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Dear Ms Miller,

## TfL's failure to lawfully conclude its investigation into the actions of Market Asset Management (Seven Sisters) Ltd

1. This firm is instructed by Victoria Alvarez and Fabian Cadavid, who are traders in Seven Sisters Market ('the Market'), along with Mirca Morera, who is an advocate for some of the other traders, including her father. Ms Alvarez, Mr Cadavid and Ms Morera are referred to collectively as 'our clients' below. Please note, we have corresponded with Transport for London ('TfL') in the past as solicitors for El Cafetal Ltd (Ms Alvarez' business) and West Green Road / Seven Sisters Development Trust Limited ('the Trust') (of which she is a Director).
2. The purpose of this letter is to:
  - (1) explain why TfL is obliged to conclude its investigation into serious complaints raised by our clients about Market Asset Management (Seven Sisters) Ltd ('MAM')'s actions, and those of linked companies, and what that obligation entails (see paragraphs 41 to 59 below);
  - (2) seek information (see paragraphs 60 to 61), specifically about:
    - (a) the investigatory steps taken to date; and
    - (b) the sanctions open to TfL under the lease of Seven Sisters Market to MAM ('the Market Lease'), including

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termination of the Market Lease and the criteria for taking such steps;

(c) whether, and if so to what extent, the Contracts (Rights of Third Parties) Act 1999 has been excluded by the terms of the Market Lease; and

(3) request an undertaking that the investigation is completed within the next 35 days with a fully reasoned, evidence-based report that is shared with our clients together with a reasoned decision on the action to be taken against MAM (including, in particular, whether the Market Lease should now be terminated) (see paragraph 62).

3. Please let us have your substantive response within seven days, i.e. by close on 6 August 2018, and with it the information sought.

## **Background**

### *The Market*

4. As you know, the Market occupies the ground floor of a former Edwardian department store, known locally as Latin Village, Latin Corner and Wards Corner.
5. London Underground Ltd ('LU') holds the freehold in the land. LU is an indirect subsidiary of TfL, being owned by Transport Trading Ltd, a direct subsidiary. As such, LU is a member of what is known as 'the TfL Group' and bound by its policies. We return to this point below.
6. For some years LU has leased the ground floor Market space out to a 'market operator' who, in turn, has granted what purport to be licences to the market's traders (we reserve our position on the precise legal nature of these arrangements). All of the Market traders are BME people and most have Latin American origins. Many also have Colombian national origins and/or nationality.
7. In litigation brought by this firm about the significance of the public sector equality duty then contained in section 71 of the Race Relations Act 1976 to public authorities' decision-making about the future of the Market, *R (Harris) v London Borough of Haringey* [2010] EWCA Civ 703 ('*Harris*'), the Court of Appeal held that the duty was engaged, partly because of the identity of the traders and proprietors of other nearby businesses and partly because of the particular communities they served. Given this, Pill LJ held that the duty demanded an "analysis" of the material about these factors that was before the decision-maker "with the specific statutory considerations in mind", adding "it is necessary to have due regard to the needs specified in section 71(1). There had been no analysis of the material before the Council in the context of the duty", so the decision was unlawful (see [40]).

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*Grainger's development plans*

8. *Harris* came about because Grainger PLC ('Grainger') proposed to develop the site of the Market for retail and private residential purposes. Planning permission to do so was secured in 25 June 2012 (the earlier decision to grant it having been quashed by the Court in *Harris*, and then subsequent applications having been refused by Haringey Council). However, those plans are subject to certain Compulsory Purchase Orders ('CPO's) being made and an unusual section 106 agreement that requires the temporary relocation of the Market, a space to be made available for it in the new development and its support in the meantime. That agreement came about through the direct intervention of the former Mayor, Boris Johnson, in the planning process.
9. As to the CPO process, this was the subject of a lengthy contested public inquiry last year (see <http://seven-sisters.persona-pi.com/>) which has yet to be formally concluded with the publication of the inspector's report and a subsequent decision by the Secretary of State.
10. As to the section 106 agreement, this has yet to be complied with (the terms are here on the Haringey website, updated in July 2017: <http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=311814>).
11. It should also be noted that, on 25 April 2014, planning permission was granted for an alternative, community-led redevelopment plan for the site by the Trust (see the 'Decision Notice' at <http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=272550>).
12. It follows from all of this that the site's development by Grainger is possible, but far from certain.

