

Date: 29 November 2023

Item: Legal Compliance Report (1 April 2023 – 30 September 2023)

This paper will be considered in public

1 Summary

- 1.1 This paper summarises legal and compliance information provided by each TfL Directorate for the Legal Compliance Report for the period 1 April 2023 to 30 September 2023. Updates are also provided for ongoing matters carried over from the previous reports where applicable.
- 1.2 There are no material breaches of law which would affect TfL's continued operations and reported matters continue to be broadly in line with previous reports.

2 Recommendation

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

3 Background and Scope of the Report

- 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.
- 3.2 The Directorates were asked to identify where they are aware of any alleged breaches of law between 1 April 2023 and 30 September 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 Commentary on Legal Compliance Issues

Prosecutions

- 4.1 TfL and Tram Operations Limited (TOL) were 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 tragedy on 9 November 2016 at Sandilands tram junction in Croydon in which seven people tragically lost their lives. 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. TfL and TOL pleaded guilty to the offence at the earliest opportunity. The ORR also prosecuted the tram driver for breaching section 7 of the 1974 Act which 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 pleaded not guilty, and he was acquitted by a jury following a five-week trial which ended on 19 June 2023. TfL and TOL were sentenced at a hearing which took place on 24, 26 and 27 July 2023. TfL was ordered to pay a fine of £10m and TOL was ordered to pay a fine of £4m. TfL and TOL were also ordered to pay £234,404 each towards the ORR's legal costs. TfL has paid the fine and legal costs. Following the sentencing, TfL has reviewed the sentencing remarks and following discussion with Board Members a paper on Safety Risk Management on TfL Services was considered by the Safety, Sustainability and Human Resources Panel on 15 November 2023. The actions following the review will be tracked and reported to the Safety, Sustainability and Human Resources Panel.

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

- 4.2 No formal warnings or notices from the HSE or ORR were reporting during this period.

Formal Warnings or Notices from the London Fire Commissioner

- 4.3 TfL has been informed that a London Fire Brigade Notice of Deficiency will be served on London Underground following a site visit on 19 September 2023 at

Oxford Street station. During the inspection the London Fire Brigade found that electrical equipment was being stored in rooms marked as disused on the fire plan and found breaches to the compartmentation that had not been fire sealed. TfL took immediate action to address and resolve these matters.

Formal Warnings or Notices from the Environment Agency

- 4.4 No formal warning or notices were received during this reporting period from the Environment Agency.

Formal Warnings or Notices from the Information Commissioner

- 4.5 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 (together, data protection legislation), the Freedom of Information Act 2000 (the FOIA) and the Environmental Information Regulations 2004 (the EIRs).
- 4.6 No formal action was taken by the ICO in the reporting period in connection with TfL's compliance with data protection legislation.
- 4.7 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.
- 4.8 Two data breaches were reported to the ICO during this reporting period. Both resulted from personal data being compromised by external cyber-attacks on IT systems used by TfL suppliers, which also affected multiple other UK organisations.
- 4.9 The first breach was reported to the ICO after TfL was informed by Capita Resourcing in May 2023 that personal data they had processed for TfL had been affected by the cyber-attack which the Capita Group suffered in March 2023. This remains under consideration by the ICO. The cyber-attack on Capita systems did not impact TfL's systems and TfL keeps its contracts with Capita under constant review.
- 4.10 The second breach was reported to the ICO in June 2023 after a supplier, CDER Group, informed TfL that they had been affected by a cyber-attack on the file transfer service MOVEit. All the affected individuals were notified that their data had been compromised in the incident. Since the end of this reporting period, the ICO has confirmed that it will not be taking enforcement action against TfL in connection with this data breach.
- 4.11 There were no outstanding complaints relating to TfL's compliance with data protection legislation at the end of the last reporting period.
- 4.12 There were 11 new complaints to the ICO in this reporting period relating to TfL's compliance with data protection legislation.

