

Michael Liebreich



Mr. Sadiq Khan
Mayor of London
City Hall
The Queen's Walk
London SE1 2AA

cc: Heidi Alexander, Deputy Mayor for Transport and Deputy Chair, TfL
Assembly Member Florence Eshalomi
London Assembly Transport Committee Members
Commons Transport Committee secretariat

22 December 2019

Dear Sadiq,

Many thanks for your letter of 3 October 2019. I apologise for the delay in responding, I did not want to disturb you during the general election campaign.

Sadly, I am forced to write to you again because of your failure to address the questions posed in my letter of 9 September 2019.

Despite what you say, it is clear that Fatigue Audit IA 17 780 was compromised from start to finish: line executives having access to field work and making misleading comments to a TfL Board Panel and in public; drafts inexplicably watered down; the resulting report not correctly reported to the TfL Board's Audit and Assurance Committee; discussions by Board and Panels not correctly minuted; and the report not sent in a timely way to the bodies investigating the Sandilands crash, including the police.

It is also clear that none of this has been properly investigated. As I explained in my letter of 9 September 2019, the Board Briefing Note of 24 July 2018 – behind which TfL management, you and Heidi Alexander have taken shelter – failed to establish the most basic of facts. Both the London Assembly¹ and the GMB Union² have called for an independent investigation, and they were right to do so.

It now turns out that there are further anomalies around a second Fatigue Audit, IA 13 744, dating back to before the Sandilands crash. In 2013 a Croydon tram driver reported First Group/Tram Operation Limited (TOL) to CIRAS over fatigue concerns. A safety audit in March 2014 by an external company found "seven weaknesses". Yet just a few months later, TfL conducted its own fatigue audit and gave TOL a clean bill of health. When Caroline Pidgeon asked for a copy of the resulting report, she was given a version with the last four pages deleted, including all reference to the "seven weaknesses".

It is becoming hard to see how there has not been a concerted effort within TfL to divert attention away from the question of fatigue and safety management, directing it instead de facto towards the driver of the crashed tram.

¹ <https://www.london.gov.uk/moderngov/ieListDocuments.aspx?CId=179&MId=6716> (and item 6.4 in minutes)

² Motion 412 <https://www.gmb.org.uk/sites/default/files/GMB19-AGENDA.pdf>

I can absolutely understand the anger among survivors and families of the deceased caused by the recent decision by the CPS not to charge the driver. However, in my view, far more serious questions must be asked of TfL and TOL. It is obvious from the evidence I have seen that Mr Dorris and his fellow drivers were operating in a rotten management culture, with a history of safety breaches, in particular around fatigue management, on which TfL failed to pick up.

As Mayor and Chair of TfL, it is your job to ensure that information in any way relevant to the reasons for the Sandilands crash is provided, accurately and in a timely way, to those responsible for investigating it and to those responsible for scrutinising TfL. There have been multiple failures to do so. And it is your job get to the bottom of things when they go wrong.

You may continue to maintain that you “don’t see the point of an investigation”. However, as you know, pre-inquest hearings into the deaths at Sandilands have begun, and next year will see the full inquest begin. I have faith that the coroner will investigate all of these anomalies, even if you do not.

The balance of this letter will cover the following:

1. Inaccuracies in your letter of 3 October relating to the failure to send Fatigue Audit IA17 780 to the Sandilands investigating bodies;
2. Newly-revealed anomalies in the handling of 2014 Fatigue Audit IA 13 744;
3. Your protection from questioning of the former MD of TfL Surface Transport;

I also attach, as Appendix I, a list of open questions to which I believe either an independent investigation or the coroner should seek answers.

1. Inaccuracies in your letter of 3 October relating to the failure to send Fatigue Audit IA17 780 to the Sandilands investigating bodies

In your 3 October 2019 letter, you say that “at the 10 September³ meeting of the Transport Committee my Deputy Mayor for Transport, Heidi Alexander, ***explained in detail the exact circumstances*** and timeline that led to the fatigue audit not being shared with regulators until January 2018⁴, and the report on the ***investigation*** into this is provided on TfL’s website” (emphasis mine).

