



EMPLOYMENT TRIBUNALS

Claimant: Mr D Sharp

Respondent: The Secretary of State for Justice

Heard at: Leeds **On:** 2nd, 3rd, 4th & 5th June 2026

Before: Employment Judge S Edwards

Representation

Claimant: Miss L Dawson (Counsel)

Respondent: Mr P Smith (Counsel)

JUDGMENT

1. The claim of failure to make reasonable adjustments in relation to the adjustment of not allowing the claimant to continue in his role of Inspectorate Manager without the requirement of attending potentially violent incidents was not presented within the applicable time limit, but it is just and equitable to extend the time limit and will therefore proceed.
2. The claim of failure to make reasonable adjustments in relation to the failure to offer the claimant suitable alternative duties to avoid dismissal was presented within the applicable time limit and will therefore proceed.
3. The following complaints of failure to make reasonable adjustments for disability are well-founded and succeed:
 - a. not allowing the claimant to continue in his role of Inspectorate Manager without the requirement of attending potentially violent incidents.
4. The remaining complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.
5. The complaint of unfavourable treatment because of something arising in consequence of disability is well-founded and succeeds.
6. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

FULL REASONS

JUDGMENT with summary reasons was given at the hearing on **5th June 2026** and written summary reasons were requested at the hearing in accordance with Rule 60 of the Employment Tribunal Procedure Rules. However, the Tribunal considers that it is appropriate to provide written full reasons, and the following written full reasons are therefore provided:

Introduction

1. This is a claim by Mr Dean Sharp against his former employer, the Secretary of State for Justice. I will refer to Mr Sharp as the claimant and the Secretary of State for Justice as the respondent throughout this judgment. The claimant was employed within His Majesty's Prison and Probation Service from 27th March 2000. The claimant commenced his employment as a Prison Officer in HM Prison Wormwood Scrubs.
2. He took up a post as Response Team Manager in the National Dog Technical Support Group (NDTSG) based in Swinfen on 1st April 2013, which was a Band 5 post.
3. The claimant was diagnosed with Post Traumatic Stress Disorder in 2018, which arose from two incidents; firstly, the claimant's treatment by his managers after he reported concerns regarding the conduct of a manager in 2015 and secondly; an incident in which he was isolated from his colleagues by prisoners during a riot. The respondent accepted that the claimant's PTSD was a disability throughout the period to which his claims in these proceedings relate.
4. The hearing took place in person and both the claimant and the respondent were represented by counsel.

The Issues

5. At the outset of the hearing the issues were discussed and agreed to be the following:

Time Limits

- 5.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 October 2024 may not have been brought in time.
- 5.2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 5.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 5.2.2. If not, was there conduct extending over a period?
 - 5.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

- 5.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 5.2.4.1. Why were the complaints not made to the Tribunal in time?
 - 5.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

Unfair Dismissal

- 5.3. It is admitted that the Claimant was dismissed by the Respondent and that the effective date of termination was 28 January 2025.
- 5.4. What was the reason or principal reason for dismissal? The Respondent says the reason was capability (medical inefficiency).
- 5.5. If the reason was capability, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. The Tribunal will usually have to consider, in particular, whether:
 - 5.5.1. The Respondent genuinely believed the Claimant was no longer capable of performing their duties;
 - 5.5.2. The Respondent adequately consulted the Claimant;
 - 5.5.3. The Respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;
 - 5.5.4. The Respondent adequately considered redeployment as an alternative to dismissal;
 - 5.5.5. The Respondent could reasonably be expected to wait longer before dismissing the Claimant; and,
 - 5.5.6. Dismissal was within the range of reasonable responses.

Disability

- 5.6. The respondent admits that the claimant was a disabled person at all material times by reason of a mental impairment.

Discrimination arising from disability

- 5.7. It was accepted that the respondent knew that the claimant had a disability at all material times.
- 5.8. The Respondent admitted that the Claimant was dismissed on 28 January 2025 and that this amounted to unfavourable treatment. The respondent accepted that the claimant was dismissed because he could not carry out the full range of operational duties required in the Response Team Manager role and the Inspectorate Manager role due to the regular exposure to high threat and violent deployments. The respondent accepted that his inability to respond to concerted indisciplines and to carry out all the elements of his role arose in consequence of his disability.

- 5.9. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says its aims were:
- 5.9.1. Ensuring regular and satisfactory levels of attendance at work;
 - 5.9.2. Ensuring the safe and effective operation of the business;
 - 5.9.3. Reducing the impact on other employees caused by the Claimant's ongoing sickness absence; and,
 - 5.9.4. Reducing the impact on other employees caused by the Claimant being unable (as advised by OH) to respond to all (including the most serious and potentially violent) incidents on a permanent basis.
- 5.10. The Tribunal will decide in particular:
- 5.10.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 5.10.2. Could something less discriminatory have been done instead; and,
 - 5.10.3. How should the needs of the Claimant and the Respondent be balanced?

Failure to make reasonable adjustments

- 5.11. The Respondent accepted they have the following provisions, criteria or practices (PCPs):
- 5.11.1. That staff must be able to undertake all the duties of their posts; and,
 - 5.11.2. That staff in the NDTSG role (National Dog and Technical Support Group) must be able to cover the role of a Response Team Manager?
- 5.12. The respondent accepted that the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:
- 5.12.1. he was unable to carry out all the duties of his role, in particular attend concerted indisciplines (i.e. riots) in the role of Response Team Manager.
- 5.13. The respondent accepted that they knew that the claimant was likely to be placed at the disadvantage.
- 5.14. What steps could have been taken to avoid the disadvantage? The Claimant suggests:
- 5.14.1. Allowing the Claimant to remain in the NDTSG role (National Dog and Technical Support Group) without the need to respond to concerted indisciplines (i.e. riots); and,
 - 5.14.2. Offering the Claimant suitable alternative duties to avoid dismissal such as a role within the inspectorate team, a dog handler role, a dog section manager role, and/or an area intelligence role.
- 5.15. Was it reasonable for the Respondent to have to take those steps, and when?

5.16. Did the Respondent fail to take those steps and when?

Evidence

6. I had the benefit of a bundle of documents running to 836 pages. I was directed to read a number of key documents before hearing witness evidence, which were duly read. I otherwise only considered those documents to which I was taken.
7. I was provided with a witness statement from the claimant and witness statements from Mr Glenn Knight and Mr Andrew Rogers, on behalf of the respondent.
8. The claimant, Mr Knight and Mr Rogers gave oral evidence during the course of the hearing. Where there was a direct conflict of evidence concerning factual events, I generally preferred, on the balance of probabilities, the evidence of Mr Knight and Mr Rogers. Mr Knight and Mr Rogers gave clear and straightforward evidence that was consistent with the contemporaneous documents and the contents of their witness statements. There were a number of occasions where the claimant gave evidence orally that did not appear in his statement and his response to questions as to why it was not there was that he had given submissions to his legal team and they had said it was not relevant or he did not know why it was not there. Further, the claimant was repeatedly evasive in his answers when asked questions that should have been within his knowledge, either failing to answer the question put to him or refusing to answer the question on the basis that it was a question that should be put to the respondent's witnesses instead.
9. There was a preliminary issue regarding the existence and disclosure of an audio recording of the dismissal appeal meeting with Mr Rogers. The claimant's trade union representative had recorded the hearing covertly. The recording was disclosed to the respondent late and there was no transcript of the recording. The recording had not been provided to the Tribunal when documents were disclosed. I asked the parties whether they intended to ask the Tribunal to listen to the recording. They were afforded time to consider whether they intended to play the recording to the Tribunal whilst I carried out the necessary reading. The parties confirmed that they did not intend to play the recording and would not be relying on it in evidence.

Facts

10. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the tribunal must consider in order to decide if the claims succeed or fail. The absence of reference to any item of evidence should not be taken as indicating that it has been overlooked. I have considered all the evidence before me and refer only to the matters necessary to determine the issues. These facts are found on the balance of probabilities.
11. Many of the facts in this case were agreed between the parties, particularly in relation to the chronology of events. The main areas of dispute related to the interpretation of the claimant's capabilities and the decisions that were made by the respondent.

