



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Mutangadura

**Respondent:** AJ Bell PLC

**Heard at:** Manchester Employment Tribunal (by video)

**On:** 9 September 2025, 1 October 2025 (in chambers)

**Before:** Employment Judge Dunlop

## Representation

**Claimant:** In person

**Respondent:** Mr R Lassey (Counsel)

# JUDGMENT

1. The claimant was not a disabled person within s.6 Equality Act 2010 during the period 2015- June 2024.
2. The claim is dismissed in its entirety.

# REASONS

## Introduction

1. By a claim form presented on 23 August 2024, Mr Mutangadura raised complaints of discrimination on grounds of age and disability against the respondent, AJ Bell PLC,.
2. As he made clear in his Particulars of Claim, attached to the claim form, Mr Mutangadura was never employed by the respondent. The claim is about two job applications he made to the business, one on 8 April 2024, for a role as a Financial Services Administrator, and one on 8 June 2024, for a role as a Customer Service Administrator. He was not successful in either application. He alleges that his correspondence, which included requests

for reasonable adjustments to be made to the recruitment processes, was ignored.

3. At a preliminary hearing for case management on 26 February 2025, Employment Judge Barker formulated a List of Issues arising out of the circumstances described by Mr Mutangadura. In relation to disability discrimination, she identified complaints of direct discrimination (section 13 Equality Act 2010), discrimination arising from disability (s.15), failure to make reasonable adjustments (ss.20-21) and disability-related harassment (s.26). In relation to age discrimination, she identified complaints of direct discrimination (s.13) and age-related harassment (s.26).
4. Mr Mutangadura later withdrew his complaints of age discrimination and direct discrimination on grounds of disability, and those claims were dismissed.
5. This preliminary hearing was convened by EJ Barker to consider:
  - 5.1 Whether "at the time to which these claims relate" Mr Mutangadura met the definition of a disabled person in s6 Equality Act 2010.
  - 5.2 An anticipated application by the respondent for a Deposit Order (that application was subsequently confirmed in writing on 20 May 2025 with written grounds provided in a letter dated 5 September 2025).

## **The Hearing**

6. The hearing took place by video and there were no significant technical issues. I had regard to a 292-page bundle of documents provided by the respondent and a 106-page bundle of document provided by the claimant. I took some time for pre-reading. Mr Mutangadura had some difficulty in narrowing the documents that he wanted me to read. Bearing in mind that he was representing himself, I familiarised myself generally with the contents of his bundle in full.
7. I discussed the scope of the hearing with Mr Mutangadura and Mr Lassey at the start of the hearing. I asked whether Mr Mutangadura accepted, now that the age discrimination claim had been withdrawn, that the case would fall to be dismissed if I made a finding that he was not disabled at the material time. Mr Mutangadura accepted that that was the position, save in relation to the claim of harassment. He posited that a harassment claim could potentially proceed if the conduct was related to the protected characteristic of disability, even if he was found to be not actually disabled.
8. With the agreement of the parties, I decided that I would determine the question of disability status, and then go on to consider the consequences of whatever decision I reached, particularly as regards to whether any harassment claim could survive if my decision was that Mr Mutangadura was *not* disabled. At the end of the day, it was apparent that I was going to be unable to reach and give a decision on the substantive disability status point. The parties made short further submissions as to whether a harassment claim could survive a decision on disability status that was adverse to Mr Mutangadura.

9. This hearing has also been listed to deal with deposit applications made by the respondent. Those applications contended that, even if Mr Mutangadura was disabled at the relevant time, the claims had “little reasonable prospect of success”.
10. Mr Mutangadura had provided a disability impact statement which was in the bundle. He confirmed that statement and was cross-examined by Mr Lassey. Both parties then had the opportunity to make submissions as to both the disability status point and the deposit order applications. I heard from Mr Mutangadura about his means in relation to the deposit order applications.

