

## **Review of RTL Articles 2023/24**

This document highlights the provisions contained in the current Articles and what aspects of those Articles may need to change, based on experience, comments from the last external review of the Company by Systra, and feedback from the Company. The initial review of Articles was undertaken from the Shareholder's point of view, however it now incorporates views of the Company management, and feedback from the Board. The final decision is the Shareholder's but it is taken with advice from the Board.

## **Article 1**

The Model Articles (a default set of Articles prescribed by Regulations) are disapplied.  
This continues.

## **Article 2**

### **Defined Terms.**

We have kept the terms required by the Transport Act and acknowledged the Council's unique position as a long-term single shareholder. Some of the other definitions have been updated to reflect the changes in the rest of the document.

## **Article 3**

Name of Company - Unchanged.

## **Article 4**

Registered Office in England and Wales - Unchanged.

## **Article 5**

The Objects of the Company are widely drawn to carry on business as a general commercial company - Unchanged.

## **Article 6**

It is recognised that the Company was set up under the Transport Act 1985. We still need to include these provisions as various powers in relation to borrowing are still in existence and have to be reflected in these Articles.

## **Article 7**

Liability of the members is limited. Standard clause. Unchanged.

## **Article 8**

Directors general authority - Unchanged.

## **Article 9**

Shareholders have a reserve power to direct the directors to take or refrain from specific actions - Unchanged.

## **Article 10**

A number of decisions require Council approval. Some of these decisions have been reviewed as follows. Changes have been made to these provisions but they have gone to the Shareholder Agreement:

**Staffing** – in the current Articles, Directors can change the establishment and T&Cs of the staff generally, but not their own establishment levels (i.e. number of Directors), removing directors or changing T&Cs of Directors. The practice of how such decisions were taken by the Council (as to the number of Executive Directors and their remuneration etc) was not formalised. It is now proposed that a Remuneration Committee is formed so that on an annual basis, the Chief Executive can make recommendations about pay-increases for the Executive Directors. Only non-executive directors will sit on the Remuneration Committee. These decisions are then to be notified to the Council. It should be noted that the Executive Directors follow an established grading structure so progression takes place in accordance with the appropriate grade.

As at present, the Board will make all other decisions about general staff T&Cs, pay grades etc. The employee representative has access to Board meetings and can speak on all matters related to pay and grading etc. The employee representative will not attend the Remuneration Committee.

The shareholder will be involved with the roles and T&C's of the non-executive directors, and deciding how many there should be. The purpose of this is to ensure that the Company is not being run directly by the Council, but it does have the external oversight and scrutiny which non-executive roles can bring. The unified Board (execs and non-exec) are collectively accountable to the shareholder as a local authority controlled company.

**Previously Article 10 also dealt with these issues:**

**Dealing in assets** – at present the Company can only purchase or sell assets with the Council's approval. This includes land, buses and other vehicles.

**Buses.** There is a financial limit regarding buses, permission is only required when the purchase of buses is above £1m and outside of the annual fleet replacement plan.

**Land.** The Company needs the Council's permission to sell or acquire land.

It is now proposed to make amendments as follows. However these issues are now set out in a Shareholder Agreement to allow them to be changed more easily.

**Buses** – The annual fleet replacement plan (particularly the financial implications) is something which should be approved annually by the Shareholder since it is likely to substantially affect the Company's ability to repay loans, meet pension obligations, continue operating existing services, invest in services or pay a dividend. The fleet replacement strategy (more correctly the Fleet Development Plan) is currently approved by the Shareholder every year through the annual report, and it also references the subsidiary companies, so this good practice is already evident.

This rule in the Articles will also be applied to subsidiaries, so that the reports presented to the Council cover all the companies in the Group. A rule will also be applied to unforeseen purchases outside the Fleet Development Plan which are above a level of materiality which is agreed between the Shareholder and the Company. The Company needs an ability to fulfil its obligations or react to market conditions in a timely manner and the Shareholder recognises this.

