

Date: 27 November 2024

Item: Legal Compliance Report (1 April 2024 – 30 September 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 April 2024 to 30 September 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 April 2024 and 30 September 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 (ORR), 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 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.
- 4.3 Temporary signals have been installed at the pedestrian crossing where the incident occurred. TfL is now making permanent changes to the pedestrian crossing in the station so as to reduce pedestrian risk and continues to liaise with the HSE on these works.

Formal Warnings or Notices from the London Fire Commissioner

- 4.4 No formal warning or notices were received during this reporting period from the London Fire Commissioner.

Formal Warnings or Notices from the Environment Agency

- 4.5 We previously reported a Compliance Notice received from the Environment Agency dated 7 October 2019 requiring the removal of all equipment containing polychlorinated biphenyls (PCBs) on the London Underground network by the end

of 2023. PCBs on our network were safely contained within electrical components, not accessible to the public and had not escaped into the environment. We made good progress in complying with the Compliance Notice, however, due to a number of issues which were outside of our control, including the coronavirus pandemic, we were unable to remove and replace all PCBs by that date. We have continually updated the Environment Agency with our progress in removing PCBs from the network, including where there were risks to completion. At the end of 2023 we confirmed to the Environment Agency that the remaining PCBs would be removed from the London Underground network by the end of 2024.

- 4.6 On 10 October 2024, the Environment Agency issued a fine to London Underground of £150,000 for not completing the removal of all PCBs by the end of 2023 as required by the Compliance Notice, which has been paid. The Environment Agency also require the removal of PCBs by 31 December 2024. The last of the equipment which we suspect contains PCBs will be removed and replaced by the deadline. The Environment Agency has acknowledged the mitigating circumstances which delayed the PCB removal programme and our extensive actions throughout the removal programme to ensure the London Underground network is free from PCBs when deciding on the level of fine.

Formal Warnings or Notices from the Information Commissioner

- 4.7 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 (together, data protection legislation), the Freedom of Information Act 2000 (the FOIA) and the Environmental Information Regulations 2004 (the EIRs).
- 4.8 No formal action was taken by the ICO in the reporting period in connection with TfL's compliance with data protection legislation.
- 4.9 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.
- 4.10 TfL was subject to a cyber incident which was detected on 1 September 2024. We notified the ICO on 2 September and are conducting a thorough investigation, alongside the National Crime Agency and the National Cyber Security Centre, keeping the ICO informed. Some customer names and contact details, including email address and home addresses, were accessed during the incident as well as data relating to Oyster refunds which included bank account numbers and sort codes for around 5,000 customers, who were contacted individually and offered support and guidance. No other data breaches were reported to the ICO in this period.
- 4.11 As previously reported, there was one outstanding complaint relating to compliance with data protection legislation, where 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,

accessing vehicle keeper data from EU vehicle licensing authorities, in order to issue Penalty Charge Notices (PCNs). TfL provided the ICO with the information requested and the ICO has confirmed that it will not be pursuing the matter further.

- 4.12 There were three complaints to the ICO in this reporting period relating to TfL's compliance with data protection legislation.
- 4.13 Two of the complaints related to the handling of Subject Access Requests. In one case the ICO advised that, while the statutory timescale had been exceeded, the request had otherwise been answered properly. The second Subject Access complaint was from an employee. The ICO upheld TfL's use of an exemption to withhold legally privileged information but noted that some information was initially withheld without an exemption, although it was recognised that this had been rectified following an internal review by the TfL Privacy team prior to the ICO's involvement.
- 4.14 The final complaint was from an employee regarding the level of detail shared from an Occupational Health report with managers responsible for the employee. The ICO noted the advice that had already been provided by the TfL Privacy team and required no further action to be taken.
- 4.15 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).
- 4.16 In this reporting period 1,585 requests were made to TfL under the FOIA and EIRs, with 1,581 (99.7 per cent) replied to on time.
- 4.17 There were five open ICO complaints at the end of the last reporting period. Two complaints were in relation to the use of the EIR exception relating to public safety, which resulted in the ICO issuing a Decision Notice upholding TfL's use of the exception to refuse disclosure. One complaint related to the use of EIR exceptions on protecting public safety, the course of justice and the confidentiality of commercial information and resulted in a Decision Notice in TfL's favour. One complaint was in relation to the use of FOI exemptions protecting law enforcement and commercial interests and the final complaint was in relation to the use of the FOI cost limit. Both were resolved informally without the need for a Decision Notice.
- 4.18 Five new complaints were received by the ICO in this reporting period.
- 4.19 Two complaints relate to the application of the FOI exemption protecting personal data; one relates to the use of the cost limit; and another relates to the use of EIR exceptions protecting the confidentiality of proceedings and legally privileged information. The fifth complaint is about the general handling of an FOI request and the response issued.

