

**BUS EMERGENCY SCHEME (BES) – REQUEST TO ALL  
COUNCILS TO SIGN UP TO BES 2 SCHEME**

**STRATEGIC PLANNING & TRANSPORT (COUNCILLOR CARO  
WILD)**

**AGENDA ITEM: 4**

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**Reason for this Report**

1. This report sets out the wider context, the background to, and reasons for the Bus Emergency Scheme (BES) and seeks the agreement of Cardiff Council to sign up to BES2.

**Wider Context**

2. Bus travel has been severely affected by the Covid-19 pandemic. Passenger numbers have plummeted, whilst social distancing and additional cleansing requirements have placed added burdens and costs on operators.
3. Welsh Government (WG) and local authorities (LAs) have stepped in to support the sector with substantial financial assistance. There has also been an excellent, ongoing dialogue between all parties to discuss and agree on support arrangements.
4. Prior to the pandemic, WG had consulted on a range of proposed changes to the way bus services are delivered in Wales. A Bus Bill was due to have been brought forward during the current Senedd term. Pressures associated with not only Covid but also the large volume of legal work generated by Brexit and the transition period forced WG to postpone the planned legislation.
5. Due to the large amount of public funding that goes into bus services from WG and LAs, WG would like to see the public sector having greater influence over areas such as the networks of services provided, ticketing and integration with rail services. It also sees a greater role for Transport for Wales, which is now responsible for rail services in Wales.
6. This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that these two can be linked. In the short term, the funding being provided to keep operators afloat is therefore being provided with a number of conditions attached. These

are to incentivise operators to engage in planned changes that are in line with their longer-term ambitions for reform.

7. The Minister of Economy and Transport and North Wales, Ken Skates MS, has met with Leaders of all 22 LAs, along with his officials, to outline Welsh Government's direction of travel. Further details have been included in the Wales Transport Strategy (WTS) which has been the subject of consultation. More recently, the Deputy Minister, Lee Waters MS, met with all Leaders to discuss the WTS but also to encourage LAs to sign up to the Bus Emergency Scheme 2 (BES2). This is the latest phase of financial support to help operators through the period of the pandemic (more details on BES 2 below).
8. Leaders have agreed to establish a WLGA Bus Member Group, with a focus on the longer-term proposals to reform the sector's operations. That group includes the WLGA Leader (who is also the WLGA's Transport Spokesperson), the deputy Transport Spokesperson, the chairs of the four regional transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group is due to meet with Lee Waters on 18<sup>th</sup> January 2021.

## **Background**

9. The problems facing operators were recognised at an early stage of the pandemic. Looking ahead, to secure their services for the future, local authorities agreed to continue making payments for contracted services even though many services were initially suspended.
10. Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs being incurred. Initially, WG made £29m available from a Hardship Fund, which operated from April 2020 for three months. This Fund was assembled from monies that would otherwise have been paid via Bus Services Support Grant (BSSG), Mandatory Concessionary Fare reimbursement and the 'My Travel Pass' scheme.
11. The Bus Emergency Scheme was then introduced in July to provide ongoing support. This became known as 'BES 1' and it continued to maintain operators' income at historic levels, based on what was being paid to them under previous grant schemes. In return for this financial support Welsh Government signalled that it expected operators to contribute to a reshaping of bus services in Wales – to include improved regional networks with greater integration with rail services, smart ticketing and timetabling.
12. BES 1.5' was introduced in August, administered by the lead Authorities, through whom BSSG had been paid since 2013<sup>1</sup>. It provided £10m of

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<sup>1</sup> The lead authority acts as a conduit for BSSG funding from Welsh Government to operators. Current lead authorities are Monmouthshire (for South East Wales); Flintshire (for North Wales); Swansea (for South West Wales), Ceredigion and Powys. Within each LA, transport staff play an important role liaising with operators on a range of issues to meet local Members' requirements. The roles include

so-called 'ramp up funding' to support the reopening of schools and economic activity. This funding helped to cover the cost of reinstating services suspended when travel restrictions associated with the pandemic were introduced, and which were needed to meet increasing demand, given capacity constraints of social distancing. BES 1.5 was then extended to the end of March 2021 following the announcement of a further support package in September 2020<sup>2</sup>. Operators were once again asked to sign up to a range of terms and conditions to access the BES funding.

