriminate against the Claimant when the complaints were made at the instigation of the Second and/or Third Respondents. Indeed the Claimant states at paragraph 31 of her F&BP that Michelle Brewer "*procured…[t]hird party complaints against the Claimant to Chambers*" (our emphasis), including the emails from Kirrin Medcalf and Shaan Knan referred to at paragraphs 9 and 21 above. Furthermore, at paragraph 84 of her F&BP, the Claimant states that "*At Michelle Brewer's specific suggestion or instruction, Shaan Knan specifically encouraged attendees to write to the Heads of Chambers*" (our emphasis).

(h) The fact that the First Respondent may have been in a position to influence the Second and/or Third Respondents, as stated at paragraph 96 of the F&BP, does not in itself constitute the instruction, causing or inducement of the Second and/or Third Respondents by the First Respondent to unlawfully discriminate against the Claimant (or an attempt to do so). The First Respondent can only be liable if it did in fact instruct, cause or induce the unlawful discrimination of the Claimant by the Second and/or Third Respondents (or attempt to do so). Whether it was in a position to influence the

Second and/or Third Respondents is therefore irrelevant. In any event, the First Respondent is not the only organisation to have adopted the stance that it has on trans rights; indeed the Claimant refers at paragraph 22(b) of her F&BP to the Second Respondent's Trans Rights Working Group adopting a "*trans rights agenda in line with that of Stonewall and other trans rights pressure groups*" including "*Gendered intelligence, Trans Media Watch, Mermaids and the LGBT Consortium*". Furthermore, the Claimant refers at paragraph 54 of her F&BP to the fact that the Second Respondent adopted the same "*pro-gender theory viewpoint from at least 2017*", which was well in advance of any of the matters set out in paragraphs 89 to 96 of the F&BP that the Claimant relies upon as constituting the instruction, causing, or inducement by the First Respondent arising.

Instructing, causing or inducing victimisation

23. The First Respondent denies that it instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant as alleged at paragraph 24 of the Claimant's Re-Amended Grounds of Claim, in the F&BP or at all.

Alleged protected acts

24. In respect of each of the alleged protected acts set out in paragraph 24(a) of the Claimant's Re-Amended Grounds of Claim:

(a) It is denied that the Claimant's email of 14 December 2018, referred to at paragraph 24(a)(i) of the Claimant's Re-Amended Grounds of Claim (and we understand erroneously stated at such paragraph 24(a)(i) as being dated 18 rather than 14 December 2018), is a protected act. In any event, the First Respondent did not become aware of such email until these proceedings were raised and it was provided to the First Respondent as part of the disclosure process. The First Respondent could not therefore have instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant because of such protected act.

(b) It is not admitted that the Claimant's tweets regarding the launching of the LGB Alliance, referred to at paragraph 24(a)(ii) of the Claimant's Re-Amended Grounds of Claim, are protected acts. The Claimant is put to strict proof that the tweets she now relies upon (whether read singly or cumulatively) are protected acts within the meaning of section 27(2) of the Equality Act 2010.

(c) It is admitted that the Claimant's response dated 21 November 2019 to the First Respondent's complaint about her, referred to at paragraph 24(a)(iii) of the Claimant's Re-Amended Grounds of Claim, is capable of being a protected act. However, the First Respondent did not become aware of such response until these proceedings were raised and it was provided to the First Respondent as part of the disclosure process. The First Respondent could not therefore have instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant because of such protected act.

(d) It is admitted that the Claimant's DSAR to the First Respondent, referred to at paragraph 24(a)(iv) of the Claimant's Re-Amended Grounds of Claim, is capable of being a protected act. However, the DSAR was received by the First Respondent on 30 January 2020 and the matters that the Claimant relies upon at paragraphs 89 to 95 of the F&BP as constituting the instruction, causing or inducing by the First Respondent of the Second and/or Third Respondents' alleged unlawful discrimination of the Claimant occurred prior to the date the Claimant's DSAR was received by the First Respondent. The matters relied upon by the Claimant as constituting the instruction, causing or inducing by the First Respondent could not therefore have been because of the Claimant's DSAR. It is not admitted that the Claimant's data subject access requests to the Second and/or Third Respondents are protected acts. The Claimant has not specified what Third Respondents she submitted data subject access requests to and is relying on as protected acts. In any event, the First Respondent did not have sight of any of the Claimant's data subject access requests to the Second and/or Third Respondents until these proceedings were raised and they were provided as part of the disclosure process. The First Respondent could not therefore have instructed, caused or induced the Second and/or Third Respondents to unlawfully victimise the Claimant because of such protected act.

(e) It is denied that the Claimant's ACAS early conciliation application in respect of the First Respondent was a protected act. No information was provided by ACAS to the First Respondent about the nature

of Claimant's prospective claim and indeed ACAS did not contact the First Respondent at all regarding the Claimant's claim prior to such claim being lodged with the Tribunal. It is not admitted that the Claimant's ACAS early conciliation applications in respect of the Second and/or Third Respondents are protected acts. The First Respondent was not privy to the ACAS conciliation process in respect of the Second and/or Third Respondents.

25. The Claimant has not specified which alleged matters in paragraphs 89 to 96 of the F&BP are alleged to have been because of which protected act(s). In any event, the First Respondent denies any of the matters specified in paragraphs 89 to 96 of the F&BP were because of any alleged protected act. In particular, Kirrin Medcalf complained to the Second and/or Third Respondents because they were concerned about the anti-trans rhetoric espoused online by the Claimant and the impact this had on the wellbeing and safety of the First Respondent's staff, one of whom had been named by the Claimant on social media in the context of a highly derogatory tweet.

Alleged detriments

26. The Claimant has not specified which alleged detriment(s) are alleged to have been because of which protected act(s) nor which detriment(s) she alleges that the First Respondent instructed, caused or induced.

27. The First Respondent denies that it instructed, caused or induced the detriments alleged by the Claimant due to a protected act by the Claimant or otherwise. The First Respondent further submits that the detriment particularised at paragraph 24(b)(iii) of the Claimant's Re-Amended Grounds of Claim, namely the First Respondent's complaint to the Second and Third Respondents dated 31 October 2019, was an act of the First Respondent and cannot therefore be an act that the First Respondent instructed, caused or induced the Second and or/Third Respondents to commit.

Instructing, causing or inducing indirect discrimination

28. The First Respondent denies that it instructed, caused or induced the Second and/or Third Respondents to indirectly discriminate against the Claimant as alleged at paragraph 25 of the Claimant's Re-Amended Grounds of Claim, in the F&BP or at all.

29. The First Respondent denies that the Second and/or Third Respondents applied a provision, criterion or practice ("**PCP**") of "*allowing the First Respondent to direct its complaint process*." The First Respondent submitted a complaint to the Second Respondent in respect of the Claimant's conduct and was one of a number of organisations and individuals to do so. The First Respondent had no involvement in the process carried out by the Second and/or Third Respondents in respect of the complaint.

30. *Esto* the Tribunal finds that the Second and/or Third Respondents did apply the alleged PCPs, the First Respondent does not admit that these placed the Claimant and those who share her sex and sexual orientation at a particular disadvantage in comparison with individuals who do not share the Claimant's sex and/or sexual orientation. In particular, the First Respondent's position is that (i) the evidence demonstrates that the Claimant's gender critical beliefs are more likely to be held by men than women and (ii) there is no evidence that lesbians are more likely to hold gender critical beliefs than non-lesbians.

31. *Esto* the Tribunal finds that the First Respondent did instruct, cause or induce the Second and/or Third Respondents to apply the alleged PCPs and that these placed the Claimant at a substantial disadvantage because of her sex and/or sexual orientation, the First Respondent submits that this was a proportionate means of achieving a legitimate aim, such legitimate aim including but not necessarily being limited to the protection of the health, safety and wellbeing of its employees.

32. The Claimant's statements in her Ground of Claim are denied in so far as they are inconsistent with this response.

26 November 2021
CMS Cameron McKenna Nabarro Olswang LLP

Response form

Case number	2202172/2020

You must complete all questions marked with an '*'

1 Claimant's name

1.1	Claimant's name	Ms Allison Bailey

2 Respondent's details

2.1*	Name of individual, company or organisation	Garden Court Chambers Limited
2.2	Name of contact	
2.3*	Address — Number or name	57-60
	Street	Lincoln's Inn Fields
	Town/City	London
	County	
	Postcode	WC2A 3LJ
	DX number (If known)	
2.4	Phone number Where we can contact you during the day	
	Mobile number (If different)	
2.5	How would you prefer us to contact you? (Please tick only one box)	☐ Email ☐ Post ☐ Fax Whatever your preference please note that some documents cannot be sent electronically
2.6	Email address	
	Fax number	
2.7	How many people does this organisation employ in Great Britain?	
2.8	Does this organisation have more than one site in Great Britain?	☐ Yes ☑ No
2.9	If Yes, how many people are employed at the place where the claimant worked?	

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3 Acas Early Conciliation details

3.1 Do you agree with the details given by the claimant about early conciliation with Acas? ☑ Yes ☐ No

If No, please explain why, for example, has the claimant given the correct Acas early conciliation certificate number or do you disagree that the claimant is exempt from early conciliation, if so why?

4 Employment details

4.1 Are the dates of employment given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to question 4.2**

If No, please give the dates and say why you disagree with the dates given by the claimant

When their employment started

When their employment ended or will end

I disagree with the dates for the following reasons

The Claimant is not employed by the Second Respondent.

4.2 Is their employment continuing? ☐ Yes ☐ No

4.3 Is the claimant's description of their job or job title correct? ☐ Yes ☐ No

If Yes, please **go to Section 5**

If No, please give the details you believe to be correct

5 Earnings and benefits

5.1 Are the claimant's hours of work correct? ☐ Yes ☐ No

If No, please enter the details you believe to be correct. [ ] hours each week

5.2 Are the earnings details given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to question 5.3**

If No, please give the details you believe to be correct below

Pay before tax (Incl. overtime, commission, bonuses etc.) £ ☐ Weekly ☐ Monthly

Normal take-home pay (Incl. overtime, commission, bonuses etc.) £ ☐ Weekly ☐ Monthly

5.3 Is the information given by the claimant correct about being paid for, or working a period of notice? ☐ Yes ☐ No

If Yes, please **go to question 5.4**

If No, please give the details you believe to be correct below. If you gave them no notice or didn't pay them instead of letting them work their notice, please explain what happened and why.

5.4 Are the details about pension and other benefits e.g. company car, medical insurance, etc. given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to Section 6**

If No, please give the details you believe to be correct.

6 Response

6.1* Do you defend the claim? ☑ Yes ☐ No

If No, please **go to Section 7**

If Yes, please set out the facts which you rely on to defend the claim.
(See Guidance - If needed, please use the blank sheet at the end of this form.)

Please see the enclosed Grounds of Response.

7 Employer's Contract Claim

7.1 Only available in limited circumstances where the claimant has made a contract claim. (See Guidance)

7.2 If you wish to make an Employer's Contract Claim in response to the claimant's claim, please tick this box and complete question 7.3 ☐

7.3 Please set out the background and details of your claim below, which should include all important dates
(see Guidance for more information on what details should be included)

8 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

8.1 Name of representative

8.2 Name of organisation: Irwin Mitchell LLP

8.3 Address

Number or nam

Stree

Town/Cit

Count

Postcode: B 4 6 A H

8.4 DX number (If known)

8.5 Phone number

8.6 Mobile phone

8.7 Their reference for correspondence: SAO/5370123-1

8.8 How would you prefer us to communicate with them? (Please tick only one box)

- [x] Email
- [ ] Post
- [ ] Fax

8.9 Email address

8.10 Fax number

9 Disability

9.1 Do you have a disability?

- [ ] Yes
- [x] No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as the claim progresses through the system, including for any hearings that maybe held at tribunal premises.

Please re-read the form and check you have entered all the relevant information.
Once you are satisfied, please tick this box. [x]

Employment Tribunals check list and cover sheet

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

Once your response has been received, you should receive confirmation from the office dealing with the claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the response is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us. If you want to submit your response online please go to www.gov.uk/being-taken-to-employment-tribunal-by-employee.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Customer Contact Centre - see details below

General Data Protection Regulations

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter.

To receive a paper copy of this privacy notice, please call our Customer Contact Centre - see details below

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

Customer Contact Centre

England and Wales: 0300 123 1024
Welsh speakers only: 0300 303 5176
Scotland: 0300 790 6234

Textphone: 18001 0300 123 1024 (England and Wales)
Textphone: 18001 0300 790 6234 (Scotland)

(Mon - Fri, 9am -5pm), they can also provide general procedural information about the Employment Tribunals.

Continuation sheet

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL **Case No. 2202172/2020**

BETWEEN

MS ALLISON BAILEY

Claimant

and

(1) STONEWALL EQUALITY LIMITED

(2) GARDEN COURT CHAMBERS LIMITED

Respondents

GROUNDS OF RESISTANCE OF THE SECOND RESPONDENT

Summary

1. Save where expressly admitted or not admitted below, the Second Respondent denies all allegations made within the Claimant's claim.

2. The Second Respondent denies that it has unlawfully discriminated against the Claimant, contrary to the ***Equality Act 2010***, whether because of her sex or because of her sexual orientation or at all.

3. The Second Respondent further denies that it has victimised the Claimant, whether as alleged or at all.

4. The Second Respondent denies that any of its actions were caused, induced or instructed by the First Respondent, whether as alleged or at all.

5. It is the Second Respondent's case that the Claimant's claim against the Second Respondent is vexatious and an abuse of process. It is the Second Respondent's case that the Claimant is using this litigation abusively against the Second Respondent in pursuit of a wider campaign against the First Respondent.

Jurisdiction

6. The Claimant has purported to bring her claim against the Second Respondent under ***section 47*** of the ***Equality Act 2010***, which relates to barristers.

7. As is known to the Claimant, the Second Respondent is not, itself, a barrister (see further below). The Second Respondent therefore cannot be directly liable under ***section 47***.

8. Moreover, as is also known or ought to be known to the Claimant, barristers within Chambers are neither employed by nor agents of the Second Respondent, such that the Claimant cannot avail herself of ***section 109*** of the 2010 Act in order to seek to fix the Second Respondent with liability under ***section 47***.

9. In the premises, it is averred that the Tribunal does not have jurisdiction to hear the Claimant's claim against the Second Respondent. The Second Respondent accordingly applies for all of the Claimant's claims against it to be struck out under ***Rule 37(1)(a)*** of ***The Employment Tribunals Rules of Procedure*** on the ground that the claim has no reasonable prospect of success; alternatively, that the Claimant be ordered to pay a deposit as a condition of continuing to advance her allegations/arguments against the Second Respondent on the basis that those allegations/arguments have little reasonable prospect of success.

10. The Second Respondent also seeks its costs against the Claimant for bringing a claim against the Second Respondent on which the Tribunal has no jurisdiction and on which in any event the Claimant has no prospect of success.

Background

11. It is admitted that the Claimant is both a woman and a lesbian. Save as aforesaid, no admissions are made in respect of paragraph 3 of the Particulars of Claim.

12. The Claimant identifies as a "gender critical feminist". As such, she is fundamentally opposed to the First Respondent's stance in relation to transgender (''trans'') rights and, in particular, its campaign to reform the ***Gender Recognition Act 2004*** in order, *inter alia*, to allow trans individuals to be legally recognised as being of the gender with which they self-identify. The Claimant's views in relation to the First Respondent's stance are set out at paragraph 8 of her Particulars of Claim.

13. It is recognised by the Second Respondent that the debate around "sex versus gender" is a complex one and one which evokes extremely strong opinions within those on opposing sides of the debate. For the avoidance of doubt, although Chambers is a Stonewall Diversity Champion (see below), neither Chambers nor the Second Respondent, as an organisation, adopts or purports to adopt a position one way or the other upon this inherently complex debate. In any event, Chambers is made up of approximately 200 self-employed barristers so that, other than a shared commitment to human rights, equality, and social justice, Chambers provides a base for barristers to pursue their practices in accordance with their professional obligations.

Garden Court Chambers/The Second Respondent

14. The Claimant is a barrister practising in legally aided criminal defence work. She was called to the Bar in 2001 and, in December 2004, became a tenant at Garden Court Chambers, which is a leading multidisciplinary set of barristers' chambers based in Lincoln's Inn Fields. Garden Court Chambers ("Chambers") is an unincorporated association of self-employed barristers.

15. The Second Respondent is not, as has been asserted at paragraph 5 of the Particulars of Claim, a set of barristers' chambers; rather, the Second Respondent is a service company incorporated by Chambers, *inter alia*, for the purposes of employing the staff engaged in administering and providing clerking services to Chambers. The Claimant, along with all other full members of Chambers, is a member of (i.e. shareholder in) the Second Respondent.

16. The decision-making body for Chambers is the Management Board, the composition of which is prescribed by Article 6 of the Chambers Constitution and comprises both barristers

elected to specified positions within Chambers and senior employees of the Second Respondent. The Management Board is responsible for the strategic direction and day-to-day management of Chambers. At all material times, and up to January 2020, this was in conjunction with the Chambers' Director.

17. Chambers' Constitution expressly provides that tenants of Chambers must at all times comply with the ***Bar Standards Board Code of Conduct*** ("the BSB Code of Conduct").

The BSB Code of Conduct and Other Relevant Guidance

18. The BSB Code of Conduct sets out, *inter alia*, the Core Duties with which all barristers are required to comply. The overarching duty to which barristers are subject is Core Duty ("CD") 5, which provides:

> *"You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession"*

19. Other relevant Core Duties include:

    (i) CD3, which provides:

    > *"You must act with honesty, and with integrity"*

    (ii) CD8, which provides:

    > *"You must not discriminate unlawfully against any person"*

20. The BSB Code of Conduct provides that CD5 (and CD9, which is not material for present purposes) apply at all times and are not limited to when the barrister is practising or otherwise providing legal services.

21. On or before 21st October 2019, the BSB issued Social Media Guidance. The Guidance reiterated that barristers were bound by CD5 **at all times**. It went on to state the following:

> *"Comments designed to demean or insult are likely to diminish public trust and confidence in the profession (CD5). It is also advisable to avoid getting drawn into heated debates or arguments. Such behaviour could compromise the requirements for barristers to act with honesty and integrity (CD3) and not to unlawfully discriminate against any person (CD8). You should always take care to consider the content and tone of what you are posting or sharing. Comments that you reasonably consider to be in good taste may be considered distasteful or offensive by others."*

Relevant Chronology

22. On 14th December 2018, Stephen Lue, a barrister within Chambers, sent an email to all tenants and pupils within Chambers and all of the employees of the Second Respondent advising that Chambers had officially become a Stonewall Diversity Champion. This reflected Chambers' commitment to encourage, support and nurture diversity, equality and inclusivity for all LGBTQ+ people within the work place.

23. It is admitted that the Claimant responded to Mr Lue's email on the same date (copying in all of the original recipients), asserting that she *"emphatically object[ed] to any formal association"* between Chambers and the First Respondent. Within her email, the Claimant asserted that the First Respondent advocated *"trans-extremism"* and had been *"complicit in supporting a campaign of harassment, intimidation and threats"* against those who questioned *"its trans self-id ideology"*. For the avoidance of doubt, it is denied that, in writing this email, the Claimant did a protected act within the meaning of ***section 27(2)*** of the ***Equality Act 2010***.

24. The Claimant relies at paragraph (10) of her Particulars of Claim on her "*fee income substantially*" reducing "*in comparison to previous years, most notably to 2018*". Further, at paragraph (24) (b) (i), she relies on the detriment of the Second Respondent "*withholding of instructions and work by the Second Respondent in 2019, causing her financial loss.*" It is of concern that the Claimant, as a barrister, asserts this in the knowledge of the specific factors listed below and, in particular, her email chain of 25 September 2019 to her Senior Practice Manager set out below. It is misleading that she makes no reference to her instructions to him within her Particulars of Claim.

25. Any reduction suffered by the Claimant in her fee income in 2019 in comparison with previous years had no connection with her alleged protected act or any of them as alleged. The Second Respondent would make the general observation that variations, and sometimes significant variations, in income from one year to the next are inherent in the vicissitudes of a career at the Bar and in particular the legally aided criminal Bar, which has suffered a series of cuts to public funding and a reduction in the volume of available work, in

particular in 2019, when Chambers' Crime Team, as a whole, had a reduction in income compared to the previous year.

26. The Second Respondent also relies on the following specific factors particular to the Claimant in her management of her practice as a self-employed barrister in 2019:

26.1 As evidenced by her chambers' diary, and as known to the Claimant, the Claimant asked to be kept free for <u>67 days</u>, some 13.4 weeks, of that calendar year in order to focus on her "*extracurricular*" activities.

26.2 On 25 September 2019, her Senior Practice Manager wrote to her by email to ask about her diary, saying, *inter alia*:

"*Thanks for your attendance note. I thought I'd drop you an email to see how you are. Everything seems to be moving until next year! What's your plans for your diary this year? Are you looking for your diary to be filled up or are you relaxed at the moment? I want to make sure that you are ok*"

The Claimant replied by email that same day, including the following

"I was just thinking the same thing myself. I'm doing a lot of exiting (sic) extracurricular stuff at the moment but I need to remember that I have to pay the rent! Would you let me speak to a couple of people and reflect on what I'm able to take on this year; next year diary is looking pretty good so far. Will be in touch again soon. Until then I'm good".

As evidenced by the email chain, the Claimant made no reference or complaint as to any drop in work.

26.3 Additionally, the Claimant was instructed as junior counsel, led by a QC, in an eight-week murder trial which was adjourned from October 2019 to November 2019 and therefore not billed until 2020 (referred to be her Senior practice Manager in the mail above as "Everything seems to be moving until next year!". Again, there is no reference to this by the Claimant within her Particulars of Claim. If, which is not admitted, the Claimant did suffer any marked reduction in her fee income in 2019 in comparison with previous years, it is expressly denied, insofar as it is alleged, that this was as a consequence of instructions and work being actively withheld from the Claimant by any servant or agent of the Second Respondent.