*The last Market Lease*

13. Meanwhile, the last lease of the Market space expired on 16 September 2015. MAM first held that lease for a very short period, having been assigned it just days before the end of its term by the previous market lessee, Jill Oakley. After that, we understand LU's position was that MAM held the assigned lease 'at will', notwithstanding its term having expired.

*Decision to award the current Market Lease to MAM*

14. In 2016, it emerged that LU intended to enter into a new lease with MAM and draft heads of terms had been agreed. The intention was that the new lease would continue until it lapsed or was terminated on notice to enable Grainger's development of the site to proceed.

15. Various Market traders became concerned about the process by which MAM had been selected as the preferred future leaseholder, despite indications from a TfL employee, Martin Teodorczyk, that there would be an open, advertised process.
16. All of this was the subject of an exchange of pre-action correspondence with this firm culminating in a letter of 29 October 2016 from TfL's solicitors maintaining that decisions over who should hold a future Market Lease were commercial, the assurances given by Mr Teodorczyk were unauthorised, and MAM was the only organisation to make an offer.
17. After further exchanges, the Trust was invited to make an offer and did so, but this was rejected in favour of MAM. The reasons given are significant. In an e mail of 6 May 2016 from Alun Jones to Roger Dunlop (a commercial property agent then acting for the Trust) it was said (our emphasis):

“I regret to advise that we will not be pursuing your clients [sic] offer further.

We appreciate that the proposal has some merits and we understand your clients [sic] reasons for wishing to take responsibility for managing the market.

However, it is our normal practice to give current tenants an opportunity renew their leases, unless we choose to restructure our portfolio, and detailed negotiations have already taken place with Market Asset Management Ltd. Heads of Terms were agreed some time ago and a new lease is close to completion. The current lessee is also linked with Grainger Seven Sisters Ltd who are planning to regenerate this area in partnership with Haringey Council. As you will be aware the market is considered to be an important part of the local community and will be part of the regeneration plans. MAM Ltd are therefore well placed to continue to manage the market, support the regeneration proposals and help with the continuity of the market.”

18. A further letter of 23 May 2016 from Mr Jones makes these points in near identical terms, adding

“MAM Ltd is best placed to continue to manage the market, support the regeneration proposals and help sustain its future”

19. In the same letter, this view is characterised as “TfL's position”.
20. The decision and the materiality of these considerations were defended by TfL in further pre-action correspondence, notably a letter of 15 July 2016.

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*The February 2017 complaints*

21. Shortly before LU was about to sign the new Market Lease with MAM, concerns were raised with TfL about a pattern of unacceptable behaviour directed towards the Market traders, in particular by MAM's director, Jonathan Owen. This raised serious questions about whether MAM was indeed "best placed" to "manage the market... and sustain its future". Examples were given in a letter of 23 February 2017 from this firm to TfL.
22. In summary:
  - (1) at a November 2016 meeting of the steering group (which is supposed to make proposals and plans to sustain the market) traders had been threatened with "a fucking war" by Mr Owen;
  - (2) immediately prior to another meeting with traders on 13 February 2017, Mr Owen told Ms Morera he was "getting [my] boxing gloves ready";
  - (3) at that meeting, he announced "if I wanted to, I could get rid of 90% of the traders here";
  - (4) Mr Owen used language at that meeting such as "bloody illegal immigrants" and "not to be Irish" which, although not directed at anyone specific, traders found offensive, distasteful and menacing;
  - (5) responding to traders requesting improved security at the Market at the 13 February meeting, Mr Owen said, "I'm giving you permission, it's my property [sic], grab them by the scruff of the neck and throw them out";
  - (6) then, on 15 February 2017, Mr Owen wrote to say he was "considering closing down" stalls, and reporting them to the Food Safety Officer at London Borough of Haringey Council. Mr Owen suggested that the Council "would be perfectly entitled to do this" i.e. close stalls, and that he "would support such action"; and
  - (7) car parking facilities had been compromised.
23. That letter concluded by requesting "that TfL hold off entering into the proposed market lease, until a proper investigation has been concluded". TfL acceded to that request on 24 February 2017.