Heidi Alexander did not ***explain in detail the exact circumstances*** that led to the fatigue audit not being sent to the police and the other external bodies investigating the Sandilands crash. What she did was refer the committee back to the Board Briefing Note published by TfL on 24 July 2018⁵, and say that “having looked at a lot of the documents myself [and] speaking to senior members of staff at TfL about exactly what has happened, I am confident that a further independent investigation into this is not required”. In other words, like you, she closed ranks with senior TfL executives.

As for ***investigation***, there is no evidence that one has yet been undertaken. No assurance team was set up; no attempt made to gather contemporaneous meeting notes; no examination of

³ For accuracy, the meeting was on 11 September 2019

⁴ For accuracy Fatigue Audit IA 17 780 was only sent to the BTP, RAIB and ORR in February 2018

⁵ <http://content.tfl.gov.uk/24-july-2018-board-briefing-note%20on-fatigue.pdf>

emails or communications undertaken; no one interviewed; no statements taken. The 24 July 2018 Board Briefing Note was simply “choreographed,” to use the same word as Jon Fox, Director of London Rail, used in his email of 17 July 2018, whose meaning it is very easy to understand.

On 23 May 2018 you chaired a TfL board meeting that demanded to know the *reasons* for the failure to send the fatigue audit (“what happened and why”); what was minuted was only a request for a *chronology*. Sure enough, the 24 July 2018 Board Briefing Note was just a chronology, not the result of any investigation. It lists the dates of some (though by no means all) of the times that the SSHR Panel instructed management to send the report or asked for confirmation it had been sent, and states that the cause was an unspecified “error”. It explains nothing and identifies no perpetrators.

In short, the 24 July 2018 Briefing Note – to which TfL, you and Heidi Alexander have continually referred as representing the results of an investigation – is no such thing. It is a whitewash.

Turning to the edits to Fatigue Audit IA 17 780 that were undertaken after TOL raised objections to the first draft. In your letter you say that “***no evidence and no recommendations were taken out of the report in that process.***” Perhaps not, but they most certainly ***were watered down beyond recognition.*** The 7 July 2017 draft of IA 17 780⁶ was brutally clear about the problems TfL’s audit field work had identified. I quote:

Priority 1 Issues:

- *TOL’s management of driver’s hours of work, and the roster design, do not consider fatigue risk factors or reference industry good practice.*
- *TOL’s fatigue awareness training for managers and supervisors does not include factors that increase fatigue or how to recognise fatigue in others.*
- *TOL has no formal process for determining when a fatigue risk analysis should be carried out or reviewed.*

It is worth noting, by the way, that around the time this was written, the SSHR Panel was being told in a public meeting, by a senior TfL executive, that the fatigue audit “***did not give rise to any concerns***”⁷. When discovered, that alone should have been cause for an internal TfL investigation.

The final draft of IA 17 780, published on 15 September 2017 after what looks like two months of negotiations between TOL and TfL⁸, turned these points into “areas for potential improvement”, lost among what were formerly Priority 2 Issues and hedged with disclaimers. I quote:

The following findings are areas for potential improvement of TOL’s FRMS with respect to the ORR guidance on Managing Rail Staff Fatigue, which states: ‘Following the guidance is not compulsory and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law’.

Several of these findings align with work already underway following TOL’s own audit of their FRMS and TOL’s completion of the FRMS checklist in Appendix F of the ORR guidance

⁶ <https://www.london.gov.uk/questions/2019/12001>

⁷ <http://content.tfl.gov.uk/sshrp-20170928-item03-minutes.pdf>

⁸ <http://content.tfl.gov.uk/management-of-fatigue-in-tram-operations.pdf>

- [...]
- *Formalising the process for determining when to carry out a fatigue risk analysis;*
- *The consideration of ORR's Good Practice Guidelines – Fatigue Factors, and industry good practice, in addition to applying the HSE Fatigue Risk Index Tool to the roster design;*
- [...]
- *Reviewing fatigue awareness training for managers and supervisors to ensure it includes factors that increase fatigue and how to recognise fatigue in others;*
- [...]