- 4.20 One of the complaints relating to the personal data exemption was dismissed with a Decision Notice issued by the ICO. Four complaints remain open.
- 4.21 During this reporting period, an appeal against a Decision Notice in TfL's favour was dismissed by the First-Tier Tribunal (Information Rights). This concerned the use of the FOI exception for law enforcement in a case about the cost of damage caused by graffiti on the TfL network. The Tribunal's decision is awaited on the outcome of five linked appeals heard during this period against Decision Notices issued in TfL's favour relating to cameras used to enforce traffic restrictions and road user charging.

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

- 4.22 TfL had two ongoing Notices of Assessment from HM Revenue and Customs (HMRC) from the last reporting period.
- 4.23 The first notice was issued following a Value Added Tax (VAT) investigation in July 2023, the initial conclusions of which found that the income generated by the services provided by the IFS Cloud Cable Car should be subject to VAT at a standard rate of 20 per cent. Since the cable car had commenced operating, TfL had treated the services as passenger transport services and therefore eligible for zero rated VAT. Since the end of the reporting period, HMRC has finalised its decision and withdrawn the assessment, concluding that the IFS Cloud Cable Car is VAT zero rated. The matter has now been closed.
- 4.24 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. The matter is ongoing.

Investigation by an Ombudsman

- 4.25 There were six new investigations reported during this reporting period.
- 4.26 Three investigations related to the refusal of Ultra Low Emission Zone (ULEZ) scrappage scheme applications; one investigation related to the incorrect administration of PCNs issued for contraventions on the TfL road network; and two investigations related to the processing of private hire vehicle licence renewal applications.
- 4.27 A decision from the Ombudsman is awaited in one of the investigations relating to a ULEZ scrappage scheme application.
- 4.28 In the second such investigation, the complainant's application had been refused despite them having provided the information required. On the Ombudsman's recommendation, TfL made a payment to the complainant for loss and distress caused by the way in which the application was handled.
- 4.29 In the third investigation, the Ombudsman found that TfL was correct in refusing the application for being out of time but should have advertised the ULEZ scrappage scheme policy change. In accordance with the Ombudsman's recommendation, TfL sent a letter of apology.

- 4.30 In the fourth investigation, the Ombudsman found that two of the complainant's three PCNs were incorrectly administered. The Ombudsman was satisfied that TfL had cancelled the two PCNs in question and only took payment for one.
- 4.31 In the fifth investigation, in accordance with the Ombudsman's recommendation, TfL made a payment to the complainant for distress caused and the delay in resolving the renewal.
- 4.32 In the sixth investigation, TfL has offered to refund the licence fee for the delay caused in processing the renewal application. A decision from the Ombudsman is awaited.

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

- 4.33 There were four ongoing enforcement notice matters reported in the last reporting period and two new enforcement notices issued during the reporting period.
- 4.34 The first 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. Since the end of this reporting period, TfL's revised planning application was refused by the borough on 8 October 2024. TfL awaits the borough's report on the reasons for the refusal to determine its next steps. The borough has decided not to enforce the notice until the process has been decided. The matter is ongoing.
- 4.35 The second 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 informed the Royal Borough of Kensington and Chelsea that the graffiti has been removed from all TfL property listed in the Notice by 29 November 2023 and that not all 19 locations in the Notice are TfL property. TfL has not received a response and is following up to close the matter.
- 4.36 The third ongoing enforcement notice (received 1 December 2022) was issued by Westminster City Council in relation to improvement works required to the building façade at Queensway Underground station. The work was due to be completed by 23 June 2023 but was 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 is completing the works in consultation with the Council's planning and heritage officers.
- 4.37 The fourth 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 the 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). No further response has been received from the City of London Environmental team and the matter is considered closed.

- 4.38 The two new notices (received on 3 July 2024) were issued by the London Borough of Tower Hamlets for use of land adjacent to Magdalen Passage without planning permission. One notice relates to unauthorised installation of a container on the land. TfL has written to the tenant requiring them to remove the container or obtain the relevant planning permission. This matter is ongoing.
- 4.39 In relation to the second new notice, the tenant has complied with the notice and ceased the use of the land as an unauthorised car park. This matter is now closed.

