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FLASH REPORT

Country:	United Kingdom
Title:	<i>Asda Stores Ltd v Brierley</i> CA [2019] EWCA Civ 44
Date:	11 February 2019
Expert:	Grace James
<u>Context</u>	
Issue at stake:	Comparison in equal pay cases
Ground of discrimination:	Sex
Source:	National court decision
Field:	Equal pay
Applicable law:	The Equality Act 2010 / Equal Pay Act 1970

Content: This case concerns an equal pay claim by thousands of female supermarket staff wanting to compare themselves with men working in a network of warehouses and distribution centres. The latter are operating under a different management structure. In this appeal by Asda Stores Ltd, the Court of Appeal held on 31 January 2019, that common terms were observed and that, although satisfied under national laws, the claimants would also be entitled to draw a comparison under EU law as there was a 'single source'. Hence, the claims can proceed.

Key points of analysis: The Court of Appeal explained the established test for 'common terms' necessary for a claim under the Equality Act 2010 S79: Underhill, LJ summarised the existing authorities (*Levertton v Clwyd County Council* [1989] AC 706, *British Coal Corporation v Smith* [1996] ICR 515 and *North v Dumfries and Galloway Council* [2013] UKSC ICR 993) and dispelled any confusion around whether and with whom comparisons should be made for the purpose of S79(4) of the Equality Act (confounded by a re-wording of that section from that which was found in the original Equal Pay Act of 1970 (s1(6)), following the enactment of the Equality Act in 2010). The Court of Appeal explained the test in hypothetical terms and stated that it was unnecessary for claimants to provide evidence of actual terms of employment vis-à-vis their comparators.

Further information / links:

<http://employmentlawbulletins.com/wp-content/uploads/2019/01/Asda.pdf>.