

**Date: 6 June 2022**

**Item: Legal Compliance Report (1 October 2021 – 31 March 2022)**

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**This paper will be considered in public**

## **1 Summary**

- 1.1 This paper summarises the information provided by each TfL Directorate for the Legal Compliance Report for the period 1 October 2021 to 31 March 2022.

## **2 Recommendation**

- 2.1 **The Committee is asked to note the report.**

## **3 Background**

- 3.1 The Legal Compliance Report is compiled from information supplied through questionnaires completed by each TfL Directorate and follow up discussions concerning known legal compliance issues.

## **4 Scope of the Report**

- 4.1 The Directorates were asked to identify where they are aware of any alleged breaches of law between 1 October 2021 and 31 March 2022. The questionnaire sought responses concerning the following:
- (a) prosecutions against TfL;
  - (b) formal warnings or notices from the Health and Safety Executive (HSE), the Office of Rail and Road (ORR), the London Fire Commissioner, the Environment Agency, the Information Commissioner or the other Government agencies;
  - (c) investigations by an Ombudsman;
  - (d) alleged legal breaches notified by local authorities or other bodies;
  - (e) judicial reviews;
  - (f) involvement in inquests;
  - (g) commercial/contract claims in excess of £100,000;
  - (h) personal injury claims;

- (i) proceedings in relation to discrimination on the grounds of race, sex, disability, age, religion or belief, sexual orientation, equal pay or breach of contract;
  - (j) wrongful or unfair dismissal;
  - (k) actions to recover unpaid debt in excess of £5,000;
  - (l) breaches of procurement rules and/or the Competition Act;
  - (m) other material breaches of the law;
  - (n) any other material compliance issues; and
  - (o) any initiatives introduced by Directorates to address compliance issues.
- 4.2 The report has been updated to reflect recent changes in the Executive Committee structure and associated responsibilities.
- 4.3 The graphs that have previously been used to show trends have not been included in this report because the changes of management responsibility and the significant fluctuations in the data due to the coronavirus pandemic mean that historic trends cannot be identified. Trend analysis will continue to be captured in the report going forward taking this report as a baseline.
- 4.4 In accordance with TfL's commitment to transparency, the Legal Compliance Report is included in the public paper.

## **5 Commentary on Legal Compliance Issues**

### **Prosecutions**

- 5.1 On 24 March 2022, we were notified that London Trams would be prosecuted by the ORR for an offence under section 3 of the Health and Safety at Work, etc Act 1974 (1974 Act). The prosecution relates to the tram derailment on 9 November 2016 at Sandilands junction in Croydon in which seven people tragically lost their lives. Tram Operations Limited (the operator) is also being prosecuted under section 3. The driver will be prosecuted for an offence under section 7 of the 1974 Act.

### **Formal Warnings or Notices from the Health and Safety Executive or Office of Rail and Road**

- 5.2 We previously reported the ORR investigation into the death of a member of the public who fell into the gap between the platform and the train at Waterloo station on the Bakerloo line on 26 May 2020 and died. The ORR confirmed it had closed the Improvement Notice on 22 December 2020. The Rail Accident Investigation Branch (RAIB) has also carried out an investigation and published its report on 21 September 2021 including three recommendations which London Underground are responding to. The British Transport Police has completed its investigation. The ORR will make a decision as to whether any prosecution should be brought in relation to the incident after the inquest has concluded. The inquest is scheduled for 19-28 September 2022.

- 5.3 A Notice of Contravention was received on 21 October 2021, from the HSE regarding Acton Workshop. On 23 March 2022, the HSE issued two Improvement Notices in relation to Health Surveillance (in relation to skin checks and respiratory checks). The HSE also issued a Notice of Contravention regarding TfL's arrangements for managing health risks across TfL. We have demonstrated compliance with the notices.

#### **Formal Warnings or Notices from the London Fire Commissioner**

- 5.4 Seven Fire Deficiency Notices were received by London Underground from the London Fire Commissioner during this period in respect of issues such as electrical testing, emergency lighting and fire risk assessments. All matters have been addressed in the notices.

#### **Formal Warnings or Notices from the Environment Agency**

- 5.5 We previously reported a notice from the Environment Agency received on 7 October 2019 in relation to equipment containing polychlorinated biphenyls (PCBs) on the train network. The notice required the phase out and removal of all assets containing PCBs by 2023. London Underground has implemented a removal plan and continues to work to remove the PCBs.