*The February to April 2017 investigation*

24. The investigation proceeded by means of requests for information from and meetings with traders and Mr Owen, involving Mr Jones and a colleague, Clive Henman. It concluded on 6 April 2017 with a

report to which was appended a 'statement of reassurance' and 'action plan' from MAM and a letter from Mr Jones to Mr Owen.

25. That letter stated materially (our emphasis):

"During our meetings you accepted that your conduct referred to in the allegations was wrong. You accepted you had caused offence and apologised, and had apologised to the individuals in question."

I have met with Ms Morera, and my colleague Mr Henman has spoken with Mr Khanjary. The impression they gave is that there is a lack of trust between MAM and the market traders. Both confirmed that you had apologised for your actions. We have discussed your commitment to improving relations between MAM and the market traders. I acknowledge the role the Action Plan and the increased involvement of Malcom Veigas will have in this.

The investigation report and appendices are attached. In view of the above I have agreed that the Lease can be renewed."

26. The appended report which is dated 4 April 2017 elaborates on the last of these points as follows:

"Having regard to the discussions during our investigation and the additional information supplied by Jonathan Owen / MAM - including Jonathan Owen's admission of his inappropriate behaviour, Jonathan Owen's apology for said behaviour, and the actions being taken by MAM to work with traders to improve the market - I intend to proceed with the grant of a lease to MAM."

and in its main body, noted (our emphasis):

"In our two meetings with Jonathan Owen, Jonathan Owen accepted that he had previously behaved inappropriately towards some traders and said that whilst he had not intended to cause offence [sic], he acknowledged the offence that his language had caused."

We discussed respect and trust with Jonathan Owen, and whilst we acknowledge the challenging environment of running a market, we asked that he abide by the London Underground Code of Conduct (attached); to which he agreed.

Jonathan Owen presented the MAM Equality and Diversity Policy to us. We welcome that MAM has adopted such a policy and Jonathan Owen confirmed his commitment to the MAM Equality and Diversity Policy in his meetings with us....

In our second meeting with Jonathan Owen, MAM explained the steps that they will take to improve the market and to work with traders to improve their businesses. MAM subsequently sent us an Action Plan (attached). The action plan commits MAM to frequent cleaning of the communal areas. It will help with the promotion of the market, and gives a commitment to improved relations with licence holders."

27. Plainly then, MAM's admissions and promises of changes in behaviour, including adherence to the Code of Conduct, were decisive factors in the signature of the Market Lease (hence the use of the words "[i]n view of the above", "[h]aving regard to"). They were also shared with our clients and other traders by TfL and, in the light of them, a decision was made, despite misgivings, not to challenge the award of the Market Lease to MAM.
28. The Market Lease was signed very shortly afterwards.

*The September 2017 complaints and their investigation*

29. Regrettably, the promises that had been made to TfL by MAM have not been honoured. In a letter of 6 September 2017 addressed to Grahame Craig, Ms Morera gave a series of (non exhaustive) examples as to why that was so.
30. In summary:
- (1) there had been unexplained utility hikes of 300% experienced by 32% of market traders, all of whom are of Latin American origin (and, more specifically, Colombian origins);
  - (2) one of these targeted traders, Fabian Catano (a disabled victim of the London 7/7 bombings), had been issued with what purported to be an eviction order by MAM;
  - (3) Mr Owen had told another trader, Fernando, that he was "very angry" with him and Ms Morera because of evidence given during the CPO inquiry and threats were made against both of them;
  - (4) Mr Owen had described Ms Alvarez and another female trader as "fucking bitch[es]" to another trader;
  - (5) he had also demanded employee information from Ms Alvarez and cancelled the licence of one of her units;
  - (6) the Police had advised the Market traders that security measures taken by MAM were inadequate, no steps had been taken to improve them and a series of crimes had been committed against traders; and
  - (7) parking facilities remained compromised.
31. Ms Morera also highlighted the outcome of the earlier complaints, traders having since passed a no confidence vote in MAM and TfL's Equality Act 2010 duties. Her letter concludes:

"I have tried to resolve the matter formally in a TFL meeting on the 16th March with Alun Jones, Tom Atkinson and Clive Henman in Seven Sisters, and a TFL investigation was initiated.

However, we have not received a satisfactory outcome. I am making a second formal complaint and I would like to arrange a meeting at the TFL offices. In your response please advise me of a date of a meeting.”

