



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5 **Case No: S/4104213/2016**

**Hearing Held at Edinburgh on 27 February 2017**

10 **Employment Judge: I McFatridge**  
**Members: Mr GD Buchanan**  
**Ms M Watt**

15 **Mr Martin Alexander**

**Claimant**  
**In person**

20 **Student Awards Agency for Scotland**

**Respondents**  
**Represented by:**  
**Mr Carey**  
**Solicitor**

25 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

30 The unanimous Judgment of the Tribunal is that the claimant was not unlawfully  
discriminated against by the respondent. The claim is dismissed.

**REASONS**

35 1. The claimant submitted a claim to the Tribunal in which he claimed that he had  
been unlawfully discriminated against on grounds of sex by the current  
respondents who are the Student Awards Agency for Scotland. He also initially  
claimed against Pertemps an employment agency. He also claimed a contractual

notice payment from Pertemps. Both respondents denied the claims. A Preliminary Hearing was held at which it was decided that the discrimination claim against Pertemps should be dismissed. The contract claim was thereafter compromised between the parties and withdrawn. The remaining claim proceeded  
5 against the current respondents only. At the outset of the Hearing the respondents raised a jurisdictional issue for the first time. It was their position that the Tribunal had no jurisdiction to hear the claim against them. The details of this issue are set out below. Although the jurisdictional issue was raised somewhat late in the day, a fact acknowledged by the respondents' agent, the Tribunal considered that given  
10 the principle that all Tribunals must be alert to ensure they act *intra vires* at all times and do not go beyond their jurisdiction it was appropriate for the Tribunal to deal with the jurisdictional issue before dealing with any other aspect of the claim. The respondents' representative thereafter made a legal submission which was based largely on a written submission which he handed to the Tribunal. The  
15 claimant indicated that as a lay person he felt that he could not contribute much to the discussion but made a short submission to the effect that it appeared to him that both of the parties to this case seemed intent on avoiding responsibility. The Tribunal then retired to consider matters and after a short time we indicated that we did not consider that the respondents' jurisdictional challenge had any merit and it  
20 was our view that the Tribunal did have jurisdiction to hear the case. We gave brief reasons at the time and have set these out in further detail below. Following this the claimant gave evidence on his own behalf. Evidence was then led on behalf of the respondents from Mr S McIver a Security Manager with the Scottish Government Security Team, Fiona Wherret a Security Administrator within the  
25 same team and Miss K McConnell, another Security Administrator within this team. A joint bundle of productions was lodged by the parties. On the basis of the evidence and the productions the Tribunal found the following factual matters relevant to the claim to be established.

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### **Findings In Fact**

2. The respondents to this claim are the Scottish Ministers who amongst other things are responsible for the Student Awards Agency Scotland. The respondents have a framework agreement with Pertemps Recruitment Partnership Limited relating to the supply of temporary administrative staff services in the East Region and this agreement was lodged (pages 75-208). In general terms Pertemps act as an employment agency who employ staff who are provided to the end user who is the respondents. Pertemps employ individuals on the basis that they are available for assignment to end users. They are then paid by Pertemps for any work they do for the end user. The claimant became an employee of, and signed a statement of terms and conditions with Pertemps on or about February 2016 (pages 257-260). The terms and conditions applying to employees such as the claimant were contained in a document entitled Flexible Employee Handbook which was lodged (pages 209-256).
3. The claimant's contact at Pertemps was an individual adviser called Adam Young. On or about 4 March Adam Young sent the claimant an e-mail indicating that he might have a possible role for him with the Student Awards Agency Scotland. This appeared to have followed an approach from SAAS to Pertemps indicating a future requirement for administrative staff.
4. The claimant indicated that he was interested in the role and asked for his name to be put forward. As part of the respondents' requirements under the framework agreement Pertemps were required to make various checks on potential contract workers such as the claimant. These included checking identity and address, checking any qualifications which might be relevant and also, where relevant, carrying out a criminal records search using Disclosure Scotland. The post with SAAS required individuals wishing to be considered for it to complete a basic disclosure. The claimant applied for this at some point in March and the document arrived on 4 April. A copy of the claimant's disclosure form was lodged (page 265). It disclosed that the claimant had a conviction at Selkirk Sheriff Court on 24 July 2012 for a contravention of the Animal Health and Welfare (Scotland) Act 2006 Section 19(2). It noted that the disposal was that the claimant had been sentenced to a Community Payback Order in respect of three months' unpaid work requiring

him to complete 100 hours within the three months. The claimant contacted Mr Young on receipt of the form and had a brief discussion with him about the offence.

