

**Date: 13/08/2020**

**Our Reference: FOIA-2020-0072**

**Your Reference: n/a**

*(Via email)*

Dear Applicant

## **RE: Freedom of Information Act 2000 Request**

I write in response to your Freedom of Information Act 2000 (or 'FoIA 2000') request dated 16/07/2020 in which you requested copies of correspondence from January 2017 onwards between the College of Policing, the Ministry of Defence Police and the Defence Police Federation on the level of fitness required by the Ministry of Defence Police officers who are carrying out the role of Authorised Firearms Officers.

When a request for information is made under FoIA 2000, a public authority has a general duty under section 1(1) of the Act to inform an applicant whether the requested information is held. There is then a general obligation to communicate that information to the applicant. If a public authority decides that the information should not be disclosed because an exemption applies, it must, under section 17(1) cite the appropriate section or exemption of the Act and provide an explanation for relying upon it.

It is important to note that a freedom of information request is not a private transaction. Both the request itself and any information disclosed are considered suitable for open publication, that is, once access to information is granted to one person under the legislation, it is then considered public information and must be communicated to any individual should a request be received. In light of this, our responses and disclosures are published on our external website at a later date. This should be borne in mind where a request is made for personal data of named individuals.

## **Decision**

After conducting careful searches for any information relevant to your request I can confirm that there is information held. However, your request is being partially refused under the following exemption:

- Section 31 – Law enforcement
- Section 40(2) – Personal information
- Section 42(1) – Legal Professional Privilege

A refusal notice is provided in **Appendix A**. I trust this letter answers your questions. Your rights are provided in **Appendix B**.

Yours sincerely,

**Melda Squires | Legal Advisor**  
**Information Management and Legal Team**  
**College of Policing**

Email: [FOI@college.pnn.police.uk](mailto:FOI@college.pnn.police.uk)

Website: [www.college.police.uk](http://www.college.police.uk)

**Appendix A**  
**Refusal Notice**

**Section 31 – Law enforcement**

- 1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
  - a) The prevention or detection of crime
  - b) The apprehension or prosecution of offenders

The exemption provided under section 31 requires me to consider the prejudice or harm that would, or would be likely, to result from disclosure. I must then go on to consider the public interest test which requires a consideration of the arguments in favour of and against disclosure and whether the public interest in disclosure is outweighed by any harm that disclosure may cause.

As a publicly funded body and from an ethical perspective, we accept we have a duty to make appropriate information available to the public wherever possible. We appreciate that there is a public interest in releasing discussions around the current standard of fitness needed to be attained by Armed Firearms Officers. Disclosure of this information would bring greater transparency and aid the public in being able to see the nature of the work we do and the way in which we support policing. It would also help provide assurance to the public that we are fully transparent in our discussions with other government bodies in setting the various standards expected of police in specialist roles.

However, we also recognise that the effective conduct of College relations is reliant upon an open dialogue between the College and its clients, partners and other stakeholders to maintain the trust and confidence of those we work with. If we fail to do so, the interests of law enforcement may be adversely affected by poorer quality guidance and quality assurance being provided and confidence by both law enforcement and the public, being decreased. Providing details of specific discussions regarding the fitness standards needed to be attained by AFO's in MDP carries a real risk of damaging the relationship between the College and law enforcement. This would significantly reduce our ability to support policing and may potentially affect the relationships we have with other law enforcement partners.

We believe that disclosure of the relevant contents of the correspondence would be likely to prejudice effective law enforcement. Disclosure would be likely to remove the provision of a safe place and inhibit

open discussion around operational risks faced by law enforcement and prevent engagement between stakeholders. If copies of correspondence were to be disclosed the quality of future decision making by the College would likely be significantly impaired, as internal/external input may be reduced, or largely modified, due to a fear of the discussions being disclosed to the public. We provide a quality assurance function and assess forces armed policing arrangements against national guidance and standards. If exchanges of information or feedback are to be disclosed, the openness of law enforcement agencies may be inhibited in the future and this in turn could lead to vulnerability for forces and increase the risk to the safety of the public and indeed law enforcement, prejudicing sections 31(1)(a) and (b) above.

Disclosure could also hinder the effective prevention and detection of crime as it has the potential to reveal specific operational capabilities and vulnerabilities of police forces. Disclosure of information that undermines the operational integrity of law enforcement capabilities is highly likely to have an adverse impact on public safety and a negative effect on law enforcement generally. This risk to public safety cannot be said to be in the public interest.