The £1m limit needs to be reviewed. It was set in 1986 for a significantly smaller company with a turnover of £8.2m (i.e. 12.5% of turnover), and has not been adjusted for inflation or the growth in fleet size. It would, for example, have been sufficient to purchase at least 10 double deck buses, which was more than the normal level of annual fleet replacement, but now only covers 3. Accounting for basic inflation it would be £2.85m in current money, whilst 12.5% of current turnover would be £6.25m. After discussion between the Council's and

Company's respective Directors of Finance the level of materiality is proposed to be £2.85m. As this will now be reflected in the Shareholder Agreement it will be easier to keep this level of materiality under review.

The level of materiality can also be considered in each annual review so that the Company can advise the Shareholder on the relevant market factors which may influence it. The Shareholder will then be able to agree any proposed increase. This is proposed as an effective way to keep this issue under review. It is suggested that having an absolute £ figure in the Articles will only build in problems for the future.

**Land** – Keep the same rule. Apply it also to subsidiary company land holdings.

**Subsidiaries (1)** – Shareholder approval needs to be sought to start, acquire, close, dispose or materially change the operations of any other entity. Again a level of materiality needs to be agreed between Shareholder and the Company.

**Subsidiaries (2)** – the Reserved Matters, for instance material purchases which apply to the Company will apply to its subsidiaries so that we take a Group perspective.

**Subsidiaries (3)** – Appointments to subsidiary Boards should be from the Executive Directors of RTL. The Company should not alter subsidiary Articles of Association without Council consent.

**Subsidiaries (4)** – Company should seek approval from Council when seeking external borrowing and creating fixed or floating charges. Note that the statutory restrictions on borrowing applies in these instances. Asset Finance, where an asset may be retrieved by the finance company should repayments default, is not considered to be “borrowing” for the purposes of the Transport Act. This is common industry practice.

**A new Article 11** is inserted to provide for the Remuneration Committee.

## **Previous Article 11 – now Article 12**

### **Transport Acts**

Specific provisions which are still required in relation to borrowing, raising money by issue of shares. Unchanged.

### **Previous Article 11.2**

Directors can delegate their powers to a power of attorney. (Power of Attorney allows another person to make a decision for you, or act on your behalf, if you lack capacity, are prevented from doing the act or don't want to make your own decisions).

An unusual position, and possibly relevant to a family company but not RTL. It is also in an unusual place (under the heading of Transport Acts). It has been deleted. Note the similar reference at previous Article 13.1.2 is also to be removed.

## **Previous Article 12 – now Article 13**

There needs to be an annual review of:

- past performance
- current operations and viability

- company's plans for the future

There also needs to be an interim review six months after.

Keep these provisions. However, three things are added to the list:

**Social Value** – as a Council owned Company there should be a programme of Social Value in terms of Environmental, Social and Governance measures which is ambitious for Reading, recognises the Council's Corporate Plan priorities, is clearly articulated, agreed by the Board and presented to the Shareholder for regular review on progress.

**Dividend Strategy** – the Company should have a plan to return a dividend to the Council or to articulate how it provides other returns to the Council. The Council decided to forgo dividends from the Company in 2005/06 to support investment in the Company, turning around a terminal decline in patronage with a younger fleet and more high-profile route branding. RBC continued capital investment in supporting measures like bus priority lanes, and offered attractive borrowing rates especially for the hybrid and gas vehicles. All of this created a virtuous circle that has allowed the company to gradually take on services that were financially supported by RBC, including elements of Berry 23/24 and Royal Blue 33, evening and Sunday services, night services (NightTrack), Green Park (DayTrack), and the maintenance of on the street real time information system.

Following this, the approach changed to improving efficiency, utilising existing overheads to deliver services across the wider Thames Valley and travel-to-Reading region which share similar economic trends, starting with Leopard 3 in June 2014, Lion 4/X4 in August 2015, Greenline 702 in January 2018, Newbury & District in September 2018, Courtney in April 2019.

The situation has changed again post Covid, changes to local government funding and borrowing and in the context also of Bus Service Improvement Plans. Hence the need for a current strategy to be agreed between Council and Company.

The Council has empowered the Company with a new Board and has taken onboard advice about selecting NEDs which can deliver commercial objectives.

