

Date: 14 June 2016

Item: Legal Compliance Report (1 October 2015 – 31 March 2016)

This report 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 2015 to 31 March 2016.

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 2015 and 31 March 2016. The questionnaire sought responses concerning the following:

- (a) prosecutions against TfL;
- (b) formal warnings or notices from the Health and Safety Executive, the Office of Rail and Road, the London Fire and Emergency Planning Authority, the Environment Agency, the Information Commissioner or 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 EU/UK 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 The reporting periods for the graphs included in this report follow the six monthly Legal Compliance reporting periods from April to September and October to March. The graphs commence in the reporting period covering October 2013 – March 2014. Each period includes any ongoing matters carried over from previous reporting periods where applicable. In accordance with TfL's commitment to transparency, the legal compliance report is included in this public paper.

5 Commentary on Legal Compliance Issues

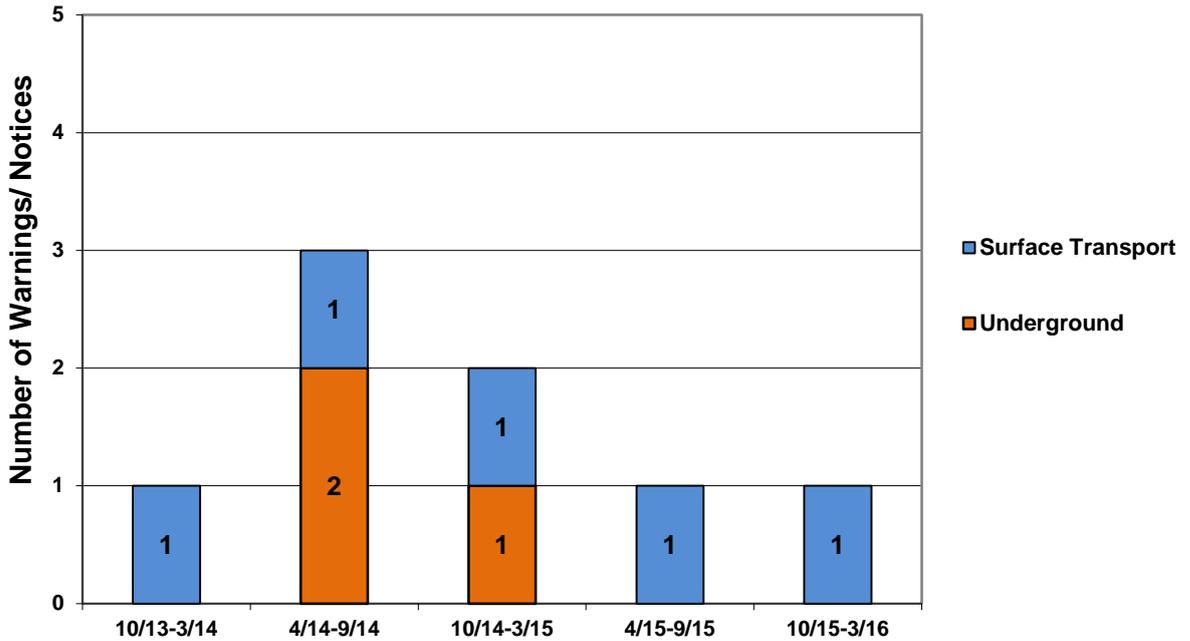
Notification of Intention to Prosecute

- 5.1 No notifications of prosecution have been received during this period.

Formal Warnings or Notices from the Health and Safety Executive (HSE) or Office of Rail and Road (ORR)

- 5.2 Surface Transport previously reported an incident on the A40 in November 2011, in which a motorcyclist was injured as a result of temporary bridging plates installed over defective expansion joints on the A40 Westway. The HSE investigation is still ongoing and no formal warning or notices have been issued to date.
- 5.3 Since the end of the reporting period, the ORR has served an Improvement Notice on London Underground in relation to an embankment failure which occurred on 1 May 2016 between Chorleywood and Rickmansworth stations on the Metropolitan line. The ORR has concluded that after the slip was reported London Underground should have ordered a suspension of service until an assessment of the stability of the embankment was carried out by a properly qualified person rather than, as happened, London Underground and Chiltern Line trains being allowed to continue running past the area of the slip on speed restriction for a period of c75 minutes. The notice also refers to concerns over the length of time (c66 minutes) it took London Underground to inform Chiltern Rail of the embankment failure and also the lack of guidance in the line operating procedures for the Metropolitan line for action to be taken in the event of an infrastructure failure such as an embankment failure. The improvement required of London Underground by the ORR is to review and amend operating procedures to ensure that they cover what to do in the event of an infrastructure failure and what to do until the situation has been assessed to ensure safety of staff, passengers and the public generally. The improvements have been discussed and agreed between London Underground and ORR and London Underground has committed to put them in place by December 2016.

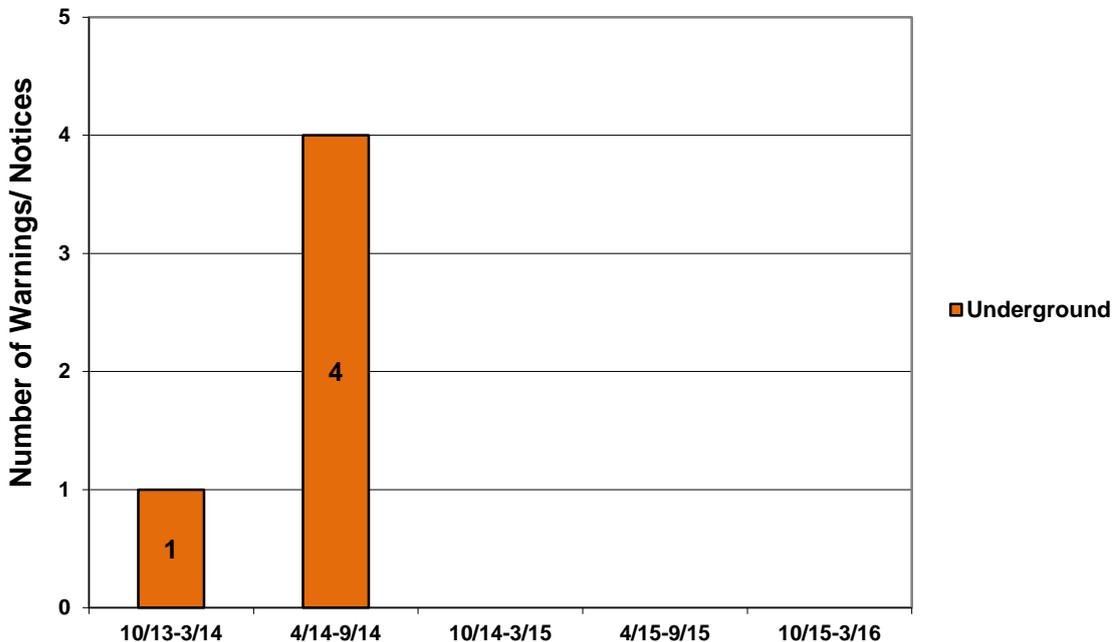
HSE/ ORR Formal Warnings or Notices



Formal Warnings or Notices from the London Fire and Emergency Planning Authority (LFEPA)

5.4 No warnings or notices were reported for this period.

LFEPA Formal Warnings/Notices

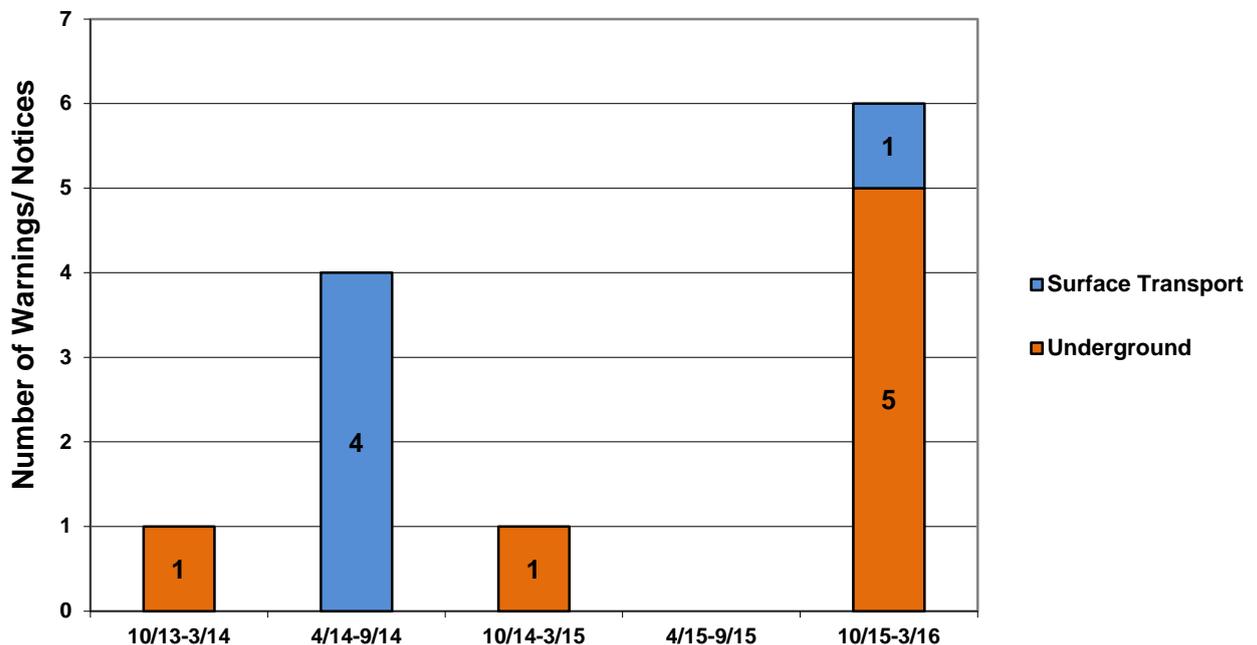


Formal Warnings or Notices from the Environment Agency

5.5 As reported in the June 2015 report, London Underground received an Enforcement Notice on 4 November 2014 for failure to order its carbon dioxide emissions allowances by the deadline in accordance with the provisions of the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme Order 2010. London Underground has complied with the Enforcement Notice.

