



EMPLOYMENT TRIBUNALS

Claimant: Mr C Hindley-Matic

Respondent: City College, Plymouth

Heard at: Exeter (via video) **On:** 18 September 2025

Before: Employment Judge Hastie

Representation

Claimant: In person

Respondent: Mr C MacNaughton, solicitor

JUDGMENT

The reserved judgment of the Tribunal on the preliminary issues is as follows:

- (1) The claimant was a disabled person by reason of cancer only.

RESERVED REASONS

Introduction

1. The preliminary hearing was to determine whether the claimant was at any material time a disabled person on account of impairments or combination of impairments at any material time pursuant to section 6 of the Equality Act 2010 (EqA10).

Preliminary hearings (case management)

2. A preliminary hearing for case management purposes was conducted by Employment Judge Hay on 9 January 2025. A further preliminary hearing was conducted by Employment Judge Self on 10 July 2025.

Background

1. The claimant was employed by the respondent as a lecturer from 13 September 2019 until 14 September 2023. He was dismissed following various allegations made against him which the respondent said amounted to gross misconduct justifying dismissal. The claimant started the early conciliation process on 6 December 2023. The ACAS certificate was issued on 17 January 2024. The ET1 was presented on 13 February 2024.

2. The claimant brings claims of unfair dismissal and disability discrimination against his former employer, City College, Plymouth. The discrimination claims are brought under
 - section 15 EqA10 – discrimination arising from disability, and
 - section 21 EqA10 – failure to make adjustments.
3. The claimant alleges that the decision to discipline him and the decision to dismiss him constitute unfavorable treatment. The claim in relation to failure to make adjustments appears to relate to the period May 2023 to September 2023. The claimant asserts that the substantial disadvantage in relation to his reasonable adjustments claim was not being able to effectively advocate for himself.
4. The claimant does not pursue a claim for indirect discrimination.
5. The respondent opposes the claims. The respondent asserts that the dismissal was fair and within the range of reasonable responses. The respondent further asserts that the claimant was not a disabled person pursuant to section 6 EqA10 by way of the impairments that the claimant asserts arose in consequence of his cancer diagnosis.

The Hearing

6. The hearing took place by way of video hearing with both parties joining remotely. I was provided with a bundle of 439 pages. I was also provided with a document dated 4 August 2025 from Mr Mike Mallet, UCU Union Representative at City College Plymouth. The case management order of 10 July 2025 had imposed a page limit of 250 pages. There had been no direction permitting the increase. During the hearing, I was directed to only a small number of pages in the bundle. I have fully considered those. I also read the bundle ahead of the hearing, and again during my consideration of the issues. The claimant gave evidence and was cross examined. Frequent breaks were taken during the hearing. The claimant was given time to note questions and collect his thoughts before giving an answer. The claimant was asked frequently and after each break if he felt able to proceed and, on each occasion, he confirmed that he was.

Issues

7. The claimant says that he is disabled in accordance with the definition in section 6 of the EqA2010. He asserts that his impairments are,
 - a) Cancer
 - b) Physical/chronic fatigue
 - c) Cognitive fatigue/Chemo brain
 - d) Emotional regulatory difficulties
 - e) Phantom Rectum and Bowel Dysfunction
 - f) Peripheral Neuropathy and tremors
8. Impairments a) to d) are contained in the case management order of EJ Hay. They are also referenced in the case management order of EJ Self. Impairments e) and f) were raised by the claimant after the first case management hearing. He was directed by EJ Self to address why these additional impairments should be considered. The claimant's explanation for the same is contained at page 11 of his document titled 'Case management directives' dated 28 August 2025.
9. At the preliminary hearing of 18 September 2025, the claimant confirmed that he

relied on impairments a) to d). He said that impairments e) and f) are contributing factors but he relied on a) to d) in asserting disability. The claimant confirmed that he was not pursuing an amendment to include impairments e) and f).