12. The National Dog Technical Support Group (NDTSG) was part of a national unit known as the Operational Response and Resilience Unit ('ORRU') whose role was to respond to incidents that arise in prisons. NDTSG provides professional oversight of the use of dogs and deploy nationally in response to incidents. The claimant's role as Response Team Manager (RTM) required him to be deployed into prisons to resolve incidents that could not be resolved by the individual prison resources.
13. The types of incidents they could be deployed to included, but was not limited to, concerted indisciplines (riots), hostage situations, threats to commit suicide, incidents involving firearms and explosives, guarding gates that could not be closed or if there was crane or other equipment that needed to be guarded from prisoner interference.
14. Firearms and explosives searches have a scale of possible threat. If a cartridge is found in an open area, a search of that area can take place in a controlled manner without the presence of prisoners and can be easily controlled with limited risk. However, if the report is of a prisoner with a firearm, it is far more risky. A team would clear the prisoners from their cells and the NDTSG team would search the cells and other areas. However, there are situations where there remains contact with prisoners depending on the movement and management of the prisoners within the prison environment during the search.
15. The nature of the role of NDTSG meant that, at the time they are called to deploy, the majority of incidents are already serious and likely to have been caused by an act of violence of some kind or there was a very high probability of a situation escalating to result in violence.
16. The very nature of prisons and the people with whom an officer interacts in the prison environment means that there is almost always a risk or the potential for violence when coming into contact with prisoners.
17. There are deployments where the potential for violence is limited, for example, pre-occupation searches where the dog team attend to search the prison before the prison population is accommodated. There are also some deployments that can be managed by the RTM or Inspectorate Manager (IM) remotely, such as deploying dog handlers to guard gates or other equipment, which would not result in the potential of a violent incident for the remote manager.
18. This is the case across the prison estate, irrespective of the grade of security assigned to the prison.
19. The RTMs and IM's can be deployed nationally. There are two bases, one at Kidlington in Oxfordshire and one at Hatfield Woodhouse in Doncaster. Nominally the officers based in Doncaster cover the North and those in Oxfordshire cover the South. However, when necessary, they could be required to cover any location or be jointly deployed. Decisions about deployment of resources and personnel are made by the National Tactical Adviser.
20. The claimant lives in Staffordshire. He travelled 94 miles from his home to his base location in Doncaster approximately twice a week. He would otherwise

travel a significant distance to other locations and could be required to attend sites in Northumberland, Manchester or Leeds, sometimes on the same day. There was a significant amount of travelling required in the role.

21. Staff employed in NDTSG were given a company vehicle, usually a van, to be used when on business duties as they needed to transport dogs or equipment as part of their role. They were also issued with a fuel card to cover business travel. Their terms and conditions also meant that their working day would begin when they left home and end when they returned. If, due to travel or the nature of the duty being done, they worked over the required length of their shift, they would claim Time Off in Lieu (TOIL) for that time. Other staff outside ORRU were required to travel in their own time, in their own vehicle and cover their own vehicle expenses for that commute.
22. The claimant was assigned to the role of Inspectorate Manager (IM) from 31st October 2022 to 31st January 2023 in order to cover the sickness absence of a colleague. It was a temporary assignment. The role of Inspectorate Manager involved responsibility for training, assessments, licencing, investigation and reporting of incidents. I'll refer to this as non-operational duties. There was also an operational requirement, which was a requirement to respond to requests for deployment in the same way as the RTM role.
23. The claimant's secondment to IM was to come to an end on 31st January 2023 when his colleague returned to work and he was to return to his substantive role as RTM. There was no other vacancy in the role of Inspectorate Manager at that time. The claimant commenced a period of sickness absence on 30th January 2023. The prospect of returning to his RTM role and being exposed to potentially violent incidents triggered his PTSD and his mental health deteriorated.
24. There was no dispute in this case that the claimant could not carry out the duties of his substantive role as RTM from at least March 2023. It was an inherent and unavoidable part of the RTM role to respond to incidents that were violent or had the potential to be so and to provide leadership and management in those situations.
25. The occupational health report on 3rd February 2023 confirms he is not fit to return to his RTM role because it triggers his PTSD but he could provide sustained and effective service if he were able to remain in the role of Inspectorate Manager.
26. When the claimant began working in the role of Inspectorate Manager from 31st October 2022, the type of deployment the IM's would respond to were predominantly firearms and explosives searches and they were not required to respond to the full range of incidents. The frequency of deployments were less than the RTM role and the level of potential threat in those deployments was lower.
27. The Occupational Health (OH) report on 8th March 2023 confirms the claimant is fit to carry out the role of Inspectorate Manager and he can manage his PTSD symptoms, even with the triggers in the IM role because of the context of those triggers. A stress risk assessment was recommended.
28. The stress risk assessment was carried out on 15th March 2023 and the result

was a 6 month trial in the role of Inspectorate Manager. The purpose was to see if the claimant could fit into the role without triggering his PTSD and there would be a review at the end of the period. There was a vacancy to fill at this stage because a colleague, Ian, had retired and the claimant's temporary secondment could be accommodated. This was a temporary role for 6 months and subject to a period of assessment when the claimant's and the respondent's experience of the effect of the adjustment would be considered.

29. The claimant initially returned on a phased basis on 23rd March 2023 for 4 weeks and did not do operational on call duties.
30. The claimant did carry out operational on call deployments in the IM role between around 16th April and 31st July 2023. Those deployments included firearms and explosives searches.
31. There was a significant increase in the number of deployments between 2021 and 2024 as deployment returned to pre-covid levels, as follows:
 - 31.1. 2021: 387 deployments
 - 31.2. 2022: 570 deployments
 - 31.3. 2023: 800 deployments
 - 31.4. 2024: 823 deployments
32. These figures show all deployment requests to the National Technical Response Group. These would be referred to the National Technical Adviser who would decide who and what needed to be deployed. Not all incidents were violent or potentially violent, not all incidents needed an on-site response from an RTM or IM. It does not show how many were deployments in the South that the claimant's North team would not have attended. It does not show how many of the deployments needed to be responded to by IM's as secondary RTMs. They are all incidents that would have needed a decision about deployment by an RTM or an IM in the first instance.
33. There had been instances where Band 4 officers were deployed to incidents that required on site management leadership from an RTM but that was not available due to the number of incidents occurring at the same time. The increased call outs and this operational difficulty resulted in the need to consider how the ORRU would be able to respond to that increased demand.
34. On 8th June 2023, John Archibald, the claimant's line manager, emailed the Inspectorate Team Managers and informed them that they would be required to deploy to incidents as a secondary RTM when there were multiple incidents happening nationally at any one time. The effect of that was to expand the type or nature of the deployments the IM's were expected to respond to. They would be required to respond to the same range of incidents as the RTM's. This would result in them being deployed into situations that were more violent and had a greater potential to be violent. The date on which that requirement would become operational was to be discussed.
35. Ultimately, the requirement for the IM's to respond as secondary RTM's did not become operational until 10th May 2024. At that point only four of the possible six IM's were required to respond to the increased extent of deployments and the claimant was not required to respond.
36. On 9th June 2023 the claimant attended a one to one meeting called a "Bilat"

with Mr Archibald. He was asked about his thoughts on the proposal for IM's to act as secondary RTM's and the claimant said he had no comment at that time and he needed to reflect on it. There had been a positive response to the proposal from other Inspectorate Managers.

