

Date: 5 June 2024

**Item: Legal Compliance Report (1 October 2023 –
31 March 2024)**

This paper will be considered in public

1 Summary

- 1.1 The paper summarises legal and compliance information provided by each TfL Directorate for the Legal Compliance Report for the period 1 October 2023 to 31 March 2024. 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 October 2023 and 31 March 2024. 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, the London Fire Commissioner, the Environment Agency, the Information Commissioner or the other Government agencies;
 - (c) investigations by the 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 including 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 1998;
 - (m) other material breaches of the law;
 - (n) any other material compliance issues; and
 - (o) any initiatives introduced by Directorates to address compliance issues.
- 3.3 The numbers of matters reported against each of the categories listed in section 3.2 (a) to (l) above, together with the number of matters reported against them in each of the preceding two reporting periods, is set out in Appendix 1.

4 Commentary on Legal Compliance Issues

Prosecutions

- 4.1 No formal warnings or notices of prosecution were received during this reporting period.

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

- 4.2 TfL received three separate notices from the Health and Safety Executive (HSE), Building Safety Regulator on 3 November 2023, regarding the registration of three high-rise buildings in accordance with the Building Safety Act 2018. The buildings are at Karridale Mansions, 72 Tottenham Court Road; Albany Court, St. James's Park; and 199 Victoria Street. TfL responded to the Building Safety Regulator in November and December 2023 to inform them that TfL is not the leaseholder of the first building and as such is not responsible for the registration, and that the second and third buildings did not meet the height criteria for high-rise buildings in accordance with Building Safety Act 2018. No further correspondence has been received from the Building Safety Regulator.
- 4.3 On 28 March 2024 the HSE served a Notification of Contravention on TfL following its investigation into the tragic death of a pedestrian at Walthamstow bus station on 15 December 2023. The HSE identified a failure to provide safe crossings for vehicles and pedestrians which contravenes sections 2(1) and 3(1) of the Health and Safety at Work etc. Act 1974 and regulation 4(1) of the Workplace (Health, Safety and Welfare) Regulations 1992.

- 4.4 Temporary signals have been installed at the pedestrian crossing where the incident occurred. TfL is working with the HSE to discuss proposals for a permanent solution that reduces pedestrian risk and continues to allow the bus station to operate in a safe manner for bus passengers and colleagues.

Formal Warnings or Notices from the London Fire Commissioner

- 4.5 On 29 February 2024 TfL was served with a Notice of Deficiency by the London Fire Brigade (LFB) following a site visit at Canning Town Underground station. During the inspection, the issues identified relate to faults on the fire alarm panel, access to emergency routes or exits from the station, fire risk assessments and the condition of a breaching inlet. All the required work has been completed and the LFB will be updated shortly.

Formal Warnings or Notices from the Environment Agency

- 4.6 No formal warnings or notices were received during this reporting period from the Environment Agency.
- 4.7 We previously reported a notice from the Environment Agency received on 7 October 2019 in relation to equipment containing polychlorinated biphenyls (PCBs) on the London Underground network. The notice required the phase out and removal of all assets containing PCBs by the end of 2023. London Underground has implemented a removal plan and work continues to remove the PCBs as soon as possible. We are liaising closely with the Environment Agency.

Formal Warnings or Notices from the Information Commissioner

- 4.8 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).
- 4.9 No formal action was taken by the ICO in the reporting period in connection with TfL's compliance with data protection legislation.
- 4.10 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.
- 4.11 No data breaches were reported to the ICO during this reporting period.
- 4.12 During the previous reporting period we had notified the ICO of a personal data breach resulting from a cyber-attack in March 2023 against Capita Resourcing. The breach affected multiple clients of Capita Resourcing, including TfL (a former client at the time of the breach). TfL has obtained assurances from Capita that all personal data associated with the services which they provided to TfL has been deleted unless they are required to retain it further for the purpose of the

investigation or management of the cyber-attack and breach, as well as assurances that any such data is protected and secured. In the current reporting period, the ICO has advised that regulatory action will not be taken against TfL in connection with the Capita Resourcing breach.

