

EMERGENCY RESOLUTION 2

MARAUDING TERRORIST FIREARMS ATTACK (MTFA) - SECURING NATIONAL AGREEMENT

At a meeting on 8th and 9th May 2013, the Fire and Rescue Service leads on 'Marauding Terrorist and Firearms Attack' MTFA, representatives of the Office of Security and Counter Terrorism (OSCT) and lead FBU representatives discussed significant issues that still require progress. At this latest meeting the fire and rescue service leads were emphatic that they genuinely wish to actively engage with the FBU with a view to reaching agreement. However, they were equally emphatic that because of the security imperatives of government that they will proceed with their plans for fire service MTFA activity even if such agreement cannot be reached with the Union. These matters were considered by the FBU's MTFA working group on 10th May and then discussed with relevant national officials at the weekend immediately preceding Conference. Having received a report on these issues the Executive Council feels that Conference has no other opportunity to ensure that the Executive Council is acting in accordance with the wishes of Conference on the issue of MTFA other than to do so now. The Executive Council feels therefore that it is vital that this Conference should, and would want to, consider the implications for our policies at the earliest opportunity given this unhelpful development. The Executive Council is also mindful that the issue of fire and rescue service involvement in MTFA has never formally been considered in detail by Conference, the supreme government of the Fire Brigades Union.

To this end the Executive Council recommends the following to our Conference in 2013.

The aim is to best inform members of the issues involved, to pursue satisfactory national agreements and in the meantime to agree a policy position reflective of the current situation to protect the union from the potential implications of MTFA involvement until such time as satisfactory, national agreements are achieved. In cognisance of what remains a fluid and on-going issue, Conference agrees that as and when these matters are satisfactorily addressed the measures within this policy position may be amended by the Executive Council.

Conference will be aware of the UK government's intention for the Fire and Rescue Service to have an increased role at incidents referenced as acts of MTFA. A similar aspiration is held by the governments in the three devolved administrations. The initiative was prompted by a number of events in the UK and abroad including Mumbai, Cumbria and the Northumbria Police Force Area.

Their intention is for the Fire and Rescue Service to deal with casualties and fires in the 'warm zone' at such incidents.

The broad definitions of the zones can be described thus:

- Cold zone - all areas where there has been no terrorist activity and is unlikely to become exposed;
- Warm zone - an area in which there is no terrorist activity or threat from terrorists, but is an area which has recently experienced such activity and one which remains vulnerable to renewed activity (whereupon it would become, once again, a designated hot zone);
- Hot zone - an area where terrorists are located and where the area which is within the reach of the effects of terrorist activity whether through the use of firearms or explosives.

There is a closely associated body of work taking place to review Fire and Rescue Service practice in the event of firearms incidents particularly where the shooting is continuous and/or randomly targeted.

MTFA and warm zone working necessitates multi-agency response and on-site collaboration.

The Executive Council has considered the issue on a number of occasions and has monitored the progress in exploratory national discussions between FBU officials at meetings organised for that purpose by fire and rescue service representatives.

There have been a number of circulars to brigade officials and members highlighting some of the serious issues involved.

Conference is aware that our members face the prospect of being confronted with such situations as a consequence of attending calls where the nature of the incident is not known at the time of mobilising.

FBU members will have followed the events in the USA, including firearms attacks over the last few months; notably the shooting of two volunteer firefighters in the town of Webster in New York State in December 2012 and the more recent bomb incident in Boston along with the subsequent shootings. As a consequence of the details that have recently come to light Conference is also mindful of the potential outcomes that could have transpired in Dewsbury had the attack planned to take place on 30 June 2012 not been averted.

Consistent with the aims and objects of the Union in our Rule Book, as the UK's principal Fire and Rescue Service professional body and primary representative body, our key concerns have been centred on three themes:

- Safety of our communities and the minimising of risk from these types of incident;
- Improvement of the professional standards in the service to meet its expanding role;
- Proper reward and recognition for our members for their commitment, activity and the risks they face.

Conference will recall that the General Secretary wrote to the national employers some time ago informing them that the FBU was open-minded to discussion on the principles involved in providing an MTFa response capability, but this was very much dependent upon there being robust planning that must deliver effective and safe operational procedures. These discussions must also include appropriate reward for the increased activity and potential risks.

Both of these aspects are particularly poignant at a time when pay awards are, frankly, miserly; when pensions (including those pensions payable to members and/or families in the event of injury or death) are the subject of attack; and when the fire service is suffering unprecedented cuts in the numbers of front-line personnel with the resultant worsening of service delivery and response which will limit the ability of the Fire and Rescue Service to provide a meaningful contribution to protecting life and property at such incidents.

There has been no movement on the issue of pay in respect of an extension of the role of Fire and Rescue Service personnel and there are no agreed operational procedures and standards in respect of MTFa. The FBU have been engaged in discussions at a national level with Fire and Rescue Service leads on the issues of operational procedures and planning but at a pace which both sides probably agree needs to be increased.

The elements of discussion related to operational procedures are, for reasons of both safety and security, properly subject to appropriate and agreed levels of confidentiality at this time. However, it is pertinent to highlight that there is mutual agreement that should the Fire and Rescue Service adopt a role in MTFa activity:

- It must conform to strict national protocols to ensure inter-operability and intra-operability between Fire and Rescue Services and other agencies;
- Under no circumstances will Fire and Rescue personnel work within the hot zone.