- 5.6 Subsequently, in July 2015 (but reported in this period) London Underground received a Notice of Intent from the Environment Agency to impose a penalty of £6.5m. London Underground successfully appealed and the penalty was reduced to £20,000. London Underground has paid the penalty.
- 5.7 In the current period, London Underground received four fixed penalty notices for breaches of the Environmental Protection Act 1990. One was from the London Borough of Hillingdon in January 2016 in respect of fly tipped rubbish at Eastcote Station. Three were from the London Borough of Barking and Dagenham relating to the disposal of commercial waste in domestic bins. The four fixed penalty charges have been paid. The fly tipped rubbish has been cleared; security of business and personal information arrangements have been addressed; new waste management measures have been implemented including the provision of extra bins and shredding facilities; and monitoring and response procedures have been improved.
- 5.8 Also in the current period, Surface Transport reported a letter dated 23 March 2016 from the Forestry Commission issuing a Notice under Article 31(4) of the Plant Health (Forestry) Order 2005 in relation to infestation of Oak Processionary Moth (OPM) on oak trees on TfL property on Wickham Road Street, Croydon. The Notice requires the destruction or treatment of the OPM infestation by 15 July 2016.

Environment Agency Formal Warnings/Notices



Formal Warnings or Notices from the Information Commissioner

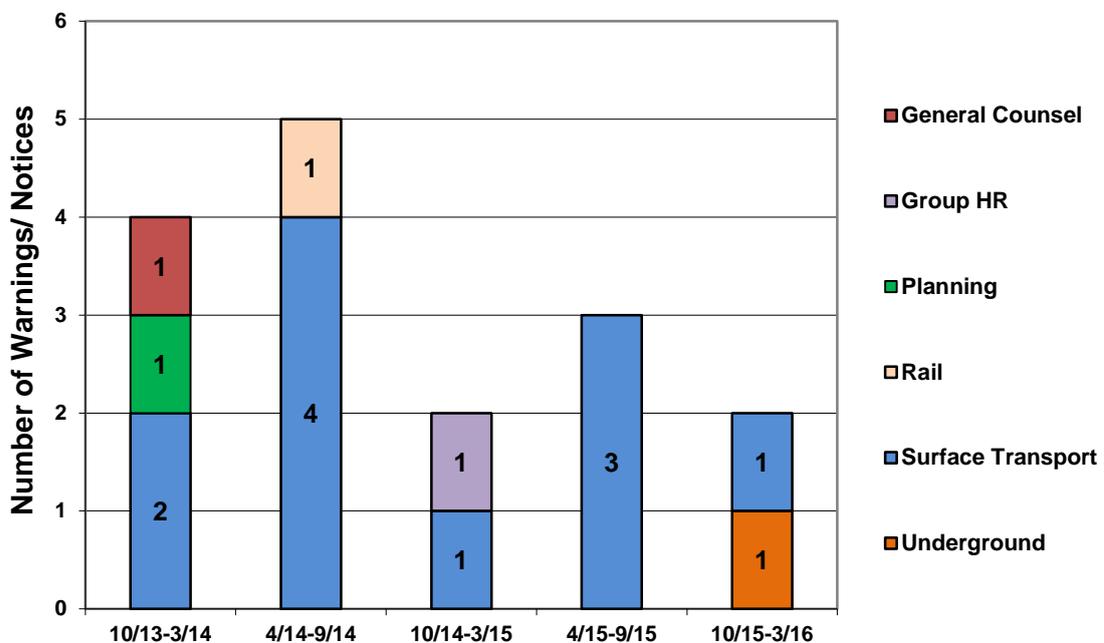
- 5.9 The Information Commissioner's Office (ICO) investigates alleged instances of non-compliance with the Data Protection Act 1998 (the DPA), the Freedom of Information Act 2000 (the FOIA), Environmental Information Regulations 2004 (the EIRs) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the PECR).

- 5.10 No formal action was taken by the ICO between 1 October 2015 and 31 March 2016 in connection with TfL's compliance with the DPA.
- 5.11 During this period, the ICO notified TfL of three new complaints from individuals who considered that TfL had failed to process their personal data in accordance with the DPA. In addition, there was one complaint from an individual who was not the data subject about TfL's use of personal data.
- 5.12 The first of the new complaints arose in connection with a subject access request (SAR) where the requester claimed that he had not been provided with all the data to which he was entitled. He also complained that it was unlawful for TfL to use a voice recording in a disciplinary hearing. The recording had been made on a line manager's mobile phone when the complainant had become abusive and threatening in the workplace and the line manager subsequently provided it as evidence of his behaviour. Some additional data was located and provided to the complainant. The ICO found TfL in breach of the DPA as a result of some data to which the requester was entitled not being provided within 40 calendar days but found that the use of the voice recording did not breach the DPA.
- 5.13 The second new complaint arose in connection with a SAR and a subsequent arrangement not to refer to the complainant by name in emails relating to an investigation. The complainant complained that this was a breach of the law. TfL has sent a response to the ICO disputing this position. Since the end of the reporting period, the ICO's response has been received they have found that there was no breach.
- 5.14 The third new complaint concerned an alleged inappropriate disclosure of sensitive personal data. TfL has replied to the ICO. Since the end of the reporting period, the ICO found there is insufficient evidence that there has been a breach of the DPA.
- 5.15 The remaining new complaint concerned a presentation given by TPH and the Metropolitan Police to representatives of the taxi trade. The presentation included statistical information regarding sexual assaults in taxis and private hire vehicles and the complaint alleged that personal data may have been disclosed. Since the end of the reporting period, the ICO has found that no breach of the DPA has occurred, as the statistical data did not identify any individuals and it was police data in any event.
- 5.16 There was one outstanding data protection complaint from the previous report, relating to the disclosure of non-medical information to Occupational Health and an allegation of inappropriate disclosure and use of medical data. The ICO found no breach had occurred through the provision of non-medical data to Occupational Health for the purpose of obtaining advice, but that there had been a breach from the inadvertent provision of medical data to an employee other than the line manager, via an automated email and disclosure of a memo from Occupational Health relating to the reasons for the complainant's absence from work that was unnecessarily included in an investigation pack. The ICO required no further action to be taken.

- 5.17 The ICO has been notified that the Santander Cycle Hire Scheme was the subject of cyber attacks in December 2015/January 2016 and March 2016. The attacks were similar in nature and involved attempts to access customer accounts via the Scheme's website and mobile app. The ICO is investigating the circumstances and has not yet come to a decision on whether a breach of the DPA has occurred. All customers affected have been informed.
- 5.18 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 apply to the ICO for a decision on whether a request has been dealt with in accordance with the FOIA or EIRs. Appeals against the ICO's decisions are heard by the First-Tier Tribunal (Information Rights).
- 5.19 TfL received 2,564 requests under the FOIA and EIRs between period 12 2014/15 and period 13 2015/16, and responded to 85.2 per cent of such requests within the statutory time limit.
- 5.20 During this period TfL were notified by the ICO of eight new complaints regarding TfL's handling of FOI and EIR requests. There were also two outstanding complaints from the previous reporting period. Of these 10 complaints the ICO took formal regulatory action on two occasions, by issuing a Decision Notice. Both Decision Notices found in TfL's favour and are outlined below.
- 5.21 Of the eight new complaints, five related to TfL's failure to provide a response to an FOI request. All these requests have been answered and four of the complaints have been resolved informally; the ICO has been informed that the fifth response has been sent but the complaint has not yet been closed by the ICO.
- 5.22 One new complaint related to TfL's decision to handle under the DPA a request by an individual for information held in relation to his complaint about an incident involving a bus.
- 5.23 One new complaint related to an information request for traffic modelling information. The information was incomplete at the time of the request and was subsequently provided to the requester, who believes that earlier versions of the modelling information should have been provided. TfL is preparing a response to the ICO.
- 5.24 The final new complaint has been decided in TfL's favour and the ICO issued a Decision Notice upholding TfL's refusal of access to train scheduling information on the grounds of health and safety. The ICO agreed that the disclosure of the information may risk the health and safety of employees and the public, and that the public interest supported the information being withheld.
- 5.25 The first of the outstanding complaints from the previous reporting period related to a delayed response to an EIR request made in connection with a planning application by McDonalds Restaurant. The ICO was informed in August 2015 that the response has been sent and has taken no further action.