11. I adjourned the hearing to give a reserved Judgment. This is that Judgment.

## The Issues

12. In respect of the disability-status decision, the issues were set out by EJ Barker as follows (I have amended the numbering):

1. *The relevant time for the purpose of this claim is 8 April 2024 to 25 June 2024.*
2. *Did the Claimant have a physical or mental impairment? The Claimant relies upon his low mood and anxiety.*
3. *If so, did that impairment have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?*
4. *If so, was that adverse effect long-term? In particular, when did it start and:*
  - a) has the impairment lasted for at least 12 months? The Claimant says that he was diagnosed in 2015.*
  - b) is or was the impairment likely to last at least 12 months?*
5. *Were any measures being taken to treat or correct the impairment?*
6. *But for those measures would the impairment be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?*
7. *Was the Claimant disabled at all relevant times?*

13. I raised with the parties that I was somewhat concerned about the way in which the issues had been framed having regard to the “relevant period”. In the claimant's s.15 complaint, the “something arising” from his disability is said to be:

*“the state of his work history between 2015 and 2024 inclusive (such as his inconsistent employment history with considerable gaps in employment, the length of time in that employment and the vast number of different employers that employed him) as shown on the Claimant's applications to each of the roles referred in paragraph 12 [of the case management summary] above.”*

14. I am not aware of any authority which deals with the issue of whether something which occurs prior to the claimant becoming disabled within the terms of s.6 Equality Act (but is caused by the medical condition which will

later form the basis for the claimant attaining that status) can be classed as “something arising” from disability. It seems to me that that nothing can “arise from” a disability at a time when that disability was not (at least in legal terms) present at all.

15. Given that, it seems to me that it is relevant for me to determine not only whether the claimant was a disabled person at the time he made his applications, but also whether he was disabled for the entire period between 2015-2024, or for some portion of it.

### Other Tribunal decisions

16. My determination in this case is to some extent simplified, and to some extent complicated, by the existence of other Tribunal decisions considering the question of Mr Mutangadura’s disability status. There were four decisions put before me in the Tribunal bundle.

16.1 A preliminary hearing Judgment dated 1 November 2018, of Employment Judge Holmes, in the case of Mr Mutangadura v The Home Office (2410356/2018). That Judgment did not, in fact, include any decision as to Mr Mutangadura’s disability status under s.6, and I paid no further regard to it.

16.2 A dismissal on withdrawal judgment dated 2 March 2020 in the case of Mr Mutangadura v Sainsbury’s Supermarkets Limited. Again, that Judgment did not include any decision as to Mr Mutangadura’s disability status under s.6 and, again, I paid no further regard to it.

16.3 A final hearing Judgment dated 14 May 2021, of Employment Judge McDonald (and members) in the case of Mr Mutangadura v AO Retail Limited (2400235/2020). The McDonald panel found that Mr Mutangadura was not disabled during the period 15 August to 15 October 2019. This was also a case about applications for employment, and it appears that the evidence before EJ McDonald was relatively limited. The Tribunal found that the Claimant’s evidence was not always reliable. It found that he had not established a substantial adverse effect on day-to-day activities.

16.4 A preliminary hearing Judgment dated 14 May 2025 of Employment Judge Aspinall in the case of Mr Mutangadura v Transport for Greater Manchester (“TGM”) (2412088/2023). Employment Judge Aspinall also found that Mr Mutangadura was not a disabled person during the period August to November 2023. As Mr Mutangadura had actually worked for TGM, EJ Aspinall had more evidence to draw on. This was also a very recent decision.

17. Mr Lassey did not suggest that the earlier Judgments were binding on this Tribunal. He acknowledged that the respondent was not party to any of those cases, and made no case that there would be an abuse of process in permitting Mr Mutangadura to advance a case that he was a disabled person for the entire period from 2019 to the present day, despite the fact that that could potentially give rise to apparently inconsistent decisions from different Judges in different cases.

18. However, Mr Lassey also said that the decisions, and particularly the most recent decision of Judge Aspinall were ‘highly persuasive’ and that I ought to be hesitant about reaching a different conclusion. His cross-examination

of Mr Mutangadura was brief, and essentially focused on establishing that “nothing had changed” in terms of his impairments and their impact from the position as it was at the time of the Aspinall Tribunal and at the time of the events giving rise to the TGM claim.

19. Mr Mutangadura’s position, which he was able to articulate very clearly, was that his impairments and their effect had not changed since the period EJ Aspinall was looking at. He also did not appear to dispute any of EJ Aspinall’s findings of fact. Rather, his argument was that her analysis was flawed and by concluding that he was not disabled she had made an error of law. In line with this, I understand that it is his intention to seek to challenge the decision in the Employment Appeal Tribunal. I want to be very clear that it is the function of the Employment Appeal Tribunal, and not this Tribunal, to decide whether EJ Aspinall did err in reaching her decision.