27. It is admitted that, in October 2019, the Claimant was involved in the founding of a group calling itself the "LGB Alliance", which group is fundamentally opposed to the gender self-ID stance advocated by the First Respondent. The Mission Statement of the LGB Alliance, as set out on its website, includes, *inter alia*, the following:

> *"5. We accept the biological reality of two sexes – female and male. Sex is not 'assigned'. For the vast majority of people, sex is determined at conception, observed in the womb and/or at birth, and recorded. We reject the co-opting of rare medical conditions that affect reproductive development or function (known as DSDs/intersex) in order to cast doubt on the biological reality of sexual dimorphism, i.e. two sexes.*
>
> *6. We maintain that gender is a social construct which is used to impose often harmful and outdated stereotypes."*

28. The Claimant has a personal Twitter account under which she tweets using the username @BluskyeAllison. Her Twitter profile, however, identifies her real name and uses the same photograph which is used on Chambers website. In October 2019, the Claimant's Twitter profile stated:

> *"Criminal defence barrister at Garden Court Chambers, London. Gender critical; biological reality before gender identity. Own views, not those of @gardencourtlaw."*

The Claimant's Twitter feed is predominantly used by her in order to express gender critical feminist views.

29. At 11:12 p.m. on 22nd October 2019 the Claimant tweeted the following on her personal twitter account:

> *"This is an historic moment for the Lesbian, Gay and Bisexual movement. *LGB Alliance* launched in London tonight, and we mean business. Spread the word, gender extremism is about to meet its match."*

30. Between 23rd and 25th October 2019 the Second Respondent received a number of complaints from individuals and organisations (not including the First Respondent) in relation to the Claimant's aforementioned tweet (albeit a number of the said complaints additionally referenced the tenor/content of the Claimant's Twitter feed more generally). The common theme of the complaints was that the LGB Alliance was considered by the complainants to be transphobic and the Claimant's reference to *"gender extremism"* to amount to a direct attack on trans rights.

31. It was determined by the joint Heads of Chambers that Chambers had a duty to investigate the complaints referred to in the preceding paragraph in accordance with its complaints procedure.

32. In addition to receiving the specific complaints referred to above, Chambers' official Twitter account was also tagged into numerous tweets responding to the Claimant's original tweet. Many of those replies were highly critical of both Chambers and the Claimant, highlighting an apparent contradiction between Chambers' human rights ethos and the views being espoused by the Claimant. Articles had also subsequently appeared in both *The Independent* and *Pink News*, about the Claimant's tweet and the furore which it had provoked, which articles had both directly referenced Chambers by name. Some members of Chambers expressed their concern about the media coverage portraying Chambers in a negative light.

33. In light of the above, David de Menezes, the Second Respondent's Communications and Marketing Director, and the joint Heads of Chambers took the view that, given that Chambers was a business whose core practice was advancing human rights and non-discrimination, and given the perception that the rights of a protected minority were being called into question, it was necessary to take active steps to limit reputational damage to Chambers by demonstrating that Chambers took the concerns that had been raised seriously. As a result, specific replies were sent to a small number (approximately six) of the tweets that had been received criticising Chambers in the following terms:

> *"We are investigating concerns raised about Allison Bailey's comments in line with our complaints/BSB policies. We take these concerns v seriously and will take all appropriate action. Her views are expressed in a personal capacity & do not represent a position adopted by Garden Court.*
> *Garden Court Chambers is fiercely proud of its long-standing commitment to promoting equality, fighting discrimination and defending human rights."*

Whilst it is accepted that these replies would have been visible to anyone looking at the thread of the individual tweets in question, it is denied, as alleged at paragraph 13 of the Particulars of Claim, that this amounted to a *"public statement that the Claimant was under investigation"*.

34. On 25th October 2019, an announcement was posted on Chambers' website in the following terms:

> *"We wish to make it clear that LGB Alliance is not part of Garden Court Chambers nor representative of the views of Chambers."*

This wording had been sent to the Claimant in advance of being posted and had been approved by her by email.

35. Sometime prior to 27th October 2019 the Claimant had spoken to a journalist by the name of Nicholas Hellen at the *Sunday Times*, resulting in the publication of an article in that newspaper on that date. Within the article, the Claimant asserted that she had no faith that Chambers (whom she named) would conduct a fair complaints process because *"they [were] compromised by their relationship with"* the First Respondent. There was no basis for the Claimant to make such a serious, and potentially defamatory, allegation as to the impartiality of Chambers' complaints process and those responsible for handling complaints. Whilst aware of the article, the Second Respondent took no action as to the quote made about Chambers.

36. Maya Sikand, who is a member of the Management Board and Head of the Civil Liberties and Human Rights team within Chambers, was asked on or around 24th October 2019 to investigate the complaints that had been received by Chambers and to make recommendations to the joint Heads of Chambers as to the appropriate action, if any, to be taken in relation to the same.

37. On 30th October 2019, Mia Hakl-Law, the Second Respondent's Director of Operations and Human Resources, wrote to the Claimant (attaching a copy of Chambers' complaints procedure) advising her that Ms Sikand would be investigating the complaints that had been received and would be in touch if she considered it was necessary to seek a response from the Claimant prior to determining whether any action was required. At that time, the only complaints that had been received by Chambers and the only complaints that Ms Sikand had been tasked to investigate were those that have already been referred to at paragraph 30 above (and in respect of which no specific action was ultimately recommended by Ms Sikand).

38. The Claimant raised no objections to Ms Sikand investigating the complaint.

39. Further, the Claimant was contacted and informed of the investigation prior to the First Respondent contacting Chambers through its website and raising a complaint about the Claimant as set out below.

40. On 31st October 2019, a complaint was received via the Chambers website directly from the Head of Trans Inclusion at the First Respondent. The complaint was wide-ranging and referenced a significant number of tweets, which were alleged by the complainant to be transphobic, including (but not limited to) the following:

(1) A tweet posted by the Claimant on 22nd September 2019:
"Stonewall recently hired [MP], a male bodied person who ran workshops with the sole aim of coaching heterosexual men who identify as lesbians on how they can coerce young lesbians into having sex with them. Page called 'overcoming the cotton ceiling' and it is popular."

(2) A tweet posted by the Claimant on 27th October 2019, referencing the article that had appeared in the Sunday Times that day (see paragraph 30 above):
"@NicholasHellen thank you for your article. On this issue, I and many other women are grateful to @thetimes for fairly & accurately reporting on the appalling levels of intimidation, fear & coercion that are driving the @stonewalluk trans self-ID agenda."

41. Having considered the complaint received from the First Respondent, Maya Sikand's provisional view was that the two tweets cited above (and those two tweets only) might potentially breach one or more of the Core Duties owed under the BSB Code of Conduct. For the avoidance of doubt, Ms Sikand did not consider that any of the remaining tweets that had been cited within the First Respondent's complaint potentially breached any of the Core Duties and no investigation was considered necessary or undertaken in relation to the same.

42. On 6th November 2019, Maya Sikand wrote to the Claimant inviting her comments upon the two tweets that she had identified as being potentially problematic. Ms Sikand indicated that she considered that the tweets potentially offended against relevant Core Duties within the BSB Code of Conduct and the recently issued BSB Social Media Guidance. Ms Sikand initially asked for a response to be provided by 5 p.m. on Friday 8th November 2019, although this period was subsequently extended at the Claimant's request.

43. On 21st November 2019, the Claimant submitted a detailed response to Ms Sikand, running to some 14 pages (with a further 18 pages of attachments). In summary, the Claimant denied that either of the identified tweets were in breach of the Core Duties under the BSB Code of Conduct or the BSB Social Media Guidance. The Claimant asserted that each of the tweets reflected her *"honest understanding"* and that stating this understanding could not amount to a breach of any of the cited Core Duties or the BSB Guidance. Within her

response, the Claimant set out at some length the gender critical feminist standpoint as well as her own personal history. In addition to commenting upon the two specific tweets that had been identified as problematic, the Claimant commented at some length upon the elements of the First Respondent's complaint that had **not** been deemed by Maya Sikand to require a response (on the basis that Ms Sikand did not consider that those elements of the complaint breached either any of the Core Duties or the BSB's Social Media Guidance).

44. In relation to the tweet referred to at paragraph 30 above, the Claimant asserted that the complaint made by the First Respondent, of itself, amounted to an instance of the *"intimidation and coercion"* referred to within that tweet. It is averred that it is clear from this part of the Claimant's response that the tweet in question was not intended to relate merely to those who professed support for the First Respondent's *"trans self-ID agenda"* but rather to the First Respondent itself as an organisation.

45. It is admitted that the Claimant asserted within her response to Maya Sikand that the complaint against her by the First Respondent amounted to an act of discrimination on the grounds, *inter alia*, of her sex and her sexual orientation.

46. Given the complexity and sensitivity of the issues involved and because the Heads of Chambers were concerned to ensure that they were acting in compliance with any reporting duties they may have, on or around 28 November 2019 Stephanie Harrison QC, then a member of Chambers' Management Board and now a joint Head of Chambers, sought advice from the Bar Council Ethics Committee (having been referred to that Committee by the Bar Standards Board) in relation to whether those two tweets offended the BSB Social Media Guidance and, if so, whether Chambers would have a duty to report the Claimant's tweets.

47. By email of 3 December 2018, Cathryn McGahey QC provided her view, on behalf of the Bar Council Ethics Committee, in relation to those two tweets. She prefaced her advice as follows: "The view of the Ethics Committee (or any member of it) does not, as I am sure you know, bind the BSB. However, should any complaint be made, you would be welcome to share this advice with the BSB. The advice is confidential, but the confidence is owed to, and not by, you; you are free to share it with anyone as you see fit." Her advice, in summary, was

that the Claimant may be at risk of a finding of a breach of CD5 and/or CD3 in relation to both tweets. She did not believe that CD8 would be engaged by either tweet.

48. Stephanie Harrison QC shared this informal advice with Judy Khan QC and Marc Willers QC (two of the then joint Heads of Chambers) and also with Maya Sikand and Mia Hakl-Law. The Claimant had specifically requested that the third joint Head of Chambers, Leslie Thomas QC, not be involved in the process as he was also a member of the Bar Standards Board),

49. Maya Sikand completed her investigation report on behalf of the joint Heads of Chambers on 11th December 2019. Her report concluded the following:

(i) that, although the wording of the Claimant's tweet of 22nd October 2019 appeared to be deliberately provocative, it did not, on a proper reading, contain anything transphobic or discriminatory;

(ii) that, although the tweet had plainly been perceived as both *"distasteful"* and *"offensive"* by others, that was inherent in the very nature of the issues that were being debated and it could not properly be said that contributing to one side of that debate (or even taking a lead upon it) was, of itself, conduct that was likely to diminish public trust either in the Claimant or in the profession as a whole (i.e. it did not amount to a breach of CD5);

(iii) that, notwithstanding the above, the Claimant ought to have taken greater care in the tone and content of her tweet and ought to be careful to ensure that respect for the inherent dignity of others was reflected in the tone and content of all her tweets, notwithstanding her own strongly held beliefs;

(iv) that the words attributed to the Claimant about the First Respondent and about Chambers' relationship with the First Respondent within the *Sunday Times* article published on 27th October 2019 offended against the expectation that members of Chambers should not do anything to damage Chambers' reputation and/or its business or other interests. However, in the absence of Chambers having a specific policy in force at the material time in relation to social media or media use, it was not considered appropriate to recommend that any further action should be taken in respect of this on this occasion.

(v) that the majority of the tweets identified in the First Respondent's complaint did not breach either the Core Duties or the BSB's Social Media Guidance;

(vi) that the tweet at paragraph 40(1), if not substantiated, was likely to be found by the BSB to be a breach of CD5 and/or CD3, if it was considering these complaints. Maya Sikand indicated that she had not been provided with any evidence to support the assertion that MP had encouraged sexual assaults upon young women (which was the essence of the Claimant's allegation). Ms Sikand concluded that, on the evidence before her, the Claimant had made an extremely serious allegation which, on the face of it, could not be shown to be true. She concluded that, in such circumstances, it was likely that the BSB would have found the tweet breached CD5 (even if it accepted that the Claimant honestly believed it to be true);

(vii) that the tweet at paragraph 40(2) was at real risk of being found by the BSB to be in breach of CD5 and/or CD3. Ms Sikand concluded that the tweet in question could reasonably be read to imply that the First Respondent itself was behind conduct which would amount to a criminal campaign against those who opposed its views on trans issues (an interpretation supported by the Claimant's own response to the First Respondent's complaint, as per paragraph 37 above). In the absence of evidence to substantiate an allegation that the First Respondent was effectively orchestrating a criminal campaign, it was likely that the BSB would find that the tweet breached CD5.

50. Ms Sikand went on to indicate that, although she had concluded that the BSB would be likely to make findings adverse to the Claimant in respect of the two specific tweets (as set out at (vi) and (vii) above), Chambers did not have a duty to report the tweets to the BSB. Chambers' duty to report arose only where there had been *"serious misconduct"* and Ms Sikand did not consider that the tweets in question crossed that particular threshold. Ms Sikand recommended that the Heads of Chambers should ask the Claimant to remove the two particular tweets in light of her assessment that they were likely to be considered to be in breach of one or more Core Duties. Beyond this, and beyond recommending that the Heads of Chambers would need to consider the terms of any response to the various complainants, Ms Sikand did not recommend that any further action ought to be taken in relation to the Claimant.Ms Sikand sent her completed report to the Claimant on 11th December 2019 and copied the same to Marc Willers QC and Judy Khan QC.

51. On 15th December 2019, Judy Khan QC wrote to the Claimant indicating that she and Mr Willers had decided to accept Maya Sikand's findings and recommendations. The Claimant

was asked to remove the two tweets, but was informed that Chambers did not intend to report her to the BSB (albeit that others might independently choose to do so). Ms Khan indicated that, in light of this conclusion, they did not consider that it was necessary to meet with the Claimant, although confirmed that they would be happy to do so if the Claimant so desired.

52. The Claimant responded on the same date. The Claimant did not indicate whether she would comply with the request to remove the two specific tweets, but instead raised a number of questions effectively questioning the independence of Maya Sikand. Judy Khan QC responded within half an hour confirming that Ms Sikand had been chosen to conduct the investigation as she was independent-minded. It was confirmed that Ms Sikand had not expressed any concerns about the Claimant's tweets prior to being appointed to carry out the investigation and that she had not previously undertaken work for, or had any affiliation with, the First Respondent.

53. The Claimant did not remove the tweets as asked and has not removed them to date. No further action was taken as a result of her refusal to remove them.

54. For the sake of completeness, it is averred that the First Respondent was not, in fact, informed by Chambers or the Second Respondent of the outcome of Maya Sikand's investigation or the consequent decision taken by the joint Heads of Chambers at any time prior to the presentation of the Claimant's claim. Nor was any other complainant informed of the outcome of the investigation. It is only through these proceedings that the First Respondent would have become aware of the investigation and decision.

55. It is admitted that the Claimant submitted a Subject Access Request ("SAR") to the Second Respondent on 30th January 2020 in which she requested the disclosure of various documentation. It is further admitted that, within her SAR, the Claimant asserted her belief that she had been discriminated against by the Second Respondent.
The request was prefaced by the Claimant stating the following:

> *"I am concerned that I have been subjected to unlawful discrimination and victimisation by Garden Court Chambers as a result of complaints made against me by Stonewall, which in turn arise from concerns I have raised with chambers about the conduct of Stonewall. I believe that those concerns included protected acts within the meaning at* (sic) *s.27 Equality Act 2010."*

56. Mia Hakl-Law provided an initial response to the Claimant's SAR by way of a letter, dated 2nd March 2020. The letter reminded the Claimant, *inter alia*, that the Second Respondent was not her employer and that it was not the Data Controller for personal data processed or used by individual barristers within Chambers in the course of their practice. Various documentation was, however, provided by the Second Respondent in relation to certain of the categories of data sought.

57. It is admitted that, following the initial provision of a substantial volume of documentation by the Second Respondent, the Claimant identified further documentation which she believed ought to be provided. It is acknowledged that, as a result of the Covid-19 pandemic and the many acute pressures on Chambers' staff and resources, there was a significant delay in providing a substantive response to this correspondence. However, further documentation has now been supplied to the Claimant. The Second Respondent believes that it has fully complied with its obligations in respect of the Claimant's SAR.

Pleadings

58. The Second Respondent's primary case is that, for the reasons set out at paragraphs 6 to 9 herein, the Tribunal lacks jurisdiction to hear the Claimant's claims against it. Without prejudice to the generality of that case, the Second Respondent pleads as follows:

(i) Victimisation

59. It is denied that the Second Respondent, its servants or agents have victimised the Claimant either as alleged or at all. There is no basis at all for the Claimant's claims.

Alleged Protected Acts

60. As set out at paragraph 23 herein, it is denied that the Claimant's email of 18th December 2018 amounted to protected act as averred at paragraph 24(a)(i) of her Particulars of Claim. It is assumed that the Claimant seeks to rely upon ***section 27(2)(d)*** of the ***Equality Act 2010.*** However, for the avoidance of doubt, it is denied that the content of the Claimant's email can properly be construed as making of an allegation (whether express or implied) that the First Respondent had contravened the Act.

61. It is not admitted that the Claimant's tweets around the launching of the LGB Alliance (or any of them) amounted to a protected act. Whilst the Claimant has made reference at paragraph 12 of her Particulars of Claim to the alleged content of these tweets, the Claimant has presently failed to identify the specific tweet(s) upon which she seeks to rely for the purposes of paragraph 24(a)(ii) of her Particulars of Claim or their precise content. The Second Respondent reserves the right to plead further in this regard once it has been provided with copies of the specific tweet(s) which are alleged to have amounted to a protected disclosure.

62. It is admitted that:
   (i) the Claimant's response to Maya Sikand's investigation submitted on 21st November 2019 (referred to at paragraphs 35 to 37 above);
   (ii) the Claimant's Subject Access Request; and
   (iii) the Claimant's Early Conciliation "application" (which the Second Respondent presumes to be a reference to the Claimant complying with the requirement under ***section 18A*** of the ***Employment Tribunals Act 1996*** to contact ACAS before instituting proceedings)

are each capable of amounting to protected acts.

Alleged Detriments

63. The Claimant has failed to specify which alleged detriment(s) are alleged to have been because of which protected act(s).

64. As to the alleged detriment set out at paragraph 24(b)(i) of the Particulars of Claim:
   (i) No admissions are made as to whether the Claimant, in fact, suffered a substantial reduction in her fee income in 2019 in comparison with previous years. The Claimant has provided no particulars of the reduction.
   (ii) If, which is not admitted, the Claimant did suffer any marked reduction in her fee income in 2019 in comparison with previous years, it is denied that this was as a consequence of instructions and work being actively withheld from the Claimant by any servant or agent of the Second Respondent. The Second Respondent notes that the Claimant has failed to identify any individual or individuals whom she asserts

withheld work or instructions from her. Further, and significantly, to the extent she suffered any reduction, the Second Respondent relies on the specific factors pleaded above at paragraphs 24-26, which are not referred to by the Claimant in her Particulars of Claim though plainly known to her.

(iii) For the avoidance of doubt, the Second Respondent strongly denies that any work or instructions were withheld from the Claimant for any reason. As set out, the Claimant provides no detail as to the reduction; no detail as to who supposedly withheld work or instructions; no detail as to how she is able in law to attach this to the Second Respondent and no detail or evidence at all as to how she claims there is any connection with any protected act, in so far as she made any protected acts. Her claims in this and all other regards are simply not made out. The Second Respondent also notes that in any event the only alleged protected act which precedes the bulk of the relevant period is the Claimant's email of 18th December 2018, which it is denied amounted to a protected act in any event.

65. As to the alleged detriment at paragraph 24(b)(ii):

(i) As set out at paragraph 27 herein, it is denied that the Second Respondent published a statement that the Claimant was under investigation. It is admitted that replies were sent to a number of specific individuals indicating that Chambers was investigating concerns that had been raised about comments made by the Claimant;

(ii) It is, in any event, denied that the Second Respondent replied to the specific individuals in the above terms because the Claimant had done any protected act. The replies were sent as a direct result of the sheer volume of criticism which was being directed at the Second Respondent and/or Chambers on social media and in an attempt to limit reputational damage to Chambers by demonstrating that Chambers took the concerns that had been raised seriously.

66. The alleged detriment at paragraph 24(b)(iii) of the Particulars of Claim is not understood to be an allegation of victimisation against the Second Respondent.

67. As to the alleged detriment at paragraph 24(b)(iv), it is denied that the aspects of the complaint which were upheld against the Claimant were upheld because the Claimant had done any protected act(s). They were upheld for the reasons set out at paragraph 50 above, namely that there was no objective evidence presented to Ms Sikand, in either instance, that

the content of the tweet in question was true and, in such circumstances, it was considered that the tweets (and each of them) potentially placed the Claimant in breach of CD5 of the BSB Code of Conduct. The Claimant's assertions are further undermined by the fact that Ms Sikand's views were consistent with and took into account the advice provided by Ms McGahey QC on behalf of the Bar Ethics Committee as set out at 49 above. For the avoidance of doubt, neither the actions of Maya Sikand in investigating the First Respondent's complaint nor the decision taken by the Joint Heads of Chambers to uphold certain aspects of that complaint were, in any event, acts undertaken by or on behalf of the Second Respondent

68. As to the alleged detriment at paragraph 24(b)(v), it is denied that the Second Respondent had failed to comply with the Claimant's SAR. If, which is denied, the Second Respondent has failed to comply with the Claimant's SAR in any material respect, it is denied that any material failure is because the Claimant had done one or more protected acts. The Second Respondent has attempted to comply fully with its obligations and believes that it has done so.

(ii) Indirect Discrimination

69. It is denied that the Second Respondent, its servants or agents indirectly discriminated against the Claimant, whether as alleged at paragraph 25 of the Particulars of Claim or at all.

The First Alleged PCP

70. It is denied that the Second Respondent (or any servant or agent of the Second Respondent) applied the PCP set out at paragraph 25(a)(i). The Claimant makes an extremely serious and potentially defamatory allegation that the Second Respondent applies a PCP of treating "*gender critical beliefs as being bigoted or otherwise unworthy of respect*". The Second Respondent takes strong issue with this assertion. There is no basis for it at all and none pleaded.

71. In any event, and as set out at paragraph 13 herein, the Second Respondent as an organisation neither adopts nor purports to adopt a specific position in relation to the "sex versus gender" debate. As is known to the Claimant, Garden Court Chambers, separate from

the Second Respondent, in housing approximately 200 self-employed barristers practising in a range of different areas, is committed to defending human rights, equality, social justice and upholding the rule of law.

