

**Date: 5 June 2023**

**Item: Legal Compliance Report (1 October 2022 – 31 March 2023)**

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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 2022 to 31 March 2023.

### **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 2022 and 31 March 2023. 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. Section 3 places a duty on employers to conduct their undertakings in such a way as to ensure, as far as is reasonably practicable, that people affected by it are not exposed to risks to their health and safety. At the first hearing at Croydon Magistrates Court on 10 June 2022, TfL and TOL indicated a guilty plea. The ORR is also prosecuting the tram driver for breaching section 7 of the 1974 Act. Section 7 requires reasonable care to be taken by employees to protect the health and safety of those affected by their actions or omissions at work. The tram driver has pleaded not guilty and the trial began on 16 May 2023 before a jury at the Old Bailey and is listed to last for four to five 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 which resulted in an Improvement Notice being served on London Underground. 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 response has been sent to the ORR in relation to the recommendations from the RAIB report. The ORR has confirmed that it is satisfied that London Underground has addressed all of the recommendations.

- 5.3 The ORR issued TfL with an Improvement Notice on 21 December 2022 following an incident at Chalfont and Latimer where a track worker carrying out lookout duties was struck by a train. The ORR was satisfied with the steps TfL implemented to improve the track patrol safety. No further action was taken.
- 5.4 On 23 December 2022, the HSE issued a Notification of Contravention outlining a number of health and safety breaches including the management of pedestrian crossing points in relation to a fatality at Victoria Bus Station in which a customer was hit after two buses collided. The HSE was satisfied with the risk assessments and upgrades carried out by TfL and no further action has been taken.

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

- 5.5 Two Fire Deficiency Notices were received by London Underground from the London Fire Commissioner during the period in respect of a defective water supply to a station sprinkler system at Southgate station and a defective fire panel, associated fire detection and suppression systems at Angel station. All matters have been addressed.

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

- 5.6 On 15 February 2023, we received a Hygiene Emergency Prohibition Order from the Environmental Health Office in relation to a pest infestation at the Acton REW (Railway Engineering Workshop) Canteen. All the issues raised in the order have now been addressed. No further action was taken.

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

- 5.7 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).
- 5.8 No formal action was taken by the ICO in the reporting period in connection with TfL's compliance with data protection legislation.
- 5.9 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.
- 5.10 No data breaches were reported to the ICO during this reporting period.
- 5.11 There were no outstanding complaints relating to the TfL's compliance with data protection legislation at the end of the last reporting period.

- 5.12 There were six new complaints to the ICO in this reporting period relating to TfL's compliance with data protection legislation. Of the six new complaints, three related to responses to subject access requests, two related to requests for deletion of personal data and one to a request for rectification of information. In each case the ICO was satisfied with how the complaints were resolved.
- 5.13 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).
- 5.14 In this reporting period, 1,748 requests were made to TfL under the FOIA and EIRs, with 1,746 (99.88 per cent) replied to on time.
- 5.15 There were no open ICO complaints at the end of the last reporting period.
- 5.16 Eight complaints were received by the ICO during this reporting period relating to non-disclosure of requested information. Of the eight complaints, six complaints were found in TfL's favour and one complaint was found in favour of the complainant.. One complaint was still open at the end of the reporting period.
- 5.17 Of the six complaints found in TfL's favour, four Decision Notices were issued by the ICO and two cases were closed informally. Two of the four Decision Notices issued in TfL's favour, were appealed to the First Tier Tribunal. One Decision is awaiting a Tribunal ruling on whether an appeal will be heard and in the other TfL has agreed to provide the information sought by the appellant without the appeal being heard.
- 5.18 The one complaint found in favour of the complainant concerned the use of the FOI cost limit. In this case TfL provided the requested email correspondence to the complainant.

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

- 5.19 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 still awaited.
- 5.20 In addition, checks were made as to whether other licences are required across the network. Licence requests were submitted in November 2022 for a radio system used at the Ruislip depot and another in January 2023 for the new Piccadilly Line Upgrade One Person Operator system. An update on these applications is awaited from Ofcom.
- 5.21 TfL has introduced a single TfL frequency system maintained within the Telecoms teams and the Wireless Communications Systems Standard has been updated so

projects and system owners are aware of the need to engage with TfL Engineering to support any licensing applications.

- 5.22 We received a breach notice from the London Borough of Haringey in October 2022 in relation to a breach of the planning conditions for the improvements to Tottenham Hale station. The London Borough of Haringey have agreed not to issue Enforcement Notice proceedings while TfL work to resolve the breach.
- 5.23 The Advertising Standards Authority (ASA) notified TfL on 14 February 2023 of complaints received following the broadcasting of a television advertisement to support the Ultra Low Emission Zone (ULEZ) expansion. TfL have responded to the ASA 's request to substantiate the claims made by the advertisement and await an outcome.

