

Date: 7 July 2015

Item: Legal Compliance Report

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 2014 to 31 March 2015.

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 October 2014 and 31 March 2015. 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 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 compliance 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. 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

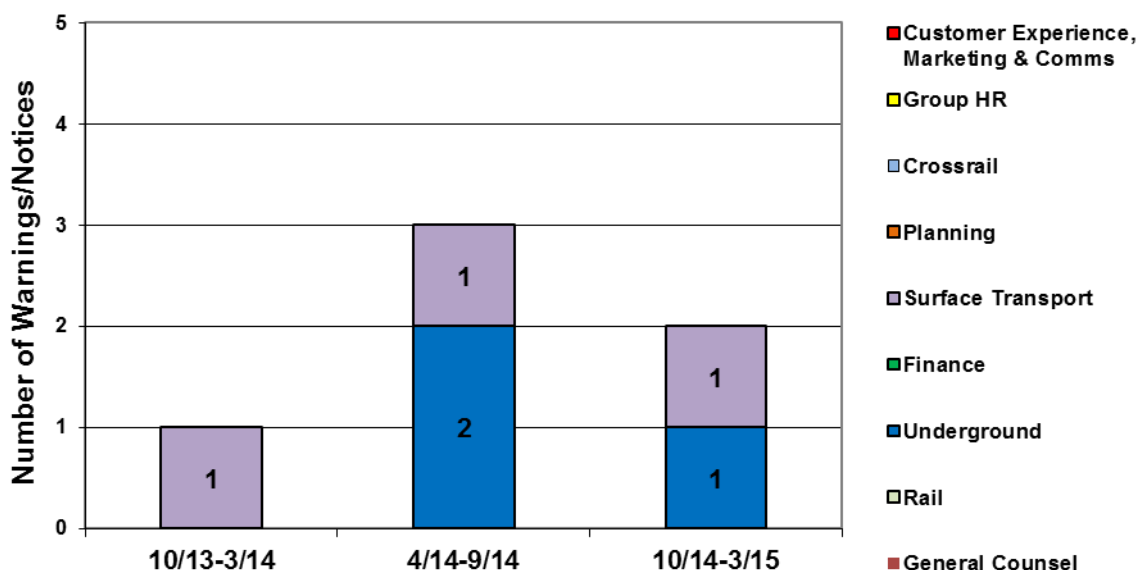
5.1 No notifications of prosecution have been received during this period.

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 London Underground reported an Improvement Notice received on 16 January 2015 from the ORR regarding lifting operations at Ruislip Track store. London Underground complied with the notice and is implementing a Lifting Plan to deal with lifting loads across the network.

