

Date: 18 December 2014

Item 11: Legal Compliance Report (1 April 2014 – 30 September 2014)

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 April 2014 to 30 September 2014.

2 Recommendation

2.1 **That the Panel 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 HSE or Sustainability/Resilience/Security based law between 1 April 2014 and 30 September 2014. 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 Regulation, the London Fire and Emergency Planning Authority, the Environment Agency 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) personal injury claims;
- (h) proceedings in relation to discrimination on the grounds of race, sex, disability, age, religion or belief, sexual orientation, equal pay or breach of contract;

- (i) wrongful or unfair dismissal;
 - (j) other material breaches of the law;
 - (k) any other material issues; and
 - (l) 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. All historic information including Metronet, Tube Lines and Group Services data have been removed to reflect the current organisational structure. In accordance with TfL's commitment to transparency, the legal compliance report is now included in this public paper.

5 Commentary on Legal Compliance Issues

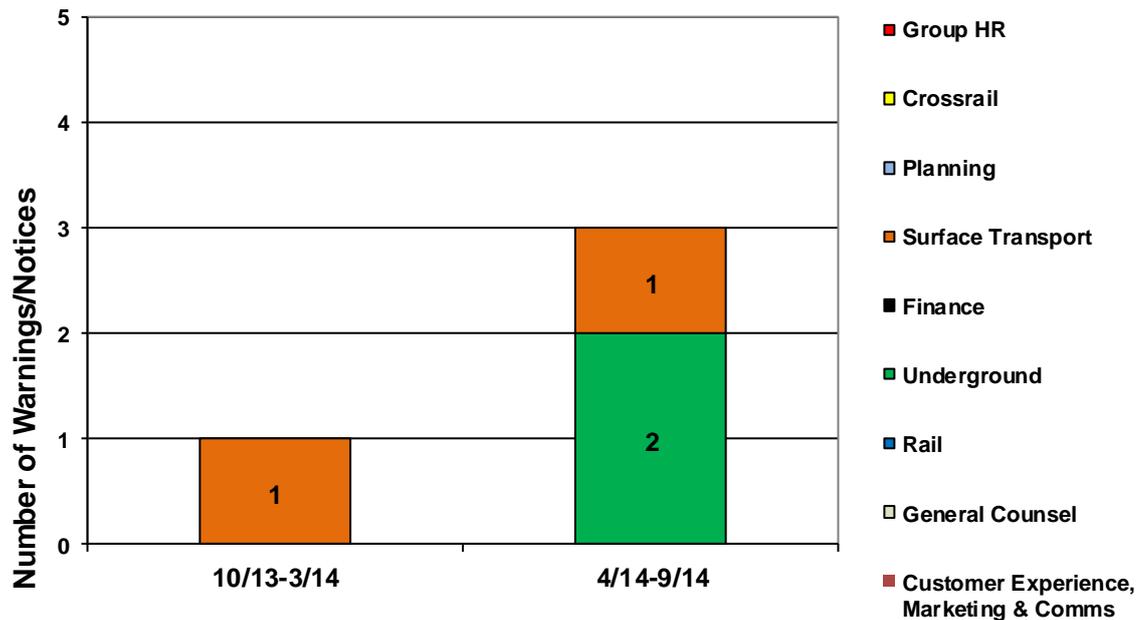
Notification of Intention to Prosecute

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

Formal Warnings or Notices from the Health and Safety Executive (HSE) or Office of Rail Regulation (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 London Underground reported two prohibition notices for the period. The first related to a deferred prohibition notice received on 22 July 2014 from the ORR for an alleged breach at Walthamstow station concerning water ingress. TfL reviewed the working environments and undertook the necessary corrective action. No further communication has been received from the ORR.
- 5.4 The second related to a prohibition notice received on 22 September 2014 from the ORR for an alleged breach following an accident at South Kentish Town disused station vent shaft. TfL has taken steps to prevent a reoccurrence.

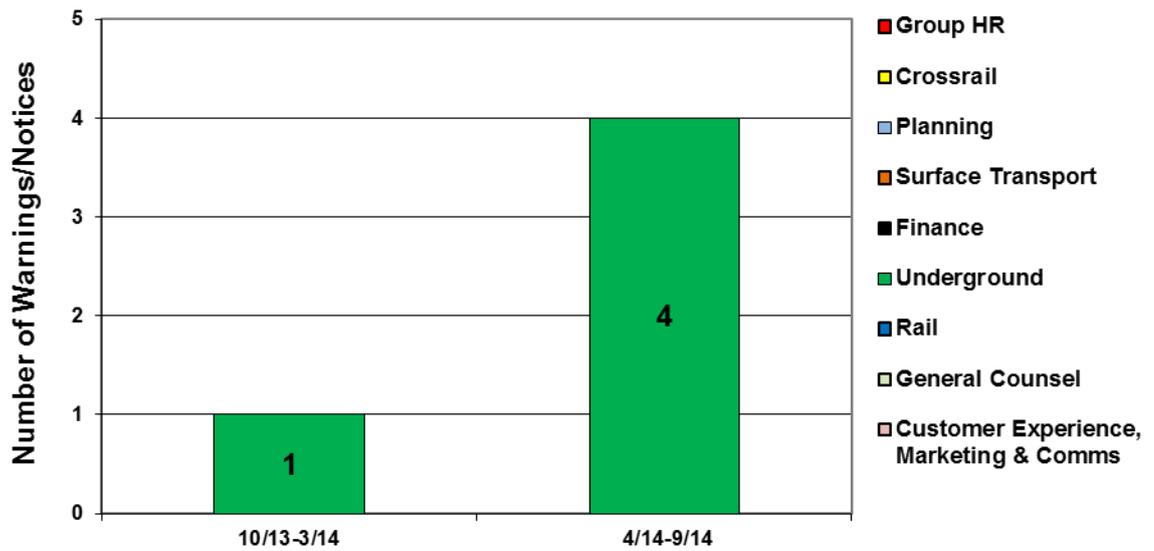
HSE/ORR Formal Warnings/Notices



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

- 5.5 London Underground reported four notices received during this reporting period for fire safety issues. The first notice received on 17 April 2014 was for an alleged breach following a routine inspection by a LFEPA officer at Vauxhall station. The situation has been resolved by London Underground and the LFEPA has confirmed following a site inspection on 30 April 2014 that the works specified in the Enforcement Notice has been satisfactorily completed within the specified time scale.
- 5.6 The second notice received on 24 July 2014 was for an alleged breach following a routine inspection by a LFEPA officer at Baker Street. London Underground complied with the requirement of the notice. LFEPA has been informed that the repair works have been completed. No further communication from LFEPA has been received.
- 5.7 The third notice received on 12 August 2014 was for an alleged breach following a routine inspection by a LFEPA officer at Camden Town station. The situation has been rectified by London Underground. A response was sent to LFEPA on 9 September 2014 and no further communication has been received.
- 5.8 The fourth notice received on 22 September 2014 was for an alleged breach following a routine inspection by a LFEPA officer at Canary Wharf. London Underground took action to address the issues immediately and within the notice timescales. No further communication from LFEPA has been received.