### **Findings of Fact**

20. Mr Mutangadura relied on a very detailed impact statement, running to some 41 pages. Mr Lassey did not materially challenge the content of that statement in cross examination. (I appreciate that in job application cases in particular, the respondent is likely to have only very limited access to evidence to support any such challenge).

21. Both the McDonald panel and EJ Aspinall had made adverse findings as to Mr Mutangadura’s credibility. Mr Lassey did not directly submit that I should make similar findings, although, as I have said, he did encourage me to adopt the conclusions set out in those Judgments.

22. I make no finding as to Mr Mutangadura’s credibility, either positively or negatively. I make the following findings of relevant facts, which are largely drawn from his unchallenged evidence. I note here that the vast majority of the statement consisted of a detailed recounting of Mr Mutangadura’s employment history back to 2015.

### **Events prior to 2019**

23. In 2010 Mr Mutangadura was wrongly accused of money laundering at work and threatened with physical violence as a result. This was deeply distressing for him. It has led to a situation where Mr Mutangadura becomes anxious when approached by managers or asked to attend meetings where he does not know what is going to happen. Notwithstanding that incident, he continued to perform well in sales roles until May 2015, when he experienced a sudden decline in his mental health and was subsequently diagnosed with anxiety and low mood.

24. Mr Mutangadura described his GP advising him around this time that it may be beneficial for him to seek employment in non-sales roles, which he might find less stressful. Mr Mutangadura agreed with this advice, but he has subsequently found that it is difficult for him to get non-sales roles, as he lacks relevant experience. This means that he is pushed back to undertaking sales work, which he then finds very stressful and difficult to cope with.

25. On 1 May 2015 Mr Mutangadura was dismissed from his role at Carfinance247 due to a drop in his sales performance. He then worked for less than two weeks at another sales role, for Convergys. In June 2015 he held another role at Recruit N Grow for less than two weeks, again being dismissed for poor performance. Mr Mutangadura then commenced work for ELAS, but this also only lasted a few weeks until he was dismissed for poor performance. He then commenced work for Ticketmaster in October, but failed his probationary period and was dismissed in January 2016. During this period Mr Mutangadura was being monitored for depression by his GP and taking Citalopram. He also joined and left a martial arts club, because he felt anxious and believed people were watching him.
26. In March 2016 Mr Mutangadura commenced another sales role, which is described by EJ Aspinall as 'high pressure'. The company was called Verastar. He visited his GP after one week complaining of stress-related symptoms including stammering and palpitations. He resigned from the role after three weeks. He then got another role with AQA, but resigned to take up a role he had secured with HMRC. In October 2016 he resigned his HMRC role to take up a role with BT. He resigned from BT in February 2017 because he had found dealing with angry customers on the phone difficult and stressful. He went to work for SERCO in shortly afterwards. He was generally well in 2017 and reduced his Citalopram dose, before coming off it entirely. Mr Mutangadura was not medicated for his condition after this date.
27. Notwithstanding the fact that things seemed to be going well, Mr Mutangadura resigned from Secro and went to work for AQA (again). He chose to leave Serco to take this role notwithstanding the fact that it was a temporary fixed-term role. He left in September 2017 when the role was coming to an end. In the same month, he joined The Claims Guys. Mr Mutangadura became attracted to a colleague at work in that role and declared his feelings for her. The feelings were not reciprocated. He resigned his role in February 2018 as he did not feel that he could continue with it in those circumstances. Although there was some concern as to whether Mr Mutangadura had acted appropriately, it is important to stress that he was not dismissed or disciplined due to his conduct towards that individual: he left of his own accord.

#### **2019-2022**

28. Mr Mutangadura subsequently went to work for Sainsburys, again obtaining a role within a short period of time. He was dismissed from that role in September 2019, when his fixed-term contract was not renewed, due to the employer taking the view that he was not working fast enough.
29. Mr Mutangadura was subsequently unemployed from September 2019 to September 2022, a period of three years. That period coincided with the covid pandemic and also coincided with Mr Mutangadura being heavily engaged in litigation against The Home Office. Mr Mutangadura gave evidence that he applied for over 20 jobs in this period, but he was not successful in obtaining employment until he received support from the Restart Scheme, through the Job Centre. As a result of this, he successfully

obtained a data-entry role with a company called Intrapath in September 2022.