As for the removal of the overall Audit Conclusion “Requires Improvement” from the front page of the document, ***I have never seen another Audit Report which does not state its conclusion anywhere in the document.*** Audits are an essential part of the governance of TfL; management are not allowed to omit parts of them that are inconvenient to it or its business partners.

In fact, when it came to reporting audit outcomes to the TfL Board's Audit and Assurance Committee on 14 December 2017⁹, Fatigue Audit IA 17 780 was not listed as “Requires Improvement” but marked “Consultancy” and listed as No Conclusion. So the fact that seven months after Sandilands TOL's fatigue management processes were given the second-lowest audit rating ***was never shared with the Board Committee charged with safeguarding TfL's governance.***

In summary, this is an audit ***compromised from beginning to end*** – from a line executive accessing and misrepresenting fieldwork, through the document being watered down, to the audit conclusion being withheld from accident investigators and from TfL's Audit and Assurance Committee.

2. Newly-revealed anomalies in the handling of 2014 Fatigue Audit IA 13 744

In the past two months, since the 11 September 2019 appearance of Heidi Alexander and myself before the London Assembly Transport Committee, anomalies have come to light in the handling of a second Fatigue Audit, IA 13 744, carried out by TfL on TOL's operations in 2014.

As you may know, in 2013, three years before the Sandilands crash, a Croydon tram driver was so concerned about fatigue that he complained to the anonymous safety reporting organisation CIRAS, even though TOL was not at the time a subscriber to the service. In June 2014, TfL initiated Fatigue Audit IA 13 744 which quickly gave TOL's operation of the Croydon Tram a “Well Controlled” rating.

We now know – not as a result of the “comprehensive and transparent” publication of information by TfL that you claim in your letter, but as a result of persistent questioning by Caroline Pidgeon and Keith Prince in the London Assembly – that a few months before that, an

⁹ <http://content.tfl.gov.uk/aac-20171214-part-1-item05-internal-audit-q2-report-2017.pdf>

external audit of TOL's safety management system had been carried out by a company called AbsTracked Solutions Ltd, which found "seven weaknesses".

We know that TfL was aware of the "seven weaknesses", because they are referred to in Audit Report IA 13 744, which was completed in July of 2014, just four months later. However, we also know (from the response to Freedom of Information Request 2155-1920¹⁰) that TfL "does not hold" (i.e. presumably never sought to obtain) a copy of the AbsTracked Solutions report before giving TOL's fatigue management system a clean bill of health. This seems, at best, extraordinary sloppy.

What is also sloppy is that RAIB did not investigate the "seven weaknesses" in the aftermath of the Sandilands crash, even though it appears they knew of their existence. I find that inexplicable, and have taken it up with Simon French, among other grave concerns about their report on Sandilands, and not so far received an adequate response.

In June last year Caroline Pidgeon asked you to publish a copy of Fatigue Audit IA 13 744 (Mayor's Question 2018/1314), which you did. However, I was recently stunned to notice that the document you provided contained only 8 of its original 12 pages. The final four pages, which were missing, included page 9, on which the "seven weaknesses" are mentioned¹¹.

How could this have happened? How did someone create a pdf of a 12-page document, leaving off the last four pages? Who was responsible? I am sure you agree that this seems suspiciously convenient for TOL and TfL.

On 26 November 2019, in response to yet another Mayoral Question, Heidi Alexander wrote to Caroline Pidgeon, saying "The mistake arose when the audit report was converted from a word document to a pdf file for storage by the Internal Audit Team". But we know that is not true.

The document properties of the original, 12-page audit document show that it was made on 2 July 2014 by Ayodeji Odelusi, Internal Auditor at TfL. The document properties of the truncated, 8-page version show that it was created on 2 July 2018 by Melanie Riley, Assistant Project Manager, Project and Programme Delivery, Surface Transport – in other words not by anyone in Internal Audit Team, but by someone in the Surface Operation.