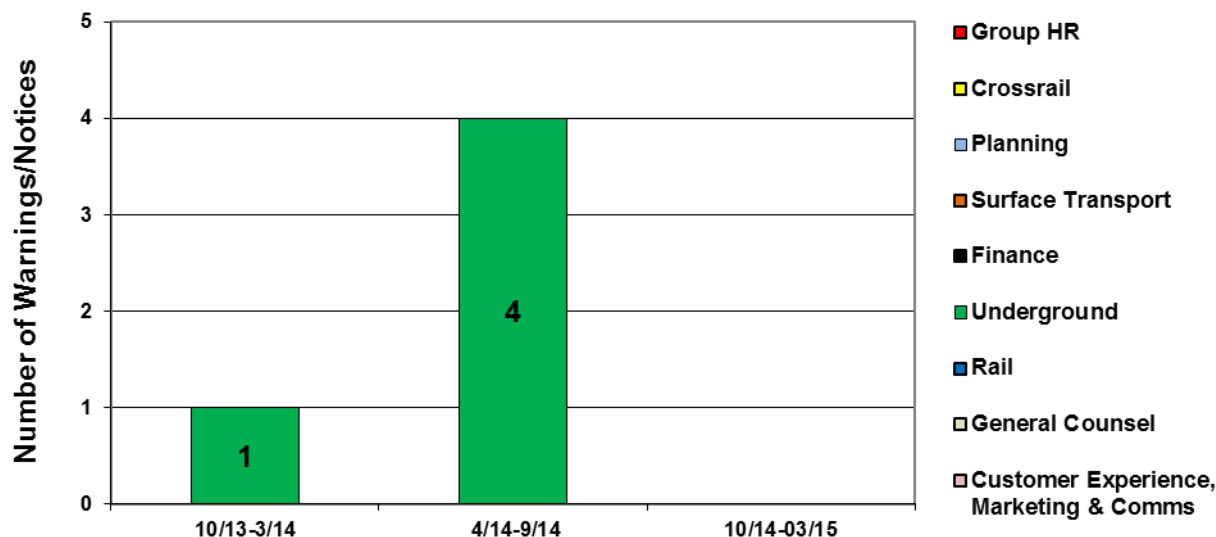
HSE/ ORR Formal Warnings/ Notices



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

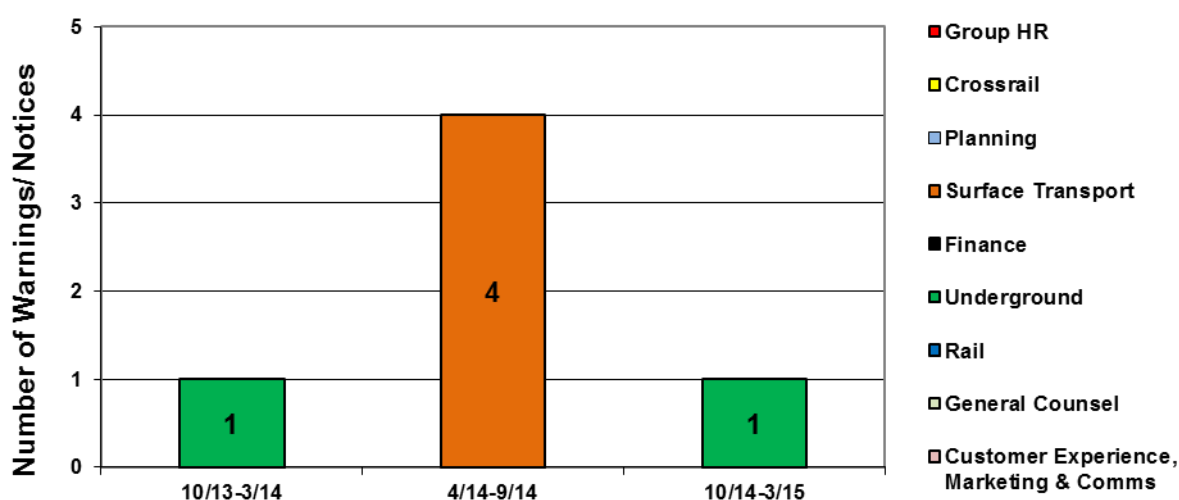


Formal Warnings or Notices from the Environment Agency

5.5 London Underground received an Enforcement Notice on 4 November 2014 for failure to comply with the provisions of the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme Order 2010 (for the year 1 April 2013 – 31 March 2014 (including any outstanding commitment from previous years). The notice required London Underground to surrender its CRC allowance by 28 November 2014 in order to align TfL's compliance with the CRC Energy Efficiency Scheme. London Underground has complied with the enforcement notice.

5.6 The scheme requires participants to measure and report on their energy consumption and to buy allowances from the Environment Agency for the amount of CO2 emissions associated with their energy consumption. London Underground had submitted the appropriate report by the July 2014 deadline but, by administrative oversight, had not taken the further step of ordering and purchasing the requisite allowances. London Underground remedied the matter and complied with the notice within the timescales required. To avoid a recurrence, London Underground's administrative procedures have been reviewed and improved.

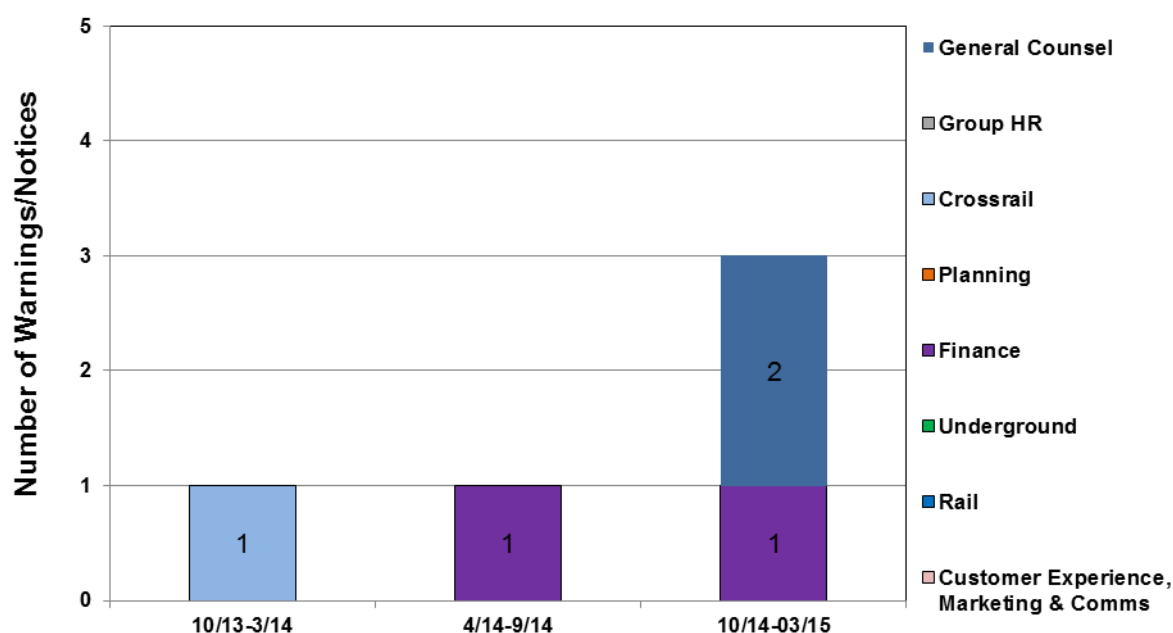
Environment Agency Formal Warnings/Notices



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

- 5.7 Since the end of the last reporting period, Finance reported an Enforcement Notice received on 2 October 2014 from the 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 at 60 Montford Place. The purchase was subject to a lease and the site was being used as a construction site by the tenant. TfL 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 was informed. TfL terminated the lease which took effect on 5 December 2014 and the matter is resolved.
- 5.8 General Counsel reported two alleged breaches. The first relates to the late filing of accounts for TfL's subsidiary companies to Companies House due to submissions being rejected for not following a new format although the accounts were prepared in good time. TfL was issued with a late filing penalty of £1,500 which was paid in December 2014.
- 5.9 The second alleged breach related to a summons received on 5 December 2014 from the Office National Statistics (ONS) for failure to provide statistical data in respect of Tube Lines Limited. The outstanding information was provided to the ONS on 17 December 2014 and an amount of £175 was paid to the ONS for costs. No further action was taken. Arrangements have been put in place to provide such statistical data going forward.