- 5.26 The second outstanding complaint has been decided in TfL's favour and the ICO issued a Decision Notice upholding TfL's refusal on cost grounds to answer a series of questions about exemptions to the Low Emission Zone for persons who belong, or do not belong, to the Showman's Guild. The ICO found that the cost limit had been correctly applied and that TfL had provided appropriate advice and assistance.
- 5.27 A previous decision of the ICO was challenged at the First Tier Tribunal during the reporting period. The ICO had upheld TfL's position that it did not hold information about positive action campaigns to encourage people from ethnic minorities to become taxi drivers. The Tribunal found that the request should have been interpreted more broadly so as to include the "put yourself in the driving seat" campaign, which operated between 2005 and 2011, and required TfL to either provide the FOI applicant with information relating to this campaign or issue a refusal notice. TfL is currently compiling a response to the applicant. TfL was not party to the Tribunal proceedings.
- 5.28 In addition to the FOI and EIR complaints raised with the ICO, there is an outstanding case with the Upper Tier Tribunal. The ICO had issued a Decision Notice in January 2013 upholding TfL's use of the FOI cost limit to withhold information relating to the ethnic origin of those involved in grievance proceedings. The requester appealed to the First-Tier Tribunal (Information Rights) and the Tribunal dismissed the appeal on 3 December 2013. The requester sought leave from the Upper Tribunal to appeal this decision and a hearing took place on 16 February 2016. The judgment has not yet been issued.

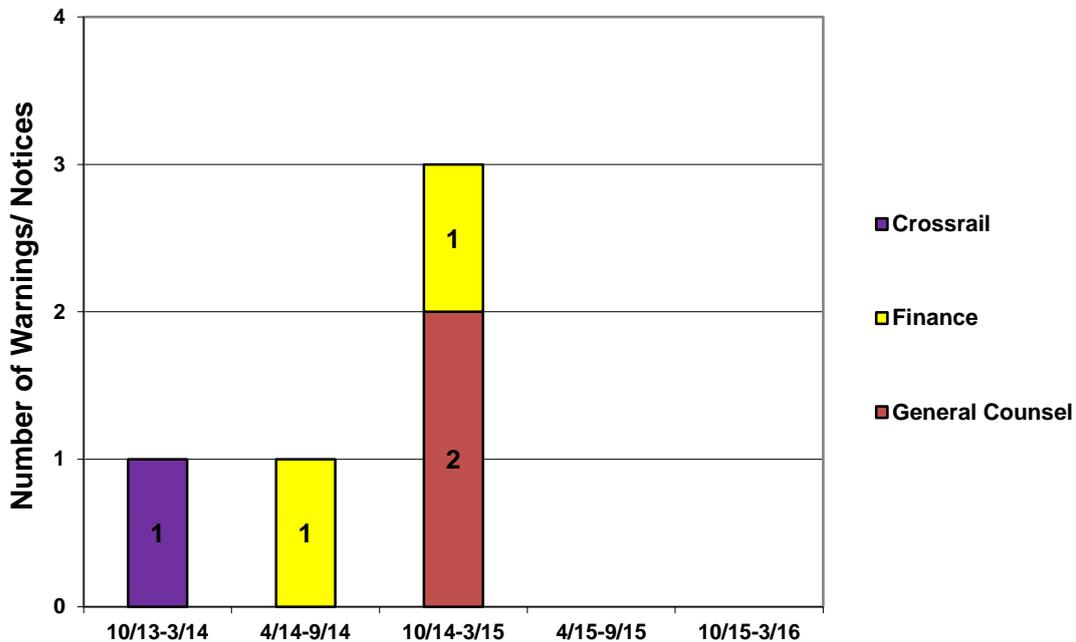
Information Commissioner Formal Warnings/Notices



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

5.29 No formal warnings/notices were received during this period.

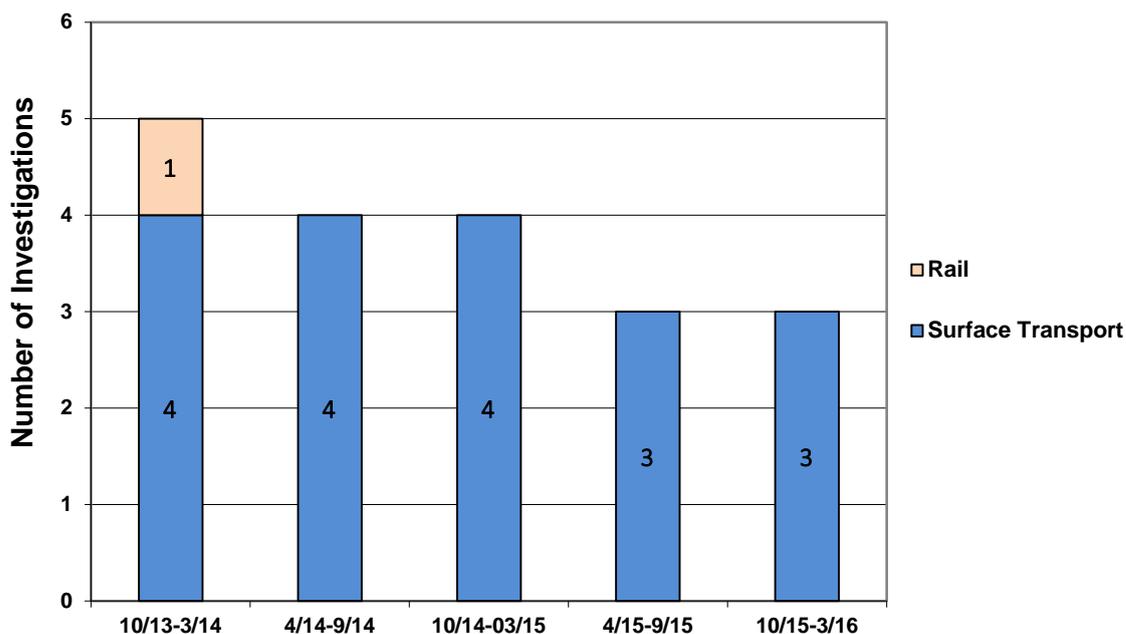
Other Government Agencies Formal Warnings/Notices



Investigation by an Ombudsman

- 5.30 Surface Transport reported one outstanding investigation from the last report and two new investigations. The outstanding investigation relates to antisocial behaviour as a result of a bus stop outside a property. The two new investigations relate to changes to a coach stop blocking the light to the complainant's property and a compensation claim for lost revenue caused by flooding to a commercial tenant's business.
- 5.31 In the outstanding investigation, as previously reported, the Local Government Ombudsman (LGO) found that TfL was not at fault. TfL was not informed by Havering Council of the complainant's objection before starting refurbishment works. TfL took up the complainant's concerns with Havering Council for consideration. Havering Council concluded that the clearway would not be moved which means it is not possible to move the bus stop. The complainant will now need to take the matter up with the Council directly.
- 5.32 In the first new investigation, the LGO requested TfL to amend the bus cage (bus stop sign on the road surface) and its policies for handling appeals submitted late. The LGO has concluded its investigation however discussions between TfL and the complainant are still ongoing as to the remedial action that could be taken.
- 5.33 In the second new investigation the LGO found that TfL had acted reasonably in reaching a settlement with the tenant.

Investigations by Ombudsman



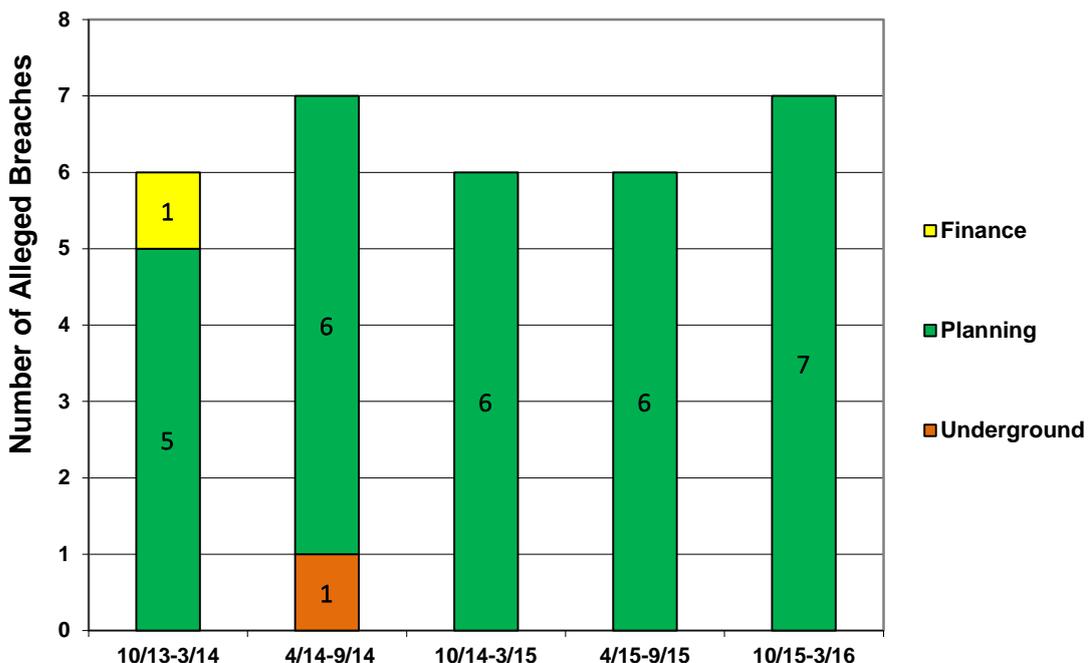
Notices Received Regarding any Alleged Breach of Law by a Local Authority or Other External Agency

- 5.34 Planning reported five outstanding notices from the previous reporting period and two new notices in the current period. The first outstanding notice was a Decision Notice of an Enforcement Appeal received on 25 October 2013 regarding the installation of a new shopfront, awning and roller shutter at 42-43 Haven Green. The tenant has not complied with the Notice and it has been agreed that unless the tenant complies prosecution will proceed on 31 August 2016. TfL continues to monitor the matter.
- 5.35 The second outstanding notice received on 25 February 2014 was an Enforcement Notice from London Borough of Haringey relating to an unauthorised front extension to units on 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. TfL wrote to the tenant to remind them of their lease obligations and the risk of prosecution by the London Borough of Haringey. The tenant lodged an appeal with the Planning Inspectorate. During this period, the Enforcement Notice remains stayed while a newly appointed property management company prepares proposals for the frontages of the properties and all the adjacent properties. TfL continues to monitor the matter.
- 5.36 The third outstanding notice received on 16 April 2014 was an Enforcement Notice from London Borough of Tower Hamlets regarding the removal of an unauthorised shop front, shutter and awnings and reinstatement of a timber framed shop front at 285 Whitechapel Road. The tenant had until 1 December 2015 to complete the works. The London Borough of Tower Hamlets Enforcement Officer confirms that the approved shopfront has been installed and that the matter is now closed.
- 5.37 The fourth outstanding notice received in July 2014 was an Enforcement Notice from London Borough of Tower Hamlets regarding an unauthorised change of use of premises on Mile End Road. TfL wrote to the tenant to remind them of their

lease obligation. The premises have now returned to their original use and the matter is closed.

