

Proving and Disproving Disability

Amy Stroud

Disclaimer

This seminar is aimed at providing an oversight and should not be considered as an alternative to fully informed legal advice.

About the speaker

Amy Stroud (2004)

Amy acts for respondents and claimants alike, appearing in tribunals, the Employment Appeal Tribunal and the Court of Appeal.

Her clients range from individuals, local authorities and police constabularies to educational bodies, charities and national chains.

.



Section 6, Equality Act 2010

- (1) A person (P) has a disability if-
- a) P has a physical or mental impairment, and
 - b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

J v DLA Piper [2010] ICR 1052

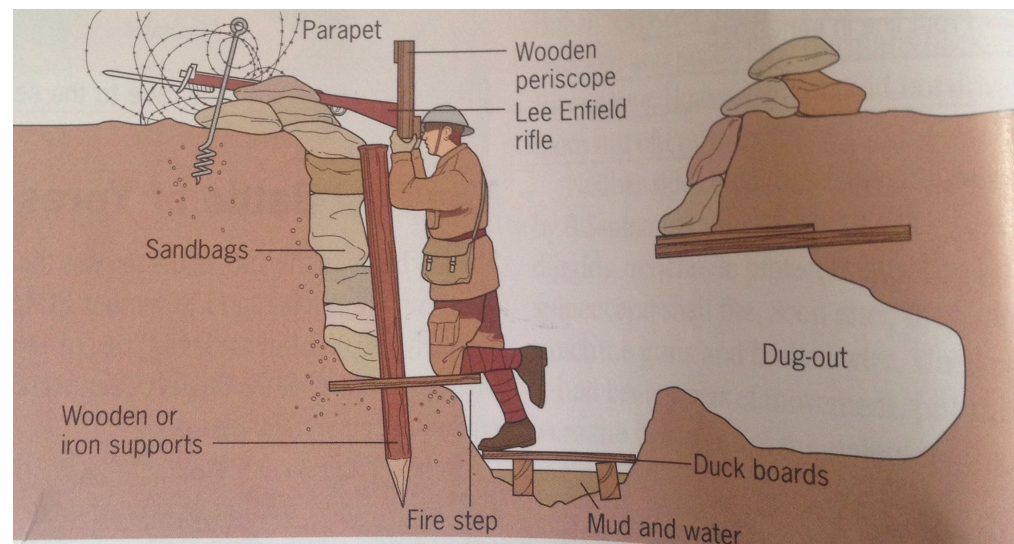
mental impairment



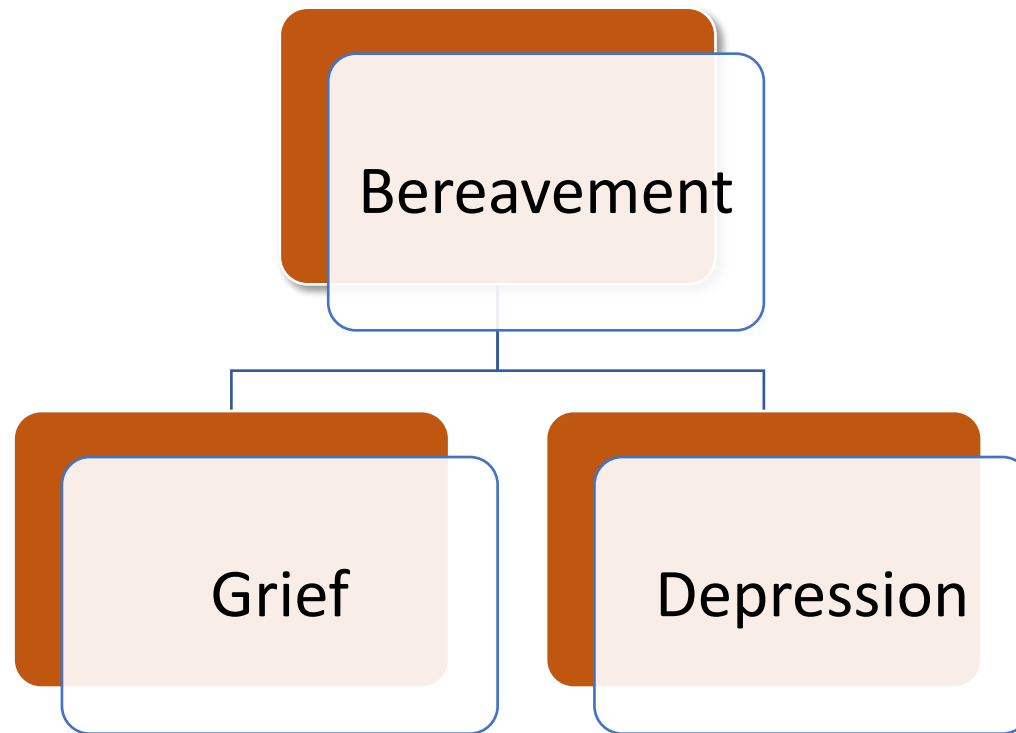