- 5 5. Section 19(2) of the Animal Health and Welfare (Scotland) Act 2006 provides that

*“A person who is responsible for an animal commits an offence if*

*(a) the person causes the animal unnecessary suffering by an act or omission, and*

10 *(b) the person knew, or ought reasonably to have known, that the act or omission would have caused it suffering or be likely to do so.”*

15 It is probably as well at this stage to set out the claimant’s position regarding this offence.

20 6. The claimant’s position is that in the period up to 2011/12 he was for a time in an abusive relationship with his female partner. The claimant’s position is that during this period he was subject to domestic violence and other abuse by his partner. With regard to the offence his position is that his partner had purchased two dogs during the course of the relationship but did not look after them properly. A final incident of abuse had taken place where the claimant was threatened by his partner with a knife and one of the dogs defended him. The claimant then fled the abuse to the Scottish Borders along with his dog. Whilst there a concerned member of the public noticed that the dog appeared to be in very poor condition and reported him to the SSPCA. This led to his prosecution. The claimant’s position was that when he went to court he advised his solicitor of the background of abuse however his position was that his solicitor did not believe him and told him to plead guilty. The claimant indicated that he pled guilty against his better judgment.

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7. It is also relevant that since then the claimant has been an active campaigner to highlight the issue of male victims of abuse and is a member of an organisation

called Abused Men In Scotland (AMIS). He has met with government ministers and senior police officers as a result of his work with this group and has also told his story at various conferences on the subject.

- 5 8. When discussing the offence with Mr Young the claimant gave him some brief details but did not go into detail regarding the abuse which he had suffered.
9. The respondents' policy is that applicants for a position as contract worker are required to go through a basic vetting process which is supervised by a team within  
10 the Scottish Government Security team known as the Baseline Team. This team carries out pre-employment checks for the Scottish Government. As noted above individuals who are applying for temporary roles through Pertemps have their basic vetting details confirmed by Pertemps. The security standard for such vetting is contained in a document which was lodged (pages 413-460) entitled "HMG  
15 Baseline Personnel Security Standard". One of the things which is required is a criminal records check which has to be dated within a 12 month period. In terms of the framework agreement much of the actual work on the security vetting is carried out by Pertemps. They are expected to have seen a photo ID of the candidate, to have carried out the criminal records check and seen proof of address and also a  
20 non-photo ID. Once this is done a Baseline Personnel Security Standard Verification Record is completed by Pertemps and submitted to the Scottish Government along with various other forms. The verification record for the claimant was lodged (pages 461-463). This was completed by Mr Young. Where a candidate had a criminal records check which had disclosed an unspent  
25 conviction the respondents anticipated that this would be mentioned in Section 4 of this document. Mr Young did not say anything about the conviction in Section 4 but simply completed "not applicable" in this section. Along with this document was sent a document setting out further details of the claimant including the Criminal Record Declaration. This contained a section which had to be completed  
30 yes or no as to whether the candidate had an unspent conviction. The box was ticked for yes but no details were given in the section below which required to be completed if the answer was yes.

10. When the document in respect of the claimant first arrived at the Baseline Security Team it would appear that no-one noticed these discrepancies and Pertemps were advised that the claimant was one of those who had passed verification and could therefore start employment.

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11. This was an error. What ought to have happened was that the circumstances of the claimant's conviction ought to have been individually assessed before a decision was made as to whether or not the claimant could be offered an assignment. For a role such as the role with SAAS all the respondents were looking for was to ensure that the terms of the conviction were not such as would put future colleagues of the candidate at risk. Clearly different criteria would apply for different posts.

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12. Given that the matter was not initially noticed Pertemps advised the claimant that he had been cleared for the post. Shortly thereafter it would appear that the respondents noticed their error and advised Pertemps that they would require further information about the conviction before the claimant could be "cleared" to be offered the assignment.

