



15 February 2019

Howard Carter
TfL General Counsel
Palestra House
197 Blackfriars Rd
London SE1 8JZ

cc: Kay Carberry
Nina Skorupska
Anne McMeel

RE: Omission to send Fatigue Audit IA 17 780 to investigating bodies

Dear Howard,

Further to our phone this morning, let me summarise for you the reasons why I do not consider the Briefing Note of 24 July 2018 an adequate explanation for the failure to send a copy of Fatigue Audit IA 17 780 to the various bodies investigating the Sandilands crash.

First of all, here is my timeline – from memory, agendas, emails and minutes – of the times when the Fatigue Audit was discussed by the SSHR Panel:

- The Fatigue Audit was first discussed at the SSHR Panel meeting on 26 June 2017, where the Panel was told by Leon Daniels that the audit was “satisfactory and did not give rise to any concerns”. No explanation has ever been given for Leon’s statement, which directly contradicts TfL’s eventual classification of the Audit as having been “Requires Improvement” and the RAIB’s statement that “the conclusions of the TfL Audit are consistent with its own finding that, at the time of the accident, TOL’s management of fatigue risk was not in line with published industry practice, and that there was significant scope for improvement.”
- As you know, I was extremely unhappy with several elements of Leon’s verbal submissions to the Panel, as were several other Panel members, and I insisted on a number of changes before the minutes were eventually approved.
- The Fatigue Audit was next discussed by the SSHR Panel on 28 September 2017. In response to a suggestion that the Fatigue Audit Report should be made public, you pointed out that it would be inappropriate to do so as long as multiple enquiries were ongoing into the Sandilands crash (the RAIB, the internal SNC Lavalin one, and those of the ORR and the British Transport Police). It was agreed instead that a copy be sent to all those enquiries and

to the SSHR Panel members. Unfortunately this was not minuted (though I am quite sure other Panel Members would clearly recall the discussion).

- The Fatigue Audit Report was circulated to SSHR Panel Members just before the meeting on 22 November 2017, where it was again discussed. I asked for confirmation that it had been sent to the various ongoing enquiries, which was duly provided. Again, this was unfortunately not minuted – frankly it never crossed my mind that it might not have been done.
- The Fatigue Audit was next discussed at the special SSHR meeting on 22 January 2018. Surprised that the RAIB report contained no mention of the TfL Fatigue Audit Report, I asked for confirmation that it had been sent and that RAIB had received it, and Jill Collis promised to check.
- It was only after this meeting that it was apparently discovered that the Audit Report had not been sent out as agreed. I was not informed of the oversight until 12 February, after the 25th January meeting of the full TfL Board where a discussion of the Fatigue Audit had formed part of my report to the board.

So the Fatigue Audit had been discussed at no fewer than four SSHR Panel meetings, at three of which the need to send a copy of the report to the RAIB and other investigating bodies was emphasised. And yet it was not sent.

When I raised this at the next full TfL Board meeting which I attended (23 May 2018), the Mayor agreed that the reasons must be fully investigated. A Briefing Note was duly produced on 24 July 2018. However, it contained a number of material omissions:

- It omitted any mention of the minuted discussion of the Fatigue Audit at the June 2017 SSHR meeting, at which Leon Daniels described the Audit as having been “satisfactory and raising no cause for concern.”
- It omitted any mention of the SSHR Panel discussion at the September 2017 meeting around the need to either publish the report or distribute it to the various investigating bodies, which may not have been minuted but certainly took place;
- It failed to establish exactly who was responsible for sending (or failing to send) the Report at each point between its publication on 15 September 2017 and 12 February 2018. While the Briefing Note claimed that “[TfL’s] Health and Safety department was responsible for sharing this audit report with the external bodies,” the fact is that every single SSHR Panel action item relating to Sandilands was allocated to Leon Daniels until his retirement at the end of December 2017. The only exception was action item 45/09/17 relating to the provision to the SSHR Panel of a timeline of the Fatigue Audit: this was allocated to Gareth Powell in the minutes of the September meeting, but reallocated to Leon by the time of the 22 November Actions List (and to my knowledge never provided);
- It contained no analysis of emails or other communications between members of TfL management about the Fatigue Audit Report and the process of distributing it to the various investigations, making it impossible to know who was or thought they were responsible for the actual distribution;

- It failed to establish the date on which the omission was discovered, and the reasons for any possible delay between this date and 12 February 2018 (after the 25th January board meeting), to send out copies of the report and to inform the SSHR Panel of the omission.

Following the publication of the Briefing Note there has been a steady stream of Mayoral Questions and FOI requests, all seeking transparency over the failure to send the Fatigue Audit to the investigating bodies in a timely way. I am afraid I have not yet seen the level of transparency that the gravity of this matter demands.

We are all aware of the context, which I raised with you, the Commissioner and Anne McMeel in July 2017: the potential for a conflict of interest – or even a perceived conflict of interest – in Leon Daniels leading TfL’s response to the Sandilands crash and reporting on it to a public Panel, having been a director of TOL for the first ten years of the tram’s operations and then the TfL officer directly responsible for oversight of the TOL contract at the time of the crash.

I have really grappled with how best to proceed. Until our call, I really saw no alternative but to inform the various investigating bodies and GLA Transport Committee of my continued discomfort with the information provided, and to let them fulfil their functions as they see fit.

If you are saying that you would be happy to correct the omissions I have listed in the 24 July Briefing Note, I would be only too happy. But this does need to be resolved quickly and transparently.

I am copying this to Kay Carberry, Nina Skorupska and Anne McMeel, with whom you will no doubt want to discuss the situation.

Yours sincerely,



Michael Liebreich