



**College of
Policing**

THE PROFESSIONAL BODY FOR POLICING

**Implementation
Job-Related Fitness
Tests for the Police
Service of England
and Wales**

**September 2014
Winsor Recommendation 33**

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Potential for legal challenge

This guidance has been produced by the College of Policing to support the assessment and validation process concerning the introduction of the job-related fitness test for serving police officers. Police forces that implement these standards will be able to cite them as being assessed as reasonable and appropriate under the Equality Act 2010 and the Health and Safety at Work etc. Act 1974. Any derogation from these standards carries a risk of legal challenge from an officer disadvantaged by the implementation of a higher or a lower standard, any additional standards or a different method of assessment from those recommended in this guidance.

1 Introduction

The home secretary accepted the recommendation of the Police Advisory Board for England and Wales (PABEW) to introduce, in part, the recommendation made in the Winsor Review ([Part 2 report](#)) for annual fitness testing of serving police officers.

The initial Recommendation 33 to implement fitness testing made in Winsor (Part 2) states:

A fitness test should be introduced in September 2013 for all police officers and staff required to undertake personal safety training. Participants should be required to attain level 5:4 on a 15-metre shuttle run. From September 2014, those who fail the test three times should be subject to the appropriate disciplinary procedures.

The PABEW reconsidered the part of the recommendation stating that officers who fail the test on three occasions should be subject to appropriate disciplinary procedures. They recommended instead that forces provide supportive action through force performance procedures to officers who fail the test. The home secretary accepted Winsor Recommendation 33 subject to the caveat proposed by the PABEW.

In order to facilitate implementation of the job-related fitness test (JRFT) for in-service fitness testing, the PABEW accepted that in the first year (from September 2013 to September 2014) there should be no sanction applied to those officers who fail the fitness test or who are unable to take it because of a medical reason. The force occupational health provider should assess the reason provided.

The Fitness Testing Working Group (FTWG) developed and produced interim guidance for the initial introduction of annual fitness testing in September 2013, which set out how forces should implement the new arrangements. The interim period allowed forces and those officers required to undertake the test to prepare for the regime going live in September 2014.

This guidance sets out how forces should implement the annual fitness testing regime as a pre-selection for those police officers who are required to undertake personal safety training (PST) and provides advice on support measures to assist officers in passing the JRFT.

2 Fitness testing for police staff

No decision has been made with respect to fitness testing for police staff. Winsor Recommendation 33, as it relates to these employees, remains outstanding. The FTWG is working in partnership with the Police Staff Council to address this.

3 Health and safety compliance

This guidance will help police forces ensure that the JRFT standards comply with the [Health and Safety at Work etc. Act 1974 \(HSWA\)](#) and the [Police \(Health and Safety\) Act 1997](#). It also complies with the Health and Safety Executive's (HSE) guidance on successful health and safety management in the workplace – [HSG65](#).

4 Job-related fitness test standards

The JRFT measures aerobic capacity. It is based on scientific research to match the aerobic demands of PST (Brewer, J. (2004) Research into Fitness for the Police Service. Lilleshall Sports Injury and Human Performance Centre). The JRFT standard is the same as that used in recruiting officers.

Table 1: Recommended Winsor Recommendation 33 JRFT standard

Candidate	Recommended endurance standard (level:shuttle)
Police officer	5:4

Note: the upper body strength test is not included in these standards.

4.1 JRFT standards – application

Forces must implement this pass standard as a pre-selection process for those police officers undertaking PST and carry out an annual retesting regime. Only those police officers who undertake PST should be subject to testing. It should be a local force decision as to whether special constables who undertake PST should be tested, however, forces must note that special constables are viewed as employees under the Police (Health and Safety) Act 1997.

All officers tested should wear appropriate physical training clothing and footwear, not operational police uniform and/or equipment.

Forces must undertake the testing in an indoor facility with suitable flooring and floor markings. It is important to ensure that the recording of the 15-metre multi-stage fitness test can be heard clearly from all parts of the facility where the testing is being undertaken. Forces must address the suitability of the facility in the risk assessment (see [appendix 2](#)).

4.2 JRFT familiarisation and support

Forces should establish a system which allows officers to become familiar with the JRFT and, if necessary, attempt an informal test. This should reassure any officer who is anxious about the test regarding the level of physical competence required.

Forces may consider the positive action provisions under the Equality Act 2010, where it is shown that there are groups of officers with a protected characteristic and the police force reasonably thinks that such groups may:

- experience a disadvantage connected with the protected characteristic
- have different needs from those who do not share the protected characteristic
- are disproportionately represented.

This allows the police force to enable people with that protected characteristic to overcome or minimise the disadvantage, meet their needs or to enable or encourage them to participate in the JRFT.

Any measures will only be legitimate if they are a proportionate means of achieving the aims set out above.

For example, women and officers in a high age category have been shown statistically to have a disproportionately lower pass rate. It may be helpful to run open days/events targeted at these groups, in a supportive environment, as a positive action measure. Other positive action examples might include a mentoring programme or assistance with training and preparation for the test.

Forces should assess all initiatives as a proportionate means of enabling officers who share a protected characteristic to overcome any disadvantage connected to the protected characteristic, to meet their needs or to enable or encourage them to participate in the JRFT.

There should not be a blanket policy in place to always treat officers who have protected characteristics more favourably than those who do not share the protected characteristic.

In addition, forces must consider support processes for all to help candidates pass the JRFT on their first attempt or develop them after they have recorded a fail.

