

Document written by the claimant and used in an English employment tribunal case on stammering, 2020. See www.stammeringlaw.org.uk/stammering-case-impact-statement-2020

CLAIMANT'S FURTHER INFORMATION ON DISABILITY

This document has been prepared to provide further information on the effects of my impairment (stammer). It is supplemental to disability impact statement filed and served on [] 2020. It is intended to provide further information to ¶9 of the [] 2020 case management order (i) and (ii), as well as letter from Respondent requesting better evidence dated [] 2020. Where "Respondent" is used, this refers to the 1st Respondent and 2nd Respondent.

In a letter dated [] 2020 from the Respondents, the **impairment** and **long-term** point is admitted – that I have a physical or mental impairment (my stammer) and that it is a long-term condition. The Respondents dispute that, **at the relevant time, my stammer had a substantial negative effect** (*sic*). It is not clear whether the Respondents admit or dispute the **substantial adverse effect on normal day-to-day activities** point.

1. For ease, I was directed to produce a signed and dated impact statement where I give the following details in relation to my stammer: *(i) when it started, how long it did or has lasted, what if any effect it has on his ability to do day-to-day activities, what, if any, medication or other treatment he has had for it, and what the impact of the stammer on his ability to perform day-to-day activities would have been if he had not had such treatment and (ii) any unredacted GP, hospital or other health records and other medical evidence which may exist about the Claimant's stammer which is within his possession or which he can obtain.*

DEFINITION OF DISABILITY

2. The *main elements* of the definition of disability under the Equality Act 2010 ("the Act") is set out in **Guidance on matters to be taken into account in determining questions relating to the definition of disability (Equality Act 2010 Code of Practice) ("Guidance")**:

The Act defines a disabled person as a person with a disability. A person has a disability for the purposes of the Act if he or she has a physical or mental

impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day to-day activities (S6(1)).(Guidance A1)

This means that, in general:(A2)

- *the person must have an **impairment** that is either physical or mental (see A3 to A8);*
- *the impairment must have **adverse effects** which are **substantial** (see Section B);*
- *the substantial adverse effects must be **long-term** (see Section C); and*
- *the long-term **substantial adverse effects** must be effects on normal day-to-day activities (see Section D).*

IMPAIRMENT

the person must have an impairment that is either physical or mental (see A3 to A8)

3. I suffer from a stammer – also known as stutter or Chronic Childhood-Onset Fluency Disorder or – a speech disorder that involves frequent and significant problems with normal fluency and flow of speech. My stammer, as a physical or mental impairment, has the following direct **effects** on my fluency, flow of speech and overall ability to communicate:

- a) difficulty in starting a word, phrase or sentence
- b) revision of a phrase or sentence
- c) repetition of a sound, syllable or word
- d) silence for certain syllables or words, or pauses within a word (broken word)
- e) frequent disruption in ability to produce audible verbal messages, also known as speech blocks (**Primary**)
- f) addition of extra words (interjections, such as "um" if difficulty moving to the next word is anticipated
- g) substituting a word with another before or during a speech block
- h) excess tension, tightness, or movement of extremities to help produce a word

i) limited ability to effectively communicate

4. There are also other indirect effects that are caused by my stammer. This is because stammering often results in various affective, behavioural, and cognitive reactions, which include:

a) avoidance

b) anxiety (including social anxiety)

c) embarrassment

d) fear, and

e) shame.

5. The severity of the effects (both direct and indirect) can fluctuate in the immediate, short or long term. The reasons for these fluctuations can vary and can also be attributed to the exacerbation of any of the effects listed in paragraph 3 and paragraph 4 above. For me, this is usually due to factors from the immediate environment and/or anxiety as a consequence of my stammer, such as having to talk over the phone or respond to questions during a job interview – or being placed in an unfavourable situation – such as when asked to introduce myself in front of a group. The anxiety experienced goes beyond what would normally be expected in a person who do not stammer as this would not normally limit their ability to communicate, which is what happens in my case, to the extent of being substantial. Furthermore, fluctuations in the short or long term are mostly attributed to circumstances which are "ongoing" over a period of time, such as feeling comfortable in my daily working environment, or the contributory nature of detrimental life events on my overall levels of stress.

6. For the avoidance of doubt, my stammer is a chronic disorder which had an onset in childhood and persists in adulthood, it is therefore **always present** irrespective of any fluctuation in severity or coping mechanisms deployed to alleviate adverse effects.