37. At a bilat meeting with Mr Archibald on 4th July 2023, the claimant requested to be excused from operational on call duties for two reasons; because of concerns about operational incident flashbacks which trigger his PTSD and to support this wife and mother in law.
38. The request was granted and the claimant was not required to be on call or respond to any operational on call deployments. The claimant did cover non-operational duties for his colleagues, such as dog assessments and reports, when his colleagues were on call and/or deployed.
39. On 11th July 2023 it was agreed that, as a reasonable adjustment, the claimant would not be required to do operational on call duties from 1st August 2023 until 1st November 2023 when his temporary secondment would be reviewed. The effect of the adjustment on the claimant and on the Inspectorate Team would be monitored during that time. The adjustment was temporary.
40. On 12th July 2023 the claimant emailed his colleagues to inform them that he would not carry out on call duties from 1st August 2023 onwards. He confirms that the reason is to support his family and "as a further reasonable adjustment to combat my PTSD symptoms." The claimant said "I understand that this will impact others on the inspectorate having to cover my periods of primary, and for this I am sorry". The claimant recognised that his colleagues would need to cover his operational on call duties and his apology indicates that he knew this was likely to have a detrimental impact on them. The claimant's IM colleagues did not raise any concerns about the impact the claimant's adjustment of not carrying out on call duties was having on them or their workloads. The claimant's removal from the on call rota did not result in the claimant's IM colleagues being assigned to on call duties more regularly, they continued their on call pattern of two weeks on call and two weeks not on call. The claimant's removal from the on call rota did not result in a significant increase in the number of deployments his colleagues responded to on call and the claimant's IM colleague did not indicate that the workload was unmanageable or causing any difficulties.
41. The decision that the types of deployment the IM's were required to respond to would be expanded continued to be discussed by senior management. The IM job description already required the IM's to respond to all types of deployment so there was no requirement for any formal consultation or change request to implement the change as confirmed by Mr Appleton, who had been involved in the original drafting of the job description. Mr Appleton confirmed in his email on 13th October 2023 that the change was a positive step for the IM's.
42. This increased the capacity of the team to respond from 4 RTMs to add 6 IM's, totalling 10 potential responders.
43. On 17th October 2023, Mr Archibald held a bilat and informed the claimant that he had discussed the claimant's request for a permanent move to the role of Inspectorate Manager with Ms Stevenson and Mr Knight and his request would not be supported. Mr Archibald said "I informed you that even though this

adjustment had been made for you for an initial six-month period it couldn't be supported indefinitely because it didn't meet our business needs. As you are aware, the Band 5 Inspectorate Manager position is an on call operational role, and there is a requirement to respond to operational incidents."

44. The claimant confirmed that he did not want to go out on operational call outs in the IM role because of his PTSD. The claimant confirmed that his PTSD was never going to get better. The claimant indicated that he did not understand why he could not continue in the role as he had been supportive of the non-operational elements of the role for his colleagues. Mr Archibald confirmed that the role was an operational role and they could not continue to support the role as a non-operational role.
45. An alternative role of Detail manager was identified, which was a non-operational Band 5 role and the claimant was asked if he wanted to do it. Ultimately, this role never became an active vacancy and was not recruited to.
46. It was communicated by email on 20th October 2023, to the IM's that the expansion in types of incidents they would be deployed to was to be required. There was no change to the on call rota, no change to shift patterns and no change to day to day duties as a result of this expansion in deployments. The change was received positively by the IM's and Ms Stevenson stated in an email on 23rd October 2023 that "Some staff were actually aggrieved that they had not been called to support the management of incidents when they were on call as they felt they were sat around waiting."
47. An OH report dated 27th October 2023 confirms that the claimant had never felt better and was keen to remain in the Inspectorate Manager role. The claimant remained anxious about attending incidents of a violent nature and the avoidance of being reminded of traumatic events was key with PTSD. It is confirmed that the claimant's PTSD is a chronic condition that he may have for the rest of his life. It is confirmed that he is unable to attend incidents of a violent nature but the claimant reports that he is able to attend call outs such as firearms and explosives searches.
48. On 6th November 2023 Ms Stevenson emailed the claimant and his IM colleagues and confirmed that the only change to their duties would be that they would need to be deployed to all forms of operational incident and not just firearms and explosives searches. Ms Stevenson confirmed there would be no change to shift patterns, there would be no change to annual leave, no change to the on call rota and daily duties would not change. Ms Stevenson invited discussion in the area and their voice was relevant.
49. The claimant's IM colleagues did not raise concerns with the respondent about the expansion in the types of deployments they would need to respond to when on call. The claimant's IM colleagues did not raise any concerns with the respondent about the impact the expansion of operational on call duties would have on their private lives, workload or ability to take annual leave.
50. The claimant was invited to attend a Formal Attendance Review Meeting (FARM) with Mr Archibald to take place on 23rd November 2023. That was an appropriate format to discuss the claimant's ongoing need for adjustments to his role in accordance with the guidance provided in the Annexes to the Attendance Management Policy.

51. The claimant refused to attend the FARM meeting because he had raised three grievances;
 - 51.1. on 23rd October 2023 regarding the decision to remove his adjustment of working in the Inspectorate Manager role without on call duties,
 - 51.2. on 26th October 2023 regarding the claimant being referred for an occupational health assessment in circumstances where he did not consider that to be necessary; and
 - 51.3. on 7th November 2023 regarding being invited to attend a FARM meeting with Mr Archibald.
52. The FARM meeting, and a formal decision about whether the claimant's temporary secondment to IM with adjustments would be supported further, was postponed until the grievances and appeals were addressed. The grievance processes concluded on 19th February 2024 when the grievance appeal decision was issued.
53. The claimant sought to raise a grievance about the grievance decision and process on 10th and 16th March 2024. It was confirmed by Ms Ashcroft, Head of ORRU, on 18th March this grievance could not progress under the respondent's policy as it was a grievance against a grievance decision. The claimant was reluctant to meet with Mr Archibald to discuss and review his working arrangements and requested that a decision making meeting be scheduled with Mr Knight, as outlined in Ms Ashcroft's email dated 18th March 2024.
54. On 15th April 2024 it was confirmed that the expansion of deployment by IM's as secondary RTMs would commence on 10th May 2024 with, for an interim period, 4 IM's out of a possible 6, being deployed in that way. The claimant was not required to carry out the expanded deployments at that stage. It was confirmed that the IM's were a secondary resource. RTMs would be the primary resource and would always respond to all incidents initially with IM's responding as a secondary or support where it was operationally required. That would particularly be in protracted incidents and where there were multiple incidents at any one time.
55. The OH report on 16th April 2024 again confirms that the claimant is unable to attend violent incidents. The referral is escalated to a doctor. On 19th April 2024 he is reviewed by Dr Burdzik, who again confirms that the claimant cannot be involved in a call to a violent incident. The risk of future flare ups would be managed if he avoided situations that trigger flashbacks. Dr Burdzik confirms that the claimant cannot return to responding to call outs to violent situations involving prisoner contact and that would be the same in his previous RTM role and in the role as IM. Dr Burdzik agrees with the claimant's statement that he cannot go on operational call outs, although he has repeatedly reported that he can attend searches relating to firearms and explosives.
56. On 2nd May 2024 Mr Knight invited the claimant to attend a Decision Meeting by way of a Teams call. A formal invite letter to a FARM meeting had not been sent and the meeting was adjourned to ensure the formal process was followed. The claimant submitted a grievance to Mr Andrew Rogers regarding the lack of invite to the meeting on 2nd May 2024. Mr Rogers replied to the claimant's grievance stating he should attend the meeting once it was arranged following formal processes.

57. The claimant was formally invited and attended a FARM meeting with Mr Knight on 16th May 2024. That was an appropriate form of meeting as it was to discuss the claimant's adjustments. It was confirmed that the meeting was to discuss the claimant's temporary restrictions and whether they were sustainable and to provide alternative solutions, but dismissal and medical inefficiency would not be looked at during the meeting.
58. The claimant did not agree with the OH report that he could not have prisoner contact and a further OH report was offered. The claimant refused to attend a further OH assessment.
59. Mr Knight confirmed that the temporary restriction of duties could not be sustained by the business because he could not ask the claimant to attend a potentially violent incident. Mr Knight did not carry out any analysis of the actual impact the claimant's restricted duties had on the respondent's ability to respond to deployment requests or of the impact of the adjustment on the claimant's colleagues before reaching or in order to reach his decision that the temporary restriction of duties could not be sustained. His decision was based on an assumption that there would be a detrimental impact but he did not know the extent of that impact in any real terms.
60. Mr Knight offered the claimant the possibility of changing his role to a Band 5 role with Insights and Assurance, which was a non-operational role or a Band 2 role at Kidlington, which was also a non-operational role. He also indicated other opportunities may be available in the wider prison service.
61. The claimant asked Mr Knight why he could not remain in his adjusted IM role. Mr Knight states that it's not sustainable because he can't send the claimant on deployments that are potentially violent. There is no explanation as to how he reached the conclusion that it was not sustainable.
62. The claimant asked for an email that states he can't remain in NDTSG for him to use at Tribunal.
63. Mr Knight wrote to the claimant on 23rd May 2024 confirming the outcome of the meeting. Mr Knight confirmed that taking into consideration the OH report and the information provided by the claimant in the meeting, the business could not sustain his temporary restrictions or reasonable adjustment. Mr Knight did not explain how he reached the conclusion it was unsustainable, other than stating it was because the IM role is an operational role requiring deployment to potentially violent incidents. The letter also offered the claimant a Band 5 role as a Digital Forensics Investigator, which he believed would not expose the claimant to potentially violent incidents.
64. The claimant was sent an estimate of the pension compensation he would receive under medical inefficiency if dismissed. The request for this estimate was not discussed with the claimant before it was requested by Mr Archibald. It was requested to ensure that the claimant and Mr Knight were aware of all the circumstances if the claimant were to be dismissed for medical inefficiency. It was not an indication that a decision to dismiss had been made at that time and it was a request that was made in accordance with the respondent's usual practice.