All health and safety criteria must apply to ensure that no candidate's safety is compromised as a result of practice tests. This also gives each candidate the opportunity to receive advice on how to improve their fitness (if required) from the appropriately trained specialist administering the test.

4.3 JRFT protocols

The JRFT delivery criteria must be consistent with the recognised 15-metre multi-stage fitness practice with an appropriate warm up undertaken as per Home Office Circular 43/2004 – see **appendix 1**.

Forces must deliver the test to the 5:4 standard only.

4.4 JRFT occupational health referral

The purpose of the medical questionnaire (see **appendix 4** for an example) is to ensure an officer's safety is not placed at risk when they undertake the JRFT. If an officer cannot pass the medical screening element of the JRFT or records a fail due to an inadequate physical fitness standard, musculoskeletal complaint or ill health, forces must implement a structured referral process involving occupational health. The referral process must include a documented action plan to give the candidate a realistic period to make appropriate improvements to undertake the JRFT successfully.

4.5 JRFT failure

If an officer is not able to pass the JRFT at the first attempt, forces must provide supportive action (see **4.2 JRFT familiarisation and support**) and allow a series of at least two retakes, with sufficient intervals between each attempt. A period of at least six weeks is advisable between each retake in order to allow the officer time to train and develop to achieve the 5:4 standard. If all appropriate support measures and alternatives have been delivered and the officer is still unable to achieve the required standard, forces should use the unsatisfactory performance procedures (UPP) as set out in the Police (Performance) Regulations 2012 procedure.

If an officer cannot pass the JRFT, forces must not permit the officer to undertake PST. To allow the officer participation in PST may not be a legally defensible position if an injury occurs.

5 Alternative test

The College of Policing, in association with the FTWG, is currently considering an alternative test in the form of the Chester Treadmill Walking Test. However, further work is required to determine the validity, accuracy and reliability of the test before it can be used as a justified alternative to the multi-stage shuttle run test to the equivalent 5:4 standard.

Some forces have already implemented alternative fitness tests, but this approach may bring certain risks. The 5:4 multi-stage shuttle run test standard can be justified as being equivalent to the level of aerobic capacity reached in PST (defined in terms of VO_2 max).

The risk with any alternative fitness test is that it may not be adequately assessed for its validity and reliability against national standards and could have an adverse impact on officers, which forces may not be able to justify if challenged.

Any alternative must have similar content validity to the 5:4 multi-stage shuttle run test, and be sufficiently reliable to be considered a parallel test. Forces will be updated once the consultation on a validated alternative has been finalised.

Forces should only offer an alternative test based on medical grounds or as a reasonable adjustment, following a decision from occupational health.

6 Equality and diversity

In the context of work, the Equality Act 2010 requires that there is no unlawful discrimination because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation. The law also requires public sector employers, including the police service, in the exercise of their functions, to have due regard to the need to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.1 Potential for unlawful discrimination

Any test that is part of a selection process for a job comes under the requirements of the employment provisions of the equality legislation. A fitness test has the potential to discriminate unlawfully both directly and indirectly. Direct discrimination occurs if someone is treated less favourably because of a protected characteristic. Indirect discrimination occurs if a provision criterion or practice (such as a fitness test) is applied universally, but which puts a person from a protected group at a particular disadvantage, and which is unable to be justified as being a proportionate means of achieving a legitimate aim.

Forces need to assess a fitness test that, if not passed, has sanctions and potential employment implications, and consider if any potential discrimination can be justified as being a proportionate means of achieving a legitimate aim. An equality impact assessment (EIA) showed that the tests had the potential to impact adversely on individuals because of their sex and/or age (see **appendix 4**).

6.2 Potential for sex discrimination

A lower pass mark for women than for men would result in unlawful direct discrimination against men who are denied a job if they passed the women's pass mark, but not the man's. See *Allcock v the Chief Constable of Hampshire Constabulary* [1997] IT/3101524/97. PC Allcock applied to be a dog handler. He passed the fitness test in the time set for women, but not for men (which was quicker) and was denied a job. If he had been a woman he would have been given the job. The Tribunal found that he had been unlawfully directly discriminated against on the ground of his sex.

Direct sex discrimination cannot be justified in law. A fitness test which has the same pass mark for men and women but which fewer women than men are able to pass, could indirectly discriminate against women if it does not accurately reflect the requirements of the role.

6.3 Potential for age discrimination

A lower pass mark for older people would result in direct discrimination against younger people denied a job if they passed the older person's pass mark, but not the one for younger people. Direct age discrimination can be justified in limited circumstances where a legitimate aim has been identified.

A fitness test which has the same pass mark for all age groups but which fewer older people can pass, could indirectly discriminate against older people if it does not accurately reflect the requirements of the role (because this would not be proportionate). See *Dougan v the Chief Constable of the Royal Ulster Constabulary* [2006] 03244/97SD and 01734/98SD, and *Bamber v Greater Manchester Police* [2011] 2401829/09 and 2404977/10.

In the case of *Dougan*, Ms Dougan alleged that the recruit fitness test indirectly discriminated against women because fewer women than men could pass. The Tribunal found that one element of the test (the 'grappler') was justified against the requirements of the legislation, but the timings to pass the other elements (the circuit run) were not justified against the requirements of the role.