adverse reaction

Herry v Dudley Metropolitan Borough Council [2017] ICR 610

Where a reaction to circumstances perceived as adverse can become entrenched



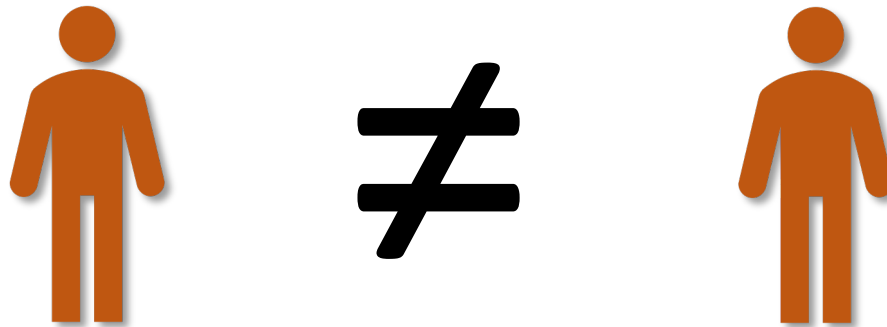
Igweike v TSB Bank plc [2020] IRLR 267



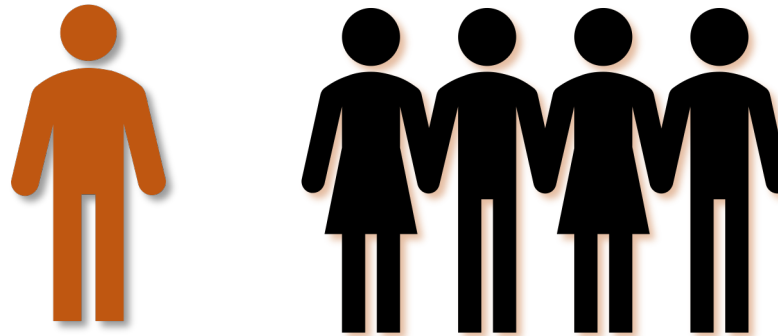
Workplace activities as normal day-to-day activities

- ❑ Paterson v Commissioner for Police of the Metropolis [2007] ICR 152
- ❑ Chacon Navas v Eurest Colectividades SA [2007] ICR 1
- ❑ Sobhi v Commissioner of Police for the Metropolis [2013] UKEAT/0518/12

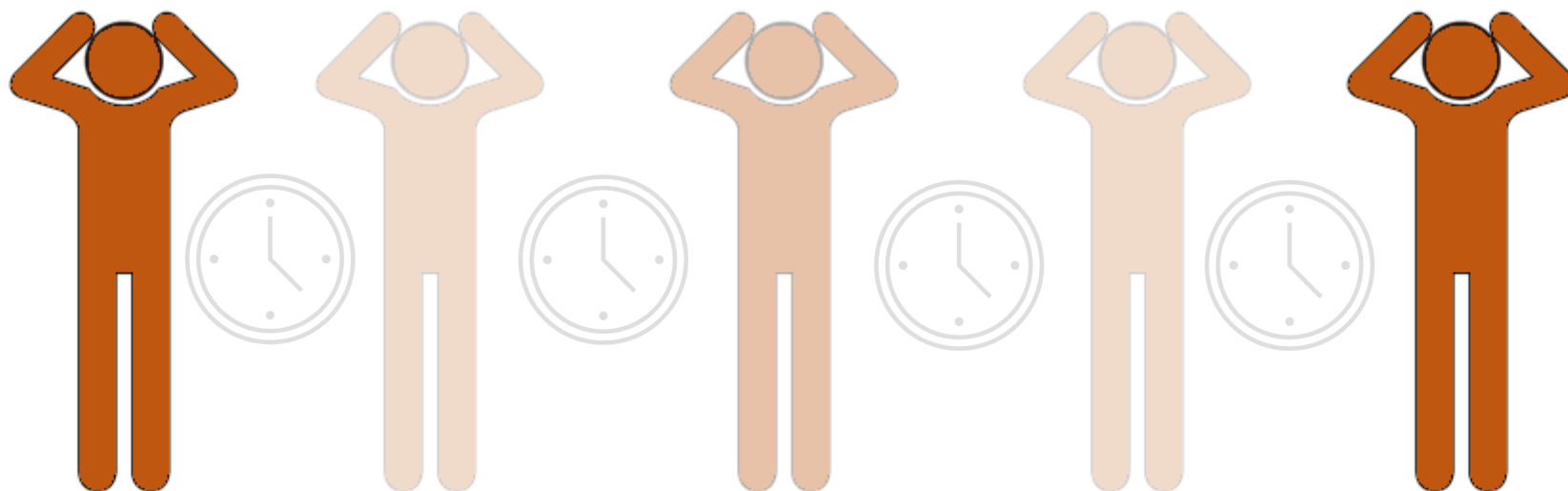
Compare the degree of ability to carry out the activity in the absence of impairment, with the altered degree of ability to carry out the activity as a result of the effect of the impairment