65. On 30th May 2024 the claimant requested that he be put back on operational on call duties from 1st June 2024. The claimant was sent the outcome letter by email on 30th May and Mr Knight confirmed in his email "Your role within this group requires you to respond to all incidents and having someone unable to do this on a permanent basis will impact on the business. Given you work in a small operational team of Band 5s this is also having an impact on individuals". It confirms that the claimant's request to go back on call in his Inspectorate role would not be supported because of the OH advice.
66. A FARM decision making meeting was held by Mr Knight with the claimant on 6th June 2024. It was confirmed that given the nature of the group and the role the adjustment was not sustainable. Mr Knight confirmed that the claimant could not respond to incidents remotely and that he could not guarantee that the claimant would not have to respond to an incident that could potentially turn violent and trigger his PTSD. The claimant requested to go back on call in his IM role to mitigate against the risk that he would have to attend potentially violent incidents. Mr Knight reiterated that being in the IM role would not mitigate against the risk that he would have to attend potentially violent incidents.
67. The claimant indicated that he would return to his RTM role and then apply for a vacancy as an IM. However, he also confirmed that he still had PTSD and there would remain the possibility of deterioration, although there had been an improvement in his symptoms. Mr Knight confirmed that if the claimant wanted to take that course of action he would need a further OH assessment and would need to pass a fitness test and Conflict and Restraint Training.
68. The claimant began a period of sick leave on 25th June 2024. His fit notes state the reason for absence as depression.
69. A further OH report was obtained on 12th July 2024. The report confirmed that the claimant was likely to provide full and effective service in the Inspectorate team for the foreseeable future. That advice is on the basis that the role of IM is adjusted so that he does not need to attend potentially violent incidents. It confirmed that the claimant was unsure whether he could return to his RTM role because of the possibility of PTSD triggers.
70. At a meeting on 30th July 2024 the claimant could not give a definitive answer about whether he was fit to return to operational on call duties and attend violence incidents and said that he would not know until it was tested. It was confirmed by Mr Archibald that this was an unrealistic expectation because of the risk of triggering his PTSD.
71. A FARM meeting took place on 11th October 2024 and the claimant was offered the opportunity to explore a Band 5 role in the People Hub. He was provided with the contact details for the relevant manager for the role but the claimant did not contact them. The role was at Hewell, 40 miles from the claimant's home, was non-operational and would have offered pay protection for 2 years.
72. On 21st October a final FARM meeting took place between the claimant and Mr Knight. It was further confirmed that the reason his adjustments could not be sustained was because the role required that he attend operational duties. The claimant was given notice that his employment would terminate on grounds of medical inefficiency.

73. The outcomes was confirmed in writing on 28th October 2024 and the claimant's final date of employment would be 20th January 2025.
74. The OH reports consistently state that the claimant cannot attend incidents of a violent nature. If he cannot attend incidents of a violent nature, it is also the case that he cannot attend incidents of a potentially violent nature because events can escalate quickly to become violent and he is working in unpredictable environments. If the claimant attends an incident that is not violent at the point of deployment, but is potentially so and it escalates, he is exposed to violence and at risk of triggering his PTSD. Not all such potentially violent incidents will escalate to be so, but it would be unreasonable and irresponsible for the respondent to take that risk.
75. The claimant rejected the alternative roles offered by the respondent as follows:
- 75.1. Detail Manager – This was early in the process and the role did not ultimately come to fruition as a vacancy.
 - 75.2. Insights and Assurance – There was no job description for the role at the time it was offered and it was a temporary role, alongside the cost and time required to commute to the role.
 - 75.3. Digital Forensic Investigator – the cost and time required to commute to Doncaster was not acceptable to the claimant.
 - 75.4. Band 2 Support Grade – The cost and time required to commute and the significantly reduced salary after pay protection expired and the reduced level of seniority.
 - 75.5. People Hub Manager – he would be required to travel 40 miles, which was a 3 hour round trip, he was concerned about long term prospects after the two year pay protection expired, he has dyslexia and he was concerned about his ability to fulfil an administrative role and he did not agree with the decision that led to the offer of the role in the first place.
76. The claimant's role as RTM and IM required significant travel. The claimant's objections regarding travel to alternative roles were twofold; firstly, that he would be required to pay for the cost of travel in his own vehicle as he would not be eligible for a company vehicle or fuel card and secondly; that he would have to commute in his own time whereas in his operational roles for NDTSG, his travel time was working time that he was able to reclaim as TOIL.
77. The claimant would not have accepted any alternative role apart from the adjusted IM role as he felt that doing so would be tacit agreement that the decision not to support his adjustment was acceptable.
78. The claimant appealed the decision to dismiss him, predominantly on the grounds that he considered the decision not to allow him to continue in his adjusted role was discriminatory.
79. The appeal hearing took place with Mr Rogers on 14th January 2025. At the commencement of the appeal meeting, there was no admission by Mr Rogers that the claimant had been discriminated against. There was no reference to that admission in the appeal meeting notes. The claimant did not raise that admission in the meeting. The claimant is a confident individual that was not afraid to raise or discuss contentious or difficult matters and had a strong sense of justice and procedure. If there had been an admission that the respondent had discriminated against him, he would have raised that as a point of

discussion in the meeting. It is not raised by the claimant as having happened at any stage until it appears in his witness statement.

80. Mr Rogers was emphatic in his denial that he made that admission when giving oral evidence. In cross examination when asked what the exact words were the claimant said he struggled to recall but “he gave the impression I’d been treated badly in the process”. If such an important admission had been made it is more likely than not that the claimant would recall the words used and, in any event, giving an impression of poor treatment is not the same as admitting discrimination.
81. The claimant made it clear in his email to Mr Rogers on 16th January 2025 that the only possible outcome of appeal he would accept was a return to work in the IM role without the requirement to attend potentially violent incidents, he would not have to carry out the fitness test for the role and that sick leave excusal was authorised for his absence from 25th June 2024.
82. The contents of the discussion on 14th January and the claimant’s email on 16th January were taken into account by Mr Rogers before he reached his decision to uphold the decision to dismiss on 28th January 2025. As a result of the appeal outcome being sent on that date his termination date was extended to 28th January 2025. This became the effective date of termination. The claimant did not raise any concerns with the way that the appeal was addressed, although he did not agree with the outcome.
83. Mr Rogers did not carry out an analysis of the impact of the claimant’s adjustments on the ability of the business to respond to deployments or the impact on the claimant’s colleagues before he upheld the decision to dismiss. He took the same approach as Mr Knight, which was that the role was operational and if the claimant could not respond to operational deployments, he could not carry out the role.

Law

Time Limits

84. Section 123 Equality Act 2010

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

85.

Unfair Dismissal

86. **S.98 Employment Rights Act 1996**

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer

acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

87. **British Home Stores Ltd v Burchell 1980 ICR 303, EAT** – An employer must have a genuine and reasonable belief in the reason for dismissal, having conducted a reasonable investigation.
88. **Iceland Frozen Foods v Jones [1982] IRLR 439** – when deciding on the reasonableness of the employer's conduct, the Tribunal must not substitute its own decision on the right course of action for that of the employer. The Tribunal must decide whether, in the particular circumstances of the case, the decision to dismiss the employee fell within a range of reasonable responses which a reasonable employer might have adopted.
89. Following the guidance in **Spencer v Paragon Wallpapers Limited [1976] IRLR 373** and **East Lindsey District Council v Daubney [1977] IRLR 181**, summarised in **S v Dundee City Council [2014] IRLR 131** the Tribunal must consider whether it is reasonable to expect the employer to wait any longer for the employee to return to work, the employer must consult the employee and obtain medical advice on the employee's position, prognosis and likely return to work.
90. **HJ Heinz Co Ltd v Kenrick 2000 ICR 491, EAT** states that a disability related dismissal that cannot be justified under the Equality Act is not automatically an unfair dismissal under the Employment Rights Acts 1996. However, the approach to justification is similar, though not identical to that taken to determining the reasonableness of treating the reason for dismissal as sufficient in an unfair dismissal claim **Post Office v Jones 2001 ICR 805, CA**. Lord Justice Underhill in **O'Brien v Bolton St Catherine's Academy 2017 ICR 737, CA** stated that it considered it "entirely legitimate" for an employment tribunal to decide that a finding that a dismissal was disproportionate for the purposes of disability related discrimination also meant that it was not reasonable further purposes of s.98(4) ERA.