In the case of *Bamber*, an Employment Tribunal found that a fitness test resulted in indirect sex and age discrimination against an older woman officer. The Tribunal found that the test used by the force for level 2 public order training could not be justified as being a proportionate means of achieving a legitimate aim.

6.4 Potential for disability discrimination

A disabled person is defined under the Equality Act as someone with a physical or mental impairment that has a long-term, substantial adverse impact on that person's ability to undertake normal day-to-day activities. A fitness test could result in unlawful discrimination against disabled people.

6.5 Legal justification

The FTWG carefully considered the legal justification required, and the potential for any discrimination. They identified that the aim of the in-service fitness test was to ensure that officers were able to meet the aerobic demands of PST and, therefore, effectively perform the role of a police officer. Under the indirect discrimination provisions of the Equality Act 2010, any disproportionate impact has to be legally justified against this aim.

The FTWG identified a disproportionate impact on women and older people through data provided to the College of Policing of pass and failure rates for those groups who undertook the test in the interim period of implementation from September 2013 and May 2014. The College of Policing also requested data regarding the pass and failure rates of those with a disability, however, the data received was incomplete so no conclusions could be drawn.

It is not unlawful to treat a disabled person more favourably than a person who is not disabled, however, there is no legal requirement to reduce standards that are a necessary requirement of a role.

The Equality Act 2010 requires forces not to discriminate against officers for a reason arising from their disability, and to make reasonable adjustments for officers where working arrangements place a disabled officer at a substantial disadvantage to officers who are not disabled. Forces may want to consider reasonable adjustments in order to comply with their duty to provide these, which may be in the form of an alternative test – see **5 alternative test**. Forces must make justifiable decisions on reasonable adjustments on a case-by-case basis.

The College of Policing will gather further data from forces regarding officers with a disability, so the impact can be sufficiently assessed.

The physical demands of PST have been assessed scientifically and identified as 5:4 on a 15-metre shuttle run (Brewer, J. (2004) Research into Fitness for the Police Service. Lilleshall Sports Injury and Human Performance Centre). This is, therefore, an appropriate and necessary standard to ensure that the officers are sufficiently fit to safely undertake a role that requires PST.

Case law in relation to fitness testing indicates that any test must be the same for all those from a protected group. Although only an employment tribunal can decide whether indirect discrimination is justified in the particular circumstances, the FTWG considers that the standard is likely to be a proportionate means of achieving a legitimate aim.

Forces must be aware that this justification covers only roles that require PST.

See **appendix 3** for a full EIA. Forces should also conduct their own diversity monitoring to take into account local force considerations.

6.6 Equality monitoring

The FTWG considers that the outcomes of implementing the in-service fitness test should continue to be monitored at force and national level to ensure that the standard remains relevant and can continue to be justified as being a proportionate means of achieving a legitimate aim. In order to use the positive action provision of the Equality Act 2010, forces will need to monitor and review the pass rates of all those required to undertake the test by reference to their protected characteristics.

All forces must continue to provide testing data on a six-monthly basis to the College of Policing, disaggregated by sex, gender and disability for monitoring and evaluation of any disparate impact.

7 Delivery

7.1 Health and safety

A specific risk assessment for the JRFT must be completed by a suitably experienced person in line with the HSE's '5-step risk assessment' template. The risk assessment should be reviewed by a designated health and safety adviser/officer periodically, or in the event of significant injury/illness to a participant, or if an organisational restructure affects JRFT delivery. An example of an appropriate risk assessment is shown in **appendix 2**. Other local force considerations will be needed to add or influence the scoring or content of the risk assessment.

7.2 Staffing

Forces must be satisfied that staff members delivering the JRFT test are competent to do so as well as first aid certified. Forces must record the qualification/certification in the risk assessment.

7.3 Medical screening

All candidates must complete a medical screening questionnaire prior to undertaking the JRFT (an example questionnaire is shown in **appendix 4**). The screening questionnaire must be part of the risk assessment and approved by an occupational health specialist. A designated occupational health specialist must review the medical screening questionnaire periodically or in the event of significant injury/illness to a participant. Candidates should complete this questionnaire as part of the pre-join instructions for undertaking the fitness test.

Where practicable, forces should provide the questionnaire to candidates at least six weeks prior to the anticipated date of the JRFT. The questionnaire will identify the requirement for a referral to a specialist for further assessment and determine suitability for the individual to participate in the JRFT. On the day of the test, participants should complete a further health declaration (see **appendix 5**) confirming there has been no change in their personal circumstance in the intervening period. This process is already in place in many forces with regard to PST.

8 Data collection

It is important to continue to audit the number of passes and failures and understand how specific groups of individuals (eg, age, sex and officers who have a disability) are performing. Each force is required to collect results from their testing regime and supply them via an online survey provided by the College of Policing on a six-monthly basis. The College will request results on a date to be notified.

Appendix 1 Home Office circular 43/2004 (relevant section)

Test elements and standards

The test administrator must ensure that all candidates are sufficiently warmed up for the test. This should involve some whole body activity such as jogging, followed by appropriate stretching exercises, particularly of the leg muscles. It would be useful to familiarise candidates with the test by taking them to level 3 as part of the warm up followed by basic mobility stretching activities.