We do not yet know what the "seven weaknesses" were. Would you agree, though, that it would look highly suspicious if any of them turn out to be anything to do with fatigue management? Do you not think it odd that TfL would audit the same operation just a few months later and give it a clean bill of health, without apparently bothering to find out what the "seven weaknesses" were? And is it not extraordinary that in July 2018, a truncated version of Fatigue Audit IA 13 744 was created by someone in TfL Surface Transport, omitting all mention of the "seven weaknesses", and sent to Caroline Pidgeon in response to her Mayoral Question?

Were these just more "human errors"? Or were they part of a concerted effort to limit scrutiny of TOL's fatigue management system and the thoroughness of TfL's safety monitoring thereof?

Only an independent investigation – or the forthcoming coroner's inquest – can be relied on to answer this question.

¹⁰ https://www.whatdotheyknow.com/request/tfl_internal_audit_ia_13744_abst#incoming-1469654

¹¹ <https://www.london.gov.uk/questions/2018/1314>

3.3. Your protection from questioning of the former MD of TfL Surface Transport

In your letter, you say “I am satisfied that there was no conflict of interest in Leon Daniels, TfL’s former Managing Director of Surface Transport, leading TfL’s response to the Sandilands tragedy. It is to be expected that he would be kept fully briefed on all issues related to something of this level of importance.”

Of course, it is to be expected that Mr Daniels, as Managing Director of TfL’s Surface Directorate at the time, would have led the **operational** response to Sandilands – implementing the RAIB’s Urgent Safety Advice, reopening the line, etc. What is **not to be expected** is that a line executive in charge of an operation whose major contractor is undergoing a safety audit in the aftermath of a fatal accident should have any involvement in that safety audit.

- ***It is not to be expected*** that Mr Daniels should have had access to, or involvement in, audit fieldwork, as the then Head of HSE admitted he did during her testimony¹² to the London Assembly Transport Committee on 15 May 2019 (“When Leon was commenting, it was a progress update”).
- ***It is not to be expected*** that a line executive of an operation still undergoing investigation should have made a public statement (“An audit of FirstGroup’s fatigue management processes had taken place, these were found to be satisfactory and did not give rise to any concerns”) – as he did at the 23 June 2017 meeting of the SSHR Panel of the Board of TfL¹³ and to the press. A statement which can only have had the effect of downplaying the severity of safety breaches in the operations of his own directorate and those of his former employer, and which was later shown to be incorrect.
- ***It is not to be expected*** when, in August 2017, after canvassing the opinions of my fellow members of the board’s SSHR Panel, I raised concerns about a conflict of interest with the Commissioner, TfL General Counsel and the Chair of the Audit and Assurance Committee, only to have these concerns dismissed in a phone call with the Commissioner, with no investigation undertaken or records kept.
- ***Above all, it is not to be expected*** that the Chair of an organisation in which these breaches occur says he “does not see any point” in their investigation.

In your letter, you say that “any further questions on what Leon said at various meetings in 2017 should be directed to him, to allow him to respond.” I’m sorry, but this is an abdication of your responsibility as Mayor and Chair of TfL.

Mr Daniels was a director of Tramtrack Croydon at the time of the Sandilands crash. He was a member of the executive committee of TfL – an organisation you chaired at the time, and still chair. The only reason he is not still an employee of TfL is because he was terminated at the end of 2017 – with a substantial payoff as “compensation for loss of office”, on which I can only assume either you or Heidi Alexander signed off.

Even today, Mr Daniels remains a trustee and director of London Transport Museum, ***where he sits alongside TfL’s General Counsel – the same TfL officer to whom the internal audit team responsible for Fatigue Audits IA 17 780 and IA 13 744 reports.***

¹² <https://www.london.gov.uk/moderngov/documents/s78141/Minutes%20-%20Appendix%201%20-%20Tram%20and%20Bus%20Safety%20-%20Panel%201.pdf>

¹³ <http://content.tfl.gov.uk/sshrp-20170928-item03-minutes.pdf>

I absolutely agree that Mr Daniels deserves an opportunity to respond to the legitimate and serious questions that I and others have raised. There is a simple way to ensure that he is afforded one: appoint an independent investigator and allow Mr Daniels to answer the questions, publicly and clearly, as should be expected of a senior executive.