- 4.13 Of the 11 new complaints, seven complaints concerned individual rights under data protection legislation. Five complaints related to responses to subject rights requests (three resulted in disclosure of additional information and two were resolved in TfL's favour) and two complaints related to procedural issues associated with request handling.
- 4.14 One complaint required further explanation to the ICO about the sharing of vehicle registration data with the DVLA to facilitate them sending awareness letters to drivers of vehicles seen in the expanded Ultra Low Emission Zone (ULEZ) area prior to 29 August 2023. The ICO took no further action.
- 4.15 One complaint related to the accuracy of vehicle registration keeper data used to issue a penalty charge notice. This data was found to have been an accurate record of the submitted information at the time it was processed.
- 4.16 One complaint related to the processing of personal data by a revenue inspector on London Trams. This was redirected to the operator, TOL and the Data Protection Officer of FirstGroup.
- 4.17 In one complaint TfL was advised by the ICO that it had received an unspecified number of complaints from drivers based in the European Union (EU) about TfL's debt recovery contractor EPC accessing vehicle keeper data from EU vehicle licensing authorities. This matter remains open.
- 4.18 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).
- 4.19 In this reporting period 2,020 requests were made to TfL under the FOIA and EIRs, with 2,018 (99.88 per cent) replied to on time.
- 4.20 There was one open ICO complaint at the end of the last reporting period, which resulted in the ICO issuing a Decision Notice upholding TfL's use of an FOIA exemption to withhold information relating to law enforcement.
- 4.21 Six new complaints were received by the ICO in this reporting period. Three concerned the use of the FOIA exemption applicable to personal information. Of those, one resulted in a Decision Notice in TfL's favour, one required no further action, and one is still open. One complaint concerned the use of the FOIA cost limit to refuse a request and is still open. Two complaints concerned the use of the exception in the EIRs relating to manifestly unreasonable requests, both of which resulted in Decision Notices in TfL's favour.

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

- 4.22 There were two outstanding warning notices from the last period and two new warning notices reported during this period.
- 4.23 The first outstanding warning notice was issued by the Office of Communications (Ofcom) (received on 22 July 2022) relating to the requirement for London Underground to have a licence from Ofcom for the One Person Operator CCTV system. An application for the licence was submitted but due to a change in the radio frequency requirement, the application has been withdrawn as it was no longer required.
- 4.24 In addition, checks were made as to whether other licences are required across the network. Licence applications 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. The licence applications were approved and issued by Ofcom on 1 August 2023.
- 4.25 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.
- 4.26 Earlier this year we received notice from The Advertising Standards Authority (ASA) in relation to two complaints they had received relating to advertisements support the ULEZ expansion. TfL responded to the ASA's request to substantiate the claims made by the advertisement. TfL continues to liaise with the ASA and awaits their final response.
- 4.27 The first new warning notice (received on 22 June 2023) was issued by the Forestry Commission in relation to tree felling on Station Approach, Epping, which occurred in May 2023 without acquiring the necessary consents. The Forestry Commission indicated that no further action would be taken and steps have been taken to prevent a recurrence.
- 4.28 The second new warning notice (received on 27 June 2023) was issued by Ofcom for operating a business radio system at Victoria Coach Station without a valid Wireless Telegraphy licence. A Wireless Telegraphy licence application was submitted to Ofcom and approved on 8 August 2023.

Investigation by an Ombudsman

- 4.29 There was one outstanding investigation reported from the previous report relating to a private hire vehicle licence renewal application which was rejected for being out of time. The complainant experienced technical difficulty with the online renewal process and missed the deadline for making the application. In line with the Ombudsman's decision, TfL expedited the complainant's application and offered to refund their application fee. The matter is now closed.

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

- 4.30 There were seven outstanding enforcement notices from the last report, two fixed penalty charge notices issued during the reporting period and one new enforcement notice received since the end of the reporting period.
- 4.31 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 planned to relocate the tenant's business to a nearby site. This will allow TfL control of the relevant 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.
- 4.32 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.
- 4.33 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. The matter is ongoing.
- 4.34 The fourth outstanding enforcement notice (received in October 2022) was issued by the London Borough of Haringey in relation to planning conditions for improvements to Tottenham Hale station. TfL plans to submit a revised planning application. The London Borough of Haringey has agreed to suspend the enforcement notice pending the outcome of the planning application.
- 4.35 The fifth outstanding 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. The leaseholder lodged a planning appeal which was refused by the London Borough of Wandsworth. The leaseholder has commenced works to comply with the enforcement notice.
- 4.36 The sixth outstanding 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.
- 4.37 The seventh outstanding enforcement notice (received on 14 April 2023) was a Community Protection Notice issued 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 enforcement notice.

