

WEIGHING UP THE LAW

Sailesh Mehta examines the impact on the London Fire Brigade of the recent independent cultural review.

IN AUGUST 2020, firefighter Jaden Matthew Francois-Esprit took his own life. His family were concerned that he had been bullied at work because of his race. From that tragedy comes the independent cultural review of the London Fire Brigade (LFB) by Nazir Afzal OBE which was published in November 2022.

The review features testimony from 2,000 members of staff, finding evidence of “dangerous levels of ingrained prejudice against women”. There was also strong evidence that people of colour were “frequently the target of racist abuse”. The LFB Commissioner Andy Roe accepted the damning conclusion that his organisation was institutionally misogynist and racist. To his credit, he accepted every one of the recommendations as well.

Mr Roe said he was horrified and heartbroken when he read parts of the review. But given recent history, he could not have been surprised. The Fire Brigades Union has expressed such concerns for many years. Its members were often reporting on the ill-treatment of women and minorities and the culture of fear in some areas. Good leaders in the organisation would have told him the same story. He should have been aware of the “toxic” and “pack-like” culture after the 2019 report by His Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS). He was aware the 2020 review by Engage found that the majority of staff interviewed found the culture to be controlling and wanted change. The latest July 2022 report of the HMICFRS noted that the London Fire Brigade still needs to improve in looking after its people and that the Brigade’s values and behaviour are not displayed by all staff.

The LFB Commissioner will have been prepared by his advisers that the trickle of legal actions against the organisation will become a flood in the wake of the Nazir review. There are likely to be series of high-profile actions alleging unfair treatment. Many of these will succeed and cost the LFB in large compensation payments.

Mr Roe will know from his army background that leadership is the key to changing the culture of any organisation. He must act decisively to remove those leaders who are a part of the problem. They are not hard to find – just ask the rank and file in any of the 100 stations and the same names will keep coming up. The army-like rigid and formal hierarchical structures need to be loosened up and flattened a little, with power flowing downwards. The sign of a good leader is to be able to command with only a little power.



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Abraham Lincoln said if you want to test a person’s character, give them power. A good leader will use it wisely and a bad leader will abuse it. But if you want to improve a person’s leadership skills, take away their power. A good leader does not need power to command.

An external complaints service is already being introduced to allow objective and confidential handling of complaints. A culture of impunity has to be exposed and dealt with swiftly. This will take time and result in much temporary pain for the organisation – there is no alternative but to change.

The fact that Mr Roe supported the review and was quick to accept its findings and recommendations augurs well for the future. He has the political support of the Mayor of London and from the former Fire Minister – this will be invaluable when he needs to drive changes despite internal opposition.

Many other fire and rescue services can consider themselves lucky not to have had their problems investigated and then broadcast in the same way as the LFB’s. This is their ‘wakeup call’ which they ignore at their peril. They have the luxury of time and cover to move quickly to address problems which are likely to be almost identical. Their insurers should ensure this is done to protect themselves from potential actions, the effects of which can be mitigated by early action.

The Minister of State for Crime, Policing and Fire, Chris Philp MP, has his work cut out in the next few months. Not only does he have to deal with implementation of the Grenfell Inquiry Reports, guide through and bed down a morass of fire-related legislation, he also has to ensure a sea change in the culture of fire brigades throughout the country. It is a pity that the Minister will probably spend most of his time on Crime and Policing and only what’s left on Fire. Chief Fire Officers would be well advised to brief their Minister thoroughly in anticipation of rough waters ahead for the whole industry. ◀

Sailesh Mehta talks to Colin Todd MBE about the St Michael's Hospice fire in St Leonard's, and the role expert witnesses play in fire prosecutions.

Incident background

When: July 2015

Outcome: Three residents died within 24 hours

Cause: Arson by another hospice resident.

Contributing factors: Poor reaction of staff untrained in fire evacuation process; Locked fire exit doors that could not be opened; Beds that could not be moved through corridors and into safe places; Holes in ceilings that allowed smoke to spread.

Sailesh acted as prosecutor and Colin was advising and assisting the defence.

Expert evidence

SM: What's your view on why and when an expert should be instructed?

CT: Whether the experts are acting on behalf of the prosecution or the defence, the earlier they are instructed, the better. In terms of the why, in the case of the prosecution, they may need some expert assistance in determining what breaches have occurred and what offences arose from those breaches. For the defence, it's important to make sure that the client is properly advised on their responses to, for example, a request for a police interview.

The expert's role is to advise the court regardless of who instructed them, so it's important to maintain impartiality throughout the whole process. If they've become part of the investigation, they can't then act as an impartial expert for the court.

SM: The prosecution in this case had its own expert who was employed by the fire service, and was thus involved in the case. What are your views about independent experts and those that are employed by fire services?

CT: I think you have to be very careful as to how an impartial expert could also be the investigating officer. In this instance, the court accepted that and there is nothing wrong in principle with a fire and rescue authority using its own expert. It is probably best that there is blue water between any in-house expert and the investigating officer in the case. This happens with the HSE, where the HSE's expert witness has no involvement in the investigation in the first place.

SM: Once the expert gets instructed in a case such as this, what is the starting point for their expert report?

CT: There are three areas on which to advise in terms of the validity of a prosecution. The first is whether a breach been committed in the first place, and that's not always as black and white as it seems. The physical fire precautions required under the Fire Safety Order, need to be provided 'where necessary', and this necessity has to be tested in order to establish if there has been a breach.

Secondly, in order for an offence to be committed, there has to be the 'risk of death or serious injury in case of fire'. Whilst it is the role of the courts to determine whether an offence has been committed, the expert can give technical advice as to whether there was risk of death or serious injury.

Finally is whether a 'due diligence' defence can be used. Enshrined in the Fire Safety Order is that, if one took all reasonable precautions and showed all due diligence to prevent the commission of the offence, this can form an adequate defence.

Assessing breaches

SM: In this case study, the hospice was charged with 13 indictments, which raises how, rather than having one overarching summons, some prosecutions are split into dozens of individual points that deal with specific breaches.

CT: Some Fire and Rescue authorities see it as a numbers game – the more breaches alleged, the better. We also see a tendency for Fire and Rescue authorities to assume that every minor breach must constitute an offence and is described in the charges followed by the phrase "*thereby resulting in the risk of death or serious injury in case of fire.*" As an expert witness, my view is a client may well admit to some offences, but others may disappear.

SM: So one of the key things that a defence expert can assist with is, whether a breach of one of the articles results in an offence?

CT: That's a really important point for an expert witness to make clear to the courts – at what point does a breach become so serious as to put people at a risk of death or serious injury?

SM: The hospice admitted two breaches of the Fire Safety Order. These encapsulated 11 further breaches, which were not pursued. The court agreed and the judge was able to sentence on the full facts of the case, fining the hospice £250,000. ◀

