

# Overview and Scrutiny Commission

Wednesday 24 June 2009

## PRESENT:

Councillor James, in the Chair  
Councillor Mrs Watkins, Vice Chair  
Councillors Coker, Fox Pattison and Roberts (substitute for Councillor Viney)

Apologies for absence: Councillor Viney

Also in attendance: Councillor Peter Brookshaw and Councillor Tudor Evans

The meeting started at 2.30 pm and finished at 6.20 pm.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

## 23. APPOINTMENT OF VICE-CHAIR

Resolved that Councillor Mrs Watkins be appointed as Vice-Chair for this meeting.

## 24. DECLARATIONS OF INTEREST

The following declaration of interest was made by a Member in accordance with the Code of Conduct –

<b>Name</b>	<b>Minute No. and Subject</b>	<b>Reason</b>	<b>Interest</b>
Councillor Evans	Minute no. 26 Plymouth CityBus Limited Shareholding	IDeA lead peer in the south west	Personal

## 25. CHAIR'S URGENT BUSINESS

There were no items of Chair's Urgent Business.

## 26. DECISION CALLED IN: PLYMOUTH CITYBUS LIMITED SHAREHOLDING (Pages 1 - 10)

The Commission considered the call in of the Cabinet decision, Plymouth CityBus Limited Shareholding (Cabinet minute 4 (09/10) refers).

The Commission heard from –

- one of the Members who had called the decision in -
  - Councillor Evans;  
(Councillors Smith and Stevens sent their apologies for their absence);
- the decision maker -
  - Councillor Brookshaw, Cabinet Member for Safer and Stronger Communities, on behalf of the Leader. (Also in attendance – Adam Broome (Director for Corporate Support) and John Cremins (Head of Strategic Procurement)).

Resolved that the resolution included in section 6 of the Commission's report (attached as an appendix to these minutes) be accepted.

(Councillor Evans declared a personal interest in the above item.)

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**OVERVIEW AND SCRUTINY COMMISSION  
CALL-IN  
24 JULY 2009**



## **DECISION CALLED-IN:**

**Plymouth CityBus Limited Shareholding  
(Cabinet minute no. 4 09/10)**

**Plymouth City Council**

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## **1. The Panel**

1.1 Members of the Commission present at the meeting held on Wednesday, 24 June 2009 to hear the called-in decision were –

- Councillor James (Chair)
- Councillor Mrs Watkins (Vice-Chair)
- Councillor Coker
- Councillor Fox
- Councillor Pattison
- Councillor Roberts (substituting for Councillor Viney)

1.2 Council officers at the meeting were Giles Perritt, Head of Policy, Performance and Partnerships and Rachel Watson, Senior Democratic Support Officer (Scrutiny).

## **2. Reasons for Call In**

Three Members called in the following Cabinet decision:

- Plymouth CityBus Limited Shareholding (Cabinet minute no. 4 (09/10))

The reasons for the call in were as follows:

a) The process by which the decision was made was deficient.

The decision was taken with Councillor Bowyer in attendance and partaking: he has since declared a conflict of interest disclosing a shareholding in Taxibank which is part of the Taxifast group which has publicly declared a wish to purchase Citybus. He did not however declare any interest at the Cabinet meeting despite Taxifast (part of the same group of companies) being a CityBus competitor; as a result of this no Cabinet Member presented to R & P OSP to answer questions about the allocation of £946,000 to fund a project 'researching' the consequences of selling all or part of the shares. Questions of probity and vires arise potentially flawing the process; it puts into doubt the validity of decisions made to date.

Failed to publish or make clear the position of the CityBus Board including its Executive Directors. Have made comments publicly about the business of CityBus which may have given commercial benefit to bidders.

The Cabinet failed to consult with elected members or customers prior to making the decision – the Conservative Cabinet are custodians of the shareholding on behalf of the whole council not just their own Party. The decision is not time critical (no justification was forthcoming at Commission) and thus further public and Member consultation should have been undertaken.

b) The decision-maker failed to consider alternative courses of action.

There are certain factors missing within the paperwork. The Coypool Site Plan for instance. That plan was drawn up by independent advisors to seek ways to relocate certain council assets, release capital receipts and increase efficiency. This included the relocation of CityBus and the creation of a modern bus depot on a smaller footprint; redevelopment costs on an oversized, outdated site at Milehouse would be expensive and thus reduces the company's value. Asset Management was seeking to maximise the value and benefit of the CityBus asset through joint development leading to high-yield land values and potential development deals. What happened to that plan? Has the council done all it can to maximise benefit?

