

COUNCIL: 22 OCTOBER 2020

CABINET PROPOSAL

SECURING THE FUTURE SUSTAINABILITY AND VIABILITY OF CARDIFF CITY TRANSPORT SERVICES LIMITED

Annexe A and Appendices 1 to 8 and 10 to this report are not for publication as they contain exempt information of the description contained in paragraphs 14 (Information relating to the financial or business affairs of any particular person {including the authority holding that information}) and 21 (public interest) of Schedule 12A of the Local Government Act 1972. In all the circumstances of this case it is viewed that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, as without keeping certain of the information relating to the financial and business affairs exempt, such information may not have been provided to the authority in order to consider matters and or its disclosure could prejudice a party.

Appendix 6 to this report is not for publication as it contains exempt information of the description contained in paragraph 16 (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of Schedule 12A of the Local Government Act 1972.

Reason for this Report

1. This report sets out the Council's proposal, as shareholder, to invest in the future of Cardiff City Transport Services Limited (trading as Cardiff Bus) and to secure the continuity of bus service provision in the city. It highlights a range of measures to address the difficulties faced by Cardiff Bus and the Trustees of its pension scheme to agree, in accordance with Pension Legislation, the Triennial valuation of the pension scheme at 31 March 2018.
2. In parallel to securing a pension scheme valuation, the report considers the release of funding approved in the Council's budget framework (February 2020) for 2020/21 in order to enable the company to implement a turnaround plan to secure the future sustainability and financial viability of the company.

Background

3. Cardiff Bus is a private company limited by shares (Company Ref 02001229) 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 its main purpose is to carry out the business of a public transport company. The company Board currently comprises 11 Directors (5 Councillors, 2 Non-Executive Directors and 4 Employee Directors) and there is also a company secretary.
4. The company has faced a number of significant challenges in recent years including:
 - Reduced patronage and government funding impacting on turnover;
 - Relatively high and increases in operating costs;
 - An aging fleet;
 - A secured overdraft; and
 - Management and supervisory capacity constraints.
5. The above issues contributed to significant trading losses in 2017/18, following which the Council instigated an initial shareholder review.
6. As part of this shareholder review, the Council in November 2018 approved the appointment to the company Board of two experienced independent non-executive directors, with a background in transport as well as financial management. In January 2020, the company recruited a new Managing Director to support the Board to take the company forward and to address the challenges.
7. Cardiff Bus is the Statutory and Principal employer in a defined benefit pension scheme. This means it is legally responsible under legislation to meet the funding objectives and to fund the liabilities of the Scheme (Statutory Employer) and the “main” employer for the purposes of the Scheme rules, having certain decision making powers relating to the running of the Scheme (Principal Employer).
8. Common with all defined benefit pension schemes, the Trustees and company are required to agree a triennial valuation of the pension scheme in accordance with the Pension Act 2004.

Issues to Consider

9. The company had made significant headway in improving performance as part of a turnaround plan; however, in line with the entire public transport industry across the country, the Covid-19 pandemic and resulting restrictions since March 2020 has resulted in reductions in income and patronage, whilst it continues to provide essential services. The company, shareholder and Welsh Government are working closely in order to protect the delivery of bus services.

10. The regulations and requirements in respect of pension law, assessment of covenant strength and impact of this on the approach to pension scheme funding and Pension Protection Fund (PPF) levy (insurance policy payable by the Company) are complex. Accordingly the Council has worked closely with actuaries and legal advisors in determining solutions to allow the company and Trustees to agree the Triennial Valuation of its pension scheme in line with the Pension Regulator requirements.
11. Annexe A sets out in more detail the background to the key issues and approach that the Council has undertaken to determine feasible solutions working with a range of stakeholders. The Annexe includes:
 - Background to the company and impact of covid-19
 - Position of various stakeholders involved in the Cardiff Bus Pension Scheme following the inability to agree the triennial valuation and risk to the viability of the company.
 - Interventions and rationale considered and proposed to complete the pension scheme valuation and secure the viability of Cardiff Bus.
 - Legal and Financial implications
 - Relevant correspondence as appendices
12. Annexe A is deemed confidential for the reasons set out at the start of this report. Members should note that legal and financial implications are also confidential and included as part of Annexe A. Members should consider these carefully as part of their decision making in respect to the recommendations set out in this report.

Reason for Recommendations

13. The interventions proposed in this report achieve the key principles of protecting the current and future entitlement of members and of the Cardiff Bus Pension Scheme as well as resolving immediate risks to the viability of the company. The proposal staves off an immediate risk to financial viability arising from the potential risk of winding up of the pension scheme and the Pension Regulator intervention, by allowing the completion of the 31 March 2018 valuation.
14. Financial risk to the Council is mitigated by a back to back agreement with the company to meet all ongoing costs in respect to the pension fund. This includes any future deficit contributions payable to the scheme, administration costs of and any pension levy payable. However, it should be noted that in the event of any future liquidating event of the company, pension liabilities would fall to the Council.
15. The proposal provides a solid base for the company and its stakeholders to take some really difficult but required actions to build a more sustainable financial and operational future and make significant improvements to the vital services people rely on.