### **Investigation by an Ombudsman**

- 5.24 There were two new investigations reported in the reporting period.
- 5.25 The first investigation related to the delay in the processing of a private hire vehicle (PHV) driver application (due to a backlog of new applications as a result of the coronavirus pandemic) and the second related to a PHV licence renewal application which was rejected for being out of time. In the first investigation, the application in line with the Ombudsman's decision, TfL offered an apology and made a payment as compensation to the complainant for the delay and the inconvenience caused. In the second investigation, the complainant experienced technical difficulty with the online renewal process and missed the deadline for making the renewal application. TfL has subsequently agreed to expedite the application as a renewal application and an outcome is awaited from the Ombudsman.

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

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

- 5.28 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. TfL continues to liaise with the tenant and the London Borough of Camden on this matter.
- 5.29 The third outstanding 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. TfL has asked the London Borough of Tower Hamlets to liaise directly with the leaseholder and the outcome is awaited.
- 5.30 The first new enforcement notice (received on 30 January 2023) was issued by the London Borough of Wandsworth for the unauthorised erection of a forecourt shop/sales building at 134 West Hill. TfL continues to liaise with the leaseholder and the London Borough of Wandsworth on the matter.
- 5.31 The second new enforcement notice (received on 28 February 2023) was issued by the London Borough of Hammersmith and Fulham for the unauthorised erection of a structure to front a retail unit at 56A Erconwald Street, without planning permission. TfL continues to liaise with the leaseholder and the London Borough of Hammersmith and Fulham.
- 5.32 The third new enforcement notice received after the end of the current reporting period on 14 April 2023 is a Community Protection Notice pursuant to the Anti-Social Behaviour, Crime and Policing Act 2014 which relates to the removal of graffiti at 19 locations in the Royal Borough of Kensington and Chelsea. TfL is liaising with the borough to ensure that the work is undertaken to satisfy the notice.

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

- 5.33 There was one outstanding judicial review from the previous reporting period and two new judicial reviews reported during the current reporting period.
- 5.34 The outstanding judicial review relates to a claim issued on 6 November 2020 by United Trade Action Group (UTAG) against TfL's 9 August 2020 decision to grant a London PHV operator's licence to Transopco UK Limited (trading as FREE NOW). The claim alleged that FREE NOW enabled PHV drivers to ply for hire in London using the app which was unlawful and that FREE NOW's drivers were 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.
- 5.35 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 including a payment of £40,000 on account to TfL which has been paid.

- 5.36 On 18 August 2022, UTAG sought permission to appeal directly to the Supreme Court which was refused on 4 January 2023. UTAG has been ordered to pay TfL's costs.
- 5.37 The first new judicial review relates to a claim issued on 16 February 2023 by the London Boroughs of Harrow, Hillingdon, Bexley, Bromley, and Surrey County Council against the Mayor's decisions to expand the Ultra Low Emission Zone (ULEZ) London-wide from 29 August 2023 and to grant fund TfL for the related scrappage scheme.
- 5.38 There are five grounds of challenge broadly relating to (1) the statutory procedure followed; (2) alleged unlawful consultation in relation to, and a failure to have regard to, expected compliance rates in the outer London zone; (3) the scrappage scheme including an alleged failure to take into account the potential for inclusion of non-Londoners in the scrappage scheme; (4) alleged failure to carry out any cost-benefit analysis and/or have regard to the Green Book methodology; and (5) alleged inadequate consultation, apparent predetermination as to the outcome, and the alleged exclusion of certain organised responses from consultation results.
- 5.39 On 12 April 2023 the Court granted permission for the claim to proceed on Ground 1 and one aspect of Ground 3. The Claimants subsequently requested a renewed consideration of permission on the grounds that were refused permission (except Ground 4 which has been abandoned) at an oral hearing which will take place on 25 May 2023. The substantive hearing will take place on 4 July 2023.
- 5.40 The second new judicial review claim was issued on 23 February 2023 by an individual purporting to represent those affected by the ULEZ expansion. The grounds of challenge included the proportionality of the Mayor's decision in light of the air quality benefits of the expansion. On 13 April 2023, the Court refused permission on all but two of the grounds alleged and the claim in relation to those two grounds has been stayed pending final determination of the boroughs' claim referred to above.

### **Inquests**

- 5.41 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.
- 5.42 There were five outstanding inquests from the last reporting period and five new inquests reported during this period. Of the five outstanding inquests, two were concluded. The first concluded inquest involved two deceased resulting in one narrative conclusion and one of suicide. The second concluded inquest resulted in a narrative verdict. Of the five new inquests, three were concluded: two were road traffic collisions and one a narrative conclusion. The outcomes of the three outstanding inquests and the two new inquests are awaited.

