

Mayor of South Yorkshire

Friday, 27 September 2024

Former Office of the Police and Crime Commissioner Accounts and Budget Issue

Is the paper exempt from the press and public? No

Reason why exempt: Not applicable

Purpose of this report: Governance

Is this a Key Decision? No

Has it been included on the Forward Plan of Key Decisions? Not a Key Decision

Portfolio: The Mayor's Police and Crime Commissioner Functions

Portfolio Holder: Oliver Coppard, Mayor of South Yorkshire

Lead Chief Executive: Martin Swales, MCA Chief Executive and Head of Paid Service

Director Approving Submission of the Report:

Gareth Sutton, Chief Finance Officer
Rebecca Brookes, Monitoring Officer

Report Author(s):

Gareth Sutton, Chief Finance Officer
Rebecca Brookes, Monitoring Officer

Executive Summary

We make this report to you, the Mayor of South Yorkshire in the exercise of your Police and Crime Commissioner functions, in the exercise of our respective statutory duties as the Chief Finance Officer and Monitoring Officer for the South Yorkshire Mayoral Combined Authority ("MCA").

In preparing this report we have consulted with the Chief Executive of the MCA (Head of Paid Service).

We have also consulted with the Chief Finance Officer for South Yorkshire Police.

A significant omission in accounting practices in respect of the Office for Police and Crime Commissioner (OPCC) revenue budget from the financial year 2020/2021 onwards has been identified, with the effect that there has been non-compliance with the legal duty to charge prudent minimum revenue provision to the Office for Police and Crime Commissioner revenue account in accordance with regulations 27 and 28 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, the Statutory Guidance on Minimum Revenue Provision and the PCC's approved Minimum Revenue Provision Policy Statement.

This report describes and quantifies the omission. The report does not at this stage comment on how this matter arose nor how it may be resolved.

Copies of this report have been provided to the Auditor of the former OPCC, the MCA's Auditor, Members of the MCA and Members of the Police and Crime Panel.

Under section 115 of the Local Government and Finance Act 1988 Act, you are required to formally consider this report, decide whether you agree or disagree with the views contained within it and decide what action (if any) you propose take within 21 days of the date of the report. You simultaneously have a duty to consider the report under section 5 of the Local Government and Housing Act 1989. A copy of your report in response must be provided to the Chief Finance Officer, MCA Auditor, Members of the MCA and Members of the Police and Crime Panel.

What does this mean for businesses, people and places in South Yorkshire?

This report exercises the legal duties of the statutory officers of the MCA to report to the Mayor the issue detailed in the main body of the report. Robust governance arrangements are a key enabler of good decision-making, supporting the Mayor in delivering for South Yorkshire.

Recommendations

That in the exercise of your Police and Crime Commissioner functions, within 21 days you:

1. Consider this report;
 2. Decide whether you agree or disagree with the views contained within it;
 3. Decide what (if any) action you propose to take; and then
 4. Provide a report in response, providing copies to the Chief Finance Officer, MCA Auditor, Members of the MCA and Members of the Police and Crime Panel.
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1. Background

- 1.1 The elected office of the Police and Crime Commissioner for South Yorkshire (“PCC”) was incorporated as a legal entity. References throughout this report to the PCC are references to that legal entity.
- 1.2 On 7th May 2024, the functions of the Police and Crime Commissioner for South Yorkshire (“the PCC”) transferred to the Mayor of South Yorkshire pursuant to the South Yorkshire Mayoral Combined Authority ((Election of Mayor and Transfer of Police and Crime Commissioner Functions) Order 2024 (“the 2024 Order”) and all property rights and liabilities of the PCC were transferred to the MCA.
- 1.3 Upon transfer, the Mayor became responsible for the maintenance of the Police Fund and compliance with all applicable legal obligations in respect of the same. The accounts for the OPCC, including the Police Fund, now form part of the consolidated accounts of the MCA.
- 1.4 Section 21 of the Local Government Act 2003 (“the 2003 Act”) provides for the Secretary of State to make regulations and issue statutory guidance about the accounting practices to be followed by a local authority, with respect to the charging of expenditure to the revenue account. A local authority must have regard to any statutory guidance issued.
- 1.5 The Local Authorities (Capital Finance and Accounting) England Regulations 2003 (“the 2003 Regulations”) were made under section 21(1) of the 2003 Act. Regulation 27(1) places a duty on local authorities to charge a minimum revenue provision (“MRP”) for the financial year to a revenue account, regulation 28(1) requires local authorities to determine an amount of minimum review provision which it considered to be prudent.
- 1.6 Statutory Guidance on Minimum Revenue Provision made under section 21(1A) of the 2003 Act (“the statutory guidance”) as set out at Appendix 1 requires a local authority to prepare a statement of its policy on making MRP for approval before the start of every financial year and provides that statement should describe how it is proposed to discharge the duty to make MRP during that year. The statutory guidance further provides for methods of making prudent provision and allows local authorities to depart from those recognised methods should it decide that it is more appropriate to do, subject to conditions. A local authority may change the method(s) it uses to calculate its MRP at any time, any changes should be explained in the MRP statement.