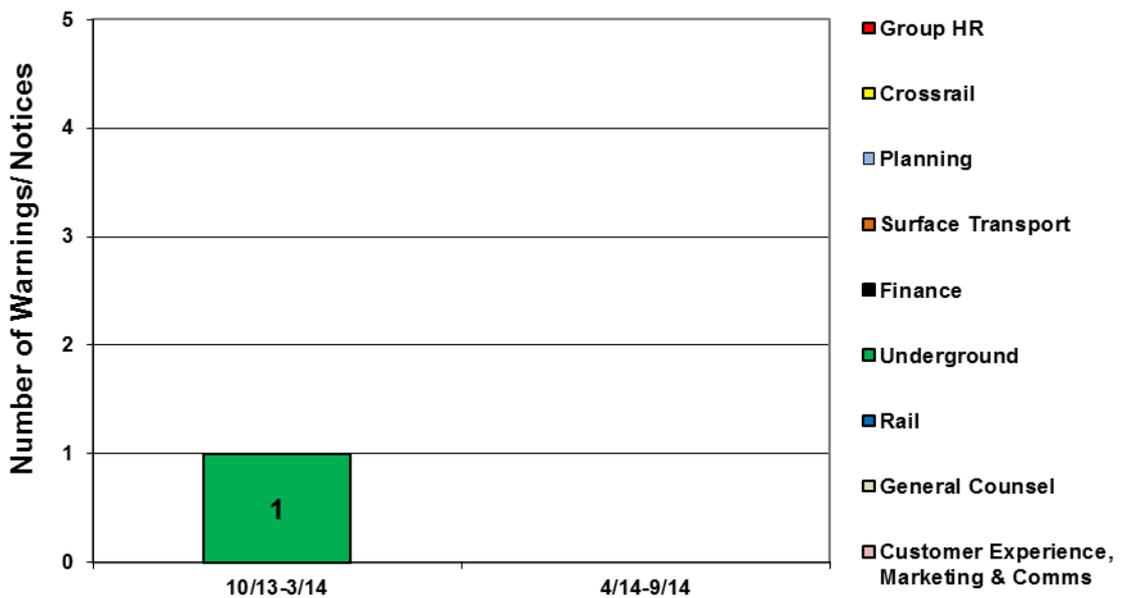
LFEPA Formal Warnings/Notices



Formal Warnings or Notices from the Environment Agency

5.9 No warnings or notices were reported for this period.

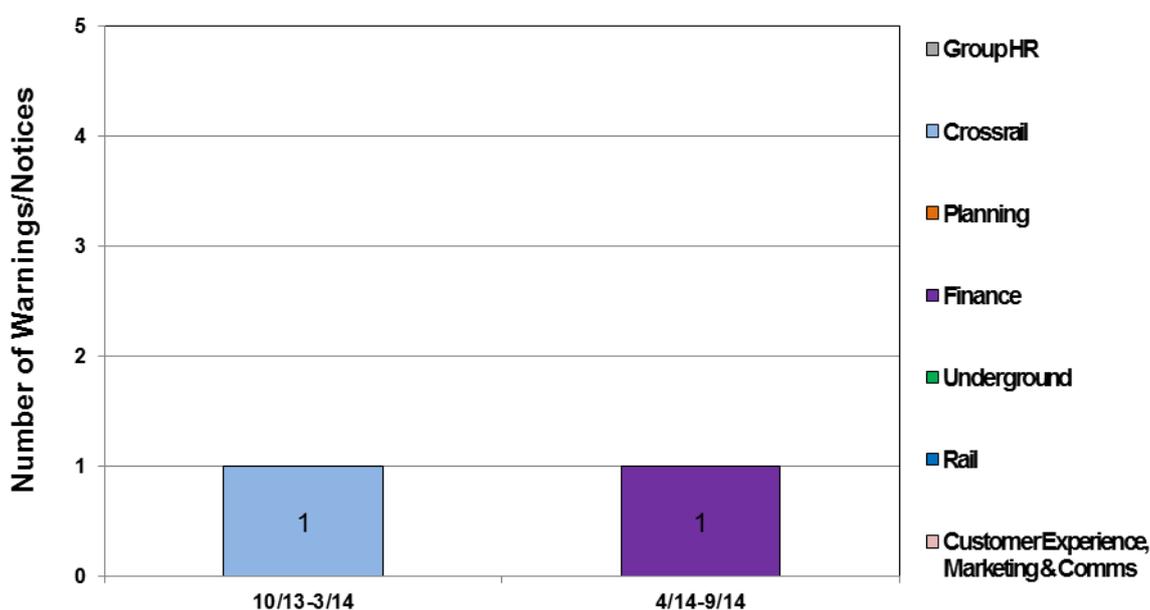
Environment Agency Formal Warnings/Notices



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

- 5.10 Since the end of the reporting period Finance has reported an Enforcement Notice received on 2 October 2014 from London Borough of Lambeth for an alleged breach of planning control under the Town and Country Planning Act 1990 in relation to a site purchased by TfL for the Northern Line Extension (NLE) at 60 Montford Place. The purchase was subject to a lease to a contracting company who is not a TfL contractor. The site was being used as a construction site by the tenant for purposes other than the NLE project before 08:00 hours and on Sundays. TfL has terminated the lease which will take effect on 5 December 2014. TfL has notified the tenant of the alleged breach of the planning control and requested that the tenant comply with the requirements of the Enforcement Notice by 12 November 2014. The local planning authority has been informed.