If the integrity of our quality assurance function is damaged by releasing detailed information on the exchanges of information, this would likely undermine our ability to continue to ensure forces are meeting the high standards the public would expect. This in turn, would likely impact on the law enforcement capabilities of police forces in England and Wales.

As stated above, the public interest test is a consideration of whether the community benefit of possession of the information outweighs the potential harm of releasing that information. It is not an evaluation of what interests the public. On weighing up the competing interests, I consider that the public interest test favours withholding the detailed correspondence between the College and the organisations you have requested.

#### **Section 40(2) – Personal information**

- 2) Any information to which a request for information relates is also exempt information if –
  - c) It constitutes personal data which does not fall within subsection (1), and
  - d) The first, second or third condition below is satisfied

Under section 40(2) by virtue of section 40(3A)(a), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it. Personal data is defined in section 3(2) of the Data Protection Act 2018 (DPA) as:

'any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).'

The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, or has them as its main focus or impacts on them in any way.

In this instance, the information 'relates to' the names of individuals and email addresses in the correspondence between the College and MDP regarding the fitness standards to be attained by AFO's. It is the College's view that the information requested would fall within the definition of 'personal data' as the requested information relates to living individuals and they are identifiable from that information.

Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FoIA 2000 are met. The relevant condition in this case is at section 40(3)(a)(i) of FoIA 2000, where disclosure would breach any of the data protection principles. In this case the College has considered whether disclosure of the personal data would breach the first data protection principle, which states that 'Personal data shall be processed fairly and lawfully.'

The College are of the view that there would be no legitimate expectation on the part of some of the data subjects that the College would disclose this information without the consent of the individuals concerned first being obtained. Exception is given of course to those who hold senior positions within the College of Policing, the UK police service, and the Police and Crime Commissioner, where there is an expectation that such information would be disclosed with or without consent. As such, I have provided the information for the individuals who hold such senior positions. It has not been possible to obtain the consent of those data subjects and it would be unfair to them to disclose their personal data without consent being obtained. It is our view that the data subjects would have a reasonable expectation that this information would not be disclosed and it would not be fair to them to put this information into the public domain without their express consent.

The College of Policing does accept that releasing this information would reinforce the College's commitment to being an open and transparent organisation, serving to maintain public confidence in the College and the wider police service. On balance however the College of Policing does not consider that the legitimate public interest would outweigh the interests of the data subject in this case and that it would not be fair to put this information in the public domain without their consent.

Based on the above I am of the view that it would not be fair to disclose the names and email addresses contained in the correspondence captured by your request and to do so would breach the first Data Protection principle, which requires the College to process personal data fairly and lawfully. As such it is not necessary for me to go on to consider the other elements of the first principle.

It is for this reason that the College of Policing have withheld this information under 40(2) by virtue of section 40(3)(a)(i).

## **Section 42 (1) - Legal professional privilege**

Section 42 states:

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

There are two types of legal professional privilege. Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. For information to be covered by litigation privilege, it must have been created for the dominant purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation.

Having made the necessary assessment and applying the precedent set in the case of *Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006) we are therefore exempting some information from disclosure by applying the section 42 exemption.

When applying section 42 to exempt information from disclosure, it is necessary to conduct a public interest test. Please note that there is no requirement to demonstrate any prejudice or adverse effect when applying s42. There is no need to show that any harm would occur from disclosure of the information.

Similar to my assessments for the application of section 31, we note that the College is a publicly funded body and we accept that we have a duty to be transparent and make appropriate information available to

the public wherever possible. I will not repeat the reasons given in the public interest test for this exemption which also apply to the application of this exemption.

Following the case of Bellamy referenced above, it is notable that "there is a strong element of public interest inbuilt into the privilege itself. In their guidance", the ICO note that the general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. The College has considered that the concept of legal professional privilege and the rationale behind the concept maintain that it is in the interest of the administration of justice and therefore in the public interest to exempt the information from disclosure.

The ICO advises that additional weight may be added to the consideration of legal professional privilege if the advice is live. In this scenario there is ongoing relevant live litigation for which the relevant information was prepared for which would support this principle.

On weighing up the above factors in favour of maintaining the exemption, alongside the same factors considered under section 31 for the public interest in disclosure, I consider that the public interest favours withholding some of the information covered by your request under section 42 (1).