#### **Formal Warnings or Notices from the Information Commissioner**

- 5.6 The Information Commissioner's Office (ICO) investigates alleged instances of non-compliance with the UK General Data Protection Regulation (UK GDPR), the Data Protection Act (DPA) 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the PECR) (together, data protection legislation), the Freedom of Information Act 2000 (the FOIA) and the Environmental Information Regulations 2004 (the EIRs).
- 5.7 No formal action was taken by the ICO in the reporting period in connection with TfL's compliance with data protection legislation.
- 5.8 A requirement of the UK GDPR is for all data breaches posing a risk to individuals' rights and freedoms to be reported to the ICO within 72 hours, and for affected data subjects to be informed of the breach if it represents a high risk to their rights and freedoms.
- 5.9 One data breach occurred in the reporting period which we reported to the ICO. The breach related to an incidence of suspected fraud and the ICO was satisfied that appropriate measures had been taken in reporting the incident to the police. Data subjects who may have been affected were notified and offered appropriate support.
- 5.10 There were no open complaints relating to TfL's compliance with data protection legislation at the end of the last reporting period.
- 5.11 There were eight new complaints to the ICO in this reporting period about TfL's compliance with data protection legislation. One complaint related to the justification for processing personal data, and the ICO was satisfied that TfL had complied with its data protection obligations. Six complaints related to responses to requests for access to personal data, and were resolved with findings in three

instances that no further disclosure was required, one complaint led to an update to a locally managed process to provide access to files, and the inclusion of additional information in a privacy notice and two were answered through the provision of a more detailed explanation of why some requested data was exempt from disclosure. One complaint related to the maintenance of a paper file and the process has been reviewed, and no further action will be taken by the ICO.

- 5.12 The FOIA and the EIRs give a general right of access to information held by public authorities. Public authorities are generally required to respond to requests for information within 20 working days and provide the requested information unless an exemption applies. Any person who has made a request to a public authority for the disclosure of information under the FOIA or the EIRs can complain to the ICO. Unless the complaint is resolved informally, the ICO records the outcome in a published Decision Notice. Appeals against the ICO's decision are heard by the First-Tier Tribunal (information Rights).
- 5.13 In the reporting period 1,522 requests were made to TfL under the FOIA and EIRs, with 1,520 (99.9 per cent) replied to on time.
- 5.14 There was one complaint to the ICO open at the end of the last reporting period, concerning TfL's refusal to engage in any correspondence with a requester, following TfL's finding that the FOI request was vexatious. This complaint was resolved informally by the ICO.
- 5.15 Two Decision Notices were issued by the ICO relating to complaints received in this reporting period. Both concerned the use of the FOI cost limit to refuse requests and in each case the ICO found that TfL had complied with the FOIA.
- 5.16 There were no open ICO complaints at the end of this reporting period.

#### **Formal Warnings or Notices from any other Government Department or Agency Indicating a Breach of Law**

- 5.17 No warnings or notices were reported for this period.

#### **Investigation by an Ombudsman**

- 5.18 There were two outstanding investigations and seven new investigations reported in the last report.
- 5.19 The two outstanding investigations related to complaints about TfL's handling of taxi/private hire vehicle licence renewal applications. In respect of the first, a payment has been made to the complainant for loss of earnings and the matter is now closed. On the second, the Local Government Ombudsman (LGO) found that there was no fault by TfL in processing the application.
- 5.20 Five of the new investigations relate to the application of the Ultra Low Emission Zone scheme and two investigations relate to taxi/private hire application processes. TfL has approved two of the applications, made a payment in respect of two complainants as compensation for the inconvenience caused by TfL and a decision is awaited from the LGO on the remaining three investigations.