Other Government Agencies Formal Warnings/Notices



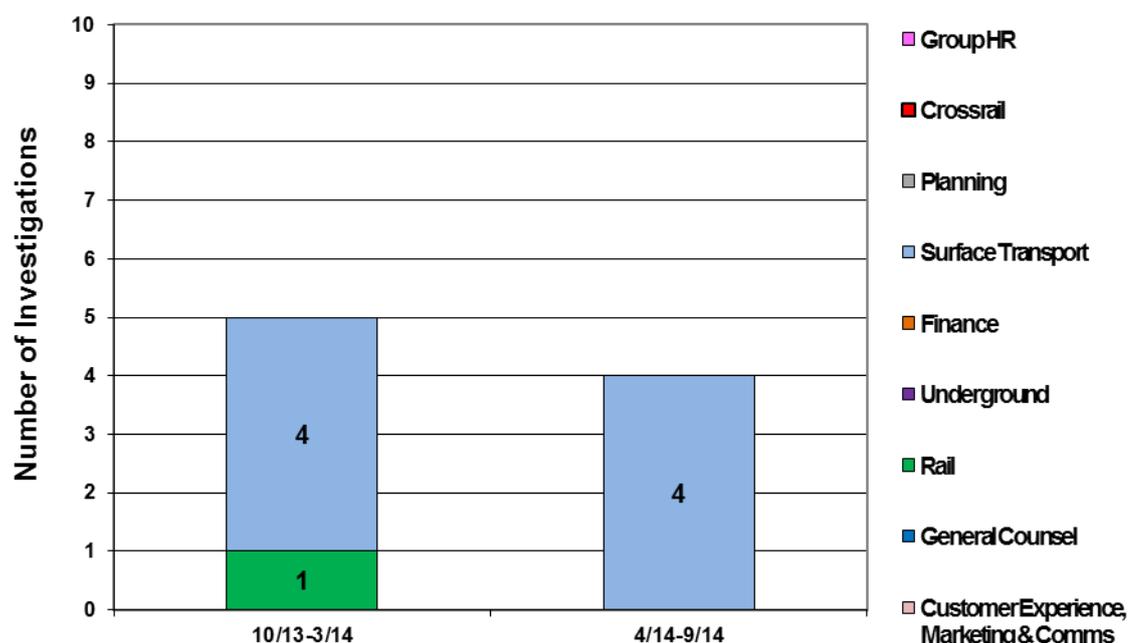
Investigation by an Ombudsman

- 5.11 Surface Transport reported two outstanding investigations relating to issues concerning (i) a bus stop outside a complainant's home compromising her safety and security and (ii) not being able to make arrangements to pay an on the spot Penalty Fare Notice for travelling without a ticket on the DLR. In the first investigation the LGO found that TfL was not at fault in placing the bus stop where it had following a lengthy consultation. TfL has offered to rebuild a wall outside the complainant's home. The complainant has since moved from the property but is still seeking compensation from TfL which is not accepted in view of the LGO finding.
- 5.12 In the second outstanding investigation, following an investigation by the LGO, TfL has agreed to reset the appeals procedure for appellants in cases where they did not receive the opportunity to respond to their appeals. TfL has also put in place mechanisms to advise appellants that appeals could be made online, via email or recorded delivery when sending letters by post. The

Ombudsman was satisfied that the outcome would prevent a reoccurrence in future.

- 5.13 Two new investigations were reported by Surface Transport relating to issues concerning (i) a bus shelter outside a complainant's home which had been moved 180 degrees compromising her ability to maintain her garden wall and (ii) a child travelling on a bus being issued with a Penalty Fare Notice. In the first case the LGO had found the TfL had not been at fault in placing the bus shelter where it had. TfL had offered to remove the panels to the bus shelter should the resident have cause to carry out any maintenance to the garden wall.
- 5.14 In the second case, the complainant could not produce evidence of the disputed travel card and therefore the LGO could not consider the claim. The LGO was satisfied with the manner in which TfL handled the complaint.

Investigations by Ombudsman



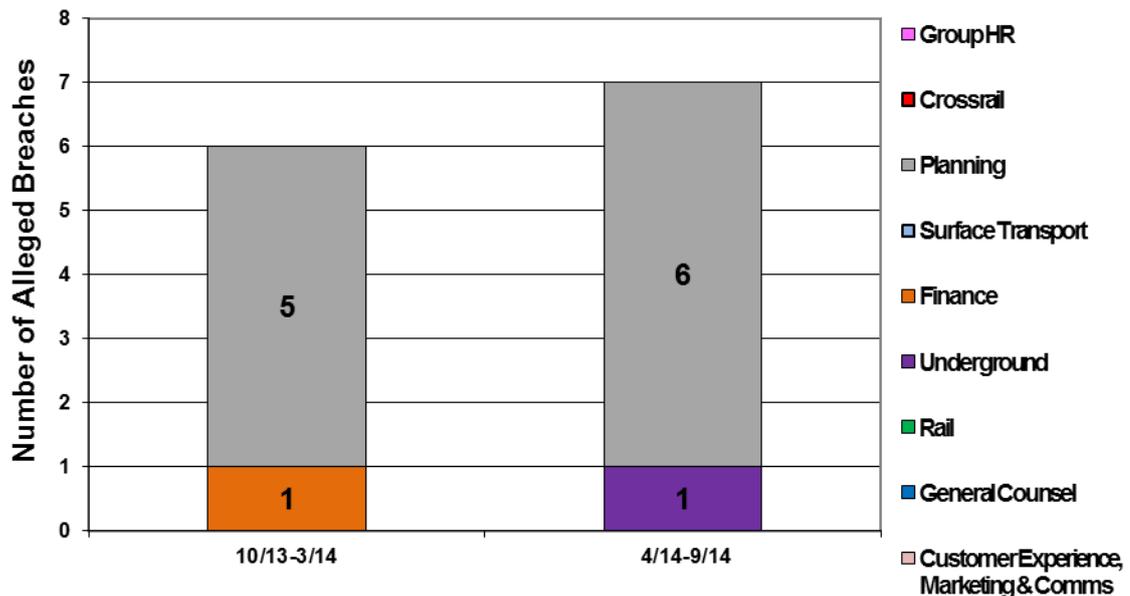
Notices Received Regarding any Alleged Breach of Law by a Local Authority or Other External Agency

- 5.15 Planning reported one outstanding notice and five new notices in the period of which two were received in the last reporting period and included in this report for the first time. The 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. TfL has written to the tenant to remind them of their obligation to comply with the decision and continues to monitor the matter.
- 5.16 The first new 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 has written to the tenant to remind them of their lease obligations and the risk of prosecution by the London Borough of Haringey.

