

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
– 22 November 2022

Decision No: 22/00102

Subject: Contract extensions for the provision of Post-Mortem Facilities for the Mid Kent & Medway, North West Kent, and East Kent coroner areas

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

Past Pathway of Paper: N / A

Future Pathway of Paper: For Cabinet Member Decision

Electoral Divisions: Countywide

Summary: This paper describes a six-month extension of contractual arrangements for the provision of mortuary and Post-Mortem (PM) services in the Mid Kent & Medway, North West Kent, and East Kent coroner areas.

Recommendation(s): The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse the proposal that the Cabinet Member for Community and Regulatory Services agree the six-month extension for the provision of mortuary and Post-Mortem (PM) services in the Mid Kent & Medway, North West Kent, and East Kent coroner areas and confirm current arrangements from earlier decisions [21/00079](#) and [21/00096](#) 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.
- 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. Extensions to three of the four contracts for PM facilities and staff expired on 30 September 2022. Due to an administrative oversight following the departure of the

contract manager from the Coroner Service in May 2022, there is a need for three of these contracts to be extended retrospectively (from October 2022) to ensure continuity of this critical service.

- 1.4. Whilst the three NHS Trusts continue to provide PM facilities for the Council outside of a contracted arrangement, it is recommended that these contracts are extended retrospectively for six months from 1 October 2022 to 31 March 2023 to align contract end dates with the financial year. This interim arrangement will be used by the Coroner Service to continue to examine the service and associated costs to the Trusts of running the contract, and to update contract terms in line with KCC's future needs.
- 1.5. Contracts with Dartford and Gravesham, East Kent, and Medway NHS Trusts for the provision of PM facilities were extended by 12 months in October 2021 to ensure service continuity until the opening of the Digital Autopsy (DA) Body Storage facility at Aylesford, which was estimated for July 2022. The facility has not yet opened, and it is unclear how the Digital Autopsy project will be progressing as the procurement is currently on hold due to market conditions. Extending 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.
- 1.6. 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.
- 1.7. Contracts had been previously awarded under key decisions [21/00079](#) and [21/00096](#); endorsed by this Cabinet Committee in September 2021 and November 2021. Due to an administrative error, whilst the contracts were awarded in accordance with due process the final Record of Decision was not processed. This report therefore asks Members as part of the key decision to confirm their previous endorsement of these decisions.

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. 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 2021, 6,030 deaths¹ were referred to the Senior Coroners, of which 3,138 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

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.

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 for this proposed extension (six months).

- 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. 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

- 3.1. **Do nothing** – this is the current situation as the service is operating outside of a contract. Whilst the three NHS Trusts continue to provide PM facilities for the Council outside of a contracted arrangement, without a contract in place, the Council is at risk of receiving an inconsistent provision and quality of service and having a lack of control over costs, all of which could cause reputational damage to KCC.
- 3.2. **Go out to tender** – this is not an option. Kent and Medway 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 eventually significantly reduce PM activity, there is no business case for such capital investment. Whilst it is possible that NHS providers outside of Kent may have some capacity, past experience has shown that this approach does not provide a service of suitable quality and cost.
- 3.3. **Use a framework or other viable contract mechanism** – there are no frameworks or other viable mechanisms in England and Wales.
- 3.4. **Renew the contracts for a longer period until the DA facility opens** – extending the contracts for 12-18 months will not provide KCC with the flexibility to negotiate new contracts for mortuary services that support the DA facility. In six months, KCC will have a clearer understanding of the progress of the DA, and would benefit from renegotiating the terms of the mortuary contracts in light of this.

- 3.5. **Renew contracts for six months 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. A six-month extension 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 extension in place, there is a risk NHS Trusts are able to charge spot rates for the provision of mortuary services.
- 4.2. The financial implications of these three proposed contract extensions are set out in the exempt Appendix of this report. It is forecast that the cost to extend the contracts is within the current funding envelope.
- 4.3. It should be noted that the contract with East Kent NHS Trust is a fixed fee regardless of activity levels and is paid in six equal installments. The contracts with Dartford and Gravesham and Medway NHS Trusts are charged on a cost per PM basis.
- 4.4. One significant benefit of the DA facility will be that with a falling number of pathologists available, it can offer an alternative to invasive PMs, which will reduce the overall number of PMs required. A contract extension longer than six months would tie KCC into a service that will not be required on the same scale once the DA facility comes online. In six months or less, more will be known about the direction of the DA project, and new contract terms for the provision of mortuary services can be developed to robustly support the DA service in its chosen form.

5. Legal implications

- 5.1. The current level of expenditure on PMs with the three Trusts is in the region of £1.1million a year depending on activity levels. Normally this level of expenditure would require a full tender process compliant with the Public Contracts Regulations (PCR) 2015 and KCC's Procurement Policy (Spending the Council's Money).
- 5.2. External legal advice has been obtained from Trowers and Hamlins to evaluate the procurement options and risks of extending the Contracts by six (6) months until 31 March 2023.
- 5.3. Having considered this advice, it is proposed that the modification can be made to the Medway and East Kent Contracts for the following reasons:
- 5.3.1. the services under the Contracts are necessary and require continuation until 31 March 2023.
 - 5.3.2. the prices of the extended Contracts do not exceed 50% of the value of the original Contracts; and

- 5.3.3. the services require specialist providers and therefore there are technical reasons why the incumbent providers are the only ones who are sufficiently specialist as to provide the services without material additional cost to the Council;
- 5.4. The risk to the Council is that an alternate service provider will bring a legal challenge. To mitigate this, a Modification Notice will be published to notify the market of the Council's intention to award this contract under Regulation 72.
- 5.5. The Dartford and Gravesham Contract is proposed to be extended or awarded as a below-threshold procurement, given its original value and estimated extension value. The procurement risk is considered low, provided the Council is content with the contractual values stated.

6. Equality implications

- 6.1. The Equalities Impact Assessment (EqIA) completed in 2019 for this service was reviewed last year when contract extensions were awarded to the three NHS Trusts. Nothing has changed in terms of the impact of the contract since then, and no issues have been identified by the service. 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 coroners investigation, as in this case with the NHS. 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.

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 are able to discharge their statutory duties in accordance with the Coroners and Justice Act 2009. Due to an administrative oversight following the departure of the contract manager from the Coroner Service in

May this year, there is a need for three of the contracts for PM facilities and staff to be extended retrospectively 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.
- 9.3. This interim arrangement for six months 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

The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse the proposal that the Cabinet Member for Community and Regulatory Services agree the six-month extension for the provision of mortuary and Post-Mortem (PM) services in the Mid Kent & Medway, North West Kent, and East Kent coroner areas and confirm current arrangements from earlier decisions 21/00079 21/00079 and 21/00096 as shown at appendix A.

11. Appendices

- Appendix A – Proposed Record of Decision
- Equality Impact Assessment:
<https://democracy.kent.gov.uk/documents/s115085/MortuaryfacilitiesEqIA.docx.pdf>

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