

Michael Liebreich



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

cc: Heidi Alexander
Deputy Mayor for Transport
Deputy Chair, TfL

Assembly Member Florence Eshalomi
Chair, London Assembly Transport Committee

London Assembly Transport Committee Members

9 September 2019

Dear Sadiq,

As you may know, this Wednesday 11 September I shall be appearing as a guest before the GLA Transport Committee.

I am very much looking forward to providing what insight I can into opportunities to improve the safety of London's tram and bus systems, based on my four years as Deputy Chair of TfL's Safety, Sustainability Panel under Boris and two years as Chair of the Safety, Sustainability and HR Panel under your Chairmanship. I know we agree on the vital importance of this issue, as evidenced by the aggressive targets that you have set in your Mayoral Transport Strategy.

Unfortunately, before the GLA Transport Committee gets to the more general discussion about safety, it will also be asking for my understanding of the events around TfL's failure to send Fatigue Audit IA 17 780 to the various bodies investigating the Sandilands crash – namely the RAIB, BTP, SNC Lavalin, ORR and the coroners' office.

I continue to believe that there needs to be a proper, independent investigation, as do others. In June this year, the GMB Union at its 2019 Congress passed Resolution 412, which "backs calls for the Mayor of London to appoint an independent investigation to review why TfL failed to supply critical tram safety evidence to the Croydon Tram Crash Investigators, the Office of Road & Rail and the British Transport Police". And on 4 July this year, the GLA passed a motion stating that "This Assembly agrees with the GMB Union that there are serious questions to answer with regard to the Croydon Tram Crash, wholeheartedly supports the GMB's request and calls upon the Mayor to appoint an independent investigation."

I know that you have so far rejected calls for an independent investigation, but I very much hope that I can, even at this late stage, persuade you that one is needed.

As you may recall, I raised my concerns over TfL's failure to send Fatigue Audit IA 17 780 to the various bodies investigating the Sandilands tram crash during the TfL Board Meeting on 23 May 2018. In response, Gareth Powell provided some useful background information, but the discussion ended with me saying that his explanation for the failure to send the report – that it was simply “an error” – left me with unanswered questions. I wanted to know “what happened, and why,” and you agreed with me, saying “I’m keen to know the reasons why as well.” You asked the Commissioner to ensure that a written explanation was provided.

The exchange was, however, minuted only as “A note explaining the chronology would be prepared for Members.” This does not capture the essence of your request to the Commissioner to explain the *reasons* for the failure, not just its *chronology*. Perhaps predictably, however, the Board Briefing Note produced by TfL on 24 July 2018 restated the chronology of the failure but made no attempt to explain its causes – indeed it showed no evidence of any investigation into them.

Over the subsequent months, I watched a steady flow of FOI requests and Mayoral Questions chip away at the topic. One email, released in response to MQ 2018/2658 by Keith Prince, really caught my eye. In it, Jonathan Fox, TfL's Director of London Rail (and a director of Tramtrack London) asked Howard Carter, TfL General Counsel (also a director of Tramtrack London), to confirm that he was “choreographing the production and distribution of the note to board members on the timing of the fatigue report to RAIB.” It confirms that there was never any real attempt to discover the reasons why Fatigue Audit IA 17 780 was not shared with the Sandilands investigating bodies.

So finally, on 15 February this year, I wrote to Howard Carter, expressing my deep concern at the lack of transparency, listing the questions that the 24 July 2018 Briefing Note and the various FOIs and MQs failed to answer, and noting that I felt unable to drop the matter. Nearly three years after the crash, the families still have no closure on its causes and the driver of the crashed tram remains under threat of criminal prosecution. I do not consider this acceptable.

In addition to the unanswered questions over the failure to share IA 17 780 with the investigating bodies, I do not believe that concerns I raised in summer 2017 over the potential conflict of interest of a senior TfL executive – discussed individually with my fellow SSHR Panel members – have ever been properly addressed. As I said in a letter to Howard Carter on 15 February 2019: “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.”

My concerns were rejected out of hand by the Commissioner, first in a telephone call and then in an email to me on 8 August 2017 – without any apparent investigation or referral to any other person or body. I am still unaware whether there was a protocol in place at the time to deal with this sort of issue, but if there was, I doubt it was followed.

Since then my concern has only been heightened. In April this year, we learned from email traffic between TOL and TfL released in response to Caroline Pidgeon's MQ 2019/0149 that someone initially told TOL that Fatigue Audit IA 17 780 would come up with a conclusion of “Generally Well Controlled”. Who was it? Then we learned from the response to MQ 2019/12001 – also asked by Caroline Pidgeon – that Fatigue Audit IA 17 780 had been watered down between drafts, apparently under pressure from TOL. The audit conclusion “Requires Improvement” was removed entirely and

the three Top Priority issues softened into mere “Opportunities for Improvement”. This surely raises troubling questions about the closeness of the relationship between TfL and First Group, whose CEO at the time was a former Managing Director of London Underground. We also know that TfL line executives were involved in, and had access to, the fatigue audit fieldwork, which is surely unusual and far from best practice. There has been, to my knowledge, no scrutiny of whether it is appropriate for First Group to retain their 30-year contract to run the Croydon tram.

As for the nature of the “human error” which led to the failure to share Fatigue Audit IA 17 780 with the investigating bodies, TfL management has stuck to the narrative that it was a simple error and the fault of the Health and Safety Department. However, in her testimony to the GLA Transport Committee on 15 May this year, the head of that department, Jill Collis, said: “It fell in a gap between people who thought it should have gone out.” To which people is she referring? Were they all within her department? We just don’t know.