- 4.13 There was one outstanding complaint relating to compliance with data protection legislation at the end of the last reporting period. 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 contractor, Euro Parking Collection plc (EPC), accessing vehicle keeper data from EU vehicle licensing authorities, in order to issue Penalty Charge Notices (PCNs). TfL has provided the ICO with details of its contract with EPC, and the ICO has advised they are satisfied with the data protection responsibilities set out in the contract. The ICO required TfL to provide additional information to a foreign registered motorist who raised a complaint with EPC.
- 4.14 There were nine complaints to the ICO in this reporting period relating to TfL's compliance with data protection legislation.
- 4.15 Five of the complaints related to responses to subject rights requests. Three of these related to late responses, one related to whether an exemption applied to body worn camera footage, which has led to footage being further reviewed for release, and one resulted in the disclosure of additional CCTV footage at a station.
- 4.16 One complaint related to the issue of a PCN to someone who had hired a car but had returned it when the penalty was incurred. The PCN was cancelled and refunded.
- 4.17 One complaint related to identity and verification checks being made by an agent on a customer account, which was addressed through additional management oversight of the agent. Another complaint related to the disclosure of information for the purposes of an Employment Tribunal (ET), which was addressed by advice being given to the individual who made the disclosure. The final complaint related to photographs of a customer injury having been taken by staff without a clear statement of how they would be used, which was addressed by advice being given to the Area Manager and the member of staff concerned.
- 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 decision are heard by the First-Tier Tribunal (Information Rights).
- 4.19 In this reporting period, 2,051 requests were made to TfL under the FOIA and EIRs, with 2,037 (99.3 per cent) replied to on time.

- 4.20 There were two open ICO complaints at the end of the last reporting period, one of which resulted in the ICO issuing a Decision Notice upholding TfL's use of the EIR exception for manifestly unreasonable requests and the other resulting in a Decision Notice from the ICO about the FOIA exemption for personal data which accepted TfL's change of position withdrawing reliance on the use of the exemption.
- 4.21 Fourteen new complaints were received by the ICO in this reporting period.
- 4.22 Two complaints related to the application of the FOIA cost limit, eight related to the use of EIR exceptions protecting public safety, the course of justice and the confidentiality of commercial or industrial information, two related the use of the EIR exception for manifestly unreasonable requests, one related to the use of FOIA exemptions to avoid prejudice to law enforcement and commercial interests and one related to whether the requested information was held.
- 4.23 Nine of the complaints were upheld in TfL's favour with Decision Notices issued by the ICO. Five complaints remain open.
- 4.24 During this reporting period, seven appeals against Decision Notices in TfL's favour have been made by requesters to the First-Tier Tribunal. The ICO and TfL are responding to these and hearing dates are awaited.

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

- 4.25 TfL received two new Notices of Assessment from HMRC during the reporting period.
- 4.26 The first notice was issued following a Value Added Tax (VAT) investigation in July 2023 which found that TfL was liable to pay VAT relating to the IFS Cable Car. Once HMRC has finalised its decision and if its assessment is not withdrawn, TfL may request an independent review of the assessment. The deadline for requesting an independent review has been extended by agreement with HMRC until 30 August 2024 and we await HMRC's decision.
- 4.27 The second notice was issued following an investigation of TfL's Off Payroll Working process and whether the Off Payroll Working rules have been applied correctly. TfL is liaising with HMRC and continues to provide requested information.
- 4.28 One ongoing matter from the last reporting period relates to a notice received from the Advertising Standards Authority (ASA) on 14 February 2023 in relation to complaints received following the broadcasting of a television advertisement to support the Ultra Low Emission Zone (ULEZ) expansion. TfL responded to the ASA's request to substantiate the claims made by the advertisement. The ASA published its final ruling in February 2024 and upheld two of the five claims made in the advertisement, however it did not challenge the scientific basis of the claims made. TfL has updated information on leaflets and on the TfL website to ensure that the basis of the environmental claims is clear.

Investigation by an Ombudsman

4.29 No investigations were reported during this reporting period.

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

4.30 There were seven ongoing enforcement notice matters reported in the last period and three new enforcement notices issued during the reporting period.

4.31 The first ongoing 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 on hold pending proposals for the frontage 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 the development. TfL plans to relocate the tenant's business to a nearby site and progress the redevelopment plans, ensuring all necessary planning requirements are fulfilled in the process. No action will be taken by the borough on the enforcement notice due to the redevelopment and the matter is therefore closed.

4.32 The second ongoing 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. The property is no longer tenanted and TfL has obtained planning permission for a new development which will accommodate a new tenant in 2025. Due to the new development no action will be taken by the borough with regards to the enforcement notice. The matter is now concluded.

4.33 The third ongoing enforcement notice (received on 16 September 2022) was issued by the London Borough of Tower Hamlets for a house in multiple occupation at 108A Whitechapel Road. Following ongoing engagement between the leaseholder and the borough, an application for a change of use was permitted. No further action will be taken by the borough. The matter is now concluded.