Burden of proof

91. **S. 136 Equality Act 2010**

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

92. The key cases regarding the burden of proof and from which guidance on the operation of the burden is taken are **Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205, EAT**, **Igen Ltd and others v Wong and others 2005 ICR 931**, **Laing v Manchester City Council and another 2006 ICR 1519, EAT** and **Madarassy v Nomura International plc 2007 ICR 867, CA**. The burden of proof requires a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer, in the absence of an adequate explanation, that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction, on the balance of probabilities, is the second stage engaged. The burden then shifts to the respondent to prove, on the balance of probabilities, that the treatment in question was "in no sense whatsoever" on the protected ground.

Failure to make reasonable adjustments

93. **S. 20 Equality Act 2010**

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

94. **S.21 Equality Act 2010**

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

95. **Smith v Churchills Stairlifts plc 2006 ICR 524, CA** – the test of reasonableness is an objective one and it is ultimately the tribunal's view of what is reasonable that matters. It is for the tribunal to determine objectively the extent to which a step would cause disruption. The tribunal must look at the proposed adjustment from the point of view of the claimant and the respondent then make an objective decision as to whether the adjustment is a reasonable one.

96. For an adjustment to be reasonable there must be a prospect that the adjustment will remove the disadvantage (**Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10**) and the adjustment identified must be practicable for the employer to implement.

97. **General Dynamics Information Technology Ltd v Carranza [2015] IRLR 43**
- It is important to identify precisely the step which could remove the substantial

disadvantage.

Discrimination arising from disability

98. **S.15 Equality Act 2010**

(1) A person (A) discriminates against a disabled person (B) if:

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

99. **Golam Chowdhury v Network Rail Infrastructure Limited [2025] EAT 132** – the Tribunal can refer back to findings in respect of reasonable adjustments when considering a discrimination arising from disability complaint when the questions of proportionality and justification are materially identical to the reasonable adjustments case.

100. **Hardy & Hansons plc v Lax 2005 ICR 1565, CA**, - The tribunal must carry out a critical evaluation, carrying out its own assessment of the evidence, by weighing of the needs of the employer against the discriminatory impact on the employee. It is not simply a question of whether the treatment falls within a range of reasonable responses open to a reasonable employer.

101. **Department for Work and Pensions v Boyers EAT 0282/19** – The tribunal must engage in an objective assessment, balancing the needs of the employer, as represented by the legitimate aims pursued against the discriminatory effect of the decision to dismiss.

102. **Chief Constable of West Yorkshire Police v Homer [2012] ICR 704** – the objective of the measure must correspond to a real and legitimate business need, the dismissal must be both appropriate and reasonably necessary to achieve that objective and the tribunal must weigh the importance of the respondent's objective against the seriousness of the detriment to the claimant when conducting the assessment.

103. **Dominique v Toll Global Forwarding Ltd EAT 0308/13** – any failure to comply with the reasonable adjustments duty must be considered as part of the balancing exercise in considering questions of justification. Lord Justice Elias stated in **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA**, "An employer who dismisses a disabled employee without making a reasonable adjustment which would have enabled the employee to remain in employment — say allowing him to work part-time — will necessarily have infringed the duty to make adjustments, but in addition the act of dismissal will surely constitute an act of discrimination arising out of disability. The dismissal will be for a reason related to disability and, if a potentially reasonable adjustment which might have allowed the employee to remain in employment has not been made, the dismissal will not be justified."

104. **Birtenshaw v Oldfield [2019] IRLR 946** – HHJ Soole stated, when assessing proportionality the tribunal “should give a substantial degree of respect to the judgment of the decision maker as to what is reasonably necessary to achieve the legitimate aim, provided they have acted rationally and responsibly. However it does not follow that the tribunal has to be satisfied that any suggested lesser measure would or might have been acceptable to the decision-maker or otherwise caused him to take a different course”

Conclusions

My conclusions are set out below with reference to each issue to be determined.

Time Limits

105. In relation to time limits we are focussed on the failure to make reasonable adjustments claim. The unfair dismissal and s.15 claims are accepted to be in time.
106. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 October 2024 may not have been brought in time.

Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010?

Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates or if not, was there conduct extending over a period? If there was conduct extending over a period, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

107. The failure to make reasonable adjustments claim in respect of the adjustment to the Inspectorate Manager role is a claim under s123(3)(b) and not a conduct extending over a period type claim. The decision not to allow the claimant to remain in the Inspectorate role with adjustments in place was formally made and communicated by Glenn Knight on 16th May 2024 and communicated to the claimant in the FARM meeting of that date. Effectively, the decision not to make the adjustment a permanent one is a claim that the respondent failed to do something, and the decision was made on that date.
108. The claim in respect of the adjustment of allowing the claimant to remain in the Inspectorate role was not made within the primary time limit allowing for any ACAS extension. The decision was made on 16th May 2024 and the primary time limit expired on 15th August 2024. ACAS Early Conciliation did not commence until 9th January 2025, and the claim was not filed with the Tribunal until 14th March 2025.
109. The claim regarding the failure to offer the claimant suitable alternative duties to avoid dismissal was conduct extending over a period, which only ended when the decision was made to dismiss the claimant on 21st October 2024.
110. The claim relating to the alternative roles is within time given that early conciliation commenced on 9th January, the certificate was issued on 20th February 2025, and the claim was filed on 14th March 2025.

If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide why were the complaints not made to the Tribunal in time and in any event, is it just and equitable in all the circumstances to extend time?

111. The claimant says that he did not make the reasonable adjustments claim in time because he had outstanding grievances with the respondent that were being addressed internally and he was still attending FARM meetings in which the claimant maintained that the adjustment should be put in place. There was also an appeal against the decision to dismiss at which the adjustment was further discussed, which did not occur until January 2025.
112. The claimant had trade union advice, at a very senior level throughout the period of these events and in May 2024 when the decision was made not to implement the adjustment. He already had in mind that he would pursue the matter at Tribunal as he refers to it in the FARM meeting on 16th May 2024. He either was or should have been aware of the time limits for Tribunal claims in relation to this matter at that time.
113. There was a further FARM meeting on 6th June 2024 and on 30th July 2024 within the period of the primary time limit. The content of these meetings does not focus on the claimant requesting that the adjustment be put in place but on other alternatives to dismissal such as returning to on call duties and alternative roles. The claimant was aware that the decision had been made that the adjustment would not be made permanent on 16th May 2024. There were no ongoing grievances live during that time.
114. The reasonableness of the adjustment is the crux of this case and is an issue on which findings need to be made in any event in the context of proportionality in the discrimination arising from disability complaint and in respect of fairness of the unfair dismissal claim. The evidence needs to be analysed and decisions made in any event even if the reasonable adjustments claim is time barred.
115. There is limited prejudice to the respondent in them facing a claim that is time barred because the evidence is required anyway and the discrimination arising from disability complaint and failure to make reasonable adjustments claims are so closely related that whether the claimant succeeded on one of those claims or both, there is unlikely to be much if any real difference in the compensation that would potentially be awarded.
116. It is clear that it was reasonably practicable for the claimant to make the claim in time but that is not the test I need to apply. My discretion is wider than that to extend time if it is just and equitable to do so. Given the limited prejudice to the respondent and the need to make findings on whether the adjustments identified were reasonable in relation to the other claims, and the fact that there were ongoing discussions taking place that related to the adjustment, including the appeal, I find that it is just and equitable to extend time for the reasonable adjustments claim.