72. Moreover and in any event, the aspects of the complaint which were upheld against the Claimant were not upheld because the Claimant espouses gender critical beliefs, but rather because the tweets contained allegations of criminal and/or disreputable conduct and there was no objective evidence presented to Ms Sikand that the content of the tweets in question was true. Furthermore, the independent view given by Ms McGahey QC on behalf of the Bar Ethics Committee was taken into account.

<u>The Second Alleged PCP</u>

73. It is denied that the Second Respondent (or any servant or agent of the Second Respondent) applied a PCP of allowing the First Respondent to direct its complaints process, whether in respect of the specific complaint made against the Claimant or more generally. This again is a very serious and potentially defamatory allegation calling into question the impartiality of the complaints process. Again, the Claimant has no basis or evidence to support this assertion.

74. Further and for the avoidance of doubt, if the alleged PCP is intended to relate only to the handling of the specific complaint against the Claimant, which appears to be the case on the current pleading, it is denied that the same would be capable of amounting to a PCP in any event.

75. The First Respondent did not, in any sense, direct Chambers' complaint process. The Second Respondent takes strong issue with this baseless assertion. Chambers received a complaint from the First Respondent making allegations against the Claimant which Chambers was required to treat (and did treat) seriously in the same way it treated the other complaints. Thereafter:

(i) the Joint Heads of Chambers ultimately only upheld two limited elements of the original complaint;

(ii) the majority of the allegations contained within the original complaint were not upheld against the Claimant (nor even deemed worthy of investigation);

(iii) the decision was taken after advice from the Bar Ethics Committee was obtained;

(iv) the outcome suggested within the complaint (the Claimant's expulsion from Chambers) was never remotely countenanced either by Maya Sikand or by the Joint Heads of Chambers;

(v) Chambers did not even consider it necessary to report the Claimant to the BSB;

(vi) the only action taken against the Claimant as a result of the complaint being partially upheld was to request the removal of the two specific tweets, which she did not do. No further steps were taken in consequence.

(vii) The Claimant did not take up offers made by the Joint Heads of Chambers to meet, to draw a line under these matters and to move forward. The Claimant did not pursue any of these matters internally through Chamber's grievance procedures and before issuing these proceedings, despite being invited to do so.

Conclusion

76. For the reasons set out the Tribunal has no jurisdiction to hear the claim against the Second Respondent. In any event, the claim in all its parts has no real prospect of success. It is vexatious and amounts to an abuse of process. As set out above, the Second Respondent makes an application for the claims against it to be struck out; alternatively, that the Claimant pay a deposit and, in any event, that she pay the Second Respondent's costs.

77. In the premises, the Claimant's claims (and each of them) against the Second Respondent are denied in their entirety and it is denied that the Claimant is entitled to the relief sought or any relief.

Irwin Mitchell LLP

4 September 2019

CASE NO: 2202172/2020

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN

MS ALLISON BAILEY

Claimant

and

(1) STONEWALL EQUALITY LIMITED

(2) GARDEN COURT CHAMBERS LIMITED

(3) ~~JUDY KHAN QC,~~ STEPHANIE HARRISON QC and RAJIV MENON QC ~~and LIZ DAVIES~~, sued as representatives of all members of GARDEN COURT CHAMBERS except the Claimant

Respondents

RE-RE-AMENDED GROUNDS OF RESISTANCE OF THE SECOND AND THIRD RESPONDENTS

Key

These Re-Amended Grounds of Resistance are submitted on behalf of the Second and Third Respondents following receipt of the Claimant's Further Information dated 25 May 2021. References to paragraph numbers below are references to the Claimant's Further Information dated 25 May 2021 (the "**Claimant's Further Information**").

Summary

1. Save where expressly admitted or not admitted below, the Second and Third Respondents ~~denies~~ deny all allegations made within the Claimant's claim. The Second Respondent (the "**Service Company**") was established for the purposes of operating as a service company for the Third Respondent (the "**Chambers**") with the intent of holding all

Chambers' assets and also providing clerking and other administrative services to Chambers including discharging expenses and liabilities, providing premises, and providing administrative support. The Service Company is a private company limited by guarantee without share capital, Company Number 04170245. The Chambers is an unincorporated association with (at the material time) approximately 190 individual self-employed practitioners.

2. The Second and Third Respondents denies Service Company and Chambers deny that it has they (or either of them) have unlawfully discriminated against the Claimant, contrary to the **Equality Act 2010**, whether because of her sex or because of her sexual orientation or at all.

3. The Second and Third Respondents Service Company and Chambers further denies deny that it has they (or either of them) have victimised the Claimant, whether as alleged or at all.

4. The Second and Third Respondents denies Service Company and Chambers deny that any of its their actions were caused, induced or instructed by the First Respondent **("Stonewall")**, whether as alleged or at all.

5. It is the Second and Third Respondents's case that the Claimant's claim against the Second and Third Respondents (and each of them) is vexatious and an abuse of process. It is the Second and Third Respondents's case that the Claimant is using this litigation abusively against the Second and Third Respondents in pursuit of a wider campaign against the First Respondent.

Jurisdiction

6. The Claimant has purported to bring her claim against the Second Respondent under **section 47** of the **Equality Act 2010**, which relates to barristers.

7. As is known to the Claimant, the Second Respondent is not, itself, a barrister (see further below). The Second Respondent therefore cannot be directly liable under **section 47**.

8. Moreover, as is also known or ought to be known to the Claimant, barristers within Garden Court Chambers ("**Chambers**") are neither employed by nor agents of the Second Respondent, such that the Claimant cannot avail herself of **section 109** of the 2010 Act in order to seek to fix the Second Respondent with liability under **section 47.**

9. ~~In the premises, it is averred that the Tribunal does not have jurisdiction to hear the Claimant's claim against the Second Respondent. The Second Respondent accordingly applies for all of the Claimant's claims against it to be struck out under **Rule 37(1)(a) of The Employment Tribunals Rules of Procedure** on the ground that the claim has no reasonable prospect of success; alternatively, that the Claimant be ordered to pay a deposit as a condition of continuing to advance her allegations/arguments against the Second Respondent on the basis that those allegations/arguments have little reasonable prospect of success.~~

10. ~~The Second Respondent also seeks its costs against the Claimant for bringing a claim against the Second Respondent on which the Tribunal has no jurisdiction and on which in any event the Claimant has no prospect of success.~~

10A. ~~Further, barristers within Chambers are not employed by Chambers, such that the Claimant cannot avail herself of **section 109(1)** of the 2010 Act in order to seek to fix Chambers with liability for the actions of individual barristers under **section 47.** Moreover, it is averred that the Claimant has presently failed to identify any individual barrister under section 47 and/or the basis upon which it is averred that any individual barrister is properly regarded as having acted as an agent of the Third Respondent in relation to any of the matters of which she complains.~~

10B. ~~In the premises, the Third Respondent also applies for all of the Claimant's claims against it to be struck out under Rule 37(1)(a) of The Employment Tribunals Rules of Procedure on the ground that the claim has no reasonable prospect of success; alternatively, that the Claimant be ordered to pay a deposit as a condition of continuing to advance her allegations/arguments against the Third Respondent on the basis that those allegations/arguments have little reasonable prospect of success. Further, the Third Respondent will seek to recover its costs of responding to and defending the Claimant's claims.~~

10C Chambers consisted of (at the material time) approximately 190 self-employed practitioners with a wide variety of views and opinions. There was no corporate or collective position adopted by Chambers on the issue of gender critical theory and members of chambers did not act as authorised agents of Chambers in expressing their views on that or any other topic. Chambers are not responsible for the views and actions of barristers acting in the course of their own professional working relationships and

interests and are, further, not responsible for the private and personal communications between individual members of chambers and/or third parties.

Background

11. It is admitted that the Claimant is both a woman and a lesbian. Save as aforesaid, no admissions are made in respect of paragraph 3 of the Particulars of Claim.

12. The Claimant identifies as a "*gender critical feminist*". As such, she is fundamentally opposed to ~~the First Respondent's~~ Stonewall's stance in relation to transgender ("**trans**'') rights and, in particular, its campaign to reform the **Gender Recognition Act 2004** (the **"GRA"**) in order, *inter alia*, to allow trans individuals to be legally recognised as being of the gender with which they self-identify. The Claimant's views in relation to ~~the First Respondent's~~ Stonewall's stance are set out at paragraph 8 of her Particulars of Claim.

13. It is recognised by the ~~Second and Third Respondents~~ Service Company and Chambers that the debate around "*sex versus gender*" is a complex one and one which evokes extremely strong opinions within those on opposing sides of the debate. It is accepted that gender critical beliefs are protectable beliefs. What is protected is the belief that sex is an immutable characteristic. There are, however, restrictions on the manner in which that belief is expressed: the holder of that belief does not have a licence to abuse other people, by, for example, making allegations of criminal and/or disreputable conduct. Further, disagreeing with gender critical views and/or raising reasonable or legitimate concerns about them is not the same as treating such views as bigoted or unworthy of respect. For the avoidance of doubt, although Chambers ~~is~~ was a Stonewall Diversity Champion (see below), neither Chambers nor the ~~Second~~ Respondent Service Company, as an organisation, adopts or purports to adopt a position one way or the other upon this inherently complex debate. As set out below at paragraphs 22 and 73.6, the primary purpose of Chambers becoming a Stonewall Diversity Champion was to promote respect and an inclusive working environment for LGBTQ+ individuals. In any event, Chambers ~~is~~ was made up of approximately ~~200~~ 190 self- employed barristers at the material time so that, other than a shared commitment to human rights, equality, and social justice, Chambers purpose was to provide~~s~~ a base for barristers to pursue their practices in accordance with their professional obligations.

Garden Court Chambers/The ~~Second Respondent~~ Service Company

14. The Claimant is a barrister practising in legally aided criminal defence work. She was called to the Bar in 2001 and, in December 2004, became a tenant at Garden Court Chambers, which is a leading multidisciplinary set of barristers' chambers based in Lincoln's Inn Fields. ~~Garden Court Chambers ("Chambers"/the Third Respondent) is an unincorporated association of self-employed barristers~~.

15. The ~~Second Respondent~~ Service Company is ~~not, as has been asserted at paragraph 5 of the Particulars of Claim, a set of barristers' chambers; rather, the Second Respondent~~ is a service company incorporated by Chambers, *inter alia*, for the purposes of employing the staff engaged in administering and providing clerking services to Chambers. The Claimant, along with all other full members of Chambers, is a member of (i.e. shareholder in) the ~~Second Respondent~~ Service Company.

16. The decision-making body for ~~Chambers~~ the Service Company is the Management Board, the composition of which is prescribed by Article 6 of the Chambers' Constitution and comprises both barristers elected to specified positions within Chambers and senior employees of the Second Respondent (the "**Management Board**"). The Management Board consists of The Chair, Deputy Chairs of Chambers, the Treasurer, the Equality and Diversity Officer, and the Women's Representative. The Management Board is responsible for the strategic direction and day-to-day management of Chambers. At all material times, and up to January 2020, these activities were carried out ~~this was~~ in conjunction with the Chambers' Director and, thereafter, the Management Board alone. The Chambers' Director had authority, subject to the approval by the Board, for the strategic, operational, management and administration of Chambers. The decision-making body for Chambers is the Management Committee. Chambers is committed to the implementation and promotion of equal opportunities and both Chambers, and its individual barrister members, adhere to the Equality Code of the Bar.

17. Chambers' Constitution expressly provides that tenants of Chambers must at all times comply with the **Bar Standards Board Code of Conduct** (the **"BSB Code of Conduct"**). Article 9 of Chambers' constitution provides that members are required to notify Chambers' administration, by the end of November, of their intended working pattern for the following year, including the number of working weeks the member intends to work and any significant change in their work pattern.

The BSB Code of Conduct and Other Relevant Guidance

18. The Bar Standards Board ("**BSB**") Code of Conduct sets out, *inter alia*, the Core Duties with which all barristers are required to comply. The overarching duty to which barristers are subject is Core Duty ("**CD**") 5, which provides:

> *"You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession"*

19. Other relevant Core Duties include:

    19.1 CD3, which provides:

    > *"You must act with honesty, and with integrity"*

    19.2 CD8, which provides:

    > *"You must not discriminate unlawfully against any person"*

20 The BSB Code of Conduct provides that CD5 (and CD9, which is not material for present purposes) apply at all times and are not limited to when the barrister is practising or otherwise providing legal services.

21 On or before 21 October 2019, the BSB issued Social Media Guidance. The Guidance reiterated that barristers were bound by CD5 **at all times**. It went on to state the following:

> *"Comments designed to demean or insult are likely to diminish public trust and confidence in the profession (CD5). It is also advisable to avoid getting drawn into heated debates or arguments. Such behaviour could compromise the requirements for barristers to act with honesty and integrity (CD3) and not to unlawfully discriminate against any person (CD8). You should always take care to consider the content and tone of what you are posting or sharing. Comments that you reasonably consider to be in good taste may be considered distasteful or offensive by others."*

21A Chambers has a complaints procedure for third party complaints and a grievance procedure for internal complaints in line with BSB guidance. The complaints procedure was (and still is) publicly available on Chambers' website.

Relevant Chronology

22 On 14 December 2018, Stephen Lue, a barrister within Chambers and a member of its family team, sent an email to all tenants and pupils within Chambers and all of the employees of the ~~Second Respondent~~ Service Company advising that Chambers had officially become a Stonewall Diversity Champion. This had been promoted in particular by gay and lesbian members of the family team and reflected Chambers' commitment to encourage, support and nurture diversity, equality and inclusivity for all LGBTQ+ people within the work place.

23 It is admitted that the Claimant responded to Mr Lue's email on the same date (copying in all of the original recipients), asserting that she *"emphatically object[ed] to any formal association"* between Chambers and ~~the First Respondent~~ Stonewall. Within her email, the Claimant asserted that ~~the First Respondent~~ Stonewall advocated *"trans-extremism"* and had been *"complicit in supporting a campaign of harassment, intimidation and threats"* against those who questioned *"its trans self-id ideology"* (the "**14 December 2018 Email**"). The communiations between Stephen Lue and the Claimant about her objections, conducted via email and text on or around 14-15 December 2018, were entirely amicable and were conducted in a respectful and considerate way. For the avoidance of doubt, it is denied that, in writing this email, the Claimant did a protected act within the meaning of **section 27(2)** of the **Equality Act 2010.**

24 The Claimant relies at paragraph (10) of her Particulars of Claim on her "*fee income substantially*" reducing "*in comparison to previous years, most notably to 2018*". Further, at paragraph (24)(b)(i), she relies on the detriment of the ~~Second Respondent~~ Service Company and/or members of ~~the~~ ~~Third Respondent~~ Chambers "*withholding of instructions and work by the Second Respondent and/or by members of the Third Respondent in 2019, causing her financial loss.*" It is of concern that the Claimant, as a barrister, asserts this in the knowledge of the specific factors listed below and, in particular, her email chain of 25 September 2019 to her Senior Practice Manager set out below. It is misleading that she still makes no reference to her instructions to him within her Particulars of Claim.

25 Any reduction suffered by the Claimant in her fee income in 2019 in comparison with previous years had no connection with her alleged protected act (the 14 December 2018 Email) ~~or any of them as alleged~~. The ~~Second and Third Respondents~~ Service Company

and Chambers would make the general observation that variations, and sometimes significant variations, in income from one year to the next are inherent in the vicissitudes of a career at the Bar and in particular the legally aided criminal Bar, which has suffered a series of cuts to public funding and a reduction in the volume of available work, in particular in 2019, when Chambers' Crime Team, as a whole, had a reduction in income compared to the previous year.

26 The ~~Second and Third Respondents~~ Service Company and Chambers also ~~relies~~ rely on the following specific factors particular to the Claimant in her management of her practice as a self-employed barrister in 2018 and 2019 (see also paragraph 64.8 below):

26.1 As evidenced by her chambers' diary, and as known to the Claimant, in 2018, the Claimant was unavailable for work for 94 working days and, in 2019, she was unavailable for work for 79 working days (in both cases because she asked to be kept free or was away or was on holiday or was sick). ~~the Claimant asked to be kept free for 67 days, some 13.4 weeks, of that calendar year in order to focus on her "extracurricular" activities~~.

26.2 On 25 September 2019, her Senior Practice Manager, Mr Charlie Tennant, wrote to her by email to ask about her diary, saying, *inter alia*:

> "*Thanks for your attendance note. I thought I'd drop you an email to see how you are. Everything seems to be moving until next year! What's your plans for your diary this year? Are you looking for your diary to be filled up or are you relaxed at the moment? I want to make sure that you are ok*"

The Claimant replied by email that same day, including the following:

> "*I was just thinking the same thing myself. I'm doing a lot of exiting (sic) extracurricular stuff at the moment but I need to remember that I have to pay the rent! Would you let me speak to a couple of people and reflect on what I'm able to take on this year; next year diary is looking pretty good so far. Will be in touch again soon. Until then I'm good".*

As evidenced by the email chain, the Claimant made no reference or complaint whatsoever as to any drop in work. Indeed, it is notable that the first time that it is suggested that her drop in income constituted actionable unlawful conduct was on 13 February 2020, some nearly 5 months after this email was sent.

26.3 Additionally, the Claimant was instructed as junior counsel, led by a QC, in an eight-week murder trial which was adjourned from October 2019 to November 2019 and therefore not billed until 2020 (referred to b~~e~~y her Senior practice Manager in the mail above as "*Everything seems to be moving until next year*!". Again, there is no reference to this by the Claimant within her Particulars of Claim. If, ~~which is admitted~~, the Claimant did suffer any marked reduction in her fee income in 2019 in comparison with ~~previous years~~ 2018, it is expressly denied, insofar as it is alleged, that this was as a consequence of instructions and work being actively withheld from the Claimant by any servant or agent of the ~~Second Respondent~~ Service Company and/or ~~Third Respondent~~ Chambers.

27 It is admitted that, in October 2019, the Claimant was involved in the founding of a group calling itself the "**LGB Alliance**", which group is fundamentally opposed to the gender self-ID stance advocated by ~~First Respondent~~ Stonewall. The Mission Statement of the LGB Alliance, as set out on its website, includes, *inter alia*, the following:

> *"5. We accept the biological reality of two sexes – female and male. Sex is not 'assigned'. For the vast majority of people, sex is determined at conception, observed in the womb and/or at birth, and recorded. We reject the co-opting of rare medical conditions that affect reproductive development or function (known as DSDs/intersex) in order to cast doubt on the biological reality of sexual dimorphism, i.e. two sexes.*
>
> *6. We maintain that gender is a social construct which is used to impose often harmful and outdated stereotypes."*

28 The Claimant has a personal Twitter account under which she tweets using the username @BluskyeAllison. Her Twitter profile, however, identifies her real name and uses the same photograph which is used on Chambers' website. In October 2019, the Claimant's Twitter profile stated:

> *"Criminal defence barrister at Garden Court Chambers, London. Gender critical; biological reality before gender identity. Own views, not those of @gardencourtlaw."*

The Claimant's Twitter feed is predominantly used by her in order to express her gender critical feminist views and her views relating to the sex/gender controversy.

29 At 11:12 p.m. on 22 October 2019 the Claimant tweeted the following on her personal twitter account (the **"22 October 2019 Tweet")**:

> *"This is an historic moment for the Lesbian, Gay and Bisexual movement. *LGB Alliance* launched in London tonight, and we mean business. Spread the word, gender extremism is about to meet its match."*

30 Between ~~23~~ 18 and ~~25~~ 28 October 2019 the ~~Second Respondent~~ Service Company received 11 ~~a number of~~ complaints (not including ~~the First Respondent~~ the Stonewall Complaint) 10 of which were in relation to the Claimant's aforementioned tweet (albeit a number of the said complaints additionally referenced the tenor/content of the Claimant's Twitter feed more generally). 9 complaints were from individuals, one complaint was from a non-governmental organisation (**"NGO"**) called '*Gendered Intelligence*' and one complaint was from an NGO called the '*LGBT Consortium*'. The common theme of the complaints was that the LGB Alliance was considered by the complainants to be transphobic and the Claimant's reference to *"gender extremism"* to amount to a direct attack on trans rights and was undermining Chambers' reputation for defending human rights and equality for all.

31 It was determined by Chambers' then ~~the~~ joint Heads of Chambers (Judy Khan QC, Marc Willers QC, and Leslie Thomas QC) that Chambers had a duty to investigate the complaints referred to in the preceding paragraph in accordance with its complaints procedure.

32 In addition to receiving the specific complaints referred to above, Chambers' official Twitter account was also tagged into numerous tweets responding to the Claimant's original tweet. Many of those replies were also highly critical of both Chambers and the Claimant, highlighting an apparent contradiction between Chambers' human rights ethos and the views being espoused by the Claimant. Articles had also subsequently appeared in both *The Independent* and *Pink News* and the *Telegraph*, about the Claimant's tweet and the furore which it had provoked, which articles had both directly referenced Chambers by name. Some members of Chambers expressed their concern about the media coverage portraying Chambers in a negative light and undermining Chambers' reputation.

33 In light of the above, David de Menezes, the ~~Second Respondent's~~ Service Company's Communications and Marketing Director, and the then joint Heads of Chambers took the

view that, given that Chambers was a business whose core practice was advancing human rights and non-discrimination, and given the perception that the rights of a protected minority were being called into question, it was necessary to take active steps to limit reputational damage to Chambers by demonstrating that Chambers took the concerns that had been raised seriously. As a result, specific replies were sent to a small number (~~approximately six~~ seven) of the tweets that had been received criticising Chambers in the following terms:

> *"We are investigating concerns raised about Allison Bailey's comments in line with our complaints/BSB policies. We take these concerns v seriously and will take all appropriate action. Her views are expressed in a personal capacity & do not represent a position adopted by Garden Court.*
>
> *Garden Court Chambers is fiercely proud of its long-standing commitment to promoting equality, fighting discrimination and defending human rights."*

Whilst it is accepted that these replies would have been visible to anyone looking at the thread of the individual tweets in question, it is denied, as alleged at paragraph 13 of the Particulars of Claim, that this amounted to a *"public statement that the Claimant was under investigation"*.

34 On 25 October 2019, an announcement was posted on Chambers' website in the following terms:

> *"We wish to make it clear that LGB Alliance is not part of Garden Court Chambers nor representative of the views of Chambers."*

This wording had been sent to the Claimant in advance of being posted and had been approved by her by email.