32. Responding by letter on 12 October 2017, your colleague Joanna Daly stated:

“After receiving allegations regarding MAM and its director Jonathan Owen, we need to discuss these allegations further with affected parties. Allegations received by us fall into two areas on which we will focus our discussions:

- A. Unfair practices (including allegations of uncompetitive utility prices); and
- B. Inappropriate conduct (including sexist and/or racist language).

We will:

- Arrange meetings with you, Mr Catano and Ms Morera and any other licensee who are able to share specific examples of unfair practices or inappropriate conduct;
- Arrange a meeting with Mr Owen to gather his response to the specific allegations of unfair practices or inappropriate conduct;
- Identify and take appropriate actions; and
- Produce findings in writing and to circulate them to those involved in the discussions and relevant political stakeholders.

Please note that many of the points raised in correspondence that we have received are outside of our remit as landlord and relate to direct contractual obligations between MAM and the traders or that, in the case of harassment, in the first instance ought to be directed to the Citizen Advice Bureau or other entities that are more appropriate to deal with such matters.”

33. Pausing there, we observe that Ms Daly appears not to have been fully briefed on what had happened in the previous investigation, in particular, TfL’s emphatic insistence on MAM’s compliance with LU’s Code of Conduct and Mr Owen’s undertaking that it would do so. Section 3.2 of that Code, headed “Working Relationships”, states that those working for LU must:

- “• treat everyone with whom they come into contact at work with courtesy and respect;
- be aware of and comply with LUL’s policy, standards and procedures on equality and workplace harassment;
- Avoid initiating or provoking violent situations or otherwise behaving in a manner which is offensive, abusive, intimidating, bullying, malicious or insulting to fellow employees, customers and contractors and others with whom they come into contact in the workplace.”



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34. The second bullet point refers to policies that include the 2010 document, LU - Harassment and Bullying at Work Policy and Procedure. Its introduction stresses:

“the right to a supportive working environment free from harassment and/or bullying”

and the shared:

“responsibility to create a safe and supportive working environment and this includes behaving in a responsible, moderate and sensitive manner in dealings with others”.

35. Essentially, LU was holding MAM to the same standards to which it holds itself. That was underscored by Mr Jones’ minuted discussions with Mr Owen on 6 April 2017, in which it was emphasised the lease renewal was being considered in a context in which compliance with section 3.2 above was behaviour “expected” of MAM by TfL.
36. It follows that harassment was very much a matter to be investigated by TfL when grappling with the 6 September 2017 complaint (rather than something to be discussed with a Citizens’ Advice Bureau, which suggestion is not understood).
37. Ms Morera made this point and others regarding TfL’s policies and duties at a meeting with traders that took place on 13 November 2017. Traders also explained how MAM’s conduct formed a pattern, that it had systematically breached the promises that had been made during the last investigation to secure the Market Lease and all of this needed to be addressed through action by TfL. They were told by Ms Daly and her colleague, Mr Sinclair Gray, that TfL accepted section 149 of the Equality Act 2010 was engaged by the 6 September 2017 letter and other complaints that had been voiced, but they could not say with certainty what action TfL could take. Minutes of this meeting were sent to Mr Gray on 14 November 2017.
38. On 27 Mar 2018 Mr Gray wrote to Ms Morera stating:
- “[p]lease excuse the delay in reverting I just want to let you know that we hope to revert shortly after Easter with a substantive response.”
39. The investigation has yet to be concluded, however, and other than the meeting with traders, it is unclear what, if anything, has been done to progress it.
40. Meanwhile, relations with traders have worsened, as will be apparent when the investigation moves forward. For instance, concerns raised about MAM at the steering group are not being addressed, the utilities charge issue is unresolved, other traders have been required to cease trading by MAM, and Mr Cadavid has issued a County Court claim regarding the discrimination, harassment and victimisation he has experienced.

## Legal framework

41. This is straightforward. TfL is a public authority, as is LU. Whilst both undoubtedly have private functions, they have public ones too, including managing assets and enforcing obligations private bodies owe them in the public interest (see e.g. *R (Prokopp) v London Underground Ltd* [2003] EWHC 960 (Admin)). Such functions are amenable to judicial review. In these respects, TfL and LU are subject to three relevant public law duties.