13. WG, working with Transport for Wales (TfW), are now proposing to enter into a longer-term BES 2 agreement with operators and local authorities to protect services. It will operate for an initial maximum term of up to 2 years from the date BES 1.5 commenced (i.e. up until 31 July 2022), unless market conditions recover sufficiently for an operator to no longer require BES support for any of its services whether they be contracted or commercial.

### **Key Features of BES2**

14. BES 2 will continue to address the loss of farebox revenue and the additional costs associated with responding to the pandemic. Under BES 2 the WG funding will sit alongside local authority funding provided through the Concessionary Travel Scheme and via Revenue Support Grant and the Bus Services Support Grant to make up the shortfall.
15. Welsh Government will be a co-signatory to the BES 2 agreement with bus operators, along with Transport for Wales<sup>3</sup>. Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local services receive this support. They need to sign up to the principle of the agreement and the relationship with their Lead Authority, in ensuring that the ongoing emergency funding meets their priorities and is delivered on their behalf. This will provide the legal basis for WG to make payments to the operators. **In this way, WG can use its powers to support operators, whereas the additional funding would breach local authorities' de minimis limits for direct award contracts** (further details in the briefing note in Appendix 1 and the full proposed Agreement is in Appendix 2). Local Authorities will remain responsible for those services which they currently contract directly with bus operators. Local Authorities will need to consider planning for contingencies, such as if the BES2 agreement is not signed or the level of funding for BES2 is reduced during the period of the agreement.

16. Key features of BES 2 will be as follows:

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administration of Concessionary Fares reimbursement and provision of support for contracted journeys on non-profitable routes.

<sup>2</sup> Overall, an additional £45m has been provided by WG to support the bus sector this financial year including the £10m ramp up funding an extra £35m from September to the end of the year.

<sup>3</sup> Given that the agreement is under discussion between Welsh Government, operators and Transport for Wales as well as local authorities, and must be approved by all parties, it may be subject to some changes before it is finalised.

- Maximum term until 31<sup>st</sup> July 2022 or until operators enter into an embedded partnership agreement;
- development and delivery of a Reference Network, intended to provide a range of benefits to communities; multi-operator ticketing; and operator sign-up to an Economic Contract at the heart of WG's Economic Action Plan (and its principles of fair work, health, decarbonisation, skills and learning etc);
- long term co-operation and co-ordination across TfW, LAs and operators by entering into partnerships with a clear set of obligations and shared standards;
- one agreement per operator in each of the regions that they work in, signed by Welsh Government, TfW, a lead authority and the operator; and
- operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date.

## **Beyond BES2**

17. Discussions are starting to take place in relation to the planning of future networks<sup>4</sup> and the respective roles of WG, TfW, LAs and operators. It is important to note that these are not the prime focus of the BES2 agreement. It will be vitally important for further detailed discussions to take place with Members on these matters. However, this is not a reason to delay the signing of the BES 2 agreement. WG does believe that the BES2 offer will help to engage operators in the discussions about the future at a time when their income is more dependent than ever on public sector support. In signing up to BES 2, though, LAs are agreeing to financial support being provided to the sector. They are not committing themselves to any specific, future model of bus service management as that will be the subject of further debate.

## **Issues**

18. In relation to paragraph 15 above, it states “the Council may need to implement contingencies if the BES2 agreement is not signed or the level of funding for BES2 is reduced during the period of the agreement.” Local Authorities do not have the powers to instruct Bus Operators and there is no contingency funding available that Cardiff Council could use to make up the difference. Therefore, bus operators would need to consider what services they can continue to operate. The awarded s63 supported services contracts will be reviewed to ensure that any shortfall in funding is kept within existing budgets. Notice periods will also be given consideration particularly if there are any financial gaps arising from any notice periods the Welsh Government are able to provide and statutory or contractual obligations.
19. Paragraph 16 above refers to an ‘Economic Contract’ from the WG, “Prosperity for All: Economic Action Plan”. Economic contracts are a

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<sup>4</sup> The reference network will need to be designed and agreed collectively by WG, TfW and LAs and discussed with operators. An All-Wales Bus Network officer group has been established to progress the thinking around this.

