

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

To: Growth, Economic Development and Communities Cabinet Committee
– 14th May 2024

Key decision **24/00032**

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 Unrestricted – Appendix A is Confidential - Paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972**

Electoral Divisions: All

Summary: This paper proposes award of a three-year contract (that can be extended for up to two 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 Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Community and Regulatory Services on the proposed decision to:

- 1) Issue new contracts, via direct awards, for the provision of Post-Mortem Facilities in Mid-Kent and Medway, Northwest Kent, and East Kent, to commence from 1 April 2024 for a period of 3 years (36 months) with the option of extending for up to a further 2 years (24 months)
- 2) Delegate authority to the Director for Growth and Communities, in consultation with the Cabinet Member for Community and Regulatory Services to take relevant actions, including but not limited to, awarding, finalising the terms of and entering into the relevant contracts or other legal agreements, as necessary, to implement the decision
- 3) Delegate authority to the Director for Growth and Communities, in consultation with the Cabinet member for Community and Regulatory Services to award extensions of contracts for commissioned services in accordance with the extension clauses within the contract (3 years + 2-year extension) as shown at Appendix B.

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 expired on 31 March 2024. There is a need for these contracts to be renewed from 1st April 2024 to ensure continuity of this critical service. Provision of this service since 31st March has been undertaken by the five NHS trusts, on the basis of the previously agreed contract terms and PM rates. These arrangements will be formalised by the proposed contracts. The Coroners Service are in regular discussion with the relevant NHS trusts to ensure that the service can continue on this basis in the short term.
 - 1.4. Uncertainty relating to the Digital Autopsy (DA) project has delayed decision making with regards to the required contract period. Work has been undertaken to review and implement recommendations of the Fuller Inquiry into the service specification (these recommendations were not published until late November 2023).
 - 1.5. Contracts with Dartford and Gravesham, East Kent, Medway Maritime and Maidstone and Tunbridge Wells NHS Trusts for the provision of PM facilities have previously been awarded/extended on an annual basis, taking into account the potential opening of the Digital Autopsy (DA) Body Storage facility. Once operational, this facility could potentially significantly reduce the numbers of PM required through these Contracts. Further scoping work is required to progress this project; therefore this facility will not progress within the timescales expected. The DA project will not have an impact upon the initial term of this contract.
 - 1.6. Contracts with Dartford and Gravesham, East Kent, Medway Maritime and Maidstone and Tunbridge Wells NHS Trusts for the provision of PM facilities are required. 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 A recharge arrangement is in place with Medway Council, to recoup some of the cost to provide the coroner service across this area.
- 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 2023, 6448

deaths were referred to the Senior Coroners, of which 3471¹ required a PM. The number of cases requiring PMs is consistent with previous years.

- 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.
- 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, service costs and carbon emissions 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 require the Trusts to provide capacity to carry out this 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.

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.

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.

No single facility can accommodate the number of PMs required.

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 awards 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 24/25 budget being £1,437,600. These Contracts are funded from the Coroner) Revenue Budget. The full maximum cost of the contract over the 5 years (3 years plus potential to extend for 2 years) is £7,188,000. This will be met from base budget allocation. As there is no available competition in this instance, information held on other Mortuary costs will be used to benchmark negotiated rates.
- 4.3. There is no guarantee of volumes under these contracts (with the exception of the agreement with East Kent NHS Trust, see point 4.4 below). Inflationary uplifts are to be negotiated individually with all Trusts (to be reviewed on an annual basis) and incorporated into Budget planning.
- 4.4. 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 negotiations 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. 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
- 5.2. 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 c.£1.4m budget (based on 23/24 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) was updated in 2023 for this service in preparation for the new contracts. 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 coroner officer 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, for example 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. Conclusions

- 8.1. 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.
- 8.2. 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 award new PM contracts with the current providers until the Digital Autopsy facility opens.
- 8.3. This arrangement will allow the Coroner Service to better understand the provision and associated costs of running the contract for the Trusts. Awarding new 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.

9. Recommendations

Recommendation(s): The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Community and Regulatory Services on the proposed decision to:

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10. Appendices

Appendix A: Exempt Confidential commercially sensitive information

Appendix B: Proposed Record of Decision

Appendix C: 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

11. Contact details.

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