10. The respondent asserted that there are two relevant periods in relation to the claims. Period one being the time of the alleged conduct by the claimant – September 2021 to October 2022. Period two being the period of the investigation and outcome – May 2023 to 14 September 2023.
11. The claimant was diagnosed with cancer in December 2019. The claimant asserts that he is disabled in accordance with EQA10 Schedule 1 paragraph 6. In asserting disability, he relies on the cancer diagnosis and the impairments that arose as a consequence of the cancer and/or its treatment. The respondent accepts that the claimants cancer amounted to a disability. The respondent further states that *'he is however in remission, and this has been the case since on or around March 2023'*. The respondent does not accept that the claimant is disabled in relation to any other impairments. The claimant confirmed that the entirety of the cancerous cells were removed during surgery in 2020, so he was not 'in remission'. From August 2020, he had annual scans. They were all clear and concluded on 3 September 2025.

Law

Disability

12. The claimant alleges discrimination because of his disability under the provisions of the Equality Act 2010 (EqA10).
13. A person has a disability if he has a physical or mental impairment that has a substantial and long term adverse effect on his ability to carry out normal day to day activities. A substantial effect is one that is more than minor or trivial, and a long term effect is one that has lasted or is likely to last for at least 12 months or is likely to last the rest of the life of the person, Section 6 EqA10.
14. The claimant bears the burden of showing that he meets this definition, on the balance of probabilities Morgan v Staffordshire University [2002] IRLR 190.
15. In Goodwin v Patent Office [1999] ICR 302, it was held that there are four limbs to the definition of disability, and this is reflected in the legislation.
 - Does the person have a physical or mental impairment?
 - Does that impairment have an adverse effect on their ability to carry out normal everyday activities?
 - Is that effect substantial?
 - Is that effect long term?
16. Normal day to day activities are things people do on a regular basis such as shopping, reading, writing, conversing, getting washed and dressed, preparing food, eating, carrying out household tasks, walking and travelling, socialising, and working. Normal day to day activities must be interpreted as including activities relevant to professional life Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763.
17. Paragraph 2 Schedule 1 Equality Act 2010 states that:
 - (1) The effect of an impairment is long term if -

- (a) It has lasted for at least 12 months,
 - (b) It is likely to last for at least 12 months, or
 - (c) It is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal everyday activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
18. The issue of how long an impairment is likely to last is determined at the date of the alleged discriminatory act and not the date of the tribunal hearing McDougall v Richmond Adult Community College [2008] ICR 431, CA. Subsequent events should not be taken into account.
19. Paragraph 6 Schedule 1 EqA10 states that cancer is a disability.

Disability status

20. The claimant confirmed that the asserted impairments he relied on are:
- a) Cancer
 - b) Physical/chronic fatigue
 - c) Cognitive fatigue/Chemo brain
 - d) Emotional regulatory difficulties
- a) Cancer**
21. The claimants diagnosis of cancer is not in dispute. The claimant is disabled by reason of his cancer diagnosis. Paragraph 6 Schedule 1 EqA10 applies.
- b) Physical/chronic fatigue**
22. There is no reliable evidence upon which I can find that the claimant's asserted impairment of physical chronic/fatigue is a disability within the provisions of the Equality Act 2010.
23. I am persuaded that the claimant had physical/chronic fatigue. There is a medical history of his reporting physical/chronic fatigue to his doctors. The claimant had reported chronic fatigue to his doctor in January 2023 that had 'exacerbated in the last 3 – 4 months'. The claimant was referred by his doctor to the specialist chronic fatigue syndrome specialist team on 20 March 2023. He was diagnosed with Chronic Fatigue Syndrome by Dr. Pshezhetskiy on 22 November 2024. The fatigue lasted for at least 12 months and was present during period two (May 2023 – September 2023). As the long term requirement relates to the effect of impairment rather than merely the impairment itself, it is not sufficient that the claimant has an impairment that is long term, the impairment must have a substantial adverse effect on day to day activities that is long term.
24. The claimant accepts that during period 1, September 2021 to October 2022 his sickness absence record shows that he was absent with a sickness bug only on one occasion, 21 September 2021. There are no other sickness absences recorded. There is no absence due to chronic or cognitive fatigue or for any other reason. The claimant asserts that he was often permitted to leave work early. There is no evidence of this in the papers that was brought to my attention.
25. The claimant accepted that during the period 2019 – 2022 he gave additional feedback to students that was over and above his scheduled teaching. He provided support to other students. The claimant agreed that he performed above