The obligation is not on the Company to provide a dividend of a particular size or by a relevant date, but the obligation is on the Company to make in clear in its Annual Review what approach it is taking to dividend payments. This will allow the Council as Shareholder to scrutinise the plan and provide feedback to the Board if it thinks that the Company's plans do not align with the Council's requirements.

**Risk management** – the Company should be clear about what risks it faces and how it is managing these. Note that the risk register is currently provided with the annual and interim reports.

**Note re subsidiaries** – The main business plan will be at a Group level. However, annually the Company can present a summary of the business strategy for each active company and how it contributes to the Group business plan.

#### **Previous Article 13 – now Article 14**

Directors may delegate

Unchanged though the position (about powers of attorney) from 11.2 about delegation through power of attorney is deleted.

#### **Previous Article 14 – now Article 15**

Committees

The Directors can organise their business through Committees. We have added a requirement on the Company Secretary to maintain an up-to-date scheme of delegation, with Terms of Reference for any Committees (noting that currently there are no Committees) and to send a copy to the Council every time it is changed so that the Council is aware how business is organised generally. Note – the need for a Remuneration Sub has been established in order to provide an effective mechanism for the confirmation of executive director pay.

#### **Previous Article 15 – now Article 16**

Collective decision making by Directors.

Unchanged. A standard clause.

#### **Previous Article 16 – now Article 17**

Unanimous decisions

Mostly unchanged, but updated wording. A standard clause.

#### **Previous Article 17 – now Article 18**

Calling a Directors' meeting

Unchanged, but confirms position of electronic meetings

#### **Previous Article 18 – now Article 19**

Participation in Directors' meetings.

Unchanged.

#### **Previous Article 19 – now Article 20**

Quorum

Currently this is four. The rules on minimum number of Directors flowing from the Transport Act Regulations have now been repealed so we have a free hand here. There is no distinction that any particular directors have to be present which is a risk. It is advisable for the CEO or FD/Deputy to be at every meeting to advise the Board. It is advisable to have a minimum number of NEDs – it is suggested to have 3 out of the seven.

#### **Previous Article 20 – now Article 21**

Chairing of Director's meetings.

This has been changed to reflect the fact that the Council appoints the Chair of the Board. We maintain the standard provision to elect a Chair where the Chair of the Board is not available.

### **Previous Article 21 – now Article 22**

#### Casting Vote

“Chair has a casting vote”. Not clear if this is a “second and casting vote” or a “second or casting vote”. There is a difference – make it clear it is a second or casting vote. It is noted that the Board aim for consensual decisions wherever possible.

### **New Article 23**

Transactions or other arrangements with the company.

This deals with the circumstances whereby at common law a transaction may be voided or require the members approval if the directors have an interest in it. This section now provides a mechanism for any such declarations to be made at the Board. It was previously included within the Conflicts of Interest section but has now been separated.

### **Previous Article 22 – now Article 24**

#### Conflicts of Interest

Standard provisions. Has been updated to latest recommended wording. Wording for related party transactions has been separated into Article 23.

### **Previous Article 23 – now Article 25**

Records of decisions to be kept for 10 years

We have added a provision - these decisions also need to be supplied to the Council [this was a Systra recommendation]. A mechanism needs to be set up for this to happen outside of the Articles and part of the Shareholder Agreement.

### **Previous Article 24 – now Article 26**

Directors can make further rules about how decisions are to be made.

We have added a provision – the Company Secretary needs to supply a copy of such rules to the Council every time they are changed.

### **Previous Article 25 – now Article 27**

Number of Directors.

This section has been changed to simplify it. Reference was previously made to the Transport Act, but those rules (about numbers of directors) have been repealed. (SI 1985/1901 Public Transport Companies (Permitted Maximum and Required Minimum Numbers of Directors))

The rules also referred to the directors in the category of “who are not full-time employees of the Company” this was meant to include the non-executives, so we have cleared up the references to executive and non-executive directors throughout the document to make it simpler to read.

The Council can determine the maximum and minimum number of directors by ordinary resolution (i.e. a shareholder decision at Policy Committee).