35 Sometime prior to 27 October 2019 the Claimant had spoken to a journalist by the name of Nicholas Hellen at the *Sunday Times*, resulting in the publication of an article in that newspaper on that date. Within the article, the Claimant asserted that she had no faith that Chambers (whom she named) would conduct a fair complaints process because *"they [were] compromised by their relationship with"* ~~the First Respondent~~ Stonewall. There was no basis for the Claimant to make such a serious, and potentially defamatory, allegation as to the impartiality of Chambers' complaints process and those responsible for handling complaints. Whilst aware of the article, and deeply concerned by it, the

~~Second~~ Service Company and/or ~~Third Respondent~~ Chambers took no action as to the quote made about Chambers and the further damage to Chambers' reputation.

36 Maya Sikand, who was, at that time, ~~is~~ a member of the Management Board and Head of the Civil Liberties and Human Rights team within Chambers, was asked on or around 24 October 2019 to investigate the complaints that had been received by Chambers and to make recommendations to the joint Heads of Chambers as to the appropriate action, if any, to be taken in relation to the same.

37 On 30 October 2019, Mia Hakl-Law, the ~~Second Respondent's~~ Service Company's Director of Operations and Human Resources, wrote to the Claimant (attaching a copy of Chambers' complaints procedure) advising her that Ms Sikand would be investigating the complaints that had been received and would be in touch if she considered it was necessary to seek a response from the Claimant prior to determining whether any action was required. At that time, the only complaints that had been received by Chambers and the only complaints that Ms Sikand had been tasked to investigate were those that have already been referred to at paragraph 30 above (and in respect of which Ms Sikand concluded no investigation was required and no specific action was ultimately recommended by Ms Sikand).

38 The Claimant raised no objections to Ms Sikand investigating the complaint.

39 Further, the Claimant was contacted and informed of the investigation prior to ~~the First Respondent~~ Stonewall contacting Chambers through its website and raising a complaint about the Claimant as set out below.

40 On 31 October 2019, a complaint was received via the Chambers website directly from the Head of Trans Inclusion at t~~he First Respondent~~ Stonewall (the **"Stonewall Complaint")**. The complaint was wide-ranging and referenced a significant number of tweets, 12 in total, which were alleged by the complainant to be transphobic, including (but not limited to) the following:

40.1 A tweet posted by the Claimant on 22 September 2019 (the "**22 September 2019 Tweet**"):

> *"Stonewall recently hired [MP], a male bodied person who ran workshops with the sole aim of coaching heterosexual men who identify as lesbians on how they can coerce young lesbians into having sex with them. Page called 'overcoming the cotton ceiling' and it is popular."*

40.2 A tweet posted by the Claimant on 27 October 2019, referencing the article that had appeared in the Sunday Times that day (see paragraph 30 above) (the **"27 October 2019 Tweet"**):

> *"@NicholasHellen thank you for your article. On this issue, I and many other women are grateful to @thetimes for fairly & accurately reporting on the appalling levels of intimidation, fear & coercion that are driving the @stonewalluk trans self-ID agenda."*

41 Having considered the complaint received from ~~the First Respondent~~ Stonewall, Maya Sikand's provisional view was that the two tweets cited above, the 22 September 2019 Tweet and the 27 October 2019 Tweet (hereinafter referred to as the "**Two Tweets**"), ~~(~~and those ~~t~~Two ~~t~~Tweets only~~)~~, might potentially breach one or more of the Core Duties owed under the BSB Code of Conduct. For the avoidance of doubt, Ms Sikand did not consider that any of the remaining tweets that had been cited within ~~the First Respondent's~~ Stonewall's complaint or any other matter referred to potentially breached any of the BSB Core Duties and no investigation was considered necessary or undertaken in relation to the same.

42 On 6 November 2019, Maya Sikand wrote to the Claimant inviting her comments upon the two tweets that she had identified as being potentially problematic. Ms Sikand indicated that she considered that the tweets potentially offended against relevant Core Duties 3 and 5 within the BSB Code of Conduct and the recently issued BSB Social Media Guidance. Ms Sikand initially asked for a response to be provided by 5 p.m. on Friday 8 November 2019, although this period was subsequently extended at the Claimant's request.

43 On 21 November 2019, the Claimant submitted a detailed response to Ms Sikand, running to some 14 pages (with a further 18 pages of attachments). In summary, the Claimant denied that either of the identified tweets were in breach of the Core Duties under the BSB Code of Conduct or the BSB Social Media Guidance. The Claimant asserted that each of the tweets reflected her *"honest understanding"* and that stating this

understanding could not amount to a breach of any of the cited Core Duties or the BSB Guidance. Within her response, the Claimant set out at some length the gender critical feminist standpoint as well as her own personal history. In addition to commenting upon the two specific tweets that had been identified as problematic, the Claimant commented at some length upon the elements of the ~~First Respondent's~~ Stonewall complaint that had **not** been deemed by Maya Sikand to require a response (on the basis that Ms Sikand did not consider that those elements of the complaint breached either any of the Core Duties or the BSB's Social Media Guidance).

44 The Claimant's response to the Two Tweets was:

44.1 In relation to the 22 September 2019 Tweet, the Claimant asserted that:

"It is my understanding that Morgan Page ran workshops with the sole aim of coaching heterosexual men who identify as lesbians on how they can coerce young lesbians into having sex with them."

And

"This is coercive sexual behaviour; if it were not, no workshops would be necessary. It is regarded by many women and lesbians as an example of rape culture."

44.2 In relation to the 27 October 2019 Tweet the Claimant asserted:

"It is my understanding that appalling levels of intimidation, fear & coercion are driving the @stonewalluk trans self-ID agenda."

~~In relation to the tweet referred to at paragraphs 30 above~~, The Claimant asserted that the complaint made by ~~the First Respondent~~ Stonewall, of itself, amounted to an instance of the *"intimidation and coercion"* referred to within that tweet. It is averred that it is clear from this part of the Claimant's response that the tweet in question was not intended to relate merely to those who professed support for ~~the First Respondent's~~ Stonewall's *"trans self-ID agenda"* but rather to the ~~First Respondent~~ Stonewall itself as an organisation.

45 It is admitted that the Claimant asserted within her response to Maya Sikand that the complaint against her by ~~the First Respondent~~ Stonewall amounted to an act of discrimination on the grounds, *inter alia*, of her sex and her sexual orientation.

46 Given the complexity and sensitivity of the issues involved and because the Heads of Chambers were concerned to ensure that they were acting in compliance with any reporting duties they may have, on or around 28 November 2019, Stephanie Harrison QC, then a member of Chambers' Management Board and now a joint Head of Chambers, sought advice from the Bar Council Ethics Committee (having been referred to that Committee by Amit Popat, the Head of Equality and Access to Justice at the Bar Standards Board) in relation to the correct approach in deciding whether those two tweets could offended the BSB Code and its Social Media Guidance and, if so, whether Chambers would have a regulatory duty to report the Claimant's tweets to the BSB.

47 By email of 3 December ~~2018~~ 2019, Cathryn McGahey QC provided her view, on behalf of the Bar Council Ethics Committee, in relation to those two tweets. She prefaced her advice as follows: "*The view of the Ethics Committee (or any member of it) does not, as I am sure you know, bind the BSB. However, should any complaint be made, you would be welcome to share this advice with the BSB. The advice is confidential, but the confidence is owed to, and not by, you; you are free to share it with anyone as you see fit.*" Her advice, in summary, was that the Claimant may be at risk of a finding of a breach of CD5 and/or CD3 in relation to both tweets. She did not believe that CD8 would be engaged by either tweet. She acknowledged that : "*It is really difficult ... in a case of this sort, to advise with any certainty whether the BSB would regard a particular comment as amounting to a breach of CD 5. The issue is always fact-specific and any judgment on it has a very substantial subjective element"* and that the BSB Social Media Guidance "*offers no real guidance on the question of where lines should be drawn*". In summary, her advice was that the Claimant's "*comments would ... almost certainly be regarded as a proper subject for BSB investigation."*. In respect of the 22 September 2019 Tweet, she advised that the Claimant: "*would be at risk of a finding that her comment was likely to diminish trust in the profession and in her"* and *"to publish a serious allegation that cannot be substantiated may well be found to be a breach of CD5, and possibly of CD3*". In saying so, she assumed the Claimant honestly believed her allegation. In respect of the 27 October 2019 Tweet, she said that "*if that allegation cannot be substantiated, then the Claimant may be at risk of a finding of a breach of CD5 and/or CD3*". She concluded that: "*I think, though, that the two tweets are nevertheless **probably** over the borderline of acceptable conduct, on the basis that Allison's views are sincerely held **but that she***

has published allegations of criminal and/or disreputable conduct that she cannot substantiate" (emphasis added) (see further paragraph 67.9 below).

48 Stephanie Harrison QC shared this informal advice with Judy Khan QC and Marc Willers QC (two of the then joint Heads of Chambers) and also with Maya Sikand and Mia Hakl-Law. The Claimant had specifically requested that the third joint Head of Chambers, Leslie Thomas QC, not be involved in the process as he was also a member of the Bar Standards Board).

49 Maya Sikand completed her investigation report on behalf of the joint Heads of Chambers on 11 December 2019. Her report concluded that no further action should be taken against the Claimant (beyond a request to the Claimant to delete the Two Tweets) and Ms Sikand made the following findings and determinations:

49.1 that, although the wording of the Claimant's tweet of 22nd October 2019 appeared to be deliberately provocative, it did not, on a proper reading, contain anything transphobic or discriminatory;

49.2 that, although the tweet had plainly been perceived as both *"distasteful"* and *"offensive"* by others, that was inherent in the very nature of the issues that were being debated and it could not properly be said that contributing to one side of that debate (or even taking a lead upon it) was, of itself, conduct that was likely to diminish public trust either in the Claimant or in the profession as a whole (i.e. it did not amount to a breach of CD5);

49.3 that, notwithstanding the above, the Claimant ought to have taken greater care in the tone and content of her tweet and ought to be careful to ensure that respect for the inherent dignity of others was reflected in the tone and content of all her tweets, notwithstanding her own strongly held beliefs;

49.4 that the words attributed to the Claimant about the First Respondent and about Chambers' relationship with the First Respondent within the *Sunday Times* article published on 27 October 2019 offended against the expectation that members of Chambers should not do anything to damage Chambers' reputation and/or its business or other interests. However, in the absence of Chambers having a specific policy in force at the material time in relation to social media or media

use, it was not considered appropriate to recommend that any further action should be taken in respect of this on this occasion.

49.5 that the majority of the tweets identified in the First Respondent's complaint did not breach either the Core Duties or the BSB's Social Media Guidance;

49.6 that the 22 September 2019 Tweet at paragraph 40(1), if not substantiated, was likely to be found by the BSB to be a breach of CD5 and/or CD3, if it was considering these complaints. Maya Sikand indicated that she had not been provided with any evidence to support the assertion that MP had encouraged sexual assaults upon young women (which was the essence of the Claimant's allegation). Ms Sikand concluded that, on the evidence before her, the Claimant had made an extremely serious allegation which, on the face of it, could not be shown to be true. She concluded that, in such circumstances, it was likely that the BSB would have found the tweet breached CD5 (even if it accepted that the Claimant honestly believed it to be true);

49.7 that the 27 October 2019 Tweet at paragraph 40(2) was at real risk of being found by the BSB to be in breach of CD5 and/or CD3. Ms Sikand concluded that the tweet in question could reasonably be read to imply that the First Respondent itself was behind conduct which would amount to a criminal campaign against those who opposed its views on trans issues (an interpretation supported by the Claimant's own response to the First Respondent's complaint, as per paragraph 37 above). In the absence of evidence to substantiate an allegation that the First Respondent was effectively orchestrating a criminal campaign, it was likely that the BSB would find that the tweet breached CD5.

50 Ms Sikand went on to indicate that, although she had concluded that the BSB would be likely to make findings adverse to the Claimant in respect of the two specific tweets (as set out at ~~(vi) and (vii)~~ paragraph 49.6 and 49.7 above), Chambers did not have a duty to report the tweets to the BSB. Chambers' duty to report arose only where there had been *"serious misconduct"* and Ms Sikand did not consider that the tweets in question crossed that particular threshold. Ms Sikand recommended that the Heads of Chambers should ask the Claimant to remove the two particular tweets in light of her assessment that they were likely to be considered to be in breach of one or more Core Duties. Beyond this, and beyond recommending that the Heads of Chambers would need to consider the terms

of any response to the various complainants, Ms Sikand did not recommend that any further action ought to be taken in relation to the Claimant. Ms Sikand sent her completed report to the Claimant on 11 December 2019 and copied the same to Marc Willers QC and Judy Khan QC.

51 On 15 December 2019, having themselves carefully considered all the material and Ms Sikand's report and thinking that it would be wise for the Claimant to take down the Two Tweets, Judy Khan QC wrote to the Claimant indicating that she and Mr Willers QC had decided to accept Maya Sikand's findings and recommendations. The Claimant was asked to delete ~~remove~~ the two tweets, but was informed that Chambers did not intend to report her to the BSB (albeit that others might independently choose to do so). Ms Khan indicated that, in light of this conclusion, they did not consider that it was necessary to meet with the Claimant, although confirmed that they would be happy to do so if the Claimant so desired.

52 The Claimant responded on the same date. The Claimant did not indicate whether she would comply with the request to remove the two specific tweets, but instead raised a number of questions effectively questioning the independence of Maya Sikand. Judy Khan QC responded within half an hour confirming that Ms Sikand had been chosen to conduct the investigation as she was independent-minded. It was confirmed that Ms Sikand had not expressed any concerns about the Claimant's tweets prior to being appointed to carry out the investigation and that she had not previously undertaken work for, or had any affiliation with, ~~the First Respondent~~ Stonewall. Judy Khan QC confirmed to the Claimant that it was only a request and not a requirement to delete the two tweets.

53 The Claimant did not remove the tweets as asked and has not removed them to date. No further action was taken as a result of her refusal to remove them.

54 For the sake of completeness, it is averred that ~~the First Respondent~~ Stonewall was not, in fact, informed by Chambers or the ~~Second Respondent~~ Service Company of the outcome of Maya Sikand's investigation or the consequent decision taken by the joint Heads of Chambers at any time prior to the presentation of the Claimant's claim. Nor was any other complainant informed of the outcome of the investigation. Nor was any member of chambers informed of the outcome of the investigation (excluding those involved). It is only through these proceedings that ~~the First Respondent~~ Stonewall would have become aware of the investigation and decision.

55 It is admitted that the Claimant submitted a Subject Access Request ("**SAR**") to the ~~Second Respondent~~ Service Company on 30 January 2020 in which she requested the disclosure of various documentation. It is further admitted that, within her SAR, the Claimant asserted her belief that she had been discriminated against by the ~~Second Respondent~~ Service Company.

The request was prefaced by the Claimant stating the following:

> *"I am concerned that I have been subjected to unlawful discrimination and victimisation by Garden Court Chambers as a result of complaints made against me by Stonewall, which in turn arise from concerns I have raised with chambers about the conduct of Stonewall. I believe that those concerns included protected acts within the meaning at* (sic) *s.27 Equality Act 2010."*

56 Mia Hakl-Law provided an initial response to the Claimant's SAR by way of a letter, dated 2 March 2020. The letter reminded the Claimant, *inter alia*, that the ~~Second Respondent~~ Service Company was not her employer and that it was not the Data Controller for personal data processed or used by individual barristers within Chambers in the course of their practice. Various documentation was, however, provided by the ~~Second Respondent~~ Service Company in relation to certain of the categories of data sought.

57 It is admitted that, following the initial provision of a substantial volume of documentation by the ~~Second Respondent~~ Service Company, the Claimant identified further documentation which she believed ought to be provided. It is acknowledged that, as a result of the Covid-19 pandemic and the many acute pressures on Chambers' staff and resources, there was a significant delay in providing a substantive response to this correspondence. However, further documentation has now been supplied to the Claimant. The ~~Second Respondent~~ Service Company believes that it has fully complied with its obligations in respect of the Claimant's SAR.

Pleadings

58 ~~The Second Respondent's primary case is that, for the reasons set out at paragraphs 6 to 9 herein, the Tribunal lacks jurisdiction to hear the Claimant's claims against it.~~ Without prejudice to the generality of that case, the ~~Second and Third Respondents~~ Service Company and Chambers plead~~s~~ as follows:

Victimisation

59 It is denied that the ~~Second Respondent~~ Service Company, its servants or agents and/or ~~and/or the Third Respondent and/or~~ Chambers, its servants or agents have victimised the Claimant either as alleged or at all. There is no basis at all for the Claimant's claims.

Alleged Protected Acts

60 As set out at paragraph 23 herein, it is denied that the Claimant's email of 14~~8~~th December 2018 amounted to protected act as averred at paragraph 24(a)(i) of her Particulars of Claim. It is assumed that the Claimant seeks to rely upon **section 27(2)(d)** of the **Equality Act 2010.** However, for the avoidance of doubt, it is denied that the content of the Claimant's email can properly be construed as making of an allegation (whether express or implied) that ~~the First Respondent~~ Stonewall had contravened the Act.

61 The Claimant has confirmed in correspondence that the single tweet she relies upon as constituting a protected act in relation to the launching of the LGB Alliance is the 22 October 2019 Tweet. It is ~~not admitted~~ denied that the Claimant's 22 October 2019 Tweet about ~~around~~ the launching of the LGB Alliance ~~(or any of them)~~ amounted to a protected act. ~~Whilst the Claimant has made reference at paragraph 12 of her Particulars of Claim to the alleged content of these tweets, the Claimant has presently failed to identify the specific tweet(s) upon which she seeks to rely for the purposes of paragraph 24(a)(ii) of her Particulars of Claim or their precise content. The Second and Third Respondents reserves the right to plead further in this regard once it has been provided with copies of the specific tweet(s) which are alleged to have amounted to a protected disclosure.~~

62 It is ~~admitted~~ denied that:

62.1 the Claimant's response to Maya Sikand's investigation submitted on 21 November 2019 (referred to at paragraphs 35 to 37 above);

62.2 the Claimant's Subject Access Request; and

62.3 the Claimant's Early Conciliation "application" (which the Second Respondent presumes to be a reference to the Claimant complying with the requirement under **section 18A** of the **Employment Tribunals Act 1996** to contact ACAS before instituting proceedings)

are each capable of amounting to protected acts.

Alleged Detriments

63 The Claimant has failed to specify which alleged detriment(s) are alleged to have been because of which protected act(s) in the Particulars of Claim.

64 As to the alleged detriment set out at paragraph 24(b)(i) of the Particulars of Claim:

Detriment 1 (the alleged withholding of instructions and work)

64.1 It is admitted that the Claimant's billing and fee income for the years 2015 to 2020 were:

YEAR	BILLING	FEE INCOME
2015	54,285.93	50,580.85
2016	67,121.68	57,169.90
2017	85,797.49	72,569.37
2018	166,489.54	111,641.82
2019	39,553.55	51,682.10
2020	32,080.69	31,467.09

~~No admissions are made as to whether the Claimant, in fact, suffered a substantial reduction in her fee income in 2019 in comparison with previous earlier years. The Claimant has provided no particulars of the reduction.~~

64.2 ~~If, which is not admitted, the Claimant did suffer any marked reduction in her fee income in 2019 in comparison with previous years~~. It is denied that ~~this~~ any reduction in the Claimant's fee income in 2019 was as a consequence of instructions and work being actively withheld from the Claimant by any servant or agent of the ~~Second Respondent~~ Service Company or by any member of Chambers (whether acting as an agent of ~~the Third Respondent~~ Chambers or at all). ~~The Second and Third Respondents notes that the Claimant has failed to identify any individual or individuals whom she asserts withheld work or instructions from her.~~ Further, and significantly, to the extent that there was a reduction in her fee income, ~~she suffered any reduction,~~ the ~~Second and Third Respondents~~ Service Company and Chambers ~~relies~~ rely on the specific factors pleaded above at paragraphs 24-26, and below at paragraph 64.8, which are not referred to by the Claimant in her Particulars of Claim or Further Information though plainly known to her.

64.3 For the avoidance of doubt, the ~~Second and Third Respondents~~ Service Company and Chambers strongly ~~denies~~ deny that any work or instructions were withheld from the Claimant for any reason. ~~As set out, the Claimant provides no detail as to the reduction; no detail as to who supposedly withheld work or instructions; no detail as to how she is able in law to attach this to the Second Respondent and/or the Third Respondent and no detail or evidence at all as to how she claims there is any connection with any protected act, in so far as she made any protected acts~~. Her claims in this and all other regards are simply not made out. The ~~Second and Third Respondents~~ Service Company and Chambers also note~~s~~ that in any event the only alleged protected act which precedes the bulk of the relevant period is the Claimant's email of ~~18~~ 14 December 2018, which it is denied amounted to a protected act in any event.

64.4 It is denied that the Service Company and/or Chambers subjected the Claimant to the detriment alleged by the actions of Colin Cook, Luke Harvey and Christina Eleftheriou and/or by "*the members of Chambers named in respect of the other detriments and/or PCPs*" in the Claimant's Further Information or at all.

64.5 It is admitted that the individuals in the criminal clerking team changed, but not in a way which materially reduced the seniority of those who were clerking the Claimant. It is denied that it was changed in the way suggested or on the date stated at paragraph 3(a) of the Claimant's Further Information. Nothing was taken away from her. Instead, the change that occurred was the addition, in October 2018, of Luke Harvey (as Deputy Crime Team Practice Manager), who was recruited because the previous incumbent had left, and the addition of Ms Eleftheriou (as Crime Team Assistant). Mr Harvey was previously the deputy and then acting Head of the Chambers' Public law Team and a very experienced, highly competent, clerk. Mr Harvey was also an experienced criminal clerk and had previously worked at Queen Elizabeth Building, a renowned set of chambers, from 2009-2013, as a junior criminal clerk. It is denied that Charlie Tennant stopped clerking the Claimant. It is evident that Mr Tennant continued to clerk the Claimant from, *inter alia*, his email of 25 September 2019 set out above at paragraph 26.2, in which he thanks her for an attendance note and enquires whether she is looking to have her diary filled up, as her cases seem to be moving to the following year.

