

**COUNCIL:**

**29 SEPTEMBER 2022**

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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 Council took the decision on 29 November 2018, subject to amendments being made to the Company’s Articles, to allocate two of its seven Non-Executive Director positions on the Board of Cardiff Bus for the appointment of independent persons 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. 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.
5. 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.

6. 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. 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.

## **Issues**

7. The initial term of office of the two interim Independent Non-Executive Directors was due to end on 13 February 2020; however, following subsequent decisions of the Council on 30 January 2020 and 28 January 2021, both Independent Non-Executive Directors were re-appointed for two further 12-month and 20-month periods respectively until 13 October 2022 when their current terms of office are due to end.
8. Given the ongoing and unprecedented period of transition and change for the Company, a public appointment process has not yet been instigated. Both of the interim Independent Non-Executive Directors have continued to play key roles in the development of the business during the past three and a half years, and have provided vital support, alongside the other Board members, to the Managing Director during this period. Given the desire to provide continued stability to the Company's Board, in particular following the appointment of other new Non-Executive Directors to the Board by the Council in May 2022, any changes to the existing appointments at the present time would be neither appropriate nor desirable.
9. It is therefore proposed that the two interim Independent Non-Executive Director appointments should be further extended for a 6-month period until 13 April 2023 to enable both individuals to attend the Company's Annual General Meeting on 22 November 2022 and continue to contribute their respective skills and expertise to the work of the Board and Company covering the period up to 31 March 2023 when the current round (Round 3) of the Bus Emergency Scheme (BES) grant funding provided by the Welsh Government in the 2022/23 financial year will come to an end. During this interim period, however, it is proposed that a public appointment process is instigated.
10. Both of the interim Independent Non-Executive Directors have confirmed that they are happy to continue in their roles for an additional 6-month period. This proposal is also supported by both the Company's Chair and Managing Director.
11. As noted in paragraph 8 above, the Council has previously delegated authority to the Director of Governance & Legal Services and Monitoring Officer to carry

out a public appointments process in respect of the two Independent Non-Executive Director positions, including the establishment of a politically balanced Member Appointment Panel to undertake interviews for these two positions, and to report the outcome of this process to Council for decision in due course. The report to Council on this matter in January 2021 confirmed this delegated authority.

12. As part of the public appointment process, the use of specialist advice is proposed in order to support the advertisement and shortlisting process. It is recommended that the authority for such engagement is delegated to the Corporate Director Resources, in consultation with the Cabinet Member for Finance, Modernisation & Performance.

### **Financial Implications**

13. The costs involved in engaging specialist advice to support the appointment process will need to be found from within existing budgetary resources. 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 provide that the Council may appoint up to two people, who are neither an elected member nor employee of Cardiff Bus, to be independent Non-Executive Directors, 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 procurement of specialist advice to support the public appointments process will need to comply with the Contract Standing Orders and Procurement Rules, set out within Part 4 of the Constitution.
20. 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 shall rest with Full Council (unless delegated or otherwise provided).

## **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 6-month period until 13 April 2023;
2. agree to delegate authority to the Corporate Director (Resources), in consultation with the Cabinet Member for Finance, Modernisation & Performance, to engage specialist advice to support the advertisement of the two Independent Non-Executive Director positions and the shortlisting of appropriately qualified candidates for consideration by a politically balanced Member Appointment Panel; and
3. note the delegated authority granted previously by Council to the Director of Governance & Legal Services and Monitoring Officer to seek nominations from political groups for the establishment of a politically balanced Member Appointment Panel to undertake interviews, and to conclude the public appointment process by reporting the outcome of this process to Council for decision in due course.

**CHRIS LEE**  
**Corporate Director Resources**  
**23 September 2022**

### **Background Paper**

Council Report, 28 January 2021: Cardiff Bus – Reappointment of Independent Non-Executive Directors