30. The Intrapath job lasted until November 2022 when Mr Mutangadura resigned due to anxiety. Employment Judge Aspinall attributed this to anxiety around the Employment Tribunal trial that was due to take place in his Home Office case. Mr Mutangadura does not mention this in the part of his statement where he initially discusses the Interpath role, but he does reference the Employment Tribunal proceedings as being the reason for that resignation in paragraph 86.

### **2023 onwards**

31. Employment Judge Aspinall records that Mr Mutangadura subsequently applied for over 100 jobs during spring and summer 2023. He was ultimately successful in securing a role as a Customer Support Officer for TGM. He found the role difficult, particularly working on telephones and requested adjustments. By autumn, he was on sickness absence. His employment was terminated by TGM following a probation review meeting on 16 November 2023. In his statement, Mr Mutangadura recounts over numerous paragraphs specific occasions where he had struggled at TGM, including particular calls with unhappy customers.

32. Mr Mutangadura applied for roles following his dismissal from TGM including, in spring and summer 2024, the applications which form the basis for this claim. He has not been successful in securing a role to date.

### **Other evidence**

33. The first 28 pages of Mr Mutangadura's impact statement contained a very detailed account of his employment history and his analysis of the problems he has had during job application processes, and in employment. On page 28 there is a separate heading "Anxiety and Dating and Relationships". Under this heading he explains that since June 2015 he has felt "anxious and physically ill" thinking about starting a conversation with a woman, and at times terrified. He draws a distinction between the 'normal' level of anxiety he felt about dating prior to 2015, and the extreme level of anxiety he has felt since, and speaks at length about how difficult this is for him. He then goes onto give an extremely detailed account, over several pages, of the episode in 2017/2018 where he developed feelings of attraction towards a colleague at The Claims Guys and ultimately resigned from that role when he believed he had been too demonstrative of his feelings towards her.

34. At the end of his impact statement, Mr Mutangadura refers to various other examples of his anxiety and/or low mood interfering with his everyday life. These examples are drawn from non-working life, in contrast to the majority of the statement. However, the examples are very, very specific and isolated. For instance, at paragraph 125 the claimant describes that he had plans on 29 July 2018, but woke up and it was raining. Due to the weather, he stayed in and cancelled his activities, and was in a low mood. He draws a contrast with the period before 2015 when he would play rugby in all sorts of bad weather.

## Relevant Legal Principles

35. Section 6 of the Equality Act 2010 deals with the question of 'disability status' i.e. when a person will be considered to be a disabled person for the purposes of the Act. It provides (as relevant) as follows:

### 6 Disability

(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.**

36. The word "substantial" is defined in s.212(1) Equality Act 2010 as meaning "more than minor or trivial".

37. Section 6 is supplemented by Schedule 1 of the Act and by statutory guidance (Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)). We had regard to these, and to the EHRC's Code of Practice on Employment, particularly Appendix 1 which deals with the meaning of disability.

38. It is now well-established that a Tribunal making a determination of disability status must focus on what a person cannot do, or can do only with difficulty, rather than on the things he can do easily. As noted in the Code, it is relevant to consider whether an impairment means that a particular activity causes pain and fatigue, even if it does not prevent the claimant from undertaking it entirely.

39. Section D of The Guidance contains some provisions on what amounts to normal day-to-day activities. Specifically, paragraph D3 provides:

*"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 shift pattern."*

40. The latter part of the guidance reflects case law which has established that activities which are done at work may be "day to day activities" provided that they are general and undertaken by wide sections of the population. A specialist activity – such as playing piano to a professional standard – will probably not be a day-to-day activity, but activities which form part of general participation in professional life e.g. using a computer, answering emails, talking to people in a professional manner, may well be day-to-day activities. Mr Mutangadura referred in his skeleton argument to the key

cases in support of this principle, specifically **Chacón Navas v Eurest Colectividades SA 2007 ICR 1** and **Paterson v Commissioner of Police of the Metropolis 2007 ICR 1522**. Subsequent cases such as **Aderemi v London and South Eastern Railway Ltd 2013 ICR 591, EAT**, **Banaszczyk v Booker Ltd 2016 IRLR 273, EAT** and the ECJ decision in **HK Danmark v Dansk almennyttigt Boligselskab 2013 ICR 851** have consistently found that specific work-based activities can properly be relied on in demonstrating disability. These cases collectively establish that the term “normal day to day activities” is better seen as a yardstick, or a measure of seriousness, rather than a requirement to distinguish between activities carried out at work and those carried out away from work.