'something for something' approach with a social purpose to increase the availability of fair - and rewarding - work, which creates more and better jobs closer to home, that meets decarbonisation ambitions and ensures businesses are optimising the potential of new and emerging technologies. Opportunities will be explored through the BES 2 agreement.

20. Paragraph 16 above refers to a 'capped profit'. Bus operators have not been permitted to make a profit during the emergency arrangements up to now. The Operator will be required in the BES 2 Agreement to participate in an open book reconciliation process with TfW and the Lead Authority to allow assessment of costs to ensure that the Operator has not been overcompensated and that payments reflect the reasonable cost of providing the Services with no more than a reasonable profit earned. The reconciliation process will not take into account any capital expenditure, exceptional (non-operating) payments or dividend payments in determining whether the Operator has generated a profit before tax, or a loss at the end of each Reconciliation Period.
21. Clause 5 of the BES2 Agreement in Appendix 2 of this report refers to a partnership arrangement where, "The Operator shall use reasonable endeavours to agree the terms of an Umbrella Partnership Agreement..." The definition in the agreement of the Umbrella Partnership Agreement, "means the framework voluntary partnership agreement agreed in accordance with clause 5." The voluntary partnership agreement (VPA) is as described in Section 46 of the Local Transport Act 2008 2008, amending section 153(2) of the Transport Act 2000. VPA's give local authorities and bus operators the opportunity to work together voluntarily to improve local bus services. The Umbrella Partnership Agreement is in the process of being drafted and will require detailed technical and legal consideration by Bus Operators and Officers in the Welsh Government, Transport for Wales and Local Authorities before it is finally agreed.
22. The scope of what bus transport models/bus reform proposals would be appropriate post-BES 2 will be a consideration for future discussion and debate between the key stakeholders. Further reports and any related decisions will be presented to Cabinet at the appropriate time.

#### **Local Member consultation (where appropriate)**

23. There has not been Local Member consultation on the BES 2 agreement. However, any need for significant changes to the design of the bus network will involve Local Member consultation.

#### **Reason for Recommendations**

24. To ask that Cabinet notes the principles of the BES 2 agreement.
25. To seek Cabinet approval to grant the Director of Planning, Transport and Environment delegated authority to (a) determine and approve the final terms of the BES 2 Agreement and the Umbrella Partnership Agreement, (b) give the Lead Local Authority (currently proposed to be Monmouthshire County Council) approval to sign the BES 2 agreement

on Cardiff Council's behalf and (c) conclude all ancillary matters including any back to back agreements that may be required with the Lead Local Authority.

26. To ask that Cabinet notes that there will be further reports on bus reform proposals relating to the future management of bus services in the Region and Wales.

### **Financial Implications**

27. The Bus Emergency Support Grant (BES) provides financial support directly to bus operators as a result of lost income as a result of the impact of Covid 19. The Council will need to ensure that it works closely with all operators to undertake its role in directing the provision of services as part of BES, working with all national and regional partners in the process to manage and implement the requirements of the scheme. Where routes operated in the City are supported by the Council, it will need to consider the ongoing impact of continuing to do so as part of current and future revenue budgets.
28. The Council is the sole shareholder of Cardiff City Transport Services Limited, who will be a recipient of funds from BES to support its ongoing viability. In the absence of such funds and in order to continue to continue key routes, the only recourse for the company would be support from its shareholder, subject to legal and financial due diligence. The performance of the Council's shareholding, impact of BES2 grant on operators in the short term and longer term measures to support and change the bus industry will need to be monitored closely as part of the Council's role, with potential financial risks and implications identified at any early stage. This is essential in the event that market conditions do not improve by 31 July 2022, the currently assumed end date of BES.
29. In October 2020, Council agreed a range of measures to support the viability of Cardiff Bus. Welsh Government have confirmed that these measures are separate and the BES 2 grant does not result in any reduction of resources receivable by Cardiff Bus as result of the implementation of the agreed actions.