- 5.38 The fifth outstanding notice received in August 2015 was from Westminster City Council for removal of an unauthorised temporary electrical cabinet at Terminus Place. The cabinet was removed while TfL submitted a planning application. Westminster City Council has granted TfL temporary permission until 30 June 2016.
- 5.39 The first new notice was received in January 2016 in relation to Green Ferry Road, E17 regarding overhanging vegetation. TfL established that the land is owned by the London Borough of Waltham Forest and it has been agreed that the notice can be disregarded.
- 5.40 The second notice was received in March 2016 from the London Borough of Camden in relation to Godstone Road, Purley in respect of advertising hoarding installed on TfL land without consent. TfL has informed the London Borough of Camden that the hoarding will be removed.

Alleged Breaches of Law by a Local Authority/Other External Agency



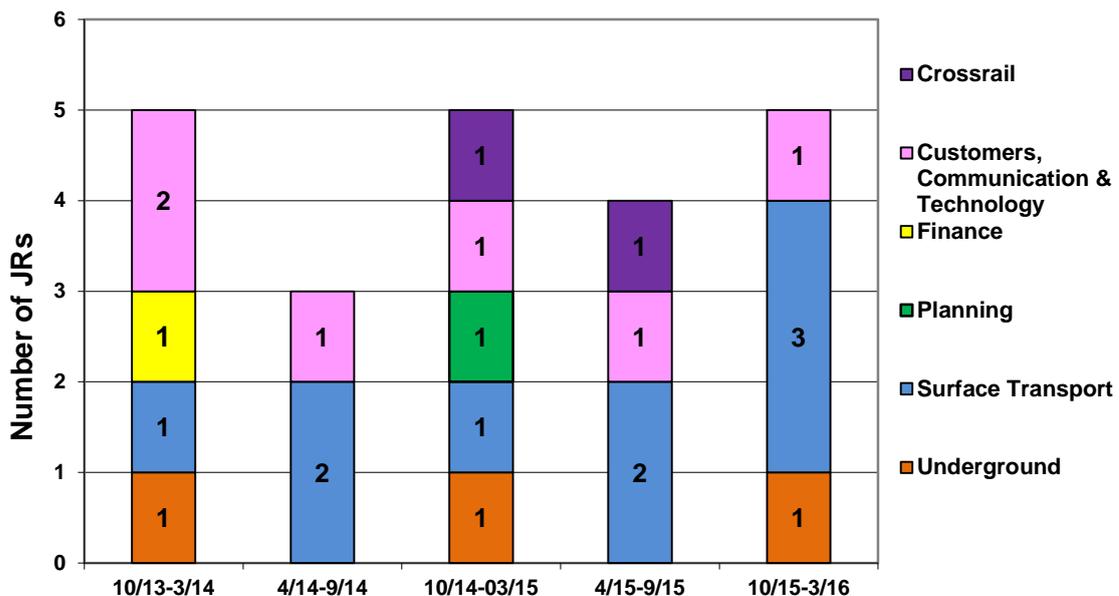
Decisions Subject to a Judicial Review

- 5.41 Surface Transport previously reported that Eventech Limited (a subsidiary of Addison Lee) was granted permission to bring a judicial review against the London Borough of Camden's Parking Adjudicator's decision not to allow Private Hire Vehicles (PHV) the same rights as Hackney licensed vehicles to use bus lanes. In April 2012, TfL successfully obtained an injunction preventing Addison Lee from causing, encouraging or assisting PHV drivers to use bus lanes marked for use by taxis. The Court also declared the indemnity Addison Lee had offered to drivers in respect of bus lane fines and liabilities to be void and unenforceable. The hearing took place on 19-21 June 2012 and the application was refused on all grounds and Eventech Limited was ordered to pay TfL's costs of defending the claim.

- 5.42 Eventech Limited then made an application for permission to appeal the decision and this was granted on 6 December 2012. The Court of Appeal hearing took place on 23 and 24 May 2013. On 29 September 2013 the Court of Appeal issued an Order referring the State aid questions raised to the European Court of Justice (ECJ). The appeal was adjourned pending the outcome of the ECJ hearing which was held on 3 July 2014. On 24 September 2014, the Advocate General, who represents the EU's interests, issued its opinion to the ECJ. The Opinion concluded that if TfL could show that black cabs and PHVs are not legally and factually comparable on grounds of safety and efficiency (which the Advocate General suggested may well be the case), no question of State aid would arise by allowing taxis but not PHVs to use the bus lanes during certain hours of the day.
- 5.43 On 14 January 2015, the ECJ gave its judgment on the State aid issues. The ECJ's decision concluded that making bus lanes available to taxis and not PHVs in order to establish a safe and efficient transport system does not appear of itself to amount to State aid. The judgment also states that the policy may conceivably affect State trade but this finding alone would not affect the conclusion overall that the policy does not appear to the ECJ to give rise to State aid.
- 5.44 The Court of Appeal will now determine the State aid issue (which must take into account the ECJ's ruling) and whether the policy breached freedom of movement of services and the principle of equal treatment. A decision of the Court of Appeal is awaited.
- 5.45 In the last report, Surface Transport reported that on 13 August 2015 TfL received a claim for judicial review made by the London Taxi Drivers' Association (LTDA) seeking a declaration that the ongoing construction of the East-West Cycle Superhighway, without planning permission, was in breach of planning control. TfL defended the claim. Following a hearing on 13-14 January 2016, the LTDA's claim was dismissed and TfL was awarded £10,000 in costs.
- 5.46 Surface Transport reported one new claim for judicial review. The application was made on 31 March 2016 by residents living in the vicinity of Archway in respect of the consultation process for creating bus stands as part of the Archway gyratory system improvement works. Since the end of the reporting period, permission for judicial review has been refused and the residents were ordered to pay TfL's costs.
- 5.47 Customers, Communication and Technology previously reported a judicial review application arising out of a decision (in April 2012) not to allow an Anglican Mainstream/Core Issues Trust advert on London's buses. The claim was initially issued against the Mayor but TfL was substituted as the Defendant. The hearing took place on 28 February and 1 March 2013. On 22 March 2013 the claim was dismissed on all grounds and the Judge held that displaying the advertisement would have been in breach of TfL's duties under the Equality Act 2010. The claimant was also ordered to pay TfL's costs.
- 5.48 Permission to appeal to the Court of Appeal was granted and the appeal hearing took place on 9 and 10 December 2013. On 27 January 2014 the Court of Appeal decided that while it would not have been a breach of the Equality Act to run the advert, the decision not to run the advert was justifiable in terms of the Human Rights Act and European Convention provisions on freedom of expression and freedom of religion.

- 5.49 The Court of Appeal awarded TfL 75 per cent of its costs for both the first hearing and the Court of Appeal hearing.
- 5.50 The Mayor was added as second defendant and a further hearing took place on 30 June and 1 July 2014. On 30 July 2014, the Judge found that it was TfL rather than the Mayor which took the decision, and while the Mayor had strongly expressed his opinion on the decision, his motivation in doing so was not electoral and not improper.
- 5.51 The Claimant applied for leave from the Court of Appeal to appeal the decision, which was refused at a hearing on 10 June 2015. We continue to seek recovery of our costs and have recently agreed a settlement with the claimant.
- 5.52 London Underground has reported one new judicial review claim in this period. Proceedings were issued by the London Borough of Islington in a claim challenging TfL's decision to close Caledonian Road tube station from March to October 2016 in order to refurbish its lifts. TfL decided to withdraw its decision for reconsideration and the claim was discontinued. Following a further risk assessment, TfL decided to that the station could remain open during the lift refurbishment work.