- 5.17 The second new notice received on 28 March 2014 was an Enforcement Notice from London Borough of Tower Hamlets regarding the removal of unauthorised hoardings, satellite dish and fascia panel. TfL has written to the tenant to remind them of their lease obligations.
- 5.18 The third new notice received on 16 April 2014 was an Enforcement Notice from London Borough of Tower Hamlets regarding the removal of unauthorised shop front, shutter and awnings and reinstate timber framed shop front as per a 2011 planning permission. TfL has written to the tenant to remind them of their lease obligations.
- 5.19 The fourth new notice received in July 2014 was an Enforcement Notice from London Borough of Tower Hamlets regarding the unauthorised change of the use of the premises. TfL has written to the tenant to remind them of their lease obligation. London Borough of Tower Hamlets confirmed that the tenant has since lodged an appeal with the Planning Inspectorate and a decision is expected in three to four months time.
- 5.20 The fifth new notice received on 12 August 2014 was a Breach of Condition Notice from Westminster City Council regarding the use of rear terraces only for the purpose of maintenance. TfL has written to the tenant to remind them of their obligation. The tenant's planners have confirmed that only maintenance and window cleaners have access to the rear terraces. The matter is now closed.
- 5.21 London Underground received a notice on 18 September 2014 from the London Borough of Hammersmith and Fulham following a complaint by a resident regarding damaged pigeon netting erected underneath a bridge above a path. London Underground repaired the netting and erected CCTV to monitor underneath the bridge.

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

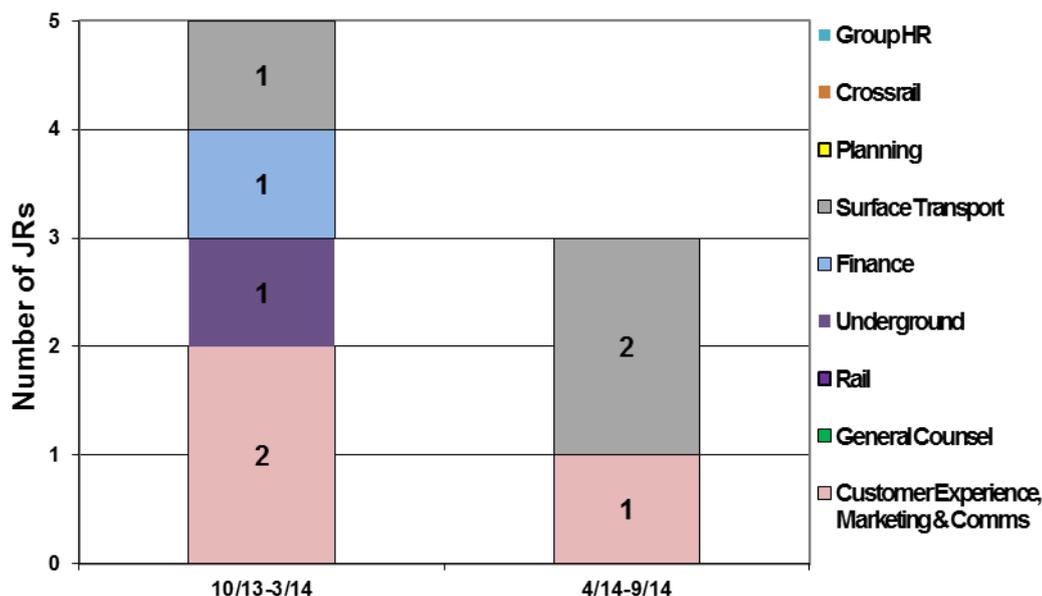


Decisions Subject to a Judicial Review

- 5.22 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 when using the 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.
- 5.23 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 has been 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 concludes that if TfL can show that black cabs and PHVs are not legally and factually comparable on grounds of safety and efficiency (which the Advocate General suggests may well be the case), no question of State aid arises by allowing taxis but not PHVs to use the bus lanes during certain hours of the day.
- 5.24 If the ECJ shares the Advocate General's view then it is likely that TfL will be able show that there is no State aid arising from our bus lane policy when the case returns to the Court of Appeal. The ECJ decision will be given on 14 January 2015, following which the Court of Appeal will give its final decision.

- 5.25 Surface Transport reported a judicial review application brought against the Secretary of State for Communities and Local Government, and the London Borough of Hammersmith and Fulham in respect of planning permission for a TfL Cycle Hire site. Local residents brought judicial review proceedings against the original grant of planning permission to TfL. The London Borough of Hammersmith and Fulham did not defend the application and the Council's decision to grant planning permission was quashed. The planning application was remitted for re-consideration by the London Borough of Hammersmith and Fulham. TfL appealed for non-determination in July 2013 but then did not pursue the matter in June 2014.
- 5.26 Customer Experience, Marketing and Communications previously reported a judicial review application arising out of a decision not to allow an Anglican Mainstream/ Core Issues Trust (CIT) 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.
- 5.27 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:
- (a) 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; and
 - (b) it could not be sure whether the Mayor, rather than TfL, took the decision not to run the advert in April 2012, and if he did, what his purpose was, and therefore the judge who originally heard the case would have to receive further evidence on these issues.
- 5.28 The Court of Appeal awarded TfL 75 per cent of its costs for both the first hearing and the Court of Appeal hearing.
- 5.29 The Mayor was added as second defendant and a further hearing on the issues of who took the decision 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 verdict, his motivation in doing so was not electoral and not improper.
- 5.30 The Claimant is seeking leave from the Court of Appeal to appeal the decision and the decision of the Court of Appeal is awaited.