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13. On or about 4 or 5 April Mr Young first of all telephoned the claimant to advise that he had been cleared for the assignment and thereafter called him back to say that he had not been cleared but required to provide some further information regarding the conviction. Mr Young spoke to the claimant and the claimant sent Mr Young a short e-mail on 5 April 2016. The text of this was as follows:-

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*"Hey Adam,*

*Sure thing.*

*Just before this happened I was victim in an abusive relationship. Me and the two dogs were in terrible health due to the lack of care and the level of control my ex partner had. Mack was his name and he tried to protect me from my ex partner on the day where she held a sharp object to my throat. That next day I fled to the Scottish Borders and I took the dog with me as he was my dog. I done my best to get Mack's and my*

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*own life back on track but it was already too late, it literally took a week or two before they took him away from me. Nobody believed I was abused which led to the conviction.*

*Just further to this I have petitioned to have it removed and have done a fair bit of charity work with AMIS sharing my story and fighting for equality in the understanding of male victims of abuse.*

*If you need anything else let me know.”*

On 6 April Mr Young sent an e-mail which incorporated the claimant’s comments on the conviction to Debbie Marshall of SAAS.

14. Debbie Marshall responded later that morning stating

*“Hi Adam*

*Thanks for your email and enclosure.*

*We don’t foresee there being an issue on this occasion however we would like to run it passed our Security Branch tomorrow and I will contact you as soon as possible to let you know the situation.*

*Thanks again*

*Debbie”.*

It would appear that for whatever reason this e-mail was not in fact forwarded to Fiona Wherret who was the Administrator at the respondents’ Baseline Security Team who was dealing with the matter.

15. Over the next few days it would appear the claimant became more and more anxious as he was hearing nothing back about the job. Ms Wherret was also keen to have the matter resolved and telephoned Pertemps to say that she needed further information. At this point Mr Young indicated that the claimant wished to speak to the security team himself and Ms Wherret advised that she had absolutely no difficulty with this. Mr Young then advised the claimant of this and the claimant telephoned Ms Wherret. The alleged contents of this call are at the root of the claimant’s case of sex discrimination. The Tribunal’s factual finding on the

evidence was that we accepted Ms Wherret's version of this conversation. She indicated to the claimant that she simply required further details of the conviction since the respondents were under a duty of care to ensure that the claimant's colleagues were not placed at risk. The claimant then spoke at great length about the abuse he suffered and the general problem of male victims of abuse and the way they are treated. The call was much longer than Ms Wherret had anticipated. It was overheard both by Mr McIver who was her manager and also by Ms McConnell who was another Security Administrator who shared the same office. Ms Wherret did not ask the claimant at any point for details of the abuse he had suffered although it would appear the claimant provided these. At the end of the call the matters were left with Ms Wherret asking the claimant to put what he had told her in an e-mail and send it.

16. Following the conversation Ms Wherret had a conversation with Ms McConnell where she told Ms McConnell that an e-mail would be coming in at some stage from the claimant and once it was received it should be passed on to Ms Wherret. Ms Wherret also discussed matters with Mr McIver and agreed with him that she should make a note of the call since it had been a rather unusual call. Ms Wherret typed a call note which was lodged (page 497). The Tribunal considered this to be an accurate record of what took place on the call. Ms Wherret also decided that on the basis of the information provided about the conviction there was no risk to the claimant's potential colleagues should he be appointed and SAAS were advised that they could proceed with the appointment.

17. In the meantime the claimant sent an e-mail to Mr Young for onward transmission to SAAS. The e-mail was lodged (pages 281-282). He set out his version of the telephone conversation and indicated that he considered this to be "*a biased act*". It is unclear whether this e-mail was ever passed on to the Security Baseline Team at the Scottish Government or not but in any event the claimant was appointed to the post and commenced work on 13 April 2016.

18. The claimant's position is that he had become very upset by the alleged discrimination which he endured in the phone call. The claimant suffers from an eating disorder and immediately commenced binge eating again. He found

difficulty sleeping. He developed feelings of resentment towards the Scottish Government. He attended training during his initial time with the respondents. On 28 April he did not attend work. He attended work on 29<sup>th</sup>. He did not give the true reason for his absence but stated untruthfully that he had suffered a bereavement. He did not turn up for work on 2 or 3 May and did not contact the respondents. He had also been late for work on many of the mornings he had turned up for work in the period 13-26 April. On 3 May the respondents decided to terminate his assignment. An e-mail was sent by Kieran O'Connor EDM Manager to Debbie Marshall on 3 May 2016 setting out the background to this decision. It was lodged (page 287). It is probably as well to set this out in full.