Failure to make reasonable adjustments

Burden of Proof

117. The respondent accepted that they did apply a PCP of requiring employees to carry out all the duties of their role and a requirement for RTM and IM managers to respond to concerted indisciplines.
118. The respondent also accepted that this placed the claimant at a substantial disadvantage because of his disability, particularly that his inability to carry out all the duties of his role, meant he was more likely to be dismissed. The respondent accepted that they knew the claimant had a disability and they knew or could reasonably have been expected to know that he was likely to be placed at the disadvantage identified.
119. The claimant identified adjustments that he suggests would have been reasonable to avoid the disadvantage identified; namely allowing him to remain in the Inspectorate Manager role without the need to respond to concerted indisciplines and offering him a suitable alternative role such as an adjusted Inspectorate Manager role, a dog handler role, a dog section manager role or an area intelligence role.
120. He has proven facts that, in the absence of an explanation from the respondent, a breach of the duty to make adjustments may have occurred. That breach being that the respondent made the decision that the adjustment that he was not required to work on call, and/or not required to respond to concerted indisciplines and potentially violent incidents, would not be put in place on a permanent basis and the respondent did not trial the Inspectorate Manager role without the need to respond to potentially violent incidents in June 2024. That is sufficient to shift the burden of proof to the respondent to demonstrate that the adjustments were either not reasonable or that they did not fail to make them.
121. The crux of the dispute in this case is whether the adjustments requested by the claimant were reasonable.

What steps could have been taken to avoid the disadvantage?

122. The step that would have needed to be taken for the claimant to avoid the disadvantage was allowing the claimant to remain in his Inspectorate Manager role without the requirement to respond to potentially violent incidents.
123. The claimant sought to limit the adjustment to there being no requirement to respond to concerted indisciplines and violent incidents. However, it is clear from the OH advice, the claimant's position throughout the meetings held with the respondent, and from his evidence to this tribunal that he could not respond to incidents where there was the potential to be exposed to violence.
124. Not all calls for deployment resulted in an RTM or IM having to attend on site and not all calls for deployment resulted in exposure to potentially violent incidents. The majority, and effectively any that required the claimant to attend at a prison where there was potential contact with prisoners, would expose the claimant to potentially violent incidents. However, there were pre-occupational searches and deployments that needed to be managed by RTMs and IMs remotely. The example given by Mr Knight was deployment of dog teams to cover an open gate. They were a limited proportion of deployments, but we do not know what proportion of the total deployments they amounted to.

125. I have taken into consideration the respondent's position that the adjustment resulted in the claimant either, not being able to carry out on call duties or not being able to carry out on call duties without back up support. The nature of the role meant that requests for support were made by prisons, and it is unpredictable what incidents the unit needed to respond to. The claimant could not be on call alone as deployment to potentially violent incidents could be required at any time and he could not respond. He either needed to be on call as an additional resource on the basis he would cover deployments that were not potentially violent or not on call at all.
126. Although the pleaded adjustment was framed by reference to concerted indisciplines in the RTM role, the evidence established and the parties addressed the true substantial disadvantage as exposure to potentially violent incidents in the RTM and IM roles. In considering the reasonableness of the adjustment I have considered it in that context.
127. Offering the claimant an alternative role where he was not exposed to potentially violent incidents would also have been a reasonable adjustment that removed the disadvantage.

Was it reasonable for the Respondent to have taken those steps, and when?

128. The claimant says the adjustments would be effective in ensuring sustained service and avoiding the need to dismiss him. He could respond to deployments that were not potentially violent such as pre-occupational searches and response to calls that could be managed remotely and he could cover the dog assessment, training and report based work and other duties of the role for his colleagues when they were on call, reducing the burden of their non-operational workload. This is demonstrated by the fact that they were sustained by the respondent between 1st August 2023 when the claimant was no longer required to be on call and the commencement of his sickness absence on 25th June 2024, a period of around 10 months.
129. The respondent says that the adjustments were not reasonable because they had a detrimental impact on the claimant's colleagues and a detrimental impact on the team's capacity to maintain sufficient resilient to respond to call outs.
130. Mr Knight stated that the impact on the claimant's colleagues was that they needed to carry out more on call duties and respond to more deployments when on call. He stated that there was an increase in the number of calls for deployment between 2021 and 2024 and there needed to be resilience built into the team by ensuring there was an increase in and sufficient resources to deploy to those incidents and without the claimant on call, that resilience could not be met.
131. There was an increase in the number of deployments across the team but there was no evidence as to the proportion of those deployments that were concerted indisciplines, the proportion that were violent incidents, the proportion that were potentially violent incidents. There was no evidence of the proportion of those incidents that would have required an RTM or IM to be deployed on site. Mr Knight conceded that some deployments can be responded to remotely. There was no evidence of how many of the deployments were incidents that the claimant could have responded to such as pre-occupation searches. There was no evidence of how many of those deployments the Inspectorate

Managers needed to be deployed to compared to the Response Team Managers. There was no evidence as to how many of the deployments the claimant's North team or a combined team needed to be deployed to.

132. As a general principle of logic, the increased number of deployments across the whole team would have resulted in the Response Team Managers and Inspectorate Managers being required to respond to more incidents when on call. For the Inspectorate Managers, it's also a general logical consequence that when their role was expanded with effect from 10th May 2024 to require deployment to a wider range of incidents, the number of deployments would increase when on call. However, that was not caused by the claimant not being on call or not responding to potentially non-violent incidents. It was caused by a general increased workload. However, there was no evidence to demonstrate the extent or significance of the increase on the Response Team Managers or, most importantly, the Inspectorate Managers.
133. Between the period 23rd March 2023 and 1st August 2023 the claimant was working in the Inspectorate Manager role. For the first 4 weeks he was not working on call due to a phased return. From around 16th April 2023 until 31st July 2023 the claimant was working on call, responding to deployments. At that time the IM only responded to a limited number of incidents, particularly firearms and explosive searches and the claimant did respond to those.
134. From 1st August 2023 until the claimant commenced a period of sick leave on 25th June 2024 the claimant was not working on-call and the Inspectorate Managers covered his on call-duties. From 1st August until 10th May 2024 those on call duties remained more limited than latterly. There is no evidence of the practical impact the claimant not working on call had on his Inspectorate Manager colleagues during that period.
135. There is no evidence to demonstrate the asserted increase in on-call duties or number of deployments for the Inspectorate Managers. The evidence available in the email from Kevin Appleton, the bilat meeting with John Archibald and the email on 20th October 2023 from Sarah Stevenson regarding the expansion of the types of deployments Inspectorate Managers would attend, indicates that the IM's were positive about that change and aggrieved that they were not attending deployments and were "sitting around waiting." It is unlikely they would be positive about a change that increased their workload if they were already concerned about the detrimental effect the claimant not being on call was having on their workloads.
136. At that time the claimant had not been on call for a period of two and a half months and his colleagues had been covering his on call shifts. IM's saying they were sitting around waiting does not suggest that the impact of the claimant's restrictions was a detrimental one as they had capacity.
137. As a matter of logic there would have been some increase but I find on the evidence that it was limited and did not create any real pressure that would indicate it was unsustainable. There is nothing in the documents and nothing in Mr Knight's evidence to explain what he took into consideration when reaching a conclusion that the adjustment was not sustainable, other than the general logical conclusion that there would be some detrimental impact because the work needed to be covered by fewer people and the simple fact that the role should be an operational one.

138. When Inspectorate Managers were required to respond to an increased range of deployments from 10th May 2024 there is no evidence of the extent or severity of the increase in workload on the IMs as a result of that change. The decision that the adjustment was not sustainable was taken only six days later and there is no evidence that the impact on the claimant's colleagues had been assessed.
139. However, there is evidence from Ms Stevensons' emails of 20th October 2023 and 6th November 2023, Mr Appleton's email on 13th October 2023 and Mr Archibald's record of the claimant's bilat on 9th June 2023, that when it was proposed that the IM's respond to increased duties, this was welcome, at least by some members of the team and they had capacity to respond to increased call outs. The addition of a further four IM's in May 2024, out of a possible six, to respond to deployments as secondary RTMS would reduce the burden on RTMs, however we have no evidence of the extent of the assistance that provided or the impact on the IM's that were deployed.
140. There is no evidence that there was an increase in the number of on calls or the number of incidents responded to by the claimant's colleagues as a result of his restricted duties. The evidence from Ms Stevenson indicates that there would be no change to shift patterns, no change to the on call rota and no change in day to day duties. This indicates that there was no increase in on calls for IM's once the change was implemented. Given Mr Sharp was already not working on call, there doesn't appear to have been any change or issue caused even after the additional deployments, otherwise you would expect to see a change in on call rotas, shift patterns or day to day duties. There were none.
141. There is no evidence of any complaints from the Inspectorate Managers about their workload, ability to take annual leave or any unsustainable increased impact on personal lives. The evidence available suggests they were content to take on more work and had capacity to do so.
142. There is no evidence to explain how Mr Knight concluded that maintaining the claimant's adjustment was not sustainable as a result of the increase in workload or the impact the claimant's inability to work on call had on the team.
143. In the bilat on 17th October 2023 Mr Archibald records that he had spoken to Mr Knight and Sarah Stevenson with regard to joining the inspectorate team on a permanent basis and it was agreed that they couldn't support the request because the adjustment to on call duties did not meet business need and there was an operational requirement to respond to incidents.
144. Mr Knight did not give evidence about what was discussed in that meeting or what was taken into consideration when reaching the conclusion that the adjustment was not sustainable beyond restating what was recorded by Mr Archibald. Further, there were no notes of the meeting or discussion between Mr Archibald, Ms Stevenson and Mr Knight presented in this tribunal. Mr Knight does say that he disagrees with the claimant's view that there had been no negative feedback and the arrangement was working but no evidence of what that negative feedback was, how it was taken into account or why it was not working has been presented.