Page 2, paragraph 4, [Home Office Circular 43/2004](#)

Appendix 2 JRFT (5:4) – risk assessment

Risk to the participants undertaking the JRFT

Activity/task assessed:			Name of assessor:				Assessment no:	Type of assessment specific:		
Date implemented:			Date of last assessment:				Review date:			
No	Activity/workplace	Hazards	*Persons at risk	Severity of hazard	Likelihood of risk	Overall risk level H, M, L	Control measures/comments	Revised risk level	Further action required? (Y/N)	
1	Pre-JRFT (screening and pre-test)	a. Serious illness or fatality	P, PS	5	2	10 (M)	<ul style="list-style-type: none"> Implement positive action/familiarisation of testing regime for all potential participants Complete informed consent and health screening questionnaire at least four weeks prior to the JRFT Review questionnaire by appropriate person Do not test any staff identifying medical problems on the questionnaire Occupational health referral for any potential problems identified in the questionnaire All instructors must be trained in provision of basic first aid (consider the access to and training needs for a defibrillator) Comply with JRFT standard operating procedure (HO circ 43/2004) 	5 (L)		

*Persons at risk include participant (P), instructor (I), police service (PS)

Risk to the participants undertaking the JRFT (continued)

Activity/task assessed:			Name of assessor:				Assessment no:	Type of assessment specific:		
Date implemented:			Date of last assessment:				Review date:			
No	Activity/ workplace	Hazards	*Persons at risk	Severity of hazard	Likelihood of risk	Overall risk level H, M, L	Control measures/ comments	Revised risk level	Further action required? (Y/N)	
1		b. Slip or trip	P	3	3	9 (M)	<ul style="list-style-type: none"> The floor surface should be of a suitable gymnasium standard The floor surface must be clear, clean, clearly marked and maintained All candidates must be wearing appropriate footwear All instructors must be trained in basic first aid Compliant to all relevant Health and Safety Executive, Approved Codes of Practice (HSE ACOPs) 	4 (L)		
2		c. Musculo skeletal injury	P	3	3	9 (M)	<ul style="list-style-type: none"> All candidates must not run beyond 5:4 Comply with JRFT standard operating procedure (HO circ 43/2004) All candidates must be clearly briefed Candidate must declare any current musculoskeletal injury which they feel may deteriorate as a result of undertaking the JRFT All candidates must be afforded appropriate time to warm up before the JRFT (preferably delivered by a qualified instructor) All instructors must be trained in basic first aid 	4 (L)		

*Persons at risk include participant (P), instructor (I), police service (PS)

Risk to the participants undertaking the JRFT (continued)

Activity/task assessed:			Name of assessor:				Assessment no:	Type of assessment specific:		
Date implemented:			Date of last assessment:				Review date:			
No	Activity/workplace	Hazards	*Persons at risk	Severity of hazard	Likelihood of risk	Overall risk level H, M, L	Control measures/comments	Revised risk level	Further action required? (Y/N)	
		d. Injury, illness or fatality due to the general use of fitness testing facility	P, I, PS	5	2	10 (M)	<ul style="list-style-type: none"> All candidates must not run beyond 5:4 Comply with JRFT standard operating procedure (HO circ 43/2004) All candidates must be clearly briefed on the facilities (ie, fire evacuation procedures) Candidate must declare any current musculoskeletal injury which they feel may deteriorate as a result of undertaking the JRFT All candidates must be afforded appropriate time to warm up before the JRFT (preferably delivered by a qualified instructor) All instructors must be trained in provision of basic first aid Compliant with all relevant HSE, ACOPs 	5 (L)		

*Persons at risk include participant (P), instructor (I), police service (PS)

Risk estimator matrix

Severity → Likelihood ↓	No injury	First aid injury	Lost time (over 3 days)	Major injury or disabling disease	Death
Improbable	1	2	3	4	5
Remote	2	4	6	8	10
Possible	3	6	9	12	15
Probable	4	8	12	16	20
Very likely to occur	5	10	15	20	25

Warning – health and safety

Officers undertaking the job-related fitness tests must not run beyond the 5:4 standard.

Appendix 3 Equality impact assessment

<p>Title of policy: Police Service of England and Wales in-service fitness tests Date: 12 June 2014</p>
<p>Assessor: Jayne Monkhouse OBE</p>
<p>1: Identify the aims and purpose of the policy This should identify the legitimate aim of the policy (there may be more than one).</p> <p>Purpose: To implement Recommendation 33 of the Independent Review of Police Officer and Staff Remuneration and Conditions (the Winsor Report) as amended by the PABEW/PNB and agreed by the home secretary; ie, 'A fitness test should be introduced in September 2013 for all police officers required to undertake personal safety training. Participants should be required to attain level 5:4 on a 15-metre shuttle run'.</p> <p>Aim: To ensure that officers are sufficiently physically fit to carry out their duties safely (appendix 13, paragraph 19 of the Winsor Report).</p>
<p>2: Identify the individuals and organisations likely to have an interest in, or be affected by the policy This should identify the persons/organisations who may need to be consulted about the policy or procedure and its outcomes (there may be more than one).</p> <p>The organisations considered to be interested in and most likely to be affected by the introduction of in-service fitness tests are members of the Police Advisory Board of England and Wales (PABEW).</p>
<p>3: Consultation Who was consulted and how? (This should include reference to people and organisations identified in section 2.)</p> <p>The FTWG was first formed in 2003 by the PABEW. It was chaired by an ACPO officer and included representatives from the Home Office, the Association of Police Authorities, Her Majesty's Inspectorate of Constabulary, the Police Federation of England and Wales (PFEW), the Police Superintendents' Association of England and Wales and a number of specialist advisers on fitness testing and equality. Representatives from the National Policing Improvement Agency replaced officials from the Home Office in 2007 and were subsequently replaced by representatives from the College of Policing in 2013.</p> <p>Correspondence was received and considered from groups including the British Association of Women in Policing (BAWP) and force fitness specialists. The Women Reserve Seat representatives of the PFEW were consulted and kept informed of the work of the FTWG by the PFEW representatives.</p> <p>From time to time specialist advisers including ACPO (PUF) and health and fitness experts have been invited to the meetings. More recently the meeting has included representatives from the BAWP, the National Disabled Police Association, force fitness instructors and a representative of force medical advisers.</p>

4: Research

Summarise the findings of any research you have considered regarding this policy. This could include quantitative data, qualitative information and anything you have obtained from other sources.