## **Notices Received Regarding any Alleged Breach of Law by a Local Authority or Other External Agency**

- 5.21 There were two outstanding enforcement notices carried over from the last report and one new enforcement notice during the current reporting period.
- 5.22 The first outstanding enforcement notice (received on 25 February 2014) was from the London Borough of Haringey relating to an unauthorised front extension to units at 231-243 High Road and 249a High Road Tottenham. The tenant failed to remove the extension by 31 July 2014 as required by the notice. The tenant lodged an appeal with the Planning Inspectorate and the enforcement notice remains stayed pending proposals for the frontages of the properties and all the adjacent properties. In January 2019, a Compulsory Purchase Order was approved to enable a borough led regeneration scheme. On 5 August 2021 the developer announced it is no longer progressing with the development. TfL is seeking to remove the unauthorised front extension and will continue to liaise with the London Borough of Haringey to resolve the matter.
- 5.23 The second outstanding enforcement notice (received on 6 December 2019) was from the London Borough of Camden relating to a number of alleged breaches of planning permission at 366/366A Kilburn High Road, London. TfL continues to liaise with the tenant and the London Borough of Camden on this matter.
- 5.24 A new notice (received on 1 April 2022) was issued by the City of Westminster for enforcement action in relation to the poor condition of the shopfront at 218-220 Baker Street, London. The notice requires that the works be completed within six-months. The matter is ongoing.

## **Decisions Subject to a Judicial Review**

- 5.25 There were three outstanding judicial reviews from the previous reporting period. There are no new judicial reviews during the current reporting period.
- 5.26 The first judicial review relates to an application issued on 13 August 2020 by the taxi groups United Trade Action Group (UTAG) and the Licensed Taxi Drivers' Association Limited (LTDA) against TfL and the Mayor in relation to TfL's interim London Streetspace Guidance issued to boroughs, the Streetspace Plan and a scheme implemented on the A10/Bishopsgate. On 20 January 2021, the High Court allowed the claims and quashed the Streetspace Plan, TfL's interim Borough Guidance and the A10 Bishopsgate Order. TfL appealed to the Court of Appeal which allowed the appeal on all grounds at a hearing on 15-16 June 2021. The court set aside the grant of judicial review in respect of the Plan, Guidance and A10 Order, and set aside the High Court's orders quashing them. The court made a full costs order in favour of TfL and the Mayor and ordered UTAG and the LTDA to pay £50,000 on account within 14 days. The court refused permission to appeal. On 19 August 2021, UTAG and the LTDA made an application to the Supreme Court seeking permission to appeal. A decision from the court is still awaited.
- 5.27 The second judicial review relates to a claim issued on 6 November 2020 by UTAG against TfL's decision in August 2020 to grant a London private hire vehicle (PHV) operator's licence to Transopco UK Ltd (trading as "FreeNow"). The grounds of claim are (i) that FreeNow enables PHV drivers to ply for hire in

London using an App which is unlawful because plying for hire is an activity reserved to hackney carriages and (ii) that FreeNow's drivers are committing a separate offence of accepting bookings without a PHV operator's licence. UTAG was granted permission to proceed with the judicial review claim on the basis that the court should look at whether PHVs engaged via Apps are plying for hire and whether PHV drivers are accepting bookings. This follows a Supreme Court judgment given in February 2021 in relation to the worker status of drivers operating for Uber and comment in the judgment relating to the contractual relationship between operators and drivers as set out in their terms and conditions and how that affects compliance with the Private Hire Vehicles (London) Act 1998 (the 1998 Act). On 6 December 2021, the court dismissed UTAG's claim for judicial review albeit it recognised the importance of the plying for hire issue and granted leave for an appeal to the Court of Appeal. It also granted a declaration in relation to UTAG's second ground of claim that operators must contract directly with passengers to provide PHV services (see paragraph below). UTAG lodged its appeal to the Court of Appeal on 21 December 2021 and also sought permission to appeal to recover their costs in relation to the claim. The hearing will take place on 5-6 July 2022.

- 5.28 In the third judicial review, Uber London Limited (ULL) issued a claim on 19 May 2021 seeking a declaration from the court as to whether the 1998 Act requires a PHV operator who accepts a booking from a passenger to enter into a contract with that passenger to provide the journey. Both TfL and UTAG were named as defendants. On 6 December 2021, the court granted a declaration that operators must contract directly with passengers where they accept a booking. TfL is undertaking a review of operators' contractual terms so as to ensure compliance with the 1998 Act.

