

**COUNCIL:**

**28 JANUARY 2021**

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**REPORT OF THE CORPORATE DIRECTOR RESOURCES**

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**CARDIFF BUS – REAPPOINTMENT OF INDEPENDENT NON-EXECUTIVE DIRECTORS**

**Reason for this Report**

1. To reappoint two Independent Non-Executive Directors to Cardiff Bus.

**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. Four of the Directors are full-time employees of Cardiff Bus and are classified as Executive Directors.
5. The Council took the decision on 29 November 2018, subject to amendments being made to the Company’s Articles, to allocate two Non-Executive Director positions for the appointment of independent persons to the Board of Cardiff Bus who are neither Elected Members of the Council nor employees of the Council or the Company. In accordance with good practice in terms of corporate governance, the two Independent Non-Executive Directors supplement the expertise of Board members, providing constructive challenge and holding management to account.
6. As a result, the Council currently nominates five Councillors as Non-Executive Directors of the Company and no more than two Independent Non-Executive Directors to the Board of Cardiff Bus.
7. The Council took the decision previously on 29 November 2018 to 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. This process resulted in the appointment by the Council of Sian Davies and Linda Phillips as Independent Non-Executive Directors of Cardiff Bus on an interim basis for a 12-month period, subject to the required amendments to the Company's Articles being made.

8. The Council also agreed on 29 November 2018 that, prior to the end of the initial interim 12-month period, a public appointment process would be undertaken for the two Independent Non-Executive Director positions by way of public advert, shortlisting and interview. The Council also delegated authority to the Director of Governance & Legal Services and Monitoring Officer to carry out the public appointment process in 2019/20 for the two Independent Non-Executive Director positions and to oversee the shortlisting and interview process for the appointments based on the establishment of a politically balanced Member Appointment Panel.
9. The initial term of office of the two Independent Non-Executive Directors was due to end on 13 February 2020; however, following a decision of the Council on 30 January 2020, both Independent Non-Executive Directors were re-appointed for a further 12 month term until 13 February 2021.
10. Due to an unprecedented period of transition and change for the Company, it is considered prudent to postpone the public appointment process in order to continue to provide stability for the company during a sustained period of challenging trading conditions, particularly due to the impact of the Covid-19 pandemic on bus service usage in the city during 2020/21. Both of the Independent Non-Executive Directors have continued to play key roles in the development of the business during the past 12 months; and have provided vital support, alongside the other board members, to the Managing Director. Given the desire to provide continued stability to the Company's Board, any changes to the existing interim appointments at the present time would be neither appropriate nor desirable.
11. It is therefore proposed that the two Independent Non-Executive Director appointments should be further extended for a 20-month period until October 2022 following the next council elections in May 2022 to enable both individuals to continue to contribute their respective skills and expertise to the work of the Board and Company during the continuing Covid-19 pandemic. This would also allow sufficient time for a public appointment process to be undertaken, as required, in 2022 and would support the continued input of the two Independent Non-Executive Directors to Board business and any transition period for the Board, particularly in the context of the appointment of any new Non-Executive Directors to the Board at the Annual Meeting of the Council, which is expected to take place in May 2022.

12. Both Independent Non-Executive Directors have confirmed that they are happy to continue in their roles. This proposal is also supported by both the Company's Chair and Managing Director.

### **Financial Implications**

13. All remuneration and expenses payable to the Independent Non-Executive Directors are the financial responsibility of Cardiff Bus.

### **Legal Implications**

14. The recommendations can be achieved within legal constraints.
15. 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 (section 73) and regulations made thereunder. The relevant regulations are The Public Transport Companies (Permitted Maximum and Required Minimum Numbers of Directors) Order 1985 No 1901, which prescribes 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. It also prescribes three as the required minimum number of persons who are full-time employees of the company, in positions of responsibility for the management of the company's business or any part of that business, who are to be directors of the company where the company owns 50 or more buses.
16. 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 fulltime employee of the Company holding a position of responsibility for the management of the Company's business or any part of it.
17. The Articles were amended such that the Council may appoint up to two people to be Non-Executive Directors who are neither an elected member nor employee of Cardiff Bus provided that such people have experience and skills in financial and general management, corporate governance, transport policy and/or management.
18. The appointment of directors 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.

19. 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.

## **RECOMMENDATIONS**

The Council is recommended to:

1. approve the reappointment of Sian Davies and Linda Phillips as Independent Non-Executive Directors of Cardiff Bus for a further 20-month period until October 2022; and
2. agree to delegate authority to the Director of Governance & Legal Services and Monitoring Officer to carry out the public appointment process for the two Independent Non-Executive Director positions (to be appointed from October 2022) and to oversee the shortlisting and interview process for the appointments based on the establishment of a politically balanced Member Appointment Panel.

**CHRIS LEE**  
**Corporate Director Resources**  
**22 January 2021**

## **Background Papers**

- Council Report, 30 January 2020: Cardiff Bus – Reappointment of Independent Non-Executive Directors
- Officer Decision Report, 13 February 2019: Cardiff City Transport Services Limited (Cardiff Bus) – Procurement and Appointment of Independent Non-Executive Directors
- Council Report, 29 November 2018: Cardiff Bus – Appointment of Independent Non- Executive Directors