4.34 The fourth ongoing 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 borough has agreed to suspend the enforcement notice pending the outcome of the planning application.

4.35 The fifth ongoing 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. Following ongoing engagement with the leaseholder and the borough, the tenant has now demolished the unauthorised structure in accordance with the enforcement notice. The matter is now closed.

- 4.36 The sixth ongoing 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 advised the borough that not all 19 locations on the Notice are TfL property. TfL has commenced works to remove the graffiti from all TfL property and continues to liaise with the borough.
- 4.37 The seventh ongoing enforcement notice (received on 6 October 2023) was 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 is the freeholder of the adjoining land at the frontage and the change of use does not impact TfL's landownership. TfL has advised the borough to liaise with the café bar leaseholder directly.
- 4.38 The first new enforcement notice relates to improvement works required by Westminster City Council following a notice in December 2022 in relation to the condition of the building façade at Queensway Underground station. The work was due to be completed by 23 June 2023. The works were delayed due to complications in agreeing the construction design of the scaffolding. On 1 May 2024 Westminster City Council informed TfL that the work has not been undertaken in accordance with the enforcement notice. TfL has agreed to complete the works within eight weeks of the letter and to keep the Council updated on the progress of the work.
- 4.39 The second new enforcement notice (received on 2 January 2024) was issued by Westminster City Council in relation to breaches of planning control, including an unauthorised roller shutter and signage at 3-4 London Street. The tenant confirmed on 24 February 2024, that the signage and the roller shutter had been removed, in accordance with the notice. The matter is now closed.
- 4.40 The third new notice (received 22 March 2024) was issued by the City of London environmental department enquiring about the materials contained within the external wall system and the ownership details of the premises at 29-30 Queen Street, a London Underground owned property, in preparation for an inspection of the building under the Housing Act 2004 and Building Safety Act 2022. This forms part of the council's programme to assess the fire risk associated with medium and high-rise residential blocks following the Grenfell tragedy. TfL provided the required ownership details and confirmed that external wall system contained bricks; further detailed documentation required by the City of London on the building and its construction and management are to be provided by the leaseholder of the building Berkeley Homes (Eastern). A response is awaited.

Decisions Subject to Judicial Review

- 4.41 There were three ongoing judicial reviews from the previous reporting period and one new judicial review during this reporting period.
- 4.42 The first ongoing judicial review 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 (second defendant) was awarded its legal costs of

responding to the claim. The claimant made an application for permission to appeal in December 2023 – which TfL resisted – and a decision from the court is awaited.

- 4.43 The second ongoing judicial review 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 their medical condition when deciding to prosecute and relied on irrelevant evidence about the authenticity of their medical report. The claimant filed a Notice of Discontinuance on 6 November 2023 and the claim has now been discontinued.
- 4.44 The third ongoing judicial review application was issued on 25 October 2023 by a group of claimants based in the Netherlands 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. A hearing is listed for 5 and 6 November 2024.
- 4.45 The new judicial review application was brought by an individual challenging the Parking Adjudicator's decision to reject their appeal against a Congestion Charge PCN issued by TfL. The Parking Adjudicator rejected the claimant's case that the relevant Congestion Charge signs at the specified location were not in place and were inadequate. TfL resisted the application and on 19 February 2024 the court refused the claimant's application for judicial review. The claimant made a further application for the decision to be reconsidered at an oral hearing. The hearing was held on 15 May 2024 and the application was dismissed.

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 ongoing inquests from the last reporting period and four new inquests reported during this reporting period. Four of the five ongoing inquests were concluded: two concerned road traffic accident/collisions, one was recorded as an accidental death, and one inquest was concluded but TfL was not an interested person. The outcomes of the four new inquests are awaited.

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

- 4.48 No such claims were brought during this reporting period.

Personal Injury Claims

- 4.49 TfL has been subject to 276 claims for personal injury that were closed during the reporting period, of which 17 were employers' liability claims by staff and 259 claims were for public liability by customers/members of the public.
- 4.50 Of the 259 claims for public liability, 215 were closed without payment and 44 were settled. Of these claims, 140 related to London Underground and 119 to other parts of the network. These are increases from 101 and 89 respectively in the previous reporting period and 99 and 97 in the period before that. These higher figures align with pre-pandemic public liability claims levels but will be kept under review for trends.
- 4.51 Of the 17 claims for employers' liability, five were closed without payment and 12 were settled.