Other Government Agencies Formal Warnings/Notices

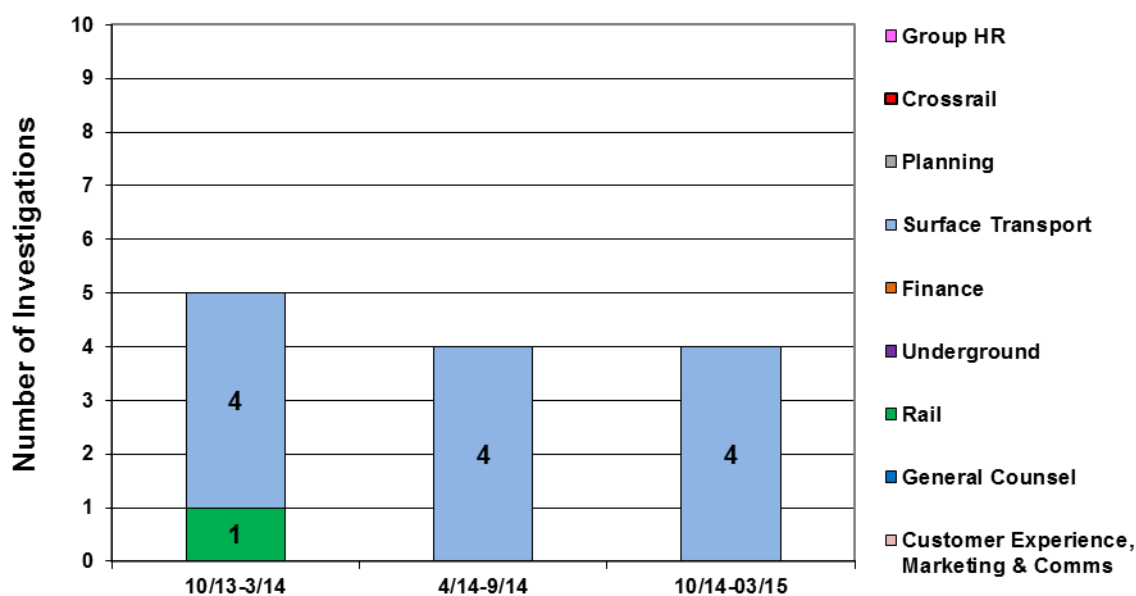


Investigation by an Ombudsman

- 5.10 Surface Transport reported four new investigations relating to issues concerning placing a temporary bus stop outside a complainant's home, TfL's failure to remove a tree stump from outside the complainant's home and disputed payment of the land ownership transference fees, a disputed concession amount for a Student season ticket and TfL's administration of a Congestion Charging Penalty Charge Notice and the conduct of TfL's contracted bailiffs.
- 5.11 In the first investigation the Local Government Ombudsman (LGO) found that TfL was not at fault in placing the temporary bus stop where it had to facilitate building works. TfL provided the LGO and the complainant with a date for the completion of works and the bus stop reverting back to its original position. The LGO was satisfied with the outcome.
- 5.12 In the second investigation, following an investigation by the LGO, TfL removed the tree stump as requested by the LGO. The LGO found it was not unreasonable for the complainant, who purchased the TfL land on which the tree stump was located, to pay the land ownership transference costs. The matter is now concluded.
- 5.13 In the third investigation, the complainant who held a Student Photocard had not re-confirmed eligibility for the concession in accordance with TfL's terms and conditions for applying for concession. This resulted in the cancellation of the Photocard. Following the investigation the LGO found that TfL acted correctly.

5.14 The fourth investigation is ongoing.

Investigations by Ombudsman



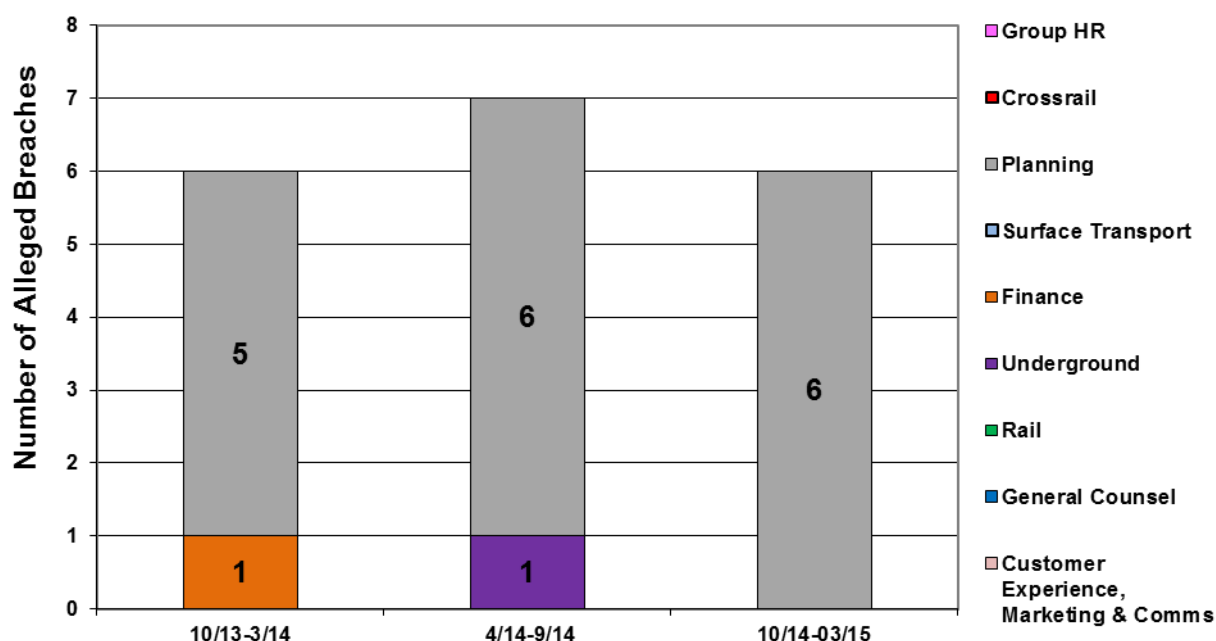
Notices Received Regarding any Alleged Breach of Law by a Local Authority or Other External Agency

- 5.15 Planning reported five outstanding notices from the previous reporting period and one new notice 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. TfL wrote to the tenant to remind them of their obligation to comply with the decision and requested confirmation that the appeal decision has been complied with. TfL continues to monitor the matter.
- 5.16 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 has written to the tenant to remind them of their lease obligations and the risk of prosecution by the London Borough of Haringey. The tenant has since lodged an appeal with the Planning Inspectorate and a decision is awaited.
- 5.17 The third outstanding 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 at 193-195 Whitechapel Road E1. TfL has written to the tenant to remind them of their lease obligations. The tenant has commenced works and TfL continues to monitor the matter.
- 5.18 The fourth outstanding 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 to reinstate timber framed shop front at 285 Whitechapel Road. The tenant is in the process of having plans drawn up for the shop front. TfL continues to monitor the matter.