64.6 It is denied that Mr Harvey had any official formal role as the clerking assistant to the Transrights Working Group (the "**TWG**") as alleged at paragraph 3(b) of the Further Information. As set out below, at paragraph 65.21, the TWG was a grouping of 16 barristers and was relatively inactive. The only assistance from the clerks included but was not limited to diarising a few internal meetings and training events for the barristers.

64.7 It is admitted that Mr Harvey was more junior to Mr Tennent but denied that Mr Harvey was significantly more junior to Mr Tennent as alleged at paragraph 3(c) for the reasons given in paragraph 64.5 above. It is further denied that Mr Harvey was inexperienced in clerking in crime as alleged at paragraph 3(c) for the reasons set out above at paragraph 64.5 above, it is admitted that Ms Eleftheriou was significantly more junior to Mr Tennant. It is averred that Ms Eleftheriou mostly dealt with administrative matters and deferred clerking decisions, where appropriate, to those above her. It is denied that the Claimant suffered any victimisation and/or direct belief discrimination detriment in relation to the addition of either Mr Harvey or Ms Eleftheriou to the criminal clerking team or in relation to the clerking abilities of either Mr Harvey or Ms Eleftheriou. On the contrary, every member of the criminal clerking team (including Mr Harvey or Ms Eleftheriou) was able to explain adequately her practice and abilities to solicitors and they were able to clerk her properly. No complaint was made by the Claimant in respect of this alleged victimisation and/or direct belief discrimination detriment, nor raised with Mr Tennant and/or any other member of Staff or member of Chambers alleging this victimisation and/or direct belief discrimination detriment.

64.8 It is admitted that there was a reduction in the Claimant's billing in 2019 as alleged at paragraph 3(d) of the Further Information in comparison with her billing in 2018. It is denied that the reduction in billing between 2018 and 2019 was because of the Claimant's alleged protected act(s). The primary reasons for the reduction in billing and a reduction in her income in 2019 was because:

64.8.1 In 2018, she was unavailable for work for 94 working days (which included keep free days or being listed as away, on holiday or sick) and, in 2019, she was unavailable for work for 79 days (again, which included

keep free days or being listed as away, on holiday or sick) which impacted on her billing and income in 2019 (and subsequent years).

64.8.2 She accepted fewer cases in the period 2018-2020 than in the period 2015-2017.

64.8.3 In 2018 she had exceptionally high earnings for her. Approximately 70% of her earnings in that year (2018) were derived from instruction received and work undertaken in 2017 and previous years. Between 2015-2020, in no other year did she receive an income anything like the amount received in 2018.

64.8.4 In 2019, several of her more substantial trials were either adjourned to 2020 or started later than initially listed, resulting in them only being finished (and billed) in 2020.

64.8.5 As set out at paragraph 26.3 above, for example, an eight- week murder trial was adjourned from October 2019 to November 2019 and therefore not billed until 2020.

64.8.6 There was a material change in the payment regime for the vast majority of publicly funded Crown Court work, introduced on 1 April 2018, which triggered a substantial reduction in fee income for most criminal defence barristers.

64.9 It is admitted that two other barristers experienced a reduction of £50,000 or more in their fee income in 2019. It is denied that the average billing reduction was less than £18,000: it was higher, approximately £29,000.

64.10 The allegation at paragraphs 3 and 4 amounts to an allegation of a conspiracy between Colin Cook, Mr Harvey, Ms Eleftheriou and every member of chambers mentioned in respect of the other victimisation and/or direct belief discrimination detriments and PCPs (or anyone of them), namely, that they acted together deliberately to engineer a restructure of the criminal clerking for the purpose of depriving her of work and to reduce her income apparently as retaliation for her alleged first protected act (her 14 December 2018 email). This allegation, despite its seriousness, is ridiculous, denied in its entirety, and is embarrassing for want of particulars. The recruitment and replacement of clerks is a normal chambers

activity and the idea that it was directed at the Claimant is without foundation, spurious and wrong.

64.11 As to paragraph 5, it is admitted that Mr Cook, Mr Harvey and Ms Eleftheriou were employed by and agents of the Service Company when they were acting in the course of their employment. It is not admitted that they were acting as the agents of Chambers. The allegation that every time members of chambers are referred to in the rest of the Further Information, they were acting officially as officers or committee members or group members and, therefore, agents, is an unparticularised, blanket allegation which is not accepted.

64.12 It is denied that Mr Cook, Mr Harvey and Ms Eleftheriou knew what gender critical beliefs were at that time and, further, knew that the Claimant held them. Further, or in the alternative, it is denied that they withheld instructions and work from the Claimant because of such beliefs.

64.13 It is further denied that there was a conspiracy as between MrCook, Mr Harvey and Ms Eleftheriou and/or every member of chambers to act together deliberately to engineer a restructure of the criminal clerking team for the purpose of depriving the Claimant of work and to reduce her income because of her gender critical beliefs.

65 As to the alleged detriment at paragraph 24(b)(ii) of the Particulars of Claim (as amended):

Detriment 2 (the alleged publishing of a statement that the Claimant was under investigation)

65.1 As set out at paragraph ~~27~~ 33 herein, it is denied that the ~~Second Respondent~~ Service Company and/or ~~the Third Respondent~~ Chambers published a statement that the Claimant was under investigation. It is admitted that replies were sent to a number of specific individuals indicating that Chambers was investigating concerns that had been raised about comments made by the Claimant. It is averred that these replies were not a public communication or a generally disseminated tweet.

65.2 It is, in any event, denied that the ~~Second Respondent~~ Service Company (and/or insofar as it is alleged any member of ~~the Third Respondent~~ Chambers) replied

to the specific individuals in the above terms because the Claimant had done any protected act. The replies were sent as a direct result of the sheer volume of criticism which was being directed at the ~~Second Respondent~~ Service Company and/or Chambers on social media and in an attempt to limit reputational damage to Chambers by demonstrating that Chambers took the concerns that had been raised seriously.

65.3 The quotation in paragraph 6 is admitted. The quotation appeared in an email from Michelle Brewer, in response to a tweet posted by the Claimant on 9 September 2019 at 4:41 am in which she said:

> "*There are no outrageous levels of violence against trans women in the UK or the USA, not when compared to the truly shocking levels of male violence against females. Yet, the proposal is to allow any man, predator, lunatic, fetishist, to self-ID. That the fecking problem.*"

Ms Brewer's email expressed the following concerns about that tweet:

> "*It is therefore incredibly alarming that I am being contacted by numerous individuals informing me that a member of chambers (Allison Bailey) is tweeting comments directly criticising and undermining GCC events considering trans rights and panellists we invite to speak on the panel — in particular Stephen Whittle. In one post Allison refers to Stonewall having gone rogue and is putting women and children at risk. Allison states in another post that there are no 'outrageous levels of violence against trans women in the UK or US." The latter comment flying in the face of the evidence of levels of violence faced by the trans community — particularly trans women of colour (see: https://www.unilad.co.uk/featured/transgender-women-of-colour-have-an-averagelife- expectancy-of-just-35-years/ and various EU reports record that within the LGBTQ community trans people face the highest levels of violence)… Allison is of course entitled to her views and she is entitled to express these. However my concern is this: We as chambers are committed to working with the LGBTQ+ community and we have a long history of working on cases concerning GBV — the profile-raising work we undertake as individuals and*

within our working group is significantly compromised and undermined by some of Allison's social media tweets. The marginalisation of the trans community in the UK is well documented (https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeg/390/3p9d0f). — access to justice is a massive issue for trans people in the UK — and there are very few chambers that have sought to build the reputation and trust of members of this community in the way that we have at GCC. The tweets from a member of chambers does compromise our message to the community that we are a safe space — whether that be to clients, organisations and/or members of chambers (barristers and staff)."

It is admitted that Ms Brewer asked whether Chambers had any policies that dealt with the use of tweets and social media.

It is averred that the reason why Ms Brewer expressed the concerns outlined above was because of a desire to further reduce the damage to Chambers' reputation caused by a public perception that, because of the way in which the Claimant had expressed herself, Chambers did not respect trans human rights and equal treatment (see, further, paragraphs 65.11 and 65.20 below). Ms Brewer had, in any event, no involvement in the decision to send the Responsive Tweet (see, further, paragraph 65.12 below) which is the subject of this allegation.

As to paragraph 7, it is admitted that Mia Hakl-Law sent an email to Michelle Brewer at 11.17pm copied to the Heads of Chambers, the TWG, Emma Nash, and Stephanie Harrison QC. She said Michelle Brewer's email of 16 October 2019 at 10.31pm had been "*timely*" because she had drafted a social media policy which was to be put to the next board meeting for approval as there was no such policy in place. The reference to "*timely*" therefore was not because of any "*corporate*" policy to adopt or support an anti-gender critical agenda if that be suggested by paragraphs 6-23 of the Further Information. It is denied that Ms Hakl-Law's email was tainted by direct discrimination because of belief: she did not know what gender critical beliefs were (at that time) and she did not know that the Claimant held them.

65.4 As to paragraph 8, it is admitted that, on 22 October 2019, the Claimant published a tweet regarding the launch of the LGB Alliance (as set out above at paragraph 29) (the 22 October 2019 Tweet). The tweet said:

> *"This is an historic moment for the Lesbian, Gay, and Bisexual movement. *LGB Alliance* launched in London tonight, and we mean business. Spread the word, gender extremism is about to meet its match."*

65.5 Also, on 22 October 2019 the Claimant further tweeted the following:

> *"From this alleged deceit has come gender-neutral school toilets, police recording male-bodied rapists as "female" and the NHS admitting self-ID trans-women onto female wards. LGB alliance calls this "Stonewall Law" and plans to fight it. *Stonewall has lost its way on trans-issue*…".*

65.6 Chambers received 10 complaints about the 22 October 2019 Tweet (8 from members of the public and two from the NGOs referred to at paragraph 30 above) including, *inter alia,* complaints such as:

> *"One of your barristers, Allison Bailey, announced on Twitter yesterday that she attended the launch of the "LGB Alliance", a group solely dedicated to forcing trans people out of the LGBT+ community and eroding trans rights. She also has links with other well-known trans-exclusionary groups like Women's Place UK and refers to activism for transgender equality as "extremism". Given your claims to be leaders in human rights and anti-discrimination law, I would like to know what you plan to do about the fact that you have a barrister in your group actively contributing to the marginalisation of a minority group through the amplification of stigmatising and incendiary rhetoric."*

> *"I'm shocked and saddened to see that Allison Bailey of your Court is publicly pronouncing her anti-human rights approach on Twitter. It is very unprofessional and does not align with your Chambers push for 'fighting injustice, defending human rights and upholding the rule of*

*law'. She has announced that she is participating in the following: 'This is an historic moment for the Lesbian, Gay and Bisexual movement. *LGB Alliance* launched in London tonight, and we mean business. Spread the word, gender extremism is about to meet its match.'. This is an explicit denial of human rights of queer people and trans people, (along with all others). I do believe you need to convey concerns of how this appears for your Court if it is to be taken seriously as a place which fits for the justice of all and leaves no one behind."*

"To Whom It May Concern: I wonder if you're aware that one of your barristers, Allison Bailey is openly and publicly advocating for the denial of trans-rights on her public Twitter account which states her connection with Garden Court, and her position openly she frequently advocates for Transphobic perspectives as could be seen in her latest viral tweet… I think this reflects badly on your chambers and seems to contravene core duty 5…".

"I am extremely concerned about the fact that your barrister, Allison Bailey is associating your organization with that of hate speech, intolerance, and transphobia. Everyone is welcome to 3 their opinions. I tweet my own all the time. But no one on my Twitter account knows where I work, because to do so associates my views with those of my employer and vice versa. Her profile lists you as her employer and tags your Twitter. Her entire Twitter is dedicated to transphobia and she is now involved in another organization whose sole purpose is harming trans people. By bringing your organization into this, you will lose clients because they will assume you have the same beliefs she does. And maybe you do. But that's not good business. And if you don't agree, at least have her take any reference to your organization out of her Twitter and make her account anonymous."

65.7 In the circumstances, Chambers had a professional obligation to investigate the complaints about the Claimants conduct, as it would have done against any member of chambers. Such investigation was reasonable, appropriate and in no

sense retaliatory against her alleged protected acts nor was it because of the Claimant's gender critical beliefs.

As to paragraph 9, it is admitted that, on 24 October 2019, Tom Wainwright sent the email quoted in paragraph 9 of the Further Information. Mr Wainwright's email was in response to a complaint about the Claimant's social media tweets from a respected NGO with very close links to a significant number of professional clients with whom he had a long-standing professional relationship. It is denied that Mr Wainwright's conduct was tainted by direct belief discrimination: his actions were motivated by a desire to manage the complaint from an NGO with very close links to professional clients. Mr Wainwright had, in any event, no involvement in the decision to send the Responsive Tweet (see, further, paragraph 65.12 below) which is the subject of this allegation.

65.8 As to paragraph 10, it is admitted that, on 24 October 2019 at 9.15 am Leslie Thomas QC (in his role as one of the joint Heads of Chambers) emailed all staff and members a link to the BSB newly issued guidance on the use of social media. The Claimant replied at 9.25 am misconstruing Mr Thomas QC's email as being designed to intimidate her when it was not. Judy Khan QC responded directly to the Claimant (at 9:57am) to address this misapprehension. The full text was:

> *"No doubt you would point out that you are entitled to your views, that you spell out in your tweets that they are yours and not GC's views and that you do not intend to cause offence. You are, after all, just expressing your own opinion. I asked Leslie to circulate the guidance as I was in the process of drafting an email to you, bringing to your attention the fact of the complaints. Your Twitter account makes it clear that you're a member of GC. It is thought that your tweets are undermining the position of a number of members of Chambers who are doing transgender work. We all appreciate that this is a sensitive topic and we are aware that there are strong views either way. Please can you bear in mind the work that is being done by others in Chambers and the possible offence caused by tweets. Also please resist the temptation to respond in an intemperate way. We are simply trying to keep everyone together, whilst dealing with a myriad of other difficult*

issues. This email is not an attempt to intimidate or threaten you. If you made a complaint about someone else in GC, we would adopt exactly the same approach. We will of course take into account your views."

It is denied that the actions of either Ms Khan QC or Mr Thomas QC were tainted by direct belief discrimination: they were simply responding to complaints about the Claimant's use of social media in the light of newly issued BSB guidance on the use of social media.

65.9 As to paragraph 11, it is admitted that, on 24 October 2019 at 15.39, Marc Willers QC emailed the Claimant stating that Chambers had received several formal complaints and a number of negative comments about the 22 October 2019 Tweet. He also told her that the Heads of Chambers would need to investigate the complaints made against her. He asked her to cease tweeting on the subject, to delete the reference on her Twitter profile to her membership of Garden Court Chambers, and not to conduct media interviews on the subject. The purpose of Mr Willers QC's request was to try to de-escalate the situation particularly on social media and to try to limit any further damage to Chambers' reputation caused by a public perception that, because of the Claimant's tweets, Chambers did not respect trans human rights and equal treatment. It is denied that the purpose of his request was tainted by direct belief discrimination.

65.10 As to paragraph 12, it is admitted that, throughout 24 October 2019, emails were sent from/to Judy Khan QC, Leslie Thomas QC, Marc Willers QC, Mia Hakl-Law, and David de Menezes. The purpose of the communication was to discuss how best to deal with the complaints which continued to be made made about the 22 October 2019 Tweet including drafting a responsive tweet to publish on Twitter to try and limit the said damage to Chambers' reputation. It is denied that the purpose of the communication was tainted by direct belief discrimination: it was simply a means by which the complaints could be addressed and managed. It is denied that Mr de Menezes was aware of what gender critical beliefs were at and/or that the Claimant held them at that time in any event and it is further denied that he took the decision to send the Responsive Tweet (see, further, paragraph 65.12 below).

65.11 It is denied that a draft tweet in response to say that the Claimant was under investigation was discussed. It is admitted that David de Menezes sent an email on 24 October 2019 to the Heads of Chambers which contained the words quoted in paragraph 12. The full quotation is:

> *"The tweets below mentioning GC point out a contradiction between our human rights ethos and Allison's views and ask for a response. Some of those who have tweeted have thousands of followers, but the posts from some of these accounts and their profile descriptions don't seem particularly reputable. However it's very unusual for us to receive so many critical tweets directed at us within such a short space of time, so this could escalate. We are monitoring closely and keeping screen shots".*

The contradiction referred to was articulated by the members of the public that had complained about the Claimant's 22 October 2019 Tweet and not from Mr de Menezes (as appears to be suggested by paragraph 12).

65.12 As to paragraph 13, it is admitted that on 24 October 2019 Mr de Menezes published the following tweet on Twitter. This was not generally disseminated but **only** sent to the seven accounts on twitter that had themselves raised a direct complaint. It was not posted generally to the public or Chambers' followers on twitter.

> "*We are investigating concerns raised about Allison Bailey's comments in line with our complaints/BSB policies. We take these concerns v seriously & will take all appropriate action. Her views are expressed in a personal capacity & do not represent a position adopted by Garden Ct. Garden Court Chambers is fiercely proud of its long-standing commitment to promoting equality, fighting discrimination and defending human rights.*"

(The "**Responsive Tweet**")

65.13 The Responsive Tweet did not say that the Claimant was "*under investigation*" as alleged at paragraph 12: it said that the concerns raised by members of the public were being investigated.

65.14 It is denied (if it be alleged) that the Responsive Tweet was posted generally to Chambers' followers on Twitter: instead, it was posted to the seven accounts on Twitter that had raised a direct complaint.

65.15 It is denied that there was any act of victimisation in posting the Responsive Tweet: on the contrary, Chambers was required by its own constitution, by the BSB Code of Conduct and by law to investigate complaints when made and it was reasonable and responsible that it did so. It is further denied that the Responsive Tweet constituted an act of direct belief discrimination.

65.16 Paragraphs 14 and 15 are admitted. In respect of paragraph 14, Ms Hooper was raising a reasonable concern in response to newspaper articles which appeared to suggest that (incorrectly) that the LGB Alliance was part of or supported by Chambers (see, further, paragraph 32 above and paragraph 71.28.1 below). In respect of paragraph 15, these were private, personal messages between two barristers (Louise Hooper and Michelle Brewer) and their suggestions were not adopted by the Heads of Chambers. The assertion that any such messages constituted actionable victimisation and/or direct belief discrimination detriment is denied and is misconceived. It is denied that Ms Hooper's and/or Ms Brewer's actions were because of the Claimant's gender critical beliefs. It is further denied that Ms Hooper and Ms Brewer had any involvement in the decision to send the Responsive Tweet.

65.17 As to paragraph 16, the focus of those discussions was not whether Chambers could and should put out a transgender positive statement but how Chambers could limit further damage to its reputation. It is admitted that, when discussing the Responsive Tweet, there was a suggestion of tweeting an image of the trans pride flag, however, that suggestion was rejected by Judy Khan QC on the basis that Chambers needed "t*o strike a balance in our response and we should be aware that there are possible differing views in Chambers*."

65.18 It is denied that the individuals referred to at paragraphs 17-19 (Leslie Thomas QC, Judy Khan QC, Marc Willers QC, Stephanie Harrison QC, David de Menezes, Mia Hakl-Law, Louise Hooper, Tom Wainwright and Michelle Brewer) victimised the Claimant and/or directly discriminated against her because of her gender critical beliefs. Their response was motivated by/or for the

purpose of attempting to further reduce the damage to Chambers' reputation as set out above. All those individuals were not responsible, in any event, for the decision to send a Responsive Tweet and regarding the content of the Responsive Tweet. That was the decision of the Heads of Chambers alone. It is further denied that the Claimant suffered any victimisation and/or direct belief discrimination detriment by any of the individuals named by her as a result of the posting of the Responsive Tweet. It is averred that Ms Hakl-Law and Mr de Menezes were not aware of what gender critical beliefs were and that the Claimant held them at that time.

65.19 As to paragraph 22(a) and (h), the TWG was an informal grouping of 16 barristers. The TWG had no authorised or official status within Chambers nor specific allocated staff or resources. It was a loose grouping of individual barristers with an expertise and/or interest in legal cases concerning trans people – it was not about adopting one particular gender theory over another. It had an internal email address in the sense that the 16 people who expressed interest (to varying degrees) in this area of work had a group email for convenience.

65.20 As to paragraph 22(a), it is admitted that Louise Hooper, Tom Wainwright and Michelle Brewer were members of the TWG. It is further admitted that the TWG was set up by Michelle Brewer but it is denied that that took place in May 2018: it was set up in 2016. It is admitted that reform of the GRA was a topic of interest to some of the individual barristers in the TWG, however, the primary purpose of the grouping was the sharing of expertise and information and, where possible, to develop litigation strategies, for example, in areas relating to asylum/human trafficking, detention, family cases and medial law (although its activities, overall, were relatively limited).

65.21 As to paragraph 22(b), it is admitted that the following events occurred: an external training event on 26 September 2016, a strategy meeting on 30 April 2018, and internal training sessions on 25 May 2018, 3 and 15 October 2018. It is denied that there was any agreed, collective, position on advancing a trans-rights agenda except to the extent that individual practitioners were involved in or wished to be involved in cases concerning the legal rights and protections for trans-people as a vulnerable minority. It is denied that in doing so the purpose

was to advance a trans rights agenda in line with that of Stonewall or other trans rights pressure groups as alleged in paragraph 22(b). The primary purpose is set out above, in paragraph 65.22, although it is admitted and averred those members of Chambers in the TWG were concerned to defend and promote respect for the human rights of trans people as they do for other vulnerable protected minorities and groups in line with Chambers general ethos. It is denied that the TWG was set up in response to or because of the Claimant's gender criticial beliefs: the genesis of the TWG pre-dated the expression of the Claimant's gender critical beliefs as set out in the 22 October 2019 Tweet, the 22 September 2019 Tweet and the 27 October Tweet (see, above, at paragraphs 29, 40) by some 3 years. It is denied that the members of the TWG (including Louise Hooper, Michelle Brewer and Tom Wainwright) had anything to do with the decision to send the Responsive Tweet, which is the subject of this allegation.

65.22 As to paragraph 22(c), it is denied that the TWG was used as a strategic alliance with Stonewall on the GRA or otherwise. There was no collective agreement or collective position by the 16 barristers on the TWG email on this issue. The TWG had not sought and had no formal mandate from the Management Board or the Heads of Chambers. It had no clear mission statement or agreed purpose or agreed agenda: it simply was a grouping of barristers working on or interested in legal cases concerning trans people. No collective decision was taken by the TWG or Chambers to adopt one particular gender theory or to reject gender critical positions.