and beyond and could do that in spite of his health. The claimant was able to give detailed examples of the additional work and support he provided to several students throughout period 1.

26. The claimant relied on the document from Mr Mallet that describes an incident in late 2020 when he was tasked with doing additional work but only got half of it done. The claimant said this showed that his conditions were affecting him prior to the relevant time of the claim. I do not accept that the description of the incident by Mr Mallet is persuasive evidence of chronic or cognitive fatigue having a substantive adverse and long term effect on normal day to day activities. It is not medical evidence and appears in isolation when set against the other evidence of the claimants performance.
27. The evidence is that the claimant continued to work throughout the material period. He asserts that he was working reduced hours and working from home. There is no evidence of this that was drawn to my attention, and I was unable to find any in my reading of the bundle. I accept that some or all of the relevant period was during the Covid19 lockdown, and the claimant is likely to have been working from home at times. In any event, the claimant was also taking on extra work supporting students, including accompanying them on a night shoot to Dartmoor. I do not accept that somehow this was not relevant to his asserted fatigue because it took place on a Sunday. Although the claimant states in his disability statement that his physical fatigue had a substantial adverse effect on his ability to carry out normal everyday activities, the evidence does not support this assertion, and I do not find it to be the case.

c) Cognitive fatigue/Chemo brain

28. I will refer to this asserted impairment as cognitive fatigue. The claimant asserts that he suffered from cognitive brain fog due to the cancer diagnosis. This caused a level of confusion and impaired judgement. The claimant asserts that at times during 2021 and 2022 he had no sense of boundaries and his judgment was impaired. The claimant said he did not exercise his judgment as consistently as he might have had he not had the asserted impairments.
29. The claimant asserts that his emotional regulation and cognitive fatigue led him to develop an over *familial* tone. The claimant accepted that there was no reference to an over familial tone in the medical evidence but said that his cognitive difficulties and emotional regulation led to an *over familial* tone. He accepted that an *overly familial* tone would not be a medical finding or diagnosis, but that fatigue, cognitive impairment and emotional regulation difficulties would be. He said, the medical causes speak *to an overly familial tone*. I have also considered this case on the basis that the claimant may have said or meant to refer to an *over familiar* tone, rather than an overly familial one.
30. The claimant said that it would be unfair for him to say that the cancer treatment removed his moral compass. He said it did cause lapses in judgment, affected his concentration, and caused tiredness and stress. He says he was less resilient and more fatigued than before his cancer diagnosis and his level of judgment was reduced. The claimant says that the emotional difficulties and cognitive impairment due to the cancer caused him to enter into the relationship which was the basis of the disciplinary process. He says that he had control over who he entered into a relationship with, but at the material time he suffered from brain fog and emotional dysregulation and the conditions came and went in terms of severity.

31. The letter of R Johnson dated 11 January 2021 states that the claimant had

continued working since chemotherapy. Mr Johnson states that the claimant had a degree of *chemo brain* which can cause mild reductions in short term memory and concentration and a degree of increased fatigue. However the letter states that the claimant was successfully working from home, and his symptoms were not adversely affecting his teaching.