MTFA is different to most incidents attended by Fire and Rescue Services in that they have the potential to be multiple, and to move, in location. The risk of death, serious injury and chronic ill-health is at the extreme end of tolerability. As a consequence, the procedures must be consistent in content and delivery across the UK without deviation.

It is appropriate to inform Conference that in one recent legal case involving injury and incident-ground deaths of our members, the employing Fire and Rescue Authority premised its defence in the most unequivocal and shameful way, asserting that a Fire and Rescue Authority did not have a duty of care towards its employees. The underlying argument the employer was promoting was that Fire and Rescue Services are not required to ensure the safety of personnel at incidents.

Similarly, it must be remembered that in the case of the Atherstone on Stour fire, the Crown Prosecution Service brought criminal charges of (alleged) neglect against incident commanders at Watch Manager and Station Manager level.

In both cases, legal teams funded by the Fire Brigades Union fought these attacks. We have been successful in the case of the prosecutions related to the Atherstone on Stour fire and we await the outcome of the other case mentioned above.

It is of no small concern that the legal processes and pursuit of compensation payments through litigation have taken many years and are still not settled. Throughout this period the families of those firefighters killed have been living on a reduced household income.

Conference notes that a number of members have volunteered on a temporary basis, to become involved in MTFA activities, including warm zone working at MTFA incidents. The Fire Brigades Union has provided UK-wide advice and information to officials and members consistent with the principles outlined above. It is imperative that members and officials observe such advice.

In spite of advice to members, which is based on sound, professional judgement, we note that some Fire and Rescue Services have attempted to introduce single service procedures. In April 2013, the Executive Council were informed by officials that one Fire and Rescue Service employer has embarked on a unilateral campaign to extend its list of volunteers, and that at least one other may also be suggesting that it will make involvement in MTFA activities compulsory. Also in April 2013, the Executive Council learned that a series of significant multi-FRS, multi-agency MTFA exercises were imminent.

Conference is clear - there is no contractual obligation and there has been no collective agreement with the FBU. Any fire service involvement must conform to national protocols and procedures which must be reached by agreement with the Fire Brigades Union at national level.

In relation to the above matters, Conference agrees the following:

1. Our local officials must continue to inform management that there is no collective agreement locally on warm zone working at MTFA, and that any agreement must be made nationally.
2. Our local officials must not agree local work practices or risk assessments in respect of local MTFA until national agreement is reached.

3. Members who have volunteered for warm zone working at MTFA must:

- a) Regularly inform line managers in writing and verbally that any understanding between the individual and the Fire and Rescue Service is on voluntary basis only. Members should emphasise that this can and will be withdrawn, as appropriate, on the basis of an individual or collective decision.
- b) Make a note of the date and time of any verbal communication and of course keep a copy of any memorandum or letter that is submitted.

4. National discussions should continue in respect of protection and enhancement of pay, terms and conditions of employment and pensions.

Given the recent developments; the absence of national agreement; and the risks to our members, we have to seriously consider the implications for both (a) the FBU's Accident Injury and Death Benefit Fund and (b) the provision of assistance to members.

The Fire Brigades Union has a proud record of defending members against disciplinary action by Fire and Rescue Services. Equally the FBU has not hesitated from defending our members against criminal prosecution arising from their professional activity on the incident ground.

However members need to be mindful of the recent court cases mentioned above and that undertaking voluntary activities may leave them (and their families) vulnerable to unsuccessful compensation claims.

Accordingly, Conference feels it appropriate to bring to the attention of members the fact that the Executive Council must consider carefully the prospects for success of any compensation claim before pursuing it against an employer made in respect of MTFA activity.

The potential for serious injury to, and death of, members on a wide-scale at MTFA incidents is high. Satisfactory procedures agreed with the FBU will have the greatest likelihood of ensuring firefighter safety and reducing the chances of injury or death that are tolerable to members of the FBU.

The Executive Council also has a duty to ensure that the members' funds are protected. The Accident Injury and Death Benefit Fund (AIF) is a members' fund which pays out in excess of £1,000,000 in benefits each year. It is imperative therefore that potentially excessive and unbearable burden is not placed on the AIF. Accordingly, we must ensure that the members' well-managed AIF is not placed in jeopardy as a result of a few members, however well-meaning their intentions, volunteering to involve themselves in MTFA operations when procedures have not been agreed with the FBU.

Therefore Conference agrees the following policy position shall apply **until such time as satisfactory, national agreements are achieved with the FBU** concerning MTFA:

- a. In respect of Rule 30(9)(d), any member who volunteers to undertake warm and/or hot zone working at MTFA incidents shall not automatically qualify for benefits under Rule 30 for any injury, disablement, illness, disease or death sustained or arising from undertaking such voluntary activities at operational incidents. For the avoidance of doubt:
 - i. This does not include injury, illness or death sustained during MTFA training events (unless occasioned by live gunfire);

- ii. this does not include injury, illness or death sustained at an incident to which the member was mobilised without knowing it was an MTFA incident, or prior to it being determined as an MTFA incident.
- b. In accordance with Rule 25(3)(a), all members should be advised that FBU assistance to members is not automatic and that assistance may only be granted at the discretion of the Executive Council. In any case and given the current circumstances, members volunteering to undertake MTFA activities need to recognise their vulnerability and should be aware that common law claims are unlikely to be successful.
- c. The policy position and associated matters above shall be kept under review by the Accident and Injury Fund Management Committee and the Executive Council.

EXECUTIVE COUNCIL