- 5.19 The fifth outstanding notice received in July 2014 was an Enforcement Notice from London Borough of Tower Hamlets regarding the unauthorised change of 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 awaited. TfL continues to monitor the matter.
- 5.20 The new notice received in February 2015 was from London Borough of Tower Hamlets to improve or remove a structure in front of 69-89 Mile End Road. The structure has now been removed and the matter is closed.

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



Decisions Subject to a Judicial Review

- 5.21 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.
- 5.22 Eventech Limited then made an application for permission to appeal the

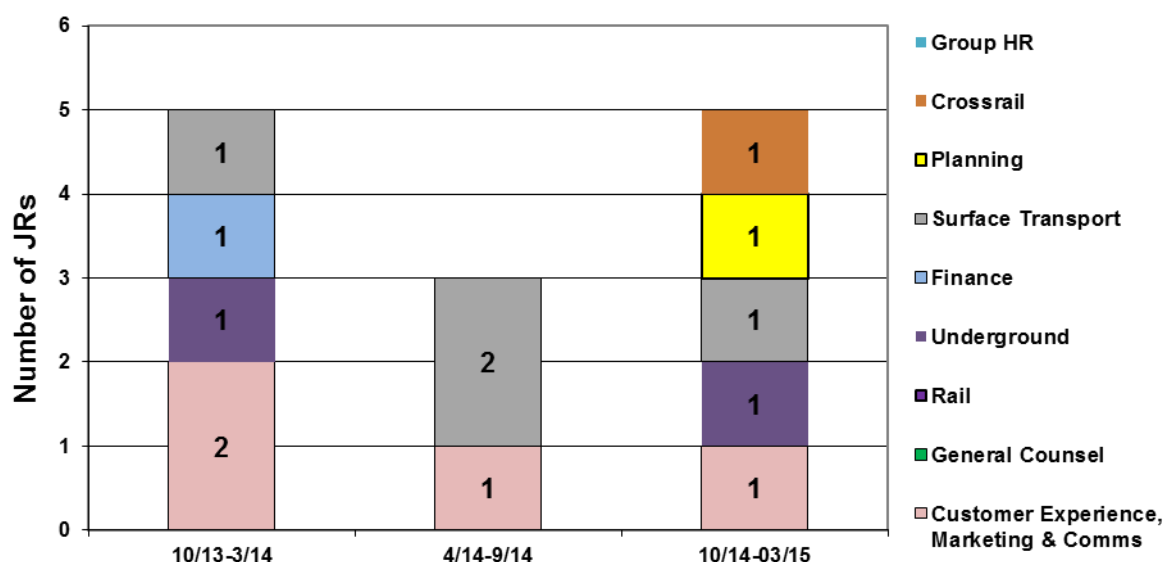
decision and this was granted on 6 December 2012. The Court of Appeal hearing took place on 23 and 24 May 2013. On 29 September 2013 the Court of Appeal issued an Order referring the State aid questions raised to the European Court of Justice (ECJ). The appeal has been adjourned pending the outcome of 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 concluded 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.

- 5.23 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.
- 5.24 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.
- 5.25 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.
- 5.26 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 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.
- 5.27 The Court of Appeal awarded TfL 75 per cent of its costs for both the first hearing and the Court of Appeal hearing.
- 5.28 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.
- 5.29 The Claimant applied for leave from the Court of Appeal to appeal the decision on 14 December 2014 which was refused on the papers. The Claimant then applied to seek leave to appeal. At the hearing on 10 June 2015, the Court of Appeal refused CIT permission to appeal.
- 5.30 London Underground reported an application for permission to bring a judicial

review by Sisara Investments N.V. on 27 February 2015. The claim challenged the decisions made by London Underground not to sell 17-23 Southwark Street back to the former owner of the property, Sisara Investments N.V., in accordance with the Crichel Down Rules. The Crichel Down Rules are non-statutory guidance that provide in certain circumstances that former owners will be given the first opportunity to repurchase, at the current market value. Since the end of the reporting period, permission for judicial review was refused on 11 May 2015 and Sisara was ordered to pay TfL's costs of £4,000.

- 5.31 Crossrail reported a judicial review application arising out of their decision not to negotiate exclusively with a consortium for the right to develop above the western ticket hall at Tottenham Court Road. It is alleged that Crossrail breached the terms of its Land Disposal Policy. A hearing took place on 3 March 2015 in the High Court at which an application for leave to appeal was refused. The Consortium has since applied to the Court of Appeal for leave to appeal. A decision is awaited.
- 5.32 Planning reported a judicial review and statutory challenge to the Transport and Works Act Order (TWAO) and associated planning permission for the Northern Line Extension. An interim injunction was granted to prevent tree removal and other works on site pending the full hearing. TfL, in its defence to the claim, included an application for expedition due to the impact of delay on delivery of the Northern Line Extension. The Court acknowledged the urgency to the case and fixed a hearing to take place within several weeks. Agreement was reached with the claimant which resulted in the claim being withdrawn before the hearing. The injunction was discharged and the works on the Northern Line Extension are progressing as planned.