41. Mr Mutangadura further referred to a more recent case, that of **Williams v Newport City Council 2023 EAT 136**. The claimant in that case was a social worker who had commenced sick leave after being made aware that she would have to attend court as part of her role. She had suffered a traumatic experience when giving evidence in court in an earlier role, and considered it impossible that she would be able to go to court again. The council refused to remove the requirement to attend court and after an extended period of sickness absence she was eventually dismissed. The Tribunal found that attending court was not a day-to-day activity and that she was therefore not disabled. The EAT found that that conclusion that attending court was not a day-to-day activity was one that was open to the Tribunal to reach. However, in view of the ET’s finding that the claimant remained genuinely unfit to work whilst the requirement to attend court was maintained, and that other aspects of her work involved activities of a general professional nature, the EAT substituted a finding that the claimant was disabled.

### **Submissions on disability status**

42. I was grateful to both the claimant and the respondent for their written submissions. Mr Lassey’s submissions comprised a comprehensive survey of the legal landscape, which I have taken into full consideration. I mean him no disrespect by not repeating every element of it. Mr Lassey expanded his submissions orally to address this specific case arguing, in essence, that I should find Mr Mutangadura is not disabled for the same reasons as EJ Aspinall had made that finding.

43. Mr Mutangadura’s submissions were of conspicuously high quality for a self-represented litigant – no doubt a testament to the litigation experience he has garnered over the years. His submissions were specifically focused on this particular case, and how the accepted legal principles should apply to it. In essence, his case is that the facts speak for themselves. He has suffered a significant decline in his ability to obtain and hold down various jobs since he began to experience mental health problems in 2015. Obtaining and holding down a job is, he submits, a paradigm day-to-day activity, and he clearly satisfies the test. He submits that EJ Aspinall was in error in not reaching that conclusion based on the case law I have outlined above.

### **Discussion and conclusions**

44. Firstly, I accept that Mr Mutangadura suffers from mental impairments of anxiety and low mood. That much is clear not only from his impact statement, but also from the somewhat limited medical evidence I had before me. I also consider that I am entitled to take account of Employment Judge Aspinall's recitation of some of the medical evidence which was before her in the TGM claim. Finally, the respondent did not dispute the existence of the impairment.

45. I also accept that the effects of the impairment are fluctuating. That is again clear from the claimant's own account, and supported by the medical evidence recounted by Employment Judge Aspinall.

46. The key dispute in this case is whether Mr Mutangadura has demonstrated that those impairments had a substantial adverse effect on his ability to carry out day to day activities.

47. That is generally regarded as being a relatively low threshold test. However, I have little hesitation in concluding that Mr Mutangadura has not met the test insofar as the evidence he gave about his life outside work. There was a distinct paucity of evidence of the impact outside work, particularly given the length and detail of other parts of Mr Mutangadura's statement. I consider that I am entitled to have regard to the frequency with which he experienced adverse impact in considering whether it is substantial (always remembering that this means "not minor or trivial"). For example, I consider that deciding not to leave the house on one day in July 2018 is a "minor and trivial" effect of low mood, when Mr Mutangadura is giving evidence about a nine-year period from 2015 until 2024. Similarly, giving one example of him being worried, whilst on a trip, about possibly having left electrical appliances on at home is, again, "minor or trivial".

48. There are other 'out of work' examples which Mr Mutangadura gives where he describes feeling anxious – for example when someone sits behind him on the bus, or in circumstances of potential conflict, or when receiving an unexpected parcel. However, there is no evidence of how the feelings of anxiety in these situations impacts on his ability to carry out day to day activities.