- c) The decision-taker failed to take account of relevant factors.

Failed to consider alternative course of action. There are also certain factors missing within the paperwork, the Coypool Site Plan for instance, seeking ways to relocate certain council assets, release capital receipts and increase efficiency. This included the relocation of CityBus and the creation of a modern bus depot on a smaller footprint; this recognised that redevelopment costs on an oversized site at Milehouse would be expensive (due to outdated buildings) and thus reduced the company's value. What happened to that plan? Has the council done all it can to maximise benefit?

Where is the Risk Analysis connected to the disclosure of the estimated value of 'in excess of £10 million' for CityBus? What is the potential to harm our potential bargaining position?

Bids cost bidders considerable sums of money to produce – is it realistic to suppose they will do that when the project could halt at Stage 1? The council claims the project can be halted at Stage 1. Where is the Risk Analysis addressing the potential that (a) no bids will be forthcoming or (b) legal action may be taken by bidders should the project halt at Stage 1?

### **3. Scrutiny Approach**

#### Procedure followed in the call-in meeting

- 3.1 The Members who called in the decision were asked to explain why they have done so and what they felt should be reviewed. (The Members making the call-in were allowed up to 15 minutes to present their case.) The decision-makers could then respond (15 minutes allowed).
- 3.2 After each presentation, Commission members could ask questions to clarify any points made by the speakers (the speakers would not have an opportunity to cross-examine one another).
- 3.3 The Commission would then discuss the matter and might ask further questions of the Members making the call in or the decision makers during the debate.
- 3.4 When the Chair considered that the matter had been debated for a reasonable length of time, the decision maker would be offered the opportunity to make any final comments on the matter. One of the Members making the call in would also be offered the opportunity to sum up. Each side would be allowed five minutes for this purpose.

- 3.5 The matter would then move to the vote and the options were as follows:
- a) Did Members wish to refer the decision for further consideration? If Members voted no at this stage, the call-in was ended. The matter was not referred back and the original decision could be implemented.
  - b) If Members voted in favour of referring the matter for reconsideration, they must decide the following:
    - i) Where to refer the matter back for reconsideration –
      - directly to the original decision-maker (i.e. the Cabinet or a Cabinet member)
      - to the City Council with a request that they decide whether to refer the matter back to the original decision-maker for reconsideration.
    - ii) Reasons for referring the matter back - Members must agree on the factors the decision-maker (or Council) were to be asked to consider.
- 3.6 The matter could not be referred for reconsideration without reasons being given.

#### **4. Witnesses**

Members heard from the following people –

Members who called the decision in:

- Councillor Evans  
(Councillor Smith and Councillor Stevens sent apologies for their absence).

Decision maker –

- Councillor Brookshaw, Cabinet Member for Safer and Stronger Communities (on behalf of the Leader/Cabinet) with Adam Broome (Director for Corporate Support) and John Cremins (Head of Strategic Procurement).

Councillor Pattison expressed concern that the Leader was not present because he considered that this would result in a gap in Commission Members' knowledge.

#### **5. Findings**

- 5.1 In order to support the reasons why this Cabinet decision was called in, Councillor Evans informed the Commission that –
- the decision was deficient on three grounds;
  - this was a decision that should have been about the valuation of the company but appeared to be about the future of the company;
  - there were concerns about declarations and conflicts of interest;
  - two Members of the administration had links with the decision but only one had declared an interest at the time of the decision;

- this was a probity question: under Nolan principles, it was about what it could be perceived to be;
- the Cabinet report contained a statement that the CityBus Board had backed the decision; this was not so as that report to the Board had not been voted on and was opposed by many of the Board members/executive;
- staff, the executive of the Board, the Labour Party, unions had not been consulted; only the Conservative Group had been consulted;
- the Devonport, Stoke, St Peter & the Waterfront Area Committee had been told that the decision would be made by the 'Conservative Group';
- regarding alternative courses, doing nothing was an option but it was not an alternative;
- there had been a letter from the Leader in the Herald indicating that existing staff would be required by the new company; this may not be so, the purchaser might only be interested in the land;
- there had been discussion in the past about Coypool and swapping land with Milehouse; once the company was sold, land use would be lost;
- there had been no discussion about risk analysis;
- the part 1 Cabinet report indicated that the Council considered that the company was worth a minimum of £10m; this was financially irresponsible;
- there was risk regarding finding a price at this time at the bottom of a recession, it was unknown what the risk of this exercise might be to the company and £960,000 was being put at risk as no decision could be made until that had been expended, with no opportunity to scrutinize this expenditure;
- if there was only one bidder there could be a monopolies merger situation;
- this project was not about bus services, there would be no benefit to CityBus and the Council would lose the dividend forever;
- it was not understood why only the four years of lowest dividend had been provided as proof that the company was not worth keeping.