Judicial Reviews

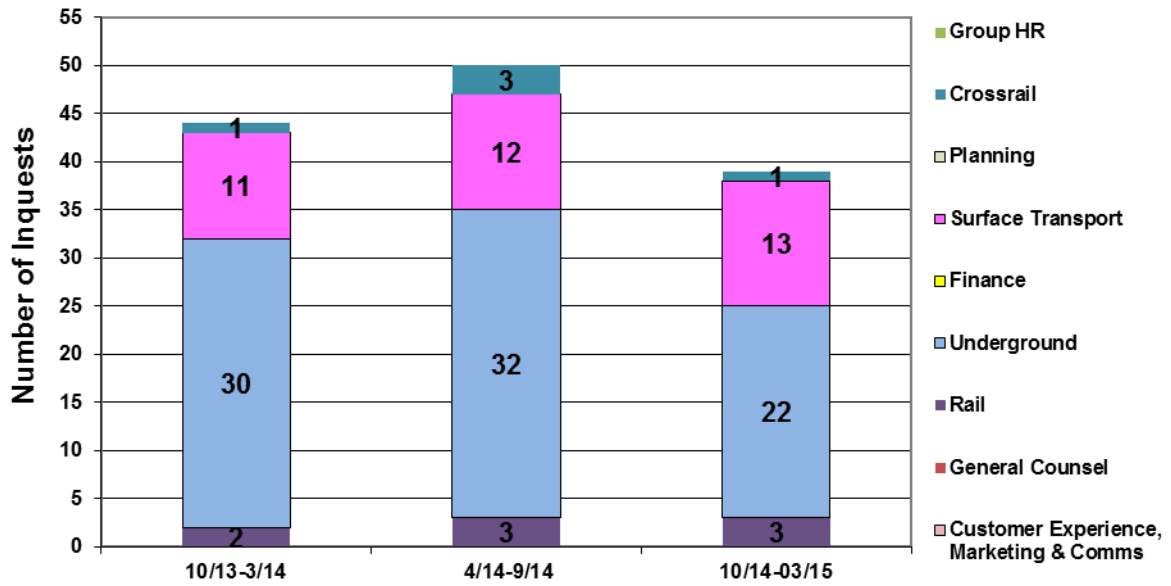


Inquests

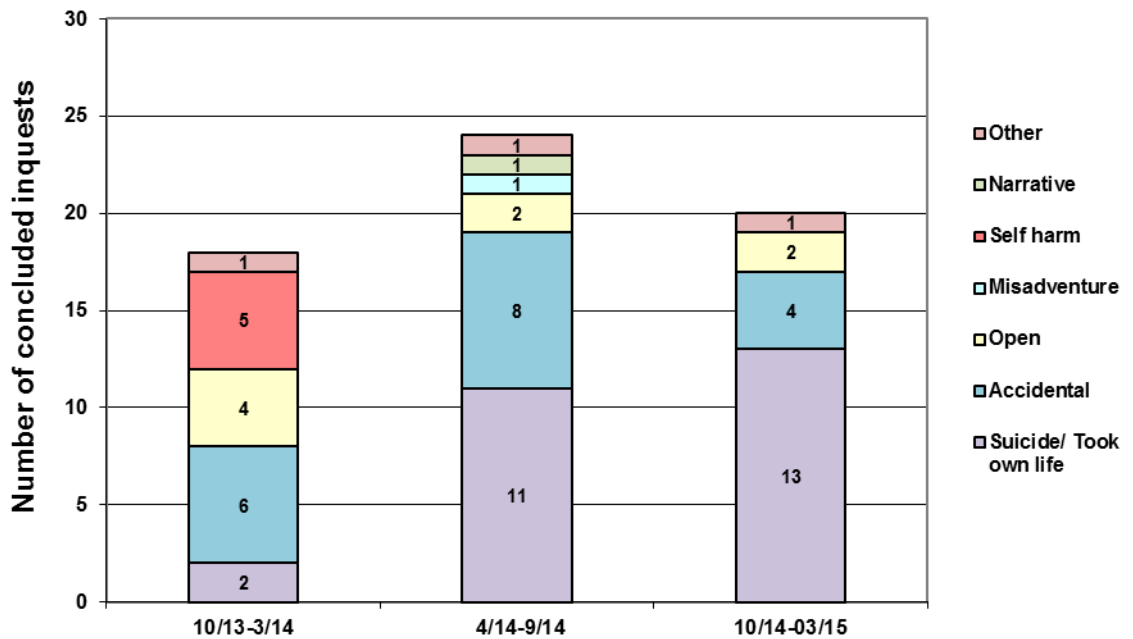
- 5.33 London Underground has been involved in 22 inquests, 15 of which have been carried forward from the previous report and seven inquests have been included in this report for the first time.
- 5.34 Of the 15 inquests carried forward from the previous report, seven were suicides, two were open verdicts and six were awaited. Of the seven new inquests reported, five were suicides and two are awaited.
- 5.35 London Rail reported three inquests. Two were carried forward from the previous report and one has been included in this report for the first time.
- 5.36 Of the two inquests carried forward from the previous report, one was an accident and one a suicide. A date for the new inquest is awaited.
- 5.37 Surface Transport reported eight outstanding inquests in the last report and five new fatal accidents, two of which occurred in the previous reporting period but are reported here for the first time as a result of late notification to TfL.
- 5.38 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 (MCA) published their final report on 16 August 2012. The MCA are prosecuting Serco for two failure to keep safe offences. Serco has entered a not guilty plea and the trial is currently listed to start on 5 October 2015. The inquest remains adjourned pending the outcome of the prosecution.
- 5.39 The second fatal accident occurred on 24 June 2013 when a cyclist was hit by a car on Loampit Vale Road. TfL provided a statement of traffic light timings including the details of the phasing delay to the Police on 12 December 2013. 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 third fatal accident occurred on 4 September 2013 when a cyclist was killed in a collision with an HGV in West Dulwich. The inquest took place on 16 February 2015 at which the Coroner concluded that the deceased died as a result of a road traffic collision.
- 5.41 The fourth fatal accident occurred on 5 November 2013 when a cyclist was hit by a lorry (working on Crossrail) on Mile End Road. The collision took place on the Cycle Superhighway 2 at a section where it is marked by lengths of unbound blue road surfacing. The inquest set for 8 April 2014 remains adjourned pending the outcome of the prosecution of the driver. The trial date initially set for 18 February 2015 has been adjourned to 16 June 2015.
- 5.42 The fifth 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. An inquest took place on 24 April 2015 at which the Coroner concluded that the deceased died as a result of a road traffic collision.
- 5.43 The sixth 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.