*“As we discussed earlier, Martin has not turned up this morning and as of the time of this e-mail I have had no contact from him to explain his absence. Martin was provided with my desk number shortly after joining the team and was told to use this if he needed to call in sick or otherwise inform us he could not make work.*

*This follows his absence on Thursday last week which was the result of a family bereavement. Martin did not contact us on Thursday, instead he explained his absence upon arrival at work the following day. I only briefly spoke to Martin on Friday as he was in training for the full day, but I made it clear that the training could be re-arranged if he needed to be elsewhere or did not feel up to going. While he mentioned that he was going to the Borders to be with family over the weekend, he did not indicate that this would prevent him attending work today.*

*Martin has failed to arrive at the appointed start time of 08.30 on a number of occasions since joining the team. I e-mailed him along with our other three Pertemps colleagues to clarify that the expected start time for this assignment was 08.30, but that I was happy to accommodate anyone who wanted to start earlier. Martin has indicated that he is happy to work later but unfortunately this is not compatible with the needs of the team.*

*Prior to joining the team Martin's attitude in the corporate induction was reported to be poor with his attitude considered to be dismissive,*

negative and resentful. Martin expressed his dissatisfaction at being assigned to EDM, making it clear that he thought he should be joining the contact centre along with the rest of his training group. In light of Martin's comments I have enquired with Audrey Clark whether he could be re-deployed within the contact centre but unfortunately this is not something Audrey is prepared to consider.

He has seemed distant throughout the time he has spent in the team and has reported on at least one occasion directly to me that he hadn't been to sleep the previous night (I believe this was due to contacting his partner who lives abroad but I did not address this as I feel that matters outside work fall to Pertemps to deal with, but it gave me cause for concern).

I am sorry that Martin has suffered a bereavement and would certainly not expect him to attend work until he feels he is fit to do so. However, even taking account of the circumstances which have led to his absence I do not believe Martin has made appropriate efforts to maintain conduct with us as his place of work. When considered alongside the points raised above, I would recommend that Martin's assignment with EDM is now terminated."

### **Observations on the Evidence**

19. This was a case which very much turned on issues of credibility and we regret to say that we did not find the claimant a credible or reliable witness. On the other hand we found the three respondents' witnesses to be perfectly credible witnesses who were happy to answer questions carefully and honestly. We found the respondents' witnesses to be both credible and reliable in giving their evidence. The claimant's position in evidence was that on speaking to Ms Wherret she had pressed him for details of the abuse which he had suffered from his partner. His position is that as a result of this pressure he had felt constrained to delve into areas which he had previously psychologically blocked off including allegations that he had been sexually assaulted. His position was that during this conversation he had asked Ms Wherret whether she would be asking similar questions of a female

victim of abuse and Ms Wherret had answered to the effect that she would not. In the claimant's view, this was of itself sufficient to demonstrate that he was being treated less favourably than a woman who had been a victim of abuse would be treated in similar circumstances. The claimant gave evidence to the effect that it was of particular importance to him to get this job since he was looking to save money so as to be able to travel to the United States in May where he intended to live with his fiancée. His evidence was that as a result of the discrimination which he suffered he had felt everything come back and that memories which he had suppressed were brought to the surface. He said he had immediately started binge eating and had sunk into depression. He stated he could not sleep. He accepted that he had not attended work on 28 April because he could not sleep but had lied about it saying that he had had a bereavement. His position was that since he stopped working for SAAS he has been incapable of finding work anywhere else. His relationship with his fiancée ended and he blames this on the "discrimination" he suffered. He also indicated during the course of his evidence that he had fallen out with his flatmate and told him to leave. He lodged certain excerpts from his medical records indicating that he had consulted his GP and that he was suffering from anxiety states and eating disorders.