Legal Implications

16. Confidential legal implications can be found in Annexe A (Confidential)

HR Implications

17. There are no HR implications for this report as the 'Employer' terminology that is being used in this report is in reference to pensions only.

Financial Implications

18. Confidential finance implications can be found in Annexe A (Confidential)

Property Implications

19. There are no property implications arising from this report.

CABINET PROPOSAL

Council is recommended to:

1. Subject to Cardiff Council and Cardiff City Transport Services Limited concluding the agreements referred to in Recommendation 2:
 - 1.1 Agree that Cardiff Council becomes the Statutory and Principal Employer of the Cardiff City Transport Services Limited Pension Scheme.
 - 1.2 delegate to the Corporate Director Resources, in consultation with the Cabinet Member (Finance, Modernisation and Performance) authority to enter into legal agreements with Trustees and Cardiff City Transport Services Limited to become the Statutory and Principal Employer and deal with all ancillary matters relating thereto.
 - 1.3 agree that Cardiff Council enter into a 'Flexible Apportionment Arrangement' with the Trustees of the Cardiff City Transport Services Limited Pension Scheme meaning that all future liabilities in respect to pension obligations will fall to Cardiff Council.
2. In order to facilitate entering into a Flexible Apportionment Arrangement, delegate the Corporate Director Resources and Monitoring Officer, in consultation with the Cabinet Member (Finance, Modernisation and Performance) authority to enter into a back-to-back legal agreement with Cardiff City Transport Services Limited to ensure any sums payable by the Council in respect of:
 - a. contributions in to the scheme as part of any deficit recovery
 - b. allowance for scheme expenses
 - c. Pension Protection Fund levy and
 - d. any other costs and expenses incurred by the Council in respect to its obligations as Statutory and Principal employer are recovered from the Cardiff City Transport Services Limited.

3. Delegate to the Corporate Director Resources, in consultation with the Cabinet Member (Finance, Modernisation and Performance) authority to carry out on behalf of Cardiff Council the responsibilities of the Statutory and Principal Employer of the Cardiff City Transport Services Limited Pension scheme.
4.
 - a) Subject to completion of the actions set out in recommendations 1 & 2, delegate to the Corporate Director Resources, in consultation with the Cabinet Member (Finance, Modernisation and Performance) authority to release up to £7.0 million included in the 2020/21 capital programme with this payment being subject to Cardiff City Transport Services Limited agreeing to carry out the interventions to support viability and strengthen the balance sheet.
 - b) note that any release of funds allocated in future years will be subject to review and included as part of future budget proposals.
5. Delegate to the Corporate Director Resources, as Cardiff Council's shareholder representative, authority to approve any request by Cardiff City Transport Services Limited to issue additional equity as appropriate.
6. Agree that Cardiff Council acquire additional equity issued in Cardiff City Transport Services Limited as part of the implementation of any financial support package approved by the Council.
7. Delegate to the Corporate Director Resources, in consultation with the Cabinet Member (Finance, Modernisation and Performance) authority to identify and make necessary improvements to the governance process in respect to Cardiff City Transport Services Limited as outlined in this report and report back to a future Council meeting on the changes made.
8. Delegate to the Corporate Director Resources, authority to explore alternative means of providing financial support to Cardiff City Transport Services Limited that would reduce the requirement for Cardiff Council's allocation included in the indicative Capital Programme and authorise the Corporate Director Resources to conclude any such agreements on behalf of Cardiff Council.

THE CABINET

15 October 2020

The following Annexe and its appendices are attached:

Annexe A – Securing the Future Sustainability and Viability of Cardiff City Transport Services Limited. (Confidential)

Appendix 1 - Letter received from the board of Cardiff Bus on 2nd June 2020 setting out the intention to hold an Emergency Board Meeting on 11th June 2020 (Confidential)

Appendix 2 – Letter from Trustees to Company (Confidential)

Appendix 3 – Trustee letter to the Pension Regulator setting out delay in agreeing a valuation (Confidential)

Appendix 4 – Letter from the Pension Regulator to the Council (Confidential)

Appendix 5 – Letter from the Chair of Cardiff City Transport Services Ltd seeking financial support for viability (Confidential)

Appendix 6 – Comparison of Guarantee as well as Statutory and Principal Employer options (Confidential)

Appendix 7 – Cardiff Bus Strategy Update (Confidential)

Appendix 8 – In principal approval by the Trustees of the Cardiff Bus Pension Scheme of measures to agree the 31 March 2018 scheme valuation (Confidential)

Appendix 9 – Welsh Minister consent for financial viability support

Appendix 10 – Letter from Chair of Policy Review & Performance Scrutiny Committee

Background papers

- Grant Thornton - Report in the Public Interest concerning governance arrangements for Subsidiaries
- Confidential Communication passing between Company, Trustees, Pension Regulator and Council (exempt from publication for reasons given above)