- 5.44 The seventh 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.
- 5.45 The eighth 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.
- 5.46 The first new fatal accident occurred on 5 March 2014 at Northumberland Avenue when a motorcyclist was killed in a collision with the central traffic island. The inquest was set for the 27 and 28 April 2015 but has been adjourned to 29 June 2015.
- 5.47 The second new fatal accident occurred on 4 May 2014 when a female pedestrian was killed in a collision with a taxi on Westminster Bridge. The inquest was held on 20 February 2015 at which the Coroner made a prevention of future deaths report concerning the street lighting. TfL is responding to the prevention of future deaths report.
- 5.48 The third new fatal accident occurred on 10 October 2014 at Hillingdon Circus when a pedestrian was killed in a collision with a London Underground fleet vehicle. A date for the inquest is awaited.
- 5.49 The fourth new fatal accident occurred on 17 October 2014 when a cyclist was killed in a collision with a tipper truck at Ludgate Circus. An inquest date set for 26 March 2015 has been adjourned pending the outcome of the decision whether to prosecute the driver.
- 5.50 The fifth new fatal accident occurred on 19 February 2015 at Bressenden Place when a cyclist was killed in a collision with a lorry. A date for the inquest is awaited.
- 5.51 Crossrail reported one outstanding fatal accident from the last report. The outstanding fatal accident occurred on 7 March 2014 at Fisher Street when the deceased was working spraying concrete. The inquest was held on 23 February 2015 and the Coroner concluded a verdict of accidental death.

Inquests



Inquest Findings

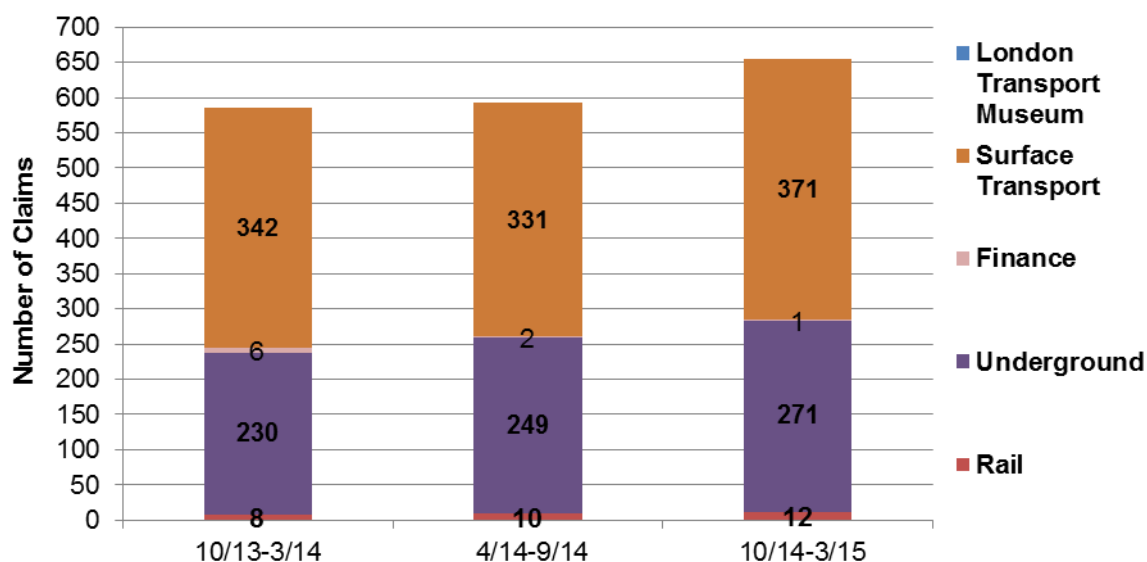


Personal Injury Claims

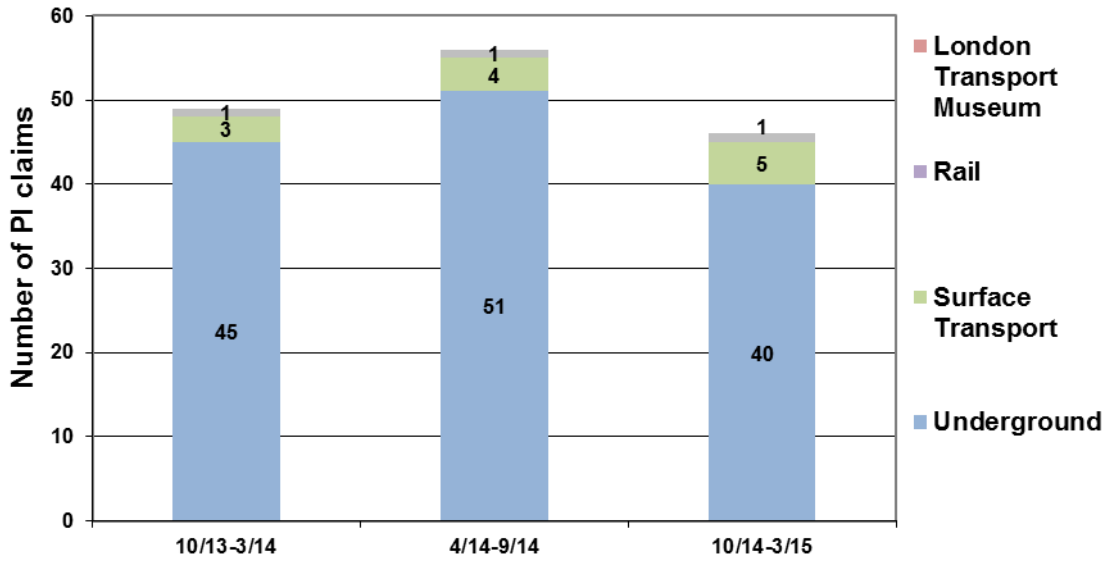
5.52 London Underground has been the subject of 271 claims for personal injury that were closed during the period of this report, of which 40 claims were employers' liability claims by staff and 231 claims were for public liability by customers/members of the public.