SUBSTANTIAL ADVERSE EFFECT

the impairment must have adverse effects which are substantial

7. Section 212 of the Act states **a substantial adverse effect is something which is more**

than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.*(sic)*

8. The Guidance states that when considering whether the **adverse effects** of an impairment are **substantially adverse** account should be taken of the following relevant factors:

- a) *the amount of time it takes a person to carry out a day to day activity;*
- b) *the way in which an activity is carried out;*
- c) *the cumulative effects of the impairment;*
- d) *the manner in which behaviour could be reasonably modified to prevent or reduce the effects of an impairment;*
- e) *the effects of the environment; and*
- f) *where an impairment is subject to treatment or correction, the effects of the impairment as it would be but for the treatment or correction*

9. Under the DDA 1995, a list of capacities were set out in Schedule 1, clause 4(1). The Equality Act 2010 does not require the adverse effects to fall within such a list, however perhaps worth noting that the adverse effects caused by my impairment fall within **Speech**, which is one of the capacities listed.

The time taken to carry out an activity

10. For **10(a)**, the guidance states that the time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.*(sic)* It goes further by providing the following example:

A ten year old child has cerebral palsy. The effects include muscle stiffness, poor balance and uncoordinated movements. The child is still able to do most things for himself, but does get tired very easily and it is harder for him to accomplish tasks like eating and drinking, washing and getting dressed. Although he has the ability to carry out every day activities such as these, everything takes longer compared to a child of a similar age who does not have cerebral palsy. This amounts to a substantial adverse effect. (Guidance B2)

11. The primary effect of my stammer is speech blocks – abrupt inability to produce audible verbal messages. I experience severe speech blocks that can last as long as 10 seconds, and can occur as often as every spoken word. As a result, it takes me significantly longer to

communicate even the most basic of information, and even when doing so, it is with great difficulty as there are other effects also at play that have other adverse effects, such as anxiety and embarrassment, discuss later in this document.

12. In a report dated 14th April 2014 from [Ms E], Speech Pathologist, she stated which is not:

[]'s fluency was measured during the interview as well as various monologue and conversation tasks during the assessment. His stutter was characterized primarily by blocks, many of which were up to 10 seconds in duration. He usually maintained eye contact during the blocks. No significant secondary behaviours such as eye blinks or head nods were observed.

*On a Severity Rating Scale of 1 – 10 (where 1 = no stuttering and 10 = **extremely severe** stuttering), []'s speech was rated at an **8** during the interview which improved to a 3 - 4 throughout the rest of the other speaking tasks during the session. When his severity was closer to 8, he took considerable time to **express even small amounts of information**. His difficulties were **more noticeable when he was asked direct questions** during the interview which was conducted near the start of the session.*

13. _____
significantly longer for me to communicate even a small amount of information compared to someone who did not have a stammer. Moreover, there are also other adverse effects apart from taking significantly longer, such as raised anxiety and fatigue due to the constant disruption in breathing caused by speech blocks.

The way in which an activity is carried out

14. For **10(b)**, the guidance states that another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment. (*sic*) It goes further by providing the following example:

A person who has obsessive compulsive disorder (OCD) constantly checks and rechecks that electrical appliances are switched off and that the doors are locked when leaving home. A person without the disorder would not normally carry out these frequent checks. The need to constantly check and recheck has a substantial

adverse effect.(B3)

15. I have great difficulties when having to speak over the phone, something which is very common for persons with a stammer. There are also other factors from the immediate environment that can exacerbate the severity of my stammer, making it very difficult for me to communicate. One such factor is having to speak over the phone when sitting at my desk in the office where others can hear and see me, not to be construed with me being shy or wanting privacy. My stammer has the effect of creating excess tension and tightness, especially during a block; and by moving my arms or legs can help with getting over the block, as the movement from an extremity creates a signal which triggers the release of the word in the brain (I apologise that I am not able to explain this better, but that is the gist of it). I therefore require a private space to conduct telephone calls so as to remove these factors introduced by the immediate environment. In circumstances where there is nowhere private for me to go I would avoid using the phone as far as possible. A person who did not stammer would not have their speech impaired in these circumstances. It is already very difficult for me to speak over the phone, so when I do, I need to ensure that I reduce all possible aggravating environment factors, and in this case, carrying out phone calls in private, which is course in most cases is not possible while in the office. These adverse effects from my impairment are substantial, given that it is already very difficult to speak over the phone, and then being further restricted that when I do speak over the phone that it has to be done in a certain way. **A person without a stammer would not be limited in their ability to communicate (speak) unless they did so in a private place.**