145. There is no evidence to indicate what difference it would have made to the Inspectorate Managers and Response Team Managers if the claimant had been able to cover all on call duties, or the difference it would have made to the IMs and RTMs if he was only able to respond to limited call outs. The claimant was on sick leave from 25th June 2024 and there was never any trial conducted to assess the impact the restrictions on the claimant's duties would have had on the team once the type of deployments the Inspectorate Managers were to respond to increased.
146. I accept that there would have been an impact on his colleagues, but there is simply no evidence available from which I can conclude that the detrimental impact was sufficiently significant to make it unsustainable for the claimant's adjustment to be maintained and therefore to conclude that the adjustment was not reasonable. The evidence that has been presented indicates the contrary. I find it was practicable for the respondent to implement the adjustment.
147. A reasonable adjustment may involve the removal of particular duties from within the overall duties of a role. In this case, the claimant had already undertaken the role of IM Manager in a modified form, (i.e. with removal of operational on-call duties) for a substantial period as a reasonable adjustment. The contemporaneous evidence, or lack of such evidence, indicates that the operational impact of that adjustment was limited. On that basis, I find that the adjustment of allowing the claimant to continue working in his Inspectorate Manager role without responding to potentially violent incidents was a reasonable adjustment as it was compatible with continued performance of the role for both the claimant and the respondent.
148. In relation to when the adjustment should have been made, it should have been made from the point it was refused on 16th May 2024.
149. In relation to alternative roles, when the claimant refers to the Inspectorate role, that is essentially a repeat of the issue above and is dealt with accordingly already. If not and they are saying the claimant should have been permitted to remain in the Inspectorate Manager role carrying out on call duties, that would not remove the disadvantage as he would be exposed to potentially violent incidents and would not be reasonable.
150. Offering the claimant a dog handler or dog section manager role would not have removed the disadvantage as they are operational roles that expose the claimant to potential violence when entering the prison environment. As they would not remove the disadvantage, they are not reasonable.
151. In relation to area intelligence, the claimant did not identify any vacant role in area intelligence or provide any suggestion of what a newly created role in that area would look like. In the absence of a vacancy or any submissions or evidence as to what a newly created role in area intelligence would be, I cannot find that offering such a role was either possible or reasonable and I simply don't know what the claimant is proposing. The claimant was asked about this role in cross examination but was unable to explain what he was referring to.

Did the Respondent fail to take those steps?

152. The respondent did fail to allow the claimant to remain in the role of Inspectorate Manager without responding to potentially violent incidents. The

decision not to make the adjustments permanent, or at the very least to trial the adjustments in circumstances where the IMs were responding to an increased number of calls, was made on 16th May 2024.

Discrimination arising from disability

Burden of Proof

153. The respondent accepted that the dismissal of the claimant was unfavourable treatment. The respondent also accepted that the claimant's inability to respond to concerted indisciplines, to carry out all the duties of his role and his sickness absence amounted to something arising in consequence of his disability. The respondent also accepted that the claimant was dismissed because of his inability to respond to concerted indisciplines and do all the duties of his role, particularly be deployed to potentially violent incidents and because of his sickness absence. As such, the burden of proof shifts to the respondent to demonstrate that dismissal for those reasons was a proportionate means of achieving a legitimate aim.

Was the treatment a proportionate means of achieving a legitimate aim?

The respondent says their legitimate aims were:

- Ensuring regular and satisfactory levels of attendance at work;
- Ensuring the safe and effective operation of the business;
- Reducing the impact on other employees caused by the Claimant's ongoing sickness absence; and
- Reducing the impact on other employees caused by the Claimant being unable (as advised by OH) to respond to all (including the most serious and potentially violent) incidents on a permanent basis.

154. The claimant accepted in evidence that the respondent's aims were legitimate and it was also accepted by Miss Dawson in submissions that they are, on paper, legitimate aims for any business. That concession results in my finding that they were legitimate on the basis they are agreed to be so.

Was the treatment, being the dismissal of the claimant, an appropriate and reasonably necessary way to achieve those aims; could something less discriminatory have been done instead and how should the needs of the parties be balanced.

155. I am required to carry out a critical analysis of whether the dismissal of the claimant was an appropriate and reasonably necessary way of achieving the respondent's legitimate aims. That requires me to consider and balance the needs of the respondent and the impact on the claimant.
156. I have taken into account and given high regard to Mr Knight's view of the needs of the organisation as expressed by the legitimate aims pursued and his explanation for the decision to dismiss. Mr Knight's view of the needs of the organisation was reached based on a general assumption that there was or would be a detrimental impact on the organisation's ability to respond to call outs and on the claimant's colleague's workload. I have found that there is a logical conclusion that there would be some impact on the ability of the organisation to respond to call outs and on the claimant's colleagues but there is simply no evidence of what the extent of that impact was or would be and it

was not known and had not been assessed by Mr Knight before reaching his decision. The view of Mr Knight was therefore significantly flawed.

157. The email of Ms Stevenson, as previously referred to, indicates that the claimant's colleagues were sitting and waiting for deployment and were keen to be deployed, at a time when the claimant was not on call. This does not accord with there being any detrimental impact that needs to be reduced.
158. There was an increase in calls outs and the business needed to respond to them, but that justified the decision to expand the IM deployments. There is no evidence that there was a real detrimental impact on the organisation or the claimant's colleagues as a result of the claimant's inability to attend potentially violent incidents to a degree that resulted in a need to reduce the impact, and certainly not to a degree that made it proportionate to dismiss the claimant to reduce that impact.
159. There were concerns about the safe and effective operation of the business prior to June 2023. That concern was that Band 4 officers were being deployed to incidents where on site management oversight from RTMs should have been in place but was not due to the number of incidents. That was one of the drivers behind the decision to expand the type of deployments the IM Managers responded to. However, that issue was not caused by the claimant's availability for on call as it was a problem for RTM managers and the claimant was working as an IM Manager at the time.
160. The respondent has not demonstrated in their evidence that there were any real material concerns about the unit's capacity to respond to calls caused by the claimant's inability to respond to potentially violent incidents. The increase in the number of deployments across the units does demonstrate that action needed to be taken to ensure that there were sufficient resources to respond to the increase in work, however, that was achieved by extending the deployments responded to by the Inspectorate Managers. There is no evidence that the needs of the business could not be met without the claimant also being available to respond to all deployments.
161. In ensuring regular and satisfactory levels of attendance and in relation to reducing the impact of the claimant's absence on his colleagues, the claimant was off sick from 25th June 2024 until his dismissal on 28th January 2025. He has provided sustained and effective service in his adjusted IM role in relation to attendance until that absence began. His absence occurred after the decision was made that he could not continue to be employed in an adjusted IM role and he would need to either return to full on call duties, which it was agreed was not possible because of the PTSD triggers, or find alternative work. The occupational health advice and the information from the claimant indicated that he would be able to provide regular and satisfactory service if he was able to continue working in an adjusted IM role. Had the respondent made the reasonable adjustment of continuing the claimant's employment without responding to potentially violent incidents he would have achieved sustained and satisfactory attendance, demonstrated by his satisfactory attendance between March 2023 and June 2024.
162. Dismissal ended a twenty five year career in the prison service, which is had a significant detrimental impact on the claimant and his future employment. Balancing this against my findings the respondent failed to demonstrate a

sufficiently weighty operational need for dismissal, as there is no evidence of any real material or significant impact in the form of disruption or detriment to the business or the claimant's colleagues caused by the claimant's inability to respond to potentially violent incidents that needs to be reduced, dismissal of the claimant was not an appropriate and reasonably necessary way of achieving the respondent's aims in such circumstances.