5.2 In order to support the reasons why this Cabinet decision had been taken, the Cabinet Member for Safer and Stronger Communities informed the Commission that –

- there needed to be an accurate value of the CityBus shares so that Council could make a decision in November with all the facts;
- £1.1m profit was predicted;
- directors of the company acted on behalf of the company, the Council acted on behalf of all citizens of Plymouth and so it was essential to make an informed decision;
- running a bus company was not core business for the Council;
- regarding the declaration of interest point raised by the callers-in, on 2 June when the Cabinet had made its decision, no third party had declared an interest in bidding for the company;



- on 5 June the Head of Strategic Procurement was informed by an interested party that he was considering putting in place a consortium and at that point the Head of Strategic Procurement informed the Cabinet Member for Finance, Property, People and Governance of this who had then stood down from the project accordingly;
- the Cabinet Member for Finance, Property, People and Governance had a 0.7 per cent shareholding in Taxibank (as declared in the Declarations of Interest Register); this was a company which was not in direct competition to Citybus and so there had been no interest to declare on 2 June;
- section 8 of the Cabinet report indicated that the Options Analysis had been reviewed by the Board in June 2008 and broadly endorsed and accepted;
- Cabinet had not decided to change shareholdings;
- in May 2006 a report had considered options at Coypool; the Council had sought to buy, but offers had been rejected;
- the £10m referred to in the part I Cabinet report was not an indication of any actual value of the company and the report made it clear that the three-stage project could be stopped at stage 1, with costs of £465,000 accrued at that point;
- the Council had received one verbal and three written expressions of interest so far.

5.3 Commission members questioned the Councillor who had called-in the Cabinet decision, the Cabinet Member, the Director for Corporate Support and the Head of Strategic Procurement and were advised that –

- caller-in
  - in answer to the Chair's reference to the note he had from the Cabinet Member for Finance, Property, People and Governance (*circulated at meeting, see [www.plymouth.gov.uk/democracy](http://www.plymouth.gov.uk/democracy) Overview and Scrutiny Commission 24 June 2009 agenda supplement pack Appendix A*) regarding the declaration of interest point, he, the caller-in, repeated that in view of Nolan principles, the decision could be perceived as an instance of impropriety and should be stopped and investigated;
  - another Cabinet Member had declared an interest at the time of the Cabinet decision because of his involvement with a taxi firm, presumably because he thought that speculation about the company could have affected the market;
  - there might be no actual requirement for the Cabinet Member of Finance, Property, People and Governance to register his minor shareholding, but there was a difference between registering an interest in the register and declaring a prejudicial or personal interest in a meeting regarding a matter under consideration because of how it could be perceived;
  - he did not agree that market testing would decide the fate of the company; in his view politicians would;
  - the purpose of the Transformational Change Programme budget was to transform business process, but it was being used to sell off the company, not change processes;

- there had been no discussion in front of a scrutiny panel or with unions about the use of a third of that budget or priorities and it could not be seen where the benefits were for the Council to spend money in this way;
  - those who were responsible for business transformation in the council had not been consulted;
  - there were only two Council officers on the Board who knew about discussions, the Chief Executive and Director of Development, and the rest had not been privy to those discussions;
  - it was not correct to say that there was only one alternative option, i.e. not to undertake the project, as there was an internal document regarding using Milehouse as a potential land swap with Coypool;
  - there were alternatives to achieve the raising of £10m + but they had not been discussed;
  - giving out information that the estimated value of Citybus was in excess of £10m and about the length of the project was to give signals that would engender 'bus wars'.
- the decision makers –
    - to answer the contention that executive directors of the Board did not favour the sale of shares, in June 2008 the Board had broadly endorsed and accepted the options review, so the Council had been told, and the decision was for the Council not CityBus;
    - staff had been assured that pensions and terms of employment, etc. were at the forefront of the Council's concerns and that those pensions and rights would be looked after;
    - it was his understanding that both the Conservative Group and the Labour Group had been consulted within 24 hours of the decision
    - there was no hidden agenda to this decision, it was simply prudent management of the Council's finances;
    - this investment was on behalf of the whole of the people of Plymouth, not just passengers of CityBus;
    - the reason why this was being done now was that there was a window of opportunity;
    - there was concern that CityBus was so small they would not be able to finance themselves and so the Council would be required to;
    - the first time that Cabinet began to discuss the issue was on 2 June 2009;
    - the Overview and Scrutiny Commission had referred the project to the Growth and Prosperity Overview & Scrutiny Panel;
    - the dividend was based on a third of net profits and he, the Cabinet Member for Safer and Stronger Communities, could not say if the Council could ask for 50 per cent of any profit;
    - an analysis of the last four years' dividend figures was contained in the part 1 Cabinet report;
    - there were five Councillors and two officers on the CityBus Board which comprised a total of 11 directors;