Relative comparison with the performance of fellow workers when trying to assess degree, extent or nature of impact on the individual

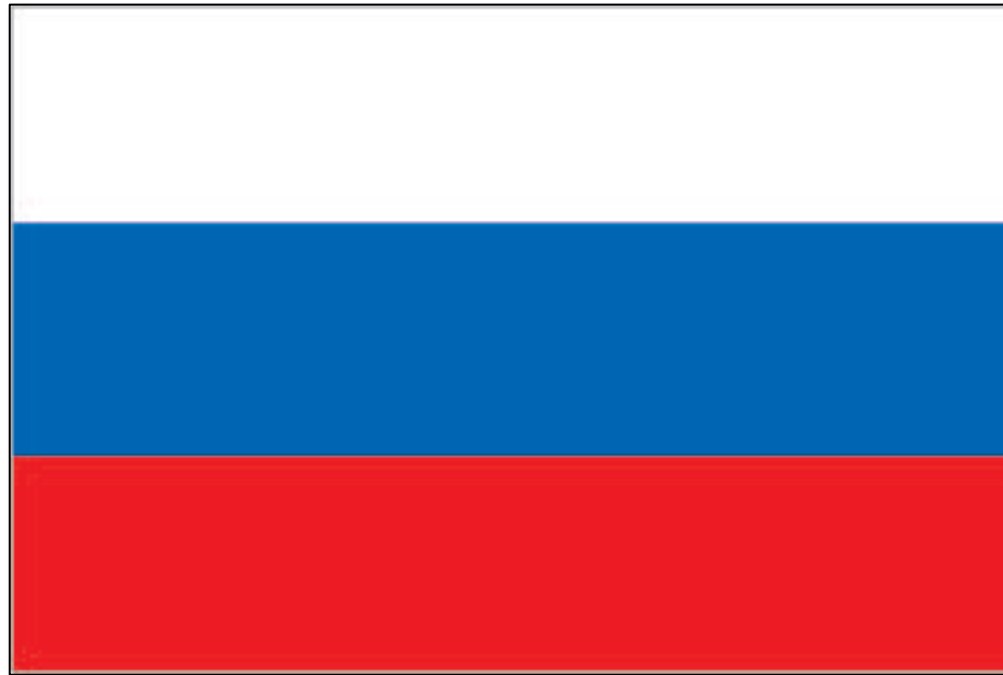


Recurrence



Sullivan v Bury Street Capital Ltd

UKEAT/0317/19



Sullivan

- ❑ Where an SAE did in fact recur, Tribunal could still conclude *as at that earlier date*, that it was not likely to recur.
- ❑ Even where the SAE is itself a recurrence, this does not prevent Tribunal concluding *as at the later date*, a further recurrence was not likely.

Civil Procedure Rules Part 35.1

Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

Evidence and the long term SAE

Igweike v TSB Bank plc [2020] IRLR 267

**Tesco Stores Ltd v Tennant
UKEAT/0167/19**



Tribunal do's and don't's

- ❑ It is not the duty of the tribunal to obtain evidence or ensure that adequate medical evidence is obtained
- ❑ The tribunal should not be inquisitorial or proactive
- ❑ The tribunal performs the test, not the expert
- ❑ Generally the tribunal should not reject uncontradicted medical evidence

Evidence is everything



When might grief become depression?

What is normal now?



Any questions?

amy.stroud@42br.com