- 5.53 Of the 40 claims for employers' liability, six were closed without payment and 34 were settled.
- 5.54 Of the 231 claims for public liability, 127 were closed without payment and 104 were settled.
- 5.55 London Rail has been the subject of 12 claims for personal injury that were closed during the period of this report, of which all claims were for public liability. Of the 12 claims, nine were closed without payment and three were settled.
- 5.56 Surface Transport has been the subject of 371 claims for personal injury that were closed during the period of this report, of which five claims were for employers' liability and 366 claims were for public liability.
- 5.57 Of the 366 claims for public liability, 229 were closed without payment and 137 were settled.
- 5.58 Finance has been subject to one claim for personal injury that was settled during the period of this report, which was for employers' liability.
- 5.59 Out of the 655 personal injury claims closed by TfL during this period, 371 were closed without payment and 284 were settled. There was an increase of 63 personal injury claims closed for this reporting period compared to the 592 claims closed and reported in the last reporting period (1 April 2014 – 30 September 2014).

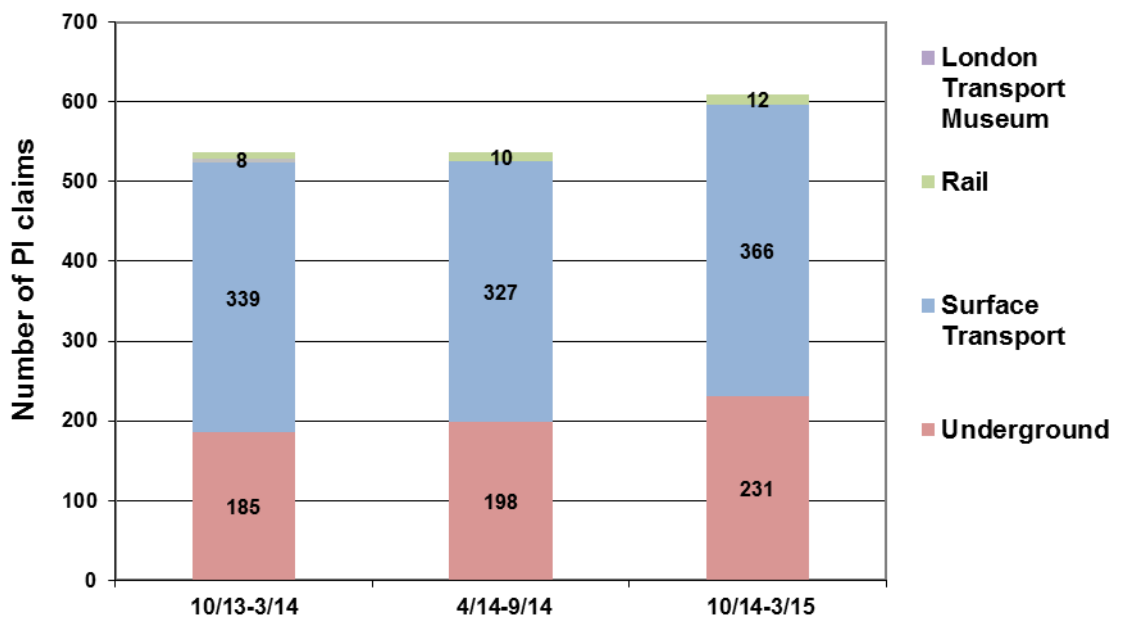
Personal Injury Claims Concluded in the Reporting Period

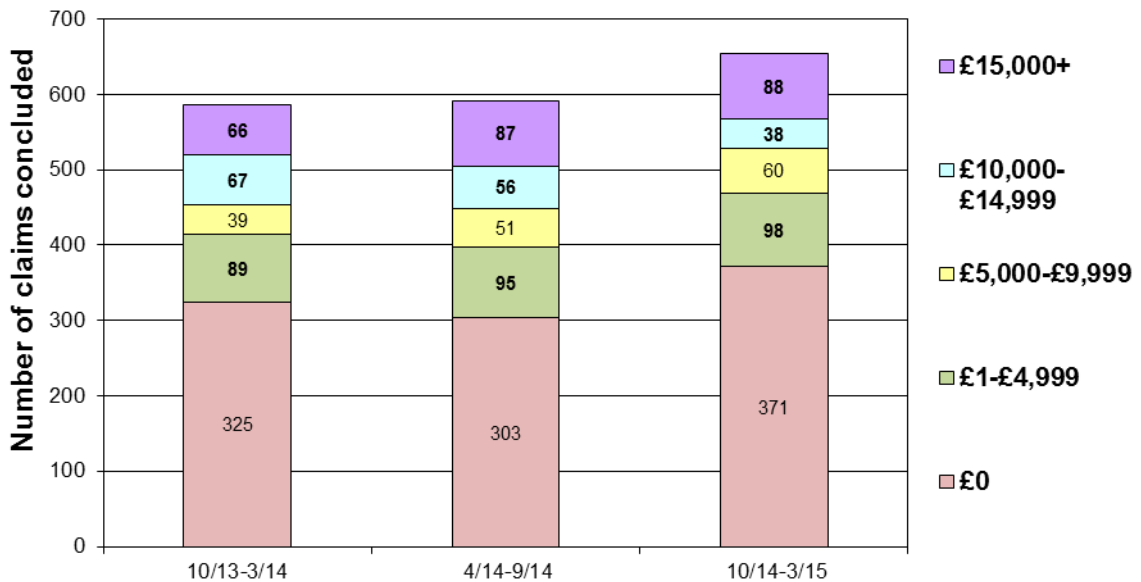


Personal Injury Claims – Concluded Employers' Liability (Staff)



