

Date: 30 November 2022

Item: Legal Compliance Report (1 April 2022 – 30 September 2022)

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 April 2022 to 30 September 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 April 2022 and 30 September 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 Each period will include any ongoing matters carried over from the previous reporting period where applicable.
- 4.3 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 TfL would be prosecuted by the ORR for an offence under section 3 of the Health and Safety at Work, etc Act 1974 (1974 Act) in relation to the tram derailment on 9 November 2016 at Sandilands junction in Croydon in which seven people tragically lost their lives. Tram Operations Limited (TOL), the operator, is also being prosecuted under section 3. Both TfL and TOL have pleaded guilty. The driver will be prosecuted for an offence under section 7 of the 1974 Act and has pleaded not guilty. The trial has been listed to start on 15 May 2023 for 4-5 weeks. The sentencing hearing for TfL and TOL will take place following the conclusion of the driver's trial.

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. The ORR confirmed it had closed the Improvement Notice on 22 December 2020. The Rail Accident Investigation Branch (RAIB) published its report on 21 September 2021 which included three recommendations which London Underground responded to. The British Transport Police has completed its investigation. The inquest took place from 20-27 September 2022 and concluded that the death was accidental. A decision from the ORR is awaited as to whether any prosecution should be brought in relation to the incident.

Formal Warnings or Notices from the London Fire Commissioner

- 5.3 Four Fire Deficiency Notices were received by London Underground from the London Fire Commissioner during the period in respect of emergency/fire compliance plans, signage, storage, smoke detectors, evacuation procedures and fire risk assessments and training. All matters have been addressed.

Formal Warnings or Notices from the Environment Agency

- 5.4 No formal warnings or notices were reported for this report.

Formal Warnings or Notices from the Information Commissioner

- 5.5 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).
- 5.6 No formal action was taken by the ICO in the reporting period in connection with TfL's compliance with data protection legislation.
- 5.7 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.
- 5.8 We reported two data breaches during the period to the ICO. The first data breach involved personal data relating to job applications being sent in error to two TfL employees. The second breach was caused by an error during the migration of data to a new lost property database, which led to some people who had reported lost items being sent third parties' personal information. The ICO concluded that they did not need to formally record either breach and took no further action.
- 5.9 There were no open complaints relating to TfL's compliance with data protection legislation at the end of the last reporting period.
- 5.10 There were eight new complaints to the ICO in the reporting period about TfL's compliance with data protection legislation. Three complaints related to responses to subject access requests and TfL provided further responses direct to the complainant. One complaint related to a missing document from an employee file and the ICO asked TfL to review the complaint but did not require further information. One complaint related to the handling of an employee disciplinary investigation. The ICO identified failings in relation to the accuracy of disclosures made in the course of the investigation. The ICO noted that TfL had already responded to the complainant on these points and did not require further action. One complaint related to the handling of a customer refund by a contractor and no further action was required. One complaint related to disclosure of personal data to an external legal firm and no further action was required. The final complaint related to a passenger's personal data being made public during the issue of a penalty fare notice. The ICO advised TfL to respond to follow up concerns raised by the passenger after TfL's initial response to the ICO.
- 5.11 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 decisions are heard by the First-Tier Tribunal (information Rights).

- 5.12 In this reporting period, 1,254 requests were made to TfL under the FOIA and EIRs which had reached their statutory deadline, with all of them replied to on time.
- 5.13 There were no open ICO complaints at the end of the last reporting period.
- 5.14 Two complaints were received by the ICO in the reporting period. Both concerned the non-disclosure of requested information. The first complaint was resolved informally, with the ICO concluding it was frivolous and the second resulted in a Decision Notice in TfL's favour.
- 5.15 There were no open ICO complaints at the end of the reporting period.

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

- 5.16 A warning notice from the Office of Communications (Ofcom) was received on 22 July 2022 relating to the need for London Underground to have a licence from Ofcom for the One Person Operator CCTV system. An application for the licence has been submitted and the outcome is awaited. In addition, checks are being made as to whether other licences are required across the network.

Investigation by an Ombudsman

- 5.17 There were three outstanding investigations from the last report and one new investigation in the reporting period.
- 5.18 Of the three outstanding investigations, two related to the application of the Ultra Low Emission Zone scheme and one related to taxi/private hire application processes. In respect of the first, the Local Government Ombudsman found that there was no fault by TfL in processing the application. In the second, TfL allowed a late application after a delay in responding to the complainant caused them to be out of time. TfL also paid compensation for the delays caused to the complainant. In the third investigation TfL offered an apology and made a payment as compensation to the complainant for the manner in which the application was dealt with.
- 5.19 The new investigation relates to a complaint about TfL's handling of Penalty Charge Notices. TfL refunded the Penalty Charge Notice fees and issued a payment to the complainant for inconvenience suffered.

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

- 5.20 There were three outstanding enforcement notices from the last report and three new enforcement notices during the reporting period.
- 5.21 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, London. 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 plans to relocate the tenant's business to a nearby site in spring 2023. This will allow TfL control of the subject area and progress the redevelopment plans, ensuring all necessary planning requirements are fulfilled in the process. The stay on proceedings will remain in place until then.

- 5.22 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.
- 5.23 A third outstanding enforcement 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. All the works to the shopfront have been completed.
- 5.24 The first new enforcement notice (received on 1 March 2022) was issued by the London Borough of Tower Hamlets in relation to the removal of a coffee kiosk near the entrance to Bethnal Green Tube station which posed a health and safety risk. The kiosk was relocated.
- 5.25 The second new enforcement notice (received on 24 August 2022) was issued by the City of Westminster for illegal signage at a property. The signage has now been removed.
- 5.26 The third new enforcement notice (received on 16 September 2022) was issued by the London Borough of Tower Hamlets for an illegal house in multiple occupation at 108A Whitechapel Road, London. TfL has asked London Borough of Tower Hamlets to liaise directly with the leaseholder and the outcome is awaited.

