

From: Simon Jones, Corporate Director, Growth, Environment & Transport

To: Mike Hill, Cabinet Member for Community and Regulatory Services

Decision No: 23/00025

Subject: New contracts for the provision of Post-Mortem Facilities for the Mid Kent & Medway, North West Kent, North East Kent, Central and South East Kent coroner areas

Classification: : **Part 1: Main Report Unrestricted**
Part 2: Exempt Appendix – Section 12a Local Government Act

Electoral Divisions: Countywide

Summary: This paper describes an annual contract that can be renewed up to four years for arrangements for the provision of mortuary and post-mortem (PM) services in the Mid Kent & Medway, North West Kent, North East Kent, Central and South East Kent coroner areas.

Recommendation(s): The Cabinet Member for Community and Regulatory Services is asked to agree to:

- A) Issue new contracts, via direct awards, for the provision of Post-Mortem Facilities in Mid-Kent and Medway, North West Kent, North East Kent, Central and South East Kent, to commence from 1 April 2023 for a period of 12 months with the option of extending for a further 4 years.
- B) delegate authority to the Director for Growth and Communities, in consultation with the Cabinet Member for Community & Regulatory Services, to negotiate, finalise and enter into the contracts; and
- C) delegate authority to the Director for Growth and Communities to take other relevant actions, including but not limited to entering into required legal agreements and agreed contract extensions, as necessary to implement the decision

The Record of Decision is 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.

- 1.2. In some cases, the Coroner will order a Post-Mortem (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. On behalf of the Kent Senior Coroners, KCC ensures access to body storage and PM facilities across the Kent coroner areas.
- 1.3. The current contracts for PM facilities and staff expire on 31 March 2023. There is a need for these contracts to be renewed from 1st April 2023 to ensure continuity of this critical service.
- 1.4. Contracts with Dartford and Gravesham, East Kent, Medway Maritime and Maidstone and Tunbridge Wells NHS Trusts for the provision of PM facilities are required until the opening of the Digital Autopsy (DA) Body Storage facility at Aylesford. There is no confirmed commencement date for the implementation of the DA project. Renewing the mortuary contracts will allow more time for KCC to determine the DA project's direction of travel and develop a contract for the provision of mortuary services to complement this.
- 1.5. 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 renew the contracts with the current providers for this critical service.

2. The needs of the Senior Coroners

- 2.1. 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 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. 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 2022, 6289 deaths were referred to the Senior Coroners, of which 3138 deaths¹ required a PM. The number of cases requiring PMs is consistent with previous years, despite the impact of Covid.
- 2.3. The NHS in Kent and Medway has always provided body storage and PM facilities to the Kent and Medway coroners alongside 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 work and there is no public mortuary facility in Kent or Medway. 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. Given the modelling that the number of physical PMs will reduce significantly when the DA facility opens, such investment cannot be justified and, in any event, would be impossible within the timeframe.
- 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

¹ The overall number of deaths referred to the Senior Coroner has decreased since 2020 following the implementation of the non-statutory [national medical examiner system](#), operated by the NHS.

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. The lesson learned from this is that procuring services at such a distance from the coroner area places an unsustainable strain on bereaved families, carbon emissions and service costs and therefore is not a viable option.

- 2.5. Continuing outside of a contracted arrangement puts the Council at risk of receiving an inconsistent service. For example, if NHS Trusts choose to dedicate their pathologists and body storage to their hospital deaths rather than community deaths, a reduced capacity would be available to KCC to carry out its statutory duty on behalf of the Senior Coroners. Without a contract in place, KCC cannot challenge the Trusts if they reduce their capacity to carry out such a critical service.

3. Options

Option 1: Do nothing

This is a statutory service, and unless contracts are put in place the system of coronial death investigation and certification in the Mid Kent & Medway, North West Kent, North East Kent, Central and South East Kent coroner areas will fail. The Council will also be at risk of receiving an inconsistent provision and quality of service, a lack of control over costs, and subsequent reputational ramifications.

Option 2: Go out to tender Competitive Tender Process

There are no private sector organisations within this marketplace locally, and previous experience of mortuary use outside of Kent has not delivered a suitable service. A competitive tender process will not yield a competitive process.

Option 3: Use a framework or other viable contract mechanism.