Judicial Reviews

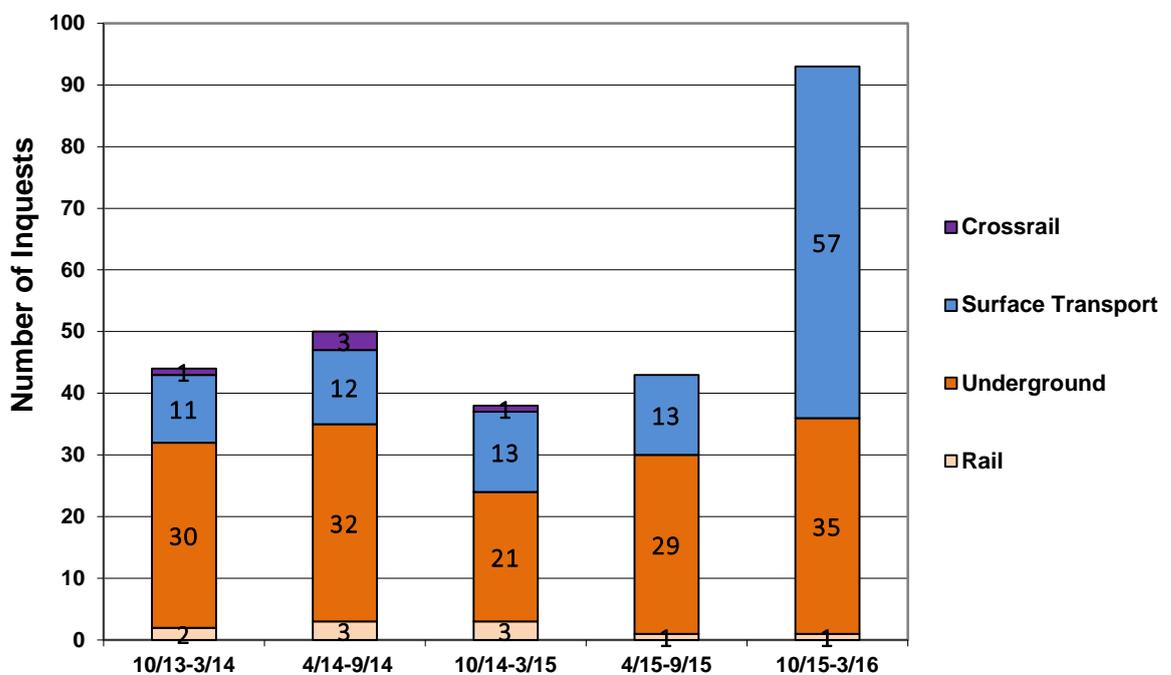


Inquests

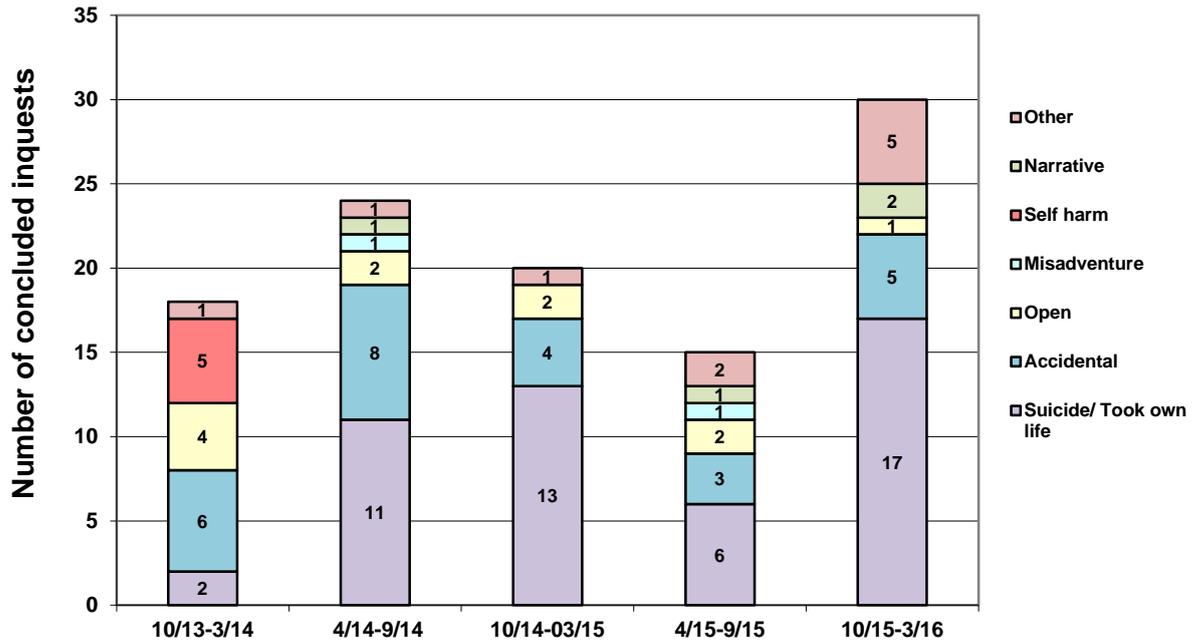
- 5.53 London Underground has been involved in 35 inquests, 18 have been carried forward from the previous report and 17 are included in this report for the first time.
- 5.54 Of the 18 inquests carried forward from the previous report, 12 were suicides, one was a narrative verdict, one an accident, one death from surgical complications and three are awaited. Of the 17 new inquests reported, five were suicides, one was an open verdict and 11 are awaited.
- 5.55 London Rail reported one inquest carried forward from the previous report. An inquest took place on 11 January 2016 recording a narrative verdict.

- 5.56 Surface Transport reported 16 outstanding inquests in the last report and 41 new inquests. One of the inquests outstanding in the last report related to a fatal accident on board the Woolwich Ferry that occurred on 3 August 2011. The Marine Accident Investigation Branch published their report on 16 August 2012. The Maritime and Coastguard Agency prosecuted Serco Ltd, which was the operator of the ship at the time. On 16 October 2015 Serco was found not guilty of failing to take reasonable steps to ensure that the ship was operated in a safe manner contrary to section 100 of the Merchant Shipping Act 1995. However, it was found guilty of failing to ensure the health and safety of workers and other persons so far as is reasonably practicable. Serco was fined £200,000 and ordered to pay £220,000 prosecution costs. The inquest took place on 18 and 19 April 2016 and the Coroner recorded a verdict of accidental death.
- 5.57 Of the 15 remaining outstanding inquests, three inquests were accidents, five resulted in no inquests being held following the prosecution of the drivers involved and seven are awaited.
- 5.58 Of the 41 new fatal accidents reported, 24 occurred during this reporting period and 17 occurred during previous periods but are reported here for the first time. All of the 17 fatal accidents involved bus collisions. We await further information from the Metropolitan Police and Coroner's Court on the status of any inquests.
- 5.59 Of the 24 new fatal accidents reported, ten fatalities involved collisions with buses, five involved collisions with HGVs, three involved collisions with motorbikes, four involved collisions with vehicles, one involved a collision with a minicab and one a police van. The status of the inquests for these fatalities is yet to be confirmed by the Metropolitan Police and Coroner's Court.

Inquests



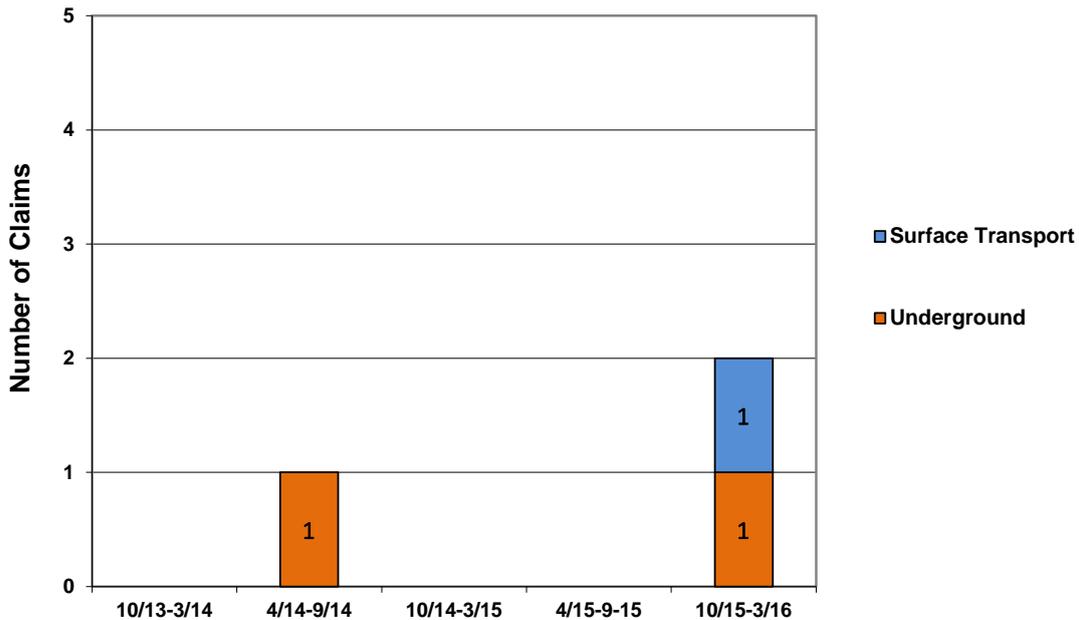
Inquest Findings



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

- 5.60 Surface Transport reported one claim from a contractor under the London Highways Alliance Contract in relation to restrictions to working on the Transport for London Road Network. A court hearing is awaited and the claim will be robustly defended.
- 5.61 London Underground reported a claim brought by Thorntask Limited for allegedly outstanding amounts under four works contracts across the London Underground network. London Underground has filed a counterclaim for commissions paid by Thorntask to two former London Underground employees. This matter is also currently being investigated by the British Transport Police. The hearing of the civil case has been listed for three days commencing on 30 January 2017.