### *The common law*

42. First, TfL and LU are bound by public law to honour the promises they make to defined groups of the public unless there are compelling public policy reasons not to do so: see *R v. North and East Devon Health Authority, ex parte Coughlan* [1999] EWCA Civ 1871, [2001] Q.B. 213 and *R (Bhatt Murphy) v The Independent Assessor* [2008] EWCA Civ 755, the principles of which were applied to TfL's decision making in e.g. *R (Dolatabadi) v Transport for London* [2005] EWHC 1942 (Admin). Those promises include specific and policy commitments.
43. Here there are two relevant sets of promises. The first were made to Ms Morera in Ms Daly's 12 October 2017 letter. Essentially, the promise was to investigate the concerns raised adequately and, by necessary implication, doing so would include examining whether there had been "unfair practices (including allegations of uncompetitive utility prices)" and "inappropriate conduct" by reference to the standards TfL had set for MAM in the lease and in discussions, including at the 6 April 2017 meeting.
44. The second set is found in TfL's group policies which, unsurprisingly are framed to embrace its subsidiaries such as LU. These include the Action on Equality Plan, published in March 2016, which sets out TfL's equality commitments for 2016-20. Its preamble states:

"as a public authority and in accordance with the Equality Act 2010, we work to show due regard and the need to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not..."

and it notes:

"Our vision for our business partners is that they will ... actively support and participate in our equality agenda.

To achieve this we will...

- Review contract requirements and establish a clear equality and inclusion specification in our contract requirements...
- Promote the benefits of diversity and equality to our partners through communications (eg our website, videos, roadshows, contractor training)
- Include elements of equality and accessibility in the design of business processes

We will measure progress using...

- Clear and consistent equality requirements embedded in our contracts”

45. Given the timing of the signature of the new Market Lease, we assume clear and consistent equality requirements are “embedded” in its terms but ask for details below (see paragraph 61(4)).

#### *The Equality Act 2010*

46. Secondly, as Mr Gray and Ms Daly rightly acknowledged during the 13 November 2017 meeting, section 149 of the Equality Act 2010 is engaged by the traders’ complaints. It provides materially:

“Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)....
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
  - (a) tackle prejudice, and

(b) promote understanding.”

47. Race, disability and gender are listed amongst the relevant protected characteristics at subsection (7).
48. The duty is engaged when a public authority investigates allegations of racially-motivated conduct by private parties. As much is obvious from its origins in the MacPherson Report.
49. The duty to have due regard is an ongoing one (*R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [95]). It has been variously described as “a test of the substance of the matter” which must be discharged with “vigour” (*R (Domb) v London Borough of Hammersmith and Fulham* [2009] EWCA 941 Civ at [52]), “rigour” (*Brown* at [92]), and which imposes “a heavy burden on public authorities...in ensuring that there is evidence available, if necessary, to demonstrate that discharge” (*R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at [59]).
50. “Due regard” necessarily involves a decision maker:
  - (1) appreciating when the duty to have due regard is triggered, i.e. whenever there is an equality issue which needs at least to be addressed (*R (Elias) v Secretary of State for Defence* [2005] EWHC 1435 (Admin) at [98]);

and then:

- (2) taking steps to properly understand any discrimination, equality or good relations problem, its degree and extent (*R (Lunt) v Liverpool City Council* [2009] EWHC 2356 at [44], *Rahman v Birmingham City Council* [2011] EWHC 944 (Admin) at [35] and *R (Green) v Gloucestershire CC*, *R (Rowe & Anor) v Somerset CC* [2011] EWHC 2687 (Admin) at [121]-[127]);
- (3) considering the information it has with the specific statutory considerations in mind (*Harris* at [40]);
- (4) when doing so, identifying any unlawful discrimination and negative (or positive) consequences in terms of equality of opportunity and good relations of the courses of action being contemplated (*Elias* (Court of Appeal) at [274]);
- (5) balancing any consequences for equality of opportunity against the other benefits of proceeding, or not (*R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA (Civ) 141 at [31], *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [81]); and

- (6) considering whether, and if so how, any identified negative consequences can be mitigated (*R (Kaur & Shah) v London Borough of Ealing* [2008] EWHC Admin 2026 at [43]).

