

PRESS SUMMARY

Important note: This summary forms no part of the court’s decision. It is provided to assist the press and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at www.judiciary.uk and caselaw.nationalarchives.gov.uk, using the neutral citation number [2025 EWCA Civ 1662]. References in square brackets are to paragraphs of the full judgment.

ALISON BAILEY v STONEWALL EQUALITY LTD

Judgment handed down [18 December 2025][10.30am]

Introduction

1. This appeal concerned the scope and meaning of section 111 of the Equality Act 2010 (the 2010 Act) which prohibits a person from instructing, causing or inducing another person to discriminate against, harass or victimise another person, or attempting to do so, in the context of certain types of activity to which the 2010 Act extends (including the actions of barristers towards other tenants in chambers, see section 47).

Background

2. Ms Bailey, was at the material time a barrister at Garden Court Chambers (GCC) [1]. Ms Bailey holds the belief 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 sex, and is for the individual to identify. The ET found that Ms Bailey’s belief, sometimes referred to as ‘gender critical’, was protected by the 2010 Act. [13].
3. Stonewall is a charity committed to advancing the rights of gay, lesbian, bisexual and trans people. From 2015, it turned its attention to transgender issues and campaigned for gender recognition reform. It campaigned for inclusion for trans people as well as for gays, lesbians and bisexuals. It devised a Diversity Champions Scheme to promote inclusion for the groups it represented in workplaces. [14].
4. GCC signed up to the Diversity Champions Scheme in November 2018. Ms Bailey objected to that in an email she sent to all members of GCC. In the latter part of 2019,

Ms Bailey posted a number of comments on Twitter (now X) which reflected her gender critical views and her objection to Stonewall's trans agenda. [16]. GCC received a number of complaints about Ms Bailey's tweets and commenced an investigation [18]. The draft investigation report reflecting the first phase of that investigation concluded that none of Ms Bailey's tweets were transphobic or in breach of professional guidance [19]. On 31 October 2019, Kirrin Medcalf, head of trans inclusion at Stonewall, wrote to GCC complaining about Ms Bailey's tweets and on line statements (the "Stonewall complaint") [21]. GCC's investigation was reopened to look at that complaint and other tweets by Ms Bailey not so far investigated [22]. The final investigation report concluded that two of Ms Bailey's tweets were likely to have breached professional obligations. GCC asked Ms Bailey to take down those two tweets. Ms Bailey refused. No further action was taken by GCC. [23]-[24].

Tribunal proceedings

5. The Claimant brought proceedings against GCC in the Employment Tribunal ("ET"). The ET held that Ms Bailey's views about gender self-identity and the effect of Stonewall's campaign to promote self-identity were protected beliefs (for the purposes of section 10(2) of the 2010 Act) and that the two tweets were protected acts (for the purposes of section 27(1) of the 2010 Act). [25] The ET identified a number of problems with GCC's reopened investigation and held that the outcome of that investigation was a detriment to Ms Bailey amounting to direct discrimination and victimisation by GCC of Ms Bailey [26]-[27]. The ET awarded Ms Bailey damages of £22,000, including an award of aggravated damages [29]. There was no appeal by GCC [1].
6. Ms Bailey pursued a separate claim against Stonewall, arising out of the same events, on the basis that Stonewall had instructed, caused or induced discrimination contrary to section 111 of the 2010 Act [2]. She argued that the Stonewall complaint was a detriment to her as was the upholding of that complaint by GCC [30]-[31]. The ET decided that it was possible to read the Stonewall complaint as a threat that GCC should take some action against Ms Bailey if GCC wished to continue its relationship with Stonewall, but that was not the right way to read the Stonewall complaint, rather the correct reading was that the Stonewall complaint was a protest or an appeal to GCC as a perceived ally; neither Kirrin Medcalf nor Stonewall was looking for any specific

action against Ms Bailey, the Stonewall complaint was not the basis of GCC's decision to investigate the two tweets and did not play any part in the outcome of GCC's investigation [38]. The ET dismissed Ms Bailey's claim against Stonewall [35]-[37], [39].

7. Ms Bailey appealed to the Employment Appeal Tribunal (the "EAT"). The EAT dismissed the appeal [41].
8. The Claimant appealed to the Court of Appeal. The question in the second appeal was whether the ET was wrong to dismiss Ms Bailey's claim against Stonewall for causing or inducing or attempting to cause or induce GCC to discriminate against her and whether the EAT was wrong to dismiss the first appeal. That question turned on the construction and meaning of section 111(2) and (3) of the 2010 Act. [3].

The Court of Appeal Decision

9. The Court of Appeal (Lord Justice Bean, Vice President of the Court of Appeal Civil Division, Lord Justice Newey and Lady Justice Whipple) today dismissed all five grounds advanced by Ms Bailey on appeal. Lady Justice Whipple wrote the lead judgment with which the other members of the Court agreed. [97]-[99].
10. The Court considered relevant case law on the approach to and meaning of section 111 of the 2010 Act. [59]-[66].
11. The Court dismissed Ms Bailey's challenge to the facts as they were found by the ET **(Ground 2, part)** [49].
12. The Court considered Ms Bailey's case that Stonewall had caused or attempted to cause discrimination by GCC against Ms Bailey under section 111(2) and (8) of the 2010 Act **(Grounds 1 and remainder of Ground 2)**.
13. The first headline question was what the ET had decided and why. The core of the ET's reasoning was contained at para 377 of its Decision. Within that paragraph, the ET found that the Stonewall complaint was "the occasion of the report, no more" [68]. The notion that a person's actions can be the occasion of subsequent loss without in law

causing that loss is well established in the law of tort. A distinction can be drawn between the occasion of a loss and an act which gives rise to liability. The ET here was drawing that distinction and deciding that Stonewall's actions were not the effective cause of GCC's discriminatory report. [70]. The dominant and effective cause of the detriment to Ms Bailey was GCC's investigation, not anything done by Stonewall. That flowed from the ET's findings that Kirrin Medcalf did not want action to be taken against Ms Bailey and that Stonewall had nothing to do with the GCC investigation or the outcome of it. There were a variety of legal routes to that conclusion but the most obvious was *novus actus interveniens*, ie, that GCC's actions and omissions in the course of the investigation broke the chain of causation. That was what the ET concluded. [71]

14. The second headline question was whether that conclusion was open to the ET on the law and/or the facts. The Court held that once 'but for' causation had been established, the question was whether, having regard to the statutory context and all the facts, it was fair and just and reasonable to find the defendant liable, with a focus at that stage on the various legal ways (or labels) by which liability may be limited [79]. It was open to the ET to conclude that the acts of GCC broke the chain of causation between the Stonewall complaint and the discrimination suffered by Ms Bailey in the outcome of the investigation by GCC [81]. The Court rejected Ms Bailey's submissions that this analysis was precluded by section 111(2), alternatively the ET's conclusion was perverse [81]-[82].
15. The ET was also entitled to find that Stonewall had not attempted to cause discrimination against Ms Bailey [84].
16. The Court next considered Ms Bailey's case that Stonewall had induced or attempted to induce GCC's discrimination against Ms Bailey (**Ground 5**). The Court held that Ms Bailey's arguments could not get off the ground in light of the ET's findings of fact [88]. The assertion of attempted inducement failed for the same reasons [89].
17. The Court rejected two complaints by Ms Bailey about the EAT's reasoning. Neither point was material to the outcome anyway [93]. (**Ground 3**).

18. The Court agreed with the EAT that there had been no reason to remit to the ET [96].
(Ground 4).

19. The appeal was dismissed [97].

___END___