We have stated that the non-executives should not exceed 7 and the executives should be at least two and no more than four. The Shareholder Agreement will go into more detail about how the directors are to be appointed and how the Council will be involved:

There will also be one employee representative which will sit in its own category. There will be a scheme to elect the employee representative which is fair, transparent and democratic and which is notified to the Council by the Company Secretary. It should include employees of the subsidiary companies.

There should be no less than five and no more than seven NEDs.

Five of these to be appointed by the Board to reflect the range of skills considered appropriate by the Board. These appointments to be approved by the Council.

Two of these to be reserved as appointments which may be made by the Council. (Note that if the Council does not wish to appoint to these posts then the Company may be invited to appoint to them in consultation with the Council). The Shareholder Agreement to deal with the process of how these vacancies are notified, how advertisements are agreed, and how the appointments process will run).

All appointments to be made on merit after proper advertising and transparent process.

#### **Previous Article 26 – now Article 28**

Methods of appointing directors. Directors can be appointed by ordinary resolution (of the Shareholder at Policy Committee), or by the Board. There is a default power for the Council to appoint any person to the Board to fill a vacancy *or as an additional director*.

The power to appoint an additional director would be subject to any rules on the maximum size of Board and the categories are effectively determined by the revised position in new Article 27 above. Effectively this power only gets used if there is inaction by the Board or deadlock between the Council and the Company about a suggested appointment. If the Council wishes to change the make-up of the Board in future, it can do so by ordinary resolution.

#### **Previous Article 27 – now Article 29**

Retirement of directors

This clause has been reworked. NEDs are ordinarily appointed for a four-year term. There is no clause about how many terms they should serve. There was a provision for NEDs to retire by rotation. We have redrafted this to allow for appointments to be limited to two terms. There is an issue in that five of the seven current NEDs were all appointed on the same day in January 2022 and so they need to be reappointed during the next two years, and we need to find a way of staggering the appointments and retirements to avoid a cliff edge of a substantially brand-new board at some point in the future, which is not advisable. We have proposed to keep the basic expectation in place, i.e. 2 terms of four years, however we have allowed for a mechanism to stagger the retirements so that directors are appointed for between three and six years but up to a maximum of ten years. This allows the Board to have a considered succession plan.

There is a default power for the Council to serve a notice on the Company preventing any particular non-executive director being re-appointed for a second term for whatever reason.

### **Previous Article 28 – now Article 30**

Termination of directors' appointments. Standard wording to remove directors in specified circumstances. There is also a default power for the Council to remove any director from office notwithstanding the articles or any agreement between the Company and the Director.

### **Previous Article 29 – now Article 31**

Directors remuneration.

This clause provides for directors to be remunerated. Any council member appointed as a director does not receive additional remuneration.

Note that the Remuneration Committee now oversees Executive pay and will report its decisions to the Council.

This has been amended to require the Company Secretary to maintain a scheme for the payment of such allowances and to send revisions of the scheme to the Council as and when it is updated.

### **Previous Article 30 - now Article 32**

Directors Expenses.

Standard clause to allow Directors to claim expenses for attendance at meetings. This has been amended to require the Company Secretary to maintain a scheme for the payment of such expenses and to send revisions of the scheme to the Council as and when it is updated.

### **New Article 33**

Appointment of a Secretary – standard clause.

### **New Article 34**

Employee Representative.

Provision is made for an employee representative on the Board. This is suggested as the most practical way forward to recruit an employee rep after the previous employee board member retired. The duties of a statutory director may put off some candidates from seeking election as the board member.

## **Part 3**

### **Previous Articles 31 to 54 – now Articles 35 to 59**

Standard wording relating to shares etc. Most of these clauses have been retained as standard wording. Only the issues below have been changed.

Article 35 - Issue of shares.

“No share to be issued to any person other than the Council”.

The clause has been amended to “No share shall be issued to any person other than the Council without the consent of the Council having been obtained in writing”.

## **Part 4**

### **Previous Articles 55 -67 – now Articles 59 to 70**

General meetings.