## **Appendix B**

### **Rights**

If you are dissatisfied with the handling procedures or the decision of the College of Policing made under the Freedom of Information Act 2000 (the Act) regarding access to information you can request that the decision is reviewed internally.

Internal review requests should be made in writing, within **forty (40) working days** from the date of the refusal notice, and addressed to: FOI team, Central House, Beckwith Knowle, Otley Road, Harrogate, North Yorkshire, HG3 1UF or email: [FOI@college.pnn.police.uk](mailto:FOI@college.pnn.police.uk)

In all possible circumstances the College of Policing will aim to respond to your request for internal review within **20 working days**.

### **The Information Commissioner**

If, after lodging an internal review request with the College of Policing you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at <https://ico.org.uk/for-the-public/official-information/>.

Alternatively, write to:

### **Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**

**Phone: 0303 123 1113**



# Ministry of Defence Police

Ref. D/MDP/30/2

CEO Chief Constable Mike Cunningham  
Leamington Road  
Ryton-on-Dunsmore  
Coventry  
CV8 3EN

A Adams QPM  
Chief Constable

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

22 August 2019

Dear Mike,

## **Job Related Fitness Test**

I am writing to seek clarification on the current position of the above, following recent conversations between colleagues at MDP and your staff as well as the NPCC lead for fitness. During those we have been made aware that there are discussions concerning the appropriateness of the JRFT and the standards that should apply.

You will be aware that I am currently in the process of moving the Ministry of Defence Police to the Authorised Firearms Officer fitness standard, in order to fully comply with the CoP firearms training licence requirements by the end of March 2021. That process requires the move of a number of my officers from their present contracted terms to a higher level and we are intent on issuing a consultation document to the Defence Police Federation shortly – I am, obviously, keen that the document contains the extant position on fitness levels. The timeline for this requires me to issue a consultation document by the end of September 2019 so that we can introduce a year of no consequence testing in 20/21.

It would be helpful if you were able to assist in our understanding if any of the current debates are likely to impact upon that engagement process specifically, will the JRFT remain in the present format and will the standards be retained.

A ADAMS  
Chief Constable



[Redacted]

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**From:** [Redacted]  
**Sent:** 04 June 2020 12:47  
**To:** [Redacted]  
**Subject:** Existing MDP fitness testing convergence plan  
**Attachments:** 20160307-Fitness Testing Implementation v1 6Final.docx

Hi [Redacted]

Here is the original fitness testing standard convergence plan that MDP put forward back in 2016 in case you have not seen it.

As you will see it talk about a 4 year plan from April 2016 so MDP are already 2 months behind the original proposal with many of the dependencies not having been achieved.

Possibly worth bearing in mind when considering next steps.

Thanks

[Redacted]

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[Redacted]

[Redacted]

**College of Policing**  
PO Box 58323,  
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**MDP Fitness Testing Standards**  
**Implementation Plan for 'Convergence with CoP National Standard'**

**1. Background Information**

1.1 Current MDP TACOS proposition includes a Fitness Standard of 5.7 MSFT for all current officers based upon the scientific research conducted by the Institute of Naval Medicine (INM) for the AFO Role Profile. Without prejudice to formal TACOS agreement, 'Non Consequence' Mandatory Testing on 5.7 MSFT is scheduled to commence on 1 April 2016.

1.2 This proposition is at variance with the CoP National Standard of 7.6 MSFT for the AFO Role Profile and has been the subject of several MDP briefing updates to the NPCC National Armed Policing Working Group (NAPWG). At the last NAPWG in January 2016 the MDP position was again challenged by CoP Firearms Licensing representatives.

1.3 Recent SCOG discussion noted that CNC had implemented a plan to transition to the 7.6 MSFT for AFO's and that the current MDP approach left the Force at variance to the rest of Armed Policing. There was COG 'agreement in principle' that a reinstatement of the 7.6 MSFT for new recruits would bring some mitigation to align back to the CoP National Standard, noting that 369 officers had already joined the Force at that level.

1.4 CoP has very recently written to CCMDP highlighting that 5.7 MSFT does not allow the MDP to be compliant with the AFO Role Profile and therefore it brings into question wider partner force interoperability considerations, deployments under NPOCC arrangements (e.g. Op Temperer) and ultimately the continued approval of the MDP Firearms Training Licence.