Decisions Subject to Judicial Review

- 4.40 There were two judicial reviews from the previous reporting period and one new judicial review was reported during this period.
- 4.41 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 was refused on 13 June 2024. The claimant applied for permission to appeal directly to the Supreme Court which was also refused. There is an outstanding costs order against the claimant which we are seeking to enforce.
- 4.42 The second ongoing judicial review claim was issued on 25 October 2023 by a group of claimants based in the Netherlands seeking to challenge the lawfulness of PCNs issued to drivers working for those companies. The claim included allegations that PCNs issued under the Low Emission Zone (LEZ) and ULEZ schemes were unlawfully denominated in Euros and exceeded the amount prescribed by the relevant legislation. TfL has agreed a settlement of the claim which has been approved by the court. Any financial remedies will be subject to further directions from the court.
- 4.43 The new judicial review application was issued on 18 June 2024 by an individual in claiming that there was inadequate signage within the relevant LEZ/ULEZ charge zone, with TfL listed as an Interested Party. The applicant contended that the signs displayed were wrongly authorised by the Secretary of State for Transport on the basis that the signs do not clearly specify that charges apply. The court refused application for permission for judicial review on the grounds that the claim was substantially out of time with no good reason to extend time and that the case was unarguable.

4.44 Since the end of this reporting period, a new judicial review application was issued on 21 October 2024, brought by an individual challenging the decisions of the Parking Adjudicator to dismiss their appeal against a PCN issued by TfL following a moving traffic contravention. TfL has responded to the claim and lodged its summary of grounds of resistance with the court. A decision is awaited.

Inquests

4.45 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.

4.46 There were five ongoing inquests from the last reporting period and 12 new inquests reported during this reporting period. Three of the five ongoing inquests were concluded: one was recorded as an accidental death; one a suicide; and, in one inquest, the Coroner decided not to hold the inquest due to the outcome of the related criminal proceedings in which a driver was convicted of death by careless driving and sentenced. The outcomes of the two remaining ongoing inquests and 12 new inquests are awaited.

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

4.47 No such claims were brought during this reporting period.

Personal Injury Claims

4.48 TfL has been subject to 316 claims for personal injury that were closed during the reporting period, of which 22 were employers' liability claims by staff and 294 were for public liability by customers/members of the public.

4.49 Of the 294 claims for public liability, 259 were closed without payment and 35 were settled. Of these claims, 145 related to London Underground and 149 to other parts of the network. These are increases from 140 and 119 respectively in the previous reporting period and 101 and 89 in the period before that and this increase will be kept under review for trends.

4.50 Of the 22 claims for employers' liability, 13 were closed without payment and nine were settled.

4.51 The increase in the number of closed claims compared with the last reporting period reflects an increase in the number of claims being received overall, which in turn reflects a gradual return to pre-pandemic levels, albeit that claim numbers are still significantly lower than they were pre-pandemic.

Employment Tribunal (ET) Proceedings

4.52 There were 126 ET claims reported during the period, of which 89 were carried forward from the previous report and 37 were reported for the first time.

4.53 Of the 126 ET claims, 47 were for unfair dismissal, seven for constructive unfair dismissal, one for wrongful dismissal, 11 for sex discrimination, 26 for disability discrimination, three for discrimination on the grounds of religion/belief, 19 for race discrimination, two for age discrimination, four for whistleblowing, one for

part-time worker discrimination, one for unpaid holiday pay, two for breach of contract, and two for health and safety detriment/breach of health and safety legislation.

- 4.54 Of the 126 ET claims reported during the period, 88 cases are ongoing and 38 were concluded during the period. Of the 38 ET cases concluded, four were won (one of which is being appealed), 16 were settled (two of which were non-financial), two were lost (the remedy for one of which was settled before the remedy hearing and we await the remedy judgment in relation to the other), three were partially lost (and we await the remedy judgment in relation to one), four were struck out, and nine 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 in relation to ET matters will be addressed in regular reporting to the People and Remuneration Committee.

Civil Debt Claims in Excess of £5,000

- 4.56 No civil debt claims in excess of £5,000 were reported for this reporting 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 Both the JSO and Insulate Britain final injunctions are subject to annual supervisory review by the court. The first such review 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 which is awaited; the existing final injunctions remain in place until a decision is made.

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 including online and in-person training on Disability Awareness for People Leaders, to improve disability awareness across TfL to create an inclusive workplace and improving the experience of disabled colleagues;
- (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) 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, which has been postponed to February 2025;
- (e) 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;
- (f) ongoing use of Data Protection Impact Assessments, to review proposed new or changed uses of personal data;
- (g) the promotion through the TfL Management System of Information Governance policies, instructions and guidance;

- (h) 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;
- (i) 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;
- (j) training on a wide range of legal issues including employment law updates, witness workshops, contractual payment notices, landlord's remedies for breach of covenant, legal terms, restriction on land disposals, guidance on conducting public inquiries, a practical guide to inquests, GLA powers and powers of the functional bodies; and contentious issues in supplier contracts;
- (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 and equal and fair treatment of suppliers;
- (l) continued production of instructions, guidance and templates in the TfL Procurement and Commercial Management Framework 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) ongoing work to update TfL's Enterprise Risk Framework and processes to ensure they effectively support TfL's objectives; and
- (o) 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 April 2024 to 30 September 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 30 September 2024

List of Background Papers:

None

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