Employment Tribunal Proceedings

- 4.52 There were 124 ET claims reported during the period, of which 89 were carried forward from the previous report and 35 were reported for the first time.
- 4.53 Of the 124 ET claims, 44 were for unfair dismissal, seven for constructive unfair dismissal, 10 for sex discrimination, three for discrimination on the grounds of pregnancy/maternity leave, 32 for disability discrimination, one for trade union detriment/denial of trade union rights, two for victimisation, three for discrimination on the grounds of religion/belief 15 for race discrimination, two for whistleblowing, one for part-time worker discrimination, one for unpaid holiday pay, one for breach of contract, and two for health and safety detriment/breach of health and safety legislation.
- 4.54 Of the 124 ET claims during the period, 85 cases are ongoing and 39 were concluded during the period. Of the 39 ET cases concluded, 14 were won, 11 were settled, five were won in part, one was lost, three were struck out, and five were withdrawn.
- 4.55 Considering the nature of new claims, settlements, and tribunal outcomes over the last 12 months there has been no clear or discernible trend (either upwards or downwards) in relation to the number of claims relating to any specific protected characteristics. Overall, the number of ET claims lodged and the number of claims that are settled is the same level as in previous reporting periods. Any lessons learnt during in relation to ET matters will be addressed in regular reporting to the Safety, Sustainability and Human Resources Panel.

Civil Debt Claims 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 (JSO) 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. A number of defendants signed an undertaking not to commit any prohibited acts set out in the injunction and as such were removed from the final injunction Order and were not liable to pay TfL 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 was granted for five years from the date of the Order made by the Judge in the Insulate Britain case (3 May 2023), with the consequence that the JSO injunction expires at the same time as the Insulate Britain injunctions. The remaining Defendants have since the handing down of the final injunction judgment, made applications to the court to be offered the opportunity to sign an undertaking so that they are removed as Defendants in this matter and also discharged from the liability to pay costs. Those applications are still pending before the court.
- 4.59 The injunction is subject to annual supervisory review by the court. The first supervisory annual review of both the Insulate Britain and Just Stop Oil injunctions took place on 13 and 20 May 2024 at which we set out our case to keep the injunction in place for five years from the date it was granted, as originally ordered. The Court has reserved judgment; the existing final injunctions remain in place until judgment is handed down.

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

- 4.60 No known breaches or alleged breaches were reported.

Other known Breaches

- 4.61 No other known breaches were reported.

Management of Compliance Issues

- 4.62 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.
- 4.63 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.

4.64 The legal and compliance framework is the subject of continuous review and improvement. Initiatives to address compliance across TfL have included:

- (a) the continued provision of online training on Inclusion Matters, to make TfL a more inclusive place for everyone;
- (b) the introduction of Customer Equality Impact Assessment training throughout the business explaining the requirements of the Public Sector Equality Duty to ensure that we continue to comply with our obligations pursuant to that duty and continue to consider inclusion and putting people (customers) at the heart of the decisions and changes we make;
- (c) the provision of the ongoing carbon literacy programme and the work of the TfL Sustainability Colleague Network Group to continue to raise awareness of climate change issues;
- (d) ongoing work to update contractual and commercial templates and forms to ensure they align with legal requirements;
- (e) ongoing work to support Procurement and Commercial activity including reviewing arrangements to prepare for the implementation of the new Procurement Act 2023;
- (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, witness workshops, mediation and alternative dispute resolution, diversity and inclusion, respect in the workplace, probation, effective case management and providing guidance and best practice learnt from ET cases;
- (j) ongoing and regular issue of the employment law bulletin to managers and HR to support the dissemination of the latest developments in the law and best practice;
- (k) training on a wide range of legal issues including employment law updates, witness workshops, contract pitfalls, property and compulsory purchase law updates, biodiversity net gain regulations and guidance and pre-election period guidance on the use of resources;

- (l) 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 and equal and fair treatment of suppliers;
- (m) continued production of instructions, guidance and templates in the TfL Procurement and Commercial Management Framework to support compliance with regulations and governance;
- (n) ongoing work to identify and address areas of weakness in TfL's processes, helping to implement corrective actions where appropriate;
- (o) ongoing work to update 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 Procurement and Commercial teams to support the dissemination of important messages relating to regulatory and legal issues.

5 Conclusions

- 5.1 The Legal Compliance Report for the period 1 October 2023 to 31 March 2024 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.
- 5.2 Reported matters continue to be broadly in line with previous reports.

List of Appendices:

Appendix 1: Legal and compliance matters covering reporting periods from 1 October 2022 to March 2024.

List of Background Papers:

None

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