There are no known frameworks or other viable mechanisms for the provision of mortuary facilities in England and Wales.

Option 4: One NHS Trust delivers all PMs.

No single facility can accommodate the number/level of PMs.

Option 5: Renew contract through single source procurement Direct award new contracts to the NHS Trusts – Direct award new contracts to the NHS trusts through the regulation 12 exclusion permitted within PCR15. This option is recommended given the very specialist nature of the work and the absence of any alternative providers with sufficient capacity in Kent or nearby adjoining areas. Annual contracts that can be renewed/extended will be used to improve understanding of the service and associated costs to the Trusts of running the contract. New contract terms will be updated and developed using these findings and in line with KCC's future needs, including the approach to DA.

4. Financial implications

- 4.1. Without a contract renewal in place, there is a risk NHS Trusts can charge spot rates for the provision of mortuary services.

- 4.2. The financial implications of these proposed contract renewals are set out in Annex A (exempt) of this report. Subject to negotiation, it is forecast that the cost to renew the contracts is within the current funding envelope, the 22/23 budget being £1,269,400.00.
- 4.3. 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 six equal instalments, however the discussions for the new contract will include payment based on activity levels. The contracts with Dartford and Gravesham, Medway Maritime and Maidstone and Tunbridge Wells NHS Trusts are charged on a cost per PM basis.

5. Legal implications

- 5.1. In accordance with regulation 12 of the Public Contract Regulations 2015 (PCR15), Public contracts between entities within the public sector are excluded from the provisions detailed in the PCR15. This allows the Council to award contracts directly to the four NHS Trusts without the need to follow the competitive processes detailed in the regulations.
- 5.2. The Council does have an obligation to deliver Value for Money on behalf of the taxpayer. As part of the negotiation process, the Council will ensure consistency across the contract through amended pricing and specifications. This will ensure the service remains within the £1.3m budget (based on 22/23 cost).
- 5.3. To ensure transparency, the Council will publish a Contracts Finder Notice for each of the contracts detailing the value and duration.

6. Equality implications

- 6.1. The Equalities Impact Assessment (EqIA) updated in 2023 for this service this year in preparation for contract renewals. Should any issues arise, they will be dealt with in accordance with KCC policies and statutory requirements.

7. Data Protection implications

- 7.1. 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. The contract contains a data sharing agreement that places a specific obligation on the provider to always comply 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.

8. Policy

- 8.1. The proposed Digital Autopsy facility, to which these contracts are directly linked, supports Priority 2 of Framing Kent's Future: Infrastructure for Communities, as it supports a further digitalisation of KCC's service offer, which contributes to finding better ways to deliver services for Kent.

9. Conclusions

- 9.1. KCC supports the Kent and Medway Senior Coroners by ensuring contracts are in place for body storage and for PMs to ensure they can discharge their statutory duties in accordance with the Coroners and Justice Act 2009. There is a need for the contracts for PM facilities and staff to be extended to ensure continuity of this critical service.
- 9.2. There are no private sector PM providers anywhere in England and Wales to take on the Kent and Medway PM workload and no public mortuary in Kent or Medway. 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. KCC is therefore left with no alternative but to extend the current PM contracts with the current providers until the Digital Autopsy facility opens. Further to the previous report to Cabinet Committee to extend the post-mortem contracts for six months, work continues apace on Digital Autopsy, but requires further time to determine the best way forward.
- 9.3. This arrangement for an annual contract that can be renewed/extended up to two times will align contract end dates and allow the Coroner Service to better understand the provision and associated costs of running the contract for the Trusts. Extending the mortuary contracts will also provide more time for KCC to determine the DA project's direction of travel, and what the relationship will be between these two services.

10. Recommendation

10.1 **Recommendation(s)**: The Cabinet Member for Community and Regulatory Services is asked to agree to:

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C) delegate authority to the Director for Growth and Communities to take other relevant actions, including but not limited to entering into required legal agreements and agreed contract extensions, as necessary to implement the decision

The Record of Decision is at Appendix A.

11. Appendices

Appendix A: Record of Decision

Equality Impact assessment: [Renewal of contracts with the NHS for the provision of mortuary facilities and staff to carry out post mortems on behalf of the Kent and Medway Coroner Service](#)

12. Contact details.

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