20. It was clear from the claimant's evidence that he feels very strongly that he was a victim of abuse and that male victims of abuse such as him are not treated appropriately by society in general and by the Scottish Government in particular. It also appeared to the Tribunal that he had a tendency to overdramatise albeit we accepted that this may well be a symptom of the depressive illness from which it appears he suffers. We rejected the claimant's account of what took place in the telephone call for a number of reasons. The first of these was that it seemed extremely unlikely that Ms Wherret would ask him detailed questions about the abuse which he had suffered given that prior to the call Ms Wherret knew absolutely nothing about his allegation that he had previously suffered abuse by his partner. It appeared to us much more likely that, as Ms Wherret said, the claimant had raised the matter and had done so in a way which she considered to be inappropriate. We also considered that Ms Wherret's note of the phone call which she took within an hour of the call ending was likely to be accurate. It was written

before Ms Wherret knew of these proceedings. When asked why he had not made a similar note the claimant's position was that he understood all calls could be recorded by the government. It was of some concern to the Tribunal that, when asked to elaborate, his view appeared to be that the Scottish Government can and do listen in to any telephone call they wish and it appeared to be his strong belief that this call would have been recorded even although there was absolutely no evidence to this effect. In addition we considered that the evidence of Mr McIver and Ms McConnell was entirely consistent with that of Ms Wherret. It appeared to us that the overwhelming likelihood was that Ms Wherret had been trying to obtain some further detail regarding the conviction so that the respondents could fulfill their duty of care to other future colleagues. This was a fairly routine thing for Ms Wherret and it would appear that it was the claimant who raised irrelevant matters in a disproportionate way. We felt that it was extremely unlikely that Ms Wherret would have said that she was only asking these questions of the claimant because he was a male. On the issue of corroboration we note that at the preliminary hearing the claimant had indicated that he would be calling Adam Young as a witness. Adam Young was in fact present at the Tribunal on the day of the Hearing but the claimant decided that he did not wish to call him. The claimant had also indicated in previous correspondence that his flatmate had overheard his side of the conversation but he did not call his flatmate to give evidence. When asked why not he indicated that he had fallen out with his flatmate as a result of his depression. It was clear from some of the claimant's correspondence in the matter that he feels very strongly about the issue. For example he has threatened to burn down Saughton House in one of his letters. We did not feel this added to his credibility.

21. At the end of the day the Tribunal was prepared to accept that within the mind of the claimant something happened during his telephone call with Ms Wherret which upset him. We were not however in a position to find that Ms Wherret made the discriminatory remarks which were alleged and indeed the likelihood is that the claimant has misinterpreted perfectly innocuous and standard statements made by Ms Wherret doing a job which she has been doing for a number of years.

## **Discussion and Decision**

### **Jurisdictional Issue**

5 22. At the beginning of the Hearing the second respondents raised a jurisdictional  
issue. The matter is set out more fully in the respondents' written submission  
however to summarise the respondents note that this is a claim for direct sex  
discrimination and that the discriminatory act in question is alleged to have  
10 occurred during the telephone conversation between the claimant and Ms Wherret  
on 8 April 2016. They note that the claimant's assignment to the respondents  
began on 13 April 2016 and was terminated on 29 April 2016. They point out that  
the discriminatory act occurred before the commencement of the claimant's  
assignment to the respondents and they state that as a result the subject matter of  
the alleged discriminatory act therefore fell outside the Tribunal's jurisdiction.

15 23. We were referred by the respondents' representative to the relevant statutory  
provisions. It appeared to us that the key issue in determining jurisdiction was to  
look at the various work situations which give rise to duties under the 2010 Act  
which are set out in part five of the said Act. We agreed with the respondents that  
20 the specific provision which relates to the respondent in this case is set out in  
Section 41. It is probably as well to set out the terms of Section 41 in full.

*“(1) A principal must not discriminate against a contract worker -*

25 *(a) as to the terms on which the principal allows the worker to do  
the work;*

*(b) by not allowing the worker to do, or to continue to do, the work;*

*(c) in the way the principal affords the worker access, or by not  
affording the worker access, to opportunities for receiving a  
benefit, facility or service;*

30 *(d) by subjecting the worker to any other detriment.*

*(2) A principal must not, in relation to contract work, harass a contract  
worker.*

*(3) A principal must not victimise a contract worker –*

(a) *as to the terms on which the principal allows the worker to do the work,*

(b) *by not allowing the worker to do, or to continue to do, the work;*

(c) *in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;*

(d) *by subjecting the worker to any other detriment.*

(4) *A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).*

(5) *A “principal” is a person who makes work available for an individual who is –*