32. There are few references to cognitive fatigue in the evidence I was provided with. In a letter from K. Aldrich dated 16 October 2023, there is a section headed - "Possible treatment toxicities and/or late effects." One of the long term consequences of chemotherapy is given as "cognitive impairment". There is no further explanation of this consequence. K Aldrich does not state that the claimant had any of these toxicities and/or late effects.
33. In his disability impact statement, the claimant gives one specific reference to documentary evidence of this asserted impairment. This is the occupational health report of 23 March 2023 – structured tasks. In relation to his GP records he states, "GP records (2021-2024) note ongoing cognitive deficits". The claimant's GP records are at item 24 on the index (172-216) some 44 pages of scanned documentation. I was not referred to any particular pages within this 44 page section in relation to cognitive fatigue or chemo brain. I have located sections of the notes where the GP records the claimant's reports of fatigue. It is not clear from the notes whether this is cognitive fatigue or physical fatigue.
34. The claimant accepted that he had provided lengthy responses to the allegations that were made against him, and which were the subject of the disciplinary process. He said he was trying to be thorough in his responses, and he was able to prepare a response over the period of a month, June to July 2023. The claimant asserts that his ten page response to the allegations in period 2 was prepared across a one month period (June – July 2023). This is asserted to be evidence of fatigue. I do not accept that the month available for the claimant to respond to the allegations establishes that any fatigue or other impairment was having a substantial and long term adverse effect on his day to day activities. The claimants responses to the allegations were extensive and he accepted he was able to cognitively assess his conduct. I do not accept that the responses are indicative of physical or cognitive impairment.
35. The claimant asserts that Capecitabine/Oxaliplatin intensified his cognitive fatigue. I was not directed to any medical evidence in support of this assertion, and I have not encountered any such evidence in my reading.
36. Again, the claimant relied on the document from Mr Mallet that describes an incident in late 2020 when he was tasked with doing additional work but only got half of it done. The claimant said this showed that his conditions were affecting him prior to the relevant time of the claim. I do not accept that the description provided by Mr Mallet establishes that the claimants impairments were having a substantial and long term adverse effect on his normal day to day activities. The claimant was continuing in his role as a lecturer, going above and beyond, and there appear to be no concerns raised by the respondent.
37. Taking into account the evidence I heard from the claimant and the evidence in the bundle I am not persuaded that the claimant had a diagnosis or impairment of cognitive fatigue. If I am wrong in that I am further unpersuaded that cognitive fatigue was an impairment that had a substantial and long term adverse effect on the claimants ability to carry out normal everyday activities. The claimant's "Daily Impact" section of his disability statement is not well served in terms of specific evidence of the adverse effect on his ability to carry out day to day activities. The claimants assertion of the daily impact on him of this impairment are not consistent with evidence that he was continuing to carry out his duties at work.

He took no relevant absence from work and continued to provide additional support to students beyond his contracted duties. In my view this is further evidence that undermines the claimants assertion that cognitive fatigue is an impairment capable of being a disability and I do not find it to be so.