65.23 As to paragraph 22(d), it is admitted that, on a pro bono basis, on occasions, Chambers agreed to donate space to trans rights organisations to host events when the space was available. This was no different to providing free space to the very many other groups, charities and community organisations that Chambers extended this facility to. It is denied that Chambers marketed the TWG as a group: there was no external marketing with messaging that the TWG was seeking work.

65.24 As to paragraph 22(e), it is admitted that the TWG does have a designated email address. This is no different to the other (approximately 69) designated group email addresses within Chambers.

65.25 As to paragraph 22(f), it is denied that the TWG had formal clerking. Clerks and administrative staff assisted as and when in diarising any meetings or training events for individual members of Chambers.

65.26 As to paragraph 22(g), it is admitted that consideration was given to funding for childcare costs for at least one internal training session because it was held on a Saturday but that is no different to any other meeting of members of chambers held at the weekend.

65.27 It is denied, as alleged at paragraph 23, that the TWG was an official Chambers group which carried out its activities on behalf of Chambers and, when acting in the course of or in connection with the TWG, its members (including Louise Hooper, Tom Wainwright and Michelle Brewer) were agents of Chambers for the purposes of sections 109 and 110 Equality Act 2010. The allegation that the individuals listed conspired to cause the Claimant a victimisation and/or direct belief discrimination detriment by the publishing in a very limited way of the Responsive Tweet to the seven accounts which had complained is misconceived: the content of the Responsive Tweet was decided upon not by them but by the Heads of Chambers.

Detriment 3 (the First Respondent's complaint to the Third Respondent (the "Stonewall Complaint")

66 ~~The alleged detriment at paragraph 24(b)(iii) of the Particulars of Claim is not understood to be an allegation of victimisation against either the Second or Third Respondent~~.

66.1 As to paragraph 24, it is admitted that, on 22 September 2019, Michelle Brewer sent a text to the individuals listed raising concerns about the Claimant's 22 September 2019 Tweet but it is denied that Stephanie Harrison QC received that text and was not told and had no knowledge of the matters referred to in paragraph 24. It is further admitted that Ms Brewer said she would put in a formal complaint against the Claimant but, in the event, she did not do so.

66.2 As to paragraph 25, Michelle Brewer sent a WhatsApp message to Tara Hewitt from Trans Equality Legal Initiative ("**TELI**") on 22 September 2019 saying, "*already sent to a crew in chambers and will speak to Stonewall tomorrow*". It is averred that she was referring to the aforementioned text. Ms Brewer's message

to Ms Hewitt was in response to an earlier message from Ms Hewitt to Ms Brewer, raising concerns about the content of the Claimant's 22 September 2019 Tweet.

66.3 TELI is a network of human rights lawyers, trans activists, and diversity professionals. It is admitted that this initiative was set up by Michelle Brewer ~~alongside Louise Hooper~~ and other founders outside of Chambers. The launch event was held at Linklaters on 18 November 2016. It was attended by 175 lawyers, activists, and professionals. The Service Company and Chambers deny that this was a Garden Court initiative. Chambers was one of many sponsors: other sponsors including Linklaters, Leigh Day Solicitors, One Pump Court and University Hospital South Manchester NHS.

66.4 Paragraph 27 is admitted.

66.5 As to paragraph 28, it is admitted that Chambers provided the space but did not host or participate in the event on 23 October 2019. Nobody from Chambers attended this event. The meeting was convened by the Trans-Organisational Network ("**TON**"). The TON is a network of trans-specific organisations.

66.6 It is denied that Ms Brewer suggested or instructed Shaan Knan to encourage attendees to write to the Heads of Chambers making complaints about the Claimant. In response to Mr Knan's enquiry as to how he should deal with other people's concerns relating to the content of the Claimant's social media posts, she simply passed on information to Mr Knan that if anyone had complaints, they should raise them with the Heads of Chambers through the Chambers' complaints mechanism. It is denied that this reply constituted an instruction or a procurement to complain. It is further denied, in so far as it is alleged, that Ms Brewer's response was retaliatory or in any way to be regarded as an act of victimisation or direct belief discrimination. The same response would have been given to anybody who had raised any concerns about the conduct of a member of Chambers. The assertion that such actions constituted actionable victimisation and/or direct belief discrimination detriment is misconceived and denied. It is further denied (if it be alleged) that Ms Brewer engaged in some sort of conspiracy with Stonewall with regard to the submission of the Stonewall complaint against the Claimant, although such allegation of collusion has not

been pleaded contrary to the suggestion given by the Claimant's Leading Counsel to Employment Judge Stout at the Preliminary Hearing on 11 and 12 February 2021 and referred to at §46 of that Judgment.

66.7 As to paragraph 29, the Service Company and/or Chambers are unable to comment on what did or did not appear on the First Respondent's electronic message board. In any event, it is denied that Michelle Brewer encouraged "*the trans community to write messages of support (supporting action against Bailey) to the Head of Garden Court Chambers*" as alleged. She signposted to Chambers' complaints process in line with her professional responsibilities.

66.8 As to paragraph 30 it is admitted that Michelle Brewer spoke briefly to Shaan Knan by telephone on 23 October 2019. She texted him one message on 24 October 2019, and he responded to that message, by text, on 6 November 2019. Save as aforesaid, paragraph 30 is denied.

66.9 As to paragraph 31, it is denied that it is possible to draw an inference that Michelle Brewer was "*procuring*" complaints from Tara Hewitt, Shaan Knan or Kirrin Medcalf. She was simply responding to concerns and/or complaints raised and appropriately signposting Chambers' complaints procedures in line with her professional responsibilities. The Service Company and/or Chambers have no reason to doubt the accuracy of paragraphs 7-10 of the First Respondent's Further Re-Amended Grounds of Resistance dated 8 June 2021. There was no direct or indirect contact (through discussion or messaging) between Kirrin Medcalf and Michelle Brewer to procure a complaint as alleged or at all.

66.10 It is further denied that Michelle Brewer's communications and/or actions relating to these events were authorised by or done on behalf of Chambers, as a member of Chambers' TWG and/or as an authorised agent as alleged at paragraph 33. Nor were her actions in retaliation to or connected with any of the alleged protected acts (and the Claimant has not articulated which alleged protected act this detriment relates to) and nor were her actions tainted by direct belief discrimination.

66.11 It is averred that Detriment 3 is out of time. The alleged procured act took place on 31 October 2019 and the time limit for submitting the ACAS early conciliation

notice was 30 January 2020. The Claimant issued the ACAS notification after that date, on 10 February 2020 and brought her claim on 9 April 2020.

Detriment 4 (the outcome of the Stonewall Complaint)

67 As to the alleged detriment at paragraph 24(b)(iv) of the Particulars of Claim, the outcome of the investigative process was the recommendation made by Maya Sikand to the Heads of Chambers in her report (which was accepted) that no action should be taken against the Claimant in respect of any of the tweets that were the subject of the investigation, save that the Claimant was asked to delete the Two Tweets (which she did not do in any event and no action was taken against her because of her failure to do so) (see paragraphs 49-51 above). Complaints made by Stonewall in respect of 10 other tweets (other than the Two Tweets) were summarily rejected and did not require any further investigation at all (along with the 10 complaints relating to the 22 October Tweet). Further, Maya Sikand's report concluded that in respect of those tweets the Claimant had not expressed transphobic views, was not being discriminatory nor were the Two Tweets designed to demean and insult trans people. It is denied that the ~~aspects of the complaint which were upheld against the Claimant were upheld~~ the findings made about the Two Tweets were because the Claimant had done any protected act(s) or were tainted by direct belief discrimination. The findings in respect of these Two Tweets was for the reasons set out at paragraphs 49 and 50 above, ~~namely~~, that there was no objective evidence presented to Ms Sikand, in either instance, that the content of the tweet in question which made allegations of criminal/disreputable conduct was true and, in such circumstances, it was considered that the tweets (and each of them) potentially placed the Claimant in breach of CD5 of the BSB Code of Conduct. The Claimant's assertions are further undermined by the fact that Ms Sikand's views were consistent with and took into account the advice provided by Ms McGahey QC on behalf of the Bar Ethics Committee as set out at 49 above. Further, that her report and recommedation was accepted by Heads of Chambers Judy Khan QC and Marc Willers QC after their own careful consideration of it and all the relevant material as set out in paragraph ~~49~~ 51 above. For the avoidance of doubt, neither the actions of Maya Sikand in investigating the ~~First Respondent's~~ Stonewall complaint nor the decision taken by the Joint Heads of Chambers ~~to uphold certain findings~~ in respect of the outcome of Ms Sikand's report were, in any event, acts undertaken by or on behalf of the ~~Second Respondent~~ Service Company.

67.1 It is admitted that Maya Sikand was a senior member of Chambers and a member of the Management Committee and that she was appointed by the Heads of Chambers to investigate the complaints and to report on them to the Heads of Chambers. Maya Sikand was initially asked to investigate the complaints relating to the Claimant's tweet on 22 October 2019 and she prepared an initial draft report on 4 November 2019. In the interim the complaint from Stonewall was received by Chambers on 31 October 2019. After sending out the initial draft report on 4 November 2019 at 17.48 Maya Sikand realised that she had wrongly excluded from consideration the Stonewall complaint and an earlier anonymous complaint received by Chambers on 18 October 2019. In her final report Maya Sikand considered the Stonewall complaint and the complaints about the Claimant's tweet on 22 October 2019. The 18 October 2019 complaint was summarily dismissed. It is averred that she was an authorised agent of Chambers for the purpose of investigating the complaints against the Claimant. It is denied that there were "four versions" of the Sikand Report as suggested at paragraph 34. There was one report (the "**Sikand Report**") which was circulated internally in draft and there were several drafts of the Sikand Report: an initial draft on 4 November 2019 at 17:48 (the "**Initial Draft Sikand Report"**) and a final draft sent to the Claimant on 11 December 2019 at 18:43 (the "**Final Sikand Report**") with several drafts in between.

67.2 As to paragraph 34(a), it is admitted that the Initial Draft Sikand Report had no input from anybody else. It is admitted that Maya Sikand provided the Initial Draft Sikand Report to the Heads of Chambers (then, Judy Khan QC and Marc Willers QC) and also to Stephanie Harrison QC, Mia Hakl-Law and David de Menezes. Contrary to the suggestion at paragraph 34(a), the Initial Draft Sikand Report was in draft and not a finalised version.

67.3 As to paragraph 34(b), it is not understood to which draft the Claimant is referring to as "*the Second Sikand Report*". It is admitted that Stephanie Harrison QC, Judy Khan QC and Marc Willers QC provided comment and suggestions on the text of the Initial Draft Sikand Report and that this process took place over email. It is denied that the input of Ms Harrison QC, Ms Khan QC and Mr Willers QC was tainted by discrimination. It is denied that a fresh report (which the Claimant calls the "*Second Sikand Report*") was created out of this process: the Sikand Report

was a travelling draft and, in the various iterations of it, it was amended until finalised. Whilst it is admitted that Stephanie Harrison QC, in an email, said the words attributed to her, in the context of the Two Tweets, it is denied that the quotation cited therein appeared in any draft: it did not. It was a comment that was never adopted and was not, in any event, the final view taken by Stephanie Harrison QC. It is denied that, as a result of these exchanges relating to the Initial Draft Sikand Report, the Stonewall Complaint was added or made the subject of a further investigation: the remit of the Sikand investigation was to deal with all of the complaints including the Stonewall Complaint. There was only one investigation.

67.4 As to paragraph 34(c), the Claimant has not identified the date of the alleged "*Third Sikand Report*". The reality was that, during this period, there were several drafts. It is admitted that the Stonewall Complaint was shared with the Claimant. It is further admitted that, on 21 November 2019, the Claimant provided Ms Sikand with a response to the Stonewall Complaint. The gist of the Claimant's response was that she simply asserted her "*understanding*" of the truth of the allegations contained in the Two Tweets. She said that it was her *understanding* that Morgan Page ran workshops with the "*sole aim of coaching heterosexual men who identify as lesbians on how they can coerce young lesbians into having sex with them*". She said she was "*horrified*" and "*appalled*" that Stonewall has "*opened the door to men who wish to be abusive to lesbians and women. All that is needed is for that male bodied person to declare themselves 'trans' and they can coerce, harass and intimidate lesbians and radical feminists with impunity.*" In the event, it was considered by Ms Sikand that her response was inadequate. The Claimant had made statements alleging criminal/disreputable conduct and her response was inadequate because she had not substantiated these serious allegations: a sufficient factual foundation for them had simply not been provided. An honest belief was not sufficient. Further, Ms Sikand did not consider that the Claimant's reference to her own history of sexual abuse was relevant in determining the issues that she had to decide.

67.5 It is admitted that Ms Sikand shared the Claimant's response to the Two Tweets of concern from the Stonewall Complaint with Stephanie Harrison QC, Judy Khan QC and Marc Willers QC. It is further admitted that Ms Harrison QC did

not share the entirety of the Claimant's response with Ms McGahey QC because it included personal and sensitive information which would have been highly inappropriate for Chambers to share with anybody outside the investigation process including the Bar Council.

67.6 As to paragraph 34(d) it is admitted that, on 5 November 2019, Stephanie Harrison QC, on behalf of the Heads of Chambers and also on behalf of Maya Sikand, approached the Bar Council Ethics Committee and spoke to Cathryn McGahey QC of the Ethics Committee. It is denied that Ms Harrison QC's approach to the Ethics Committee constituted an act of direct belief discrimination: it was to seek regulatory advice on a complex and sensitive matter where there was little available guidance (see paragraph 67.7 below). It was appropriate for Ms Harrison QC to make such an approach because she was Chambers' Equality & Diversity Officer and had a role on the Management Committee relating to Equality and had been requested by the Heads of Chambers to provide advice in respect of this complex matter. It is denied that the purpose of Ms Harrison QC's approach was to "*procure*" a view on a potential breach of the BSB Code and the implication contained therein, that the design was to procure a view adverse to the Claimant and an act of retaliation or direct belief discrimination, is also denied. Instead, Ms Harrison QC's intent was to seek advice from the regulator and that was entirely appropriate and reasonable.

67.7 It is further admitted that, on 28 November 2019 at 17:32, Stephanie Harrison QC sent an email to Cathryn McGahey QC with details of the the Stonewall Complaint and an extract from Ms Sikand's email to the Claimant, dated 6 November 2019, asking for her response to the Two Tweets in order to obtain advice as to whether the Two Tweets would offend CD3, 5, and 8 of the BSB Social Media Guidance. It is denied (if it be suggested) that Stephanie Harrison QC's purpose in doing so was to procure an unfavourable outcome for the Claimant either as an act of retaliation for doing a protected act or as an act of direct belief discrimination. The intention was to seek regulatory advice on a complex and sensitive matter, where there was little available guidance as to the correct approach, and it was entirely reasonable and appropriate to do so.

67.8 It is further admitted that, on 29 November 2019 at 09:11, Cathryn McGahey QC responded to Stephanie Harrison QC and the quotation quoted at paragraph 34(d) is correct (albeit it is only a partial selection of the entire text). Ms McGahey QC asked for further information to identify the material on which the Claimant was commenting on, in order to consider the matter in more detail and provided an initial view that her "*instinct is that these tweets may be on the border line, whether or not they crossed that line depended on whether the truth of them could be substantiated or, at least, whether they amount to legitimate comment on the underlying facts*". On 29 November 2019 at 10:15, Stephanie Harrison QC replied to Cathryn McGahey QC asking her what her view would be "*on the premise*" that there was nothing sufficient to substantiate the allegation of coercion in the 22 September 2019 Tweet. The quotation quoted in this regard is accurate but incomplete. The purpose was to clarify and confirm the correct approach, in principle, and further seeking a view "*on whether there needed to be some relationship between the gravity of the allegation (here serious sexual misconduct/potential criminal offence) and the objective basis for the assertion".* Ms Harrison QC confirmed that the material the Claimant was commenting on, in respect of the 27 October 2019 Tweet, was the Times Article of the same date and provided the Times article referred to above at paragraph 35. She also provided material relating to the 22 September Tweet and the workshop entitled "*Overcoming the cotton ceiling*".

67.9 Ms McGahey QC provided a more detailed response on 3 December 2019 at 22:22. Her advice, regarding the 22 September 2019 Tweet, was that she was "*concerned , as you were, about the allegation that the aim of the course was to teach men how to coerce young women into having sex with them… In the absence of any material indicating that AB's allegation is true, I think she would be at risk of a finding that her comment was likely to diminish trust in her profession and in her. In essence, she has alleged that MP has encouraged sexual assaults on young women, in circumstances in which (as far as I know) that allegation cannot be shown to be true… to publish a serious allegation that cannot be substantiated* ***may well be found*** *to be a breach of CD 5 and possibly CD 3"* (emphasis added). This was on the basis that the Claimant *"honestly believed her allegation to be true*" . Her advice in relation to the 27 October 2019 Tweet was: "*I think that*

tweet can reasonably be read to imply SW itself is behind a criminal campaign against those who oppose its views on trans issues. For similar reasons… if those allegations cannot be substantiated then I think again that AB ***may be at risk*** *of a finding of a breach of CD 5 and/or CD3*" (emphasis added). She concluded that she thought "*that the two tweets are nevertheless* ***probably*** *over the border line of acceptable conduct on the basis that AB's views are sincerely held* ***but that she has published allegations of criminal and/or disreputable conduct that she cannot substantiate***" (emphasis added). The quotations quoted at paragraph 34(d) are correct (albeit out of context). It is admitted that Ms McGahey QC said that there is a "*subjective element*" in her advice, that the BSB and other members of the Ethics Committee "*might take a different view*" and to ask if Chambers wanted "*more authoritative advice*".

67.10 It is further admitted that Chambers decided not to request more formal advice. This was because that Ms McGahey had provided sufficient guidance on the approach to the BSB Codes of Conduct and Social Media Guidance, and had advised that even if upheld, no action in respect of reporting the matter to the BSB was required. If that advice had been that there may be a need to report and/or discipline the Claimant, then formal advice would have been sought as Judy Khan QC made clear in her email of 4 December 2019. This was favourable to the Claimant as no action was taken against her. It is admitted that the Claimant's full response to the Two Tweets was not provided to Ms McGahey QC. Instead, the gist of the Claimant's response was provided by Ms Harrison QC. It is denied that it was deliberately "*withheld*" from Ms McGahey QC as alleged. It was not appropriate to share the Claimant's full response with anybody outside Chambers' investigative process because of the sensitive personal information that it contained (see above at paragraph 67.4). Further, Ms. McGahey QC had requested the material that the Claimant was commenting on, not her full response. The focus was on anything in the response that objectively supported the truth of the allegations. It is denied that the Claimant's response substantiated her tweets: it did the opposite. It is denied that not providing the Claimant's full response was material to the outcome of the advice given by Ms McGahey QC. Ms McGahey QC was not deciding the complaints, she was giving regulatory advice on the approach to be adopted.

67.11 As to paragraph 34(e), it is not understood what is meant by the "*Third Sikand Report*". A draft was sent out at 00:00 on 11 December 2019. In that draft, it is correct that Ms Sikand, accepting the advice of Ms McGahey QC, said that the Claimant "*may be at risk*" of a BSB finding that she had breached the BSB code. It is admitted that the draft or final report did not refer to Ms McGahey QC's advice or the requests for her advice: Chambers was entitled to seek advice from its regulator and was not obliged to provide that advice to the Claimant. It is denied that Ms McGahey QC requested that the Claimant give an explanation: her request for more information concerned whether there was evidence of substantiation (which there was not). Information relevant to her request was provided to her. It is not understood what is meant by the various drafts "*adopting*" other drafts: these were travelling drafts.

67.12 As to paragraph 34(f), it is admitted that the quotations quoted therein are accurate (albeit that the full exchange has not been provided). It is further admitted that Ms Harrison QC commented on the draft sent at 00:00 on 11 December 2019 by email and in track changes and that one of the changes was the deletion of the words "*may be at risk*" and the addition of the words "*likely to have breached*". It is denied that there is a material and substantial difference between the phrases "*may be at risk*" and "*likely to have breached*" and it is further denied that the latter is unfaithful to or contrary to the advice given by Ms McGahey QC on 3 December 2019: the conclusion of Ms McGahey's advice was that the Claimant was "***probably***" in breach. The word "*probably*" is synonymous with being more likely than not (the civil standard of proof). Ms Harrison QC's suggested formulation "*likely to have breached*" was, in fact, more faithful to Ms McGahey's formulation of "*probably*" than Ms Sikand's formulation of "*may be at risk*" in any event. It is, however, averred that, either way, this difference was not material to the outcome. The recommendation to request the deletion of the Two Tweets remained the same and no other action was recommended. It is denied that Ms Harrison's amendment was an act of direct belief discrimination: she was reflecting the advice that had been received from Ms McGahey QC. Further, it is averred that the tone of Ms Sikand's responses to Stephanie Harrison QC, on 11 December 2019, are a clear indication of how prepared she was to ignore the contributions of others and reach her own conclusion. It is also clear

that Maya Sikand demonstrated, in her comment "*I didn't ask for tracks Steph! I'm not your junior in a case*" that she did not feel bound to include comments from others (in particular Ms Harrison QC), that she was making up her own mind and that, ultimately, it was her decision to do so, or not do so. Equally, Ms Harrison QC made clear that Ms Sikand was entitled to reject her comments. Ms Harrison QC's response was: "*Its totally up to you to do [sic] take into account what I have suggested*".

67.13 As to paragraph 34(g), on 11 December at 18:43 the Final Sikand Report was sent to the Heads of Chambers and the Claimant. The Final Sikand Report concluded that it was likely that the BSB would find a breach of CD5 in respect of the Two Tweets, however, there was no obligation to report the Claimant to the BSB because Ms Sikand did not consider that the conduct was in the territory of "*serious misconduct*". Further the report went on to say that no action should be taken against the Claimant (save that she was asked to delete the Two Tweets (see above at paragraphs 49-51).