Judicial Reviews



Inquests

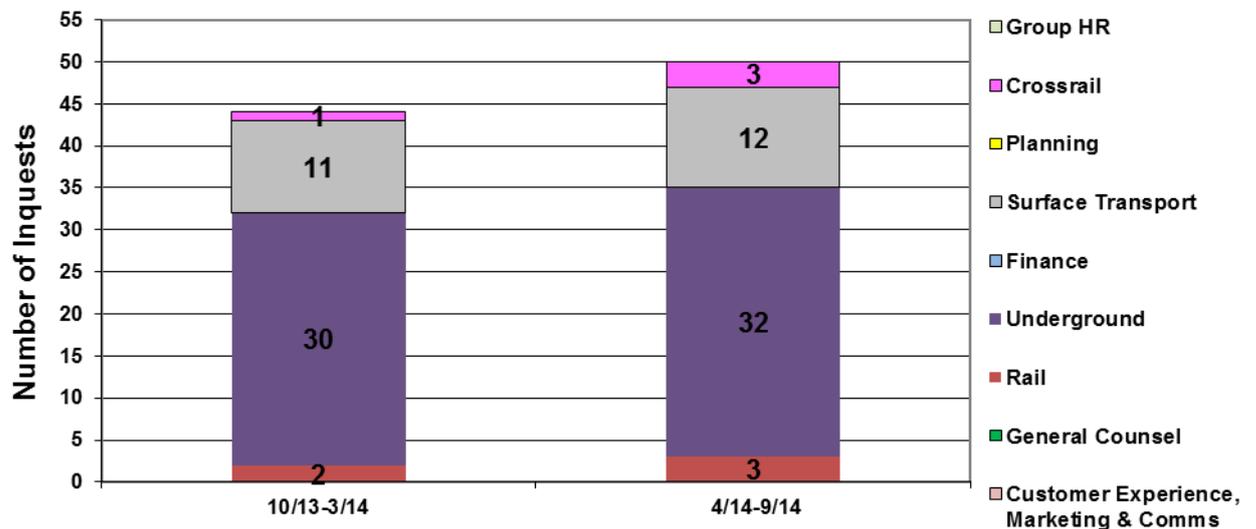
- 5.31 London Underground has been involved in 32 inquests, 17 of which have been carried forward from the previous report and 15 inquests have been included in this report for the first time.
- 5.32 Of the 17 inquests carried forward from the previous report, eight were suicide, one was an open verdict, one accidental death, one narrative verdict, one misadventure and five are awaited. Of the 15 new inquests reported, two were accidental deaths, three suicide and 10 inquests are awaited.
- 5.33 London Rail reported three inquests. Two were carried forward from the previous report and one inquest was included in this report for the first time. Of the two inquests carried forward, one was an open verdict and one still awaits a date for the inquest. A date for the new inquest is also awaited.
- 5.34 Surface Transport reported six outstanding inquests from a previous report and six inquests relating to fatal accidents, four of which occurred in the last reporting period and have been included in this report for the first time. The first outstanding inquest relates to a fatality of a member of crew on board the Woolwich Ferry that occurred on 3 August 2011. The Marine Accident Investigation Branch published their final report on 16 August 2012. A date for the inquest is still awaited. Since the end of the reporting period, Serco the operator of the Woolwich Ferry have been notified that they are to be prosecuted for two failure to keep safe offences.
- 5.35 The second outstanding fatal accident occurred on West India Dock Road when a pedestrian was hit by a car at night on 24 October 2013 whilst crossing the road. The inquest was held on 7 July 2014 and the Coroner concluded that the deceased died as a result of an accident.

- 5.36 The third outstanding fatal accident occurred on 5 November 2013 when a cyclist was hit by a lorry (working on Crossrail) on Mile End Road. The inquest set for 8 April 2014 has been adjourned pending a prosecution of the driver.
- 5.37 The fourth outstanding fatal accident involved a cyclist and a bus on 12 November 2013 near East Croydon station. The inquest took place on 3 October 2014 and the Coroner concluded that the deceased died as a result of a road traffic collision. The Coroner has issued a Prevention of Future Deaths Report to London Borough of Croydon commenting that the signage was confusing. London Borough of Croydon is responsible for signage at this location.
- 5.38 The fifth outstanding fatal accident occurred at the junction of Camberwell Road with Albany Road, when a cyclist was hit by a heavy goods vehicle on 18 November 2013. A date for the inquest is awaited.
- 5.39 The sixth outstanding fatal accident occurred on 24 June 2013 when a cyclist was hit by a car on Loampit Vale Road. The driver was arrested on suspicion of causing death by dangerous driving and a decision whether to prosecute is awaited. A date for the inquest is awaited.
- 5.40 The first new fatal accident occurred on 11 March 2014 when a male pedestrian, a former TfL employee, was killed in a collision with a HGV at Euston bus station. The inquest took place on 28 October 2014 at which the Coroner concluded that the deceased died as a result of an accident.
- 5.41 The second new fatal accident occurred on 22 March 2014 when a female was hit by a bus at Kingston – Cromwell Road. A date for the inquest is awaited.
- 5.42 The third new fatal incident, included in this report for the first time, relates to a male who died from exposure in Barnet on 25 March 2013. The inquest took place on 28 and 29 October 2014. The Coroner will make a Prevention of Future Deaths Report concerning access to information for missing persons which will be sent to the Metropolitan Police.
- 5.43 The fourth new fatal accident occurred on 13 May 2014 when a male cyclist was killed in a collision with an HGV at the southern roundabout at Elephant and Castle. A date for the inquest is awaited.
- 5.44 The fifth new fatal accident occurred on 31 May 2014 when a male pedestrian was killed in a collision with a motorcycle whilst crossing the A23 Streatham High Road. A date for the inquest is awaited.
- 5.45 The sixth new fatal accident occurred on 4 September 2013 when a cyclist was killed in a collision with an HGV in West Dulwich. The inquest is scheduled for 16 February 2015.
- 5.46 TfL continues to progress a range of measures underway to further reduce the number of collisions involving cyclists across London including trialling a bike detection system which utilises radar and imaging technology on three of TfL's redistribution vans to gather data. Initial reports indicate that there is a 90% detection rate of cycles. TfL is also involved with the cycle detection on Buses

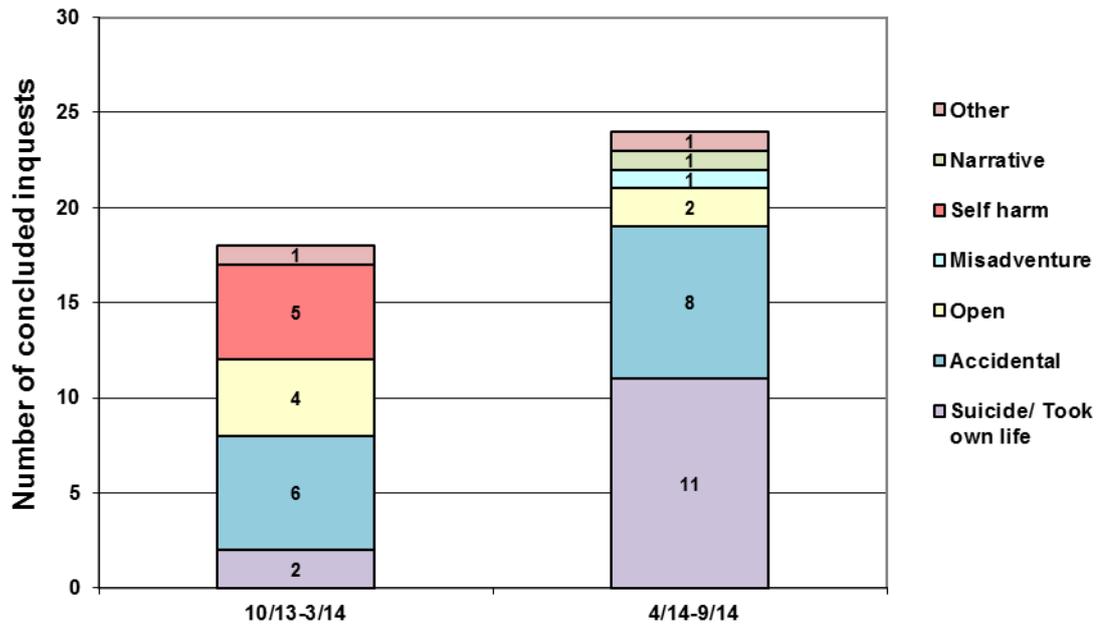
project.