**2. Demographic and Recruitment Challenge**

2.1 Annex 'A' provides a breakdown of MDP Firearms Role Profiles by age. Taking the 24/02/16 'dataset' as a snapshot, the number of authorised firearms officers in MDP on that day was 2062. Of those: 1306 (63%) were above the age of 45; 867 (42%) were above the age of 50; and 63 (3%) were aged over 60 and eligible to leave the Force at short notice (under their current pension arrangements).

2.2 Annex 'B' provides a projection of exits for the wider force and the proposed yearly recruitment programme which are subject to: SDSR-AWE timescale and final outcome; Review of Infrastructure and any required structural change. For the three year period from 2016/17 the projected recruitment is 612 officers. If those officers are recruited at 7.6 MSFT, then together with the 369 officers that have already demonstrated capability at that standard, this would increase the pool to 981 officers. In addition, the adoption of 7.6 for the more specialist ASV role profile would further increase by another 546 officers.

2.3 Overall, recruitment based on a 7.6 MSFT together with specialist role profiles being adopted at 7.6 for ASV and 10.5 for TSG will provide a natural opportunity to plan a transition to the CoP National Standard. This approach will require further consultation with the DPF especially around the position that CoP are now taking regards the 5.7 MSFT standard and its implications for armed policing interoperability.

**3. Proposal**

3.1 The proposal is that the implementation of MDP Fitness Testing should be progressive through time and demonstrate commitment to achieve convergence with the CoP National Standard. The approach should have due regard to Force demographics, other specialist roles and a prioritisation to reinstate (at the earliest opportunity) the 7.6 MSFT for Recruits and NEOFS that have joined the Force since June 2014.

3.2 The following plan sets out progressive steps from initial implementation of TACOS (INM) proposition in April 2016, progressing through to convergence with CoP Standards in four years.

#### 4. Implementation Plan

2016/17	New contract Officers (From April 2016)	7.6	Mandatory With Consequence as per contract
	Legacy Officers	5.7	Mandatory Without Consequence
	<b>Review</b> Volunteer Specialist Role Profiles.	Extant with current standards	Mandatory With Consequence to their current Specific Role Profile. E.g. TSG (10.5) & OSU (6.3).
2017/18	New contract Officers (From April 2016)	7.6	Mandatory With Consequence as per contract
	Legacy Officers	5.7 (Voluntary 7.6 )	Mandatory With Consequence.
	Volunteer Specialist Role Profiles.	Extant with current <b>new</b> standards	Mandatory With Consequence to their current Specific Role Profile.
2018/19	New contract Officers (From April 2016)	7.6	Mandatory With Consequence as per contract
	Legacy Officers	6.3 (Voluntary 7.6 )	Mandatory With Consequence.
	Volunteer Specialist Role Profiles.	Extant with current <b>new</b> standards	Mandatory With Consequence to their current Specific Role Profile.
2019/20	New contract Officers (From April 2016)	7.6	Mandatory With Consequence as per contract
	Legacy Officers	7.6	Mandatory With Consequence.
	Volunteer Specialist Role Profiles.	Extant with current <b>new</b> standards	Mandatory With Consequence to their current Specific Role Profile.

#### 5. Recommendations and Rationale

5.1 Continue along current plan with implementation of the INM recommended standard of Mandatory Non consequence 5.7 MSFT as the baseline for all Legacy AFO's (April 2016).

5.2 Recruits/NEOFs (since June 2014) reinstated to the Mandatory with consequence 7.6 MSFT standard (April 2016).

5.3 Review Specialist Firearms Role Profiles against National fitness standards. This will break down into two key areas for ASV and TSG:

- a) ASV is an MDP role profile<sup>1</sup> built on components from ARV and sits as a capability between the AFO and ARV role profiles. From an MDP perspective, the physicality requirement for the ASV role can be satisfied by achieving the national AFO role requirement of 7.6 to meet operational interoperability requirements. The College has set

<sup>1</sup> Agreed and signed off by the College.

the fitness standard for ARV at 9.4 but ASV does not meet the full ARV role profile requirement and therefore the default comparison for national requirements would be the next national role profile for which ASV would have to be compliant i.e. the National AFO Role profile which has 7.6 MSFT.

b) TSG is an MDP role profile<sup>2</sup> based on the national Dynamic Intervention/Dynamic Entry (DI/DE) role profile. To maintain the TSG's status and interoperability with similar teams nationally the 10.5 standard is necessary to achieve this. It is recognised that there are some demographic concerns with the current composition of the TSG and a risk of losing experienced officers from the role through age or injury that are experiencing difficulty in maintaining the 10.5 standard. There is an intermediate role profile of TSG support officer which provides an option to enable those officers to move down to a support role with a recommended operative fitness standard of 7.6.