Background

In 2003 the PABEW had expressed concerns about the potential for unlawful discrimination in certain fitness standards operated by forces. They commissioned an FTWG to make recommendations and produce guidance for:

1. an interim solution as to the type and level of fitness required at recruitment on the best evidence currently available, based on an assessment of job and competency requirements
2. how the recruitment fitness test (based on the interim solution in point 1 above) should be conducted fairly and consistently and what the response should be to those who do not meet the standard
3. further work (with timetable to progress) that will be needed to (a) assess fully, and validate, the required standards and test, (b) establish the type and level of job and competence-related fitness required for specialist roles and how to test fairly and effectively for them, and (c) establish the possible needs for, and forms of, ongoing support and assessment of the fitness and health of police officers.

By 2010 the FTWG had completed work identified at items 1, 2, 3(a) and 3(b).

Lilleshall Consultancy Services was commissioned to develop the JRFT for recruits to the police service, which was adopted in 2004.

In 2008 Lilleshall Consultancy Services was again commissioned to develop job-related fitness standards for 13 specialist posts. Its report was accepted by the PABEW in 2010 and promulgated by ACPO in January 2012.

In March 2012 the Winsor Report recommended that a fitness test should be introduced in September 2013 for all police officers and staff required to undertake PST. Participants should be required to attain level 5:4 on a 15-metre shuttle run. From September 2014, those who fail the test three times should be subject to the appropriate disciplinary procedures.

In July 2013 the PABEW agreed the principle of the recommendation in respect of police officers only. In addition, it proposed that UPP rather than disciplinary procedures would be appropriate to deal with a failure to meet the standard, subject to support from a force's occupational health services to remedy the failure.

The home secretary accepted the PABEW's amended Recommendation 33, and the PABEW tasked the FTWG to produce guidance on implementing the in-service fitness test.

Requirements of the Equality Act 2010

A test that is part of a process relating to work comes under the requirements of the employment provisions of the Equality Act 2010. Police officers have been found to have been discriminated against in the application of fitness tests. Examples include:

Sex discrimination

In the case of *Allcock v the Chief Constable of Hampshire Constabulary* [1997] IT/3101524/97 an industrial tribunal found that a lower pass mark for women than for men was unlawful direct discrimination against men. Direct sex discrimination cannot be justified under the requirements of the Equality Act 2010.

In the case of *Dougan v the Chief Constable of the Royal Ulster Constabulary* [2006] 03244/97SD and 01734/98SD the industrial tribunal found that a fitness test which had the same pass mark for men and women, but which fewer women than men were able to pass was unlawful indirect sex discrimination against women. The constabulary was able to justify the requirements of the upper body strength element of the test but failed to justify the timings for the circuit run of the physical competency assessment against the requirements of the role.

Sex and age discrimination

In the case of *Bamber v Greater Manchester Police* [2011] 2401829/09 and 2404977/10 an employment tribunal found that a fitness test resulted in indirect sex and age discrimination against an older woman officer. The tribunal found that the test used by the force for level 2 public order training could not be justified as being a proportionate means of achieving a legitimate aim.

Sex/maternity and pregnancy discrimination

In the case of *Tapp v the Chief Constable of Suffolk Constabulary* [1998] ET/1501546/97 an employment tribunal found that the removal of a pregnant officer from PST and transferring her to clerical duties without carrying out any risk assessment was unlawful sex discrimination.

The Equality Policy Statement of the Winsor Report indicates that 'there are certain groups for whom mitigating action would need to be taken (before they can take the fitness test). Women returning from maternity leave would need time to regain their fitness before taking the test, as would those returning from illness, injury or certain medical treatments.'

Potential for direct age discrimination

A lower pass mark for older people would result in direct discrimination against younger people denied a job if they passed the older person's pass mark, but not the one for younger people. Direct age discrimination may be justified if it can be shown to be a proportionate means of achieving a legitimate aim.

Potential for disability discrimination

A fitness test could also result in unlawful discrimination against disabled people. A disabled person is defined under the Equality Act 2010 as someone with a physical or mental impairment that has a long-term, substantial adverse impact on that person's ability to undertake normal day-to-day activities.

It is not unlawful to treat a disabled person more favourably than a person who is not disabled; however, there is no legal requirement to reduce standards that are a necessary requirement of a role.

Forces need to ensure that they do not discriminate directly or indirectly against disabled officers taking the test.

The Equality Act 2010 also requires forces not to discriminate against officers for a reason arising from their disability and to make reasonable adjustments for officers where working arrangements place a disabled officer at a substantial disadvantage to officers who are not disabled. This might mean, for example, that an officer with a knee condition who cannot undertake the turn on the bleep test should be offered an alternative method to demonstrate their ability to undertake PST.