2. Key Issues

- 2.1 In accordance with the statutory guidance, the former PCC annually approved an MRP policy statement as part of the cyclical budget setting process.
- 2.2 The enactment of these statements should have led to a charge (the provision) being made each year to the OPCC revenue account. The quantum of the charge is shaped by the adopted policy and the amount of debt held. Charges should reflect the useful economic life of the assets acquired. Future year budget planning should take account of the known and expected changes in the MRP charges.
- 2.3 Following the transfer of PCC functions to the Mayor and upon the MCA's officers undertaking due diligence on the inherited debt management arrangements, it has become apparent that there has been a significant omission in the accounting and budgetary practices of the former PCC.
- 2.4 Whilst an MRP policy statement compliant with Government guidance was approved each year, the enactment of that policy through MRP charges to the OPCC revenue account and its inclusion in the medium-term resource strategy has been found to be significantly incorrect.
- 2.5 Review of the audited accounts, the adopted MRP policy statement, the 2024/25 revenue budget and the forward-look MTRS has highlighted that no MRP charges relating to £65m of capital investment financed through borrowing principally over the period 2019/20 – 2022/23 have been made within the audited accounts nor has provision been taken in the MTRS.
- 2.6 Analysis shows that £15.7m of charges that should have been made to the revenue account over financial years 2020/21 – 2023/24 have been incorrectly omitted. Furthermore, no charges associated with the capital investment have been included within the adopted MTRS for financial year 2024/25 and beyond.
- 2.7 The consequence of this is that, as at the time of writing, the OPCC revenue reserve balances are overstated by c. £15.7m and the MTRS is, unless mitigated, in deficit by c.£49.5m. The omission of these charges has likely led to incorrect accounts being published and a flawed planning environment being presented to decision-makers.
- 2.8 Officers from the MCA and the Force are also now reviewing the profiling of required provisions within the MTRS for debt that will be required to deliver the future capital programme.
- 2.9 Consideration will now need to be given to how these issues can be resolved in a sustainable way. Any immediate resolution is likely to require reactionary measures including the cessation of planned activity and the re-allocation of resources currently deployed to priority work, risks and priorities. A deferment of costs onto a more sustainable basis would afford the MCA and the Force the chance to readjust its planning in a more considered fashion but would likely lead to greater financing costs overall.

2.10 We believe that the failure to make provision for prudent MRP in the OPCC revenue budget was an inadvertent omission on the part of the office of the former PCC, however the consequences of the omission are that the accounting practices of the former PCC with regards to MRP failed to comply with the requirements of the 2003 Regulations, the Statutory Guidance on Minimum Revenue Provision and the PCC's approved statements on MRP, for the financial years 2020/2021 to 2023/2024.

2.11 I Gareth Sutton, The Chief Finance Officer for the MCA take the view that it appears that since the PCC failed to have regard to the statutory guidance and/or failed to make prudent MRP in respect of capital expenditure principally incurred between 2019/2020 and 2022/2023, they acted unlawfully, and consequently entered unlawful items of account in respect of MRP. Further I take the view that this failure is likely to cause loss or deficiency to the Police Fund revenue budget for the reasons set out in this report. Noting the continuity provisions in the 2024 Order, I consider my duty to make a report under section 114(2) of the Local Government and Finance Act 1988 Act ("The 1988 Act") Act is engaged.

2.12 I Rebecca Brookes, Monitoring Officer for the MCA take the view that it appears that since the PCC failed to have regard to the statutory guidance and/or to have failed to make prudent MRP in respect of capital expenditure between 2019/2020 and 2022/2023, they acted unlawfully. Noting the continuity provisions in the 2024 Order, I consider my duty to make a report under section 5(2) of the Local Government and Housing Act 1989 ("The 1989 Act") is engaged.

3. Options Considered and Recommended Proposal

3.1 Option 1

This report requires you to consider the content of the report within 21 days and formally respond.

In addition to this we propose the following practical steps:

1. Engage with the Audit Committee chairs and the external auditors to notify them of the issue and our intent to work with them on options for resolution.
2. Engage with external stakeholders, including MCA Leaders, the Police and Crime Panel, and Government and Governmental agencies to notify them of the issue and our intent to work with them on options for resolution.
3. Between MCA and Force teams, develop out sustainable financial and service proposals to manage both the initial financial shock and the longer-term sustainability.
4. Commission a review into this issue to consider how the omissions occurred, how the wider control framework failed, and what lessons can be learnt.

We propose to prepare a further report for you when proposals for resolution are developed.

3.2 Option 1 Risks and Mitigations

N/A

3.3 Recommended Option

Option 1.

4. Consultation on Proposal

4.1 This is a report of the Chief Financial Officer and the Monitoring Officer. Legislation and guidance require that the MCA's Head of Paid Service and Force Chief Financial Officer are consulted on the discharge of the statutory obligations presented.