#### *The Human Rights Act 1998*

51. Thirdly, TfL and LU are bodies “certain of whose functions are functions of a public nature” for the purpose of subsection 6(3)(b) of the Human Rights Act 1998.
52. Section 6(1) makes it unlawful for such an authority to act in a way which is incompatible with a Convention right set out at schedule 1. That schedule includes Articles 3, 8 and 14 ECHR which will be breached if the state permits, including by passively failing to investigate and sanction, racial and other discriminatory treatment by private parties as well as state bodies: see e.g. *B.S. v. Spain*, No. 47159/08, 24 July 2012, *Abdu v. Bulgaria*, No. 26827/08, 11 March 2014 and *R.B. v. Hungary*, 64602/12, 12 April 2016, para. 39.

#### *Private law obligations*

53. LU may owe enforceable private law obligations to the traders under section 1(1) of the Contracts (Rights of Third Parties) Act 1999 read with the Market Lease. We seek information about this below.

#### **Analysis**

54. This section of the letter draws together the threads above.

#### *TfL’s obligation to conclude its investigation*

55. Having committed itself to the investigation described in Ms Daly’s 12 October 2017 letter, TfL must complete that process. Our clients have the clearest of legitimate expectations that will happen and there is no public interest in that not happening, less still one sufficiently compelling to override the commitment given. See *Coughlan* and *Bhatt Murphy* cited above at paragraph 49. As Laws LJ said in the latter case at [30]:

“good administration (“by which public bodies ought to deal straightforwardly and consistently with the public”: paragraph 68 of my judgment in *Ex p Nadarajah* [2005] EWCA Civ 1363) generally requires that where a public authority has given a plain assurance, it should be held to it. This is an objective standard of public decision-making on which the courts insist.”

56. Similarly, having decided in April 2017 to hold MAM to the LU Code of Conduct and the policies referred to therein, TfL was obliged to investigate alleged conduct that, on its face, involved flagrant and systemic breaches of the standards those documents set. It would be an unlawful abdication of power and irrational to do otherwise

because MAM's commitment to TfL would then become hollow and meaningless.

57. Even had there been no such commitments, section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998 would create a duty to investigate in the circumstances discussed above. Once TfL became aware of traders' concerns, it was obliged to take the steps set out at paragraph 46 above, beginning with enquiries to properly understand any discrimination, equality or good relations problem, its degree and extent (see *Lunt*). As discriminatory treatment and harassment based on statuses such as race and gender were alleged, and such treatment and harassment had been admitted only months before, Articles 3, 8 and 14 of the European Convention on Human Rights read with section 6 demanded an investigation.

*The content of the investigatory obligation*

58. However an investigatory obligation arises, the resulting investigation will need to have certain basic features including, but also beyond, those Ms Daly identified on 12 October 2017.
59. In particular, the obligations described at paragraphs 43 and 46 to 52 above mean that those investigating must:
- (1) identify:
    - (a) the terms of reference and those matters that have not been investigated, giving reasons why not;
    - (b) the allegations being investigated;
    - (c) the standards they believe are relevant to those allegations, which here will include:
      - (i) the express terms of the Market Lease;
      - (ii) any relevant collateral agreement (such as Mr Owen's 6 April 2017 promises);
      - (iii) the LU Code of Conduct and, in turn, the policies referred to in of the Code including the LU Harassment and Bullying at Work Policy and Procedure;
      - (iv) the statutory needs expressly identified in section 149(1) i.e. elimination of discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act, the advancement of equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and

the fostering of good relations between persons who share a relevant protected characteristic and persons who do not share it;

- (v) Articles 3, 8 and 14 of the ECHR (the enjoyment of which the state has a positive obligation to secure);
  - (vi) health and safety law; and
  - (vii) commonly accepted, fair commercial practices; and
- (d) the factual background;
- (2) then gather and document:
- (a) the evidence relevant to the allegations;
  - (b) MAM's response;
  - (c) the comments of those who have made the allegations on that response;
  - (d) any further evidence that appears potentially relevant because of (2) (b) or (c) above;
- (3) then make and reach:
- (a) evidence-based factual findings including on the question of whether the actual or perceived protected characteristics of traders and others associated with them (including race, gender and disability), affected MAM's actions and failures;
  - (b) conclusions on whether the facts found mean that standards have been breached; and
  - (c) decisions (or if they lack decision-making authority, then recommendations) as to action to be taken.

### **Information sought**

60. Please address the questions and requests for documents using the enumeration below. If you are unable or unwilling to do so, please give full reasons that are specific to the request. Note, these are not Freedom of Information Act 2000 requests and should not be treated as such: our clients are entitled to this information given the public law obligations discussed above and their status as complainants.