The Equality Policy Statement of the Winsor Report indicates that 'Forces should take care to treat appropriately those who are assessed as unable to pass the test because of a health condition or problem. It could be as a result of a disability under the Equality Act 2010. Subject to medical advice and a risk assessment, this is likely to include placing the individual on restricted duty, in a role appropriate for his disability, and in respect of which reasonable adjustments have been made.'

The Winsor Report continued that 'officers ... with a hearing impairment, or another medical reason which would prevent them from running the shuttle run test, would need to have an appropriate alternative provided, for instance the "Chester Test" in which a treadmill or "straight line" test is offered to measure cardiovascular fitness. Those who are unable to take the test for reasons of illness, injury or disability would also be referred to occupational health departments for advice and assistance or further action' (appendix 13 paragraph 21).

Alternative test

As at November 2013 six forces offered an alternative test. These included an exercise bike, a step test (various heights), and a running machine. However, there was no data on whether these tests were equivalent to level 5:4 on the shuttle run.

The PFEW commissioned a report for the FTWG from fitness expert Paul Buckle MSc on the suitability of an alternative fitness test. His report (Nov 2013) indicated that:

'Many fitness tests are available to use as an alternative to the JRFT, which involve both sub-maximal and maximal methods of testing. Sub-maximal fitness tests include the Chester Step Test and the Astrand-Ryhming Cycle Test. Both tests rely primarily on heart rate to predict the VO_2 max value, which factors in unknown errors into the result. Maximal field tests include the Cooper 12-minute mile running test; the 1.5-mile running test and the Rockport one-mile walking test. Adverse weather conditions, mis-judged pacing and lack of motivation to perform maximally can adversely affect scores, resulting in an under-estimation of a VO_2 max result. The Bruce treadmill running test is another maximal test, but again lack of motivation may result in a poor performance being recorded, and the speed of the treadmill belt, compounded by a steep gradient, makes it hazardous for officers with known health issues.'

The report concluded that the 'Chester treadmill walking test seems the only fitness test that could be considered as an alternative to the JRFT. It is a straight forward test to undertake and to administer and is relatively safe, as the pace is only ever at walking speed, albeit brisk. The only equipment needed is a treadmill, and there is no reliance on heart rate readings. The validity and reliability of the test to determine VO_2 max is as trustworthy as that of the multi-stage shuttle run.'

The report recommended that the Chester Treadmill Walking Test be used as the alternative test to the police JRFT, with the standard calibrated at 9 minutes, at a gradient of 12%, as the equivalent to 5:4.

The College of Policing undertook further work on the scientific analysis that underpinned the research with Kevin Sykes, emeritus professor of occupational health and workplace fitness at the University of Chester, the developer of the Chester Tests. The College is currently considering whether there is insufficient published data to accurately match the VO_2 of 35 ml on the Chester Treadmill Walking Test.

Cost

The Winsor Report estimated that the total cost of introducing in-service fitness using the JRFT would be around a maximum of £6.6 million per annum, across all forces (paragraph 5.1.133).

A number of forces expressed concerns to the FTWG about the lack of availability of venues, occupational health support and the cost of operating an annual test. In particular, West Midlands Police indicated that the cost of the shuttle run was prohibitive and they had decided to provide an alternative arrangement involving the Chester Step Test and an overall health assessment of officers.

5. Monitoring

Summarise the findings of any monitoring data you have considered regarding this policy. This could include data which shows whether the policy is having the desired outcomes and also its impact on members of different equality groups.

Monitoring data specialist posts

The FTWG were aware that the EIA to identify any disproportionate impact of the specialist post fitness standards in 2010 had shown that the tests, albeit from a range of higher standards, had a disproportionate adverse impact because of age and sex. See [EIA Specialist Post Fitness Tests](#).

Monitoring data in the Winsor Report

Hampshire Police operated in-service fitness testing between July 2010 and June 2011. The monitoring data from the testing, referred to in paragraph 5.1.56 of the Winsor Report, indicated that there were differences in pass rates between people of different genders and ages taking the test. The percentage of men who failed the test was 0.6% compared with 5.3% of women. The average age of women who failed the test was 42, while their average age overall was 35. The average age of men who failed the test was 47, while their average age was 38.

Interim guidance

In July 2013 the FTWG produced interim guidance for the College of Policing. This included an EIA to support the introduction of the in-service test in September 2013. During the first year no sanctions were to be imposed on officers failing or unable to take the test.

This gave forces the opportunity to develop their procedures, officers to try the test and improve their fitness if necessary and the FTWG to monitor the equality impact on the test on significant numbers of officers for any disproportionate impact by age, sex and disability (only). The results were to be analysed by the FTWG and, if necessary and if appropriate, changes would be proposed to the College of Policing to reduce or remove any unjustifiable adverse impact.

Data collection May 2014

At the end of May 2014 useable data had been received from 37 forces. Twenty-two forces supplied data on disability, but much of this was incomplete. Only 34 officers under the age of 20 took the test, making conclusions in this age group untenable.

Three forces (Suffolk, Surrey and Sussex) each tested an officer over the federated rank's compulsory retirement age of 60, indicating that they were testing officers of superintendent rank or above. Two forces tested more officers than were in their force (Kent: 102% and Surrey: 112%) indicating that the data included officers who had taken the test more than once.

Twelve forces out of 27 which provided information on the numbers of officers expected to take the test indicated their intention to test every officer in their force.