163. A less discriminatory option was to allow the claimant to continue in his role as Inspectorate Manager without the need to respond to potentially violent incidents. This would reduce the impact on his colleagues to the extent that he could cover deployments that would not result in exposure to potentially violent incidents and other dog assessment, reporting and training duties within the team to reduce pressure on his colleagues when they are on call. It would have reduced the impact of his sickness absence on his colleagues as he would have returned to work. It would have resulted in sustained attendance at work and it would have assisted the respondent in the safe and effective operation of the business as there was a significant amount of the work he could do and he could reduce the impact on his colleagues, allowing them to focus on on-call operational duties.

Unfair Dismissal

What was the reason or principal reason for dismissal? The Respondent says the reason was capability (medical inefficiency).

164. The burden is on the respondent to demonstrate the reason for dismissal. The reason or principal reason for the dismissal was capability due to ill health. It is clear that the reason for dismissal was that the claimant could not carry out all of the duties of his RTM or IM role because of PTSD. He could not attend any on call deployments that exposed him to potentially violent incidents as it triggered his PTSD. This is clear from the matters discussed with Mr Archibald and the discussions in the FARM meetings with Mr Knight. It is also clear from the dismissal outcomes letter and the appeal outcome letter that it was the claimant's inability to respond to potentially violent incidents when on call that was the reason for his dismissal and that was caused by his ill health.

If the reason was capability, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

165. In reaching my conclusions on the following matters I have in mind that I must make the assessment based on whether it was within a range of reasonable responses open to a reasonable employer and it is not a question of what I would have done or would consider reasonable.

The Respondent genuinely believed the Claimant was no longer capable of performing their duties;

166. It was common ground between the parties from at least as early as March 2023 the claimant was not fit to perform the RTM role at all. It was also common ground between the parties that the claimant was not able to carry out all the duties of the IM role because he could not carry out on call duties that required

him to respond to potentially violent incidents. That was the case from at least 1st August 2023 and incorporated an inability to carry out on call duties in the original IM role and in the expanded role from May 2024.

167. It is clear from the Occupational Health reports and from the claimant's oral evidence, that he could not respond to potentially violent incidents, for example, the claimant conceded in oral evidence that he could not be deployed to respond to riots, or a hostage incident, which would not be a concerted indiscipline but would be a trigger for his PTSD.
168. There were non-operational duties that the claimant could carry out, but there was no dispute that there were some duties he could not do. Given the claimant's admission that there were duties he could not do, the respondent had a genuine belief that the claimant was no longer capable of performing all the duties of his substantive RTM role or the full duties of the IM role, both before and after expansion of deployments and at the date of dismissal.
169. The respondent does not need to have a genuine belief that the claimant cannot carry out any of his duties. It is sufficient that they held a genuine belief that he could not carry out some of the duties of his role.

The Respondent adequately consulted the Claimant;

170. The respondent did adequately consult the claimant. The respondent held numerous meetings with the claimant in the form of bilats, a stress risk assessment, obtaining and discussing OH reports and holding FARM meetings before the decision to dismiss was made.
171. The claimant accepted in evidence that Mr Knight met with him three times and he was accompanied by his trade union representatives, that the right things were discussed in the meetings, that alternatives to dismissal were discussed irrespective of the suitability of those alternatives and that he was given a full and reasonable opportunity to explain his position and circumstances.
172. There was a dispute between the parties about the extent of the restrictions the claimant needed by reference to whether violent or potentially violent incidents were the triggers for the claimant. The claimant says there was an assumption about his capability and no discussion of what he could and could not do. The respondent took the view that he could not be deployed into any prison as all contact with prisoners or incidents in prisons could be potentially violent. The claimant disagreed with this and said there were some deployments he could do such as firearms and explosives searches. The claimant says this was not discussed. I find that it was discussed. There is evidence that it was discussed in the meetings, however there remained a difference of opinion as to what sort of incidents would expose the claimant to potentially violent incidents. That difference of opinion does not amount to the consultation about the claimant's situation not being adequate and reasonable.

The Respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;

173. The crux of the dispute was whether the respondent should have obtained a further OH report between 12th July 2024 and the decision to dismiss on 21st October 2024.

174. A further OH report between 12th July and 21st October when the dismissal decision was made would have made no difference to the outcome. The claimant's health situation was well known and hadn't changed in that time. He could not return to his RTM role and he could not respond to potentially violent incidents in his IM role. The claimant accepted in evidence that the OH advice in the July 2024 report was advice that he could provide full and effective service for the foreseeable future in an adjusted IM role but he could still not respond to potentially violent incidents. The claimant's health had not improved to such a degree that he could begin to respond to those incidents by covering all on call duties and deployments.
175. The claimant had requested to return to on call duties but he did not know what the impact on his PTSD would be and it was, according to the medical evidence, more likely than not that exposure to potentially violent incidents would trigger his PTSD and result in a deterioration in his health. The respondent could not agree to that proposal in those circumstances and still meet its duty of care for the claimant.
176. The claimant did not appeal on the basis that there was a misunderstanding regarding his capability and he could now respond to potentially violent incidents and he maintains the well understood position regarding the deployments he can respond to.
177. There was no reason for the respondent to obtain a further OH report before dismissal in October 2024, the medical position was known.

The Respondent adequately considered redeployment as an alternative to dismissal;

178. There are two parts to this issue. Firstly, was there adequate consideration of allowing the claimant to remain in his IM role with adjustments and secondly, was there adequate consideration of other alternatives. I will deal with the latter first.
179. In relation to other roles the respondent adequately considered redeployment alternatives. They identified and offered the claimant a Detail Manager role, albeit much earlier in the process and it did not come to fruition, but they did consider and discuss it as an option. The claimant was offered roles as a Band 5 Digital Forensics Investigator, a Band 5 role in Insights and Assurance, and Band 5 role in the People Hub and a Band 2 Support Grade role. They also provided the claimant with a list of other vacancies and the claimant accepted there were only 3 and none were suitable.
180. The respondent discharged their duty by giving adequate consideration to roles available and it was ultimately for the claimant to consider whether they were suitable for him. The respondent is not necessarily required to create a new role for the claimant and the claimant has not identified the duties or title of any new role that could or should have been created for him.
181. The roles identified by the claimant as alternatives to dismissal, dog handler, dog section manager, inspectorate and area intelligence were simply not viable alternatives because of the exposure to potentially violent incidents or did not exist as a vacancy and were not proposed with any real coherence during the

dismissal process.

182. In relation to the adjusted IM role, I have found that allowing the claimant to continue in the role of IM without requiring him to attend potentially violent incidents was a reasonable adjustment. Given that it is a reasonable adjustment, it would have been reasonable to place the claimant in that role, either for a further trial period after the IM deployments were expanded or permanently as an alternative to dismissal. I have explained my reasons for this being a reasonable adjustment and therefore a reasonable alternative already.

The Respondent could reasonably be expected to wait longer before dismissing the Claimant; and,

183. The claimant's situation was not going to change and having reached the conclusion that the adjusted IM role was not sustainable it is understandable why the decision to dismiss was taken at the time it was. However, given my findings on reasonable adjustment and proportionality, the conclusion that the role was not sustainable was flawed for the reasons I've already described. In circumstances where there is a reasonable adjustment that can be made to avoid the need to dismiss, it is outside the range of reasonable responses of a reasonable employer to dismiss without putting that adjustment in place and at least monitoring its impact.

Dismissal was within the range of reasonable responses.

184. Dismissal was not within a range of reasonable responses available to a reasonable employer. The respondent has failed to establish through a lack of evidence that there was any detrimental or disruptive impact on the claimant's colleagues or the ability of the unit to respond to calls that would make dismissal a reasonable option open to a reasonable employer. Further, there was a reasonable adjustment that could have been made, which would have negated the need to dismiss the claimant. Not putting that adjustment in place and assessing the impact of that adjustment before dismissal, particularly after the IM deployments were expanded made dismissal entirely unreasonable and outside the band of reasonable responses.

Approved by:

Employment Judge Edwards

3rd July 2026

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are

exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/