Commercial/ Contract Claims

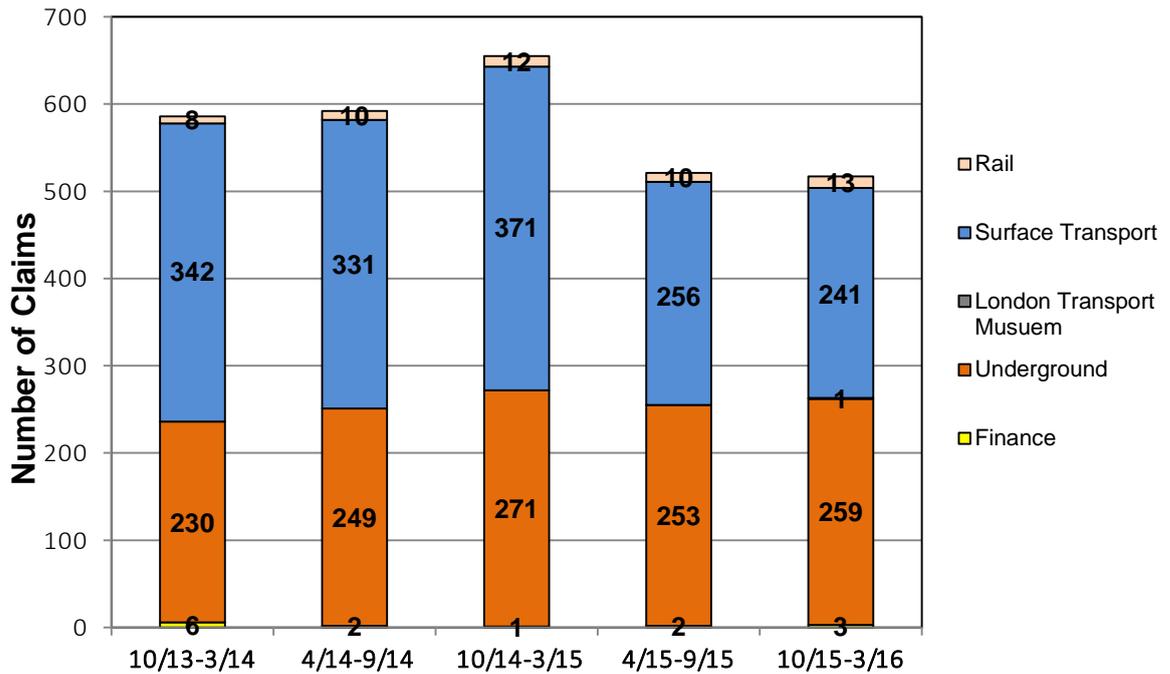


Personal Injury Claims

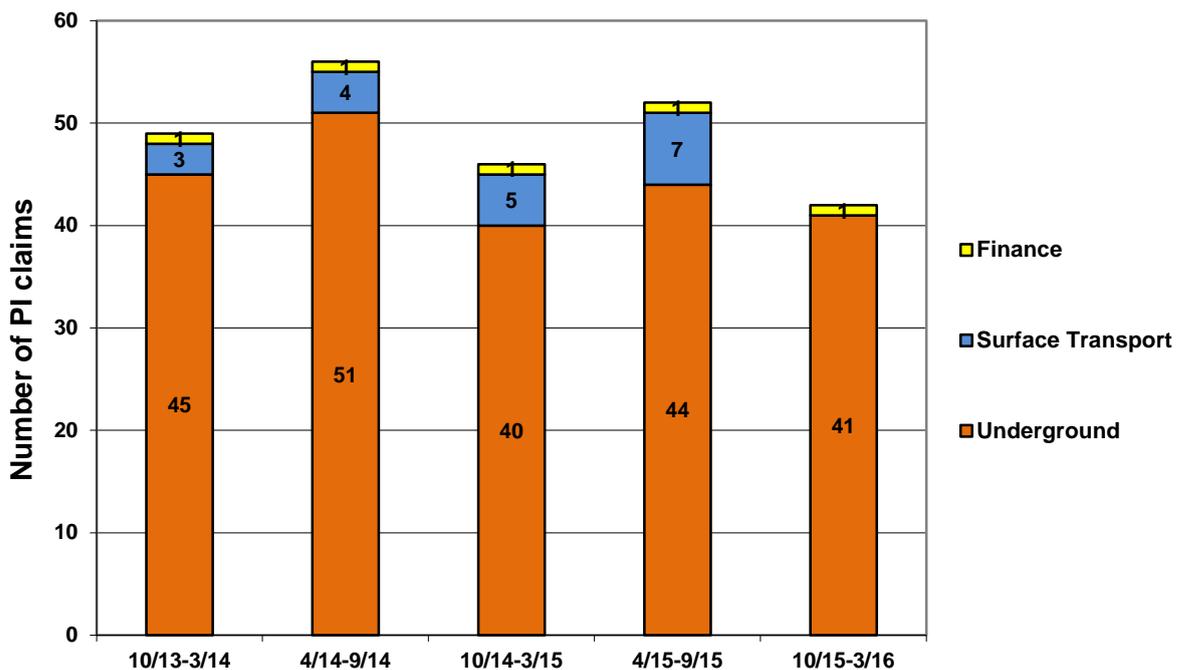
- 5.62 London Underground has been the subject of 259 claims for personal injury that were closed during the period of this report, of which 41 claims were employers' liability claims by staff and 218 claims were for public liability by customers/members of the public.
- 5.63 Of the 218 claims for public liability, 157 were closed without payment and 61 were settled.
- 5.64 Of the 41 claims for employers' liability, six were closed without payment and 35 were settled.
- 5.65 London Rail has been the subject of 13 claims for personal injury that were closed during the period of this report, of which all claims were for public liability. Of the 13 claims, six were closed without payment and seven were settled.
- 5.66 Surface Transport has been the subject of 241 claims for personal injury that were closed during the period of this report, of which all claims were for public liability.
- 5.67 Of the 241 claims for public liability, 148 were closed without payment and 93 were settled.
- 5.68 Finance has been subject to three claims for personal injury that were closed during the period of this report. One was an employer's liability claim and two were public liability claims.
- 5.69 The employer's liability claim was closed without payment.
- 5.70 Of the two public liability claims, one was closed without payment and one was settled.

- 5.71 London Transport Museum has been subject to one claim for personal injury that was closed during the period of the report, which was for public liability. The claim was closed without payment.
- 5.72 Out of the 517 personal injury claims closed by TfL during this period, 320 were closed without payment and 197 were settled. There was a decrease of four personal injury claims closed for this reporting period compared to the 521 claims closed and reported in the last reporting period (1 April 2015 – 30 September 2015).

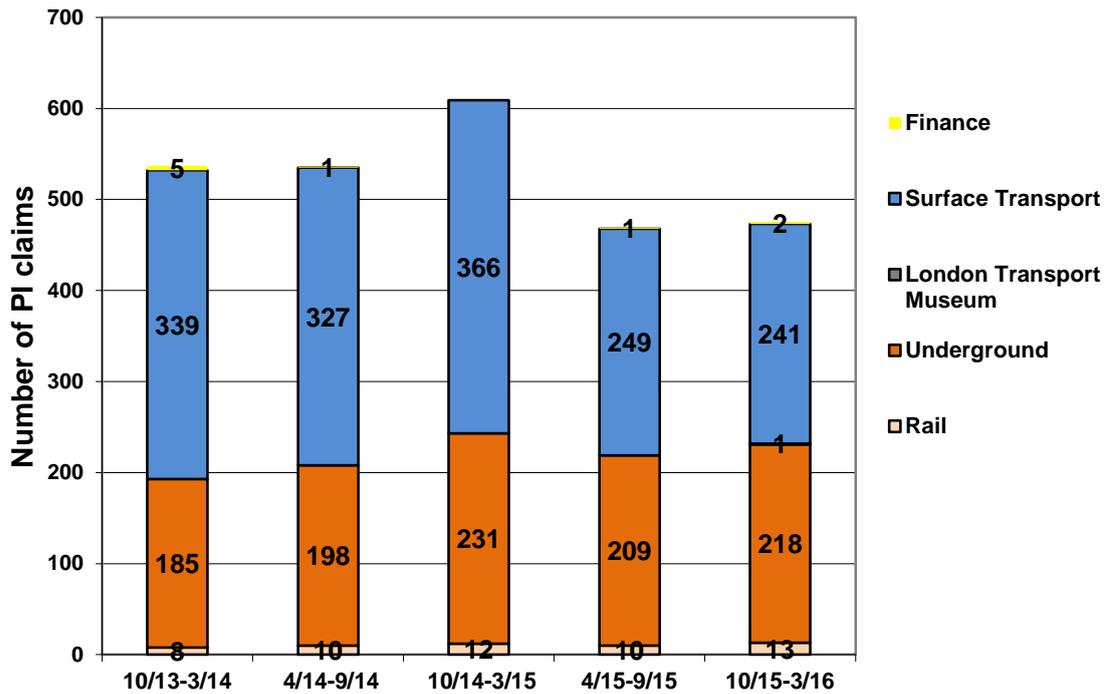
Personal Injury Claims Concluded in the Reporting Period