67.14 As to paragraph 34(h), the final report, findings, and recommendations were that of Maya Sikand's alone, after considering all the evidence including the information from Ms McGahey QC from the BSB. It is denied that Ms Sikanad's final report, findings and recommendations constituted acts of direct belief discrimination. It is admitted that others had input into the drafts but Maya Sikand was not bound to accept any proposed amendment or comment as she made clear to Ms Harrison QC on 11 December 2019. When completing the Final Sikand Report, it was down to Maya Sikand alone to select the information to go into that report as a final version. It is denied, contrary to what is suggested at paragraph 34(h), that each of Ms Khan QC, Mr Willers QC and Ms Harrison QC inappropriately took part in the decision-making relating to the conclusions of the Sikand Report and/or that their involvement constituted an act of direct belief discrimination. The ultimate decision-makers were the then Heads of Chambers (Judy Khan QC and Marc Willers QC) and they made their decision based on their consideration of the report and all the relevant material. Nor did Ms Khan QC, Mr Willers QC and Ms Harrison QC direct Ms Sikand what to say in the report (if this be alleged). Their involvement extended to offering comments. Some of those where accepted and some were not, at the discretion of Ms Sikand,

which, as her response to Stephanie Harrison QC on 11 December 2019 indicates, she was quite prepared to exercise. Any collusion (if it be alleged) between the Heads of Chambers, Ms Harrison QC and Ms Sikand to produce a report with adverse findings to the Claimant, either as an act of retaliation or as an of direct belief discrimination, is denied. It is averred that the conclusion of the Sikand Report was not adverse to the Claimant in any event: it concluded that no action should be taken against her (save that she was asked to take the Two Tweets down which in the event she refused to do and no action was taken against her). Any victimisation and/or direct belief discrimination detriment in this regard is, therefore, denied. Nor is it accepted (if it be alleged) that the taking of advice from a regulatory body is capable of constituting such a detriment.

67.15 Paragraphs 35-37 are denied.

67.16 Paragraphs 38-40 are admitted.

67.17 It is denied that the matters pleaded in paragraph 34 constitute victimisation or direct belief discrimination. It is averred:

67.17.1 There is nothing in the outcome of the investigative process that is capable of constituting actionable victimisation and/or direct belief discrimination detriment. The recommendation was that the Claimant be **requested** to delete the Two Tweets. It was only a request, which the Claimant refused in any event, and no action was taken against her. Further, no steps were taken to pursue disciplinary action, no referral was made to the BSB and no steps were taken to publicise the outcome of the investigation.

67.17.2 Seeking regulatory advice from the Bar Council on the correct interpretation and approach to the widely drawn BSB Code of Conduct and Social Media Guidance is not capable of constituting actionable victimisation and/or direct belief discrimination detriment. If it were, then all professional people would be deterred from speaking to their regulator for confidential advice.

67.17.3 There is nothing in the conduct of the investigation of the complaint, and the decision in respect of it, that establishes that the steps taken were as

a result of any relevant individual's view that gender critical beliefs were bigoted or not worthy of respect and, therefore, there is no causal connection between the conduct of the investigation and its outcome and the Claimant's gender critical beliefs. To the contrary, the concern about the Two Tweets was that they alleged criminal or disreputable conduct, not that they were gender critical. That position is supported not only by the advice from Ms McGahey QC (see above at paragraph 67.9) but also by the fact that both the Charity Commission and CrowdJustice had concerns about the **manner** in which the Claimant and/or LGB Alliance expressed her/its views. The Charity Commission's decision in respect of the LGB Alliance dated 20 April 2021 considered (at paragraph 37 of that decision) that some of the language used in LGB Alliance's social media activity was "*inflammatory and offensive*" which "*appeared to involve, at times, demeaning or denigrating the rights (recognised by law) of others*". On or around 1 July 2020, CrowdJustice took down the Claimant's page, citing as a reason for doing so that : "*we considered that some of the language used on the case page, taken either individually and/or considered in the full context of the page, was unnecessarily inflammatory and offensive. In our view, parts of the case page, unconnected to the facts of the actual legal case, could be considered to promote hate, abuse or harassment towards a minority community, in contravention of our terms.*"

Detriment 5 (failure to comply with Subject Access Requests ("SAR")

68 As to the alleged detriment at paragraph 24(b)(v) of the Particulars of Claim, it is denied that the ~~Second Respondent~~ Service Company had failed to comply with the Claimant's SAR. If, which is denied, the ~~Second Respondent~~ Service Company has failed to comply with the Claimant's SAR in any material respect, it is denied that any material failure is because the Claimant had done one or more protected acts. The ~~Second and Third Respondents~~ Service Company and Chambers have attempted to comply fully with its obligations and believe that they have done so. ~~The allegation as against the Third Respondent is not presently understood in circumstances where, on the Claimant's own case, she is presently awaiting responses to her additional Subject Access Requests.~~

68.1 It is denied that Liz Davies was involved in the response to the Claimant's SAR request at all save that she was copied into some of the e-mail exchanges. Ms Davies had no decision-making involvement. It is further denied that Colin Cook played any material role in the response to the Claimant's SAR request. It is further denied that Mr Cook knew what gender critical beliefs were or that the Claimant held them. It is admitted that Mia Hakl-Law and Ms Harrison QC and Ms Khan QC were involved in ~~the~~ the response to the SAR. It is averred that the actions of Ms Hakl-Law, Ms Harrison QC and Ms Khan QC were not connected either with a protected act or with the Claimant's gender critical beliefs.

68.2 The Service Company and Chambers did comply with the SAR: it responded to her SAR request on 2 March 2020 and 28 August 2020. The Service Company and Chambers has complied with their obligations under the Data Protection Act 2018. The Service Company and the Chambers will rely on the fact that the Claimant has not raised a complaint that there has been a breach of the Data Protection Act 2018 with the Information Commissioner.

68.3 Further, the Claimant has not suffered a victimisation and/or direct belief discrimination detriment in relation to the response to the SAR.

(ii) Indirect Discrimination

69 It is denied that the ~~Second Respondent~~ Service Company, its servants or agents and/or ~~the Third Respondent~~ Chambers, its servants or agents indirectly discriminated against the Claimant, whether as alleged at paragraph 25 of the Particulars of Claim or at all. There is no basis for this allegation: neither women nor lesbians, as a group, would suffer a particular disadvantage when compared with men or heterosexuals, because of the operation of the alleged PCPs.

The First Alleged PCP: (the treatment of gender critical beliefs as being bigoted or otherwise unworthy of respect)

70 It is denied that the ~~Second Respondent~~ Service Company (or any servant or agent of the ~~Second Respondent~~ Service Company) and/or ~~the Third Respondent~~ Chambers (or any servant or agent of the ~~Third Respondent~~ Chambers) applied the PCP set out at paragraph 25(a)(i). It is further denied that the individuals listed at paragraphs 47 to 53 operated the alleged PCP. ~~The Claimant makes an extremely serious and potentially defamatory~~

allegation that the Second and/or Third Respondent apply/applies a PCP of treating "*gender critical beliefs as being bigoted or otherwise unworthy of respect*". The Second and Third Respondents takes strong issue with this assertion. There is no basis for it at all and none pleaded.

71 In any event, and as set out at paragraph 13 herein, neither the Second Respondent Service Company nor the Third Respondent Chambers as an organisation neither adopts nor purports to adopt a specific position in relation to the "*sex versus gender*" debate. As is known to the Claimant, Garden Court Chambers, separate from the Second Respondent Service Company, in housing approximately 200 190 self-employed barristers practising in a range of different areas, is committed to defending human rights, equality, social justice and upholding the rule of law.

71.1 It is denied that the treatment of gender critical beliefs as being bigoted or otherwise unworthy of respect is capable of constituting a PCP: it is not a provision, criterion or practice that applies across the board. Further, it is denied that such a PCP could constitute indirect sex discrimination: neither women nor lesbians, as a group, would suffer a particular disadvantage when compared with men or heterosexuals, because of the operation of that alleged PCP. Further still, it is denied that the matters set out by the Claimant in support of this alleged PCP are capable of constituting matters that may properly be considered as constituting an inference in the context of a direct belief discrimination claim.

71.2 As to paragraph 54, it is denied that Chambers is a corporate entity. It is a trade organisation. Further, as such it is denied that, as a collective, it had "*whole heartedly adopted Stonewall's pro-gender theory viewpoint*" as alleged at paragraph 54. There was no collective view or consensus on the issue of gender theory. This was a matter on which there were varying views amongst the approximately 190 members of Chambers. The Service Company and/or Chambers make no admissions as to the assertion at paragraph 54 that "*it is a fundamental aspect of Stonewall's pro-gender theory viewpoint that gender critical beliefs are bigoted and unworthy of respect*" but, in any event, that was not the collective view of Chambers and that was not the reason that Chambers signed up to be Stonewall Diversity Champions. Signing up to being a Stonewall Diversity Champion did not entail the adoption of a gender critical viewpoint (see

paragraph 13 above and paragraph 73.6 below). It is denied that Chambers' social media output, seminars and events were evidence of an organisational adoption of a pro-gender theory viewpoint. It is also denied that the three examples given at paragraph 54(a) (i) and (ii) 54 (b) are capable of constituting the adoption of an organisational viewpoint, or are capable of constituting an inference of direct belief discrimination, in circumstances where Chambers has 18,800 followers and has tweeted 16,100 times. Those examples were simply the views of individual barristers.

71.3 As to paragraph 54(a), it is admitted that Chambers was a sponsor (among others) of the TELI launch on 20 May 2016 but it is denied that Chambers hosted this event: it was hosted by Linklaters (see paragraph 66.3 above). It is further admitted that Michelle Brewer was one of the founders of TELI (see paragraph 66.3 above). Michelle Brewer, Louise Hooper, and Stephanie Harrison QC attended the launch event of the TELI as independent barristers and spoke at the event. Their attendance does not provide support for an inference of direct belief discrimination. Ms Harrison QC, Ms Brewer and Ms Hooper did not know, at that time, that the Claimant held gender critical beliefs. There were, in total, 175 delegates to this event. It is further admitted that the launch was live tweeted via Chambers' twitter account and the content of the two tweets quoted at paragraph 54(a)(i) and (ii) is correct. There were many such live tweets given the high number of attendees. It is averred that none of this demonstrates the alleged organisational adoption by Chambers of Stonewall's alleged viewpoint or the alleged inference of direct belief discrimination: it simply demonstrates the actions of some delegates at one event.

71.4 As to paragraph 54(b), it is admitted Chambers published the tweet quoted and the content of that tweet is correct. The tweet provided a link to Professor Alex Sharpe's blog, it is not admitted that this tweet is capable of constituting any support for one side of such '*debate*' but, in any event, Chambers did not support a particular side in that '*debate*'. The tweet quoted at paragraph 54(b) does not mention the Claimant, makes no mention of gender critical beliefs and cannot, therefore, be capable of constituting material that demonstrates an inference of direct belief discrimination. It is not admitted that Chambers published tweets supporting Alex Sharpe's writings on the GRA consultation.

71.5 It is denied that the existence of the TWG supports the existence of the PCP as alleged at paragraph 55 of the Claimant's Further Information. The existence of the TWG does not support an inference of direct belief discrimination: the reason it was set up had nothing to do with the Claimant's gender critical beliefs.

71.6 As to paragraph 56, it is admitted that David Neale raised concerns about the Claimant's email dated 14 December 2018 and it is further admitted that he said the words quoted. The context was that there were personal reasons why the Claimant's email offended him. Those were his personal views. They do not amount to an organisational adoption of a PCP about gender-critical beliefs nor do they amount to material that is capable of supporting an inference of direct belief discrimination. Mr Neale did not treat her less favourably because of her gender critical beliefs. Judy Khan QC and Leslie Thomas QC responded appropriately to Mr Neale's complaint and the words quoted at paragraph 56(a) and (b) are correct. It is denied that they could be inferred as considering the Claimant's gender critical beliefs to be bigoted or unworthy of respect and it is denied that such are capable of constituting an inference of direct belief discrimination.

71.7 As to paragraph 57, the quotations from the emails quoted are correct. It is denied that it is possible to infer from these emails that Mr Renton, Ms Brewer and/or Mr Lue considered that the Claimant's gender critical beliefs were bigoted or unworthy of respect. The fact that people have different views does not mean that each thinks the others' views are bigoted or unworthy of respect. Whilst they did not agree with her views, it is denied they took the stance that her views were bigoted or unworthy of respect or that she was not entitled to hold them. Chambers values human rights for all people including those involved in both sides of this 'debate'. The manner in which the Claimant expressed her views and some of the content of her tweets was problematic and of concern, particularly where the content made allegations of criminal and/or disreputable conduct, which was of concern to Mr Renton in the email quoted at paragraph 57(b) of the Claimant's Further Information, which refers to his concerns that the Claimant was"*insisting again and again that all trans prisoners were male-bodied rapists*". In any event, the views expressed were individual barrister's views sent in private communications. In fact, Mr Renton and the Claimant, who share space in

Chambers, had an amicable discussion about their different views and came to an accommodation. Mr Lue made it clear, in the communications between him and that Claimant, that he had a "*strong affinity*" with her. There is, in any case, no Chambers' collective view that gender critical beliefs are bigoted or not worthy of respect.

71.8 As to paragraph 58, it is admitted that Chambers sent the Responsive Tweet (see paragraph 65.14 above) and also posted the statement and amended statement quoted. The inference referred to is denied: the only reasonable inference that can be drawn from this process is that, by acceding to the Claimant's request to amend the original statement, Chambers were listening to her views and willing to accommodate them. The idea that listening to people's views and accommodating them is indicative of regarding them as bigoted or unworthy of respect or tainted by discrimination makes no sense whatsoever. Further, there is no material here that supports an inference of direct belief discrimination: Chambers had no collective view on the LGB Alliance. This is to be contrasted with the view of the Charity Commission, who took the view that the LGB Alliance's social media activity was "*inflammatory and offensive*" which "*appeared to involve, at times, demeaning or denigrating the rights (recognised by law) of others*" (see paragraph 67.13.3 above and paragraph 71.28.2 below).

71.9 As to paragraph 59, it is denied that such an inference can be drawn. There was no "*collective view*" about the Claimant's gender critical beliefs.

71.10 Paragraph 60 is denied: the actions of the people referred to at paragraphs 61-70 were not because they considered her gender critical beliefs to be bigoted or unworthy of respect, nor were they disrespectful to the Claimant, and, nor were they incompatible with their status as senior members of the bar. Instead, they were a reasonable response to ~~nine~~ seven complaints from members of the public and three complaints from NGOs (including Stonewall). Chambers had a duty to investigate such complaints and the approach they adopted for the Claimant was not tainted by indirect discrimination nor direct belief discrimination.

71.11 As to paragraph 61(a), it is denied that, in email correspondence, on 24 October 2019, Leslie Thomas QC concluded that the Claimant had breached the Equality Act 2010. There is no such email that says this. Mr Thomas QC's said,

rhetorically: "*Can it be said that the tweets fall foul of or potentially fall foul of and/or are in breach of CD8 not to unlawfully discriminate against any person, can it be said that her tweets may be considered to be distasteful or offensive by others*". It is further denied that such was demonstrative of his view that the Claimant's gender critical beliefs were bigoted and unworthy of respect. Mr Thomas QC was concerned about the content of her tweets and the intemperate manner in which she had expressed herself and, as such, his email does not support an inference of direct belief discrimination.

71.12 Paragraph 61(b) is admitted.

71.13 As to paragraph 61(c), it is denied that Mr Thomas QC advised Maya Sikand on how she should conduct the investigation and what conclusions she should reach in her report to the Heads of Chambers. On or around the 2 November 2019, Maya Sikand had discovered a new tweet (the "**2 November 2019 Tweet**") which the Claimant had tweeted which was potentially of concern, although no complaints had yet been made about it. On 4 November 2019, Ms Sikand sent an email to Mr Thomas QC and others sending them the 2 November 2019 Tweet. Mr Thomas QC gave his view that the 2 November 2019 Tweet would breach the BSB Code of Conduct. In the event, the 2 November 2019 Tweet was not the subject of the investigation and no determinations were made about it. By expressing the view that he did on the 2 November 2019 Tweet, Mr Thomas QC was not expressing a view on the Two Tweets that formed the focus of Ms Sikand's investigation or, indeed, any of the complaints and nor was his view about the 2 November 2019 Tweet suggestive of an inference of direct belief discrimination. It is further admitted that Mr Thomas QC suggested an individual at the BSB who could be contacted for confidential advice but it is denied that that act was tainted by indirect discrimination or direct belief discrimination against the Claimant.

71.14 As to paragraph 61(d), it is denied that the incidents referred to in paragraph 61(d)(i),(ii) and (iii) demonstrate that Mr Thomas QC holds the view that the Claimant's gender critical beliefs are bigoted or unworthy of respect and are, therefore, capable of being material that supports either a claim of indirect discrimination or a claim of direct belief discrimination. The manner in which it is alleged that Mr Thomas QC's "*reactions*" demonstrated this view is

unparticularised. In any event, these were different complaints. Mr Neale's concern was about a member of chambers expressing views objecting to the Stonewall Diversity Champion scheme which concerned the promotion of an inclusive workplace environment (see paragraphs 13 and 73.6) which was of direct concern to him as an employee. The Claimant was complaining about the social media posts of a door tenant (Professor Alex Sharpe) tweeting in her personal capacity. In any event, it is denied that Professor Sharpe's tweets, which were tweeted in her personal capacity expressing her own views and not those of Chambers, were abusive.

71.15 As to paragraph 62, it is denied that Mr Thomas QC's reactions to the Claimant's complaint about Alex Sharpe were dismissive and combative towards her. It is admitted that Mr Thomas QC was supportive of the concern raised by David Neale against the Claimant because of the particular circumstances of that case (which are set out above at paragraph 71.6). It is denied that his support for David Neale had anything to do with holding a view that the Claimant's gender critical beliefs were bigoted and unworthy of respect. It is denied that Mr Thomas QC was involved, to any material extent, in the complaints against the Claimant and further denied that his limited involvement was motivated by a desire to "*maximise the prospect*" of an adverse finding against the Claimant. In the event, there was no adverse finding against her because no action was taken (save that she was asked to delete the Two Tweets and she choose not to do so).

71.16 As to paragraph 63, it is denied that there were four Sikand reports (see above at paragraphs 67.1). There was one report which went through a number of drafts and updates. It is denied that there was any material deviation from Ms McGahey QC's advice. It is not reasonable to draw an inference, from the purported facts, that Judy Khan QC's and Marc Willers QC's involvement in considering the draft reports and making amendments was done to change the report from a favourable report to a less favourable report or to ensure that the report was likely to be less favourable to the Claimant because they thought the Claimant's gender critical belief was bigoted and unworthy of respect. The conclusion of this process was that the report was not unfavourable to the Claimant because no action was taken against her (save that she was asked to delete the Two Tweets and she chose not

to do so). The recommendations in the report were favourable to the Claimant because she was not being referred to the BSB.

71.17 As to paragraph 64(a), it is admitted that the Claimant's full response to the Stonewall Complaint was not shared with Ms McGahey QC for the reasons set out above at paragraph 67.10. It is further denied that Ms Harrison QC's comments on the draft at 00:00 on 11 December 201~~1~~9 changed the conclusions of the report so that they were more adverse to the Claimant (see above 67.12). The purpose and effect pleaded is denied. There was no unfair conclusion to the Claimant: the result of the Sikand Report was that there was no action taken against her (save that she was asked to delete the Two Tweets and she chose not to do so). The recommendations in the report were favourable to the Claimant because she was not being referred to the BSB.

71.18 As to paragraph 64(b), it is admitted that Ms Harrison QC sent an email on 24 October 2019. The email said: "*I agree I think someone should also speak directly to Alison to indicate to her that's what we will be doing. We have along history in chambers of support for trans rights both in litigation dating back to 1988 (Rees) and in campaigns. A number of us have a close personal association with David Burgess a key lawyer in the struggle for recognition of human rights and non discrimination for trans people. It is the 10th anniversary of his death today and it is an affront to his memory.*" It is denied that there was an implication, or that a reasonable inference could be drawn, that, in Stephanie Harrison QC's view, the Claimant's involvement with LGB Alliance was transphobic and otherwise insulting and she did not hold that view.

71.19 As to paragraph 64(c), it is admitted that Ms Harrison QC sent an email dated 11 November 2019 to the Heads of Chambers, Ms Sikand and Ms Hakl-Law. It is denied that, in so doing, Ms Harrison QC was attempting to pre-judge the investigation. To the contrary, it was to find an accommodation between Chambers and the Claimant so a line could be drawn under the matter. Nor was this email evidence of any knowledge or expectation of what Stonewall might or might not do and the consequences that might flow from that. In any event, the investigation and the conclusions reached were those of Ms Sikand and ultimately the Heads of Chambers. It was reasonable, in the circumstances, for alternative

methods of resolving the complaints against the Claimant to be explored as a way of de-escalating the situation.

71.20 As to paragraph 65(a), it is admitted that Ms Sikand was a member of the email group of the TWG. It is denied that Ms Sikand attended TWG training or meetings. It is admitted that Ms Sikand sent an email on 16 October 2019 to members of the TWG which did not say, as suggested, that the Claimant should be censored but, rather, that she **could not be censored** because she was tweeting in her own capacity. Ms Sikand's email does not support an inference of direct belief discrimination.

71.21 As to paragraph 65(b), it is admitted that the Initial Draft Sikand Report was sent out for comments and that comments were received. Ms Sikand accepted some but not all of the comments. It is denied that this was to the detriment of the Claimant.

71.22 As to paragraph 65(c), it is denied that Ms Harrison QC redrafted the report dated 11 December 2019 at 00:00 with the effect that the conclusions reached by Ms Sikand on 11 December 2019 were changed making the conclusions significantly more serious and to the detriment of the Claimant as alleged (see above at paragraphs 67.12). There was no wholesale "r*e-draft*": Ms Harrison QC's contribution was by way of suggestions in the form of track changes to the text. Ms Sikand was free to accept or reject any suggestions made by Ms Harrison QC. The conclusions reached in the final report dated 11 December 2019 at 18:43 were that no action should be taken against the Claimant (save that she was asked to delete the Two Tweets) and so were not different to the outcome reached in the 11 December 2019 00:00 draft in any event.

71.23 As to paragraph 65(d), it is admitted that the various passages quoted are correct albeit that they are selective. It is denied that Ms Sikand failed to take into account relevant matters including evidence that was favourable to the Claimant in the conduct of her investigation or her conclusions and/or indicated to other people, by the use of the phrase "*we will bear it in mind*", that she intended to disregard relevant matters including letters of support in favour of the Claimant . It is further denied that the use of that phrase was intended to be off-hand, ironic and

dismissive and intended to be read as such and/or that it is capable of supporting an inference of direct belief discrimination.