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

- 5.43 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.
- 5.44 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 hearing took place in the High Court on 18-21 October 2022 and judgment was given on 12 December 2022 in favour of Hackney. The case has now come to an end.

## **Personal Injury Claims**

- 5.45 TfL has been the subject of 230 claims for personal injury that were closed during the reporting period, of which 33 claims were employers' liability claims by staff and 197 claims were for public liability by customers/members of the public.
- 5.46 Of the 197 claims for public liability, 142 were closed without payment and 55 were settled.
- 5.47 Of the 33 claims for employers' liability, 28 were closed without payment and five were settled.

## **Employment Tribunal Proceedings**

- 5.48 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.
- 5.49 There were 136 ET claims reported during the period, of which 95 were carried forward from the previous report and 41 were reported for the first time.
- 5.50 Of the 136 ET claims, 43 are for unfair dismissal, four are for constructive unfair dismissal, 41 are for disability discrimination, two are for trade union detriment, 15 are for sex discrimination, 14 are for race discrimination, two are for victimisation, one is for breach of contract, three are for Wage Act/ unlawful deductions from wages, one is for unpaid holiday pay, four are for discrimination on the grounds of pregnancy/maternity leave, one is for age discrimination, one is for discrimination, one is for whistleblowing, one is for part-time work discrimination and two are for health and safety detriment.
- 5.51 Of the 136 ET claims during the period, 101 cases are ongoing and 35 were concluded during the period. Of the 35 ET cases concluded, seven were won, 11 were settled, one was partially won, two were struck out, and 14 were withdrawn.



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

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

### **Other Material Compliance Issues**

5.53 On 4 October 2021 Insulate Britain staged a protest around Blackwall Tunnel and Hanger Lane in London resulting in obstruction of the highway and significant road traffic disruption. In response to a further protest 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 acting on behalf of Insulate Britain and 112 named defendants. The injunction was granted and covered key locations on our roads where any disruption in the movement of traffic is a danger. A final hearing took place in the High Court on 29 and 30 March 2023 at which TfL sought to finalise the interim injunctions put in place so that key roads and bridges on the TfL Road Network remain protected on a permanent basis. On 3 May 2023 (after the end of the current reporting period), the Court granted final injunctions against 129 named defendants and Persons Unknown for a period of five years with a provision for yearly review by the Court for supervisory purposes.

5.54 Since 1 October 2022, the environmental activist group Just Stop Oil has been staging protests in London, including on a number of our roads, resulting in obstruction of the highway and significant road-traffic disruption. In response to these protests, on 17 October 2022 TfL made an application to the High Court seeking an interim injunction to protect the most important roads on the TfL network, preventing further protests designed to obstruct the highway. The interim injunction was granted on 18 October 2022. A final hearing took place on 4 May 2023 (after the end of the current reporting period) to determine TfL's application for the interim injunction to be made permanent. Judgment is awaited and the interim injunction remains in place in the meantime.

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

5.55 No known breaches or alleged breaches of EU/UK Procurement Rules and/or the Competition Act 1998 were reported.

### **Other known Breaches**

5.56 No other known breaches were reported.

### **Management of Compliance Issues**

5.57 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.

5.58 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.

5.59 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) ongoing work to support Procurement and Commercial activity as they prepare for the passing and implementation of the new Procurement Bill;
- (c) updating guidance and providing briefings on the new subsidy control regime (which replaces the EU State aid regime);
- (d) 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;
- (e) ongoing use of Data Protection Impact Assessments, to review proposed new or changed uses of personal data;
- (f) the promotion through the TfL Management System of Information Governance policies, instructions and guidance;
- (g) ongoing bespoke training to the business on a range of employment issues including employment law updates, reasonable adjustments requirements, disability discrimination, tribunal procedures, mediation and alternative dispute resolution, effective case management and providing guidance and best practice learned from ET cases;
- (h) training on a wide range of legal issues including common contract pitfalls and contract law, procurement law including competitive procedure and exclusions, derogations and modifications, NEC3 engineering and construction contract, Employment Law Update and witness workshops;
- (i) 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;
- (j) continued production of instructions, guidance and templates in the TfL Commercial Toolkit to support compliance with regulations and governance;
- (k) ongoing work to identify and address areas of weakness in TfL's processes, helping to implement corrective actions where appropriate;
- (l) continuous improvement in the overall processing times of new PHV driver applications, within 15 working days;
- (m) ongoing work to update the TfL's Enterprise Risk Framework and processes to ensure they effectively support TfL's objectives; and
- (n) 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 2022 to 31 March 2023 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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