

From: Mike Hill, Cabinet Member for Community and Regulatory Services
Simon Jones, Corporate Director, Growth, Environment & Transport

To: Growth, Economic Development and Communities Cabinet Committee
– 21 September 2021

Decision No: TBA

Subject: Contract extensions for coroners' post mortem examinations

Classification: Part 1 Report – Unrestricted

Part 2 Appendix - Exempt as defined in Schedule 12A of the Local Government Act 1972

Electoral Divisions: Countywide

Summary: This report concerns proposed extensions to two of the four contracts for body storage and post mortem (PM) facilities with the Kent NHS Trusts that expire on the 30 September 2021.

Recommendation:

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Community & Regulatory Services on the proposed decision to award 12-month extensions to the PM contracts with East Kent NHS Trust and Medway NHS Trust for the period 1 October 2021 to 30 September 2022 as shown at Appendix A.

1. Introduction

1.1. The Coroners and Justice Act 2009 places a duty on Coroners to investigate deaths that are referred to them if they have reason to think that:

- The death was violent or unnatural;
- The cause of death is unknown; or
- The deceased died while in prison, police custody or another form of state detention e.g., where a Deprivation of Liberty Safeguard Order (DoLS) is in place

1.2. In some cases, the Coroner will order a PM to establish the cause of death, and in such cases, the deceased is taken to one of five NHS mortuaries across Kent and Medway located at Margate, Ashford, Tunbridge Wells, Dartford, and Gillingham. On behalf of the Kent Senior Coroners, KCC ensures access to body storage and PM facilities across the four Kent coroner areas.

1.3. Two of the four contracts for body storage and PM facilities are due to expire on the 30 September 2021 and in the normal course of events KCC would seek to renew the

contracts for another four years. However, in light of the decision by KCC to build a Digital Autopsy and Body Storage facility at Aylesford, the contracts simply need to be extended until such time as the new facility opens, estimated for July 2022. These extensions will ensure this critical service continues uninterrupted and will allow for a phased transition from invasive PMs to non-invasive Digital Autopsy (DA) for the majority of deceased. Where the DA is inconclusive in terms of identifying a cause of death to the coroner's satisfaction, a partial or full invasive PM may still be necessary and a single NHS Trust is being commissioned to fulfil this role. It is estimated that through DA the number of invasive PMs within Kent and Medway will fall from 3,000 a year to 1,100.

- 1.4. This report sets out the needs of the two Kent and Medway senior coroners and the options and context for re-providing these services, before recommending an option for KCC to extend the contracts with the current providers for this critical service.

2. The needs of the Senior Coroners

- 2.1. Her Majesty's Senior Coroners are responsible for providing the coronial service for the KCC and Medway administrative areas. By virtue of The Coroners and Justice Act 2009, KCC is responsible for meeting all the costs of the coroner service although Medway Council meets its share of the costs through a cost apportionment and pro rata allocation.
- 2.2. In particular, KCC supports the Senior Coroners by putting in place contracts for the major areas of activity which includes the provision of body storage and PM facilities. In 2020, 6,573 deaths were referred to the Senior Coroners, of which 3,028 necessitated a PM (46% of deaths referred).
- 2.3. Until now the NHS in Kent and Medway has always provided body storage and PM facilities to the Kent and Medway coroners as an adjunct to their own requirements for body storage for hospital deaths where the coroner is not involved. There are no private sector PM providers anywhere in England and Wales that could take on this PM work. Furthermore, each of the five mortuaries in Kent and Medway are already operating at full capacity for body storage and so would not be able to take on any additional PM work from each other in the absence of significant capital investment to increase their body store capacity and given the number of PM's will reduce significantly when the DA facility opens, such investment cannot be justified and, in any event, would be impossible within the timeframe for this proposed extension.
- 2.4. Commissioning the coronial work outside of Kent at other NHS sites is not an option for two reasons. First, the cost to KCC of transferring the deceased would be prohibitive. Second, the service has recent previous experience of using Greenwich Public Mortuary for a year when Maidstone and Tunbridge Wells NHS Trust did not renew its contract with KCC in 2013. At that time, there was a public outcry by families and funeral directors about the costs of transporting the deceased from Greenwich once the PM had been done, and the travelling time to view the deceased. The local MP eventually intervened and brokered a solution with the Trust to take the work back. However, the lesson learned is that from a customer perspective, procuring services at such a distance from the coroner area places an unsustainable strain on bereaved families and service costs and therefore is not a viable option.

3. Procurement route

- 3.1. The current level of expenditure on PMs with the two Trusts is in the region of £997,000 a year depending on activity levels. Normally this level of expenditure would require a full tender process compliant with the European Procurement Regulations and KCC's Procurement Standing Orders.
- 3.2. However, in the absence of any private sector providers and with finite capacity at the current providers KCC is left with no alternative but to seek to extend the contracts with the current providers on a temporary basis until the DA facility comes on-line in July 2022. This will ensure continuity of service given the long standing and successful partnerships between the Trusts, KCC and the Senior Coroners.