As noted in my 15 February 2019 letter to the Commissioner: “Please be assured that I make no allegations about anyone deliberately withholding information from the Sandilands investigating bodies, but I do insist on correct process.” I simply think that in a situation as serious as this, the survivors of the Sandilands crash, the families of the deceased and the general London public need to know *exactly how Fatigue Audit IA 17 780 was conducted, whether it was robust or compromised by the closeness of the relationship between TfL and First Group, and why it was not sent to the various bodies investigating the Sandilands crash in a timely way, as instructed by the board’s SSHR Panel*. To answer these questions in a way that commands public trust will require an independent outside investigation.

During Mayors Questions on 18 July this year, when Keith Prince pressed you to say whether you would appoint an independent investigator, as demanded by the GMB Union and the GLA Motion, you read a carefully-worded statement and said you didn’t see the point of an investigation. I think you have been let down by whoever drafted that statement, because it is misleading.

The statement described IA 17 780 as “a single report which was commissioned following a separate incident on the tram network after Sandilands”. But IA 17 780 was not a report on the incident of the driver filmed asleep on 19 May 2017. It was a comprehensive audit of fatigue processes at TOL, a full six months after the Sandilands tram crash. To this day it constitutes perhaps the most complete body of evidence on the working environment in which Croydon tram drivers have been operating.

Also, the Sandilands crash and the 19 May 2017 film were far from the only incidents on the Croydon tram in which fatigue may have played a causative role: in 2013 a driver complained about fatigue to the anonymous reporting organisation CIRAS; in November 2016 the Sun aired footage of a driver asleep at the wheel of a tram, taken on 21 April that year; at 5.22am on 31 October 2016, nine days before the fatal crash, a tram went round Sandilands corner at 45mph and the driver had to activate the emergency brake; on 24 April 2017, a Victoria Derbyshire investigation for the BBC interviewed four current and former drivers who admitted falling asleep while operating trams. Fatigue Audit IA 17 780 sheds important light on *all* of these incidents.

Your statement went on to say “TfL produced a report for its board in July 2018 explaining why the internal audit report was not issued to the external organisations investigating Sandilands immediately upon its completion. This report is available on the TfL website and can be found through a quick internet search. The TfL board report provides a full and adequate explanation.”

Except, as we have seen, the July 2018 report for the board is merely a *chronology*, it provides no *explanation* of the reasons for the failure, beyond stating that it was “clearly an oversight,” a conclusion for which it offers no evidence.

Finally, you said “I am unclear what the point of a further investigation would be, particularly bearing in mind the RAIB carried out a thorough investigation into Sandilands, including forming an independent view on the issue of fatigue management, and actually even including a summary of TfL's audit in its final investigation report. TfL also commissioned an independent investigation into Sandilands as well as a separate fatigue report.”

But the issue here is not whether or not the findings of IA 17 780 would have materially changed the findings of the RAIB or SNC Lavalin reports; it is quite simply to establish how it happened that IA 17 780 was not sent to the investigating bodies by TfL as agreed with the SSHR Panel of TfL's board. Until such time as the police, ORR and coroner finish their processes, we cannot know what weight will be put on the issue of fatigue management at TOL, or what evidence they find useful. In fact, it is not for us to speculate on that – it is for us to ask why evidence that quite clearly was *potentially material* was not delivered in a timely way by TfL to the external investigating bodies.

Sadiq, I was truly delighted when you asked me to continue serving on the board of TfL in 2016. One of the main areas on which I wanted to continue focusing was safety, as I explained in my letter to Val Shawcross reapplying for appointment:

As a member of the Safety, Accessibility and Sustainability Panel, I have welcomed TfL's steady progress in bringing down the levels of Killed and Seriously injured on the transport system. However, I have also been vocal about areas in which I believe there is an urgent need to do more:

- At meetings of the Safety, Access and Sustainability Panel I have highlighted the fact that TfL has two safety cultures: an advanced, industry-leading one in Rail and Underground and on major construction projects like Crossrail; and what I consider an old-school, blame-evading one in the Surface directorate.*
- I have made it clear that I find the safety performance of London's bus system to be unacceptable. While I welcomed the recent launch of the first Bus Safety Plan, I felt compelled to write to management about my concerns that the plans were insufficiently urgent and comprehensive.*

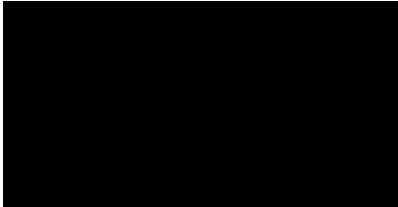
I really appreciated your public thanks for the role I played as Chair of the SSHR Panel in the aftermath of the Sandilands tragedy and during the subsequent investigations. It was not an easy time for any of us, and not something for which one can be truly prepared. In general, I think TfL and its management responded superbly to what was clearly a very serious and traumatic failure.

I would like to think that the lack of transparency over IA 17 870 is the last gasp of that “old-school, blame-evading safety culture in the Surface directorate”, against which I battled during my whole time on the board of TfL. I worry, however, that it is instead evidence of that culture's persistence, and I can guarantee that unless you root it out, you will fail to meet the targets in your Mayoral Transport Strategy for reducing KSIs on London streets, including the hundreds each year involving TfL-contracted bus services.

I remain available at any time to meet with you and/or Heidi Alexander. I would be more than happy to advise on the terms of reference for an independent investigator.

In any case, I wish you the very best in your efforts to improve road safety in London in the shortest possible time-frame. There could not be a more vital challenge during your Mayoralty.

Yours sincerely,



Michael Liebreich