

**ORIGINATOR: CHIEF EXECUTIVE
(AND MONITORING OFFICER)**

PAPER NO: AC13/14

**SUBMITTED TO: POLICE AND CRIME COMMISSIONER (PCC)
POLICE AND CRIME PANEL**

SUBJECT: MONITORING OFFICER REPORT - ACCOUNTS

SUMMARY:

1. This report is a formal report by the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
2. The report explains an omission from compliance with an enactment in relation to the close-down of the PCC's and Chief Constable's accounts.
3. The Monitoring Officer concludes that notwithstanding the omission, the close-down of the accounts has not been invalidated.
4. Steps to avoid a repetition of the omission are outlined.
5. The report is supplied to the PCC (for consideration with the Audit Committee) as well as the Police and Crime Panel.

RECOMMENDATION:

The Police and Crime Commissioner is recommended to:

- Note the omission with regard to the proper advertising of the public rights in the respect of the accounts;
- Note the opinion of the Monitoring Officer at paragraph 7 which will enable the PCC to proceed to consider the accounts for approval by 30 September 2013;
- Support the actions to be taken (and described at paragraph 8) to prevent a similar omission in the future.

1. INTRODUCTION

- 1.1 On 5 September 2013 the external auditor for the Police and Crime Commissioner for Suffolk (PCC) and the Chief Constable of the Suffolk Constabulary advised the PCC's Chief Finance Officer that in conducting the audit of accounts he had noticed that the timing of an advert had "not provided the required time to allow the public to exert their rights to inspect the accounts."
- 1.2 This report, which is a formal report by the PCC's Monitoring Officer, examines this omission, the consequences and the steps to be taken to prevent a repetition.

2. LEGAL CONTEXT

- 2.1 The Accounts and Audit (England) Regulations 2011 provide, amongst other things, for the signing, approval and publication of the Statement of Accounts for relevant bodies, which include the PCC and the Chief Constable. By 30 September in each year the PCC and Chief Constable must ensure that their accounts are approved and signed in accordance with the statutory requirements.
- 2.2 Under Regulation 10 of the 2011 Regulations the PCC and Chief Constable must give notice of the public rights to inspect the accounts and other documents not later than 14 days before the commencement of the period during which the accounts and other documents are made available for public inspection. Notice must be given by advertisement and by website.

3. FACTS

- 3.1. The notice required by the 2011 Regulations was given by advert in the East Anglian Daily Times on 15 July 2013 and which was the first day of the period of the inspection of the accounts. Further the notice was displayed on the PCC website from 10 July 2013 and by link from the Suffolk Constabulary's website on 12 July 2013.
- 3.2 Whilst Regulation 10 is unhelpfully worded by virtue of the words "not later than 14 days" which are capable of being misconstrued, the advert and posts on the website were not publicised sufficiently in advance of the period for the inspection of the accounts. To this extent the legislation was not complied with by the PCC and the Chief Constable.

4. MONITORING OFFICER

- 4.1 The PCC's Chief Executive is also the PCC's Monitoring Officer. It is the duty of the Monitoring Officer pursuant to Section 5 of the Local Government and Housing Act 1989, if it appears to him that there has been an omission that gives rise to a contravention by the PCC of an enactment to prepare a report to the PCC with regard to the omission.
- 4.2 The Monitoring Officer is required amongst other things to send the report to the PCC and to the Police and Crime Panel. The PCC must consider the report at a meeting within 21 days of receipt of the report.

5. ISSUES

- 5.1 The external auditor, in the course of notifying the omission, asked the Monitoring Officer to consider whether or not the audit process had been invalidated by not advertising the public rights 14 days in advance of the inspection period. In particular the external auditor wished consideration to be given to how fundamental the breach was, whether a member of the public's rights would have been prejudiced by the breach and whether a member of the public has requested to inspect the 2012/13 accounts and has any request been denied.