4. Options

- 4.1. **Do nothing** – this is not an option. Unless a contract is put in place the system of coronial death investigation and certification in the Mid Kent and Medway area will collapse with the inevitable consequences for bereaved families.
- 4.2. **Go out to tender** – this is not an option. The Kent NHS Trusts do not have capacity to take on any extra work without significant capital investment and given that KCC is moving over to Digital Autopsy which will significantly reduce PM activity, such capital investment makes no sense at all. Whilst it is possible that NHS providers outside of Kent, for example in the greater London area, may have some capacity, past experience of using a mortuary outside Kent has shown that such an approach simply does not work on any level.
- 4.3. **Use a framework or other viable contract mechanism** – there are no known frameworks or other viable mechanisms in existence elsewhere in England and Wales.
- 4.4. **Renew contract through single source procurement** – this is the only viable option given the very specialist nature of the work and the absence of any alternative providers with sufficient capacity in Kent or nearby adjoining areas.

5. Financial Implications

- 5.1. The financial implications of these three proposed contract extensions are set out in Part 2 (exempt) of this report. It is estimated that the cost to extend the contracts is within the current funding envelope.
- 5.2. It should be noted that the current contract with East Kent NHS Trust is a fixed fee regardless of activity levels and is paid in 12 equal instalments. At the point where the DA facility opens, all deceased that would normally have undergone an invasive PM will be scanned, so dependent on if and when notice is served to end the contract extension, KCC could potentially be liable for both DA scanning charges and the monthly charge for PMs even though no PMs will be taking place in the East Kent area. To mitigate this scenario, the move over to DA will be phased with deaths in the East Kent area not being scanned at the DA facility until the contract extension with the Trust comes to an end.

6. Policy Framework

- 6.1. This tendering opportunity has not been subject to competition. The existing contract can be extended, as supported by Regulation 72 (c) (ii) and (iii) of the Public Contract Regulations which states that a contract may be modified without a new procurement procedure in accordance (c) (ii) the modification does not alter the overall nature of the contract; (iii) any increase in price does not exceed 50% of the value of the original contracts or framework agreement

7. Equality implications

- 7.1 An Equalities Impact Assessment (EqIA) was prepared and approved in 2019 when the PM contract with Maidstone & Tunbridge Wells NHS Trust was last renewed. Nothing has changed since then in terms of the impact of the contract on the protected characteristics and no issues have been identified by the service.

8. Data Protection Implications

- 8.1 For the purposes of the coroner service, the two senior coroners are the data controllers. The GDPR does not apply to deceased persons but information is collected during the course of their enquires that relates to the living. This includes details about next of kin, for example name, address, and telephone number. Sometimes this information is shared with other organisations for the specific purposes of the coroner's investigation, as in this case with the NHS. However, it is not necessary to seek the explicit consent of the data subject to share this data. In any event, the contract contains a data sharing agreement that places a specific obligation on the provider to comply at all times with the requirement of the GDPR for the data they hold relating to next of kin. In addition, the service has published a privacy notice which explains what personal information it holds about service users, how it collects it, how it uses it and how it might share information.

9. Policy – Strategic Statement

- 9.1 The proposed Digital Autopsy facility, to which these contracts are directly linked, supports the KCC Strategic Statement outcome 38(a) Modernising the Council through technology solutions for business change.

10. Conclusions

- 10.1 KCC supports the Kent and Medway Senior Coroners by ensuring contracts are in place for body storage and for PMs to ensure they are able to discharge their statutory duties in accordance with the Coroners and Justice Act 2009. There are no private sector PM providers anywhere in England and Wales to take on the Kent and Medway PM workload. The five current mortuary sites are all operating at full body storage capacity and could not take on additional work from each other without significant capital investment and given that PM activity will reduce significantly when the Digital Autopsy facility opens, such capital investment could not be justified. KCC is therefore left with no alternative but to extend the current PM contracts with the current providers until the Digital Autopsy facility opens.

11. Recommendation(s)

11.1 The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Community & Regulatory Services on the proposed decision to extend the PM and body storage contracts with East Kent NHS Trust and Medway NHS Trust for the period 1 October 2021 to 30 September 2022 as shown at Appendix A.

12. Appendices:

Appendix A – Proposed Record of Decision

Contact details

Report Author

Giles Adey, Coroners Office Manager (Budget & Contracts)

07740 186032

giles.adey@kent.gov.uk

Relevant Director:

Stephanie Holt-Castle, Director for Growth and Communities

03000 412064

stephanie.holt-castle@kent.gov.uk