5.4 Four Year Plan – Fitness Testing will become embedded, which together with the reviewed specialist role profiles and 'recruited officers' being tested at the 7.6 MSFT standard, will lead to a progressive move through a 6.3 standard (6.3 applies to Public Order and Specialist Taser Officers) towards the 7.6 standard. The projected trend is that the residual pool of AFOs at 5.7 will diminish as the overall fitness standards and culture of the MDP develops. A natural tipping point for a baseline of 7.6 for all AFOs could be reached over a three/four year period. Considering the previous two years of education and voluntary fitness testing a published plan on future expectations will give reasonable notice and encouragement to officers to play their part in ensuring their own fitness level meets 5.7 with a further four years to achieve 7.6 but with the option to achieve sooner.

5.5 CoP expectation is for MDP to achieve the 7.6 fitness standard only in relation to AFOs. Officers not trained or deployed as AFOs would generally only be required to achieve the 5.4 standard. The exceptions would be if other non-firearms role profiles such as Public Order (6.3) and Dog Handler (5.7) with a fitness standard above 5.4 maybe applicable.

5.6 Risks, identified with proposal:

- a. Acceptance of plan and timescale by College.
- b. DPF acceptance and incorporation into TACOS.
- c. Indirect discriminatory impact on female and older officers as identified by INM work.
- d. Impact on operational capability dependent on attrition rate if officers cannot achieve standard.

5.7 Risks, identified with remaining with current arrangements:

- e. Breach resulting in revocation of Firearms Training License.
- f. Loss of recognition that MDP is interoperable with UK police forces.
- g. Loss of license/interoperability impacting on all exiting firearms protocols/MoUs which enable MDP to carry out armed policing role out-with MOD property e.g. SEG, ASV and OPM.
- h. MDP being able to meet commitment to Op Temperer.
- i. MDP culpability (criminal) and liability (civil) post incident if MDP is seen to be no longer compliant with national armed policing and firearms training standards.

5.8 It is recognised that following the INM research and recommendations that 5.6c will be of concern. It can be argued that any increase in fitness standard with a higher requirement in physicality will have a disproportionate impact on female and older officers. This risk has to be balanced against the operational requirement to meet national operational standards in armed policing to deal with MTFAs (post Paris 1 & 2 which has seen significant change in the national picture since the INM work was complete). This is very relevant to MDP given the core role of CT and protecting national strategic assets from terrorist attack.

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<sup>2</sup> Again, agreed and signed off by the College.