6. MONITORING OFFICER INQUIRY

6.1 The Monitoring Officer has inquired into the matter of the omission. A number of key facts have been established.

- The newspaper advert appeared on 15 July 2013;
- The PCC website advert appeared on 10 July 2013 (and was still displayed as at 12 September 2013);
- The Suffolk Constabulary's website link to the PCC website advert appeared on 12 July 2013 and was still displayed as at 12 September 2013;
- All three adverts/links should have appeared at least 14 days before the 15 July 2013, which was the first day the accounts and other documents were available for inspection;
- The need to place the adverts was omitted from the accounts close-down timetable prepared on behalf of the PCC's Chief Finance Officer;
- There have been no requests from members of the public to exercise their rights of inspection, either before, during or subsequent to the inspection period;
- This accords with experience in recent years;
- If requests had been received outside the period of inspection, the public would have been given the opportunity to inspect the accounts;
- No objections are known to have been raised in respect of the accounts;
- Apart from the external auditor raising the matter, no person is known to have challenged the omission to fully comply with Regulation 10.

7. MONITORING OFFICER OPINION

7.1 There has been an omission to comply with an enactment regarding the close-down of the accounts.

7.2 The Monitoring Officer's duty is clearly engaged.

7.3 Whilst there has been a clear breach of Regulation 10 this does not itself render every subsequent step that needs to be taken in the close-down of the accounts to be of no effect. Indeed there are other obligations that must be satisfied in the close-down timetable. If any person is dissatisfied with the omission with reference to Regulation 10 they have the opportunity to challenge the procedural irregularity through judicial review. However there are a number of factors which would impact upon how readily a court would grant relief. Judicial review is a discretionary remedy and therefore relief would not necessarily be granted even if there was a clear breach of procedure or irregularity. Factors which would militate against the relief being granted would include whether there had been any delay in bringing a claim, whether granting relief would be prejudicial to good administration and whether anyone had been materially prejudiced by the omission.

7.4 In this case no person has asked to exercise their public rights in respect of inspecting the accounts. Apart from the external auditors quite properly raising the matter, no person has challenged the omission or raised the possibility or prospect of legal challenge. There is no evidence that anyone has been prejudiced by the omission in any way. Indeed should

anyone now raise concerns it is very likely that the delay in so raising them would be a bar to relief being granted.

- 7.5 Invalidation of the close-down process would now prejudice good administration because the accounts could not be approved by 30 September 2013 as statutorily required. It would be for a person with sufficient interest to persuade a court to declare the close-down process invalid. I am confident that any claim in judicial review would, should one be brought, be successfully resisted for the reasons set out above. The passage of time would serve to reinforce that view. In short, I do not consider that the close-down process has been invalidated.

8. LESSONS TO BE LEARNT

- 8.1 In view of the above, I have consulted with both the PCC's and Chief Constable's Chief Finance Officers. As a consequence, and in order to prevent a reoccurrence, steps will be taken to ensure that:

- The Regulation 10 requirements are specifically referred to in future close-down timetables for the accounts;
- The content of the close-down timetables are reviewed against relevant legislation for completeness;
- Complete adverts notifying the public rights under Regulation 10 are placed in the local newspaper and both PCC's and Suffolk Constabulary's websites;

The PCC's Chief Finance Officer has undertaken to ensure that these actions will be addressed.

9. FURTHER STEPS

- 9.1 As required by the 1989 Act this report, supplied to the PCC for consideration, has also been forwarded to the Police and Crime Panel.
- 9.2 The report has been added to the agenda for the PCC's and Chief Constable's Audit Committee on 24 September 2013 and which will give opportunity for consideration of the report by the PCC with the assistance of the Committee.

10. RECOMMENDATION

The Police and Crime Commissioner is recommended to:

- Note the omission with regard to the proper advertising of the public rights in the respect of the accounts;
- Note the opinion of the Monitoring Officer at paragraph 7 which will enable the PCC to proceed to consider the accounts for approval by 30 September 2013;
- Support the actions to be taken (and described at paragraph 8) to prevent a similar omission in the future.

**Christopher Jackson LLB LLM MBA Solicitor
Chief Executive and Monitoring Officer
Office of the Police and Crime Commissioner for Suffolk**

16 September 2013