The data concerned 31,072 officers who had taken the test – 30,185 of whom had passed (97%). The data represented 24% of the total number of officers in England and Wales at the end of March 2013.

Women made up 27% of all officers in the police service at March 2013; they made up 26% of those tested.

The most recent statistics available for the age of officers in the police service are from March 2012 when there were some 4,000 more officers than at March 2013. This data showed 8,910 officers up to the rank of chief superintendent between the ages of 50 and 59 (6.6% of the total); 1,083 women (0.8% of all officers) and 7,827 men (5.8% of all officers).

In comparison, 8.9% of officers tested were in the 50-59 age group, plus three officers over the age of 60.

The 2012 data showed that there were three women and 69 men over 60 up to the rank of chief superintendent.

6. Conclusions

Taking into account the results of the monitoring, research and consultation, set out how the policy impacts or could impact on people from the following protected groups. (Include positive and/or negative impacts.)

6.1 Age

The data showed that adverse impact increased with age and was particularly evident in those over 50.

Those in their 20s had an average pass rate of 98.6%; in their 30s a 98.3% pass rate; in their 40s a 96.6% pass rate and those over 50 had an average 92.5% pass rate.

However, several forces showed a significantly lower pass rate for the over 50s, with the lowest (Gwent) having a 77.5% pass rate for 71 officers tested. The pass rate for those in their 20s and 30s compares with the average pass rate for men. The pass rate for those in their 40s shows a 2% difference compared with those in their 20s; for those in their 50s this increases to 6.1%.

In some forces the age difference between 20 and 50 was as much as 10%, with the greatest difference being nearly 18% (Gwent).

6.2 Disability

No conclusions were possible because the data was incomplete.

6.3 Sex (including transgender and pregnancy and maternity)

The data showed that the average pass rate for men was 98.8% with no force showing less than a 98% pass rate for men. The average pass rate for women was 92.4% with the lowest being 84.1% (Warwickshire/West Mercia). This is an average gender difference of 6.4% with several forces showing a gender difference of over 10% – the highest being 14.1% (Warwickshire/West Mercia).

This is a greater disproportionate adverse impact against women than could have been expected from the Hampshire figures quoted in the Winsor report. This could be explained by the fact that Hampshire officers have been required to take the test since 2010 and have had a greater opportunity to train to take the test.

Officers over 50 were over-represented in the data set compared with their proportion in the workforce (8.9% compared with 6.6%). This could be explained if senior officers and others in roles not requiring the performance of PST were taking the test.

Transgender

No information was collected.

The test standard does not distinguish between genders. It allows officers to demonstrate their cardiovascular capacity without reference to gender. Any medical concerns during transition would be identified and accommodated on an individual basis through completing the medical questionnaire prior to taking the test.

Pregnancy and maternity

No information was collected.

Any medical concerns identified by a new or expectant mother would be addressed on an individual basis through completing the medical questionnaire prior to taking the test.

Health and safety legislation that covers new and expectant mothers requires that they are subject to specific risk assessments at work. The Health and Safety Executive defines new and expectant mothers as women who are pregnant or who have given birth within six months. The medical questionnaire that is filled in prior to taking the test contains a specific question to identify new and expectant mothers so that a specific risk assessment may be completed.

7. Decisions

If the policy will have a negative impact on members of one or more of the protected groups, explain how the policy will change or why it is to continue in the same way.

If no changes are proposed, the policy needs to be objectively justified as being an appropriate and necessary means of achieving the legitimate aim set out in **1: Identify the aims and purpose of the policy.**

The employment provisions of the Equality Act 2010 state that any test that is required for work must not discriminate unlawfully against people from the protected groups, ie, age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, and/or sexual orientation.

The case law in respect of fitness tests indicates that any test must be the same for all people from the protected groups (ie, it does not directly discriminate). Direct discrimination cannot be justified in respect of any of the protected characteristics, except age. Direct age discrimination may be justified if it can be shown to be a proportionate means of achieving a legitimate aim.

The FTWG considered that setting different standards for different age groups was not justifiable. The aim of the test is to ensure that officers are sufficiently fit to undertake their duties safely. Justification is founded on the ability to undertake a role which requires PST. The standard is required for the role irrespective of age (or any other protected characteristic).

Further, any disproportionate adverse impact caused by the fitness test on people from any of the protected groups (ie, indirect discrimination) must be justified as being a proportionate means of achieving a legitimate aim. The means chosen for achieving the aim must be appropriate and necessary.

Although the data set provided by forces operating the in-service test prior to June 2014 was not as large as hoped, it showed that the test has a disproportionate adverse impact on women and on older officers. Older women suffer a double disadvantage.

The average difference in impact was 6.4% in favour of men and 6.1% in favour of younger officers. However, the difference showed considerable variation between forces, rising to 14.1% in favour of men in Warwickshire/West Mercia and to 17.7% in favour of younger officers in Gwent.

The aim of the test is to ensure that officers are sufficiently fit to undertake their duties safely. The purpose of PST is to teach the appropriate use of equipment and techniques needed for personal protection, such as restraining violent people effectively and safely. This is an important risk control measure to ensure a safe working environment under the Police (Health and Safety) Act 1997.

The physical demands of PST have been assessed scientifically and identified as 5:4 on a 15-metre shuttle run. This is, therefore, an appropriate and necessary standard to ensure that officers are sufficiently fit to safely undertake a role that requires PST.