- 5.47 Crossrail reported one fatal accident from the previous reporting period and two new inquests which occurred in the last reporting period and have been included in this report for the first time. The existing fatal accident took place at 113 High Holborn on 15 February 2014 when a pedestrian was killed by falling masonry. The inquest took place in September 2014 and the Coroner concluded a verdict of accidental death.
- 5.48 The first new fatal accident occurred in September 2013 when a cyclist was killed in a collision with a HGV at Finchley Circus. The inquest took place on 4 March 2014 and the Coroner concluded a verdict of accidental death.
- 5.49 The second new fatal accident occurred on 17 March 2014 at Fisher Street when the deceased was working spraying concrete. The Metropolitan Police and the Health and Safety Executive are undertaking an investigation. The inquest is scheduled to commence on 23 February 2015.

Inquests



Inquest Findings

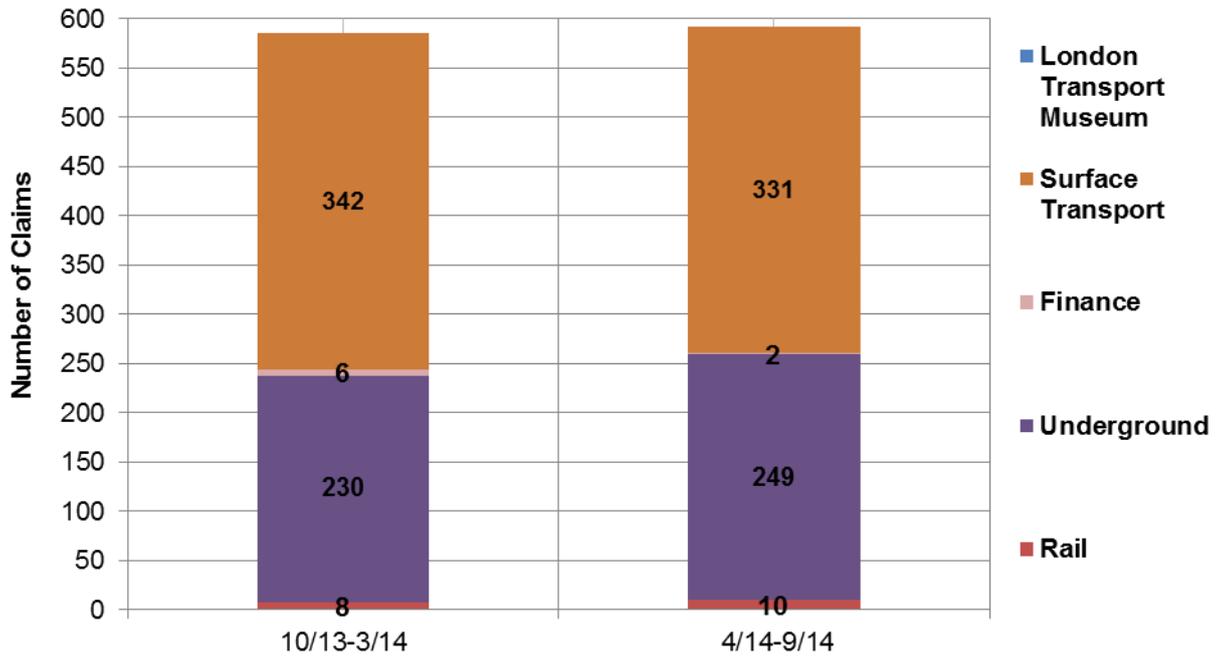


Personal Injury Claims

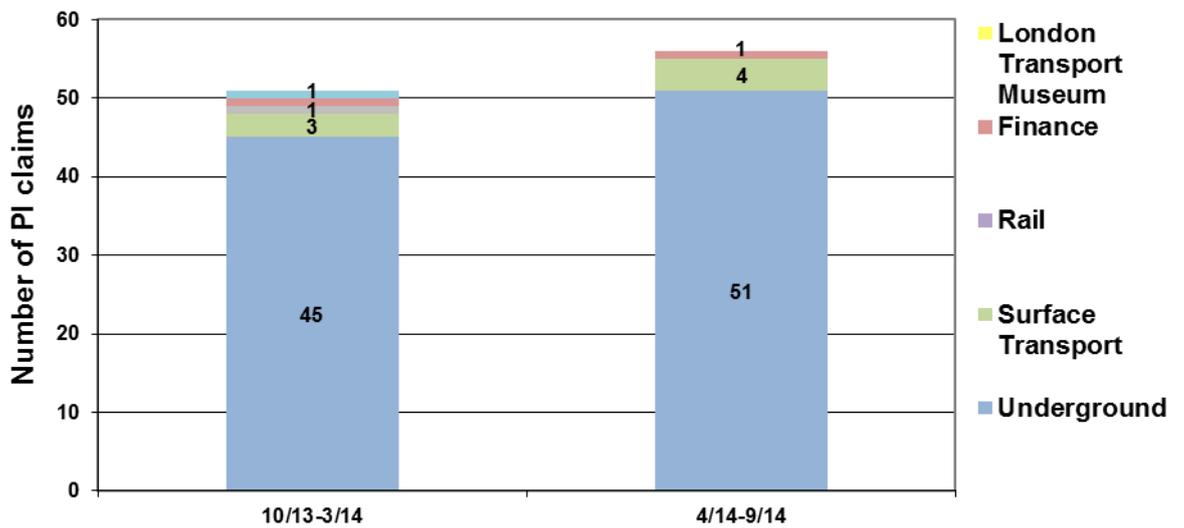
- 5.50 London Underground has been the subject of 249 claims for personal injury that were closed during the period of this report, of which 51 claims were employers' liability claims by staff and 198 claims were for public liability by customers/members of the public.
- 5.51 Of the 51 claims for employers' liability, 10 were closed without payment and 41 were settled.
- 5.52 Of the 198 claims for public liability, 103 were closed without payment and 95 were settled.
- 5.53 London Rail has been the subject of 10 claims for personal injury that were closed during the period of this report, of which all claims were for public liability. Of the ten claims, six were closed without payment and four were settled.
- 5.54 Surface Transport has been the subject of 331 claims for personal injury that were closed during the period of this report, of which four claims were for employers' liability and 327 claims were for public liability.
- 5.55 Of the 327 claims for public liability, 183 were closed without payment and 144 were settled.
- 5.56 Finance has been subject to two claims for personal injury that were closed during the period of this report, of which one was for employers' liability and one was for public liability.
- 5.57 Out of the total 592 personal injury claims closed by TfL during this period, 303 were closed without payment and 289 were settled. There was an increase of 6 personal injury claims closed for this reporting period compared to the 586 claims closed and reported in the last reporting period (1 October

2013 – 31 March 2014).