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Sadiq, please be assured that my only incentive in all this is to ensure that nothing like the Sandilands crash can ever happen again, and that Londoners are kept safe. After the crash, the widow of one of those killed came to an open meeting of the SSHR Panel; I committed to her that I would do everything in my power to ensure that the reasons for the crash were uncovered, and that lessons learned would be applied across TfL Surface Transport. I continue to be bound by that commitment.

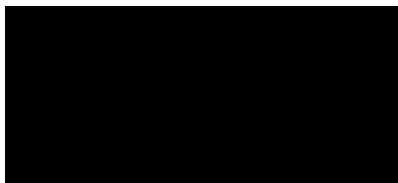
Should you decide, even at this late date, to appoint an external investigator, I still stand ready to help in any way I can. In this spirit I have compiled a list of unanswered questions, to which you should want answers as much as anyone (attached as Appendix I).

Should you continue to maintain, however, that you “cannot see the point of an investigation”, at least please ensure that TfL cooperates in a fully open and transparent way with HM Senior Coroner for South London, Ms Ormond-Walshe – who will be conducting the inquest into the deaths at Sandilands next year – in particular when it comes to questions about the management of fatigue risk and safety by TOL and TfL.

Finally, as to the defence in your letter of TfL Surface Transport’s safety record and culture, I will address that in a separate letter.

Meanwhile, I wish you the best for the holiday season.

Yours sincerely,



Michael Liebreich

Appendix I: List of unanswered questions

The following is an initial list of questions an independent investigator should seek to answer. It is not intended to be, nor is it, exhaustive.

- Why was a line executive – one whose TfL team, as well as his former colleagues at First Group were under investigation over their potential role in the Sandilands crash – allowed to have access to safety audit fieldwork, as admitted by the Head of HSE in her appearance before the London Assembly Transport Committee on 11 September 2019¹⁴? Was this normal practice at TfL?
- Why was that same line executive allowed to come to the SSHR Panel on 26 June 2017 – a meeting open to the public, survivors and families of the victims of Sandilands – and state publicly¹⁵ that “An audit of FirstGroup’s fatigue management processes had taken place, these were found to be satisfactory and did not give rise to any concerns,” a statement which was materially untrue and can only have had the effect of diverting attention from TfL and TOL and on to the driver?
- Was any disciplinary action ever taken against that executive when this misleading statement was discovered, and if not, why not?
- In a 28 July 2017 email released in response to Mayors Question 2019/12001¹⁶, Andrew Wallace, TOL’s Interim Head of Safety, claimed that “At the end of the audit, TOL was given verbally a provisional conclusion of 'Generally Well Controlled'. Who gave TOL this assurance? Was it a member of the audit team or a line executive?
- Were TfL line executives involved in the negotiations between TOL and TfL which led to the watering down of the conclusions of Fatigue Audit IA 17 780 between July and September 2017, including the removal of the audit conclusion “Requires Improvement” from its front page¹⁷? Who authorised these changes, in particular the removal of the Audit Conclusion from the final version of IA 17 780?
- Why was Fatigue Audit IA 17 780 not listed as “Requires Improvement” in the quarterly summary of audits¹⁸ that went to the Audit and Assurance Committee of the TfL Board on 14 December 2017, but marked “Consultancy” and counted under “No Conclusion”? Who took this decision?
- What procedure was in place in 2017 to deal with conflicts of interest brought to the attention of the Commissioner, General Counsel, and Chair of the Audit and Assurance Committee by board members? Was it followed in the case of concerns raised by me (in consultation with other SSHR Panel members) in August 2017, and if not, why not?
- The minutes of the SSHR meeting on 28 September 2017 reveal that the Panel requested Gareth Powell, then Director of Strategy and Contracted Services, Surface Transport