(a) *employed by another person, and*

(b) *supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).*

(6) *“Contract work” is work such as is mentioned in subsection (5).*

(7) *A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).”*

20 24. It appeared to the Tribunal that the key issue is first to determine is the point in time at which the respondent becomes bound by the duty to not discriminate against contract workers. It was the Tribunal’s view that the claim being made by the claimant was one which fell within the terms of Section 41(1)(d). The claimant’s position was that the respondents had discriminated against him directly by treating him less favourably than they would treat a woman. This is a detriment and would be covered by Section 41 if the respondents could be regarded as a principal and if the claimant could be regarded as a contract worker. Whilst we understand the respondents’ position and are aware that other workers have indicated that there is a potential anomaly in this situation the Tribunal was of the view that Section 41 does apply to the current situation. We were referred by the respondents to the case of ***London Borough of Camden v Pegg & others*** ***UKEAT/0590/11/LA***. It was considered this was authority for the position that the duties under Section 41 commence once a contract worker is assigned to a

contract. We do not accept that this correctly sets out the ratio of that case. What the case states is that if a worker is assigned to a contract then clearly Section 41 applies. It does not however state that Section 41 cannot apply before the worker is assigned.

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25. The Tribunal's view is that Section 41 does apply. We note that a principal is a person who makes work available. A principal might make work available prior to the individual being assigned. We note that a contract worker is simply described as an individual supplied to a principal. It appears to the Tribunal that there is nothing here which makes it clear that obligation only starts when the contract worker having been supplied to the principal enters into some kind of formal assignment. The Tribunal's view is that in fact the express terms of Section 41 do apply to the situation here. We think that that is particularly the case where, as here, there is a framework agreement or contract between the principal and the employment agency (the "other person") in relation to the supply of individuals. The nexus which arose between the parties was where the respondent was making work available via Pertemps and Pertemps were in the course of supplying the claimant to do such work in furtherance of the framework agreement. The situation falls within the terms of s41 and the Tribunal has jurisdiction.

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26. If we are wrong in this and it is considered that the legislation is ambiguous then we note that the Equality Act 2010 is, in part, the UK's implementation of the EU Equal Treatment Directive 2006/54/EC on the implementation and the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation which is a recast version of previous directives. We also note that the principle of equal opportunities and equal treatment is included in Article 141(3) of the European Treaty and Articles 21 and 23 of the Charter of Fundamental Rights of the European Union. We are under an obligation where we can, to interpret domestic legislation in light of the European legislation on the subject. With this in mind it appeared to the Tribunal to be incontrovertible that it would not be in line with any possible interpretation of the European Directive for us to make a finding that a potential employer in the circumstances of the present case were not under an obligation to avoid discriminating against individuals

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seeking an assignment. One only has to consider the opposite case for a moment to see how unreasonable it would be to rule otherwise. If Section 41 did not cover the respondents in this case then any potential end user would be free to discriminate against potential applicants for a post within their vetting procedure. They could decide not to take on staff of a particular gender or racial group. They could decide to apply completely different criteria to one gender over another. They could decide they were not prepared to accept potential contract workers of a particular sexual orientation. In the view of the Tribunal such an anomaly would be contrary to European law and the Tribunal would only be in a position to implement it if it was clearly and unambiguously required by the domestic legislation. As we have found the domestic legislation does not clearly and unambiguously state this but in fact says the opposite or is, at worst, ambiguous. In the circumstances, even if we had found Section 41 to be ambiguous the Tribunal considered that Section 41 would still apply to the respondents in this case and that the Tribunal had jurisdiction.

### **Substantive Case**

27. The claimant's claim was that he had been directly discriminated against by being treated less favourably than a woman would have been treated in the same situation. He would not have been asked intrusive questions about his abuse if he were a woman. He made specific reference to the alleged comment by Ms Wherret that she would not have asked these questions of a woman in the same situation. Our view on the evidence was that Ms Wherret did not make that statement to the claimant. In addition our view on the evidence was that Ms Wherret did not ask the claimant intrusive questions about the abuse which he had suffered. In the circumstances there are no primary facts from which the Tribunal could draw an inference of discrimination and the claim must therefore fail. We did not understand the claimant to be stating that the decision to terminate his contract was tainted by discrimination and in any event he led no evidence on the subject. Our view was that the reasons for the claimant's termination were set out in the letter from Mr O'Connor at P287 and did not involve any unlawful discrimination. The claim is dismissed.

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Employment Judge: Ian McFatridge

Date of Judgment: 13 March 2017

Entered in register: 16 March 2017

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