- 4.38 TfL received two fixed penalty notices in relation to Section 87/88 of the Environmental Protection Act 1990. The first fixed penalty charge notice was received from the London Borough of Camden on 16 May 2023 for illegal disposal of waste at Warren Street station. The second fixed penalty notice was received from the City of London Corporation on 27 June 2023 in relation to waste found on a public highway at Chancery Lane station. TfL has paid the fines issued for both fixed penalty charge notices and reviewed compliance arrangements to avoid future recurrence.
- 4.39 Since the end of this reporting period, TfL received a new enforcement notice on 6 October 2023 issued by the London Borough of Brent in relation to the unlawful change of use of a café bar at 11-12A Kilburn Bridge. TfL has no interest in the premises but is the freeholder of the adjoining land at the frontage. TfL is investigating whether the unlawful change of use affects the land owned by TfL.

Decisions Subject to a Judicial Review

- 4.40 There were two ongoing judicial reviews from the previous reporting period, two new judicial reviews reported during the current reporting period and one new judicial review reported after the end of this reporting period.
- 4.41 The first judicial review outstanding at the end of the last reporting period was 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 ULEZ London-wide from 29 August 2023 and to grant fund TfL for the related scrappage scheme. TfL was an interested party. The hearing took place on 4 and 5 July 2023 and on 28 July 2023, the claim was dismissed on all grounds. TfL and the Mayor have recovered £500,000 in legal costs. The matter is now closed.
- 4.42 The second outstanding judicial review claim was issued on 23 February 2023 by an individual purporting to represent those affected by the ULEZ expansion, seeking to challenge the Mayor's decision to expand the ULEZ London-wide from 29 August 2023. At a hearing on 14 September 2023 the claim was dismissed on procedural grounds and TfL was awarded its costs of responding to the claim. The claimant has made an application for permission to appeal and a response from the court is awaited.
- 4.43 The first new judicial review application is an application by TfL challenging a Determination by the London Tribunals relating to enforcement of red route parking bays. On 26 May 2023, a panel of Adjudicators determined that red route parking bay contraventions cannot be enforced remotely using CCTV. TfL disagreed and applied for a review of the Determination. On 21 July 2023 the Chief Adjudicator of the London Tribunals refused TfL's application to review the Determination. TfL made an application for judicial review on 3 August 2023 seeking to challenge the London Tribunal's Determination and the decision of the Chief Adjudicator. Since the end of this reporting period, the hearing took place on 26 October and, on 17 November 2023, judgment was given. The court found that the Adjudicator made an error in its approach to interpretation of the relevant Regulations in relation to CCTV enforcement of red route parking bay contraventions. Ongoing enforcement of red route parking bay contraventions using CCTV evidence by TfL is therefore lawful. On the secondary aspect of our

claim, which related to the proper approach that should be taken to the review of Adjudicator decisions, the court found that the Chief Adjudicator was entitled to refuse to order a review of the Adjudicator's approach to the interpretation of the Regulations and the correct approach to challenge an error of law made by an Adjudicator is to seek judicial review.

- 4.44 The second new judicial review application was brought by an individual who was prosecuted and convicted for fare evasion following misuse of a Freedom Pass issued to another person. The claimant alleged that TfL failed to take into account her medical condition when arriving at the decision to prosecute and relied on irrelevant evidence about the authenticity of her medical report. The claimant has indicated to the court that she is withdrawing the claim. We await confirmation from the court.
- 4.45 After the end of the reporting period, on 25 October 2023, a group of claimants based in the Netherlands issued a judicial review seeking to challenge the lawfulness of policies applied by TfL following Road User Charging contraventions as applied to recipients located outside of the United Kingdom. The claim includes allegations that penalty charge notices issued under the Low Emission Zone and ULEZ schemes are unlawfully denominated in Euros and exceed the amount prescribed by the relevant legislation. We are responding to the claim.

Inquests

- 4.46 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.
- 4.47 There were five outstanding inquests from the last reporting period and four new inquests reported during this period. The five outstanding inquests were concluded: two were found to be accidents; one was an open conclusion; and one by a road traffic collision. The outcomes of the five new inquests are awaited.

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

- 4.48 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 pension fund management services. A stay of the proceedings was agreed, pending the outcome of two test cases. Following the decisions of the courts in the two test cases, TfL and HMRC have agreed a consent order bringing the claim to an end, with each party bearing its own legal costs.

Personal Injury Claims

- 4.49 TfL has been the subject of 205 claims for personal injury that were closed during the reporting period, of which 14 claims were employers' liability claims by staff and 191 claims were for public liability by customers/members of the public.
- 4.50 Of the 191 claims for public liability, 155 were closed without payment and 36 were settled.