### **Inquests**

- 5.29 This section reports on those inquests in which TfL is either a witness, has been asked to provide information to the Coroner or is, or may be, an interested person.
- 5.30 There were seven inquests outstanding from the last reporting period of which the outcomes for all are awaited.
- 5.31 There were no new inquests reported during the current period.
- 5.32 We previously reported the conclusion on 22 July 2021 of the seven inquests concerning the tragic deaths of Dan Chinnery, Mark Smith, Donald Collett, Robert Huxley, Phillip Logan, Dorota Rynkiewicz and Phillip Seary on 9 November 2016 when a tram derailed and overturned on a curve as it approached the Sandilands junction in Croydon. The jury conclusion was accident.
- 5.33 The Senior Coroner heard evidence at the inquests about Prevention of Future Deaths (PFD) and concluded that there were four areas in which she should make a PFD report with a view to preventing future deaths. One issue addressed to TfL and Bombardier (now Alstom) is in respect of current tram stock and the risk of passenger ejection through tram doors. The Senior Coroner stated that consideration should be given in relation to current and future trams as to whether tram doors can be adapted now or in the future so as to strengthen them. This

has also been addressed to the Department for Transport who are asked to disseminate the conclusion to all tram door manufacturers, UKTram to disseminate to UK tramways and the Light Rail Safety Standards Board.

5.34 A response to the PFD report was provided on 17 November 2021. On 13 December 2021, the Senior Coroner provided copies of all the responses to the PFD reports.

5.35 Five of the families wrote to the Attorney General to request that she considers using her powers under section 13 of the Coroner's Act 1988 to apply to the High Court for an order seeking fresh inquests. The Senior Coroner provided submissions to the Attorney General about the approach to the inquests. It is understood that the families are no longer asking the Attorney General to progress this further.

5.36 TfL continues to offer support to the families and the wider community.

### **Commercial/ Contract Claims Brought by or Against TfL in Excess of £100,000 (Not including Personal Injury Claims)**

5.37 We previously reported that on 9 September 2016 the TfL Trustee Company Limited, TfL's pension trustee subsidiary, issued proceedings against HMRC for overpaid VAT on fund management services. A stay of the proceedings has been agreed, pending the outcome of two test cases. One of the test cases is being appealed and TfL will review its position once that has been determined.

5.38 Legal proceedings were issued on 23 March 2021 against the London Borough of Hackney in relation to the lease arrangements for Kingsland Viaduct regarding future rent payments due to the London Borough of Haringey for the remaining term of the lease. The case is listed for trial in October 2022.

### **Personal Injury Claims**

5.39 TfL has been the subject of 313 claims for personal injury that were closed during the reporting period, of which 34 claims were employers' liability claims by staff and 279 claims were for public liability by customers/members of the public.

5.40 Of the 279 claims for public liability, 222 were closed without payment and 57 were settled.

5.41 Of the 34 claims for employers' liability, nine were closed without payment and 25 were settled.

### **Employment Tribunal Proceedings**

5.42 TfL continues to take a proactive and robust approach to managing Employment Tribunal (ET) cases, coupled with a training programme for managers on the latest developments in the law and best practice so as to avoid employment disputes as far as possible

5.43 There were 115 ET claims reported during this period of this report, of which 86 were carried forward from the previous report and 29 were reported for the first time in this period.

- 5.44 Of the 115 ET claims, 35 are for unfair dismissal, six are for constructive unfair dismissal, 33 are for disability discrimination, one is for trade union detriment, one is for trade union rights, 10 are for sex discrimination, 13 are for race discrimination, one is for victimisation, one is for religious discrimination, three are for breach of contract, five are for unlawful deductions from wages, two are for unpaid holiday pay, one is for equal pay, one is for discrimination on the grounds of pregnancy/ maternity leave, one is for unpaid notice pay, and one is for health and safety detriment.
- 5.45 Of the 115 ET claims brought during the period, 95 cases are ongoing and 20 were concluded during the period. Of the 20 ET cases concluded during this period, six were withdrawn, six won, two lost and six were settled.

#### **Civil Debt in Excess of £5,000**

- 5.46 No civil debt claims in excess of £5,000 were reported for this period.