49. The main example relied on of his anxiety being said to affect him out of work is in relation to dating and relationships. Whilst going on a date with a romantic partner or potential partner is a day-to-day activity, I am not sure that *initiating* a date or relationship is. Rather, it is something that some people will do very regularly and some people may never do, depending on their situation in life, their personality and the circumstances they find themselves in. It is a deeply personal matter which many people will struggle to do, or not do at all. I do not think that makes those people disabled. Employment Judge Aspinall evidently heard similar evidence in relation to dating and relationships, which she discusses at paragraph 64.6 of her Judgment. She concludes that the fact that Mr Mutangadura was able to make approaches to women, despite his deeply-felt embarrassment at doing so, meant that there was no substantial adverse effect on day-to-day activities. I agree with that finding.

50. The more difficult part of the case, in my view, is Mr Mutangadura's argument that attending work is itself a day-to-day activity, and that his failure to hold down a job over an extended period means that it is self-evident that his impairments have the substantial adverse effect required by the statute.
51. Employment Judge Aspinall dealt with a similar argument at paragraph 64.1 of her Judgment. She rejected it as "flawed thinking" and "not how I must apply the law in Section 6". She noted that there may be many reasons why Mr Mutangadura's various roles did not last such as that they were not a good fit, or reasons to do with location, motivation or economic factors. She said "It is not for me to find the cause of his intermittent employments".
52. Before me, Mr Mutangadura relied on the **Williams** case and the other authorities I have mentioned above in support of his argument that his employment history speaks for itself and amply demonstrates the substantial adverse effect of his impairment. At paragraph 17 of his skeleton argument he set out nine separate 'incidents' which he says demonstrate that his impairments of depression and low mood led to him being unable to work, or to sustain employment.
53. In his oral submissions, Mr Mutangadura criticized EJ Aspinall's conclusions on this point, saying that she had found elsewhere in her Judgment that at least some of his roles had come to an end due to his anxiety and/or depression (specifically the role with The Claims Guys which ended after his unreciprocated demonstrations of affection).
54. It seems to me that the difficulty is that "going to work" or "holding down a job" is not one activity. It is a composite of activities. The exact make up of that composite will depend not only on the role in question, but also on other matters, such as where the claimant lives in relation to the workplace, such that "going to work" might or might not involve activities of having to walk, drive or use public transport. This is all the more so when one is considering not just one role, as in the **Williams** case, but the many, many roles that Mr Mutangadura has chosen to leave or been dismissed from since 2015 (or even since 2019).
55. I agree with Judge Aspinall that to say that 'the facts speak for themselves' and that Mr Mutangadura's employment history demonstrates that his impairments must have a substantial adverse effect on his ability to carry out day to day activities is not applying the test set out in the statute (and explained in **Goodwin v Patent Office [1999] ICR 302**). It is an impermissible short cut. For Mr Mutangadura to succeed he must go behind his employment record, and explain what activities he struggled with (which may not themselves be day-to-day activities *per Goodwin*) which led to his employments being terminated and/or to him failing to secure employment.
56. Mr Mutangadura's evidence, focusing as it does on his track record as a whole, is limited in the extent to which it goes behind the track record, and into the reasons why each employment ended. As will be clear from the Findings of Fact section above, there were at least some instances where Mr Mutangadura chose to leave a role in order to pursue another role. Those instances will have added to what he describes as his "chequered

employment history" just as much as the instances where he was dismissed for poor performance, or his decision to leave The Claims Guys due to awkwardness/embarrassment in relation to a female colleague.