Cumulative effects of an impairment

16. For **10(c)**, the guidance states that an impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect. *(sic) (B4)* It goes further by providing the following example:

a person whose impairment causes breathing difficulties may, as a result, experience minor effects on the ability to carry out a number of activities such as getting washed and dressed, going for a walk or travelling on public transport. But taken together, the cumulative result would amount to a substantial adverse effect on his or her ability to carry out these normal day-to-day activities.(B5)

17. Appendix 1 of **Equality Act 2010 Code of Practice (Employment)** also states an impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how they carry

out those activities. For example, where an impairment causes pain or fatigue in performing normal day-to-day activities, the person may have the capacity to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.(sic)

18. My impairment has adverse effects that can manifest during or after speaking. For example, during a speech block, the tension and tightness causes me to stop breathing whilst trying to force push the word out. In addition, the obvious struggle and discomfort increases my anxiety, which is not only observable but also evident in my voice. The overall adverse effect is an increase in the severity of my stammer, and with the constant disruption in breathing, being left exhausted.

19. The guidance also gives the following example:

*where a person has mild learning disability. This means that his assimilation of information is slightly slower than that of somebody without the impairment. He also has a **mild** speech impairment that slightly **affects his ability to form certain words**. Neither impairment on its own has a substantial adverse effect, but the effects of the impairments taken together have a substantial adverse effect on his ability to converse. (B6)*

20. This example refers to a mild speech impairment that slightly affects a person's ability to form certain words.(sic) It refers to **one effect** caused by a **mild** speech impairment. I have listed nine similar *effects* in paragraph 3 and five *indirect effects* in paragraph 4, of which all have an adverse effect on speech. **These effects, by itself or taken together, are substantial and limits my ability to communicate.**

Effects of behaviour

21. For **10(d)**, the guidance states that account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.(sic)(B7)

22. I make use of a combination of coping mechanisms and avoidance strategies where possible, including (1) avoiding stress factors that go beyond the normal day-to-day stresses

that could adversely affect the severity of my stammer, (2) making use of speech pathology techniques whenever possible (and where able) to even out the naturalness of my speech (3) and other avoidance strategies such as interjections, fillers and substitutions.

23. The effectiveness of these mechanisms and strategies do help in some circumstances, but not all, for example: Interjections and substitutions are very similar, with the latter being the more conscious of the two in that I would deliberately look for a word which would be simpler for me to produce. However, this clearly does not work for everything, for example, when I block on saying my name, there is no interjection or substitution that can help me in these situations. Moreover, and irrespective of any speech pathology_coaching sessions, the severity of my stammer at best has dropped to moderate in the past and is also highly dependant on other effects such as environment.

24. The guidance also highlight other considerations under this heading:

*account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability **it is important to consider the things that a person cannot do, or can only do with difficulty.**(B9)*

25. It is to be noted that coping and avoidance can only go so far. For example, I struggle saying my name when having to introduce myself at work or otherwise, and no avoidance strategy or substitution can save me from this.

26. Moreover, the natural desire to avoid embarrassment or shame bring rise to other issues, including withdrawing, or limiting, my participation in work and social events which are conversational in nature.

27. This was also noted in report dated 14th April 2014 from [Ms E]:

*[] reported a deterioration in his fluency, especially at work from late 2012, through 2013 with a more marked deterioration through the start of 2014. He likened the severity of his stutter during this period, to that which he experienced in high school. He reported more **severe stuttering when he was asked direct questions. He avoided words to improve his stutter.** Through late 2012 - 2013, [] reported that as a result of his worsening fluency, he "**withdrew**" and **avoided speaking, especially at work.** He mentioned that in a performance review over this period, he*

received feedback from his manager that he should work at being more engaged with his colleagues.

Effects of environment

28. For **10(e)**, the guidance states that environmental conditions may exacerbate or lessen the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, **how tired the person is, or how much stress he or she is under, may have an impact on the effects.** When assessing whether adverse effects of an impairment are substantial, the extent to which such environmental factors, **individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered.** The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities.*(sic)*(B11)

Effects of treatment

29. The Act provides that:

where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, 'likely' should be interpreted as meaning 'could well happen'. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (Schl, Para 5(1)).(B12)

30. It goes further by stating this provision applies even if the measures result in the effects being completely under control or not at all apparent. Where treatment is continuing it may be having the effect of masking or ameliorating a disability so that it does not have a substantial adverse effect. If the final outcome of such treatment cannot be determined, or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, it would be reasonable to disregard the medical treatment in accordance with paragraph 5 of Schedule 1.*(sic)* (B13)

31. In the report from [Ms E] she repeated what I told her in 2014: (1) that I sought opinion and treatment on my stammer when I was 19, but that I did not find it effective, (2) and that I also trialed a delayed auditory feedback device which did not work. It was only in 2014 when I decided to sought treatment for my stammer, with the hope that the science have advanced since 2002.

