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TfW Board minutes October 2020

10:00 – 16:30; 15 October 2020

Attendees

Scott Waddington (SW) (Chair); James Price (JP); Heather Clash (HC); Sarah Howells (SH); Nicola Kemmery (NK); Alison Noon-Jones (ANJ); Vernon Everitt (VE); Alun Bowen (AB); Gareth Morgan (item 2c); and Jeremy Morgan (Secretariat).

Operational update session (Part B): David O’Leary (DOL); Lewis Brencher (LB); Lisa Yates (LY); Lee Robinson (LR); Alexia Course (AC); Karl Gilmore (KG); Gareth Morgan (GM); Dave Williams (DW); and Ynyr Roberts (YR) (item 5e).

Part A – Full Board Meeting

1a. Apologies for Absence

Natalie Feeley; Geoff Ogden (Part B)

1b. Notice of Quorum

A quorum being present, the Chair welcomed everyone to the meeting and declared the meeting open.

1c. Declarations of Interest

There were no declarations of interest.

1d. Minutes previous meeting and matters arising

The minutes of the meeting held on 17 September 2020 were considered and their accuracy as a correct record confirmed. There were no issues arising from the minutes.

2a. Safety Moment

In the context of winter approaching and all staff working from home, the Board were pleased to see a message going to all staff extending the well-being calendar invite to one hour. The Board were also reminded of the need to remember all the health, safety and wellbeing issues for any normal winter period as well as all the COVID related matters.

2b. Customer moment

More COVID restrictions are likely to come in and we need to think through what this means in terms of engaging with customers.

2c. Safety performance

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GM joined the meeting. Safety performance figures are generally good but need to be seen in the context of passenger numbers remaining below 30%. However, facemask compliance is averaging over 90% and there have been no RIDDOR reportable accidents. Fire risk assessments for the new TfW office in Pontypridd have been undertaken with recommendations from the Fire Officer being implemented. A draft health and safety induction plan is being developed for staff moving to Pontypridd by the working group established, which includes representatives from Facilities and Communications. A range of internal safety videos are also currently being developed covering office safety, construction activities and safety culture. Anti-social behaviour continues to be an issue, with the number of incidents increasing, but overall, route crime is trending slightly downwards.

The tripartite Agile Security Plan has continued into its second period. The plan was developed and implemented based on intelligence and with security and BTP support across the network. This plan has received positive feedback from employees, customers and police. Within the seven weeks of the plan being put into place close to 3,000 members of the public have either been refused travel or requested to leave a train for not conforming to wearing a face covering.

The Body Worn Camera trial continues to be successful and is due for conclusion at the end of September. There will be a final volunteer review with each depot to gather final thoughts and collect the feedback. A proposal for Body Worn Cameras will be drafted based on crime statistics, infrastructure and the volunteer feedback, and issued to procurement processes to identify a suitable supplier and product.

The Board were briefed on investigations into two SPAD incidents during the last period. The Board suggested a safety stand-down to highlight the SPAD trend and the need to take action. GM to suggest to this to TfW Rail Services.

Action: GM to suggest safety stand-down on SPADs to Rail Services.

No accidents have been reported on any infrastructure sites. Close calls are being reported and every effort is being made to guard against complacency.

3a. CEO report

The CEO introduced his report. School and college transport continues to be a challenge, especially in relation to Hereford College. Unfortunately, due to social distancing requirements, not all students are able to travel by train which necessitates some students having to take a slower journey by bus.

Work continues to cost the impact of COVID-19 on the CVL transformation programme. A revised price has been developed and is in range previously presented to the Board and the Welsh Government. [REDACTED]

The Board were informed that over the first weekend in October, there was a significant interruption in the freight carrying capacity of the CVL asset at intersection and Adam Street bridges in Cardiff. As part of a repair to intersection bridge in Cardiff, engineers noted what they believed to be a deforming of an arch when compared to the last inspection. This led to a further inspection on Adam Street bridge which was also required a detailed urgent inspection. Consequently, weight limits were put on both structures which prevented heavier units (including Class 769s and freight) from passing. The problem has been rectified. The Board discussed lessons learnt including how we work with Network Rail on such issues.

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The Board were updated on negotiations with the ODP for arrangements post-EMA which were expanded upon in the afternoon session. The Board were informed that as we move towards running day-to-day services under a public sector rail operator, work is being done to determine what this mean for the organisation's structure and governance, based on the guiding principle of integrating safe running of the railway within TfW as a whole. The Board were informed that that one of the biggest risks to the success of OLR will be driver availability and training, especially with the onset of new and cascaded rolling stock.

The Board agreed that the focus for all parties involved in rail in Wales is to determine what is the network that we want to run in Wales and what is the most efficient way of doing this. The Board asked whether it should be involved in the thinking around future service levels, especially in response to COVID-19. It was agreed that TfW should be very wary of reducing service levels that could have a long-term impact on what TfW is trying to achieve in terms of better integrated transport services for the whole country and could impede recovery from the pandemic. The Board advised against taking action with a short-term, one-off impact that cannot be recovered in the medium to long term and passengers do not return. The Board also expressed its wish to understand more of the detail around any potential cost saving measures.