## 61. Please:

- (1) confirm the factual background set at paragraphs 4 to 40 above is accepted to be accurate or, if it is not, give details of the disagreement;
- (2) confirm TfL accepts its public law duties in respect of the investigation of the September 2017 complaints are as identified at paragraphs 42 to 52 above or, if that is not accepted, explain why not;
- (3) supply a copy of the Market Lease (note, commercially sensitive information such as lease payments may be redacted if that is thought necessary);
- (4) if equality obligations were not “embedded” into the Market Lease as anticipated by the Action on Equality Plan of March 2016, then explain why not and what, if any, thought was given to doing so;
- (5) state whether TfL continues to expect MAM’s compliance with section 3.2 of the LU Code of Conduct and, in turn, the policies referred to in the Code including the LU Harassment and Bullying at Work Policy and Procedure;
- (6) identify the standards of conduct which TfL expects of MAM (including those expressly set out on the face of the Market Lease and those implied), by stating whether it accepts that the following would be a breach of the Market Lease (or if not the Market Lease, then of a collateral agreement formed during the February to April 2017 investigation):
  - (a) bullying by MAM of traders or others associated with them (note, by ‘bullying’ we mean:

“offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power or authority through means intended to undermine, humiliate or denigrate the recipient or which could be reasonably perceived by the recipient to be so intended”

see paragraph 2.2.1 of the LU Harassment and Bullying at Work Policy and Procedure, examples of which are:

- (i) humiliation or ridicule of a person;
- (ii) making insulting or offensive comments about a person;
- (iii) intimidating behaviour, including threats, shouting, and the use of abusive language or intimidating body language;



- (iv) ostracising, excluding or marginalising a person;
  - (v) preventing or impeding a person from doing their job; or
  - (vi) threatening or committing physical violence);
  - (b) discrimination prohibited by the Equality Act 2010 by MAM against traders or others associated with them;
  - (c) harassment by MAM against traders or others associated with them (note, by ‘harassment’ we mean:
    - “... unwanted conduct affecting... dignity... in the workplace. It may be related to age, sex, race, disability, religion, sexuality, nationality and may be persistent or an isolated incident.
    - ... This conduct may be of a physical, verbal or non-verbal nature is unwanted by the recipient and has the purpose or effect of violating another person’s dignity or creating an offensive, intimidating, hostile, degrading or humiliating environment.”
  - see paragraph 2.2.1 of the LU Harassment and Bullying at Work Policy and Procedure);
  - (d) victimisation prohibited by the Equality Act 2010 by MAM against traders or others associated with them;
  - (e) any breach of the Health and Safety at Work Act 1974 or associated legislation by MAM; and
  - (f) any, or if not any then systemic or frequent breaches, of the purported licences granted to traders;
- (7) state who is currently responsible for the investigation of the September 2017 complaints and what, if any, experience they have in handing investigations into matters within the scope of section 149 of the Equality Act 2010 and the Human Rights Act 1998;
- (8) list the investigatory steps taken to date in respect of the September 2017 complaints, who took them and their outcome;
- (9) supply any notes taken at, and any minutes of, all meetings in respect of the September 2017 complaints;
- (10) identify planned investigatory steps that have yet to be taken, who is responsible for taking them and when they will occur;

- (11) identify the sanctions open to TfL under the Market Lease for breach of its terms and any collateral agreement, including termination of the Market Lease and identify the criteria TfL applies for imposing such sanctions; and
- (12) state whether, and if so to what extent, the Contracts (Rights of Third Parties) Act 1999 has been excluded by the terms of the Market Lease giving full reasons.

**Undertaking sought**

62. We request an undertaking that the investigation of the September 2017 complaints will:
  - (1) be completed within the next 35 days;
  - (2) result in a fully reasoned, evidence-based report that is shared with our clients which complies with the basic requirements listed at paragraph 59 above; and
  - (3) prompt a reasoned decision on the action to be taken against MAM (including, in particular, whether the Market Lease should now be terminated).
63. If you are unwilling, or consider yourself unable, to give this undertaking, please explain why not.
64. Last, please confirm receipt of this letter by return.

Yours faithfully,

*Bindmans LLP*

Bindmans LLP