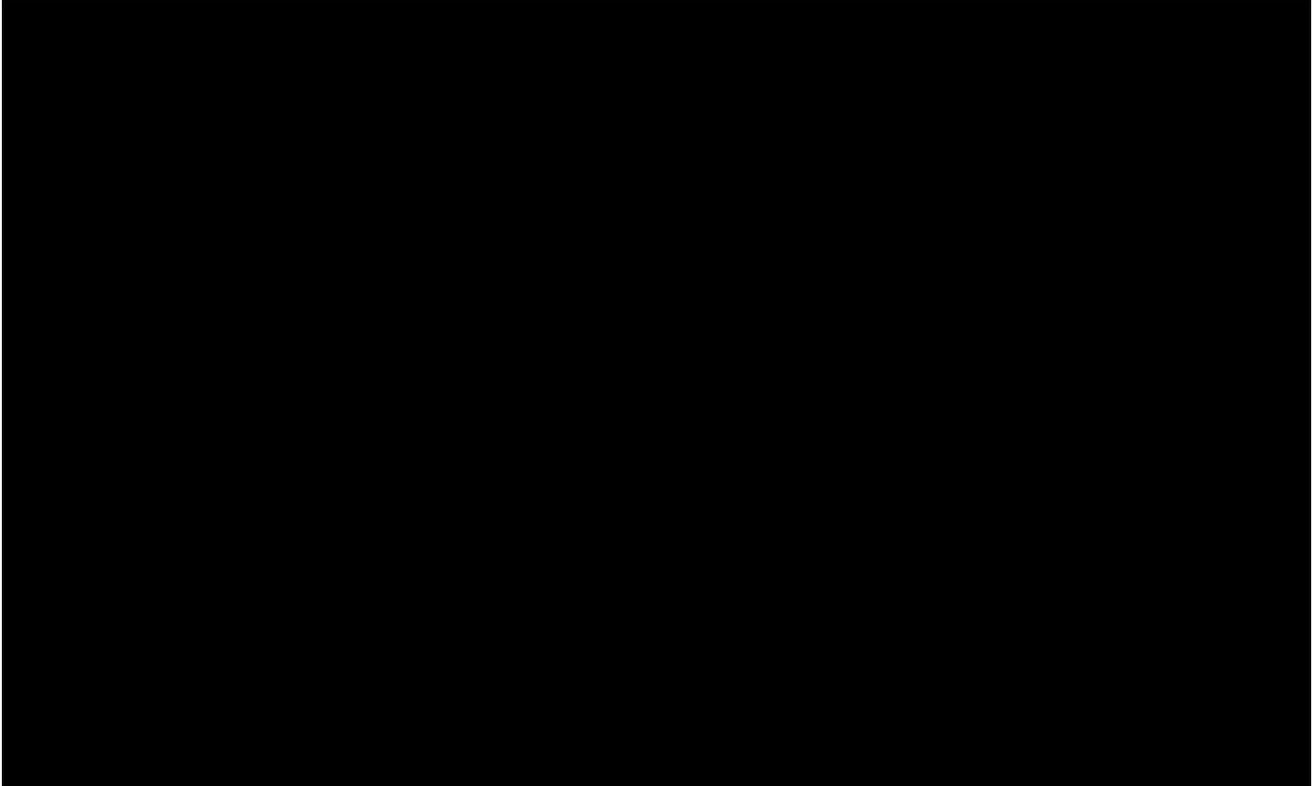
5.8 In summary, the above progressive implementation plan recognises the recommendations from INM to establish and implement Fitness Testing within MDP. CoP have always expressed reservations about the MDP approach, and this position appears to have become more resolved since the recent MTFAs incident in Paris has driven further scrutiny and challenge to UK national interoperability for armed policing. The result is a much stronger stance from CoP to achieve this national capability requirement which is essential to support operations such as Operation Temperer.

[REDACTED]

**7 March 2016**

**(Compiled in consultation with [REDACTED])**

**Age Breakdown of MDP Firearms Role Profiles**



**Thee (3) year projection on MDP Exits / Recruitment**

The estimated 'exit' rates (All leavers not just those reaching 60) over next 3 years is;

- \* 16/17 - 16 officers per month (182 for the year)
- \* 17/18 - 20 officers per month (240 for the year)
- \* 18/19 - 20 officers per month (240 for the year)

The estimated recruitment (as a % of agreed/funded complement) over the next 3 years is;

- \* 16/17 – 240 new recruits (93%)
- \* 17/18 - 180 new recruits (94%)
- \* 18/19 – 192 new recruits (97%)

Clearly this will be kept under regular review mindful of other issues that will impact on staffing levels going forward (e.g. SDSR–AWE, HQ site location, Infrastructure Policing Review etc).<sup>4</sup>

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<sup>4</sup> Source: [REDACTED] (24/02/16)

[Redacted]

**From:**

[Redacted]

**Sent:**

19 November 2018 21:53

**To:**

[Redacted]

**Subject:**

Early Information

Hi [Redacted]

I would have texted – but some recent problems with my work iPhone led to full reboot which lost all my mobile contacts!

This is to let you know that Andy Adams will shortly be writing to Mike to provide an update on our progress in moving toward JRFT at Level 7.6 (i.e. National Standard for AFO).

In doing so he will also be seeking confirmation that our (continued) intended approach meets the College’s expectation on our compliance with JRFT expectations – given that such was referenced to us when the Licence was re-instated. Andy had briefly discussed this with Mike in the margins of a Chiefs Council.....but this is to give you the heads up in anticipation of such landing with Mike later this week.

Regards

[Redacted]

[Redacted]

**Protecting | Reassuring | Achieving**

We Protect and Reassure to Achieve our Ministry of Defence requirement

***Diversity: People perform better when they can be themselves***