

Invisible Disabilities Disabled Person – a legal or medical question ?

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Invisible / Hidden Disabilities

- Depression, Mental Health issues, Learning Disabilities, Dyslexia , Dyspraxia
- PTSD
- Diabetes
- Epilepsy
- Autism / ASD & Asperger Syndrome

Hidden Disabilities

- Most often - per the legal definition – one or more impairment(s)
- Many of these labels, “short hand” for a set of symptoms which vary significantly
- Distinction between the impairment(s) & the diagnosis (the medical definition)
- Not self evident / easy to identify

Hidden Disabilities

- Not always evident from the outset
- When advising, be aware of potential for employment concern(s) to have underlying cause:
 - Conduct concerns
 - Performance issues – errors, lack of concentration
 - “Personality clashes”
- Or management process/workplace concerns to trigger symptoms

An Example

Nally v Freshfield Care Limited (ET 2401774/14

- *“The Claimant was dismissed for two incidents where he appeared to lose his temper, be rude or difficult.”*
- *“The respondent should have known from their own knowledge someone suffering from PTSD or anxiety could behave in this way ... he was indicating a connection between his behaviour and his condition”*

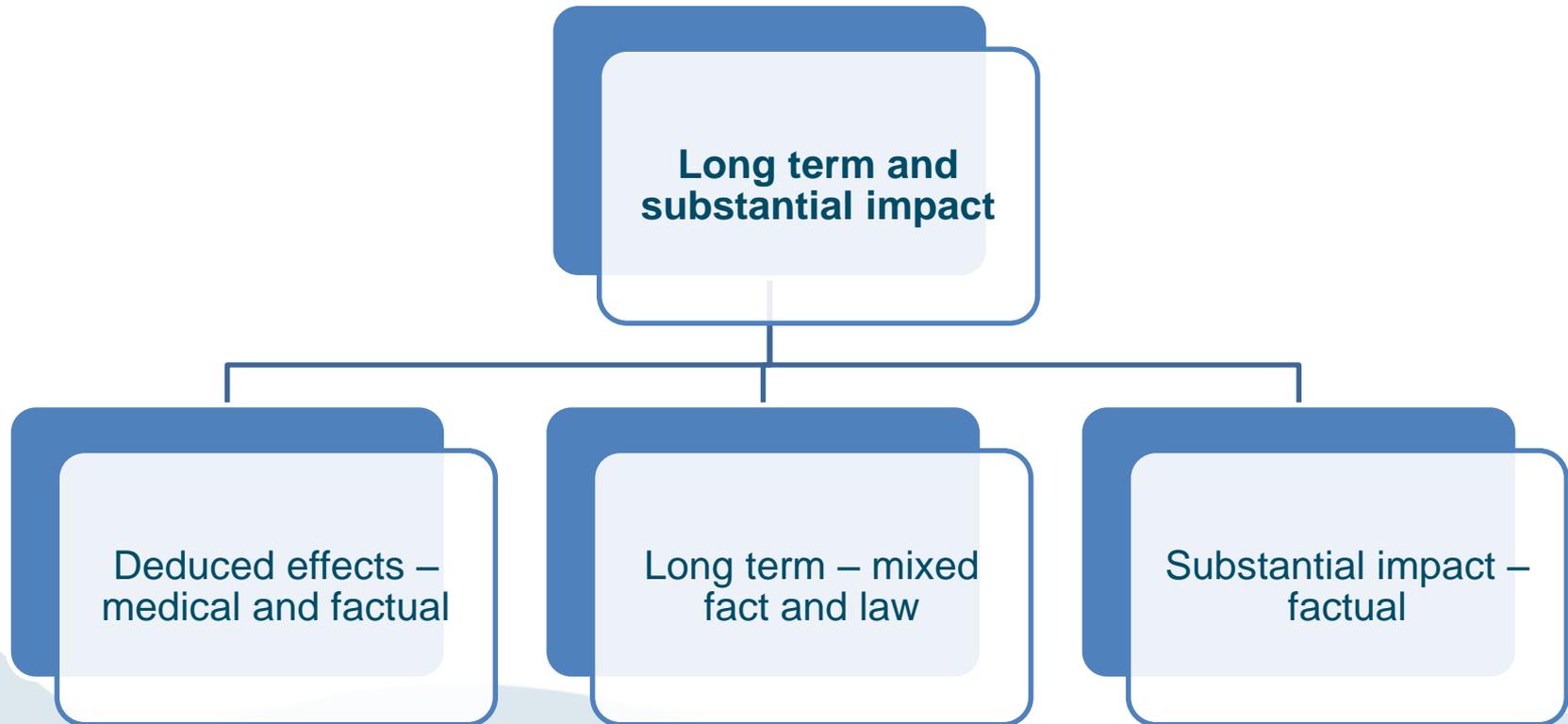
Lessons from *Nally*

- Unfavourable treatment
- Not a medical test/assessment
- Identify the cause of behaviour, performance or employment concerns – causal link