The Board discussed options around the potential structure of the new OLR company. The Board agreed the running of services should be managed through a performance, and not a contract management, culture. The Board also discussed options around the make-up of the WOLR Board and agreed that the OLR managing director should be an individual with a rail background and able to demonstrate safety and operational excellence. The Board were informed of the additional directors' duties in respect of health and safety issues of becoming a WOLR director. The Board also emphasised the need to factor in bus and other modes that will transfer to TfW and the potential impact structure of the Board and SLT. The Board emphasised the need to ensure stability for the teams going forward to mitigate any nervousness around future changes to structures and governance. It was agreed to provide the Board with the latest thinking around structures and governance at the next meeting.

Action: JP to update November's Board on latest on developing structures and governance for the new arrangements around WOLR, the joint venture and infrastructure management and CVL transformation.

The Board were informed that currently undeployed catering staff are being redeployed to cleaning and security activities, offsetting costs being paid to contractors.

3b. Finance

The Board noted the financial report and September's management accounts. The Board requested further information on the implications of WOLR on TfW's balance sheet. In the context of managing WOLR, the issue around seasonal variations in revenue which create a degree of uncertainty will be raised with the Welsh Government. It was agreed to table a paper on at a future meeting on TfW's future responsibilities around fares, revenue and discounting.

Action: DOL to produce a paper on TfW's future responsibilities around fares, revenue and discounting.

The Board were informed of changes in full year forecasts, with revenue expenditure currently at £20 million less than forecast due to the reflection of the Emergency Measures Agreement (EMA) close and post EMA period reflected within the year; and capital expenditure £24 million less than forecast due to CVL Transformation programme expenditure changes largely driven by the pandemic.

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The Board noted that in the month (September) resource expenditure was at £30 million (excluding non-cash) of which £28.6 million relates to rail, the majority of which is passed through to the ODP; and that in the month (September) capital expenditure was at £10 million of which £9.9 million related to Rail.

3c. Update on sub-committees

The Board were updated on September's People Committee meeting which covered the graduate scheme, talent development and the launch of the flexible benefits scheme. The Board commented on the work being done to make TfW a good place to work.

3d. Steering Board

The next TfW Steering Board is scheduled for 21 October.

4. Any other business

The Board requested an update on activities relating to bus and were informed that work is on-going. The Chair agreed to provide an update from the Bus Steering Board at November's meeting.

Part B – Operational update session

LB, AC, LY, KG, DW, DOL, GM and LR joined the meeting.

5a. Rail Futures

The Board discussed a paper providing an overview of the current rail services contract situation, noting the work completed to identify a new solution and recommending a new proposition for agreeing a deed of termination for the existing Grant Agreement, delivery of rail services through invoking Operator of Last Resort commencing 7 February 2021, a Joint Venture with Keolis Amey and a step-in contract with Amey Keolis Infrastructure Ltd for infrastructure management and CVL transformation, both commencing 7 February 2021. The paper also included a value for money assessment against Managing Welsh Public Money principles and legal advice on procurement, state aid compliance and railway legislation.

Confirmation was given to the Board that a return to the Grant Agreement was not viable because low passenger numbers would have devastating impact on revenues and would result in the contract failing, and as result an alternative model for the delivery of rail services must be agreed. The Board discussed the potential implications of an unmanaged exit from the Grant Agreement

The Board discussed the risks of going back to the Grant Agreement and agreed that the proposed mitigations of invoking operator of last resort, a joint venture with Keolis Amey and a step-in contract with Amey Keolis Infrastructure Ltd outweigh the risks of returning to the Grant Agreement. The Board agreed that the impact of returning to the Grant Agreement on all parties would be significant and action should be taken to not allow this to take place.

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The Board were informed that key to entering into a new agreement is a requirement for all parties to agree contractual and financial remedies. [REDACTED]

[REDACTED] The Board agreed that although a full value for money assessment on the joint venture cannot be undertaken as negotiations on the detail of the arrangement are still ongoing, in aggregate, the proposed new arrangements were justified on value for money grounds.

The Board were briefed on supporting legal advice received on the proposed new arrangements regarding state aid compliance, procurement and compliance with the Railway Regulations in relation to invoking Operator of Last Resort.

The Board were informed that a review took place to determine whether a case could be made for the proposed new arrangements being novel, contentious or repercussive. The Board were informed that the current situation is the same as faced by the rail industry across the UK and throughout the process, TfW has had full engagement with the DfT and Welsh Ministers. Further, no decision on the new arrangements will be made without the full written approval of Welsh Ministers. The review concluded that the proposed new arrangements are not considered to be novel, contentious or repercussive.

The Board discussed issues around revenue risks and accepted that in taking direct control of the railway, revenue risks will transfer from the ODP to TfW and the public sector. The Board were informed that based on industry scenarios, it is not considered viable for any revenue risk transfer to be possible to any operator for several years and that industry scenarios imply that the government would need to maintain revenue risk for the majority of train companies for at least the next five to seven years. The Board accepted that whilst having this revenue risk presents TfW with significant challenges, the recommended proposition will be complementary to managing it in an effective manner. Through OLR arrangements, TfW will be responsible for managing the cost base which will allow TfW to decide directly upon the mitigations necessary to address a decline in revenue. The Board also recognised that owing to the current situation, revenue risks have sat with the Welsh Government and would likely remain for the foreseeable future however rail services were contracted.