#### **Other Material Compliance Issues**

- 5.47 We previously reported that on 3 October 2020 TfL notified Ola UK Private Limited (Ola) that it would not be granted a new London PHV operator's licence at the expiry of its licence on 3 October 2020. TfL concluded that Ola was not fit and proper to hold such a licence after discovering a number of failures that could have risked public safety. On 20 October 2020, Ola appealed TfL's decision. The hearing of the appeal took place on 13-17 December 2021. The Court decided that subject to Ola satisfying the Court that its terms and conditions comply with the recent Divisional Court judgment in the ULL case referred to at 5.28 above, the Court would grant Ola an operator's licence of 15 months with 18 stringent conditions. Ola was also ordered to pay TfL's costs
- 5.48 We previously reported an outstanding claim brought by an individual, on 9 June 2021, in the High Court against Crossrail and a number of its contractors and sub-contractors alleging blacklisting and breach of data protection law. The claim has now been resolved.
- 5.49 We previously reported an outstanding claim for unpaid invoices brought by a claimant who provided traffic surveys to TfL. The payments were suspended following an internal investigation and there is also a police investigation. On 29 April 2022 TfL obtained an order that the claimant pay security for our costs. A trial is to be held between 1 November 2022 and January 2023.
- 5.50 On 4 October 2021 Insulate Britain staged a protest around Blackwall Tunnel and Hanger Lane in London on the TfL Road Network (TLRN) resulting in obstruction of the highway and significant road traffic disruption. In response to a further protest on the TLRN at Old Street (A501) on 8 October 2021, an application was made to the High Court for an interim injunction preventing further protests designed to obstruct the highway by any persons including Insulate Britain and 112 named defendants. The injunction was granted and covers the A501 (including the area of protests in Old Street) and 13 other key locations on the TLRN, where any disruption in the movement of traffic is a danger. Further protests took place on 27 October 2021 on A40 Gypsy Corner and 4 November 2021 on Bridge Street in Westminster which impacted other roads in the area



including the TLRN. Following this, an application for a further interim injunction was applied for and granted on 4 November 2021 covering additional key safety locations and A roads including six bridges on the TLRN.

- 5.51 A hearing took place on 7 December 2021 to allow Insulate Britain to respond to the injunction. An order was agreed to continue the injunctions. On 4 April 2022, the High Court granted TfL's application to extend the expiry date of the interim injunctions pending the outcome of the substantive claim.

### **Breaches or Alleged Breaches of EU/UK Procurement Rules and/or the Competition Act 1998**

- 5.52 No breaches of alleged breaches were reported for this period.

### **Other Known Breaches**

- 5.53 No other known breaches were reported.

### **Management of Compliance Issues**

- 5.54 TfL's legal and compliance risks are managed as part of TfL's overarching strategic risk management framework. A range of operational and assurance processes are in place to mitigate these risks at all levels in the organisation, taking into account during this reporting period the particular challenges presented in response to the coronavirus pandemic.
- 5.55 These safeguards are supported by the provision of advice on, and training in, relevant legal and corporate governance issues, which are tailored to the needs of TfL's business units and adjusted where possible to take account of increased home working as a consequence of the pandemic.
- 5.56 The legal and compliance framework is the subject of continuous review and improvement. Initiatives to address compliance across TfL have included:
- (a) ongoing work to update contractual and commercial templates and forms to ensure they align with legal requirements;
  - (b) promoting TfL's compliance with information governance legislation (including the FOIA, EIRs, DPA 2018 and UK GDPR) and associated statutory Codes of Practice, including transparency and the proactive publication of information;
  - (c) the use of Data Protection Impact Assessments, to review proposed new or changed uses of personal data;
  - (d) the promotion through the TfL Management System of Information Governance policies, instructions and guidance;
  - (e) ongoing bespoke training to the business on a range of employment issues including employment law updates, reasonable adjustments requirements and effective case management and providing guidance and best practice learned from ET cases;

- (f) training on a wide range of legal issues including disability discrimination law, witness workshop, employment law update, contractual terms and overriding rights and public procurement requirements;
- (g) continued support with the use of TfL's e-tendering system to assist users to comply with the procurement regulations, and to observe the principles of transparency, equal and fair treatment of suppliers;
- (h) continued production of instructions, guidance and templates in the TfL Commercial Toolkit to support compliance with regulations and governance;
- (i) ongoing work to identify and address areas of weakness in TfL's processes, helping to implement corrective actions where appropriate; and
- (j) the ongoing issue of the Commercial Law Bulletin to the Commercial teams to support the dissemination of important messages relating to regulatory and legal issues.

## **6 Conclusions**

- 6.1 The Legal Compliance Report for the period 1 October 2021 to 31 March 2022 sets out the legal and compliance matter of which TfL senior management is aware. There are no material breaches of law which would affect TfL's continued operations.
- 6.2 Notwithstanding the ongoing impact of the pandemic, reported matters continue to be broadly in line with previous reports.

### **List of appendices to this report:**

None

### **List of Background Papers:**

None

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