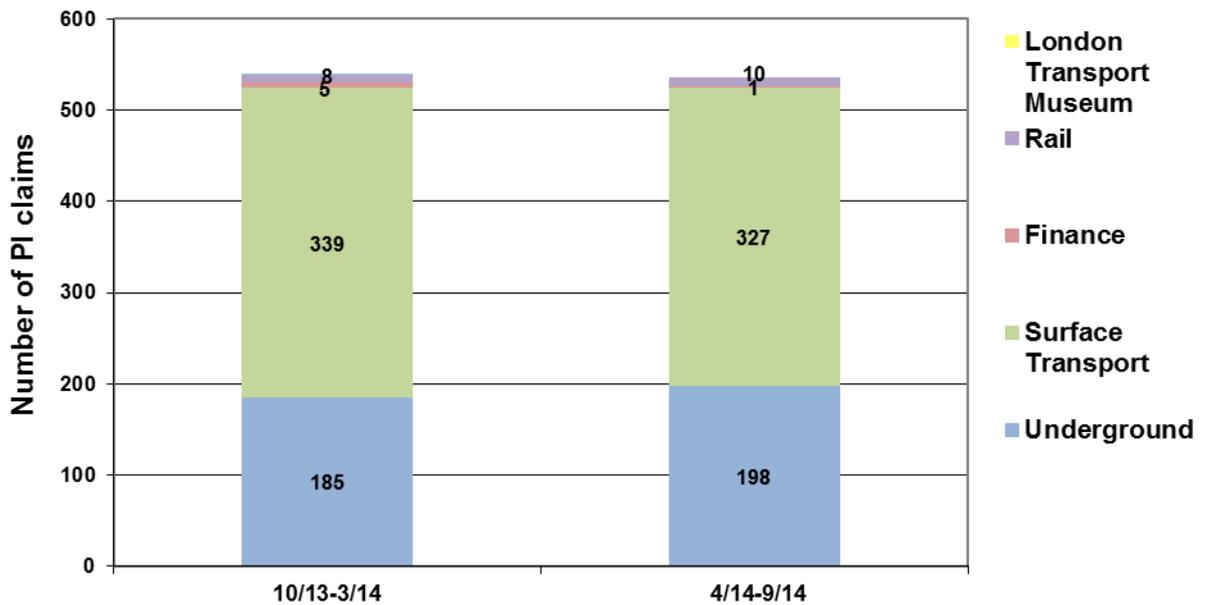
Personal Injury Claims Concluded in the Reporting Period



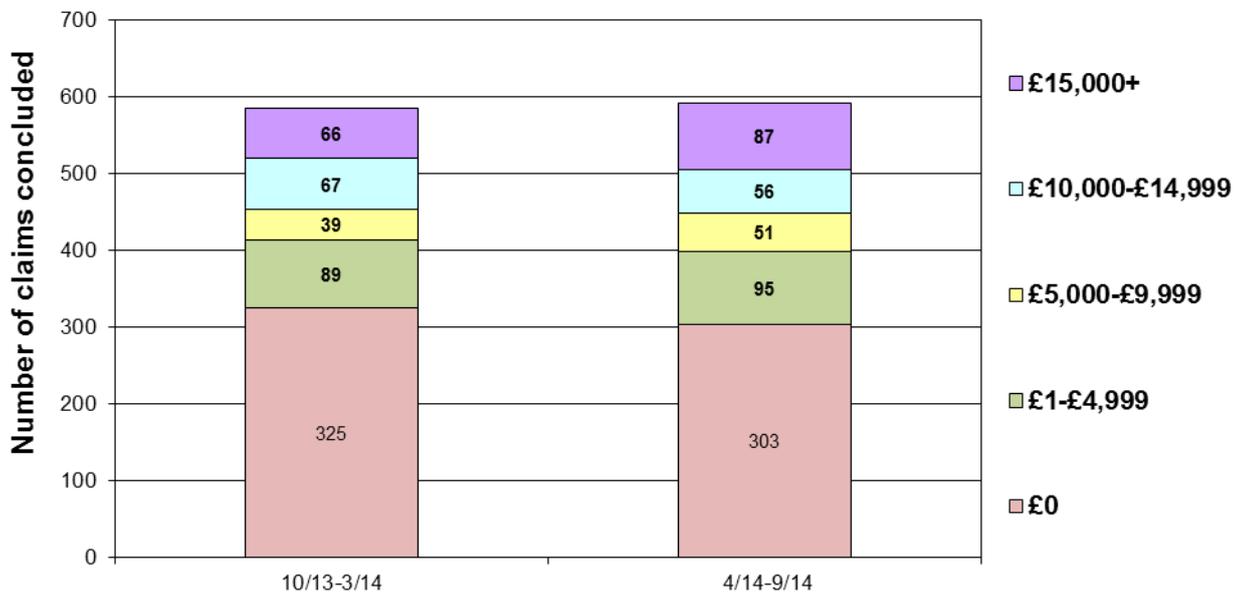
Personal Injury Claims – Concluded Employers' Liability (Staff)



Personal Injury Claims – Public Liability (Customers)