The Board approved the recommendation to agree a legally binding Heads of Terms with the ODP by 18 October 2020 to enable:

- agreement in principle (subject to Welsh Ministers' confirmation of funding) to a continuation of rail services on EMA terms until a date that OLR can be safely and efficiently mobilised (currently proposed as 6 February 2021);
- a transfer of Rail Services from the ODP to Operator of Last Resort;
- a novation of the AKIL contract for infrastructure management and CVL Transformation services for seven years;
- the development of an integration and innovation services partnership with Keolis; and
- a Termination Deed setting out the ODP Grant Agreement compensation amounts between the parties.

The Board agreed the consequences of this agreement are that subject to final agreement and contracts exchange in December 2020:

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- the ODP Grant Agreement will end following agreement of a Termination Deed at an agreed date of 6 February 2021;
- a novation of the contract providing infrastructure management and CVL transformation services from 7 February 2021 for a period of seven years;
- the Railway Services of the ODP will transfer to the Wales Operator of Last Resort (WOLR) on 7 February 2021; and
- a new joint venture will be entered into between Transport for Wales, Keolis and Amey to provide Integration and Innovation services to the organisation over a five-year period.

The Board accepted that should final agreement and terms not be reached by December 2020, TfW shall retain the right and capability to return the ODP to the Grant Agreement on the 6 February 2021. The Board understood and previously discussed the consequences of this action. The Board gave authority to SW and JP to sign all relevant documentation pertaining to the above, unless a significance issue arises that requires the Board's attention.

5b. TfW risk register

The Board reviewed and discussed changes to the risk register over the last month.

5c. Public perceptions

SenseMaker software was in September to gauge 1,700 customer perceptions of using public transport in a COVID-shaped reality. The survey found that more people in the sample are keen to return to using public transport but there may be a shift towards using it less for commuting and more for leisure. A discussion took place on encouraging people back to using trains but with a need to ensure customers are safe.

5d. CVL Covid impact assessment

The Board reviewed a paper summarising the impact of the COVID-19 Global Pandemic on the CVL Transformation programme and the resulting effects on both cost and programme. [REDACTED]

[REDACTED]

The Board inquired whether there is a risk of withdrawal of ERDF funding. It was confirmed that the programme has been rescheduled and the completion date of the works being funded through ERDF have been brought forward.

It was also confirmed that the new rolling stock on order cannot run on the existing CVL infrastructure and it would now be more costly to cancel new rolling stock than to cancel the programme. The Board agreed that there is now very little room for manoeuvre on cost. The Board were informed that a system is being used to manage cost changes and the use of optimism bias whereby each draw down of money has to be scrutinised. It was also confirmed that indexation and inflation have been factored in to cost estimates, but the potential impact of Brexit is unknown.

Action – KG to determine whether the impact of Brexit on CVL transformation prices can be factored in to programme costs.

The Board accepted a recommendation to formally submit the impact assessment to the Welsh Government in order to progress budgetary discussions. The Board also agreed of any changes resulting from value engineering when they are implemented by the project team.

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5e. Pontypridd lease

YR joined the meeting. The Board considered a paper asking it support a recommendation to sign a lease with Rhondda Cynon Taf County Borough Council to take occupation of a 60,000 square foot office Building at 3 Llys Cadwyn, Pontypridd from 2020 until 2035, with an annualised rent of £833,000. It was confirmed that the Welsh Government will also sign the lease as guarantor and has confirmed that it is content to sign it. Following lease signing, it is anticipated that the keys will be handed over to TfW on Monday 19 October. The Board were informed that up-front “Cat B” Capital fit out works are almost complete and the finalised cost is expected to be below £4.2 million plus VAT which is lower than the £4.6 million estimated in October 2019 and is lower than the £4.3 million plus VAT budget available from Welsh Government for these works.

The Board asked whether the new office is adaptable to a post-COVID-19 world with the likelihood of fewer people being in the office at any one time. The Board were informed that the office can be used in different way with a focus on areas furnished for collaboration rather than banks of desks.

The Board approved the recommendation to sign the lease with Rhondda Cynon Taf County Borough Council.

5f. Communications

The Board were informed that brand impression has dropped back to May 2020 figures. Recent issues around transporting students to college in and around Hereford had a negative impact. However, there has been plenty of other positive internal and external engagement.

5g. Scorecard

The Board noted the scorecard and requested the addition of a measure for infrastructure.

5h. Strategic plan

The Board considered the merits of publishing a strategic five-year plan and agreed to wait until the middle of year following the Senedd elections, a new programme for government and the new Wales Transport Strategy.

5i. Papers to note

The Board noted an update on the Future Integrated Transport Programme and milestone trackers.

The Chair thanked all for their attendance and supporting papers.