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

<u>The philosophical approach to sex and gender</u>

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.

Stonewall

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.

Garden Court and Stonewall – the December 2018 emails

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.

.

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".

Launch of LGB Alliance and Resulting Twitter Storm

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.

The TON Meeting 23 October 2019

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.

<u>The Response Tweet – Detriment 2</u>

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.

Sending the Response Tweet 24 October

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.

The website statement

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 <u>not</u> 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 <u>terfisaslur.com</u> 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 on a very quick read 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.

Comparative Complaint Handling

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.

EMPLOYMENT JUDGE GOODMAN

25th July 2022

JUDGMENT AND REASONS SENT to the PARTIES ON

. 27th July 2022 .

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 paragraphs 47 to 70 of the Claimant's Further and Better Particulars and paragraphs 70-72 of 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 paragraphs 71 to 81 of the Claimant's Further and Better Particulars and paragraphs 73 - 75 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 in time in respect of any act which occurred on or after 11 November 2019. 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 belieifs 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