¹⁴ <https://www.london.gov.uk/moderngov/documents/s78141/Minutes%20-%20Appendix%201%20-%20Tram%20and%20Bus%20Safety%20-%20Panel%201.pdf>

¹⁵ <http://content.tfl.gov.uk/sshrp-20170928-item03-minutes.pdf>

¹⁶ <https://www.london.gov.uk/questions/2019/12001>

¹⁷ <https://www.london.gov.uk/questions/2019/12001>

¹⁸ <http://content.tfl.gov.uk/aac-20171214-part-1-item05-internal-audit-q2-report-2017.pdf>

provide “a timeline of the fatigue management audit work” (action item 45/09/17¹⁹). By the time of the next meeting, on 22 November 2017, the action (renumbered 46/09/17²⁰) had been reallocated to the same line executive who had misrepresented the Fatigue Audit’s findings at the June 2017 meeting. Why did this reallocation occur and who authorised it?

- The Commissioner, Mayor and other TfL executives have repeatedly excused the failure to send IA 17 780 as a “human error”²¹. To which human are they referring? Do they know the identity and failed to reveal it, or have they failed to establish it?
- Who were the people – presumably two or more – that the Head of HSE referred to in her testimony to the Transport Committee on 15 May 2019, when she said: “[the Fatigue Audit] fell in a gap between people who thought it should have gone out”²²?
- The Head of HSE was instructed at the SSHR meeting of 23 January 2018 to check that Fatigue Audit IA 17 780 had been sent, but this did not happen until 12 February, after the 30 January TfL board meeting. On what date was the failure to send IA 17 780 actually discovered? What was the reason for any delay?
- On three occasions – 28 September 2017, 22 November 2017 and 22 January 2018 – the SSHR either emphasised the need to send Fatigue Audit IA 17 780 to the investigators or asked for confirmation that this had been done. Why were these discussions omitted from the minutes? The TfL executives present, as well as the Board Secretariat, make contemporaneous notes during SSHR meetings. Do their notes from those dates mention the instruction to send the Fatigue Audit report to the investigators?
- At its meeting on 23 May 2018, the board asked for an investigation into the reasons for the failure to send Fatigue Audit IA 17 780 to investigators²³: “what happened and why”. By what process did this get changed in the minutes²⁴ to “A note explaining the chronology would be prepared for Members,” paving the way for the 24 July 2018 Board Briefing Note to fail to answer any of the questions above?
- In 2014, before completing Fatigue Audit IA 13 744 with a “Well Controlled” rating, did TfL obtain a copy of AbsTracked Solutions audit of TOL’s safety management systems, which identified “seven weaknesses”? Did TfL check that these weaknesses had been resolved before giving IA 13 744 a Well Controlled rating? If not, why not?
- Under whose instruction was the 2018 pdf version of the 2014 Fatigue Audit IA 13 744, which you sent to Caroline Pidgeon in response to her Mayor’s Question 2018/1314²⁵ created – the version which is missing the final four pages including all reference to the “seven weaknesses”? Were those pages deliberately omitted? Or is there a plausible alternative explanation?

¹⁹ <http://content.tfl.gov.uk/sshrp-20171122-item03-minutes.pdf>

²⁰ <http://content.tfl.gov.uk/sshrp-20171122-item04-actions-list.pdf>

²¹ <https://www.london.gov.uk/questions/2018/1312>

²² <https://www.london.gov.uk/moderngov/documents/s78141/Minutes%20-%20Appendix%201%20-%20Tram%20and%20Bus%20Safety%20-%20Panel%201.pdf>

²³ <https://www.youtube.com/watch?v=XQBkLoH6CWU&feature=youtu.be&t=3625>

²⁴ <http://content.tfl.gov.uk/board-20180725-item03-minutes-20180523-for-approval.pdf>

²⁵ <https://www.london.gov.uk/questions/2018/1314>