Decisions Subject to a Judicial Review

- 5.27 There were two outstanding judicial reviews from the previous reporting period. There were no new judicial reviews reported during the current reporting period.
- 5.28 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. 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 which was refused on 27 June 2022. UTAG and the LTDA were ordered to pay TfL's costs.

- 5.29 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 "FREE NOW"). The claim alleges that FREE NOW enables PHV drivers to ply for hire in London using the App which is unlawful and that FREE NOW's drivers are committing a separate offence of accepting bookings without a PHV operator's licence. Judgment was given on 6 December 2021 and the Court dismissed UTAG's claim that PHVs made available via the FREE NOW app were plying for hire but gave leave to appeal to the Court of Appeal. UTAG lodged its appeal in relation to plying for hire to the Court of Appeal on 21 December 2021 and sought permission to appeal to recover their costs in relation to the claim. TfL responded on 4 January 2022.
- 5.30 The appeal was heard by the Court of Appeal on 6 and 7 July 2022 and the Court found that PHVs made available via the FREE NOW app were not exhibited and the drivers were not soliciting custom, and therefore dismissed the appeal. The Court of Appeal also dismissed UTAG's application for permission to appeal costs. UTAG sought permission to appeal to the Supreme Court which was refused and UTAG was ordered to pay TfL and FREE NOW's costs.
- 5.31 UTAG has sought permission to appeal directly from the Supreme Court on 18 August 2022. The Supreme Court's determination on permission to appeal is awaited.

Inquests

- 5.32 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.
- 5.33 There were seven inquests outstanding from the last reporting period and one new inquest reported during this period. Of the seven outstanding inquests, three were concluded, two were a narrative conclusion and one a verdict of suicide. The outcome of the four outstanding inquests and the one new inquest are awaited.

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

- 5.34 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.
- 5.35 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. A hearing took place in the High Court on 18 – 21 October 2022 and a decision is awaited.

Personal Injury Claims

- 5.36 TfL has been the subject of 238 claims for personal injury that were closed during the reporting period, of which 20 claims were employers' liability claims by staff and 218 claims were for public liability by customers/members of the public.
- 5.37 Of the 218 claims for public liability, 170 were closed without payment and 48 were settled.
- 5.38 Of the 20 claims for employers' liability, five were closed without payment and 15 were settled.

Employment Tribunal Proceedings

- 5.39 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 to avoid employment disputes as far as possible.
- 5.40 There were 120 ET claims reported during the period, of which 92 were carried forward from the previous report and 28 were reported for the first time.
- 5.41 Of the 120 ET claims, 36 are for unfair dismissal, five are for constructive unfair dismissal, 33 are for disability discrimination, two are for trade union detriment, one is for trade union rights, 14 are for sex discrimination, 16 are for race discrimination, one is for victimisation, one is for religious discrimination, one is for breach of contract, two are for unlawful deductions from wages, two are for unpaid holiday pay, three are for discrimination on the grounds of pregnancy/maternity leave, one is for unpaid notice pay, and two are for health and safety detriment.
- 5.42 Of the 120 ET claims during the period, 88 cases are ongoing and 32 were concluded during the period. Of the 32 ET cases concluded, six were won, 10 were settled, one was lost, one was partially lost, three were struck out, one was dismissed and 10 were withdrawn.

Civil Debt in Excess of £5,000

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

Other Material Compliance Issues

- 5.44 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. Following a court order that the claimant pay security for TfL's costs, on 27 May 2022 the claimant discontinued its claim ending proceedings with no payment to be made by TfL.

- 5.45 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.
- 5.46 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. At a hearing on 11 October 2022 the High Court granted TfL's further application to extend the existing injunctions until the trial date which is awaited.
- 5.47 Since the end of the reporting period, on 17 October 2022 TfL made an application seeking an interim injunction against a group known as Just Stop Oil (acting in coalition with Insulate Britain) who have been staging protests in London including on a number of roads on the TLRN, resulting in obstruction of the highway and significant road traffic disruption. On 18 October 2022, the injunction was granted in respect of named roads on the TLRN to prevent further protests designed to obstruct the highway by any persons including Just Stop Oil and 60 named members. A further application was made by TfL to extend the interim injunction to add six additional roads on the TLRN and to add 121 named defendants. That application was granted on 31 October 2022 and the injunction was also extended to remain in force until 28 February 2023 or until any other order is made.

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

- 5.48 Court proceedings were issued against TfL and Greater London Authority (GLA) on 26 May 2022 in relation to alleged breaches of (i) the Public Contract Regulations 2015; and (ii) an alleged 'tender contract' relating to the tender for Major Ceremonial Events. Following the GLA's decision to re-run the procurement process, the claimant discontinued its claim.

Other Known Breaches

- 5.49 No other known breaches were reported.

Management of Compliance Issues

- 5.50 TfL's legal and compliance risks are managed as part of TfL's overarching Enterprise Risk Management Framework. A range of operational and assurance processes are in place to mitigate these risks at all levels in the organisation.
- 5.51 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 coronavirus pandemic.
- 5.52 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 ongoing 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) ongoing 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, disability discrimination 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, employment law update, contract modifications, procurement law and regulations, intellectual property rights, contract management, planning process, legal privilege and public inquiries;
 - (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 April 2022 to 30 September 2022 sets out the legal and compliance matters of which TfL senior management is aware. There are no material breaches of law which would affect TfL's continued operations.
- 6.2 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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