Although only an employment tribunal can decide whether indirect discrimination is justified in the particular circumstances, the FTWG considered that the standard is likely to be a proportionate means of achieving a legitimate aim.

This justification covers only roles that require PST. Justification does not extend to holders of other posts who may wish to undertake the fitness test for personal reasons but who are not required to perform PST in their role. Women and older officers who are not required to undertake PST but who are subject to a disadvantage because of a failure to meet the fitness test standard may have a claim of unlawful indirect sex or age discrimination. In these circumstances a force could not rely on the justification set out in these guidelines.

It is important to note that the test is not a test of health. It is a test of cardiovascular capacity and the standard has been set against the physical requirements of PST. Although it is important to undertake a risk assessment to ascertain whether an officer is physically able to undertake the test without injuring themselves or others, the test is not designed to measure or promote health or to counteract obesity in the workforce.

The test does not test functionality, ie, the ability to turn or twist. It tests cardiovascular capability only. A disabled officer may be able to demonstrate their ability to undertake PST but may not be able to undertake the shuttle run because of their disability.

It may be a reasonable adjustment to use an alternative fitness test in these circumstances, however, a suitable one has not yet been identified by the College of Policing. Should forces use any alternative test, this will not have been validated against the national standard and forces may not be able to justify its use if challenged.

Cost alone is not enough to justify discrimination. It can be taken into account as part of the justification if the force can show there are other objective reasons for the treatment. Cost may be a factor taken into consideration when making a reasonable adjustment.

8. Equality improvement plan

List any changes to policies or procedures that need to be included in the equality action plan/ service plan.

8.1 Positive action

Forces should make positive efforts to improve the fitness standard for those from groups particularly disadvantaged by the test, namely women and older officers.

Under section 158(1)(a) of the Equality Act 2010, positive action is permitted if a force reasonably thinks that persons who share a protected characteristic suffer a disadvantage connected to the characteristic. Sections 158(1)(b) and (c) also allow forces to take positive action if persons who share a protected characteristic have different needs from persons who do not share it, or whose participation in an activity by persons who share a protected characteristic is disproportionately low.

The actions taken must be a proportionate means of achieving the aim of enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage, meet those needs, or enable or encourage persons who share the protected characteristic to participate in that activity.

Actions that the force could consider include training and testing sessions only for women or older officers, training packages tailored to the needs of individual women or older officers, mentoring or shadowing by women or older officers during training and/or testing.

The positive action provisions of the legislation allow special treatment that would be otherwise unlawful. There is no requirement to provide similar facilities for members of groups not disadvantaged by the fitness test, but it would be good practice to provide advice and assistance to all officers to help them pass the test.

8.2 Monitoring

In order to use the positive action provision of the Equality Act 2010 a force, as an employer, would need to monitor and keep under review the pass rates of all those required to undertake the test by reference to their protected characteristics. This would show whether the test continued to put women and older people at a particular disadvantage in that force.

Forces should collect testing success rate data in respect of sex and age and make six-monthly returns to the College of Policing in order to ensure that the test is appropriate and necessary.

It is further recommended that the College of Policing monitors and evaluates any disparate impact on grounds of sex and age.

8.3 Alternative test

In order to comply with their duty to make reasonable adjustments for disabled people, forces need to be able to have available a validated and appropriate alternative test. Not all disabled officers will require an alternative test, but those with lower limb conditions, for example, may be disadvantaged by the requirement to turn on the shuttle run while still being capable of undertaking PST.

It is recommended that the College of Policing develops an alternative form of fitness test, calibrated to 35 VO₂, consistent with level 5:4 on a 15-metre shuttle run and the requirements of PST.

Appendix 4 JRFT medical screening questionnaire

Name **Date**
Warrant no **Contact tel**

The purpose of this questionnaire is to ensure that your health is not placed at risk when you perform the job-related fitness test (JRFT).

If no positive answers are given to questions 1, 2 and 3 you may take the JRFT. If a positive answer is given to question 1, 2 or 3 you will be referred to occupational health for further assessment to determine if you are able to take the JRFT.

	Yes	No
Please tick		
1. Are you pregnant or have you given birth within 6 months of your JRFT due date?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you have any injury, ailment or condition which could inhibit your participation in the JRFT?	<input type="checkbox"/>	<input type="checkbox"/>
Please specify		
3. Are you currently being investigated or receiving treatment for a heart or cardiovascular condition?	<input type="checkbox"/>	<input type="checkbox"/>
Please specify		

Signature

Appendix 5 JRFT health declaration

I am/I am not at present undergoing treatment/taking medication under the direction of a medical practitioner (including physiotherapy).*

I have the following injury/medical condition(s) outlined below.*

I do not have any injury or medical condition(s).*

*Delete as appropriate

(Enter details in comment box below or strike through as appropriate.)

Comments:

I understand that failure to disclose any existing medical or physiological condition may affect any future claim for loss or injury as a result of this training or undertaking the job-related fitness test.

Date

Signed

Print name

Warrant/employee no

Trainer's comments (confirm with individual if they have undertaken an occupational health assessment concerning their suitability to undertake the JRFT, and if any of the conditions have arisen subsequent to that assessment):

This form may be forwarded to occupational health if required.

Protecting the public Supporting the fight against crime

As the professional body for policing, the College of Policing sets high professional standards to help forces cut crime and protect the public. We are here to give everyone in policing the tools, skills and knowledge they need to succeed. We will provide practical and common-sense approaches based on evidence of what works.



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