5. Timetable

5.1 You – as the Mayor – are required to consider this report within 21 days.

6. Financial and Procurement Implications and Advice

6.1 Analysis of expenditure records suggests that £15.7m of minimum revenue provision associated with capital investment made over the period 2019/20 – 2022/23 should have been transacted through the OPCC revenue account over financial years 2020/21 through to 2023/24. Review of the audited accounts shows that these charges have been incorrectly omitted.

6.2 Further analysis shows that no minimum revenue provision associated with the capital investment has been included within the budget for financial year 2024/25 and beyond. This leaves an additional shortfall within the medium-term resource strategy of £49.5m, with £5.2m falling due in the current financial year.

6.3 The incorrect omission of these charges in prior year accounts, the current year budget, and the future year MTRS is a material issue that will require reporting to the external auditor for the OPCC accounts relating to 2023/24 (Grant Thornton) and the MCA's current external auditor (KPMG). The Chairs of the Joint Independent Audit Committee and the Audit, Standards and Risk Committee, and Police and Crime Panel will also be apprised of the situation.

6.4 Whilst this report necessarily concentrates on issues related to the current debt position, work is also now underway to review assumptions and MTRS provision for the future capital programme.

6.5 It should be noted that expenditure related to the Police Fund is held separately from the rest of the MCA's financial affairs. This reflects the statutory ringfence

around this Fund. Accordingly, this issue can be isolated from the rest of the MCA's transport and economic growth activity and the MCA's funding partners.

7. Legal Implications and Advice

- 7.1 Section 114(2) of the 1988 Act (as modified 2024 Order) places a duty on the Chief Finance Officer appointed under section 73 of the Local Government Act 1985 to make a report under section 114 *"if it appears to him that the authority,... a person holding any office or employment under the authority,...(b) has taken... a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority; or (c) is about to enter an item of account the entry of which is unlawful."*
- 7.2 Section 5(2) of the 1989 Act (as modified by the 2024 Order) places a duty on the Monitoring Officer designated under section 5(1) of the 1989 Act to make a report if *at any time it appears to him that any proposal, decision or omission by the authority..., by any person holding any office or employment under the authority or ..., has given rise to or is likely to or would give rise to—(a) a contravention by the authority..., by any person holding any office or employment under the authority ...of any enactment or rule of law or of any code of practice made or approved by or under any enactment..."*
- 7.3 The 2024 order makes provision for continuity in respect of the transfer of PCC functions to the Mayor and transfer of PCC properties, rights and liabilities to the MCA, with anything done by the PCC for the purpose of or otherwise in connection with the transferred functions, property, rights or liabilities having effect as if done by or in relation to the MCA.
- 7.4 This report is made jointly by us as the Chief Finance Officer and Monitoring Officer, in the discharge of our respective duties under the provisions set out above, following consultation with the MCA's Head of Paid Service and the Chief Finance Officer for South Yorkshire Police.
- 7.5 Section 115 of the 1988 Act requires the Mayor exercising PCC functions to consider this report, decide whether he agrees or disagrees with the views contained within it and consider what action (if any) he proposes to take in consequence of it, within 21 days of the date of the report before formally responding. Section 5 of the 1989 Act also requires the Mayor exercising PCC functions to consider the report.

8. Human Resources Implications and Advice

- 8.1 There are no immediate HR implications arising out of this report, however it is recommended that HR implications be considered as part of the determination of a prudent MRP provision.

9. **Equality and Diversity Implications and Advice**

9.1 There are no immediate equality and diversity implications arising out of this report, however it is recommended that equality and diversity implications and compliance with the Public Sector Equality Duty be considered as part of the determination of a prudent MRP provision.

10. **Climate Change Implications and Advice**

10.1 There are no immediate climate change implications arising out of this report, however it is recommended that climate change implications be considered as part of the determination of a prudent MRP provision.

11. **Information and Communication Technology Implications and Advice**

11.1 There are no immediate ICT implications arising out of this report, however it is recommended that ICT implications be considered as part of the determination of a prudent MRP provision.

12. **Communications and Marketing Implications and Advice**

12.1 In accordance with the requirements of section 114(4) of the Local Government and Finance Act 1988 and section 5 of the Local Government and Housing Act 1989, (each as modified by the South Yorkshire Mayoral Combined Authority (Election of Mayor and Transfer of Police and Crime Commissioner Functions) Order 2024, a copy of this report has been provided to the Mayor, the MCA's auditor, the Members of the MCA and the Members of the Police and Crime Panel.

12.2 A copy of this report will be made available for public inspection.

List of Appendices Included:

N/A

Background Papers:

Local Government and Finance Act 1988

Local Government and Housing Act 1989

Local Government Act 2003

Local Authorities (Capital Finance and Accounting) England Regulations 2003

South Yorkshire Mayoral Combined Authority (Election of Mayor and Transfer of Police and Crime Commissioner Functions) Order 2024

[Statutory Guidance on Minimum Revenue Provision](#)