71.24 Paragraph 65(e) is denied.. It is admitted that on 4 November 2019 at 22:51 Ms Sikand said in an email:"*How did we miss the one on the 18 October? Why did no-one notice it?. I've removed that one and the Stonewall one from my complaint thing*". It is denied that Ms Sikand said or meant the words quoted in the Further Information in square brackets as follows: "*the Claimant's tweet*". The Claimant's reference to a tweet on 18 October 2019 is incorrect. There was a tweet posted on 17 October 2019, not 18 October 2019, and the next day, on 18 October 2019, there was an anonymous complaint. Ms Sikand did give some consideration to the 18 October 2019 complaint, it was summarily dismissed, and no determination was made about it in the Final Sikand Report. There was no sanction concerning the 18 October 2019 complaint. It is denied that Ms Sikand's various comments shared while preparing her reports demonstrate the view that the Claimnt's beliefs were bigoted or unworthy of respect. It is denied that she intended to retain the 18 October 2019 complaint for a subsequent investigation or report or sanction: there was no subsequent investigation or report or sanction about this tweet. It is further denied that she intended the 18 October 2019 complaint to be worthy of future consideration as a basis for a sanction or said so: there was no such statement, no determination and no sanction in respect of it.

71.25 As to paragraph 65(f), the quotations quoted therein are accurate. Ms Harrison QC had suggested alternative methods of resolving the matter (see paragraph 71.19 above). Ms Sikand pointed out that, even if the outstanding issues that were the subject of the Sikand investigation were resolved, there was the potential for other complaints arising out of other material that the Claimant had written, for example, the 2 November 2019 Tweet. It is denied that it is possible to draw an inference from Ms Sikand's email that she "*wished to pursue a further investigation"* and/or that Ms Sikand was attempting to "*sanction*" the Claimant "*by any means*" as alleged. In fact, there was no further investigation and the result of the report authored by Ms Sikand was that no sanction was applied to the Claimant because no action was taken against her (save that she was asked to delete the relevant tweets which she did not do and, thereafter, no disciplinary action was taken against her in respect of that). Further, it is denied that this email

is evidence of a view on the part of Ms Sikand that the Claimant's gender critical beliefs were bigoted and unworthy of respect.

71.26 As to paragraph 65(g), it is denied that Ms Sikand made incomplete, inaccurate or misleading statements in her correspondence with the Claimant whilst investigating her complaints. It is admitted that Ms Sikand wrote to the Claimant on 11 November 2019 and 25 November 2019 and her emails contained the quotations at paragraphs 65(g)(i), (ii) and (iii). The purpose of the investigation was to examine the ~~8~~ 7 complaints made by the public and two NGOs about the 22 October 2019 Tweet and the 12 tweets that were the subject of the Stonewall Complaint (only two of which were found to merit further investigation). It is denied that the other tweets referred to in paragraph 65(g)(i) were material to Ms Sikand's findings and conclusions: Ms Sikand decided that the complaints about them did not merit further consideration. It is denied that Ms Sikand pre-judged the outcome of the investigation. The basis for the allegation that Ms Sikand pre-judged the complaints is not explained. If it is the case that the basis for this allegation is that Ms Sikand pre-judged some complaints because she summarily dismissed **other** complaints (as suggested in paragraph 65(g)(iii)) then that is not the case and, in any event, the summary dismissal of such complaints was to the Claimant's advantage. It is further denied that Ms Sikand held a belief about whether or not the Claimant would be able to avoid a BSB sanction and that she misled the Claimant about this: whether or not the BSB would impose a sanction upon the Claimant is not something that was in the control or knowledge of Ms Sikand. In any event, the Claimant did not remove the Two Tweets and there was no BSB sanction.

71.27 As to paragraph 65(h), Ms Sikand did not consider the Claimant's background sexual abuse to be relevant to the issues she had to decide. It is denied that Ms Sikand was dismissive about the Claimant's response to the Stonewall Complaint: she took it into account.

71.28 As regards paragraph 66, it is denied that Michelle Brewer, Louise Hooper, Tom Wainwright, Alex Sharpe, Shu Shin Luh, Stephen Clark and Stephen Lue were acting as authorised agents in the course of sharing personal views via the private texts, WhatsApp or email messages referred to at sub-paragraphs 66(a) to (e). It

is averred that Ms Harrison QC did not receive the WhatsApp message of the 22 September 2019 (see paragraph 66.1 above). Further:

71.28.1 Save as set out above, it is admitted that the quotations quoted in paragraph 66 (a) to (e) are correct but it is averred that they do not support the proposition that the individuals referred to therein believed that the Claimant's gender critical views were bigoted or otherwise unworthy of respect. What was of particular concern was the **manner** in which the Claimant expressed herself. In respect of Ms Hooper's communication with Michelle Brewer referred to at paragraph 66(a)(ii) of the Claimant's Further Information, Ms Hooper's actions were motivated by her concern that the article in the *Telegraph* (see above at paragraph 32) had appeared to suggest (incorrectly) that the LGB Alliance was part of or supported by Chambers.

71.28.2 To the extent that such communications referred to concerns about the LGB Alliance, it is noteworthy that the Charity Commission, in its decision dated 20 April 2021, had itself raised concerns about the way in which views were being expressed by the LGB Alliance concluding that some of the language used in the LGB Alliance's social media activity was "*inflammatory and offensive*" which "*appeared to involve, at times, demeaning or denigrating the rights (recognised by law) of others*" (see paragraph 67.13.3 above). The Charity Commission further concluded (at paragraph 39 of its decision) that: "*If LGB Alliance presents its view in such a way that respects the dignity of transgender persons and does not create an intimidating, hostile, degrading, humiliating or offensive environment, then this is capable furthering charitable purposes. If a charity promotes the rights of one or more groups whilst demeaning or denigrating the rights of others, then the Commission may consider taking regulatory action.*"

71.28.3 It is also noteworthy that CrowdJustice took down the Claimant's page, citing (on 1 July 2020) as a reason for doing so that "*we considered that some of the language used on the case page, taken either individually and/or considered in the full context of the page, was*

unnecessarily inflammatory and offensive. In our view, parts of the case page, unconnected to the facts of the actual legal case, could be considered to promote hate, abuse or harassment towards a minority community, in contravention of our terms."

71.28.4 With respect to Maya Sikand, no communications are referred to but, in any event, her actions demonstrate that she does not hold the view attributed to her: her report found that the Claimant's tweets were not "*transphobic*" or "*discriminatory*". The Two Tweets were of concern because they alleged criminal and/or disreputable conduct not because they articulated gender critical views.

71.28.5 As far as Mr Lue is concerned, he simply received an email from Ms Brewer and no inference can be drawn from having received an email (and any such inference would be contrary to the obvious respect and affection evidenced in his actual communications with the Claimant (see paragraph 23 above)).

71.28.6 In respect of Professor Sharpe, unlike the Claimant's case, Chambers were never aware of, nor ever received, any formal complaints about Professor Sharpe's tweets. In the Claimant's case multiple formal complaints had been received. Only the Claimant raised an issue about Professor Sharpe, privately, and she did not want to pursue a complaint. Had any formal complaint been received, then Chambers would have dealt with it in line with its complaint's procedure, in the same way that it did in the Claimant's case. It is denied that Professor Sharpe's tweets, which were tweeted in her personal capacity expressing her own views and not those of Chambers, were abusive.

71.28.7 No admissions are made as to what Gendered Intelligence did or did not publish. Gendered Intelligence were one of the NGOs that complained about the Claimant's 22 October 2019 Tweet. It is denied (if it be alleged) that Ms Brewer's actions amounted to any encouragement of others to complain.

71.29 As to paragraph 67, it is denied that it was appropriate to use the same "*legal reasoning*" (which is unspecified) in this case as that used in a response to another

case ("**Mr X**"). They were different situations but the approach taken was materially the same. In both cases, complaints were received by members of the public. Both complaints were treated as serious by Chambers. In both cases, Chambers investigated. In both cases, Ms Harrison QC approached Ms McGahey from the Bar Council for advice. In both cases, both members of chambers were asked to take down the tweets of concern. In both cases, they refused to do so. The points of difference were that Mr X was asked to take down the tweets even though there was a positive finding that there had been no breach of the BSB Code of Conduct and also that his website profile was summarily taken down from Chambers' website by Chambers. The Claimant was therefore not treated worse than Mr X. It is denied that the treatment of the Claimant was because of either her gender critical views or her sex or sexual orientation.

71.30 As to paragraph 68, it is admitted that the Claimant submitted a complaint against her colleague Stephen Simblet QC. It is denied that Mr Simblet QC's response to the Claimant's solicitor was abusive, unprofessional and included threats against the Claimant and her solicitors. Stephen Simblet QC was responding to the Claimant's solicitor in his own personal capacity as a data controller under the Data Protection Act 2018 and he was not responding in the capacity of a barrister or as a member of chambers or as an authorised agent of the Service Company and/or Chambers.

71.31 As to paragraph 69, Kathryn Cronin was appointed to deal with the Claimant's complaint against Stephen Simblet QC. It is admitted that the outcome rejected the Claimant's complaint. It is denied that Ms Cronin secretly investigated the Claimant "*without any counter complaint from Mr Simblet QC*". There was one investigation and one conclusion, which was that each side should apologise to the other. The comparison in paragraph 70 is denied. They were two different situations. The inference therein is denied. The comments by Mr Simblet QC and by the Claimant that were being investigated were not connected with gender critical beliefs. Ms Cronin's conduct was not connected with the Claimant's gender critical beliefs.

71.32 As to paragraph 70, it is not reasonable to infer that the reason for Mr Simblet QC's and Ms Cronin's behaviour was because they considered the Claimant's gender critical beliefs to be bigoted or otherwise unworthy of respect.

72 ~~Moreover and in any event, the aspects of the complaint which were upheld against the Claimant were not upheld because the Claimant espouses gender critical beliefs, but rather because the tweets contained allegations of criminal and/or disreputable conduct and there was no objective evidence presented to Ms Sikand that the content of the tweets in question was true. Furthermore, the independent view given by Ms McGahey QC on behalf of the Bar Ethics Committee was taken into account~~.

The Second Alleged PCP: (allowing Stonewall to direct Garden Court Chambers' complaints process)

73 It is denied that the ~~Second Respondent~~ Service Company (or any servant or agent of the ~~Second Respondent~~ Service Company) and/or ~~the Third Respondent~~ Chambers (or any servant or agent of ~~the Third Respondent~~ Chambers) applied a PCP of allowing ~~the First Respondent~~ Stonewall to direct its complaints process, whether in respect of the specific complaint made against the Claimant or more generally. ~~This again is a very serious and potentially defamatory allegation calling into question the impartiality of the complaints process. Again, the Claimant has no basis or evidence to support this assertion.~~

The Claimant has not articulated how the people referred to at paragraphs 71-74 allegedly allowed Stonewall to direct the complaint process.

73.1 It is denied that "*allowing the First Respondent to direct Chambers' complaints process*" is capable of constituting a PCP that applies across the board and is capable of causing a group disadvantage to women and/or lesbians.

73.2 It is denied that neither Chambers nor the individuals listed at paragraphs 71-74 operated the alleged PCP.

73.3 It is denied that Stephen Lue and Michelle Brewer were capable of acting as authorised agents because they were:

73.3.1 not Heads of Chambers;

73.3.2 not a member of the Management Committee;

73.3.3 not a party to any decision-making process authorised by the Heads of Chambers or Management Committee;

73.3.4 not employees;

73.3.5 not workers;

73.3.6 not in an employment relationship with the Second and/or Third Respondent;

73.3.7 not part of the decision-making process in connection with any of the alleged detriments;

73.3.8 in respect of Mr Lue, he was not even aware of the Stonewall Complaint nor the investigation process.

73.4 It is admitted that David de Menezes and Mia Hakl-Law were capable of being authorised agents but David de Menezes was not involved in the Stonewall Complaint nor the investigation nor the conclusion of that complaint. Mia Hakl-Law was not a decision-maker in respect of that complaint.

73.5 It is admitted that Maya Sikand, Stephanie Harrison QC, Judy Khan QC, Marc Willers QC and Leslie Thomas QC were capable of being authorised agents.

73.6 As to paragraph 75, it is denied that liaising with Stonewall regarding Chambers' status as a Stonewall Diversity Champion is evidence that the alleged Second PCP exists. Signing up to be a Stonewall Diversity Champion simply means agreeing with the values of respect for LGBTQ+ employees. In any event, there were no set individuals who were formally responsible for liaising with Stonewall.

73.7 Save as set out above, paragraph 76 is denied. It is denied that Shaan Knan was employed by Stonewall or was acting as an authorised agent for Stonewall on 23 October 2019. No admissions are made as to what Shaan Knan did or did not do.

73.8 As to paragraph 77, it is denied that Ms Sikand's Initial Draft Report was changed because she saw further tweets from the Claimant mentioning Stonewall. It is denied that the final report was co-authored by the Heads of Chambers (see above paragraph 67.14).

73.9 As to paragraph 78, it is denied that the Service Company and/or Chambers procured Kirrin Medcalf to complain against the Claimant (if this is alleged). There is no association or link between Kirrin Medcalf and the Service Company / Chambers (if it is alleged).

73.10 As to paragraph 79, it is admitted that the quotation quoted was said by Ms Sikand. In so far as it is suggested that Ms Sikand allowed Stonewall to direct the investigation or its outcome, that is denied. Ms Sikand conducted the investigation and drafted her report independently of Stonewall. She was not, in any event, the ultimate decision-maker in the complaints process (that was the Heads of Chambers). In the event, there was no disciplinary sanction taken against the Claimant – see paragraphs 49-52 and 67 above. Where a complaint is made, Chambers has a duty to carry out an investigation. Such an investigation was carried out and, ultimately, found that although likely that a breach of the BSB Core Duties and Social Media Guidance had taken place, no sanction was applied other than a request to take down the Two Tweets, which she refused to do and suffered no consequences because of such refusal.

73.11 Paragraph 80 is denied. It is further denied that Ms. Harrison QC misrepresented Ms McGahey QC's advice to Ms Sikand and the Heads of Chambers: she forwarded the advice to them and commented on the draft of the report on 11 December 2019 at 00:00 (see above at paragraph 67.12). It is further denied that Ms Harrison QC misrepresented whether the Claimant could substantiate the allegations in the Two Tweets to Ms McGahey QC. She provided relevant material referred to above at paragraph 67.8.

73.12 As to paragraph 81, the allegation in this paragraph is not understood and is incapable of being responded to because it is so vague and unsupported. All the clerks' email addresses are publicly available.

74 Further and for the avoidance of doubt, if the alleged PCP is intended to relate only to the handling of the specific complaint against the Claimant, which appears to be the case on the current pleading, it is denied that the same would be capable of amounting to a PCP in any event. It is further denied that a woman or a lesbian would suffer a particular disadvantage by the operation of the alleged PCP

75 ~~The First Respondent~~ Stonewall did not, in any sense, direct Chambers' complaint process. The ~~Second and Third Respondents~~ Service Company and Chambers take~~s~~ strong issue with this baseless assertion. Chambers received a complaint from ~~the First Respondent~~ Stonewall making allegations against the Claimant which Chambers was required to treat (and did treat) seriously in the same way it treated the other complaints although it is to be noted that Ms Sikand ~~intiailly~~ initially (wongly) ignored it. Thereafter:

75.1 the then Joint Heads of Chambers ultimately ~~only upheld two limited elements of the original complaint~~ took no action against the Claimant (other than asking her to delete the Two Tweets, which she chose not to do in any event);

75.2 the ~~majority of the~~ other allegations contained within the original complaint were not upheld against the Claimant (nor even deemed worthy of investigation);

75.3 the decision was taken after advice from the Bar Council Ethics Committee was obtained;

75.4 the outcome suggested within the complaint (the Claimant's expulsion from Chambers) was never remotely countenanced either by Maya Sikand or by the Joint Heads of Chambers or any one else;

75.5 Chambers did not even consider it necessary to report the Claimant to the BSB;

75.6 the only action taken against the Claimant as a result of the findings made ~~as a result of the complaint being partially upheld~~ was to request she delete the two specific tweets, which she choose not to do. No further steps were taken in consequence.

75.7 The Claimant did not take up offers made by the Joint Heads of Chambers to meet, to draw a line under these matters and to move forward. The Claimant did not raise a complaint or pursue any of these matters internally through Chamber's grievance procedures and before issuing these proceedings, despite being invited to do so.

Direct Discrimination

76 The Claimant's claim of direct belief discrimination is denied:

76.1 It is admitted that 'gender critical' beliefs are protectable beliefs. It is not admitted that all the beliefs (or parts thereof) described in paragraph 8 of the Claimant's

Further Information are properly characterised as 'gender critical' beliefs because the opening words of paragraph 8 identify the Claimant's belief as being that "*the First Respondent's campaigning on gender theory is sexist and homophobic*". It is denied that objecting to Stonewall's campaigning is a properly protectable belief.

76.2 It is denied that Chambers and/or the Service Company and/or the individuals named in the Claimant's Further Information subjected the Claimant to the less favourable treatment articulated in the detriments particularised in paragraphs 3-46 of the Claimant's Further Information (or at all) because of her beliefs.

76.3 The Claimant has not pleaded the relevant comparator pursuant to S.23 Equality Act 2010 and nor has she pleaded that she relies upon a hypothetical comparator.

76.4 Even if (which is denied) there was a difference of treatment, it is denied that such was causally connected to the Claimant's belief in the ***Madarassy*** sense.

76.5 It is denied that the matters relied upon by the Claimant in support of the first PCP at paragraphs 54-70 of her Further Information support any inference of direct belief discrimination.

76.6 Further, or in the alternative, it is denied that any detriment was caused to the Claimant.

Conclusion

77 ~~For the reasons set out the Tribunal has no jurisdiction to hear the claim against the Second Respondent. In any event, the claim in all its parts has no real prospect of success against either the Second Respondent or the Third Respondent. It is vexatious and amounts to an abuse of process. As set out above, the Second and Third Respondents makes an application for the claims against it them to be struck out; alternatively, that the Claimant pay a deposit and, in any event, that she pay the Second and Third Respondents's costs.~~

78 In the premises, the Claimant's claims (and each of them) against both the ~~Second Respondent and the Third Respondent~~ Service Company and Chambers are denied in their entirety and it is denied that the Claimant is entitled to the relief sought or any relief.

Irwin Mitchell LLP

4 September 2019

Amended on 2 November 2020

TMP Solicitors LLP

Re-Amended on 27 July 2021

TMP Solicitors LLP

Re-Re-Amended on 26 November 2021

From:	Kirrin Medcalf
To:	Colin Cook; Crime Clerks Mailbox; Emma Nash
Subject:	Concerns: Garden Chambers associated barrister - transphobia online, and targeting a trans member of our staff
Date:	31 October 2019 15:17:13

Dear Heads of Chambers: Leslie Thomas QC, Judy Khan QC, and Marc Willers QC

I am contacting you within my role as Head of Trans Inclusion at Stonewall to raise concerns regarding the barrister Allison Bailey and her association with yourselves.

Ms Bailey who goes by @bluskyeallison on twitter publicly states her association with Garden Court Chambers in her twitter bio. Via her twitter she has been making and retweeting multiple transphobic statements online, including:

- Retweeting threats of violence: " I am a walking hate crime" (https://twitter.com/y_hail/status/1184053827449827328)
- Liking and writing posts calling trans women men:
  - "because some men like performing femininity we are eliminating every safe space women have" (https://twitter.com/NoToMisogyny/status/1186268687466143749)
  - "I put the rights and safety of women before men who want to live as women" https://twitter.com/BluskyeAllison/status/1175363351129595904
- Writing tweets calling for trans people to lose their current legal rights:
  - "Women & girls have suffered, and continue to suffer, at the hands of predatory & abusive men. It is offensive & unacceptable to suggest, much less legislate, for a system whereby *any* man can declare himself lawfully to be a woman." (https://twitter.com/BluskyeAllison/status/1184847295768125442)
  - "tell the MoJ to stop sending men to women's prisons. Tell the NHS that no, men cannot self-ID onto women's wards." https://twitter.com/BluskyeAllison/status/1180665075851546625
- Writing posts that misgender trans women by saying they have "male privilege" https://twitter.com/BluskyeAllison/status/1183080781838716933
- Calling trans people and their campaign for equality "trans extremism" which is highly inflammatory language that encourages violent resistance https://twitter.com/BluskyeAllison/status/1176418398739341312

As well as specifically targeting Stonewall and specific members of our staff:

- **Targeting a woman who works for us (our trans empowerment manager) and calling her a man** "Morgan Page, a male" https://twitter.com/BluskyeAllison/status/1175739790181974017
- Calling our work on LGBT equality "gender extremism" (https://twitter.com/BluskyeAllison/status/1188863773727166466)
- accusing Stonewall of "appalling levels of intimidation, fear & coercion" (https://twitter.com/BluskyeAllison/status/1188365954255863808)
- spreading false information about Stonewall splitting (which is completely untrue) through retweeting these tweets: https://twitter.com/Marie07163544/status/1187047008302960642 & https://twitter.com/GabriellaSwerl/status/1187043177829675008).

Ms Bailey has also chaired Woman's Pace meetings which is regarded by many LGBT rights and anti-violence organisations to be a hate group.

These actions and their link to Garden Court Chambers, threatens the positive relationship yourselves have built with the trans community through holding events, round tables and meetings for trans people on trans equality & rights. Ms Baileys actions are also in direct conflict with the fantastic work your barristers, such as Alex Sharpe, have done on GRA reform.

Garden Court barristers have always been allies to trans people and to Stonewall, which is something we are very proud of and grateful for. However, for Garden Court Chambers to continue associating with a barrister who is actively campaigning for a reduction in trans rights and equality, while also specifically targeting members of our staff with transphobic abuse on a public platform, puts us in a difficult position with yourselves: the safety of our staff and community will always be Stonewalls first priority.

I trust that you will do what is right and stand in solidarity with trans people.

Thank you in advance for your time and consideration on this issue.

Yours sincerely,

Kirrin Medcalf
Head of Trans Inclusion

Pronouns: *They/Them & He/Him*
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We've come a long way, but the fight for equality is far from over. Join us. Search #ComeOutForLGBT

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