- 4.51 Of the 14 claims for employers' liability, four were closed without payment and 10 were settled.

Employment Tribunal Proceedings

- 4.52 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.
- 4.53 There were 134 ET claims reported during the period, of which 102 were carried forward from the previous report and 32 are reported for the first time.
- 4.54 Of the 134 ET claims, 40 are for unfair dismissal, five are for constructive unfair dismissal, 12 are for sex discrimination, four are for discrimination on the grounds of pregnancy/maternity leave, 41 are for disability discrimination, two are for trade union detriment/denial of trade union rights, two are for victimisation, two are for discrimination on the grounds of religion/belief, 15 are for race discrimination, two are for whistleblowing, one is for part-time worker discrimination, three are for Wage Act/unlawful deductions from wages, one is for unpaid holiday pay, two are for breach of contract, and two are for health and safety detriment/breach of health and safety legislation.
- 4.55 Of the 134 ET claims during the period, 89 cases are ongoing and 45 were concluded during the period. Of the 45 ET cases concluded, eight were won, 10 were settled, five were lost in part, two were lost, seven were struck out, and 13 were withdrawn.

Civil Debt in Excess of £5,000

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

Other Material Compliance Issues

- 4.57 Since 1 October 2022, the environmental activist group Just Stop Oil has engaged in protests in London, including on a number of TfL's 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.
- 4.58 A final hearing took place on 4 May 2023 to determine TfL's application for the interim injunction to be made permanent. At the hearing, eight named Defendants opted to sign an undertaking not to commit any prohibited acts as set out in the interim/final injunction, and before judgment was given on 26 May 2023 a further 157 Defendants also voluntarily signed an undertaking on similar terms. Those who signed an undertaking are removed from the final injunction Order and are not liable to pay our costs, but a breach of the undertaking could result in contempt of court proceedings. A final injunction was granted against the remaining named Defendants and Persons Unknown. The final injunction is granted for five years from the date of the Order in the Insulate Britain case (3 May 2023), with the consequence that the Just Stop Oil injunction expires at the

same time as the Insulate Britain injunctions. The injunction is also subject to annual supervisory review by the Court. The remaining Defendants are required to pay TfL's costs and we are in the process of recovering the costs.

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

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

Other known Breaches

- 4.60 No other known breaches were reported.

Management of Compliance Issues

- 4.61 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.
- 4.62 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.
- 4.63 The legal and compliance framework is the subject of continuous review and improvement. Initiatives to address compliance across TfL have included:
- (a) the introduction of an online training module on Inclusion Matters, to make TfL a more inclusive place for everyone;
 - (b) the implementation of a carbon literacy programme and the establishment of the TfL Sustainability Staff Network Group to raise awareness of climate change issues;
 - (c) ongoing work to update contractual and commercial templates and forms to ensure they align with legal requirements;
 - (d) ongoing work to support Procurement and Commercial activity including reviewing arrangements to prepare for the implementation of the new Procurement Act 2023;
 - (e) updating guidance and providing briefings on the new subsidy control regime (which replaces the EU State aid regime);
 - (f) 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;
 - (g) ongoing use of Data Protection Impact Assessments, to review proposed new or changed uses of personal data;

- (h) the promotion through the TfL Management System of Information Governance policies, instructions and guidance;
- (i) 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;
- (j) training on a wide range of legal issues including legal terms, contentious issues in supplier contracts, competition procedures, inquests, identifying and managing intellectual property, how to respond to money claims and threats of legal action, the Equality Act 2010 and the Public Sector Equality Duty, privilege, and the practical application of the rules required by public bodies when offering certain land back to former owners;
- (k) 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;
- (l) continued production of instructions, guidance and templates in the TfL Commercial Toolkit to support compliance with regulations and governance;
- (m) ongoing work to identify and address areas of weakness in TfL's processes, helping to implement corrective actions where appropriate;
- (n) continuous improvement in the overall processing times of new private hire vehicle driver applications, within 15 working days;
- (o) ongoing work to update the TfL's Enterprise Risk Framework and processes to ensure they effectively support TfL's objectives; and
- (p) 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 2023 to 30 September 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

Contact Officer: Andrea Clarke, Interim General Counsel
Email: AndreaClarke@tfl.gov.uk