

COUNCIL:

29 NOVEMBER 2018

REPORT OF THE CHIEF EXECUTIVE

CARDIFF BUS – APPOINTMENT OF INDEPENDENT NON-EXECUTIVE DIRECTORS

Reason for this Report

1. To consider changes to the Council's appointed representatives to Cardiff Bus, including the appointment of two Independent Non-Executive Directors.

Background

2. Cardiff City Transport Services Limited (otherwise known as 'Cardiff Bus') is a private company limited by shares and is wholly owned by the Council. Cardiff Bus was constituted as a Public Transport company within the meaning of Section 72 of the Transport Act 1985 and the main purpose of the company is to carry out the business of a public transport company.
3. The appointment of Directors to the Board of Cardiff Bus is governed by (i) the Company's Articles of Association ('the Articles') and (ii) legislation. Of particular relevance to Cardiff Bus is the Transport Act 1985 ('The 1985 Act') and regulations made thereunder.
4. The Board of Cardiff Bus currently comprises eleven Directors and there is also a Company Secretary.
5. Four of the Directors are full-time employees of Cardiff Bus, three of whom hold responsibilities for the management of Cardiff Bus and are classified as Executive Directors. The fourth employee is appointed to the Board as a representative of Cardiff Bus employees.
6. The Council currently nominates seven Councillors as Non-Executive Directors, which is the maximum number of persons (who are not full-time employees of the company) that may be appointed as Directors (see legal implications below). There is no requirement for the appointment of Councillors to be allocated to political groups on the basis of political balance.

Issues

7. It is proposed that the number of Councillors appointed as Non-Executive Directors be reduced from seven to five in order to provide for the appointment of two Independent Non-Executive Directors who are neither elected members of the Council nor employees of the Council or the Company.
8. In accordance with good practice in terms of corporate governance, the proposed appointment of two Independent Non-Executive Directors would supplement the expertise of Board members, providing constructive challenge and holding management to account.
9. The Company's existing Articles allow for the appointment of one Independent Non-Executive Director who is neither an elected member nor employee of Cardiff Bus. As a result, the Company's Articles will require amendment to allow for the appointment by the Council of no more than two Independent Non-Executive Directors. This provision would not fetter the ability of any future Council to appoint seven Councillors as Non-Executive Directors should it wish to do so.
10. It is therefore proposed that the Council, as the Shareholder, will write formally to the Company, subject to agreement by Council, to notify it of the proposed amendments to the Articles, which can then also be considered formally by the Company in accordance with the Company's decision making process. As the sole shareholder, the Council is able to require such amendment to be made to the Articles.
11. The Council is seeking to appoint two Independent Non-Executive Directors on an interim basis only for a 12-month period from the date of appointment, which is expected to be made in January 2019. It is proposed that authority be delegated to the Corporate Director Resources, in consultation with the Cabinet Member for Finance, Modernisation & Performance, to procure appropriately qualified individuals to serve as the interim independent Non-Executive Directors in accordance with the Council's procurement framework.
12. It is proposed that each of the two Independent Non-Executive Directors should be appointed respectively on the basis of their professional skills and experience in areas such as financial & general management; corporate governance; and transport policy and/or management.
13. The Council expects that the independent Non-Executive Director positions would be remunerated, but this is a matter for consideration by the Company in accordance with the Articles.
14. Prior to the end of the interim 12-month period, it is proposed that the Council will undertake a public appointment process for the two Independent Non-Executive Director positions by way of public advert, shortlisting and interview. To this end, it is recommended that authority be delegated to the Director of Governance & Legal Services and Monitoring Officer to carry out the appointment process in 2019/20; including the establishment of a politically balanced Member

Appointment Panel; overseeing a shortlisting process, where applicants would be assessed against criteria set out in a person specification for the position, and supporting interviews of the shortlisted applicants. The outcome of the public appointment process would be reported to a future meeting of Council for approval.

