

## **Sexual jealousy not necessarily sex discrimination**

**March 2008**



A female employee had begun a relationship with her solicitor employer. He was funding her attending university and when he saw her apparently having a relationship with a male student he became jealous and dismissed her the same day. The tribunal which heard the case concluded that she was both unfairly dismissed and had been subject to sex discrimination because she would not have been dismissed "but for" the fact that she was a woman.

The EAT applied the House of Lords approach in Khan, namely that the question cannot be answered by the "but for" test alone, the tribunal must look for and examine the reason or motive for the treatment in question. The facts were that the dismissal was because of the breakdown in the relationship between the employee and the employer, not because of the employee's sex.

The EAT also criticised the tribunal's failure to formulate a hypothetical comparator. The EAT stated that a male homosexual employer and a male homosexual employee would have been the correct comparator and that such an employer would have reacted in exactly the same way as the employer in this case on discovering that the employee was apparently having a relationship with another person.

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