57. At paragraph 10 of Mr Mutangadura's skeleton argument he set out a list of day-of-day work activities which he claims were affected by his mental health impairments, but there has been little evidence as to *how* those activities were affected. Some of the bullet points are themselves too vague to constitute activities, or else are composite activities themselves, such as "completing work tasks". In respect of others, such as "speaking to people on the phone", I have heard evidence that the claimant did not like doing this, but no actual evidence about the difficulty he had in doing it.
58. I am also conscious that similar arguments were made in front EJ Aspinall (as I have said, Mr Mutangadura was very clear that the effect of his condition fluctuated day-to-day, but was essentially consistent across the period from 2019 to the present, including the period considered by EJ Aspinall and the periods being considered today).
59. There is an important difference between EJ Aspinall's hearing and this one. In the TGM claim, Mr Mutangadura had actually been employed by the employer over a considerable period of time. TGM, as a respondent, was able to put evidence before EJ Aspinall demonstrating Mr Mutangadura's capabilities in the workplace in relation to the very things that he tells me he found difficult due to his anxiety – things like answering calls, resolving conflicts and articulating his views over email. EJ Aspinall drew on that evidence in her Judgment (in particular paragraphs 64.1 and 64.2) to support her conclusion that Mr Mutangadura had not demonstrated a substantial impact on his ability to carry out day-to-day activities in a workplace context. My view is that EJ Aspinall was in a better position to make that assessment because of the more complete evidential picture she had before her. That is not a criticism of this respondent, it simply reflects the fact that TGM was actually Mr Mutangadura's employer, whereas this respondent never was.
60. In those circumstances, and having regard to the principle of judicial comity, it would be wrong of me to simply accept Mr Mutangadura's assertions at face-value, and, in doing so, reach a decision which is inconsistent with EJ Aspinall's decision in circumstances where she had access to better evidence and was better placed to reach a Judgment. I therefore do not find that Mr Mutangadura has shown a substantial adverse effect on his ability to carry out day-to-day activities in the workplace.
61. For those reasons, my conclusion is that Mr Mutangadura was not disabled during the relevant period.

### **Consequential matters – the harassment claim**

62. As noted above, Mr Mutangadura raised a point at the outset of the hearing, contending that, even if he was not disabled, his harassment claim should be permitted to proceed because the harassment jurisdiction does not require an individual to establish disability status. I had hoped to provide an oral judgment on disability status during the course of the hearing and then

return to this point but, unfortunately, the way the hearing progressed meant there was insufficient time to do that. Both parties therefore briefly addressed me on the point at the end of the day, in order that I could determine it as part of this decision, in the event that I was to conclude that Mr Mutungadura was not a disabled person at the material time.

63. It is convenient to remind myself exactly what the harassment claim is that Mr Mutungadura is seeking to pursue, in accordance with EJ Barker's List of Issues. The Issues in relation to harassment were expressed as follows (I have amended the numbering for ease of reference):

***Harassment related to disability (section 26 of the Equality Act 2010)***

1. *Did the Respondent engage in unwanted conduct related to disability for the purposes of the Equality Act 2010? The Claimant relies upon the following:*
  - a) *the Respondent not proceeding with and/or declining the Claimant's application for the Financial Services Administrator role made on 8 April 2024*
  - b) *the Respondent did not invite the Claimant to a phone or face to face interview for the Financial Services Administrator role that was applied for on 8 April 2024*
  - c) *the Respondent did not proceed with and/or declined the Claimant's request on 9 April 2024 to be considered for the Platform Investments Administrator role, Team Administrator role and any other Administrator roles that may have been available at AJ Bell on 9 April 2024.*
  - d) *the Respondent did not reply to the email regarding reasonable adjustments sent by the Claimant on 9 April 2024.*
  - e) *the Respondent's decision to not proceed with the Claimant's application and/or declining the Claimant's application for the Customer Service Administrator that the Claimant made on 8 June 2024 (as the Respondent referred to in their 25 June 2024 email to the Claimant)*
  - f) *the Respondent not inviting the Claimant to a phone or face to face interview for the Customer Service Administrator role that he applied for on 8 June 2024*
2. *Did the unwanted conduct occur in the manner alleged by C?*
3. *If so, was the unwanted conduct related to disability?*
4. *If so, did the unwanted conduct have the purpose or effect of:*
  - a) *violating the Claimant's dignity; or*
  - b) *creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*
5. *If so, having regard to all the circumstances of the case, was it reasonable for the conduct to have that effect on the Claimant?*

64. Turning specifically to s.26 Equality Act 2010, which sets out the test for harassment, it is clear that the impugned conduct need only be "related to a relevant protected characteristic". An employee can potentially succeed in a disability-related harassment claim where they are subjected to conduct related to someone else's disability (e.g. a parent who hears insulting comments at work about their disabled child) or disability at large (e.g. an employee who is exposed to an environment where insulting comments are made about, for example, people in wheelchairs or people suffering from dementia). There is also case law which establishes that an employee can succeed in a direct disability discrimination claim in circumstances where their employer perceives that they would meet the statutory definition of disability, but in fact they do not (**Chief Constable of Norfolk**

**Constabulary v Coffey 2020 ICR 145**). The same must be true, in my view, of harassment claims, and I understood Mr Lassey did not dispute that such a claim was potentially available in the right circumstances.

