



## The long road ahead for Tesco store workers

Philip Cameron

23rd June 2021

[LinkedIn](#)

[Twitter](#)

[Email](#)

[Print](#)

In March we reported on the [Supreme Court decision in the Asda equal pay case](#). In Asda, the Supreme Court confirmed that thousands of women in Asda retail stores could compare themselves against the predominantly male employees in distribution, who were better paid.

This time, another nationwide supermarket, Tesco, has been the subject of a European Court of Justice decision on equal pay, which has the same effect, i.e. the pool of potential claimants in equal value claims has been widened.

In this case, both male and female employees who work in Tesco stores brought proceedings in the employment tribunal for equal pay for equal work comparing themselves to male or female colleagues in Tesco distribution centres (the same comparison in Asda save that the claimants were female only in Asda). The claims brought by the men were stayed as their outcome would depend on the outcome of the claims brought by their female colleagues (i.e. if the females succeeded, their pay would be increased to the same as that of males in the distribution centres; that would mean the males in the retail stores would be paid less than their female store colleagues, so would be able to bring an equal pay claim against their female colleagues on that basis).

The basis of the referral to the ECJ for a preliminary ruling was under Article 157 of the Treaty of the Functioning of the European Union. Article 157 provides that men and women must receive equal pay for equal work.

First, the ECJ had to rule whether it had jurisdiction to deal with a request for a preliminary ruling on this matter given that the UK has left the EU. The ECJ ruled that it did have that jurisdiction. Article 157 remains directly effective in the UK and UK employees can rely on Article 157 where it gives rise to a claim that is not otherwise available in domestic legislation.

The important point in this case is that the ECJ found that Article 157 had direct effect in relation to work of equal value as well as equal work. In this case, although workers were based in different establishments, the pay of those workers could be compared because they could be attributed to a single source, and a comparison, as in Asda, could be made between staff in the stores and staff in the distribution centres.

This is merely the start and does not mean that the claimants will succeed: this is an entry point to claims and the claimants must now seek to establish the necessary elements of an equal pay claim. These claims often takes years to reach conclusion.