- regarding whether the Leader's view included in a Herald article that the city had very little influence over the way the Board was run could be considered to be misleading, it was not possible for the decision makers to respond to a Herald report;
- further consultation would happen with the CityBus Board;
- it was not appropriate to consult with CityBus employees yet as no decision had been made and it was not relevant to involve customers in this process of testing whether shares should be sold or not.

5.5 The Commission then debated the issues and Members' comments included –

- an estimated valuation by independent financial advisors was contained in the Cabinet part 2 report;
- it must be assumed that the valuation had taken place before 2 June 2009 and it was inconceivable that no discussion had been held with the Cabinet Member before this or that it had not been discussed by Cabinet before 2 June 2009;
- two members of the Cabinet who were also directors of CityBus had had discussions about this a long time ago;
- it was wrong to suggest that all similar companies that had been privatised were doing well;
- the Plymouth CityBus Ltd ran unprofitable services to Derriford Hospital and a number of people relied on that, particularly as Plymouth was a poor city;
- the Council should want to be able to deliver to the most disadvantaged in the city, i.e. services to vulnerable people, and this was not reflected in the report;
- it was a concern that Commission was not able to see the documents that underpinned the decision;
- the Council was just testing the market at the moment, the Project Management had been set up to oversee the project and the Growth and Prosperity Overview and Scrutiny Panel could consider this matter in the future; ultimately it would be the Council who made the decision;
- there was suspicion that the decision had already been taken and that 'due diligence' was an exercise to line up authority to sell an asset; it might be better to put shares on the market rather than spend £ ½ m;
- at the moment, there was nothing to consult about.

5.7 In order to support the reasons why this Cabinet decision should not be called in, the decisions makers summed up as follows –

- this decision was about testing the market and assessing the value of shares;
- Cabinet would then consider in November 2009 and a decision would be taken by full Council.

5.6 In order to support the reasons why this Cabinet decision had been called in, Councillor Evans informed the Commission that –

- the purpose of this meeting was not to discuss Citybus as this was about the selling of shares;

- he had not been able to ask the Leader about her public statement where she had questioned the truth of what he had said;
- he was being asked to believe that the Deputy Leader and the Cabinet Member for Finance, Property, People and Governance received information from the Board some time ago but had not discussed the matter, then being asked to believe that there had been no discussion in Cabinet within the last four months, and that was scary;
- he was told that there had been a discussion with the Conservative Group ten days before the Cabinet meeting of 2 June and a vote taken but he must question whether that could that have happened with no Cabinet Members involved;
- the contention that Cabinet Members could agree to spend £ ½ m without reading part 2 papers was concerning;
- the advice that running a bus company was not core business had been exposed to be included in an IDeA report, not government dictum, provided post the worst performance of the Council and, if this was not core business, he must question why the Life Centre was being built.

## **6. Decisions**

6.1 Having been put to the vote, the Commission made the following resolution –

Resolved that the Cabinet decision to seek, and negotiate proposed terms with, potential purchasers of shares in Plymouth CityBus Limited subject to full Council approval of any final recommendation for sale, be not referred back to the decision maker (Cabinet). (For full decision see resolutions of Cabinet minute no. 4 09/10.)

## **7.0 Background Information**

7.1 Listed below is the relevant background information to this report –

- Part I Cabinet report and Cabinet minute no. 4 (09/10) (Plymouth CityBus Limited Shareholding), web link as follows –  
[www.plymouth.gov.uk/democracy](http://www.plymouth.gov.uk/democracy) Cabinet meeting 2 June 2009.

(Councillor Evans declared a personal interest in the above item.)