d) Emotional Regulatory Difficulties

38. The claimant alleges that he had an impairment of emotional regulation difficulties. This is a further example of an asserted impairment for which it would not be unreasonable to expect some form of medical evidence. My attention was not drawn to the medical records in relation to this asserted impairment. In his disability statement the claimant states that the supporting evidence is two counselling records (Mustard Tree and Innovate) and a prescription for beta-blockers in 2023. There were no counselling records in the bundle. Innovate Health Care is the Occupational Health provider for the respondent, they supply two reports, March 2023 and September 2022. There is mention that Innovate could provide counselling services at a further charge, but there is no actual counselling record. In relation to the beta-blockers there was no medical evidence of why these were prescribed to the claimant. My attention was not drawn to any specific pages in the bundle that supported this contention by the claimant. My reading of the bundle did not reveal any reference to "beta-blockers". It may be that one of the many medications referred to in the bundle is a beta-blocker but without evidence on that point I have no way of knowing. The claimant drew my attention to page 173 of the bundle. This is an entry in the medical records dated 1 September 2022 that states 'anxiety state'. I do not consider that this two word entry establishes any of the asserted impairments as a disability or disabilities.
39. The claimant accompanied some students on a Dartmoor night shoot. He said that events at the night shoot were connected to his emotional dysregulation. The claimant accepted that emotional dysregulation is not mentioned in the bundle but there are mentions of stress and cognitive fatigue and his struggles to cope with his condition. The claimant said he was able to go on the night shoot despite his chronic fatigue as it was on a Sunday
40. I am not persuaded that the claimant had an impairment or diagnosis of emotional regulation difficulties. There is insufficient evidence for me to reach a conclusion that he had such an impairment. If I am wrong in that I am further unpersuaded that emotional regulation difficulties were an impairment that had a substantial and long term adverse effect on the claimants ability to carry out normal everyday activities. There is insufficient evidence, either written or oral for me to conclude that this asserted impairment had a substantial and long term adverse effect on the claimants ability to carry out normal day to day activities. In his disability statement it appears that the claimant has self-diagnosed this impairment. For example, he says, "*I experienced paradoxical emotional detachment and emotional dependency, social withdrawal, and heightened distress.*" In the absence of any evidence from a qualified therapist/counsellor/medical practitioner, I have only the words of the claimant to rely upon. The claimant gave no evidence that he was qualified to self-diagnose in this way. I am unable to place any weight on the evidence of the claimant in this context.
41. The claimant did not pursue asserted impairment e) or f). These were e) Phantom Rectum and bowel dysfunction, and f) Peripheral Neuropathy and tremors. He did though say during the hearing that these were relevant to the impairments that were asserted (impairments a) to d)). In fairness to the claimant, I have considered whether there is evidence that persuades me that these

impairments, in isolation or together with other impairment(s), could amount to a disability under section 6 EQA10. These appear to be possible side effects of the claimants cancer and or its treatment. My attention was not drawn to any diagnosis of these conditions, and I could not locate the same in the bundle save for a mention of some peripheral Neuropathy in 2020 that was said by Dr Rowe to settle between cycles of chemotherapy. There is insufficient evidence for me to conclude that he had either or both of these conditions at the material time. If that is incorrect, I do not consider that there is sufficient evidence to conclude that the impairments had a substantial and long term effect on the claimant's normal day to day activities.

42. The claimant must establish that he has a physical or mental impairment that has a substantial and long term effect upon his ability to carry out normal day to day activities. It does not matter whether the conditions relied upon are illnesses in their own right or the effects of some other condition or its treatment, but there must be sufficient medical and other evidence to establish that the claimant has a physical or mental impairment that has a substantial and long term effect upon his ability to carry out normal day to day activities.
43. I have to an extent accepted the claimant's impact statement as some evidence of what he says are the effects of his impairments. There also needs to be some medical evidence that underpins that personal evidence. The medical and occupational health evidence provided is extensive, but it is patchy and mostly incoherent. There was no complete or compelling narrative in the medical evidence that led me to be able to find that the claimants contention in relation to asserted impairments b) to d), that he was a disabled person by reason of these impairments at the material times.
44. I have carefully considered the evidence, both oral and written. The claimant has not established, on the balance of probabilities, that the three conditions of physical/chronic fatigue, cognitive fatigue/chemo brain, and emotional regulatory difficulties, whether separately or together, and whether standing alone or as symptoms or after-effects of cancer or its treatment, amount to a disability or disabilities so as to establish on a separate or additional basis the claimants status as a disabled person at the relevant times.
45. The claimant was disabled by reason of cancer. The claimant was not disabled in relation to asserted impairments b) to d). Nor was he disabled in relation to impairments e) and f) and these were not pursued in any event.
46. The matter will be listed for a further case management hearing via video.

Employment Judge Hastie

Date: 14 October 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
31 October 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE