

Governance, Risk and Best Value Committee

10.00am, Thursday 21 May 2015

Lothian Buses – Governance and Responsibility review relating to the events and Council involvement into management difficulties at Lothian Buses

Item number 7.1
Report number
Executive/routine
Wards

Executive summary

Council agreed on 5 February 2015 “to call for an independent external report to Governance, Risk and Best Value Committee in three cycles detailing events and Council involvement in relation to Lothian Buses management difficulties, to include reference to all meetings and decisions taken, accepting that some information might be sensitive or confidential”.

The Governance, Risk and Best Value Committee noted a progress update on 5 March 2015 which advised that international professional services firm KPMG had been appointed to undertake this independent review. KPMG have now completed their review and their Report is shown at Appendix 1 for members’ consideration.

Links

Coalition pledges
Council outcomes
Single Outcome Agreement

Lothian Buses – Governance and Responsibility review relating to the events and Council involvement into management difficulties at Lothian Buses

Recommendations

- 1.1 That Committee notes the independent external report prepared by international professional services firm KPMG into events and Council involvement in relation to recent management events at Lothian Buses Limited.

Background

- 2.1 On 5 February Council considered a motion tabled by Councillor Rust relating to Lothian Buses Limited (“Lothian Buses”) and heard a deputation from Lothian Buses’ JTUC. The Council decided
 - 2.1.1 *“To welcome the public ownership of the award-winning Lothian Buses (“the company”) which operated over 70 services and had a fleet of over 700 vehicles.*
 - 2.1.2 *To note that the Transport Spokespersons from each political party had been kept briefed individually and at committee. As a consequence of concerns arising from the long-running management difficulties and questions of governance at the company and their impact on staff morale and confidence in the company, the Convener, Vice Convener and opposition party spokespersons had now agreed to meet as a group on a regular basis to address these concerns.*
 - 2.1.3 *To recognise that some elected members and members of the public were inevitably not in possession of the full facts. Therefore in the interests of transparency and recognising the Council’s shareholder responsibility, call for an independent external report to Governance, Risk and Best Value Committee in three cycles detailing events and Council involvement in relation to Lothian Buses’ management difficulties, to include reference to all meetings and decisions taken, accepting that some information might be sensitive or confidential.*
 - 2.1.4 *To note that the current Chairperson of Lothian Buses was currently reviewing the senior management position in Lothian Buses and expected his review to be completed by April 2015. The Council’s intention would be that the outcome of this review be reported to the Council.”*

Main report

- 3.1 Further to this Council decision, the Governance, Risk and Best Value Committee noted a report on 5 March 2015 updating on progress in appointing an independent party (KPMG) to conduct the Governance and Responsibility review and in agreeing terms of reference relating to the events and Council involvement into management difficulties at Lothian Buses.
- 3.2 KPMG's independent report detailing the events and the Council's involvement in relation to Lothian Buses' management difficulties is shown at Appendix 1.

Measures of success

- 4.1 That the Council is found to have complied with relevant governance requirements.

Financial impact

- 5.1 A fee has been agreed with KPMG for undertaking this review.

Risk, policy, compliance and governance impact

- 6.1 The findings of the review will be of direct relevance in this regard.

Equalities impact

- 7.1 There are no equalities aspects that were specifically considered as part of this review.

Sustainability impact

- 8.1 There are no sustainability issues in relation to this review.

Consultation and engagement

- 9.1 Group Leaders have been kept updated on progress since the decision of Council on 5 February. Group Leaders at their meeting of 26 February gave their agreement to the finalisation of the terms of reference for this review.
- 9.2 Governance, Risk and Best Value Committee received a progress update report on 5 March 2015.
- 9.3 Lothian Buses JTUC were contacted and appraised of progress in appointing an independent party to conduct the review and a general description of the work that will be undertaken. A copy of KPMG's Report is also being shared with Lothian Buses JTUC.

- 9.4 The Council provided each of the non-executive directors of Lothian Buses with a waiver of confidentiality to allow them to co-operate fully with the independent review. The Council also requested and received a waiver of confidentiality from the board of Lothian Buses to allow information to be provided to KPMG, and the KPMG report to be made public.

Background reading/external references

[Minutes of Council Meeting of 5 February 2015.](#)

[GRBV minutes of 5 March 2015](#)

Sue Bruce

Chief Executive

E-mail: sue.bruce@edinburgh.gov.uk

Links

Coalition pledges

Council outcomes

**Single Outcome
Agreement**

Appendices



PRIVATE & CONFIDENTIAL

Independent governance and
responsibility review relating to the
events and City of Edinburgh Council
involvement into management
difficulties at Lothian Buses

City of Edinburgh Council

KPMG LLP

14 May 2015

This report contains 25 pages

Krm/gc/mw



Contents

Glossary

1	Background	3
1.1	Introduction	3
1.2	Scope of work	3
1.3	Work done	3
1.4	Structure of our report	5
1.5	Limitations	5
2	Background to Lothian Buses’ management difficulties	6
2.1	Introduction	6
2.2	Management difficulties at Lothian buses	6
2.3	KPMG review	7
3	CEC’s governance arrangements in relation to Lothian Buses	8
3.1	Historical governance arrangements	8
3.2	Establishment of Transport for Edinburgh (“TFE”)	8
3.3	Legislation	9
3.4	CEC Committee Terms of Reference and Delegated Functions	9
3.5	Shareholder Agreement	10
3.6	Summary	11
4	Chronology and facts	12
4.1	Introduction	12
4.2	Chronology	12
4.3	Lodging of the Grievance to commencement of the investigation	13
4.4	Commencement of the investigation to issuing of the investigation report	14
4.5	Issuance of the investigation report to date of the mediation	14
4.6	Breakdown of the mediation to resignation of the Former Chairperson	16
4.7	Events following the resignation of the Former Chairperson	20
4.8	Summary of timeline analysis	22
5	Conclusions	23
5.1	Governance procedures	23
5.2	CEC application of governance procedures	23



Glossary

- (“AB”), Councillor Andrew Burns – Leader of CEC
- (“ADM”), Alastair MacLean - Director of Corporate Governance of CEC
- (“AF”) Ann Faulds - Former Chairperson of Lothian Buses
- (“AMV”), Councillor Adam McVey - Vice Transport Convenor of CEC
- (“CC”), Carol Campbell - Head of Legal, Risk and Compliance of CEC
- (“CEC”), City of Edinburgh Council
- (“DML”), Donald McLeod - Non-Executive Director of Lothian Buses
- (“the Engagement Letter”), Our engagement letter, dated 24 February 2015
- (“Executive Directors”), Executive Directors of Lothian Buses (Bill Campbell, Bill Devlin and Norman Strachan)
- (“IC”), Ian Craig - Chief Executive of Lothian Buses
- (“JM”), John Martin - Senior independent Non-Executive Director of Lothian Buses
- (“LH”), Councillor Lesley Hinds - Transport Convenor of CEC
- (“Lothian Buses”), Lothian Buses Ltd
- (“MR”), Marjory Roger - Non-Executive Director of Lothian Buses
- (“OB”), Owen Boyle – Former Employee Representative Director of Lothian Buses
- (“SB”), Dame Sue Bruce, Chief Executive of CEC
- (“SC”), Councillor Steve Cardownie - Deputy Leader of CEC
- Steve Cassidy - Non-Executive Director of Lothian Buses
- (“TDP”), Tony Depledge - Interim Chairperson of Lothian Buses
- (“TFE”), Transport for Edinburgh

1 Background

1.1 Introduction

1.1.1 We were instructed by City of Edinburgh Council (“CEC”) to perform an independent governance and responsibility review of events and CEC involvement into management difficulties at Lothian Buses Ltd (“Lothian Buses”) in accordance with the terms of our engagement letter, dated 24 February 2015 (“the Engagement Letter”).

1.2 Scope of work

1.2.1 Our scope of work was set out in a CEC resolution dated 5 February 2015. The scope of work is to prepare an independent report detailing events and CEC involvement in relation to Lothian Buses’ management difficulties, to include reference to all meetings and decisions taken, accepting that some information might be sensitive or confidential.

1.3 Work done

1.3.1 The work we performed included the following:

Background understanding

1.3.2 CEC provided us with a file of correspondence and documents relating to CEC’s involvement in Lothian Buses’ management difficulties and decisions taken. We reviewed the information provided by CEC to understand the background to events and CEC involvement.

1.3.3 We considered CEC and Lothian Buses’ minutes and matters of public record (including press articles) where they were relevant in our opinion.

1.3.4 The period of our independent governance and responsibility review is from 1 January 2014 to 5 February 2015, the date of the CEC resolution to perform this work.

1.3.5 In order to assess and comment on the extent to which CEC, in its involvement, complied with relevant governance requirements we:

- Obtained and documented our understanding of the legal and operating structure of Lothian Buses, including group structure;
- Obtained and documented our understanding of the governance arrangements in respect of CEC’s involvement in decision making, affecting Lothian Buses, with particular reference to:
 - The shareholder agreement amongst CEC, Transport for Edinburgh and Lothian Buses;
 - CEC’s Committee Terms of Reference and Delegated Functions; and
 - The Transport (Scotland) Act 1985.

Interviewing relevant parties

- 1.3.6 We interviewed fourteen people who had been involved in meetings and decisions taken in relation to Lothian Buses' management difficulties, as follows:

Council members

- Leader – Councillor Andrew Burns
- Deputy Leader – Councillor Steve Cardownie
- Transport Convenor – Councillor Lesley Hinds
- Vice Convenor - Councillor Adam McVey

Council officers

- Chief Executive – Sue Bruce
- Director of Corporate Governance – Alastair MacLean
- Head of Legal, Risk and Compliance – Carol Campbell

Lothian Buses Board

- Former Chairperson – Ann Faulds
- Interim Chairperson – Tony Depledge
- Senior Independent Non-Executive Director – John Martin
- Non-Executive Director – Marjory Roger
- Non-Executive Director – Steve Cassidy
- Non-Executive Director – Donald McLeod
- Former Employee Representative Director – Owen Boyle

- 1.3.7 We did not consider it appropriate to interview any of the Executive Directors of Lothian Buses who were the focus of the decisions taken because our work focussed on the governance of CEC in relation to the management difficulties and not the underlying Grievance issues.

- 1.3.8 We did not conduct a review of emails / correspondence by those involved in decision making to identify further meetings or events. No information came to light during our work which indicated that a more in depth review was necessary. Our review of documents and the interviews undertaken did not identify any significant inconsistencies in terms of meetings held, decisions taken and CEC involvement.

- 1.3.9 During our investigation we were asked by two Non- Executive Directors of Lothian Buses to review the phone records of the Executive Directors and Chief Executive on the date of the mediation. We did not consider that this additional work was required as we have



gathered the facts during our investigation which conclude that the Chief Executive called the Transport Convenor during the mediation. We believe that this is the fact which the Non-Executives were wishing us to establish from a review of the phone records.

- 1.3.10 We refer to the detailed scope of our work collectively within this report as the “Governance Review”

1.4 Structure of our report

- 1.4.1 We set out the findings of our work in the following sections of the report:

- Section 2: Background to Lothian Buses’ management difficulties;
- Section 3: CEC’s governance arrangements in relation to Lothian Buses;
- Section 4: Chronology and facts; and
- Section 5: Conclusions.

1.5 Limitations

- 1.5.1 This report summarises the findings of our work in relation to the Governance Review covered by the scope of our Engagement Letter. The content of this report is based upon information provided to KPMG LLP (“KPMG”). We have relied on the information provided and, except where explicitly stated, we have not attempted to verify independently this information. Accordingly, there may be further documentation which is relevant but which has not been identified as such during the course of our work and has not therefore been considered. Should additional information or documentation become available which impacts upon the conclusions or recommendations reached in this report, we reserve the right to amend our findings accordingly.
- 1.5.2 Our work does not constitute an audit and does not provide the same level of assurance as an audit. Further, we do not comment on any legal consequences of our findings and this report should not be taken as providing any legal advice.
- 1.5.3 This report is strictly private and confidential and has been provided for the purposes of confirming the factual accuracy of content only. This report is not to be copied, quoted or referred to, in whole or in part without our prior written consent. Our client is CEC and KPMG owes no duty of care to any other party in relation to this report and its contents. Any other party who receives a copy of this report and chooses to rely on it does so at its own risk.
- 1.5.4 Any party other than CEC that obtains access to this report or a copy (under the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, through City of Edinburgh Council’s Publication Scheme or otherwise) and chooses to rely on this report (or any part of it) does so at its own risk. To the fullest extent permitted by law, KPMG does not assume any responsibility and will not accept any liability in respect of this report to any party other than CEC.

2 Background to Lothian Buses' management difficulties

2.1 Introduction

- 2.1.1 Lothian Buses is an award winning bus company which operates over 70 bus services in Edinburgh and the surrounding areas of Midlothian and East Lothian. The company also operates several limited stop express routes, an Edinburgh Airport service, park and ride services and a night bus network as well as several tourist services. It has over 2,000 employees of which 1,500 are drivers.
- 2.1.2 Lothian Buses is a limited company. Its Board of Directors is responsible for its direction and management and also has responsibility for complying with all relevant laws and regulations.
- 2.1.3 Tony Depledge is the current Interim Chairperson of the board of Lothian Buses. The Chairperson is accompanied by six Non-Executive Directors and an Employee Representative Director. Ian Craig is the Chief Executive. There are three additional Executive Directors (Bill Campbell (Operations Director), Bill Devlin (Engineering Director) and Norman Strachan (Finance Director) collectively referred to in the report as the "Executive Directors".
- 2.1.4 Lothian Buses is majority owned by CEC (through its 100% subsidiary company, Transport for Edinburgh Ltd, which owns 91% of the company). The remaining 9% of Lothian Buses is owned by East Lothian Council, West Lothian Council and Midlothian Council.

2.2 Management difficulties at Lothian buses

- 2.2.1 There has been significant press coverage (from the fourth quarter of 2014) of a dispute between members of the senior management team at Lothian Buses.
- 2.2.2 A series of newspaper articles have made reference to a grievance raised by the Executive Directors against the Chief Executive ("the Grievance").
- 2.2.3 Details of the Grievance were made public and broadly related to a breakdown in the Chief Executive's relationship with his fellow Executive Directors and allegations of inappropriate interaction with management and staff.
- 2.2.4 Press coverage made reference to the fact that the Grievance was investigated a Senior Independent Non-Executive Director" at Lothian Buses and that Ann Faulds ("the Former Chairperson") was ousted in a dispute with CEC.
- 2.2.5 In January 2015, the press reported that all the Chief Executive and other three Executive Directors had been given notice of termination and would leave the company in the next two years. Mr Depledge ("the Interim Chairperson") was quoted as stating that recent months had been "bruising and damaging" for the CEC owned company.
- 2.2.6 In early February 2015 the press reported that a Lothian Buses' Non-Executive Director had stated that Councilor Lesley Hinds ("CEC's Transport Convener") has broken rules of



Independent governance and responsibility review relating to the events and CEC involvement into management difficulties at Lothian Buses

*KPMG LLP
14 May 2015*

governance, breached the code of conduct and overstepped her authority in representing CEC as the transport firm's primary shareholder.

- 2.2.7 A motion was raised by Councillor Rust at the meeting of CEC on 5 February 2015 which called for a report, in the interests of transparency and recognising CEC's shareholder responsibilities, detailing events and Council involvement in relation to Lothian Buses' management difficulties.

2.3 KPMG review

- 2.3.1 It is following these reports of management difficulties at Lothian Buses that KPMG was appointed to conduct a Governance Review and investigate CEC's involvement in Lothian Buses management difficulties.

- 2.3.2 In Section 3 of our report we set out the governance arrangements between CEC and Lothian Buses and in Section 4 we set out a detailed chronology of the meetings, facts considered and individuals involved in CEC governance of the management difficulties at Lothian Buses.

- 2.3.3 In Section 5 we provide our conclusion on CEC's involvement and how that accorded with the arrangements.

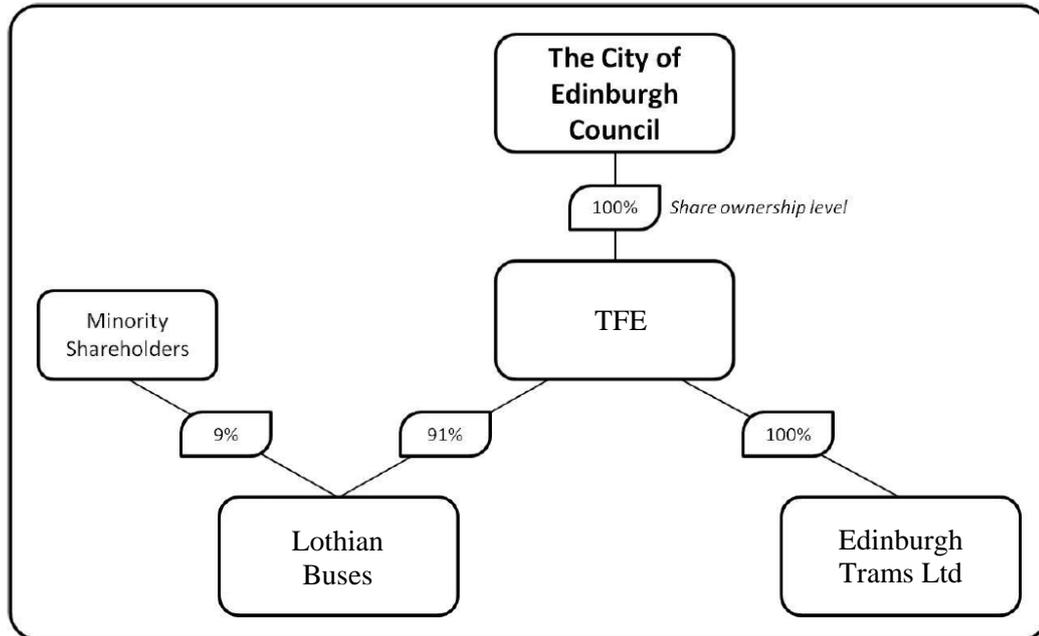
3 CEC’s governance arrangements in relation to Lothian Buses

3.1 Historical governance arrangements

- 3.1.1 The relationship between CEC and Lothian Buses was previously governed by a Majority Shareholder Agreement which was approved by Council on 31 October 2006. It framed the overall ambition to “encourage the greater use of public transport for journeys in, to and from Edinburgh,” to “work towards reducing and reversing the growth in private vehicle use,” and to “develop its bus services taking account of the Council’s policy of achieving the integration of new and existing elements of the public transport network”.
- 3.1.2 CEC directly owned 91% of Lothian Buses with the remainder owner by East Lothian Council and Midlothian Council (“the minority interest”).
- 3.1.3 Historically, good governance practice in respect of CEC and Lothian Buses was supported by CEC’s companies’ unit. This unit was disbanded (many years prior to 2012) as part of the reorganisation of CEC’s Economic Development department and thereafter there was no dedicated CEC resource charged with this responsibility.
- 3.1.4 In the second half of 2012 an external review, commissioned by the Director of Corporate Governance, was undertaken of the governance arrangements over the arms-length external organisations (“ALEOs”) at CEC, including Lothian Buses. A number of changes were recommended in a report to CEC dated December 2012.

3.2 Establishment of Transport for Edinburgh (“TFE”)

- 3.2.1 In December 2012, the context of CEC’s intention to achieve an integrated bus and tram service, with Lothian Buses as the operator, CEC resolved that the Director of Corporate Governance should be instructed to put in place a shareholder agreement with TFE and Lothian Buses. It also resolved that its transport companies (TFE, Lothian Buses and Edinburgh Trams Limited) would report to CEC as shareholder through CEC’s Transport and Environment Committee.
- 3.2.2 In June 2013, CEC approved recommendations relating to the establishment of TFE, transfer of its shareholding in Lothian Buses to TFE and the draft contents of a shareholder agreement between CEC, TFE and Lothian Buses. Following these decisions, an organisational structure was established as is shown below:



3.3 Legislation

3.3.1 The Transport Act 1985 made provision for the transfer of the operations of the National Bus Company to the private sector; to provide for the reorganisation of passenger transport in the public sector; and to provide for local and central government financial support.

3.3.2 The Transport (Scotland) Act 2001 made further provision in relation to transport with reference included in respect of certain aspects of bus services such as ticketing arrangements, competition provisions, quality partnership and quality contract schemes.

3.3.3 In the context of our review, sections 72 to 79 of the Transport Act 1985 have relevance. These relate to the interaction and relative responsibilities of local authorities and public transport companies and include:

- local authorities' obligations in respect of ensuring an appropriate board composition in respect of a public transport company; and
- the disability of a director of a public transport company, who is remunerated as such or is an employee of the company or its subsidiaries, from being elected or being a member of any council who are that company's controlling authority (or any component authority) and from taking part in certain council committee decisions relating to the company.

3.4 CEC Committee Terms of Reference and Delegated Functions

3.4.1 Section 56 of The Local Government (Scotland) Act 1973 establishes the ability of a local authority to arrange for the discharge of its functions by a committee, sub-committee or officer of the authority.

- 3.4.2 The terms of reference and delegated functions at CEC relevant to our review are set out in a document dated 29 May 2014. This sets out the powers delegated by CEC to its committees and sub-committees pursuant to the Local Government (Scotland) Act 1973. The document is entitled “Committee Terms of Reference and Delegated Functions”.
- 3.4.3 Section Eight of the Committee’s Terms of Reference and Delegated Functions document establish the constitution, quorum and functions delegated to CEC’s Transport and Environment Committee. These include, but are not limited to:
- the tram project;
 - strategic transport planning; and
 - public transport.
- 3.4.4 The Transport and Environment Committee therefore has delegated responsibility for matters relating to Lothian Buses.
- 3.4.5 Councillors Lesley Hinds and Adam McVey were the Convenor and Vice Convenor respectively, of the Transport and Environment Committee, throughout 2014 and 2015 to date and are referred to in this report as the Transport Convenor and Deputy Transport Convenor respectively.
- 3.4.6 Section Four of the Terms of Reference and Delegated Functions document details the process in respect of “Urgent decisions”. It states, “If a decision which would normally be made by a Committee requires to be made urgently between meetings of the Committee, the Chief Executive or appropriate Director, in consultation with the Convenor or Vice Convenor, may take action, subject to the matter being reported to the next meeting of the Committee”.
- 3.4.7 We make reference to the above sections of CEC’s Committee Terms of Reference and Delegated Functions when we consider CEC’s involvement in the management difficulties.

3.5 Shareholder Agreement

- 3.5.1 In line with the recommendations approved by CEC a majority shareholder agreement amongst CEC, TFE and Lothian Buses was established on 28 October 2013 (“the Shareholder Agreement”). The Shareholder Agreement sets out the terms on which the three parties have agreed that Lothian Buses will operate.
- 3.5.2 Lothian Buses’ objectives stated in the Shareholder Agreement include:
- operation of bus networks as part of an integrated network of public transport service in harmony with other modes of transport owned or operated by any affiliate of Lothian Buses; and
 - integration of new and existing elements of the public transport network.
- 3.5.3 Relevant features of the Shareholder Agreement include:
- The Chairman of the Board is prescribed and shall not be changed unless otherwise decided by CEC;

- The quorum for transacting business at any board meeting is three directors (of which one shall be a director appointed by CEC);
 - Lothian Buses is required to give CEC five business days' notice of each board meeting which is to be held in the normal course of business and where required at short notice, shall use reasonable endeavours to give CEC advance notice; and
 - There is provision for appointment by CEC of one Council official who can attend Lothian Buses board meetings as an observer.
- 3.5.4 Section eight of the Shareholder Agreement sets out Lothian Buses undertakings. Subject to certain clauses, section 8.1.7 states that, "save with the prior written consent of the Council, it shall not effect or propose any of the Reserved Matters."
- 3.5.5 In the context of this review, two relevant Reserved Matters, set out in in the Shareholder Agreement are:
- "5. Appoint or remove any Director (other than any Director appointed as an employee representative)"; and
 - "11. Incur any liabilities other than liabilities incurred on arm's length terms in the ordinary course of the business (the Permitted Liabilities)..."
- 3.5.6 The Reserved Matters and specifically the one in relation to the removal and appointment of a Director are not out of line with what we would expect to see in the Shareholder Agreement.
- 3.5.7 It further states at section 8.5 "Where consent to a Reserved Matter is required under clause 8.1.7 and the Company [Lothian Buses] reasonably considers that waiting for the next meeting of Council or relevant committee thereof before any decision concerning consent can be given would result in a material adverse effect on the trading of the Company...it shall, by giving notice in writing to the Council, invoke an accelerated procedure for the consent process..." That process effectively requires a Council decision within five working days otherwise it is assumed consent is withheld.

3.6 **Summary**

- 3.6.1 In summary there is a well-defined and clear approach to the governance by CEC over its subsidiary Lothian Buses, through a combination of the delegation of responsibility to the Transport & Environment Committee and the Shareholder Agreement.
- 3.6.2 In relation to the management difficulties the removal of the Chief Executive would be classified as a reserved matter which would require the consent of CEC as set out above. It is the context of this framework that we have set out the facts gathered in relation to CEC's involvement in the management difficulties at Lothian Buses.

4 Chronology and facts

4.1 Introduction

- 4.1.1 As we have stated in Section 2, our governance review involved detailed discussions with fourteen individuals, including CEC members and officers, together with Lothian Buses Non-Executive Directors and the Employee Representative Director.
- 4.1.2 CEC provided a detailed file of correspondence and documents relating to its involvement with Lothian Buses management difficulties. The file included details of text messages and emails, notes of meetings held, letters and minutes of meetings. We have summarised the key events and meetings, parties involved and relevant decisions taken in relation to CEC's involvement in Lothian Buses management difficulties in this section. We have included details of other meetings or events to provide context as required.
- 4.1.3 As our investigation progressed we were provided with additional information from a small number of the interviewees (Council members, Council officers and Non-Executive Directors of Lothian Buses) and we have included additional facts from this material within our report where relevant.

4.2 Chronology

- 4.2.1 We have summarised the key dates, meetings, individuals involved, decisions taken and where relevant the facts which were considered in the chronology below.
- 4.2.2 Our agreed scope of work covers a period which commences in January 2014. For the purposes of our governance review we have commenced our detailed review from the date that the Grievance was lodged by the Executive Directors, on 22 August 2014. There was a consistent response amongst those to whom we spoke that prior to that date, CEC had limited day to day involvement of Lothian Buses. There had been discussions in relation to the integration of the Trams, and a CEC observer attended Lothian Buses board meetings as was provided for under the Shareholder Agreement but nothing more.
- 4.2.3 We have split our chronology into five sub periods to aid the reader. These sub-periods are as follows:
- Lodging of the Grievance to commencement of the investigation;
 - Commencement of the investigation to issuing of the investigation report;
 - Issuance of the investigation report to date of the mediation;
 - Breakdown of the mediation to resignation of the Former Chairperson; and
 - Events following the resignation of the Former Chairperson.
- 4.2.4 We deal with each in turn below. In each section we have set out a chronology with some additional commentary to aid the reader. Meetings and written correspondence are highlighted in blue in the chronology boxes.

4.3 Lodging of the Grievance to commencement of the investigation

- 4.3.1 The Former Chairperson received the Grievance on 22 August 2014 and immediately informed CEC through discussions with its Chief Executive and the Director of Corporate Governance. The Transport Convenor was made aware of the Grievance by text correspondence at the same time.
- 4.3.2 A formal meeting was held on 1 September 2014 in which the Leader and Deputy Leader, Transport Convenor and the Former Chairperson were in attendance. It was concluded that an investigation should be performed without a public suspension if possible.
- 4.3.3 There were further discussions mostly involving the Former Chairperson who regularly updated and consulted with the Director of Corporate Governance up to 17 September 2014, when the investigation of the Grievance was commenced by the Senior Independent Non-Executive Director.

Lodging of the Grievance to commencement of the investigation

Date	Details
22/08/2014	Grievance is lodged by Executive Directors and provided to AF.
22/08/2014	AF verbally updates SB and ADM. LH is also made aware of matter.
01/09/2014	Leaders meeting with AF in attendance providing update on Grievance and agreeing that investigation should be performed without a public suspension. In attendance AB, LH, ADM, SC and AF.
04 - 05/09/2014	Informal discussions between ADM to AF and AMD and LH on Grievance.
05/09/2014	Meeting with AB, LH, AF and ADM in attendance. Discuss IC being out of the office rather than being suspended while the investigation is performed.
05/09/2014	AF informs ADM that she is consulting with legal advisors on how best to deal with IC absence.
09- 10/9/2014	Additional discussion between AF and ADM covering whether mediation is an option and whether IC should return to work before investigation is complete.
17/09/2014	AF updates ADM that JM is planning to perform the three investigative interviews tomorrow and Friday.
Source: KPMG Analysis – Note formal correspondence and meetings shaded in blue	

- 4.3.4 In summary during this period, the Former Chairperson consulted with CEC, due to the seriousness of the issues and it was agreed that an investigation should be undertaken and that the Chief Executive should be away from the business during that period.
- 4.3.5 It could be argued that this was entirely a matter for Lothian Buses and that CEC should merely have been an observer at any board meetings where decisions were taken in relation to the issue. However this was a serious matter and the evidence we have gathered suggests

that the Former Chairperson proactively consulted CEC as shareholder and asked for advice rather than CEC imposing its views on the investigation process to be adopted.

4.4 **Commencement of the investigation to issuing of the investigation report**

4.4.1 The Independent Non-Executive Director commenced his investigation on 19 September 2014 and delivered a report to the Former Chairperson on 9 October 2014. Details of discussions between individuals during this period are set out below.

Commencement of the investigation to issuing of the investigation report

Date	Details
19-Sep-14	JM commences investigation with interviews of two of the three Executive Directors who had raised the Grievance.
22-Sep-14	JM conducted an interview with the remaining Executive Director and received a rebuttal statement from IC (in relation to the Grievance). JM could not properly review the rebuttal statement post an eye operation. Therefore the IC interview was postponed to 29 September 2014.
24-29 Sep-14	Various discussions between AF, ADM, and LH. AF seeking shareholder view on IC's return to work while investigation is in progress. SB is also informed of progress in general terms.
29-Sep-14	JM conducts investigative interview with IC and commences preparation of his report.
09-Oct-14	JM investigation report completed and provided to AF.
09-Oct-14	AF contacts ADM to provide an informal update on outcome of investigation report.

Source: KPMG Analysis – Note formal correspondence and meetings shaded in blue

4.4.2 In summary during this period, the independent investigation is progressed and the Former Chairperson continued in informal discussions with CEC focussing on the Chief Executive's position, whilst the investigation was ongoing. The Former Chairperson briefed CEC informally on the outcome of the investigation immediately upon receipt of the report.

4.5 **Issuance of the investigation report to date of the mediation**

4.5.1 The Former Chairperson provided an update in relation to the findings of the investigation report to the Leader, Deputy Leader and Chief Executive of CEC at a meeting on 13 October 2014. The Former Chairperson updated the Transport Convenor on 14 October 2014.

4.5.2 Whilst we have not reviewed the original Grievance, we have seen a copy of the investigation report. The investigation report upheld five of the points of the Grievance but did not uphold the remaining four (although two were out of scope of the investigation) and concluded that there were no grounds for disciplinary action against the Chief Executive.



Independent governance and responsibility review relating to the events and CEC involvement into management difficulties at Lothian Buses

*KPMG LLP
14 May 2015*

- 4.5.3 The investigative report also commented on what could be done going forward to try to resolve the problems with senior management relationships and made reference to mediation, improved communication and additional procedures. The investigative report recognised the strength of feeling held by the Executive Directors and it cast some doubt on whether these changes would be enough to resolve matters.
- 4.5.4 The Senior Independent Non-Executive Director, in addition to the written investigative report, provided a written outcome of the Grievance to the Executive Directors and the Chief Executive on 17 October 2014.
- 4.5.5 Following consultation with Lothian Buses' legal advisors, the Former Chairperson held a post investigative interview with the Chief Executive on 20 October 2014.
- 4.5.6 The Former Chairperson provided the Transport Convenor, the Chief Executive of CEC and the Director of Corporate Governance with a further update at a meeting on 22 October 2014. Following this meeting it was decided that mediation should be tried to resolve the matter.
- 4.5.7 A letter was subsequently issued by the Chief Executive of CEC dated 22 October 2014 thanking the Former Chairperson for the update and stating that any decisions arising would be a matter for the Lothian Buses Board. We have been advised that this related to decisions arising from the investigation although it is not explicitly stated in the letter.
- 4.5.8 The issue of the management difficulties at Lothian Buses was also raised on 23 October 2014 at Council Leader's questions. There were also continuing informal discussions between the Former Chairperson, the Director of Corporate Governance, the Chief Executive of CEC and the Transport Convenor in relation to the matter.
- 4.5.9 A mediation was held on 31 October 2014. The three Executive Directors, the Chief Executive, respective legal advisors and the mediator attend the session. A chronology is set out below.

Issuance of the investigation report to date of the mediation

Date	Details
13-Oct-14	AF meets with AB, SC and SB to provide them with a briefing on the findings of investigative report.
13-Oct-14	ADM updates LH on the outcome of investigation report “finds in favour of some and against on others. No dismissal on those grounds. Irretrievable breakdown of senior management team. Loss of trust and confidence”. LH is noted as stating that mediation is needed.
14-Oct-14	AF provides an update to LH
17-Oct-14	JM provides written outcome of his investigation to the three Executive Directors and IC.
20-Oct-14	AF holds a post investigative interview with IC and JM.
22-Oct-14	Meeting between SB, ADM, LH and AF.
22-Oct-14	Letter issued from SB to AF thanking AF for the update and stating that any decisions arising will be a matter for the Lothian Buses board.
23-Oct-14	Council Leader’s questions and the issue re IC was raised. Discuss 'observer' on LB board.
23-Oct-14	Discussion between ADM and LH on having an observer on the Lothian Buses board.
31-Oct-14	Mediation held with three Executive directors and IC with legal advisors and mediator
Source: KPMG Analysis – Note formal correspondence and meetings shaded in blue	

4.5.10 In summary, the Former Chairperson informed a wide range of people within CEC of the outcome of the investigation. The investigation report upheld five of the points of the Grievance but did not uphold the remaining four (although two were out of scope of the investigation) and concluded that there were no grounds for disciplinary action against the Chief Executive. It was reasonable for the Former Chairperson to continue to brief proactively and meet with CEC during the period, particularly when it is considered that the briefing focussed on the treatment of the Chief Executive rather than the investigation itself.

4.5.11 CEC had some input to the decision to conduct a mediation. A mediation had also been suggested in the investigation report. The mediation was intended to find a way for the Chief Executive and other Executive Directors of Lothian Buses to work together.

4.6 Breakdown of the mediation to resignation of the Former Chairperson

4.6.1 We understand that it became apparent early on in the mediation that the individuals would not be able to work together. We were advised that, later on during the mediation, the Chief Executive was presented by the Former Chairperson with an offer of a package to leave Lothian Buses.



- 4.6.2 The Chief Executive then telephoned the Transport Convenor to clarify if shareholder approval has been given to his exit from Lothian Buses.
- 4.6.3 The Transport Convenor then telephoned the Director of Corporate Governance to confirm that permission had not been given and sought confirmation it would be required. Further telephone calls were made to the Chief Executive and the Leader of CEC to highlight what was happening and to check whether shareholder approval had been given by anyone within CEC. The Director of Corporate Governance called the Head of Legal, Risk and Compliance who confirmed that it was a “reserved matter” in the terms of the Shareholder Agreement which required CEC consent.
- 4.6.4 It was confirmed that no consent had been given and the Director of Corporate Governance, unable to reach the Former Chairperson by telephone, proceeded on the evening of 31 October 2014 to go to the building where the mediation was being held. He met with the Former Chairperson and her legal representative, to reiterate that shareholder approval must be obtained before deciding on any matter which required shareholder consent.
- 4.6.5 The Former Chairperson returned to the mediation, which wound up shortly thereafter with no resolution of matters. The mediator had in fact left before the Director of Corporate Governance went to the mediation premises.
- 4.6.6 Following the breakdown in the mediation, the Former Chairperson discussed with the Transport Convenor, the Leader and the Director of Corporate Governance the way forward on 3 November 2014. The Former Chairperson highlighted the underlying conduct issues of the Chief Executive and other subjective matters which the Former Chairperson had taken into account in her decision, which had not been covered as part of the Grievance investigation.
- 4.6.7 The Former Chairperson was then asked by the Director of Corporate Governance to set out how Lothian Buses wished to proceed by the end of that week.
- 4.6.8 Whilst the investigation report stated that there were no grounds for disciplinary action against the Chief Executive, we have been advised that the Former Chairperson had taken legal advice in relation to the conduct of the Chief Executive and believed that it could be argued that there were grounds for the termination of his contract. This was the Former Chairperson’s preference in the context of her dealings with the Chief Executive which involved more than merely the investigation report. By this point she had lost trust and confidence in him. She also believed that he had breached the terms of the mediation confidentiality agreement by contacting CEC.
- 4.6.9 We have discussed this with CEC and the legal advice that they received noted that while one could provide arguments for dismissal it was not felt that this would necessarily be successful given the circumstances of the case. This could result in a significant claim against Lothian Buses. The conclusions of the investigation report did not support this course of action as there was a statement that there were no grounds for disciplinary action.
- 4.6.10 The Former Chairperson advised us that she also believed that two of the Executive Directors of Lothian Buses, the Operation Director and the Engineering Director were more critical to the ongoing operations of Lothian Buses than the Chief Executive. If the senior



leadership team issues could not be resolved then the departure of the Chief Executive was the better solution for the benefit of Lothian Buses going forward.

- 4.6.11 The Senior Independent Non-Executive Director who had conducted the investigation and drafted the report supported the Former Chairperson's view on this matter. The Senior Independent Non-Executive Director (with the Former Chairperson) met with the Director of Corporate Governance and the Head of Legal Risk and Compliance to discuss the matter and then separately with the Transport Convenor and the Director of Corporate Governance.
- 4.6.12 Following these meetings, the Former Chairperson convened a meeting of the Non-Executive Directors of Lothian Buses to further the matter on 5 November 2014, the Employee representative was not invited to the meeting. In attendance were the Former Chairperson, the Senior Independent Non-Executive Director, and three other Non-Executive Directors (one joined the meeting by telephone).
- 4.6.13 The Former Chairperson briefed those present on the matter and stated that she was planning to seek shareholder approval for the termination of the employment of the Chief Executive. The Non-Executives provided their support to the Former Chairperson in this decision (the remaining Non-Executive Director who was not able to attend this meeting was contacted by telephone afterwards and also supported the Former Chairperson proposal). The Former Chairperson and the attendees were aware that this proposal may not be supported by CEC. One Non-Executive Director advised us that he had stated there was a risk of taking action against the views of the major shareholder.
- 4.6.14 A formal written request was then submitted by the Former Chairperson to the Chief Executive of CEC on 6 November 2014.
- 4.6.15 There were meetings on 10 and 11 November 2014 within CEC to discuss this request. Individuals who were in attendance at the meetings included the Leader and Deputy Leader of the Council, the Transport Convenor and Deputy Transport Convenor and the Head of Legal Risk and Compliance and the Director of Corporate Governance.
- 4.6.16 The meeting notes and interviews we have conducted with these individuals within CEC show that there was a detailed consideration of the facts. Either option regarding the request (to approve it or to deny it) was defensible. The preference was for a longer term solution which involved all of the Executive Directors and the Chief Executive. A dismissal may have resulted in considerable cost. It was agreed that consent for the immediate dismissal of the Chief Executive should be refused.
- 4.6.17 It was also discussed within CEC that the Former Chairperson had appeared to be trying to circumvent shareholder approval rights against the wishes of the shareholder and that meant that her position was untenable. We believe that this view was related to the offer of termination that arose during the mediation, which led to the Director of Corporate Governance having to attend to remind the Former Chairperson that shareholder approval was required before any decision to terminate the Chief Executive could be made. There was also a general discussion on what should be done for the best of Lothian Buses and the CEC going forward.

- 4.6.18 The following day on 12 November 2014, the Former Chairperson was invited to a meeting with CEC. The Former Chairperson was advised that shareholder approval to the request had been withheld and provided with a letter dated 12 November 2015 signed by the Chief Executive of CEC. The Former Chairperson was also asked to resign. She did not do so immediately but did resign later that day.
- 4.6.19 There were then meetings with the Executive Directors to try maintain stability within Lothian Buses and to stress the need to address some of the management issues which were apparent.
- 4.6.20 A timeline of these events is set out below.

Breakdown of the mediation to resignation of the Former Chairperson

Date	Details
31-Oct-14	IC telephones LH to advise that he is being offered a package to go and whether this has shareholder approval.
31-Oct-14	LH contacts ADM. ADM discusses this issue with SB. AB is also made aware of matter. LH instructs ADM to remind AF that shareholder consent was required to dismiss the Chief Executive.
31-Oct-14	ADM meets with AF and legal advisor to reiterate that shareholder approval is needed if IC is being dismissed.
31-Oct-14	Mediation concludes with no agreement reached.
04-Nov-14	ADM asks AF to set out what Lothian Buses want to do by the end of the week and CEC will consider that submission.
04-Nov-14	Meeting with AF, JM, ADM, CC and AF's legal advisor to discuss IC's position
04-Nov-14	Meeting with JM, LH and ADM and discussion on IC's position
05-Nov-14	AF has meeting with NED's of LB (DB called after on phone). They support AF in seeking shareholder consent to terminate IC's employment.
06-Nov-14	Written request submitted to SB requesting consent for the termination of IC's employment.
10-Nov-14	Meetings between LH, CC, LM and ADM to discuss request from AF
11-Nov-14	Meeting with LH, AB, SC, AMV, CC and ADM to discuss request and way forward
12-Nov-14	AF provided with refusal letter and asked to resign. AF resigns later in the day.
12-Nov-14	Meetings held by LH and ADM with Executive Directors and IC.
12-Nov-14	Meeting of AB, SC, LH, AMV, ADM and CC discuss Lothian Buses board, who should be the Chairperson and whether LH should go on Lothian Buses board temporarily.
Source: KPMG Analysis – Note formal correspondence and meetings shaded in blue	

- 4.6.21 In summary, there was a significant amount of formal and informal communication through this period. The informal communication was in the form of discussions involving the Former Chairperson and officers and elected members of CEC. This is not unexpected given the seriousness of the grievance lodged and its possible impact on the running of Lothian Buses. It is also clear that CEC was aware of the Former Chairperson's view on the Chief Executive's position as this developed. It is also the case that the Former Chairperson was made aware of CEC's misgivings in relation to the proposed dismissal of the Chief Executive.
- 4.6.22 It was for the Former Chairperson of Lothian Buses to make the decision she made, with the evidence and other information available to her, in requesting approval for CEC that the Chief Executive's contract be terminated. We note that there was no dissent amongst the other Non-Executive Directors of Lothian Buses as to that decision.
- 4.6.23 It was also for CEC, as majority shareholder to come to its own view on whether to grant the approval requested or not. These rights are established in the Shareholder Agreement.
- 4.6.24 It is worthy of note also that CEC's legal advice to parties deciding on the request, was that it was open to CEC to either approve or reject the Former Chairperson's request for consent. CEC was entitled to apply its own lens to the facts and circumstances communicated, formally and informally, in coming to its decision on the request for consent.

4.7 Events following the resignation of the Former Chairperson

- 4.7.1 Following the resignation of the Former Chairperson there were two Board meetings convened, on 13 and 21 November 2014 at Lothian Buses.
- 4.7.2 At the first Board meeting a request was made for the Transport Convenor to be appointed to the Board on a temporary basis (not exceeding 3 months) to help Lothian Buses through the inevitable instability and to observe the company through this period. This request was withdrawn at the same meeting when it was highlighted that, under the terms of the Transport Act 1985 there may be a conflict of interest from such an appointment. The Transport Convenor was then admitted to the Board as an observer which was accepted by the attendees as a reasonable course of action. Per the Shareholder Agreement a formal notice should have been sent by CEC in relation to the appointment of an observer. However as the suggestion was approved by Lothian Buses at the board meeting at which the suggestion was raised, this was not required.
- 4.7.3 Following the Board meetings a letter was sent to CEC by Marjory Rodgers (one of the Non-Executive Directors) requesting clarification of why CEC had withheld their consent for the termination of the Chief Executive's employment. A letter was subsequently provided to Ms Rodgers which was a copy of the original letter which withheld consent as provided to the Former Chairperson, although this letter did not explain the reasons for consent being withheld.
- 4.7.4 From discussions with the Non-Executive team at Lothian Buses a number of them remain unaware of the reasons why consent had been withheld.
- 4.7.5 The Interim Chairperson, following a number of discussions with the Chief Executive and Executive Directors, came to the conclusion in January 2015 that the Chief Executive and

other Executive Directors could no longer run Lothian Buses and should leave the business at the end of their notice periods. One year in respect of the Chief Executive and two years in respect of the Executive Directors. The Interim Chairperson raised his proposal at a Lothian Buses Board meeting and this request was made to CEC (under accelerated procedures as defined in the Shareholder Agreement). This was granted after internal consultation within CEC on 21 January 2015.

4.7.6 On 5th February 2015 a motion was raised at a full meeting of Council by Councillor Rust to have an independent investigation into Council involvement in the Management Difficulties at Lothian Buses. A timeline in relation to the matters discussed in this section is set out below.

Events following the resignation of the Former Chairperson

Date	Details
13-Nov-14	LB Board meeting. TD appointed as Interim Chairperson. Intention by CEC to appoint LH to Board on a temporary basis but following concerns raised by other board members LH agreed to participate as an observer. Also discussion on appointment of individual to help support the Executive Directors.
21-Nov-14	LB Board Meeting. LH confirmed she wished to be an observer which was agreed. CEC had provided the Chairperson with a proposal in relation to assisting with the management of leadership issues. Lothian buses decided not to take up CEC's offer of assistance.
05-Dec-14	Letter from MR to SB asking for clarification on why the shareholder rejected the request from AF which had the support of the investigating director and the five Non-Executive directors.
17-Dec-14	LB Board meeting.
22-Dec-14	Written response to MR enclosing original refusal letter provided to AF.
13-Jan-15	ADM provides verbal update to T&E committee on decision (to withhold consent) taken under urgency.
21-Jan-15	Lothian Buses Board meeting. CC attends as the CEC observer. Board agrees to seek shareholder approval to terminate the contracts of employment of the Chief Executive and other Executive Directors (including in addition the director of HR).
21-Jan-15	Meeting of LH, ADM and CC.
21-Jan-15	Consent given - from CEC (ADM letter).
05-Feb-15	CEC Council meeting - motion by Councillor Rust
Source: KPMG Analysis – Note formal correspondence and meetings shaded in blue	

4.7.7 In summary, CEC wished to have appropriate oversight of Lothian Buses following the decision to withhold consent re the Chief Executive's removal and the Former Chairperson's resignation. The arrangement put in place was in line with the Shareholder Agreement and acceptable to the Board of Lothian Buses. During this time CEC made other



offers of support, including staff resources, to the Interim Chairperson, which were in the end not taken up.

- 4.7.8 Following a period when an attempt was made to put the management difficulties behind it, the Lothian Buses Board decided to remove all of the Executive Directors and obtained Shareholder consent for that.

4.8 Summary of timeline analysis

- 4.8.1 We have set out in detail the key dates, meetings and decisions which were made in the time period from the lodging of the Grievance on 22 August 2014 to the raising of the motion by Councillor Rust to investigate CEC involvement in the Management Difficulties on 5 February 2015. The level of detail given takes account of the sensitive and confidential nature of the Grievance and investigation processes.

- 4.8.2 It is not within our scope of work to provide an opinion on the decision made by CEC or the decision making amongst the Lothian Buses' Non-Executives that led to a request for approval of Lothian Buses' proposed termination of the Chief Executive's contract. In hindsight neither decision appears to be outside the bands of reasonableness at the time it was made. Our scope is to consider CEC's involvement in that process and governance over Lothian Buses in relation to the management difficulties.

5 Conclusions

5.1 Governance procedures

- 5.1.1 There is a well-defined and clear approach to the governance by CEC over its subsidiary Lothian Buses, through primarily the Shareholder Agreement and its Committee Terms of Reference and Delegated Functions which set out the powers delegated by CEC to its committees and sub committees including the procedures in relation to “Urgent Decisions”.
- 5.1.2 The Shareholder Agreement states that Lothian Buses shall not effect or propose any “Reserved Matters“, save with the prior written consent of the Council”. In the context of our governance review, to “Appoint or remove any Director (other than any Director appointed as an employee representative)” is a Reserved Matter and it is clear that the Former Chairperson of Lothian Buses was required to obtain the prior written consent of CEC if she wished to remove its Chief Executive.
- 5.1.3 In accordance with the Shareholder Agreement, a request for shareholder consent for the removal of the Chief Executive of Lothian Buses was prepared by the Chairperson of the Board of Directors of Lothian Buses and submitted to the Chief Executive of CEC.
- 5.1.4 CEC’s governance procedures require a decision in this respect to be taken by Council, the Transport and Environment Committee (under delegated powers) or, in respect of “Urgent Decisions” by the Chief Executive or appropriate Director, in consultation with the Convenor or Vice Convenor (of the relevant committee), subject to the matter being reported to the next meeting of the Committee.
- 5.1.5 Urgency is not defined. The request for permission submitted by the Former Chairperson did not refer to the accelerated procedures. However in the circumstances and given the importance of the issue, it was not unreasonable that the request for the consent for dismissal of the Chief Executive of Lothian Buses was dealt with in accordance with those provisions rather than waiting until the next scheduled meeting of the relevant committee.

5.2 CEC application of governance procedures

The decision not to provide consent

- 5.2.1 In our opinion CEC met its governance requirements in reaching its decision not to provide consent, as the Transport Convenor, the Deputy Convenor, the Director of Corporate Governance, the Chief Executive of CEC, Head of Legal, Risk and Compliance and Leader and Deputy Leader of CEC were involved in the decision making process. This has been confirmed to us from interviews and from a review of meeting notes and other relevant information made available to us. A rationale for the decision reached was consistently stated to us by relevant interviewees. This exceeds the minimum requirements for Urgent decisions.
- 5.2.2 We have also confirmed that the decision was reached based on an analysis of the relevant facts being considered. Both the key facts within the request for dismissal and the findings from the investigation report were considered when reaching the decision. We also noted

that the Chairperson of Lothian Buses had a number of prior informal discussions and briefings with the Transport Convenor and other individuals who were ultimately involved in making the decision to withhold approval to dismiss. The Senior Independent Non-Executive Director who conducted the investigation report also spoke to the Transport Convenor informally prior to the request for approval. The key facts were therefore fully available to the individuals within CEC who subsequently made or were consulted on the decision. It is clearly evidenced that the matter was duly considered and taken in line with governance requirements.

- 5.2.3 We have been advised in line with the requirements associated with Urgent Decisions, the decision was subsequently reported verbally to a meeting of the Transport and Executive Committee under a 'B agenda item'. We reviewed the minutes and noted that there is a "Resolution to consider in private" in relation to a "Transport Companies Update - Verbal update" which we have been advised relates to this matter.
- 5.2.4 Therefore in relation to the request regarding the removal of the Chief Executive of Lothian Buses, CEC complied with governance requirements, specifically the requirements of the Shareholder Agreement and its Committee Terms of Reference and Delegated Functions.
- 5.2.5 The subsequent proposal some months later to terminate the employment contacts of the Chief Executive and three Executive Directors were also performed in accordance with the accelerated procedures in place.

The decision to request the resignation of the Former Chairperson

- 5.2.6 Following shareholder permission being withheld for the removal of the Chief Executive of Lothian Buses, the Chair of Lothian Buses was asked to resign. We note that the offer presented by the Former Chairperson to the Lothian Buses' Chief Executive to leave Lothian Buses at the mediation, when there was no shareholder consent in place, was a factor leading to the request for the Chairperson's resignation.
- 5.2.7 It would not be unexpected for the position of the Chairperson of a subsidiary to have become a much more difficult position in circumstances where they have taken the decision to terminate the Chief Executive of a company and the majority owner of the business disagreed with that decision. In any event, CEC had the right as majority shareholder to choose who it wished to be Chairperson.

The Transport Convenor's role on the Lothian Buses board

- 5.2.8 We also examined the facts surrounding the request to appoint the Transport Convenor to the Board of Lothian Buses shortly after the resignation of the Chairperson of Lothian Buses. We note that a request was made for the Transport Convenor to be appointed on a temporary basis (period not exceeding three months) to the Board of Lothian Buses at a Board meeting, but this request was withdrawn at the same meeting when it was highlighted by the Senior Independent Non-Executive Director that this appointment could lead to a conflict of interest under the terms of the Transport Act. The Transport Convenor was then admitted to the Board as an observer which is allowable under the Shareholder Agreement. It was considered reasonable by the Interim Chair of Lothian Buses for the Transport



Convenor to be involved in this manner. The Transport Convener only attended two board meetings in this capacity.

Other matters

- 5.2.9 With the exception of the matters set out above, we have seen no evidence of any active involvement of CEC in the day to day running of Lothian Buses or in its management or governance processes. We have been advised by interviewees that CEC had an observer on the Board and limited contact with Lothian Buses in advance of the management difficulties which surfaced.
- 5.2.10 It could be argued that, under the terms of the Shareholder Agreement, CEC should have had no involvement whatsoever in the Grievance process which Lothian Buses followed, other than responding to a formal request for consent from the Former Chairperson. However we consider that this was unrealistic in the circumstances, given the seriousness of the issue. There was a process of informal briefings and updates, which all concerned were happy to participate in and which did not impact on the independence of the Grievance investigation process or the decisions taken by the Former Chairperson or CEC. The fact that CEC applied its own lens when deciding not to grant consent reinforces the importance of the rights set out in the Shareholder Agreement.