Personal Injury Claims – Concluded Public Liability (Customers)



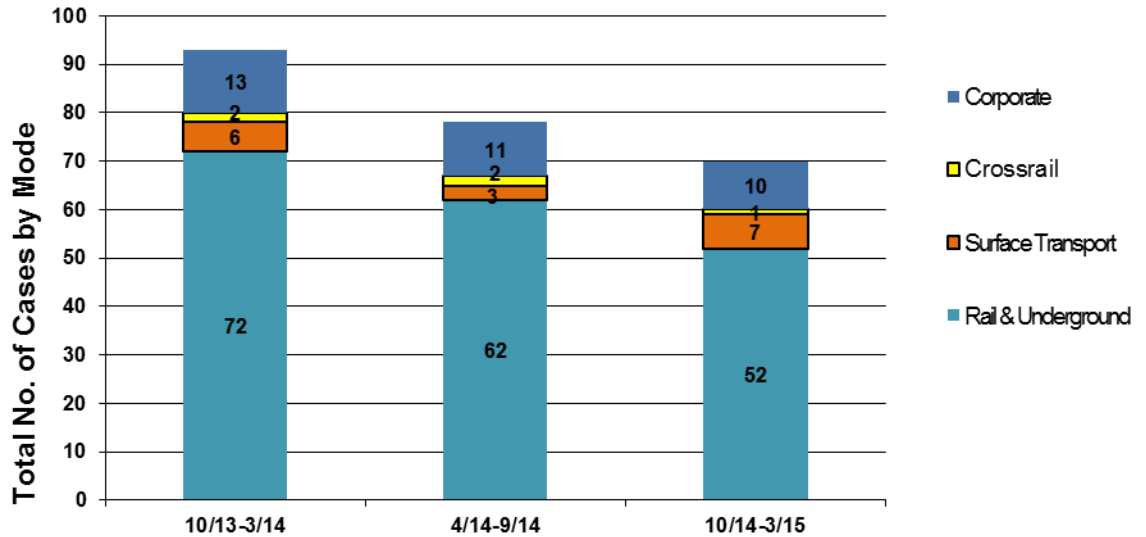


Employment Tribunal (ET) Proceedings

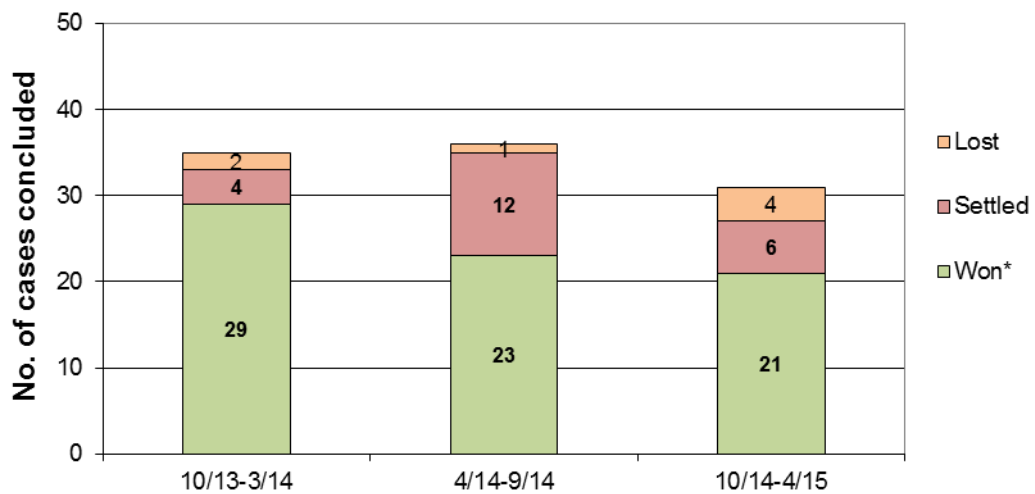
- 5.60 TfL continues to take a proactive and robust approach to managing ET cases, coupled with an extensive training programme for managers on the latest developments in the law and best practice so as to avoid employment disputes as far as possible. The number of ET claims continues to decrease.
- 5.61 Rail and Underground has been the subject of 52 ET claims during the period of this report. Of these, 26 were for unfair dismissal, four were for sex discrimination, one was for whistle blowing, one was for trade union detriment, nine were for disability discrimination, one for breach of contract, one for race discrimination, one was for discrimination on the grounds of pregnancy, one was for breach of the Agency Workers Regulations, one was victimisation, one was for failure to allow time off to undertake health and safety rep duties, four were unlawful deduction of wages and one was for breach of the Wages Act.
- 5.62 Surface Transport has been the subject of seven ET claims during the period. Of these, five were for unfair dismissal, one was for discrimination on the grounds of race and one was for sex discrimination.
- 5.63 Corporate has been the subject of 10 ET claims during the period. Of these, two were for unfair dismissal, six were for disability discrimination, one was for age discrimination and one was on grounds of the Wages Act.
- 5.64 Crossrail reported one outstanding ET claim from the previous period which was for discrimination on the grounds of race.
- 5.65 Of a total of 70 ET claims, 39 cases are ongoing and 31 were concluded during the period. Of the 31 ET cases concluded during this period, 10 were won, nine were withdrawn, two were struck out, six were settled and four were lost.

5.66 There was a decrease of seven ET claims during this reporting period from the 78 claims reported in the last reporting period (1 April 2014 – 30 September 2014).

Total number of Claims



Employment Tribunal Cases Concluded



*Claims won include withdrawn and struck out claims

Other Known Breaches

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

Other Material Compliance Issues

- 5.68 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. Arbitration proceedings and discussions are ongoing with the remaining three boroughs.

Management of Compliance Issues

- 5.69 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.
- 5.70 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.
- 5.71 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, Successful Project Delivery and Public Contract Regulations 2015;
 - (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 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 October 2014 to 31 March 2015 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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