Personal Injury Claims – Concluded Cases

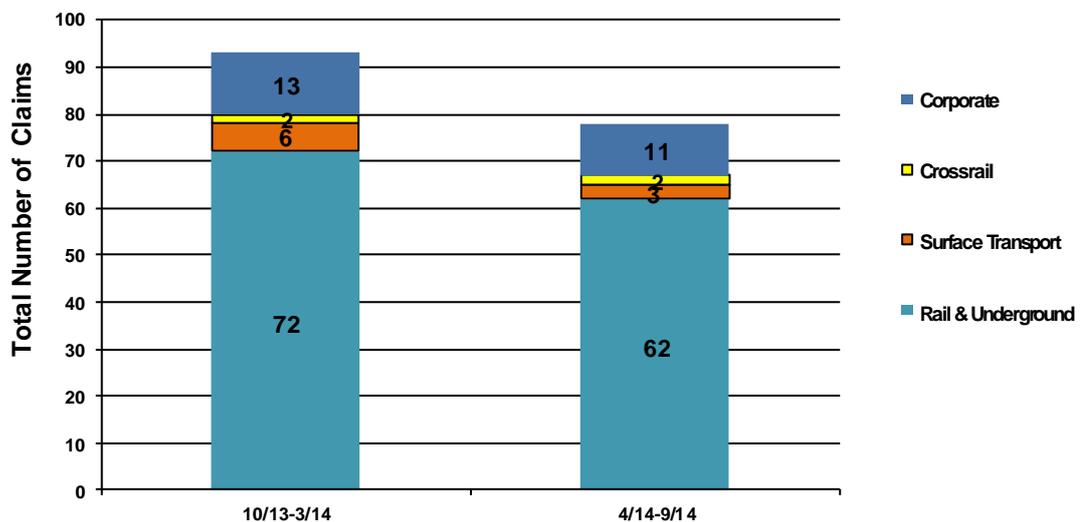


Employment Tribunal (ET) Proceedings

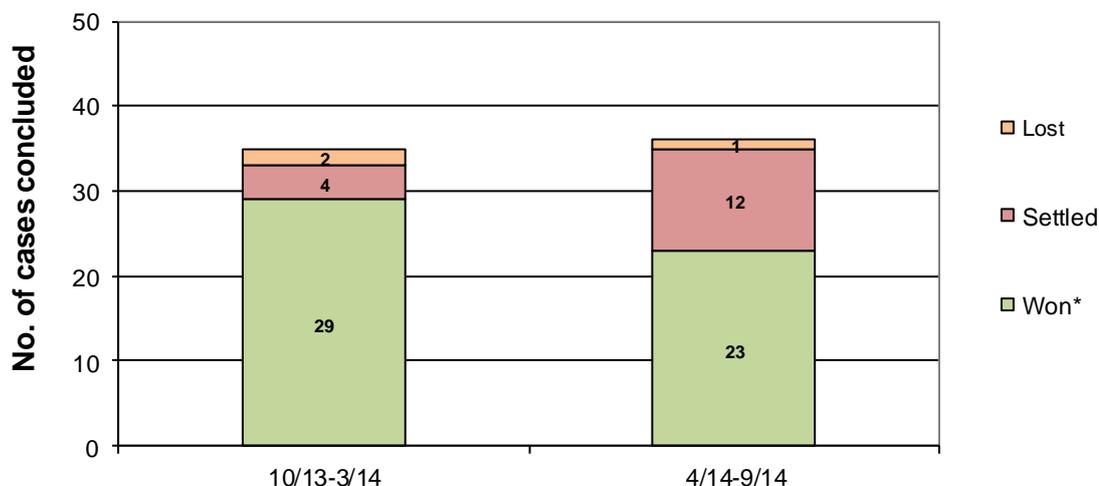
5.58 TfL continues to take a proactive and robust approach to managing ET cases, coupled with an extensive training programme for managers on the latest developments in the law and best practice so as to avoid employment disputes as far as possible.

- 5.59 The number of ET claims have reduced considerably and TfL achieves a successful outcome in more than 80 per cent of cases.
- 5.60 Rail and Underground has been the subject of 62 ET claims during the period of this report. Of these, 33 were for unfair dismissal, six were for sex discrimination, one was for whistle blowing, one was for trade union detriment, ten were for disability discrimination, two for breach of contract, four were for race discrimination, one was for discrimination on the grounds of age, one was for breach of the Agency Workers Regulations, one was for detriment on the grounds of part-time status and two were for breach of the Wages Act.
- 5.61 Surface Transport has been the subject of three ET claims during the period all of which were for unfair dismissal.
- 5.62 Corporate has been the subject of 11 ET claims during the period. Of these, three were for unfair dismissal, six were for disability discrimination, one was for age discrimination and one was on grounds of the Wages Act.
- 5.63 Crossrail reported two outstanding ET claims during the period. Both were for discrimination on the grounds of race.
- 5.64 Of a total of 78 ET claims, 40 cases are ongoing and 38 were concluded during the period. Of the 38 ET cases concluded during this period, seven were won, six were withdrawn, ten were struck out, 14 were settled and one was lost.
- 5.65 There was a decrease of 15 ET claims during this reporting period from the 93 claims reported in the last reporting period (1 October 2013 – 31 March 2014).

Total Number of Claims



Employment Tribunal Cases Concluded



*Claims won include withdrawn and struck out claims

Other Known Breaches

- 5.66 The Directorates were asked to identify any other material breaches of the law which had not been addressed elsewhere. None were identified.

Other Material Issues

- 5.67 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. There are ongoing arbitration proceedings with the remaining three boroughs although agreement in principle has now been reached with one of these and discussions are ongoing with the remaining two.

Management of Compliance Issues

- 5.68 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.
- 5.69 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.
- 5.70 The legal and compliance framework is the subject of continuous review and improvement. Initiatives to address compliance issues across TfL have included:

- (a) providing advice and direction to all areas of TfL on the handling of personal information, management of information, requests for the disclosure of information and the retention of information, working business areas to develop and review processes, systems and supplier relationships as necessary;
- (b) continued promotion of e-learning courses on Freedom of Information, Data Protection and records management including mobile versions available for staff without computer access;
- (c) ongoing bespoke training made available 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;
- (d) training made available to the business on a range of legal issues including Derogations and Single Source Justifications, Distance Selling, Standstill and Evaluation, Procurement Law, Common Legal Terms, Equalities Duty, Alternative Dispute Resolution and Successful Project Delivery;
- (e) a Commercial Peer Review Forum attended by senior managers to consider procurement strategies and contract award recommendations;
- (f) continued use of the TfL Commercial Toolkit. Access to commercial and procurement documents made easier and more intuitive and all documents accessible from one location;
- (g) the implementation of Category Management which allows for greater visibility of the quantity, value and nature of what is procured across TfL and effective compliance with the aggregation rules imposed by the EU Procurement Directives;
- (h) continued use of online resources for example THEMiS, to access up-to-date information on the EU Procurement Directives and case studies to enhance support and advice provided to the business to comply with procurement law;
- (i) ongoing use of the Supplier Quality Assurance process providing TfL with robust tools for complying with relevant health and safety regulations through early identification and mitigation of health and safety risk in particular at the outset of the procurement process;
- (j) continued use of the pan TfL template for procurement strategies, evaluation strategies and contract award recommendations. This has resulted in more robust templates, greater visibility of possible legal compliance issues within the business at an early stage in the planning process, ensuring concerns are highlighted, scrutinised and agreed as appropriate;
- (k) ongoing reporting and recording of gifts and hospitality; and

- (l) continued improved procedures to ensure compliance with borrowing documentation, risk management documents, regulations and TfL Treasury Management Strategy.

6 Conclusions

- 6.1 The Legal Compliance Report for the period 1 April 2014 to 30 September 2014 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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