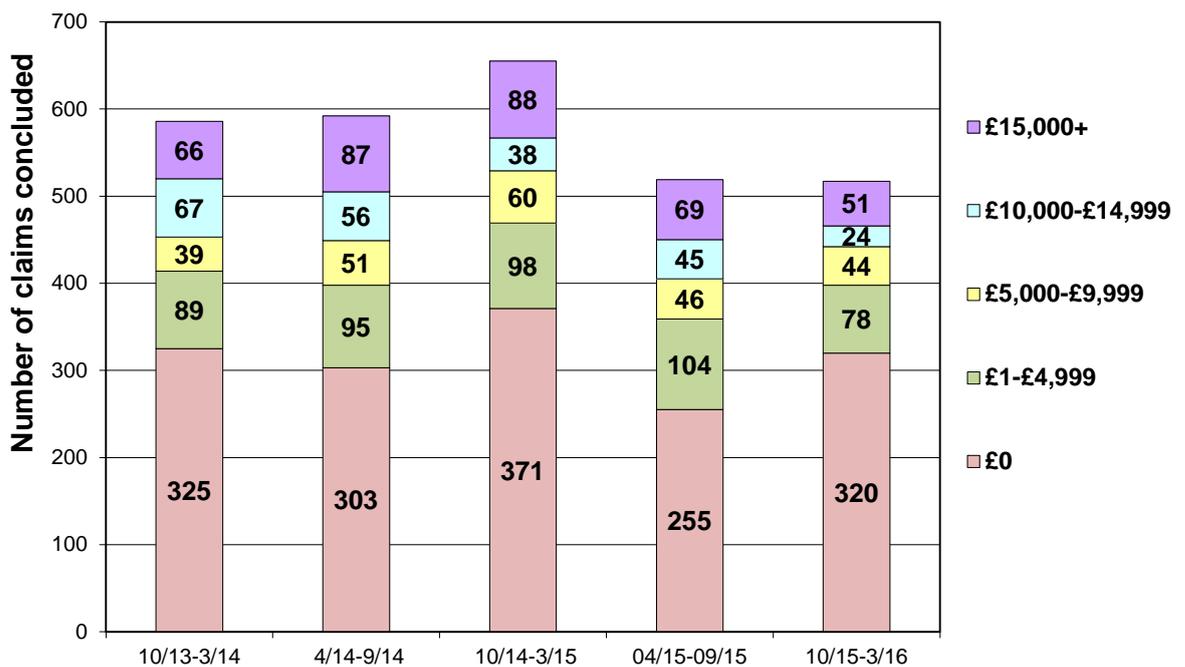
Personal Injury Claims – Concluded Employers' Liability (Staff)



Personal Injury Claims – Concluded Public Liability (Customers)



Personal Injury Claims – Concluded Cases



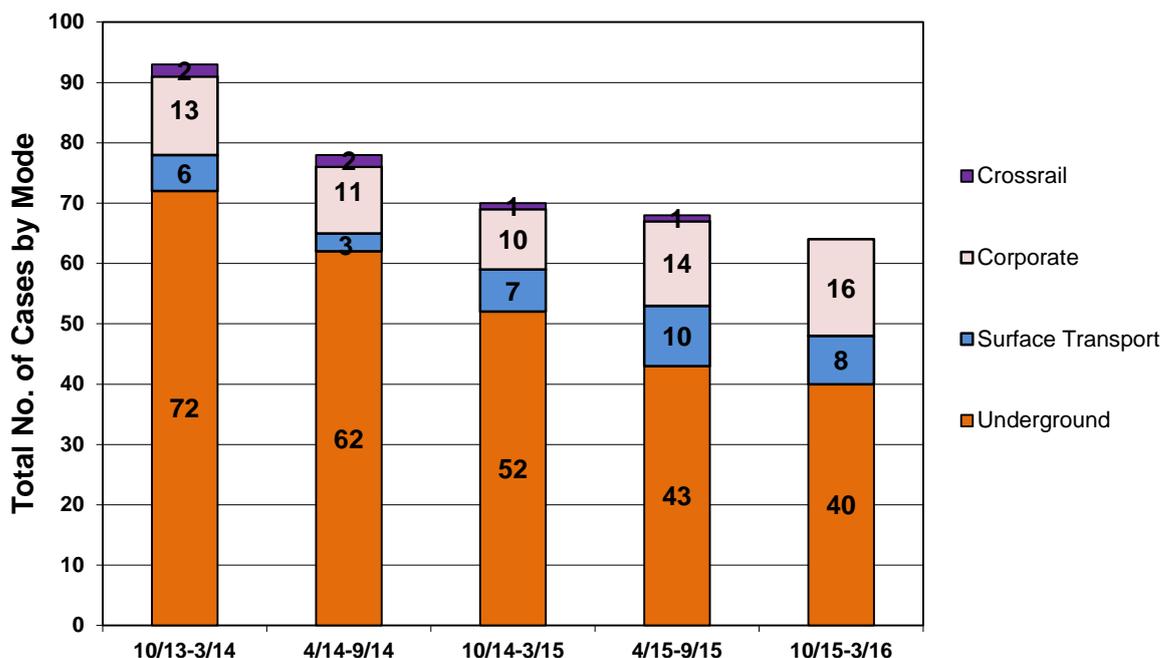
Employment Tribunal (ET) Proceedings

- 5.73 TfL continues to take a proactive and robust approach to managing ET cases, coupled with an extensive training programme for managers on the latest developments in the law and best practice so as to avoid employment disputes as far as possible. The number of ET claims continues to decrease.
- 5.74 The procedure for employment tribunal cases has changed, with conciliation taking place at an earlier stage. The ACAS early conciliation regime has been in place for approximately 20 months. It requires employees wishing to bring a claim

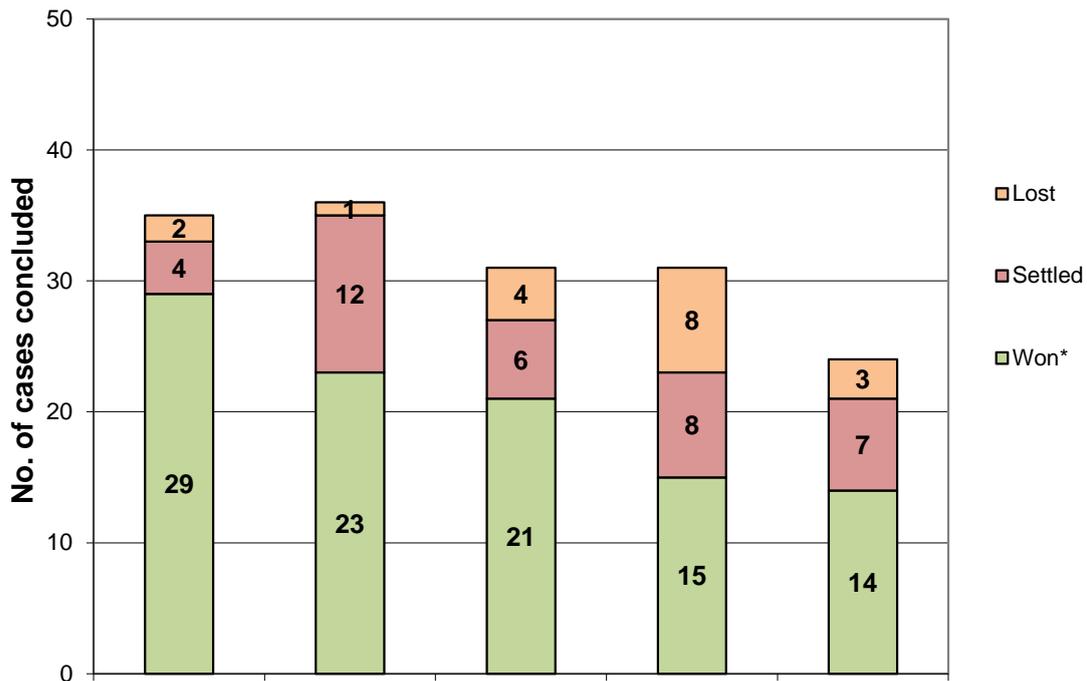
in the Employment Tribunal to attempt conciliation via ACAS before a claim is issued. In TfL's experience the process is effective in that it has enabled a number of claims to be resolved without resorting to litigation which has saved time and money for TfL. In addition, early conciliation has enabled better identification and focus of the key issues in any claim. Although early conciliation can extend the overall length of the case management process, we consider that the benefits of early conciliation outweigh this.

- 5.75 London Underground has been the subject of 40 ET claims during the period of this report. Of these, 23 were for unfair dismissal, two were for sex discrimination, one was for trade union detriment, eight were for disability discrimination, two for race discrimination, one was for breach of the Agency Workers Regulations, one was for public interest disclosure and two were for discrimination on grounds of religion.
- 5.76 Surface Transport has been the subject of eight ET claims during the period. Of these, seven were for unfair dismissal and one was for discrimination on grounds of religion.
- 5.77 Specialist services have been the subject of 16 ET claims during the period. Of these, four were for unfair dismissal, nine were for disability discrimination, one was for race discrimination and two were for unlawful deductions of wages.
- 5.78 Of a total of 64 ET claims, 40 cases are ongoing and 24 were concluded during the period. Of the 24 ET cases concluded during this period, eight were won, five were withdrawn, one was struck out, seven were settled and three were lost.
- 5.79 There was a decrease of four ET claims during this reporting period from the 68 claims reported in the last reporting period (1 April 2015 – 30 September 2015).

