
**REPORT OF THE DIRECTOR OF GOVERNANCE & LEGAL SERVICES
AND MONITORING OFFICER**

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

Reason for the Report

1. To consider the appointment of two Independent Non-Executive Directors of Cardiff Bus.

Background

2. The appointment of Members to serve on outside bodies is a Local Choice function under the Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001, as amended. The Constitution provides that this matter is reserved for Council which will, from time to time, receive nominations and make these appointments.
3. 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.
4. The appointment of Directors of 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. The Council is able to appoint seven (Non-Executive) Directors of the Board of Cardiff Bus, which is the maximum number of persons who are not full-time employees of the company that may be appointed as Directors.
5. 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. The two Independent Non-Executive Directors supplement the expertise of Board members, providing constructive challenge and holding management to account.
6. It was also agreed previously 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. The independent Non-Executive Director positions are remunerated; however, this is a matter for consideration by the Company in accordance with the Articles.

7. 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. The five Councillors that have been appointed by the Council as Non-Executive Directors to the Board of Cardiff Bus are Councillors Davies, Hunt, Owen Jones, Lay and Taylor. The two Independent Non-Executive Directors, whose current terms of office are due to end on 13 April 2023, are Sian Davies and Linda Phillips.

Issues

8. The Council took the decision on 29 November 2018 to delegate authority to the previous Corporate Director Resources, in consultation with the Cabinet Member for Finance, Modernisation & Performance, to procure two appropriately qualified individuals to serve as interim Independent Non-Executive Directors. This process resulted in the initial 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.
9. The initial terms of office of the two interim Independent Non-Executive Directors were due to end on 13 February 2020; however, following subsequent decisions of the Council on 30 January 2020, 28 January 2021 and 29 September 2022, both Independent Non-Executive Directors were re-appointed for further 12-month, 20-month and 6-month periods respectively until 13 April 2023 when their current terms of office are due to end.
10. The Council has also delegated authority previously to the Director of Governance & Legal Services and Monitoring Officer to carry out a public appointments process for the two Independent Non-Executive Director positions, including the establishment of a politically balanced Member Appointment Panel to oversee the shortlisting and interview process for appointments to these two positions, and to report the outcome of this process to Council for decision. This delegated authority was agreed initially in November 2018 and has been confirmed in subsequent reports to Council on this matter.
11. In accordance with the previous decision of the Council and prior to the end of the terms of office of the current two Independent Non-Executive Directors on 13 April 2023, the Council has undertaken a public appointment process for the two Independent Non-Executive Director positions by way of a public advert, which has been followed by shortlisting and interview processes.
12. In accordance with the previous decision of the Council, a politically balanced Member Appointment Panel (based on three Labour; one Liberal Democrat and one Conservative members) was convened, which included Councillors Cowan, Gunter, Mackie and Weaver (Chair). The Council's Liberal Democrat Group confirmed that it was not able to nominate any members of the group to the Member Appointment Panel on this occasion due to members' work/diary commitments, but agreed to the

appointment process proceeding without its involvement. The Panel was supported by the Corporate Director (Resources) as the Council's appointed shareholder representative to Cardiff City Transport Services Limited (Cardiff Bus).

13. Following interviews of shortlisted candidates on 23 & 27 March 2023, the Member Appointment Panel is expected to agree two nominations for appointment as Independent Non-Executive Directors for a 3-year term of office with effect from 14 April 2023, subject to the receipt of satisfactory references. The names of the two individuals nominated for appointment by Council will be set out in the Amendment Sheet for the Council meeting on 30 March 2023.

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 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).

Financial Implications

20. No costs have been incurred as part of the public appointment process and all remuneration and expenses payable to the Non-Executive Directors once they are in post will be the financial responsibility of Cardiff Bus.

RECOMMENDATIONS

Council is recommended to:

1. 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 for the two positions; and
2. approve the appointment of two Independent Non-Executive Directors of Cardiff Bus, as named in the Amendment Sheet provided at the meeting, for a term of 3 years, subject to the receipt of satisfactory references.

DAVINA FIORE

Director of Governance & Legal Services and Monitoring Officer

24 March 2023

The following background papers have been taken into account:

- Council reports dated 28 November 2019; 30 January 2020; 28 January 2021 and 29 September 2022
- Cardiff City Transport Services Limited Memorandum and Articles of Association