32. Speech Pathology Therapy is designed to help alleviate the effects that stammering has

on the individual. It is highly dependant on the severity of a person's stammer, effect of environment and the individual's ability to apply the technique. Therapy for chronic disorders are simply that, to help the person live a better life by helping to alleviate the adverse effect that the stammer has on a person's ability to communicate. My experience with speech therapy in 2014 were positive, in that it helped me gain confidence in my speech through various techniques, however this was only in the context of therapy. [Ms E] states in paragraph 3 that:

*[] has made very pleasing progress with the Camperdown Program. He has learnt the various naturalness levels and **within the context of the clinic is gaining increasing control** of his fluency and appears to be gaining confidence in his spoken communication. He is able to rate the severity of his stutter from audio recordings with good accuracy. He is at the stage of applying the technique into short, easy-going real-life contexts. From there, sessions will focus on assisting [] to generalise the use of the technique consistently into his everyday speaking*

33. I have made very pleasing progress with the Camperdown program "within the context of the clinic is gaining increasing control of his fluency". She also states that the next stage is to apply the technique to into short, easy-going real-life contexts.

34. The progress I made as a result of these sessions, as stated in the report, was in the context of therapy. Applying the techniques in real life is a completely different story.

35. I have resumed sessions with [Ms E] since June 2020 with the hope that I will be able to get to the stage of applying these techniques in the real world. For the avoidance of doubt, the techniques help alleviate the severity of the effects, it does not remove them. For example, instead of blocking for 10 seconds I might be able to reduce the time it takes to progress past the block to 5 seconds. Nevertheless, even with this improvement, it with still take me significantly longer to communicate even basic information.

DAY-TO-DAY ACTIVITIES

the long-term substantial adverse effects must be effects on normal day-to-day activities

36. The Act does not define what is to be regarded as a 'normal day-to-day activity'. (sic). However, the guidance states that:

In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating

food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal **day-to-day activities** can **include general work-related activities**, and study and education-related activities, such as **interacting with colleagues**, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern. (D3)

.....

*Example: A person works in a small retail store. His duties include maintaining stock in a stock room, dealing with customers and suppliers in person and by telephone, and closing the store at the end of the day. **Each of these elements of the job would be regarded as a normal day-to-day activity, which could be adversely affected by an impairment.** (D3)*

.....

*The term 'normal day-to-day activities' is not intended to include activities which are normal only for a particular person, or a small group of people. In deciding whether an activity is a normal day-to-day activity, **account should be taken of how far it is carried out by people on a daily or frequent basis. In this context, 'normal' should be given its ordinary, everyday meaning.**(D4)*

37. My duties as a Full Stack Software Developer that relies on speech include:

- a) gathering requirements; this is wide reaching, and involves a lot of spoken communication;
- b) asking questions to clarify requirements;
- c) liaise with various teams and departments within the company;
- d) provide a daily updates in-front of a group of people (the team);
- e) participate in conference calls, which can be audio, video of both;
- f) participate in knowledge sharing workshops,

ADVERSE EFFECT ON NORMAL DAY-TO-DAY ACTIVITIES

38. All of the activities above are related to speech, of which most happen on a day-to-day basis. I can only carry out most of these activities with difficulty, and at times also rely on colleagues to complete my sentence or help me when I block.

39. I contend that if maintaining stock in a stock room, dealing with customers and closing a store are normal day-to-day activities, then it must be said that asking a question, having a conversation with a colleague, friend or family member in person or over the telephone are normal day-to-day activities.

40. _____
normal day-to-day activities involving speech.

41. Lastly, the guidance includes an example of a man who stammers at D17:

*A man has had a stammer since childhood. He does not stammer all the time, but his stammer, particularly in telephone calls, goes beyond the occasional lapses in fluency found in the speech of people who do not have the impairment. However, this effect can often be hidden by his avoidance strategies. He tries to avoid making or taking telephone calls where he believes he will stammer, or he does not speak as much during the calls. He sometimes tries to avoid stammering by substituting words, or by inserting extra words or phrases. _____ **there are substantial adverse effects on the person's ability to carry out normal day-to-day communication activities.***