65. The primary point made by Mr Lassey, was that Mr Mutungadura was not putting his claim in such a way. When one reads the list of issues, Mr Lassey argued, it is clear that Mr Mutungadura's putative disability is the only 'disability' in the frame – the claimant is not saying that there were general comments about disabled people that he found offensive, nor is he saying that the respondent perceived him to be disabled even if he actually was not. Therefore, in the circumstances of *this* claim, a finding that Mr Mutungadura was not disabled at the relevant time would be determinative of the harassment complaint as well as the other heads of claim.
66. I agree with Mr Lassey that there is no question here of conduct being related to disability in any sense other than being related to Mr Mutungadura's own putative disability. Mr Mutungadura did not suggest anything of that nature.
67. However, the question of perceived disability merits some further consideration. Mr Mutungadura's primary position is that he was (and is) disabled. He also places great emphasis on the fact that he had asked for reasonable adjustments as part of the recruitment process. It would be very harsh to now say that, in the light of my finding that he was not disabled, he ought to have ensured that EJ Barker expressly recorded an alternative argument that he was perceived as disabled in the list of issues. The pleading regime in the Employment Tribunal is informal, and Mr Mutungadura has ensured that the point was raised at this hearing. Mr Lassey was in a position to respond to it and I am satisfied that it is a point that Mutungadura is entitled to raise and that I am able to determine.
68. If I am correct to import the **Coffey** test into a claim of harassment in these circumstances (the direct discrimination claim having been withdrawn) the respondent will have 'perceived' Mr Mutungadura to be disabled if it believed all of the elements of the statutory definition of disability were present, even if it did not attach that label to them.
69. It is common ground in this case that Mr Mutungadura had emailed the respondent during the recruitment process and asked for reasonable adjustments. He says that he had referred to having anxiety and low mood. I have not seen the emails and this point was not explored by the parties in evidence, but irrespective of whether he informed the respondent of his specific medical conditions, I consider that any large employer with a dedicated recruitment team would interpret a request for "reasonable adjustments" during the recruitment process to be an assertion by the candidate making the request that they are a disabled person within the meaning of s.6.
70. Is that assertion enough to create a perception of disability on the part of the employer? Again, it is significant that this is a job application case, and that there was at no time an employment relationship between the claimant and the respondent. In **Coffey** the claimant was a serving police officer who was refused a transfer because of a slight hearing impairment. The

respondent was in a position to gain information about the specific impairment as her employer, and it did have such information. Generally, if an applicant for employment tells an employer that they have a disability, that will be a pretty good clue that, indeed, they very likely do have a disability. However, it cannot, in my judgement, be the endpoint. If a putative employer was then fixed with a 'perception' of that individual as being disabled unless and until they obtain their own evidence, that would have the effect of significantly widening the protection which the Equality Act 2010 offers, at least on my understanding.

71. In my view, the position is that the employer in that situation does *not* have the belief that all the elements of the statutory test are met simply because an assertion has been made – it does not have the grounds to form such a belief one way or another. It is merely put on notice that the candidate is someone who *may* prove to have a protected characteristic. (Of course, such an interpretation does not affect the protection against harassment available to a candidate who proves to be actually disabled. They will be able to rely on that disability as the relevant protected characteristic for the purposes of s.26 regardless of the employer's knowledge of the disability. It is also right to note that the victimisation provisions in s.27 may in some circumstances assist non-disabled applicants who have, for example, requested reasonable adjustments in the understanding that they are disabled. There was no victimisation claim in this case.)

72. For those reasons, I am satisfied that none of the claimant's complaints arising out of his alleged disability can survive the finding that he was not a disabled person within the meaning of s.6 at the relevant time. The claim will therefore be dismissed in its entirety and not listed for any further hearing.

### **Deposit Order application**

73. In view of my conclusions above I have not determined the respondent's application for a deposit order.

Approved by: Employment Judge Dunlop

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Date: 4 November 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

15 December 2025

FOR EMPLOYMENT TRIBUNALS

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