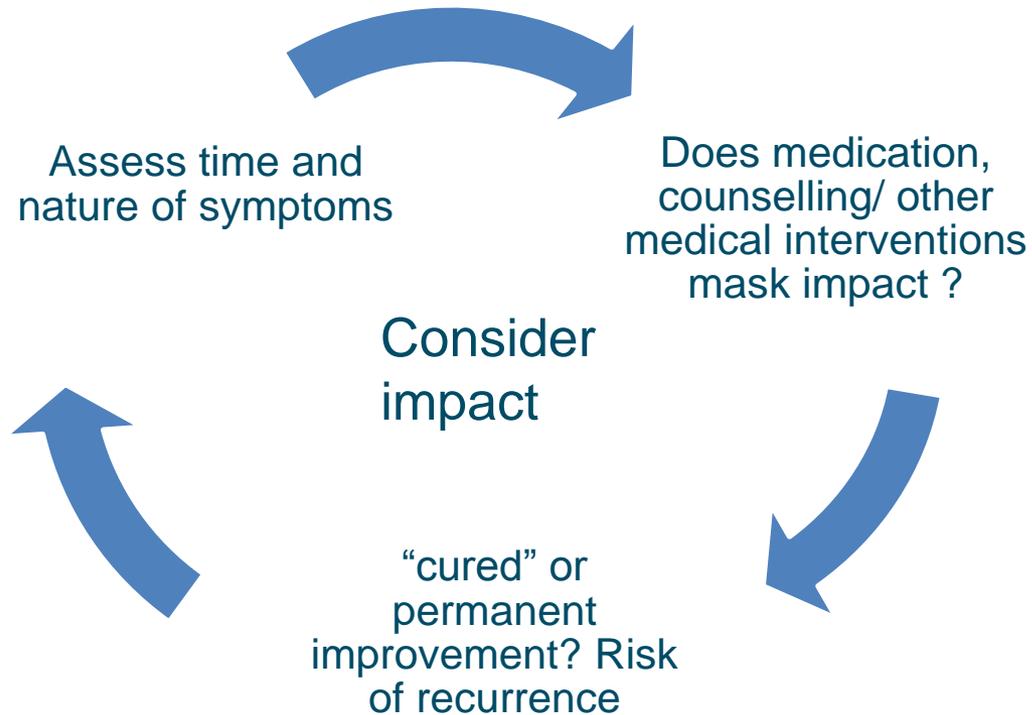
See *Risby v London Borough of Waltham Forest*
UKEAT/0318/15

- Lack of knowledge/awareness can be a defence – but care with Section 20 claim(reasonable adjustment) and Section 15
- unlikely to be direct (section 13) discrimination

Disabled Person Definition: legal or medical question ?



Deduced Effects



What reasonable adjustments ?

- Depression & PTSD:
 - Support / assistance and modification of role/duties
 - Additional counselling
 - Pay for/help to fund the same: if reasonable and effective for example CBT
 - Phased return
 - Breaks/change to hours/ duties /part time?
- Coping Mechanisms

Unlikely: sabbatical, early retirement, top up of sick pay (unless failure in process), customer/client facing role – depends on scope for this to be effective

Depression & PTSD

- Beware assumptions on capability, projects etc. and direct discrimination risk
- Scope carefully request for information if “signed off” for lengthy periods
- Vicious circle – suspension, investigation, triggers stress/anxiety/depression and ability to progress process and achieve closure – adjustments to process
- Duty of care

Learning Issues /Dyslexia Autism/ASD

- Understanding the individual's condition
- Discussing with the person affected
- New diagnosis?
- Tailored Adjustments – strengths and where additional support/intervention is needed
- Time and targets

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