15. It is important that the Council as the sole shareholder identifies an officer with responsibility for carrying out the Council's role as Shareholder. This role is currently undertaken by the Corporate Director Resources (and Section 151 officer) and it is recommended that this arrangement should continue.

Financial Implications

16. The costs involved in procuring and securing two Independent Non-Executive Directors will need to be found from within the existing budgetary resources allocated to the Council. All remuneration and expenses payable to the Non-Executive Directors once they are in post will be the financial responsibility of Cardiff Bus.

Legal Implications

17. Pursuant to the Articles of Association of Cardiff City Transport Services Limited (Cardiff Bus), the Council may determine the maximum and minimum number of directors to be appointed, subject to the provisions of the Transport 1985 Act.
18. The Transport Act 1985 (section 73) and The Public Transport Companies (Permitted Maximum and Required Minimum Numbers of Directors) Order 1985 No 1901, prescribes:
 - (i) seven as the permitted maximum number of persons '*who are not full-time employees*' of a public transport company who may be directors of such a company; and
 - (ii) three as the required minimum number of directors of the company '*who are full-time employees of the company holding positions of responsibility for the management of the company's business or any part of it*'.
19. Whilst it is noted that the application of Order No 1985 No 1901 has been revoked in respect of England {see the Control of Fuel and Electricity, Local Government and Transport (Revocations and Savings) Order 2013/ 2986 schedule 3}, the Order still applies in Wales.
20. Under the Articles, which uses slightly different language to the legislation, directors are classified as either as Executive or Non-Executive directors. In short:
 - (i) an Executive Director is defined as a director who is a full-time employee of the Company holding a position of responsibility for the management of the Company's business or any part of it; and

- (ii) a Non-Executive Director is defined as a director who is not a full-time employee of the Company holding a position of responsibility for the management of the Company's business or any part of it.

Currently, the Council may appoint one person to be a Non-Executive Director who is neither an elected member nor employee of Cardiff Bus provided that such person has experience of the management of a Company's finances.

- 21. The appointment of any individual to serve on an outside body is a Local Choice function under the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007. The Council has determined that responsibility for this function (save for specified exceptions) shall rest with Full Council.
- 22. The appointment should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths

RECOMMENDATIONS

The Council is recommended to:

- (1) approve the reduction, from seven to five, in the number of Non-Executive Director positions allocated for the appointment of Councillors to the Board of Cardiff City Transport Services Limited,
- (2) receive nominations and confirm the appointment of five Councillors to serve as Non-Executive Directors of Cardiff City Transport Services Limited.
- (3) subject to the proposed amendments to the Company's Articles, approve the allocation of two Non-Executive Director positions for the appointment of independent persons to the Board of Cardiff City Transport Services Limited (i.e. who are neither elected members of the Council nor employees of the Council or the Company).
- (4) subject to the proposed amendments to the Company's Articles, approve the appointment of two independent Non-Executive Directors (to be selected as set out in recommendation 5) on an interim basis for a 12-month period.
- (5) subject to the proposed amendments to the Company's Articles, delegate authority to the Corporate Director Resources, in consultation with the Cabinet Member for Finance, Modernisation & Performance, to procure two appropriately qualified individuals to serve as the interim independent Non-Executive Directors.

- (6) subject to the proposed amendments to the Company's Articles, agree to delegate authority to the Director of Governance & Legal and Monitoring Officer to undertake a public appointment process in 2019/20 for the two Independent Non-Executive Director positions and oversee the shortlisting and interview process for the appointments based on the establishment of a politically balanced Member Appointment Panel.
- (7) note that the Corporate Director Resources continues to carry out the Council's role as Shareholder of Cardiff City Transport Services Limited.

PAUL ORDERS
Chief Executive
23 November 2018

The following background papers have been taken into account:

- Cardiff City Transport Services Limited Memorandum and Articles of Association
- UK Code on Corporate Governance (July 2018)