The Company does not have General, Annual and Special meetings as envisaged by the Articles. These are all standard boilerplate clauses. Much of what is written in Part 4 (Articles 55-67) is at odds with the reality that we have one corporate shareholder and that the Shareholder Representative is the Policy Committee of the Council. The Articles are written as if there are normal meetings of the Shareholder which are Chaired by the Chair of the Board – that does not happen. This has been reviewed and new wording has been included to deal with this situation where the Council remains as the sole shareholder.

## **Part 5**

Administrative arrangements

### **Previous Articles 68 to 73 – now Articles 71 to 76**

#### **Previous Article 68 – now Article 71**

Means of communication to be used

Substantively unchanged but updated wording. Standard administrative provision. Fax as a valid method of service has been deleted.

#### **Previous Article 69 – now Article 72**

Company Seal

Unchanged. Standard administrative provision.

#### **Previous Article 70 – now Article 73**

No right to inspect the accounts and other records.

The Council CEX has a right to inspect all accounting records, books, documents, statements and records of the Company. This clause has been amended so that the other statutory officers of the Council have a similar right (s151 and MO) as do Council auditors.

#### **Previous Article 71 – now Article 74**

Provision for employees on cessation of the business

Section 247 Companies Act (power to make provision for employees on cessation of the business) is noted as being possibly inconsistent with the general duty of directors under section 172 to promote the success of the company: but the legislation recognises the importance of making provision for employees if the company ceases trading (at which point the 'success of the company' is usually a lost cause).

This power must be sanctioned either by an ordinary resolution of the members or by a board resolution. If the latter, it must be authorised in the Company's articles (as it is here in RTL's Articles); and even then that authority cannot be invoked to make payments to directors or shadow directors.

Any payments under this section must be made before the start of any winding-up proceedings, and out of distributable profits.

Suggest keeping it as a standard administrative provision.

**Previous Article 72 – now Article 75**

Indemnities for Directors

Updated wording. Standard administrative provision.

**Previous Article 73 – now Article 76**

Insurance

Unchanged. Standard administrative provision.

## Schedule of subsidiaries

	Company	Company number	Directors	Owner	Notes
1	Newbury and District Ltd	07491219	Caroline Anscombe Laurence Jenkins (& Secretary) Robert Williams	RTL	Incorporated 2011. Model Articles adopted.
2	Newbury Buses Ltd	0919408	Laurence Jenkins (& Secretary) Robert Williams	RTL	Incorporated June 1985. Dormant.
3	Thames Valley Buses Ltd	01128598	Caroline Anscombe Laurence Jenkins (& Secretary) Robert Williams	RTL	Changed name from Courtney Coaches Ltd in March 2021.
3.1	Courtney ATF Centre Ltd	10264656	Caroline Anscombe Laurence Jenkins (& Secretary) Robert Williams	TVBL	Incorporated July 2016. Testing facility. Plans to close in March 2024.
3.2	Courtney Bodyworks Ltd	07780550	Caroline Anscombe Laurence Jenkins (& Secretary) Robert Williams	TVBL	Incorporated 20 September 2011. Plans to merge into Thames Valley Buses in April 2024.
4	The Greater Reading Omnibus Ltd	02807576	Laurence Jenkins (& Secretary) Robert Williams	RTL	Dormant. Incorporated 7 April 1993. RTL acquired 100% of the share capital on 1 June 1998.
5	Reading Rovers Ltd	01919290	Laurence Jenkins (& Secretary) Robert Williams	RTL	Dormant. Incorporated 5 June 1985
6	Reading Buses Ltd	01919285	Laurence Jenkins (& Secretary) Robert Williams	RTL	Dormant. Incorporated 5 June 1985
7	Reading Minibuses Ltd	01919277	Laurence Jenkins (& Secretary) Robert Williams	RTL	Dormant. Incorporated 5 June 1985

	<b>Company</b>	<b>Company number</b>	<b>Directors</b>	<b>Owner</b>	<b>Notes</b>
8	Reading Transport Pension Trustees Ltd	01919421	Pitmans Trustees Ltd Gursharn Uppal (RTL NED) Paul Rush (Driver) Sharmila Perera (Accountant) Michael Hughes (Training Academy Manager) Caroline Anscombe (Laurence Jenkins – Secretary)	RTL	Dormant. Incorporated 5 June 1985.