Total number of Claims



Employment Tribunal Cases Concluded

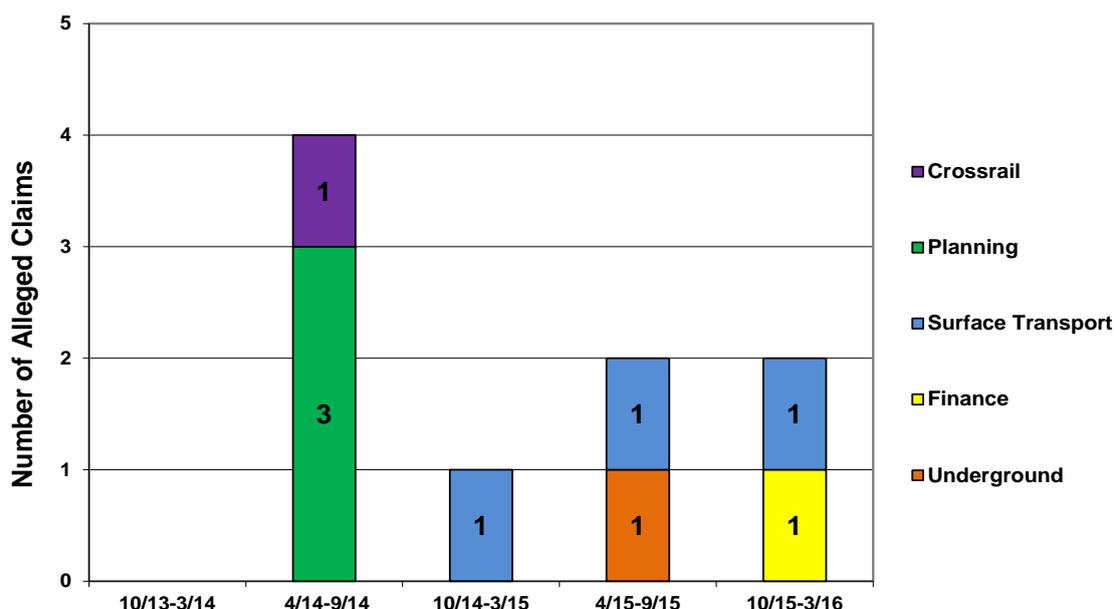


*Claims won include withdrawn and struck out claims

Civil Debt in Excess of £5,000

- 5.80 Surface Transport previously reported a claim brought against TfL by the London Borough of Enfield in March 2014 for the recovery of unpaid invoices relating to monitoring CCTV cameras. Discussions between the parties are still ongoing.
- 5.81 Finance reported a claim received from the London Borough of Hackney for non-payment of non-Domestic Rates since 2013 relating to a property at 324 Railway Arch, E8 4EA. TfL had not received invoices for the payment of the non-Domestic Rates due to the incorrect address on the account. Some of the invoices were paid in January 2016. TfL awaits further detail on the remaining invoices.

Unpaid Debt



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

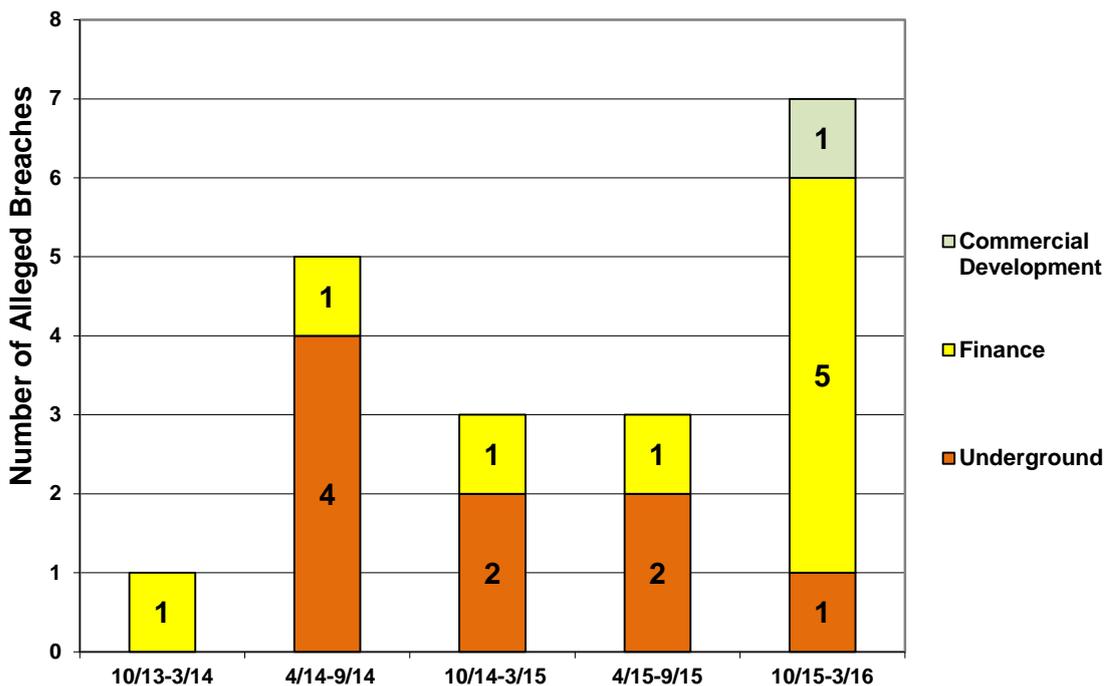
- 5.82 London Underground reported one new alleged breach, in February 2016, following a complaint from an unsuccessful bidder who was excluded at the pre-qualification stage in the procurement for London Underground Civils and Tunnelling Framework. A review was undertaken and bidders were invited to resubmit their pre-qualification responses. The re-submitted pre-qualification responses were re-evaluated resulting in the bidder being included in the list of bidders to be invited to tender.
- 5.83 Finance reported five alleged breaches. The first alleged breach was notified in February 2016 in relation to the procurement for Pan-GLA Transcription and General Note Taking Services claiming TfL has applied different criteria in relation to two lots at pre-qualification stage. The bidder was unsuccessful in the procurement of Lot 1 but successful for Lot 2 and alleged a breach of the Public Contracts Regulations 2015. Following clarification by TfL, the bidder took no further action.
- 5.84 The second alleged breach was notified in October 2015 relating to an alleged breach of the principles of equal treatment and transparency in the procurement of Customer information Assistant Services. Information was exchanged and the procurement process re-run and the contracts concluded.
- 5.85 The third alleged breach was notified in February 2016 from two bidders in relation to the Recruitment Services Contract for engineering roles. The complainant alleged errors in the evaluation process. The process was reviewed and no breach was found. The contracts were concluded with no further action taken.
- 5.86 The fourth alleged breach was notified in March 2016 in respect of the

procurement for Recruitment Services Contract for temporary engineering positions for one Lot. Following clarification from TfL, the unsuccessful bidder took no further action.

5.87 The fifth alleged breach was a complaint received from a bidder in February 2016 in relation to the procurement of Project and Programme Management and Commercial Services Framework. The bidder alleged the call-off evaluation process was not properly conducted and that there was a lack of transparency. TfL responded to the bidder’s concerns and the call-off contract has been concluded without any further action.

5.88 Commercial Development reported an alleged breach in relation to a lease at Down Street Station. The bidder alleged an error in the evaluation process and a breach of the principles of non-discrimination and transparency. Commercial Development responded to the bidder’s concerns and no further action has been taken to date. Since the end of the reporting period, a second complainant made an application without notice for an injunction restraining TfL from continuing with the Down Street tender process, or any process relating to use or development of disused stations. That complainant alleged his company had been unfairly excluded from the process. The application was dismissed.

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



Other Known Breaches

5.89 The Directorates were asked to identify other material breaches of law which had not been addressed elsewhere. Customers, Communication and Technology reported one complaint received from a member of the public regarding the information on the TfL website and a leaflet produced on assistance dogs for Taxi and Private Hire, alleging the information was misleading and harmful, because they implied that only assistance dogs accredited by Assistance Dogs UK (ADUK) should be accepted by taxis and private hire drivers. The Advertising Standards Authority (ASA) agreed that the information was misleading under the Advertising

Code. ASA resolved the complaint informally and TfL amended the information on the website on 22 April 2016. TfL has advised the ASA that if a customer with a dog which is not accredited by the ADUK experiences a driver refusing them travel in London, TfL will take up their complaint and investigate. This may lead to prosecution of drivers and /or operators if found that an offence under the Equality Act has been committed. No further action has been taken by the ASA and the matter is closed.

5.90 No other alleged breaches were identified.

Other Material Compliance Issues

5.91 Finance previously reported a dispute in relation to highways land that was vested in various London Boroughs which TfL maintain and was transferred to TfL on 3 July 2000 pursuant to the GLA Roads and Side Roads (Transfer of Property) Order 2000. Of the 32 London boroughs, agreement has been reached for land transfers with 29 boroughs. Proceedings and discussions are still ongoing with the remaining two boroughs.

Management of Compliance Issues

5.92 It should be noted that with effect from 1 February 2016 there have been changes to the sentencing guidelines for health and safety offences. If an organisation is prosecuted for a health and safety offence, the fines are likely to be higher than they may have been previously, with the level of fine being based on turnover.

5.93 TfL's legal and compliance risks are managed as part of TfL's overarching strategic risk management framework. A range of operational and assurance processes are in place to mitigate these risks at all levels in the organisation.

5.94 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.

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

- (a) advice to all areas of TfL on the use of customer and employee data, requests for the disclosure of information, management of information and working with business areas to develop and review processes, systems and supplier relationships as necessary;
- (b) promotion of e-learning courses on Freedom of Information, Data Protection and records management, including mobile versions available for staff without computer access;
- (c) the implementation of a programme of pro-active publication of information, to improve transparency and simplify the handling of FOI requests;
- (d) ongoing bespoke training to the business and HR on a range of employment issues including employment law updates, compliance with TUPE, reasonable adjustments requirements and effective case management and providing guidance and best practice learned from

Employment Tribunal cases;

- (e) training on a range of legal issues including alternative dispute resolution, contract law update, NEC Contracts, land transactions and use of TfL's resources and the rules governing the pre-election period ;
- (f) the delivery of bespoke training in connection with the new Utilities Contracts Regulations and preparation of robust documentation to ensure compliance. A 'train the trainer' approach has been adopted to ensure business areas retain a good level of knowledge with the teams;
- (g) support of compliance with the Modern Slavery Act 2015. TfL's initial annual statement is being drafted and to include the measures taken to ensure modern day slavery does not form part of its supply chain;
- (h) continued updates to the standing TfL PQQ template and other documents in the TfL Commercial Toolkit to capture ongoing regulatory changes; and
- (i) 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 2015 to 31 March 2016 sets out the legal and compliance matters of which TfL senior management is aware. There are no material breaches of the 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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