### **Legal Implications**

30. The report sets out the principles of the BES 2 agreement, which agreement formalises Welsh Government's commitment to supporting recovery of bus services following the impact of COVID-19. The briefing note attached at Appendix 1 (Bus emergency scheme phase 2 (BES 2) - briefing note for local authorities) sets out details of the proposed BES 2 arrangements. The BES 2 agreement is in a form provided by Welsh Government and provides for a further agreement referred to as an Umbrella Partnership Agreement. Both Agreements have yet to be finalised and may be subject to further amendment. The BES agreement has four parties namely Welsh Government, Transport for Wales, The Lead Regional Transport Authority and the relevant operator. As such, Cardiff Council will not be a direct party to the BES 2 agreement. The

lead authority would be entering the Agreement on behalf of Cardiff Council and the other local authorities in the region. The recommendations, if approved, will provide delegated authority to the Director, in consultation with those listed, to approve the final terms of both agreements and to authorise the Lead Authority to enter the BES 2 Agreement on the Council's behalf.

31. Whenever considering financial support to third parties, consideration should be given, amongst other things, as to whether the proposed funding arrangements comply with competition law, the UK Subsidy Control regime ( previously state aid ) and procurement law requirements ('the Constraints'). The Council's Legal Service has not undertaken such analysis given that Welsh Government has prepared the BES 2 proposals and the draft BES 2 Agreement. Legal Services are advised that Welsh Government has considered such Constraints. It is noted that the briefing note, under the paragraph headed, 'What risks exist with the proposed approach?' considers State Aid and Procurement Constraints and notes, 'Mitigation – working with lawyers to ensure that the terms are compliant with the law'. Further, the draft agreement contains provision ( for example, see clause 19.2 and 19.3 ) to the effect that the Lead Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such legal requirements.
32. Cardiff Council 'owns' Cardiff Bus. Accordingly, when considering any funding requests, via the BES 2 agreement or otherwise, that involve Cardiff Bus, it is important that the Council has regard to any competition, subsidy and procurement law issues raised. Further that it considers, if any potential conflict of interest arises in its roles as a local authority and owner of a bus operator, in terms of any wider bus operating issues considered under the BES 2 agreement and if so takes appropriate measures.
33. Generic legal advice

(a) Equalities & Welsh Language

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a). Age, ( b ) Gender reassignment ( c ) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (i) Religion or belief – including lack of belief.

The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

(b) The Well-being of Future Generations (Wales) Act 2015

The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2020 -23.

When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

(c) The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to Council.

### **HR Implications**

34. There are no HR implications arising from this report.

### **Property Implications**

35. There are no property implications associated with this report.



## RECOMMENDATIONS

Cabinet is recommended to:

1. note the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to establish a relationship with their regional lead authority and signatory, that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf.
2. delegate authority to the Director of Planning, Transport and Environment, subject to consultation with the Cabinet Member Strategic Planning and Transport, Cabinet Member Finance, Modernisation & Performance, s.151 Officer and Director Governance and Legal Services to determine and approve the final terms of the BES 2 Agreement and the Umbrella Partnership Agreement (as both are currently in draft form), give the Lead Local Authority (currently proposed to be Monmouthshire County Council) approval to sign the BES 2 agreement on Cardiff Council's behalf and to deal with all ancillary matters relating thereto including any back to back agreement that may be required with the Lead Local Authority.
3. note that there will be further reports on bus reform proposals relating to the future management of bus services in the Region and Wales.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Andrew Gregory</b> <b>Director of Planning, Transport &amp; Environment</b>
	15 January 2021

*The following appendices are attached:*

Appendix 1: BES 2 Briefing Document for Local Authorities.

Appendix 2: Proposed BES 2 Agreement.

*The following background papers have been taken into account*

- Letter to Local Authority Transport Lead Members from Lee Waters AS/MS, Deputy Minister for Economy and Transport, dated 18<sup>th</sup> Dec 2020 (electronic document reference: "BES –S.pdf")
- Letter to Local Authority Chief Executives from Simon Jones, Director, Economic Infrastructure, dated 18<sup>th</sup> Dec 2020 (electronic document reference: "SJ Letter to LA Chief Execs Dec 2020.pdf").
- BES 2 Agreements: Local Authority legal briefing, 18<sup>th</sup> Dec 2020 (electronic document reference: "BES 2 Agreements LA legal briefing.pdf").
- Welsh Government, "Prosperity for All: economic action plan" (source: <https://gov.wales/prosperity-all-economic-action-plan>)